

IN THE MATTER OF

ROBERTO FOJO, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3373. Complaint, Mar. 2, 1992 -- Decision, Mar. 2, 1992*

This consent order prohibits, among other things, a Miami, Florida, obstetrician/gynecologist from agreeing with any other physician to withhold or threaten to withhold emergency room services at any hospital, and, for a period of five years, from threatening that any physician would or might withhold such services at any hospital.

Appearances

For the Commission: *L. Barry Costilo, Paul Nolan and Alan Soudakoff.*

For the respondent: *Robert P. Manina, Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Ft. Lauderdale, FL.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Roberto Fojo, M.D., hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roberto Fojo, M.D., is a physician licensed to practice medicine in the State of Florida and engages in the practice of obstetrics and gynecology in Miami, Florida. At the time of the acts and practices described herein, Dr. Fojo held medical staff privileges at North Shore Medical Center, Inc., in Miami where

he was chairman of its department of obstetrics and gynecology. His principal office is located at 1190 Northwest 95th Street, Suite 107, Miami, Florida.

PAR. 2. Except to the extent that competition has been restrained as alleged herein, respondent has been and is now in competition with other obstetrician/gynecologists (Ob/Gyns) in Miami, Florida.

PAR. 3. Respondent's general business practices, and the acts and practices described below, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 4. North Shore Medical Center Inc. ("North Shore" or "hospital") is a 357-bed general acute care not-for-profit hospital located in Miami, Florida. At the time of the acts and practices described herein, North Shore had a major marketing program directed toward the health care needs of women, and its Ob/Gyn department provided a substantial source of revenue to the hospital.

PAR. 5. As is typically the case, the economic arrangement between North Shore and its medical staff did not involve an exchange of money, but rather an exchange of "free" goods and services. The hospital granted privileges to qualified physicians to use its facilities and support personnel without receiving payment from the physicians, and in exchange physicians agreed to provide various services without receiving payment from the hospital. One of the services that some physicians provided as part of this arrangement was taking emergency room "call," *i.e.*, being available on a regularly scheduled basis to come to the hospital to treat emergency room patients. As of November 1986, North Shore required Ob/Gyns who had active or provisional medical staff privileges at the hospital to take emergency room call. As a consequence, approximately 20 Ob/Gyns were required to take emergency room call. Most of these Ob/Gyns competed with each other.

PAR. 6. Beginning at least as early as November 1986, respondent conspired with other members of North Shore's Ob/Gyn department to withhold and threaten to withhold emergency room call services from the hospital. The aim of the respondent and other conspirators was to improve their economic arrangement with North Shore by coercing the hospital to release them from their obligation to take emergency room call in exchange for their hospital privileges, and to pay in some other manner those Ob/Gyns who were willing to

take call. By concertedly threatening not to take emergency room call, respondent and the other conspirators sought to enhance their bargaining power and to reduce the risk that the hospital would terminate their individual hospital privileges if they refused to take call. The conspirators' loss of medical staff privileges at North Shore would have placed them at a competitive disadvantage vis-a-vis other Ob/Gyns.

PAR. 7. Respondent chaired Ob/Gyn department meetings at North Shore on November 13 and December 11, 1987. At the November 13th meeting, members of the department voted to remove their names from North Shore's emergency room call roster. At the December 11th meeting, 19 members of the department who were present agreed to inform North Shore's administration that on December 15, 1986, the department members would stop taking emergency room call. Immediately after the meeting, respondent notified North Shore's administration of this threatened action.

PAR. 8. After making this threat, respondent refused to take call in late December 1986 and has not taken call since that time. Moreover, in late December 1986, respondent, on behalf of the members of his department, met on several occasions with North Shore's administrator to seek greater financial incentives for taking call, including indemnification for malpractice damages or direct payments to Ob/Gyns.

PAR. 9. In January 1987, all but two members of the Ob/Gyn department stopped taking emergency room call. Thereafter, from February 1 through June 30, 1981, North Shore altered its economic arrangement with the Ob/Gyns and paid them, as well as other physicians on its staff, to take call. North Shore decided that this arrangement was too expensive and as of July 1, 1981, staffed its emergency room with those few Ob/Gyns who were willing to take call in exchange for hospital privileges.

PAR. 10. The purpose, effect, tendency, or capacity of the conspiracy, acts, and practices described in paragraphs six through nine are and have been to restrain trade unreasonably in the following ways, among others:

- a. Restraining competition among respondent and other Ob/Gyns on the medical staff of North Shore;

- b. Coercing North Shore to provide Ob/Gyns access to its facilities on more favorable economic terms; and
- c. Depriving consumers of the benefits of competition.

PAR. 11. The conspiracy, acts, and practices described herein constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Such conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Roberto Fojo, M.D. ("Dr. Fojo") is a physician licensed and doing business under and by virtue of the laws of the State of Florida. The mailing address and principal place of business of Dr. Fojo is 1190 Northwest 95th Street, Suite 107, Miami, Florida.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for the purposes of this order, the following definitions shall apply:

1. "*Respondent*" means Roberto Fojo, M.D., and his employees, agents and representatives.

2. "*Emergency room call services*" means being available, as determined by a hospital, to come to the hospital and treat emergency room patients needing medical or surgical services.

II.

It is further ordered, That respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, continuing, or attempting to enter into or continue, any agreement or understanding, either express or implied, with any physician to withhold or threaten to withhold emergency room call services at any hospital; and

B. For a period of five (5) years from the date this order becomes final, expressly or impliedly threatening that any physician would or might, in concert with any other physician, withhold emergency room call services at any hospital.

Provided that, nothing in this order shall prohibit respondent from entering into any agreement with any physician with whom respondent practices medicine in partnership or as a professional corporation, or who is employed by such partnership or professional corporation or by respondent.

III.

It is further ordered, That respondent:

A. Distribute a copy of this order and the accompanying complaint, by first class mail within thirty (30) days after this order becomes final, to each hospital at which he has hospital privileges at the time this order becomes final;

B. File a written report with the Commission within sixty (60) days after this order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which respondent has complied and is complying with this order; and

C. Notify the Commission within thirty (30) days of any change in his business address.

IN THE MATTER OF

HANSON PLC, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3374. Complaint, Mar. 9, 1992--Decision, Mar. 9, 1992

This consent order permits, among other things, the respondents to acquire Beazer PLC, and requires the respondents to divest the Cencal Cement Company interest to a Commission-approved acquirer. If the divestiture is not completed within 12 months, the respondents shall consent to the appointment by the Commission of a trustee to divest the Cencal interest.

Appearances

For the Commission: *Casey Triggs and Steven A. Newborn.*

For the respondents: *Helene Jaffe, Weil, Gotschal & Manges,*
New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, Hanson PLC ("Hanson") and H B Acquisitions PLC ("HBA"), an indirect wholly-owned subsidiary of Hanson (hereinafter collectively referred to as "Hanson"), both corporations subject to the jurisdiction of the Commission, propose to acquire substantially all of the voting securities of Beazer PLC ("Beazer") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21 and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows: