

IN THE MATTER OF

COLUMBIA HOSPITAL CORPORATION, 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-3472. Complaint, Nov. 19, 1993--Decision, Nov. 19, 1993*

This consent order requires, among other things, the respondents to divest Kissimmee Memorial Hospital, and this divestiture has been consummated. In addition, it prohibits, among other things, the respondents from acquiring, for 10 years, any acute care hospital in Osceola County, Florida without prior Commission approval. The prior approval requirement also is to be met before respondents permit any acute care hospital they operate in the county to be acquired by any entity that already operates a hospital there.

Appearances

For the Commission: *Mark J. Horoschak* and *David M. Narrow*.

For the respondents: *Ky Ewing, Vinson & Elkins*, Washington, D.C.

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 the respondents, Columbia Hospital Corporation ("Columbia") and Galen Health Care, Inc. ("Galen"), corporations subject to the jurisdiction of the Commission, have entered into an agreement whereby Columbia will acquire 100 percent of the voting stock of Galen; that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the

Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint the following definitions shall apply:

a. "*Columbia*" means Columbia Hospital Corporation, a corporation organized, existing, and doing business under the laws of Nevada, with its principal place of business at 777 Main Street, Suite 2100, Fort Worth, Texas.

b. "*Galen*" means Galen Health Care, Inc., a corporation organized, existing, and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky

c. "*Acute care hospital*" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

d. "*Acute care inpatient hospital services*" means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities. In Florida, acute care inpatient hospital services are provided only by health care institutions licensed as hospitals, in facilities thereof licensed or certified to provide acute care (as opposed to other types of hospital care, such as psychiatric, substance abuse, rehabilitation or subacute skilled nursing care).

THE PARTIES

PAR. 2. As of December 31, 1992, Columbia owned and operated 24 hospitals in Florida, Texas, Alabama, and Georgia. In 1992, Columbia had revenues of more than \$819 million. Respondent Columbia owns and operates, through a wholly-owned subsidiary, Kissimmee Memorial Hospital ("KMH"), an acute care hospital in Kissimmee, Osceola County, Florida.

PAR. 3. Galen owns and operates approximately 70 hospitals in 18 states. In fiscal year 1992, Galen's hospitals had total net revenues of more than \$3.8 billion. Respondent Galen owns and operates Osceola Regional Medical Center ("Osceola Regional"), an acute care hospital in Kissimmee, Osceola County, Florida.

JURISDICTION

PAR. 4. Columbia and Galen, at all times relevant herein, have been and are now engaged in or affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12. The businesses of Columbia and Galen, at all times relevant herein, have been and are now in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE PROPOSED ACQUISITION

PAR. 5. On or about June 10, 1993, Columbia and Galen entered into an agreement whereby Columbia will acquire 100 percent of the voting stock of Galen, and Galen stockholders will receive in exchange Columbia voting stock. The total value of the Galen stock to be acquired by Columbia is in excess of \$3.2 billion.

NATURE OF TRADE AND COMMERCE

PAR. 6. The relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care

inpatient hospital services and or any narrower group of services contained therein.

PAR. 7. The relevant section of the country is Osceola County, Florida.

MARKET STRUCTURE

PAR. 8. The relevant market is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm concentration ratios.

ENTRY CONDITIONS

PAR. 9. Entry into the relevant market is difficult due to certificate-of-need regulation of entry by the State of Florida, substantial lead times required to establish a new hospital, and other factors.

COMPETITION

PAR. 10. KMH and Osceola Regional are actual and potential competitors in the relevant market.

EFFECTS

PAR. 11. The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the relevant market in the following ways, among others:

(a) It would eliminate actual and potential competition between KMH and Osceola Regional, and between Osceola Regional and others;

(b) It would significantly increase the already high levels of concentration;

(c) It may create a firm whose market share is so high as to lead to unilateral anticompetitive effects;

(d) It would eliminate Osceola Regional as a substantial independent competitive force;

(e) It may enhance the possibility of collusion or interdependent coordination by the remaining firms in the relevant market; and

(f) It may deny patients, physicians, third-party payers, and other consumers of hospital services the benefits of free and open competition based on price, quality, and service.

VIOLATIONS CHARGED

PAR. 12. The acquisition agreement described in paragraph five above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 13. The acquisition described in paragraph five, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation into the proposed acquisition of Galen Health Care, Inc. by Columbia Hospital Corporation, including as a proposed respondent Columbia Healthcare Corporation (a corporation into which Columbia Hospital Corporation is proposed to be merged immediately preceding its acquisition of Galen Health Care, Inc.), and the respondents, 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 respondents with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all 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 respondents 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 the respondents have violated the said Act, and that 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 procedure 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 Columbia Hospital Corporation is a corporation organized, existing and doing business under the laws of the State of Nevada, with its principal place of business at 777 Main Street, Suite 2100, Fort Worth, Texas. Respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under the laws of the State of Delaware, with the same principal place of business as Columbia Hospital Corporation.

2. Respondent Galen Health Care, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky.

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

I.

For the purposes of this order:

A. "*Columbia*" means Columbia Hospital Corporation, a corporation organized, existing and doing business under the laws of Nevada, with its principal place of business at 777 Main Street,

Suite 2100, Fort Worth, Texas, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns (including specifically, but not limited to, Columbia Healthcare Corporation, the corporation into which Columbia Hospital Corporation is proposed to be merged), and the officers, employees, or agents of Columbia's divisions, subsidiaries, affiliates, successors and assigns.

B. "*Galen*" means Galen Health Care, Inc., a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors assigns, and the officers, employees, or agents of Galen's divisions, subsidiaries, affiliates, successors and assigns

C. "*Respondents*" means Columbia and Galen, collectively and individually.

D. "*Acute care hospital*" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

E. To "*acquire an acute care hospital*" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

F. To "*operate an acute care hospital*" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. "*Affiliate*" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

H. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. "*Kissimmee Memorial Hospital*" means the general acute care hospital currently owned and operated by Columbia in Osceola County, Florida at 200 Hilda Street, Kissimmee, Florida, and all of its assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, and other property of whatever description, except for accounts receivable and cash.

J. "*Commission*" means the Federal Trade Commission.

II.

It is ordered, That:

A. Within six (6) months after the date this order becomes final, respondents shall divest, absolutely and in good faith, Kissimmee Memorial Hospital. Kissimmee Memorial Hospital shall be divested only (1) to Adventist Health System/Sunbelt Health Care Corporation and/or its affiliates, pursuant to the acquisition agreement attached hereto as Exhibit A, or otherwise (2) to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The purpose of the divestiture required by this order is to ensure the continuation of Kissimmee Memorial Hospital as an ongoing, viable acute care hospital and to remedy the lessening of competition alleged in the Commission's complaint.

B. Respondents shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as

Appendix I. Said Agreement shall continue in effect until such time as respondents have divested Kissimmee Memorial Hospital or until such other time provided in the Agreement to Hold Separate.

C. Pending divestiture, respondents shall take such action as is necessary to maintain the viability and marketability of Kissimmee Memorial Hospital and shall not cause or permit the destruction, removal or impairment of any assets or businesses of Kissimmee Memorial Hospital, except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondents have not divested Kissimmee Memorial Hospital as required by paragraph II of this order within six (6) months after the date this order becomes final, respondents shall consent to the appointment of a trustee by the Commission to divest Kissimmee Memorial Hospital. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondents shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A. of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures of acute care hospitals.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest Kissimmee Memorial Hospital

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *provided, however*, that the Commission or Court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to Kissimmee Memorial Hospital, or any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph III in an amount equal to the delay, as determined by the Commission or the Court for a court-appointed trustee.

5. Subject to respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of Kissimmee Memorial Hospital. The divestiture shall be made in the manner set out in paragraph II of this order; *provided, however*, that if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve

more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a Court may set. The trustee shall have authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the Court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting Kissimmee Memorial Hospital.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the Court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the Court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be nec-

essary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain Kissimmee Memorial Hospital.

12. The trustee shall report in writing to respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV.

It is further ordered, That for a period of ten (10) years from the date this order becomes final, no respondent shall, without the prior approval of the Federal Trade Commission:

A. Acquire any acute care hospital in Osceola County, Florida;
or

B. Permit any acute care hospital it operates in Osceola County, Florida to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in Osceola County, Florida.

Provided, however, that no acquisition shall be subject to this paragraph IV of this order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000).

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not permit all or any substantial part of any acute care hospital they operate in Osceola County, Florida to be acquired by any other person (except pursuant to the divestiture required by paragraph II of this order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the

provisions of this order, which agreement respondents shall require as a condition precedent to the acquisition.

VI.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondents made at their principal offices, respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in respondents' possession or control relating to any matter contained in this order; and

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview their officers or employees, who may have counsel present, regarding such matters.

VII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully satisfied the divestiture obligations of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all

internal memoranda, reports, and recommendations concerning the required divestitures.

B. Annually beginning on the first anniversary of the date this order becomes final and continuing for nine (9) years thereafter, respondents shall submit a verified report demonstrating the manner in which they have complied and are complying with this order.

VIII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries or affiliates, which may affect compliance obligations arising out of this order.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by among Columbia Hospital Corporation, a corporation organized, existing and doing business under the laws of the State of Nevada, and Columbia Health Care Corporation, a corporation, organized, existed and doing business under the laws of the State of Delaware, both with their principal place of business at 777 Main Street, Suite 2100, Forth Worth, Texas (collectively referred to as "Columbia"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Whereas, on or about June 10, 1993, Columbia entered into an agreement to acquire all of the voting stock of Galen Health Care, Inc. (hereinafter the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), which would require divestiture of Columbia's Kissimmee Memorial Hospital in Osceola County, Florida ("KMH"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of KMH's assets and businesses during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of KMH as described in paragraph II of the Consent Order, and the Commission's right to seek to restore KMH as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve KMH as a viable independent acute care hospital pending its divestiture, and

(ii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, Columbia's entering into this Agreement shall in no way be construed as an admission by Columbia that the Acquisition is illegal; and

Whereas, Columbia understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Columbia with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of KMH as held separate pursuant to this Agreement, as follows:

1. Columbia agrees to execute and be bound by the attached Consent Order.

2. Columbia agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a - 2.c, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the Consent Order, unless by that date the Commission has finally accepted such Order; or

c. The day after the divestitures required by the Consent Order have been completed.

3. Columbia will hold KMH's assets and businesses as they are presently constituted separate and apart on the following terms and conditions:

a. KMH, as it is presently constituted, shall be held separate and apart and shall be operated independently of Columbia (meaning here and hereinafter, Columbia excluding KMH) except to the extent that Columbia must exercise direction and control over KMH to assure compliance with this Agreement.

b. Columbia shall not exercise direction or control over, or influence directly or indirectly, KMH or any of its operations or businesses; *provided, however*, that Columbia may exercise only such direction and control over KMH as is necessary to assure compliance with this Agreement.

c. Columbia shall maintain the viability and marketability KMH and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability.

d. Except for the single Columbia director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3.h), Columbia shall not permit any director, officer, employee, or agent of Columbia to also be a director, officer or employee of KMH.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations litigation, or negotiating agreements to dispose of assets, Columbia shall not receive or have access to, or use or continue to use, any of KMH's "material confidential information" not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Columbia from sources other than KMH, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

f. Columbia shall not change the composition of the management of KMH except that the KMH directors or agreement to hold members serving on the New Board or Management Committee (as defined in subparagraph 3.h) shall have the power to remove employees for cause.

g. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a - 3.f hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraph 3.h).

h. Columbia shall either separately incorporate KMH and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or shall establish a separate business venture with articles of agreement covering the conduct of KMH in accordance with this Agreement. Columbia shall also elect a new three person board of directors of KMH ("New Board") or Management Committee of KMH ("Management Committee"). Columbia may elect the directors to the New Board or select the members of the Management Committee; *provided, however*, that such New Board or Management Committee shall include no more than one Columbia director, officer, employee, or agent. Except as permitted by this Agreement, the director of the New Board or member of the Management Committee who is also a Columbia director, officer, employee or agent, shall not receive in his or her capacity as a New Board director or Management Committee member material confidential information and shall not disclose any such information received under this Agreement to Columbia or use it to obtain any advantage for Columbia. Said director of the New Board or member of the Management Committee who is also a Columbia director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of material confidential information (as that term is defined in subparagraph 3.e.). Such New Board director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding \$1,000,000 and carrying out Columbia's responsibility to assure that KMH is maintained in such manner as will permit its divestiture as an ongoing, viable acute care hospital. Except as permitted by this Agreement, such New Board director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if Columbia and KMH were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be

stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of KMH shall be retained separately in KMH. If necessary, Columbia shall provide KMH with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for KMH which have already been approved by Columbia.

j. Should the Federal Trade Commission seek in any proceeding to compel Columbia (meaning here and hereinafter Columbia including KMH) to divest itself of KMH, or to seek any other injunctive or equitable relief, Columbia shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Columbia also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Columbia made to its principal office, Columbia shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Columbia and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Columbia relating to compliance with this Agreement;

b. Upon five (5) days notice to Columbia, and without restraint or interference from it, to interview officers or employees of Columbia, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

IN THE MATTER OF

IMPERIAL CHEMICAL INDUSTRIES 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-3473. Complaint, Nov. 29, 1993--Decision, Nov. 29, 1993

This consent order allows, among other things, the respondents to proceed with the proposed acquisition of certain Du Pont assets, but it requires the respondents to divest, within 15 months, a predetermined acrylic-plastic manufacturing capacity by selling one of their U.S. plants to a Commission-approved purchaser, and to provide the buyer with technical assistance for 18 months, if necessary. In addition, if the divestiture is not accomplished in the specified time-frame, the respondents agree to a Commission-appointed trustee to complete the transaction.

Appearances

For the Commission: *Rhett R. Krulla, Steven Newborn and Robert Tovsky.*

For the respondents: *William Rosoff, Davis, Polk & Wardwell, New York, N. Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Imperial Chemical Industries PLC, a corporation, ICI Americas Inc., a corporation, and ICI Acrylics Inc., a corporation, have entered into an agreement with E.I. du Pont de Nemours and Company ("Du Pont"), that violates said Acts, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows: