

Complaint

127 F.T.C.

IN THE MATTER OF

ERNESTO L. RAMIREZ TORRES, D.M.D., ET. AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3851. Complaint, Feb. 5, 1999--Decision, Feb. 5, 1999*

This consent order, among other things, prohibits Ernesto L. Ramirez Torres, D.M.D., and other dentists in Juana Diaz, Coamo, and Santa Isabel, Puerto Rico, from fixing prices and engaging in a boycott in order to obtain higher reimbursement rates for dental services under Puerto Rico's government managed care plan.

Participants

For the Commission: *Steven Osnowitz, Gary Schorr, Michael Kades, Patricia Allen, David Pender, Robert Leibenluft, Anne Schenof, Daniel Ducore, Willard Tom, William Baer, Louis Silvia and Peter Gulyn.*

For the respondents: *Manuel Fernandez-Mejias, Hato Rey, Puerto Rico.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the individuals named above, hereinafter respondents, 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 its complaint, stating its charges as follows:

PARAGRAPH 1. Respondents are dentists licensed and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico. These dentists constitute a majority of the dentists in the contiguous municipalities of Juana Diaz, Coamo, and Santa Isabel, Puerto Rico. The respondents are:

(a) Ernesto L. Ramirez Torres, D.M.D., Calle Comercio #105, Juana Diaz, Puerto Rico;

(b) Eric D. Frontera Roura, D.M.D., Calle Mario Braschi #7, Coamo, Puerto Rico;

(c) Ernesto L. Ramirez L.V., D.M.D., Comercio #105, Juana Diaz, Puerto Rico;

(d) Jaime R. Gierbolini Borelli, D.M.D., Jose I. Quinton #49, Coamo, Puerto Rico;

(e) Adolfo L. Gierbolini Borelli, D.M.D., P.O.Box 261, Coamo, Puerto Rico;

(f) Roberto L. Mateo Nieves, D.M.D., Calle Betances #12, Santa Isabel, Puerto Rico;

(g) Miguel E. Rivera Mateo, D.M.D., Haciendas del Monte, Calle 6 G-2, Santa Isabel, Puerto Rico;

(h) Hector Renta Melendez, D.M.D., Calle Florencio Santiago #41, Coamo, Puerto Rico;

(i) Migdalia E. Alvarado Burgos, D.M.D., Calle Santiago Iglesias #66, Coamo, Puerto Rico;

(j) Juan R. Rosario Ramos, D.M.D., Calle Comercio, Esq. Hostos #116-C, Juana Diaz, Puerto Rico;

(k) Jorge L. Rivera Rosario, D.M.D., Calle Munoz Rivera #47, Juana Diaz, Puerto Rico;

(l) Jorge C. Munoz Mattei, D.M.D., Munoz Rivera #54-C, Juana Diaz, Puerto Rico; and

(m) Raul D. Ortiz Escalera, D.D.S., Calle Baldoriaty #42, Coamo, Puerto Rico.

PAR. 2. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 3. The acts and practices of respondents herein alleged concern their agreements, combinations, and conspiracies to set the prices and other terms and conditions under which they would participate in Puerto Rico's program to provide medical, pharmaceutical, and dental services to the indigent (the "Reform"), established pursuant to the Puerto Rico Health Insurance Administration Act of 1993, Act No. 72, Article II. The Reform was intended to create a health insurance system to give high quality health care, including dental services, to indigent residents of Puerto Rico. The Reform is financed by the Commonwealth, Federal Medicaid, other applicable Federal funds, contributions by employers and individual employees, and income from privatization funds (such as leases and sales of

government-owned health care facilities). To date, the Reform has been implemented throughout much of Puerto Rico, although it is not yet in place in San Juan and its environs, Ponce, or Mayaguez. The Reform currently covers 1.1 million individuals among the over 3.8 million residents of Puerto Rico.

PAR. 4. The Administración de Seguros de Salud ("ASES"), a public corporation, implements and administers the Reform. ASES has divided Puerto Rico into regions, soliciting for each region bids from payers to organize and provide services for beneficiaries. ASES currently selects one payer with which to contract per region. That payer then contracts with providers, including hospitals, physicians, pharmacies, and dentists.

PAR. 5. After reviewing bids from several payers, ASES selected La Cruz Azul to administer the Southeast Region of the Reform beginning October, 1994. Initially the municipalities of Juana Diaz, Coamo, and Santa Isabel were not included in the Reform, but ASES included them in the Southeast Region on December 20, 1995. The combined population of Juana Diaz, Coamo, and Santa Isabel is approximately 106,000 residents.

PAR. 6. Absent agreements among competing dentists on the price and other terms upon which they will provide services to third-party payers, competing dentists decide individually whether to enter into contracts with third-party payers, and on the terms and conditions under which they are willing to enter into such contracts.

PAR. 7. Beginning in September of 1995, many of the respondents, in various combinations, sometimes including other dentists, met and discussed the impending expansion of the Southeast Region to Juana Diaz, Coamo, and Santa Isabel, and the terms and conditions under which they would agree to participate in the Reform. During these meetings, respondents agreed to the price terms that would cause them to participate in the Reform, and respondents agreed that they would convey their joint response to La Cruz Azul's request to each of them to participate in the Reform. Thereafter, a letter was prepared to present to La Cruz Azul, stating respondents' opposition to certain terms and conditions, including the amount of payment, which they wanted increased. The respondents threatened a boycott of the Reform program if La Cruz Azul did not address their demands. During this period of time, the respondents constituted a majority of dentists engaged in the practice of dentistry in the municipalities of Juana Diaz, Coamo, and Santa Isabel.

PAR. 8. On December 14, 1995, the respondents met with representatives of La Cruz Azul, and presented their letter with the terms and conditions under which they would participate in the Reform, including price terms, for which they sought higher reimbursement. During the meeting with La Cruz Azul, and while a representative of La Cruz Azul was not present, the respondents discussed among themselves their response to the terms and conditions for participation in the Reform, and agreed to nearly identical responses. Each respondent provided La Cruz Azul written notice that the dentist would not participate in the Reform under the terms offered by La Cruz Azul.

PAR. 9. The respondents refused to participate in the Reform upon its expansion to the areas of their practices on December 20, 1995, and communicated with the public that they would not accept its terms and conditions. Respondents in Juana Diaz placed an advertisement in a newspaper notifying the public that they would not participate, and some respondents conveyed their refusal to deal with the Reform in a radio interview. Because of this concerted refusal to deal, residents of Juana Diaz, Coamo, and Santa Isabel who were eligible under the Reform were not able to receive dental services from local providers.

PAR. 10. Dentists from Ponce advertised their willingness to accept Reform patients from Juana Diaz, Coamo, and Santa Isabel. In response, respondents sought to have the Colegio de Cirujanos Dentistas de Puerto Rico (the "Colegio") prohibit this advertising. The Colegio eventually found advertisements by one of the dentists from Ponce to be in violation of the Colegio's rules, and notified the dentist, who then stopped advertising that was targeted to residents of Juana Diaz, Coamo, and Santa Isabel.

PAR. 11. La Cruz Azul acceded to respondents' demand to raise the level of reimbursement of dental fees under the Reform. The respondents then agreed to participate in the Reform, effective February 1, 1996.

PAR. 12. The respondents have not integrated their businesses in any economically significant way, nor have they created any efficiencies that might justify the acts and practices described in paragraphs seven through eleven.

PAR. 13. The acts and practices of the respondents as described in this complaint have had the purpose, tendency, effects, and

capacity to restrain trade unreasonably and hinder competition in the provision of dental goods and services in Southeast Puerto Rico, in the following ways, among others:

1. To restrain competition among dentists;
2. To fix the compensation and other terms and conditions upon which dentists would deal with payers and participate in the Reform, thereby raising the cost of and limiting access to dental services to be funded by the Reform; and
3. To deprive the Commonwealth of Puerto Rico, payers, and consumers of the benefits of competition among dentists.

PAR. 14. The combination or conspiracy and the acts and practices of respondents, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The acts, practices, and violations, or the effects thereof, as herein alleged, will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondents, named in the caption above, and the respondents having been furnished thereafter with a copy of the draft 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 the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 purpose only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 the complaint should issue stating its

charges in that respect, and having thereupon accepted the executed consent agreement and placed it on the public record for a period of sixty (60) days, and having duly considered the comment received, 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. Respondents are dentists licensed and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with their names and principal places of business located at the addresses listed below:

(a) Ernesto L. Ramirez Torres, D.M.D., Calle Comercio #105, Juana Diaz, Puerto Rico;

(b) Eric D. Frontera Roura, D.M.D., Calle Mario Braschi #7, Coamo, Puerto Rico;

(c) Ernesto L. Ramirez L.V., D.M.D., Calle Comercio #105, Juana Diaz, Puerto Rico;

(d) Jaime R. Gierbolini Borelli, D.M.D., Calle Jose I. Quinton #49, Coamo, Puerto Rico;

(e) Adolfo L. Gierbolini Borelli, D.M.D., P.O. Box 261, Coamo, Puerto Rico;

(f) Roberto L. Mateo Nieves, D.M.D., Calle Betances #12, Santa Isabel, Puerto Rico;

(g) Miguel E. Rivera Mateo, D.M.D., Haciendas del Monte, Calle 6 G-2, Santa Isabel, Puerto Rico;

(h) Hector Renta Melendez, D.M.D., Calle Florencio Santiago #41, Coamo, Puerto Rico;

(i) Migdalia E. Alvarado Burgos, D.M.D., Calle Santiago Iglesias #66, Coamo, Puerto Rico;

(j) Juan R. Rosario Ramos, D.M.D., Calle Comercio, Esq. Hostos # 16 Juana Diaz, Puerto Rico;

(k) Jorge L. Rivera Rosario, D.M.D., Calle Munoz Rivera #47, Juana Diaz, Puerto Rico;

(l) Jorge C. Munoz Mattei, D.M.D., Calle Munoz Rivera #54-C, Juana Diaz, Puerto Rico; and

(m) Raul D. Ortiz Escalera, D.D.S., Calle Baldoriaty #42, Coamo, Puerto Rico.

2. 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.

ORDER

I.

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

A. "*Payer*" means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Payer includes, but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization; government health benefits program; employer or other person providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

B. "*Person*" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

C. "*Provider*" means any person that supplies health care services to any other person, including, but not limited to, dentists, physicians, pharmacies, hospitals, and clinics.

D. "*Qualified risk-sharing joint arrangement*" means an arrangement to provide dental services in which (1) the arrangement does not restrict the ability, or facilitate the refusal, of providers participating in the arrangement to deal with payers individually or through any other arrangement, and (2) all providers participating in the arrangement share substantial financial risk from their participation in the arrangement through: (a) the provision of services to payers at a capitated rate; (b) the provision of services for a predetermined percentage of premium or revenue from payers; (c) the use of significant financial incentives (e.g., substantial withholds) for its participating providers, as a group, to achieve specified cost-containment goals; or (d) the provision of a complex or extended course of treatment that requires the substantial coordination of care by different types of providers offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to

the individual patient's condition, the choice, complexity, or length of treatment, or other factors.

E. "*Qualified clinically-integrated joint arrangement*" means an arrangement to provide dental services in which (1) the arrangement does not restrict the ability, or facilitate the refusal, of providers participating in the arrangement to deal with payers individually or through any other arrangement, and (2) all providers participating in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the providers participating in the arrangement, in order to control costs and ensure quality of the services provided through the arrangement.

F. "*Reimbursement*" means any payment, whether cash or non-cash, or other benefit received for the provision of dental goods and services.

II.

It is further ordered, That each respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of dental goods and services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, cease and desist from:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding to:

1. Negotiate on behalf of any other dentist with any payer or provider;
2. Deal or refuse to deal with, boycott or threaten to boycott, any payer or provider; or
3. Determine any terms, conditions, or requirements upon which dentists deal with any payer or provider, including, but not limited to, terms of reimbursement.

B. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited if the person were subject to this order.

Provided that nothing in this order shall be construed to prohibit any agreement or conduct by any respondent that is reasonably necessary to form, facilitate, manage, operate, or participate in:

(a) A qualified risk-sharing joint arrangement; or

(b) A qualified clinically integrated joint arrangement, if the applicable respondent has provided the prior notification(s) as required by this paragraph (b). Such prior notification must be filed with the Secretary of the Commission at least thirty (30) days prior to forming; facilitating; managing; operating; participating in; or taking any action, other than planning, in furtherance of any joint arrangement requiring such notice ("first waiting period"), and shall include for such arrangement the identity of each participant, the location or area of operation, a copy of the agreement and any supporting organizational documents, a description of its purpose or function, a description of the nature and extent of the integration expected to be achieved and the anticipated resulting efficiencies, an explanation of the relationship of any agreement on reimbursement to furthering the integration and achieving the expected efficiencies, and a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from such agreement(s). If, within the first waiting period, a representative of the Commission makes a written request for additional information, the applicable respondent shall not form; facilitate; manage; operate; participate in; or take any action, other than planning, in furtherance of such joint arrangement until thirty (30) days after substantially complying with such request for additional information ("second waiting period") or such shorter waiting period as may be granted by letter from the Bureau of Competition.

III.

It is further ordered, That each respondent shall, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint, as well as certified Spanish translations thereof, to each payer or provider who, at any time since January 1, 1995, has communicated any desire, willingness, or interest in contracting for dentists' goods and services with the respondent.

IV.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, each respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order.

B. One (1) year from the date this order becomes final, annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, each respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs II and III of this order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, each respondent shall permit any duly authorized representative of the Commission:

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

B. Upon five business days' notice to a respondent, and without restraint or interference from that respondent, to interview that respondent or any employee or representative of that respondent.

VI.

It is further ordered, That this order shall terminate on February 5, 2019.

IN THE MATTER OF
ALLEGHANY CORPORATION

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

Docket C-3335. Consent Order, July 11, 1991--Modifying Order, Feb. 11, 1999

This order reopens a 1991 consent order -- that required Alleghany Corporation to divest certain rights and interests in title plants and back plants to a Commission-approved acquirer, and, for ten years, to obtain Commission approval before acquiring certain related assets -- and this order modifies the consent order by relieving Alleghany of its compliance obligations, under paragraphs VI, VII, VIII.B., IX and X, since Alleghany restructured itself and is no longer engaged in the title plant/back plant business.

Participants

For the Commission: *Pamela Gill and Roberta Baruch.*

For the respondents: *John C. Christie, Jr., Hale & Dorr,*
Washington, D.C.

ORDER REOPENING AND MODIFYING ORDER

On October 14, 1998, respondent Alleghany Corporation ("Alleghany") filed a Petition to Reopen and Modify Consent Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. In its Petition, Alleghany requests that the Commission reopen the order in Docket No. C-3335 ("Order") to relieve Alleghany of its compliance obligations under Paragraphs VI, VII, VIII.B., IX and X, the only remaining operative paragraphs of the Order.¹ The Petition was placed on the public record for thirty days pursuant to Section 2.51(c) of the Commission's Rules of Practice and Procedure. Paragraph VI of the Order prohibits Alleghany from acquiring for ten years without prior notice to the Commission any stock, share capital, or equity

¹ In support of its Petition, Alleghany provided the affidavits of Robert M. Hart, General Counsel of Alleghany and Thomas J. Adams, III, General Corporate Counsel of Chicago Title Corporation ("Chicago Title") and of Chicago Title and Trust Company ("CT&T") ("Hart Affidavit" and "Adams Affidavit").