

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 described 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 Baxter International Inc. ("Baxter") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Baxter Parkway, Deerfield, Illinois.

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, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*Baxter*" means Baxter International Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Baxter International Inc., and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns. Baxter also includes Immuno International AG.

B. "*Immuno*" means Immuno International AG, a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its principal place of business located at Zollikerstrasse 60, CH-8702, Zollikon, Switzerland.

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

D. "*FDA*" means the United States Food and Drug Administration.

E. "*Acquisition*" means the acquisition by Baxter of the majority of Immuno voting stock.

F. "*Factor VIII Inhibitor Treatments*" means the activated prothrombin complex concentrates used to treat Factor VIII antibodies in hemophiliacs, approved by the FDA for sale in the United States.

G. "*Autoplex*" means the Factor VIII Inhibitor Treatments marketed by Baxter.

H. "*FEIBA*" means the Factor VIII Inhibitor Treatments marketed by Immuno.

I. "*Autoplex Assets*" means all of Baxter's assets and rights relating solely to the research, development, manufacture or sale of Factor VIII Inhibitor Treatments sold under the trade names Autoplex or Autoplex T, including all arrangements necessary to meet the requirements of paragraph II.A of this order. "Autoplex Assets" include, but are not limited to, all machinery, fixtures, equipment and other tangible personal property, rights to brand or trade names, formulations, inventory, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, software, information stored on management information systems (and specifications sufficient for the Acquirer to use such information) and all data, contractual rights, materials and information relating to FDA and other government or regulatory approvals for the United States.

J. "*FEIBA Assets*" means all of Immuno's assets and rights relating solely to the research, development, manufacture or sale of Factor VIII Inhibitor Treatments sold by Immuno, prior to the Acquisition, under the trade name FEIBA, including all arrangements necessary to meet the requirements of paragraph IV.A of this order. "FEIBA Assets" include, but are not limited to, all machinery, fixtures, equipment and other tangible personal property, rights to brand or trade names, formulations, inventory, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, software, information stored on management information systems (and specifications sufficient for the New Acquirer to use such information) and all data, contractual rights, materials and information relating to FDA and other government or regulatory approvals for the United States.

K. "*Divested Inhibitor Assets*" means either the Autoplex Assets or the FEIBA Assets, as applicable.

L. "*Acquirer*" means the entity to whom Baxter shall divest the Autoplex Assets pursuant to paragraph II of this order.

M. "*New Acquirer*" means the entity to whom the trustee shall divest either the Autoplex Assets or the FEIBA Assets pursuant to paragraph IV of this order.

N. "*Fibrin Sealant*" means a topical biological product, in any form, including, but not limited to, freeze-dried and frozen, used to control bleeding or seal tissues together.

O. "*Immuno Fibrin Sealant Assets*" means all of Immuno's assets and rights relating to the research, development, manufacture or sale of any Fibrin Sealant developed by Immuno, as of the date this order becomes final. "Immuno Fibrin Sealant Assets" include, but are not limited to, all formulations, patents, patent applications, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, software, information stored on management information systems (and specifications sufficient for the Fibrin Sealant Licensee to use such information) and all data, contractual rights, materials and information relating to FDA and other government or regulatory approvals for the United States.

P. "*Fibrin Sealant Licensee*" means the entity to whom Baxter shall license the Immuno Fibrin Sealant Assets pursuant to paragraphs V or VII of this order.

Q. "*Contract Manufacture*" means the manufacture of Factor VIII Inhibitor Treatments or Fibrin Sealant, as applicable, by Baxter for sale to the Acquirer, the New Acquirer or the Fibrin Sealant Licensee, as applicable.

R. "*Cost*" means the manufacturer's average direct per unit cost of manufacturing Factor VIII Inhibitor Treatments or Fibrin Sealant, as applicable, plus costs of manufacturing Factor VIII Inhibitor Treatments or Fibrin Sealants, as applicable, that are directly attributable to FDA regulatory, quality control and compliance.

## II.

*It is further ordered, That:*

A. Within four (4) months of the date Baxter signed the agreement containing consent order in this matter, Baxter shall divest, absolutely and in good faith, the Autoplex Assets, effect all arrangements, including, but not limited to, the licensing of any Baxter patents and know-how not related solely to the research,



development, manufacture or sale of Factor VIII Inhibitor Treatments, necessary to enable the Acquirer to manufacture and sell a Factor VIII Inhibitor Treatment using the Divested Inhibitor Assets, and execute an agreement that includes the provisions required by paragraph II.C of this order.

B. The Autoplex Assets shall be divested only to, and the agreement executed only with, an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that the Acquirer does not choose to acquire all of the physical assets included in the Autoplex Assets because the Acquirer does not need such physical assets in order to engage in the manufacture and sale of Factor VIII Inhibitor Treatments, respondent shall not be required to divest such assets. The purpose of the divestiture is to ensure the continued competition between Autoplex and FEIBA in the United States, in the same manner in which these products would compete absent the Acquisition, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's complaint.

C. Respondent's agreement with the Acquirer or New Acquirer (hereinafter "Divestiture Agreement") shall include the following and Baxter shall commit to satisfy the following:

1. Baxter shall grant to the Acquirer the right of reference to the data contained in Baxter's Product License Application ("PLA") No. 91-0649 (or to the New Acquirer the right of reference to the data contained in Immuno's PLA No. 82-027) for the Divested Inhibitor Assets on file with the FDA. Baxter shall make all necessary filings with the FDA authorizing the FDA to refer to the applicable PLA for the data in support of the PLA of the Acquirer or New Acquirer for a Factor VIII Inhibitor Treatment, including any supplemental PLAs or related PLAs. Provided, however, that the right of reference granted in this subparagraph does not constitute a general release of the data in Baxter's PLA No. 91-0649 (or Immuno's PLA No. 87-027), including any supplemental PLAs or related PLAs, except as it may appear in labeling.

2. Baxter shall Contract Manufacture and deliver to the Acquirer or the New Acquirer, in a timely manner and under reasonable terms and conditions, a supply of Factor VIII Inhibitor Treatments specified in the Divestiture Agreement, at Baxter's cost for a period not to



exceed three (3) years from the date the Divestiture Agreement is approved, or four (4) months after the date the Acquirer or the New Acquirer obtains all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States, whichever is earlier; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph III of this order submits to the Commission the certification provided for in subparagraph II.C.8 of this order.

3. Baxter shall make representations and warranties to the Acquirer or the New Acquirer that the Factor VIII Inhibitor Treatments that are Contract Manufactured by Baxter for the Acquirer or the New Acquirer meet the FDA approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* Baxter shall agree to indemnify, defend and hold the Acquirer or the New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Factor VIII Inhibitor Treatments Contract Manufactured by Baxter pursuant to subparagraph II.C.2 of this order to meet FDA specifications. This obligation shall be contingent upon the Acquirer or the New Acquirer giving Baxter prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Baxter to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Baxter to be liable for any negligent act or omission of the Acquirer or the New Acquirer, or for any representations and warranties, express or implied, made by the Acquirer or the New Acquirer that exceed the representations and warranties made by Baxter to the Acquirer or the New Acquirer.

4. During the term of Contract Manufacturing, upon reasonable request by the Acquirer, the New Acquirer or the trustee appointed pursuant to paragraph III of this order, Baxter shall make available to the trustee, or its agents or representatives, all records kept in the normal course of business that relate to the cost of manufacturing the Contract Manufactured Factor VIII Inhibitor Treatments.

5. Upon reasonable notice and request from the Acquirer or the New Acquirer to respondent, respondent shall provide: (a) such assistance and advice as is reasonably necessary to enable the Acquirer or the New Acquirer to obtain all necessary FDA approvals

to manufacture Factor VIII Inhibitor Treatments for sale in the United States; (b) such assistance as is reasonably necessary to enable the Acquirer to manufacture Factor VIII Inhibitor Treatments in substantially the same manner and quality employed or achieved by Baxter or, if divested to the New Acquirer, Immuno, prior to the Acquisition; and (c) consultation with knowledgeable employees of Baxter and training at a facility of the Acquirer's or the New Acquirer's choosing, for a period of time, not to exceed one (1) year, sufficient to satisfy the management of the Acquirer or the New Acquirer that its personnel are adequately trained in the manufacture of Factor VIII Inhibitor Treatments for sale in the United States. Such assistance shall include an on-site inspection of Baxter's facility that is performing the Contract Manufacturing, upon reasonable notice and request of the Acquirer or the New Acquirer. Respondent may require reimbursement from the Acquirer or the New Acquirer for all its direct out-of-pocket expenses incurred in providing the services required by this subparagraph II.C.5.

6. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission, with the divestiture application filed by respondent with the Commission requesting approval of the proposed divestiture, a certification attesting to the good faith intention of the Acquirer or the New Acquirer, including an actual plan by the Acquirer or the New Acquirer, to obtain in an expeditious manner all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States.

7. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the trustee appointed pursuant to paragraph III of this order, periodic verified written reports setting forth in detail the efforts of the Acquirer or the New Acquirer to sell Contract Manufactured Factor VIII Inhibitor Treatments in the United States and to obtain all FDA approvals necessary to manufacture its own Factor VIII Inhibitor Treatments for sale in the United States. The Divestiture Agreement shall require the first such report to be submitted 60 days from the date the Divestiture Agreement is approved by the Commission and every 90 days thereafter until all necessary FDA approvals are obtained by the Acquirer or the New Acquirer to manufacture Factor VIII Inhibitor Treatments for sale in the United States. The Divestiture Agreement shall also require the Acquirer or the New Acquirer to report to the Commission and the trustee within ten (10) days of its ceasing the sale of Contract

Manufactured Factor VIII Inhibitor Treatments in the United States for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture its own Factor VIII Inhibitor Treatments for sale in the United States.

8. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or the New Acquirer: (a) voluntarily ceases for sixty (60) days or more the sale of Contract Manufactured Factor VIII Inhibitor Treatments in the United States prior to obtaining all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States; (b) abandons its efforts to obtain all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States; or (c) fails to obtain all necessary FDA approvals of its own to manufacture Factor VIII Inhibitor Treatments for sale in the United States within three (3) years from the date the Commission approves the Divestiture Agreement with the Acquirer or the New Acquirer; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph III of this order certifies to the Commission that the Acquirer or the New Acquirer made good faith efforts to obtain all necessary FDA approvals for manufacturing Factor VIII Inhibitor Treatments for sale in the United States and that such FDA approvals appear likely to be obtained within such extended time period.

9. The Divestiture Agreement with an Acquirer shall provide that if it is terminated, the Autoplex Assets shall revert back to the respondent and either the Autoplex Assets or the FEIBA Assets shall be divested by the trustee to a New Acquirer pursuant to the provisions of paragraph IV of this order.

D. While the obligations imposed by paragraphs II, III or IV of this order are in effect, respondent shall take such actions as are necessary: (1) to maintain all necessary FDA approvals to research, develop, manufacture and sell both of the Factor VIII Inhibitor Treatments in the United States; (2) to maintain the viability and marketability of both of the Divested Inhibitor Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Factor VIII Inhibitor Treatments; and (3) to prevent the destruction, removal, wasting, deterioration or



impairment of any of the Divested Inhibitor Assets or tangible assets including the manufacturing facilities needed to Contract Manufacture and sell both of the Factor VIII Inhibitor Treatments, except for ordinary wear and tear.

### III.

*It is further ordered, That:*

A. At any time after this order becomes final, the Commission may appoint a trustee to monitor whether Baxter and the Acquirer or the New Acquirer expeditiously perform their respective responsibilities as required by the Divestiture Agreement approved by the Commission and this order. Baxter shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the trustee appointed pursuant to this paragraph:

1. The Commission shall select the trustee, subject to the consent of Baxter, which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall have the power and authority to monitor respondent's compliance with the terms of paragraph II of this order and with the Divestiture Agreement with the Acquirer or the New Acquirer.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to monitor respondent's compliance with the terms of paragraph II of this order and monitor the efforts of the Acquirer or New Acquirer to obtain all necessary FDA approvals to manufacture and sell Factor VIII Inhibitor Treatments.

4. The trustee shall serve until such time as the Acquirer or the New Acquirer has received all necessary FDA approvals to research, develop, manufacture and sell Factor VIII Inhibitor Treatments in the United States.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information relating to the research, development, manufacture or sale of Baxter's Factor VIII Inhibitor Treatments, or to any other relevant information, as the trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the cost of manufacturing Factor VIII Inhibitor Treatments. Respondent shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to monitor respondent's compliance with paragraph II of this order and the Divestiture Agreement with the Acquirer or the New Acquirer.

6. The trustee shall serve, without bond or other security, at the cost and expense of Baxter, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Baxter, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in subparagraph III.A.1 of this order.

9. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of paragraph II of this order and the Divestiture Agreement with the Acquirer or the New Acquirer.

10. The trustee shall evaluate reports submitted to it by the Acquirer or the New Acquirer with respect to the efforts of the

Acquirer or the New Acquirer to obtain all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States and shall report in writing to the Commission every sixty (60) days concerning compliance by the respondent and the Acquirer or the New Acquirer, with the provisions of paragraph II of this order and the efforts of the Acquirer or the New Acquirer to obtain all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States.

B. If the Commission terminates the Divestiture Agreement pursuant to subparagraph II.C.8 of this order, the Commission may direct the trustee to seek a New Acquirer, as provided for in paragraph IV of this order and the Divested Inhibitor Assets shall revert back to the respondent.

#### IV.

*It is further ordered, That:*

A. If Baxter fails to comply with the terms of paragraph II of this order and to divest absolutely and in good faith the Autoplex Assets within four (4) months from the date respondent signed the agreement containing consent order, or if the Commission terminates the Divestiture Agreement pursuant to subparagraph II.C.8 of this order, then any executed Divestiture Agreement with the Acquirer shall be terminated and the Commission may appoint a trustee to: (a) divest either the Autoplex Assets or the FEIBA Assets; (b) effect all arrangements, including, but not limited to, the licensing of any Baxter patents and know-how not related solely to the research, development, manufacture or sale of Factor VIII Inhibitor Treatments, necessary to enable the New Acquirer to manufacture and sell a Factor VIII Inhibitor Treatment using the Divested Inhibitor Assets; and (c) enter into a Divestiture Agreement with a New Acquirer that satisfies the requirements of paragraph II.C of this order. In the event that the New Acquirer does not choose to acquire all of the physical assets included in the Divested Inhibitor Assets because the New Acquirer does not need such physical assets in order to engage in the manufacture and sale of Factor VIII Inhibitor Treatments, respondent shall not be required to divest such assets. The purpose of the divestiture is to ensure the continued competition between Autoplex and FEIBA, in the same manner in which these



products would compete absent the Acquisition, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's complaint. Neither the decision of the Commission to appoint the trustee nor the decision of the Commission not to appoint the trustee to divest either the Autoplex or the FEIBA Assets 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(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed under paragraph IV.A of this order to divest either the Autoplex Assets or the FEIBA Assets to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Baxter, which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee. This trustee may be the same trustee as appointed pursuant to paragraph III of this order.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest either the Autoplex Assets or the FEIBA Assets to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer pursuant to the terms of paragraph II.C of this order, which Divestiture Agreement shall be subject to the prior approval of the Commission.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a (or amend the existing) trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by paragraph IV.A of this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in subparagraph IV.B.3 of this order to divest either the Autoplex Assets or the FEIBA

Assets and to enter into a Divestiture Agreement with the New Acquirer that satisfies the requirements of paragraph II.C of this order. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the twelve (12) month period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the twelve (12) month period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, data, facilities and technical information related to the manufacture, distribution, or sale of Factor VIII Inhibitor Treatments or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities.

6. The trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price and the trustee's obligation to expeditiously accomplish the remedial purpose of the order; to assure that Baxter effects all arrangements necessary to enable the New Acquirer to produce a Factor VIII Inhibitor Treatment using the Divested Inhibitor Assets; to assure that Baxter enters into a Divestiture Agreement with the New Acquirer to acquire the Divested Inhibitor Assets that complies with the provisions of paragraph II.C of this order; and to assure that Baxter complies with the remaining provisions of paragraph II.D of this order. The divestiture shall be made to, and the Divestiture Agreement shall be made with, the New Acquirer in the manner set forth in paragraph II.C of this order; provided, however, 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 selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment

bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture 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 the respondent 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 locating a New Acquirer and assuring compliance with this order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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 IV.B 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 necessary or appropriate to comply with the terms of this order.

11. The trustee shall have no obligation or authority to operate or maintain the Divested Inhibitor Assets.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning his or her efforts to divest either the Autoplex Assets or the FEIBA Assets as required by this order.

## V.

*It is further ordered, That:*

A. Within four (4) months of the date Baxter signed the agreement containing consent order in this matter, Baxter shall grant a non-exclusive, royalty-free license, in perpetuity, and in good faith,



of the Immuno Fibrin Sealant Assets, and shall execute an agreement that includes the provisions required by paragraph V.C of this order.

B. The Immuno Fibrin Sealant Assets shall be licensed only to a Fibrin Sealant Licensee that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the licensing of the Immuno Fibrin Sealant Assets is to ensure the continued research and development competition between Immuno's Fibrin Sealant and Baxter's Fibrin Sealant, to ensure the use of the Immuno Fibrin Sealant Assets for the research, development, manufacture and sale of a Fibrin Sealant approved by the FDA for sale in the United States, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Respondent's agreement with the Fibrin Sealant Licensee (hereinafter "License Agreement") shall not include any provision restricting the Fibrin Sealant Licensee's ability to sublicense the product. The License Agreement shall include the following and Baxter shall commit to satisfy the following:

1. Baxter shall grant to the Fibrin Sealant Licensee the right of reference to the data contained in Immuno's PLA No. 87-0509 for the Immuno Fibrin Sealant Assets on file with the FDA. Baxter shall make all necessary filings with the FDA authorizing the FDA to refer to Immuno's PLA No. 87-0509 for the data in support of the Fibrin Sealant Licensee's PLA for a Fibrin Sealant, including any supplemental PLAs or related PLAs. Provided, however, that the right of reference granted in this subparagraph does not constitute a general release of the data in Immuno's PLA No. 87-0509, including any supplemental PLAs or related PLAs, except as it may appear in labeling.

2. Once all necessary FDA approvals are obtained by Baxter (or Immuno prior to the Acquisition) to manufacture and sell Immuno's Fibrin Sealant in the United States, Baxter shall Contract Manufacture and deliver to the Fibrin Sealant Licensee in a timely manner and under reasonable terms and conditions, a supply of Immuno's Fibrin Sealant specified in the License Agreement, at Baxter's Cost for a period not to exceed three (3) years from the date the License Agreement is approved, or four (4) months after the date the Fibrin Sealant Licensee obtains all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States, whichever

is earlier; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph VI of this order submits to the Commission the certification provided for in subparagraph V.C.8 of this order.

3. Baxter shall make representations and warranties to the Fibrin Sealant Licensee that the Fibrin Sealant that is Contract Manufactured by Baxter for the Fibrin Sealant Licensee meets the FDA approved specifications therefor and is not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* Baxter shall agree to indemnify, defend and hold the Fibrin Sealant Licensee harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Fibrin Sealant Contract Manufactured by Baxter pursuant to subparagraph V.C.2 of this order to meet FDA specifications. This obligation shall be contingent upon the Fibrin Sealant Licensee giving Baxter prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Baxter to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Baxter to be liable for any negligent act or omission of the Fibrin Sealant Licensee or for any representations and warranties, express or implied, made by the Fibrin Sealant Licensee that exceed the representations and warranties made by Baxter to the Fibrin Sealant Licensee.

4. During the term of Contract Manufacturing, upon reasonable request by the Fibrin Sealant Licensee or the trustee appointed pursuant to paragraph VI of this order, Baxter shall make available to the trustee, or its agents or representatives, all records kept in the normal course of business that relate to the cost of manufacturing the Contract Manufactured Fibrin Sealant.

5. Upon reasonable notice and request from the Fibrin Sealant Licensee to respondent, respondent shall provide: (a) such assistance and advice as is reasonably necessary to enable the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States; (b) such assistance as is reasonably necessary to enable the Fibrin Sealant Licensee to manufacture Fibrin Sealant in substantially the same manner and quality employed or achieved by Baxter once it begins manufacturing

the Immuno Fibrin Sealant; and (c) consultation with knowledgeable employees of Baxter and training at either Immuno's or the Fibrin Sealant Licensee's facility, whichever the Fibrin Sealant Licensee chooses, for a period of time, not to exceed one (1) year, sufficient to satisfy the Fibrin Sealant Licensee's management that its personnel are adequately trained in the manufacture of Fibrin Sealant for sale in the United States. Such assistance shall include an on-site inspection of Baxter's facility that is performing the Contract Manufacturing, upon reasonable notice and request of the Fibrin Sealant Licensee. Respondent may require reimbursement from the Fibrin Sealant Licensee for all its direct out-of-pocket expenses incurred in providing the services required by this subparagraph V.C.5.

6. The License Agreement shall require the Fibrin Sealant Licensee to submit to the Commission, with the divestiture application filed by respondent with the Commission requesting approval of the proposed license, a certification attesting to the good faith intention of the Fibrin Sealant Licensee, and including an actual plan by the Fibrin Sealant Licensee, to obtain in an expeditious manner all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States.

7. The License Agreement shall require the Fibrin Sealant Licensee to submit to the trustee appointed pursuant to paragraph VI of this order, periodic verified written reports setting forth in detail the efforts of the Fibrin Sealant Licensee to sell Contract Manufactured Fibrin Sealant in the United States and to obtain all FDA approvals necessary to manufacture its own Fibrin Sealant for sale in the United States. The License Agreement shall require the first such report to be submitted 60 days from the date the Commission approves the License Agreement and every 90 days thereafter until all necessary FDA approvals are obtained by the Fibrin Sealant Licensee to manufacture Fibrin Sealant for sale in the United States. The License Agreement shall also require the Fibrin Sealant Licensee to report to the Commission and the trustee within ten (10) days of its ceasing the sale of any Contract Manufactured Fibrin Sealant in the United States for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture its own Fibrin Sealant for sale in the United States.

8. The License Agreement shall provide that the Commission may terminate the License Agreement if the Fibrin Sealant Licensee: (a)



voluntarily ceases for sixty (60) days or more the sale of Contract Manufactured Fibrin Sealant in the United States prior to obtaining all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States; (b) abandons its efforts to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States; or (c) fails to obtain all necessary FDA approvals of its own to manufacture Fibrin Sealant for sale in the United States within three (3) years from the date the Commission approves the License Agreement with the Fibrin Sealant Licensee; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph VI of this order certifies to the Commission that the Fibrin Sealant Licensee made good faith efforts to obtain all necessary FDA approvals for manufacturing Fibrin Sealant for sale in the United States and that such FDA approvals appear likely to be obtained within such extended time period. The License Agreement shall provide that if all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States are not obtained within the time frames specified by this subparagraph V.C.8, the Commission may terminate the License Agreement.

9. The License Agreement with a Fibrin Sealant Licensee shall provide that if it is terminated, the License Agreement shall be terminated and the trustee shall grant a new non-exclusive, royalty-free license to a new Fibrin Sealant Licensee pursuant to the provisions of paragraph VII of this order.

D. While the obligations imposed by paragraphs V, VI or VII of this order are in effect, respondent shall take such actions as are necessary: (1) to maintain and obtain all necessary FDA approvals to research, develop, manufacture and sell Immuno's Fibrin Sealant in the United States; (2) to maintain the viability and marketability of the Immuno Fibrin Sealant Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of the Immuno Fibrin Sealant Assets or tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant, except for ordinary wear and tear.

## VI.

*It is further ordered, That:*

A. At any time after this order becomes final, the Commission may appoint a trustee to monitor whether Baxter and the Fibrin Sealant Licensee expeditiously perform their respective responsibilities as required by the License Agreement approved by the Commission and this order. Baxter shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the trustee appointed pursuant to this paragraph:

1. The Commission shall select the trustee, subject to the consent of Baxter, which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee. This trustee may be the same trustee appointed pursuant to paragraphs III or IV of this order.

2. The trustee shall have the power and authority to monitor respondent's compliance with the terms of paragraph V of this order and with the License Agreement with the Fibrin Sealant Licensee.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to monitor respondent's compliance with the terms of paragraph V of this order and monitor the efforts of the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture and sell Fibrin Sealant.

4. The trustee shall serve until such time as the Fibrin Sealant Licensee has received all necessary FDA approvals to research, develop, manufacture and sell Fibrin Sealant in the United States.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information relating to the research, development, manufacture or sale of Immuno's Fibrin Sealant, or to any other relevant information, as the trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the cost of manufacturing Fibrin Sealant. Respondent shall cooperate with any reasonable request of the trustee. Respondent shall take no action to

interfere with or impede the trustee's ability to monitor respondent's compliance with paragraph V of this order and the License Agreement with the Fibrin Sealant Licensee.

6. The trustee shall serve, without bond or other security, at the cost and expense of Baxter, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Baxter, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in subparagraph VI.A.1 of this order.

9. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of paragraph V of this order and the License Agreement with the Fibrin Sealant Licensee.

10. The trustee shall evaluate reports submitted to it by the Fibrin Sealant Licensee with respect to the efforts of the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States and shall report in writing to the Commission every sixty (60) days concerning compliance by the respondent and the Fibrin Sealant Licensee with the provisions of paragraph V of this order and the efforts of the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States.

B. If the Commission terminates the Divestiture Agreement pursuant to subparagraph V.C.8 of this order, the Immuno Fibrin



Sealant Assets shall revert back to the respondent and the Commission may direct the trustee to seek a new Fibrin Sealant Licensee, as provided for in paragraph VII of this order.

## VII.

*It is further ordered, That:*

A. If Baxter fails to comply with the terms of paragraph V of this order and enter into a License Agreement with a Fibrin Sealant Licensee within four (4) months from the date respondent signed the agreement containing consent order, the Commission may appoint a trustee to: (a) grant a non-exclusive, royalty-free license, in perpetuity, and in good faith, of the Immuno Fibrin Sealant Assets to a Fibrin Sealant Licensee; and (b) enter into a License Agreement with a Fibrin Sealant Licensee that satisfies the requirements of paragraph V.C of this order. The purpose of the licensing of the Immuno Fibrin Sealant Assets is to ensure the continued research and development competition between Immuno's Fibrin Sealant and Baxter's Fibrin Sealant, to ensure the use of the Immuno Fibrin Sealant Assets for the research, development, manufacture and sale of Fibrin Sealant approved by the FDA for sale in the United States, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Neither the decision of the Commission to appoint the trustee nor the decision of the Commission not to appoint the trustee to license the Immuno Fibrin Sealant Assets 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(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed under paragraph VII.A of this order to license the Immuno Fibrin Sealant Assets and enter into a License Agreement with a Fibrin Sealant Licensee, Baxter shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Baxter, which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for

opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee. This trustee may be the same trustee as appointed pursuant to paragraphs III, IV or VI of this order.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to grant a non-exclusive, royalty-free license of the Immuno Fibrin Sealant Assets to a Fibrin Sealant Licensee and to enter into a License Agreement with a Fibrin Sealant Licensee pursuant to the terms of paragraph V.C of this order, which License Agreement shall be subject to the prior approval of the Commission.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a (or amend the existing) trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the non-exclusive, royalty-free license required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in subparagraph VII.B.3 of this order to license the Immuno Fibrin Sealant Assets and enter into a License Agreement with a Fibrin Sealant Licensee that satisfies the requirements of paragraph V.C of this order. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of licensing or believes that licensing can be achieved within a reasonable time, the twelve (12) month period may be extended by the Commission or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the twelve (12) month period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, data, facilities, and technical information related to the Immuno Fibrin Sealant Assets, or to any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to accomplish the licensing of the Immuno Fibrin Sealant Assets required by this order. Any delays in licensing the Immuno Fibrin Sealant Assets required by this order caused by respondent shall extend the time under subparagraph VII.B.4 of the order for accomplishing the

licensing of the Immuno Fibrin Sealant Assets required by this order in an amount equal to the delay, as determined by the Commission or, for the court-appointed trustee, by the court.

6. The trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to grant a license of the Immuno Fibrin Sealant Assets as required by this order at no minimum price and the trustee's obligation to expeditiously accomplish the remedial purpose of the order; to assure that Baxter enters into a License Agreement with a Fibrin Sealant Licensee to acquire the Immuno Fibrin Sealant Assets that complies with the provisions of paragraph V.C of this order; and to assure that Baxter complies with the remaining provisions of paragraph V.D of this order. The license shall be made to Fibrin Sealant Licensee in a manner set forth by this order; provided, however, 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 grant a non-exclusive, royalty-free license to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Baxter, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Baxter, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the licensing 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 Baxter 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 ability to grant a non-exclusive, royalty-free license of the Immuno Fibrin Sealant Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses



incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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 VII.B 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 necessary or appropriate to comply with the terms of this order.

11. The trustee shall have no obligation or authority to operate or maintain the Immuno Fibrin Sealant Assets.

12. The trustee shall report in writing to Baxter and to the Commission every sixty (60) days concerning the trustee's efforts to grant a non-exclusive, royalty-free license of the Immuno Fibrin Sealant Assets as required by this order.

### VIII.

*It is further ordered*, That respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I.

### IX.

*It is further ordered*, That:

A. Within sixty (60) days after the date this order becomes final and every ninety (90) days thereafter until Baxter has fully complied with the provisions of paragraphs II, IV, V and VII of this order, Baxter 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 these paragraphs of this order. Baxter shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these paragraphs of this order, including a description of all substantive contacts or negotiations for accomplishing the divestiture, entering into the Divestiture Agreement and entering into a license Agreement, required by this

order, including the identity of all parties contacted. Baxter shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Divestiture Agreement required by paragraph II and the License Agreement required by paragraph V of this order.

B. One (1) year from the date this order becomes final and annually until respondent has complied with all terms of this order or until the Acquirer or New Acquirer has obtained all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States and the Fibrin Sealant Licensee has obtained all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States, whichever is later, and at such other times as the Commission may require, 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 this order.

#### X.

*It is further ordered*, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent 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 other records and documents in the possession or under the control of respondent, relating to any matters contained in this order; and

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

#### XI.

*It is further ordered*, That respondent shall notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other

change that may affect compliance obligations arising out of the order.

Commissioner Starek recused.

#### APPENDIX I

#### INTERIM AGREEMENT

This Interim Agreement is by and between Baxter International Inc. ("Baxter"), a corporation organized and existing under the laws of the State of Delaware, 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.*

#### PREMISES

*Whereas*, Baxter has proposed to acquire the majority of the outstanding voting common stock of Immuno International AG; and

*Whereas*, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

*Whereas*, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding 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 competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

*Whereas*, Baxter entering into this Interim Agreement shall in no way be construed as an admission by Baxter that the proposed Acquisition constitutes a violation of any statute; and

*Whereas*, Baxter understands that no act or transaction contemplated by this Interim 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 Interim Agreement.

*Now, therefore,* Baxter agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. That it will execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date Baxter signs the Consent Agreement.

2. That it will take such actions as are necessary: (1) to maintain all necessary FDA approvals to research, develop, manufacture and sell both of the Factor VIII Inhibitor Treatments in the United States; (2) to maintain the viability and marketability of both of the Divested Inhibitor Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Factor VIII Inhibitor Treatments; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of the Divested Inhibitor Assets or tangible assets including manufacturing facilities needed to Contract Manufacture and sell both of the Factor VIII Inhibitor Treatments, except for ordinary wear and tear.

3. That it will take such actions as are necessary: (1) to maintain and obtain all necessary FDA approvals to research, develop manufacture and sell Immuno's Fibrin Sealant in the United States; (2) to maintain the viability and marketability of the Immuno Fibrin Sealant Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of the Immuno Fibrin Sealant Assets or tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant, except for ordinary wear and tear.

4. Baxter agrees that, from the date Baxter signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a and 4.b, it will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The date the Commission finally issues its complaint and its Decision and Order.

5. Baxter waives all rights to contest the validity of this Interim Agreement.

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

a. Access, during the office hours of Baxter 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 Baxter relating to compliance with this Interim Agreement; and

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

7. This Interim Agreement shall not be binding until accepted by the Commission.

## IN THE MATTER OF

## JEANETTE L. DOUGLASS

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

*Docket C-3727. Complaint, March 24, 1997--Decision, March 24, 1997*

This consent order prohibits, among other things, Jeanette L. Douglass, an officer of Computer Business Services, Inc. ("CBSI"), from misrepresenting the earnings or success rate of CBSI investors; the existence of a market for CBSI's products or services; the amount of time it takes investors to recoup their investments; and from making any representation regarding the performance, benefits, efficacy or success rate of any product or service unless she possesses reliable evidence to substantiate the claims. The consent order also prohibits the use of misleading testimonials or endorsements and requires certain disclosures to investors.

*Appearances*

For the Commission: *C. Steven Baker, Evan Siegel, Alan Krause and Mary Tortorice.*

For the respondent: *Lewis Keiler, Sonnenschein, Nath & Rosenthal, Chicago, IL.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Jeanette L. Douglass, individually and as an officer and director of Computer Business Services, Inc. ("CBSI"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Jeanette L. Douglass is an officer and director of CBSI. Individually or in concert with others, she formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. Her principal office or place of business is at 19348 Flippen Rd., Westfield, Indiana.

2. Respondent, in concert with CBSI, has advertised, offered for sale, sold, and distributed to the public home-based business ventures. Prospective consumers who purchase home-based business ventures from CBSI come to be known by the company as "Center Owners." A "center" ordinarily consists of computer hardware, software,



training manuals, marketing materials, and available technical assistance which, together, are represented to enable the owner to create products and services that can be resold profitably to the general public.

3. Beginning no later than April 1988, and continuing through the present, respondent, in concert with CBSI, has disseminated or has caused to be disseminated magazine, newspaper and postcard advertisements, including but not necessarily limited to the attached Exhibit A, to induce consumers nationwide to call a toll-free number to order a free information kit. Respondent, in concert with CBSI, represents through these advertisements that consumers can expect to earn \$4,000 per month using CBSI's "proven turnkey business." Exhibit A.

4. Respondent, in concert with CBSI, has also disseminated or has caused to be disseminated advertisements for home-based business ventures through commercial online services, including, but not limited to, CompuServe and America Online. Respondent, in concert with CBSI, represents through these advertisements that consumers can expect to earn \$4,000 per month through CBSI's home-based business ventures. Exhibit B.

5. Respondent, in concert with CBSI, has disseminated or has caused to be disseminated several information packets containing brochures and an audio cassette tape recording by the co-founders of CBSI, George and Jeanette Douglass. These materials, which are sent to prospective purchasers of home-based business ventures, contain the following statements:

(a) In the last 13 years, we've identified over 30 needs and wants. Each one of them is easy to run, helps other people, and provides you a good profit. Computer Business Services has not only identified these 30 needs, but has developed the technology to perform these services easily and profitably. Along with the technology, we've developed all the strategies to perform these services, plus the ways to find the people that need these services, and you can do it all from your home.

(b) Most of the couples and individuals that we've helped start their business have been extremely successful. . . .

(c) Each one of the programs I'm about to explain to you provides a needed service to the people or organizations in your community. Each service adds value to the people's lives you serve, and you can be proud to provide these services. Each program is a proven money-maker, and is now being operated successfully by our present center owners.

(d) Once you start to advertise your CBSI center, people know about it immediately and start coming to you for your services. Every business or

organization needs to contact people and you have the only way to contact people quickly, inexpensively and effectively. Once this word gets out, you'll have to expand your services very rapidly, just as we did.

(e) Now we've already helped thousands of couples and individuals turn into successful business people, and we believe we can help you, too.

(f) If you get our CBSI computer program and follow our proven strategies, I really don't believe that you can do it badly enough not to be successful. Once you get the word out that you've got these programs available, people will come to you.

(g) We right now have 30 services you can perform. We have thousands of center owners already earning good money, and I believe you can, too.

(h) Now you have 24 hours in a day. You work 8, sleep 8, and have 8 free hours. If you take 8 free hours times 7 days a week, you have 56 hours. Divide that by two, and you have 28 hours that you can use in this business. Now I realize I've not included weekends. If you use 28 hours per week to do this program, you will be extremely successful.

(i) I can't guarantee your success. I can't guarantee that you'll make \$4,000 to \$10,000 a month. I don't know what's inside of you. But I do know this. Our services are needed in every community in the United States. Our programs really work, and you can earn more money than you ever dreamed possible if you will work our programs.

(j) Most of the couples and individuals that we've helped start their business have been extremely successful and our relationship with them has been exhilarating.

(k) This is a business that you can build a few customers at a time and reap the profits for a long time to come. I call it stack up income. You set it up once and get paid for it every month. So after a few years, you have big money coming in every month, even if you take a month off.

(l) Each of these services is a proven money-maker in large cities, small towns and rural communities throughout the country.

(m) Now some of our center owners use the computer dialing equipment for telemarketing on the unattended mode. Some just don't like to use the computer for telemarketing at all, and in some states, there are regulations that limit the use in the unattended mode. . . . Again, you must make the decision how you use your equipment. Some center owners do very well using their computer dialing equipment for finding people who want their products. Others use the unattended mode to find qualified prospects for insurance, real estate, chimney cleaning and so forth. If they call from 9:00 a.m. to 9:00 p.m., they usually can call around 1,000 people a day.

6. Respondent, in concert with CBSI, also has disseminated or has caused to be disseminated materials containing endorsements by and photographs of purported Center Owners who convey the impression that ordinary consumers can successfully start and operate one or a combination of CBSI's home-based business ventures. These materials include but are not necessarily limited to the attached Exhibit C. For example, these materials contain the following statements and depictions:

(a) "LEE STOUT: I am a very satisfied CBSI Center Owner. Without my involvement with CBSI the opportunities that have become realities would not have been possible. The CBSI telecommunications program has enabled me to grow my business to the point where I can make \$100,000+ per year. . . . If I can be successful at this, anyone can!"

(b) "DOUG STROUD: I earned \$101,865 in one year with my own CBSI business. I am running Voice Mail and Computer Home Monitor. CBSI software is the best available."

(c) "CURTIS MAPP: I now have 258 subscribers to the CBSI Computerized Monitor Service program. Each subscriber is billed at \$30.00 per month, which means I'm earning over \$7,700 per month with this program alone."

7. Beginning no later than January 1991, and continuing through the present, respondent, in concert with CBSI, has sold home-based business ventures to approximately 15,000 consumers. Center Owners ordinarily spent between \$3,000 and \$16,000 on CBSI's products and services.

#### Profitability

8. Through the means described in paragraphs two through seven, respondent, in concert with CBSI, has represented, expressly or by implication, that CBSI Center Owners ordinarily operate profitable businesses out of their own homes.

9. In truth and in fact CBSI Center Owners do not ordinarily operate profitable businesses out of their own homes. Indeed, it is rare for CBSI Center Owners to recoup even their initial investments.

10. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

#### Substantial Income

11. Through the means described in paragraphs two through seven, respondent, in concert with CBSI, has represented, expressly or by implication, that:

- a. CBSI Center Owners ordinarily earn substantial income.
- b. CBSI Center Owners can reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month.

12. In truth and in fact:

- a. CBSI Center Owners do not ordinarily earn substantial income. Indeed, the vast majority of Center Owners never even recoup their initial average investments of approximately \$9,000.



b. CBSI Center Owners can not reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month. Indeed, the vast majority of Center Owners not only never earn \$4,000 per month, but never earn \$4,000 over the duration of their businesses.

13. Therefore, the representations set forth in paragraph eleven were, and are, false or misleading.

#### Endorsements: Actual Experiences

14. Through the means described in paragraph six, respondent, in concert with CBSI, has represented, expressly or by implication, that CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials reflect the actual experiences of those Center Owners.

15. In truth and in fact, in numerous instances, CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials do not reflect those Center Owners' actual experiences.

16. Therefore, the representation set forth in paragraph fourteen was, and is, false or misleading.

#### Endorsements: Typicality and Ordinariness

17. Through the means described in paragraph six, respondent, in concert with CBSI, has represented, expressly or by implication, that CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

18. In truth and in fact, CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials do not reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

19. Therefore, the representation set forth in paragraph seventeen was, and is, false or misleading.

#### Substantiation for Earnings Claims

20. Through the use of the statements and depictions contained in CBSI's advertisements and promotional materials referred to in

paragraph eleven, respondent, in concert with CBSI, has represented, expressly or by implication, that she, in concert with CBSI, possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eleven, at the time the representations were made.

21. In truth and in fact, respondent, in concert with CBSI, did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eleven, at the time the representations were made. Therefore, the representation set forth in paragraph twenty was, and is, false or misleading.

#### Automatic Telephone Dialing Systems

22. Through the means described in paragraphs two through seven, respondent, in concert with CBSI, has represented, expressly or by implication, that consumers can successfully utilize automatic telephone dialing systems to market their businesses.

23. Respondent, in concert with CBSI, has failed to disclose in advertisements and promotional materials for the outbound telemarketing programs that federal law prohibits the use of an automatic telephone dialing system in the unattended mode to initiate a telephone call to any residential telephone line to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party. This fact would be material to consumers in their purchase or use of CBSI's home-based business ventures. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

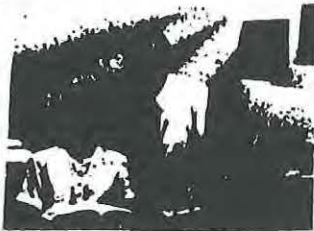
24. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

935

Complaint

EXHIBIT A

EXHIBIT A



**FREE** CBI 486 Computer

## Earn \$4,000 Per Month From Your Home With A Computer!

Begin part-time and still retain the security of your present position. This is a proven turnkey business an individual or couple can run. If you purchase our software and business program, we will give you the computer and printer. If you already own a computer, you may receive a discount. You do not need to own, or know how to run, a computer—we will provide free home office training. Financing available.

*Learn how other couples, and individuals like yourself, are building a lifetime income!*

To receive free cassettes and color literature, call toll-free: **1-800-343-8014, ext. 145**

(In Indiana: 317-378-4415) Or Write

COMPUTER BUSINESS SERVICES INC. 1266 PLAZA, STE. 145, SHERIDAN, INDIANA 46069



Complaint

123 F.T.C.

EXHIBIT B

*[Handwritten signature]*

EXHIBIT B

EARN \$4,000 PER MONTH ON THE NEW INSTANT INFORMATION SUPERHIGHWAY!

All you need is a kitchen table, computer, modem and a telephone.

There is an exploding worldwide need for instant information. You can now be part of the start of a revolutionary new industry.

Computer Business Services Inc. (the world leader in instant information) immediately needs couples and individuals to provide these services from their homes. You may start part time and retain the security of your present job. Quit spending money on your computer and let it earn money for you. We provide a complete operation including everything you need to start plus the complete training to be a success.

If you purchase our software and training materials...  
modem, color monitor and printer at no extra cost...  
give you a commitment. Financing available.

Call 1-800-343-8014 ext. 2050

24 hours a day to receive FREE color material and high cassette tapes...  
at cost profit from and be a part of the new instant information superhighway.

# WORLD'S LARGEST POSTCARD

## WARNING: Statistics show that reading this card can change your life!



**NICK ZICHICHI**

"I earned \$1,000 in one week selling personalized children's books part time. I'm also running the Financial Aid for College program, and I sell a lot through high schools. I have started on Voice Mail and Voice Message Center. I now have 30 accounts, and I'm opening about 20 new accounts per week. I'm done with working hard for someone else. This is the limit for me."



**LEE STOUT**

"I am a very satisfied CBSI Center Owner. Without my involvement with CBSI the opportunities that have become realities would not have been possible. The CBSI telecommunications program has enabled me to grow my business to the point I where I can make \$100 (x10) per hr. Thanks to all at CBSI, from the tech support to customer service, marketing support and everyone in between. If I can be successful at this, anyone can!"



**SHARON MALTAGLIATI**

"George (Douglass), thank you for giving me the strength to "go out on a limb." It was because of the people that I came to know from listening to your tapes on stress (now), that I knew we had to drive to Sheridan, Indiana, to meet you. For years, just like you and Joanne and so many other people, I have lived the burning desire to start my own business. I had a full-time job making an excellent living, a beautiful home, cars, etc., however, I was not happy because my dream was getting further and further away from me. So here I am, working, working, working to build my dream. Please give my best to your entire staff. Everyone has been most helpful, and I look forward to working with all of you for many years to come."



**DAVID SMITH**

"I purchased a CBSI 1000 Monogram & Embroidery Machine and went into business. I now have more business than I can actually handle. I try to get at least \$30 per hour from my machine. Most days I gross \$400 and spend \$100 for shirts, sweat etc. I can literally get my machine up anywhere and do lots of business. shirts, shoes, hats, etc. The business is very exciting and very challenging."



**RHONDA SILEN**

"Your company gave me the chance to do something I didn't think was possible. Without your company, I would be stuck in a 9-5 job fighting with a stupid boss about taking my children to the doctor (or staying home when they are sick). With my CBSI home business I am able to play a more active part in my children's lives. At the same time I am also able to provide for my family financially. I am able to make a difference in the lives (and education) of the children in my community. Without your wonderful company, none of this would be possible."



**DON UEHARA**

"I couldn't believe what I read and heard on the tapes. It was just so good to be in it. But it is true. Everything works great and the support staff is great. I work the Time Weather and Lottery program. I have 77 advertising spots and I sell them for \$60 to \$100 per spot. I paid for my initial investment really quick. I am also selling Personalized Children's Books. I have also sold \$70,000 worth of computer systems. I believe in luck, and the harder I work the luckier I seem to get."



**MARK BRANT**

"My name is Mark Brant and I'm running the CBSI Video Board program. I recently signed a major cable company for advertising, 10,000 coupons each month and plan to do much more. I also signed up three video stores as well. The concept is great and the business is great."



**DOUG STRONG**

"I earned \$10,865 in one year with my own CBSI business. I am running Voice Mail and Computer Home Monitor. CBSI software is the best available. I believe CBSI software is Great Great. The people like what they are doing. I would like to see you."



**JENNIFER**

"My husband and I have been Center Owners for 11 months, and we just want to say THANK YOU to all the love at CBSI for their support and help. We can truly say that this company will take care of their Center Owners. This is not a fly by night organization and we do appreciate that. We look forward to what the future holds."



**GILL**

"Congratulations to me and the great team! We have a new staff, all here in the industry. CBSI might not have the funds of dollars that Microsoft, Corel has, but we have an amazing team. We are IBM, but the CBSI technical support team is even better. I share and professional as the tech teams, will be upgrading for a few Center Owners and we are you. We are."



**ANNE**

"I now have 258 subscribers to the CBSI Computer Monitor Service program. Each subscriber is billed \$30.00 per month, which means I'm earning over \$7,740 per month with this program alone. Thanks to everyone at CBSI for your assistance, especially in Technical Service and Customer Service. No other franchise agencies or systems can tackle other programs."



**FRAN**

"Words can't describe the fun & excitement my business provides! After three years, I am just as enthusiastic about it as in the beginning. It has been a blessing for me to touch lives and have a ministry in my community, and earn a good income as well. I truly thank and praise God. I was the housewife with the empty house, it took a lot of hard work, but it was worth it."

Complaint

EXHIBIT C

JEANETTE L. DOUGLASS

Call your program advisor **TODAY** at 1-800-545-2274, ext. 347.

SA 7000195

EXHIBIT C





## 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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent, her attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 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 the respondent has 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, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Jeanette L. Douglass is an officer and director of Computer Business Services, Inc. Her principal office or place of business is at 19348 Flippen Rd., Westfield, Indiana.

2. The acts and practices of the respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. 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

## DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Business venture*" means any written or oral business arrangement, however denominated, whether or not covered by the Federal Trade Commission's trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436, and which consists of payment of any consideration for:

A. The right to offer, sell, or distribute goods, or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

2. "*Clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print or electronic advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable for an ordinary consumer to see and read, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. Unless otherwise specified, "*respondent*" shall mean Jeanette L. Douglass, individually, and each of his [sic] agents, representatives and employees.

4. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

5. "*Automatic telephone dialing system*" shall mean as defined in the Telephone Consumer Protection Act, 47 U.S.C. 227(a)(1).

## I.

*It is ordered,* That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not misrepresent, expressly or by implication:

A. That consumers who purchase or use such business ventures ordinarily succeed in operating profitable businesses out of their own homes;

B. That consumers who purchase or use such business ventures ordinarily earn substantial income;

C. The existence of a market for the products and services promoted by respondent;

D. The amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain by purchasing a business venture;

E. The amount of time within which the prospective purchaser could reasonably expect to recoup his or her investment; or

F. By use of hypothetical examples or otherwise, that consumers who purchase or use such business ventures earn or achieve from such participation any stated amount of profits, earnings, income, or sales. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondent from using hypothetical examples which do not contain any express or implied misrepresentations or from representing a suggested retail price for products or services.

## II.

*It is further ordered,* That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not represent, expressly or by implication, the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless such representation is true and, at the time of making the representation, respondent possesses and relies upon competent and reliable evidence that substantiates such representation. For purposes of this order, if such evidence consists of any test, analysis, research, study, or other



evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if it has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

### III.

*It is further ordered,* That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any business venture or any product or service that is part of any business venture in or affecting commerce, shall not:

A. Use, publish, or refer to any user testimonial or endorsement unless respondent has good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained; or

B. Represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

1. The representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation; or

2. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

a. What the generally expected results would be for users of the product, or

b. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Provided, however, that when endorsements and user testimonials are used, published, or referred to in an audio cassette tape recording, such disclosure shall be deemed to be in close proximity to the endorsements or user testimonials when the disclosure appears at the beginning and end of each side of the audio cassette tape recording containing such endorsements or user testimonials. Provided further,

however, that when both sides of an audio cassette tape recording contain such endorsements or user testimonials, the disclosure need only appear at the beginning and end of the first side and the end of the second side of the audio cassette tape recording.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

#### IV.

*It is further ordered,* That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture utilizing, employing or involving in any manner, an automatic telephone dialing system, shall disclose, clearly and prominently, and in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondent from making truthful statements or explanations regarding the laws and regulations regarding the use of automatic telephone dialing systems.

#### V.

*It is further ordered,* That respondent Jeanette L. Douglass shall for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

## VI.

*It is further ordered,* That respondent Jeanette L. Douglass, for a period of five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

## VII.

*It is further ordered,* That respondent Jeanette L. Douglass, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business addresses and telephone numbers and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

## VIII.

*It is further ordered,* That respondent Jeanette L. Douglass, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

## IX.

This order will terminate on March 24, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in fewer than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.



Complaint

123 F.T.C.

IN THE MATTER OF

## PHILLIPS PETROLEUM COMPANY

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-3728. Complaint, March 28, 1997--Decision, March 28, 1997*

This consent order requires, among other things, the Oklahoma-based corporation to divest approximately 160 miles of pipeline belonging to ANR Pipeline Company and Phillips in the Anadarko Basin area, and to maintain the assets in their current condition and to provide customers under the contract with ANR with gathering services at existing terms and conditions pending divestiture. The consent order also requires Phillips, for ten years, to notify the Commission before acquiring during any 18-month period more than five miles of gas gathering pipelines in the specified areas of the Oklahoma counties.

*Appearances*

For the Commission: *George Cary, Frank Lipson, Phillip Broyles and William Baer.*

For the respondent: *William Kolasky, Wilmer, Cutler & Pickering, Washington, D.C.*

## COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Phillips Petroleum Company ("Phillips"), through its subsidiary GPM Gas Corporation ("GPM"), is subject to the jurisdiction of the Commission and that Phillips' acquisition of certain gas-gathering assets of ANR Pipeline Company ("ANR"), a subsidiary of the Coastal Corporation, is 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 FTC Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

## I. PHILLIPS

PARAGRAPH 1. Respondent Phillips is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Phillips Building, Bartlesville, Oklahoma.

PAR. 2. Respondent Phillips is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

## II. THE PROPOSED ACQUISITION

PAR. 3. Respondent Phillips, through its subsidiary GPM, entered into a Purchase and Sale Agreement dated January 12, 1996, with ANR to acquire the gas gathering assets currently owned by ANR.

## III. THE RELEVANT MARKETS

PAR. 4. The relevant line of commerce in which to analyze the effects of the merger is natural gas gathering services *i.e.*, the transportation, for the respondent's own account or for other persons, of natural gas from the wellhead or producing area to a natural gas transmission pipeline or a natural gas processing plant.

PAR. 5. The relevant sections of the country in which to analyze the effects of the acquisition are the areas in and around the following townships:

- a. T28N/R24W in Harper County, Oklahoma;
- b. T5N/R28E in Beaver County, Oklahoma;
- c. T29N/R21W in Woods County, Oklahoma;
- d. T24N/R25W in Ellis County, Oklahoma;
- e. T23N/R26W in Ellis Country, Oklahoma;
- f. T1N/R26E in Beaver, Oklahoma; and
- g. T23N/R18W in Woodward, Oklahoma.

PAR. 6. The relevant line of commerce is highly concentrated in the relevant geographic markets. The acquisition will significantly increase concentration in the relevant geographic markets set forth in paragraph five a-g.

PAR. 7. Respondent Phillips is an actual and potential competitor of ANR in the relevant line of commerce in the relevant geographic markets.

PAR. 8. Effective entry in the relevant line of commerce in the relevant geographic markets is unlikely.

#### IV. EFFECTS OF THE MERGER

PAR. 9. The effects of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in the following ways, among others:

a. Actual and potential competition between Phillips and ANR to provide natural gas gathering services to existing natural gas wells will be eliminated;

b. Actual and potential competition between Phillips and ANR to provide natural gas gathering services for new natural gas wells will be eliminated; and

c. The respondent is likely to exact anticompetitive price increases from producers in the relevant geographic market for performance of natural gas gathering services in the relevant geographic markets; and

d. Producers may be less likely to do exploratory and developmental drilling for new natural gas in the relevant geographic markets than prior to the merger.

#### V. VIOLATIONS CHARGED

PAR. 10. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

PAR. 11. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

#### DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Phillips Petroleum Company ("Phillips"), through its subsidiary GPM Gas Corporation ("GPM"), of certain gas-gathering assets of ANR Pipeline Company,

a subsidiary of the Coastal Corporation ("Coastal"), and it now appearing that Phillips, hereinafter sometimes referred to as "respondent," having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 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 Acts, 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 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. Phillips Petroleum Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Phillips Building, Bartlesville, Oklahoma.

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, as used in this order, the following definitions shall apply:



A. "*Phillips*" or "*respondent*" means Phillips Petroleum Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups and affiliates controlled by Phillips, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Coastal*" means The Coastal Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups and affiliates controlled by Coastal, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. The "*Acquisition*" means the proposed acquisition by GPM Gas Corporation, a subsidiary of Phillips, of certain gas-gathering assets of ANR Pipeline Co., a subsidiary of Coastal, pursuant to the purchase agreement executed on January 12, 1996, by and between Phillips and Coastal as subsequently modified and amended.

D. "*Gas Gathering*" means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.

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

F. "*Related Person*" means a person controlled by, controlling, or under the common control with, another person.

G. "*Relevant geographic area*" means all portions of Harper County, Oklahoma, within fifteen miles of the Kansas border; all portions of Beaver County, Oklahoma, within twenty miles of the Harper County border; all portions of Ellis County, Oklahoma, within eighteen miles of the northwest corner of Ellis County; and Townships T23N/R14W, T23N/R15W, T23N/R16W, T23N/R17W, T23N/R18W, T22N/R16W, T22N/R17W, T22N/R18W, T21N/R17W, and T21N/R18W of Woodward, Major and Woods Counties, Oklahoma.

H. "*Schedule A assets*" means the whole and any part of the assets listed in Schedule A of this order.

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

## II.

*It is further ordered, That:*

A. Following completion of the Acquisition, Phillips shall divest the Schedule A assets, absolutely and in good faith, at no minimum price, consistent with the provisions of this order.

B. The divestiture shall be made only to an acquirer or acquirers that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. Pending divestiture of the Schedule A assets, Phillips shall take such actions as are necessary to maintain the viability and marketability of the Schedule A assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A assets except for ordinary wear and tear.

D. Phillips shall comply with the Asset Maintenance Agreement, attached hereto and made a part hereof as Appendix I.

E. The purpose of the divestiture is to ensure the continued use of the Schedule A assets in the same type of business in which the Schedule A assets are used at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

## III.

*It is further ordered, That:*

A. If Phillips has not divested the Schedule A assets consistent with paragraph II of this order by the later of April 30, 1997, or thirty days after Phillips consummates the Acquisition, the Commission may appoint a trustee to divest the Schedule A assets.

B. In the event that 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, Phillips shall 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 III 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 Phillips to comply with this order.

C. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A, Phillips shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Phillips, which consent shall not be unreasonably withheld. The trustee shall preferably be a person with experience and expertise in acquisitions and divestitures of gas gathering assets. If Phillips has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Phillips of the identity of any proposed trustee, Phillips shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Schedule A assets. The trustee may, in his or her discretion, or at the direction of the Commission, effect such arrangements and divest (a) any additional gas gathering assets (including, but not limited to, gas gathering lines, compressors, surface equipment, and gas purchase and gathering contracts) of the respondent located in the relevant geographic area and (b) any additional assets necessary to connect the divested assets to the buyer's existing systems or to a third-party transmission line. The trustee may select such assets pursuant to clauses (a) and (b) of this paragraph to assure the marketability, viability, and competitiveness of the Schedule A assets so as to accomplish expeditiously the remedial purposes of this order.

3. Within ten (10) days after appointment of the trustee, Phillips shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.C.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time,



the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. Phillips shall provide the trustee full and complete access to the personnel, books, records and facilities related to the Schedule A assets, or to any other relevant information, as the trustee may request. Phillips shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Phillips shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Phillips shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall make reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Phillips' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made to an acquirer or acquirers that receive the prior approval of the Commission, provided, however, if the trustee receives *bona fide* offers for any of the assets to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest that particular assets to the acquiring entity or entities selected by Phillips from among those approved by the Commission.

7. The trustee shall serve at the cost and expense of Phillips, without bond or other security unless paid for by Phillips, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Phillips, such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture 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 Phillips, 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 the Schedule A assets.



8. Phillips shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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

11. The trustee shall have no obligation to operate or maintain the Schedule A assets.

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

#### IV.

*It is further ordered*, That, for a period of ten (10) years from the date this order becomes final, Phillips shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire the Schedule A assets after their divestiture, or any assets the trustee may divest pursuant to paragraph III.C.2 of this order.

B. Acquire any stock, share capital, equity, or other interest in any person engaged in gas gathering within the relevant geographic area at any time within the two years preceding such acquisition, provided, however, that an acquisition of securities will be exempt from the requirements of this paragraph (IV.B) if after the acquisition Phillips will hold cumulatively no more than two (2) percent of the outstanding shares of any class of security of such person; and provided further, that this paragraph (IV.B) shall not apply to the acquisition of any interest in a person that is not at the time of the acquisition engaged in gas gathering within the relevant geographic

area due to the sale within the preceding two years of all assets used for gas gathering within the relevant geographic area to another party who intended to operate said assets for gas gathering within the relevant geographic area; or

C. Enter into any agreements or other arrangements with any person or with two or more related persons to obtain, within any 18 month period, direct or indirect ownership, management, or control of more than five (5) miles of pipeline previously used for gas gathering and suitable for use for gas gathering within the relevant geographic area.

#### V.

*It is further ordered,* That the prior notifications required by paragraph IV of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of Part 803, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Phillips. In lieu of furnishing (1) documents filed with the Securities and Exchange Commission, (2) annual reports, (3) annual audit reports, (4) regularly prepared balance sheets, or (5) Standard Industrial Code ("SIC") information in response to certain items in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, Phillips shall provide a map showing the location of the pipeline whose acquisition is proposed and other pipelines used for gas gathering in the relevant geographic area and a statement showing, for the most recent 12 month period for which volume information is available, the quantity of gas that flowed through pipeline whose acquisition is proposed. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting

periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by paragraph IV of this order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

## VI.

*It is further ordered, That:*

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Phillips has fully complied with the provisions of paragraphs II or III of this order, Phillips 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. Phillips shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Phillips shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order is entered, and at such other times as the Commission may require, Phillips 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 this order.

## VII.

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

## VIII.

*It is further ordered,* That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, 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 and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present, relating to any matters contained in this order.

## IX.

*It is further ordered,* That this order shall terminate on March 28, 2007.



## Decision and Order

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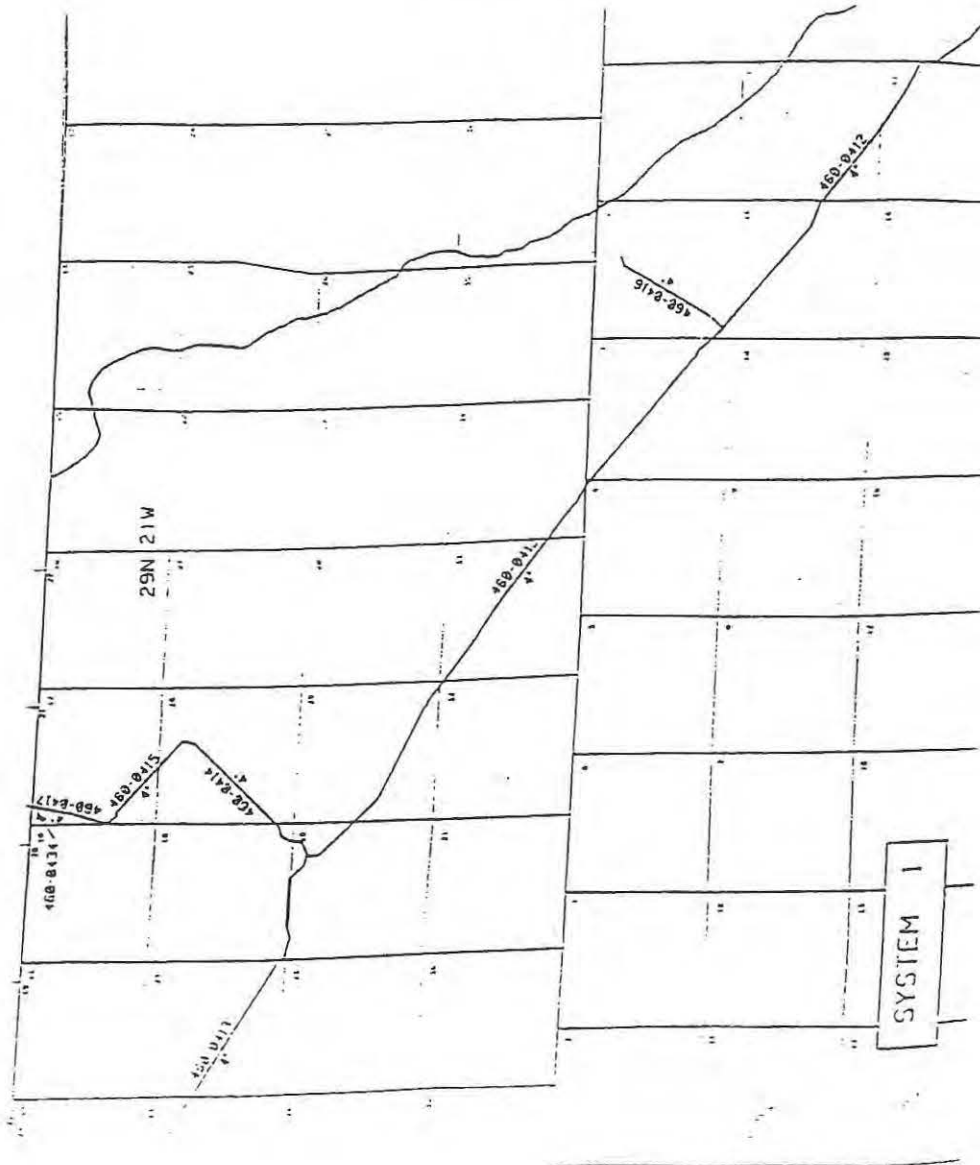
## SCHEDULE A

## SCHEDULE A

System 1 is located in T29N-R22W, T29N-R21W, T28N-R21W, and T28N-R20W in northeastern Harper County, Oklahoma, and consists of approximately 15 miles of 4" piping as described in the table and map below.

| System Number | Item Number | Current Owner | ANR Line Number | Legal Location |       | Pipe Length Feet | Diameter Inches |
|---------------|-------------|---------------|-----------------|----------------|-------|------------------|-----------------|
|               |             |               |                 | Township       | Range |                  |                 |
| 1             | 1           | ANR           | 460-113         | 29N            | 22W   | 17,400           | 4               |
|               |             |               |                 | 29N            | 21W   |                  |                 |
|               | 2           | ANR           | 460-0434        | 29N            | 21W   | 400              | 4               |
|               | 3           | ANR           | 460-0417        | 29N            | 21W   | 3,800            | 4               |
|               | 4           | ANR           | 460-0415        | 29N            | 21W   | 3,700            | 4               |
|               | 5           | ANR           | 460-0414        | 29N            | 21W   | 11,000           | 4               |
|               | 6           | ANR           | 460-0412        | 29N            | 21W   | 40,500           | 4               |
| 7             | ANR         | 460-0416      | 28N             | 21W            | 5,000 | 4                |                 |
|               |             |               | 28N             | 20W            |       |                  |                 |
|               |             |               | 28N             | 21W            |       |                  |                 |
| total         |             |               |                 |                |       | 81,800           |                 |

SCHEDULE A



## Decision and Order

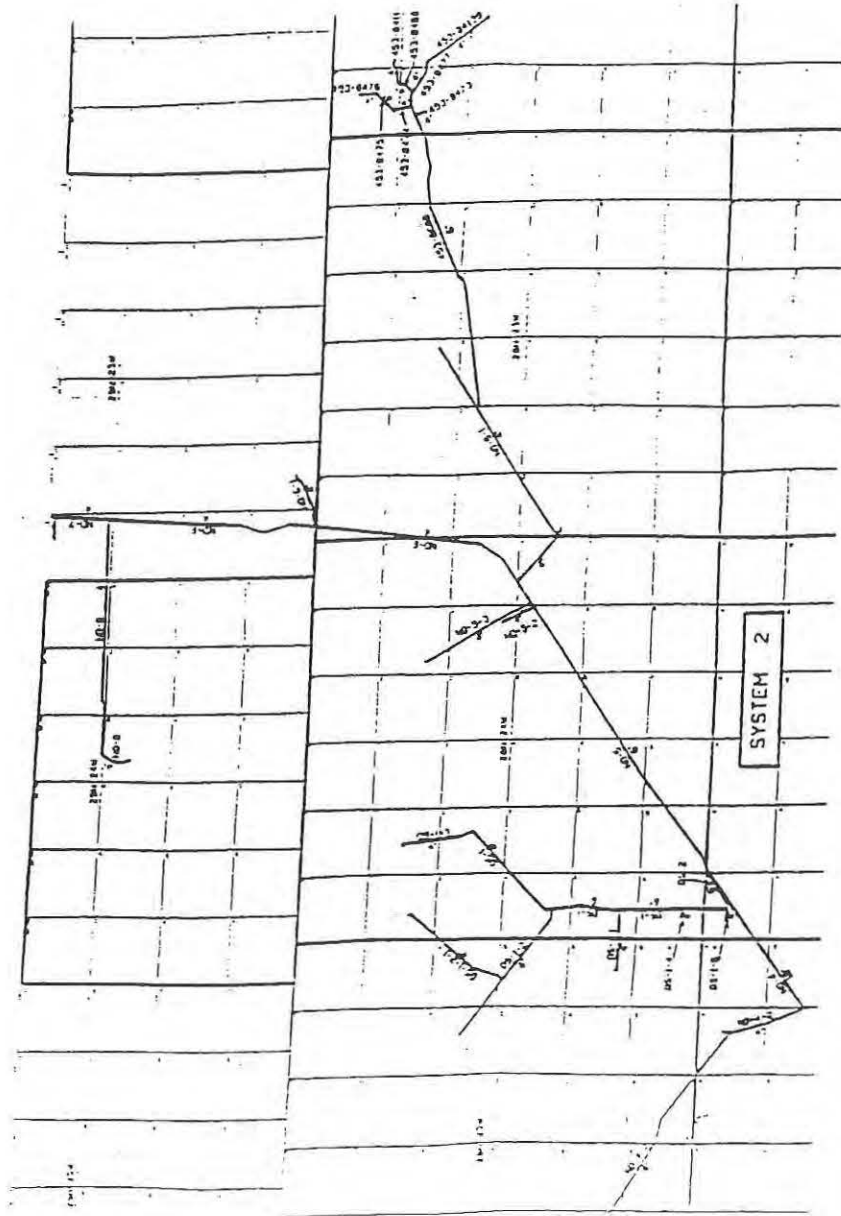
123 F.T.C.

## SCHEDULE A

System 2 is located in T28N-R25W, T27N-R25W, T29N-R24W, T28N-R24W, T27N-R24W, T29N-R23W, T28N-R23W, and T28N-R22W in northern Harper County, Oklahoma, and consists of approximately 36 miles of 4" piping, approximately 14 miles of 6" piping, and approximately 3 miles of 10" piping as described in the table and map below.

| System Number | Item Number | Current Owner | Line Number | Legal Location |          | Pipe Length Feet | Diameter Inches |   |
|---------------|-------------|---------------|-------------|----------------|----------|------------------|-----------------|---|
|               |             |               |             | Township       | Range    |                  |                 |   |
| 2             | 1           | GPM           | ND-3-2      | 27N, 28N       | 25W      | 27,000           | 4               |   |
|               | 2           | GPM           | ND-4        | 27N            | 24W, 25W | 13,900           | 10              |   |
|               | 3           | GPM           | DS-1-5*     | 27N            | 24W      | 1,200            | 4               |   |
|               | 4           | GPM           | DS-2        | 27N            | 24W      | 3,400            | 6               |   |
|               | 5           | GPM           | DS-1        | 27N, 28N       | 24W      | 14,600           | 6               |   |
|               |             |               |             |                | 28N      | 24W              | 8,500           | 4 |
|               | 6           | GPM           | DS-1-4*     | 28N            | 24W      | 1,000            | 4               |   |
|               | 7           | GPM           | DS-1-1      | 28N            | 24W, 25W | 5,300            | 4               |   |
|               | 8           | GPM           | DS-1-2      | 28N            | 24W, 25W | 12,800           | 4               |   |
|               | 9           | GPM           | DS-1-2-1*   | 28N            | 24W, 25W | 9,500            | 4               |   |
|               | 10          | GPM           | DS-1-3      | 28N            | 24W      | 6,000            | 4               |   |
|               | 11          | GPM           | ND-5        | 27N, 28N       | 24W      | 30,500           | 6               |   |
|               | 12          | GPM           | ND-5-2      | 28N            | 24W      | 3,100            | 4               |   |
|               | 13          | GPM           | ND-5-3      | 28N            | 24W      | 9,300            | 4               |   |
|               | 14          | GPM           | ND-5-1      | 28N            | 23W, 24W | 23,500           | 4               |   |
|               | 15          | ANR           | 453-0608    | 28N            | 22W, 23W | 24,900           | 6               |   |
|               | 16          | ANR           | 453-0473    | 28N            | 22W      | 900              | 4               |   |
|               | 17          | ANR           | 453-0477    | 28N            | 22W      | 4,100            | 4               |   |
|               | 18          | ANR           | 453-04139   | 28N            | 22W      | 5,600            | 4               |   |
|               | 19          | ANR           | 453-0488    | 28N            | 22W      | 1,400            | 4               |   |
|               | 20          | ANR           | 453-04117   | 28N            | 22W      | 2,300            | 4               |   |
|               | 21          | ANR           | 453-0474    | 28N            | 22W      | 1,700            | 4               |   |
|               | 22          | ANR           | 453-0475    | 28N            | 22W      | 1,900            | 4               |   |
|               | 23          | ANR           | 453-0476    | 28N            | 22W      | 1,800            | 4               |   |
|               | 24          | GPM           | ND-6        | 28N            | 24W      | 31,600           | 4               |   |
|               |             |               |             |                | 28N      | 23W              |                 |   |
|               |             |               |             |                | 29N      | 23W              |                 |   |
| 25            | GPM         | ND-6-1        | 29N         | 23W            | 4,900    | 4                |                 |   |
| 26            | GPM         | ND-7          | 29N         | 23W            | 6,600    | 4                |                 |   |
| 27            | GPM         | ND-8          | 29N         | 23W, 24W       | 21,600   | 4                |                 |   |
|               |             |               |             |                |          | 278,900          |                 |   |

SCHEDULE A





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## SCHEDULE A

System 3 is located in T6N-R27E, T5N-R27E, T5N-R28E, and, T4N-R28E in northeastern Beaver County, Oklahoma, and consist of approximately 18 miles of 4" piping and approximately 13 miles of 6" piping as described in the table and map below.

| System Number | Item Number | Current Owner | Line Number | Legal Location |          | Pipe Length Feet | Diameter Inches |
|---------------|-------------|---------------|-------------|----------------|----------|------------------|-----------------|
|               |             |               |             | Township       | Range    |                  |                 |
| 3             | 1           | GPM           | OG15901     | 5N, 6N         | 27E      | 5,400            | 4               |
|               | 2           | GPM           | OG15901-J   | 5N             | 27E      | 5,300            | 4               |
|               | 3           | GPM           | OG15901-G   | 5N             | 27E      | 6,300            | 4               |
|               | 4           | GPM           | OG159       | 5N             | 27E, 28E | 29,200           | 6               |
|               | 5           | GPM           | OG15901-K   | 5N             | 27E      | 1,800            | 4               |
|               | 6           | GPM           | OG16501     | 5N, 6N         | 27E      | 11,200           | 6               |
|               | 7           | GPM           | OG16501-B   | 6N             | 27E      | 500              | 4               |
|               | 8           | GPM           | OG165D      | 5N             | 27E      | 600              | 4               |
|               | 9           | GPM           | OG16501-C   | 6N             | 27E      | 700              | 4               |
|               | 10          | GPM           | OG165E      | 6N             | 27E      | 6,800            | 4               |
|               | 11          | GPM           | OG159F      | 5N             | 27E      | 5,100            | 4               |
|               | 12          | GPM           | OG15901-F1  | 5N             | 27E      | 3,700            | 4               |
|               | 13          | GPM           | OG15901-F   | 5N             | 27E      | 3,700            | 4               |
|               | 14          | GPM           | OG159-B     | 5N, 6N         | 27E      | 4,500            | 4               |
|               | 15          | GPM           | OG15901-B2  | 6N             | 27E      | 1,700            | 4               |
|               | 16          | GPM           | LG-3        | 5N             | 28E      | 9,100            | 4               |
|               | 17          | GPM           | LG-2        | 5N             | 28E      | 22,800           | 4               |
|               | 18          | GPM           | LG-2-1      | 5N             | 28E      | 5,300            | 4               |
|               | 19          | GPM           | LG-1        | 4N, 5N         | 28E      | 27,300           | 6               |
|               | 20          | GPM           | LG-1-1      | 4N             | 28E      | 5,100            | 4               |
|               | 21          | GPM           | LG-1-2*     | 4N             | 28E      | 6,900            | 4               |
|               |             |               |             |                |          | 163,000          |                 |



## Decision and Order

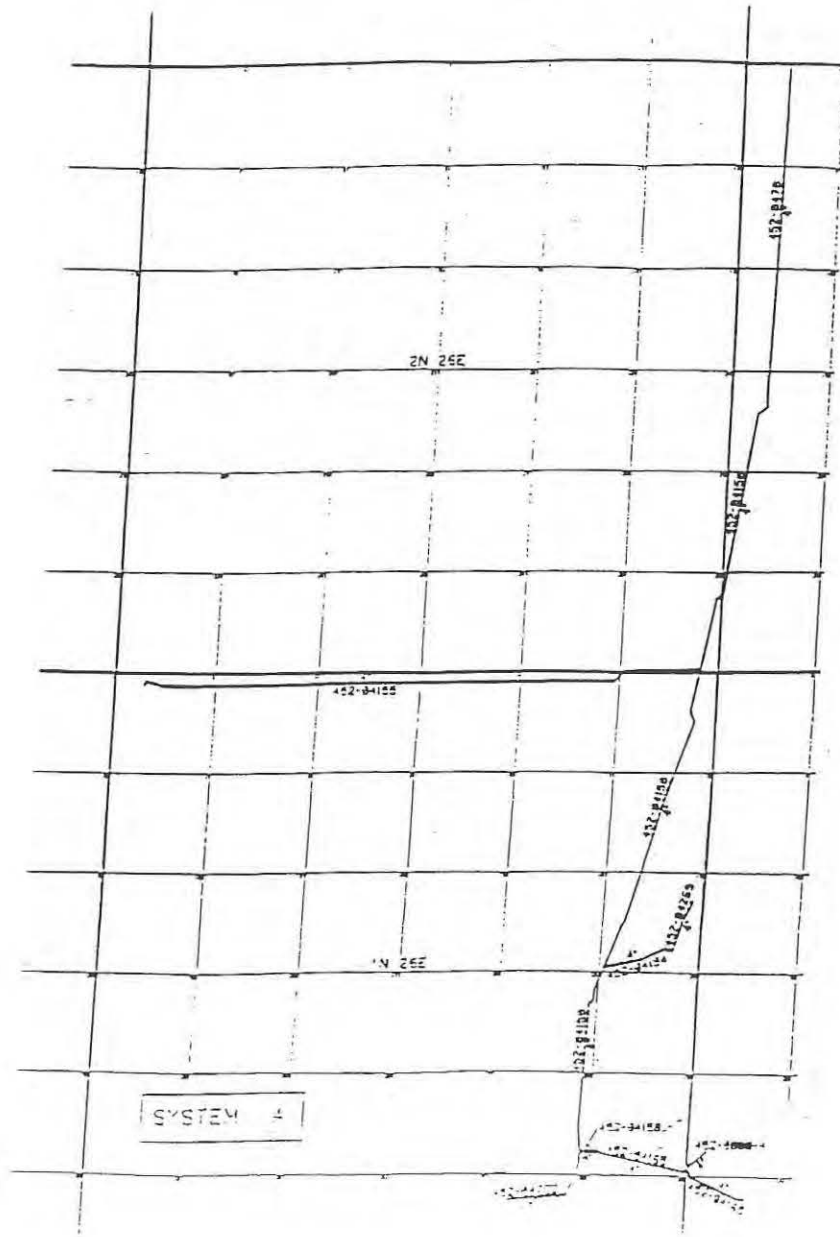
123 F.T.C.

## SCHEDULE A

System 4 is located in T2N-R26E, T1N-R26E, T2N-R27E, and T1N-R27E in southeastern Beaver County, Oklahoma, and consists of approximately 21 miles of 4" piping as described in the table and map below.

| System Number | Item Number | Current Owner | ANR Line Number | Legal Location |       | Pipe Length Feet | Diameter Inches |
|---------------|-------------|---------------|-----------------|----------------|-------|------------------|-----------------|
|               |             |               |                 | Township       | Range |                  |                 |
| 4             | 1           | ANR           | 452-0470        | 2N             | 27E   | 15,500           | 4               |
|               | 2           | ANR           | 452-04150       | 2N             | 27E   | 45,000           | 4               |
|               |             |               |                 | 2N             | 26E   |                  |                 |
|               | 3           | ANR           | 452-04155       | 1N             | 26E   | 30,600           | 4               |
|               |             |               |                 | 1N, 2N         | 26E   |                  |                 |
|               |             |               |                 | 1N             | 26E   |                  |                 |
|               | 4           | ANR           | 452-04194       | 1N             | 26E   | 3,900            | 4               |
|               | 5           | ANR           | 452-04269       | 1N             | 26E   | 3,200            | 4               |
|               | 6           | ANR           | 452-04158       | 1N             | 26E   | 1,700            | 4               |
| 7             | ANR         | 452-04232     | 1N              | 26E            | 2,900 | 4                |                 |
| 8             | ANR         | 452-04165     | 1N              | 26E, 27E       | 8,200 | 4                |                 |
| 9             | ANR         | 452-0000-4    | 1N              | 27E            | 1,400 | 4                |                 |
|               |             |               |                 |                |       | total            | 112,400         |

SCHEDULE A





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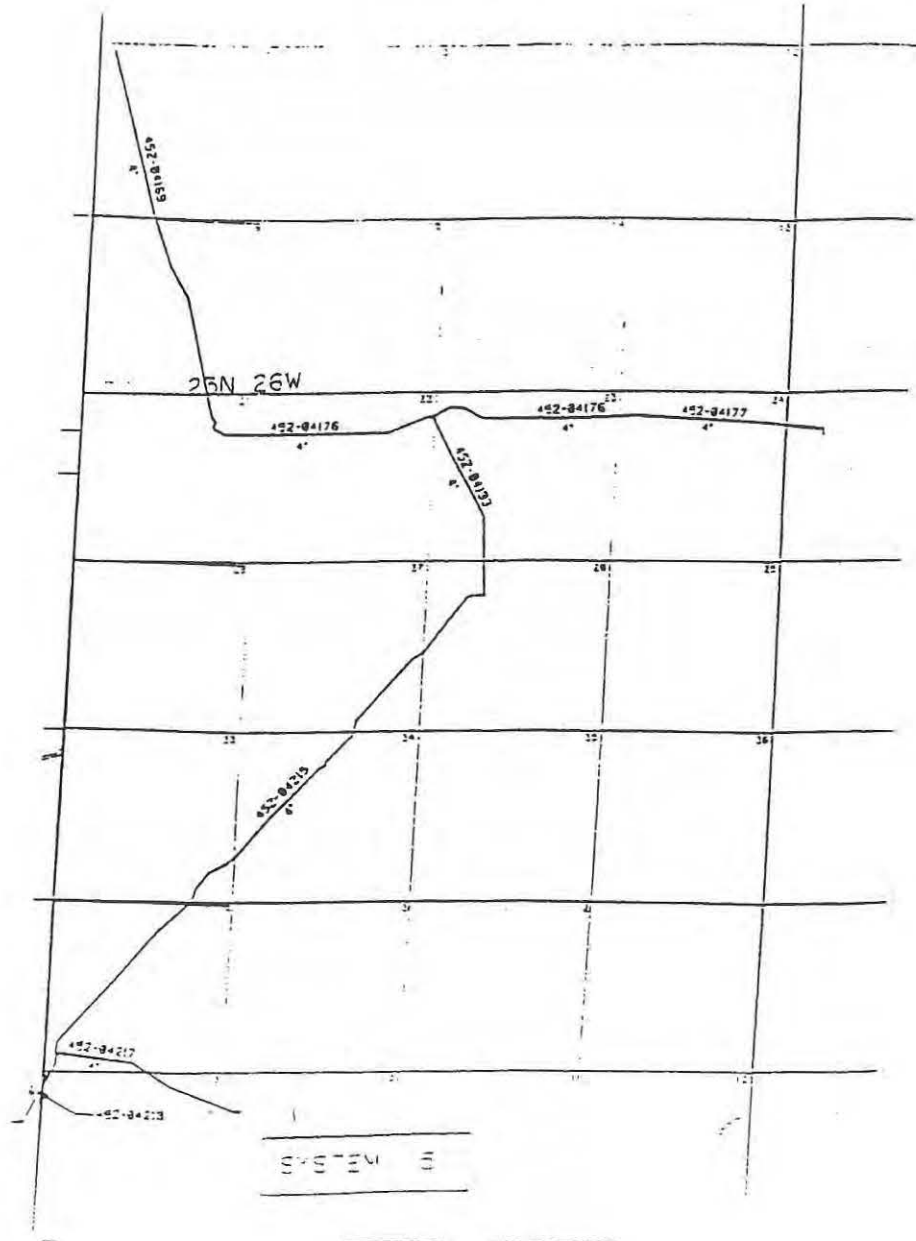
## SCHEDULE A

System 5 is located in T23N-R26W, T23N-R25W, and T22N-R26W in northwestern Ellis County, Oklahoma, and consists of approximately 13 miles of 4" piping as described in the table and map below.

| System Number | Item Number | Current Owner | ANR Line Number | Legal Location |          | Pipe Length Feet | Diameter Inches |
|---------------|-------------|---------------|-----------------|----------------|----------|------------------|-----------------|
|               |             |               |                 | Township       | Range    |                  |                 |
| 5             | 1           | ANR           | 452-4169        | 23N            | 26W      | 12,200           | 4               |
|               | 2           | ANR           | 452-4176        | 23N            | 26W      | 13,700           | 4               |
|               | 3           | ANR           | 452-4177        | 23N            | 25W, 26W | 5,900            | 4               |
|               | 4           | ANR           | 452-4193        | 23N            | 26W      | 6,200            | 4               |
|               | 5           | ANR           | 452-4215        | 22N, 23N       | 26W      | 19,200           | 4               |
|               | 6           | ANR           | 452-4218        | 22N            | 26W      | 2,600            | 4               |
|               | 7           | ANR           | 452-4217        | 22N            | 26W      | 6,200            | 4               |
|               |             |               |                 |                |          | 66,000           |                 |

Decision and Order

SCHEDULE A



## Decision and Order

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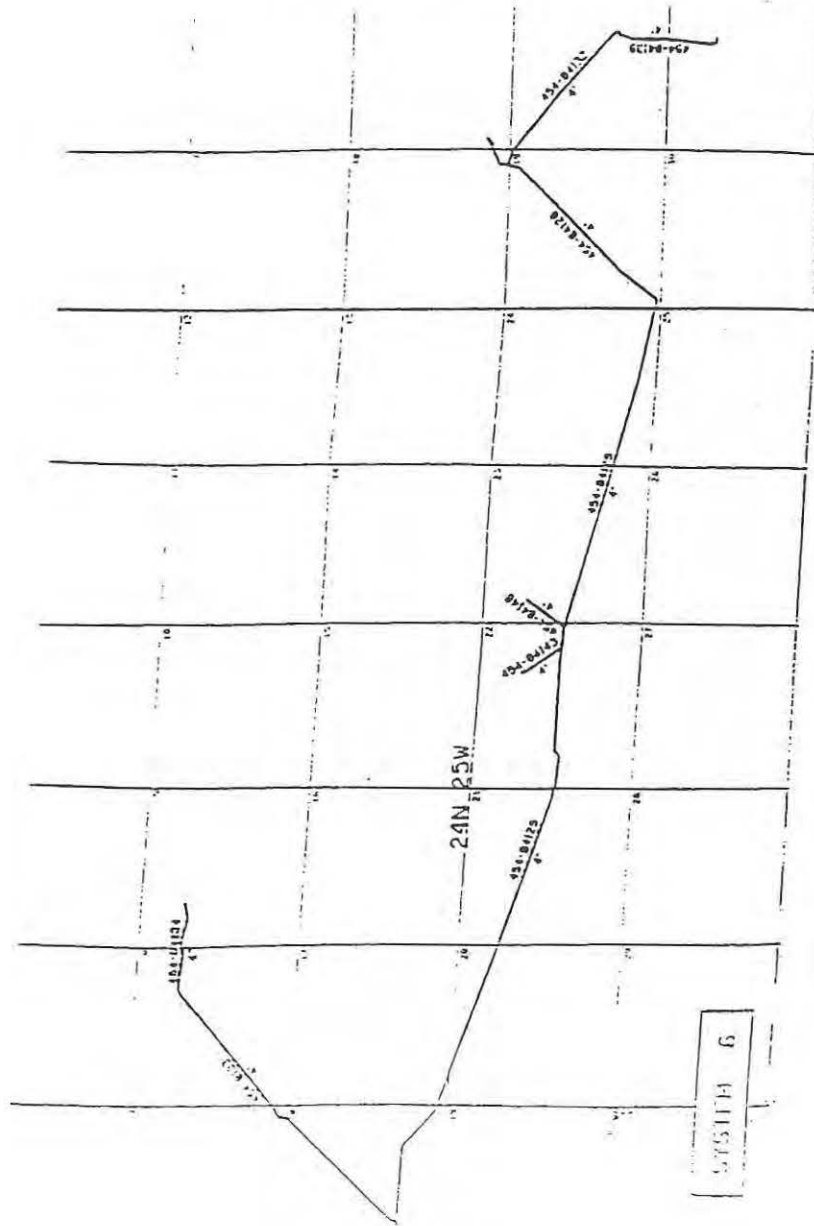
## SCHEDULE A

System 6 is located in T24N-R25W and T24N-R24W in northern Ellis County, Oklahoma, and consists of approximately 13 miles of 4" piping as described in the table and map below.

| System Number | Item Number | Current Owner | ANR Line Number | Legal Location |       | Pipe Length Feet | Diameter Inches |
|---------------|-------------|---------------|-----------------|----------------|-------|------------------|-----------------|
|               |             |               |                 | Township       | Range |                  |                 |
| 6             | 1           | ANR           | 454-04134       | 24N            | 25W   | 2,700            | 4               |
|               | 2           | ANR           | 454-04133       | 24N            | 25W   | 11,200           | 4               |
|               | 3           | ANR           | 454-04129       | 24N            | 24W   | 32,100           | 4               |
|               | 4           | ANR           | 454-04143       | 24N            | 25W   | 1,600            | 4               |
|               | 5           | ANR           | 454-04148       | 24N            | 25W   | 1,600            | 4               |
|               | 6           | ANR           | 454-04128       | 24N            | 24W   | 7,500            | 4               |
|               | 7           | ANR           | 454-04132       | 24N            | 25W   | 5,800            | 4               |
|               | 8           | ANR           | 454-04139       | 24N            | 24W   | 3,500            | 4               |
|               |             |               |                 |                | total | 66,000           |                 |

Decision and Order

SCHEDULE A





## Decision and Order

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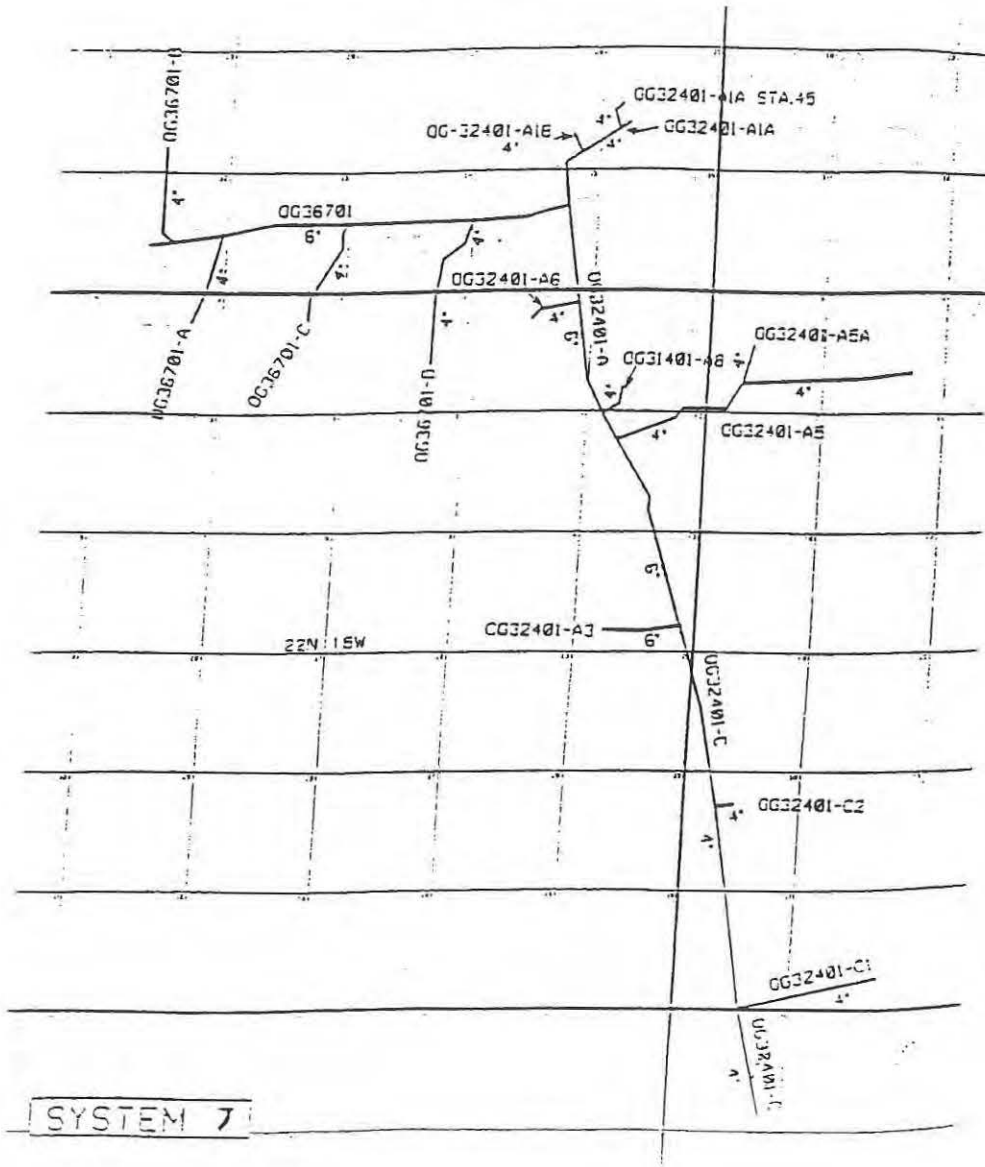
## SCHEDULE A

System 7 is located in T23N-R18W, T22N-R18W, T22N-R17W, and T21N-R17W in Woodward County, Oklahoma, and consists of approximately 14 miles of 4" piping and approximately 8 miles of 6" piping as described in the table and map below.

| System Number | Item Number | Current Owner | ANR Line Number     | Legal Location |          | Pipe Length Feet | Diameter Inches |   |
|---------------|-------------|---------------|---------------------|----------------|----------|------------------|-----------------|---|
|               |             |               |                     | Township       | Range    |                  |                 |   |
| 7             | 1           | GPM           | OG36701-B           | 23N            | 18W      | 7,900            | 4               |   |
|               | 2           | GPM           | OG36701-A           | 22N, 23N       | 18W      | 4,200            | 4               |   |
|               | 3           | GPM           | OG36701             | 23N            | 18W      | 18,000           | 6               |   |
|               | 4           | GPM           | OG36701-C           | 22N, 23N       | 18W      | 4,300            | 4               |   |
|               | 5           | GPM           | OG36701-D           | 22N, 23N       | 18W      | 7,000            | 4               |   |
|               | 6           | GPM           | OG32401-A1A         | 23N            | 18W      | 3,300            | 4               |   |
|               | 7           | GPM           | OG32401-A1B         | 23N            | 18W      | 1,000            | 4               |   |
|               | 8           | GPM           | OG32401-A1A Sta. 45 | 23N            | 18W      | 1,500            | 4               |   |
|               | 9           | GPM           | OG32401-A           | 22N, 23N       | 18W      | 22,300           | 6               |   |
|               | 10          | GPM           | OG32401-A8          | 22N            | 18W      | 1,500            | 4               |   |
|               | 11          | GPM           | OG32401-A5          | 22N            | 17W, 18W | 11,500           | 4               |   |
|               | 12          | GPM           | OG32401-A5A         | 22N            | 17W      | 3,400            | 4               |   |
|               | 13          | GPM           | OG32401-A6          | 22N            | 18W      | 2,000            | 4               |   |
|               | 14          | GPM           | OG32401-C           | 22N            | 17W      | 18,100           | 4               |   |
|               |             |               |                     |                | 22N      | 17W              |                 |   |
|               |             |               |                     |                | 21N      | 17W              |                 |   |
|               |             | 15            | GPM                 | OG32401-C2     | 22N      | 17W              | 900             | 4 |
|               | 16          | GPM           | OG32401-C1          | 22N            | 17W      | 6,300            | 4               |   |
|               | 17          | GPM           | OG32401-A3          | 22N            | 18W      | 3,300            | 6               |   |
|               |             |               |                     |                |          | 116,500          |                 |   |

Decision and Order

SCHEDULE A



## APPENDIX I

## ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between Phillips Petroleum Company ("Phillips"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Phillips Building, Bartlesville, Oklahoma; and the Federal Trade Commission ("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").

## PREMISES

*Whereas*, Phillips through its subsidiary GPM Gas Corporation ("GPM"), agreed to acquire certain gas-gathering assets of ANR Pipeline Company ("ANR"), a subsidiary of the Coastal Corporation ("Coastal"), pursuant to an agreement dated January 12, 1996, hereinafter "Acquisition"; and

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

*Whereas*, if the Commission accepts the Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules;

*Whereas*, Phillips and Coastal may consummate the acquisition upon provisional acceptance by the Commission of the Agreement Containing Consent Order; and

*Whereas*, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested pursuant to the Agreement Containing Consent Order ("the Schedule A assets") during the period prior to their divestitures, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

*Whereas*, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Schedule A assets; and

*Whereas*, the purpose of this Agreement and of the Consent Order is to preserve the Schedule A assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the order, in order to remedy any anticompetitive effects of the Acquisition; and

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

*Whereas*, Phillips 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*, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Schedule A assets, the Parties agree as follows:

#### TERMS OF AGREEMENT

1. Phillips agrees to execute the Agreement Containing Consent Order and, upon its issuance, to be bound by the Consent Order. The Parties further agree that each term defined in the Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15. U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Phillips and Coastal will be free to close the Acquisition any time after the Commission has provisionally accepted the Agreement Containing Consent Order.

3. Phillips agrees that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 3.a - 3.b, it will comply with the provisions 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; or

b. On the day the divestiture set out in the Consent Order has been completed.

4. From the later of the date of this Agreement or from the date of their acquisition, until the divestiture set out in the Consent Order has been completed, Phillips shall maintain the viability, competitiveness and marketability of the Schedule A assets and shall not cause the wasting or deterioration of the Schedule A assets, nor shall Phillips encumber or otherwise impair their viability.

5.a. From the time that Phillips acquires the Schedule A assets that are currently owned by ANR until their divestiture has been completed in pertinent part, Phillips will offer to gather gas on those Schedule A assets on the same terms and conditions offered by ANR on the date of their transfer.

b. From the time that this Agreement is accepted by the Commission until Phillips divests in pertinent part the Schedule A assets that it owns as of the date of the Agreement, Phillips will continue to purchase or gather gas from wells connected to those assets on the same terms and conditions in effect as of the date of this Agreement.

c. If a producer, operator, or shipper executes a waiver of its rights under this paragraph, Phillips may contract on such other terms and conditions as it may deem appropriate.

6. Should the Commission seek in any proceeding to compel Phillips to divest itself of the assets to be acquired from Coastal or to seek any other injunctive or equitable relief, Phillips 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 not sought to enjoin the Acquisition. Phillips also waives all rights to contest the validity of this Agreement.

7. 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 Phillips and to their principal offices, Phillips shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Phillips, 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 Phillips relating to compliance with this Agreement; and

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

8. This Agreement shall not be binding until approved by the Commission.

Complaint

123 F.T.C.

IN THE MATTER OF

## PRE-PAID LEGAL SERVICES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3729. Complaint, April 4, 1997--Decision, April 4, 1997*

This consent order prohibits, among other things, an Oklahoma-based corporation from making certain false and misleading claims concerning the benefits and appropriateness of living trusts or any legal instrument or service it offers and requires the respondent to clearly and conspicuously disclose to consumers that such trusts may be legally challenged on similar grounds as wills, that living trusts may not be appropriate in all instances, and that the transfer of an individual's assets into a living trust is not included in the price of creating the trust. In addition, the respondent must offer a \$165 refund to every purchaser of an American Association for Senior Citizens trust who hasn't already received a refund and who doesn't live in certain states that have already been offered partial refunds in connection with an earlier multi-state settlement.

*Appearances*For the Commission: *Elizabeth M. Palmquist.*For the respondent: *Margaret Feinstein, Dickstein, Shapiro, Morin & Oshinsky, Washington, D.C.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that The Administrative Company, a corporation, Michael P. McIntyre, individually and as an officer and director of The Administrative Company, and Pre-Paid Legal Services, Inc. ("Pre-Paid"), a corporation (collectively, "respondents"), have violated the provisions of 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, alleges:

PARAGRAPH 1. Respondent Michael P. McIntyre's current address is 4328 Hollow Oak, Dallas, Texas.

Respondent The Administrative Company has ceased doing business. Its address is the same as that of Michael P. McIntyre.

Respondent Pre-Paid Legal Services, Inc., is an Oklahoma corporation, with its principal office or place of business at 321 E. Main Street, Ada, Oklahoma.

PAR. 2. Respondents, at all times relevant to this complaint, have advertised, promoted, offered for sale, and sold living trusts to consumers. A living trust is a trust into which an individual can place all of his or her assets during his or her lifetime and, by transferring ownership of the assets to the name of the trust, thereby remove the assets from the individual's estate.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. In the course of marketing their products to the public, respondents, directly or through commissioned sales agents, have caused to be disseminated sales literature concerning living trusts, including, but not necessarily limited to, the attached Exhibits 1 and 2. This literature contains the following statements:

(a) It is your legal right as a UNITED STATES Tax Payer to establish a Living Trust. By establishing a Living Trust, at your death your estate avoids PROBATING YOUR WILL which can COST SEVERAL THOUSANDS of dollars in legal and executor fees and TAKE SEVERAL YEARS before being transferred to your family and loved ones. YOU RETAIN FULL CONTROL OF ALL ASSETS!

YOU COULD SAVE THOUSANDS OF HARD EARNED DOLLARS!

Exh. 1.

(b) A LIVING TRUST eliminates ALL PROBATE FEES and COST. . . . With a LIVING TRUST, your family will not have to go through probate, and can avoid paying expensive probate fees and costs. Exh. 2, p. 18.

(c) A LIVING TRUST allows a quick DISTRIBUTION to your heirs. Assets in probate court are often frozen two years or more, even with a WILL. A LIVING TRUST allows these same assets to be distributed within days to your loved ones, since a LIVING TRUST avoids Probate Court. Exh. 2, p. 17.

(d) Total assets [pass through a] living trust [to] spouse or heirs [in] 1-3 days. Exh. 2, p. 24.

(e) A LIVING TRUST prevents a WILL CONTEST. . . . Through a LIVING TRUST your wishes will be carried out without interference. Exh. 2, p. 17.

(f) Membership entitles you to:

1. FREE LEGAL SERVICES FOR PREPARATION OF A REVOCABLE LIVING TRUST BY A QUALIFIED ATTORNEY IN YOUR STATE AND A FREE "POUR-OVER" WILL. Exh. 2, p. 8.

(g) AN A-B LIVING TRUST protects against catastrophic MEDICAL COSTS. . . . With an A-B LIVING TRUST, if you become seriously ill, your trustee can make gifts of your property to your heirs, and three years thereafter, can seek government benefits for your care, so that the bulk of your estate will go to your heirs. Exh. 2, p. 19.



(h) Is There Anything Bad About a Living Trust? No. There is nothing bad about a Living Trust. Exh. 2, p. 20.

PAR. 5. Through the use of the statements contained in the sales literature referred to in paragraph four, including, but not necessarily limited to, the sales literature attached as Exhibits 1 and 2, respondents have represented, directly or by implication, that:

(a) The use of a living trust avoids all probate and administrative costs.

(b) At death, a living trust allows assets to be distributed immediately or almost immediately.

(c) A living trust cannot be challenged.

(d) Living trusts are prepared by local attorneys.

(e) A living trust protects against catastrophic medical costs.

(f) A living trust is the appropriate estate planning device for every consumer.

(g) There are no disadvantages to a living trust.

PAR. 6. In truth and in fact:

(a) A living trust does not always avoid probate and administrative costs.

(b) The use of a living trust does not necessarily result in immediate distribution of assets since creditors may file claims against the trust instrument.

(c) A living trust is not immune from challenge.

(d) Most living trusts prepared for AASC members were not prepared by local attorneys. Instead, of the 3,064 living trusts prepared for AASC members in 43 states, approximately 3,000 were prepared by an Arizona attorney licensed to practice law solely in Arizona and New York.

(e) A living trust does not protect against catastrophic medical costs.

(f) A living trust is not appropriate for everyone. The determination of whether a living trust is appropriate for a particular consumer requires an examination of the assets that compose the consumer's estate, the potential tax consequences of the estate plan, and the objectives of the consumer.

(g) There are disadvantages to a living trust. For example, while probate law imposes a statutory deadline beyond which creditors can

no longer file claims against a will, in some states, there is no law limiting the time that creditors may file claims against a trust instrument.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the sales literature referred to in paragraph four, including, but not necessarily limited to, the sales literature attached as Exhibits 1 and 2, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. In their advertising, promoting, offering for sale, and sale of living trusts, respondents have failed to disclose that the transfer of an individual's assets into the living trust was not included in the price paid for creating the living trust and that it would be the responsibility of the individual purchaser to transfer assets into the trust, once created, or to arrange for another individual or entity to do so. This fact would be material to consumers in deciding whether to purchase a living trust and from whom to purchase a living trust. The failure to disclose this fact was, and is, a deceptive act or practice.

PAR. 10. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

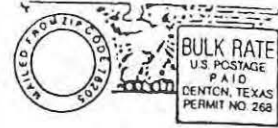
Complaint

123 F.T.C.

EXHIBIT 1

A.A.S.C.  
1155 15th Street NW, Suite 810  
Washington D.C. 20077-1637

MAR 25 1982



**URGENT MESSAGE ENCLOSED**

**OPEN IMMEDIATELY!**



\*\*\*\*\*CAR-RT-SGRT\*\* CR-02  
A37A 081 4812 S264 1549  
████████████████████  
541 VENTURA AVE  
SAN MATEO CA 94403-3223

**SPECIAL BULLETIN:**

It is your legal right as a UNITED STATES Tax Payer to establish a Living Trust. By establishing a Living Trust, at your death your estate avoids PROBATING YOUR WILL which can COST SEVERAL THOUSANDS of dollars in legal and executor fees and TAKE SEVERAL YEARS before being transferred to your family and loved ones. YOU RETAIN FULL CONTROL OF ALL ASSETS!

**YOU COULD SAVE THOUSANDS OF HARD EARNED DOLLARS!**

INFORMATION IS AVAILABLE ON HOW TO OBTAIN A FREE LIVING TRUST  
Just fill out and return this postage paid card.

Name \_\_\_\_\_  
Age:  Male  Female \_\_\_\_\_  
County \_\_\_\_\_  
Home Phone \_\_\_\_\_  
E-mail \_\_\_\_\_

\*\*\*\*\*CAR-RT-SORT\*\* CR-02  
A37A 081 4812 S264 1549  
████████████████████  
541 VENTURA AVE  
SAN MATEO CA 94403-3223

982

Complaint

EXHIBIT 2



**NATIONWIDE  
NON-PROFIT  
ORGANIZATION**

1155 15th Street, N.W.  
Suite 810  
Washington, D.C. 20005

1-800-880-1310



Complaint

123 F.T.C.

## EXHIBIT 2



Dear Member:

We welcome you to the wonderful world of meaningful benefits and services provided as part of your membership in THE AMERICAN ASSOCIATION FOR SENIOR CITIZENS.

As the senior officer of this non-profit Association, and one who is on the sunny side of sixty, I assure you I value my membership and enjoy the many benefits available to all of our members.

This Association was founded several years ago and entrusted with the responsibility of getting the message to people our age so that we can receive every benefit and advantage to make sure the dollars we have spent a lifetime earning and saving will pass on to our heirs as intact as Uncle Sam will allow.

With this responsibility as our driving force, our Association explored every conceivable avenue available before making the decision to educate our membership on the value and importance of REVOCABLE LIVING TRUSTS.

It is also important for you to know and understand what this Association is committed to in regard to a PRE-PAID LEGAL benefit that actually pays the legal fees for your REVOCABLE LIVING TRUST, and provides many other legal benefits. Look at the following pages to understand our commitment to you in this respect.

In addition, we have sought meaningful and worthwhile consumer benefits and services for our membership. We are sure you can recognize the value of these benefits for you and your family. We are happy you have joined our "YOUNG AT HEART" adult Association. A living trust is the most important gift you can give to your loved ones.

Also, a portion of American Association of Senior Citizens membership dues are used to support the research efforts of medical research facilities, and others, as they seek better treatment and cures relating to our senior citizens. AASC Medical Research Foundation's charter, as explained in the following section, is to continually stay abreast of current research efforts throughout the United States to determine who should receive financial support from the Foundation.

Please know we are here to make things a little better for you and all of our growing family of members. As soon as we receive your application I will see that your membership kit is forwarded to you.

Warmest personal regards,

Donald T. Berlinn  
Executive Director

EXHIBIT 2



**MEDICAL  
RESEARCH  
FOUNDATION**

## EXHIBIT 2

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*As Directors on the Board of AASC Medical Research Foundation, we are charged with guiding the Foundation to fulfill its charter of supporting worthy medical research that relates to better health care for our senior citizens.*

*In many cases, this money has a direct impact on community awareness, education and health care delivery.*

### About our President . . .

**Donovan F. Ward, M.D.**  
AASC Medical Research Foundation President.

**Past President of the American Medical Association.**

A Fellow of the American College of Surgeons.

President of the Fifty Year Club of American Medicine.

Member of the AMA's committees on Medical Practice and Public Relations.

Past President and National Director, American Health Care Advisory Foundation.



EXHIBIT 2

Our  
other  
Directors  
are . . .



**Robert P. Ewing**, is past Chairman and President of Bankers Life and Casualty Company and is a Trustee of the MacArthur Foundation, a Director of Evanston Illinois Hospital and a former Director of the Health Insurance Association of America.



**Howard E. Cartwright**, of Chicago is past CEO of College of American Pathologists, past Director of College of American Pathologists Foundation and a member of American Association of Medical Society Executives.



**Denis J. Fu, M.D.**, a practicing physician in Hawaii, has served as a medical consultant for various state and national development programs.



**Joseph W. Lawrence, M.D.**, has a long and distinguished career in Public Health and is currently the Health Officer for Lee County, Florida, a position he has held since 1960.



**Samuel R. Sherman, M.D.**, has a long list of accomplishments including: past President of the California Medical Association.



**Alexander L. Sadowski, D.D.S.**, has accumulated over 1000 hours of continuing education, served on the New Mexico State Dental Association's Finance Committee and is both past president and secretary of the Southwest District Dental Society.



**Donald T. Berlinn**, has been Vice President of ITT Life Insurance Company Agency and President of Medical Air Services Association, the nation's first nationwide air ambulance service. Currently President of Affordable Dental Connection and Association Management Group and President of American Association for Senior Citizens.

*All of our listed Directors are also members of the Advisory Board of American Association of Senior Citizens and advise the Association on developing new benefits or improving existing benefits for our senior citizens.*



Complaint

123 F.T.C.

## EXHIBIT 2

*Financial support is provided by the AASC Medical Research Foundation to the following and other research facilities:*

- American Medical Association
- American Heart Association
- American Public Health Foundation
- Alzheimers Disease and Related Disorders Association
- California Medical Education and Research Foundation
- Leukemia Research Foundation
- Mt Sinai Foundation
- National Multiple Sclerosis Society
- National Kidney Foundation
- Regional Cancer Treatment Center — Iowa
- University of Iowa Dept. of Immunology
- University of San Francisco Cardiovascular Research

*In addition, the Foundation has given grants to the following, and others:*

|  |                                     |
|--|-------------------------------------|
| ON LOK Senior Health Services          | Cancer Research Foundation          |
| Iowa Methodist Health Foundation       | of North Texas                      |
| March of Dimes — Walk America          | Allegheny-Singer Research Institute |
| University of Iowa College of Medicine | University of Florida — Oncology    |
| San Antonio Area Lupus Foundation      | St. Jude's Children's Hospital      |
| Tulane University Medical Center,      | Sloan-Kettering Cancer Center       |
| Dept. of Pediatric-Cardiology          | North California Transplant Bank    |
| Cancer Counseling, Inc.                | ALS & Neuromuscular Research        |
| Tarrant County Cancer Care Services    | Foundation                          |
| Cystic Fibrosis Foundation             | Children's Hospital Medical Center  |
| Univ. of Connecticut Health Center     | Florida Geriatric Research          |
| Jean Marie Colbert Bone Marrow         | Foundation                          |
| Transplant Center                      | Regional Cancer Foundation          |
| Children's Heart Foundation            | Children's Memorial Foundation      |
| Fred Hutchinson Cancer Research        | Cancer Care Services                |
| Center                                 |                                     |

The AASC Medical Research Foundation was formerly known as the American Health Care Advisory Association Foundation, providing financial support to the above and other research facilities.

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# AASC

Provides  
for its Members  
the Benefits of  
Pre-Paid Legal Services, Inc.®



A few of the most common personal worries and business activities needing an attorney's professional counsel and assistance include:

|                     |                         |                       |
|---------------------|-------------------------|-----------------------|
| Threat of a Lawsuit | Adoption                | Consumer Fraud        |
| Debt Collection     | Domestic Problems       | Taxes                 |
| Auto Transaction    | Partnerships            | Forming a Corporation |
| Contractor Dispute  | Lease Changes           | Property Purchase     |
| Trusts              | Motor Vehicle Accidents | Manufacturer Problems |
| Ejection            | Creditor Harassment     |                       |
| Criminal Threats    | Bankruptcy              |                       |

An American Stock  
Exchange Company

Paid Over 80,000 Attorneys

Paid Over \$80,000,000 in Legal Fees

Over 5,000,000 Members Have Access  
to Services Nationwide

## EXHIBIT 2

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**M**embership entitles you to:

- 1 FREE LEGAL SERVICES FOR PREPARATION OF A REVOCABLE LIVING TRUST BY A QUALIFIED ATTORNEY IN YOUR STATE AND A FREE "POUR-OVER" WILL (see following section)
- 2 LEGAL SERVICES AT DEATH
- 3 IN-OFFICE ATTORNEY CONSULTATION
- 4 UNLIMITED TELEPHONE CONSULTATIONS WITH A PROVIDER ATTORNEY
- 5 MOTOR VEHICLE LEGAL SERVICE
- 6 TRIAL DEFENSE FUND
- 7 IRS AUDIT PROTECTION
- 8 LEGAL ASSISTANCE IN MANY CASES

## EXHIBIT 2

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## *Unlimited Telephone Consultations:*

- As a member of AASC, you may call the Pre-Paid Legal Toll-Free Number, 1-800-654-7757, from 8:30 a.m.-5:00 p.m. any business day. Pre-Paid Legal will direct you to your provider attorney for legal advice.
- You do not need to guess about your legal rights or spend hundreds of dollars for consultations with an attorney. In the privacy of your own home, you simply call the attorney and he will answer questions concerning ANY personal or legal matters.

**The following are just a few examples of the types of questions you may need answered:**

1. "I am 67 years old and collecting social security. Is it legal for me to claim a deduction for a dependent who earns an income?"
2. "My company is trying to force me into retirement by offering me an early retirement buyout. What are my rights?"
3. "It has been 12 weeks since I was in the hospital and my insurance company has still not paid the \$1,500 hospital bill. How long do they have to settle the claim?"
4. "My neighbor's teenage son, despite my requests to stop, continues to play loud music that keeps me awake at night. Is there anything I can do?"
5. "I had a contractor fix my roof, it still leaks and the contractor will not return my call. What can I do?"
6. "My husband is in a nursing home. I do not feel he is getting the proper care. Aren't there certain standards set by the state that nursing homes must follow? What are my husband's options?"
7. "I inherited some land in another state and I would like to lease it out. How do I do this?"

**In addition to advising you of your rights, the attorney, if necessary, will personally call or send a letter to help resolve your problem.**



## EXHIBIT 2

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## **U** p to 50 Hours Legal Assistance at Death:

**Everyone needs a lawyer upon the death of a family member for settlement of the estate and consultation with the surviving spouse or children:**

- To finalize trust documents
- To resolve liens contesting the trust, including the IRS
- For out-of-state property settlements and property sales
- For deed transfers
- To resolve claims of creditors, including hospitals, funeral homes, etc.
- For protection against any person who attempts to challenge the estate

The settlement of an estate is a complicated and lengthy process. Qualified attorneys usually charge between \$175—\$300 per hour for their services. This translates into a cost of approximately \$8,750 — \$15,000 for 50 hours of legal assistance to settle an estate. **As a member of AASC, your membership entitles you to up to 50 hours of legal assistance, depending on your member classification.**

### **A True Story:**

*A Senior Citizen of Dixon, Illinois joined AASC in June of 1991. In July, 1991, he passed away. His children, rather than beginning the long and costly process of finding an attorney to probate his estate, simply called the AASC members' toll-free number. A Pre-Paid Legal attorney immediately began to settle the estate.*

*"My father only became a member six weeks ago but we feel so fortunate that he did. We immediately called a provider attorney and were so relieved to learn that we would have the legal work on my father's estate done immediately thanks to Pre-Paid Legal. The service is invaluable," said the daughter.*

 *n-Office Consultation:*

*ONE PER YEAR*

**AASC provides its members with a Living Trust. Each year it should be reviewed and updated with changes concerning:**

- Any Legal Matter
- Investments
- Deeds
- Property and Real Estate
- Cars, Trucks and Equipment
- Bank Accounts
- C.D.'s

## EXHIBIT 2

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 **Motor Vehicle Legal Service  
Expense Benefits:**

Nearly every American drives some form of motor vehicle every day. You are at risk, every time you get behind the wheel of your car.

AASC is proud to offer you a wide variety of coverage in the area of motor vehicles. Read below to discover the valuable benefits you will have after enrollment.

- **MINOR LEGAL EXPENSES:** If a licensed member, spouse, or any covered dependent, while driving any licensed motor vehicle, is accused of an alleged traffic violation, the Company pays your attorney fees, pursuant to the following schedule:  
  
    **Up to \$75** for legal assistance regarding such charge; **up to \$125** for legal assistance requiring court appearance; **up to \$200** for legal assistance which includes trial work.
- **MAJOR LEGAL EXPENSES:** If a licensed member, spouse or any covered dependent, while driving any licensed motor vehicle, is accused of a criminal charge such as manslaughter, involuntary manslaughter, negligent homicide or vehicular homicide, the Company will pay your attorney fees based on a maximum hourly rate of \$100.
- **SUSPENDED DRIVER'S LICENSE:** The Company provides for professional assistance, and if necessary, maintenance of your driver's license. The Company will pay a reasonable attorney fee for the suspended driver's license services **up to \$250** per occurrence to your attorney.
- **LEGAL COLLECTION SERVICE:** Should your licensed auto, private boat or motorcycle be damaged in an accident, the Company will assist you in collecting damages done to your vehicle. The Company provides legal assistance, win, lose, or draw, in collecting damages when your auto, private boat or motorcycle is involved in an accident, and will pay **up to \$250** per occurrence to your attorney.
- **PERSONAL INJURY LEGAL EXPENSES:** The Company will pay your attorney fees, win, lose, or draw, **up to \$250** per occurrence to collect or file for personal injuries of \$1000 or less received while driving, riding, or when struck as a pedestrian by any motor vehicle.

## EXHIBIT 2

## *5,000 Trial Defense Fund:*

All too often you read in the paper about someone being sued over what you would consider a trivial matter . . . It couldn't happen to you. But everyday, people just like you are sued by neighbors, friends, co-workers, even family. In this sue happy society, it is great to know that your AASC membership offers benefits to cover just that.

The Company will pay up to a maximum of \$5,000 in attorney fees the first membership year for either the member or member's spouse, if he or she is named Defendant or Respondent in a **covered civil or criminal action** in a court of law. **The criminal action must be one which arises out of the direct performance of the Covered Person's employment activities.** The trial defense fund benefit will even pay for the attorney even though your insurance company may have retained one for you, if the choice of attorney is not yours and you feel you need your own personal attorney.

### **BENEFITS TO BE PAID AS FOLLOWS:**

Benefits are based on a maximum hourly rate of \$100 and are to be paid as follows:

**Up to \$250** for any and all legal services rendered in defense of the covered lawsuit prior to the actual trial.

**Up to \$300** per day for each actual day of trial, including covered criminal preliminary hearings not to exceed an annual aggregate trial defense fund of \$5,000 per membership.

Upon renewal of the membership the Covered Person will receive additional trial defense benefits at no additional cost to the member. The trial defense fund increases, as follows:

**2nd Year Renewal** The trial defense fund will be increased to an annual aggregate sum of \$10,000 per membership payable up to \$300 for any and all legal services rendered prior to trial and up to \$350 per day for each actual day of trial, including criminal preliminary hearings.

**3rd Year Renewal** The trial defense fund will be increased to an annual aggregate sum of \$15,000 per membership payable up to \$350 for any and all legal services rendered prior to trial and up to \$400 per day for each actual day of trial, including criminal preliminary hearings.

**4th Year Renewal** The trial defense fund will be increased to an annual aggregate sum of \$20,000 per membership payable up to \$400 for any and all legal services rendered prior to trial and up to \$450 per day for each actual day of trial, including criminal preliminary hearings.

**5th Year Renewal** The trial defense fund will be increased to an annual aggregate sum of \$25,000 per membership payable up to \$450 for any and all legal services rendered prior to trial and up to \$500 per day for each actual day of trial, including criminal preliminary hearings.



## EXHIBIT 2

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 **IRS Audit Protection Service:**

I.R.S. . . . The idea of an audit strikes fear in even the most careful tax payer. Why not enjoy the peace of mind that the AASC membership offers through the IRS Audit Protection Service? Here are the details.

The Company will pay up to a maximum of \$5,000 in professional fees for either the member, spouse, or dependent children, to the member's choice of any licensed public accountant, certified public accountant, enrolled agent or attorney or any combination thereof when a member is notified in writing by the Internal Revenue Service (IRS) of an audit of such member's tax return or such member is requested in writing to appear at the offices of the IRS concerning such member's tax return.

**BENEFITS TO BE PAID AS FOLLOWS:**


**Up to \$100** for consultation, advice and/or assistance, upon receipt of written notice from the IRS that the member's tax return is being audited or such member is requested in writing to appear at the offices of the IRS concerning such member's tax return.

In the event settlement is not achieved with the IRS within thirty (30) days, then **up to \$250** beginning on the thirty-first (31) day to provide the member, spouse, or dependent children representation at the audit and at the audit and for negotiations, conferences, telephone conversations, settlement conferences, subsequent thereto, but prior to the institution of litigation.

In the event settlement is not achieved without litigation, then payment will be made up to the balance of \$5,000 in professional fees in either event of the IRS suing the member or the member paying the disputed tax and then suing the IRS. Such payment to be made at up to a rate of **\$300 per day** of each day of trial appearance.

**Coverage begins with the return due on April 15 of the year this contract is effective.**

## EXHIBIT 2

 **Legal Assistance in Many Cases:**

*AASC membership provides legal assistance in many cases including the following . . . .*

**PHONE CALLS AND LETTERS ON YOUR BEHALF**

A letter or phone call from your Plan Attorney can get you the results you want fast and cut through the red tape. You and your Plan Attorney can now decide together when this is the best legal step for you. There is no charge for the first letter. **(Any further fees are to be set by the Plan Attorney and are the sole responsibility of the Named Member on the Contract.)**

**REVIEW OF CONTRACTS AND DOCUMENTS**

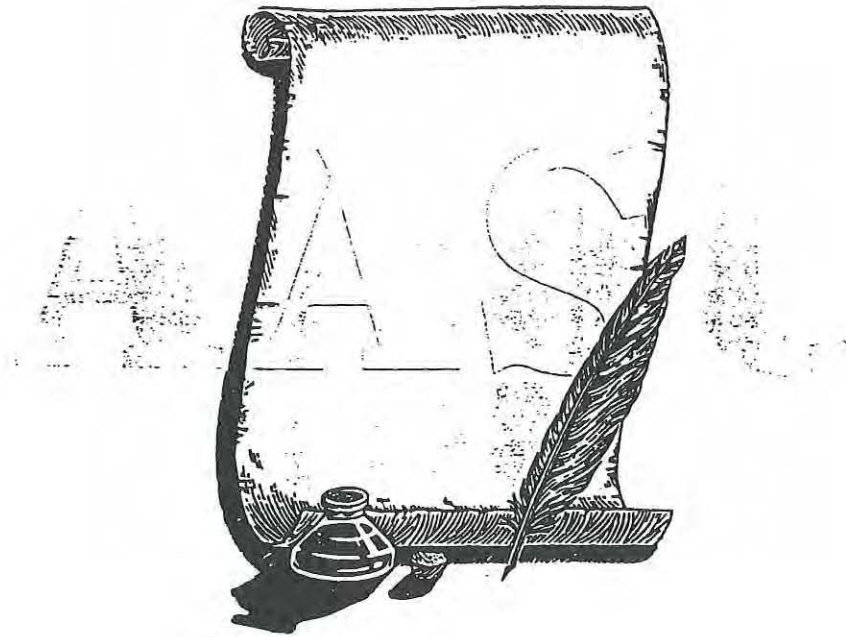
You can have an unlimited number of legal documents of up to three pages each reviewed by your Plan Attorney, free of charge. Your Plan Attorney will give you an analysis of the documents and suggest changes for your benefit or any other necessary procedures, before you sign!

**LEGAL FORMS BENEFIT**

Imagine having access to the most often needed legal documents — just a phone call away!

The documents you need will be prepared for you at a greatly **reduced rate**, but don't worry, still with the same care and concern for your welfare. A list of legal forms available, along with the nominal charges, will be in your contract packet. Complete information about the forms you need can be obtained with just a phone call to your Plan Attorney.

EXHIBIT 2



**ALL ABOUT  
A LIVING  
TRUST**

## EXHIBIT 2

## **A**dvantages of a Living Trust

### **1** PROBATE:

**A LIVING TRUST** avoids a complex **PROBATE** proceeding. Probate is the court process designed to transfer title of assets to your heirs. A Probate is required even when there is a **WILL**. The Probate Court procedure is complicated by laws requiring your Executor to obtain special court approval to take any actions, including paying your bills, and distributing your assets.

With a **LIVING TRUST**, the title to property is transferred through the trust, so that your heirs can easily receive these assets, and will not have to go through complex Probate Court proceedings.

### **2** DISTRIBUTION:

**A LIVING TRUST** allows a quick **DISTRIBUTION** to your heirs. Assets in probate court are often frozen two years or more, even with a **WILL**.

A **LIVING TRUST** allows these same assets to be distributed within days to your loved ones, since a **LIVING TRUST** avoids Probate Court.

### **3** PRIVACY:

**A LIVING TRUST** is completely **PRIVATE**. There is no privacy with a public Probate Court Proceeding.

A **LIVING TRUST** is a private document, the size and distribution of your estate remains confidential.

### **4** WILL CONTEST:

**A LIVING TRUST** prevents a **WILL CONTEST**. In Probate Court, anyone can easily contest a **WILL**, even without a lawyer.

Through a **LIVING TRUST** your wishes will be carried out without interference.

### **5** CONTROL:

**A LIVING TRUST** enables you to **CONTROL** your assets. By making a gift of all of your property to your heirs, you may eliminate probate. However, once the gift is made you have lost ownership of your property, which you may later need for your support.

A **LIVING TRUST** allows you to retain control of your property, and upon your demise, **YOU CONTROL WHEN AND HOW MUCH YOUR BENEFICIARY WILL RECEIVE.**



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## EXHIBIT 2

**6 DISABLED HEIRS:**

**A LIVING TRUST** preserves benefits for **DISABLED HEIRS**. A disabled heir generally loses government assistance payments upon receiving an inheritance.

A **LIVING TRUST** can authorize your successor trustee to make special distributions for a disabled heir while still preserving government benefits.

**7 PROBATE FEES:**

**A LIVING TRUST** eliminates **ALL PROBATE FEES** and **COST**. Probate fees are based on the entire value of an estate, without deducting bills or mortgage.

The probate expense can be as much as the following, or more:

| GROSS ESTATE SIZE | APPROXIMATE EXPENSES |
|-------------------|----------------------|
| \$100,000.        | \$10,000.            |
| \$300,000.        | \$30,000.            |
| \$500,000.        | \$50,000.            |

This example also applies to all other mortgaged property owned in every state. If a couple owns property in four states there would be four probates required.

With a **LIVING TRUST**, your family will not have to go through probate, and can avoid paying expensive probate fees and costs.

**8 JOINT TENANCY:**

**A LIVING TRUST** avoids **JOINT TENANCY** problems. Joint tenancy is a method of avoiding probate, where, upon death of one co-owner, the survivor becomes the full owner of the property.

1. As an owner, your child has the power to interfere with your decision to sell or refinance the property.
2. If your child should go through divorce, the other spouse may claim an interest in the property.
3. If your child should owe taxes, the tax collector may take your property to satisfy the tax obligation.
4. If your child should be found liable in any lawsuit, your property may be sold to pay the judgment.

With a **LIVING TRUST**, probate is entirely avoided and there is not exposure of your assets to the debts or liabilities of your child.

**9 CONSERVATOR:**

**A LIVING TRUST** avoids a **CONSERVATOR**. If you ever become incapacitated, the Probate Court will appoint a conservator to manage your property, and your estate will be required to pay court fees and costs for the conservatorship each year.

With a **LIVING TRUST**, your trustee can manage your property if you are unable to handle your affairs, and there are no court fees and costs.

## EXHIBIT 2

**10 INCOME TAXES:**

**A LIVING TRUST** saves sizeable INCOME TAXES. When a couple holds property or stocks in joint tenancy, the surviving spouse is required to pay a capital gains tax upon sale. This tax is based upon one-half of the increase in value of the property since the time of its purchase.

In a LIVING TRUST, title is transferred into the trust. This entirely eliminates the Federal Capital Gains Tax on all increases in value up to the date of death.

**11 ESTATE TAXES:**

**An A-B LIVING TRUST** saves substantial ESTATE TAXES. Estate taxes are paid to the federal government for the transfer of property upon death. Federal estate taxes are based on the size of the estate and are imposed where the net value of an estate is larger than \$600,000.00. The Federal Estate Taxes are almost one-half of the estate after deducting \$600,000.00.

A Living Trust saves substantial estate taxes as follows:

| NET ESTATE   | APPROXIMATE TAX SAVINGS |
|--------------|-------------------------|
| \$ 800,000.  | \$ 75,000.              |
| \$1,000,000. | \$153,000.              |
| \$1,200,000. | \$235,000.              |

**12 MEDICAL COSTS:**

**AN A-B LIVING TRUST** protects against catastrophic MEDICAL COSTS. If you should ever require care in a convalescent hospital or long term nursing home, the medical expense could eventually wipe out your estate, thereby denying you the opportunity to leave your property to your loved ones.

With an A-B LIVING TRUST, if you become seriously ill, your trustee can make gifts of your property to your heirs, and three years thereafter, can seek government benefits for your care, so that the bulk of your estate will go to your heirs.

## EXHIBIT 2

## **Q**uestions Most Commonly Asked

**Q: Is There Anything Bad About a Living Trust?**

**A:** No. There is nothing bad about a Living Trust. It is a traditional and well-proven estate planning tool that has been used, in one form or another, for hundreds of years.

Any problems people have with a properly prepared Living Trust have nothing to do with the trust itself, but with the property left out of it because they failed to change titles and beneficiary designations to the name of their trust. The trust still works - but any property left out risks being probated. If you desire to completely avoid probate, all assets must be in your Living Trust. It does not take much time to change the titles and beneficiary designations, and once it is done your Living Trust is easy to maintain.

**Q: Where Should I Keep My Living Trust Documents?**

**A:** We suggest that you make several copies of your original documents and give a copy to each of your back-up trustees. Make sure you tell them where the original documents are located. We suggest you keep the original trust document in your safe deposit box or another safe place and keep one copy at home so you can review it from time to time. (Make sure your safety deposit box is titled in the name of your trust, so your back-up trustee will have no trouble gaining access.)

**Q: Can I Put Out-Of-State Property Into The Trust?**

**A:** Yes, you can, and in fact, you should. If you do not transfer out-of-state property into your trust, your heirs will need to have a separate probate in each state in which you own real estate. This may result in probate fees for each state. If, however, the property is transferred into your trust, the probate systems of all of the states involved are avoided.

**Q: What If I Move To Another State?**

**A:** Call Pre-Paid Legal at 1-800-654-7757 to locate a Pre-Paid attorney nearest you. Ask for a review. Most states follow the same general rules, so if something needs changing, only those parts are changed that need to be under the laws of that state. You do not need a completely new document.

**Q: What If I Buy Property In Another State?**

**A:** Before you buy property in another state, especially real estate, check to make sure it can be titled in the same way as in your home state. A bank or title insurance company in the state where the property is located can tell you if the title you want to use is acceptable in that state.

## EXHIBIT 2

**Q: Does Transferring Property Into a Trust Cause a Reappraisal Of The Property So That Property Taxes Are Raised?**

**A:** No, it does not. Revenue and Taxation Code 62 specifically states that a transfer into a Revocable Living Trust does not cause a reappraisal of the property.

**Q: How Should Property And Accounts Be Titled?**

**A:** As a general rule, all of your property should be titled in the name of your trust. Here are some examples:

**If you are single:**

"(your name), Trustee under trust dated (insert date you signed your trust)."

**If you are married:**

"(your name and your spouse's name), Trustees under trust dated (insert date you signed your trust)."

Very often you will see the letters "UTD" used as a shortened version of the words "under trust dated."

**Q: If I Own Partial Interest In Property With Others, Can I Transfer That Interest Into A Trust?**

**A:** Yes. You can transfer your share of any property into the trust without affecting the shares of the others.

**Q: If I Want To Sell Assets Or Add New Assets To The Trust, Will I Need To Return To The Attorney's Office Each Time?**

**A:** No, you will not. You can sell assets and add new assets yourself without requiring a change of the trust.

**Q: Can I Sell Assets I Have In The Trust Without Any Complications?**

**A:** Yes, you can. You can freely sell your property even if it is in the name of the trust. The only difference will be that escrow company officials may ask for a copy of the trust documents.

**Q: Can IRAs, KEOGHS And Other Tax Deferred Investments Be Transferred Into The Trust?**

**A:** IRAs, KEOGHS and other tax deferred investments **cannot** be transferred into the trust. However, the trust can be the beneficiary of those investments. Each case must be discussed with an attorney to determine whether it is better to name the trust as beneficiary, or the individuals themselves as beneficiaries.

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## EXHIBIT 2

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**Q: What About Adding Other Persons On My Accounts, Deeds, Etc.?**

**A:** Never add another person on the title of your property or your accounts (this includes parents and children) without first checking with your attorney. It could cause you or your family some very serious problems, possibly even defeating the purposes of your trust or exposing you to a lawsuit.

**Q: When Will I Need To Update My Living Trust?**

**A:** There is no special time to change your trust, although it is a good idea to review your living trust at least every year. As a general rule, you should change your trust anytime it no longer is what you want. Any major change in your family, such as marriage, divorce, death, adoption, birth, etc. should cause you to think about your trust. If one of your trustees/guardians can no longer fulfill their responsibilities you should make changes accordingly.

Remember that you should keep a separate list of your Special Gifts.

**Q: How Do I Fund My Trust?**

**A:** YOU CAN FUND YOUR TRUST BY THE FOLLOWING THREE STEPS:

1. Go to your bank and change the name on savings, money market and certificate of deposit accounts to the name of the family trust. Also, place trust in safety deposit box.
2. If you own stocks or bonds, contact your stock broker to change the name to the name of the family trust.
3. Finally, if you have real estate, you may use the Quick-Claim Deed to transfer it yourself or you may contact a title company to transfer the title to the name of the family trust.

IF YOU HAVE ANY QUESTIONS CONCERNING THE FUNDING OF YOUR TRUST, CALL **PRE-PAID LEGAL** AT 1-800-654-7757.



## EXHIBIT 2

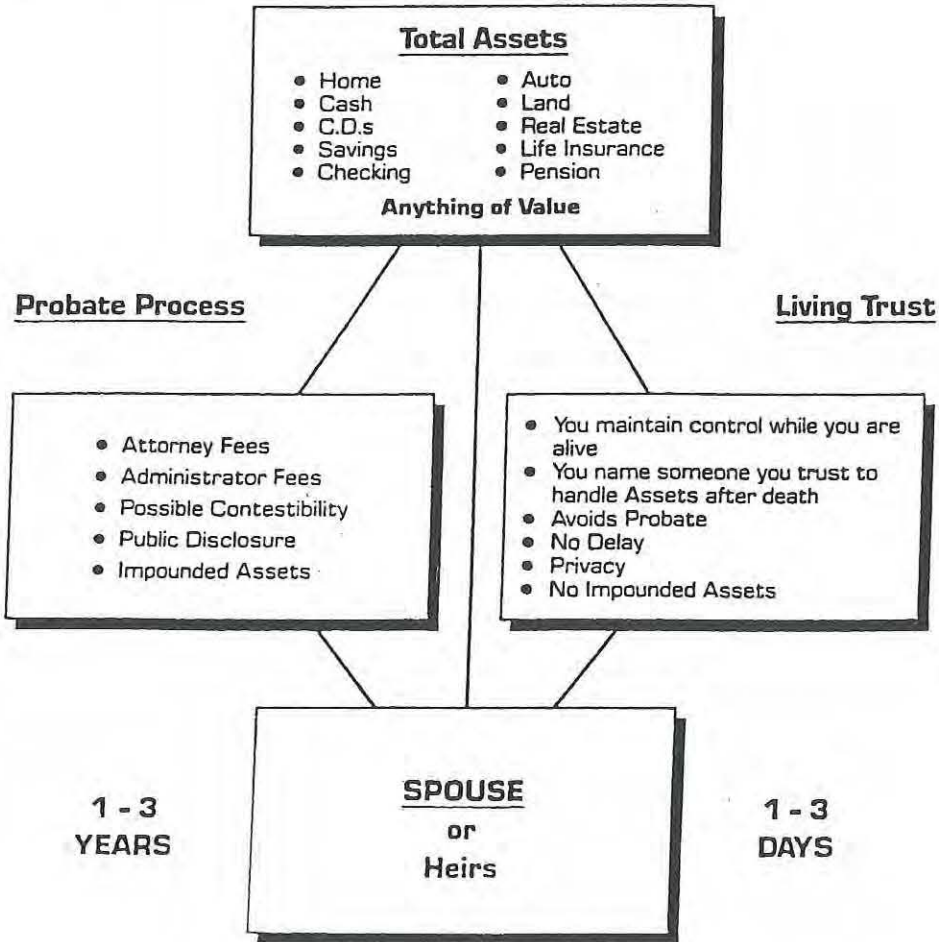
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***D*** *isadvantages of Going  
Through Probate*

1. Impounded or frozen accounts
2. Impounded safety deposit box
3. Probate court cost (10% or more)
4. Waiting period (1-3 years)
5. Attorney fees (very costly)
6. Administration fees
7. Public disclosures
8. Impounded mail
9. Forced asset liquidations
10. Expensive litigation
11. Possible Federal Estate Taxes and/or  
State Inheritance Taxes

EXHIBIT 2

# **D** *Death Probate versus Revocable Living Trust*



## EXHIBIT 2

## **P**reventing *These Situations*

### **A LIVING TRUST WOULD HAVE PREVENTED THIS SITUATION:**

Martha had been a widow for just one year when she put all of her property, including her house, into **joint ownership with her married son**. She did this thinking that when she died, her property would automatically go to her son **without the need for probate**.

Several years later, her son and his wife separated and Martha decided to sell her house so she could move in with her son. But she soon discovered **she could not sell the house** without her daughter-in-law's signature on the deed. The daughter-in-law was still legally married to her son and was entitled by law to a "marital interest" in the property. **The title company would not insure clear title to the buyer** without the daughter-in-law's signature because it was not clear what her "interest" would be — and the daughter-in-law refused to sign unless she got part of the money when the house was sold. Martha was stuck! She did not know that **joint ownership with a married person can include that person's spouse**. And because Martha had placed her house in joint ownership, **Martha lost control of her own home**.

### **A LIVING TRUST WOULD HAVE PREVENTED THIS SITUATION:**

Bill and Agnes were an elderly couple who put **everything they owned . . .** including their home and stock . . . in their adult unmarried daughter's name. **They believed that this would avoid probate** and that all of their property would pass directly to their daughter who was an only child, when they were both gone. A year later, Bill died of a heart attack. Several months after that, the daughter was killed in an auto accident.

Agnes never believed she would survive both her husband and daughter. To add to her distress, **Agnes now owned nothing in her own name**. Everything was in her daughter's name! She was forced to probate her daughter's estate to get back her own property.

During this long process she had to rely on the court to grant her living expenses. **Sometimes the court would approve expenses . . . sometimes not**. And during a declining stock market, she helplessly watched the value of her stocks fall to only a fraction of their previous value because the court could not react in time for them to be sold quickly enough. **Agnes lost her financial independence** plus a substantial portion of her assets to probate . . . just **trying to get back what was hers in the first place**.

### **THE CONSEQUENCES IF A JOINT OWNER CANNOT SIGN:**

**Most married couples own their property jointly**, and they assume that if one of them becomes disabled or incompetent, the other can continue to take care of their personal and financial affairs without interruption. But look at what happened to Henry and Mary:

Henry and Mary were successful and responsible adults. **They made safe investments and planned carefully for their future**. They owned everything **jointly** and even had **WILLS**, leaving everything to each other. But in just seconds their lives changed dramatically. **Henry was in a tragic car accident**, and suffered extensive head injuries and

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## EXHIBIT 2

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brain damage. Mary could continue to write checks and pay their day to day bills because only one of their signatures was required on their checking account. But soon the cash started running out, and **Mary realized she needed to sell some of their investments, and maybe their house,** to pay for Henry's care and the other bills. Mary was unable to sell any of their jointly owned property without both signatures, and since Henry could not sign his name, **the only way Mary could sell their property was to place Henry into a probate guardianship and have the court sign for him.** Henry's WILL was no help at all because he was still alive.

Mary had no idea how expensive and cumbersome this legal "joint ownership" can be. Not only did she have to deal with Henry's situation and the effect of this tragedy on their personal lives, but **she also had to deal with the court system.** She was especially frustrated that **she had to pay for the court to approve the sale of their own property** and then get the court's approval on how Henry's share of that money was spent — even when it was used to pay their personal bills and take care of Henry! When Henry finally died more than five years later, Mary found herself back in probate court — this time to probate Henry's WILL.

**THE SAME THING CAN EASILY HAPPEN TO YOU if you own property through joint ownership.** Many older parents list their adult sons or daughters as joint owners on their property (especially real estate and C.D.s), mainly to avoid probate when they die. And many mistakenly assume that their adult child will automatically be able to take over for them if they become disabled or incompetent. Most people just do not know how easily joint ownership can lead to a probate guardianship.



**OTHER  
MEMBERSHIP  
BENEFITS &  
SERVICES**



## EXHIBIT 2



## *Medical Air Ambulance Services*

*Specialized Facilities ... often at distant locations, available to our members at NO out-of-pocket cost when the need arises.*

### *Ten Separate Services ... Some Lifesaving ... Some Peace of Mind:*

- **EMERGENCY AIR TRANSPORTATION** to any specialized hospital in the nation with what could be the single life sustaining element available to you or a member of your family.
- **ESCORT TRANSPORTATION** for your spouse, family member or companion to accompany you in flight if space permits.
- **NON-INJURY TRANSPORTATION** to have a family member flown round trip by common carrier to the city where you are hospitalized for more than seven days.
- **REPATRIATION**, should the patient and his attending physician determine that recuperation nearer home is feasible, air transportation will be provided.
- **ORGAN RETRIEVAL/ORGAN RECIPIENT TRANSPORTATION.** If a member requires a heart, heart/lung, liver, kidney, lung, or pancreas transplant, this service will transport the organ to the recipient or fly the recipient candidate to the organ.
- **RETURN TRANSPORTATION** either by air ambulance or scheduled air carrier for your return home.
- **MINOR CHILDREN RETURN**, including an attendant, if necessary, when minor children are stranded as a result of you being hospitalized out of town.
- **VEHICLE RETURN.** Privately owned or rented cars, vans, motorhomes, or travel trailers left unattended as a result of the medical emergency will be returned to your residence.
- **PHYSICAL REMAINS RETURN.** Will return mortal remains.

## EXHIBIT 2

*Listen to What People Say About Medical Air Services:***Louis C. Timm**

716-328-9824 • Rochester, New York

*"We could not have asked for better treatment, in fact we have been telling our friends about MASA."***Lee and Violet Frost**

618-832-6538 • Anna, Illinois

*"We are satisfied with your service we take every opportunity to encourage friends to enroll in MASA."***Mrs. James (Thelma) Wilkinson**

515-652-3244 • Ottumwa, Iowa

*"We have only good thoughts and remarks to make of Medical Air Services."***Mr. Victor S. Kalinski**

218-681-4767 • Thief River Falls, Minnesota

*"It was a 400 mile trip one way. We were very pleased in that no time was wasted and everything seemed very well planned. We recommend this service very highly."***Harold and Ruth Wendt**

715-229-2770 • Owen, Wisconsin

*"I am now well on the way to recovery from open heart surgery while in Texas in April. We express our special thanks for the fine and prompt service Medical Air Services provided during our emergency. Besides providing air service home, we especially appreciated having a driver take our automobile 1700 miles to Wisconsin."***Christine J. Adamson**

313-659-6080 • Flushing, Michigan

*"We feel this service is very valuable for the security it provided and we feel it is one of the best investments we have ever made."***Bruce Theel**

701-477-5244 • Rolla, North Dakota

*"Your company is providing a critical medical service to the population living in remote areas, without air facilities closer to major medical centers. Could you sell hospitals such a service, so that more people are informed of this marvelous service you give at such a reasonable rate?"***Katherine G. Bennett**

716-637-6468 • Brockport, New York

*"The Bennetts are staunch believers that everyone should be a member of Medical Air Services. You showed concern far beyond the service anyone could expect."***Margaret Kreutzer**

204-326-9972 • Edinburg, Texas

*"I am very pleased with the services I received from your company after the death of my husband."***Frankie Adkins**

512-428-2534 • Brunswick, Missouri

*"We made a call to Medical Air Services and found out our daughter's flight to be with her critically ill father would be taken care of. We certainly thank your "flight for life" service and don't intend to be without it."***Mrs. Joyce Evans**

816-638-4561 • Urich, Missouri

*"Words cannot express what I feel for your company. You were all so helpful and courteous. I would love to enroll some of my friends who have not heard of your services. Please send me some enrollment applications."***Stanley Snodgrass**

513-922-4562 • Cincinnati, Ohio

*MASA will always be a part of our insurance program as long as it is available to us. On a scale of one to ten, we rate you a ten plus."***Mr. and Mrs. Robert Taylor**

612-894-9709 • Burnsville, Minnesota

*"We wish to thank you for the "hassle free" way in which you handled all the arrangements to fly me and my injured husband home after he fractured a vertebra in his back. We say thanks for all your help."***Helen Redekal**

507-938-4241 • Canby, Minnesota

*"In this day and age it is very difficult to believe some company would stand behind their promises and react so efficiently and promptly in our crisis. I highly recommend this service to each and everyone."*

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## EXHIBIT 2



## *Prescription Program*

*The lowest price available at your local pharmacy!*

- Over 30,000 participating neighborhood pharmacies
- Fill all your prescription needs **AT** or **BELOW** average wholesale prices



## *Mail Order Pharmacy*

*The preferred option for maintenance medications!*

- TOLL FREE ORDER — Comparison cost line
- NO shipping or handling charges
- Doctor-Verified prescriptions
- Easy to use
- Convenient at-home delivery



**Savings that really add up!**

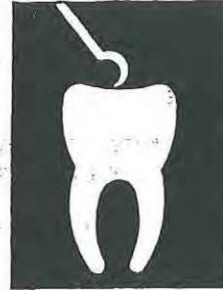
## EXHIBIT 2



## Affordable Dental Connection

### Free & Discounted Dental Service

- FREE Diagnosis
- FREE Dental History
- FREE Bite Wing X-Rays
- FREE Flouride Treatment for Children
- FREE Oral Hygiene Instructions
- FREE Oral Cancer Examination



*Discounts of 20% to 50% off the  
Dental Providers "usual and customary" fees.*

- Prosthodontists
- Implantologists
- Oral Surgeons
- General Dentistry
- Orthodontists
- Endodontists





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## EXHIBIT 2

## **E**yewear Savings

*SPECS brings you savings at Sears, Montgomery Ward, JC Penney, Dillard's, Marshall Fields, Royal Optical, and many other stores.*

You receive the SPECS Vision Plan free as part of your membership benefit package. The SPECS Vision Plan is designed to offer both you and your family savings of up to 60% on all your eyecare needs.

Simply present the SPECS card at any of the 1,500 participating Sears, Montgomery Ward, JC Penney, Dillard's, Marshall Fields, Royal Optical and many other eyewear departments located throughout the country and let the savings begin.

It's so easy! There's no waiting, no forms to complete, and no limitations — all merchandise is included. Most locations are open evenings and weekends for your convenience. And, you can pay for your order with your store credit card.



### TYPICAL SAVINGS

|   | YOUR<br>Cost |
|---|--------------|
| <b>Frames</b>   |              |
| Frames up to \$54 retail — you save 60% .....           | \$20.00      |
| Frames \$55 to \$74 — you save 60% .....                | \$30.00      |
| Frames over \$74 .....                                  | 50% off      |
| <b>Lenses</b>   |              |
| Single Vision — you save 45% .....                      | \$28.00      |
| Bifocal — you save 40% .....                            | \$50.00      |
| Trifocal — you save 40% .....                           | \$60.00      |
| Lenticular — you save 50% .....                         | \$95.00      |
| <b>Contact Lenses &amp; Non-Prescription Sunglasses</b> |              |
| 20% Discount from regular retail prices                 |              |
| <b>Eye Examinations*</b>                                |              |
| Spectacle: \$5 off regular fee                          |              |
| Contact: \$10 off regular fee                           |              |

\*Eye Examinations are provided by Doctors of Optometry located in or adjacent to most participating optical departments. The fee for fitting and dispensing spectacles (including unlimited adjustments) is only \$8. There is no dispensing fee for contacts.



## EXHIBIT 2

## **H**earing Aid Discounts

*Save 60% or MORE!*

- All world famous name brands.
- When is a \$400 hearing aid better than an \$800 hearing aid?

*When it's the same hearing aid!!*



*30 day No cost - No obligation FREE home trial*

**Hear better today!**

## **C**hiropractic Discounts

*Nationwide network of over 2200 licensed chiropractors.*

- Free Chiropractic Evaluation!
- Preferred Client 15% discount.

*Headaches • Neck Pain • Pain In Lower Back, Hips or Legs  
Tight Muscles or Spasms • Decreased Flexibility  
Abdominal Pain • Dizziness or Blurred Vision  
Shoulder or Arm Pain • Numbness in Extremities  
Breathing Difficulties*



**Get rid of that pain!**

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## EXHIBIT 2

**D** *iscount Shopping Service*

*Members save up to 50% on  
thousands of nationally  
advertised items.*

As a Member you'll enjoy huge savings through substantial discounts on most major consumer purchases. It's easy. Just pick up the phone and you'll receive the guaranteed lowest price available for the item you want. Use your price to comparison shop at your local stores.

- Audio Equipment
- Cameras
- Carpeting
- China and Silverware
- Diamonds
- Fine Jewelry
- Furniture
- Personal Computers
- Luggage
- Major Appliances
- Pianos and Organs
- Sewing Machines
- Video Recorders
- Exercise Equipment
- Televisions
- Typewriters
- Video Tapes
- Binoculars
- Air Conditioners

*Plus thousands of  
other items!*

**You'll save hundreds of dollars!**

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**G**rocery Coupon Program



*Manufacturer's  
coupons for brand  
name items you want,  
need, and use!!!*



*Save hundreds and hundreds  
of dollars each year on your  
grocery bills.*

**Saving Money on groceries  
has never been easier.**

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## EXHIBIT 2

**G**ift Catalog

Our members *SAVE*  
up to 80%

Savings Galore!  
Over 550 Items!

Cameras • Jewelry • Household Appliances • Silver Plate  
Luggage • China • Watches • Telephones  
Silverware • Tools • Leather Goods • Fur Coats

*Receive impressive savings on gifts for*  
*Birthdays Anniversaries Weddings*  
*Graduations Christmas*

**SAMPLE SAVINGS**

| Item   | Suggested Retail | Your Price      |
|--|------------------|-----------------|
| Ladies or mens quartz Diamond Watch.....               | \$ 119.00.....   | <b>\$ 23.00</b> |
| 35mm Camera - auto focus, auto wind, auto loading..... | \$ 269.00.....   | <b>\$ 69.00</b> |
| Cordless telephone.....                                | \$ 179.00.....   | <b>\$ 59.00</b> |
| Ladies Black Eel-Skin purse.....                       | \$ 345.00.....   | <b>\$ 69.00</b> |
| Norwegian blue Fox fur coat.....                       | \$1250.00.....   | <b>\$256.00</b> |



## EXHIBIT 2

## **V**acation & Travel Discounts

*Your membership travel services are waiting for you NOW. Let our travel consultants accommodate you!*



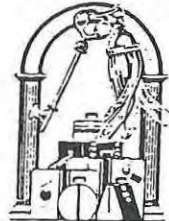
- \$100,000 FREE Travel Accident Insurance on selected flights
- Discounts from many of the world's most desired resorts, cruise lines, and tour packages

- Prompt, courteous, professional assistance
- Lowest currently available air fares
- Up to 5% off on air fares to many destinations worldwide



**Get that dream vacation!**

## **H**otel, Motel, Resort Condominium Discounts



*Guarantees 50% Savings*

- At over 2000 hotels, motels, and resort condominiums.
- Available at thousands of destinations worldwide.

**The world can be yours!**



## EXHIBIT 2

## **N**ew Car Discounts

*Save \$1000 or MORE!*



For a nominal service charge you'll receive a computer printout showing the dealers cost for the make and model you want.

*Information that gives you a price advantage!*

**Knowing what your dealer knows can get you the very best price on the car you want.**

## **U**sed Car Discounts

*Outstanding savings on late-model pre-owned cars.*



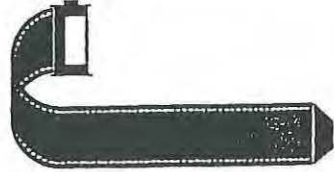
For a modest fee, you will receive a price quote for the late-model car of your choice that will also include the retail price and trade-in value.

*Make your best deal!*

**Every car is prepared for sale under guidelines which meet the highest standards and conditions.**

EXHIBIT 2

**F**ree Kodak Film  
A \$350 Value!!



- Our members are provided certificates for 10 FREE rolls of KODAK Color Film.
- Send in a roll of film for processing - Receive a new roll of film FREE.
- MONEY BACK GUARANTEE: You pay only for the prints that come out!

**D**iscounts on Flowers  
Fresh & Beautiful

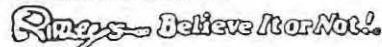


- Over 5,000 participating Florists worldwide.
- Open 24 hours a day — 7 days a week

**C**ar Rental Discounts  
SAVE 10% to 40% every time you rent a car!

- Free upgrade in car class at Hertz, Avis, National.
- Special exclusive flat-rates at National and Alamo.

**F**amily Entertainment Discounts  
At such places as:



And we are negotiating new entertainment discounts every day that will be added to your membership as available!

**Something for everyone!**

Complaint

123 F.T.C.

EXHIBIT 2

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# AASC

NATIONWIDE  
NON-PROFIT  
ORGANIZATION