

Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Quantum Capital Corp.*, Suwanee, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Quantum National Bank, Suwanee, Georgia (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty Bancshares, Inc.*, Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Bank, Springfield, Missouri, a *de novo* bank.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Dartmouth Capital Group, Inc.*, Gilford, New Hampshire, and Dartmouth Capital Group, L.P., Gilford, New Hampshire; to become bank holding companies by acquiring 52.90 percent of the voting shares of SDN Bancorp, Encinitas, California, and thereby indirectly acquire San Dieguito National Bank, Encinitas, California.

Comments regarding this application must be received by the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 1995.

Board of Governors of the Federal Reserve System, September 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22576 Filed 9-11-95; 8:45 am]

BILLING CODE 6210-01-F

Louis G. Titus, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of

Governors. Comments must be received not later than September 21, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Liscomb J. Titus and Paula E. Titus*, Trustees of the Louis G. Titus Revocable Trust; to retain 51.2 percent; Paula E. Titus, individually, to retain an additional 27.6 percent; and John L. Titus, all of Holdrege, Nebraska, to retain 39.3 percent of the voting shares of LJT, Inc., Holdrege, Nebraska, and thereby indirectly acquire The First National Bank of Holdrege, Holdrege, Nebraska.

Board of Governors of the Federal Reserve System, September 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-22566 Filed 9-11-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 951-0044]

Columbia/HCA Healthcare Corporation.; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Nashville-based health care corporation to divest Poplar Springs Hospital, a psychiatric hospital facility in Petersburg, Virginia.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Mark Horoschak, Bureau of Competition, Federal Trade Commission, S-3115, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. (202) 326-2756

Oscar Voss, Bureau of Competition, Federal Trade Commission, S-3115, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2750

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's

Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of John Randolph Medical Center in Hopewell, Virginia, and certain related assets, by Columbia/HCA Healthcare Corporation ("Columbia/HCA") from the Hopewell Hospital Authority, and it is now appearing that Columbia/HCA ("proposed respondent") is willing to enter into an agreement containing an order to divest certain assets, to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between the proposed respondent by its duly authorized officers and attorneys, and counsel for the Commission that:

1. The proposed respondent Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

3. The proposed respondent waives:

- any further procedural steps;
- the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist, and other relief in disposition of the proceedings, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Columbia/HCA" or "respondent" means Columbia/HCA Healthcare Corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Columbia/HCA; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "Commission" means the Federal Trade Commission.

C. The "Acquisition" means the transaction contemplated by the October 31, 1994, agreement between Columbia/HCA and the Hopewell Hospital Authority, whereby Columbia/HCA will acquire John Randolph Medical Center in Hopewell, Virginia, and certain related assets.

D. "Psychiatric hospital" means a health care facility licensed or certified as a psychiatric hospital (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

E. "Psychiatric unit" means a department, unit, or other organizational subdivision of a general acute care or other non-psychiatric hospital, licensed or certified as a provider of inpatient psychiatric care (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

F. "Psychiatric hospital facility" means a psychiatric hospital, a non-psychiatric hospital with a psychiatric unit, or a psychiatric unit.

G. "Psychiatric hospital services" means the provision by psychiatric hospitals or psychiatric units of inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illnesses or emotional disturbance, or alcohol or drug abuse. "Psychiatric hospital services" do not include the long-term psychiatric treatment provided by residential treatment facilities, other long-term treatment of chronic mental illnesses, or such

treatment and other services provided by Federally-owned facilities and state mental hospitals.

H. To "operate" a psychiatric hospital facility means to own, lease, manage, or otherwise control or direct the operations of a psychiatric hospital facility directly or indirectly.

I. To "acquire" a psychiatric hospital facility means to directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. Acquire the whole or any part of the assets of a psychiatric hospital facility;

2. Acquire the whole or any part of the stock, share capital, equity, or other interest in any person operating a psychiatric hospital facility;

3. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of a psychiatric hospital facility; or

4. Enter into any other arrangement to obtain direct or indirect ownership, management, or control of a psychiatric hospital facility or any part thereof, including, but not limited to, a lease of or management contract for a psychiatric hospital facility.

J. "Relevant area" means the area in Virginia encompassing the independent cities of Colonial Heights, Hopewell, and Petersburg; Dinwiddie and Prince George counties; and those portions of Charles City and Chesterfield counties within a fifteen (15) mile radius of the present site of Poplar Springs Hospital in Petersburg, Virginia.

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

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

M. "Assets and Businesses" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. all real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. all contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs,

customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees (collectively, the "Contracts");

3. all machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Columbia/HCA owns the assets) (collectively, the "Personal Property");

4. all research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. all books, records, and files, excluding, however, the corporate minute books and tax records of Columbia/HCA and its affiliates; and

6. all prepaid expenses.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, all Assets and Businesses, including all improvements, additions, and enhancements made prior to divestiture, of Poplar Springs Hospital in Petersburg, Virginia (the "Paragraph II Assets").

B. Respondent shall also divest such additional Assets and Businesses ancillary to the Paragraph II Assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Paragraph II Assets.

C. Respondent shall divest the Paragraph II Assets only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Paragraph II Assets is to ensure the continuation of the Paragraph II Assets as an ongoing, viable psychiatric hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement to Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Agreement to Hold Separate provides.

E. Pending divestiture of the Paragraph II Assets, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Paragraph II Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Paragraph II Assets, except for ordinary wear and tear.

F. A condition of approval by the Commission of the divestiture shall be a written agreement by the acquirer(s) of the Paragraph II Assets that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by Paragraph IV of this Order, any Paragraph II Asset to any person who operates, or will operate immediately following the sale, any other psychiatric hospital facility in the relevant area.

III

It is further ordered that:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval the Paragraph II Assets, in accordance with this order, within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the undivested Paragraph II Assets.

B. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to § 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, the respondent 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 Paragraph III.A, shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A of this order, the respondent 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 the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent 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 respondent of the identity of any proposed trustee, respondent 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 Paragraph II Assets.

3. Within ten (10) days after appointment of the trustee, respondent 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. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the undivested Paragraph II Assets, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by respondent 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. Subject to Columbia/HCA's absolute and unconditional obligation to divest at no minimum price the Paragraph II Assets (and subject to the terms described in Paragraph II.A), and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to

the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer as set out in Paragraph II; 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, 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 the 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 sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of 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 divesting the undivested Paragraph II 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 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 waton 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(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Paragraph II Assets.

12. The trustee shall report in writing to the respondent and to 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, respondent shall not, without providing advance written notification to the Commission directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person operating a psychiatric hospital facility in the relevant area;

B. Acquire any assets of a psychiatric hospital facility in the relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any psychiatric hospital facility, or any part thereof, in the relevant area, including but not limited to, a lease of or management contract for any such facility;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any psychiatric hospital facility in the relevant area;

E. Permit any psychiatric hospital facility it operates in the relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other psychiatric hospital facility in the relevant area.

Said notification 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 that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the 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 or documentary material (within the meaning of 16 CFR § 803.20), respondent shall not consummate the transaction until

twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a.

Provided, however, that prior notification pursuant to this Paragraph IV, or pursuant to Paragraph II.F. of this order, shall not be required for:

1. the establishment by respondent of a new psychiatric hospital facility in the relevant area: (a) that is a replacement for an existing psychiatric hospital facility, if that facility is operated by respondent and is not required to be divested pursuant to Paragraph II of this order; or (b) that is not a replacement for any psychiatric hospital facility in the relevant area;

2. any transaction otherwise subject to this Paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the psychiatric hospital facility or part thereof to be acquired does not exceed one million dollars (\$1,000,000);

3. the acquisition of products or services in the ordinary course of business; or

4. any 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.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any psychiatric hospital facility it operates in the relevant area to be acquired by any other person (except pursuant to the divestiture required by Paragraph II), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

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 the respondent has fully complied with Paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II of this order. Respondent 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 Paragraph II of this order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondent 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 divestitures.

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 becomes final, and at 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 it is complying with this order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation 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, the 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 the respondent relating to any matters contained in this order; and

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

Appendix I

Agreement To Hold Separate

This Agreement to Hold Separate ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of

business at One Park Plaza, Nashville, Tennessee 37203; 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.

Premises

Whereas, on October 31, 1994, Columbia/HCA and the Hopewell Hospital Authority entered into an agreement whereby Columbia/HCA will acquire John Randolph Medical Center in Hopewell, Virginia, and certain related assets, from the Authority (the "Acquisition"); and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203, owns and operates, among other things, psychiatric hospitals; and

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

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), which would require the divestiture of certain assets specified in Paragraph II of the Consent Order ("Paragraph II Assets"), the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

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

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the Paragraph II Assets, and the Commission's right to have the Paragraph II Assets continue as a viable psychiatric hospital independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the Consent Order are to:

(i) preserve the Paragraph II Assets as a viable, competitive, and ongoing psychiatric hospital, independent of Columbia/HCA, pending the divestitures of the Paragraph II Assets as required under the terms of the Consent Order;

(ii) prevent interim harm to competition from the operation of the Paragraph II Assets pending divestiture as required under the terms of the Consent Order; and

(iii) remedy any anticompetitive effects of the Acquisition; Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust

laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture of the Paragraph II Assets is not accomplished, to appoint a trustee to seek divestiture of said assets pursuant to the Consent Order or to seek civil penalties or a court appointed trustee or other equitable relief, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the attached Consent Order.

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

a. three (3) 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. the day after the divestiture of the Paragraph II Assets, as required by the Consent Order, is completed.

3. To ensure the complete independence and viability of the Paragraph II Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Paragraph II Assets, respondent shall hold the Paragraph II Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Paragraph II Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Paragraph II Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the Consent Order; provided, however, that Columbia/HCA may designate as the "New Company" under this agreement, the "New Company" created pursuant to the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets between Columbia/HCA and the Commission in connection with FTC File No. 951-0022. Respondent shall transfer all

ownership and control of all Paragraph II Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the governing body of the entity ("New Board"), shall have three members. Respondent shall elect the members of the New Board. The New Board shall consist of the following three persons: Winfield C. Dunn; Samuel H. Howard; and David C. Colby. The Chairman of the New Board shall be Winfield C. Dunn (provided he agrees), or a comparable, knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Paragraph II Assets. The New Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be David C. Colby, provided he agrees, or a comparable knowledgeable person ("the respondent's New Board member"). The New Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary.

Meetings of the New Board during the term of this Agreement shall be audiographically/transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Paragraph II Assets, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the Consent Order, or with all applicable laws.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Paragraph II Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Assets.

f. Except for the respondent's New Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the viability and competitiveness of the Paragraph II Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's New Board Member, respondent shall not change the composition of the New Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the New Board for cause. Respondent shall not change the composition of the management of the New Company except that the New Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute

Chairman shall be appointed in the same manner as provided in Paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the New Company or the activities of the hospital to be operated by the New Board. Nor shall the New Company or the New Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Board member shall not, in his or her capacity as a New Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's New Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's New Board member shall participate in matters that come before the New Board only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's New Board member shall not participate in any matter, or attempt to influence the votes of the other members of the New Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Board; provided that the New Company shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide the New Company with sufficient working

capital to operate the Paragraph II Assets at their respective current rates of operation, and to carry out any capital improvement plans for the Paragraph II Assets which have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Paragraph II Assets, as are being provided to those Assets by Columbia/HCA as of the date this Agreement is signed. Columbia/HCA may charge the Paragraph II assets the same fees, if any, charged by Columbia/HCA for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all Material Confidential Information of the Paragraph II Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute a confidentiality agreement prohibiting the disclosure of any Material Confidential Information of the Paragraph II Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the Consent Order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacements of, the Paragraph II Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of hospitals (including non-psychiatric facilities) either in the relevant area defined in the Consent Order in this matter, or in the city of Richmond or Henrico or Chesterfield counties in Virginia, a notice of this Hold Separate and Consent Order in the form Attachment A.

q. The New Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the New Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the New Board directors.

r. The New Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Paragraph II Assets.

s. The New Board shall report in writing to the Commission every thirty (30) days concerning the New Board's efforts to accomplish the purposes of this Hold Separate.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Paragraph II Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure

to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, as defined in the draft complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, from respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

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

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

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

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

Attachment A—Notice of Divestiture and Requirement for Confidentiality

Columbia/HCA Healthcare Corporation has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of Poplar Springs Hospital in Petersburg, Virginia and certain related assets and businesses ("Poplar Springs"). Until after the FTC's Order becomes final and Poplar Springs is divested, Poplar Springs must be managed and maintained as a separate, ongoing business, independent of all other Columbia/HCA businesses. All competitive information relating to Poplar Springs must be retained and maintained by the persons involved in the operation of Poplar Springs on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves Poplar Springs.

Any violation of the Consent Agreement or the Agreement to Hold Separate,

incorporated by reference as part of the Consent Order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment, Columbia/HCA Healthcare Corp., FTC File No. 951-0044

The Federal Trade Commission has accepted, subject to final approval, a proposed consent order from Columbia/HCA Healthcare Corp. ("Columbia/HCA"). The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed consent order would settle charges by the Federal Trade Commission that Columbia/HCA's proposed acquisition of John Randolph Medical Center ("John Randolph") from the Hopewell Hospital Authority may substantially lessen competition in the market for psychiatric hospital services in the "Tri-Cities" area of south central Virginia (which includes Hopewell, Petersburg, Colonial Heights, and other nearby communities). Because the Commission has not charged that the proposed acquisition would endanger competition with respect to non-psychiatric hospital services offered by John Randolph, the scope of the proposed consent order is limited to psychiatric services. (Columbia/HCA does not operate any hospitals in the Tri-Cities area that provide non-psychiatric hospital services.)

Columbia/HCA operates over 300 hospitals nationwide. Its only hospital in the Tri-Cities area is Poplar Springs Hospital, a 100-bed hospital in Petersburg, Virginia specializing in psychiatric care. John Randolph is a 150-bed general acute care hospital in Hopewell, Virginia, about ten miles northeast of Petersburg. It is owned and operated by the Hopewell Hospital Authority. John Randolph provides psychiatric hospital services in its 34-bed psychiatric unit, as well as a variety of medical and surgical services in other departments of the hospital. The complaint accompanying the consent order alleges that the proposed combination of Columbia/HCA's Poplar Springs with John Randolph may substantially lessen competition in the relevant psychiatric hospital services market, and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The complaint defines psychiatric hospital services as those inpatient services provided by psychiatric hospitals, or psychiatric units of non-psychiatric hospitals, for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illnesses or emotional disturbance, or alcohol or drug abuse. The complaint distinguishes psychiatric hospital services from outpatient psychiatric care, as well as from long-term treatment of chronic mental illnesses (such as that provided by Central State Hospital, a state mental hospital in Petersburg, which is

not included in the relevant product market alleged in the complaint). According to the complaint, even though such alternatives are much less expensive than acute inpatient psychiatric hospital care, they cannot reasonably meet the mental health needs of the patients who receive inpatient care at the psychiatric hospitals and hospital units in the Tri-Cities.

The complaint defines the relevant geographic market as the Tri-Cities area. Columbia/HCA and John Randolph are two of only three competing providers of psychiatric hospital services in that area. The only other provider of psychiatric hospital services in the Tri-Cities area is Southside Regional Medical Center, a general acute care hospital in Petersburg, Virginia, which has a 31-bed psychiatric unit.

As stated in the complaint, the proposed acquisition would eliminate competition between Columbia/HCA and John Randolph, and significantly increase the already high level of concentration for psychiatric hospital services in the Tri-Cities area. The complaint alleges that the proposed acquisition would eliminate the psychiatric unit at John Randolph as a substantial, independent competitive force. The complaint also alleges that the proposed merger would increase the market share of Columbia/HCA, the leading provider of psychiatric hospital services in the Tri-Cities area, from over 50% to over 70%. The complaint further alleges that, as measured by the Herfindahl-Hirschman Index ("HHI"), market concentration would increase more than 2400 points to a post-acquisition level of over 6400, on a scale of 0 to 10,000. (The HHI is a measure of market concentration used by the Federal antitrust enforcement agencies to estimate, in conjunction with information on other market factors, the likelihood that a merger would endanger competition.) As explained in the 1992 Horizontal Merger Guidelines issued by the Commission and the Department of Justice (57 Fed. Reg. 41552), the Federal antitrust enforcement agencies consider markets with HHI levels above 1800 to be "highly concentrated." Where the post-merger HHI would exceed 1800, the agencies presume that a merger producing an increase in the HHI of more than 100 points is likely to significantly lessen competition (unless factors other than market concentration indicate that the merger presents no significant threat to competition).

According to the complaint, entry into the Tri-Cities area by new psychiatric hospital facilities is unlikely to prevent or remedy any anticompetitive price increases or other effects resulting from the acquisition. Certificate of need approval is required from a state regulatory agency for new psychiatric hospital or unit in Virginia. Such approval would be difficult to obtain in the Tri-Cities area, given that there is (and likely will be for the foreseeable future) substantially more psychiatric hospital bed capacity in the Tri-Cities health planning district than the state believes is sufficient to meet the mental health needs of the residents of the Tri-Cities area.

The complaint alleges that the proposed acquisition may: substantially lessen competition for psychiatric hospital services

in the Tri-Cities area; result in less favorable prices and other terms for health plans that contract with psychiatric hospital facilities in the Tri-Cities area; increase the possibility of collusion or interdependent coordination by the remaining market competitors; and deny patients, physicians, third-party payers, and other consumers of psychiatric hospital services, the benefits of free and open competition based on price, quality, and service.

The consent order, if issued in final form by the Commission, would require Columbia/HCA to divest Poplar Springs Hospital and related assets. Columbia/HCA is permitted to carry out its proposed acquisition of John Randolph. The consent order would ensure the continued operation of Poplar Springs as a viable psychiatric hospital facility independent of Columbia/HCA and John Randolph, and remedy the lessening of competition for psychiatric hospital services resulting from Columbia/HCA's acquisition of John Randolph.

Under the terms of the proposed order, Columbia/HCA must divest Poplar Springs to an acquirer and in a manner approved by the Commission. The divestiture must be completed within twelve months of the date the order becomes final; otherwise, Columbia/HCA will consent to the appointment of a trustee, who will have twelve additional months to effect the divestiture. (Paragraphs II and III)

A Hold Separate Agreement executed in conjunction with the consent agreement requires Columbia/HCA to maintain Poplar Springs separate from its other operations until the completion of the divestiture, or as otherwise specified. To assure the complete independence and viability of Poplar Springs Hospital, the Hold Separate Agreement requires Columbia/HCA to transfer all ownership and control of Poplar Springs Hospital to a separate legal entity, and to assure that no competitive information is exchanged between Columbia/HCA and this entity. Under the Hold Separate Agreement, Columbia/HCA may not exercise any direction, control, or influence over this entity, except as necessary to assure compliance with the Consent Order and the Hold Separate Agreement and the continued viability, competitiveness, and marketability of Poplar Springs.

For ten years after the order is made final, the proposed consent order would prohibit Columbia/HCA from combining (through purchase, sale, lease, or otherwise) its psychiatric hospital facility in the Tri-Cities area with any other psychiatric hospital facility in that area, without prior notice to the Federal Trade Commission. Columbia/HCA must provide such notice in accordance with procedures similar to those governing premerger notifications required by Section 7A of the Clayton Act, 15 U.S.C. § 18a (unless the merger is already subject to Section 7A's requirements, in which case no notice is necessary over and above that provided pursuant to Section 7A). The order provision supplements Section 7A, to ensure that the Commission receives advance notice of potentially significantly Columbia/HCA mergers in the relevant market, and thereby give the Commission an opportunity to block

any such merger if it can demonstrate that the merger may substantially lessen competition. The proposed order contains certain limited exceptions to the prior notification requirement for transactions which are unlikely to substantially lessen competition, such as for small transactions under \$1 million. (Paragraph IV)

The proposed consent order also contains provisions concerning its continued application to future owners of Columbia/HCA psychiatric hospital facilities in the Tri-Cities area. The acquirer of Poplar Springs, pursuant to the divestiture called for by the order, must agree to not transfer the hospital, for ten years from the date of the order, without prior notice to the Commission, to any person already operating a psychiatric hospital facility in the Tri-Cities area (Paragraph II.F.). In addition, the order would prohibit Columbia/HCA for ten years from transferring a psychiatric hospital facility in the Tri-Cities area other than Poplar Springs (e.g., the John Randolph psychiatric facility it is to acquire) to another person, unless the acquiring person first files with the Commission an agreement to be bound by the order (Paragraph V).

The purpose of this analysis is to invite public comment concerning the proposed order, and to assist the Commission in its determination of whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement or to modify its terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by Columbia/HCA that its proposed acquisition of John Randolph Medical Center would violate the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary.

[FR Doc. 95-22580 Filed 9-11-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 951-0037]

Phillips Petroleum Company and Enron Corporation.; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Houston, Texas-based Enron Corporation not to sell 830 miles of natural gas pipe and related assets within the Texas and Oklahoma Panhandle region to the Bartlesville, Oklahoma-based Phillips Petroleum Company.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, Bureau of Competition, Federal Trade Commission, S-2602, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580, (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval.

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 the outstanding voting securities of Enron Anadarko Gathering Company and Transwestern Anadarko Gathering Company, two subsidiaries of Enron Corp. ("Enron"), that will own certain gas gathering assets currently owned by Transwestern Pipeline Company ("Transwestern") and Northern Natural Gas Company ("Northern Natural"), two other subsidiaries of Enron, and it now appearing that Enron and Phillips, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into an agreement containing an Order to cease and desist engaging in certain activities, and providing for other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed 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 74004.

2. Proposed Respondent Enron 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 1400 Smith Street, Houston, Texas 77002.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft complaint.

4. Proposed Respondents waive:

- a. any further procedural steps;
- b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;