

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202-452-3204.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 9, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-6191 Filed 3-9-00; 1:08 pm]

**BILLING CODE 6210-01-P**

## FEDERAL TRADE COMMISSION

[File No. 991-0278]

**Michael T. Berkley, D.C., and Mark A. Cassellius, D.C.; Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 6, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** C. Steven Baker or Nicholas Franczyk, Federal Trade Commission, Midwest Region, 55 E. Monroe St., Suite 1860, Chicago, IL 60603-5701. (312) 960-5633.

**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 above-captioned 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 thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 7, 2000), on the World Wide Web, at "<http://www.ftc.gov/ftc/formal.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. 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)).

### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement from Michale T. Berkley, D.C., and Mark A. Cassellius, D.C., to a proposed consent order. The agreement settles charges by the Federal Trade Commission that Drs. Berkley and Cassellius have violated Section 5 of the Federal Trade Commission Act by conspiring between themselves and with other chiropractors to fix prices for chiropractic services and to boycott the Gundersen Lutheran Health Plan ("Gundersen") to obtain higher reimbursement rates for services. The proposed consent order has been placed on the public record for thirty days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the agreement and proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way

their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Drs. Berkley and Cassellius that the law has been violated as alleged in the complaint.

### The Complaint

Drs. Berkley and Cassellius are chiropractors with their principal places of business in La Crosse, Wisconsin. Except to the extent that competition has been restrained as alleged in the complaint, Drs. Berkley and Cassellius have been, and are now, in competition with each other and with other chiropractors in and around La Crosse, Wisconsin.

Since at least January 1997, and continuing until at least June 1997, Drs. Berkley and Cassellius conspired among themselves and with other chiropractors to fix prices for chiropractic services and to boycott Gundersen, a third-party payer doing business in and around La Crosse County, Wisconsin. The purpose of the boycott was, among other things, to obtain higher reimbursement from Gundersen for chiropractic services. Drs. Berkley and Cassellius organized at least two meetings of La Crosse area chiropractors to discuss their concerns about Gundersen. A central concern raised at these meetings was Gundersen's purportedly low reimbursement rates. During these meetings, the chiropractors agreed that Gundersen should increase its reimbursement rates and determined that a majority of the chiropractors were willing to leave the Gundersen network if it did not address their concerns. Dr. Berkley, acting on behalf of the group of chiropractors, communicated to Gundersen the chiropractors' concerns and the implicit threat of a boycott. The threatened boycott was successful: Gundersen, fearing the loss of a substantial number of chiropractic providers and the disruption of its network, acceded to the chiropractors' demands and increased its reimbursement rates by 20%.

Drs. Berkley and Cassellius and the other unnamed chiropractors have not integrated their practices in any economically significant way, nor have they created any efficiencies that might justify this conduct. Had they done either of these, under some circumstances, the agreement on price might not have been unlawful. Their actions have harmed consumers by increasing the prices that are paid for chiropractic services and by depriving consumers of the benefits of competition among chiropractors.

### The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint.

Paragraph II.A prohibits Drs. Berkley and Cassellius from fixing prices for any chiropractic goods or services.

Paragraph II.B prohibits them from: (1) Engaging in collective negotiations on behalf of any chiropractors; (2) orchestrating concerted refusals to deal; or (3) fixing prices, or any other terms, on which chiropractors deal. Paragraph II.C. prohibits Drs. Berkley and Cassellius from encouraging, advising, or pressuring any person to engage in any action that would be prohibited if the person were subject to the order.

Paragraph II. includes a proviso allowing Drs. Berkley and Cassellius to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or, provided Drs. Berkley and Cassellius have complied with the order's prior notification requirements, (b) any "qualified clinically integrated joint arrangement."

For the purposes of the order, a "qualified risk-sharing joint arrangement" must satisfy three conditions. First, all physicians participating in the arrangement must share substantial financial risk from their participation in the arrangement. The order lists ways in which physicians might share financial risk, tracking the types of financial risk sharing set forth in the Statements of Antitrust Enforcement Policy in Health Care, Statement 8 on Physician Network Joint Ventures issued jointly by the FTC and the Department of Justice on August 28, 1996 (4 Trade Reg. Rep. (CCH) ¶13,153 at 20,814). For example, physician participants can agree to provide services to a health plan at a "capitated" rate (a fixed payment per enrollee regardless of the amount of services provided to an enrollee). Second, any agreement on prices or terms of reimbursement entered into by the arrangement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. For example, a joint arrangement for billing services alone would not be sufficient, because the agreement on prices would not be necessary to achieve the benefits of the billing services. Third, the arrangement must be non-exclusive, *i.e.*, physicians can also deal with payers individually or through other arrangements.

For purposes of the order, a "qualified clinically integrated joint arrangement"

is one in which physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services without necessarily sharing substantial financial risk. The cooperation may include: (1) Establishing mechanisms to monitor and control utilization of health care services that are designed to control costs and assure quality of care; (2) selectively choosing network physicians who are likely to further these efficiency objectives; and (3) the significant investment of capital, both monetary and human, in the necessary infrastructure and capability to realize the claimed efficiencies. *Id.* at 20,817.

In order for a qualified clinically integrated joint arrangement formed by Drs. Berkley and Cassellius to fall within the proviso, they must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact. This requirement will help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Paragraph III. requires that Drs. Berkley and Cassellius distribute a notification letter and copies of the complaint and order to all current and future agents, representatives, and employees whose activities are affected by the order, or who have responsibilities with respect to the subject matter of the order. Paragraph IV. requires that Drs. Berkley and Cassellius notify the Commission of any change in their employment and would require them to provide copies of the complaint and consent order to any new employer for which their new duties and responsibilities are subject to any provisions in the order.

Paragraph V. requires that Drs. Berkley and Cassellius distribute a copy of the complaint and order to each payer or provider who, at any time since January 1, 1997, has communicated any desire, willingness, or interest in contracting for chiropractic goods and services with either of them.

Paragraphs VI. and VII. consist of standard Commission reporting and compliance procedures. Finally, Paragraph VIII. contains a standard twenty year "sunset" provision under which the terms of the order terminate twenty years after the date of issuance.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00-6046 Filed 3-10-00; 8:45 am]

**BILLING CODE 6750-01-M**

### FEDERAL TRADE COMMISSION

[Docket No. 981-0386]

#### Nine West Group Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 5, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Parker, FTC/H-374, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326-2574.

**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 Practices (16 CFR 2.34), notice is hereby given that the above-captioned 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 thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 6, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 6000 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and