

Complaint

96 F.T.C.

IN THE MATTER OF
MIDLAND-ROSS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF
THE CLAYTON ACT

Docket C-3035. Complaint, Aug. 21, 1980—Decision, Aug. 21, 1980

This consent order prohibits, among other things, a Cleveland, Ohio corporation from having as a director any individual who also serves as a director of a competitive company whose revenues exceed the lesser of ten million dollars, or one percent of the company's total annual revenues.

Appearances

For the Commission: *Dennis F. Johnson and Thomas J. Keary.*

For the respondent: *Robert H. Rawson, Jr., Jones, Day, Reavis & Pogue, Cleveland, Ohio.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 8 of the Clayton Act, 15 U.S.C. 19, and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), and that a proceeding by it in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

COUNT 1

PARAGRAPH 1. Gould Inc. ("Gould") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 10 Gould Center, Rolling Meadows, Illinois. Gould has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 2. Respondent Midland-Ross Corporation ("Midland-Ross") is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 20600 Chagrin Boulevard, Cleveland, Ohio. Midland-Ross has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 3. Respondent Claude M. Blair is an individual, with his principal place of business located at National City Corporation, Post Office Box 5756, Cleveland, Ohio.

PAR. 4. Gould conducts its business, as described herein, in various

States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 5. Midland-Ross conducts its business, as described herein, in various States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 6. Claude M. Blair was, until his resignation from Gould's board of directors on or about July 24, 1979, a member of the boards of directors of both Gould and Midland-Ross. He has been a director of Midland-Ross since 1974, and was a director of Gould from 1969 until his resignation.

PAR. 7. During all or part of the period that Claude M. Blair concurrently served as a director of Gould and Midland-Ross, the business of Gould and Midland-Ross included the manufacture and sale of various electrical products, including electrical busways and electrical conduit fittings.

PAR. 8. By the nature of their business as hereinabove described and the locations of their operations, Gould and Midland-Ross have been competitors, during all or part of the time period that Claude M. Blair concurrently served as a director of Gould and Midland-Ross, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 9. The simultaneous membership of Claude M. Blair on the boards of directors of Gould and Midland-Ross constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

COUNT II

PAR. 10. Paragraphs One and Four are incorporated herein.

PAR. 11. Respondent Narco Scientific, Inc. ("Narco") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at Fort Washington Industrial Park, Fort Washington, Pennsylvania. Narco has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 12. Respondent William C. Musham is an individual, with his principal place of business located at Gould Inc., 10 Gould Center, Rolling Meadows, Illinois.

PAR. 13. Narco conducts its business, as described herein, in various States of the United States and is thereby engaged in activity

in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 14. William C. Musham was, until his resignation from Narco's board of directors during January 1980, a member of the boards of directors of both Gould and Narco. He has been a director of Gould since 1976, and was a director of Narco from 1977 until his resignation.

PAR. 15. During all or part of the period that William C. Musham concurrently served as a director of Gould and Narco, the business of Gould and Narco included the manufacture and sale of electronic medical devices.

PAR. 16. By the nature of their business as hereinabove described and the locations of their operations, Gould and Narco have been competitors, during all or part of the time period that William C. Musham concurrently served as a director of Gould and Narco, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 17. The simultaneous membership of William C. Musham on the boards of directors of Gould and Narco constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of interlocking personnel relationships between Gould Inc. and other corporations, and Midland-Ross Corporation (hereinafter referred to as "Midland-Ross"), having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Midland-Ross with violation of Section 8 of the Clayton Act (15 U.S.C. 19) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

Midland-Ross, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Midland-Ross 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 Midland-Ross 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 Midland-Ross has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Midland-Ross is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 20600 Chagrin Boulevard, Cleveland, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Midland-Ross, and the proceeding is in the public interest.

ORDER

I

It is ordered, That the following definitions shall apply herein:

(a) "Subsidiary" of a corporation means any corporation, partnership, firm, association or other legal or business entity of which 50 percent or more of the issued and outstanding voting securities (or other indicia of control for non-stock business organizations) is owned or controlled, directly or indirectly, by such corporation.

(b) "Parent" means any corporation which owns or controls 50 percent or more of the issued and outstanding voting securities (or other indicia of control for non-stock business organizations) of any other business organization.

(c) "Sister" corporations mean corporations that share a common parent.

(d) "Product or service market" means any line of commerce in which Midland-Ross' (including its subsidiaries and divisions) annual revenues exceed the lesser of:

- (1) five million dollars; or
- (2) one-half of one percent of Midland-Ross' total annual revenues.

II

It is further ordered, That Midland-Ross, its subsidiaries, successors and assigns, shall forthwith cease and desist from having, and in the future shall not have, any director who also serves as a director

of any other corporation if Midland-Ross and such other corporation are, by virtue of their business and location of operation, competitors, so that the elimination of competition between them would constitute a violation of any of the antitrust laws, providing that the revenues of either corporation derived from the product or service market(s) in which they are competitors exceed the lesser of:

- (a) Ten million dollars; or
- (b) One percent of the total annual revenues of that corporation.

III

It is further ordered, That within thirty (30) days of the date of service of this order, and annually thereafter, Midland-Ross shall obtain, review, and retain from and as to each of its directors, the name and address of each other corporation not related to Midland-Ross as parent, sister or subsidiary, which such director also serves as a director, and a descriptive listing of all products and services manufactured, produced, sold or leased by each such other corporation. Midland-Ross shall not permit any person to serve as a director who fails to submit to Midland-Ross any information required by this paragraph. Midland-Ross shall provide the information received pursuant to this paragraph to the Commission upon request. If competition arises in any product or service market between Midland-Ross and any other corporation with which Midland-Ross shares a common director, by virtue of action taken by such other corporation subsequent to a submission of information by such director pursuant to this paragraph, then Midland-Ross shall not be liable under Paragraph II until the date for the next submission of information.

IV

It is further ordered, That within ten (10) days from the date of issuance of this order Midland-Ross shall distribute a copy of this order to each of its current directors and thereafter, shall distribute a copy of this order to each prospective or newly-elected or appointed director.

V

It is further ordered, That Midland-Ross shall:

- (a) within sixty (60) days after the date of service of this order, file

with the Commission a written report setting forth in detail the manner and form in which it has complied with this order; and

(b) file with the Commission such other reports of compliance as may be requested by the Commission.

VI

It is further ordered, That the obligations imposed upon Midland-Ross under the terms of this order shall continue for a period of seven years following the date of service of this order.

VII

It is further ordered, That Midland-Ross shall notify the Commission not more than thirty (30) days after any change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Complaint

96 F.T.C.

IN THE MATTER OF
NARCO SCIENTIFIC, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF
THE CLAYTON ACT

Docket C-3036. Complaint, Aug. 21, 1980—Decision, Aug. 21, 1980

This consent order prohibits, among other things, a Fort Washington, Pa. corporation from having as a director any individual who also serves as a director of any competitive company whose revenues exceed the lesser of ten million dollars or one percent of the company's total annual revenues.

Appearances

For the Commission: *Dennis F. Johnson and Thomas J. Keary.*

For the respondent: *James G. Rosenberg, Saul, Ewing, Remick & Saul, Philadelphia, Pa.*

COMPLAINT

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COUNT I

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