

IN THE MATTER OF
ALLEGHANY CORPORATION

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

Docket C-3218. Complaint, Sept. 9, 1987—Decision, Sept. 9, 1987

This consent order allows, among other things, a New York City title insurance company to acquire Safeco Title Insurance Co. by requiring respondent to divest two title plants to alleviate concerns that acquisition could reduce competition in the production and sale of title information in Cook County, Ill. and Los Angeles County, Calif. Respondent is also required to continue to honor all Chicago Title and Trust Company and Safeco plant access contracts that expire pending divestiture.

Appearances

For the Commission: *Michael Antalics and Andrew Goodson.*

For the respondents: *John C. Christie, Jr., Bell, Boyd, & Lloyd,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Alleghany Corporation, a corporation subject to the jurisdiction of the Commission, through one of its subsidiaries, has entered into an agreement that violates Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. Section 45); that through this agreement Alleghany Corporation has agreed to acquire certain assets of Safeco Corporation; and that such acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18); and it appearing that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. Section 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. Section 45(b)), stating its charges as follows:

I. DEFINITION

1. For purposes of this Complaint, the term "*title plant*" means a privately owned set of records regarding the ownership of and interests in real property that is maintained by obtaining information from the public records on a daily or regular basis and is indexed, posted or otherwise organized to update data regarding specific land

parcels. The term "*title plant information*" means that information contained in and obtained from a title plant.

II. ALLEGHANY CORPORATION

2. Alleghany Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office at Park Avenue Plaza, New York, New York.

3. Alleghany is the sole owner of Chicago Title & Trust Company, which is the sole owner of Chicago Title Insurance Company ("Chicago Title").

4. At all times relevant herein, Alleghany Corporation has been and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission and Clayton Acts, as amended.

III. ACQUISITION

5. On October 10, 1986, Chicago Title & Trust Company entered into an agreement with Safeco Corporation to acquire all of the outstanding shares of Safeco Title Insurance Company ("Safeco"), a wholly-owned subsidiary of Safeco Corporation.

IV. TRADE AND COMMERCE

6. The relevant sections of the country are Cook County, Illinois, and Los Angeles County, California.

7. The relevant line of commerce is the production and sale of title plant information.

8. There are two title plants in Cook County, one of which is wholly-owned by Safeto and one of which is wholly-owned by Chicago Title Insurance Company.

9. There are three title plants in Los Angeles County, one of which is wholly-owned by Safeco Title Insurance Company and one of which is owned jointly by Chicago Title Insurance Company and four other companies.

10. There are no reasonable substitutes for access to title plant information for purposes of issuing title insurance policies in Cook County and Los Angeles County.

11. There are substantial barriers to entry into the creation of title plants in Cook County and Los Angeles County.

12. Through their respective ownership interests, Chicago Title and

Safeco are significant competitors in the production and sale of title plant information in Cook County and Los Angeles County.

V. EFFECTS OF THE ACQUISITION

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

- a. it will eliminate substantial actual competition between Chicago Title and Safeco in the production and sale of title plant information in Cook County and Los Angeles County;
- b. it will provide Chicago Title with a monopoly over title plant information in Cook County;
- c. it will, by virtue of Chicago Title's ownership interest in two of the three title plants in Los Angeles County, increase the possibilities for collusion in the provision of title plant information in Los Angeles County; and
- d. customers of title plant information in Cook County and Los Angeles County will be denied the benefits of free and open competition.

VI. VIOLATION CHARGED

14. The acquisition agreement described in paragraph 5 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45, and the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45.

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 Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act and Clayton Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all 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 a complaint should be issued, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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. Alleghany Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office at Park Avenue Plaza, New York, New York.

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

A. "*Alleghany*" means Alleghany Corporation, its subsidiaries, divisions, groups and affiliates controlled by Alleghany, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

B. "*Safeco*" means Safeco Corporation, its subsidiaries, divisions, groups and affiliates controlled by Safeco, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

C. "*Title plant*" means a privately owned set of records regarding the ownership of and interests in real property that is maintained by obtaining information from the public records on a daily or regular basis, and is indexed, posted or otherwise organized to update data regarding specific land parcels.

D. "*TRI Plant*" means the title plant located in Los Angeles County, California, in which Alleghany maintains an ownership interest.

II.

It is further ordered, That Alleghany shall divest or shall cause to be divested, absolutely and in good faith, all of its right, title and interest in the properties described in paragraphs IIA and IIB. Divestiture shall be made within the times specified in paragraph IIA and IIB, and shall be made only to a buyer or buyers and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable title plants engaged in the production and sale of title plant information, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

A. Safeco's title plant in Cook County and all user or access agreements with that plant shall be divested within twelve months from the date this order becomes final. Computer and other services provided for the plant by Safeco from Safeco's other facilities, at the buyers's option at the time of purchase, will continue to be provided by Alleghany at a commercially reasonable price, for a period of up to three years from the date this order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

B. Either Safeco's title plant in Los Angeles County or Alleghany's interest in the TRI plant in Los Angeles County shall be divested within fourteen months from the date this order becomes final. Alternatively, Alleghany shall abandon its interest in the TRI plant within the same 14 month period. If the Safeco title plant is divested, all user or access agreements with the Safeco plant shall also be divested. If the Safeco title plant in Los Angeles County is divested, computer and other services provided for the plant by Safeco, at the buyer's option at the time of purchase will continue to be provided by Alleghany at a commercially reasonable price for a period of up to three years from the date this order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

III.

It is further ordered, That:

A. If Alleghany has not divested the Safeco Cook County title plant within the twelve month period, Alleghany shall consent to the appointment of a trustee by the Commission pursuant to the order. The appointment of a trustee shall not preclude the Commission from

seeking civil penalties and other relief available to it for any failure by Alleghany to comply with paragraphs IIB through IX of this order.

B. If a trustee is appointed by the Commission pursuant to paragraph IIIA of the order, Alleghany shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Alleghany's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have six months from the date of appointment to submit for prior approval of the Commission the divestiture of the Safeco Cook County title plant.

3. If, at the end of the six month period, the trustee has not submitted for prior approval of the Commission a divestiture of the Safeco Cook County title plant, the trustee shall have an additional twelve month period in which to submit for prior approval of the Commission a divestiture of either the Safeco Cook County title plant or a copy of Alleghany's own computerized Cook County title plant.

4. If the trustee chooses to sell a copy of Alleghany's computerized Cook County title plant pursuant to paragraph IIIB3, the sale shall include copies of all of the computer tapes and other information used by Alleghany in its operation of the computerized title plant, with the exception of the computer hardware, updated in the future on a daily basis until such time as the buyer(s) has established a separate title plant including that information and has, in full operation, the personnel needed to continue updating the plant information without Alleghany's assistance.

5. If at the end of the trustee's 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.

6. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to any undivested assets and Alleghany shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Alleghany shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

7. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest and the Commission's

intention to ensure that a viable, going concern will be divested, but there shall be no minimum price.

8. The trustee shall serve at the cost and expense of Alleghany on such reasonable and customary terms and conditions as the Commissioner may set. The trustee shall account for all monies derived from asset sales and all expenses incurred. After approval by the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Chicago Title & Trust Company and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (percentage of price) that is contingent on the trustee causing the divestiture of the assets and that shall provide an incentive for the trustee to divest the assets as soon as possible.

9. Promptly upon appointment of the trustee, Alleghany shall, subject to the Commission's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and power necessary to permit the trustee to cause divestiture of undivested assets.

10. If the trustee ceases to act or fails to act diligently, the Commission may, on its own or by request of Alleghany, appoint a substitute trustee for the balance of the time periods specified in paragraph IIIB2 and IIIB3, or any extensions thereof.

11. The trustee shall report in writing to Alleghany and the Commission every thirty days concerning the trustee's efforts to accomplish divestiture.

12. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. Alleghany shall reimburse the trustee for the reasonable value of all expenses so incurred.

13. If Alleghany and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the assets, then Alleghany and the trustee shall submit the dispute to the Commission for resolution, but the time periods shall continue to run. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon Alleghany and the trustee.

IV.

It is further ordered, That Alleghany shall not cause or permit the wasting or deterioration of the assets and operations to be divested in

accordance with paragraphs IIA and IIB of this order in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the production and sale of title plant information. In this regard:

A. Alleghany shall maintain the Safeco Cook County title plant and Safeco Los Angeles County title plant to the extent and in the manner maintained by Safeco prior to this acquisition, including but not limited to updating the records contained in the plants on a daily or regular basis such that the plants are as current as possible at all times.

B. Alleghany shall maintain in good faith all contracts for access to the Safeco Cook County title plant and Safeco Los Angeles County title plant subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable to Safeco under the terms of those agreements.

C. Alleghany shall, at the option of the accessor, automatically continue to maintain in good faith on identical terms, conditions and stipulations all contracts for access to the Safeco Cook County title plant that expire by their terms prior to divestiture of that plant for a period lasting until the closing date upon which such divestiture is completed, at which time Alleghany's obligations under such contracts shall cease, or, if divestiture of a copy of Alleghany's own plant as contemplated by paragraph IIIB3 of this order is accomplished, for a period lasting until six months after the closing date upon which such divestiture is completed, at which time Alleghany's obligations under such contracts will cease.

D. Alleghany shall, at the option of the accessor, continue to maintain in good faith on identical terms, conditions and stipulations all contracts for access to its own Cook County title plant that expire by their terms prior to divestiture of either a copy of that plant as contemplated by paragraph IIIB3 of this order or prior to divestiture of the Safeco Cook County title plant, for a period lasting until six months after the closing date upon which either divestiture is completed, at which time Alleghany's obligations under such contracts shall cease.

V.

It is further ordered, That for a period of ten years from the date this order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern,

corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant that services either Cook County, Illinois, or Los Angeles County, California, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, an existing title plant that services either Cook County, Illinois or Los Angeles County, California, without the prior approval of the Federal Trade Commission.

VI.

It is further ordered, That for a period of ten years from the date this order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern, corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, any existing title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, without providing advance written notification to the Federal Trade Commission. 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"). Alleghany shall provide the Notification to the Federal Trade Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). Alleghany shall provide to the Commission supplemental information either in Alleghany's possession or reasonably available to Alleghany. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Alleghany and of the firm Alleghany desires to acquire who negotiated the acquisition agreement, any management or strategic plans discussing the proposed acquisition, and all documents relating to competition for the provision of title plant services in that particular county. If, within the first waiting period, representatives of the Federal Trade Commission make a written request for additional information, Alleghany shall not consummate the acquisition until twenty days after submitting such additional information. 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 provi-

sions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. Section 18A).

VII.

It is further ordered, That acquisitions resulting in an ownership interest of not more than 10% of publicly traded companies, solely for the purpose of investment, are not subject to the requirements of paragraphs V and VI of this order, except that acquisitions resulting in an ownership interest of more than 5% of publicly traded companies, even if solely for the purpose of investment, are subject to the requirements of paragraphs V and VI of this order if such companies, directly or indirectly, have an ownership interest of 5% or more in Tigor Title Insurance Company, Lawyers Title Insurance Corporation, First American Title Insurance Company, Commonwealth Land Title Insurance Company, Transamerica Title Insurance Company, Stewart Title Guaranty Company, Minnesota Title Insurance Company, or TRW, Inc. or any of their successors or assigns.

VIII.

It is further ordered, That Alleghany shall notify the Commission at least thirty days prior to any change in Alleghany 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 that may affect compliance obligations arising out of this order.

IX.

It is further ordered, That:

A. Within thirty days after the order becomes final, and every thirty days thereafter until Alleghany has fully complied with paragraph II of this order, Alleghany shall file with the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order. Such compliance reports shall include, in addition to any other information that the staff of the Federal Trade Commission may reasonably request, a summary of all contacts and negotiations with potential purchasers of the stock, assets, or other rights or interests to be divested under this order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

B. Within one year after the order becomes final, and annually for the next nine years, Alleghany 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, or has complied with this order.

Commissioners Bailey and Azcuenaga were recorded as voting in the negative.

IN THE MATTER OF

JEROME MILTON, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9187. Complaint, Sept. 24, 1984—Decision, Oct. 26, 1987*

This consent order prohibits, among other things, the Chicago, Illinois maker of Shane toothpaste from representing that Shane cures or alleviates the symptoms of canker or cold sores; reduces tooth sensitivity or plaque more effectively than any other toothpaste or oral hygiene product; or cures or alleviates gum problems unless they have reliable evidence that substantiates the representation.

Appearances

For the Commission: *Nancy Warder.*

For the respondents: *Maurice Raizes, Cohon, Raizes, & Regal,*
Chicago, IL.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Jerome Milton, Inc., a corporation, and Jerome Milton Schulman, individually and as an officer of Jerome Milton, Inc., hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jerome Milton, Inc., is an Illinois corporation with its office and principal place of business located at 4350 W. Ohio Street, Chicago, Illinois.

Respondent Jerome Milton Schulman is an officer of Jerome Milton, Inc. He formulates, directs and controls the acts and practices of Jerome Milton, Inc. His address is the same as that of Jerome Milton, Inc.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are engaged in the advertising, offering for sale, sale and distribution of various dietary and health care products, including Shane toothpaste. In connection with the marketing of