

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3646. Complaint, March 21, 1996--Decision, March 21, 1996

This consent order permits Service Corporation International ("SCI"), the largest owner of funeral homes in North America, to acquire Gibraltar Mausoleum Corporation and requires SCI, among other things, to divest, within 12 months, a number of properties, including assets in Amarillo, Texas, and Brevard and Lee Counties, Florida, to Commission-approved acquirers. In addition, the consent order requires SCI, for 10 years, to notify the Commission before acquiring certain similar assets in any of these markets.

Appearances

For the Commission: *Harold Kirtz, Ann Schenof, Katharine Alphin, Daniel Ducore, Paul Davis and William Baer.*

For the respondent: *Michael Byowitz, Wachtell, Lipton, Rosen & Katz, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Service Corporation International ("SCI"), a corporation, through its wholly-owned subsidiary Rocky Acquisition Corp., a corporation, has entered into an agreement with Gibraltar Mausoleum Corporation ("Gibraltar") a corporation, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. "*SCI*" means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents, and representatives.

b. "*Gibraltar*" means Gibraltar Mausoleum Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Gibraltar Mausoleum Corporation, their successors and assigns, and their directors, officers, employees, agents, and representatives.

c. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

d. "*Perpetual care cemetery services*" means the provision of plots of land, mausoleum spaces, and niches for, and the services associated with, including maintenance and upkeep, the final disposition of human remains.

e. "*Crematory services*" means the incineration of human remains.

f. "*Lee County*" means Lee County, Florida.

g. "*Brevard County*" means Brevard County, Florida.

h. "*Amarillo*" means the city of Amarillo, Texas and its immediate environs.

II. THE RESPONDENT

2. Respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway,

Houston, Texas. SCI, whose 1994 revenues were \$1,117,175,000, is the largest funeral home and cemetery company in North America.

III. THE ACQUIRED PARTY

3. Gibraltar is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 9102 N. Meridian Street, Indianapolis, Indiana. Gibraltar is a privately-owned corporation which owns both funeral homes and cemeteries.

IV. JURISDICTION

4. SCI and Gibraltar are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

V. THE PROPOSED ACQUISITION

5. On or about June 7, 1995, SCI entered into an Agreement and Plan of Merger with Gibraltar, in which SCI, via its wholly-owned subsidiary Rocky Acquisition Corp., would acquire 100% of the voting securities of Gibraltar. At the time the voting securities of Gibraltar were valued at \$190 million. In exchange for the merger of Gibraltar into SCI, the shareholders of Gibraltar will receive an aggregate consideration of \$87,984,000 in cash and 3,286,759 shares of SCI common stock. Two of the stockholders will each receive in excess of \$15 million but less than 10% of that stock.

VI. THE RELEVANT MARKETS

6. The relevant lines of commerce in which to evaluate the effects of the acquisition are the provision of funerals, the provision of perpetual care cemetery services, and the provision of crematory services.

7. The three relevant sections of the country in which to evaluate the effects of the acquisition are Lee County, Brevard County, and Amarillo.

VII. MARKET STRUCTURE

8. SCI and Gibraltar both own and operate funeral homes and perpetual care cemeteries in Brevard County and compete in the provision of funerals and perpetual care cemetery services.

9. The markets for funerals and perpetual care cemetery services in Brevard County are highly concentrated, whether measured by the Herfindahl-Hirschmann Index or four firm concentration ratios. Gibraltar and SCI respectively are the first and second largest sellers of funerals and perpetual care cemetery services in the relevant area.

10. SCI and Gibraltar both own and operate funeral homes in Lee County and compete in the provision of funerals.

11. The market for funerals in Lee County is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by four-firm concentration ratios. SCI is the largest seller of funerals in the relevant area and Gibraltar is the third largest.

12. SCI and Gibraltar both own and operate funeral homes, perpetual care cemeteries and crematories in Amarillo and compete in the provision of funerals, perpetual care cemetery services and crematory services.

13. The markets for funerals, perpetual care cemetery services and crematory services in Amarillo are highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by four-firm concentration ratios. SCI is the largest seller of funerals in the relevant area and Gibraltar is the second largest. The two firms own two of the three perpetual care cemeteries in the area, and also own the only two crematories in the area.

VIII. ENTRY

14. Entry into the relevant markets is difficult because of the long period of time required to establish a reputation within a community. The funeral and cemetery industry has expanded slowly because of high entry costs and the long period of time required to establish a loyal family clientele.

15. State and local regulations in the relevant geographic areas of the provision of funerals and the building of new cemeteries and crematories may also inhibit timely entry into these lines of commerce.

IX. COMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION

16. The effects of the proposed acquisition, if consummated, may be to substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual competition between SCI and Gibraltar;
- b. By tending to create a dominant firm in certain of the relevant markets;
- c. By tending to increase the likelihood of coordinated interaction among the remaining firms in other relevant markets; and
- d. By eliminating effective competitors from each of the relevant markets.

X. VIOLATION CHARGED

17. The acquisition described in paragraph five violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition of the voting securities of Gibraltar Mausoleum Corporation by respondent and respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute

an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that a 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. Respondent Service Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

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

ORDER

I.

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

A. "*Respondent*" or "*SCI*" means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents, and representatives.

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

C. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and

viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

D. "*Funeral establishment*" means the assets and businesses of a facility that provides funerals.

E. "*Perpetual care cemetery services*" means the provision of plots of land, mausoleum spaces, and niches for, and the services associated with, including maintenance and upkeep, the final disposition of human remains.

F. "*Cemetery*" means the assets and businesses of a facility that provides perpetual care cemetery services.

G. "*Crematory services*" means the incineration of human remains.

H. "*Crematory*" means the assets and businesses of a facility that performs cremations.

I. "*Assets and businesses*" include all assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, cemetery or crematory, including, but not limited to, the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All vendor lists, management information systems and software used on-site, and all catalogs, sales promotion literature and advertising materials, except that SCI may delete from such materials the SCI, Gibraltar or Schooler Gordon names, trademarks or other identification;
3. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
4. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
5. All right, title and interest in the trade name of each funeral establishment, cemetery or crematory, but excluding the trade name "Schooler Gordon"; and
6. All right, title and interest in the books, records and files pertinent to any of the properties to be divested.

J. "*Properties to be divested*" means all of the assets and businesses of the following funeral establishments, cemeteries and crematories:

1. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home) 315 East Fifth Street Amarillo, Texas.
2. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home) 1505 Martin Street Amarillo, Texas.
3. Memory Gardens of Amarillo & Crematory I-27 & McCormack Road Amarillo, Texas.
4. North Brevard Funeral Home 1450 Norwood Avenue Titusville, Florida.
5. Oaklawn Memorial Gardens & Mausoleum 2116 Garden Street Titusville, Florida.
6. Metz Funeral Home 1306 Lafayette Street Cape Coral, Florida.
7. Harvey-Englehardt Funeral Home 1600 Colonial Boulevard Ft. Myers, Florida.

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, the properties to be divested.

B. Respondent shall divest the properties to be divested 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 properties to be divested is to ensure the continued use of the properties to be divested in the same business in which the properties to be divested are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the properties to be divested, respondent shall take such actions as are necessary to maintain the viability and marketability of the properties to be divested and to prevent the

destruction, removal, wasting, deterioration, or impairment of any of the properties to be divested except for ordinary wear and tear.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all the properties to be divested as required by this order.

III.

It is further ordered, That:

A. If SCI has not divested, absolutely and in good faith and with the Commission's prior approval, the properties to be divested within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the properties to be divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, SCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III A of this order, 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 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 and its counsel 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 properties to be divested.

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 B.3 to accomplish the divestiture, 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 properties to be divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. 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. 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 respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity

or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the properties to be divested.

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 wanton acts, or bad faith by the trustee.

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

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the properties to be divested.

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

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, 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 concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the sale of funerals, perpetual care cemetery services, or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery services in Brevard County, Florida; or the sale of funerals in Lee County, Florida; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) the sale of funerals, perpetual care cemetery services or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery services in Brevard County, Florida; or the sale of funerals in Lee County, Florida.

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 shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate,

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

This paragraph IV shall not apply to new facilities constructed or developed by respondent.

V.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of paragraphs II and III 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 paragraphs II and III 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 paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. 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 divestiture as required by this order.

B. One year (1) 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 is complying with paragraph IV of this order.

VI.

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 emergence of a successor corporation, or the creation or dissolution

of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, 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 representative or 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 other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers 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 Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive office located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, "Parties").

PREMISES

Whereas, on or about June 7, 1995, SCI entered into an Agreement and Plan of Merger with Gibraltar Mausoleum Corporation ("Gibraltar"), in which (1) Gibraltar would be merged into Rocky Acquisition Corp., a wholly-owned subsidiary of SCI, and

(2) Gibraltar shareholders would receive SCI common stock and other consideration specified therein ("Acquisition"); and

Whereas, both SCI and Gibraltar own interests in funeral establishments that provide funerals, cemeteries that provide perpetual care cemetery services, and crematories that provide cremations to consumers; and

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

Whereas, if the Commission accepts the Agreement Containing Consent Order ("SCI/Gibraltar Consent Agreement"), the Commission must place the SCI/Gibraltar Consent Agreement on the public record for public comment 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* and holding separate the assets and businesses of certain funeral establishments, cemeteries, and a crematory ("Hold Separate Assets") listed in Exhibit A attached hereto and made a part hereof until the divestitures contemplated by the SCI/Gibraltar Consent Agreement have been made, divestitures 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 purposes of this Agreement are to: (1) preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Gibraltar Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments, cemeteries, and a crematory as specified in the SCI/Gibraltar Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

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

Whereas, SCI 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 unless the Commission determines to reject the

SCI/Gibraltar Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Gibraltar Consent Agreement to which it is annexed and made a part, and the order, once it becomes final, and in the event that the required divestitures are not accomplished, to appoint a trustee to seek divestiture of the properties to be divested pursuant to the SCI/Gibraltar Consent Agreement, as follows:

1. SCI agrees to execute and be bound by the SCI/Gibraltar Consent Agreement.

2. SCI shall hold the Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Gibraltar Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Gibraltar Consent Agreement are accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions and for the periods set forth in Exhibit A:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the consent order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. During the term of this Agreement, SCI shall provide the Hold Separate Assets with the same or better quality of support services, including without limitation, payroll processing, accounting, management information systems, and computer support, as SCI or Gibraltar provided to the Hold Separate Assets prior to the acquisition.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for each funeral establishment, cemetery and crematory within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' material confidential information not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Gibraltar or itself, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

3. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Gibraltar stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Gibraltar that it may hold, or seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon

written request with reasonable notice to SCI made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access, during office hours of SCI, 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 SCI relating to any matters contained in this Agreement; and

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

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

EXHIBIT A

HOLD SEPARATE ASSETS

A. The following funeral establishment, cemetery, and crematory shall be held separate until the divestitures of the two Blackburn-Shaw Funeral Homes (now known as Schooler-Gordon Blackburn-Shaw Funeral Homes) and Memory Gardens of Amarillo & Crematory pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Memorial Park Funeral Home, 6969 I-40 East, Amarillo, Texas
2. Memorial Park Cemetery & Crematory, 6969 I-40 East, Amarillo, Texas

B. The following cemetery and funeral establishments shall be held separate until their divestiture pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Oaklawn Memorial Gardens and Mausoleum, 2116 Garden Street, Titusville, Florida
2. North Brevard Funeral Home, 1450 Norwood Avenue, Titusville
3. Metz Funeral Home, 1306 Lafayette Street, Cape Coral, Florida
4. Harvey-Englehardt Funeral Home, 1600 Colonial Boulevard, Ft. Myers, Florida

Complaint

121 F.T.C.

IN THE MATTER OF

CALIFORNIA DENTAL ASSOCIATION

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

Docket 9259. Complaint, July 9, 1993--Final Order, March 25, 1996

This final order prohibits the 19,000 member professional association from restricting, regulating, impeding, declaring unethical, or interfering with the advertising or publishing of the prices, terms or conditions of sale of dentists' services and the solicitation of patients, patronage or contracts to supply dentists' services. In addition, the final order requires, among other things, the respondent to update its Code of Ethics to comply with the provisions of the Commission's order and to publish the Commission's order and complaint, as well as an announcement describing the order's effect, in the California Dental Association Journal.

Appearances

For the Commission: *Sally L. Maxwell, Markus Meier, Gary H. Schorr, Linda B. Blumenreich, George R. Bellack, Elizabeth R. Hilder, David R. Pender and Robert Leibenluft.*

For the respondent: *Peter Sfikas and Tamra S. Kempf, Bell, Boyd & Lloyd, Chicago, IL.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the California Dental Association, a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission 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 California Dental Association ("CDA" or "respondent") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its principal office and place of business is located at 818 "K" Street Mall (Post Office Box 13749), Sacramento, California.