

## IN THE MATTER OF

## LANDAMERICA FINANCIAL GROUP, INC.

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-3808. Complaint, May 20, 1998--Decision, May 20, 1998*

This consent order requires, among other things, the Virginia-based corporation to divest, to Commission-approved acquirers, prior to the acquisition of Reliance Group, all of its rights, title and interest in certain title plants serving designated areas. In addition, the consent order requires the respondent to also divest all user or access agreements pertaining to each divested title plant, and to continue to provide computer and other services previously provided for each divested title plant.

*Appearances*

For the Commission: *Patrick Roach, Michael Antalics and William Baer.*

For the respondent: *John Graybeal, Parker, Poe, Adams & Bernstein, Raleigh, N.C.*

## 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 LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation ("LTC"), a corporation subject to the jurisdiction of the Commission, directly and through one of its subsidiaries, has entered into an agreement for the acquisition of certain assets that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and that such acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18) and 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, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, (15 U.S.C. 45(b)), stating its charges as follows:

## I. DEFINITIONS

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

a. "*Respondent*" or "*LTC*" means LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by LandAmerica Financial Group, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

b. "*Reliance Group*" means Reliance Group Holdings, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Reliance Group Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

c. "*Title plant*" means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

d. "*Title plant services*" means providing selected information contained in a title plant to a customer or user or permitting a customer or user to have access to information contained in a title plant.

## II. LANDAMERICA FINANCIAL GROUP, INC.

2. LTC is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its office and principal place of business located at 6630 West Broad Street, Richmond, Virginia.

3. LTC is the sole owner of Lawyers Title Insurance Corporation.

4. LTC is, and at all times relevant herein has been, a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

## III. THE ACQUISITION

5. On December 11, 1997, LTC and its subsidiary Lawyers Title Insurance Corporation entered into an Amended and Restated Stock Purchase Agreement pursuant to which LTC agreed to purchase the

title insurance operations of Reliance Group, including Commonwealth Land Title Insurance Company and Transnation Title Insurance Company.

#### IV. TRADE AND COMMERCE

6. The relevant line of commerce is the production and/or sale of title plant services. Title plant services are used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes.

7. The relevant sections of the country are:

Washington, District of Columbia  
Brevard County, Florida  
Broward County, Florida  
Clay County, Florida  
Indian River County, Florida  
Pasco County, Florida  
St. Johns County, Florida  
St. Lucie County, Florida  
Ingham County, Michigan  
Oakland County, Michigan  
Wayne County, Michigan  
St. Louis City & County, Missouri

8. The relevant markets set forth in paragraphs six and seven are highly concentrated.

9. There are no commercially reasonable substitutes for title plant services in the relevant markets set forth in paragraphs six and seven.

10. Entry into the relevant markets is difficult or unlikely to occur at a sufficient scale to deter or counteract the effect of the acquisition described in paragraph five.

11. LTC and Reliance Group, through its title insurance operations, are actual competitors in the relevant markets set forth in paragraphs six and seven.

#### V. EFFECT OF THE ACQUISITION

12. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 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 direct competition between LTC and Reliance Group in the relevant markets;
- b. By increasing the likelihood that LTC will unilaterally exercise market power in the relevant markets; and
- c. By increasing the likelihood of collusion in the relevant markets.

13. All of the above increase the likelihood that firms in the relevant markets will increase prices and restrict output both in the near future and in the long term.

#### VI. VIOLATIONS CHARGED

14. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

15. The acquisition described in paragraph five, if consummated, would constitute a violation 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.

#### DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by the respondent LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, of certain assets of Reliance Group Holdings, Inc., 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 the Clayton Act; and

The respondent 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 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 the 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 described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its office and principal place of business located at 6630 West Broad Street, Richmond, Virginia.

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 "*LTC*" means LandAmerica Financial Group, Inc., formerly known as Lawyers Title Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by LandAmerica Financial Group, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. The term "*Reliance Group*" means Reliance Group Holdings, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Reliance Group Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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

D. The term "*title plant*" means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

E. The "*Acquisition*" means the acquisition of the title insurance operations of Reliance Group by LTC, in exchange for the acquisition by Reliance Group of a minority voting interest in LTC and other

consideration, as described in the Amended and Restated Stock Purchase Agreement dated as of December 11, 1997.

## II.

*It is further ordered, That:*

A. Respondent shall divest, absolutely and in good faith, within six months from the date the agreement containing consent order is signed by respondent, all of its rights, title and interest in the properties described below:

1. For each of the following counties or other local jurisdictions, either the rights, title and interest prior to the Acquisition of LTC or the rights, title and interest prior to the Acquisition of Reliance Group in all title plants serving such county or local jurisdiction:

Washington, District of Columbia  
Brevard County, Florida  
Broward County, Florida  
Clay County, Florida  
Indian River County, Florida  
Pasco County, Florida  
St. Johns County, Florida  
St. Lucie County, Florida  
Ingham County, Michigan  
Oakland County, Michigan  
Wayne County, Michigan  
St. Louis City & County, Missouri

2. Respondent shall also divest all user or access agreements pertaining to each divested title plant. At the acquirer's option at the time of purchase, and at a commercially reasonable price, LTC shall continue to provide computer and other services previously provided for each divested title plant by LTC or Reliance Group, for a period up to three years from the date such title plant is divested, and shall assist the buyer in transferring the computer and other services to any other provider of such services.

B. Respondent shall divest the properties specified in paragraph II.A 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 is to ensure the continued use of the divested title plants as ongoing, viable title plants used in the production and/or sale of title information, and

to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the properties as specified in paragraph II.A, respondent shall take such actions as are necessary to maintain the viability and marketability of such properties and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the properties. LTC shall comply with the following requirements with respect to all title plants serving the counties or other local jurisdictions listed in paragraph II.A in which either LTC or Reliance Group has any rights, title or interest, during the period prior to the completion of the required divestiture for each such county or other local jurisdiction:

1. LTC shall cause the title plants to be maintained, including but not limited to updating the records and/or indices contained in the title plants, to the extent and in the manner maintained prior to the Acquisition.

2. LTC shall cause to be maintained in good faith all contracts or agreements for access to the title plants 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 under the terms of such contracts or agreements.

3. LTC shall cause access to the title plants to continue to be provided to accessors whose contracts or agreements for access to the title plants expire by their terms prior to the completion of the required divestiture, in good faith on terms, conditions and stipulations identical to those set forth in such contracts or agreements.

### III.

*It is further ordered, That:*

A. If LTC has not divested, absolutely and in good faith and with the Commission's prior approval, all of the properties specified in paragraph II.A within six months from the date the agreement containing consent order is signed by respondent, the Commission may appoint a trustee to accomplish the required divestitures. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, LTC 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(l) 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 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 accomplish the divestiture of the properties specified in paragraph II.A that have not been divested by LTC, including the authority, subject to the approval of the Commission, with respect to any of the listed counties or local jurisdictions as to which divestiture has not been completed by LTC, to determine whether to divest the rights, title and interest prior to the Acquisition of LTC or the rights, title and interest prior to the Acquisition of Reliance Group in title plants serving such county or local jurisdiction.

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 accomplish the divestitures 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 divestitures, 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 accomplished 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 specified in paragraph II.A that have not been divested by LTC, and 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 divestiture. Any delays in divestiture caused by respondent shall extend the trustee's period 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 expeditiously 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 completing divestiture of the properties specified in paragraph II.A that have not been divested by LTC.

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 specified in paragraph II.A that have not been divested by LTC.

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:*

A. 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:

1. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving any county or other local jurisdiction specified in paragraph II.A, where at the time of the acquisition the respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction; or

2. Acquire any assets (other than in the ordinary course of business) or ownership interest in a title plant serving any county or other local jurisdiction specified in paragraph II.A, where at the time of the acquisition the respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction.

Notification is not required to be made pursuant to this paragraph IV with respect to any acquisition by respondent of a copy of title records or other information from a person or entity which thereafter retains the original information in its ownership and control, and

where competition in the ordinary course between the parties is not otherwise restrained.

B. Notification pursuant to this paragraph 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. In addition to the information required to be supplied on such Notification and Report Form pursuant to the above-referenced regulation, the respondent shall submit the following supplemental information in respondent's possession or reasonably available to respondent:

1. The name of each county or local jurisdiction to which the terms of paragraph IV.A.1 or 2 are applicable;
2. A description of the title plant assets or interests that are being acquired; and
3. With respect to each title plant serving each county or local jurisdiction to which the terms of paragraph IV.A.1 or 2 are applicable (including title plants in which the respondent has a direct or indirect ownership interest as well as other title plants known to the respondent) the names of all persons or entities who hold any direct or indirect ownership interest in the title plant and the percentage interest held by each; the time period covered by each category of title records contained in the title plant; whether the respective categories of title records are regularly being updated; the indexing system or systems used with respect to each category of title records; and the names of all persons, including but not limited to title insurers or agents, who have access to the title plant.

C. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information or documentary material. 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.

## V.

*It is further ordered, That:*

A. Within thirty (30) days after the date this order becomes final and every thirty (30) 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.

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, upon written request, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

IN THE MATTER OF  
ROCHE HOLDING LTD.

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-3809. Complaint, May 22, 1998--Decision, May 22, 1998*

This consent order requires, among other things, the Switzerland-based corporation to divest Corange Limited's U.S. and Canadian Retavase businesses to Centecor Inc., and divest, to a Commission-approved acquirer, Corange's worldwide drug abuse testing reagent business, which uses Cloned Enzyme Donor Immuno-Assay ("CEDIA") reagents, and grant a non-exclusive license to all other CEDIA reagents.

*Appearances*

For the Commission: *Christina Perez, Andrew Topps, Ann Malester and William Baer.*

For the respondent: *Ronan Harty, Davis, Polk & Wardwell, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Roche Holding Ltd ("Roche"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire 100% of the voting stock of Corange Limited ("Corange"), a corporation subject to the jurisdiction of the Commission, in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Cardiac Thrombolytic Agents*" means all thrombolytic agents used to dissolve blood clots.
2. "*DAT Reagents*" means all diagnostic reagents used to test for any drug of abuse.