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Complaint

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-3869. Complaint, April 22, 1999--Decision, April 22, 1999

This consent order, among other things, permits Service Corporation International, the largest owner of funeral homes and cemeteries in the world, to acquire Equity Corporation International and requires the respondent to divest certain funeral service and cemetery properties to Carriage Services, Inc.

Participants

For the Commission: *Joseph Brownman, Marc Schneider, Barbara Shapiro, Harold Kirtz, James Rohrer, Maridel Freshwater Hoagland, Phillip Broyles, David von Nirschl, Roberta Baruch, William Baer, Louis Silvia, Jeffrey Fischer, and Christopher Garmon.*

For the respondent: *Marcus Watts and Annette Trip, Liddell, Sapp, Zively, Hill & LaBoon, Houston, TX.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Service Corporation International ("SCI"), and Equity Corporation International ("ECI"), a corporation, have entered into an agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that if the terms of such agreement, were they to be satisfied, would result in a violation of Section 5 of the Federal Trade Commission Act, and Section 7 of the Clayton Act, 15 U.S.C. 18, 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. RESPONDENT SERVICE CORPORATION INTERNATIONAL

1. 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. Respondent SCI had sales in 1997 of approximately \$2.4 billion.

2. Respondent SCI is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

3. Respondent SCI is, and at all times relevant herein has been, engaged in the provision of (a) funeral services in the funeral service relevant geographic markets and (b) cemetery services in the cemetery service relevant geographic markets.

II. EQUITY CORPORATION INTERNATIONAL

4. ECI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 415 South First Street, Lufkin, Texas. ECI had sales in 1997 of approximately \$135 million.

5. ECI at all times relevant herein has been engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

6. ECI at all times relevant herein has been engaged in the provision of (a) funeral services in the funeral service relevant geographic markets and (b) cemetery services in the cemetery service relevant geographic markets.

III. THE PROPOSED ACQUISITION

7. On or about August 6, 1998, respondent SCI and ECI entered into a formal agreement for respondent SCI to acquire ECI. That agreement was subsequently amended on or about December 14, 1998. The price is approximately \$578 million.

IV. TRADE AND COMMERCE

8. The relevant lines of commerce in which to analyze the proposed acquisition are (a) funeral services and (b) cemetery services.

9. The relevant sections of the country in which to analyze the proposed acquisition in connection with the provision of funeral services, and the total dollar volume in sales in each market, is as follows:

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<u>Funeral Service Markets</u>	<u>Size of Market</u>
a. Columbus, Georgia, & Phenix City, Alabama	\$14 million
b. Evansville, Indiana	\$11 million
c. Jacksonville Beach, Florida	\$1.8 million
d. Roseville, California	\$1.2 million
e. Ruskin and Sun City Center, Florida	\$1.6 million
f. West Pasco County & Tarpon Springs, Florida	\$7 million

10. The relevant sections of the country in which to analyze the proposed acquisition in connection with the provision of cemetery services, and the total dollar volume in sales in each market, is as follows:

<u>Cemetery Service Markets</u>	<u>Size of Market</u>
a. Broward County, Florida	\$14.5 million
b. Chattanooga, Tennessee, and the neighboring north Georgia suburbs	\$4.3 million
c. Citrus County, Florida	\$1 million
d. Corpus Christi, Texas	\$3.8 million
e. Eugene and Springfield, Oregon	\$1.8 million
f. North Richmond, Virginia, and the northern, eastern and western suburbs of Richmond	\$3.6 million
g. South Bay area of San Diego, California	\$7.3 million
h. Summit County, Ohio	\$11 million

V. ENTRY CONDITIONS

11. Entry into the relevant markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects.

VI. CONCENTRATION

12. The relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by two-firm or four-firm concentration ratios.

(a) In the funeral service markets:

(1) In Columbus, Georgia, and Phenix City, Alabama, the HHI will increase from about 2200 to about 3400;

(2) In Evansville, Indiana, the HHI will increase from about 2750 to about 3400;

(3) In Jacksonville Beach, Florida, the HHI will increase from about 7450 to about 10,000, resulting in a monopoly;

(4) In Roseville, California, the HHI will increase from about 5200 to about 10,000;

(5) In Ruskin and Sun City Center, Florida, the HHI will increase from about 3955 to about 6075, resulting in a duopoly;

(6) In West Pasco County and Tarpon Springs, Florida, the HHI will increase from about 2930 to about 4050.

(b) In the cemetery service markets:

(1) In Broward County, Florida, the HHI will increase from about 2800 to about 3750;

(2) In Chattanooga, Tennessee, and the neighboring north Georgia suburbs, the HHI will increase from about 2900 to about 5030;

(3) In Citrus County, Florida, the HHI will increase from about 5840 to about 10,000, resulting in a monopoly;

(4) In Corpus Christi, Texas, the HHI will increase from about 3550 to about 5050, resulting in a duopoly;

(5) In Eugene and Springfield, Oregon, the HHI will increase from about 4400 to about 4770;

(6) In North Richmond, Virginia, and the northern, eastern and western suburbs of Richmond, the HHI will increase from about 2760 to about 4530;

(7) In the South Bay area of San Diego, California, the HHI will increase from about 3970 to about 4660;

(8) In Summit County, Ohio, the HHI will increase from about 2350 to about 3450.

VII. EFFECTS OF THE ACQUISITION

13. The acquisition may substantially lessen competition in the relevant markets in the following ways, among others:

(a) By eliminating direct competition between respondent and ECI;

(b) By increasing the likelihood that respondent will unilaterally exercise market power; and

(c) By increasing the likelihood of, or facilitating, collusion or coordinated interaction;

each of which increases the likelihood that the prices of funeral services or cemetery services will increase, and that services to customers of funeral services or cemetery services will decrease.

VIII. VIOLATIONS CHARGED

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

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Service Corporation International ("SCI"), hereinafter sometimes referred to as "respondent," of the outstanding voting securities of Equity Corporation International, and respondent having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondent with violations of the Clayton Act and Federal Trade Commission Act;

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 complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 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 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.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over 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 directors, officers, employees, agents, representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by SCI, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

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

C. "*Acquisition*" means the proposed acquisition by SCI of Equity Corporation International.

D. "*Funeral Service*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: removal of the body from the place of death; 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 arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

E. "*Cemetery Service*" means a group of goods and services provided for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, or disposition in a niche.

F. "*Assets To Be Divested*" consists of the businesses identified in Schedule A, attached to this order and made a part hereof, and all assets, leases, properties, permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the businesses operated at those locations.

G. "*Carriage*" means Carriage Services, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 1300 Post Oak Boulevard, Houston, Texas, and its subsidiary, Carriage Funeral Holdings, Inc., a Delaware Corporation operating and doing business at the same address as Carriage Services, Inc.

H. "*Carriage Agreement*" means the December 18, 1998, asset purchase agreement between respondent SCI and Carriage for the sale or assignment by respondent to Carriage of all Schedule A Assets.

II.

It is further ordered, That:

A. Respondent SCI shall divest absolutely and in good faith the Assets To Be Divested to:

1. Carriage, pursuant to the Carriage Agreement, which agreement shall not be interpreted so as to vary or contradict any of the terms of this order or the Asset Maintenance Agreement attached to this order and made a part hereof as Appendix I, no later than

(a) One hundred twenty (120) days from the date on which SCI signs the agreement containing consent order, or

(b) Seven (7) days after the Commission issues its order, whichever is earlier; or

2. An acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, within four (4) months of the date on which the Commission issues its order.

B. If respondent SCI submits any application for approval of a divestiture pursuant to paragraph II.A.2., respondent shall also provide a complete copy of such application to the Attorney General of each state in which any of the Assets To Be Divested are located. The purpose of this requirement is to allow the Attorney General of any state in which such proposed divestiture assets are located to provide information to the Commission to aid the Commission in its review and action upon each such application.

C. In each of the fourteen (14) geographic areas identified in Schedule A, attached, respondent shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Assets To Be Divested, pending the divestiture of the assets required to be divested pursuant to paragraph II.A. of this order in that particular geographic area, and preserve the ability of these assets to compete at the same levels of sales, profitability, and market share as prior to the Acquisition, and shall not permit the destruction, removal, wasting, deterioration, or impairment of any of these assets, except for ordinary wear and tear that does not affect their viability, marketability, or competitiveness, and shall transfer each asset required to be divested pursuant to Section II of this order to a Commission-approved acquirer in a manner that preserves the asset's marketability, viability, and competitiveness. Respondent SCI shall comply with all terms of the Asset Maintenance Agreement, attached to this order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as respondent has divested all of the Assets To Be Divested as required by this order.

D. The purposes of this Section II are to remedy the lessening of competition resulting from the Acquisition, as alleged in the Commission's complaint, and to ensure the continuation of the Assets To Be Divested as ongoing, viable enterprises engaged in the same businesses in which they are engaged at the time of the Acquisition.

III.

It is further ordered, That:

A. If respondent has not divested, absolutely and in good faith, the Assets To Be Divested as required by paragraph II.A. of this order, the Commission may appoint one or more trustees to accomplish the required divestitures, at no minimum price, to an acquirer or acquirers that receive(s) the prior approval of the Commission, and in a manner that receives the prior approval of the Commission. Each trustee shall be appointed to accomplish the divestitures for one or more of the geographic areas identified in Schedule A.

B. 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, the respondent shall consent to the appointment of a trustee in such action.

C. Neither the appointment of a trustee nor a decision not to appoint a trustee shall preclude the Commission from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to paragraphs III.A. or III.B. 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 divest the Assets 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 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.D.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 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 Assets 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 divestiture. 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 expeditiously at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Section 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 Assets 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 divestitures required by this order.

11. In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested with respect to any geographic area in a manner consistent with the Commission's purposes as described in paragraph II.D., the trustee may divest such additional assets of respondent in that geographic area as necessary to satisfy the requirements of this order.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

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

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, acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, or any assets used or previously used (and still suitable for use), engaged in at the time of such acquisition, or within the two (2) years preceding such acquisition engaged in the provision of

1. Funeral Services in the following geographic areas:

(a) Phenix City, Alabama, and Columbus, Georgia, including Muscogee County, Georgia, Phenix City, Alabama, and 15-miles out from Muscogee County and Phenix City limits;

(b) Evansville, Indiana, including Posey, Vanderburgh, and Warrick Counties, Indiana;

(c) Jacksonville Beach, Florida, including Duval County east and south of the St. Johns River, and a 15-mile radius into St. Johns County from the southernmost county line of Duval County, Florida;

(d) Roseville, California, including Placer County, and Sacramento County north of the American and Sacramento Rivers and including the City of Folsom, California;

(e) Ruskin and Sun City Center, Florida, including Hillsborough County east of Tampa Bay and south of the city limits of Riverview, Florida; and

(f) West Pasco County and Tarpon Springs, Florida, including all of Pasco County west of Interstate 75, Florida, and Tarpon Springs, Florida.

2. Cemetery Services in the following geographic areas:

(a) Broward County, Florida;

(b) Chattanooga, Tennessee, and the neighboring north Georgia suburbs of Chattanooga, including Hamilton County, Tennessee, and Catoosa and Walker Counties, Georgia;

(c) Citrus County, Florida;

(d) Corpus Christi, Texas, including Nueces County, Texas;

(e) Eugene and Springfield, Oregon, including Lane County, Oregon;

(f) North Richmond, Virginia, and the northern, eastern and western suburbs of Richmond, including the City of Richmond, and Goochland, Hanover and Henrico Counties, Virginia;

(g) South Bay area of San Diego, California, including the area of San Diego County south of the northern city limits of the City of San Diego and a line from the northeast corner of the San Diego city limits eastward to the eastern boundary of San Diego County; and

(h) Summit County, Ohio.

B. The aforesaid 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 (30) 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 CFR 803.20), respondent shall not consummate the transaction until twenty (20) 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.

C. Within three (3) business days of any notification to the Commission required by paragraphs IV.A. and IV.B. of this order, respondent shall deliver a copy of the Notification, return receipt requested, to the office of the Attorney General of each state in which any assets are located with respect to which notification to the Commission is required under paragraphs IV.A and IV.B.

V.

It is further ordered, That:

A. Within thirty (30) days of the date on which the respondent signs the Agreement Containing Consent Order and every thirty (30) days thereafter until respondent has fully complied with the provisions of Sections 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 Sections II, III, and IV 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 Sections II, III, and IV of the order, including a description of all substantive contacts or negotiations for the divestitures 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 (1) year from the date on which this order is issued, annually for the next nine (9) years on the anniversary of the date this order is issued, 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 Section IV of this order. Said report shall include, among other things, copies of all return receipts of all Notification forms sent to any state offices in compliance with paragraph IV.C.

VI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, sale resulting in the emergence of a successor entity, or the creation or dissolution of subsidiaries or any other change 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 to counsel, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect any facility and 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 counsel for respondent, and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

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Decision and Order

SCHEDULE A

"ASSETS TO BE DIVESTED"

1. The following Funeral Service assets -

(a) In the Phenix City, Alabama/Columbus, Georgia, geographic area: (1) Vance Memorial Chapel, 3738 Highway 431 North, Phenix City, Alabama 36867; and (2) Vance Memorial Chapel, 2919 Hamilton Road, Columbus, Georgia 31904

(b) In the Evansville, Indiana, geographic area: Miller & Miller Colonial Chapel, 219 East Franklin Street, Evansville, Indiana 47711;

(c) In the Jacksonville Beach, Florida, geographic area: Beaches Funeral Home, 3600 South 3rd Street, Jacksonville Beach, Florida 32250;

(d) In the Roseville, California, geographic area: Cochrane's Chapel of the Roses, 103 Lincoln Street, Roseville, California 95678;

(e) In the Ruskin/Sun City Center, Florida, geographic area: Family Funeral Care Funeral Home, 1851 Rickenbacker Road, Sun City Center, Florida 33573; and

(f) In the West Pasco County, Florida, and Tarpon Springs, Florida, geographic area: Michels & Lundquist Funeral Home, 130 State Road 54, New Port Richey, Florida 34652; and

2. The following Cemetery Service assets -

(a) In the Broward County, Florida, geographic area: (1) Evergreen Cemetery, 1300 S.E. 10th Avenue, Fort Lauderdale, Florida 33316; (2) Lauderdale Memorial Park, 2001 S.W. 4th Avenue, Fort Lauderdale, Florida 33315; and (3) Sunset Memorial Gardens, 3201 19th Street, Fort Lauderdale, Florida 33311;

(b) In the Chattanooga, Tennessee, and the neighboring north Georgia suburbs of Chattanooga geographic area: (1) Lakewood Memory Gardens East Cemetery, 4621 Shallowford Road, Chattanooga, Tennessee 37411; (2) Lakewood Memory Gardens West Cemetery, 3509 Cummings Road, Chattanooga, Tennessee 37419; and (3) Lakewood Memory Gardens South Cemetery, 627 Greens Lake Road, Rossville, Georgia 30741;

(c) In the Citrus County, Florida, geographic area: Fountains Memorial Park, 4890 South Suncoast Boulevard, Homosassa Springs, Florida 34447;

(d) In the Corpus Christi, Texas, geographic area: Rose Hill Memorial Park, 2731 Comanche, Corpus Christi, Texas 78408;

(e) In the Eugene/Springfield, Oregon, geographic area: Sunset Hills Memorial Gardens, 4810 South Willamette Street, Eugene, Oregon 97405;

(f) In the North Richmond, Virginia, and the northern, eastern, and western suburbs of Richmond geographic area: Forest Lawn Cemetery, 4000 Pilots Lane, Richmond, Virginia 23222;

(g) In the South Bay area of San Diego, California, geographic area: LaVista Memorial Park, 3191 Orange Street, National City, California 91951; and

(h) In the Summit County, Ohio, geographic area: Greenlawn Memorial Park, 2580 Romig Road, Akron, Ohio 44320;

such assets to include, but not be limited to,

1. All rights, titles and interests in and to owned or leased real property, together with all appurtenances, licenses and permits, including property adjoining any cemetery property, whether held unconditionally or through an option or other device;

2. All machinery, fixtures, equipment, furniture, tools, rolling stock, and other tangible personal property;

3. All rights, titles and interests in all trade names; provided however that, with respect to the trade name "Family Funeral Care" associated with the Family Funeral Care Funeral Home located at 1851 Rickenbacker Road, Sun City Center, Florida 33573, the "Family Funeral Care" trade name shall be available for use by the acquirer for a period of 24 months;

4. All rights, titles and interests in the books, records and files pertinent to the Assets to be Divested;

5. All vendor lists, management information systems, software, catalogs, sales promotion literature, and advertising materials; and

6. All rights, titles, and interests 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.

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement is by and between Service Corporation International, ("SCI"), 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 77019, and the Federal Trade 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.*

PREMISES FOR AGREEMENT

Whereas, on or about August 6, 1998, SCI entered into an agreement with Equity Corporation International ("ECI"), in which SCI agreed to acquire ECI (the "Acquisition"); and

Whereas, both SCI and ECI own or operate assets that provide funeral services or cemetery services to consumers; and

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

Whereas, if the Commission accepts the Agreement Containing Consent Order to which this Appendix I is attached, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules of Practice; and

Whereas, the purpose of this agreement and of the Consent Order is to preserve the Assets To Be Divested pending their divestiture to an acquirer or acquirers approved by the Commission, under the terms of the Consent Order, in order to remedy any anticompetitive effects 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, 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, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order,

it will terminate SCI's obligation to give twenty (20) days' notice to the Commission's staff prior to consummating the Acquisition, the parties agree as follows:

TERMS OF AGREEMENT

1. SCI agrees to execute, and upon acceptance by the Commission of the Agreement Containing Consent Order for public comment agrees to be bound by, the Consent Order.

2. SCI agrees that from the date this agreement is accepted until the earliest of the dates listed in subparagraphs 2.a and 2.b, it will comply with the provisions of this agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. On the day the divestitures set out in the Consent Order have been completed.

3. SCI shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, as listed in Schedule A of the Agreement Containing Consent Order, and shall not cause the wasting or deterioration of these assets, nor shall it cause the assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the marketability, viability, or competitiveness of the Assets. SCI shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use its best efforts to preserve the existing relationships with each businesses' suppliers, customers, employees and others having business relations with such businesses, in the ordinary course of their business and in accordance with past practice. SCI shall not terminate the operation of any of the businesses identified within the Assets To Be Divested. SCI shall use its best efforts to keep the organization and properties of each of the businesses identified in the Assets To Be Divested intact, including current business operations, physical facilities, working conditions and a work force of equivalent size, training and expertise associated with each business. Included in the above obligations, SCI shall, without limitation:

- a. Maintain all operations and not reduce hours at any business;
- b. Make all payments required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations, in a manner consistent with past practice;
- c. Maintain each businesses' books and records;
- d. Not display any signs or conduct any advertising that indicate that any business is moving its operations to another location or that the business will close;
- e. Not change or modify in any material respect the existing advertising practices, programs and policies for any business, other than changes in the ordinary course of business consistent with past practice for the business not being closed or relocated; and
- f. Not transfer any on-site employees of any business, as of the date this agreement is signed by SCI, to any other business or location, other than transfers in the ordinary course of business consistent with past practice.

4. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of any or all of the Assets To Be Divested, or to seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. SCI also waives all rights to contest the validity of this agreement.

5. 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 counsel for SCI, SCI shall permit any duly authorized representative of the Commission:

- a. Access during the office hours of SCI, in the presence of counsel, to inspect any facility and 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 compliance with this Agreement; and
- b. Upon five (5) days' notice to counsel for SCI and without restraint or interference from them, to interview officers or employees of SCI, who may have counsel present, regarding any such matters.

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

IN THE MATTER OF
MESA COUNTY PHYSICIANS
INDEPENDENT PRACTICE ASSOCIATION, INC.

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

Docket 9284. Amended Complaint, May 4, 1999--Decision, May 4, 1999*

This consent order, among other things, prohibits an organization of Colorado physicians from engaging in collective negotiations on behalf of its members; collectively refusing to contract with payers; acting as an exclusive bargaining agent for its members; restricting its members from dealing with third-party payers through an entity other than Mesa IPA; and exchanging information among physicians about the terms upon which physicians are willing to deal with third-party payers. In addition, the consent order prohibits the respondent from retaining any employee or any participating physician who Mesa IPA knows is participating in payer contract review.

Participants

For the Commission: *Markus Meier, Paul Nolan, Casey Triggs, Elizabeth Palmquist, David Pender, Robert Leibenluft, Rendell Davis, Daniel Ducore, William Baer, Louis Silvia, and Roger Boner.*

For the respondent: *Richard Raskin, Sidley & Austin, Chicago, IL. Mark Horoschak, Womble, Carlyle, Sandridge & Rice, Charlotte, N.C. and Thomas McMahon, Powers Phillips, Denver, CO.*

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Mesa County Physicians Independent Practice Association, Inc. ("Mesa County IPA" and "respondent") has violated and is violating 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 this amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mesa County IPA is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its address at 751 Horizon Court, Suite 256, Grand Junction, Mesa County, Colorado.

* Complaint issued May 12, 1997 (unpublished).