

IN THE MATTER OF

PROVIDENT COMPANIES, INC., ET AL.

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-3894. Complaint, Sept. 3, 1999--Decision, Sept. 3, 1999*

This consent order, among other things, allows the merger of two of the nation's leading providers of individual disability insurance and requires the companies to continue to submit individual disability insurance data to an independent entity, as specified, for aggregating and disseminating industry-wide actuarial information.

Participants

For the Commission: *Jacqueline Mendel, Ann Malester, William Baer, Jeremy Bulow and Charlotte Wojcik.*

For the respondents: *Helen Sweeney, LeBeouf, Lamb, Greene & MacRae, New York, N.Y. and John Beerbower, Cravath, Swain & Moore, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Provident Companies, Inc., a corporation subject to the jurisdiction of the Commission, has agreed to merge with UNUM Corporation, 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 ("FTC Act"), 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. RESPONDENTS

1. Respondent Provident Companies, Inc. ("Provident") 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 1 Fountain Square, Chattanooga, Tennessee.

2. Respondent UNUM Corporation ("UNUM") 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 2211 Congress Street, Portland, Maine.

3. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE MERGER

4. Pursuant to an Agreement and Plan of Merger dated November 22, 1998, Provident and UNUM will merge under the name "UNUMProvident Corporation," with a combined stock value of \$11.43 billion ("the Merger").

III. THE RELEVANT MARKET

5. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the Merger is disability insurance sold to individuals. Disability insurance provides protection against loss of income due to sickness, accident, or injury. Individual disability insurance policies are sold to people who do not have group disability insurance coverage available through their employers or other organizations, or who desire to supplement group disability insurance. Each such individual disability insurance policy is individually underwritten, based on the applicant's medical background, financial portfolio and occupation. Because the individual is the policyholder of his or her own policy, such policies are "portable," *i.e.*, the insured person remains covered so long as he or she pays the premium even if he or she changes employers or occupations.

6. For purposes of this complaint, a relevant geographic area in which to analyze the effects of the Merger is the United States.

IV. STRUCTURE OF THE MARKET

7. The relevant market set forth in paragraphs five and six is highly concentrated, whether measured by Herfindahl-Hirschman Indices ("HHI") or two-firm and four-firm concentration ratios.

V. BARRIERS TO ENTRY AND EXPANSION

8. Timely entry into the relevant market is unlikely to occur at a sufficient scale to deter or counteract the effects of the Merger

described in paragraph nine. Access to credible data on disability claims is required to design and price disability insurance policies for individuals. Thus, an existing provider of individual disability insurance without its own credible base of such data or the ability to access a credible public data base is unlikely to expand successfully. UNUMProvident will possess a substantial percentage of available data, the contribution of which to a publicly available data base will be crucial for industry-wide data to remain credible. However, as a result of the merger, UNUMProvident may have an economic incentive not to supply its data to a publicly-available data base.

VI. EFFECTS OF THE MERGER

9. The effect of the Merger may be substantially to lessen competition 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, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct actual competition between Provident and UNUM in the relevant market;
- b. By increasing the likelihood that the firm created by the Merger will unilaterally exercise market power in the relevant market; and
- c. By increasing the likelihood of collusion in the relevant market.

VII. VIOLATIONS CHARGED

10. The Merger agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

11. The Merger described in paragraph four, 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 FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed merger of Provident Companies, Inc. and UNUM Corporation, and the respondents 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 respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 respondents have 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 (f) of its Rules, 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. Respondent Provident Companies, Inc. ("Provident") 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 1 Foundation Square, Chattanooga, Tennessee.

2. Respondent UNUM Corporation ("UNUM") 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 2211 Congress Street, Portland, Maine.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, 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. "*Provident*" means Provident Companies, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Provident, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "*UNUM*" means UNUM Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by UNUM, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "*Merger*" means the combination of UNUM and Provident pursuant to the Agreement and Plan of Merger dated November 22, 1998.

D. "*UNUMProvident*" means the entity resulting from the Merger.

E. "*Respondents*" means UNUM, Provident and UNUMProvident.

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

G. "*NAIC*" means the National Association of Insurance Commissioners.

H. "*Designee*" means any independent entity that has been requested specifically by the NAIC to prepare industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or supplementing industry-wide actuarial tables for Individual Disability Insurance.

I. "*Individual Disability Insurance*" means insurance to protect against loss of income due to disability arising from sickness, accident or injury (but not including "accident only" insurance, which insures only losses arising from accidents), individually underwritten and sold to individuals as the policyholders of the insurance, as distinguished from group disability insurance provided to members of a group by an employer or other organization.

J. "*Incidence Rate*" means the rate at which people become disabled as defined in Individual Disability Insurance policies.

K. "*Claims Termination Rate*" means the rate at which Individual Disability Insurance claims terminate.

L. "*Data*" means all data relating to Individual Disability Insurance Incidence Rates and Claims Termination Rates with respect to policyholders in the United States of the type and in the form as requested from time to time by the Society of Actuaries, the NAIC, or its Designee.

M. "*Request*" means any industry-wide solicitation of Data by the Society of Actuaries, the NAIC, or its Designee from providers of Individual Disability Insurance to be used in the preparation of industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or

supplementing industry-wide actuarial tables for Individual Disability Insurance.

N. "*Aggregated Data*" means Data provided in response to each specification in each Request by providers of Individual Disability Insurance that has been aggregated.

O. "*Disaggregated Data*" means Data from one (1) provider of Individual Disability Insurance.

II.

It is further ordered, That:

In response to each Request by the Society of Actuaries, the NAIC, or its Designee, respondents shall submit Data specified in the Request in the format and within the time period requested of respondents and other Individual Disability Insurance providers, or within six (6) months of the date the Request is made, whichever is earlier, unless the time period is extended in writing by the requesting entity or by the entity that will receive Data pursuant to any Request; provided, however, that respondents may limit the use of their Data as follows:

A. Respondents may require that the Society of Actuaries, the NAIC, or its Designee use Disaggregated Data solely for the purpose of creating Aggregated Data;

B. Respondents may require a commitment from the Society of Actuaries, the NAIC, or its Designee, whichever will receive Data pursuant to any Request, that their Disaggregated Data will not be viewed at any time by (1) any employee of any firm providing Individual Disability Insurance, or (2) actuarial consultants who provide actuarial consulting services to Individual Disability Insurance firms; provided, however, that for each submission of Disaggregated Data in response to a Request, an individual who provides actuarial consulting services to Individual Disability Insurance firms may view the Disaggregated Data, subject to the prior written consent of respondents, who may require such individual to agree in writing to preserve the confidentiality of Disaggregated Data; provided, further, however, that if respondents have not opposed such disclosure, in writing, within ten (10) days after written notice has been provided by the Society of Actuaries, the NAIC, or its Designee, respondents shall be deemed to have consented to such disclosure;

C. Respondents may require that the Society of Actuaries, the NAIC, or its Designee use Aggregated Data solely for the purpose of creating and disseminating industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or supplementing industry-wide actuarial tables for Individual Disability Insurance; and

D. Before Aggregated Data is used to create and disseminate industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or supplementing industry-wide actuarial tables for Individual Disability Insurance; respondents may require that the Society of Actuaries, the NAIC, or its Designee, whichever will receive the Data pursuant to any Request, certify in writing that:

1. Aggregated Data includes responses to the Request, for each specification in each Request, from at least three (3) other providers of Individual Disability Insurance that are among the ten (10) largest providers of Individual Disability Insurance in the industry as measured by direct earned premium; and

2. If the Disaggregated Data submitted by respondents represents 60% or more of all industry data submitted for any particular specification in the Request, respondents may require the Society of Actuaries, the NAIC, or its Designee to weight the Disaggregated Data submitted by respondents for that particular specification in accordance with generally accepted experience study practices, so that, when weighted, respondents' Disaggregated Data represents no more than 50% of the Aggregated Data.

III.

It is further ordered, That:

Within ninety (90) days after the date this order becomes final and within ninety (90) days after Requests have been made by the Society of Actuaries, the NAIC, or its Designee, and once annually, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraph II of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II of the order, including a description of all substantive contacts or negotiations to submit Data

and the identity of all individuals participating in such negotiations. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the submitting of the Data.

IV.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, 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.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents 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 respondents relating to any matters contained in this order; and

B. Upon five days' notice to respondents and without restraint or interference from them, to interview officers, directors, or employees of respondents, who may have counsel present, regarding any such matters.

VI.

It is further ordered, That respondents shall not be obligated to comply with this order if the Merger is abandoned. For purposes of this order, UNUM and Provident will be deemed to have abandoned the proposed Merger after they provide written notice to the Commission that they have abandoned the proposed Merger and have withdrawn any related notifications filed pursuant to Section 7A of the Clayton Act, as amended, 15 U.S.C.18a.

VII.

It is further ordered, That this order shall terminate on September 3, 2019.

IN THE MATTER OF

BODY SYSTEMS TECHNOLOGY, INC. ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3895. Complaint, Sept. 7, 1999--Decision, Sept. 7, 1999*

This consent order, among other things, prohibits the Florida-based corporation and its officers from representing that their dietary capsules or liquid are effective in the prevention of cancer or the treatment of cancer, HIV/AIDS, or arthritis unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. In addition, the consent order prohibits any unsubstantiated claims regarding the health benefits, performance, efficacy, or safety of any such product or program.

Participants

For the Commission: *Donald D'Amato and Michael Bloom.*

For the respondents: *Robert Gatton, Broad & Cassel, Orlando, FL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Body Systems Technology, Inc., a corporation, William E. Chace and James D. Davis, individually and as officers of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

PARAGRAPH 1. Respondent Body Systems Technology, Inc. ("Body Systems") is a Florida corporation with its principal office or place of business at 408 Live Oaks Blvd., Casselberry, Florida.

Respondent William E. Chace is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation, including the acts and practices alleged in this complaint. His business address is 408 Live Oaks Blvd., Casselberry, Florida.

Respondent James D. Davis is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation,