

Complaint

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONALCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket C-3959; File No. 9810108
Complaint, June 29, 2000--Decision, June 29, 2000

This consent order addresses the anticompetitive effects of the 1994 acquisition by Respondent Service Corporation International, the nation's largest chain of funeral homes, of LaGrone Funeral Home giving them a monopoly on funeral services in Roswell, New Mexico. Prompted by the Commission's investigation, Respondent sold Ballard Funeral Home, in Roswell, to Sentry Group Services, Inc. The order requires that, if Respondent acquires the Ballard Funeral Home pursuant to a default on Sentry's loan with Provident, a subsidiary of Respondent, Respondent must divest Ballard to a Commission-approved buyer within 90 days. Provident is also prohibited, by the order, from sharing information regarding Sentry with Respondent.

Participants

For the Commission: *Harold E. Kirtz, Randi M. Boorstein, and Gregory S. Vistnes.*

For the Respondents: *James M. Shelger, Service Corporation International, and David Clanton and David Laing, Baker & McKenzie.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act") and 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 Service Corporation International ("SCI") has acquired LaGrone Funeral

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Home 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, 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 (hereinafter "Respondent") 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 77019. Respondent had sales in 1998 of approximately \$2.8 billion.
2. Respondent 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 is, and at all times relevant herein has been, engaged in the provision of funeral services in Roswell, New Mexico.

II. The Acquisition

4. On or about May 17, 1994, Respondent acquired the LaGrone Funeral Home in Roswell, New Mexico. Respondent had entered the Roswell area with its purchase of the Ballard Funeral Home on or about February 1, 1979.

III. Trade and Commerce

5. The relevant line of commerce in which to analyze the acquisition is funeral services.

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6. The relevant section of the country in which to analyze the acquisition in connection with the provision of funeral services is Roswell, New Mexico.

IV. Entry Conditions

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

V. Concentration

8. The relevant market is highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by two-firm concentration ratios. The HHI increased from 5050 to 10,000 because of the acquisition.

VI. Effects of the Acquisition

9. The acquisition may have substantially lessened competition in the relevant market in the following ways, among others:
 - (a) by eliminating direct competition between Respondent and LaGrone; and
 - (b) by increasing the likelihood that Respondent has been unilaterally exercising and will continue to unilaterally exercise market power;

each of which increases the likelihood that the prices of funeral services will increase and that services to customers of funeral services will decrease. In fact, prices charged for funeral services in the relevant market have already increased substantially.

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10. In 1998, the Commission began a formal investigation of the Roswell, New Mexico, funeral services market. On September 28, 1999, Respondent divested the assets of Ballard Funeral Home.

VII. Violations Charged

11. The acquisition described in Paragraph 4 constitutes 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission has caused this Complaint to be signed by the Secretary and its official seal to be affixed in Washington, D.C., this twenty-ninth day of June, 2000.

By the Commission.

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The Federal Trade Commission having initiated an investigation of the acquisition by Respondent Service Corporation International of the assets of LaGrone Funeral Home, and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition and the Southeast Region 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

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Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 issued its Complaint, and having accepted the executed Consent Agreement and placed the Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues 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 77019.

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

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ORDER**I.**

IT IS ORDERED that, as used in this Decision and 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 acquisition by SCI of LaGrone Funeral Home.

D. “Funeral Services” 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 outer burial containers; and arrangements for and conveyance of the body to a cemetery or crematory for final disposition.

E. “Divested Assets” consists of Ballard Funeral Home, located in Roswell, New Mexico, and all assets, leases, properties, permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized as part of Ballard Funeral Home.

F. “Provident” means Provident Services, Inc., a subsidiary of SCI.

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G. "Sentry" means Sentry Group Services, Inc., which acquired the Divested Assets on September 28, 1999.

II.**IT IS FURTHER ORDERED** that:

A. For a period of ten (10) years from the date this Decision and 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, except for an interest obtained by Provident to secure financing as provided in Paragraph III. D. of this Decision and Order, in any concern, corporate or non-corporate, or any assets used or previously used (and still suitable for use), engaged at the time of such acquisition, or within the two (2) years preceding such acquisition, in the provision of funeral services in Chaves County, New Mexico.

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

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material (within the meaning of 16 C.F.R. §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. Provident shall keep information received from or made available to Sentry confidential from any person other than persons employed or retained by Provident who are or are expected to be engaged in reviewing, evaluating, approving, structuring, or administering the financing for Sentry. Provident shall not disclose any information received from or made available to Sentry to any officer, employee, or director of SCI or of any subsidiary or division of SCI other than Provident. Provident shall be permitted to disclose information received from or made available to Sentry (a) upon the order of any court or administrative agency, (b) upon the request or demand of a regulatory or other authority having jurisdiction over Provident, (c) to the extent reasonably required in connection with the exercise of any remedy under a loan agreement pertaining to any financing provided to Sentry, (d) to Provident's auditors or legal counsel, (e) in connection with the filing of any loan statement or similar document in connection with any public record filed in connection with financing provided to Sentry, and (f) in connection with any sale, participation, or syndication of any loan by Provident.

III.**IT IS FURTHER ORDERED** that:

A. If Respondent re-obtains the Divested Assets by means of the interest held by Provident, Respondent shall divest absolutely and in good faith the Divested Assets no later than ninety (90)

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days from the date on which Respondent obtains such interest to an acquirer ("the New Acquirer") that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. For purposes of Paragraph III. A., Respondent shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Divested Assets, pending the divestiture of the Divested Assets to the New Acquirer, 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 Paragraph III. A. of this Decision and Order to the New Acquirer in a manner that preserves the assets' marketability, viability, and competitiveness.

C. The purposes of this Paragraph III 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 Divested Assets as an ongoing, viable enterprise engaged in the same business in which it was engaged at the time of the Acquisition.

D. For purposes of this Paragraph III., Provident shall be permitted to provide financing for, and to take and hold a security interest in, the Divested Assets to the New Acquirer, subject to the conditions set forth in Paragraph II. C. of this Decision and Order. In the event that Provident exercises the right under a loan agreement relating to financing provided to the New Acquirer to foreclose on a property, Provident shall divest all title and other interests in the property obtained through foreclosure in the manner set forth in Paragraph III of this Decision and Order. In

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the event that SCI sells, divests, or otherwise disposes of Provident, and that SCI has no officers, directors, or employees in common with Provident, then the provisions of this Paragraph III. D., and of Paragraphs II. C. and V. A., shall no longer be operative.

IV.**IT IS FURTHER ORDERED** that:

A. If Respondent obtains the Divested Assets by means of the security interest that SCI retains in the Divested Assets through its financing of the divestiture of the Divested Assets by Provident and has not divested, absolutely and in good faith, the Divested Assets within ninety (90) days, the Commission may appoint a trustee to accomplish the required divestiture, at no minimum price, to an acquirer that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission.

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 or the Attorney General 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 Decision and Order.

D. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV. A. or IV. B. of this Decision and Order, Respondent shall consent to the following terms and conditions

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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 Divested Assets.
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 Decision and Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV. D. 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;

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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 Divested Assets 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 divestiture shall be made in the manner and to the acquirer as set out in Paragraph III of this Decision and 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 selected by Respondent from among those approved by the Commission; provided further, however, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.

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,

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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 Divested Assets.

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 losses, claims, damages, liabilities, 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 IV. A. of this Decision and 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 Decision and Order.

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11. In the event that the trustee determines that he or she is unable to divest the Divested Assets as described in Paragraph I. E. of this Decision and Order, the trustee may divest such additional assets of Respondent in that geographic area as necessary to satisfy the requirements of this Decision and Order.

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

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

V.**IT IS FURTHER ORDERED** that:

A. In the event that Respondent obtains the Divested Assets because of the interest held by Provident, 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 III and IV of this Decision and Order within thirty (30) days of the date on which it obtains the Divested Assets and every thirty (30) days thereafter until it has fully complied with Paragraphs III and IV of this Decision and 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 III and IV of the Decision and 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.

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B. On the first November fifteenth after the date on which this Decision and Order is issued, annually for the next nine (9) years on November fifteenth, 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 this Decision and Order.

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 this Decision and Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Decision and 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 Decision and 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.

Analysis to Aid Public Comment

VIII.

IT IS FURTHER ORDERED that this Decision and Order shall terminate on June 29, 2010.

By the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement for public comment from Service Corporation International (“SCI”) designed to remedy the anticompetitive effects arising from SCI’s 1994 acquisition of the LaGrone Funeral Home (“LaGrone”) in Roswell, New Mexico. SCI, headquartered in Houston, Texas, is the nation’s largest chain of funeral homes and cemeteries. LaGrone, at the time of the acquisition, operated two funeral homes in New Mexico.

At the time of the acquisition, there were only two funeral homes operating in Roswell, New Mexico. SCI owned the Ballard Funeral Home. LaGrone owned the remaining funeral home. The acquisition gave SCI a monopoly in the provision of funeral services in Roswell. Funeral services include transporting the deceased from the place of death to the funeral home, embalming and otherwise preparing the body for burial, providing a casket, holding a viewing or other ceremony, and transporting the body to the cemetery or crematorium. Since the acquisition, no new entry into the provision of funeral services in Roswell has occurred. After the acquisition, prices for funeral services increased in Roswell.

On September 28, 1999, prompted by the Commission’s investigation of the LaGrone acquisition, SCI sold the Ballard Funeral Home to Sentry Group Services, Inc. (“Sentry”). Sentry,

Analysis to Aid Public Comment

a privately-held company, owns and operates 37 funeral homes in Oklahoma, Texas, New Mexico, Kansas, and Colorado. Provident Services, Inc. ("Provident"), SCI's financing subsidiary, provided financing for Sentry's acquisition.¹

To ensure that competition is fully restored in Roswell, the Commission's proposed Consent Order requires that, if SCI acquires the Ballard Funeral Home pursuant to a default on Sentry's loan with Provident, SCI must divest Ballard to a Commission-approved buyer within 90 days. In the event SCI does not accomplish the divestiture within 90 days, the proposed Consent Order provides that the Commission may appoint a trustee to divest Ballard. Moreover, the proposed Consent Order prohibits Provident from sharing information obtained from Sentry with SCI.

The proposed Consent Order also provides that, for a period of ten years, SCI must give prior notice to the Commission of any proposed acquisition of a funeral home serving Chaves County, New Mexico, where Roswell is located.

The proposed Consent Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Consent Order in order to aid the Commission in its determination of whether to

¹ Provident is kept separate and distinct from the operating divisions of SCI. Because there are unique financing needs in the funeral industry, Provident provides loan services for many transactions, including the construction or acquisition of funeral homes by a number of SCI's competitors. Consequently, Provident's loan agreement includes a provision guaranteeing the confidentiality of information provided to Provident by a borrowing funeral home operator.

Analysis to Aid Public Comment

make the proposed Consent Order final. It is not intended to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the terms in any way. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

**INTERLOCUTORY, MODIFYING, VACATING,
AND MISCELLANEOUS ORDERS**

IN THE MATTER OF

DURA LUBE CORPORATION, ET AL.

Docket No. 9292. Order, January 19, 2000

Order withdrawing this matter from adjudication..

**ORDER WITHDRAWING MATTER FROM
ADJUDICATION**

This matter is before the Commission upon the joint motion filed by Complaint Counsel and Counsel for Respondents that this matter be withdrawn from adjudication -- pursuant to Section 3.25(b) and (c) of the Commission Rules of Practice, 16 C.F.R. §§ 3.25(b), (c) (1999)
-- for the purpose of considering a proposed consent agreement executed by Complaint Counsel, Respondents, and Counsel for Respondents.

IT IS ORDERED that the aforesaid motion to withdraw this matter from adjudication be, and it hereby is, granted.

By the Commission.