

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Deborah Platt Majoras, Chairman
 Pamela Jones Harbour**

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cemeteries prior to the acquisition. The Complaint charged that SCI's acquisition of ECI would lessen competition in several relevant markets, including the provision of funeral services in Columbus, Georgia, and Phenix City, Alabama, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Complaint ¶¶ 8, 9(a), 13 & 14. The Complaint alleges that the relevant funeral service markets, including the market consisting of Columbus, Georgia, and Phenix City, Alabama, were highly concentrated and that entry into these markets was difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that would otherwise result from the acquisition. Complaint ¶¶ 11, 12. At the time of the Complaint, both SCI and ECI owned two funeral homes in the Columbus-Phenix City market. In addition, SCI held the governing mortgages of the Memorial funeral homes in the market.

SCI consented to the Order addressing the competitive concerns arising from the acquisition. The Order required SCI, among other things, to divest funeral service assets and businesses in several relevant local geographic areas, including the Columbus, Georgia, and Phenix City, Alabama, market. SCI was required to divest the ECI funeral homes in the Columbus-Phenix City Market. SCI has fully complied with its divestiture obligations under the Order. The prior notification requirement in Paragraph IV of the Order addressed concerns that, given the small size of transactions that could have adverse competitive effects in the local geographic markets in issue in this case, there was a credible risk that, but for the requirement, SCI could engage in future anticompetitive mergers that would fall below the Hart-Scott-Rodino Act premerger reporting threshold. As, markt 0 f

In view of the foregoing, the Commission has determined in its discretion that it is in the public interest to reopen the proceeding in Docket No. C-3869, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 CFR §3.72(b), and to modify the Order in this case by adding the following provisions, set forth as Paragraphn §3.72 §3.72(b), and to modify the O

McMullen Funeral Home and the Colonial Funeral Home have been finally divested.

4. “Memorial Acquisition” means Respondent’s proposed acquisition, directly or indirectly, through foreclosure proceedings or otherwise, of any assets of, or stock, share capital, equity or other interest in the Memorial Funeral Homes.
5. “Memorial Funeral Homes” means the Funeral Service assets and businesses, and all assets, leases, properties, permits (to the extent transferable), contracts (including pre-need Funeral Service contracts), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the businesses operated

10. “Pre-need Contract” means any type of contract or other agreement to provide funeral services or merchandise at a future time, regardless of whether such agreement is revocable, or how payment for such services is arranged.
 11. “Select Respondent Employee” means an employee of Respondent’s corporate development department who is regularly involved in the purchase and sale of businesses for Respondent and has no responsibilities for the ongoing operation or marketing of Respondent’s funeral home properties.
 12. “Trustee” means the Hold Separate and Divestiture Trustee appointed by the Commission pursuant to this Modifying Order.
 13. “Trustee Agreement” means any agreement between a Commission-appointed Trustee and the Respondent that receives the prior approval of the Commission.
- B. Immediately upon consummation of the Memorial Acquisition and during the Hold Separate Period, Respondent SCI shall hold the Hold Separate Business separate and apart from all of Respondent’s other businesses and employees, as required by this Modifying Order, and shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business, any of its operations or employees, or the Trustee, except to the extent necessary to assure compliance with the Orders and all applicable law.
- C. In complying with the terms and conditions of this Modifying Order, Respondent shall:
1. not have access to, receive, obtain, solicit or use any Memorial Funeral Homes Confidential Business Information (“confidential information”) for any reason or purpose, except that the Trustee may, in consultation with Commission staff, disclose confidential information to Select Respondent Employees as necessary to fulfill the duties of the Trustee, or as necessary to permit SCI to oversee compliance with applicable laws or prepare United States consolidated financial reports, tax returns, reports required by securities laws and personnel reports, *provided however*, that prior to receiving confidential information a Select Respondent Employee shall execute a Confidentiality Agreement agreeing i) to use such information only for the limited purposes stated in the Order, and ii) not to divulge the confidential information; and
 2. not permit any of its employees, officers, or directors to be involved in the operations or divestiture operations of the Memorial Funeral Homes, except to the extent specifically provided in this Modifying Order.

D.

- b. The Trustee shall serve, without bond or other security, at the cost and expense of Respondent. 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.
- c. The Trustee Agreement shall transfer and convey to the Trustee, and the Trustee shall have, all rights, powers and authorities necessary to manage and maintain the Hold Separate Business pending divestiture in a manner consistent with the purposes of the Orders, and in consultation with Commission staff.
 - (1) The Trustee shall have the responsibility, consistent with the requirements and purposes of this Modifying Order, for (i) managing the Hold Separate Business independently from Respondent's other businesses and operations, (ii) maintaining the Hold Separate Business, and (iii) monitoring Respondent's compliance with its hold separate and asset maintenance obligations pursuant to this Modifying Order.
 - (2) The Trustee Agreement shall require that during the Hold Separate Period, the Trustee shall:
 - (a) assure that the Hold Separate Business is managed, operated and maintained in the regular and ordinary course, in accordance with past practice, (including regular repair and maintenance efforts), and all applicable laws; and
 - (b) use best efforts to preserve the existing relationships with suppliers, customers, employees and others having business relations with the Hold Separate Business.
 - (3) Respondent shall provide the Hold Separate Business with sufficient financial and other resources as are appropriate in the judgment of the Trustee to operate the Hold Separate Business at no less than current rates of operation and to maintain the viability, marketability and competitiveness of the Hold Separate Business pending divestiture.
- d. The Trustee Agreement shall transfer and convey to the Trustee, and the Trustee shall have, the exclusive power and authority to

divest the Hold Separate Business in a manner consistent with the requirements and purposes of the Orders, and in consultation with Commission staff.

- (1) The Trustee shall divest the Hold Separate Business and 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.
- (2) The Trustee shall have sixty (60) days from the effective date of the Memorial Acquisition to divest the Hold Separate Business, subject to the prior approval of the Commission. If, however, at the end of the sixty (60) day period, the Trustee has submitted a plan of divestiture or if the Commission believes that the 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.
- (3) Respondent shall take no action to interfere with or impede the Trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
- (4) The Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available for the divestiture of the Hold Separate Business in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made only in a manner that receives the prior approval of the Commission and only to an acquirer that receives the prior approval of the Commission as required by this Modifying 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 after receiving notification of the Commission's approval.

- (5) The Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by

opposing, the selection of the substitute Trustee within ten (10) days after written notice by the staff of the Commission to Respondent of the identity of any substitute Trustee, Respondent shall be deemed to have consented to the selection of the proposed substitute Trustee. Respondent and the substitute Trustee shall execute a Trustee Agreement, subject to the approval of the Commission, that is consistent with these Orders and with the terms and conditions of the Trustee Agreement attached a _____

- I. The purpose of Paragraph VIII of this Modifying Order is to: (1) preserve the Hold Separate Business as viable, competitive and ongoing businesses independent of Respondent and engaged in the provision of Funeral Services pending divestiture; (2) ensure that no Memorial Funeral Homes Confidential Business Information is transmitted to or received by Respondent except in accordance with the provisions of this Modifying Order; (3) prevent interim harm to competition pending divestiture; and (4) remedy the lessening of competition resulting from Respondent's acquisition of the Hold Separate Business.

By the Commission.

Donald S. Clark
Secretary

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ISSUED: December 27, 2006

Confidential Appendix I

Hold Separate and Divestiture Trustee Agreement

In the Matter of Service Corporation International, Docket No. C-3869

[Redacted From the Public Record Version But Incorporated By Reference]