

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

In the Matter of	)	
	)	
<b>Service Corporation International,</b>	)	Docket No. C-4423
a corporation, and	)	File No. 131 0163
	)	
<b>Stewart Enterprises, Inc.,</b>	)	
a corporation	)	
	)	

**PETITION FOR APPROVAL OF PROPOSED DIVESTITURE**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2012), and Paragraph II.A of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Respondent Service Corporation International (“SCI”) hereby petitions the Commission to approve the divestiture to Legacy Funeral Holdings of Alabama LLC, which is wholly-owned by Legacy Funeral Holdings, Inc. (“Legacy Holdings”), of the Divestiture Business that includes the following facility: Mobile Memorial Gardens Funeral Home, 6040 Three Notch Road, Mobile, Alabama 36619.

Subject to Commission approval of this petition, the Divestiture Business associated with this facility (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”) will be sold by subsidiaries of SCI to wholly-owned subsidiaries of Legacy Holdings pursuant to an Asset Sale Agreement by

and among Legacy Funeral Holdings of Alabama, LLC, and SCI Alabama Funeral Services, LLC (the “ASA”).

### Background

On December 23, 2013, SCI and Stewart Enterprises, Inc. (“Stewart”) (collectively, the “Respondents”) executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges that the proposed acquisition by SCI of Stewart would violate 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. On December 23, 2013, the Commission accepted the Consent Agreement for public comment, and on December 23, 2013, SCI consummated its acquisition of Stewart. Stewart is now a wholly owned subsidiary of SCI. The Commission issued the final order in this matter on April 29, 2014.

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Divestiture Assets—the disclosure of which may prejudice Respondents and Legacy Holdings, cause harm to the ongoing competitiveness of the Divestiture Assets, and impair Respondents’ ability to comply with their obligations under the Consent Agreement—Respondents have redacted such confidential information from the public version of this petition and its attachments. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2012), Respondents request that the non-public, confidential version of this petition and its attachments and the information

contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2012). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

Respondent SCI desires to complete the proposed divestiture of the Divestiture Assets as soon as possible, following Commission approval thereof. All conditions other than Commission approval, any required state approvals, and those that will be satisfied at closing have already been satisfied, so that SCI and Legacy Holdings are in a position to close the divestiture within a few days of such approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, Legacy Holdings, and Respondents because it will allow Legacy Holdings to move forward with its business plans for the competitive operation of the Divestiture Assets. Accordingly, SCI requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2012), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Divestiture Assets to Legacy Holdings pursuant to the above-referenced ASA as soon as practicable after the close of the public comment period.

**I. The ASA Is Substantially Final and Consistent with the Decision and Order's Terms**

Paragraph II.A of the Decision and Order requires Respondents to divest the Divestiture Businesses (as defined in the Decision and Order) within 180 days of the date on which the Order is issued.<sup>1</sup> Pursuant to this requirement, SCI diligently has sought buyers that would be acceptable to the Commission, through an extensive auction process that produced great interest in the properties. As noted above, affiliates of SCI will enter into the ASA with affiliates of Legacy Holdings, which requires affiliates of SCI to sell the Divestiture Assets to affiliates of Legacy Holdings. The ASA will be executed substantially in the form attached hereto as Confidential Exhibit A.

The ASA with Legacy Holdings complies with the requirements of Paragraph II of the Decision and Order.

Paragraph II.A requires that Respondents divest the Divestiture Assets, absolutely and in good faith. Pursuant to the ASA, Legacy Holdings will acquire the Divestiture Assets. See ASA § 1.1.

Paragraph II.A also requires that Respondents grant a License to all Retained Intellectual Property that will permit the Acquirer to operate the relevant Divestiture Business in substantially the same manner as Respondents prior to the Acquisition. Together with the assets to be acquired pursuant to the ASA, Legacy Holdings will have all the intellectual property it needs to operate the Divestiture assets in substantially the same manner as Respondents.

Legacy Holdings has acknowledged that the Divestiture Assets, together with Legacy Holdings' existing resources, enable Legacy Holdings to operate the Divestiture

<sup>1</sup> The Commission issued the Order as final on April 29, 2014.

Businesses as ongoing entities and that no other assets are needed from SCI to do so. See ASA § 4.4.

\* \* \*

As demonstrated above and in the accompanying ASA, SCI is entering into an agreement relating to the divestiture of the Divestiture Assets that fully complies with the Commission's Decision and Order with respect to the divestiture of these assets. Accordingly, Respondents hereby seek Commission approval of the proposed divestitures pursuant to Paragraph II.A of the Decision and Order.

## **II. The Prospective Acquirer Will Be a Strong and Effective Competitor**

Legacy Holdings is part of The Legacy Funeral Group, a family of companies in the death care industry owned by Michael L. Soper that operate funeral homes, cemeteries, and crematories in six states. Legacy Holdings is qualified and capable to own and operate the Divestiture Businesses as strong and effective competitors, as the Commission recognized in approving required divestitures by SCI of properties to Legacy Holdings on three previous occasions:

1. SCI's 2007 divestiture to Legacy Holdings of 13 funeral homes and cemeteries in connection with SCI's acquisition of Alderwoods Group, Inc., and
2. SCI's divestiture of two funeral homes and a cemetery in Las Vegas, Nevada, in 2010, in connection with SCI's acquisition of Palm Mortuary, Inc.
3. SCI's 2014 divestiture pursuant to the Consent Agreement of funeral homes and cemeteries in the Orlando, Florida, area and funeral homes in Mississippi.

The proposed acquisition by Legacy Holdings of the Divestiture Assets ensures that the Divestiture Business in Mobile, Alabama, will remain a strong and effective competitor.

**A. Background**

Michael Soper, owner, President, and CEO of the Legacy Holdings companies, has been involved in the death care industry for over twenty years. He is assisted in operating the Legacy Holdings facilities primarily by Harry C. Drew as Senior Vice President and Chief Financial Officer and William Wimberly as Senior Vice President/Operations. Other key individuals are Jim Morrison, Todd Noecker, Bill Vallie, Brian Nichols, Stephen Boudreaux, and Stephen Bassett who serve as regional managers. Together, these professionals have over 260 years of experience in the industry, including experience owning, operating, and acquiring funeral homes. Four additional members of the Legacy Group's Board of Advisors, Frank Bantle, Wesley Boies, William Mercer, and Kris Seale each have additional decades of experience in funeral home management and other aspects of the death care industry. Exhibit B includes biographical information for each of those key individuals, including details of their extensive death care industry experience.

**B. Financial Capability**

Legacy Holdings has the financial ability to complete this transaction promptly following Commission approval. Legacy Holdings has secured full appraisals, surveys, and Phase I environmental studies on the Mobile Memorial Gardens Funeral Home. Legacy Holdings has secured independent financing for this transaction from Funeral Directors Life Insurance Company ("FDLIC," *see* [www.funeraldirectorslife.com](http://www.funeraldirectorslife.com)), a Texas legal reserve life insurance company and one of the strongest providers of burial insurance in North America with

an A.M. Best Company rating of A- (Excellent). Mr. Soper and Legacy Holdings have enjoyed a long relationship with FDLIC that includes other financing and the marketing of FDLIC's pre-need funeral products to the public. FDLIC has committed to provide all of the financing required to complete Legacy Holdings' contemplated acquisition from SCI through long-term mortgage loans.

### **C. Operations Experience**

Legacy Holdings' success with former SCI facilities encouraged it to acquire the Mobile, Alabama, assets offered in this divestiture. Legacy Holdings' experience shows that it has succeeded because its management remains attuned to local market circumstances and forges strong personal relationship with the employees at these facilities.

Legacy Holdings is an established and successful operator of funeral homes and cemeteries. Legacy Holdings anticipates that, consistent with its previous acquisitions, it will offer employment to almost all of the individuals currently employed at Mobile Memorial Gardens Funeral Home, on terms and at compensation roughly equivalent to existing particulars. Hiring existing employees will help ensure the continuity of the business, allowing Legacy Holdings to compete effectively in Mobile from the date of acquisition going forward. Legacy Holdings takes pride in its ability to be financially competitive while maintaining the local staff, which contributes to the long-term success of each business.

Legacy Holdings has sufficient operating expertise not only to ensure the continued competitiveness of the Divestiture Assets, but to enhance their ability to compete. As a result, Legacy Holdings expects to increase the competitiveness of this facility, as Legacy Holdings has done with other facilities it has acquired.

### **III. The Proposed Divestiture Agreement Will Achieve the Purposes of the Decision and Order and Result in No Harm to Competition**

The proposed divestiture of the Divestiture Assets, as embodied in the ASA, will achieve the purposes of the Decision and Order. Legacy Holdings is an experienced operator of funeral homes and cemeteries, with a proven track record of successfully operating and enhancing the funeral homes and cemeteries that it has acquired in the past. Legacy Holdings enjoys a strong financial position that will enable it to complete this acquisition, continue the operation of the Divestiture Assets and enhance their competitiveness in the market for funeral and cemetery services. Combining the Divestiture Assets with Legacy Holdings' experience and financial wherewithal will ensure that the objectives of the Commission's Decision and Order will be realized.

The proposed acquisition of the Divestiture Assets does not present any competitive concerns as the Divestiture Assets do not compete with Legacy Holdings' current locations. Neither Legacy Holdings nor Mr. Soper own any death care business or assets in Alabama.

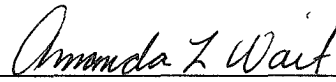
In sum, the proposed divestiture will remedy any alleged anticompetitive effects that could result from the proposed acquisition. The ASA will achieve the Commission's stated purposes of ensuring the continued use of the Divestiture Assets in the same business in which they were engaged at the time of the announcement of the Acquisition and remedying the lessening of competition as alleged in the Commission's Complaint.



Conclusion

For the foregoing reasons, Respondents respectfully request that the Commission approve the proposed divestiture of the Divestiture Assets to Legacy Funeral Holdings, Inc., as embodied in the ASA, as soon as practicable after expiration of the public comment period.

Respectfully submitted,



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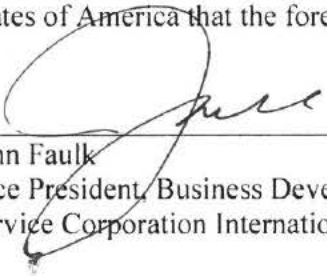
Amanda L. Wait  
Hunton & Williams LLP  
2200 Pennsylvania Ave, NW  
Washington, DC 20037  
Counsel for Respondents

Dated: May 29, 2014

CERTIFICATION OF SERVICE CORPORATION INTERNATIONAL

The facts and information related in the foregoing Petition, insofar as they pertain to Service Corporation International, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



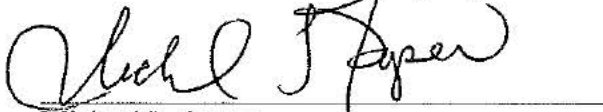
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John Faulk  
Vice President, Business Development  
Service Corporation International

CERTIFICATION OF LEGACY FUNERAL HOLDINGS, INC.

The facts and information related in the foregoing Petition, insofar as they pertain to Legacy Funeral Holdings, Inc., their subsidiaries, and their assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read "Michael L. Soper", written over a horizontal line.

Michael L. Soper  
President and Chief Executive Officer  
Legacy Funeral Holdings, Inc.

# **Confidential**

# **Exhibit A**

# Exhibit B

# EXHIBIT B

## LEGACY FUNERAL HOLDINGS

### *EXECUTIVE MANAGEMENT*

#### **MICHAEL L. SOPER** - President & Chief Executive Officer

1998–Present	Legacy Funeral Holdings, Inc. President & Chief Executive Officer
1998–Present	Memorial Pre-Care, Inc. President
1991-1998	Southwest Guaranty Trust Company, NA Vice President, Funeral & Cemetery Division
1990	Kanaly Trust Company Marketing Representative
1989	Texas Christian University, Bachelor of Science

#### **HARRY C. DREW, CMA, CFM** – Senior Vice President & Chief Financial Officer

2008–Present	Legacy Funeral Holdings, Inc. Senior Vice President & Chief Financial Officer Controller
2007-2008	Camden Property Trust Manager, Financial Reporting
2001-2007	Service Corporation International Director, Cemetery Financial Analysis Manager, Property & Merchandise Accounting Manager, Cemetery Analysis
1999-2001	Carriage Services Manager, SEC Reporting Manager, Cemetery & Funeral Compliance
1998-1999	C.R. Bard Accounting Supervisor
1995-1998	Equity Corporation International Accounting Manager, Cemetery Division

Acquisition Accountant, Cemetery Division

1994-1995      Key Corp  
401(k) Recordkeeping

1990-1994      Goodyear Tire & Rubber Company  
Staff Accountant

1989              The Ohio State University, Bachelor of Science in Business  
Administration

2004              University of Houston, Master of Science in Accounting

**WILLIAM WIMBERLY** – Senior Vice President, Operations

2006-Present      Legacy Funeral Holdings, Inc.  
Senior Vice President, Operations  
Regional Director, Louisiana & Mississippi

2000-2006      Service Corporation International  
Market Manager, 48 locations  
Mississippi, Louisiana, Alabama, Florida

1995-1999      Settegast-Kopf, Company, Houston, Texas  
Funeral Director & Embalmer

1994-1995      LaFond Ardoin Funeral Homes, Opelousas, Louisiana  
Funeral Director & Embalmer

1992-1994      University of Southwestern Louisiana  
Commonwealth Institute of Funeral Services  
License Funeral Director & Embalmer

1988-1992      United States Army – Infantry  
Communications Sergeant

***SENIOR MANAGEMENT***

**JAMES STANLEY MORRISON** – Regional Director

2005-Present      Legacy Funeral Holdings, Inc.  
Regional Director, Texas Panhandle  
Regional Director/Texas & New Mexico

1999-2003 Service Corporation International  
East Texas Area Manager

1994-1998 Equity Corporation International  
East Texas Area Manager

1990-1994 Texas Panhandle Region, Equity Corporation international  
Manager/Funeral Director

1988-1990 Texas Panhandle Region, Service Corporation International  
Manager/Funeral Director

1970-1988 Morrison Funeral Directors, Dumas, Stratford and Sunray, Texas  
Owner/Funeral Director

1970 Commonwealth College of Sciences, Houston, Texas  
Mortuary Science Degree

**TODD NOECKER** - Vice President

2009-Present Legacy Funeral Holdings, Inc.  
Regional Vice President  
Regional Manager, Las Vegas, Nevada

2001-2009 Alderwoods Group  
Market Manager, California, Arizona, Nevada

1999-2000 Service Corporation International, Arizona  
General Manager

1988-1999 Noecker Funeral Home, Gillette, Wyoming  
Owner - Manager

1988 Dallas Institute of Mortuary Science

Wyoming Law Enforcement Academy  
Coroner Certification  
Coroner County Deputy Coroner

1986 University of Wyoming

**BILL VALLIE** – Regional Manager

2006- Present Legacy Funeral Holdings, Inc.  
Regional Manager, West Texas and Eastern New Mexico



General Manager, Sunset Memorial Gardens and Funeral Home

1993-2006	Service Corporation International Location Manager, Midland, Texas Area Merchandising Coordinator for SCI West Texas Group Area Manager for SCI West Texas Group General Manager of SCI Amarillo, Texas locations
1977-1993	Ellis Funeral Home, Midland, Texas Location Manager Funeral Director/Embalmer
1976	Dallas Institute of Funeral Service

**BRIAN NICHOLS** – Regional Manager

2011-Present	Legacy Funeral Holdings, Inc. Regional Manager & PreNeed Funeral
1999-2011	Service Corporation International (SCI) Quality Assurance Manager Location Sales Location Management Regional Revenue Vice President
1997-1999	Equity Corporation International Director of Marketing
1988-1997	York Casket Sales Representative
2013	Commonwealth Institute of Funeral Service
1983-1998	Marian College, Bachelor of Science in Business Administration

**STEPHEN BOUDREAUX**

2012–Present	Legacy Funeral Holdings, Inc. Regional Manager, Louisiana and Mississippi
2011-2012	Matthews International Funeral Home Products Funeral Service Consultant
2000-2011	Delhomme Funeral Home, Lafayette, Louisiana

Manager, Funeral Director, Embalmer

1998-2000 Martin & Castille Funeral Home, Lafayette, Louisiana  
Funeral Director, Embalmer

1997-2001 F.S. Prep, Company, Lafayette, Louisiana  
Owner, Operator, Outside Sales Consultant

1996-1998 Vincent Funeral Home  
Funeral Director, Embalmer

1996 The Champion Company, Springfield, Ohio  
Outside Sales Consultant

1993 Delgado Community College, Funeral Service Education Program

**STEPHEN E. BASSETT**

2014 Legacy Funeral Holdings, Inc.  
Regional Manager and Director of Cemeteries

1991-2014 Service Corporation International  
Director of Cemetery Development  
Director of Cemetery Quality Assurance & Compliance  
Market Director, San Antonio market

1991 University of Oklahoma, Bachelor of Science. Environmental Design

***ADVISORY BOARD MEMBERS***

**FRANK J. BANTLE, SR.**

1989-Present York Casket & Matthews International  
Consultant Former owner, Houston Casket Company and  
York Southwest  
Principal owner in the initial public offering of York Group

1979-1988 Batesville Casket Company  
Sales Representative

1963-1979 Orleans Manufacturing Company, New Orleans, Louisiana  
Casket Manufacturing & Distributing

**WILLIAM E. MERCER, CPA**

2006	Retired
1989-2005	National Fiduciary Services, N.A. Southwest Guaranty Trust Company, NA Chairman of the Board and Chief Executive Officer
1970-1989	Service Corporation International Executive Vice President, Chief Financial Officer Member of Board of Directors
1963-1970	Arthur Young & Company Certified Public Accountant and Audit Manager

**B. KRIS SEALE, CPA**

1985 - Present	Funeral Directors Life Insurance Company President & CEO Directors Investment Group Chairman of the Board
1985	Baylor University, Bachelor of Business Administration Accounting and Finance Certified Public Accountant

**WESLEY BOIES**

2007 – Present	Managing Partner, RCC Investments, LLC
2006 – Present	Matthews International, Casket Division Vice President
1981 – 2006	Royal Casket Company, Inc., Oklahoma, Texas, New Mexico President