IN THE MATTER OF

MIDCON CORPORATION, ET AL.

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

Docket 9198. Consent Order, Feb. 6, 1986—Modifying Order, Aug. 31, 1988

This order reopens the proceeding and modifies the Commission's consent order issued on Feb. 6, 1986 [107 F.T.C. 48], by removing a requirement that the company divest its interests in the Acadian Gas Pipeline System.

ORDER MODIFYING ORDER
ISSUED FEBRUARY 6, 1986

On July 8, 1988, MidCon Corporation ("MidCon") filed a Request To Reopen Proceeding and Modify Order ("request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, asking that the Commission reopen and modify the consent order in Docket No. 9198 ("order"). The order requires MidCon, among other things, to divest its interest in five natural gas pipelines ("Schedule A Properties") in the area between Baton Rouge and New Orleans, Louisiana ("Baton Rouge-New Orleans Corridor" or "Corridor").

In its request, MidCon asks that the Commission reopen the order and set aside the requirement that MidCon divest the Schedule A Properties. MidCon asserts that the sale of the common stock of United Gas Pipeline Company ("United") and UER Marketing Company ("UER Marketing") to LaSalle Energy Corporation ("LaSalle") on June 30, 1987, together with Commission adoption of two additional order provisions that MidCon proposes relating to agreements between MidCon and LaSalle, will accomplish the remedial purposes of the order in Docket No. 9198. MidCon submits that "these circumstances [*i.e.*, the sale to LaSalle and the proposed order provisions] constitute changed conditions of fact sufficient to warrant reopening this proceeding to modify the order" to set aside the divestiture requirement. MidCon also claims that the sale to LaSalle, together with the order modifications proposed by MidCon, satisfy the public interest **[2]** concerns that led the Commission to issue the order

in this matter and that "it would be inequitable" in the circumstances to require MidCon to divest the Schedule A Properties.

BACKGROUND

On February 6, 1986, the Commission issued the order in this matter, requiring MidCon to divest the Schedule A Properties within one year from the date the order became final. The purpose of the divestiture was to remedy the lessening of competition and increase in concentration in the transportation and sale of natural gas in the Baton Rouge-New Orleans Corridor that the Commission believed would result from MidCon's acquisition of United Energy Resources, Inc. ("UER"), as alleged in Count Two of the Commission's complaint. The order became final on February 26, 1986. MidCon has not divested the Schedule A Properties.[1]

On June 30, 1987, MidCon's subsidiary, UER, sold the common stock of United and UER Marketing to LaSalle, a newly formed corporation. In partial payment of the purchase price, UER accepted a promissory note from LaSalle. The note provides that MidCon will acquire an equity interest in LaSalle in the event that LaSalle fails to meet its payment obligations. In addition to its note indebtedness to MidCon, LaSalle assumed substantial potential liabilities arising from the contract obligations of United.

MidCon and LaSalle also entered into a Master Agreement on Transportation ("Transportation Agreement"), in which MidCon guaranteed certain revenues to LaSalle for a period of years and LaSalle agreed to transport gas for MidCon on the United pipeline system. To ensure that LaSalle would not grant more favorable terms to other shippers than to MidCon, MidCon and LaSalle agreed to a "most-favored-nation" provision that prevents LaSalle from **[3]** charging a higher price to MidCon than to other shippers for reasonably comparable shipments.

On July 23, 1987, MidCon filed a request to reopen the proceeding and modify the order to set aside the requirement that MidCon divest the Schedule A Properties. The Commission denied the request on

[1] On February 25, 1987, MidCon requested an extension of time to accomplish divestiture under the order. On April 28, 1987, MidCon supplemented its request for an extension of time, disclosing the proposed sale of the United assets to LaSalle and asserting that the proposed sale would accomplish the remedial purposes of the order. The Commission denied the request for an extension, noting that the appropriate procedure for proposing a divestiture different from that required by an order is by a request to reopen and modify the order so that the Commission may consider whether the alternative divestiture is sufficient to accomplish the remedial purposes of the order and thereby obviate the need for the remedy provided in the order. Letter to Priscilla Mims, Esq., MidCon Corporation (June 26, 1987) (unpublished).

December 11, 1987. The Commission stated that the substantial and continuing financial and contractual commitments between MidCon and LaSalle would reduce the parties' incentives and ability to compete in the Corridor, that MidCon had failed to establish that LaSalle would be an independent, viable competitor in the Corridor and that MidCon had failed to establish that the sale of United to LaSalle would achieve the remedial purposes of the order. *See* Letter to Priscilla Mims, Esq., MidCon Corporation (December 11, 1987) ("MidCon Letter") (unpublished).

In its request filed on July 8, 1988, MidCon again asks that the Commission reopen and modify the order to set aside the requirement that MidCon divest the Schedule A Properties. As in its earlier request, MidCon asserts that the sale of United to LaSalle eliminates the horizontal overlap between United and the Schedule A Properties in the relevant market. In addition, MidCon asks that the Commission modify the order to require MidCon to divest absolutely within nine months from the date of acquisition, subject to the prior approval of the Commission, any LaSalle stock that MidCon may acquire pursuant to the terms of the promissory note. Midcon also asks that the Commission modify the order to prohibit MidCon from invoking the "most-favored-nation" clause of the Transportation Agreement in the Corridor. Finally, MidCon has supplied information that it claims attests to the financial viability of LaSalle. MidCon asserts that under these circumstances the sale of United to LaSalle restores United as a viable competitor in the Corridor and accomplishes the remedial purposes of the order.

STANDARDS FOR REOPENING A FINAL ORDER

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the petitioner "makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part." A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *See Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986) (unpublished). The burden is on the petitioner to make the satisfactory showing of changed conditions required by the

statute. This burden is not a light one, in view of the public **[4]** interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie,* 425 U.S. 394 (1981) (strong public interest considerations support repose and finality). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification.

Section 5(b) also provides that the Commission may modify an order when the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. In such a case, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. Once such a need has been shown, the Commission will weigh the reasons favoring the modification requested against any reasons not to make the modification. *See Damon Corp.,* Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 (unpublished); *see also Chevron Corp.,* Docket No. C-3147, 105 FTC 228 (1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for the order). The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.

THE PUBLIC INTEREST WARRANTS MODIFICATION OF THE ORDER

The Commission has determined that it is in the public interest to reopen and modify the order to set aside the requirement that MidCon divest the Schedule A Properties.[2] The sale of United to LaSalle, together with the additional order provisions proposed by MidCon to address the Commission's concerns that MidCon and LaSalle would not compete aggressively in the Corridor and that LaSalle would not be an independent, viable competitor in the Corridor, appear to be sufficient to remedy the lessening of competition and increase in concentration alleged in count two of the complaint. Divestiture of the Schedule A Properties as required by the order would result in MidCon's exit from the relevant market, which is no longer necessary in light of MidCon's proposed additions to the order and the additional information regarding LaSalle's viability. **[5]**

The Commission was concerned that MidCon could acquire an

[2] MidCon has not made a satisfactory showing of changed conditions of fact that require reopening of the order. Because of the continuing connections between MidCon and LaSalle and the issues relating to LaSalle's viability, the sale of United does not achieve the remedy ordered by the Commission. *See* MidCon Letter at 3-5.

interest in United as a result of MidCon's retained security interest under the promissory note. Such an interest would be inconsistent with the remedial purpose of the order to eliminate the horizontal overlap and to reestablish the assets divested by MidCon as an independent competitive entity. A new order provision proposed by MidCon would require MidCon to divest, within nine months from the date of acquisition and subject to the prior approval of the Commission, any stock of LaSalle that it may acquire by operation of the promissory note or any other security interest. The proposed provision would prevent the possibility that MidCon could control or influence LaSalle in the event that MidCon obtains LaSalle stock pursuant to the security interest.

The Commission was concerned that LaSalle's incentives to compete aggressively with MidCon for transportation of natural gas might be deterred by the requirement of the Transportation Agreement that LaSalle transport natural gas for MidCon on the same terms that LaSalle offers to any third parties. A new order provision proposed by MidCon would preclude MidCon's use of the "most-favored-nation" clause of the Transportation Agreement in the Corridor and thereby reduce the potential deterrent effect of the Transportation Agreement on competition. As modified, the Transportation Agreement would no longer provide a disincentive for LaSalle to compete aggressively with MidCon in the Corridor.[3]

The Commission also was concerned that the financial viability of LaSalle had not been demonstrated by MidCon, particularly in view of LaSalle's assumption of United's substantial potential liabilities and LaSalle's undertaking considerable debt obligations to finance the acquisition of United, including the promissory note to MidCon. MidCon has submitted financial statements of LaSalle, showing that LaSalle has operated United successfully during the past year. LaSalle has had positive operating revenue and has been able to meet its debt obligations following the acquisition of the United assets. In addition, the changes in the Transportation Agreement that eliminate possible disincentives for LaSalle to compete in the **[6]** Corridor may enhance LaSalle's ability to compete and, therefore, its viability.

CONCLUSION

For the reasons described above, the Commission has determined to

[3] In addition, MidCon and LaSalle have amended the Transportation Agreement to limit the operation of the "most-favored-nation" clause outside the Corridor. MidCon has represented that the amendment, section 7.8 of the Transportation Agreement, becomes effective if the order is modified as requested by MidCon. In granting MidCon's request to modify the order, the Commission has relied on this representation by MidCon.

reopen and modify the order to set aside the requirement that MidCon divest the Schedule A Properties. Therefore, the order will be modified to set aside the requirement that MidCon divest the Schedule A Properties and to incorporate the other changes set forth below.[4] **[7]**

Accordingly, *it is ordered,* that this matter be reopened and that the Commission's order in Docket No. 9198, issued on February 6, 1986, be modified, as of the date of service of this order, as follows:

1. The terms "Lasalle stock" shall be substituted in every case for the term "Schedule A Properties" or "Properties" in paragraphs III through VII.

2. The term "9-month" shall be substituted in every case for the term "12-month" in paragraphs III through VII.

3. Paragraph I shall be modified by replacing paragraph I.(c) with the following:

> (c) *"MidCon"* means MidCon Corp., its parent, subsidiaries, divisions, groups and affiliates controlled by MidCon and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

4. Paragraph I shall be modified to add the following:

> (g) *"LaSalle"* means LaSalle Energy Corp., its subsidiaries, divisions, groups and affiliates controlled by MidCon and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

5. Paragraph I shall be modified to add the following:

> (h) *"Transportation Agreement"* means the Master Agreement on Transportation executed between MidCon and LaSalle on June 30, 1987. **[8]**

6. Paragraph II shall be modified by replacing paragraph II.(A) with the following:

> (A) In the event MidCon, as a result of the operation of any promissory note, mortgage, bona fide lien, deed or trust or other form of security interest, executed in connection with the sale of United Gas Pipeline Company and UER Marketing Company to

[4] Occidental Petroleum Corporation acquired MidCon on April 1, 1986. Occidental has agreed to be bound as MidCon's parent by the terms of the order in Docket No. 9198. Letter from Samuel Wolfson, Esq., Assistant General Counsel, Occidental Petroleum Corp., to Elliot Feinberg, Assistant Director, Bureau of Competition, Federal Trade Commission (July 5, 1988).

LaSalle, acquires, directly or indirectly, any LaSalle stock, MidCon shall, within ten (10) days, notify the Commission in writing and shall divest the acquired stock, absolutely and in good faith, in accordance with paragraphs II through VII of this order within nine (9) months of the acquisition.

7. Paragraph II shall be modified by replacing paragraph II.(B) with the following:

(B) Divestiture of the LaSalle stock shall be made only to an acquirer or acquirers and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of the LaSalle stock is to ensure the continuation of the assets, interests and pipelines as ongoing, viable enterprises engaged in the same business in which they are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in count two of the Commission's complaint.

8. A new paragraph VIII shall be added:

It is further ordered, That MidCon cease and desist from taking any action to implement or otherwise enforce Section 3.5 (regarding rates for comparable natural gas transportation services) of the Transportation Agreement with respect to the shipment or transportation of any natural gas by LaSalle to any delivery point within the New Orleans—Baton Rouge Corridor. **[9]**

9. Paragraph III shall be modified by replacing paragraph III.(C) with the following:

(C) MidCon through its ownership of LaSalle stock shall not take any action to impair the viability of LaSalle's business.

10. Paragraph IV shall be modified by replacing paragraph IV with the following:

It is further ordered, That, within sixty (60) days after giving the Commission notice required by paragraph II of this order and every sixty (60) days thereafter until MidCon has fully complied with the provisions of paragraphs II and III of this order, MidCon 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 or has complied with those provisions. MidCon shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in paragraphs II of this order, including the identity of all parties contacted. MidCon also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture. **[10]**

11. Paragraph V shall be modified to include the following sentence at the end of the first paragraph:

The provisions of this paragraph shall not apply to the acquisition by MidCon of any LaSalle stock through the operation of any promissory note, mortgage, bona fide lien, deed or trust or other form of security interest executed in connection with the sale of United Gas Pipeline Company and UER Marketing Company to LaSalle.

CONCURRING STATEMENT OF CHAIRMAN DANIEL OLIVER

In September 1985 the Commission issued the complaint in this matter, challenging MidCon's acquisition of the United Gas Pipeline Company ("United").[1] Count II of the complaint alleged that the acquisition might substantially lessen competition in the transmission of natural gas in the area between Baton Rouge and New Orleans (the "Corridor"). In February 1986 the Commission settled count II by accepting a consent order which permitted MidCon to retain the United pipeline assets in the Corridor, but required MidCon to divest other natural gas pipeline interests in the same market (the "Acadian Partnership" interests).[2]

In June 1987 Midcon sold United to LaSalle Energy Corporation. As a result, MidCon and United are once again competitors in the Corridor. MidCon subsequently filed a petition to modify the consent order to permit it to retain its Acadian Partnership interests. The Commission denied the petition in December of last year. I dissented from that decision because, in my view, MidCon's sale of United

[1] *MidCon Corp.*, 107 FTC 48 (1986) (consent order). The complaint actually addressed the acquisition of United Energy Resources ("UER"), but the acquisition of United—the pipeline subsidiary of UER—was the gravamen of count II of the complaint. *Id.* at 52-54.

[2] *Id.* at 56. Count I of the complaint is currently in administrative litigation.

effectively eliminated any competitive problems that its earlier acquisition of United might have created.

The Commission staff and MidCon have now been able to negotiate additional modifications that have led a majority of the Commission to agree to delete the divestiture requirement. Although I do not believe that those additional modifications are necessary, I support the Commission decision to relieve MidCon of any additional divestiture obligations.

IN THE MATTER OF

NATIONAL TEA COMPANY

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE CLAYTON AND THE FEDERAL TRADE COMMISSION ACTS

Docket 9126. Order, July 23, 1980—Set Aside Order, Sept. 23, 1988

The Federal Trade Commission has set aside a 1980 order with National Tea Co. (96 F.T.C. 42) so that the company is no longer required to get the Commission's approval before acquiring grocery stores in certain geographic areas. Since the company exited the Minneapolis/St. Paul area in 1983, the Commission determined that public interest considerations warranted setting the order aside.

ORDER REOPENING AND SETTING ASIDE ORDER ISSUED ON JULY 23, 1980

On May 27, 1988, National Tea Company ("National") filed a "Petition To Reopen And Set Aside Consent Order" ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51 (1986). The Petition asked the Commission to reopen the proceeding in Docket No. 9126 and set aside the consent order issued by the Commission on July 23, 1980 ("the order"). National's Petition was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under 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 alleged anticompetitive effects arising from National's acquisition of Applebaums' Food Markets, Inc., in February 1979. 96 FTC 42 (1980). According to the complaint, the relevant line of commerce in which to assess the acquisition was sales by retail grocery stores; the relevant geographic market was the Metropolitan Minneapolis/St. Paul, Minnesota area ("Twin Cities"). The order, which was issued by the Commission on July 23, 1980, prohibits National, for a ten year period ending on July 28, 1990, from acquiring without the prior approval of the Commission, five or more retail grocery stores in seven designated states, or within 500 miles of any National warehouse, or 300 miles of any National retail grocery store. 96 FTC at 49.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified or set aside, in whole or in part, if the respondent makes a satisfactory showing that changed conditions of law or fact require the order to be modified or set aside. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when the Commission determines that the public interest so requires. Therefore, the Commission has invited respondents to show in petitions to reopen how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2.

After reviewing National's Petition, the Commission has concluded that it is in the public interest to reopen the proceeding and set aside the order in Docket No. 9126. Although National remains in the retail grocery store business, it has been out of the Twin Cities market for five years. National has shown that the prior approval requirements of the order impose substantial compliance costs on National and put it at a disadvantage with respect to its competitors who are not under similar restraints. These costs were foreseeable at the time National agreed to the order and would not provide a sufficient basis to justify termination of the order if it were serving a procompetitive purpose. However, in light of National's exit from the Twin Cities market, any need for the order in the Twin Cities market that was the focus of the Commission's complaint is outweighed by the costs of the prior approval provision.

The Commission has also concluded that it is in the public interest to

set aside the prior approval requirements of the order with respect to any other geographic areas designated in the order. The allegations of the complaint relate primarily to the Twin Cities market and with the setting aside of the primary relief, the ancillary relief should also be set aside.

Accordingly, *it is ordered*, that this matter be, and it hereby is reopened and that the Commission's order issued on July 23, 1980, shall be set aside as of the effective date of this order.

IN THE MATTER OF

BATESVILLE CASKET COMPANY, INC.

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

Docket C-3240. Complaint, Oct. 4, 1988—Decision, Oct. 4, 1988

This consent order prohibits, among other things, a Batesville, Ind. casket company from making future misrepresentations and unsubstantiated claims concerning casket durability and also prohibits false claims that the Commission or any other government agency endorses its products, warranty, or programs.

Appearances

For the Commission: *Rachel Miller.*

For the respondent: *Calvin J. Collier, Hughes, Hubbard & Reed,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Batesville Casket Company, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Batesville Casket Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at Highway 46 East, Batesville, Indiana.

PAR. 2. Respondent is now, and for some time past has been, engaged in the manufacture, marketing, sale and distribution of funeral caskets.

PAR. 3. In the course and conduct of its business, respondent causes and has caused its caskets to be sold and distributed in the various states of the United States and the District of Columbia. Respondent therefore maintains and has maintained a substantial course of

business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertising, product brochures and other sales literature concerning its caskets to distributors and retailers for display and for distribution to consumers prior to or at the time of sale.

PAR. 5. Typical and illustrative of statements contained in said advertisements and promotional materials, but not necessarily all-inclusive thereof, are the statements set forth below:

"Batesville's Steel Monoseal is a protective casket, designed to completely resist the entrance of all outside elements."

"Every Batesville Monoseal Casket carries a fully insured warranty that the casket has successfully passed the vacuum test before shipment and will remain completely resistant to the entrance of air and water for a period of 50 years. If not, Batesville, will replace it at no cost upon notification."

"The Monoseal has been a source of comfort and consolation to families for more than 40 years. To make sure the trust families have shown in us is always deserved, Batesville builds into each one the qualities necessary for lasting protection.

"In addition to testing of components during manufacture, every Batesville protective casket is vacuum tested as a complete unit at the factory before shipment. Each casket must hold a perfect seal in this vacuum test or it does not leave the factory. These precautions are why Batesville is able to supply a full warranty on their caskets against the entrance of air or water. This warranty covers a period of 20 years on the Monogard caskets, and a period of 50 years on the Monoseal."

"Every protective casket manufactured by Batesville is subjected to a scientific performance test. This test, designed to simulate actual burial conditions, involves creating a partial vacuum on the inside of the casket to check if air comes into the casket from any spot."

"Batesville Casket Company provides a full warranty on both its Monoseal and Monogard caskets. These caskets are warranted to have successfully passed the vacuum test before leaving the factory and to be completely resistant to the entrance of air and water. The warranty period is 20 years on the Monogard and 50 years on the Monoseal. The warranty specifies that should the product be found not to perform as designed within that stated period, that upon notice of this fact Batesville will, within 10 days, replace the casket with one of similar quality."

PAR. 6. Furthermore, in the course and conduct of its business, respondent has offered, disseminated and caused to be disseminated, written warranties against the entry of air or water into its caskets for specified periods of time after interment. These warranties provide, typically but not all-inclusively:

"That upon notice to it, Batesville will within ten days replace this casket with one

of similar quality if, at any time within 50 years after the date of interment, it has failed in any way to resist the entrance of air, water, or any element found in the soil in which it is interred, provided it was properly sealed and not damaged after leaving Batesville factory, and an opportunity is afforded for examination of the casket by Batesville representatives and/or impartial experts designated by them." ("Monoseal" caskets.)

"That upon notice to it, Batesville will within ten days replace this casket with one of similar quality if, at any time within 20 years after the date of interment, it has failed in any way to resist the entrance of air, water, or any element found in the soil in which it is interred, provided it was properly sealed and not damaged after leaving Batesville factory, and an opportunity is afforded for examination of the casket by Batesville representatives and/or impartial experts designated by them." ("Monogard" caskets.)

PAR. 7. Through the use of the advertisements, promotional materials and warranties referred to in paragraphs four through six above, and others not specifically set forth in this complaint, respondent has represented, directly or by implication, that:

Respondent's "Monoseal" caskets are designed, and in the ordinary course of events can reasonably be expected, to completely resist the entrance of air, water, or any other gravesite substance for a period of fifty (50) years after interment, when sealed according to directions and interred normally anywhere in the United States, and in the absence of damage between shipment from the factory and interment.

Respondent's "Monogard" caskets are designed, and in the ordinary course of events can reasonably be expected, to completely resist the entrance of air, water, or any other gravesite substance for a period of twenty (20) years after interment, when sealed according to directions and interred normally anywhere in the United States, and in the absence of damage between shipment from the factory and interment.

PAR. 8. In truth and in fact, contrary to the above representations:

(a) Respondent's "Monoseal" caskets cannot reasonably be expected, in the ordinary course of events, to completely resist the entrance of air, water, or any other gravesite substance, for a period of fifty (50) years after interment, when sealed according to directions and interred normally anywhere in the United States, and in the absence of damage between shipment from the factory and interment; rather, when directly interred, they can reasonably be expected to perform as described only for a substantially shorter period than fifty years in the majority of soil conditions normally encountered in the United States; and