

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. *CV98-312*

STATE OF MAINE,

Plaintiff

v.

EQUITY CORPORATION  
INTERNATIONAL,

Defendant

CONSENT ORDER

WHEREAS, Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Consent Order, without trial or adjudication of any issue of fact or law herein:

WHEREAS, this Consent Order is for settlement purposes only and does not constitute an admission by Defendant that the law has been violated as alleged in the Complaint or that the facts as alleged in the Complaint, other than jurisdictional facts, are true;

AND WHEREAS, Defendant has agreed to be bound by the provisions of this Consent Order pending its approval by the Court;

NOW THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendant under 10 M.R.S.A. § 1104.

## II. DEFINITIONS

In this Consent Judgment, the following definitions shall apply:

A. "ECI" means "Equity Corporation International", its directors, officers, employees, agents, representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by ECI, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "Department" means the Maine Department of the Attorney General.

C. "Acquirer" means the party or parties to whom ECI divests the assets herein ordered to be divested.

D. "ECI Assets" means all assets constituting the ECI funeral homes, including but not limited to:

1. fixtures and other appurtenances located at the funeral homes;
2. machinery, vehicles, equipment, furniture and other items used in the operation of the funeral homes.
3. real estate, including leases and deeds;
4. zoning approvals and registrations; and
5. books, records, manuals, and operations reports relating to the ECI Assets excepting manuals, reports and software used nationally by ECI.
6. for purposes of the assets subject to divestiture in Madison, the right to use in Madison the trade name Smart & Edwards Funeral Home for a period of up to two years at the option of the acquirer, if necessary, provided that the acquirer agrees to use an additional distinguishing name in conjunction with the Smart & Edwards name.

"ECI Assets" shall not include accounts receivable and cash on hand as of date of the divestiture.

E. "Assets Subject to Divestiture" means:

1. the ECI Assets in Madison; and
2. the ECI Assets in Searsport.

F. "Assets Subject To Divestiture by Trustee" means:

1. the ECI Assets in either Skowhegan or Madison; and
2. the ECI Assets in either Belfast or Searsport.

G. "Competitiveness, viability and marketability" of the Assets Subject To

Divestiture mean that ECI shall continue the operation of the Assets Subject To Divestiture in the ordinary course of business without material change or alteration that would adversely affect the value or goodwill of the Assets Subject To Divestiture.

H. "Funeral services" means the services provided at the death of an individual, the focus of which is some form of ceremony at which the body of the deceased is present; this group of services includes, but is not limited to: the removal of the body from the place of death; the embalming or other preparation of the body; the sale of a casket or outside case; the making available a place for visitation, viewing and for conducting a funeral service; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

### III. APPLICABILITY AND FILING

A. The provisions of this Consent Order shall apply to ECI, and to all other persons in active concert and participation with ECI who shall have received actual notice of this Consent Order by personal service or otherwise.

### IV. DIVESTITURE

A. ECI shall absolutely and in good faith divest the Assets Subject To Divestiture

within nine (9) months of the date on which this Consent Order is signed by ECI and the Department.

B. ECI shall divest the Assets Subject To Divestiture only to an Acquirer or Acquirers that receive the prior approval of the Department and only in a manner that receives the prior approval of the Department. The Department may, in good faith and in its sole discretion, approve the divestiture of less than all of the Assets Subject To Divestiture. The Department in its sole discretion may also extend the divestiture period if ECI has submitted a divestiture proposal or believes that a divestiture can be achieved within a reasonable time. The purpose of the divestiture of the Assets Subject To Divestiture is to ensure the continued use of the Assets Subject To Divestiture as ongoing viable funeral homes engaged in the same business in which the Assets Subject To Divestiture are presently employed and to remedy the lessening of competition resulting from the acquisitions as alleged in the Department's Complaint.

C. ECI shall offer to assign the employment contract, subject to the terms thereof, of any employee who is exclusively employed at a divested asset to the Acquirer upon divestiture.

V. DIVESTITURE BY TRUSTEE

A. If ECI has not divested, absolutely and in good faith and with the Department's prior approval, the Assets Subject To Divestiture as determined by the Department, within nine (9) months of the date on which ECI and the Department sign this Consent Order, the Department may appoint a trustee to divest the Assets Subject To Divestiture. In the event that the trustee determines that he or she is unable to divest the Assets Subject to Divestiture with respect to any geographic area, the trustee may divest the Assets Subject to Divestiture by Trustee.

B. ECI shall not enforce any restrictive covenant or any other agreement or provision limiting the right of any employee of ECI working at any of the acquired funeral homes but only to the extent that the covenant would limit the right of the employee to acquire any of the Assets Subject To Divestiture by Trustee. The Trustee shall make a reasonable accommodation with respect to any deferred compensation payable with respect to such covenant.

C. ECI shall offer to assign the employment contract, subject to the terms thereof, of any employee who is exclusively employed at a divested asset to the Acquirer upon divestiture.

D. In the event a trustee is appointed by the Department pursuant to Paragraph V.A of this Consent Order, ECI consents to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Department shall select the trustee, subject to the consent of ECI, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If ECI has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten days after notice by the Department to ECI of the identity of any proposed trustee, ECI shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Department, the trustee shall have the exclusive power and authority to divest the Assets Subject To Divestiture by Trustee.
3. Within ten days after the appointment of the trustee, ECI shall execute a trust agreement that, subject to the prior approval of the Department, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Consent Order.
4. The trustee shall have 12 months from the date the Department approves the trust agreement described in Paragraph 3 above to accomplish the divestiture, which shall be subject to the prior approval of the Department. If, however, at the end of the 12 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 for a reasonable period by the Department.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets Subject To Divestiture By Trustee or any other relevant information, as the trustee may reasonably request. ECI shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. ECI shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by ECI shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Department.
6. The trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Department subject to ECI's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the Acquirer or Acquirers as set out in Part IV of this Consent Order; provided, however, if the trustee receives bona fide offers from more than one Acquirer, and if the Department determines to approve more than one such Acquirer, the trustee shall divest to the Acquirer or Acquirers selected by ECI from among those approved by the Department.
7. The trustee shall serve, without bond or other security, at the cost and expense of ECI, on such reasonable and customary terms and conditions as the Department may set. The trustee shall have authority to employ, at the cost and expense of ECI, on reasonable and customary terms and conditions, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably 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 Department of the account of the trustee, including fees for services, all remaining monies shall be paid at the direction of ECI 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 Assets Subject To Divestiture By Trustee as determined by the Department.
8. ECI shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, on 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 such claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, 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 Part V.A. and B of this Consent Order.
10. The Department may request this Court to issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Consent Order.
11. The trustee shall have no obligation or authority to operate or maintain the Assets Subject To Divestiture By Trustee.
12. The trustee shall report in writing to ECI and to the Department every sixty days concerning the trustee's efforts to accomplish divestiture.

#### VI. PRESERVATION OF ASSETS

Until the required divestiture of the Assets Subject To Divestiture has been accomplished, ECI shall take all steps necessary to assure and maintain the competitiveness, viability and marketability of the Assets Subject To Divestiture. This obligation shall be on the following terms and conditions:

A. Pending divestiture, ECI shall provide the Assets Subject To Divestiture with the same or better quality of support services, including, without limitation, payroll processing, accounting, management information systems, and computer support, as was provided by ECI prior to the signing of the Consent Order.

B. ECI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Assets Subject To Divestiture.

C. ECI shall maintain separate financial and operating records for the Assets Subject To Divestiture and, in the event a trustee is appointed, the Assets Subject to Divestiture by Trustee.

D. If necessary, ECI shall provide any or all of the Assets Subject To Divestiture By

Trustee with sufficient working capital to operate at their current levels.

E. ECI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Assets Subject To Divestiture, except that the Assets Subject To Divestiture may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

#### VII. REPORTS TO THE DEPARTMENT

Within sixty days after the date on which this Consent Order is entered by the Court and every sixty days thereafter until ECI has fully complied with the provisions of Parts IV and V of this Consent Order, ECI shall submit to the Department a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with those provisions. ECI 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 Parts IV and V of the Consent Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted.

ECI also 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.

#### VIII. CHANGE IN CORPORATE STATUS

IT IS FURTHER ORDERED that ECI shall notify the Department at least thirty days prior to any proposed change in its corporate status such as dissolution, assignment, sale resulting in the emergence of a successor corporation, sale of substantially all of ECI's stock or assets, the creation or dissolution of subsidiaries or any other change in corporate status that may



affect compliance obligations arising out of the Consent Order; except that this provision shall not apply to the pending acquisition of ECI stock by Service Corporation International.

IX. ACCESS

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Consent Order, upon reasonable notice and subject to any legally recognized privilege, ECI shall permit any duly authorized representative of the Department:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ECI relating to any matters contained in this Consent Order; and

B. Upon five days notice to ECI, and without restraint or interference from it, to interview or take testimony under oath from officers, directors, or employees of ECI.

X. COSTS

ECI shall pay within ten days of the entry of this Consent Order \$5,000 to the Department to reimburse the Department for its costs in this matter.

DATED: 12-22-98

EQUITY CORPORATION INTERNATIONAL



By: JOHN D. GLEASON

Curtis Thaxter Stevens Broder & Micoleau, LLC

P.O. Box 7320

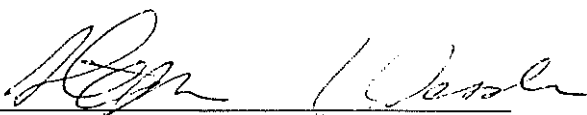
Portland, Maine 04112-7320

Bar No. 3135

Counsel for the Defendant

DATED: 12/24/98

ANDREW KETTERER  
Attorney General

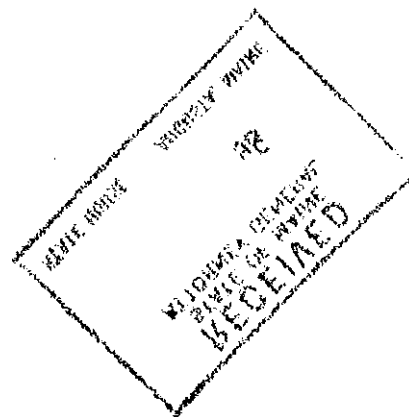
  
By: STEPHEN L. WESSLER  
Assistant Attorney General  
Director, Public Protection Division  
6 State House Station  
Augusta, Maine 04333  
Bar No. 1408  
Counsel for the Plaintiff

It is hereby ORDERED and DECREED as set forth above.

DATED: 12-28-98

  
JUSTICE, SUPERIOR COURT

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STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

STATE OF MAINE,	)	
	)	
Plaintiff	)	
	)	
v.	)	COMPLAINT
	)	(Injunctive Relief Requested)
EQUITY CORPORATION	)	
INTERNATIONAL,	)	
	)	
Defendant	)	

#### I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 10 M.R.S.A. §§ 1102-A and 1104, seeking injunctive relief to prevent the occurrence of adverse effects on competition resulting from Defendant's acquisition of certain funeral homes located within the State of Maine.

#### II. PARTIES

2. Plaintiff, the State of Maine, sues in its sovereign capacity. The State, through the Department of the Attorney General, is charged by statute with the enforcement of antitrust laws, including 10 M.R.S.A. §§ 1102-A and 1104.

3. Defendant Equity Corporation International ("ECI") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business at Lufkin, Texas. ECI is the largest operator of funeral homes within the State of Maine, owning and operating twenty-nine funeral homes in the State, all of which it has acquired from prior owners.

### III. JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to 4 M.R.S.A. § 105, 10 M.R.S.A. § 1104, and 14 M.R.S.A. § 6051 (13).

5. Venue is proper in this Court pursuant to 14 M.R.S.A. § 501.

### IV. THE ACQUISITIONS

#### A. BELFAST/SEARSPORT

6. Prior to early 1997, Belfast and Searsport had two funeral homes operators, Rackliffe Funeral Home and Young Funeral Home. Rackliffe Funeral Home had a location in Belfast (where it also operated a separate business known as Direct Cremation of Maine). Young Funeral Home operated from locations in both Searsport and Belfast.

7. In 1996, ECI acquired the Rackliffe Funeral Home and in January 1997, ECI acquired the Searsport location of Young Funeral Home. The former owner of Young Funeral Home retained the real estate in Belfast. ECI operates the funeral homes under the names Rackliff Funeral Home (in Belfast) and the Young Funeral Home (in Searsport).

#### B. SKOWHEGAN/MADISON

8. Prior to January, 1996, the Skowhegan/Madison area had two competing funeral homes, the Smart Funeral Home and the Edwards Funeral Home, each of which maintained a location in Skowhegan and a separate location in Madison.

9. In early 1996, ECI purchased both the Edwards Funeral Home and the Smart Funeral Home. After the acquisition ECI closed the Edwards facility in Skowhegan and Madison and combined them into the existing Smart facilities to operate under the new name of Smart and Edwards Funeral Home.

VI. RELEVANT MARKETS

10. For purposes of this Complaint, the relevant line of commerce or product market in which to analyze the effects of the acquisitions by ECI in Skowhegan/Madison and in Belfast/Searsport is the sale of funeral services;

10A. "Funeral services" means the services provided at the death of an individual, the focus of which is some form of ceremony at which the body of the deceased is present; this group of services includes, but is not limited to: the removal of the body from the place of death; the embalming or other preparation of the body; the sale of a casket or outside case; the making available a place for visitation, viewing and for conducting a funeral service; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

11. For purposes of this Complaint, the relevant sections of the country or relevant geographic market in which to analyze the effects of the acquisitions in Skowhegan/Madison and Belfast/Searsport are (a) the cities of Skowhegan and Madison and surrounding communities within a radius of five miles and (b) the City of Belfast and the Town of Searsport and the surrounding communities within a radius of five miles.

VI. MARKET CONCENTRATION AND ENTRY

12. The market for the sale of traditional funeral services in the Belfast/Searsport area is highly concentrated. The funeral homes operated by ECI are the only funeral homes located within the geographic market.

13. The market for the sale of traditional funeral services in the Skowhegan/Madison area is highly concentrated. The funeral homes owned by ECI are the only funeral homes within the market area.

14. Entry into the relevant markets is difficult.

VII. EFFECTS OF THE ACQUISITION

15. The effects of the acquisitions may be to lessen competition substantially and tend to create a monopoly in the relevant markets, in violation of 10 M.R.S.A. § 1102-A, in the following ways, among others:

- A. by eliminating direct competition between the funeral homes in Skowhegan/Madison and Belfast/Searsport; and
- B. by increasing the likelihood that ECI will unilaterally exercise market power.

VIII. CAUSE OF ACTION

16. The acquisitions by ECI in Skowhegan/Madison and Belfast/Searsport violate 10 M.R.S.A. § 1102-A.

IX. REQUEST FOR RELIEF

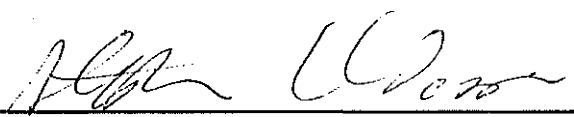
WHEREFORE, the State of Maine prays that this Court:

- A. Order the Defendant to divest one funeral home in the Skowhegan/Madison area and one funeral home in the Belfast/Searsport area;
- B. Order Defendant to pay the Department of the Attorney General for its costs; and
- C. Award such other relief as the Court deems just and proper.

DATED:

ANDREW KETTERER  
Attorney General

By:

  
STEPHEN L. WESSLER  
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Bar No. 1408  
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