

Complaint

96 F.T.C.

IN THE MATTER OF  
EQUIFAX INC.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED  
VIOLATION OF THE FAIR CREDIT REPORTING ACT AND SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 8954. Complaint, Feb. 21, 1974—Final Order, Dec. 15, 1980*

This order requires, among other things, an Atlanta, Ga. consumer credit reporting firm to cease misrepresenting the identity of its investigative personnel; improperly providing its customers with updated consumer report information; and rewarding or punishing its employees on the basis of the amount of adverse information collected and included in their reports on consumers. The order further requires that the company cease failing to make statutorily required disclosures to consumers requesting information concerning their credit status; provide such consumers with all the information in its files; and reinvestigate any disputed item of information promptly.

*Appearances*

For the Commission: *Robert W. Russell, Virginia M. Conway and David G. Grimes, Jr.*

For the respondent: *Willis B. Snell, Francis M. Gregory, Jr., Michael L. Denger and Shelley Zena Green, Sutherland, Asbill & Brennan, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Retail Credit Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, 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:

DEFINITIONS

PARAGRAPH 1. For the purpose of this Complaint the following definitions apply:

(a) "consumer reporting agency"—any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating

consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) "investigative personnel"—individuals, including, but not necessarily limited to, respondent's Field Inspectors, Field Representatives, Fee Inspectors and Claims Inspectors, engaged in the preparation of consumer reports and other reports.

(c) "consumer report"—any written, oral, or other communication of any information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, (2) employment purposes, or (3) other purposes authorized under Section 604 of the Fair Credit Reporting Act.

(d) "investigative consumer report"—a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such item of information.

(e) "claims report"—a report containing information prepared for an insurance company on an insured for the purpose of determining the validity of a claim for a benefit filed under an existing insurance policy and/or utilized in the negotiation of a settlement of said claim.

(f) "medical information"—information or records obtained directly or indirectly from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(g) "adverse information"—negative or derogatory information which may have, or may reasonably be expected to have, an unfavorable bearing on a consumer's eligibility or qualification for a benefit such as insurance, including information which may result or which may reasonably be expected to result in a denial of or increased cost for such benefit.

PAR. 2. Respondent is a corporation, organized existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1600 Peachtree St., N.W., Atlanta, Georgia.

PAR. 3. Respondent is a consumer reporting agency as defined herein, with approximately 300 branch offices and 1500 other offices

located in every State of the United States. Respondent, the nation's largest company in the consumer reporting industry, is engaged in the business of obtaining, maintaining and selling information about consumers to over 84,000 business customers. Respondent employs approximately 8500 investigative personnel who interview approximately 200,000 individuals daily and prepare about 35 million reports per year. Through its nationwide network of offices, respondent has the capacity to provide information on 98 percent of the population of the United States. Its revenues for 1972 are listed at 195 million dollars, resulting in gross income of over 17 million dollars.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, respondent causes and for some time in the past has caused reports, including consumer reports, investigative consumer reports and claims reports, as defined herein, to be distributed through the mail from its branch offices and other offices located in all fifty states and the District of Columbia, to its customers located in various other States of the United States.

Therefore, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in the aforesaid products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

#### COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four above, are incorporated by reference as if fully set forth herein verbatim:

PAR. 5. In the ordinary course and conduct of its business, as aforesaid, respondent, through its investigative personnel, prepares reports, including consumer reports, investigative consumer reports and claims reports, by interviewing the consumer and others telephonically or in person. In these interviews, respondent's investigative personnel, in certain instances, represent, directly or by implication, that:

1. they are agents or employees of the company to which the consumer has applied for a benefit, such as insurance; and/or
2. the information furnished by the consumer or others during interview, will be used exclusively by the company to which the consumer has applied for a benefit, such as insurance.

PAR. 6. In truth and in fact:

1. respondent's investigative personnel are not agents or employees of the company to which the consumer has applied for a benefit; and/or
2. the information furnished by the consumer or others during an interview, will not be used exclusively by the company to which the consumer has applied for a benefit. The information is added to respondent's files for future reference in connection with any subsequent requests by other customers for reports on the consumer, who is the subject of the interview.

The practice by respondent's investigative personnel of failing to disclose both their identity and/or the full use to be made of the information obtained during the interviews, leads consumers and others into the false and mistaken belief that they are providing information directly to the agent or employee of a company which will use the information exclusively in determining the consumer's eligibility for a benefit. Some of those interviewed would have elected to provide information directly to said company rather than to respondent had the true identity of the interviewer, or the fact that the information obtained is to be added to respondent's files for future reference, been known.

Therefore, the representations set forth in Paragraph Five above, were and are unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 7. In the ordinary course and conduct of its business, as aforesaid, respondent's investigative personnel, in the preparation of certain reports such as claims reports, employ an interview technique whereby they interview consumers and others and represent, directly or by implication, that the investigation is for a specific purpose, such as a "routine credit check" or other similarly unrelated purpose.

PAR. 8. In truth and in fact, the purpose of the investigation is often other than as represented. For example, in certain instances, the purpose of the investigation is an evaluation of the consumer's claim for loss or injury under the terms of an existing insurance policy and the purpose of the interview is to observe the consumer's physical appearance, movements, or mental or physical capabilities. Such a claim for loss or injury is of high significance to the consumer. The use of the interview technique, as aforesaid, results in information being gathered under false pretenses.

Furthermore, information gathered in this way will be retained in respondent's files for possible use in reports for other customers.

Therefore, the practice set forth in Paragraph Seven above, wa

and is unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. In the ordinary course and conduct of its business, as aforesaid, respondent, by and through its reports, its promotional literature and other means, represents, directly or by implication, to its customers, that its reports are compiled from information obtained through in-person interviews with the consumer who is the subject of the report, or his friends, neighbors, or associates; from direct observation of the consumer's home, neighborhood, or other physical surroundings; or through interviews with the "sources" indicated on the reports. Typical and illustrative of these representations, but not all inclusive thereof, are the following statements found in respondent's actual reports:

- (1) the consumer presents a "healthy appearance with no obvious [sic] impairments or apparent tensions";
- (2) the consumer's "residence seems small and inadequate"; and
- (3) the consumer "had a white gauze bandage tacked over his eye to shield it from the light".

The representations as to the manner in which the information in the reports is gathered, i.e., through in-person interviews with the consumer who is the subject of the reports, or his friends, neighbors, or associates; from direct observation of the consumer's home, neighborhood, or other physical surroundings, or through interviews with the "sources" indicated on the reports, are relied upon by users, such as insurance companies, in evaluating the validity or accuracy of the information in the reports. Moreover, in certain instances, users rely upon the information in the reports to determine the consumer's eligibility for a benefit, such as insurance, or to increase the rate for, or to cancel the consumer's insurance coverage.

PAR. 10. In truth and in fact, in certain instances:

- (1) the consumer who is the subject of the report, or the consumer's friends, neighbors or associates are interviewed only telephonically, rather than in person, as represented;
- (2) the consumer's home, neighborhood or other physical surroundings are not observed directly as represented; and
- (3) all "sources" listed on respondent's reports are not interviewed, as represented, either in person or telephonically.

Users would not give as much weight to or rely as heavily on the information in the reports in making a decision as to the consumer's eligibility for a benefit such as insurance had the manner in which

the reports were prepared been truthfully and factually represented. In fact, in certain instances, users would not reject a consumer's application for a benefit such as insurance or increase the rate for or cancel the consumer's insurance coverage, had the manner in which the information was gathered been truthfully and factually represented.

Therefore, the representations set forth in Paragraph Nine above, were and are unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. In the ordinary course and conduct of its business, as aforesaid, respondent obtains from insurance companies photocopies of statements signed by consumers authorizing the release of medical information to those insurance companies, but which are silent as to the release of said information to anyone else, including respondent. With these photocopies, respondent obtains medical information from consumers' doctors, clinics or other medical facilities, forwards the information to the named insurance companies, and retains a copy of such information in its files.

PAR. 12. In connection with the above practice, respondent represents, directly or by implication, to physicians or other medical personnel, that the information is being obtained for the exclusive use of the named insurance company to which the consumer executed the authorization. Moreover, consumers executing the authorizations for release of confidential medical information believe that the information will be obtained and used by the named insurance company exclusively.

PAR. 13. In truth and in fact, in certain instances, the information is not obtained for the exclusive use of the insurance company to which the consumer executed the authorization. A copy of the medical information is retained in respondent's files and has been, in certain instances, used in the preparation of subsequent reports for other customers. Some consumers would not have authorized the release of such confidential information had they known it would be obtained and utilized by a third party such as a consumer reporting agency.

Therefore, the acts and practices set forth in Paragraphs Eleven and Twelve above, were and are unfair, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute unfair methods of competition in commerce and unfair or deceptive

acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

## COUNT II

Alleging violations of the Fair Credit Reporting Act and of the Federal Trade Commission Act, the allegations of Paragraphs One through Three are incorporated by reference as if fully set forth herein verbatim:

PAR. 15. Respondent in the ordinary course and conduct of its business as aforesaid is now, and subsequent to April 25, 1971 has been, engaged in the preparation, offering for sale, sale and distribution of information on consumers, including consumer reports and investigative consumer reports, as defined herein.

PAR. 16. In the ordinary course and conduct of its business, as aforesaid, respondent provides its customers what it terms a "Voluntary Follow-Up Service". Through this and other similar services, respondent, periodically and on an unsolicited basis, submits to customers such as insurance companies, adverse information about consumers upon whom previous consumer reports have been furnished. At the time said information is furnished, respondent has no reason to believe that it will be used in connection with a business transaction such as the underwriting of insurance. Rather, this additional information is submitted to customers to demonstrate the value or utility of respondent's reporting service.

PAR. 17. By and through the use of the aforesaid practice, respondent has furnished, and is furnishing, consumer reports and investigative consumer reports, as those terms are defined herein, to persons whom it has no reason to believe intend to use the information for one of the permissible purposes set out in Section 604 of the Fair Credit Reporting Act, and respondent thereby was and is in violation of that Section of the Act.

PAR. 18. In the ordinary course and conduct of its business, as aforesaid, respondent, in certain instances, reports to its customers the existence of items of adverse information, as defined herein, which antedate the consumer report by more than seven years. Typical and illustrative of the practice described herein, but not all inclusive thereof, are the following:

1. The inclusion of the following notice in some of its consumer reports:

compliance with the Fair Credit Reporting Act no additional information can be

reported from this former employer covering employment experience prior to seven years ago.

2. The furnishing of photocopies of motor vehicle reports reflecting masked out or obliterated driving violations which antedate the report by more than seven years, but which indicate the existence of said obsolete violations.

PAR. 19. By and through the use of the aforesaid practices, respondent has reported and is reporting the existence of items of obsolete adverse information in violation of Section 605 of the Fair Credit Reporting Act.

PAR. 20. In the ordinary course and conduct of its business, as aforesaid, respondent employs certain procedures in the preparation of consumer reports and investigative consumer reports, as defined herein, which do not assure the maximum possible accuracy of the information concerning the individuals about whom the reports relate. Typical and illustrative of such procedures, but not all inclusive thereof, are the following:

(1) a salary/production system which requires or compels its investigative personnel, as defined herein, to complete or prepare an unreasonable number of consumer reports or investigative consumer reports, or to average an unreasonable number of said completed reports per day or other period;

(2) quotas for adverse information, as defined herein, which require or compel its investigative personnel to complete or prepare a certain proportion of consumer reports or investigative consumer reports, containing negative or derogatory information about the consumers who are the subject of the reports; and

(3) paying or "crediting" an investigator for a reinvestigation conducted pursuant to Section 611 of the Fair Credit Reporting Act only if the reinvestigation proves that the investigator was accurate in his initial investigation.

PAR. 21. By and through the use of these aforesaid procedures, and others similar thereto, but not expressly set out herein, respondent imposes requirements and pressures upon its investigative personnel which are inconsistent with accurate reporting and which have the tendency and capacity to promote incomplete or inaccurate reports. Therefore, respondent has failed and is failing to adopt reasonable procedures to assure the maximum possible accuracy of the information concerning the individuals about whom the reports relate, as required by Section 607(b) of the Fair Credit Reporting Act.

PAR. 22. In the ordinary course and conduct of its business, as



aforesaid, respondent has been and is being requested by consumers, who properly identify themselves, to disclose information in its files on the consumers. In response to these requests, in certain instances, respondent fails to clearly and accurately disclose the nature and substance of all information (except medical information) in its files at the time of the request. Further, unless specifically requested by the consumer in each instance, respondent fails to disclose:

(1) the sources of the information (except investigative sources, which need not be disclosed); and

(2) the recipients of any consumer report on the consumer which it has furnished for employment purposes, within the two-year period preceding the request, and for any other purpose within the six-month period preceding the request.

PAR. 23. By and through the use of the practices described in Paragraph Twenty-Two above, respondent has violated and is violating the provisions of Section 609 of the Fair Credit Reporting Act.

PAR. 24. In the ordinary course and conduct of its business, as aforesaid, respondent, in certain instances, has failed to disclose the information in consumers' files pursuant to Section 609 of the Fair Credit Reporting Act when requested to do so by telephone, or has discouraged such disclosures. Further, respondent has refused and is refusing to make said disclosures at offices designated by respondent as "Sub-Offices", even when some of those offices are staffed by full-time office personnel and a person in a supervisory capacity. Rather, respondent makes disclosures only at offices designated by it as "Branch Offices".

PAR. 25. By and through the use of the practices described in Paragraph Twenty-Four above, respondent has violated and is violating the provisions of Section 610 of the Fair Credit Reporting Act.

PAR. 26. In the ordinary course and conduct of its business as aforesaid, respondent, in certain instances:

(1) fails to reinvestigate items of information, the completeness or accuracy of which is disputed by the consumer;

(2) fails to record the current status of disputed information and to promptly delete information which can no longer be verified;

(3) fails to clearly and conspicuously disclose to the consumer his right to request that respondent furnish notification that a previously reported item of information has been deleted or that respondent furnish a statement prepared by the consumer (or a clear and

accurate codification or summary thereof) to recipients of previous reports; and

(4) fails to provide said notifications to recipients of previous reports (within the past two years for employment purposes and the past six months for any other purpose) when specifically requested to do so by the consumer.

PAR. 27. By and through the use of the practices described in Paragraph Twenty-Six above, respondent has violated and is violating the provisions of Section 611 of the Fair Credit Reporting Act.

PAR. 28. In the ordinary course and conduct of its business as aforesaid, respondent retains file copies of the information contained in the consumer reports and claims reports which it prepares for its customers. Respondent incorporates all of said information into the same filing system, making no attempt to segregate the consumer report information from the claims report information. In the preparation of subsequent consumer reports and claims reports, respondent uses all of its file information interchangeably, including the use of claims report information in the preparation of consumer reports and the use of consumer report information in the preparation of claims reports.

However, with respect to said claims reports, respondent fails to observe the provisions of the Fair Credit Reporting Act which regulate the preparation and dissemination of information which is used or expected to be used in consumer reports.

PAR. 29. By and through the use of the practices described in Paragraph Twenty-Eight above, respondent has failed and is failing to comply with Sections 605, 607(b) and 614 of the Fair Credit Reporting Act with respect to the preparation of consumer reports, and Sections 604 and 607(a) of that Act with respect to the dissemination of consumer reports.

PAR. 30. The acts and practices set forth in Paragraphs Fifteen through Twenty-Nine, above, were and are in violation of the Fair Credit Reporting Act, and pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act.

INITIAL DECISION BY THEODOR P. VON BRAND, ADMINISTRATIVE  
LAW JUDGE

NOVEMBER 11, 1977

## PRELIMINARY STATEMENT

This is a case under Section 5 of the Federal Trade Commission Act (FTCA) and the Fair Credit Reporting Act (FCRA). The Commission complaint, dated February 21, 1974, charges Equifax Inc., a consumer reporting agency, with violation of these statutes in connection with the preparation, dissemination and sale of consumer reports<sup>1</sup> and consumer investigative reports.<sup>2</sup> Respondent's answer denied the material allegations of the complaint.

Count I of the complaint, which contains the charges of Section 5, FTCA violations, involves allegations of deceptive and unfair acts. The charges are essentially the following: [3]

1. Respondent's investigative personnel, it is alleged, have misrepresented in certain instances, to consumers that they are the agents or employees of the companies to which the consumers have applied for benefits such as an insurance company and/or that the information furnished by the consumers or others during interviews will be used exclusively by the companies to which the consumers have applied for benefits. It is further alleged that some of those interviewed would have elected to provide the information directly to the companies from which benefits were sought rather than to respondent had they known the true identities of the interviewers or that such data would be added to respondent's files for future reference (Complaint, Pars. 5, 6).

2. It is alleged that respondent's investigative personnel have misrepresented the purposes of investigations by representations such as that a credit check was being conducted when, in fact, in certain instances, the purpose of the investigation was to evaluate a consumer claim for loss or injury under an insurance policy and the object of the interview was to observe the consumer's appearance

<sup>1</sup> "(d) The term 'consumer report' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes . . . ." (Section 603(d) FCRA).

<sup>2</sup> "(e) The term 'investigative consumer report' means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information . . . ." (Section 603(e) FCRA).

and the consumer's mental or physical capacity in connection with such investigation (Complaint, Pars. 7, 8).

3. Respondent, it is alleged, has represented that interviews are conducted in person rather than on the telephone, that direct observation of the consumer's environment is conducted and that all sources of information listed are seen. The complaint charges that, in certain instances, interviews were conducted on the telephone rather than in person, that the consumer's environment was not directly observed, and the sources listed on the consumer report were not interviewed in person or on the telephone. The complaint alleges that users of such reports would not have given as much weight to the information provided by respondent had the manner in which such reports were prepared been truthfully and factually represented (Complaint, Pars. 9, 10). [4]

4. It is alleged that respondent, through the use of authorizations, for the release of medical information, obtained from insurance companies,<sup>3</sup> represents directly or by implication to medical personnel from which such information is sought that the data is secured for the exclusive use of such insurance companies. The complaint charges that consumers executed such authorizations on the basis of that belief. It is further alleged that, in truth and in fact, the information is not obtained for the exclusive use of the insurance company to which the authorization was executed but is retained by respondent and, in certain instances, is utilized in the preparation of subsequent reports for different customers of respondent. Some consumers, it is alleged, would not authorize the release of such confidential information if they knew it would be utilized by a third party such as a consumer reporting agency (Complaint, Pars. 11, 12, 13).

The Count II charges focusing specifically on the FCRA may be summarized as follows:

1. Respondent, it is alleged, furnishes information to persons which it has no reason to believe intend to use such data for one of the permissible purposes set out in Section 604, FCRA (Complaint, Pars. 16, 17).

2. Respondent, it is alleged, reports the existence of adverse obsolete information in violation of Section 605, FCRA (Complaint, Pars. 18, 19). [5]

3. Respondent's requirements and pressures on its investigative

<sup>3</sup> According to the complaint, the authorizations obtained by respondent from insurance companies are photocopies of originals signed by the consumers but are silent as to the release of such information to anyone other than the insurance companies, including the respondent.

personnel are inconsistent with accurate reporting and have the tendency and capacity to promote incomplete or inaccurate reporting. As a result, respondent, it is alleged, has failed to adopt reasonable procedures to assure maximum possible accuracy in its reports as required by Section 607(b), FCRA (Complaint, Pars. 20, 21).

4. Respondent, it is alleged, has violated the disclosure provisions of Section 609, FCRA, in certain instances, by failure to clearly and accurately disclose the nature and substance of all information (except medical information) in its files at the time of request. It is further alleged that, unless specifically requested by the consumer in each instance, respondent fails to disclose requested information such as (a) the sources of information (except investigative sources which need not be disclosed); (b) the recipients of any consumer report on the consumer which it has furnished for employment purposes within the 2-year period preceding the request, and for any other purpose within the 6-month period preceding the request (Complaint, Pars. 22, 23).

5. It is alleged that respondent fails to disclose information in the consumer's file pursuant to Section 609 of FCRA when requested to do so by telephone or discourages such disclosures. It is further alleged that respondent refuses to make such disclosures at its "sub offices" even when some of these offices are staffed by full-time personnel and a person in a supervisory capacity. It is further alleged that respondent makes disclosures only at those offices which it has designated as branch offices. These practices, it is alleged, violate Section 610, FCRA (Complaint, Pars. 24, 25). [6]

6. Respondent, it is alleged, has violated Section 611, FCRA, by failing to reinvestigate disputed information; failing to record the current status of disputed information and to promptly delete information which can no longer be verified; failing to clearly and conspicuously disclose to the consumer his right to request that respondent furnish notification that a previously reported item has been deleted or that respondent furnish a statement prepared by the consumer to recipients of previous reports; and finally, by failing to provide notification to recipients of previous reports (within the past 2 years for employment and the past 6 months for any other purpose) when specifically requested to do so by the consumer (Complaint, Pars. 26, 27).

7. It is alleged that respondent's filing system incorporates claim reports and consumer reports in the same file with no attempt to segregate the consumer report information from the claim report information. The complaint charges that in the preparation of

subsequent consumer reports and claim reports that respondent uses all of the file information interchangeably, using claim report information in the preparation of consumer reports and consumer report information in the preparation of claim reports. The complaint alleges that such practices violate the FCRA provisions regulating the preparation and dissemination of consumer reports in Sections 605, 607B, 614, 604 and 607, FCRA (Complaint Pars. 28, 29).

After extensive evidentiary hearings, the record was closed on June 15, 1977. [7]

This matter is now before the undersigned for decision based on the allegations of the complaint, the answer, the evidence and the proposed findings of fact, conclusions, and briefs filed by the parties. All proposed findings of fact, conclusions and arguments not specifically found or accepted herein are rejected. The undersigned, having considered the entire record and the contentions of the parties, makes the following findings of fact and conclusions, and issues the order set out herein.

#### FINDINGS OF FACT

##### I. RESPONDENT AND THE NATURE OF ITS BUSINESS

1. Equifax Inc. (formerly Retail Credit Company, a corporation) is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal place of business located at 1600 Peachtree St., NW., Atlanta, Georgia (CX 1445A; Burge 5070).

2. Effective January 1, 1976, the name Retail Credit Company was changed to Equifax Inc. (Burge 4847, 4852).

3. Equifax Inc. is the parent corporation of some 14 companies and divisions, some of which are separately incorporated; some are autonomous operating divisions. While these companies perform in special markets, they are all in the information industry furnishing personal information to parties requiring data on which to base business decisions, primarily in connection with insurance, employment, and credit transactions (Burge 4848; CX 666Z-12). [8]

4. Equifax Services, which was the largest of respondent autonomous units, was a division of Equifax Inc. Its operations are the subject of this proceeding. This division was originally the insurance reporting and commercial reporting arm of Retail Credit Company (Burge 4848).

5. Equifax Services furnished consumer and consumer investigative reports to insurance companies for underwriting purposes.

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including life, health, fire, property and automobile insurance. It conducted claim investigations, furnished financial reports, and prepared employment reports, as well as credit reports, in isolated areas where there are few credit bureaus (Burge 4850-51). Reporting on insurance applicants comprised the bulk of its business (CX 679E). Insurance customers were considered its "basic field" (RX 107D).

6. Prior to January 1, 1976, Retail Credit Company had general supervision of the business which became Equifax Services (Burge 4853).

7. On April 1, 1977, Equifax Inc. created a wholly owned subsidiary corporation, Equifax Services, Inc., which provides the reporting services performed before that date by the Equifax Services division (RX 916).

8. Other affiliated companies<sup>4</sup> are: Equifax Services, Limited, which performs in Canada the same activities as does Equifax Services, Inc. in the United States (Burge 4848); Atwell, Vogel and Sterling, Inc., a company providing reports for audit-inspection and loss control services for property, casualty and inland marine underwriters (RX 107G); Hunnicutt & Associates, Inc., which is in the business of property appraisal and mapping (RX 107G); Physical Measurements, Inc., which furnishes medical examinations in connection with insurance applications (RX 107G); the Credit Bureau [9]Companies, which perform the functions which their name implies (RX 107G-H); Retailers Commercial Agency, whose primary work is making credit reports on the telephone, principally in connection with mortgage loans, and which handles most of respondent's telephone reporting (Knautz 6881-82); Gay and Taylor, which is engaged in claims adjusting services (Trotochaud 6288); Credit Marketing Services, a separate corporation providing credit reporting services to credit grantors; Retrieval Services, a division of respondent providing the service of picking up credit cards from delinquent consumers; Marketing Services, a division of Equifax Inc., doing market research; and International Printing and Distributing, a division of respondent engaged in printing for respondent and commercial printing for outside customers (Burge 4848-49).

Respondent, in the ordinary course and conduct of its business subsequent to April 25, 1971, has been engaged in the preparation, offering for sale, sale and distribution of information on consumers, including consumer reports and investigative consumer reports (CX 1445C).

<sup>4</sup> evidence was introduced with respect to the operations of these companies.

10. In the ordinary course and conduct of its business, respondent causes and for some time in the past has caused reports including claims reports, and subsequent to April 25, 1971, consumer reports and investigative consumer reports, to be distributed through the mail from its branch offices and other offices located throughout the United States to its customers located in various other States of the United States (CX 1445C).

11. Respondent maintains, and at all times mentioned in the complaint has maintained, a substantial course of trade in the aforesaid services, including consumer reports, investigative consumer reports, and claims reports, in commerce, as "commerce" is defined in the Federal Trade Commission Act (CX 1445C). [10]

12. In 1972, respondent's total revenues were \$195,262,000, and its income before taxes was \$17,460,000. These figures include all of respondent's operations (including Canada) and all of its subsidiaries (CX 1445C). Respondent's total claim volume was \$26,749,557 in 1975 (Trotochaud 6291).

13. Respondent sells information about consumers to business customers numbering in the thousands. As of July 15, 1974, it had approximately 17,000 customers<sup>5</sup> (CX 1445B).

14. In 1971, respondent issued approximately 22.5 million reports of all types to customers in the United States.<sup>6</sup> For 1973, the corresponding figure was 21 million.<sup>7</sup> (CX 1445B).

15. During the period from March 1971 to May 1974, respondent maintained files containing information concerning approximately 45 million persons<sup>8</sup> (CX 1445B).

## II. THE REPORTS AND SERVICES FURNISHED BY RESPONDENT

16. The reports prepared by respondent may generally be categorized as follows: underwriting reports to facilitate underwriting by insurance companies, employment or personnel selection reports, financial control reports and claim reports (see generally Stansbury 6735 [11]et seq.; Hopp 6683 et seq.; Knautz 6870 et seq.; Trotochaud 6724 et seq.).<sup>9</sup>

<sup>5</sup> These figures pertain to respondent's operations in the United States, and do not include figures obtained from respondent's subsidiaries (CX 1445B).

<sup>6</sup> This does not include figures obtained from respondent's subsidiaries (CX 1445B).

<sup>7</sup> This figure pertains to respondent's operations in the United States, and does not include figures obtained from respondent's subsidiaries (CX 1445B).

<sup>8</sup> This figure pertains to respondent's operations in the United States, and does not include figures obtained from respondent's subsidiaries (CX 1445B).

<sup>9</sup> This section is not intended to catalogue exhaustively all of respondent's reports. It is intended to be illustrative and to generally outline the range of services available and the more significant reports which respondent offers.



### A. The Underwriting Reports

17. Respondent's underwriting reports fall into two major groups: Life and Health reports and Fire and Casualty reports (see RX 316A-D, 315A-D). For such reports, respondent charges basically two rates: a "L & H charge for standard or regular reports in any given locality" (RX 315A) and a "fire and casualty rate charge for standard or regular reports in any given locality" (RX 316A). In addition, an hourly fee "per hour for time required on special or expanded investigations" may be charged (RX 315A, 316A).

18. In 1973, the L & H charge was \$5.35 and the fire and casualty charge was \$5.60 (RX 566 III-7, 315, 316).<sup>10</sup> Reports charged at the basic rate, e.g., \$5.35, are also referred to in the record as "single fee" reports.

19. Respondent considers two of its underwriting reports, the Regular Life report and the Regular Auto report, which are the most frequently handled reports, as its two basic services (RX 566 III-6).

#### (1) Life Reports

20. CX 422A is the Form 1 basic life report used until the end of 1975. It was used to aid respondent's customers in the underwriting of small life insurance applications (Stansbury 6746). The basic rate was charged for this report, and there was a requirement that two sources be contacted as part of its preparation. [12]

21. The applicant or an adult member of his household counted as a source. If the applicant were contacted and interviewed, then a minimum of one additional source had to be interviewed<sup>11</sup> (Stansbury 6747). The basic life report could be handled at either the applicant's business or neighborhood location or at both (Stansbury 6748).<sup>12</sup> Time coverage<sup>13</sup> in the case of this report was 2 years, meaning that the sources interviewed had to have been acquainted with the applicant for 2 years (Stansbury 6745, 6748).<sup>14</sup>

22. The basic life report was to be completed by in-person handling by the field representative, but if this proved impossible, the telephone could be used (Stansbury 6750).

23. The Streamlined Life report was a report whose rate was 25

<sup>10</sup> In certain locations, the L & H and F & C charge may have been higher or lower (RX 315B, 316B).

<sup>11</sup> An employment source would then be sufficient to complete the report.

<sup>12</sup> The term "location" in this context means the general area where the interviews were to be handled. In the case of some reports, the interviews may have been required at more than one location, i.e., a business and neighborhood location (Stansbury 6748).

<sup>13</sup> Time coverage is the total time sources need to have known the subject of the report required in the case of a particular report service offered by respondent (Stansbury 6745).

<sup>14</sup> Such coverage for a 2-year period could have been achieved even though each source knew the applicant for only one year provided that together they covered the 2-year time span (Stansbury 6745).

cents less than basic. It was designed to meet the desire for a full scope investigation with limited feedback at a lesser price. Remarks were not covered in narrative form, and the answers were given by checking various blocks. The report could be handwritten, and the heading on the report was prepared by the customer (Stansbury 6765-66). [13]

24. The NORS Service or Notification or Report Service was a service where a notification, but no report, was filed when there were no unfavorable facts found and the insurance application was relatively small. This service was used in connection with basic rate reports or reports less than basic rate (Stansbury 6775-76).

25. The RAPCON Service, like NORS, was designed to speed up handling and to limit clerical functions. It was transmitted by telecommunications if the report was completely favorable to the subject. In the event that the case was not favorable, a report was filed (Stansbury 6776).

26. The NORS Service was generally priced at less than the basic rate while RAPCON was a few cents over the basic charge (Stansbury 6777).<sup>15</sup>

27. Other life reports calling for more information or greater detail were priced at multiples of the basic rate; such reports are referred to in the record as multiple fee reports. For example, CX 487, the "Intermediate Life or Health Report" was priced at double the basic rate; its time coverage was 3 years, and the minimum number of sources to be seen was three. On this report, two locations were required; namely, a business and a residential location. The purpose of this report was to give more information than the basic life report on applications for insurance policies with larger limits (Stansbury 6770-71).

28. The Special Narrative Life report, CX 412, one more step up the ladder, had time coverage of 5 years, the minimum sources to be contacted were four, and the required locations were business and residential. It was priced at three times the basic rate. The telephone [14] could be used only after personal efforts had been made to complete the handling (Stansbury 6771-73). This report had greater detail than the Intermediate report because of the narrative treatment (id.).

29. CX 420, the Special Life Specific Rate report, was priced at six times the basic rate. The required number of sources was six. Tim

<sup>15</sup> The NORS Service was less than basic because no report had to be filed. In the case of RAPCON, the NOI rate applied, but there was a surcharge for the RAPCON telecommunications service. Generally, NORS was 25 cents less than the basic charge (Stansbury 6777).

coverage was 7 years, and the locations to be covered were two or more (Stansbury 6779).

30. CX 432, the Special Life report, was an hourly rate report. The time coverage was a quarter of the applicant's lifetime, and as many sources and locations as needed to develop the information were required. This report was the "Cadillac" or the top of the line of the Life Series. It was a service designed to get complete information in the case of larger insurance applications with particular emphasis placed on finances (Stansbury 6781).

31. Subjective features, such as the habits of the person being reported on, were covered equally on all the reports (Stansbury 6780).<sup>16</sup>

### (2) Health Reports

32. CX 413 was the basic health report. It was priced at the basic rate, had time coverage of 1 year and required a minimum of two sources. It was comparable in scope to the basic life report but put emphasis on factors bearing on morbidity, viz., frequency of disability, rather than mortality. It was used in connection with disability or loss of time insurance (Stansbury 6785-87). There was greater emphasis on finances in this health report than in the basic life report in order to throw light on the motivation to work following a disability (Hopp 6786-87). [15]

33. CX 427 was the Special Narrative Health report. It was priced at triple the basic rate, had time coverage of 5 years and required a minimum of four sources (Hopp 6795). The depth of the report was greater because of the additional time coverage and because more emphasis was placed on finances than in the case of single fee reports (Hopp 6796).

### (3) Casualty and Property Reports

34. Respondent serves the entire property and casualty insurance industry embracing some 27 different types of insurance policies ranging from automobile through property insurance (Hopp 6784).

#### *a. Automobile Reports*

35. Respondent's automobile reports fall into two general categories and, within each, there are a variety of different reports whose use depends upon the coverage desired by a particular insurance

<sup>16</sup> Subjective information is information obtained through outside sources and pertains to an individual's personal activities (Stansbury 6780-81).

company. In the first group, respondent offers full automobile services which consist of reports of an investigative consumer nature, including general information on the applicant. The second category comprises the classification type service, focusing primarily on the uses and drivers of vehicles in a household, *e.g.*, number of cars and their principal operators (Hopp 6685).

36. There are several basic full auto reports. The principal of these reports is Form 6033, CX 479, which is the most frequently used full auto report form (Hopp 6685, 6698).

37. In a full auto report, the general requirements are a year's time coverage and generally an interview with the applicant and one outside source. In the event that the applicant cannot be interviewed, then a minimum of two outside sources is required (Hopp 6686).

38. Respondent has approximately 16 to 18 report forms for its full or basic auto reports (Hopp 6687). Most of the full reports are at the flat rate or property and casualty rate. There are also some reports at multiples of that rate (Hopp 6688). [16]

39. Certain of the full automobile reports may be filled out in longhand, and these are referred to as streamlined reports (Hopp 6689).

40. The classification reports facilitate the insurance company's classification and rating system; namely, the determination of in which classification category a particular risk falls. This decision is based on such information as age group, marital status, usage of car, approximate mileage and where the car is kept (Hopp 6690).

41. In terms of the number of auto reports completed in 1972, classification type reports represented approximately 5 percent of respondent's total volume (Hopp 6691).

42. There is a wide variety of classification report forms because classification categories differ by insurance companies and in different parts of the country. For example, the institution of "no fault" insurance in certain states necessitates separate forms for those states. Respondent uses approximately 50 different report forms in connection with the classification and rating services (Hopp 6691). Some auto classification reports are telephone reports, whereas others are to be handled on the street (Case 6023-24).

43. In the case of the classification service, requirements as to interviews with the applicant, time coverage and other factors vary widely depending upon the desires of the particular customer of respondent (Hopp 6691-92).

44. The classification reports are completed in longhand since they primarily consist of "yes" or "no" answers with few or no

narrative remarks. Generally, they are less expensive than the full auto reports (Hopp 6692). There is a wide variety of prices available in this category of reports based upon the effort required (Hopp 6693). [17]

*b. Property Line Services*

45. In the property line services, respondent offers five basic services (Hopp 6708-09), but 100 or more reports are available in this line (Hopp 6716).

46. The first group is comprised of the Modified Short Form report, which requires only observation of the property to be insured and a photograph, if requested.<sup>17</sup> No interview is required, and such reports are completed in longhand (Hopp 6708-09). These reports are charged at less than the basic rate because the effort factor is not considered as great as in the standard report (Hopp 6709).

47. The second category is respondent's Dwelling, Fire Short Form report, which is also an observation service. This report, over and above the Modified Short Form information, includes an estimated replacement cost figure and certain construction features. Outside sources are not involved in the preparation of this report, but an interview with the applicant is to be attempted. This report also is priced at less than the basic fee (Hopp 6709-10).

48. The third category is the Dwelling Fire report, which is respondent's standard service and is considered a full scope report requiring a year's coverage, contact with the insured and outside sources, or with outside sources only, if the insured cannot be interviewed. It is rated at the property and casualty rate and is typed (Hopp 6710). [18]

49. The fourth category is the Streamlined Homeowner's report, the cost of which is somewhat greater than the fire report. This report, in addition to information relevant to fire coverage, includes information on theft and liability exposure (Hopp 6711). The Streamlined Homeowner's report requires an interview with the applicant and an outside source, or one outside source if the applicant can't be interviewed. One-year coverage is required, and it is done in longhand (Hopp 6711).

50. The fifth report is a Full Homeowner's report. The scope of the information covered is basically the same as in a Streamlined report, but the report is typed. It is more expensive than a Streamlined report (Hopp 6711).

<sup>17</sup> In the case of all property reports, a photograph is available, but there is an extra charge for that service (Hopp 6712).

## B. Employment or Personnel Selection Reports

51. Prior to January 1, 1976,<sup>18</sup> respondent offered three basic employment reports to the insurance industry. The Agent L & H report, the Special Narrative Agent report and the Special Agent report (Knautz 6873).

52. The Agent L & H report had a year's time coverage, and the minimum sources were the subject of the report and file information or two outside sources. The report was priced at the personnel rate<sup>19</sup> (Knautz 6873-74).

53. The Special Narrative Agent report had time coverage of 5 years, and the minimum number of sources to be contacted was three. It was priced at three basic L & H rates (Knautz 6874). [19]

54. The Special Agent report, priced at an hourly rate, had time coverage of a quarter of a subject's lifetime, and as many sources as necessary were to be seen. The customer had the option of setting a limit on the amount of time spent by the field representative (Knautz 6875).

55. Reports in the personnel selection area not confined to the insurance industry, afforded a similar spectrum for depth of coverage. Prices for these reports ranged from a single fee "personnel rate"<sup>20</sup> when the investigation was conducted at one location, to multiple fee and hourly rates<sup>21</sup> and flat rate reports<sup>22</sup> (RX 328A; Knautz 6878-81). [20]

<sup>18</sup> Subsequent to this date, respondent restructured the agency services (Tr. 6875).

<sup>19</sup> See page 18, for definition of "personnel rate."

<sup>20</sup> The "personnel rate" as of January 1, 1972, was \$4.85; the "security personnel selection rate" was \$5.25; and the hourly rate was \$10.20 (RX 328B).

<sup>21</sup> The number of fees or personnel rates to be charged for certain reports depended on the number of locations visited by the field representative. *E.g.*,

<i>Service</i>	<i>Charge Basis</i>
PERSONNEL SELECTION REPORTS	
A. One location	Personnel Rate
B. Two or three locations	Double Personnel Rate
C. Four or more locations	Triple Personnel Rate
D. Correspondent territory	Maximum Charge Double Personnel Rate

(Price List—June 1, 1972, RX 328A.)

<sup>22</sup> If a customer chose a "flat rate report," he received a full 5-year report regardless of the number of locations visited. The field representative would be compensated for normal amount of time spent and on a per-location basis. If the field representative went to more than one location, he would be compensated on the number of locations visited (Knautz 6879-80). Respondent had the following flat rate personnel selection services available as of June 1, 1972:

PERSONNEL SELECTION REPORT (Report covers most recent 5 years)	\$21.45
SECURITY PERSONNEL SELECTION REPORT (Report covers most recent 5 years)	\$24.50
SPECIAL PERSONNEL SELECTION REPORT	

(Continued)

### C. Financial Control Services

56. Respondent's financial control services include audit and validation services, credit reports, and collection aid services (Knautz 6892).

57. The audit and validation service is essentially a physical audit of inventory for institutions such as banks, which engage in inventory financing (Tr. 6893).

58. Respondent also offers business credit reports, character financial reports and individual credit reports (Knautz 6893).

59. Respondent's collection aid services include current asset and income reports, slow payer reports, credit card pickups and location reports (Knautz 6895).

### D. Respondent's Claim Service

60. Respondent's claim service generally includes investigations relating to death, health, disability, sickness, accident and continuing disability claims (Trotochaud 6291). Respondent's claim service is sold to two segments of the insurance industry: the life and health companies and those firms engaged in the fire and casualty field (Trotochaud 6291-92).

61. In the life and health fields, respondent does primarily reports on first-party claimants, viz., a claimant insured by the company with whom he has filed a claim. Third party claim investigations involving individuals filing claims against companies other than the ones with which they are insured, are generally conducted for casualty insurance companies such as auto insurers (Trotochaud 6298). [21]

62. Respondent charges for its claim reports on a flat rate and an hourly basis. Approximately 65 percent of respondent's claim revenues are derived from hourly rate investigations where a charge is made for the time spent. The remaining claim investigations are charged at a flat rate which may be a single claim rate or multiples thereof<sup>23</sup> (Trotochaud 6300-01).

63. The Late Progress report is an example of a single flat fee report. It is designed to give the insurance company information as to whether a total disability claimant is still disabled and still alive.

(Report covers most recent 1/4 lifetime)	\$47.00
SALESMEN SELECTION REPORT	
(Report covers most recent 1/4 lifetime)	\$49.00
EXECUTIVE QUALIFICATION REPORT	
(An exhaustive tailor-made investigation, specially presented)	\$350.00
(RX 328A.)	

<sup>23</sup> In 1972, the single claim rate was \$4.85, and the hourly rate charge was \$10.20 (RX 337B).

On this type of investigation, two outside sources are to be contacted (Trotochaud 6301).

64. A Continuance of Disability report is an example of a double claim rate report. On that report, respondent attempts to determine whether a claimant, accepted as disabled, is still disabled. In the case of this report, at least two outside sources and the claimant are to be seen (Tr. 6301-02).

65. The Personal Injury report is an example of a report for which four single claim rates are charged. It is used in the case of third-party claimants; outside sources and the claimant are to be interviewed. The service also includes a record check for such items as past accidents (Trotochaud 6302-03).

66. Hourly rate claim reports are termed "special investigations." Typically, in the case of a death claim investigation, there is a limit of \$95.00. The field representative may expend time up to the limit, and the customer is contacted for authorization to continue in the event the investigation is not completed (Tr. 6303). There is no minimum number of sources to be contacted in the case of an hourly rate claim report (Tr. 6304). [22]

67. Field representatives have, as a practical matter, set a time limit on flat rate claim reports. The charge for a double claim rate report is approximately the same as the hourly charge. In the case of a double fee report, the field representative generally works the case for an hour, and if more remains to be done, the customer is requested to advise whether additional work is desired (Trotochaud 6306-07).

68. The Underwriting Medical History report is a service within the jurisdiction of the Claims Department, although it is not a claim report. In it, respondent secures medical information from sources such as physicians and hospitals, in order to expedite the flow of medical information to insurance companies (Trotochaud 6282).

### III. RESPONDENT'S ORGANIZATION AND STRUCTURE

69. Respondent operates essentially at three levels: its Home Office; the operating regions; branch offices, suboffices and detached local units (DLUs) (CX 666D).

70. The Home Office, located in Atlanta, Georgia, formulates policy for the company, controls its operations and performs service functions such as accounting, sales, research, education and other staff work, which can be best done from a central point (CX 666D).

71. There are 15 regions in the United States, which have



administrative and supervisory responsibility over the branch offices located in their territory (Jones 5125).

72. Branch office managers report to a Regional Vice President, who generally is responsible for 13 to 15 branch offices (Jenkins 5644).

73. A Regional Vice President, in turn, reports to a vice president and associate operating manager in respondent's Home Office in Atlanta (Jenkins 5645). [23]

74. A Regional Vice President, who supervises the branch office managers directly, is the extension of respondent's home office management, responsible for meeting quality and financial objectives in the region. In this connection, he is also responsible for the movement of business, meeting time service, employee morale and maintenance of facilities individually for the branch offices and collectively for the region. Other responsibilities include staffing the offices and manpower development for the corporation (Lieber 8978-79).

75. Preparation of the consumer and consumer investigative reports under consideration here is carried on by respondent's branch offices in the field and their related suboffices (numbering respectively some 219 and 1,000 in April 1976) (Jones 5125).<sup>24</sup>

76. The personnel in branch offices varies with the size and type of office. A branch office always has a manager and sometimes one or more assistant managers.<sup>25</sup> It also has a number of firstline supervisors responsible for supervising, on a daily basis, the work of one to six field representatives. Such supervisors spend part of their time supervising and the balance of their time preparing reports (Jenkins 5697-98). A branch office may also contain a claim director and a supervisor of the unit making employment reports—a personnel selection director. Included in supervisory personnel is the branch office trainer who trains new field representatives (Jenkins 5698). [24]

77. Branch offices also employ service reviewers who have the responsibility of reviewing written reports after they are dictated by the field representative and typed by the stenographer. The reviewer is generally the most experienced and highly trained clerical person in the office. If she finds a discrepancy in a report, such as an

<sup>24</sup> Respondent had 272 branch offices as of February 25, 1972, while the corresponding figure for May 10, 1974 was 229. In both years, at least one such office was located in each state with the exception of Vermont and the District of Columbia (CX 1445A). In addition, as of March 31, 1972, respondent had approximately 1,055 suboffices, the corresponding figure for December 31, 1973, being 994 (CX 1445B). These figures pertain to respondent's United States' operations and do not include figures from its subsidiaries (CX 1445A-B).

<sup>25</sup> Branch managers, in addition to their other duties, also have a responsibility to obtain and keep local business from agents in their area (Shaffer 8396).

incomplete report, it is her responsibility to get the report back to the supervisor of the field representative involved (Jenkins 5699).

78. Most branch offices contain "regular" units which include the field representatives designated to handle basic rate reports, which are distinguished from claim investigations, special life reports or personnel reports. The regular units contain a cross section of respondent's employees. New employees enter these units, as a general rule, but they may also contain those field representatives with greater experience who have not shown an aptitude for handling claim investigations or the more sophisticated reports (Jenkins 5711-12).<sup>26</sup>

79. In addition to the regular units, branch offices may have specialized units such as special life units, personnel units, property line units and claim units (Curtis 7093, 7115). Once expertise and length of service are developed, field representatives are usually given more specialized investigations (Deibig 13752).

80. A suboffice is an office within a branch office's territory located at a distance from the branch office.<sup>27</sup> Suboffices do not maintain full file storage systems and do not have full responsibility over their territories other than in producing reports (Jones 5125). Detached local units function like suboffices but are in closer geographic proximity to the branch office (id., Jenkins 5828). [25]

81. It is respondent's policy that field representatives in suboffices should be "better than average" because they work without direct supervision. Their work requires the ability to operate successfully away from close contact with management (RX 107Z-140). The detached local unit, while it operates like a suboffice, receives close supervision from the branch office management because of its proximity to that office (RX 107Z-142).

82. Respondent's claim services are under the jurisdiction of the Claim Department in the Home Office, which has been in existence since 1973 (Trotochaud 6331).<sup>28</sup>

83. In the field, respondent has 17 Regional Staff Managers, Claims, approximately 200 claim directors in the branch offices and 600 to 650 full-time claim field representatives (Trotochaud 6276-77).

84. The regional claim supervisor or staff manager shares responsibility with the branch manager for superintending and

<sup>26</sup> In the case of the more sophisticated special life reports, for example, it is necessary for the field representatives to be able to read financial statements and be acquainted with concepts such as unearned income (Jenkins 5713).

<sup>27</sup> Suboffices are divided into two categories. The Class A suboffices are the larger suboffices while the Class B suboffices are smaller and in more remote and less populous areas (Matthews 5568).

<sup>28</sup> Prior thereto, the claim operations were conducted by a division of the Operating Service Department (Trotochaud 6331).

developing claim personnel. In addition, he has sales responsibility for the claim service in his region (Jones 5135-36).

85. The branch office claim director, who reports directly to his branch manager, has complete responsibility for the claim service in his office. He directly supervises the claim field representatives in the branch and suboffice territory (Trotochaud 6279). In a small branch office, the claim unit may consist of the claim director alone (Trotochaud 6284).

86. Claim work is considered a specialty program in the branch office. It particularly lends itself to specialization in terms of placing field representatives into specialized units for developing job skills in that particular area (Jones 5136-37). A full-time claim investigator is a field representative who devotes 80 percent or more of his time to claim work (Trotochaud 6285). [26]

87. Field representatives engaged in claim work need more expertise and talent than those field representatives working in a regular unit such as the life and auto unit (Monarch 8570, 8574).

#### IV. RESPONDENT'S FIELD REPRESENTATIVES

##### A. General Characteristics

88. Respondent's field representatives perform the investigative work underlying the reports with which this proceeding is concerned. Field representatives are either full-time, salaried employees or part-time employees paid on a per unit basis.

89. As of May 10, 1974, respondent had approximately 4,635 salaried field representatives out of its total of 7,413 salaried employees (CX 1445B).<sup>29</sup> During 1971, it had an average of 4,486 non-salaried employees (excluding subsidiary employees); of this total, 1,775 employees were regular part-time field representatives (CX 1445B).<sup>30</sup>

90. A new salaried field representative must be 21 years of age and a high school graduate, although respondent prefers that he or she has more education (Jenkins 5715). A background check is conducted on every employee (Tr. 5717).

91. Respondent's field representatives, in terms of educational achievement, may be grouped as follows for the period 1971-1975: [27]

<sup>29</sup> As of January 27, 1971, out of a total of 9,249 employees, respondent had 5,910 salaried field representatives (excluding U.S. subsidiaries).

<sup>30</sup> The function of the regular part-time field representatives is primarily to handle volume in peak periods (RX 107Z-80).

Educational Levels of Retail Credit Company  
Field Representatives On Hand at  
End of Each Year  
(United States and Canada)

*Calendar Years 1971—1975*

<i>Educational Level</i>	<i>1975</i>	<i>1974</i>	<i>1973</i>	<i>1972</i>	<i>1971</i>
High School Graduate	36%	39%	39%	42%	42%
College Undergraduate	39%	36%	37%	37%	39%
College Graduate	25%	25%	24%	21%	19%

Educational Level of New Retail Credit Company  
Field Representatives Hired Each Year  
(United States only)

*Calendar Years 1971—1975*

<i>Educational Level</i>	<i>1975</i>	<i>1974</i>	<i>1973</i>	<i>1972</i>	<i>1971</i>
High School Graduate	17%	15%	15%	27%	17%
College Undergraduate	40%	44%	43%	37%	45%
College Graduate	43%	41%	42%	36%	38%

(RX 728.)

92. Respondent's Branch Manager's Manual, dated December 1968, indicates that education plays the following role as a consideration in hiring:

Particularly in view of the Company's practice of promoting from within, it is desirable that a good proportion of Inspectors have some college training. However, high school graduation is acceptable, *providing the applicant had a credible scholastic record*. In hiring men with college training, it is generally desirable that this training shall have been acquired at a small college, since men from such schools would be inclined to be more satisfied with average earnings and difficult working conditions than would men from the larger, more socially prominent institutions.

(CX 673Z-10.) [28]

93. Respondent views single applicants for employment favorably for the following reasons:

In view of the moderate starting salary paid to Inspectors, many married men with family responsibilities would be hard pressed to make a go of it. Also, single men

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afford more flexibility of organization—transfer, changes in location, etc. An ideal single man, however, is one who needs a job in order to support himself and whose financial house is in order. Obviously, a married man whose salary needs are moderate should also receive full consideration.

(CX 673Z-11.)

94. The record shows the following length of service distribution for respondent's field representatives at the end of 1973:

Field Representative Length of Service Group	Actual Field Reps. at Year-End	
	Number	Percent
0 ---- 1 yr	741	14.4%
1 ---- 5 yrs	1,007	19.6
5 ---- 10 yrs	1,094	21.3
10 ---- 15 yrs	768	14.9
15 ---- 20 yrs	721	14.0
20 ---- 25 yrs	481	9.3
25 ---- 30 yrs	248	4.8
30 ---- 35 yrs	61	1.2
35 ---- 40 yrs	20	.4
40 ---- over 40 yrs	4	.1
	<u>5,145</u>	<u>100.0%</u>

(RX 566V-4.) [29]

#### B. Functions Performed

95. The field representative's job may be roughly broken down into three main functions: the morning workup, the street investigation, and post-investigative work.

96. The morning workup involves picking up the mail containing requests for reports (Jenkins 5726; Curtis 7103-04, 7110-11), checking the files to determine whether there is already a file on the subject of the inquiry, separating inquiries by lines of business and by locations of the subjects of the reports (Jenkins 5726-27, Curtis

7103-04) and "diagnosing" reports to determine need for special handling (Jenkins 5726-27).<sup>31</sup>

97. The cases in a branch office and within a given line of business are separated geographically by the areas where they are to be worked and assigned to the field representatives by the supervisor (Jenkins 5726-27).

98. The field representatives list the reports assigned to them on a Form 930 identifying their cases by customer, subject of report, and type of report (Curtis 7124). Field representatives should then line up their cases geographically in order to save travel time as well as to use reference materials to identify possible sources (Jenkins 5726-28, Curtis 7130). As part of the pre-investigative work, the field representative may confer or have a "put-up"<sup>32</sup> with his supervisor concerning possible problems in connection with the cases to be investigated (Curtis 7105-06). [30]

99. Field representatives may be either on a "once-a-day" or a "twice-a-day" schedule. This refers to the number of times that field representatives are required to report to the office per day (Jenkins 5728-29, Curtis 7107-08). Branch managers are free to determine whether their office should be on a once-a-day or a twice-a-day system (Brothers 7374).<sup>33</sup>

100. The field representative's schedule for street investigation is governed by whether he is on a once-a-day or a twice-a-day schedule (Curtis 7236, Jenkins 5729). The time actually spent on the street varies and may range from 3 to 6 hours.<sup>34</sup>

101. After the street investigation, the field representative may make telephone calls to secure information from sources he was unable to interview or to set up appointments. Such calls may be made in the afternoon, evening or the next morning (Getz 12353, Matthews 12789, Maust 8268-69, Rawls 11056-57, Clark 4003-05, Milligan 4577, Silar 3896, Wallace 2999-3000). The field representative may also confer with his supervisors concerning [31]problems

<sup>31</sup> Depending on the office, certain of these tasks may be performed by clerical personnel, a supervisor or by a field representative (Jenkins 5726-27, Curtis 7110, Guse 12045-46, Case 5287).

<sup>32</sup> "The term 'put-up' is peculiar to the Retail Credit Company—it means literally the practice of taking matters up with (or putting them up to) another person for advice or a decision." (CX 666K).

<sup>33</sup> On a once-a-day schedule, the field representative in the morning initially finishes handling cases from the day before. He may make telephone calls; he discusses his cases with his supervisor if necessary, and then dictates (or types) the reports. He then receives his new cases, prepares for his work on the street, and then leaves to do the street investigation, going directly home when he finishes (Jenkins 5729). On a twice-a-day schedule, the field representative receives his cases for the day in the morning, goes out on the street to investigate, and returns in the afternoon to conclude the handling and to dictate (or type) his cases (Brothers 7373, Jenkins 5729).

<sup>34</sup> *E.g.*, depart office between 10:00 a.m. and 12:30 p.m., finishing between 4:00 to 4:30 p.m. (Garza 9174-75); leave office between 10:00 to 12:00, finishing street work between 3:00 to 5:00 p.m. (Tr. 12328-29); depart for street at 9:00 a.m., completing street investigations by 12:45 p.m. to 2:00 p.m. (Guse 12646-47); leave office between 11:00 to 12:00 and finishing usually at 4:00 p.m. (Hinton 9618-19). In Boston, normal departure time for street was noon with the normal workday ending at 5:00 p.m. (Hakey 1576).

encountered during the investigation (Curtis 7212-13, Brothers 7370-71). After completing the handling of the reports, the field representative dictates the reports (Curtis 7128). Some field representatives on the once-a-day schedule dictate some or all of their reports at home in the afternoon or evening (Cooke 9962-63, Guse 12047, Chambers 1934, Clark 4019, Milligan 4551). Others dictate all of them the following morning (e.g., Monson 3246, Pollard 312, Silar 3896, Wallace 2999-3000, Getz 12328).

#### V. COMPENSATION

##### A. Full-Time Salaried Field Representatives

102. Field representatives are compensated by a monthly salary, overtime, a mileage allowance and, if eligible, a quarterly bonus (Case 5273).

103. Salary ranges are established for various classes of respondent's branch offices and suboffices and for various classifications of field representatives within such offices (Case 5236; RX 107J).

104. Field representatives work on a fluctuating hourly basis; their set monthly salaries cover the 40 hours in the week they work. The field representative is reimbursed at the rate of one-half of his hourly rate of pay for the hours he works overtime (Case 5273). As overtime increases, the field representative's compensation on a per hour basis of effort decreases (Case 5514-15).<sup>35</sup> [32]

105. Respondent does not believe there should be great amounts of overtime. Overtime claims running more than 10 hours beyond a 40-hour week are examined (Jenkins 5723).

106. A field representative is expected to produce a certain amount of revenue each month from the reports he prepares (see *infra*).

107. The revenue credit which a field representative earns is computed by multiplying the price of the report charged to respondent's customer by the number of reports at that price prepared by the field representative (Hakey 1594, Case 5279-80).<sup>36</sup>

108. Respondent refers to the amount the field representative is

<sup>35</sup> E.g. if the field representative makes \$600 a month, overtime would be computed as follows: divide the annual salary of \$7,200 by 52 weeks and then divide that number of hours actually worked in that week; e.g., 45 hours to arrive at the hourly rate of pay for the week. One-half of that hourly rate would be paid for each hour of overtime (Case 5274). In practice, this works out as follows: a field representative working a 40-hour week at the rate of \$600 a month would average per hour for that week, \$3.46. But if he works a 45-hour week, he would average \$3.08 an hour, and would be compensated for the 5 hours overtime at the rate of \$1.54 (1/2 of \$3.08) per hour overtime (Case 5509-10).

<sup>36</sup> Whether the field representative is credited with the full price of the report charged to the customer depends on the report (Case 5281). E.g., on a report priced \$5.75, the field representative may receive a revenue credit of only \$5.00. The remaining 75 cents would be termed "No Fee Allowed" (to the field representative) or "NFA." Respondent may use the amount designated as NFA for items such as quality control, additional

expected to produce as the production standard (Case 5276). The field representative has a predetermined production standard, which is a dollar amount, set on a monthly basis to cover his "expenses," which are salary, mileage,<sup>37</sup> overtime, and stenographic [33]charges<sup>38</sup> (Case 5274). The production standard fluctuates month to month with the field representative's expenses (Case 5276).

109. The production standard for a month is computed as follows: assume \$600 salary and \$200 for expenses for a total of \$800. This is divided by the field representative's reporting standard which may be 50 percent on the dollar, resulting in a production standard or amount for that month of \$1600 (Case 5276).

110. The reporting standard is a percentage varying in general from 45 percent to 60 percent (e.g., RX 727W, 716M). Branch offices in different code classifications have different reporting standards (Case 5317, 5326-30). A DLU has the same reporting standard as its branch office, but the reporting standard of a suboffice may differ from that of its branch office (Case 5535-36). Within each class of office, the reporting standard increases with the length of service of the field representative at 5-year intervals (Case 5321; RX 727W, 715W, 716G).

111. The higher the reporting standard, the fewer reports a field representative has to produce. Assuming expenses are the same, a field representative with a reporting standard of .55 would have to produce fewer cases than another field representative with a reporting standard of .50 (Case 5970). [34]

112. The field representative reaches the break-even point on his production if the revenue or earnings with which he is credited match salary, other expenses, and overtime (Hakey 1593-94). If his earnings credit exceeds the break-even point, he has a gain; if they fall below, then he has a loss.

113. A field representative's "gains" and "losses" are computed as follows: for each month, the field representative's total revenue

supervision, etc. (Case 5282). NFA, however, does not exist on all reports (Case 5283). A field representative may receive extra compensation or a surcharge in the case of some reports for performing certain services, such as taking a photograph (Case 5280).

<sup>37</sup> "Field representatives are reimbursed for the automobile expenses associated with their work. Automobile expenses are reimbursed by applying one standard rate per mile to miles reported by the field representative up to a certain maximum per week, and another standard rate per mile to all miles reported above that maximum per week." (RX 566 IV-2.)

*E.g.*, 15 cents per mile for the first 125 miles a week and 8 cents per mile for mileage in excess of 125 miles for the week (id. at IV-3). This was in effect January 1973 (Case 5477).

<sup>38</sup> "The costs of secretarial assistance associated with preparation of reports are, in effect, charged to field representatives in the comparison of actual performance to standard. Stenographic expenses are calculated based on a standard rate applied to units of stenographic effort, and a certain number of stenographic units are associated with each type of report." (RX 566 IV-3.)

The stenographic charge per life and auto report was 44 cents in 1973 for a Code 04 office (ibid., RX 715).



credit is multiplied by the reporting standard. The product of that computation is the field representative's "dollar standard." The excess, if any, of the dollar standard over the expenses is a "gain." Conversely, if the expenses exceed the dollar standard, he has a "loss" (Case 5274).<sup>39</sup>

114. A field representative is generally expected to produce enough reports to meet his production standard on an annual basis and, except for factors beyond his control, on a quarterly basis (Case 5275-76, N. Smith 13225-26, Curtis 7163-64). Normally, field representatives are expected to break even in a 40-hour week (Jenkins 5841).

115. A unit supervisor is responsible for seeing to it that the field representatives under his supervision prepare enough cases to satisfy their salary and other expenses (Hakey 1587-88).

116. An experienced field representative is expected to be able to complete more reports than a new employee (Jenkins 5715).

117. Field representatives receive their normal compensation whether they meet the production standard or not (Buckley 1311-12, Wallace 3025-26, Silar 4050-51). [35]

118. In computing whether a field representative meets his production standard, he may be given credit in certain instances for absences from work and allowances for certain tasks performed in the office which reduce the time available for the preparation of reports (Case 5287; RX 107Z-105-110). These include vacation credits, illness credits, disaster credit where time is lost because of adverse weather conditions, vacation on own time,<sup>40</sup> and absences for jury duty (Case 5287, 5517, 5892, 5288-89, 5293, 5287-88).

119. An allowance is given for time spent in supervision, and the amount is determined by the branch manager in consultation with the person involved. The amount of credit per hour of time is the credit which would be given for working an hourly rate report in the particular office (Case 5287, 5293-94; Brothers 7477-79, 7575-76; Curtis 7108-09).

120. Trainers are similarly given an allowance for the time they spend training new field representatives. This allowance is computed on the basis of the production credit for preparing an hourly rate report (Case 5287, 5294). Trainees are also given an allowance while in training (Case 5330-31).

121. Field representatives may be given similar allowances for performing various clerical duties in the office (Case 5287).

<sup>39</sup> *E.g.*, if the field representative has expenses (including salary, overtime, mileage, etc.) of \$900 and his dollar standard is \$1,000, he has made a gain for the month of \$100 (Case 5274).

<sup>40</sup> Time off without pay (Case 5892).

122. The Unit Supervisor Advanced normally produces two-thirds of his salary to cover his expenses, and the remaining third is made up by the branch office because he is expected to spend roughly one-third of his time in the office supervising employees (Case 5372). He and the Claim Director Advanced receive a guaranteed bonus of 10 percent of their monthly salary irrespective of their production (Case 5303, 5527-28). [36]

123. If the field representative's earnings credit exceeds salary and expenses over a quarter, then he is eligible for a bonus in that amount up to 20 percent of his salary for the quarter (Case 5274-75; RX 566 at IV-5).<sup>41</sup>

124. Eligibility for a 10 percent bonus commences with 3 calendar months of employment and for the full bonus of 20 percent, after 6 months of service (RX 107Z-63-64).

125. The decrease in compensation in terms of the hourly rate as a result of overtime (Finding 104) may be offset if, as a result of extra hours worked, the field representative is able to produce extra cases entitling him to a bonus or additional bonus (Case 5552-53). Overtime, if reported, increases the ceiling for bonus (Case 5302). [37]

126. If a field representative fails to record overtime, his expenses will be less, and having less expenses to cover, he needs to work fewer cases to show a gain for the month (Case 5384). The same would be true if he were to understate his mileage (Tr. 5384-85).

127. An overgainer is a field representative who prepares a number of reports so that his production credit is greater than his expenses and the maximum bonus of 20 percent (Curtis 7175).

128. Respondent's policies for salary increases generally require (other than in a general rate increase or an increase in a per dollar standard) a demonstration on the part of the field representative of

<sup>41</sup> This is illustrative by the following hypothetical example:

	<i>Month 1</i>	<i>Month 2</i>	<i>Month 3</i>	<i>Total</i>
Earnings Credit Amount	\$954	\$828	\$885	\$2,667
Mileage Expense	(127)	(127)	(127)	(381)
Stenographic Expense	(152)	(132)	(141)	(425)
	-----	-----	-----	-----
Earnings Credit Available to Cover Salary	\$675	\$569	\$617	\$1,861
Monthly Salary	610	610	610	1,830
	-----	-----	-----	-----
Available for Bonus	<u>\$ 65</u>	<u>\$(41)</u>	<u>\$ 7</u>	<u>\$ 31</u>

(RX 566 IV-5.)

The "earnings credit," it should be noted, was computed by multiplying the reporting allowance or standard total revenue credit (e.g., in the case of Month 1 .505 (reporting allowance) × \$1890 (revenue credit) = \$! earnings credit (RX 566 IV-4)).

his ability to produce the reports needed to cover his salary (Brown 14416-17). As a general rule, a field representative is not given a salary increase unless his average monthly gain for the preceding 6 months is at least equal to the amount of the salary increase, which would increase his production standard by the same amount (Case 5419-21, N. Smith 13267-68, Curtis 7175,<sup>42</sup> Jenkins 5837-38, Hakey 1740-41).

129. As a practical matter, after the salaries of respondent's field representatives reach a certain point, they hit a plateau where the salary cannot continue to rise further if Company financial standards are to be met (CX 1409).<sup>43</sup>

#### B. Regular Part-Time Field Representatives

130. Part-time field representatives are paid on a per report basis. The ratio of compensation to report charge [38] may vary by office (CX 679E; RX 107Z-56). If earnings per report do not result in the hourly minimum wage, then the Home Office brings such earnings up to the minimum rate of pay (RX 107Z-56).<sup>44</sup>

131. The regular part-time field representatives produce the same revenue per report as full-time salaried field representatives, but since they have a lower reporting standard, there is less reporting cost per report prepared by the part-time employees (Case 5388-89).

### VI. BRANCH OFFICE FINANCES

132. In respondent's view, the Company's financial success rests largely in the hands of branch office management; the need for careful cost control at the branch office level is, therefore, considered very important (RX 107Z-80).

133. Respondent "operates its business on a budget basis." The budgets for branch offices are figured and operated on an income basis, *i.e.*, standards per dollar of income, rather than on the flat budget basis used in the case of respondent's budgets for other than ranch offices (RX 107E). [39]

<sup>42</sup> Exceptions may be made for reasons such as low volume of available business (Curtis 7175).

<sup>43</sup> In his letter of resignation, one field representative stated, "I personally passed this point some two years ago and have been literally knocking myself out every month, month in and month out, to continue to show financial gains and to make bonus money." (CX 1409).

<sup>44</sup> A regular part-time field representative is assigned a reporting standard, which is applied against his gross revenue produced during the month to arrive at a gross figure. From this are subtracted the reimbursable expenses incurred by the field representative such as mileage. Taxes are paid on this net income; the reimbursable expenses added back into net income to arrive at the part-time field representative's gross income for the month (Case 50-11). For example, a part-time field representative in one of respondent's Code 03 offices would receive .44 of every dollar produced as earnings credit. In the case of a report priced at \$5, he would receive .44 of that amount. In this amount, the expense items would be deducted (Case 5323-24).

134. Before the beginning of each year, respondent determines its expected costs. These are correlated with the needed profits and expected revenue, and cost objectives are set (RX 107Z-73). The starting point in the budgeting process is the Company as a whole. The same process is then followed at the regional and branch office levels (Case 5351-52, 5502-03).

135. Such cost objectives are predetermined standards, set by respondent's Home Office for every cost item in a branch office and are formulated after input from the field (Bresnahan 560, 686). A regional cost budget is then transmitted to the Regional Vice President by the Home Office (Lieber 9038-39). This official has some flexibility in varying the overall cost objectives for different branch offices in his region provided he stays within the regional budget (Bresnahan 684-86; Lieber 9038-40).<sup>45</sup> Financial objectives in the region may vary from office to office (Case 5552).

136. Since cost figures are predicated on a predetermined amount of revenue, if actual revenue falls short, this may impose increased financial pressure on the branch office in the attempt to meet its objectives (Lieber 9037).

#### *Branch Office Cost Reports*

137. The Branch Office Cost Report, which is filed monthly, is a tool for determining whether the branch office has met the financial objectives set for it in its budget (see *infra*). [40]

138. The Branch Office Cost Report is a statement of the business and expenses of the branch office for the financial month.<sup>46</sup> This report classifies expenses in a number of major groups and compares each group with standard cost. The business for the financial month represents the total charges for all inquiries received by the office through the last business day (RX 107Z-70).

139. A cost standard, as used in the Cost Report, is the maximum amount of money available on a given cost item. All cost items are allotted a certain portion of incoming revenue. Such standards are shown in decimals which are percentages of each dollar of incoming revenue. This decimal system is referred to by respondent as the

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<sup>45</sup> The regional budget generally has a 2 to 3 mill spread, permitting the Regional Vice President to allocate this amount among his branch offices provided that the regional "bottom line" comes out the same (Lieber 9038). *E.g.*, the Mid-West Region's budget is \$8 million; \$24,000 (or 3 mills of the budget) may be allocated among the region's branch offices if the Regional Vice President so desires (Lieber 9040, see also Case 5504-06).

<sup>46</sup> Respondent's financial month consists of 21 working days (RX 107Z-70).

"per-dollar" system of accounting. Cost standards vary by rate of office and classification of business (RX 107Z-73).<sup>47</sup>

140. Expenses are shown both in actual amounts and on a per-dollar basis. The gain-loss standard for each item of cost is shown for the current month and the year to date, in actual dollar amounts and on a per-dollar basis (RX 107Z-70).

141. Expected revenues and costs for the year are broken down into individual months, and monthly objectives are determined as part of the budgeting process. Monthly objectives and variations from such objectives appear on the second and third line from the bottom on the front page of the Cost Report (RX 107Z-73).

142. A gain or a loss on a given item is equal to the difference between the assigned standard and actual cost (RX 107Z-73). The important figure with respect to a branch office's financial performance is the one which shows whether it has met its overall cost objective (Bresnahan 686). [41]

143. Respondent's branch managers are instructed that their overall goal is to operate within their assigned financial objectives and to give good service. To accomplish this, the office must be properly organized so that sufficient manpower is available. The determining factor on the number of employees necessary is the revenue handled. Respondent's branch managers are instructed that "[b]y closely estimating revenue and applying the standards, a budget can be established for individual cost items and also for total cost." (RX 107Z-80).

144. A branch manager may compute his budget for a particular cost item as follows if he has an objective for a gain on the cost standard:

Example: (Establishing Postage Budget)

Rate Office: \$4.60—Rate Code 02

Estimated Revenue: \$35,000

Objective Gain: .003 per \$

<i>Class</i>	<i>Est. Rev.</i>	<i>Per \$ Std.</i>		<i>Standard</i>
Local	\$20,000	× .018	=	\$ 360
DLU	5,000	× .026	=	130
Sub-office	10,000	× .035	=	<u>350</u>
				\$ 840

<sup>47</sup> Classification of business means that all incoming revenue is classified in one of the following categories such as local (i.e., within the branch office), suboffice or DLU. This classification depends primarily on the location of the field representative producing the revenue (RX 107Z-73).

## Initial Decision

<i>Est. Rev.</i>	<i>Per \$ Gain</i>		<i>Obj. Gain</i>
\$35,000	× .003	=	\$ 105
<i>Standard</i>	<i>Obj. Gain</i>		<i>Budget</i>
\$ 840	- \$ 105	=	\$ 735

i.e. The office will meet its objective postage gain of .003 per dollar provided the office handles \$35,000 revenue and operates within the budget of \$735.

(RX 107Z-80.) [42]

145. Reporting cost is the branch office's major cost item (RX 107Z-84). It includes the field representative's salary, overtime, carfare, gains or losses on reporting standard, as well as charges and credits for supervision and training (RX 107Z-71). Field representative losses are charged against the branch office (Case 5519).

146. Training costs can drain branch office finances if there is extensive and heavy training over a short period of time (Eldred 11302). And, if training costs become unexpectedly high, it may be difficult to stay within branch office financial objectives (Lieber 9125).

147. Respondent's system of setting cost objectives for its branch offices necessarily limits the resources available for training and supervision in the field<sup>48</sup> and thus, the branch manager's discretion in this area. [43]

148. The Cost Report also includes detailed work records for all salaried field representatives and a comparison of the total expense incurred by each field representative with his reporting standard (RX 107Z-70). In the context of the Cost Report, the reporting

<sup>48</sup> E.g.

Frankly, the Home Office has not yet set in concrete your final cost objective for the year; although when the objectives were sent out about a month ago, this was the original intent. However, we have raised such a clamor from the regions that there has been agreement that some further considerations will be given to certain office situations, and your office was one of them.

*I have recommended that your office be raised from .724 to .727 or .003. This does not seem much, but it is better than the original figure that was spewed out by the computer.*

In view of the fact that the objectives have not been finalized, there will still be further adjustments during the month of June; therefore, we do not know exactly where you or the other offices stand on the accumulative variations, etc. *It is too early to become too upset with what happened in May until every cost objective and all adjustments have been finalized for the year.*

*Until then, sit tight and do everything you can humanly do to hold costs to the bare minimum as there will not be any monies for some of the things we would like to have, such as more money for supervision, training, etc. Such a large portion of the additional money available from the increase went to employees that there is just not much left to provide the branch with a great amount of leeway for the remainder of 1974.*

As soon as I get further word in regard to your objectives for the remainder of the year, I will let you know.

(Regional Vice President to Manager, Albuquerque office, June 21, 1974, CX 813; emphasis supplied).

standard for salaried field representatives is based on a percent of revenues handled. This standard provides for all expenses incurred by the field representative including salary, overtime, car expense, stenographic cost (RX 107Z-73).

149. Gains on the reporting standards are added into the reporting cost figures for the financial month and are set up in a reserve for payment of bonus each quarter.<sup>49</sup> The reporting standard for field representatives varies by length of service and location (RX 107Z-73). [44]

150. The Branch Office Manager's Manual states in connection with the control of field representative work:

*Control of Field Representative Work:* The Field Representative's work should be controlled by the Manager from two standpoints. First, to see that the number of reports each Field Representative makes is limited to his experience and ability. Second, to see that each Field Representative makes enough reports to show a gain on reporting standards after his three-month training period; and that during the training period, his loss on reporting standards will not exceed the training allowance.

(RX 107Z-80.)

151. Accumulative field representative losses and field representative losses made up are to be considered together on the branch cost report since they are respectively treated as charges and credits to the branch office (RX 107Z-115). In short, where the field representatives of a branch office accumulate a loss, that loss is charged to the branch office as part of the cost of operating that office (Bresnahan 571).

152. Where training costs exceed the applicable cost standard, this is shown as a loss to the branch office (RX 107Z-84, 95)<sup>50</sup> [45]

<sup>49</sup> A field representative's gain-loss on his cost standard for purposes of the cost report may be computed; e.g. assume the following:

Business for the month produced by field representative	\$1613
A per dollar standard of	.525
Expenses of \$674	
Multiplying the per dollar standard of .525 times his business produced of \$1613 gives a per dollar standard of \$847 in dollars.	
Subtracting actual expenses of \$674 from \$847 shows this field representative has made a gain on his cost standard of \$173. (Case 5377-78; RX 673Z-107).	

<sup>50</sup> The training allowance for all new field representatives for the first 12 weeks was \$525 in 1973, broken down as follows:

Week	21 Day Month
1st	147
2nd	86
3rd	69
4th	52
5th	42
6th	34
7th	29
8th	19

(Continued)

153. Individual field representative losses are carried forward until the losses are made up by the field representative or other management action is taken. When a field representative transfers from one office to another, his losses are dropped in all instances. Field representatives transferring within a branch continue to carry their losses until they are made up. Field representative losses are carried forward into any number of months and quarters until they are made up (RX 107Z-115). As a general rule, no gains by a field representative are carried from one quarter to the next; but if gains are carried, they are carried over in the unit bonus pool and not by the individual field representative (RX 107Z-64).<sup>51</sup>

154. As a general rule, a field representative should gain on the reporting standard before being paid bonus. And:

A Field Representative is not eligible to receive bonus until losses are made up by subsequent gains. Any exception to this requires a complete put-up to the Regional Vice President-Operating. If he approves, he will forward the request to the Home Office for final approval.

(RX 107Z-64.)

155. Since exceptions to the general rule require consultation with the Regional Vice President-Operating and final approval by the Home Office, the award of a bonus to a field representative carrying losses is an unusual occurrence. [46]

156. It is the branch office manager's responsibility to meet or do better than the cost standards applicable to his office (Bresnahan 562).

157. If a branch office manager did not meet his financial objectives for the year, it affected his bonus adversely. If, in addition, his performance was questioned in other areas, such as personnel management or quality service, then his capacity to manage the office may have been brought into question (Lieber 9144).

VII. REPRESENTATION OF IDENTITY BY RETAIL FIELD REPRESENTATIVES  
(PARAGRAPHS 5-6 OF THE COMPLAINT)

158. Respondent's 1973 Field Representative Manual instructed

9th	17
10th	11
11th	11
12th	8
13th-17th	—
Total	525

(Rates and Financial Guides United States Effective March 1973, RX 715Z-1).

<sup>51</sup> One of respondent's officials testified, however, that the branch manager had discretion to give such credit in the next quarter to the same field representative who earned the excess bonus (Case 5296).



the field representative to state his name and Retail Credit's name when interviewing the subject of a report (RX 102Z-4).<sup>52</sup> The field representative was permitted to mention the name of the company requesting the report and was encouraged to do so.<sup>53</sup> In interviews of sources other than the subject of the report, neither the name of Retail nor the requesting company was required to be given (RX 102Z-11). In both instances, the manual pointed out that the field representative should never misrepresent his identity (RX 102 Z-11) and that he was to avoid "any impression that [he was] employed by the insurance company" (RX 102Z-4). [47]

159. Prior to the 1973 amendments, the Field Representative Manual stated that the name Retail Credit should be used when interviewing the subject of a report. However, it also suggested that when the requesting company desired use of its name in the introduction, then "the Field Representative should state that he is 'calling for the X Insurance Company'" (CX 666Z-4).<sup>54</sup>

160. Respondent's name, Retail Credit Company, sometimes confused consumers and led to the impression that credit rather than insurance was the reason for the investigation (CX 666Z-4, 666Z-10; Stubbs 9293). Respondent recognized this fact and instructed field representatives to explain Retail's "role in the insurance field" when confusion occurred (RX 102Z-4, see also RX 102Z-11).

161. In practice, the name Retail Credit was not always used in the field representatives' introductions even in interviews with subjects of reports (CX 748, 1243A; Jenckes 98-99, Hakey 1633-34, Dodson 3072-73, Feriante 4441, Pollard 321-22, Boyd 13156-57). Many field representatives did not identify themselves as employees of Retail because they did not want to become involved in explaining Retail's business.

The assumption people made, I was making some type of credit report because of the name Retail Credit Company, and usually it involved, or my experience was that it involved an explanation of what a credit company is doing here. As a result, by introducing myself as an insurance inspector and not by contradicting myself by saying I am from what they consider to be a credit company or loan company, it would save me a lot of hassle, and of course when you are on the road, time is of essence. (Hakey 1634-35; see also Dodson 3072-73, Pollard 321). [48]

162. Consumers were told by the field representatives contacting them that they were "from", "with" or calling "for" the insurance

<sup>52</sup> Field representatives were issued Retail ID cards, but the corporate instructions did not require that they be produced at interviews (RX 102Z-4; see also Jenkins 5852-54).

<sup>53</sup> "It is not necessary to volunteer the name of the requesting company unless this information is asked by the subject. But, doing so in most instances should facilitate the interview." (RX 102Z-4).

<sup>54</sup> While the manual drew a distinction between saying the field representative was calling "for X Insurance Company" and "from X Insurance Company," either introduction would misrepresent, by implication, the identity of the caller if Retail Credit were not mentioned (see Finding 163).

company or other customer of respondent (who had requested the report), that the interviewer was "conducting an investigation for" the insurance company or that the interview was in connection with a particular insurance application (Epperson 3939, *in camera*; Luster 3167, 3179; T. Gracey 1889, 1891-92; CX 1448A-B; McCreary 1860;<sup>55</sup> Hall 1909; Grabher 3412, 3416-17, 3420; E. Sattler 4269; Baker 3108). The field representative contacting consumer Byers stated his identity without mentioning Retail Credit and questioned her regarding her automobile and automobile insurance for which she recently applied. Ms. Byers formed the impression that he was from the insurance company (Byers 4472-73, 4476).<sup>56</sup>

163. An introduction by a field representative stating that he was "from" or making contact "for" an insurance company, that he was calling in connection with an insurance application or a similar introduction unaccompanied by the disclosure that he worked for Retail, had the tendency to create the impression that the field representative was an insurance company employee or agent rather than the employee of a third party consumer reporting agency. [49]

164. Whether an interviewer was an employee of a company with which the consumer or subject of the report had already established a relationship (such as an insurance company) or an employee of Retail, was a significant fact to a consumer being interviewed in determining whether to furnish the information requested. Some consumers who discovered that the interviewers were actually employees of Retail refused to continue with the interview or answer any more questions (Hall 1910-11, McCreary 1863). When consumer Sattler discovered the field representative was a Retail employee, he felt the introduction had been "misleading and deceptive" (E. Sattler 4270). Consumer Byers was not sure she would have answered the questions asked her had she known the true identity of her interviewer (Byers 4474, 4476-77).

165. Inherent in the belief that the interviewer is an employee or agent of the insurance company, or other requesting organization, is the belief that information provided during the interview will be used exclusively by the requesting company. In fact, respondent keeps a file copy of each report its field representatives prepare, and

<sup>55</sup> Consumers Gracey and McCreary were interviewed in connection with a survey of people on municipal disability retirement requested by the City of Miami (Tr. 6562-A-B). A Retail memorandum states that the city requested "that the inspector is to tell the claimant that he is calling in behalf of the City of Miami Welfare and Pension Department, during the interview." (RX 486C).

<sup>56</sup> The witnesses testifying in rebuttal to the testimony of consumer Hall did not dispute the portion of her testimony on which this finding is based. The testimony of consumers Epperson, Grabher, Sattler and Byers was not outweighed by the rebuttal witnesses called, the field representatives who contacted the consumers. These witnesses did not testify regarding the particular contacts in question, but rather related the introductions they generally used (Tr. 12080-81, 11741-42, 11152-53).

these file copies may be used in subsequent reports prepared on the same consumer (CX 666K-O; RX 102I-J). Field representatives do not affirmatively state or volunteer in an interview that respondent keeps file copies of its reports (Pollard 322, Boyd 13175-76, Hakey 1634). Respondent's field representatives, by misrepresenting their identities, also misrepresent the use to be made of the information obtained during an interview.<sup>57</sup>

166. By its field representatives' misrepresentations of identity, respondent violated Section 5 of the FTC Act. [50]

VIII. REPRESENTATION OF PURPOSE BY RETAIL FIELD REPRESENTATIVES  
(PARAGRAPHS 7-8 OF THE COMPLAINT)

167. Since 1966, respondent has used the "indirect approach" in its interviews with third-party claimants on whom claim reports are being prepared (RX 651A). As defined and set forth in the 1966 Claim Reports Manual, the indirect approach involved the following:

*Method Used on the Indirect Approach:* The accepted and sanctioned approach is for the Inspector to give the name "Retail Credit Company" and indicate that he is making inquiry, ostensibly for credit purposes. To help the investigator validate his position, he is supplied with a form described as the Credit File Audit, Form 4958, which permits him to record pertinent data without arousing suspicion. If the claimant is supposed to be disabled, the credit put-up enables the investigator to ask whether he has been working steadily, whether he has had any recent heavy expense which might come from illness or injuries, and other questions which will lead into a discussion of activities, background, and claim or medical history.

(RX 651A.)

168. The Credit File Audit procedure instituted in 1966, supplanted Retail's previous procedure for interviewing third-party claimants—the "pretext" interview, which had been used for many years (Stubbs 9257-58).<sup>58</sup> [51]Mr. Trotochaud, who wrote the 1966 indirect approach amendments to the Claim Reports Manual, explained the change:

Over a period of many years, our instructions provided that in the handling of claim investigations on third party claimants, we would use a suitable pretext, but the

<sup>57</sup> This finding of misrepresentation as to the use of information is based on the finding of misrepresentation of identity by field representatives, rather than solely on respondent's failure to affirmatively disclose to consumers that it keeps a file copy and may subsequently use it. The record permits no finding as to what a consumer would believe regarding the use of information, if he were aware that the interview was being conducted by a Retail employee.

<sup>58</sup> In addition to its use in claim reporting, the pretext interview was used in some work other than claims, e.g., attempting to locate individuals for failure to pay on credit cards, or attempting to locate uninsured motorists (Jenckes 78-79).

instructions did not go beyond that. So, therefore, the field representative was left on his own as to how he would proceed.<sup>59</sup>

I felt strongly that this was not a proper procedure and had made up my mind that, given an opportunity, I would correct that to lay out clearly and completely how he should approach an investigation on a third party claimant.

I was given that opportunity, and this claim reports manual was written in 1966. I wrote it and at that time implemented instructions that they would handle these investigations on what we termed an indirect approach basis. And that indirect approach basis was spelled out, and it stated that the field representative must, must, in every instance, identify himself as being with the Retail Credit Company. (Trotochaud 6347; footnote added).

169. Though the 1966 revision was intended to result in deletion of the term "pretext" from the vocabulary of Retail personnel, many employees used the term pretext interview in connection with the Credit File Audit interview (Bresnahan 612-13, see also Buckley 1261-62).<sup>60</sup> [52]

170. The Credit File Audit Interview form used by respondent in the indirect interview was the following:

RETAIL CREDIT COMPANY

CREDIT FILE AUDIT

DATE \_\_\_\_\_ FILE NO \_\_\_\_\_

AUDITOR: We are attempting to confirm that our files are correct on this individual. Conduct a direct interview with the subject or an adult member of the family.

NAME \_\_\_\_\_ AGE \_\_\_\_\_

ADDRESS \_\_\_\_\_

FORMER ADDRESSES (if any) \_\_\_\_\_

PRESENT OR LAST KNOWN EMPLOYMENT \_\_\_\_\_

PRESENT OR LAST KNOWN JOB TITLE \_\_\_\_\_

NOTE: IF PRESENTLY UNEMPLOYED, WHAT IS REASON? CHECK ONE:

TEMPORARY LAY OFF  SICKNESS OR ACCIDENT  OTHER REASON

LENGTH OF TIME OFF WORK \_\_\_\_\_ OTHER INCOME \_\_\_\_\_

NUMBER OF DEPENDENTS \_\_\_\_\_ NAME \_\_\_\_\_ AGE \_\_\_\_\_

(include name and age) \_\_\_\_\_

<sup>59</sup> As an example of a pretext used, one field representative stated, "I would go the claimant's home and say that I was looking for a person I believe that resided in the neighborhood, and had they ever heard of that person." (Jenckes 77-78).

<sup>60</sup> As late as 1972, respondent was still engaged in purging the term "pretext" from its reports (CX 1323A).

Initial Decision

96 F.T.C.

\_\_\_\_\_

\_\_\_\_\_

HOME OWNER ..... YES \_\_\_\_\_ NO \_\_\_\_\_

CAR OWNER ..... YES \_\_\_\_\_ NO \_\_\_\_\_ (MAKE AND MODEL) \_\_\_\_\_

IS SPOUSE EMPLOYED, IF SO, WHERE: \_\_\_\_\_

AUDITOR: Make any notes here to clarify any of the above questions.

Form 4958-9-60  
Printed in U.S.A.

(RX 651B.) [53]

171. The primary purpose of direct contact with a claimant is to observe the physical condition of the consumer (Jenckes 77; RX 119Y-Z; CX 1323D; Murray 9572).

172. The Credit File Audit form was designed so that when seen by the interviewee (Stubbs 9259, Trotochaud 6348), it would give the impression that the investigation being conducted was a credit investigation (Bresnahan 700-01). The information recorded on the form could be useful to Retail in its claim report (e.g., the form contained a blank for unemployment due to illness). However, the basic purpose of the form evidently was to create the impression that the reason for the field representative's visit was to conduct a credit interview.

173. Respondent's name made the representations concerning the ostensible subject of the indirect interview more convincing since "Retail Credit" connoted credit to consumers (Finding 160).

174. Respondent's rationale for pretext, and later indirect, interviews was as follows:

The person claiming is not their insured, it is a third party, maybe there's a lawyer in the picture, maybe there isn't, but that person is making a specific claim that they need to know the background on, and in so many instances the cooperation in getting medical to them and full details has not been the best, and just generally a person in that situation, if you went up to them, a person who is claiming a whiplash injury and say I am here from the X insurance company to question you about your whiplash, are you working anywhere, are you still playing golf, or so forth, it just wouldn't be—if that person had anything speculative on his or her mind it would not be in the interests of that person considering what they are trying to do to say yes, I am working the midnight shift somewhere, or play golf three times a week, this is basically the background of that. (Stubbs 9253).

[54]In short, with the pretext or indirect interview, "You would acquire information that you might not normally acquire." (Bresnahan 615).

175. The Credit File Audit indirect approach had the capacity to

mislead consumers as to the purpose of interviews. This procedure was unfair and deceptive within the meaning of Section 5 of the FTCA.

176. In 1971, respondent modified its indirect approach procedure and abolished the Credit File Audit interview (RX 575A-C; Trotochaud 6355). Under the new procedure, the field representative was instructed to state only his name and that he was from Retail Credit. He was to complete a "Personal Interview" form (RX 575C) which was essentially the same as the Credit File Audit form but contained the title "Personal Interview." Like the Credit File Audit form, the Personal Interview form was designed to be seen by the claimant, and field representatives were instructed that they could "even let the individual personally handle the form if he [were] so inclined." (RX 119V). If the field representative were asked the purpose of the interview, he was to state that he was not permitted to divulge the purpose or the source of the request (RX 575A). The new procedure, as codified in the 1973 manual, was as follows:

... The accepted and sanctioned approach is for the Field Representative to give the name 'Retail Credit Company'. To help the investigator validate his position, he is supplied with a form described as the Personal Interview, Form 4958, which permits him to record pertinent data. If the claimant is supposed to be disabled, this put-up enables the investigator to ask whether he has been working steadily, whether he has had any recent heavy expense which might come from illness or injuries, and other questions which will lead into a discussion of activities, background, and claim or medical history.

(RX 652A.) [55]

177. Field representatives were later instructed to use this indirect approach in all claim or loss investigations unless the requesting company had given specific authorization to the contrary (RX 653A). Respondent's policy favoring indirect interviews was so strong that when the Regional Claims Manager discovered that a branch office manager had permitted his claim field representatives to use the direct approach instead, he "very strongly suggested" that the indirect approach be used (Stubbs 9256).

178. The field representative's instructions in 1971, stated that, "*It is imperative that our approach not include any misrepresentation*" (RX 575A, emphasis in original), and field representatives were told not to affirmatively state the purpose of their interview. However, the indirect interview approach itself, providing for use of the Personal Interview form, had the capacity to mislead consumers as to the purpose of the interview and to lead them to the belief that credit was being investigated (Murray 9596-97). That respondent intended that consumers be led to believe the interview was for

credit purposes is shown by the fact that, in contrast to the direct interview instructions (Finding 160), the indirect interview procedure did not include a requirement that field representatives clarify any confusion created by the name Retail Credit (Edland 11759).

179. Respondent's 1971 modifications of the indirect interview did not cure the deception inherent in the pretext and Credit File Audit interviews. The "Personal Interview" format, while not involving affirmative misrepresentations, had a tendency to create the same impression as did the Credit File Audit. Like the Credit File Audit, this approach, when used in conjunction with Retail's name, was likely to lead the consumer to believe the purpose of the interview was to obtain credit information, rather than data about the [56]health and activities of a claimant in an insurance claim.<sup>61</sup>

180. Respondent's indirect interview procedure has the capacity to mislead and is unfair and deceptive within the meaning of Section 5 of the FTCA.

181. While respondent engaged in unfair practices within the meaning of Section 5 of the FTCA (Findings 175, 180), such practices were engaged in as part of the business of insurance and, therefore, are exempt from regulation by the Federal Trade Commission to the extent that they are regulated by state law.

IX. ALLEGATIONS THAT RESPONDENT HAS MISREPRESENTED THE MANNER IN WHICH ITS REPORTS ARE PREPARED (PARAGRAPHS 9-10 OF THE COMPLAINT)

A. Use of the Telephone in Interviewing

182. Respondent's procedures for interviewing and securing information vary depending on the report involved.

183. Certain of respondent's reports are designed and intended to be handled by one or more telephone interviews (Jenkins 5776). *E.g.*, various types of automobile classification check reports are to be handled primarily or exclusively through telephone interviews and the instructions on the form so state (Moore 8854, Jones 12953, Lindgren 11456, Mayo 10752-53, L. Jones 10440, Rawls 11059, Saltzgeber 11967, Getz 12345, J. Moss 11033-34, Hakey 1581-84). In the case of these reports, the extent to which the telephone is used may be specified by the customers (Hopp 6691-92, [57]Zack 8257). Certain credit line reports and some employment reports are also

<sup>61</sup> Complaint counsel offered three consumer witnesses to support the allegations of paragraphs 7 and 8 of the complaint. The testimony of these witnesses contained facts showing departures from respondent's established procedures. There is no need to make findings on the testimony of these witnesses in light of the finding that respondent's established procedures themselves were misleading.

handled by telephone (Knautz 6881-82, 6896-97; Chambers 1957; Hille 4526).

184. Use of the telephone in the case of claim reports is limited, and violation of such rules results in dismissal (Trotochaud 6310). When the telephone is used in preparation of claim reports, its use must be shown on the report (Trotochaud 6309-10).

185. In the case of the majority of the reports made by respondent, such as life and health reports, regular automobile reports, property reports and most personnel reports, the telephone is used to some extent (Jenkins 5776, Lieber 8998).

186. In the case of these reports, it is respondent's basic policy that telephone use has been "limited to the degree that you can limit it and good judgment dictates" (Jenkins 5776-77). Some telephone use is permitted in the case of these reports because "[f]or limited price reports we cannot obviously make repetitive return trips" (Tr. 5777).

187. Managers and supervisors have discretion when to permit use of the telephone in the preparation of such reports (Jenkins 5777). Respondent has no written guidelines on use of the telephone in specific situations because this might interfere with the exercise of discretion and judgment on this question at the branch office level (Browning 6074-75).<sup>52</sup>

188. Branch offices authorized telephone contact for specific classes of sources under certain conditions, *e.g.*, the applicant's employer (Hilderbrand 12006, Jones 10440-41, Martin 10512). Telephone interviews could also be used with professional persons such as attorneys whose schedules might not permit in-person interviews (Garza 9163-64, Jones 10441, Mayo 10753). [58]

189. Certain branch offices permitted use of the telephone to interview managers of apartment complexes who requested telephone contacts (C. Hood 6498-99, Larson 12518, Guse 12063); in obtaining public or school record information (Volrath 11001); in setting up appointments for face-to-face interviews (Brothers 7406, A. Brown 7742-43, E. Jones 12923, J. Moss 11037-38, Cain 9464, Nazarchyk 8032, Tew 13368-73); in locating the residences of subjects or sources in rural areas (Brothers 7406, Cain 9464); when bad weather conditions prevented street investigation (Horner 9887-88); when speed was required due to an insurance company's request for expedited handling (Getz 12345); where applicants or sources were outside of, or about to leave, the area (Larson 12545); when evening contacts were required (A. Brown 7743-44, Zack 8216); when

<sup>52</sup> It is respondent's position "that first line supervision must concur when a telephone is used to meet the logical source . . . ." (Browning 6075).



a source or subject could only be reached by telephone (Browning 6077, Landreth 12133); or when a direct interview with the applicant was required to obtain necessary information (Browning 6076, Zack 8216-17).

190. The general policy in effect in most branch offices on reports not specifically designed for telephone handling was that field representatives had first to make a reasonable effort to handle the case on the street by attempting to obtain face-to-face interviews but that the telephone could be used if such attempts were unsuccessful (e.g., Vogen 12202-03, Volrath 11000-01, Dodson 3054). First-line supervision was to concur when the telephone was used for that purpose (n. 62, *supra*).

191. It was the responsibility of the branch office manager to exercise supervision enabling him to determine whether use of the telephone had been excessive (Lieber 8999).

192. Use of the telephone had increased significantly because of social and economic changes occurring in the 1960's and 1970's. Such factors include the greater frequency of both spouses working during the day (Coleman 7923-24, Ross 9349), the increase in apartment complexes (Jenkins 5730-31) and increasing danger to the physical safety of field representatives in certain urban areas (Murray 9574, Laugavitz 10334-35). [59]

193. The objective in preparing reports was to obtain face-to-face interviews with applicants and outside sources whenever possible (e.g., Brothers 7406, Vogen 12203, Ross 9348).

194. Field representatives were instructed to so indicate on respondent's file copy of the report after identification of the source when the interview had been conducted by telephone (e.g., Baranek 9697-98, Coleman 7925, Moore 10046-47). Respondent did not normally place a notation that the telephone had been used in its underwriting reports going to customers (Jenkins 5777-78,<sup>63</sup> Browning 6077).

195. There was a requirement, however, that customers be specifically notified of telephone use on intermediate, special narrative and special life reports (Crepeau 1756, Ledum 4683, Curtis 7137, Lauer 10155-56, M. Martin 10512).

196. In addition, telephone use was shown on the customer's copy of the report if the customer had made a request to that effect (Browning 6077). And, in certain branch offices, a decision was made locally to indicate telephone handling on the customer copy (e.g., Eldred 11221, Saltzgaber 11990).

<sup>63</sup> "[W]e have always taken the position on underwriting reports that we sell information and not systems" (Jenkins 5778).

197. In respondent's "Pro Series Life" reports introduced in 1976, all reports in the series showed whether the interview was conducted "in person" or "by telephone" (Stansbury 6821-22, 6826). Respondent was informed by customers that:

it would be helpful to them to know how the information was obtained. [60]When they evaluate the information and handle it with their field forces or within their own organization, they have a better idea about it, based on knowing how it was obtained. (Stansbury 6821-22).<sup>64</sup>

**B. Respondent's Representations Regarding Face-To-Face Interviews and Personal Observations Made by Field Representatives In the Preparation of Reports**

198. Respondent's customers were told that normally respondent attempted to obtain information in person but that, if necessary, the telephone was used to interview applicants and outside sources (Drennan 6218, Vogen 12214).

199. Respondent, in its brochures to customers, has represented:

(a) **You see** your applicants even though you aren't able to visit each one yourself. Retail Credit Company's Hospitalization Interview Service is the next best thing to being there. This service affords you an in-depth view of your applicant, his living conditions and answers to such health and environment questions as:

- Is he impaired?
- Overweight?
- When did he last visit a physician?
- Hazards in the household?
- Are living conditions sanitary?
- Does he live in crime and vice area?
- Plus much more . . . (CX 384B.)

(Brochure entitled, "The Next Best Thing To Being There", CX 384A-D). [61]

<sup>64</sup> Such customers, while they "were not concerned or are not concerned overall" whether the telephone was used did want to be informed of such use so "they [would] have a better idea about it" (ibid).

(b) HEALTH HABITS: He presents a normal, healthy appearance. He is not impaired or handicapped . . . .

(Quotation from specimen, "PERSONNEL SELECTION INVESTIGATION" report in promotional brochure, "a crucial moment in any training operation", CX 386A-B).

(c) The best method of obtaining business and marketing information is through personal interviews or by direct observation . . . .

(Brochure entitled, "RETAIL CREDIT COMPANY EXECUTIVE REFERENCE MANUAL a straight line to facts about people for better business decisions", CX 387M).

(d) He (the investigator) checks files and public records. He then performs an on-the-street investigation interviewing logical sources for the information needed. These are usually neighbors and business associates and sometimes the applicant himself. A report is written and sent to the underwriter.

(Brochure entitled, "LOOK TO THE FUTURE", CX 389E).

(e) It [Retail Credit's Life & Health Insurance Service] is based on an interview with the applicant as the primary source of information, allowing for an in-depth interview of the applicant. It helps to:

- Establish age and identity
- *Observe the applicant's physical appearance and environment*

(Brochure entitled, "88% personally interviewed," CX 398A-B; emphasis supplied). [62]

(f) We have found the most dependable reporting method, for whatever purpose, is the personal interview . . . .

*When field representatives call personally* on these logical sources, they introduce themselves as representatives of Retail Credit Company . . . .

(Brochure entitled, "THE WHY AND THE HOW", CX 399N; emphasis supplied).

200. Respondent, in its brochures to prospective users of its reports, through language such as: "the next best thing to being there" and "[y]ou see your applicants even though you aren't able to visit each one yourself. . . [t]his service affords you an in-depth view of your applicant, his living conditions and answers to such health and environmental questions as: Is he impaired? Overweight?" and similar language has represented that, as a matter of standard procedure, its reports are compiled through face-to-face interviews

with the sources listed and upon the basis of the direct observation of the field representative making the report.<sup>65</sup>

201. Entries on report forms such as:

Is there anything unhealthy about appearance, such as being very thin or having excess weight?

Any deformity, amputation, blindness, deafness, or other defects?

(CX 422A.) [63]

also impliedly represented that the field representative who supplied such information had observed the subject of the report.

202. The inspection report is one of the more important documents that an underwriter uses in evaluating an insurance risk (Hartzler 801).

203. Certain underwriters assumed residential sources were usually interviewed face-to-face (Davison 2634-35, 2676).

204. If a life report indicated that the applicant was interviewed, certain users of reports construed this as meaning that there had been a face-to-face interview (Hartzler 826).

205. If a report contained information as to an applicant's physical appearance, underwriters expected that such information was obtained through direct observation (Snore 3658, Davison 2638).

206. Certain underwriters believe in-person interviews are more reliable than telephone interviews (Hartzler 826, 873; Davison 2637).<sup>66</sup>

207. Certain underwriters expected to be informed that the telephone was used to interview an applicant or a neighbor when the source was interviewed in that manner (Snore 2655-56). Certain users of respondent's reports believe that knowledge as to whether a source was interviewed by the telephone or in person is important in determining how much confidence to place in the information reported (Nietzhold 13045, Dower 2142). [64]

208. Some underwriters do not care whether the telephone is utilized on a case small enough to require only a regular report (Paine 13439-40).<sup>67</sup> In the larger cases, however, even these underwriters would place greater reliance on or prefer a face-to-face

<sup>65</sup> Respondent urges there is no testimony that any underwriter has read or relied on its promotional literature (RPF 186). There is, however, a presumption when brochures of this nature are prepared and disseminated, that the intention is that they be relied upon.

<sup>66</sup> A number of respondent's employees also preferred in-person interviews (Baranek 9717-18, Cooke 9981, Brothers 7482, Hartfield 10497, L. Jones 10472, M. Martin 10542, Muth 9948, Pregler 9210, Crofford 8118, Garcia 13133-35). That preference is generally based on the fact that in-person interviews allow them to observe the physical appearance of the applicant (L. Jones 10472, Muth 9948, Zack 8927, J. Curtis 7249); or his or her demeanor and expressions in responding to questions (Baranek 9717-18, Muth 9948); or, occasionally, the interior living conditions of the applicant's residence (Ross 9348, Brothers 7483).

<sup>67</sup> In such small cases, such underwriters would not put a different degree of reliance on information received by telephone as opposed to a face-to-face interview (Paine 13439-40).

interview because of the opportunity for direct observation (Paine 13406-07; Taylor 10860-61, 10881-82).

209. The preference for face-to-face interviews on the part of such users in the higher-priced cases compels the inference that the "how" of preparing a report viz., telephone as opposed to face-to-face contact, does significantly affect the manner in which report information is evaluated. The reason that it is a matter of indifference to some report users in the case of lower priced reports is inherently economic.<sup>68</sup>

210. If the inspection report contained adverse information pertaining to the applicant's home or physical surroundings, certain underwriters expected the field representative to have physically observed them (Snore 3659-60, Davison 2638-39).

211. Certain of respondent's field representatives have reported information concerning the appearance of the subject of the report or his home or physical surroundings, when they did not personally observe the subject of the report or his physical surroundings (Buckley 1349, Dodson 3064, Hakey 1560, Woicik 2874-75, Wallace 3004-06).<sup>69</sup> [65]

212. Information derived from telephone interviews concerning physical appearance and physical environment may be accurate even though the telephone is used; sometimes such information can be cross-checked with other sources (e.g., Stansbury 6751-52). But this is not the optimal method. As one insurance company executive testified:

Q. Isn't this information [the build of an individual] that might be best obtained by personal observation of the insurance applicant rather than by talking with the insurance applicant over the telephone?

A. Yes, personal observation would be of more merit than a telephone conversation. It would be difficult to obtain someone's build by phone. (Taylor 10860-61).

213. The manner in which interviews are conducted; namely, telephone or face-to-face, is a significant factor in evaluating consumer investigative reports.<sup>70</sup> [66]

<sup>68</sup> "On a small case, frankly, we can't afford it. We can't pay for that" (Paine 13407).

<sup>69</sup> Even assuming that a field representative was familiar with the living conditions in the area in which he prepared reports, such general familiarity with a neighborhood is no substitute for direct observation of the particular physical surroundings of the specific individual being reported on. E.g., one report asked, "Premises poorly kept?" (CX 477A). Generalizations about the neighborhood "would not necessarily apply to the applicant's own dwelling or his own individual living conditions" (Stansbury 6753).

<sup>70</sup> This finding is compelled by the following: respondent's brochures represented that personal observation is the standard procedure (Finding 200). Branch office managers are to determine whether telephone use is excessive (Finding 191). Telephone use is to be noted on respondent's file copies (Finding 194) and telephone contact is to be noted on the customer copy of the more expensive reports such as intermediate special narrative and special life reports (Finding 195). Respondent, in 1976, commenced showing on all reports in the Pro Life Series whether the telephone had been used because "Customers told us . . . it would be helpful" and because respondent's customers felt "when they evaluate the information they have a better idea about it based on knowing how it was obtained"

214. The failure to indicate on the customer's copy of the report that the telephone had been used when a source had been interviewed in that manner constituted the failure to state a material fact and was misleading.<sup>71</sup>

215. The failure to disclose that descriptions of the appearance of a subject or his physical surroundings had been obtained from other than by personal observation, *e.g.*, by telephone or general knowledge of the area, also constituted the failure to disclose a material fact in violation of Section 5 of the FTCA.

### C. Dissemination of Reports Listing Sources Not Interviewed

216. The listing of a source on a report represents that that source has actually been interviewed (*e.g.*, see Question 3 on CX 422). Some report users give more credence to reports where information contained therein is based on more than one source (Dower 2141). It was the expectation of report users that all the sources listed in a report were, in fact, interviewed by field representatives who prepared such reports (Davison 2686). If fewer sources were interviewed than listed on the report, this necessarily detracted from the confidence to be placed in the report.

217. Certain field representatives listed sources not contacted in reports which they filed (see Finding 405). To the extent that reports listing sources not interviewed have been sold, the users thereof have been misled as to the accuracy of the report. [67]

## X. ALLEGATIONS CONCERNING RESPONDENT'S USE OF CERTAIN AUTHORIZATIONS TO SECURE MEDICAL INFORMATION AND ITS SUBSEQUENT USE OF SUCH INFORMATION (PARAGRAPHS 11, 12, 13 OF THE COMPLAINT)

### A. Nature of Medical Information

218. Medical information on a given consumer may appear in either hospital or physicians' records. Such records show the diagnosis, treatment and progress of the patient (Pheasant 11391).

219. Medical records may include laboratory and x-ray results and findings of consultant physicians (Pheasant 11399). The records should include objective findings and clear reasoning as to why a diagnosis was chosen or a certain treatment selected (Gabrieli 1400).

(Finding 197). Even those underwriters who do not care whether the telephone is used in lower priced reports of necessity must be deemed to place greater reliance on information derived from face-to-face interviews in view of their preference for this method of investigation when the economic risk is higher (Finding 209).

<sup>71</sup> This does not apply to those reports which were designed for telephone handling and sold on that understanding.

They may also contain information about the patient's habits (Gabrieli 1401), his emotional or physical activities and condition (Elmendorf 4247A, Pheasant 11396), or psychiatric condition (Gabrieli 1402-03). A psychiatric record gives a history of the patient's lifetime pattern, including not only his symptoms but also his ideas, dreams, and thought processes. It may include correspondence, information received from and about his family and other people, and the patient's experiences (Grossman 4168-69). Other medical records may also include such psychiatric information, since many symptoms and illnesses have an emotional basis (Grossman 4173-74). In addition, medical records may contain the subjective impressions and opinions of the physician on matters such as the honesty of the patient (in relation to revealing matters such as alcoholism or sexual problems), or his level of intelligence (Gabrieli 1400-02, Grossman 4175-77).

220. Medical records are maintained for the benefit of the patient. They identify his problems and what treatment he has had, to provide continuity of care (Elmendorf 4247, Grossman 4174-75, Pheasant 11391). In addition, such records may be kept for use in teaching in hospitals, for research findings and reports and as protection to the physician in the event of a threat of a malpractice action (Grossman 4175). [68]

221. Medical ethics emphasize the sanctity of the patient-physician relationship and require that information divulged to a physician be kept confidential and not disclosed without the patient's authorization (Pheasant 11392-93, Gabrieli 1407-08, Grossman 4185).

222. Confidentiality is important to encourage free communications between physician and patient (Grossman 4177, 4195-96, Elmendorf 4247, 4247A-48).

223. If medical records could be disclosed, physicians might not keep complete records (Grossman 4176-77, Gabrieli 1410-11). Disclosure of such records could also adversely affect the individual patient (Pheasant 11393-95). For example, disclosure in the case of emotional problems might interfere with the patient's adjustment to society and his personal career (Gabrieli 1409-10).

#### B. Respondent's Acquisition of Medical Information

224. There are valid reasons for disclosure of confidential medi-

cal information, including disclosure to an insurance company in the case of an application for a policy.<sup>72</sup> Under such circumstances, the physician is obliged to disclose confidential medical information if authorized to do so by the patient (RX 641A-D, "Opinion and Reports of the Judicial Council" of the American Medical Association; Gabrieli 1413, Grossman 4181).

225. Respondent obtains medical information from physicians, hospitals and clinics in connection with two of its services: the Underwriting Medical History (UMH) report and certain claim reports (Trotochaud 6404-05, 6289). [69]

226. Respondent's UMH service was initiated in 1966, and established as a standard service in 1967 (Trotochaud 6282, 6369; RX 654, 655). Prior to 1972, respondent also had an attending physician's statement service; this service was similar to and eventually replaced by the UMH service (Trotochaud 6281-82, 6369-70).

227. In securing medical information in the case of UMH reports, respondent performs a courier service (Trotochaud 6404-05). The objective of the UMH service is to speed the flow of medical information from medical source to the insurer (Trotochaud 6282, 6367-68; Hawkins 1052-53).

228. In preparing UMH reports, the medical authorizations used by respondent are generally part of the application forms provided by the particular insurance company (Davison 2643-44, Hawkins 1050, N. Taylor 10824-25). The application forms used by insurance companies, of which the authorization is an integral part, are filed, approved and reviewed by the insurance departments of the states where they do business (Davison 2665-66, Hawkins 1076-78, N. Taylor 10825-26). The exact language of the authorizations has varied, since different companies are subject to the regulations of different states (Trotochaud 6408) and because, at least in the past, most companies themselves prepared the forms submitted for approval (Davison 2645-46). Currently, most companies use virtually identical forms (Davison 2645). Some of the authorizations furnished by customers to respondent (from insurance applications) have mentioned Retail Credit Company by name (and respondent has encouraged the use of such forms) (Trotochaud 6408-09; A. Brown 7754; Converse 4638; Guse 12070-71; Harden 1382, 1386), while others have authorized release of medical records to the "bearer"; to the named insurance company or its "representative" or "agent"; or to the named insurance company (A. Brown 7754, Davison 2643-44,

<sup>72</sup> Insurance companies seek medical information in determining whether to issue or rate a life or health policy and in determining what action to take when a claim is filed (Davison 2657-58; Hawkins 1018; Taylor 10831-33, 10856; Hankin 10629-30, 10637-38).



Harden 1386-87, Hawkins 1050, Trotochaud 6408). The authorizations which refer only to a named insurance company are in the minority (Trotochaud 6408). [70]

229. In connection with claim investigations, in some instances, the insurance companies obtain authorizations from the claimants and furnish them to respondent (Trotochaud 6405-06, Hankin 10649). For example, Occidental Life required a claimant to execute and submit an authorization as part of the proof of claim (Hankin 10649-50). However, in a majority of cases, the insurance company does not supply an authorization, and respondent obtains an authorization directly from the claimant. Also, certain hospitals require the signature of the doctor in addition to the signature of the claimant; in these instances, respondent cannot use the authorization furnished by the insurance company, and it obtains one signed by both the claimant and the doctor (Trotochaud 6407). Respondent, when it obtains an authorization, uses its own form, which specifically authorizes release of the information to Retail Credit Company (or, since January 1, 1976, to Equifax Inc.) (RX 633; Trotochaud 6406). The practices of insurance companies in handling claims are subject to state legislation. In California, any resident who is dissatisfied with the handling of a claim can register a complaint with the Insurance Department, which has access to the insurance company's complete file (Hankin 10633-34). In addition, in several states, insurance companies are subject to triennial examination by the insurance authorities, and this examination includes a detailed study of the company's claim operations (Hankin 10634, Davison 2667).

230. In the relevant period, field representatives were instructed not to represent themselves as employees of the insurance company (Burk 10382). In introducing themselves to medical personnel, field representatives regularly gave their names and stated they were employed by respondent (Baranek 9699, A. Brown 7749, Burk 10382, Cooke 9974-75, Guse 12052-53, Hartfield 10494, E. Jones 12927, L. Jones 10448, J. Moss 11024, Pregler 9218, Silar 4039).<sup>73</sup> [71]

231. In the course of securing medical information, respondent's field representatives regularly returned to the same medical source for medical records on different patients requested by different insurance companies (Burk 10383, Guse 12054, Harden 1388-89, Hartfield 10495). In addition, several field representatives testified that, on one occasion, they would present to a single doctor or

<sup>73</sup> The witnesses who testified on this point stated that they had never represented themselves to a medical source as an employee of an insurance company (Burk 10382, Cooke 9975, Guse 12054, Hartfield 10495, Jenckes 82, L. Jones 10449, J. Moss 11025, Pregler 9218).

hospital, authorizations from several different insurance companies on different patients (Cooke 9975, Huntington 12602, E. Jones 12928, L. Jones 10449-50, J. Moss 11024, Pregler 9217-18).

232. Under the circumstances, it appears that those medical sources contacted for information with respect to several different patients for different insurance companies were on notice that respondent's field representatives seeking medical information were not insurance company employees.

233. The UMH report is a three-part form which has, since the inception of the service, carried respondent's name (formerly Retail Credit Company and now Equifax Inc.) in bold print at the top of each page (RX 634B-D; Trotochaud 6388-89, A. Brown 7749, Baranek 9700, Cooke 9975, Guse 12053-54, Huntington 12601, Pregler 9217). The usual procedure was to give this form to the doctor, or the member of his staff whom he had designated to fill in the information requested (Trotochaud 6290, 6452-53). One part of the form, which bears the name of Retail Credit Company, is marked "Doctor's Copy," and the procedure has been to give this copy to the doctor or other medical source for his or her records (RX 634D; Trotochaud 6386-88, 6404; A. Brown 7749-50; Baranek 9700; Cooke 9975; Huntington 12602; Pregler 9217). Consequently, the doctor and his staff could, by reading the forms which they filled in and retained, determine that the information was supplied to respondent and not to an employee of the insurance company.

234. In obtaining medical information for a claim report, the preferred method was for the field representative to interview the physician. The field representative recorded the information on a company form, which had the name "Retail Credit Company." This form was then given to the doctor for his review and signature (Burk 10383-84, Trotochaud 6290). The physician could, by reading the form, determine that the information was being furnished to respondent. [72]

235. The record will not sustain a finding that respondent's employees represented themselves as insurance company employees when they sought medical information from medical sources such as physicians or hospitals (Findings 225-34).<sup>74</sup>

### C. Retention and Use of Medical Information by Respondent

236. The filing procedures for UMH reports and the rules as to

<sup>74</sup> Two of respondent's field representatives testified they stated that they represented a particular insurance company but did not affirmatively claim to be employees of such companies (Jenckes 82, Harden 1383). The testimony of these two witnesses is outweighed by the other evidence showing no deception on this point.

what use could be made of file copies, changed during the relevant period.

237. When the UMH service was first instituted, respondent retained copies of the UMH reports in the regular reference alphabetical files along with claims and underwriting reports. The file copy was stamped "PRIVILEGED FILE Do Not Use or Quote. See Mgr. or Claim Dir." (RX 654, 655; Trotochaud 6369, 6382, 6402; A. Brown 7755; Coleman 7917-18; Jenkins 5797-98). Field representatives were not permitted to quote verbatim from a UMH report in a subsequent underwriting report (Trotochaud 6381). A field representative could read the UMH report and use the information therein as a "tip" in preparing underwriting reports (Trotochaud 6382-83).<sup>75</sup> It was also permissible to supply a new requester with the date and name of the recipient of a prior UMH report. In April 1972, the procedure was changed to permit giving only the date (and not the name or account number of the prior recipient) (RX 656A-B; Trotochaud 6372-73, 6381). [73]

238. This procedure was changed by a memorandum dated July 11, 1972 (RX 636A-C), effective immediately, which gave instructions to "discontinue copying, quoting from, or using in any way in subsequent reports, information from UMH reference files." (RX 636A). Each branch office was supplied with a form which had to be returned to the Home Office, stating that the memorandum was received and the date on which it was received (RX 636C; Trotochaud 6384-85). Under the new procedures, the file copies were placed in a separate file drawer, filed chronologically by customer mailing date, and kept for 90 days (RX 636A-C; Trotochaud 6379-80). In addition, existing UMH reports in the reference files were purged when they were discovered in the preparation of new reports or in the course of the experting and destroying procedure (Trotochaud 6480). The change was instituted because the Company had not always been successful in assuring outsiders that UMH reports would not be used in subsequent reports (Trotochaud 6378-79). The file copy was retained for 90 days in order to take care of situations where the original report was lost (either in the mail or by the customer) and of any question by the customer as to billing (Trotochaud 6379). The field representative no longer had access to completed UMH reports because a file clerk could find a report on a given consumer in the chronological file only by thumbing through the entire file; no index of the file was maintained (Trotochaud 6380, 6383).

239. This procedure was changed by a memorandum dated

<sup>75</sup> Using information from a report as a tip meant "the information could not be used directly from the report, but could be used in the process of conducting the current inspectional investigation." (Trotochaud 6382).

November 26, 1973, which provided that no file copy of a UMH report was to be retained (RX 635A-B; Trotochaud 6385-86). The UMH form was revised by adding a "control" sheet (RX 634A), which contained the name of the subject of the report, the name of the customer, the medical source contacted, whether a fee was paid, and when the handling was begun and concluded; it contained no medical information (RX 634A; Trotochaud 6385-86). This control sheet was then retained in the file; the copy of the report previously designated "file copy" was redesignated "review copy" (RX 634C; Trotochaud 6386, 6400) and was to be destroyed as soon as the supervisor had reviewed it and assured himself that the report had been completed in accordance with Company instructions [74](RX 634C; Trotochaud 6386). At the same time, the procedure of leaving a copy of the report with the physician was made mandatory (Trotochaud 6388). In making this change, the Company recognized that there would be instances in which a report would be lost in the mail and that in those cases, the respondent would have to bear the cost of rehandling (Trotochaud 6387). Respondent made the change because the 90-day retention procedure led some people to think that information in the report could be used in subsequent reports. It wanted to demonstrate there was no way in which confidentiality could be violated because once the information was sent to the insurance company, respondent no longer had it (Trotochaud 6386-87). This revision of the filing system was implemented in the field (Jenkins 5797, 5803-04; A. Brown 7751-52, 7759; Coleman 7917; Paladino 8726-28; Zack 8253-54).

240. The filing procedures for claims reports which contain medical information and the rules as to what use could be made of such information, also changed in the relevant period.

241. Since at least 1960, any claim report containing medical information was stamped "privileged", with a legend stating that the claim director or manager should be consulted (Trotochaud 6420-21, 6437-38; A. Brown 7755; Eldred 11236-37; Jenkins 5798; Cf. RX 654). Prior to May 1974, claim reports were filed in the regular reference alphabetical files. Medical information in such reports could not be quoted verbatim in a subsequent report but could be used as a "tip" (CX 666N; Trotochaud 6314; *e.g.*, Burge 5097, Jenkins 5801-02, Lieber 9003, Hakey 1567-68, Laudumiey 1852-53). It was also permissible to state in a new report that a prior claim report had been made (including the customer and date) and giving the name of the doctor and hospital, dates of confinement and the cause (CX 666N, 667Z-29; Trotochaud 6314). [75]

242. Prior to February 21, 1974, if respondent received an inquiry

from a customer who supplied a valid authorization and there was medical information in the claim file concerning the subject of the inquiry, respondent supplied the medical information in the file to the second requester. This procedure was changed by a memorandum dated February 21, 1974, to provide thereafter that the information would be furnished in these circumstances only after receiving permission to do so from the medical source originally supplying the information (RX 639A-B; Trotochaud 6409-10). If such permission was refused, then respondent would recontact the source and obtain the information again (Trotochaud 6410). The change was made to comply with the rules, regulations and ethical procedures as to confidentiality which the medical profession was urging on the insurance industry (Trotochaud 6410-11).

243. Beginning in May 1974, new claim reports were placed in a separate file from other reports. During the separation process, which took approximately a year (RX 660A, 637A; Tr. 6598), previously prepared claim reports were pulled from the regular reference files and placed in the separate claim files (RX 580A-B, 638A-B; Meyer 6596-98, Trotochaud 6423-24). In June 1974, prior to completion of the separation, respondent's employees in the field were instructed to cease quoting insurance history to a current underwriting customer from previous claim files (RX 637A-C; Trotochaud 6426-28). Claim reports (including medical information therein) were not available to field representatives preparing underwriting reports after their segregation in the claim files (Cooke 10006-07, Baranek 9700-01).

244. On December 4, 1975, instructions were issued, effective immediately, that no medical information was to be kept in the claim files. All such information had to be set forth on separate forms (other than the claim report itself) and all copies of the medical attachment were to be destroyed as soon as the report was mailed to the customer (RX 647A; Trotochaud 6411-12). Again, each branch office was required to return to the Home Office a form stating that the memorandum had been received and the necessary action taken to implement the new procedure (RX 647B; Trotochaud 6412). [76]The purpose of the change was to offer the medical profession assurance that respondent would not use medical information other than to provide it to the customer requesting it, because there were still those who felt that respondent might use medical information for other purposes as long as it had such information in its possession (Trotochaud 6415).

245. In short, until July 1972, UMH reports were kept in the regular alphabetical files. And from July 1972 to November 1973, file

copies of UMH reports were kept for 90 days in a separate file (Findings 237-39). Respondent's separation of claim files from other reports began in May of 1974, the procedure taking about a year (Finding 243).

246. Prior to July 1972, information in UMH reports could be used as a tip (Finding 237). Before the separation of the claim and underwriting files, field representatives were permitted to use medical information contained in the claim files as a tip or lead in conducting their investigations (Finding 241). It was contrary to respondent's policy, when using prior medical information as a tip in a current investigation, to ask leading questions based thereon (e.g., Lieber 9004, 9054-55). Field representatives were to ask open-ended questions. Nevertheless, violations of this policy occurred.<sup>76</sup>

247. Information from claim reports could be used as provided in respondent's manuals. [77]CX 666, the Field Representative Manual contains the following instructions pertaining to medical reports in claim files:

Previous Claims Reports in our reference files are valuable assets in making a current report. Some give details of previous health conditions; some point to finances or previous automobile accidents.

Physician Reports and Hospital Records are 'privileged files.' Direct quotations from privileged reference files and copies of them can be made only when you have an authorization signed by the subject *for the customer to which you are reporting*. The authorization should be retained in your reference file.

If the current report is a Claim Report or an L&H Underwriting Report and you have no authorization, the reference file information may be used as a tip. Do not make verbatim quotations from the reference file in writing the report. Limited factual information may be given in a special paragraph and should be written as follows:

NOTE: On 7-1-68, we reported to the Blank Insurance Company, Lincoln, Nebraska, Claim #8956, in connection with a claim for sickness benefits. We found that the subject was confined to the Mercy Hospital from 4-2-68 to 4-13-68 and was attended by Dr. George White. Ailment was kidney trouble and an operation was necessary to remove a stone.

(CX 666N.) [78]

See also Claim Director Instructions, CX 676Z-14, and the Branch Office Manager Manual, CX 673Z-229. (The printer's dates are 3-70

<sup>76</sup> Although only three ex-employees testified that they asked leading questions in connection with the use of prior medical information as a tip, there was a potential for abuse in permitting such use of the information (Wines 379, Wocik 2888, Silar 4040-41). In view of the proclivity of substantial numbers of respondent's field representatives to utilize unauthorized shortcuts (Finding 405), the potential for such abuse during the relevant period when such records were available in the general files was substantial.

for CX 666, 3-71 for CX 676 and 3-69 for CX 673; RX 102N-O (printer's date 4-73)).<sup>77</sup>

248. Similar instructions were given in the L&H Manual for incorporating privileged medical information in case respondent had no authorization to quote it in a current underwriting report. These instructions were not limited to claim reports and would encompass all medical reports obtained by respondent (CX 667Z-29, printer's date 9-71). These instructions also permitted disclosure of diagnosis such as "kidney trouble" and of treatment such as "operation was necessary to remove a stone" (ibid). Respondent's procedures also permitted field representatives to use information from UMH reports as a tip prior to July 11, 1972 (Trotochaud 6382-83).

249. Respondent's instructions, even with the prohibition against direct quotation, permitted disclosure of confidential medical information pertaining to diagnosis from privileged medical reports in claim and UMH files without authorization therefor.<sup>78</sup> The permit-

<sup>77</sup> These instructions on this point in RX 102N-O are identical to those in CX 666N. However, as of July 1973, the instructions no longer permitted quotations from claim medical reports pertaining to diagnosis and treatment, disclosure being limited to dates of admission or treatment by physician or treating institution (Claim Director Instructions, RX 109B).

<sup>78</sup> Respondent requests a finding that:

... [T]here are certain basic facts [in medical records] which are not privileged, i.e., the dates of confinement to a hospital, the name of the hospital, dates of treatment by a physician, the name of his physician and admitting diagnosis, which may be disclosed without authorization (Trotochaud Tr. 6468; A. Brown Tr. 7908-09, 7912-13; Mr. Jerome Tr. 9657-58). [79]

This finding is not adopted since the testimony relied on pertaining to diagnosis is apparently in conflict: Ann Brown testified that hospitals would give admitting diagnosis without authorization (Tr. 7909, 7912-13).

The Trotochaud testimony seems to include diagnosis in the privileged category:

Q. Would you define what you mean by privileged medical information?

A. 'Privileged medical information' is that information that directly relates to the treatment or the nature of the illness. It does not include dates of confinement to the hospital, name of the hospital, dates of treatment by a doctor, name of a doctor. That information is available to the general public.

I suggest that the recent publicity given to the Hughes situation would bear that out. The hospital disclosed the fact Hughes had been admitted to the hospital and date he was admitted but did not disclose diagnosis or cause of death. That is the difference between 'privileged' medical information and 'non privileged.' (Tr. 6468; emphasis supplied)

Gerald Jerome testified:

Q. What information was privileged?

A. Medical information that required authorization to obtain.

Q. Was any information that was received from a doctor, or hospital that might not be privileged?

A. Only dates of admission and discharge and the name. (Tr. 9657-58; emphasis supplied).

See also Model State Legislation prepared pursuant to the directions of the House of Delegates of the American Medical Association defining "confidential medical information" as follows:

(d) The term 'confidential medical information' means: (1) all information regarding a patient's medical history, condition, or treatment communicated by the patient or other person on the patient's behalf to the patient's physician or his agents or employees during the course of the physician-patient relationship or to a hospital or other health care facility or its agents or employees, and (2) all information developed by the patient's physician, his agents or employees, or by a hospital or other health care facility or its agents or employees relating to the diagnosis or treatment or medical evaluation of the patient.

(RX 672D-E; Pheasant 11378-79.)

ted use [80] of respondent's medical reports as tip information, if leading questions were asked in the absence of a valid authorization, would also result in unauthorized disclosure of confidential information. In addition, the permitted use as tip information in unrelated transactions without an authorization breached confidentiality even when leading questions were not asked.<sup>79</sup>

250. Respondent's brochure entitled, "Reporting Medical Information," urging the medical profession's cooperation in furnishing such data, represented: [81]

We handle thousands of hospital and medical records every month in a tactful, responsible, and confidential manner.

(CX 397A-C, printer's date 10-71.)<sup>80</sup>

The brochure was disseminated at a time when respondent's procedures permitted using privileged medical information in its files as tip information and disclosing nature of diagnosis and treatment.

251. Respondent's brochure disseminated to the Medical Profession, CX 397 (October 1971), represents that such reports will be kept confidential. This implies no subsequent unauthorized use will be made thereof in unrelated transactions. Such representations conflicted with instructions as to respondent's employees that such information could be used as tips in preparing other reports and that the diagnosis therefrom could be disclosed in connection with other reports even though there was no authorization for such use (*e.g.*, CX 666N). The failure to disclose such procedures to medical sources constituted the failure to disclose a material fact and was misleading.

252. In view of the sensitive nature of the information contained in medical records and the possible adverse effects on patients from disclosure of such information, the patients' consent to the release of such information should be informed (Findings 218-23; see also CX 1481A; Elmendorf 4250<sup>81</sup>). [82]

253. In view of the sensitive nature of the information and the

<sup>79</sup> It is self-evident that use of tip information necessarily influences an investigation irrespective of whether leading questions are asked.

<sup>80</sup> This brochure, which pertains to reporting medical information for insurance purposes, encompasses respondent's medical reports in general.

<sup>81</sup> CX 1481A states:

The consent of the patient to release information should be informed; that is, the authorization form should state unequivocally by whom the information might be used, including the requesting company, its representative, or other organization related to that requesting company.

(These and other related principles contained in CX 1481A-B were adopted by the California Medical Association Tr. 4245-46, 4254).



consequences of its release, the fact that such information would be secured by a third party consumer reporting agency which kept copies thereof, was a material fact which should have been disclosed to the consumers signing such authorizations.<sup>82</sup>

254. Authorizations secured by insurance companies and utilized by respondent have used language such as the following:

To the extent permitted by law, I expressly waive on behalf of myself and each family member proposed for insurance under this application all provisions of law prohibiting any physician, hospital official or employee, or any other person who has attended or examined me or them, or who has been consulted by me or them from disclosing any knowledge or information thereby acquired and from testifying with reference thereto, and I expressly authorize such person to make such disclosures.

(RX 666, see also 667, 668.)<sup>83</sup>

255. The language in such authorizations would not put the consumer on notice that disclosure would be made to a third party consumer reporting agency which, for a portion of the relevant period, kept copies of such reports in its files and which could use such data in connection with unrelated transactions for which no [83]authorization had been given. Consumers signing such authorizations did not give informed consent to the disclosure of such information to respondent.<sup>84</sup> Respondent should have been aware of that fact, and its use of such forms was an unfair practice within the scope of Section 5 of the Federal Trade Commission Act.

256. The extensive changes in respondent's procedures which ultimately eliminated the retention of medical reports, has effectively prevented further unauthorized use of medical information.<sup>85</sup>

257. In any event, respondent, when it secures medical information for insurance companies, either in the form of UMH reports or in the course of a claim investigation, is engaged in the business of insurance. Respondent's acts and practices in obtaining medical information for insurance companies are, therefore, exempt from Federal Trade Commission regulation to the extent that they are regulated by state law. [84]

<sup>82</sup> Essentially, there is no consumer testimony on this point. The finding that this is a material fact is based on finding 252.

<sup>83</sup> The foregoing authorizations were in use by the Occidental Life Insurance Company and were furnished to respondent (Taylor 10855-57).

<sup>84</sup> The finding that consumers signing certain authorizations did not give informed consent when the authorization did not name the reporting agency is based on the confidential nature of the subject information and a review of the language in the authorization. This compels the inference that the consent given was confined to the transaction for which the authorization was given.

<sup>85</sup> Respondent instituted procedures to eliminate retention of UMH reports in November 1973, and to eliminate retention of claim medical reports in December 1975 (Findings 239, 244).

XI. ALLEGATIONS THAT RESPONDENT HAS FURNISHED CONSUMER  
REPORTS AND INVESTIGATIVE CONSUMER REPORTS TO PERSONS WHO  
IT HAS NO REASON TO BELIEVE INTEND TO USE THE INFORMATION  
FOR ONE OF THE PERMISSIBLE PURPOSES AS DEFINED IN FCRA  
(PARAGRAPHS 16-17 OF THE COMPLAINT)

A. Voluntary Follow-Up Service

258. Respondent formerly furnished a voluntary follow-up service pursuant to which it transmitted to certain customers to whom a prior consumer report had been furnished, additional adverse information on the individual who was the subject of the report. Voluntary information was not furnished to any customer to whom a consumer report on the individual had not been furnished previously (Jenkins 5780-81, Jones 5184-85).

259. Field representatives were instructed:

Voluntary Follow-Up Information is information which we voluntarily submit on a person upon whom we have previously reported. Any information known to the Field Representative personally or received from reliable sources, which has an unfavorable bearing on an individual on whom he has made any kind of a report, should be submitted; for instance: death, serious illness or disease, accident, bankruptcy proceedings, change in occupation which involves a hazard, arrest for some serious offense, suits or judgments, fire, fire or theft of car, etc.

(CX 666Z-35.)

260. The Voluntary Follow-Up Service was discontinued on April 29, 1974 (Jenkins 5781-82). [85]

261. Voluntary information generally consisted of public information found in newspapers or public records (Ivey 2005-06; R. Jones 5236; Jenkins 5780-81; Ledum 4663-64; Fuentes 2075-76, 2086; A. Pierce 2581; Hawkins 1085-86). It was not necessarily limited to public information, however, and could include "[a]ny information known to the field representative personally or received from reliable sources which has an unfavorable bearing" (CX 666Z-35; Jenkins 5855).<sup>86</sup>

262. No charge was imposed for the transmittal of voluntary information (Fuentes 2075, A. Pierce 2596, R. Jones 5188, Jenkins

<sup>86</sup> As one of respondent's officials testified:

Q. Might another example [of Voluntary Follow-Up] be information on which was developed through a representative or by a field representative during subsequent investigations and different reports?

A. Certainly. The field representative could very well have developed the accident or sky diving or fire. It does not have to be a newspaper clipping.

Q. Does that also apply to monetary savings?

A. Yes.

(Jenkins 5885).

5784). Respondent expected to be rewarded by increased business as a result of the service (CX 666Z-35) and, the dissemination of such information must be deemed a promotional device.

263. Insurance companies receiving voluntary information sometimes had a policy in force in connection with the individual who was the subject of the voluntary follow-up and, at other times, did not (Davison 2642-43, Hawkins 1056-57).

#### B. Monetary Savings Program

264. Respondent's Monetary Savings Program was in effect during the period 1971 to present (RPF 248). [86] Under the Monetary Savings Program, respondent, in certain instances, transmitted to its sales force information about the subjects of previously prepared reports. This was done if it was discovered that an event had occurred which would cause an insurance company a loss and if such insurance company had earlier been furnished with one of respondent's reports which would have allowed it to identify such risk and rate or decline the application of the subject of the report (Jenkins 5783-84, R. Jones 5188, L. Smith 10576, Ledum 4665, A. Pierce 2583).<sup>87</sup>

265. Respondent's sales representatives sometimes used such monetary savings information as a promotional device to demonstrate the value of its reports (H. Smith 8434-35, 8443-44; L. Smith 10576; Fuentes 2074-75).

266. Most of the information transmitted to customers pursuant to the Monetary Savings Program was of a public nature, e.g., newspaper clippings, police and court records, etc. (Fuentes 2086; R. Jones 5186, 5237; Ledum 4665; Hawkins 1086). Such information could also, however, be derived from subsequent investigations (Ledum 4665, Jenkins 5855). No charge was made for the transmittal of such information (R. Jones 5188, Jenkins 5784).

267. Monetary savings information could be transmitted to an insurance company which had no policy in effect on the individual involved. It could have rejected the application on the basis of the original report previously submitted (Jenkins 5856, L. Smith 10588-39). [87]

268. Respondent knew or should have known that information furnished under the Voluntary Follow-Up Service and Monetary Savings Program was sometimes furnished to insurance companies who had no insurance policy on the individual involved or who were

<sup>87</sup> The Voluntary Follow-Up Service differed from the Monetary Savings Program in that the initial report preceding the voluntary follow-up did not identify a risk or a hazard.

not at that time considering an insurance application on that individual (Findings 263, 267).

269. Respondent, under both the Voluntary Follow-Up Service and the Monetary Savings Program furnished information about consumers to insurance carriers when there was no request for such information and, in some instances, to customers who had no need for the information as defined by FCRA.

270. Respondent, under its Voluntary Follow-Up Service and Monetary Savings Program, furnished consumer and consumer investigative reports to persons who it had no reason to believe intended to use the information for one of the permissible purposes set out in Section 604 of FCRA (Findings 268-69).

XII. ALLEGATIONS THAT RESPONDENT HAS INCLUDED IN ITS CONSUMER REPORTS OBSOLETE INFORMATION IN VIOLATION OF SECTION 605, FCRA (PARAGRAPHS 18-19 OF THE COMPLAINT)

A. Employment Records

271. When respondent is requested to prepare employment reports covering employment experience for more than seven years and when respondent obtains adverse information more than seven years old from a former employer, as a matter of established procedure or usual and customary practice, respondent states in the reports "In compliance with the FCRA, no additional information can be reported from this former employer covering employment experience prior to seven years ago" or otherwise indicates that the Fair Credit Reporting Act does not permit the reporting of such information.

(CX 1445D, ¶ 23; CX 675U.) [88]

272. Such stock sentences were to be used only in connection with employment records (CX 675U). The stock sentence that FCRA does not permit the furnishing of information covering employment experience prior to 7 years ago was utilized only in the case of those reports where adverse information had been uncovered (CX 1445D, 675U). The limiting of the use of this stock sentence to those situations where adverse information had been uncovered indicates that its use was intended as a signal to disclose the existence of such information.<sup>88</sup>

<sup>88</sup> There are a number of ways respondent could have apprised customers of the limitations imposed on its services by FCRA without signaling the existence of adverse information in particular cases. One method might have been simply to routinely provide all users of its employment reports with a brochure setting forth the relevant text of Section 605. Such a brochure could have been enclosed with *all* reports or it could have been sent to users of the reports on a one-time basis.

273. The practice violated Section 605 of FCRA.

#### B. Motor Vehicle Reports

274. Respondent sometimes furnished photocopies of state motor vehicle reports with portions of the report masked out (Answer, Par. 18). Such reports dealing with individual consumers were purchased from state motor vehicle departments for transmission to respondent's insurance company customers (Hewey 6514).

275. Prior to April 25, 1971, 21 state motor vehicle departments provided motor vehicle records containing information more than seven years old. Some states provided such information as a matter of procedure; in other states, the systems to prevent the reporting of such information were not always effective (Hewey 6514-15). [89]

276. Respondent was aware that such practices by certain state motor vehicle departments made it difficult to comply with the provisions of Section 605 of the FCRA (Burge 4993-94, 4996).

277. Respondent, for a period of time after FCRA became effective, was uncertain whether motor vehicle records were subject to Section 605 (Hewey 6516). It was not until 1973 that the Federal Trade Commission interpreted FCRA to apply to state agencies which issued motor vehicle records (Hewey 6532).

278. Respondent's officials contacted state motor vehicle departments to encourage them to change their systems so that respondent would not be provided with old information (Hewey 6517). Respondent's attempts to have the states change their procedures were not always successful (Hewey 6518). Respondent persisted in its attempts to secure such changes (Hewey 6521-22). Currently, no state reports information over 7 years old in motor vehicle reports (Hewey 6529).

279. Respondent's masking out of obsolete information on state motor vehicle reports was a reasonable response to the situation facing it in the case of those states reporting such information. The record discloses no intent to signal the existence of such information in violation of Section 605, FCRA.<sup>89</sup> [90]

### XIII. ALLEGATIONS THAT RESPONDENT DOES NOT FOLLOW REASONABLE PROCEDURES TO ASSURE MAXIMUM POSSIBLE ACCURACY OF THE INFORMATION CONCERNING THE SUBJECTS OF ITS REPORTS (PARAGRAPHS 20-21 OF THE COMPLAINT)

#### A. Pressure To Produce Protective and Declinable Information and Respondent's System of Quality Audits

<sup>89</sup> Alternatives to the procedure actually followed, such as retyping the information on a non-official form would have made it obvious that the original record had been altered (Hewey 6521).

## (1) Protective and Declinable Information

## 280. Respondent's Branch Manager's Manual states:

*Actionable Information:* This is the basis on which we sell our services. The terms "Protective/Declinable" and "Actionable Information" have become descriptive of the information we develop for our customers and the terms are used interchangeably. Insurance companies must have information to properly rate each acceptable risk, as well as to decline or cancel the "poor risk."

(RX 107Z-153; CX 673Z-166.)

281. Declinable information is adverse information on the subject of a report which might cause the company to which he is applying for an insurance policy to refuse to write such a policy (Bresnahan 583).

282. Protective information is information which is not sufficiently serious to make the case declinable but which may have an effect on the way the insurer rates it (Bresnahan 583).<sup>90</sup> [91]

283. Significant information is used in connection with claim reports to refer to information that would be helpful to respondent's customers in evaluating claims (Monarch 8565, 8573). Protective and significant information are considered synonymous (Stubbs 9279).

284. Selective information is a term used by respondent in connection with its employment reports. It refers to particular qualities or skills which would make a person a desirable prospect for employment (Jenkins 5790, 5858-59; Hale 12681-82, 12730; Bresnahan 692-93).

285. Respondent's normal procedure is that adverse information must be confirmed by at least two sources (Jenkins 5789). An exception to the rule occurs when only one person, because of his peculiar relationship to the subject, has access to the information.<sup>91</sup> In that case, it is reported with an indication that it came only from the one source. Normally, protective and declinable information from one outside source, which cannot be confirmed, is not reported (e.g., Baranek 9713-14, 9725-26; Garcia 13131; Fuentes 2030; Johnston 12320). Such information, although derived from a source other than an employer, may be reported, however, with a confirmation note stating that the information was obtained from only one source and the reasons why it could not be confirmed (Horner 9893; Todd 9769-70, 9788-89; Lowitz 8791-92; Tilden 11817).

286. The general rule, as stated in respondent's Field Representative's Manual (March 1970), is that unfavorable information received

<sup>90</sup> The terms "protective" and "declinable" are no longer used by respondent. A current term used by respondent is "features" which combines the concepts of protective and declinable (Lieber 9106).

<sup>91</sup> An example of this would be an employer (Vogen 12206).

from the applicant or insured should be confirmed just as carefully as though received from outside sources (CX 666Z-2 and 3). If the information is personal, covering health, habits or personal reputation and cannot be confirmed, then the field representative is to make a put-up to his supervisor (ibid; see also RX 102Z-3). In practice, adverse information coming from the applicant himself is to be confirmed if possible. If it cannot be [92]confirmed, it is to be attributed to the applicant, noting that it could not be confirmed elsewhere (Jenkins 5789).<sup>92</sup>

287. Public record information does not need to be confirmed by a second source (Maust 8278, Vogen 12205).

288. The confirmation of protective and declinable information may require the field representative to contact one or more sources over and above the number otherwise required for the particular report (Garcia 13130-31, Getz 12388, Vogen 12205-06).

289. Respondent's determination of whether a case is protective or declinable is based on its estimate of the action that a majority of its customers would take. Respondent recognizes that not all companies take the same action on the basis of the same information (CX 1029A).

290. Respondent kept records of field representative and branch office performance in the development of protective and declinable information. The purpose was to monitor performance by respondent and to determine the value of its service to customers (Jenkins 5790).

291. Respondent's field representatives, as a matter of established procedure or usual and customary practice, recorded daily on standardized forms (Form 930) whether each completed report contained information which the field representative believed to be "declinable" or which he believed contained a "protective feature" (CX 1445D; RX 107Z-155).<sup>93</sup> [93]

292. Respondent's branch office managers were instructed that:

. . . [t]he 930 should be reviewed regularly throughout the month to insure that all field Representatives are developing a reasonable percentage of actionable information. Local management can judge from his territory and the types of cases he handles what range this should fall. . .

(Branch Manager's Manual, CX 673Z-169.)

293. Branch office officials maintained on respondent's Form 930-A, total figures derived from the field representative's Form 930s, showing the percentage per month of protective/declinable

<sup>92</sup> However, many witnesses testified that if the adverse information is secured from the applicant, there is no need to seek additional confirmation (e.g. Brown 7007-08, Hilderbrand 12009, Vogen 12205).

<sup>93</sup> This practice was discontinued January 1, 1976 (Browning 6065-66).

information he developed, as well as information concerning his production (Curtis 7148-51).

(2) Utilization of Quality Analyses or Audits

294. The audit division of the home office Research Department, in the relevant period, conducted quality analyses audits. Generally and traditionally, respondent conducted audits by branch offices and grouped those offices for regional results (Browning 6054).<sup>94</sup>

295. Such audits measured on a statistical basis, branch office performance with respect to the production of protective and declinable information and the branch office's performance with respect to "below standard underwriting" and "below standard operating"<sup>95</sup> (Browning 6053, Jenkins 5791, Sandor 6912-13). [94]

296. Respondent kept historical records based on the quality audits of percentages of protective and declinable information obtained by the Company as a whole, by regions and by branch offices (Jenkins 5790, Fausold 10224-25, Eldred 11247-48). The corporate averages were based on analyses of thousands of reports (Loar 12835-36, Eldred 11247-48, Golderer 8646) and changed yearly (Loar 12857; Bresnahan 715; Fausold 10229, 10244-45).

297. In 1975, respondent changed the audit procedure so as to get regional rather than individual branch office results (Sandor 6915, 6938). Effective January 1, 1976, it ceased auditing protective and declinable information, as well as the below standard operating and underwriting items (Sandor 6920, 6928; Brown 6975-76, 7002). Currently, the audits cover source selection and completeness, as well as report wording and clarity of presentation (Browning 6052-53; J. Brown 6975-76, 7002).

298. In the life and health line, a branch office was the subject of one or two quality audits a year in the period 1971 to 1974 (Sandor 6912, Hermo 8586). Also, a quality audit of a branch office's automobile reports was conducted once or twice a year in that period (Yox 8537).

299. Respondent's officials were concerned with performance on the below standard operating and underwriting categories as measured in the audits (*e.g.*, see CX 1229A-B, 1269A, 1127A). However,

<sup>94</sup> Branch offices might also conduct report audits independently at the local level (Jenkins 5819).

<sup>95</sup> "Below standard operating" refers to deficiency in clerical detail (*e.g.*, typographical errors) in the report, while "below standard underwriting" refers to deficiencies in content such as failing to ask certain questions (Browning 6053; Sandor 6913, 6916).



“quality” to respondent’s employees in this context, referred primarily to protective/declinable information (Hakey 1724-25).<sup>96</sup> As stated by the Regional Vice President for the New York Metropolitan Region in a memorandum to his managers on May 8, 1974: [95]

Notice the big questionmark where it counts the most. In Protective and Decline we didn’t have a single office listed, and that’s god awful to say the least.

(CX 1290A-B.)

300. The Seattle branch manager who, in a regional Automobile Quality Analysis, came up with 78 percent of its reports containing protective information and 9.1 percent containing declinable information was congratulated on his performance in “this all-important area” (CX 1229A).

301. The only measure of usable information in the home office audits in the period 1971 to 1974 was the recorded percentages of protective/declinable information (Curtis 7334-35, Moore 10094).<sup>97</sup>

302. The branch office received no notice of an audit, and the cases to be sampled were selected by the Research Division (Sandor 6912, Jenkins 5791).

303. Once the package of cases was received from the branch office, each case was reviewed by an analyst measuring usable or protective and declinable information and the below standard operating and underwriting features (Sandor 6913). Certain audits measured only the protective/declinable information feature (CX 1123A; Sandor 6927-28).<sup>98</sup>

304. After completion of the analysis, the results were tabulated and summarized on a cover sheet showing the number of cases sampled, the dates the audit was taken and the percentages of the items measured. The entire package was then turned over to the home office Operating Department for handling in the field (Sandor 6916, 6918). The audit results were transmitted to the Regional Vice Presidents by the Operating Department with such comments as it deemed appropriate. The Regional Vice Presidents then took up the audits with their respective branch offices (Jenkins 5791). [96]

305. Branch office performance was measured against historically determined levels. The branch offices were ranked for the performance category tested, in upper, middle, or lower thirds. The ranking was determined by relating current performance of a

<sup>96</sup> One field representative was informed by his assistant manager on April 17, 1973, “You know that the words quality and decline are now synonymous and we are being paid for developing actionable information . . .” (CX 982B).

<sup>97</sup> Employment reports were an exception (Finding 284).

<sup>98</sup> This procedure has been discontinued (Sandor 6928).

particular branch office to the performance of all branch offices in the preceding year (RX 710).

306. The following figures from CX 1254B, a Life and Health Report Quality Analysis for the Tulsa branch office in the Southwest Region, are typical of the statistics detailed in a home office quality analysis or audit in the relevant period:

	<i>Current Analysis</i>		<i>1972 Combined Results</i>	
	<i>Prot./Dec.</i>	<i>Completed</i>	<i>B.O.</i>	<i>Org.</i>
Number of Reports		70	-	52,970
Total Protective		15.7	20.0	19.0
Major Features:				
Habits		0.0	.5	1.0
Reputation		1.4	2.0	2.3
Reckless Driving		1.4	2.0	9
Declinable		1.4	3.4	4.5
% of Protective Reports Having:				
Over 20 points		0.0	2.4	1.3
11-20 points		0.0	4.9	9.1
8-10 points		18.2	22.0	16.9
5-7 points		27.3	24.4	21.6
Under 5 points		54.5	46.3	51.1
Below Stand. Underw		32.8	21.2	19.2
Below Stand. Oper.		18.6	21.2	16.3
# Pts. Graded BSU & BSO		36	-	-

[97]307. In this instance, the Tulsa office was in the lower third for all categories, viz., protective and declinable information and below standard operating and below standard underwriting (CX 1254B). The foregoing figures show that, in this audit, 70 reports were analyzed; that 15.7 percent of the Tulsa office reports had some protective information and 1.4 percent, declinable information. The respective percentages for below standard underwriting and below standard operating were 32.8 and 18.6 percent (CX 1254B; Loar 12853). The corresponding figures under the heading 1972 Combined Results under "Combined BO" are the consolidated figures for the combined branch offices in the region for the previous year. The last column, "Result Org." sets forth the corresponding figures for the

preceding year for the entire organization (Loar 12853-54, 12856-57; CX 1254B).<sup>99</sup>

308. Branch office performance with respect to protective/declinable information was included in the assessment of whether an audit was satisfactory (Jenkins 5818). And, managers were concerned with passing audits and obtaining acceptable levels of protective/declinable information (Hakey 1723).

309. Respondent's employees were told in connection with their appraisals of their unit's performance on audits with respect to production of protective/declinable information, that it is the production of such data which sells the service and keeps respondent in business (CX 778A,<sup>100</sup> 1116B, 1187A, 1254A). [98]

310. Respondent's employees in the field were "extremely sensitive to analysis results—good or bad. They [had] a definite effect on the Manager's morale, the Manager's individual bonus, and the morale of the [Employees]" (Letter, August 27, 1973, from a Regional Vice President to a Home Office official, CX 766, 770).

311. There was considerable rivalry among respondent's offices, and everyone wanted to be at the top of the performance category in terms of all phases of branch office performance measured by quality audits, including production of declinable information (Loar 12836-37; CX 783A-F).<sup>101</sup> Regions also competed with each other with respect to ranking in the quality audits (CX 1070A, 1146A).

312. Performance on the quality analysis was a factor considered in the awarding of bonuses under the Management Incentive Plan. Branch managers were reminded of this by their Regional Vice Presidents, *e.g.*:

You, no doubt, are wondering how this fine showing will affect your management incentive measurement. It will affect it in a positive way, in most cases, in that I will add to your recorded points on quality because of automobile analysis results . . .

(Regional Vice President to Managers, Western Operating Region on June 6, 1974, CX 1146A; see also CX 1194A and 1269A).

313. Field representative performance on quality audits was one

<sup>99</sup> The regional and national results in such audits reflect the averages for the year preceding that in which the audit took place (Loar 12856-57).

<sup>100</sup> *E.g.*, "The results can only be termed 'excellent.' We scored in the upper third grouping in both protective and decline . . .

. . . This is what keeps us in business . . ."

(CX 778A.)

<sup>101</sup> Sometimes, a Regional Vice President was satisfied with performance in the middle third (*e.g.*, see CX 1309C; Hale 12673-74).

factor among several to be considered in salary recommendations by the branch manager (Eldred 11327). [99]

314. If a particular field representative consistently failed to develop protective/declinable information, he could be subjected to additional training or retraining (Jenkins 5792).

315. To obtain protective/declinable information, field representatives were instructed that they should ask the full range of questions (Baranek 9723; Cooke 9997-98; Landreth 12139, 12150-51; Saltzgaber 11971-72; Brothers 7432-34;<sup>102</sup> Paladino 8732-34; Zack 8230; see also CX 1229A); see logical sources (Cooke 9988, Elmendorf 11574-75, Huntington 12629-30, J. Moss 11048, Saltzgaber 11971-72, C. Smith 8374, Weston 10709); and try to obtain direct interviews with the applicant (Hakey 1715-16, Saltzgaber 11971-72, C. Smith 8374, Elmendorf 11574-75).

316. The applicant is considered one of the best sources of protective and declinable information (Miller 11715-16, Bresnahan 736, Hakey 1716, Eldred 11249). Respondent, for that reason, emphasized the importance of obtaining direct interviews with the subject of reports (C. Smith 8372, Bresnahan 718, Bigham 8600-02; see also CX 1229A).

317. Respondent's branch managers were reminded in connection with the quality audits that there were corporate objectives to be met in connection with the production of protective and declinable information:

The attached will give you a quick picture of the Region's results, as far as this First Analysis is concerned, and you will note that we held our Protective and Declinable levels, but we are falling somewhat short of Corporate objectives. [100]

Several large offices failed to show up well, and, of course, this causes the Regional statistics to suffer.

(Regional Vice President to All Offices—South Central Region on March 22, 1972, CX 1187A).<sup>103</sup>

318. Regional Vice Presidents urged their branch managers to secure sufficient protective and declinable information to qualify for top third ranking in the audits, and branch managers assured their superiors of the desire to achieve that goal. For example:

- (a) I know you and your people are going to be disappointed with the Declinable of 5.4% in the second round analysis, especially in view of the 14.6% Declinable achieved on the first round Auto Analysis; but I also know that the personnel in

<sup>102</sup> "... it has to be talked about to our Field Representatives to make sure that they fully understand that *all questions have to be asked in all instances* in order to extract the fullest amount of information available on any given report." (Brothers 7432, emphasis supplied).

<sup>103</sup> Declinable and protective results for the region in the analysis referred to were in the middle and lower third, respectively; (CX 1187B).

Albuquerque will immediately set about to make sure the next round analysis will reflect only upper third rankings in all categories!

(Regional Vice President, Dallas, to Manager of Albuquerque branch on October 30, 1973, CX 772).

- (b) The complete results of the Second Round 1972 Quality Analyses are in. Our Region, at 19% Protective and 4.5% Decline, finds itself squarely in the Middle Third. This is disappointing, and I will tell you why. Our people, as a whole, in the Northern Pacific Region are too good to have a record other than in the Upper Third, and I would hope that you agree with me.

(Memorandum to Managers in Northern Pacific Region from Regional Vice President on November 13, 1972, CX 1070A). [101]

- (c) As you know, the L&H Analysis was completed last Fall, and I have written most of you concerning the results.

I thought you would like to have a photocopy of the master page, showing just how the South Central stacked up.

*As you can see, some of the larger offices are in the Lower Third, and this pulls our percentages down considerably. Also, some offices that have consistently delivered a high Declinable percentage are shown in the Middle and Lower Third, and I would expect that these offices would normally perform at a much higher level.*

This is just informative—you have all received your own record, but I felt you would like to see how others performed.

I can't help but congratulate Dayton and Lexington as they are in the Top Third on both Protective and Declinable. Louisville, a large office, is quite close, and several other points could have a much higher showing with one or two more Declines.

The Automobile Analyses are starting to come in now, and I have seen two of these—both had a substantial Declinable figure (Dayton and Bowling Green), and their figures are going to be hard to beat.

Good luck to both of them, but I hope all the rest of you come up with an even higher showing. As rapidly as I receive the Auto Analyses, I will send them on to you.

(Regional Vice President to Managers, South Central Region on February 13, 1973, CX 1222A; emphasis supplied). [102]

- (d) We were pleased with the improvement in the development of protective and declinable information.

\* \* \* \* \*

Even though there is improvement in our results, we still have a way to go to

reach the upper third category which we are definitely trying to shoot for. We feel this goal is attainable and are striving hard to further improve our results.

(Manager, Miami branch to Regional Vice President, Jacksonville, Florida on June 27, 1973, CX 837).

- (e) All of us naturally would like to be furnishing customers with a service that ranks above other offices and other regions. All of us would like to be in the top third as we measure an office and region.

We did reach the top third as far as protective information is concerned. We missed the top third on declinable by 0.4%, our regional performance for 1973 being 4.6%.

(Regional Vice President to Managers, Western Operating Region on September 24, 1973, CX 1127A).

319. Field representatives were advised by their superiors that they were expected to develop protective/declinable information and, on occasion, they were instructed to achieve specific percentages in these categories or that the percentages which they had achieved were too low. The following instances are illustrative: [103]

- (a) Jim, I have recently completed an analysis on 55 L&H cases completed by you between the dates of 3-13-73 and 3-22-73.

Out of the 55 reports, you had six Former Resident Address Reports on which you could not obtain a direct interview. You interviewed on 27 for 55% interview. *You had seven protective for 12.7% protective. You had no declines.*

*Jim, this is a very poor analysis and certainly after all of the meetings we have had and the literature that has been discussed in regards to protective and declinable and interview percentages, I would have expected this to have been much better. A reaudit will be made shortly and it will be necessary that your figures improve considerably. You should be hitting somewhere in the neighborhood of 70% interview on your L&H cases. Your protective should be exceeding 21% and your declinable should be exceeding 5%.*

*You are well aware of the fact that the Home Office will be pulling a Quality Analysis shortly and if very many of your cases get into that analysis, based on these reports that I have just reviewed of yours, you would actually pull the office down instead of helping it. I know you don't want to have that burden on your shoulders, and I intend to be working closely with you in this respect. [104]*

(Manager, St. Paul, Minnesota to one of his field representatives on April 4, 1973, CX 1199;<sup>104</sup> see also CX 1200, a memorandum by the same author to another field representative to the same effect. Copies of these documents were sent to the Regional Vice President; emphasis supplied).

<sup>104</sup> The figures of 21 percent and 5 percent corresponded to the home office figures breaking down performance into upper, middle and lower thirds. The manager, in this instance, desired to achieve upper third performance (Bigham 8602).

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- (b) Out of 46 Automobile reports you had only 34.8% protective information. The bulk of this was on losses with driving reputation running second. This included information developed through MVR records and can almost be discounted. You only had 2 cases containing protective information concerning neighborhood and environment along with two each of physical impairments and youth or elderly risks. You had one protective on personal reputation.

Your declinable record was very good with 6.5% or 3 cases out of the total 46. These involved losses, two, and one on physical impairment.

(Manager, New Orleans office to field representative on June 21, 1972, with copy to Regional Vice President, CX 1180A).

- (c) Finally during January *they were informed that until such time as each individual met the declinable objective for both the Special Narrative and Special Life areas, there would be no salary increases for any members of the unit. As a result every single member of the unit is overdue for a salary increase by at least three months and some as long as six months. I do not intend to recant on this area.* [105]

They have also been informed that should the results not be vastly improved by the end of the first quarter of 1971 that their first quarter bonus is in serious jeopardy and will be cut based upon their qualitative performance. You are well aware of the Frank Wibber situation, and this has had a telling effect upon the Specials Unit.

(Manager, Newark office to Regional Vice President on April 5, 1971, in connection with a special life Recheck Analysis, CX 1283A; emphasis supplied).

- (d) Mr. Phillips, in the past year since I have been in Manchester has been rated a substandard investigator due to quality of his reports. Three recent report appraisals on substandard work led me to outline the terms for his continued employment to be immediate increase in quality and more decline and protective information. To accomplish this he would be transferred to the Keene Sub-office where he would come under strong supervision. Mr. Phillips decided he did not wish to change offices and therefore, resigned. In an appraisal completed two weeks after he was given notice that he must transfer there was improvement in report quality and only because of that would I consider him eligible for reemployment.

("Employee Leaving Company" form, dated September 25, 1972, concerning field representative in Claremont, New Hampshire suboffice, CX 1346A-B). [106]

- e) In the Salt Lake City office, the "manager did put out a sheet to each individual inspector at that time. If he felt you had a low percentage, he would indicate that. He would say, 'You should be paying maybe a little more special attention to your questions and getting your questions answered.' The sheets would contain notations such as 'Your decline ratio is a little low. Work a little harder and try to get it up a little more. That's about right. Good.' " (Getz 12395). Field

representatives in Salt Lake City received such sheets from the manager each month (Getz 12399-400).<sup>105</sup>

- (f) On May 9, 1973, a San Mateo field representative was informed that one decline out of 87 cases was not acceptable "and greatly misses the company standard of 4% decline minimum" (CX 1244A; see also CX 1246A to the same effect).
- (g) The manager of the San Mateo branch office expected his unit to meet the organization averages:

I think overall, we will come up with something in these organization averages that I have been furnished, like four per cent [declinable information] (Eldred 11259).

- (h) A supervisor in the San Mateo branch office was put on probation when his unit's production of declinable information was considered too low. The manager taking the action stated: [107]

In connection with my specials quality survey completed in December where the unit dropped to 2% special narrative and 4% special service declinable as outlined in the report quality manual, I placed Mr. Ledum on probation for 60 days as a supervisor, this was in a memo to him on 1-11-74.

(RX 446B.)

- (i) I have received replies to my correspondence of October 18 from all but three managers. From the tone of the replies, *it is obvious, and gratifying, that all managers heard from are very much aware of the need for quality reports and are already taking action with field representatives who are not developing the expected portion of declinable information.*

The replies received tell me that the managers have given this a great deal of thought and are determined to do what is necessary to assure good performance on the part of each field representative.

Being convinced that managers are already taking action where needed, *I will not at this time, make the completion of a street analysis on low performing field representatives mandatory for a salary increase.*

(Regional Vice President to Managers, Western Operating Region, November 15, 1972, CX 1265; emphasis supplied). [108]

320. A field representative in the San Mateo office set for himself (in a consultation with his branch manager) the goal of 6 to 7 percent declinable and 60 percent protective information to be achieved in 12 months (CX 1524C; Elmendorf 11583; see also CX 1504C).<sup>106</sup>

321. In the San Mateo and Santa Monica branch offices, supervisors kept charts concerning the production of declinable information

<sup>105</sup> This practice stopped in the summer of 1974 (Getz 12398).

<sup>106</sup> This field representative's goals were recorded on his Personnel Appraisal Report (CX 1524A-E), a form filed for field representatives which were considered candidates for developmental training or advancement into management (Tr. 11582).



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by each field representative (Eldred 11244-45; Silar 3932; Milligan 4566, 4589).<sup>107</sup>

322. Respondent's Regional Vice Presidents and branch office managers were furnished with a document entitled "Managing Report Quality" (CX 1352A-1352Z-9; Bresnahan 658). It assigned point values for various items of protective or declinable information.<sup>108</sup> [109]The purpose of distributing CX 1352 was to enable local management to determine whether they had a protective or declinable case (Hakey 1638 39). If 10 points were assigned in a report on the basis of one item, the case was considered declinable; if no one item was valued at 10 points, then the combined score for various items had to exceed 10 points for the case to be rated declinable (Hakey 1641).

323. Respondent's Home Office, in reviewing cases in an audit, followed the point system contained in "Managing Report Quality" (Golderer 8689).

324. "[Managing Report Quality] is a training tool. It is an assist. It is a guide. It is an aid. It is a helper in counseling" and "[it] is an integral part of the put-up system" when the field representative tells his supervisor what he has developed (Golderer 8687). [110]

<sup>107</sup> The chart in the San Mateo office was discontinued shortly after Mr. Eldred became manager of that office in early 1972 (Tr. 11245).

<sup>108</sup> E.g. CX 1352 outlines the following point system for personal and family reputation in that section dealing with automobile reports:

FEATURES	INSURED & OD'S— INSURED AUTO	OD'S— OWN AUTO
H. REPUTATION—01		
. . .		
2. <i>Personal</i>		
a. Associates—immoral, gangs, hoodlums, etc.	10	5**
b. Immorality—present and pronounced	10	5**
c. Immorality—pres. mild or past severe criticism	5	2**
d. Domestic difficulty at present (e.g. divorce not final if car purchased prior to separation—not applicable on OD's)	3	-
e. Arrests or convictions (except Traf. Viol., see point I B 3) (Consider nature, number, recency, ct. action, etc.)		
(1) If serious and/or recent	10	5**
(2) If minor and/or in past	5	2**
f. Presently on parole		
(1) If for serious offense	10	5**
(2) If for a minor offense	5	2**
g. Dishonorable military discharge	8	3**
h. Communist	10	5**
i. Suspicious fire loss (Car or otherwise)	8	3**
3. <i>Family</i> —Member of family who does not drive generally criticized	2	-
** May be considered for maximum number of points if information applies to parents of dependent minor insured, or to spouse.		

325. It was Company policy that this manual not be distributed to field representatives (CX 1352A; Hakey 1639). Nevertheless, there were instances where this policy was violated by local management, and copies of the manual were distributed or made available in whole or in part to field representatives (Hakey 1639; Eldred 11323).

326. Protective/declinable information in the form of habits, reputation, and reckless driving information was measured separately under the heading "Major Features" in quality audits and compared to regional and organization-wide statistics on these items. (E.g., see CX 1254B.) And, Regional Vice Presidents brought to the attention of their branch managers, results in this area falling short of the organization averages (CX 1116A).

327. On the basis of quality audits, personnel in the branch offices were pressured to produce protective and declinable information involving habits and reputation. For example:

- (a) When I review the Major Features section I'm pleased to see that you are substantially higher than the organization on habits information. Far too frequently in some of the other audits we are missing that item by a mile. Reputation and reckless driving in Hartford need increased emphasis obviously.

(Regional Vice President to Manager of Hartford office on October 8, 1973, CX 963A; see also CX 1309A, Regional Vice President to Manager, New Orleans office on April 10, 1973).

- (b) It is also disturbing to me to see we had no cases with habits information. As much as we have written and talked about the Indepth Interview and the developing of habits information we still haven't gotten the message across in Miami. You certainly have your work cut out for you in instilling in the minds of the field representatives that we should develop more than 1% habits information. [111]

(Regional Vice President to Manager of Miami office on October 1, 1973, CX 844; see also CX 1298, 1306A-C, 1316).

328. The way in which a report was worded had a great deal to do with how many points it got with respect to protective or declinable information (Golderer 8689).

329. Respondent's local management, in its concern with scoring well in the home office quality audits, was concerned with persuading the field representatives to use phraseology in the reports facilitating a good score. For example:

- (a) . . . We did have cases in the analysis which would have been graded decline, except for a slight change in the terminology the field representative used.

We will continue to work on terminology with our people. We are developing the information. We just seem to have difficulty getting the precise wording, which would put the decline across.

(Manager, Albuquerque branch office to Regional Vice President on February 14, 1973, CX 775).

(b) We notice a continued tendency to use the phrases, 'it is believed', or 'sources believe.' Try to eliminate this and just give the specific information without these comments, which tend to disturb the confidence of the underwriter in our report.

(Manager, Albuquerque branch office to Gallup suboffice on June 21, 1972, CX 1565A). [112]

(c) Many of these cases should very well have qualified for decline information but our investigators stopped just short of answering the final question or glossed over very detrimental information with a blanket statement stating that the man was a good driver or had no personal criticism or gave him some other good pat on the back or fine recommendation which overshadowed good decline information . . .

(Manager, Manchester branch office to Regional Vice President on May 26, 1972, CX 1340).<sup>109</sup>

330. Similarly, the Regional Vice President wrote the manager of the Manchester, New Hampshire branch office:

Unfortunately, Protective at 7.5 is in the lower third and this combined with your 15.1 in the first round gives you a combined of 10.00 protective all of which are in the lower third. At the time of my visit to your office we discussed quality and you had set up a definite program but obviously this hasn't got the results which are needed. One of the biggest problems was that when your people would develop declinable information it was worded in such a way that its effectiveness was decreased. These were usually such comments as; 'this is the only known instance of driving while intoxicated' or that the subject had stopped drinking completely three months ago and was now reformed. [113]

(Letter, October 13, 1972, CX 1342).<sup>110</sup>

331. Certain managers and Regional Vice Presidents did not believe that the audits were necessarily representative (Hale 12676;<sup>111</sup> see also n. 113, 114, *infra*).

332. The same audit results in terms of protective/declinable

<sup>109</sup> The explanation of the author of the document, that it was intended merely to ensure that logical sources be selected (Tr. 8538-41), has been considered. It does not overcome the plain meaning of the document that favorable comments overshadowing good decline information be eliminated.

<sup>110</sup> Subsequently, on October 16, 1972, the manager of the Manchester branch office wrote his Regional Vice President, stating in pertinent part:

We have made a number of individual report appraisals and some rehandling on the street for a number of Field Representatives since your meeting and we are taking closer put-ups on all protective cases with an eye toward declines. In addition, I am personally reviewing declines as marked on 930s and sending back coaching points where the information does not qualify.

(CX 1343B.)

<sup>111</sup> "As I told you earlier, I do not hold a lot of credence in the figures that come out from an audit from Atlanta, and this is one of the big reasons is because when the cases are pulled in Atlanta, it is pulled on a daily basis, and not necessarily pulled by a cross-section of every individual that you have in the Branch Office, and not necessarily geographically of the territory in that Branch Office." (Tr. 12676; Regional Vice President, Gulf Region).

information could not be expected for all offices because of differing geographic as well as economic and social factors (Golderer 8668).<sup>112</sup>

333. The percentage of protective and declinable information which a field representative is able to develop differs by the area in which he works (Bigham 8603). [114]

334. The home office quality audit procedure, despite such differences, measured each region and each branch office against organization-wide results for the preceding year (see Finding 305).

335. Due to the sample size involved in the quality audit, it is questionable that such analysis constituted a valid survey of the performance of a branch office in the production of protective/declinable information at any one point in time (see Curtis 7279).<sup>113</sup>

336. Similarly, because of the sample size utilized in most audits, they did not give a representative measure of the particular items surveyed such as habits information (CX 1130A).<sup>114</sup> [115]

337. Despite the view that a particular audit (81 cases) represented only a minute percentage of the reports prepared by a branch office, the Regional Vice President for the Gulf Region, advised one of his managers of the branch on the basis of that audit:

You did an outstanding job under Major Features in developing reputation—just about twice the Company average, but *you dropped the ball on Habits information. This is the area where we definitely need some additional work.*

(CX 1306A-C, memorandum dated October 3, 1973; Hale 12711-12; emphasis supplied).

<sup>112</sup> Even within the confines of a particular borough of New York, there is a wide spectrum of people and information (Golderer 8668).

<sup>113</sup> " . . . The reason they quit [making home office quality audits] was because they felt that taking 50 reports, pulling 50 Life reports out of my office this week and then saying that is the results of your office, it is the results only for those 50 cases . . ." (Curtis 7279). Under the circumstances, "An audit was kind of like the luck of the draw. One time you might have an outstanding results, and six months later with the same people the results would be different." (ibid).

<sup>114</sup> As noted by one Regional Vice President:

I still do not feel that one analysis gives a fair measurement of information being developed on one feature such as habits, when we measure only 100 to 150 reports, and when our organization average runs only one such report to every 100 cases. Habits cases are not necessarily developed on a regular schedule. An office might go a week without developing a protective habits case. If the cases for the analysis are taken during that week, then the office would show up with zero protective on habits.

The thought that I want to convey boils down to the fact that I do not feel that I can look at one analysis and say that an office is doing a good job or a poor job of investigating. Where I accept region results as being fairly indicative of the type of service being provided from the region, it is more difficult to accept the individual office measurement as an accurate measurement.

(Regional Vice President, Western Region to Vice President Operating on September 27, 1973, CX 1130A-B).

338. On April 10, 1973, the same Regional Vice President wrote the manager of the New Orleans office as follows:

Bob, our Auto Decline since 1971 has retrogressed pretty badly. *I am sure you are going to be upset about the attached audit.*

*There were 161 cases involved, and not one habits case among the whole lot. You had only 1.9% impairments, so you can see under these major features that there is a lot of work to do. [116]*

Bob, I would like to know what you are going to do as far as Report Appraisals and Field Representative Case Handling Appraisals are concerned. *You need to develop a 'get tough' attitude with your people.*

I would not be as upset if either of the Auto audits in 1972 had been good, but the history in New Orleans for the past 1 1/2 years has not been good. As I said, I would like your specific plans for showing improvement.

(CX 1309A; emphasis supplied.)<sup>115</sup>

The manager in question was told he needed to develop a "get tough" attitude, although it was not possible to determine on the basis of 161 cases, what would have been satisfactory performance on habits information (Hale 12671-72).<sup>116</sup> [117]

339. Up to January 1, 1976, respondent conducted audits of claim reports, measuring performance with respect to significant information and below standard features (Trotochaud 6457-59, Stubbs 9282; CX 849A-E). Significant information, if 40 percent or less, was considered unsatisfactory in 1974 (CX 1498).<sup>117</sup> The level of satisfactory performance changed periodically (Stubbs 9279-80).

<sup>115</sup> The manager replied:

We have embarked upon a stronger program of Quality Analysis along with Inspector Training & Performance Reviews. All of my people are acutely aware of the need to dig deeper into Automobile reports particularly in those areas involving major features of habits, reputation and impairment information.

All personnel are also fully aware of the fact that our jobs hinge on the ability to produce good quality information of benefit to Automobile insurance company's, if we are going to continue making reports of this type.

(CX 1310, memorandum dated May 22, 1973).

<sup>116</sup> "Q With 161 cases involved in the audit, is it possible for you to state what would have been a satisfactory performance on habits' information?"

A Absolutely not."

(Tr. 12672).

<sup>117</sup> Protective and significant information were considered the same thing (Stubbs 9279). The Claim Audit Profile in effect in 1974 was:

SIGNIFICANT INFORMATION		BELOW STANDARD	
Professional:	60.0% & Above	Professional:	5.0% & Less
Superior:	50.0% to 60.0%	Superior:	10.0% to 5.0%
Good:	40.0% to 50.0%	Good:	18.0% to 10.0%
Unsatisfactory:	40.0% & Below	Unsatisfactory:	18.1% & Below

(Continued)

340. The use of audit results measuring individual branch office performance with respect to production of protective/declinable information and the ranking of individual offices results in relation to organization-wide averages had the potential for inaccurate comparisons because of the disparity of results which can be expected among offices due to differing geographic and economic factors (see Findings 332-34). The system, therefore, had the potential for generating pressure for increased production of adverse information on the basis of invalid comparisons and, therefore, was unreasonable. [118]

341. The audit results with respect to individual branch office performance on production of protective/declinable information were based on small samplings precluding assurance that the survey results were representative for the office measured (see Findings 335-36). Utilization of the system had the potential for generating pressure to increase production of protective/ declinable information on the basis of unrepresentative data and was, therefore, unreasonable.

342. The quality audit system with resultant pressure to achieve high scores in the production of protective/declinable information also had the potential for generating pressure to eliminate from reports qualifying statements, pertaining to adverse information on consumers, which could affect the manner in which such reports are construed (see Findings 329-30). The quality audit system was unreasonable on that score.

343. Respondent's system of quality audits which ranked a branch office's performance in the production of protective and declinable information against all other offices in terms of upper, middle and lower thirds computed on the basis of organization-wide figures for the preceding year impliedly set quotas for the production of such information.<sup>118</sup>

#### B. The Effect of Factors Such As Production Quotas and Time Pressures on Report Preparation

344. Salaried field representatives, by virtue of the compensation system in effect, had a quota of so many cases to produce in order to cover their salaries and expenses. The required production per field representative varied depending on his reporting standard, salary and expenses (Findings 102-29). [119]Part-time field representatives,

(Assistant Vice President-Claims to Regional Claim Supervisors on February 12, 1974, CX 1498). According to respondent's Vice President for Claims, an office would be considered substandard (Tr. 6458) if both significant information and the below standard item were below a certain level.

<sup>118</sup> This finding is corroborated by respondent's use of numerical ratings to define satisfactory performance under claim audits (Finding 339).

however, did not have a production standard or quota (J. Moore 8875).

345. Field representatives, on a daily basis, filled out the "Volume Control: Performance Objectives" section on the Form 930, computing their production quota and comparing actual achievement with their objective (Farra 752; CX 542).

346. Respondent's branch management was concerned with field representative losses, insisting that they be made up: *E.g.*,

We are insisting that those field representatives who have an accumulated loss make every effort to make this loss up in October, even if it means working Saturdays. . . .

(Manager, Miami Branch office to Regional Vice President, October 16, 1973, CX 835B; see also Fuentes 2036).

347. It was the practice of the former manager of the Dearborn office when a field representative fell behind in his performance objectives for the month to "Give him a boost or a kick and possibly assign him an extra case per day or whatever it will take, whatever is necessary to bring him into the black" (Tr. 656). When his office was in financial difficulties, he wrote his Regional Vice President as follows:

Field Rep losses continue to be an extremely costly item and all of my supervisors have been put on notice that I will not tolerate any more Field Representative losses without very good reason.

(Manager, Dearborn branch office to Regional Vice President, November 30, 1973, CX 910).<sup>119</sup> [120]

348. Time Service was another factor governing the pace at which field representatives were expected to work. Time Service was essentially the standard whereunder the branch office had a set time after receiving an inquiry or request for a report, to complete the report and mail it to the requesting customer (Hakey 1562; RX 107Z-144).

349. Time Service objectives are determined for each office; these vary from time to time and place to place. The Regional Vice President has discretion to determine the Time Service objectives for each office in his region (W. Matthews 5577). Different objectives may apply within a single office which covers both urban and rural territories. The objectives are based on historical experience and reviewed regularly (W. Matthews 5569-70, 5575; Eldred 11212-13).

350. Time Service objectives for branch office business in larger

<sup>119</sup> The office, at the time this memorandum was written, was "obviously under financial stress." The manager in question explained, "If you planned to meet expenses and make your monthly cost and four or five inspectors had a total loss of \$800 or \$1000, it would be virtually impossible to meet your cost objective in a branch office with a sizable inspector loss" (Tr. 643-44).

cities are established in terms of the Time Service index (W. Matthews 5567). For example, the objectives for the Miami branch office in 1972 were as follows: for life and health reports, an index of 1.74 with 96 percent of reports completed within 4 days and 99 percent within 6 days; for employment reports, an index of 1.74 with 96 percent of reports completed within 4 days and 1.99 with 92 percent of reports completed within 4 days and 98 percent within 8 days; for property lines, 90 percent of reports completed within 6 days and 98 percent within 10 days; and, for claim reports, an index of 2.99 and 90 percent of reports completed within 6 days (CX 506D).

351. Time Service objectives in suboffices are lower than those in branch offices because of the lower population density of territories served by such suboffices. Similarly, Time Service for work on certain circuits covering rural areas are lower than for local work (Hakey 1562-63; Jenkins 5788, 5858).

352. Branch managers were told that "fast time service can be maintained through aggressive leadership and daily inspection of the speed of the service. Time is an essential and marketable element of our business." [121](RX 107Z-144). Records were maintained to measure an office's performance in this area (ibid).<sup>120</sup>

353. Branch managers were held responsible for ensuring that Time Service objectives were met.<sup>121</sup> [122](Bresnahan 635-36). Moreover, meeting Time Service standard was one of the criteria

<sup>120</sup> Objectives for clearing local reports are expressed in terms of:

1. *Time Service Index (TSI)*: A statistical expression of the percentage of reports cleared within an established deadline.

2. *Percentage of Cases Cleared by Deadline*.

Both measurements gauge the flow of cases through a branch office and indicate the acceptability of time service.

A standard maximum deadline has been established for each line of service—for instance, 4 days for Life and Health, 6 days for Claim. Since these are maximum deadlines, the measure of flow (Time Service Index, or "TSI") is more vitally important because the lower the index, the faster the overall service.

TSI is computed by subtracting the accumulative percentage of cases cleared each day within the deadline period from the maximum number of days in the deadline period. For example, if 100 L&H cases are received today (the first day) and 30% are cleared today, 60% by tomorrow, 80% by the third day, and 100% by the fourth day, the TSI would be computed as follows:

$$\begin{array}{r} 4.00 \\ -2.70 \quad (30 + .60 + .80 + 1.00) \\ \hline 1.30 \quad \text{TSI} \end{array}$$

(RX 107Z-144.)

<sup>121</sup> There were numerous variables which affected whether Time Service objectives were achieved. Among them was the prerequisite that the office be properly organized. It was necessary to have a sufficient full and part-time investigative staff to handle fluctuations in the volume of business (Curtis 7178). In addition, an office had to have adequate supervision of the investigative staff to meet Time Service objectives. Daily controls needed to be set up to ensure that field representatives were dictating out and handling their cases on a daily basis, and the manager had to ensure that the stenographic unit was properly organized to get the dictation out on a daily basis. Measures had to be taken to ensure that reports, after they were typed, were reviewed the same day and mailed out to the customers. It was also necessary, in this connection, to provide that the reports returned to the field representatives for correction or additional work were handled the same day that they were returned (Curtis 7178-79).



considered in computation of the managerial incentive bonus (Bresnahan 575; CX 1353A-H).

354. Branch office personnel were under pressure to meet the Time Service objectives set. For example:

- (a) You have a previous letter from me concerning Time Service, but just in looking at your 1205 for the month of November I hardly see why it was necessary for so many cases to get old.

Jerry, we just cannot jeopardize the service with this sizable volume of business in order to locate people.

I am expecting you to get the service in line promptly. Whatever is necessary must be done.

(Regional Vice President to Manager, Miami office, December 5, 1973, CX 832B).

- (b) We are already in trouble for June as far as the movement of sub-office Life business is concerned. [123]

I am sorry to find it necessary to ask for special attention to the Life business so early in the month. . .but it is *imperative* that we eliminate any over 4-day Life cases for the remainder of the month, if we are to reach our deadline objectives. Unfortunately, we have already released as many over-deadline Life inquiries as the objectives will allow for the entire month.

I know I can count on your assist. If there is anything we need to help you from here, get on the phone and call me.

(Manager, Albuquerque branch office to suboffice, June 5, 1974, CX 819).

- (c) . . . I desperately need your help and assistance, most especially in the area of thoughts and ideas which will enable us to meet our time service objectives in April of 1974. . . .

. . . I can't emphasize with you enough the great importance of meeting our objectives.

(Manager, Dearborn office to Supervisors, March 26, 1974, CX 1515).

355. Field representatives were required to give explanations to management if cases become overage (Zack 8220-21). In the Salt Lake City office, a case became an expedite when it was 3 days old (Vogen 12242-43).

356. The amount of work which field representatives were expected to do on a particular case was governed, to some degree, by the price of the report. Respondent expected field representatives to not "overwork" cases. For example, if the field representative had contacted two sources in a single fee case, he should not go to a third

simply to make sure he was right. In respondent's [124]opinion, this was a question of economics in terms of the price of the report (Lieber 9110-11;<sup>122</sup> see also Johnson 12283-86). If a field representative had a tendency to dig too deeply, this would make meeting production requirements more difficult (ibid).

357. There are numerous variables determining how many cases a field representative could produce in a normal workday of approximately 8 hours. Illustrative of the practical problems facing field representatives are the following: [125]

There were very many variables and you could get into situations where, let's say, you are getting detrimental information from one source, well, how long are you going to take to resolve that issue? Supposing they give you really bad information, the obligation to your company, to the consumer, to the client, if you really work at it, you might spend 45 minutes working that particular case and there goes your average right away. Or you can go into an area where you can't find a single source you talk to because they work every day and the person might be home as a babysitter or she doesn't know the people. Then that's a different case. Or you go out and you go to Northwest 17th Terrace and the case was supposed to be handled at Northwest 17th Place because the customer made a mistake in writing up the address. Then your average goes out the window. Too many things that do not happen according to the books.

... [I]nformation is not easy to obtain and you have to work at it. If I go meet him for the first time he may not be able to tell me the information on a given person. He will give me all the information he knows which is favorable but you first have to at least establish some sort of a rapport with me in order to confide in me especially if it is personal information and that takes time. Also, you may knock on the house and the lady will say, I'll be right with you, I'm on the phone and you've got to wait until she finishes or if she is giving the baby his milk you've got to wait or someone calls and interrupts you while you are making your interview. Those are the factors that would in this way enter into the case.

(Fuentes 2043-44). [126]

358. It was more difficult for field representatives to produce cases in some geographic areas than in others because of factors such as, the distances to be traveled in order to make the requisite investigations and the greater or lesser willingness of people to give information in different locations (Shaffer 8402, Matthews 12800-01).

<sup>122</sup> THE COURT: What do you mean by overworking a case?

THE WITNESS: He has the complete information from two logical sources and he sees a third source, because he feels in his own mind, I just want to make damn sure that I have that information correctly.

THE COURT: Would this be primarily when he digs up adverse information?

THE WITNESS: A gut feeling. An indication, with two sources he carries it to a third source, or a fourth source. But, here it comes down to the scope of the investigation. A five dollar report has a certain scope of investigation as compared to a \$100,000 life report which has a broader scope and it would be expected to be carried further, and the man is carrying his investigation actually beyond the scope of that particular report, beyond what could be considered reasonable effort.

THE COURT: As to the amount that is being paid for the report?

THE WITNESS: Yes.

(Tr. 9110-11).

359. The ability of field representatives to produce reports was also affected by the manner in which an office was managed. It was difficult for field representatives to do the job in an office with poor leadership (Beckett 10965). Whether a field representative could meet his production standard in a 40 to 45-hour week depended to a considerable degree on the management of the office and the production climate in that office (Lieber 9019-20, 9071-73).<sup>123</sup> The overall quality of the management affected the quality of reports more than any one specific thing (Brown 6977). [127]

360. In addition, the ability of individual field representatives to prepare reports varied (Lieber 9126). Experience was a factor (Pregler 9222-23).

361. In short, the field representative's ability to complete a certain number of cases in a given period of time depended on his own ability, the type of cases assigned,<sup>124</sup> the characteristics of the area within which he worked and the organization of his office. The need to put in overtime was a function of these variables and the flow of business.

362. Field representatives were told to record the amounts of overtime which they incurred (Lieber 9048). Respondent's field representatives, however, had little economic incentive for recording their overtime.<sup>125</sup> As overtime increased, the field representatives' compensation on a per-hour basis of effort decreased (see Finding 104). In addition, recording overtime increased the field representative's salary and expenses and thus, increased his required produc-

<sup>123</sup> Well, the productive effort of people is dependent upon work-flow in a branch office. Work should be worked up in a manner that will permit the field rep being assigned his work early enough to meet what I consider to be an equitable balance of outside investigation work and inside office work. I look at a framework of five and a half to two and a half, five and a half out, two and a half in, or six hours out and two hours in. There has to be work available, and this entails managing the mix of business and the placing of staff. There must be a balance of organization, staff in balance with the flow of work. This must be tracked, and this is a basic function of management, tracking volume, trends by lines of service, and relating volume trends and mix in terms of dollars relating to determine productive efforts of people.

Those are the basic ingredients of adequate production in a normal day. Given those ingredients, yes. If any of these ingredients vary, then the pressure on the field rep would vary in direct proportion as to how close the office comes to this structure that I just described.

(Tr. 9020-21).

<sup>124</sup> See Section II, *supra*.

<sup>125</sup> As one branch manager explained:

Q Are some people interested in working Saturday for overtime pay?

A Heavens no, not with our company.

JUDGE VON BRAND: Why not?

THE WITNESS: Because the overtime is figured for field representative different than that overtime figure for our operating employees and inside clerical employees.

JUDGE VON BRAND: No time and a half?

THE WITNESS: That is right.

(Curtis 7271-72).

tion (Hakey 1734; Chambers 1940, 1945; Clufetos 2291; Ledum 4698; Silar 3905). [128]

363. Records of overtime in excess of 10 hours a week were questioned by management (Jenkins 5723, Fuentes 2089-90). Many field representatives chose not to record overtime because of the economic disincentives involved (e.g., Ledum 4698, Chambers 1954, Monson 3252-53).

364. Respondent's overtime system is inherently, economically unattractive from the field representative's point of view (Finding 362). It is, therefore, in the salaried field representative's interest to produce within a 40-hour week enough cases to cover his salary and expenses as well as to earn a 20 percent bonus. As a result, the less time he spends per case, the greater his per-hour compensation for his efforts. Similarly, in the case of part-time field representatives as well, the less time spent on each case, the greater their per-hour compensation (Hille 4529).

365. The reporting of overtime could also affect a branch office's reporting costs adversely if a field representative had lost on his reporting standard. In short, if a field representative had trouble meeting his expenses and listed his overtime, this could increase his own difficulties and, to that extent, it could adversely affect the finances of the branch office in which he worked (Monarch 8571-72).

366. To complete their reports, field representatives were required to contact the number of sources required for the particular report and to obtain the time coverage prescribed (Section II, *supra*). Respondent has prescribed procedures to be followed if the requisite sources or time coverage cannot be obtained or if Time Service cannot be met.

367. If a report cannot be completed within the Time Service objective, the field representative is to confer with the supervisor. The case may be held over for completion, and if it is, the customer is to be sent a Form 58 notifying him that the case will be delayed (e.g., Vogen 12209-10, Volrath 10991-92). [129]

368. Field representatives unable to obtain the required number of sources of information for a report after consulting with their supervisors, are permitted, under Company policy, to complete the report with less than the required number of sources. They are to state in the report the number of sources obtained and the reasons additional sources could not be obtained. The customer is asked for leads if he desires additional handling (Burge 5020-22; Browning 6064; Saltzgaber 11970, 11993; Tew 13357). In such circumstances, field representatives receive production credit for preparing reports

with less than the required number of sources (Baranek 9696, Eldred 11215-16, Zack 8260-61).

369. If a field representative is unable to obtain the time coverage for a report, he is authorized under Company procedures, after consulting with his supervisors, to write the report with the limited time coverage obtained, stating in the report, why full-time coverage was not available and asking for leads if the customer desires further handling (Baranek 9696, L. Jones 10446-47, Tew 13355-57, Chambers 1923). Under these circumstances, field representatives receive production credit for preparing reports with less than the required time coverage (Baranek 9696, Hilderbrand 12008-09).

370. Successful interviewing by field representatives was not a pro forma matter. To do the job properly, it was necessary to establish rapport with the sources contacted. As respondent's Branch Manager's Manual stated, field representatives, in interviewing during the course of an investigation, needed to be highly sensitive to the more subtle clues and remarks of the source contacted as well as "to the behavior, perceiving their implications and adapting [their] own approach and conversation accordingly. [Field representatives] must know when to talk and when to keep still, how to word [their] questions, and how to listen."<sup>126</sup> (RX 107Z-3). [130]

371. In addition, respondent's investigators were instructed to be objective in distinguishing facts from opinions (CX 1504G).<sup>127</sup> This was important in subjective areas such as habits information because "[i]n the field, it would be very difficult to get three or four people that may concur on something anyway." (Hilderbrand 12035).

372. Prerequisite to a meaningful interview was the selection of logical sources to be contacted. "A logical source is one which by reason of position or association with the subject of the report is in a logical position to give the information desired." (Field Representative Manual, RX 102W). Field representatives were admonished, "*It is how well the contact knows the subject of the report that determines the qualifications, not how well the Field Representative knows the contact.*" (ibid; emphasis in original).

373. Respondent's field representatives and branch office management were under pressure to develop protective/declinable information (Findings 317-19, 327).

<sup>126</sup> Respondent's Branch Manager's Manual also stated that a sense of humor "is a powerful instrument in developing a warm, friendly relationship with sources" and "some of the most pertinent personal information is sandwiched in between homey remarks and other small talk." (RX 107Z-4).

<sup>127</sup> Respondent's Field Representative Manual instructs, "Rumors, gossip, and scandal must be sifted." (RX 102Z-17).

374. It was necessary, if protective/declinable information was to be developed, that the field representative ask the full range of questions<sup>128</sup> and see logical sources (Finding 315). An interview took longer if the full range of questions was asked (Paladino 8771). Securing adverse information could also increase the number of sources which a field representative was required to see in order to obtain the necessary confirmation (Fuentes 2043). [131]

375. All other things being equal, it took longer to develop a case with protective or declinable information than a wholly favorable report (Elmendorf 11594-95, Moss 11036, Lindgren 11454, Hilderbrand 12037, Guse 12066, Saltzgaber 11987-90).

376. In the relevant period, the telephone could be used as an adjunct to the field representative's work in the street (Brothers 7406; see also Section X). But it was the field representative's "primary function . . . to work on the street with the goal of getting face to face information from our sources" (Brothers 7406).<sup>129</sup> The determination of whether resort to the telephone was necessary was to be made by the manager or supervisor (Larson 12515). An attempt to clear the case on the street was to be made first (Johnstun 12286). [132]

377. Field representatives in the local unit of respondent's Boston branch office were unable to complete the number of cases per day necessary to satisfy their production requirements in compliance with Company procedures (Hakey 1597-98, 1604, 1741).<sup>130</sup> It was not

<sup>128</sup> To assist the field representative in asking the full range of questions, he was given a note form for each report which contained the questions to be asked for that particular type of report. The note form had blanks for recording the information obtained to be transcribed later. The note form functioned as a reminder or checklist to assure that the field representative did not miss any pertinent questions (Jenkins 5757-58, Brothers 7402-03, Curtis 7127-28, Bender 7665-66).

<sup>129</sup> See also Larson 12515: "The use of the telephone [in preparing regular life or automobile reports] at that time was not an accepted part of our procedure or normal activity of handling reports. But we did at times use the telephone when we found it necessary in order to contact the individual involved."

A memorandum in the relevant period also indicated that telephone use was to be limited:

In connection with the other cases, Roy, the scope calls for personal interview of a minimum of two sources. As you know, this can be interview on an outside source, two outside sources, etc. The fact that we personally saw only one outside source and then used the telephone reduces the scope. It also does not fill our customer commitment. I was frankly a little surprised at Mr. Bigham's comment that if the telephone sources had not been identified by the "T" that no one would have known. Page 47 of the Inspector Manual instructs that sources be so identified. Further, all of our Marketing studies develop that Habits, Reputation, Hazardous Sports, and Drugs are the usable information features for Life customers. While telephone interviewing can produce Health Information and firm up Identity features, you may agree that in the long run it doesn't do much to secure additional information in those areas most used by customers.

(Assistant Vice President-Operating to Regional Vice President-Operating, July 25, 1973, CX 1217A).

<sup>130</sup> Mr. Hakey stated, on the basis of his computation, "[t]o break even, an individual would have to do a minimum of 18 reports per day to make full bonus, between 20 and a half and 21 reports a day" (Hakey 1598). Respondent introduced a computation (RX 484Z-18) showing that 14.6 cases a day were needed to meet the production standard; 15.7 cases to make a bonus of 10 percent and 16.9 cases to make full bonus. Respondent contends Mr. Hakey erred in overstating the applicable salary as well as mileage and steno expenses. The Boston branch manager's estimate for the period 1968-1974 falls somewhere between Mr. Hakey's and respondent's computations. He estimated the average field representative "would probably handle about 16 reports a day

(Continued,

possible to see two logical sources on every report, although field representatives might contact many others (Hakey 1604-05). The biggest problem in this unit was taking the time to ask a full range of questions (Hakey 1717). [133]

378. A field representative in the Claremont, New Hampshire suboffice who desired to achieve full bonus "which you needed . . . to survive" produced 23 to 24 cases a day (Crepeau 1754). He varied from Company procedures by using principally central sources and rarely filling out the note form (Tr. 1760). He needed 20 single fee equivalents a day to meet his production standard (Tr. 1778).

379. A field representative in the Baltimore branch office felt it was impossible to do the job as he was required to do it (Wines 388-89). He faked outside sources in the reports he prepared (Tr. 455, 458, 460-61).<sup>131</sup> And, had his cases been rechecked, he would have been fired, because there were many such instances (Tr. 455).<sup>132</sup>

380. A field representative in the Marietta, Georgia suboffice was assigned 18 to 22 reports a day in order to meet his production requirements (Chambers 1929-30). He normally prepared 19 to 20 reports a day (Tr. 1939). This individual was unable to prepare such reports in accordance with Company instructions in an 8-hour day (Tr. 1938-39). In order to prepare his reports, he had to work a 50 to 55-hour week, but he did not report the overtime because his production quota would have been increased (Tr. 1940). [134]

381. A field representative in the Columbus office in the period mid-April to mid-August 1972, whose goal was 18 to 20 cases a day,

average, sometimes 17" (Tr. 8235). Even accepting respondent's calculations, the difference is not so great so as to vitiate Mr. Hakey's testimony based on his experience as a firstline supervisor. Moreover, his testimony regarding the difficulties in producing reports was not confined precisely to the 18 to 21 figure. He stated:

It would be physically impossible for an individual to take out 18 reports or 21 reports *or anywhere in that vicinity*, leave the office between 12 and 1 o'clock in the afternoon and see a minimum of 36 people and drive from one location to another, confirm unfavorable information and see good close logical sources for the prescribed period of time. It is physically impossible.

(Tr. 1604; emphasis supplied).

In weighing computations such as RX 484 against the testimony of the witnesses, it should be further noted that such calculations utilizing devices such as applying national inquiry values to particular offices are approximations. (See Case 5922, 5888-89).

<sup>131</sup> In a nice area, if the property was well kept, this field representative would simply assume the good reputation of the subject (Tr. 388-89).

<sup>132</sup> There is disparity between the witness' estimate that he prepared 15 to 17 single fee property reports a day in 1972 (Tr. 382, 421) and respondent's calculations in RX 483. According to this computation, he averaged 13.7 reports a day in the period with monthly averages ranging from 12.2 to 15.3 reports a day, and he needed an average of 12.6 reports a day to meet his production requirements, the monthly averages ranging from 9.7 to 13.7 reports a day (RX 483V-Z-2). The differences between the witness' testimony and respondent's computations are not so great that his testimony needs to be disregarded for that reason. There is no dispute that this field representative faked sources (Tr. 458). In this connection, the record also shows that his superiors for some time had been on notice that he had been "consistently sporadic in his work habits" (RX 483A). Management knew or should have known that he needed close supervision.

was unable to complete his assignments in accordance with Company instructions (Pollard 310, 316, 349).<sup>133</sup> He falsified sources consistently in order to facilitate production; such faking may have been on the order of one out of 15 cases (Pollard 316-17, 355-56). He faked sources in clean, *i.e.*, favorable cases and never faked derogatory information. He also falsified time coverage<sup>134</sup> (Tr. 318, 320). He used the telephone to conduct interviews, although use of the telephone was discouraged (Tr. 317, 388).<sup>135</sup>

382. A field representative in the Dearborn office in the period January 1971 to April 1971, was unable to prepare the cases assigned to her in accordance with Company procedures (Woicik 2868-69).<sup>136</sup> She listed outside sources not seen on reports 40 percent of the time in those instances where she was able to obtain a direct interview with the insured (Woicik 2870). [135] Field representatives in the Dearborn office were warned about excessive telephone use. "They would tell us to stop using it as much as we were." This field representative did not stop using the phone as a result of such warnings, and nothing further was done (Woicik 2872-73).<sup>137</sup>

383. Another field representative in Dearborn was assigned 16 to 18 cases a day and had trouble completing them (Wallace 2993-94). She was unable to prepare her reports in accordance with Company procedures (Tr. 3002). She varied from Company procedures in the use made of the telephone (Tr. 3002-03). On a relief trip to Lansing, Michigan,<sup>138</sup> she completed cases using unqualified sources (Tr. 3013-14).<sup>139</sup> And, in the case of one report on that trip, she listed a source not contacted (Tr. 3009-14, 3040).<sup>140</sup> [136]

<sup>133</sup> He was given 12 to 13 cases a day toward the end of his employment and with carried-over cases, his assignment was 18 cases (Tr. 350).

<sup>134</sup> "Well, you would just go ahead and put a number in there. You know, one, or two or three years, enough that it would be credible" (Tr. 318).

<sup>135</sup> RX 489, one of respondent's computations which calculates that toward the end of his employment, he needed 12.9 cases a day (RX 489I) does not rebut the testimony of the witness that his goal was 18 to 20 cases a day. Respondent's calculation of the actual number of cases done by Mr. Pollard as of August 1972, 11.9 cases a day moreover, is not inconsistent with his testimony that he was given 12 to 13 cases a day toward the end of his employment.

<sup>136</sup> This field representative became a part-time employee on April 1, 1971 (Tr. 2842). Her testimony for the period January-March 1971, was permitted because of the proximity to the effective date of FCRA (Tr. 2844-45).

<sup>137</sup> This field representative testified that, on an average, she prepared 18 cases a day (Tr. 2848-49). She may have been in error as to how many cases she needed to break even—20 to 25 cases—and she may have overestimated the number of cases she actually prepared. (Compare Ross testimony that 14 to 17 reports would have been sufficient for 10 percent bonus and 18 would have given her full bonus (Tr. 9337, 9400, 9365-66). However, her testimony that she listed sources not seen on the reports she did do is accepted.

<sup>138</sup> The relief trip lasted 2 days. On the first day, she received 25 to 30 reports (Tr. 3010). And, on the second day, she received 38-40 cases (Tr. 3013).

<sup>139</sup> "Well, we took them [the cases] back to Dearborn with us and they were all dictated the following Monday and I used the telephone. . . . Except for that one isolated incident where I couldn't get anybody I talked to at least one person and maybe that person wouldn't give me any information but I at least talked to him so I wrote a report but I wrote a favorable report." (Tr. 3013-14; emphasis supplied).

<sup>140</sup> Q. Would you write the report from the Polk Directory?

A. On cases where I wasn't able to talk to anybody, I would write it from the Polk Directory and I'd put down my source "Mr. Polk" (Tr. 3011).



384. A part-time field representative in the Dearborn office, in order to meet Time Service requirements, listed the minimum number of sources required by a report even if such sources had not been seen, in approximately 30 percent of her cases (Hille 4514-16).<sup>141</sup> This field representative also wrote pat, favorable reports on the basis of sources who knew nothing about the applicant (Hille 4534-35).<sup>142</sup> Approximately 50 percent of her interviews of sources were over the telephone (Hille 4512).

385. A field representative in the Detroit office had to complete 15 to 16 cases a day to break even when she was making a salary of \$605 a month (Dodson 3043-44, 3077-78).<sup>143</sup> She was assigned 18 to 19 cases a day and prepared, on the average, 15 cases a day (Tr. 3048).<sup>144</sup> The maximum number of cases prepared by this field representative was 20, produced when she was under pressure for Time Service or to make up losses (Dodson 3050-3056).<sup>145</sup> In her view, she could only do 10 [137]cases in an 8-hour day in accordance with Company procedures (Tr. 3070-71). She did not interview all the sources listed about 75 percent of the time (Tr. 3063) and she conducted 50 percent of her interviews on the phone (Tr. 3062). Sometimes, she would not note telephone use on the file copy "because you didn't want the boss to know how often you were forced to close the report on the phone" (Tr. 3063).

386. A field representative in the Salt Lake City, Utah office, who had to average 17 cases a day to meet salary and expenses, was usually assigned 20 cases (Monson 3240). The volume of this branch office fluctuated, and the lowest number of cases he took out was 12 (Monson 3243). He worked about 9 hours a day (Tr. 3246) and would work at home using the telephone if he had leads to follow up. This field representative rarely recorded overtime because it had to be made up in production (Monson 3247). The maximum number of cases he could do in a normal workday in compliance with Company procedures was 12 (Monson 3252). This field representative, in fact, averaged 17 cases a day, which he accomplished by various shortcut-

<sup>141</sup> "Yes, there was a pressure to get the reports done within the allotted time, and it was not generally favored by me. I was not always interviewed within that amount of time, and I did resort to not always interviewing the sources I had to do." (Tr. 4515).

<sup>142</sup> About 20 percent of her cases, when first received, were on the second, third or fourth day of Time Service. She received cases on the fourth day for the first time infrequently, however (Hille 4511).

<sup>143</sup> Her testimony on this point is not rebutted by respondent's computations in RX 424. These show that, in a normal period, June-August 1973, when her monthly salary was \$605, the required number of cases per day to break even was 14.1, 14.1 and 15.2 (RX 424Z-19, Z-21, Z-23).

<sup>144</sup> Her average production per day, according to respondent's computations for the period June-August 1973, was 13.8, 14 and 16.1 cases (RX 424Z-19, Z-21, Z-23). Again, the divergence is insufficient to rebut her testimony.

<sup>145</sup> There is nothing in RX 424 which precludes a finding that, on some days, her actual production exceeded her average as computed in the exhibit in an attempt to make up for prior losses.

ting techniques, such as the use of the telephone (Monson 3252-53).<sup>146</sup> Sometimes, he would fabricate an informant "when there was pressure to get a case completed, and it was impossible to find a reasonable source of information, and [he] only had one to rely on, [then] the other one would be made up" (Monson 3254). This is a technique he used during a major portion of his time with respondent (*ibid.*).<sup>147</sup> He faked sources two to three times a month (Monson 3299). To implement this technique, he used vague listings of sources which could not be traced (Monson 3300). In addition, this field representative might stretch the time a source had known the subject of the report in order to meet time coverage requirements (Monson 3300-01). [138]

387. A field representative in the Tucson, Arizona branch office needed 15 cases a day to meet his production requirements (Moxham 3497).<sup>148</sup> His actual assignments could vary from 10 to 20 cases per day (Moxham 3499). He was able to prepare 12 cases in an 8-hour day in accordance with Company rules and regulations (*ibid.*, Tr. 3512). However, if he had completed only 11 or 12 cases for the day, his production would have to pick up because he needed 14 to 15 cases on the average (Moxham 3499). On occasion, he would list a source as meeting the time coverage requirements for a report, although the source had not, in fact, known the subject of the report for the required period of time (Moxham 3516-17). This field representative took circuit runs involving 30 cases a day (Moxham 3498).<sup>149</sup> His workday on the circuit averaged 10 to 12 hours (Moxham 3508).<sup>150</sup> Finding the subjects of the report and neighborhood sources in the outlying areas of this circuit was time consuming (Moxham 3508-09). He faked sources about 10 to 20 percent of the time on the circuit (Moxham 3515).

388. A field representative in the San Mateo office had to complete 16 single fee cases a day to cover salary and expenses, excluding dictation expense and bonus (Feriante 4428-29).<sup>151</sup> This field representative was unable to do 16 single fee reports on the average while following Company procedures. He varied from Company procedures by his use of the phone (Tr. 4435-36) and failing to ask the full range of questions in all instances (Tr. 4438).

<sup>146</sup> Forty percent of his cases were cleared, although not totally handled, on the telephone. Some cases he would complete solely through the use of the telephone (Tr. 3253).

<sup>147</sup> He fabricated more sources in his last month with the Company when he had two jobs, faking in approximately 40 percent of his cases at that time (Tr. 3254).

<sup>148</sup> With 15 reports, he was "a little bit in the clear," making some bonus; with 14, he would be slightly behind (Moxham 3497).

<sup>149</sup> The cases would be dictated the following day (Tr. 3498).

<sup>150</sup> The run was always more than 8 hours, although 12 hours was an extreme (Tr. 3515).

<sup>151</sup> Normally, it was necessary to take out more cases than that to complete 16 cases (Feriante 4429).

On occasion, 80 to 90 percent of his contacts were by phone (Feriante 4443). He also listed neighborhood sources not seen in his reports (Feriante 4440-41, 4444). [139]

389. Another field representative in the San Mateo office attempted to complete 18 full fee cases a day (Silar 3891). He was unable to prepare these cases in accordance with Company procedures (Silar 3911-12). This field representative varied from Company procedures by using inadequate sources, using fewer sources than required and in his use of the telephone (Silar 3912). He also listed sources not seen 75 percent of the time (Silar 3914).

390. A supervisor of a unit in the San Mateo office was unable to interview the required sources for his reports in the time available to him (Ledum 4702). He listed sources not seen (Ledum 4702). This field representative made the effort to interview all sources up to the fourth day that the report was in the office and then faked sources not seen in order to get the report out (Ledum 4701-02).

391. Respondent's officials admitted that, prior to the arrival of a new manager in January 1972, the San Mateo office was disorganized and not adequately supervised (Eldred 11163). And, that such conditions in the office had a negative bearing on field representative productivity (Eldred 11293).

392. The manager under whose direction such conditions arose held this position from 1969 to his termination at the beginning of 1972 (RPF 434; Tr. 13205).<sup>152</sup> The three field representatives from the San Mateo office testifying for the Commission (Findings 388-90) worked there during the entire period that this manager held office.<sup>153</sup> [140]

393. A part-time field representative in the Santa Monica branch office, in the period after April 1971, listed sources not seen (Milligan 4583-84). The faking of such sources in 1971 was a carryover of habits formed during his employment as a full-time field representative of respondent in 1970, when he was unable to do reports assigned to him in the time available (Milligan 4569-70).<sup>154</sup>

<sup>152</sup> The vice president in charge of the region who held this job from April 1970, had become aware on his first visit to the office of poor morale in that office, but did not terminate the manager in question until the beginning of 1972 because, as a matter of fairness, he felt he should be given at least a year (Smith 13173, 13203-05).

<sup>153</sup> December 1962 to January 16, 1974 (Ledum 4642); June 1966 to March 1972 (Silar 3877-78, 4072); September 1962 to mid-February 1972 (Feriante 4413-14).

<sup>154</sup> He faked sources less frequently as a part-time field representative than as a full-time employee "because my case load was lighter and I could be more selective in the cases in which I would work which was a sore point with the salaried inspectors because they felt that they should be given the gravy and I should be made to go out and dig up the hard stuff." (Tr. 4570).

This witness estimated that, during his full-time employment, his production was "maybe" 12 to 14 cases a day (Tr. 4555-56). His actual production averaged less than eight single fee reports a day (Tr. 4574, 4590).

Field representatives under respondent's production system (not just Commission witnesses) not infrequently tend to overestimate the amount of the reports they do (Zack 8235-36, see also Brown 6969-70). One reason is that, on certain days, field representatives do handle a large number of cases (Zack 8236).

394. A field representative in the Newark office found there was not enough time to do the job in the normal workday (Buckley 1356). He attempted to do 12 to 13 cases a day at the beginning of the month (id.). This field representative only secured adverse or protective/declinable information at the beginning of the month when the pressures requiring volume production were less stringent (Buckley 1355). This field representative sometimes would not confirm adverse information as required through a second source (Buckley 1326), although two sources would be shown on his reports (Buckley 1348).<sup>155</sup> [141]

395. Field representatives were assigned circuit runs. The term "circuit run" refers to a trip by a field representative to a rural area where he visits several small towns or cities which are too sparsely populated or too far away from an office to permit the field representative to follow a normal schedule in handling cases. A circuit run is longer than a usual run (Jenkins 5786, Andrews 9420; see also RX 102Z-50).<sup>156</sup> Frequently, the circuit run was what was called a "double run" or two days' work (Crepeau 1756), where the field representative was given a large number of cases to prepare over 2 days. He would "spend the day on the run" investigating the cases and would dictate or type up the reports the following day (Andrews 9421-22, Kain 9460-61, Lieber 9069). As a general rule, field representatives on a circuit run worked more cases than in their regular local areas (Jenkins 5787).<sup>157</sup>

396. The number of cases in a circuit run could vary considerably, for example: [142]

Madison, Georgia Suboffice .....	25-50 cases <sup>158</sup> (Ivey 1999, 2009, 2011).
Tucson Branch Office .....	50-55 cases* (Jenckes 74-76, 100-01).
.....	30 cases* (Moxham 3498).

<sup>155</sup> When asked why he did not confirm adverse information, this witness stated that he did not have the time: "[t]here [are] so many reports to do to make the money that you have to make that when you go out in the field, assuming that you go out there and don't use the telephone, you just have enough time to make so many stops and if you have to get 2 sources or even 3 sources on a decline, if you don't get it from the first one, it is impossible to do your job, and there is no way." (Tr. 1347-48).

<sup>156</sup> E.g., the average circuit run from the Appleton, Wisconsin suboffice involved a number of small cities and covered 100 to 200 miles (Pregler 9201-02). However, a circuit run from the Salt Lake office involved nine communities and covered about 350 miles (Huntington 12589-90).

<sup>157</sup> Similar to circuit runs were "relief runs", wherein field representatives from one office were sent to another office (branch or suboffice) with a backlog of cases, to assist in preparing reports (Brothers 7412-13). Field representatives could be given a larger number of cases than usual on relief runs and could work longer hours than usual (Lieber 9070).

<sup>158</sup> Mr. Ivey might work up to 13 or 14 hours a day if the workload on the circuit run was 50 cases (Tr. 2011).

Claremont, New Hampshire	
Suboffice .....	50-80 cases* (Crepeau 1756).
New Orleans Branch Office .....	40-70 cases* (Laudumiey 1827-29).
Salt Lake City Branch Office .....	30-50 cases* (Huntington 12589, 12592).
Alexander City, Alabama Suboffice .....	40 cases* (Martin 12890-92)
.....	40-60 cases* (Jones 12916, 12919-20, 12935-36). <sup>159</sup>

\*These circuit runs were double runs, *i.e.*, the investigation was handled on one day and dictation the next. [143]

397. Field representatives frequently used stock sources in the preparation of reports on circuit runs (Huntington 12591, Jones 12918, Crepeau 1758). A "stock" or "central" source is a person in a small town, typically a businessman or merchant, who can be used by a field representative as a source for numerous reports on a circuit run (Huntington 12591, Crepeau 1759).

398. Field representatives utilizing stock or central sources were cautioned:

A careful selection of good sources is one of the prime requisites of a good report. Do not depend on "stock" or "book" sources just because they know the subject of the report. Such persons may be excellent leads to suggest to you someone who is a logical source. Be sure that each source is in a position to give the necessary facts.

(RX 102Z-50.)

399. On circuit runs, field representatives tried to clear as many cases as possible using central or stock sources.<sup>160</sup> [144]

400. A field representative in the New Orleans branch who worked circuit runs of 40 to 70 cases a day in rural areas used stock sources. He did not ask such stock sources the normal questions since, in his view, such sources knew exactly what he wanted (Laudumiey 1828-29). The procedure of another field representative in obtaining information from stock sources was: "You knew them, and they knew what you want, and I just run the name through to

<sup>159</sup> Mr. Jones pointed out that he seldom completed all cases assigned during a particular circuit run (Tr. 12917; see also Larson 12523).

<sup>160</sup> A field representative in the Tucson office could complete 25 reports on a circuit run through three to four stock sources, if he "had any luck at all" (Jenckes 76). A field representative from the Claremont, New Hampshire office with double runs of 50 to 80 cases a day, generally cleared such cases by using central sources (Crepeau 1756, 1758-59). On a circuit run from the Alexander City, Alabama suboffice, a field representative on the average took 40 cases; on one of his runs, he would clear 20 cases solely through stock sources (Martin 12902).

Respondent emphasized the importance of interviews with applicants because applicants are considered the best sources of protective and declinable information (see Findings 315-16).