

## Interlocutory Order

IN THE MATTER OF  
HERBERT R. GIBSON, SR., ET AL.*Docket 9016. Interlocutory Order, May 18, 1978*

Request for subpoena enforcement denied without prejudice to renew.

ORDER DENYING REQUEST FOR SUBPOENA ENFORCEMENT  
WITHOUT PREJUDICE TO RENEW

On April 20, 1978, the administrative law judge, pursuant to Commission Rule 3.22 certified complaint counsel's Request for Court Enforcement of the Subpoena Served on Commission Witness Nix. For the reasons discussed below, we deny complaint counsel's request without prejudice to renewal at a later date.

The subpoena in question was dated March 16, 1978, served on Mr. Nix on March 22, 1978, with a return date of April 11, 1978. On April 10, 1978, complaint counsel received a letter from Mr. Nix indicating that he would not be able to comply with the subpoena because of illness. Attached to his letter is a statement to that effect from his physician, Dr. William deVlaming. Additionally, Mr. Nix indicated that he could not remember much of the information about which he spoke with complaint counsel and remarked on the fact that complaint counsel had previously indicated that he would not be called to testify.

Complaint counsel takes issue with each of Mr. Nix's assertions and points out that "failing memory is not a valid basis for failing to appear." Moreover, complaint counsel argues that the testimony of Mr. Nix

is crucial for several reasons. He is one of the few witnesses that will testify as to the issues raised under Count III of the Complaint. His testimony is expected to directly contradict the testimony previously presented by respondent, Gerald P. Gibson. His testimony is finally expected to link respondents, H.R. Gibson Sr., H.R. Gibson, Jr. and Gerald P. Gibson, to payments and receipt of illegal brokerage.

Nevertheless, the administrative law judge has recommended that the request be denied because of the length of time that may be involved in an enforcement proceeding and because of the likelihood that no substantive evidence will be elicited if Mr. Nix cannot recall the events in question. At the same time, the administrative law judge notes that Mr. Nix could possibly be a "crucial witness on whom complaint counsel placed considerable reliance."

We have determined that the best way to reconcile the needs of all parties is to deny without prejudice, complaint counsel's request with instructions that the administrative law judge and the parties consider the procedures of Commission Rule 3.33. Rule 3.33(a) provides that:

## Interlocutory Order

91 F.T.C.

At any time during the course of a proceeding . . . the Administrative Law Judge, in his discretion, may order the taking of a deposition and the production of documents by the deponent.

Furthermore, Section 3.33(f) provides for the introduction into evidence of a deposition if the administrative law judge finds "that the deponent is unable to attend or testify because of age, sickness, infirmity or imprisonment."

In this way, Mr. Nix will not be removed from the care and supervision of his doctor, or otherwise inconvenienced to the possible detriment of his health.<sup>1</sup> Moreover, complaint counsel will have the benefit of whatever recollection Mr. Nix can bring to bear on the situation, and Mr. Nix's memory lapses will be duly noted on the record under oath.

By its action today, the Commission should not be seen as invalidating the outstanding subpoena against Mr. Nix. The procedure suggested is an alternative to lengthy enforcement proceedings and at the same time adheres to the needs of Mr. Nix. Whether enforcement proceedings will ultimately be required as to the presently outstanding subpoena we have no way of knowing. Nevertheless, complaint counsel will not be prejudiced in renewing the request if it is determined that Section 3.33 is not feasible or if Mr. Nix again refuses to comply. Accordingly,

*It is ordered*, That complaint counsel's Request for Court Enforcement of the Subpoena Served on Commission Witness Nix be, and the same hereby is, denied without prejudice to renewal at a later date;

*It is further ordered*, That the parties and the administrative law judge consider proceedings pursuant to Commission Rule 3.33.

<sup>1</sup> Apparently, Mr. Nix is not completely incapacitated by his illness as we note that on April 7th he was said to be

975

## Complaint

IN THE MATTER OF  
SAFEWAY STORES, INCORPORATEDCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT*Docket 9053. Complaint, Sept. 3, 1975—Decision, May 18, 1978*

This consent order, among other things, requires an Oakland, Calif. retail food store chain to cease over-pricemarking and failing to sell advertised items at or below advertised prices. Further, food stores are required to conspicuously post advertisements and notices encouraging customers to check prices of advertised items. The order additionally obligates the firm to maintain business records for a period of three years, and to establish a surveillance program designed to ensure compliance with the terms of the order.

*Appearances*

For the Commission: *Robert Eliot Easton, Sr.* and *James J. Angelone.*  
For the respondent: *James F. Rill, Collier, Shannon, Rill, Edwards & Scott,* Washington, D.C.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Safeway Stores, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

## COUNT I

(Alleging violations of Section 5 of the Federal Trade Commission Act.)

PARAGRAPH 1. Respondent, Safeway Stores, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 4th and Jackson Sts., Oakland, California.

PAR. 2. Respondent is engaged in the operation of a chain of retail food stores, operating approximately 1950 stores in 27 states and the District of Columbia. Its volume of business is substantial, totalling approximately 6.77 billion dollars in retail food sales in 1973. In the operation of its retail food stores, respondent offers and sells to its customers an extensive line of groceries and other merchandise,

including food, drugs, cosmetics and devices as those terms are defined in the Federal Trade Commission Act, all of which are sometimes referred to hereinafter as "items." Some of said items are manufactured or processed by respondent at its manufacturing and processing plants located in various states. However, many of said items are purchased from numerous independent suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid items to be shipped and distributed from its manufacturing and processing plants or from its other sources of supply to its warehouses, distribution centers, or retail food stores located in various states other than the state of origination, distribution or storage of said items. In the further course and conduct of its business, respondent transmits contracts, business correspondence, monies and other documents from its stores, offices, and divisions located in states other than the states in which such contracts, correspondence, monies and other documents originated. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in the distribution, advertising, offering for sale, and sale of the items described in Paragraph Two, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for some time last past, respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the said items by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said items from respondent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said items by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the attempted or actual purchase from respondent of the said items in commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of those advertisements list or depict the said items and also contain statements and representations concerning the price or terms at which said items would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and the locations of respondent's food stores at which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated in various areas of the United States served by respondent's retail food stores, respondent has represented, directly or by implication, that in those stores covered by such advertisements, during the effective periods of the advertised offers, the items listed or depicted in such advertisements would be sold to persons who attempted to purchase such items at prices at or below the advertised prices for such items.

PAR. 6. In truth and in fact, in a significant number of respondent's retail food stores covered by such advertisements, during the effective periods of the advertised offers, certain numbers of items listed or depicted in the said advertisements were marked with prices higher than the advertised prices, and, as a result, a substantial number of items marked with a higher price were sold to persons who purchased such items at prices higher than the advertised prices. Therefore, the statements and representations as referred to herein, were false, misleading and deceptive.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, by permitting the units of certain numbers of said items to remain marked with prices higher than the advertised prices and by selling a substantial number of items so marked to customers at prices higher than the advertised prices, during the effective periods of such advertised offers at a significant number of stores covered by said advertisements, respondent has been and now is engaged in unfair acts and practices.

PAR. 8. In the course and conduct of its business, and at all times referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 9. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices.

PAR. 10. The acts and practices as aforesaid 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.

Complaint

91 F.T.C.

## COUNT II

(Alleging violations of the Federal Trade Commission Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices (16 C.F.R. 424), and Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four, and Eight: respectively, of Count I hereof are incorporated by reference in Count II as if fully set forth verbatim.)

PAR. 11. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and the provisions of Subpart B, Part 1, of the Commission's Procedures and Rules of Practice, 16 C.F.R. 1.11, *et seq.*, conducted a proceeding for the promulgation of a trade regulation rule regarding retail food store advertising and marketing practices. Notice of this proceeding, including a proposed rule, was published in the Federal Register on November 14, 1969 (34 FR 18252). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views and arguments, and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions, and additions thereto.

The Commission considered all relevant matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the Notice as indicated in the accompanying Statement of Basis and Purpose (36 FR 8777 (May 13, 1971)) and as prescribed by law, determined that the adoption of the trade regulation rule was in the public interest, and, accordingly, promulgated the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices on May 13, 1971, effective July 12, 1971.

PAR. 12. Respondent is a member of the retail food store industry, and its acts and practices in connection with the sale and offering for sale of food and grocery products or other merchandise subject to the jurisdiction of Section 5 of the Federal Trade Commission Act are within the intent and meaning of, and are subject to, the provisions of the aforesaid Trade Regulation Rule.

PAR. 13. In connection with its advertisements disseminated as aforesaid, respondent, in a substantial number of instances, has failed to comply with Paragraph (2) of the Trade Regulation Rule by offering products for sale at stated prices by means of advertisements disseminated in areas served by certain of its stores which are covered by such advertisements and by failing in those stores to charge out to

such advertised products at prices at or below the advertised prices during the effective periods of the advertisements, thereby failing to make said advertised items conspicuously and readily available for sale at or below the advertised prices.

PAR. 14. Respondent's aforesaid violations of the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices constitute unfair methods of competition and unfair or deceptive acts or practices violative of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having issued a complaint based upon alleged acts and practices of Safeway Stores, Incorporated, a corporation, also trading and doing business as Safeway, hereinafter referred to as respondent, and having served such complaint upon respondent and having withdrawn the proceeding from adjudication based upon a joint motion for withdrawal from adjudication filed by complaint counsel and counsel for respondent; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law had been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed pursuant to Sections 2.34 and 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Safeway Stores, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 4th and Jackson Sts., Oakland, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

## DEFINITIONS

“Retail Food Store” means any of respondent’s stores within the United States engaged primarily in the sale of foods for home consumption, excluding convenience-type stores with less than 4,000 square feet of building area.

“Item” means any article of merchandise which differs from any other article as to commodity, product, brand, variety, style or form, grade, type of package or label, size or weight, provided, that size or weight is to be disregarded with respect to articles priced by a standard measure of weight or count.

“Scanned Item” means an item bearing a symbol, printed on or affixed to the packaging or container of such item, in any store in which it is electronically scanned by equipment which identifies and prints on a cash register tape the price of that item.

“Unit” means one consumer package of a packaged item or the smallest advertised quantity that a consumer may purchase of an unpackaged item, provided, for that purpose of paragraph I.A. (2) of the order, a unit of a multiple priced item (*e.g.*, three for 41 cents) shall consist of that quantity, count or weight to which the multiple price applies.

“Over-pricemarked Items” means an advertised item of which more than five (or in the event a display contains fewer than 20 units, more than one-fourth) of the units in any one display bear a marked price higher than the advertised price.

“Unmarked Item” means an advertised item of which no more than five (or in the event a display contains fewer than 20 units, not more than one-fourth) of the units in any one display are legibly marked with a price.

“Overcharged Item” means an over-pricemarked item or an unmarked item of which one or more units are charged out at higher than the advertised price.

“Survey” means a compliance survey conducted by or under the direction of the Federal Trade Commission of a sample of 50 or more retail food stores over a period of at least three different weeks with approximately equal numbers of stores surveyed during each week stores are surveyed. All store surveying shall be completed within a period of time not exceeding eight consecutive weeks. Stores to be surveyed shall be selected from at least three different Standard Metropolitan Statistical Areas (SMASs) with an approximately equal number of stores surveyed in each SMSA in which stores are surveyed.

with this definition, but which is otherwise to be determined at the discretion of the staff or the Commission. Respondent waives any rights it might have to challenge the admissibility into evidence of the results of the survey of the sample on the grounds that those results are not projectable to a universe greater than the sample. Respondent, however, retains the right to challenge the evidentiary weight to be given to or inferences to be drawn from the results of any such survey on any legally available basis. All data collected in the course of a survey are to be recorded.

#### ORDER

##### PROHIBITED PRACTICES

I. *It is ordered*, That respondent Safeway Stores, Incorporated, a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of items offered or sold in its retail food stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing dissemination of, any advertisement by any means which offers or presents any items for sale at a stated price, unless throughout the effective period of the advertised offer, at each retail food store covered by the advertisement:

(1) each unit of each such advertised item, any of which are marked with a price, is individually, clearly and conspicuously marked with a price no higher than the advertised price; provided that in the case of overpriced marked scanned items, clear and conspicuous posting of the advertised price of such items at the point of display will be deemed compliance with this requirement; and

(2) each unit of each such advertised item is charged out to customers at or below the advertised price; provided that in the case of advertised items the ultimate price of whose units are determined by the total dollar amount of the customer's order or the use of a coupon, or other similar conditional price arrangement, the prices at which the units are sold, and not the prices marked on the units, shall govern.

*Provided further*, it shall constitute a defense of a charge of overpriced marking or overcharging if respondent can show that such overpriced marking or overcharging was due to circumstances beyond respondent's reasonable control. It will be presumed that any instance of overpriced marking or overcharging found was due to circumstances beyond respondent's reasonable control if respondent can show that

such over-pricemarking and overcharging occurred despite respondent's reasonable procedures to eliminate all over-pricemarking and overcharging, and that upon learning of any specific instance or instances of such over-pricemarking or overcharging, respondent immediately acted to eliminate them and took reasonable measures to assure that they did not recur.

For respondent's procedures to be reasonable, respondent shall have the burden of establishing that:

(i) it has a reasonable basis in fact for concluding that its procedures for pricemarking and charging out advertised items are properly designed to achieve compliance with this order;

(ii) it has in effect a continuing surveillance program adequate to reveal whether its retail food stores are conforming with this order; and

(iii) respondent regularly conducts a review and analysis of results of the surveillance program adequate to determine whether changes in market conditions, technology or other changes make it necessary for respondent to revise its procedures for pricemarking and charging out advertised items to maintain compliance with this order.

II. A. No enforcement action will be brought against respondent for any alleged instances of overpricemarking or overcharging on the basis of a survey unless Respondent is notified in writing within three months following the completion of that survey that the survey has been conducted. At the time of said notice the Commission shall furnish respondent copies of written instructions to the persons making in-store observations, and sufficient documentary material that will reasonably enable Respondent to identify the stores, items and prices surveyed.

B. If, in any enforcement action brought against respondent, the Commission offers evidence purporting to establish an over-pricemarking rate for respondent, such rate shall be calculated by taking, as of the date(s) of any survey and for the stores selected, the total number of items over-pricemarked as a percent of the total number of advertised items than in effect for those stores.

III. *It is further ordered,* That throughout the effective period of such newspaper advertisement, respondent shall post conspicuously at or near each doorway affording entrance to the public of each retail food store,

- (a) copy of the advertisement effective for that store; and
- (b) the following statement:

*Notice to Our Customers*

advertised item you purchase against the price indicated in our ad and report any errors to store personnel. If errors are not corrected to your satisfaction, please advise the store manager.

IV. Respondent shall not be subject to any of the provisions of this order to the extent that such provisions shall have been rendered inconsistent with the Trade Regulation Rule regarding Retail Food Store Advertising and Marketing Practices, 16 C.F.R. 424 (1977) because of any future amendment to that rule.

V. *It is further ordered, That:*

A. Respondent shall forthwith deliver a copy of this order to each of its officers (excluding assistant officers) and to other of its personnel in its Retail Divisions (down to the level of and including store managers) who, directly or indirectly, have any responsibilities relating to pricemarking and charging out of advertised items in respondent's retail food stores, and respondent shall secure a signed statement acknowledging receipt of said order from each such person.

B. Respondent shall maintain a surveillance program adequate to reveal whether the business practices of its retail food stores conform to this order and shall upon request inform the duly authorized representative of the Commission as to the nature of such program.

C. Respondent shall, for a period of three years subsequent to the date of this order:

(1) Maintain business records which show the efforts taken to achieve continuing compliance with the terms and provisions of this order; and

(2) Furnish to the Federal Trade Commission copies of the records to be maintained under subparagraph (1) above, upon written request by any of its duly authorized representatives.

D. Respondent shall, all other provisions of this order notwithstanding, within 90 days following the end of each year, for a period of three years from the date this order becomes final, file with the Commission a report setting forth in detail the manner and form in which it has complied with this order in the preceding year.

*It is further ordered, That* respondent shall notify the Commission at least thirty days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent which may affect compliance obligations arising out of this order.

*It is further ordered, That* the respondent herein shall within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

91 F.T.C.

IN THE MATTER OF

## USLIFE CREDIT CORPORATION, ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

*Docket 9057. Complaint, Sept. 26, 1975—Final Order, May 23, 1978*

This order, among other things, requires a Schaumburg, Ill. finance company and its parent corporation to cease, in connection with the extension of consumer credit, failing to provide consumers with the material and disclosures required by Federal Reserve System regulations.

*Appearances*

For the Commission: *Michael E.K. Mpras* and *Robert L. Patterson*.  
For the respondents: *Edward W. Keane* and *Bruce E. Clark*,  
*Sullivan & Cromwell*.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that USLIFE Credit Corporation, a corporation, and USLIFE Corporation, a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent USLIFE Credit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 1300 North Meacham Road, Schaumburg, Illinois. Respondent USLIFE Credit Corporation is a wholly-owned subsidiary of USLIFE Corporation.

Respondent USLIFE Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 125 Maiden Lane, New York, New York.

Respondent USLIFE Credit Corporation operates through approximately two-hundred thirteen (213) wholly-owned subsidiary loan offices located in twenty (20) States of the United States. Each subsidiary is incorporated in the respective state in which it is located

Corporation, State Securities, Inc., Sterling Finance Company, Clermont Finance Company, Courtesy Finance Company, North American Finance Company, Best Finance Company and Midland Finance Company. [2]

Respondents USLIFE Corporation and USLIFE Credit Corporation formulate and control the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

The aforementioned respondents and their subsidiaries cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents by and through their corporate subsidiary structure are now, and for some time last past have been, engaged in the offering to extend, and the extension of, consumer credit to the public.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business as aforesaid, have charged, and are now charging, for credit life and/or credit accident and health (disability) insurance a substantial number of consumers who obtained a consumer loan from respondents.

Typical and illustrative, but not all-inclusive of the circumstances in which such insurance charges are incurred by consumers, are the following:

1. During the consumer's contact with respondents, respondents' personnel orally quote a monthly repayment figure which includes charges for credit life and/or credit accident and health (disability) insurance.
2. Respondents' personnel automatically include charges for credit life and/or credit accident and health (disability) insurance on the Loan Agreement, and, unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.
3. On that portion of the Loan Agreement which contains the statements "I desire credit life insurance," or "I desire credit life insurance and disability insurance," respondents' personnel, without the permission or authority of the consumer, place an "x" on the line for the borrower's signature. [3]
4. The Loan Agreement, filled out as indicated above, is presented

to the consumer for two signatures. The consumer is not told of the purpose of each signature. These signatures are intended (1) to indicate the consumer's desire for the insurance coverage, and (2) to acknowledge the consumer's receipt of the executed Loan Agreement.

5. Respondents' personnel place the charges for credit life and/or credit accident and health (disability) insurance in the "Record of Disbursements" section of the Loan Agreement, and these charges become part of the "amount financed," but are not included in the finance charge and thus the annual percentage rate is improperly computed.

PAR. 5. By and through the acts and practices described in Paragraph Four, and others of similar import, meaning and consequence, but not specifically set forth herein, respondents, in a substantial number of instances, obtain consumers' signatures through practices which operate, directly or indirectly, to defeat the elective language of the insurance authorization disclosures by obscuring from consumers knowledge about the option, by misrepresenting to consumers that their signatures are necessary solely for the purpose of consummating the credit transaction, and by discouraging the declination of the coverage when it is questioned. These practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and/or credit accident and health (disability) insurance.

Therefore, respondents, in a substantial number of instances, induce their customers to incur charges for credit life and credit accident and health (disability) insurance without said customers making a knowing, affirmative election to have such insurance and, thereby, respondents have failed to obtain from each of their customers a "specific dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement.

PAR. 6. By and through the acts and practices described in Paragraphs Four and Five hereof, respondents have failed to include the charges for credit life and/or credit accident and health (disability) insurance in the finance charge when a specific dated and separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained as required by Section 226.4(a)(5) of Regulation Z, and thereby respondents: [4]

1. Failed to compute and disclose accurately the "finance charge," as required by Sections 226.4 and 226.8 of Regulation Z; and
2. Failed to compute and disclose accurately the "annual percentage rate"

ge rate" to the nearest quarter of one percent, as required by Sections 26.5 and 226.8 of Regulation Z.

PAR. 7. In the further course and conduct of their business as foresaid, respondents obtain borrowers' signature on that portion of the Loan Agreement which contains the statements "I desire credit life insurance," or "I desire credit life insurance and disability insurance," and said signatures are not specifically dated as required by Section 26.4(a)(5) of Regulation Z.

PAR. 8. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Sections 226.4, 226.5 and 226.8 of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE LAW  
JUDGE

JANUARY 27, 1977

PRELIMINARY STATEMENT

In a complaint dated September 26, 1975, the Federal Trade Commission (Commission) charged respondents, USLIFE Credit Corporation (USLIFE Credit) and its parent, USLIFE Corporation (USLIFE), with violations of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*), the Truth in Lending Act (15 U.S.C. 1601, *et seq.*) and its implementing regulation (Regulation Z - 12 C.F.R. 226) (Complaint, ¶¶ One and Eight). The gravamen of the charges is that in offering to extend and in extending consumer credit to the public: [2]

(1) Prospective borrowers were orally quoted a monthly repayment figure which included charges for credit life and/or credit accident and health (disability) insurance (Complaint, ¶ Four, 1);

(2) Charges for credit life and/or credit accident and health (disability) insurance were automatically included in loan agreements unless the borrower specifically objected to their inclusion (Complaint, ¶ Four, 2);

(3) X's were placed on loan agreements on the lines calling for the borrower's signature to indicate he or she wished to have credit life and/or disability insurance without the borrower's permission or authority (Complaint, ¶ Four, 3);

(4) When loan agreements, filled out as indicated above, were presented to the borrower, he was not told the purpose of the two signatures called for (*i.e.*, one to indicate insurance was desired and the

other to acknowledge receipt of the executed loan agreement) (Complaint, ¶ Four, 4); and

(5) Premium costs of insurance were included in the "Record of Disbursement" section of the loan agreement thus becoming part of the amount financed, but such premiums were not included in the finance charge and therefore the "Annual Percentage Rate" was improperly computed (Complaint, ¶ Four, 5).

The alleged result of these and similar acts and practices was that the language on the loan agreement that insurance was optional was defeated:

. . . by obscuring from consumers [borrowers] knowledge about the option, by misrepresenting to consumers that their signatures are necessary solely for the purpose of consummating the credit transaction, and by discouraging the declination of the coverage when it is questioned.

[3] It was further alleged that as a consequence:

. . . respondents, in a substantial number of instances, induce their customers to incur charges for credit life and credit accident and health (disability) insurance without said customer making a knowing, affirmative election to have such insurance and, thereby, respondents have failed to obtain from each of their customers "a specific dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement. (Complaint, ¶ Five)

In addition, respondents were charged with having failed to compute and disclose accurately: (1) the finance charge as required by Sections 226.4 and 226.8 of Regulation Z; and (2) the annual percentage rate to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z. These violations allegedly occurred because respondents did not ". . . include the charges for credit life and/or credit accident and health (disability) insurance in the finance charge when a specific dated and separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained as required by Section 226.4(a)(5) of Regulation Z . . . ." (Complaint, ¶ Six)

Respondents also were charged with violating Section 226.4(a)(5) of Regulation Z because borrowers' signatures in the "insurance" section of the loan agreement ". . . [were] not specifically dated . . . ." (Complaint, ¶ Seven)

In their answer, respondents asserted the following defenses:

(1) The complaint, as a matter of law, did not charge either respondent with a violation of the Truth in Lending Act, the Federal Trade Commission Act, any other act within the jurisdiction of the

Commission, or any valid rule or regulation promulgated by or to be enforced by the Commission (Answer, FIRST DEFENSE, p. 1); [4]

(2) USLIFE is a holding company not engaged in the business of extending consumer credit to the public and does not formulate or control the policies, acts or practices of USLIFE Credit or any of its subsidiaries or branch offices regarding the manner in which credit life or disability insurance is sold. Participation in and knowledge by USLIFE of the policies, acts and practices of USLIFE Credit, as alleged in the complaint, were disclaimed. Consequently, it was contended that, as a matter of law, USLIFE could not be liable even if the charges in the complaint were proven as to USLIFE Credit and found to be violative of any law, valid rule or regulation (Answer, SECOND DEFENSE, p. 2).

As to the first defense, the "Memorandum And Order Respecting Respondents' Motion For Summary Decision," dated February 9, 1976, denying the motion, which was issued by Administrative Law Judge (ALJ) Needelman, to whom the case originally was assigned, details the refutation of the first defense. Suffice it to say here that a violation of the Truth in Lending and Federal Trade Commission Acts is alleged when a respondent is charged with acts and practices which negate written disclosures called for by the Truth in Lending Act. (See pp. 4-7 of ALJ Needelman's "Memorandum and Order . . ." and discussion *infra* under "Did Customers Know That Insurance Was Optional?" and "Reliance On A Truth In Lending Theory Vis-A-Vis Proving A Violation Of The FTC Act"). The second defense raised by respondents is discussed below under "Naming USLIFE As A Respondent."

Prehearing conferences were held by ALJ Needelman on January 5, 1976, and by the undersigned on September 8, 1976. On May 18, 1976, the Commission rejected a consent order proffered by respondents, but opposed by complaint counsel. Oral motions for summary decision and to dismiss as to USLIFE were made at the conclusion of the presentation of the case-in-chief (Tr. 832-37, 839). These were denied (Tr. 842).

The adjudicative hearings were held in Washington, D.C., on September 13-16, 1976, and in Atlanta, Georgia, on September 20-22, 1977. The official record consists of 917 pages of transcript, which includes 132 pages reporting the two prehearing conferences. There are approximately 725 exhibits. [5]

#### *The Striking of Seven Witnesses' Testimony*

At the final prehearing conference (PHC) on September 8, 1976, counsel for respondents renewed his earlier request (PHC Tr. 60, 85)

that he be furnished in advance of trial with Jencks Act (18 U.S.C. 3500) statements of witnesses which complaint counsel planned to call to testify in connection with his presentation of evidence as a part of the case-in-chief (PHC Tr. 119). Complaint counsel was ordered to hand over any Jencks-type statements by September 10, 1976 (PHC Tr. 123-24). Production on September 10th rather than at the conclusion of the direct examination of the witnesses was ordered since this approach would more fully apprise counsel for respondents of witnesses' expected testimony, and would make cross-examination possible without either a recess or requiring counsel for respondents to speed-read the statements of the witnesses or otherwise necessitating delay in defense counsel completing his questioning of complaint counsel's witnesses while such statements were reviewed.

Although *Inter-State Builders, Inc.*, 69 F.T.C. 1152, 1165-67 (1966), and *Basic Books, Inc. v. F.T.C.*, 276 F.2d 718, 722 (7th Cir. 1960) hold that Jencks statements may not be demanded and need not be produced until the end of a witness' direct testimony, these decisions were made prior to the Commission's 1967 amendment of its rules providing for detailed discovery procedures. See 3 CCH Trade Reg. Rep. ¶9625, at 17,195. My order is in harmony with the Commission's position in more recent years favoring maximum pretrial discovery, without prejudice to either side, in order to expedite hearings.

In accordance with the order, complaint counsel stated, prior to the start of the adjudicative hearings, that he had provided counsel for respondents with "all the Jencks Act materials which constituted interview reports that we conducted . . ." (Tr. 5). However, in the course of questioning complaint counsel's first "borrower" witness, Ms. Lillian B. Brooks (Tr. 267-302), it was disclosed that the consumer protection specialist who had interviewed her during the investigation had made substantially verbatim notes of what Ms. Brooks said but that such notes had not been turned over to respondents' counsel (Tr. 290). Ms. Brooks testified that she read the notes as they were being made by the investigator and was asked if what had been written was correct (Tr. 293). [6] She also said that she was asked if she would and that she did sign them (Tr. 289, 293-94). On the following day, the investigator testified that, in accordance with the investigator's customary practice, the notes taken were disposed of after a report of the interview was prepared (Tr. 389, 403). Testimony by the investigator to the effect that the witness did not sign the notes (Tr. 387-88, 390) was not persuasive. Following a request by counsel for respondents, I ordered that the testimony of Ms. Brooks be stricken (Tr. 297-301, 409).

It is worthy of specific mention that . . .

unaware before Ms. Brooks testified that any signed statement was obtained (Tr. 291) or that any such statement had been disposed of (Tr. 291, 294-95). It also is clear that he made extensive efforts to locate the notes once he learned about them (Tr. 299, 379-80).

Because interview notes qualifying as Jencks-type statements relating to the testimony of Mr. William M. Curtin (Tr. 346-79), the third witness called by complaint counsel, were not produced, his testimony also was stricken (Tr. 379). Although Mr. Curtin testified that he did not sign the notes (Tr. 348), he said that he reviewed them and verified that what had been written by the investigator was accurate (Tr. 348, 355). In addition to the testimony of these two, the testimony of five other "borrower" witnesses—Stafford DeLoatch (Tr. 426-61), Mary Louise Knieser (Tr. 463-92), Robert Edward Garner (Tr. 493-518), Eziekiel Moore (Tr. 519-52), and Milton Dickerson (Tr. 792-829)—was stricken (Tr. 461, 492, 518, 553, 803) because the information elicited led me to conclude that Jencks statements had been obtained which complaint counsel was unable to furnish to counsel for respondents.

#### *The Requirements of The Jencks Act*

The Jencks Act, in pertinent part, calls for the government, after demand by defendants, to hand over, at the conclusion of the direct examination, statements and reports "in the possession of the United States" of witnesses it calls to testify against a defendant (18 U.S.C. 3500(a)) ". . . which relates to the subject matter as to which the witness has testified" (§ 3500(b)). Also see S. Rep. No. 981, 85th Cong., 1st Sess. 3 (1957). Section 3500(d) of the Act provides that if the government "elects not to comply . . ." the testimony is to be stricken or a "mistrial [is to] be declared." A Commission opinion to the effect that striking the testimony is appropriate in an administrative proceeding in such circumstance is *R. H. Macy & Co.*, 69 F.T.C. 1108 at 1109 (1966). [7]

Section 3500(e) of the Act provides that a "statement" is (1) a document which is written and signed or otherwise adopted or approved by the interviewee/witness, or; (2) "a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement" made by the interviewee/witness and "recorded contemporaneously with the making of such oral statement."

It is well established that Jencks Act procedures apply to administrative proceedings and that it is for the administrative law judge to determine whether a witness' own words were recorded or whether only a summarization of the witness' remarks was made. See *Inter-*

*State, supra*, 69 F.T.C. 1157-65, 1171. Also see *Ernest Mark High*, 56 F.T.C. 625, 633 (1959).

Since the witnesses' own words were recorded in the notes made by the investigator, those notes qualified as Jencks-type statements to which counsel for respondents was entitled on the basis of the decision of the Supreme Court in *Goldberg v. United States*, 44 U.S.L.W. 4424 (1976). In that decision the Supreme Court said that a Jencks statement is created when government investigators or trial lawyers (1) question the witness during an interview about what he ". . . just said to make sure that they got it down correctly," (2) "occasionally read back to see whether or not they correctly understood . . .," or (3) have the witness correct the notes (44 U.S.L.W. at 4426). Also see *Palermo v. United States*, 360 U.S. 343, 352-53 (1959); *Campbell v. United States*, 373 U.S. 487, 492-97 (1963).

There is language in a number of decisions in criminal cases to the effect that innocent, good faith destruction of an investigator's/attorney's notes not within the ambit of the Jencks Act in the course of routine administrative procedure is not the equivalent of noncompliance with an order to produce. See *United States v. Aviles*, 197 F. Supp. 536, 556 (S.D.N.Y. 1961), *aff'd*, 315 F.2d 186 (2d Cir. 1963), *remanded sub nomine, Evola v. United States*, 375 U.S. 32 (1963), *aff'd on remand*, 337 F.2d 552 (1964), *cert. denied*, 380 U.S. 906 (1965); also see 18 U.S.C.A. 3500 Part 2, Ch. 223, n.98. Cases having to do with destruction of notes which are within the ambit of the Jencks Act normally point out that the information in the notes was available in the reports provided to counsel for the defendant (*e.g.*, *United States v. Covello*, 410 F.2d 536, 545 (2d Cir. 1969), *cert. denied*, 396 U.S. 879 (1969), *rehearing denied*, 397 U.S. 929 (1970)). How one could be certain that the reports, in fact, contained *all* notes qualifying as Jencks Act statements is not clear. [8] Due process considerations require that counsel for defendants/respondents should be provided with such statements and be given the opportunity to judge whether information they contain as to what the witness said prior to testifying, as reflected in the Jencks notes/statements, comports with what the witness says while testifying.

With regard to the innocent disposition of such notes, as happened here, in *United States v. Bryant*, 439 F.2d 642, 652 (D.C. Cir. 1971), the court said that sanctions for nondisclosure of Jencks statements based on loss of evidence will be invoked ". . . unless the Government can show that it has promulgated, enforced and attempted in good faith to follow rigorous and systematic procedures designed to preserve *all* discoverable evidence gathered in the course of a criminal investiga-

showing." Also see *United States v. Perry*, 471 F.2d 1057, 1062-64 (D.C. Cir. 1972) and *United States v. Ferguson*, 498 F.2d 1001 n.3 at 1011 (D.C. Cir. 1974). No showing that either oral or written instructions were provided to the investigator or included in standard operating procedure manuals which detailed the handling of Jencks Act statements was offered at the hearing. Consequently, the sanction of striking the testimony of these seven borrower witnesses has been maintained.

Prior to closing the record the following question was certified to the Commission:

Should the testimony of witnesses be stricken after the administrative law judge concludes that a Jencks statement was obtained and complaint counsel cannot comply with the order to provide it to counsel for respondents, even though complaint counsel was unaware that what constituted a Jencks statement had been obtained during the investigation and that it had been innocently destroyed? (Order dated October 8, 1976.)

The certification was rejected as not presenting the type of controlling question of law or policy which merits interlocutory consideration under Section 3.23(b) of the Commission's Rules of Practice; however the "Order Rejecting Certification" dated November 2, 1976, reflects that the matter might be considered on appeal. [9]

The testimony which was stricken remains a part of the record because the procedure followed at trial was to permit *voir dire* of each borrower witness by counsel for respondents, have the direct and cross-examination conducted, and then rule as to whether the testimony should be stricken. This testimony, however, has not been considered in connection with the preparation of the initial decision.

Complaint counsel's request to call six additional witnesses, which is mentioned in the "Order Re Briefing Schedule" dated November 12, 1976, was denied because complaint counsel advised that the ground to be covered would be substantially the same as that already in the record which had not been stricken and the undersigned was of the view that hearing the additional witnesses would serve no useful purpose. In that same order the record was closed and dates were set for submittal of proposed findings and orders with reasons therefor by December 10, 1976, and for any replies thereto by December 23, 1976.

*Bases for the Findings of Fact; Abbreviations Used*

The findings of fact following are based on a review of the allegations made in the complaint, respondents' answer, the documentary evidence, and consideration of the demeanor of the witnesses, including an eidetic recollection of several of them. In addition, the proposed findings of fact, conclusions and proposed orders, together

with reasons and briefs in support thereof filed by both sides have been given careful consideration. To the extent not adopted by this decision in the form proposed or in substance, they are rejected as not supported by the record or as immaterial.

For the convenience of the Commission and other readers of this initial decision, the findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony, evidence and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence considered in arriving at such findings. The following abbreviations have been used: [10]

Tr. - Transcript, preceded by the name of the witness and followed by the page number.

CX - Commission's Exhibit, followed by number of exhibit being referenced.

RX - Respondents' Exhibit, followed by number of exhibit being referenced.

CCPF - Complaint Counsel's Proposed Findings.

RPF - Respondents' Proposed Findings.

#### FINDINGS OF FACT

##### *The Respondents*

1. USLIFE was organized, exists and does business under and by virtue of the laws of the State of New York. Its principal office and place of business is located at 125 Maiden Lane, New York, New York (Admitted, Answer, ¶ 1(a), p. 2).

2. USLIFE Credit was organized, exists and does business under and by virtue of the laws of the State of Delaware (Admitted, Answer, ¶ 1(a), p. 2). It is engaged in the business of regularly extending consumer credit to the public directly or through its subsidiaries (Admitted, Answer, ¶ 2, p. 4 and ¶ 3, p. 5) and is in competition with nationally known finance companies such as Household Finance and Beneficial Finance Associates (Beckley, Tr. 145). The firm's principal office and place of business is located at 1300 North Meacham Road, Schaumburg, Illinois. USLIFE Credit is a wholly-owned subsidiary of USLIFE (Admitted, Answer, ¶ 1(a), p. 2).

3. USLIFE Credit, directly or through subsidiaries, operates approximately 220 branch offices in 20 states (Admitted, Answer, ¶ 1(b), p.3). Not all branch offices are operated under the name USLIFE Credit (Admitted, Answer, ¶ 1(b), p. 3). As of April 1, 1974, other names used were: Quality Finance Company. Midland Finance Company.

Company, North American Finance Company, Clermont Finance Company, Courtesy Finance Company, and USLIFE Credit Industrial (CX 5). The states in which operations were conducted as of April 1974 were Alabama, Arizona, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and West Virginia (CS 5). [11]

4. USLIFE Credit formulates and controls the policies, acts and practices of its subsidiaries and branch offices regarding the manner in which credit life and disability insurance is sold (Answer, ¶ 1(c), p. 3).

5. USLIFE has knowledge of the loan forms used by USLIFE Credit and could order discontinuance of the use of such forms (Giuliano, Tr. 203-04; First CCPF). USLIFE exercises approval authority over the annual budget of USLIFE Credit (Beckley, Tr. 62; Dunn, Tr. 175-76). USLIFE also must give its approval before USLIFE Credit may buy other companies and is notified when USLIFE Credit decides that a branch office is to be closed (Beckley, Tr. 59-61; Dunn, Tr. 177). USLIFE has the authority and power to overrule the decision to close a branch office (Dunn, Tr. 177).

6. USLIFE Credit has 16 officers and 5 directors. Two of the directors are officers of USLIFE. No officer of USLIFE Credit is an officer or director of USLIFE (RPF 6).

7. USLIFE has 27 officers and 15 directors. One officer/director of USLIFE is a director of USLIFE Credit and another director serves on both boards. No director/officer of USLIFE is also an officer of USLIFE Credit (RPF 5).

8. Mr. Gordon H. Crosby, JR., is the Chairman of the Board of both USLIFE and USLIFE Credit (RX 30a-b). The USLIFE Executive Vice-President of Financial Services, Mr. Samuel Giuliano, who is the liaison officer between respondents, also is a director of USLIFE Credit. Periodically he meets with the Chairman of the Board and chief executive officers to review the financial posture of USLIFE Credit in the light of predetermined, jointly-agreed-upon objectives of the credit company (Giuliano, Tr. 197-201).

9. The following table prepared from information in USLIFE's 1975 annual report indicates the level of its operations:

	1975 (000)	1974 (000)
Net Income	\$49,317	\$46,074
Total Assets	1,950,901	1,837,249
Total Liabilities	1,622,327	1,537,151

	Initial Decision	91 F.T.C.
Life Insurance in Force	17,881,058	17,013,034
Consumer Credit Re- ceivables (RX 21, pp. 1 and 19.)	155,209	143,337

[12] *Sale Of Insurance*

10. The policy of USLIFE Credit has always been that credit life and credit disability insurance coverage is optional and that loan approvals are not contingent upon the customer's decision to accept or reject insurance (RPF 19). USLIFE Credit does, however, attempt to sell insurance to borrowers (Dunn, Tr. 181-83; Miles Tr. 862; RPF 46). When sales resistance was encountered, employees sometimes would say: "Well, the company's policy was we like to have insurance on every loan . . . that the insurance was a good thing for them . . . but there was nothing said to the customer if they didn't take the insurance they couldn't get the loan." (George, Tr. 252.) If successful in selling the insurance, the firm arranges for credit life and/or accident and health (disability) coverage (Admitted, Answer, ¶ 4(b), pp. 5-6). Eighty to ninety percent of USLIFE Credit borrowers purchased insurance to cover the amounts of their loans (Miles, Tr. 855).

11. The loan application form, which is filled in by employees of USLIFE Credit using information provided by prospective borrowers (Beckley, Tr. 116-17; Stricklen, Tr. 221-22; George, Tr. 247), does not have a space for entry of information as to whether insurance is or is not desired. It does have spaces for information as to the amounts of insurance premium refunds a borrower with a previous loan will have in taking out the new loan and for the premiums on insurance to cover the new loan (RX 7).

12. The loan agreement forms used disclose that the purchase of insurance to cover loans is optional (CXs 95, 98, 103, 106, 110, 116, 119-20, 122, 125, 135-414). Witnesses who are officers of the firms testified that insurance was and is optional and written instructions to the branch offices were to the same effect (Beckley, Tr. 84-87, 89, 94, 130-31, 143; Dunn, Tr. 185; RXs 2, 3).

13. In the body of the loan agreement forms there is a section which the borrower is to date and sign to indicate whether he (1) does not want insurance, (2) wants credit life insurance, or (3) wants both credit life and disability insurance (CXs 95, 98, 103, 106, 110, 116, 119-20, 122, 125, 135-414). [13] Usually this section bears a caption such as "Optional Insurance Notice" or "Insurance Notice" (*e.g.*, CXs 95, 106, 116); however, some sections have no such caption (*e.g.*, CXs 148, 150).

not always enter the date in the space provided (*e.g.*, *Dunn*, Tr. 186, CXs 135, 140, 163, 172). Pages 14a–b through 15a–h hereof are photo copies of typical loan application and loan agreement forms used by USLIFE Credit (RX 7, RX 32).

14. USLIFE Credit's emphasis was and is on encouraging borrowers to read the documents and to have employees provide explanations of the terms of the loan (*Beckley*, Tr. 93; *Miles*, Tr. 845, 860; *Dionne*, Tr. 791).

15. In view of the foregoing, it is established that the purchase of insurance was optional and that by their actions employees of respondents did not negate the written disclosures in the forms used.

#### *Oral Quotes of Loan Costs*

16. With regard to the charges that loan costs orally quoted included premiums for insurance (Complaint, ¶ Four, 1) and that such costs automatically were included in loan agreements unless the borrower specifically objected (Complaint, ¶ Four, 2), the evidence establishes that instructions to employees were that they should not include charges for credit life and/or credit accident and health (disability) insurance when monthly repayment figures were quoted (*Beckley*, Tr. 140–41). Employees told potential borrowers over the telephone what the charges for insurance on the loan might be (*George*, Tr. 253) and tried to persuade them to buy insurance (*Beckley*, Tr. 93; *Miles*, Tr. 862, 867). They also explained all of the loan terms when the potential borrower came to the office to execute the loan forms by "going over" each of the entries made (*Beckley*, Tr. 129; *Stricklen*, Tr. 242; *George*, Tr. 247; *Dionne*, Tr. 791, *Miles*, Tr. 860–61, 865). [14]







Initial Decision

ACCOUNT NUMBER TYPE		DATE OF LOAN	PREVIOUS ACCOUNT NO. TYPE		DATE OF PREVIOUS ACCT	SEC CODE	PREVIOUS LOAN
SECURITY		CO-MAKER	PURPOSE		SOURCE CODE	PREVIOUS STATEMENT (EXPIRATION DATE)	
<input type="checkbox"/> IND. A	<input type="checkbox"/> IND. B	<input type="checkbox"/> IND. C	<input type="checkbox"/> IND. D	<input type="checkbox"/> IND. E	CO-MAKER'S LAST NAME	PREVIOUS NAME	DATE OF PREVIOUS STATEMENT
PREVIOUS ADDRESS		CITY	STATE	ZIP CODE	PHONE	<input type="checkbox"/> RES <input type="checkbox"/> C	
CO-MAKER'S LAST NAME		PREVIOUS NAME	PREVIOUS ADDRESS	CITY	STATE	ZIP CODE	PHONE
ANNUAL PERCENTAGE RATE		TOTAL OF PAYMENTS		FINANCE CHARGE		AMOUNT FINANCED	
11		957		957		957	
12		2		2		2	
13		3		3		3	
14		4		4		4	
15		5		5		5	
16		6		6		6	
17		7		7		7	
18		8		8		8	
19		9		9		9	
20		10		10		10	
21		11		11		11	
22		12		12		12	
23		13		13		13	
24		14		14		14	
25		15		15		15	
26		16		16		16	
27		17		17		17	
28		18		18		18	
29		19		19		19	
30		20		20		20	
31		21		21		21	
32		22		22		22	
33		23		23		23	
34		24		24		24	
35		25		25		25	
36		26		26		26	
37		27		27		27	
38		28		28		28	
39		29		29		29	
40		30		30		30	
41		31		31		31	
42		32		32		32	
43		33		33		33	
44		34		34		34	
45		35		35		35	
46		36		36		36	
47		37		37		37	
48		38		38		38	
49		39		39		39	
50		40		40		40	
51		41		41		41	
52		42		42		42	
53		43		43		43	
54		44		44		44	
55		45		45		45	
56		46		46		46	
57		47		47		47	
58		48		48		48	
59		49		49		49	
60		50		50		50	
61		51		51		51	
62		52		52		52	
63		53		53		53	
64		54		54		54	
65		55		55		55	
66		56		56		56	
67		57		57		57	
68		58		58		58	
69		59		59		59	
70		60		60		60	
71		61		61		61	
72		62		62		62	
73		63		63		63	
74		64		64		64	
75		65		65		65	
76		66		66		66	
77		67		67		67	
78		68		68		68	
79		69		69		69	
80		70		70		70	
81		71		71		71	
82		72		72		72	
83		73		73		73	
84		74		74		74	
85		75		75		75	
86		76		76		76	
87		77		77		77	
88		78		78		78	
89		79		79		79	
90		80		80		80	
91		81		81		81	
92		82		82		82	
93		83		83		83	
94		84		84		84	
95		85		85		85	
96		86		86		86	
97		87		87		87	
98		88		88		88	
99		89		89		89	
100		90		90		90	

32  
957  
U.S. Life Credit Corp.  
AP

LOAN DISTRIBUTION  
LESS CHECKS TO  
BY ACCOUNT  
BY TO

NO. OF CHECKS  
AMOUNT  
BY TO  
BORROWER

TOTAL OF CHECKS MUST EQUAL BOX 7.

LOAN REGISTER DISBURSEMENT RECORD—HOME OFFICE  
LOAN REGISTER DISBURSEMENT RECORD — BRANCH OFFICE -15b-

Initial Decision

91 F.T.C.

32

ACCOUNT NUMBER TYPE	DATE OF LOAN	PREVIOUS ACCOUNT NO. TYPE	DATE OF PREVIOUS ACCT	DEL. CODE	HIGH CREDIT	BRANCH NO.	NAME	ADDRESS	AND PHONE NUMBER
SECURITY CODE	PURPOSE	SOURCE CODE	PREV. STATEMENT EXPIRATION DATE						
APR. A. DATE	INS.	INS.	INS.	INS.	INS.	INS.	INS.	INS.	INS.
BORROWER'S LAST NAME	FIRST NAME	INITIALS	DATE OF BIRTH	STATE	ZIP CODE	PHONE	REL.	W/C	
NET ADDRESS	CITY	STATE	ZIP CODE	PHONE	REL.	W/C			
CO-BORROWER LAST NAME	FIRST NAME	INITIALS	DATE OF BIRTH	STATE	ZIP CODE	PHONE	REL.	W/C	
NET ADDRESS	CITY	STATE	ZIP CODE	PHONE	REL.	W/C			
ANNUAL PERCENTAGE RATE									
1.13 RING PER BLS. PREM.	1.14 DISABILITY INS. PREM.	1.15 DUES CREDIT LIFE INS. PREM.	1.16 LEVEL CREDIT LIFE INS. PREM.	1.17 JOINT CREDIT LIFE INS. & SPOUSE	1.18 TOTAL INS. PREM.				
1.19 LATE FEE	1.20 INTEREST	1.21 PERSONAL ACCOUNT	1.22 RENEWAL BALANCE	1.23 PREVIOUS CARD	1.24 PREVIOUS INFORMATION	1.25 AUTO TITLE FEE	1.26 OFFICIAL FEES	1.27 TOTAL FEES	
1.28 INTEREST REPUNG	1.29 INS. PER BLS. PREM.	1.30 DUES CREDIT LIFE INS. PREM.	1.31 LEVEL CREDIT LIFE INS. PREM.	1.32 JOINT CREDIT LIFE INS. & SPOUSE	1.33 TOTAL INS. PREM.	1.34 PAYOFF BALANCE DUE ON PREVIOUS ACCOUNT	1.35 NET CASH ADVANCED		
SCHEDULE OF PAYMENTS						1.36 FIRST DUE DATE	1.37 MATURITY DATE		
EMPLOYER	OCCUPATION	YRS. IN IND.	MO. SALARY	PAY DAY	BUS. PHONE				
PL-56 EMPLOYER									
TYPE OF CREDIT SOURCE/AMOUNT	ORIGINAL AMOUNT OF MORT.	AMT. PRE BLS. COVERAGE							
						7. (BOX 7 LESS BOXES 4, 5, & 6)			
						LOAN DISTRIBUTION (LESS CHECKS TO BA AMOUNT)			
						# OF NO. BY AMOUNT BY TO BORROWER			
						TOTAL OF CHECKS MUST EQUAL BOX 7			

457  
2. U.S. Life (Indd) (104) A

I (we) hereby authorize the disbursement of the proceeds of the loan as above set forth and acknowledge receipt of the amount shown as "Check to Borrower".

Borrower

Borrower

Initial Decision

LENDER SECURED PARTY

MR  MS  MA  ME  MFS  MFA  MFE  MFA

BORROWER'S LAST NAME FIRST NAME MIDDLE INITIAL SPOUSE

STREET ADDRESS CITY STATE ZIP CODE

CO MASTER LAST NAME FIRST NAME MIDDLE INITIAL

STREET ADDRESS CITY STATE ZIP CODE

ANNUAL PERCENTAGE RATE

AMOUNT FINANCED

FINANCE CHARGE

3. (BOX 1 LESS BOX 2)

4. THE AMOUNTS SET FORTH HEREIN FOR FINANCE CHARGE AND TOTAL OF PAYMENTS ARE THE AMOUNTS THEREOF WHICH BORROWER WILL PAY IF ALL PAYMENTS ON THIS LOAN ARE MADE AS SCHEDULED.

5. \*\* EXCEPT THE FINAL PAYMENT WILL BE ANY UNPAID PRINCIPAL AND ACCRUED INTEREST.

6.

7. (BOX 3 LESS BOXES 4, 5 & 6)

LOAN DISTRIBUTION

LESS CHECKS TO

AMOUNT TO

DATE NO AMOUNT TO DATE

TOTAL OF CHECKS MUST EQUAL BOX 7

OPTIONAL INSURANCE NOTICE

ALL INSURANCE WILL BE FOR THE TERM OF THE CREDIT

If a premium or charge for HFG-FIRE insurance is shown above, the lender has requested the Borrower to insure the tangible personal property offered as security for the loan against loss, damage, or destruction. The Borrower has been advised that he may obtain such insurance from any person of his choice.

CREDIT LIFE OR DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS LOAN. If Borrower(s) desire Credit Life Insurance, either Single or Joint coverage, or Credit Life (either coverage) and Disability Insurance, they will sign the appropriate statement below. The charge(s) therefor will be shown above and the insurance covers the Borrower(s) named in the Certificate of Insurance delivered herewith.

Borrower(s) may, within 15 days from the date of loan, cancel the insurance by returning all certificates of insurance received in connection with this loan to the Lender and having all parties to the loan agree in writing to such cancellation. Upon cancellation, full refund of insurance premium(s) shown above will be made.

I/WE do not want credit life or disability insurance DATE I/WE desire credit life insurance I/WE desire credit life insurance and disability insurance

BORROWER BORROWER BORROWER

SPOUSE SPOUSE

JOINT LIFE INSURANCE ONLY

NOTE

In consideration of a loan made by Lender at its above office, in the amount stated above at Amount Financed, the undersigned jointly and severally promise to pay said Lender, its successors or assigns, said Amount Financed together with interest thereon computed from time to time on actual outstanding balances of the Amount Financed at the above stated ANNUAL PERCENTAGE RATE, which rate has been determined in accordance with interest charges as provided and authorized by the North Carolina Consumer Finance Act. The charge on any unpaid balance outstanding on this note after the Maturity Date shall be interest at 6% per annum.

Payment of said Amount Financed and interest thereon shall be made in consecutive monthly payments in the number and amounts set forth above under Schedule of Payments, beginning on the above stated First Due Date and thereafter on the same date of each succeeding month to and including the above stated Maturity Date, except that when any payment date falls on a Sunday or Holiday it shall be due on the next succeeding business day.

It is understood and agreed by the parties hereto that any charges set forth above for insurance premiums and fees will be included in the Amount Financed, and that the amounts set forth above for FINANCE CHARGE and Total of Payments are the amounts therefor that Borrower will pay if all scheduled payments hereon are paid when due.

-15d-

Initial Decision

91 F.T.C.

Every payment received hereon shall be applied first to interest to the extent that payment is received and the remainder thereof to the Amount Financed. In the event of making any scheduled or deferred payment hereon when due shall, at Lender's option and without notice or demand, render the entire unpaid balance of the Amount Financed and accrued interest at once due and payable.

**DEFAULT CHARGE:** If any payment hereon is not made when due, interest will continue to accrue on the unpaid Amount Financed at the above stated rate until such payment is made.

**PREPAYMENT:** If the unpaid balance of the Amount Financed of this loan is prepaid in full, by whatever means, before the Maturity Date hereof, interest at the above stated rate will be charged thereon only to the date of actual payment.

Cause of action shall arise hereon only with respect to the entire Amount Financed and accrued interest unpaid hereunder. The makers, sureties, endorsers and guarantors hereof severally waive demand for payment, notice of non-payment, protest and notice of protest of this note and consent to extensions of time of payment without notice.

The undersigned hereby jointly and severally authorize the Lender, its agents and assigns to communicate in any manner with any person, firm, corporation or governmental agency for any purpose in connection with the making or collection of the loan evidenced by this note and also waive the right to enforce any claim, action or cause of action which the undersigned may hereafter have for violation of right of privacy by reason of such communications. The construction, validity, and effect hereof shall be governed by the laws of North Carolina, as modified by the Federal Consumer Credit Protection Act. A statement of said loan has been delivered to the undersigned Debtor as required by Section 53-181, General Statutes of North Carolina.

**SECURITY:** If secured, this loan will be secured by a security interest in such of Borrower's personal property as is described in the below Security Agreement, or in a "Schedule A" listing attached thereto.

**SECURITY AGREEMENT**

To secure the payment of the above described loan and any future advances to the undersigned, Debtor(s) grant(s) a security interest to the Secured Party in the personal property described below or in a "Schedule A" listing attached hereto.

- All furniture, appliances and other household goods and chattels now owned and located in or about Debtor(s) residence at the address shown above.
- Motor Vehicle:

YEAR	MAKE	BODY TYPE	VIN/REG NO	YEAR	MAKE	BODY TYPE	VIN/REG NO
1				2			

- Other (describe):

and all accessions to, substitutions for, replacements of and proceeds from the described collateral.

If this Security Agreement includes a motor vehicle, Debtor(s) covenant(s) they will not remove it from the State of their present residence shown above and if this Security Agreement includes other personal property, Debtor(s) covenant(s) they will not remove such other personal property from their residence, without the written consent of the Secured Party.

If default shall occur in the payment of any debt secured hereby or any conditions of this Security Agreement, then the Secured Party may take immediate possession of the Collateral wherever found, with or without legal process, may require the Debtor(s) to assemble the Collateral and make it available to the Secured Party at a place reasonably convenient to both parties and may exercise any rights and remedies granted a Secured Party by the Uniform Commercial Code on default by the Debtor(s).

Borrower(s) hereby execute the above Note and, if applicable, the Security Agreement and acknowledge receipt of a copy of this document executed on the above "Date Of Loan".

Witness

\_\_\_\_\_  
(DEBTOR/BORROWER) SEAL

\_\_\_\_\_  
(DEBTOR/BORROWER) SEAL

\_\_\_\_\_  
(DEBTOR/BORROWER) SEAL

\_\_\_\_\_  
(DEBTOR/BORROWER) SEAL

**RECEIPT - PREVIOUS ACCOUNT**

Borrower(s) hereby tender payment in full by renewal of the previous account identified above and acknowledge receipt by credit to said account of the unearned finance charge and all insurance premium refunds.

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

SEE OTHER SIDE FOR IMPORTANT INFORMATION

Initial Decision

Agreed rate of Charge	{	3% per month on that part of the unpaid principal balance not exceeding \$300 and 1½% per month on that part of the unpaid principal balance in excess of \$300, but not exceeding \$1500, provided however, that after maturity the rate shall be reduced to 6% simple interest per annum on any balance remaining unpaid.
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