

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 reports¹ and consumer investigative reports.² 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

¹ "(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).

² "(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,³ 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

³ 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 companies⁴ 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).

⁴ 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 customers⁵ (CX 1445B).

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

15. During the period from March 1971 to May 1974, respondent maintained files containing information concerning approximately 45 million persons⁸ (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.).⁹

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

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

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

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

⁹ 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).¹⁰ 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 interviewed¹¹ (Stansbury 6747). The basic life report could be handled at either the applicant's business or neighborhood location or at both (Stansbury 6748).¹² Time coverage¹³ 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).¹⁴

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

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

¹¹ An employment source would then be sufficient to complete the report.

¹² 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).

¹³ 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).

¹⁴ 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).¹⁵

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

¹⁵ 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).¹⁶

(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

¹⁶ 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.¹⁷ 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).

¹⁷ 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, 1976,¹⁸ 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 rate¹⁹ (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"²⁰ when the investigation was conducted at one location, to multiple fee and hourly rates²¹ and flat rate reports²² (RX 328A; Knautz 6878-81). [20]

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

¹⁹ See page 18, for definition of "personnel rate."

²⁰ 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).

²¹ 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.)

²² 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 thereof²³ (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.)	

²³ 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).²⁴

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.²⁵ 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

²⁴ 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).

²⁵ 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).

