

Complaint

IN THE MATTER OF

GUARANTEE RESERVE LIFE INSURANCE COMPANY OF
HAMMOND ET AL.

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

Docket 6243. Complaint, Oct. 14, 1954—Decision, July 23, 1962

Order dismissing without prejudice—the evidence relating to practices too remote in point of time to support the recommended order—complaint charging a Hammond, Ind., insurance company with false advertising.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (U.S.C., Title 15, Secs. 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Guarantee Reserve Life Insurance Company of Hammond, a corporation, sometimes hereinafter referred to as respondent corporation, and Ben Jaffe, Jerome F. Kutak and Eugene Jaffe, individually and as officers of respondent corporation, sometimes hereinafter referred to as individual respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Guarantee Reserve Life Insurance Company of Hammond is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 128 State Street, Hammond, Ind.

PAR. 2. Respondents Ben Jaffe, Jerome F. Kutak and Eugene Jaffe are President, Vice President and Secretary, respectively, of the respondent corporation and as such direct, dominate and control the acts and practices of respondent corporation at all times herein mentioned. The business address of each of the aforesaid individual respondents is 128 State Street, Hammond, Ind.

PAR. 3. Respondents are now, and for more than two years last past have been, engaged as insurers in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Indiana,

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in which states the business of insurance is not regulated by state law to the extent of regulating the practices of respondents alleged in this complaint to be illegal. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondents, during the two years last past have issued a variety of policies providing indemnification for losses resulting from sickness or accident including those designated by it as Forms AS-2-51-1 (SD); A.S. 2-51-1; A.S. 197; H. 91-51; L-53 B-52; N-192-52A; L-53A-51; A-27-40-1; A-27-60-1; A-27-80-1 and LS-52-50.

The respondents are licensed as provided by the respective state laws to conduct an insurance business in the States of Indiana, Illinois, Kentucky, Ohio, Missouri, Virginia, West Virginia, Florida and Delaware. Respondents are not now, and for more than two years last past have not been, licensed as provided by the state law to conduct an insurance business in any state other than those last above mentioned.

Respondents solicit business by mail in the various States of the United States in addition to the State of Indiana. As a result thereof they have entered into insurance contracts with insureds located in many states in which they are not licensed to do business. Respondents' business practices are not regulated by any of those states as it is not subject to the jurisdiction of such states. In addition respondents enter into contracts of insurance through agents in each of the states in which they are licensed to conduct an insurance business.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing purchasers of said insurance policies, respondents have made, and are now making, numerous statements and representations concerning the benefits provided in said policies of insurance, by means of stuffers, circulars, folders, and other advertising material distributed throughout the various States of the United States. Typical, but not all inclusive of such statements and representations, are the following:

1. Age 10 to 79
No reduction in benefits or increase in premiums on account of age.
No termination age.
For people up to age 80
2. *The policy covers all Accidents and every sickness. We do not specify the various accidents or sickness covered by this policy for the simple reason that it covers all accidents and every sickness except insanity, venereal disease, childbirth and pregnancy. This is not a limited type policy.*
24-hour-a-day protection on or off the job
\$100 per month regular monthly income for every sickness and all accidents
* * * any accident, any confining sickness

3. \$100.00 a month if disabled by accident payable from the very first day of medical attention at the rate of \$25.00 per week for a maximum of twelve weeks if caused by a great many specified accidents such as while traveling on trains, or in private automobiles or as a pedestrian.
4. Non-confining sickness up to 12 months.
You do not have to be House Confined to collect full benefits.
5. Guarantee Plan also pays your family \$750.00 to \$20,000 for any accidental death * * * regardless where or how the accident occurs.
In addition to the benefits paid your family for accidental death, this Guarantee policy also pays *you* cash benefits for specific losses, as result of accident, of certain members of your body—such as hands, feet, eyes, etc.,—in sums ranging up to \$2,500.00.
In case of accident or sickness * * * for surgical fees up to \$650.00.
6. What will it mean to you to have \$100 a month for the rest of your life, if totally disabled by sickness or accident?
Pays up to \$100.00 per month income for the rest of your life * * * payable as long as you are disabled and cannot work because of any accident or any confining sickness.
7. Only 25¢ puts your policy in force for 1 full month.
For only 25¢—the full first month premium—you can put in force this new life time income sickness and accident policy that gives you cash insurance protection for all your life.

PAR. 5. Through the use of such statements and representations, and others of similar import and meaning not specifically set out herein, respondents represent and have represented, directly or by implication:

1. That the indemnification provided in all the said insurance policies may and will be continued, at the option of the insured, to the age of 80 so long as the insured continues to make premium payments within the time and in the amounts provided by the policy.
2. That the indemnification contained in said insurance policies provide for payment of cash benefits to the insured for loss occasioned by any sickness or accident suffered by the insured.
3. That said insurance policies provide indemnification in the form of cash benefits, for a maximum of twelve weeks when disabled while traveling in a train, private automobile or as a pedestrian.
4. That cash benefits are payable up to twelve months for loss of time due to total disability resulting from non-confining sickness.
5. That said insurance policies provide cash benefits up to \$20,000.00 for all accidental loss of life, up to \$2,500.00 for all accidental loss of limbs or sight and a maximum of \$650.00 for the surgical operations necessitated because of any one accident or sickness.
6. That said insurance policies provide for the monthly payment of cash benefits, in a specific amount, to the insured when totally disabled by any accident or confined by any sickness for the duration of such total disability up to a life time.

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7. That for the payment of twenty-five cents the respondents will issue an insurance policy to the insured which will provide indemnification for loss occasioned by accident or sickness from the date of its issuance for one month.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. The indemnification provided in all of said insurance policies may not be continued to the age of 80, or any other age, at the option of the insured by the timely and required payment of premiums, but, on the contrary, under the terms of certain of said insurance policies the respondents may refuse to accept renewal premiums and thus cancel the said insurance policies thereby terminating the indemnification provided therein. Further, said insurance policies and the indemnification provided therein are automatically cancelled upon the payment of any cash benefit for loss of limb or sight.

2. The indemnification contained in said insurance policies do not provide for the payment of cash benefits to the insured for loss occasioned by any sickness or accident suffered by the insured. On the contrary, said insurance policies do not cover loss by accident unless bodily injury is sustained, independently of all other causes solely through accidental means or independent of other causes through violent, external and accidental means. No loss resulting from sickness is indemnified if the cause of such sickness is traceable to a condition existing prior to or within 15 or 30 days of the effective date of the policy.

Said insurance policies further provide that no loss will be indemnified resulting from an accident occurring or sickness contracted outside the United States or Canada; or loss caused by venereal disease, syphilis, pregnancy, childbirth or complications therefrom; insanity or mental infirmity; or losses caused by tuberculosis, heart trouble and disease of the organs which are peculiar to women, such occurring within six months after the effective date of the policy; and losses resulting in sickness or disease excluded by specific provision of certain of the policies.

3. Said insurance policies do not provide indemnification in the form of cash benefits for a maximum of twelve weeks when disabled while traveling in a train, private automobile or as a pedestrian. On the contrary, the described cash benefits for twelve weeks will not be paid unless injury occurs, while riding as a fare-paying passenger in a train, or in a private automobile of the exclusive pleasure type and is not being used for a business purpose and by reason of it being wrecked or disabled; or as a pedestrian unless injury results from

actual contact with a moving conveyance. The said disability must require the regular treatment of a physician or surgeon and continuously and wholly prevent the insured from attending to any and every kind of business or labor.

4. None of respondents' said insurance policies provide for the payment of cash benefits up to six months for loss of time resulting from total disability if the insured is not continuously confined within doors. One policy (L-53A-51) provides such a payment up to three months; and the other (L-53B-52) provides a payment up to one month.

5. Said insurance policies do not provide cash benefits up to \$20,000.00 for all accidental loss of life, up to \$2,500.00 for all accidental loss of limbs or sight and up to \$650.00 for surgical operations necessitated because of any one accident or sickness. On the contrary, said insurance policies provide that the accidental loss of life must occur while the insured is a passenger of common carrier for passenger service, then only when such loss shall be caused by the disablement or wrecking of the car or steamship in which the insured is riding, or the accidental loss is within the insuring clause of said insurance policies and death occurs within sixty days from the date of accident and the insured has been wholly and continuously disabled since the date of such accident. None of said policies provide a maximum of \$20,000.00 for accidental loss of life.

The indemnification for accidental loss of limb or sight provides fixed cash benefits if the loss occurs within 30 days, 60 days or 100 days depending upon the time period defined in each of said policies. Further, the insured must have been wholly and continuously disabled from the date of the accident to the date of the loss.

Further, the said insurance policies providing cash benefits for surgical operations contain a "Schedule of Operations" in which operations are listed with the maximum amount payable for each scheduled operation performed but none of said operations so listed indemnify the insured to a maximum of \$650.00. The great majority of the listed operations in all of said insurance policies range from a maximum of \$5.00 to \$75.00 and it is provided in said insurance policies that only one cash benefit is payable for any one operation performed because of any one sickness or accident.

Under the insuring clause, the operations necessitated by many sicknesses and accidents are not included; also the said insurance policies specifically exclude the insured from being indemnified because of any operation performed on account of sickness unless the policy has been in effect at least six months.

6. Said insurance policies do not provide monthly indemnification, in a specific amount, to the insured when totally disabled by any accident or confined by any sickness for the duration of such total disability or confining sickness up to a life time. On the contrary, many disabling accidents and confining sicknesses which the insured may suffer or contract are excluded for the reason set out in subparagraph 2 herein of this paragraph 6.

The terms of said policies not only require that the insured be disabled in case of accident but provide that the disability must wholly and continuously prevent the insured from performing the duties of any occupation, and require the professional care and regular attendance of a physician or surgeon.

If the insured receives one of the cash benefits for the loss of limb or sight, no monthly indemnification will be paid to the insured. Loss resulting from sprain or lame back will receive the represented indemnification for only 30 days. Certain of said insurance policies reduce the specific amount of the indemnification when the insured reaches a stated age.

7. The respondent, upon the payment of twenty-five cents, will not issue an insurance policy to the insured providing indemnification for loss occasioned by accident or sickness from the date of its issuance. All of said insurance policies prevent the insured, by the terms thereof, from receiving indemnification because of loss from sickness until the policy has been in force at least fifteen or thirty days and excludes all losses from certain sicknesses until the policy has been in force at least six months.

PAR. 7. The use by the respondents of said false statements and representations with respect to its insurance policies has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations were and are true, and to induce such portions of the purchasing public to purchase a substantial number of said insurance policies by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. R. D. Young for the Commission.

Mr. A. Alvis Layne, Jr., and Mr. T. S. L. Perlman, of Pennsylvania Building, Washington, D.C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves some seven types or categories of alleged unfair and deceptive advertising practices of respondents with respect to respondent corporation's policies of health and accident insurance.¹

This initial decision finds generally that the material allegations of the complaint have been sustained by the evidence in the record and specifically finds that the respondent corporation in each of the seven said particulars alleged has violated the Federal Trade Commission Act, as that Act is affected and amended by Public Law 15, 79th Congress, since respondent corporation disseminated in interstate commerce a substantial amount of false, misleading, and deceptive advertising matter relating to its health and accident insurance policies. It is concluded therefrom that the Federal Trade Commission has jurisdiction over the subject matter of this proceeding which is clearly and substantially maintainable in the public interest. A cease and desist order appropriate to the findings made and conclusions drawn is issued herewith against the respondent corporation and also against the individual respondents for reasons hereinafter stated.

This proceeding was instituted October 14, 1954, by the filing of a complaint against respondent insurance corporation and the respondents Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe, individually and as officers of said corporation. After lawful service of process upon them, respondents filed their joint answer on December 22, 1954, within the time fixed therefor by the hearing examiner on respondents' motion for additional time in which to answer. Respondents also appeared by counsel at a pre-trial conference on December 6, 1954. On January 3, 1955, a hearing was held on respondents' objections to the jurisdiction of the Federal Trade Commission over the subject matter of the proceeding, which objections the hearing examiner overruled by an interlocutory order dated March 31, 1955. Respondents perfected an interlocutory appeal from this order, which the Commission denied on May 25, 1955.

On May 27, the examiner set the initial hearing for July 7. Thereafter, on June 7, the hearing examiner issued a subpoena duces tecum

¹ Unless the context indicates otherwise, the terms "health and accident insurance" or "health and accident insurance policies" or like terms, as used herein, include and mean respondent corporation's personal accident, health, sickness, medical, surgical, hospitalization and income protection insurance or policies. Respondent corporation's life insurance business and its group health and accident insurance policies are not involved herein. Certain policies such as its "family polio" policies which are involved herein are in fact individual policies written on the family head and covering family members as well. They are not true group insurance as authorized and recognized by the statutes of the several States.

directed to the respondent Ben Jaffe as president of respondent corporation, which subpoena was duly served on June 9. On June 20, respondents filed a motion to limit or quash said subpoena with a supporting memorandum and affidavit, and on June 29 also filed a motion for a statement limiting and clarifying issues, to both of which motions Commission's counsel made separate answers. By separate orders on July 1, the examiner denied each of said motions. The initial hearing, however, proceeded on July 7 and 8 as theretofore ordered. By agreement of counsel, respondent Jerome F. Kutak, vice president, was substituted for respondent president Ben Jaffe, and during the hearing, Kutak having failed and refused to produce some of the subpoenaed documents, the examiner ordered such documents produced. Respondents' appeal from such order was denied by the Commission on September 9. The hearing meanwhile was necessarily recessed until September 12, 1955. Prior to said hearing of September 12, the examiner issued subpoenas duces tecum for Richard D. Slott, respondent corporation's vice president and director of agents, and for William H. Youngerman, said respondent corporation's advertising agent, which respondents opposed on September 9 by a motion to limit or quash said subpoenas, which motion was orally denied on September 12 in the course of the hearing and a further hearing ordered for November 17, which verbal order was later confirmed by written order dated October 24. An appeal from this order denying respondents' motion to limit or quash said subpoenas was denied by the Commission on October 28, 1955, except to clarify the subpoena duces tecum served upon Richard D. Slott and limit the documents to be produced by him to advertising which related only to respondents' health and accident insurance. As originally issued such subpoena inadvertently was broad enough to probably encompass respondents' life insurance advertising not in issue in this proceeding.

On November 17, further evidence was adduced by Commission's counsel, after which the Commission's case-in-chief was rested. Respondents' counsel then requested and were given until January 31, 1956, in which to file their proposed motion to dismiss the proceeding, together with their supporting brief, and reasonable time was also granted to Commission's counsel to answer the same. Meanwhile, on December 9, 1955, respondent filed a motion for specification of charges, and on January 5, 1956, a motion to suspend proceedings and to postpone the filing of respondents' motion to dismiss pending the conclusion of the Commission's Trade Practice Proceedings then pending to establish rules governing the advertising of health and accident insurance. Both of such motions were respectively denied by the ex-

aminer on January 17 and January 6, 1956. Respondents appealed to the Commission from the motion to suspend proceedings, which the Commission denied on February 15, 1956. Meanwhile, an extension of time to February 15 was granted to respondents in which to file their motion to dismiss the complaint and their supporting brief. Also on January 19, the examiner on his own motion, issued an order to show cause why paragraph 10 of respondents' answer should not be stricken as incompetent, irrelevant, and immaterial, to which respondents filed their showing of cause on February 10, 1956. On April 4, 1956, the examiner issued an order, for good legal reasons stated in said order, striking all of paragraph 10 of the respondents' answer.

Oral arguments having been set for March 26, 1956, upon respondents' motion to dismiss the complaint and Commission's counsel's answer thereto, the same were canceled and the matter taken under submission on the pleadings, records and briefs of counsel on March 2, 1956, after respondents' counsel had advised the hearing examiner they desired to waive such oral argument. On May 9, 1956, an order was entered denying respondents' said motion to dismiss the complaint. On May 25, hearing was ordered for July 2, whereat respondents could present their evidence in defense unless they should elect to stand upon the record and waive the presentation. This hearing was canceled on June 28, in view of respondents' election to offer no evidence in support of their answer and to rest the case on the record as then made, waiving further hearing. In due course thereafter, the parties submitted their respective proposed findings, conclusions, and order, upon which oral argument was heard September 24, 1956, and the case taken under submission upon the whole record. All hearings at which evidence was taken in this proceeding took place in Chicago, Illinois, while other hearings referred to were held in Washington, D.C.

The complaint alleges the corporate capacity of the respondent life insurance company and the official status of the individual respondents and that as officers of respondent corporation they direct, dominate, and control its acts and practices, which allegations are all admitted by the answer. As regards the statement of facts upon which the proceeding is premised, the complaint charges, in substance, that respondents, during two years preceding the filing of the complaint, had disseminated in interstate commerce, by means of advertisements consisting of stuffers, circulars, folders, and other advertising material, allegedly false, misleading, and deceptive statements and representations concerning the health and accident insurance policies issued by respondent corporation. Such statements and representations are grouped in the complaint into seven general

categories as hereinbefore stated. Respondent corporation in its answer denies each and all of said allegations of the complaint and further pleads that the business of the corporate respondent does not constitute "commerce" as defined in the Federal Trade Commission Act; that respondent corporation is not engaged in commerce; and that the business of said respondent is "regulated by state law" as provided in Public Law 15, 79th Congress, and, therefore, the Federal Trade Commission Act is not applicable to respondents nor to the business of respondent corporation. Respondents further, in paragraph 10 of their answer plead a matter which is, in substance, an estoppel against the Commission, which paragraph was stricken by the examiner as hereinbefore stated. The prayer of the answer is that the complaint be dismissed, first, on the ground that the Federal Trade Commission Act has no application to the business of respondents in question, and, in the alternative, that the complaint be dismissed and the matter referred to the Commission's Bureau of Consultation for handling and disposition under the procedures applicable to that Bureau. The answer does not pray for dismissal upon the merits, but inasmuch as the burden of proof under Section 7(c) of the Administrative Procedure Act is upon counsel for the Commission to establish the facts alleged in the complaint by a preponderance of the evidence, such omission by respondents in their prayer is not material.

The examiner, after hearing and observing the witnesses, has given full, careful, and impartial consideration to all of the many documentary exhibits received in the record, to all other evidence presented on the record, and to the fair and reasonable inferences arising therefrom, as well as to the facts stated in the complaint which are admitted by the answer. He has also given proper recognition to relevant matters of official notice as to which "any party shall on timely request be afforded an opportunity to show the contrary," as provided by Section 7(d) of the Administrative Procedure Act and Section 3.14(c) of the Commission's Rules of Practice for Adjudicative Proceedings. All arguments, contentions, and authorities presented by way of objections and motions or in oral arguments or written briefs have likewise been fully and fairly considered. Upon the whole record thus evaluated, weighed, and considered, it is found that the material allegations of the complaints are each and all fully and fairly established by the preponderance of the evidence, the examiner specifically finding as follows:

Respondent, Guarantee Reserve Life Insurance Company of Hammond, is, and was at all times herein referred to, a stock life in-

surance corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its home office and principal place of business located at 128 State Street, Hammond, Indiana. One of its vice presidents, Richard D. Slott, the company's agency director, and his staff, however, maintain their headquarters at 308 North Michigan Avenue, Chicago, Illinois, where agents are employed and trained and from which place the general agency business of the company is directed in the States wherein it is licensed.

At the time the complaint was filed and for many years prior thereto, the respondents Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe were, respectively, president, vice president and general counsel, and secretary of the respondent corporation, and as such directed, dominated, and controlled the acts and practices of respondent corporation from the home office thereof at Hammond, Indiana. These matters will be discussed in more detail subsequently herein.

The said corporate respondent, under its charter and license to do business in the State of Indiana as a stock legal reserve life insurance company, is, and at all times herein referred to, has been authorized to engage in the business of life insurance and also of health and accident insurance. During the year 1953 said respondent corporation was not only licensed to do business in the domiciliary State of Indiana but was also licensed to do business in the States of Illinois, Kentucky, Missouri, Ohio, Virginia, and West Virginia, and in the District of Columbia. During that year it ceased to do business in the District of Columbia as a licensed company. In 1954, respondent corporation was licensed in the same States plus five additional States, namely, Alabama, Delaware, Florida, Georgia, and Nebraska. Official notice is taken that since 1954 respondent has further been licensed in the States of Arkansas and Tennessee. Official notice is also taken that for many years the development of the respondent corporation's insurance business was primarily by direct mail solicitation.

Respondent Kutak testified that the company was developing its agency business and being licensed in the various states as rapidly as possible. The record shows (Exhibit 20-B) that "One half of the accident and health business is sold by direct mail, the other half is sold by agents." See also Exhibit 34, where the mail order business in this field is shown to have been 49.32 percent of the premium income in 1953. The record further shows (Exhibits 158 and 159) that in 1953 and 1954 the direct mail order business of respondent corporation in each of the states other than the domiciliary State

of Indiana was quite substantial. Of its entire business in such states the percentages thereof which were direct mail order business ranged from that in West Virginia which was approximately 88 percent and 80 percent, respectively, in 1953 and 1954, to that in Kentucky which was approximately 15 percent and 11 percent, respectively, in 1953 and 1954. In Indiana, to which state all the other mail order business was credited, the percentages of such business to the company's total business was about 67 percent in 1953 and about 55 percent in 1954.

The respondent corporation differs both from either a regular agency company or a purely direct mail insurer in that it not only carries on an agency operation in each of the states in which it is licensed but also does business by direct mail in all of the States in which it is not licensed, plus the District of Columbia. It also most uniquely does a direct mail order type of business in competition with its agents in the States where it is licensed. Respondent Kutak testified this was a cheaper operation to obtain "leads" for the company's agents in the licensed States than to procure business in other ways, and that after the direct mail business had been "seasoned" for two or three months on the company's books, the names of such policyholders were then turned over to the licensed agents in the respective states so that they could follow through and procure other business from such persons. The respondent corporation therefore is doing its mail order type of business by advertising and soliciting insurance in direct competition with its agents with no evidence to show that the agents receive any commissions from this competitive direct mail business, the agents only getting the "leads" to possible other business.

Respondents distributed various types of direct mail insurance advertising material in all of the 48 States and the District of Columbia. All of such material is prepared and largely distributed from Chicago, Illinois, by respondent corporation's advertising agent, William Youngerman, who testified under subpoena duces tecum. Respondents' magazine ads also originate in Chicago. Much of the advertising matter, however, is sent directly from the home office in Hammond, Indiana, by mail to listed prospective buyers of the company's insurance. Other types are distributed to its licensed agents in the several States for their use. In those States wherein it is licensed, the corporate respondent makes use of magazines, newspapers, and direct mail in advertising its policies and soliciting business as well as by various solicitation methods used by its agents.

There is evidence that the corporation also uses radio broadcasts but since these primarily related to its life insurance business and not to health and accident business and the complaint does not allege the use of such media, such matter is of no materiality here insofar as the jurisdiction of the Federal Trade Commission is concerned although it has substantial bearing on the general interstate character of respondent corporation's entire business operation as an insurance company, about which there is no real factual dispute. In other jurisdictions than those wherein the company is licensed and has licensed agents, all of its business is done by direct mail solicitation and order.

The health and accident business done by the respondent corporation is quite substantial. The evidence shows that it collected premiums for such business in 1953 from the six States in which it was then licensed, other than Indiana, in the following amounts: Illinois, \$554,429.33; Kentucky, \$307,089.47; Missouri, \$301,208.82; Ohio, \$400,100.72; Virginia, \$194,659.88, and West Virginia, \$84,191.65. In that same year the premiums collected by its direct mail order business in all of the other States of the United States were accountable to and reported as received in the corporation's domiciliary State of Indiana. Since its license was terminated during 1954 after a short period of licensed operation in the District of Columbia, the proceeds received from the business in said District of Columbia were also reported as received by the corporation in the State of Indiana. The total amount of premiums collected accountable to the State of Indiana in that year were \$2,681,659.93. In 1954, the company collected premiums for health and accident business from the eleven jurisdictions it was then licensed in other than Indiana in the following amounts: Alabama, \$2,969.78; Delaware, \$14,246.54; Florida, \$172,274.23; Georgia, \$24,082.93; Illinois, \$923,036.58; Kentucky, \$421,768.23; Missouri, \$437,139.73; Nebraska, \$2,753.23; Ohio, \$629,716.53; Virginia, \$250,275.31; West Virginia, \$55,905.84. In this year for all of the other States and the District of Columbia, in all of which jurisdictions respondent corporation was doing business by direct mail order, the premiums were accountable to Indiana, the domiciliary State, such net premiums totaling \$3,138,209.28. The total amount of health and accident business done by the corporation for the year 1953 was \$4,409,704.07, and for 1954, \$6,068,809.75. This business, of course, in these years was not all new business, and the stated figures include renewal premiums as well as premiums received from newly sold policies.

The exhibits which were received in evidence were all received as a part of the Commission's case-in-chief, and for brevity will be hereinafter referred to merely by their number or numbers as the case may be. Some 173 exhibits were actually received in evidence, most of which were respondent corporation's advertisements and policies of health and accident insurance. A few exhibits were in the nature of correspondence, claim files, or other matter not falling within the two general categories of advertisements and policies. Due to the strong resistance of respondents to the subpoenas duces tecum, the record had become somewhat confused by the reception in evidence of a considerable number of exhibits which were duplicates of earlier exhibits received in evidence. Upon the examiner's suggestion, respondents' counsel, on December 13, 1955, filed a motion to strike certain exhibits as duplicates of others. In due course the examiner sustained said motion in large part, and on May 8, 1956, ordered certain exhibits which were duplicates of other exhibits stricken but not physically stricken or deleted from the record, nor was any evidence pertaining to such exhibits stricken from the record. Despite all precautions, however, several duplicate exhibits were not stricken. Reference later made herein will illustrate.

At the time of the preliminary investigation of the Commission, formal request was made for the respondent corporation to submit certain organizational data and advertising material. (See Exhibit 69-A-C.) This letter of January 28, 1954, was in due course answered by respondent Kutak as vice president of the corporation. In his letter of April 13, 1954, he submitted a statement of organizational data as requested, "as well as a listing of *all* of our advertising materials with a statement of the methods in which it is used and the policy forms involved." (Exh. 20-A-D.) During the proceeding, however, counsel then supporting the complaint caused the said subpoenas to be issued to several of the officers of the corporation as well as to its advertising agent. After respondents had refused to comply with said subpoenas and their appeals from adverse rulings by the examiner had been denied by the Commission, as hereinbefore briefly referred to, there were finally produced a very substantial additional number of advertisements and policies which had not already been received by the Commission and received in evidence earlier in the course of the hearing.

The evidence in the case other than the documentary exhibits consisted of the testimony of the respondent Jerome F. Kutak, the corporation's vice president and general counsel, and its statistician Jack G. Boyd, its vice president and director of agents, Richard D. Slott,

and two advertising agents who were not officials of respondent corporation, Harold S. Schwartz and William Youngerman, all appearing under subpoenas duces tecum. Witness Schwartz, who prepared the magazine advertisements used by respondents, was the only witness so summoned who appeared and testified without first contesting his subpoena. Schwartz submitted his advertising copy to respondents, and it was approved by them before he placed it with the magazine publisher. The witness Youngerman, who is in the mail advertising business in Chicago, is more of a general advertising representative of respondents. He assisted in the preparation and dissemination of all their health and accident insurance advertisements sent out by mail. He received advertising copy from respondents prepared in Hammond, Indiana, wrote headlines and the like for it, and then resubmitted such matter to respondents in Hammond where respondent officials approved it. Youngerman had nothing to do with any newspaper or magazine advertising. The company officials approved all advertising promulgated by its agents.

The advertising of respondent corporation's health and accident policies also included a few newspaper advertisements, but almost entirely consisted of postal cards, brochures, and booklets which were distributed far and wide throughout the entire United States by mail, as well as advertisements soliciting direct dealings from prospective policyholders placed in a number of magazines of nationwide circulation. These publications, which included chiefly such types as thriller, sex, detective, and comic magazines appealing to an infinite number of various-class persons, ages, inclinations, and standards of education and culture, but not usually frequently read by those in the higher brackets of income and intelligence, were "Man to Man," "Sir," "Real Magazine," "Top Secret," "Real Detective," "Crime Detective," "Y," "Moose Magazine," "Private Lives," "Inside U.S.A.," "Police Files," "Police Dragnet Cases," "TV World Group," "Night and Day," "Complete Detective Magazine," "Amazing Detective Group," "Man's Magazine," "Hillman Women's Group," "Brief," "For Men Only," "Inside," "Picture Life," "Sensation," "Vital Detective," "Famous Police Cases," "Movie Annual," "TV Carnival," "TV Annual," "Motormen and Conductor and Motor Coach Operator," "Man Hunt Comic," "Tim Holt Comic," "Color Magazine," "Strange Medical Facts," "Now," and "Sport Life." The evidence shows that a majority of such magazines are distributed throughout the United States. The hearing examiner also takes official notice of the general interstate character of the business of the publisher, Hillman Periodicals, Inc. See *Hillman Periodicals, Inc., et al.* (1948), 44 F.T.C. 832,

affirmed *Hillman Periodicals, Inc. v. F.T.C.* (C.A. 2, 1949), 174 F. 2d 122. In 1953 respondent corporation received 949 responses from these magazine ads, which responses increased to 4,019 in 1954. Since these ads were not used until late 1953, but appeared more and more frequently in 1954 and 1955, the foregoing figures as to responses indicate increasing results to respondents from their increased advertising in this period. The volume of respondents' circulation of such matters during the years 1953 and 1954 was vast. Six exhibits which were advertisements produced in evidence by the witness Youngerman and which were disseminated by him on behalf of respondents were as follows: No. 114, 22,431,829; No. 115, 2,988,807; No. 116, 181,826; No. 117, 1,768; No. 118, 14,580; and No. 119, 1,452,614 (R. 459-469). Except for No. 116, which was mailed into Florida only, all of these exhibits were distributed throughout the United States in the total amount of 26,889,598 copies, added to which the said distribution of No. 116 into Florida makes a total of 27,071,424 total advertisements mailed directly by the witness Youngerman on behalf of respondents. He also, however, printed large numbers of other advertising pieces for respondents. Since the testimony of respondents fails to disclose that such pieces were not distributed, it is inferred that such a substantial investment in printed matter would not long remain in respondents' headquarters. The postal cards alone totaled some 16,156,196 pieces (R. 479-482). These must also be added to the previous figure. According to the witness Youngerman the printing cost from \$2.50 to \$3.00 per thousand for these post cards (R. 501-502). Their cost would exceed \$40,000 at the lowest figure. The respondents, therefore, mailed, or caused to be mailed or otherwise circulated throughout the United States within this two-year period a total of at least 43,237,620 pieces of advertising matter. It is beyond cavil that this constitutes a very substantial distribution of advertising in commerce. There were, of course, agents' "pitch sheets" in addition to the foregoing types of direct mail advertising.

It was claimed by the witnesses that it was impossible to determine the precise amounts of such direct mail matter which were distributed into the several jurisdictions of the United States because neither the respondent corporation nor Youngerman maintained any adequate record with respect thereto. Youngerman either purchased or rented general mailing lists from brokers, placing such names on envelopes containing advertising brochures or on postal cards including a separable return card to respondent corporation. He mailed such matter to the addressees as prospective purchasers of respondents' health and accident insurance. The respondents had a complete indifference as

to where its advertising material was disseminated. Kutak testified with respect to this tremendous distribution of advertising matter that the company had maintained no records whatsoever with respect to it and that Youngerman only kept a total of letters mailed by him, since he charged respondent corporation by that method. Insofar as the company was concerned, Kutak testified that as to where such material was mailed, "we didn't care," and that where the replies came from, i.e., the States from which they originated, "It was never of interest to us." It was agreed upon the record, however, that distribution of advertising by mail into each of the several States was substantial. It is inferred from this lack of record keeping and the said statements and attitude of respondent Kutak, speaking for all respondents, that they were only interested in getting business any place they could find it. Since about one-half of the business of the company is still solicited and obtained by mail, it is clear that the respondents' business not only was founded upon direct mail order business but up to the time of hearing it was still being largely maintained and developed thereby.

The material ultimate issue in dispute in this case is whether the respondents' advertising matter had the capacity and tendency to mislead and deceive the public to which such matter was addressed. Unfair competition is not charged in the complaint. It would serve no useful purpose in this initial decision to cite and discuss the multitude of cases which enunciate the principles of interpretation of advertising as compared to the commodity which it advertises. The whole principle is well epitomized in a recent decision, *Goodman v. F.T.C.* (C.A. 9, 1957), 244 F. 2d 584, where, after an extended review of the precedents, the Court said: "In sum, *capacity to deceive and not actual deception* is the criterion by which practices are tested under the Federal Trade Commission Act." With this general principle in mind and having also in consideration the elements of the public to whom respondents' mail advertising was addressed, the advertising matter and the statements made therein considered in their respective full contexts will now be analyzed and compared with the policies offered.

Respondents' counsel have in great detail discussed the various types of policies and related advertising involved in this proceeding. The respondent corporation solicited its business both by direct mail and through its agency division. The advertising material consisted of a number of types of direct mail pieces, other advertising pieces, newspaper and magazine advertising. Some of its direct mail pieces were used by or on behalf of its licensed agents in the States wherein

it was licensed. The so-called agent's "pitch sheets" were usually used in person-to-person solicitation. Since all of this advertising was forwarded in interstate commerce throughout the country either from Chicago, Illinois, or from Hammond, Indiana, distinctions made by counsel between the types of advertising used are not material in view of the broad basis of jurisdiction held to by the Commission in *The American Hospital and Life Insurance Company*, Docket No. 6237, and subsequent cases that its jurisdiction extends to any false, misleading, and deceptive advertising which passes between the States in interstate commerce.

During the period in question, 1953-1954, the respondent corporation had some 48 different health and accident policy forms for sale. Some 47 of these are in evidence herein. Respondents contend that their policy form AS 9-48 is not in evidence, but such contention is erroneous. This form appears three times in the record, as Exhibits 55-B-E, 57-C-F, and 62-B-E. Some 10 of these exhibits are accident and health policies; 11 are hospital and surgical policies; 10 are income policies; 2, medical expense policies; 2, hospital policies; 5, special accident policies; 4, safety drivers' corporation policies; and 4, polio policies. There are some 9 riders also in evidence. All of these policies except a few were approved by the State of Indiana and issued in that State. Respondent Kutak testified that any policy form approved by the State of Indiana would be issued through the mail to any person in any State except in the few cases where they were sent into a licensing State which had not approved that particular Indiana form. In such case the form approved in such licensing State would be sold by mail. (R. 440-442).

Paragraphs 4, 5, and 6 of the complaint refer to the seven categories of alleged misstatements, paragraph 4 setting out certain of the alleged statements and representations in each category, paragraph 5 stating what it is alleged they represent directly or by implication, and paragraph 6 stating the Commission's conclusions as to why such representations are false, misleading, and deceptive. The first category relates to representations importing and meaning that the policy or policies will be in effect at insured's option to any age or a certain age so long as he makes premium payments as provided by his policy or policies. The second category relates to the representations that the indemnifications contained in such policies provide for cash benefits to insured for losses occasioned by any sickness or accident suffered by insured. The third category relates to representations that said policies provide indemnification for a maximum of 12 weeks for any disablement occurring to the policyholder while traveling in a train or

private automobile or as a pedestrian. The fourth category relates to representations that cash benefits are payable up to 12 months for loss of time due to a nonconfining disability. The fifth category relates to representations that cash benefits are provided by said policies up to \$20,000 for all accidental loss of life, up to \$2,500 for all accidental loss of limbs or sight and up to a maximum of \$650 for surgical operations necessitated because of any one accident or sickness. The sixth category relates to representations that the policies provide for the monthly payment of specified cash benefits to insured for the duration of his life when he is totally disabled by any accident or confined by any sickness. The seventh category relates to representations that upon insured's payment of 25 cents respondents will issue an insurance policy to insured which will provide him with indemnification for losses occasioned by accident or sickness for one month from the date of such policy's issuance.

Respondents in their proposed findings and conclusions urge that the various forms of advertising applied to specific policies and not to each and all of the numerous types of policies issued by them. But the company does a mail order business. This business is done even in the States where it has licensed agents. As respondent Kutak testified any policy which is authorized to be issued by respondent corporation in its domiciliary State of Indiana can be and is sold by mail in all the non-licensing jurisdictions. It is, therefore, apparent that the technical claims of respondents endeavoring to tie each advertising piece to one or a few of its many types of health and accident policies neglects the broad picture presented by respondents offering and selling by mail any and all of the policies approved in Indiana at large throughout the land. This distribution includes direct mail sent into the thirteen States other than the domiciliary State of Indiana in which respondent corporation is actually licensed. It is from the "leads" obtained from this mail order business and after the policyholder has been "seasoned" for two or three months, according to Kutak, that the company's licensed agents in the several licensing States are given such names as "leads" and then turned loose to solicit other and additional business for respondents from such already insured persons by direct contact or otherwise. In substance, the mail order business is the very heart of respondent's entire operations, and it is quite evident from the figures hereinbefore quoted that the company's growth most probably would have been far less impressive and much slower had it confined its selling operations entirely to the orthodox agency methods of obtaining business only in licensing States, which methods are generally employed by companies which Kutak

in a published article hereinafter referred to called "more 'respectable' " than mail order insurance concerns. Therefore, in considering each of the several categories of alleged false, misleading, and deceptive advertising, there must be considered the direct mail circulars and their accompanying application forms, the magazine ads which are substantially identical therewith, and the direct mailing post cards used by respondents. These were the means upon which all the business obtained by respondents has been based, and they are of prime importance in determining the probable effect of any language used in agent's "pitch sheets."

Respondents' counsel have approached the problem created by each of the advertising pieces in evidence by a close, technical, analytical comparison of each with the policy or policies it is claimed the same specifically refers to. Perhaps the exaggerated and misleading statements contained in respondents' advertising would not deceive astute and experienced lawyers or persons well acquainted with the health and accident insurance business, but the law does not call for legalistic hairsplitting. Respondents' advertising must be considered from the standpoint of its capacity and tendency to deceive the less learned and experienced members of the public to whom such advertising may appeal, many millions of whom respondents have each year utilized the mails to reach and influence. The claim files in evidence herein, Exhibits 47 to 65, inclusive, well illustrate that the appeal of respondents' advertising is to people in the lower income brackets who are unable to buy more expensive insurance coverage and who are not well informed in regard to such matters. It is true that the allowance or disallowance of each of these particular claims in said files was strictly within the legal coverage and is not subject to criticism therefor. There is no specific evidence, of course, that any of these particular claimants were deceived by any particular piece of respondents' advertising. This, of course, is immaterial as actual deceit need not be shown, but in each of such claim files save one the policies which are involved were respondents' one dollar a month type of health, accident, and hospital insurance. This is the type with which the public has been beguiled by respondents' morbid "scare" advertising, such as Exhibits 1 and 114 through 118, inclusive. These ads pictorialize in many flashy contrasting colors the tragic occurrence of several kinds of horrible accidents or a drawn-faced bedridden patient suffering from illness. From all such impending injuries and ills, respondents solemnly assure succor, security, and salvation to the purchasers of their policies. Twenty-seven million pieces of this particular type of gruesome circular invaded American households through the mail in

1953 and 1954. Respondents do not claim that the continued flow of such matter into the mail has ever been stopped by them to this very day. Whatever technical objection might be made that the picturization on these advertising pieces clearly shows that the policy offered thereby is designated as "Form AS 9-48" is untenable. This language is in very obscure small print on the representation of such policy form as it appears in the ad. Public interest is not limited by such almost undecipherable print. These advertisements must be considered in the light of all the Indiana policies offered and sold by mail in interstate commerce which are induced by this advertising. While the States have enacted laws and adopted regulations prohibiting "small print" in insurance policies, they have not yet prevented the use of small print in advertising matter which seeks to limit the broad offers made therein.

To the experienced and knowing person, it might be evident that no policy selling at \$1.00, \$1.25, or \$1.50 per month, or any other low premium mail order policy made "available to almost everyone," as respondents' magazine ads clearly state (Exhibit 24-E-F), could possibly be offered individually to all classes and ages and both sexes on a sound underwriting basis if its coverage were broader and less restricted than respondents' policies, but the ordinary unsuspecting member of the public would not know that. It is clear that the claimants did not. The occupations of these people were, respectively, housewives and a number of varied gainful pursuits, such as shipping foremen, auto mechanics, car blocker, post office foreman, rug sorter, mason tender and carpenter, hospital attendant and cottage court manager. Several claimants were aged and retired persons. They were persons of small income which ranged from \$400 per month to \$160 so far as the employed persons were concerned. The strict limitations and many exceptions contained in the respondents' very limited policies are well illustrated by some of the claim settlements shown by these files. In Exhibit A, the claimant incurred a total of \$365 in doctor and hospital bills and received \$8.66; in Exhibit 47, the claimant was paid \$9.16 against his doctor bill of \$75; in Exhibit 51, claimant's medical and x-ray bills for a broken wrist amounted to \$94, and she received \$26.33; in Exhibit 55, a housewife hospitalized for about a week for the extraction of a ureteral stone received \$2.66; in Exhibit 57, claimant was struck in the eye by a subordinate employee in the course of their employment and was treated in the hospital on 14 different days therefor, but his claim was denied under an exclusion limiting liability where disability results from an intentional act; in Exhibit 59, claimant incurred surgical and hospital bills

in the amount of \$330 for a cholecystectomy and lost considerable time from her work in a rug factory, but her claim was denied on the basis of her condition having been pre-existing; in Exhibit 60, claimant lost an eye due to a piece of wood striking it while sawing and received \$115.71, rather than \$500 for loss of the eye since this was not a travel accident; in Exhibit 61, the claimant who had been insured for ten years received \$10 for a disability confinement due to a prostatic condition at the age of 71 since this was a nonspecified illness under his policy and was reduced 50 percent after age 60, claimant being advised as to his surgical expenses that he did not "have the reimbursable type" of insurance; in Exhibit 62, a housewife who incurred hospital and surgical bills in the amount of \$634.57 for a gall bladder operation received \$32; and in Exhibit 64, a 54-year-old female hospital attendant suffered from infectious hepatitis, spent four days in the hospital under a doctor's care, and received \$10.66. Some of these claimants were advised that their policies were of the "limited" type at the time the claims were made.

Each of the seven general categories of alleged false, misleading, and deceptive statements and representations contained in respondents' advertising matter will now be considered separately. The language quoted in the complaint from respondents' advertising under each category is alleged to be "(t)ypical, but not all-inclusive," and the complaint also refers to "others of similar import and meaning not specifically set out herein." Under these allegations and the liberal rules of pleading which are applicable in administrative proceedings, the hearing examiner has, therefore, considered and made findings herein not only as to statements of respondents which are precisely quoted in the complaint but to all similar phraseology in any of the advertisements which are in evidence.

As to the first category with respect to the duration of the coverage of their policies, respondents made a number of representations in their advertising during the period in question. In the complaint the first of these is alleged as "Age 10 to 79." Respondents have raised the technical issue on this that there is no statement in the advertising. This is technically true and is somewhat illustrative of the general position taken by respondents as to each questioned statement in their advertising. It would unduly extend this initial decision to consider each of respondents' technical objections seriatim. But in direct mail circular, Exhibit 22, the statement is made, "Men, Women and Children, ages 10 to 79, who are in good health and are insurable risks * * * whether employed or not * * * may have this policy issued to them * * * just fill out the simple application blank and en-

close 25¢ in the self-addressed postage paid envelope * * * that is all you do * * * then we will issue your hospital policy and send it to you with a receipt putting it in force for one *full* month from the date your remittance is received." The omission of the letter "s" in the word "ages" imposes no insurmountable obstacle to construing the advertising in the public interest herein. Furthermore, the respondents' advertising is saturated with similar phraseology, such as "Age limits 1 day to 80 years," "Age limits 18 to 70," "Age limits 18 to 65," "issued to men and women 18 to 65, children 3 mos. to 17 years," "Ages 18 to 79," and "for people up to age 80." See Exhibits 1-C, 2-B, 3-B, 4-B, 5-B, 6-A, 7-C, 8-C, 21-D, 23-D, 23-F, 23-H, 24-C, 24-F, 26-A, 114-C, 115-C, 116-C, 117-C, 118-C, 119-C, 121-A, 130-A, 131-A, 132-A, 133-A, 134-A, 135-A, 137-A, 138-A, 139-A, 140-A, 142-B, 143-B, 147-B, 148-A, 149-A, 150-A, 151-B, 152-B, 153-B, 154-B, 155-B.

Under the first category, the complaint further quotes the language, "No reduction in benefits or increase in premiums on account of age," which appears in Exhibits 4-B, 5-B, 22, and 26-A; "No termination age," which appears in Exhibits 4-B, 131-A, 132-A, 133-A, 134-A, 135-A, 137-A, 139-A, 140-A, 143-B, 147-B, 150-A, 151-B, 152-B, 153-B, 154-B, and 155-B; and "For people up to age 80" in Exhibits 3-B and 160.

Respondents made the foregoing representations in newspapers and magazines ads, as well as in numerous circulars, post cards, and agent's "pitch sheets." By these representations circulated throughout the United States, respondents have represented and still represent that their health and accident policies are maintainable in force at insured's option by his timely payment of renewal premiums. Such representations are false, misleading, and deceptive because a substantial number of respondents' policies cannot be continued at insured's option by timely payment of renewal premiums but, on the contrary, may be terminated by respondent company at the end of any period for which the premium has been paid for any reason or for no reason at all. The respondents have failed to reveal the fact in any of their advertising that they have the legal power to terminate any of their policies which do not expressly provide for noncancellability. For example, Exhibits 109 and 110 are policies which are renewable only at the company's option and are policies approved in Indiana which are sold by mail in all nonlicensing jurisdictions as well as in most of the licensed jurisdictions.

As to the second category whereby respondents advertise that their policies provide for the payment of cash benefits for losses occasioned

by any sickness or accident, respondents caused the following representations to be disseminated in the District of Columbia and in every State during 1953 and 1954, which dissemination has not yet ceased so far as this record shows: "24-hour-a-day protection on or off the job" (Exhibits 2-B, 4-B, 5-B, 26-A, 121-A, 128-A, 131-A, 132-A, 133-A, 134-A, 135-A, 136-A, 137-A, 139-A, 140-A, 143-B, 146-B, 147-B, 151-B, 152-B, 153-B, 154-B, 155-B, 160, 162, and 163); "\$100 per month regular monthly income for every sickness and all accidents" (Exhibits 4-B, 5-B, 6-A, 26-A, 136-A, 143-B, 146-B, and 147-B); "* * * any accident, any confining sickness" (Exhibits 128-A, 157, 160, 162, and 163).

An examination of the policies reveals that these representations are false and misleading in that respondent company will not pay for losses under its policies for accidents unless the bodily injury sustained is through accidental means and independent of all other causes. Likewise, respondent company will not pay for loss resulting from sickness if the cause of such sickness is traceable to a condition existing prior to or within fifteen days of the effective date of the policy. Also, such policies provide that respondent company will not indemnify for loss resulting from an accident occurring or sickness contracted outside the United States or Canada, or a loss caused by venereal disease, syphilis, pregnancy, childbirth or complications therefrom; or insanity or mental infirmity; or losses caused by tuberculosis, heart trouble, and disease of the organs which are peculiar to women, such occurring within six months after the effective date of the policy; nor for losses resulting from sickness or disease excluded by specific provisions of certain of the policies. (For example, see Exhibits 14 A-D, 16 A-D, 91 A-D, 96 A-D, 97 A-D, and 99 A-D). Respondents likewise fail to reveal, in these advertising representations, the limitations in these respects in their policies of insurance.

As to the third category with respect to travel-accident disability benefits under the terms of their policies, respondents caused the following representation to be disseminated generally throughout the United States and the District of Columbia: "\$100.00 a month if disabled by accident payable from the very first day of medical attention at the rate of \$25.00 per week for a maximum of twelve weeks if caused by a great many specified accidents such as while traveling on trains, or in private automobiles, or as a pedestrian." (Exhibits 1-B, 7-B, 8-B, 24-E, 67-A, 116-C, 118-B and 119-B.)

By this representation the public is led to believe that respondent company provides indemnification in the form of cash benefits for a maximum of twelve weeks when the insured is disabled while travel-

ing on a train, in a private automobile, or as a pedestrian. This representation is false, misleading, and deceptive in that respondents' policies of insurance do not provide such protection, but on the contrary benefit will not be paid unless the injury occurs while riding in a private automobile of exclusive pleasure type and not being used for business purposes, and by reason of its being wrecked or disabled, or while riding as a fare-paying passenger on a train; or as a pedestrian, unless injury results from actual contact with a moving conveyance; also, such disability must require the regular treatment of a physician or surgeon and continuously and wholly prevent the insured from attending to any and every kind of business or labor. Without revealing these qualifications in connection with this representation, respondents' representations are false, misleading, and deceptive.

As to the fourth category with respect to nonconfining sickness benefits in their policies, respondents caused the following representation to be disseminated throughout the various States of the United States: "Non-confining sickness up to 12 months. You do not have to be House Confined to collect full benefits" (Exhibits 4-B, 121-A, and 128-A). This representation is false, misleading, and deceptive, in that an examination of respondents' insurance policies reveals that none of these policies provide for the payment of cash benefits up to six months for loss of time resulting from total disability if the insured is not continuously confined within doors. For example, Commission Exhibit 16 A-D provides such a payment up to three months and Commission Exhibit 14 A-D provides a payment up to one month.

As to the fifth category with respect to the amounts of coverage offered, respondents have caused to be disseminated in many States of the United States the following representations: "Guarantee Plan also pays your family \$750.00 to \$20,000 for any accidental death * * * regardless where or how the accident occurs" (Exhibits 122-A, 123-A, 126-A, 129-A, 130-A, 131-A, 132-A, 133-A, 134-A, 135-A, 137-A, 138-A, 139-A and 140-A); "In addition to the benefits paid your family for accidental death, this Guarantee policy also pays *you* cash benefits for specific losses, as result of accident, of certain members of your body—such as hands, feet, eyes, etc.,—in sums ranging up to \$2,500.00." (Exhibit 157 A-D); "In case of accident or sickness * * * for surgical fees up to \$650.00" (Exhibits 157 A-D, and similar language in Exhibits 122-A, 123-A, 126-A, 129-A, 130-A, 131-A, 132-A, 133-A, 134-A, 135-A, 137-A, 138-A, 139-A, and 140-A).

By these representations respondents have represented that their policies provide cash benefits up to \$20,000 for all accidental loss of life and up to \$2,500 for all accidental loss of limbs or sight, and to a

maximum of \$650 for surgical operations necessitated because of any one accident or sickness. These representations are false, misleading, and deceptive, in that the policies sold by respondent company do not provide the benefits listed above. On the contrary, they provide that accidental loss of life must occur while the insured is a passenger on a common carrier for passenger service, and then only when such loss is caused by the disablement or wrecking of the car or steamship in which the insured is riding, and that the accidental loss shall not be within the insuring clause of respondents' policies unless death occurs within sixty days from the date of accident and that the insured has been wholly and continuously disabled since the date of such accident. None of respondents' policies provide a maximum of \$20,000 for accidental loss of life. (See Exhibits 74-A-D, 77 A-D, 80 A-D, 103 A-D, 105 A-D, 109 A-D, 110 A-D, 111 A-D, 112 A-D, and 113 A-D.)

As to the sixth category with respect to total disability benefits paid under their policies, respondents caused to be disseminated generally throughout the United States and the District of Columbia the following representations: "What will it mean to you to have \$100 a month for the rest of your life, if totally disabled by sickness or accident?" (Exhibits 2-B, 5-B, 6-A, 26-A, 120-A, 121-A, 128-A, 136-A, 146-B, 147-B, 151-B, 152-B, 153-B, 154-B, and 155-B); "Pays up to \$100.00 per month income for the rest of your life * * * payable as long as you are disabled and cannot work because of any accident or any confining sickness" (Exhibits 3-B, 122-A, 123-A, 126-A, 129-A, 130-A, 131-A, 132-A, 133-A, 134-A, 135-A, 137-A, 138-A, 139-A, and 140-A).

By these representations respondents represented that their policies provide a monthly payment of cash benefits in a specific amount to an insured who is totally disabled by any accident, or confined by any sickness, for the duration of such total disability up to a lifetime. These representations are false and misleading because respondents' policies do not provide monthly indemnification in a specific amount to an insured who is totally disabled by any accident or confined by any sickness for the duration of such disability up to a lifetime. On the contrary, many disabling accidents and confining sicknesses are excluded from certain of respondents' policies, because such policies require that such disability must be because of an accident and must wholly and continuously prevent insured from performing the duties of any occupation, and further that professional care and regular attendance of a physician or surgeon is necessary. Also, certain of respondents' policies provide that if the insured receives one of the cash benefits for the loss of a limb or sight, no monthly indemnification will be paid. Also, if a loss results from sprain or lame back, the

insured will only receive the represented indemnification for thirty days. Also, many of respondents' policies provide that the specific amounts are reduced when the insured reaches a stated age (Exhibits 74 A-D, 77 A-D, 80 A-D, 103 A-D, 105 A-D, 109 A-D, 110 A-D, 111 A-D, 112 A-D, and 113 A-D).

As to the seventh category with respect to the representation that for the payment of 25¢ full coverage is offered for one month in their policies, respondents have caused to be disseminated generally throughout the United States the following representations: "Only 25¢ puts your policy in force for 1 full month" (Exhibits 1-A, 7-A, 8-A, 24-C, 25-A, 115-E, 116-A, 118-F, and 119-A); "For only 25¢—the full first month premium—you can put in force this new life time income sickness and accident policy that gives you cash insurance protection for all your life" (Exhibits 24-E, 24-F, 67-A and 67-B).

By these representations respondents represent that for 25¢ they will issue an insurance policy to a person which will provide indemnification for loss occasioned by accident or sickness from the date of its issuance over a one-month period. This representation is false and misleading in view of the fact that all of respondents' policies prevent the insured, by the very terms thereof, from receiving indemnification because of loss from sickness until the policy has been in force at least fifteen or thirty days, and exclude all losses from certain sicknesses until the policies have been in force at least six months and entirely exclude loss due to certain types of illness. (Also most of respondents' policies are cancellable at the company's option as already stated.)

From the evidence it is found that respondents are now, and for many years last past, have been engaged as insurers in the business of insurance in commerce as "commerce" is defined in the Federal Trade Commission Act and as the "business of insurance" is used in Public Law 15. The respondents have entered into numerous insurance contracts with various insureds in all of the jurisdictions of the United States other than the State of Indiana. In most of these States, respondents' business of insurance is not, and for constitutional reasons that part of the business which is interstate commerce cannot be regulated by State law. Respondents' insurance business constitutes a substantial course of trade in commerce between and among the several States of the United States and the District of Columbia. By direct mail order the respondent company has advertised its policies at large to the public, the public in turn has sent in applications and money for such policies by mail, and in return the company has mailed to them the policies they purchased. It subsequently carries

on by mail a series of notices and receipts to insureds relating to their renewal premium payments and accepts premiums mailed to it, this being done throughout the United States. The renewal of term insurance in this manner constitutes trade in commerce to the same extent as the original sale of such insurance, and, still further, establishes the substantiality of respondents' business. But such renewal business is not herein considered, however, with reference to the issues of alleged false, misleading, and deceptive advertising in this proceeding. Respondents also continue to bombard such policyholders by further mail advertisements, as well as to direct their agents to see such policyholders personally and to sell them further insurance in such States as respondent corporation is then currently licensed. The evidence already herein recited in considerable detail demonstrates beyond question that the respondents for many years have been and still continue to deluge the public throughout the Nation with such advertising.

It is impossible within the confines of this initial decision to portray all of the deceptive features of respondents' advertising. It is so arranged as to always emphasize the benefits and disguise the limitations, conditions, restrictions, reductions, and the like. For one example, Exhibit 1-A advises that full explanation of benefits is contained on the inside, pages 1-B and 1-C. When these are read, however, the emphasis still continues upon the benefits, which are portrayed and emphasized in large print while the limitations are not clearly set forth in the small print following each emphasized statement. In the far left-hand lower corner of Exhibit 1-B, reference is made in smaller print to additional limitations as follows: "There are of course exceptions enumerated in the policy including miners, employees of common carriers, news companies, or government mail service while on duty, insanity, violations of criminal law, and half benefits after age 60." Anyone reading this who was a farmer or a factory mechanic, for example, would be led to believe such limitations had no application to him. Each and every piece of respondents' advertising is pregnant with attractive but purposely misleading phraseology tending to deceive the ordinary member of the public by virtue of its particular arrangement and the emphasis placed upon its benefits. Furthermore, there are a number of misleading statements not specifically charged in the complaint and, therefore, not considered here. One illustration is Exhibit 163, a newspaper ad in the *Olney (Ill.) Daily Mail*, misleading the residents of Richland County into believing that they are to be the beneficiaries of a "special county-wide program" because respondents "are pledged

to interview all residents of Richland County." A similar ad appealing to the residents of Clay County appears in Exhibit 162, published in the *Flora (Ill.) Daily News Record*.

Throughout this entire proceeding, respondents have vigorously objected to the jurisdiction of the Federal Trade Commission over the subject matter. It was raised in the answer, argued extensively during the course of the hearings, and renewed in respondents' proposed findings and conclusions. Respondents contentions were set forth in considerable detail and held to be based on untenable propositions of law in the interlocutory order issued on March 31, 1955, which the Commission sustained in denying respondents' appeal from said order. In such order dated May 25, 1955, the Commission, however, ruled, as did the examiner, that the matter could not be decided at that stage of the proceeding but could be properly determined only after all evidence in the case had been submitted and an initial decision issued. In said interlocutory order of March 31, 1955, the examiner by reference made his lengthy interlocutory order of the same date issued in Docket No. 6247, *Life Insurance Company of America, et al.*, a part of said order. It is unnecessary to discuss the basis of the Commission's jurisdiction as the Commission itself, since the entry of the interlocutory order in the proceeding at bar has clearly pointed out the basis of its jurisdiction in several mail order insurance cases. See *Travelers Health Association*, Docket No. 6252, Opinion of the Commission and Opinion of Chairman Gwynne concurring in the result, December 20, 1956.² See also, *American Life and Accident Insurance Company*, Docket No. 6238, Opinion of the Commission and Concurring Opinion of Chairman Gwynne and Commissioner Tait, April 19, 1957; and *Automobile Owners Safety Insurance Company*, Docket No. 6239, Opinion of the Commission and Concurring Opinion of Commissioner Tait, April 26, 1957. In this last case, Chairman Gwynne dissented but wrote no opinion, apparently disagreeing upon the facts in the case. The Commission has also held repeatedly that it has jurisdiction over the false, misleading, and deceptive matter transmitted in interstate commerce between States in which respondent companies are fully licensed and have agents doing business for them in such states. See *American Hospital and Life Insurance Company*, Docket No. 6237; *National Casualty Company*, Docket No. 6311; *Craftsman Insurance Company*, Docket No. 6394; and *North American Accident Insurance Company*,

² For a very complete presentation of the basis of the Commission's jurisdiction, see the recently filed Brief of Respondent in the U.S. Court of Appeals for the Eighth Circuit in *Travelers Health Association v. FTC*, No. 15,743.

Docket No. 6456. These decisions adhered to by a majority of the Commission are all premised on its very broad jurisdictional doctrine first enunciated in *American Hospital and Life Insurance Company*. While the United States Courts of Appeals in each of two circuits have held that the Commission has no jurisdiction over such matters because the several States involved have enacted applicable legislation regulating such business, see *American Hospital and Life Insurance Company v. F.T.C.* (5 C.A., April 9, 1957), 243 F. 2d 719, and *National Casualty Company v. F.T.C.* (6 C.A., June 6, 1957), 245 F. 2d 883, they are not final decisions. These two decisions are currently pending in the United States Supreme Court on petitions for writ of certiorari filed September 6, 1957. In such status the decisions of the Commission are still the law which bind the parties to the instant proceeding and to which the hearing examiner must adhere. Several of the other foregoing cases are pending in various circuits on review proceedings and have not yet been decided by the respective courts.

Prior to the present proceeding, the respondents had acquiesced in the Federal Trade Commission's jurisdiction over its interstate advertising practices. Respondent Kutak, who speaks in this proceeding for the other individual respondents who did not appear, is quoted by the hearing examiner in the interlocutory order of March 31, 1955, as follows:

Jerome F. Kutak, one of the individual respondents herein, who has been the vice-president of the respondent corporation herein for some years, wrote a very candid and prophetic brochure in 1948 entitled "Legal and Economic Aspects of Mail Order Insurance." In reviewing this document, the Insurance Law Journal for August 1949 at page 593, insofar as material here, quotes him and says as follows:

"Mr. Kutak is vice-president of the Guarantee Reserve Life Insurance Company of Hammond, Indiana. In this booklet he reviews and analyzes mail order insurance * * *. At the end of the book he presents certain conclusions. "The trend in the field of insurance regulation is unmistakable. For years, the job lay with the State Insurance Commissioners, who on the whole performed a fairly satisfactory job, and were protected by what seemed insurmountable obstacles to federal regulation. There were constant and strong pressures to take that power away, or at least to concentrate it in one way or another in Washington * * *. The pressure was localized in the Post Office, which was empowered to act notwithstanding the seeming constitutional limitations of Congress. The Post Office probably exceeded its proper sphere of activity, although within its legal authority, and undertook to police an industry by fraud order, and finally by indictments. When constitutional limitations were hurdled, the F.T.C. was prepared to carry on in its customary fashion (and) to supervise and regulate the insurance industry along with all other types of business. The mail order industry anticipated this type of federal supervision, and stole a march on its more "respectable" brethren, by initiating codes of fair practice, and

cooperating with F.T.C. in the regulation of its business, which started repercussions likely to involve the entire industry. It now appears that this trend is not likely to stop."

During the progress of these proceedings, respondent Kutak, testifying vice Ben Jaffe, the company's president, stated several times that he, Kutak, was "the chief administrative officer" and "the senior executive officer of the home office" of respondent corporation. In view of his authority as spokesman for all respondents, the hearing examiner cannot reconcile the respondents' present position with respondent Kutak's said former frank admission as to the power of the Federal Trade Commission over all mail order insurers.

The positive need for Federal regulation of the interstate advertising practices of mail order insurance companies under Public Law 15 is most definitely and precisely illustrated and pointed up in this proceeding. Respondent Kutak testified (R. 292-3) that the company was licensed in the District of Columbia in 1953, but that it withdrew from the District "the following year, or at the end of that year," because of conferences held with the insurance commissioner (Superintendent) of the District of Columbia, "following which we decided as a matter of policy to withdraw." He testified that the Superintendent of Insurance of the District demanded that they cease their mail order business in the District, which demand the respondents decided not to comply with, and they did continue to do a mail order business in the District after the corporation no longer had a license therein. Kutak further testified that said Superintendent of Insurance had taken issue among other matters with certain statements made in the advertisements which were being sent into the District by mail, and that following the conference between the Commissioner and the Insurance Department attorneys on the one hand and respondents and their counsel on the other, "there were a number of reasons . . . which induced us [respondents] to withdraw." The Superintendent of the District of Columbia quite evidently possessed qualities of judgment and strength which prompted him to quickly eliminate improper practices in his jurisdiction. But thereafter the respondents continued to send direct mail order advertising of their health and accident insurance policies into the District of Columbia. This illustrates the utter impotency of any state jurisdiction other than the domiciliary one to prevent the flow of false, misleading and deceptive advertising into its territory. Only the intervention of the Federal Trade Commission can stop such practices where the domiciliary authorities neglect or fail to act vigorously against them. State statutes and regulations prohibiting such prac-

tices, however broad and far-reaching they may be, are worthless unless they are enforced.

Under the foregoing principles, the Federal Trade Commission has jurisdiction over the subject matter of this proceeding. While the regulatory laws of the State of Indiana are quite ample to permit the Department of Insurance of that State to regulate and control respondents' advertising, such statutes precisely limit their own force and effect to the confines of the State of Indiana. The "Unfair Competition and Practices Act" of Indiana, Acts 1947 ch. 12, now codified as §39-5301, to 39-5318, Burns Indiana Statutes Annotated, 1952 replacement, is Indiana's adoption of the "Model Code" or "Model Act" and recommended by the National Association of Insurance Commissioners in 1947. This Act was enacted by the Indiana Legislature in 1947 and repeatedly limits its own force and effect under basic constitutional principles to the State of Indiana by the phrase "in this State." (See §39-5301, 39-5305, 39-5308, 39-5311 and 39-5318.) It was the legislative intent "to regulate the trade practices in the business of insurance, in accordance with the intent of Congress as expressed" in Public Law 15 (Sec. 39-5301). In Section 39-5315 it is specifically provided:

For the purpose of maintaining the affirmative, active and definite administration of this Act, the commissioner with the approval of the governor may appoint [as many numerous additional employees with various particular skills] as may be found necessary to carry out the provisions of this Act.

As hereinbefore stated, there is nothing in the record to show that the Insurance Department of the State of Indiana has done anything to regulate and prevent the respondents from engaging in unfair and deceptive trade practices with relation to the dissemination of false, misleading, and deceptive advertising matter outside of the State of Indiana. What Indiana does within its boundaries is its business, but the Congressional debates, as well as the language of Public Law 15, indicate most clearly that it was never the intent of Congress to permit a vacuum to occur in the regulation of such matters merely because the State of origin of interstate practices has not regulated and prevented the same from passing into the stream of commerce. It is also clear that in the proceeding at bar the public interest is involved. Without again reciting the facts hereinbefore specifically found, even the respondents' own computations show that the amount of its direct mail business was very substantial in 1953 and 1954 and that the amounts of such business in each of the jurisdictions where respondent corporation was not licensed were substantial (R. 517-520). Exhibits 158 and 159 reveal that its total premiums from mail

order business were \$2,274,416.74 and \$2,311,386.22, respectively, in the two years, although, of course, not all of this was new business. The tremendous amount of advertising done by respondents, which has hereinbefore been found to be false, misleading, and deceptive, establishes that it is to the public interest for this Commission to require respondents to cease and desist from the future dissemination thereof in interstate commerce.

The individual respondents have admittedly directed, dominated, and controlled the acts and practices of respondent corporation at all times specifically mentioned in the complaint. (See Complaint, par. 2; Answer; par. 2). The respondent Ben Jaffe during this period was president of the corporation; the respondent Jerome F. Kutak was vice president and general counsel; and the respondent Eugene Jaffe was secretary. Respondents Ben Jaffe and Eugene Jaffe are not at all strangers to Federal Trade Commission proceedings. Official notice is taken of prior decisions of this Commission and of the courts involving each of these two respondents. In *Chicago Silk Company*, 22 F.T.C. 547 (April 27, 1936), the said respondent corporation and its officers, including its president Benjamin Jaffe, were ordered to cease and desist from offering for sale and selling in interstate commerce hosiery and lingerie through the use of punch cards or push cards which were mailed, shipped, or transported in interstate commerce as a means of selling and distributing such merchandise. On review proceedings in the U.S. Circuit Court of Appeals for the Seventh Circuit, *Chicago Silk Co. v. FTC*, 90 F. 2d 689, 690 (June 24, 1937, rehearing denied July 27, 1937), certiorari denied (1937), 302 U.S. 753, the Commission's order was affirmed by the court which unanimously found and held, *inter alia*:

That the plan involves a game of chance or the sale of a chance to procure petitioner's merchandise is clearly shown, and that the operation of the plan is contrary to established public policy of the United States and the varied States and contrary to the criminal statutes of many of the States is conceded. Petitioner's sales were increased from \$25,000 in 1932, the year it started in business, to \$150,000 in 1934, and even more in 1935. The Commission found, among other things, that petitioner is engaged in offering for sale and selling its products in interstate commerce in competition with other persons likewise engaged; that the punch-card system of obtaining the business is a species of gambling which many of its competitors do not use for the reason that the method is unethical, unfair, and in violation of law; and that said method injuriously affects the business of petitioner's competitors by diverting business from them. * * *

Again, in *Benjamin Jaffe, Individually and Trading As National Premium Company and King Sales Company*, 31 F.T.C. 835 (Sept.

5, 1940), the Commission found that the said respondent had used push or pull cards, and material instructing as to their use in selling pen and pencil sets, billfolds, silverware, blankets, and many other kinds of merchandise in interstate commerce, and issued another cease and desist order against respondent prohibiting the sale of merchandise by any means constituting a game of chance, gift enterprise or lottery scheme. And again, the Court of Appeals for the Seventh Circuit on review unanimously sustained the Commission's cease and desist order in *Benjamin Jaffe v. F.T.C.*, 123 F. 2d 814 (Nov. 14, 1941). The Court held:

Respondent asserts that every issue presented in the instant case was decided by this court in *Chicago Silk Co. v. Federal Trade Comm.*, 7 Cir., 90 F. 2d 689. Petitioner argues that this case is not res adjudicata of the case now before us. That, however, is not the question. The fact is that in the *Chicago Silk Company* case the order was directed against a corporation of which the petitioner in the instant case was president. Petitioner fails to point out any distinction between this case and that one except to argue that there must be a difference, or there would have been no occasion for respondent initiating the instant proceeding. What purpose respondent had in instituting the present action, when it had an order in the other case directed against the corporation and its officers, including the instant petitioner as president, is of no concern.

We are satisfied that every question raised by the petitioner in the instant case essential to the validity of the Commission's order was decided in the former case. Under such circumstances, a discussion of the points argued by petitioner would serve no useful purpose. The Commission's order in the instant case is affirmed, not because the former case is res adjudicata, but because the reasoning employed and conclusions reached are applicable and controlling here.

In *Eugene Russell Jaffe (alias E. J. Russell), trading as Sterling Sales Company and Craftsman Sales Company*, 35 F.T.C. 702 (Nov. 13, 1942), the Commission found that said respondent was engaged in competitive interstate sale of numerous articles of merchandise such as cameras, radios, comforters, bedspreads, etc., similar to those involved in the case of *Benjamin Jaffe, etc., supra*, which were also promoted and sold to the public by means of a game of chance, gift enterprise or lottery through the use of push cards and circulars explaining their use in the sale of such merchandise. On review proceedings in the Court of Appeals for the Seventh Circuit, in *Jaffe v. FTC*, 139 F. 2d 112 (Nov. 11, 1943), the petition of "Eugene Russell Jaffe, alias E. J. Russell, an individual doing business as Sterling Sales Company, and another," was denied and the order of the Commission affirmed. Certiorari was also denied in this case, 321 U.S. 791 (1944). The court in upholding the Commission's findings and order stated and held, *inter alia*:

The evidence does disclose that in the year 1941 more than five and one-half million push cards were distributed by petitioner throughout the United States

in the manner described, that is, through the mail. They went from Chicago, petitioner's home, to every state in the Union. The conclusion is inescapable that sales followed—otherwise petitioner's business would not have continued to thrive. Since the owner of the petitioner company testified that over fifty per cent of the company's sales of merchandise had been in connection with the push card business, the deduction is unavoidable that the merchandise was sold through and because of the lottery practices. In this connection, Mr. Jaffe, as a witness, admitted, "We built our entire business on this sales plan. We used these sales cards to sell our merchandise. The cards are so designed."

* * * * *

We held in the *Koolish* case, *Koolish v. Federal Trade Comm.*, 7 Cir., 129 F. 2d 64, and reiterate the ruling here, that supplying the means of conducting lotteries in the sale of merchandise is a practice contrary to the established public policy of the United States. It constitutes unfair competition in business and violates Sec. 5(a) of the Act in question. * * *

It is to be inferred that since each of these two said respondents Jaffe had been denied the right to use gambling devices in selling merchandise in interstate commerce, appeals from which were denied by the United States Supreme Court, they were looking for some exempt line of business in which they could safely engage and employ their capital and talents in the mail order business, one where the Federal Trade Commission would be precluded by law from interfering with their methods of promoting whatever commodities they might sell. At any rate they both got into the business of insurance. This was certainly an ideal place of refuge for them as long as the doctrine of *Paul v. Virginia*, 8 Wall. 168 (1868), and subsequent cases holding insurance not to be commerce were in effect and until insurance was held to be interstate commerce in *U.S. v. Southeastern Underwriters Association*, 322 U.S. 943 (1944). The passage of Public Law 15 by Congress in 1945, of course, prolonged their security for some years pending official execution and interpretation of that Law. Kutak, it is true, paid lip service for all respondents in 1948 by proclaiming the authority of the Federal Trade Commission over mail order insurance concerns by his said published article hereinbefore quoted from. But the insincerity of their 1948 position is thoroughly demonstrated by their continuous objection to the Commission's jurisdiction once the chips were down.

Their prior involvements with this Commission undoubtedly explains why neither of the Jaffes graced the hearings in this proceeding with their personal presence and why Kutak was the alter ego of each. Ben Jaffe's picture, however, together with that of Kutak, appears in Exhibits 29-B and -C. Kutak has been very closely and intimately associated with the Jaffes for some years in the insurance business now under consideration. Kutak is clearly not answerable for the legal

proceedings above recited involving only the Jaffes. Neither can an order be issued against him my name merely on the popular basis of "birds of a feather flock together," a doctrine now more elegantly enunciated in legal circles as "guilt by association." But the record is replete with evidence that Kutak, himself, has been a very enthusiastically active and largely profiting participant in the preparation and promulgation of the very advertising matter herein found unlawful. Kutak, testified, in substance, that all advertising matter was originated by the respondent officials and its precise forms prepared in conjunction with their advertising agents, that all such matters was always finally approved by such officials before it was published and disseminated in commerce (R. 188 and 199). This was corroborated by the evidence of the two advertising agents, Schwartz (R. 395) and Youngerman (R. 459-460). As already recited herein, Kutak also testified that he was "the chief administrative officer" and "the senior executive officer of the home office" (R. 298, 324).

All three of the respondents are, therefore, directly involved as actors in the origin, drafting, final approval, dissemination, and use of all of the false, misleading, and deceptive advertising involved in this case. The situation here is wholly unlike that in *Life Insurance Company of America*, Docket No. 6247, wherein the case was decided entirely upon two stipulations of facts, which recited no active, direct, personal participation by the officers in the advertising practices of that company. It was also pointed out in that decision that an insurance corporation, being subject to regulation by the insurance departments of the several States concerned, was somewhat different from the ordinary closely held corporation which was subject to no specific regulatory State authority. That general principle would be applicable here if the respondents Jaffe had not been repeatedly found guilty by the Commission and the courts of violating the Federal Trade Commission Act, and if it were not necessarily to be inferred from the record herein that the three dominating and controlling officers named individually in this proceeding would be free to capitalize and organize other insurance corporations in Indiana or elsewhere and to operate them just as they have operated the present respondent corporation. The history of this company indicates that the authority of the State of Indiana over the business of insurance is far from being adequately effective. While the orders of the Federal Trade Commission against corporations also run against their officers and agents and employees, that general type of order would not appear to be fully protective of the public interest here. It would bind the respondents only in their official capacities and connections with this

particular corporate respondent. These individual respondents are currently seeking to spread their agency business into other States than the 14 in which they are presently licensed.

There is no claim by respondents of any abandonment or cessation of the advertising practices herein involved. It must be inferred that they are persisting everywhere in the same unfair and deceptive advertising practices in interstate commerce as they did in 1953 and 1954 as herein found. Therefore, to make a fully effectual order herein, each of the three individual respondents has been specifically included by name as they were named in the complaint. Of course, the Federal Trade Commission has no present legal authority over the selection of the persons who may organize, control, and manage insurance companies. If States desire to commit any such great trusteeship to persons such as respondents that is a matter for such States to pass upon. The licensing States, insofar as the present authority of this Commission is concerned, may even authorize these respondents to sell insurance through push cards or other gambling devices if such acts are committed entirely intrastate. But this Commission has been clearly directed by Congress to prevent all unfair and deceptive practices of insurance companies in interstate commerce and of those who own, manage, or conduct them when the public interest so requires. That is what is basically involved in the proceeding at bar.

The importance of complete and effective regulation of the advertising used by insurance companies who sell health and accident insurance cannot be overstated. There is vast public interest involved in the health and accident insurance business and the respondents' share of such business in interstate commerce is sufficiently substantial to warrant a finding that the regulation thereof by this Commission is to the public interest. Significant facts and figures have been very recently stated by Honorable Edward T. Tait, one of the Federal Trade Commissioners, in an article entitled, "Integrity in Advertising," which has just appeared in *Best's Insurance News*, Fire & Casualty Edition, Volume 58, No. 5, September, 1957, pages 16 and 17. Among other things pertinent to this issue, he stated:

Health and accident insurance * * * limitations are not fully understood. The idea of securing protection against loss resulting from accident or sickness is relatively new. Some twenty years ago, the public spent less than \$150 million for this type of protection. This year, it will spend more than \$4 billion. * * *

* * * (T)here are various underwriting problems involved in a contract reaching a variety of sickness or accident risks; the contract must be more complex. The public is not fully educated concerning the contractual differences between health and accident coverage and other forms of insurance. Certainly

Initial Decision

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advertising must not misinform the reader as to the true nature of this protection. It must not exaggerate the scope of coverage nor hide limitations of the policies.

There being jurisdiction of the person of each of the respondents, upon the findings of fact hereinbefore made, the hearing examiner hereby makes the following conclusions of law:

1. The acts and practices of the respondents Guarantee Reserve Life Insurance Company of Hammond, a corporation, and Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe, individually and as officers and controlling stockholders of said corporation, hereinabove found to be false, misleading, and deceptive are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction over all of the said respondents' acts and practices which have been hereinabove found to be false, misleading and deceptive.

3. The public interest in the proceeding as to each and all of the respondents is clear, specific and substantial.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That the respondents Guarantee Reserve Life Insurance Company of Hammond, a corporation, and its officers, agents, representatives, and employees, and the respondents Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe, individually and as officers, directors or controlling stockholders of said corporation, directly or through any corporate or other device in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital, medical, surgical, or income protection insurance policy issued individually and not in the form of group insurance as defined by law, do forthwith cease and desist from representing directly or by implication:

1. That any such policy may be continued in effect by the insured as to him or as to him and any or all members of his family upon payment of stipulated premiums, indefinitely to the age of 80 years or to any other age, or for any stated period of time, unless full disclosure of any other provision or condition of termination as to the insured or any member of his family contained in the policy is made conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive;

2. That benefits payable under any such policy are payable in any and all cases of accident or sickness unless such is the fact;
3. That any such policy provides specified cash benefits for a maximum of 12 weeks or for any other period of time when insured is disabled as a result of an accident occurring to him while traveling in a train, by private automobile, or as a pedestrian unless such is the fact;
4. That any such policy provides cash benefits up to 12 months or for any other period of time for loss of time due to total disability for nonconfining sickness unless such is the fact;
5. That any such policy will pay in full or in any specified amount or up to any specified amount for any accidental loss of life, or for any accidental loss of limbs or sight, or for surgical, or other service incurred in connection with any such accidental loss unless such is the fact;
6. That any such policy provides monthly or other periodic indemnification in or up to any specific amount to insured when he is totally disabled by any accident or by any confining sickness for the duration of his life, for the duration of such total disability, or for any other length of time unless such is the fact; and
7. That for the payment of 25 cents the respondents will issue to the insured a policy which will provide him with lifetime protection for losses occasioned by any accident or sickness occurring within a month from the date of issuance of such policy unless such is the fact.

ORDER DISMISSING THE COMPLAINT

This matter having come before the Commission upon respondents' appeal from the hearing examiner's initial decision, and the Commission having suspended action thereon pending final judicial disposition of a related matter; and

The Commission now having reviewed the record in this matter and having determined that the evidence relates to practices too remote in point of time to support the order contained in the initial decision and that for this reason the complaint herein should be dismissed:

It is ordered, That respondents' appeal be, and it hereby is, granted.

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Commissioners Dixon and MacIntyre not participating.

Complaint

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IN THE MATTER OF

MINNESOTA COMMERCIAL MEN'S ASSOCIATION

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 6453. Complaint, Nov. 18, 1955—Decision, July 23, 1962*

Order dismissing without prejudice—the evidence relating to practices too remote in point of time to support the recommended order—complaint charging a Minneapolis, Minn., insurance company with false advertising.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (U.S.C. Title 15, Secs. 1011 to 1015, inclusive) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Minnesota Commercial Men's Association, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Minnesota Commercial Men's Association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 2550 Pillsbury Avenue, Minneapolis 4, Minn.

PAR. 2. Respondent is now, and for more than three years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Minnesota, in which States the business of insurance is not regulated by State law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondent during the three years last past has issued a variety of policies providing indemnification for various losses resulting from accident and sickness, including those designated by it as the Ideal