
IN THE MATTER OF
WESTERN UNION ASSURANCE COMPANY ALSO KNOWN AS
LINCOLN LIFE INSURANCE COMPANY ET AL.

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

Docket 8756. Complaint, Feb. 19, 1968—Decision, Nov. 27, 1968

Order requiring two affiliated Phoenix, Ariz., insurance companies to cease misrepresenting the terms of policies offered armed service personnel, failing to disclaim approval by the Federal Government, and issuing policies prior to any indication of acceptance by the insured.

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 (Title 15 U.S. Code, Sections 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 Western Union Assurance Company, a corporation, also known as Lincoln Life Insurance Company, Electro-Data Enterprises, Inc., a corporation and Jack P. Stewart, Gordon D. Rutledge and Mercier C. Willard, individually and as officers and directors of Western Union Assurance Company and/or Electro-Data Enterprises, Inc., and Elmo Matthews, individually, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a

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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 Western Union Assurance Company by amendment of its articles of incorporation on April 20, 1966, changed its corporate name to Lincoln Life Insurance Company. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business at 800 North Central Avenue, city of Phoenix, State of Arizona.

Respondent Electro-Data Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business at 1610 North 7th Street, city of Phoenix, State of Arizona.

Respondent Jack P. Stewart is an officer and director of Western Union Assurance Company and Electro-Data Enterprises, Inc., and also an agent for Lincoln Life Insurance Company. He assists in formulating, directing and controlling the acts and practices of corporate respondents named herein, including the acts and practices hereinafter set forth. His address is 86 East Country Club Drive, Phoenix, Arizona.

Respondent Gordon D. Rutledge is an officer and director of Western Union Assurance Company and was an officer and director of Electro-Data Enterprises, Inc. He assists in formulating, directing and controlling the acts and practices of corporate respondents named herein, including the acts and practices hereinafter set forth. His address is 698 South Catalina, Gilbert, Arizona.

Respondent Mercier C. Willard, Jr., is an officer and director of Electro-Data Enterprises, Inc. He assists in formulating, directing and controlling the acts and practices of said corporate respondent named herein, including the acts and practices hereinafter set forth. His address is 32 West 9th Place, Mesa, Arizona.

Respondent Elmo Matthews is an independent contractor for Western Union Assurance Company. He formulates, composes and disseminates materials in connection with the acts and practices of the said corporate respondent herein named as hereinafter set forth. His address is 3124 North 7th Avenue, Phoenix, Arizona.

PAR. 2. Respondents are now, and for some time last past have been, engaged as insurers and solicitors of insurance in the busi-

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ness of insurance in commerce as "commerce" is defined in the Federal Trade Commission Act. As part of said business in "commerce," said respondents Electro-Data Enterprises, Inc., and Elmo Matthews, individually, formulate and solicit insurance contracts for respondent Western Union Assurance Company, as insurer to insureds located in various States of the United States other than the State of Arizona in which States the business of insurance is not regulated by State law to the extent of regulating the practices of said respondents alleged in this complaint to be illegal.

PAR. 3. Respondents, in conducting the aforesaid business, have sent and transmitted, by means of the United States mails and by various other means letters, application forms, contracts, checks and other papers and documents of a commercial and solicitous nature from their place of business in the State of Arizona to prospective purchasers located in various other States of the United States and have thus maintained a substantial course of trade in said insurance contracts, policies and other papers and documents of a commercial and solicitous nature in commerce between and among the several States of the United States.

PAR. 4. Respondent Western Union Assurance Company, also known as Lincoln Life Insurance Company is licensed, as provided by State law, to conduct business only in the State of Arizona. Respondent Electro-Data Enterprises, Inc., is licensed, as provided by State law, to conduct business only in the State of Arizona. Said respondents are not now, and for some time last past, have not been licensed as provided by State law to conduct the business of insurance in any State other than the State designated in this paragraph.

PAR. 5. Respondents have solicited business by mail in various States of the United States in addition to the States named in Paragraph Four above. As a result thereof they solicited and entered into insurance contracts with insureds located in many States in which they are not licensed to do business. Said respondents' business practices are, therefore, not regulated by State law in any of those States in which said respondents are not licensed to do business as they are not subject to the jurisdiction of such States.

PAR. 6. In the course and conduct of said business, and for the purpose of inducing the purchase of said policies, said respondents have made, and are now continuing to make, numerous statements and representations concerning said policies by means of circular letters, policy forms, ownership certificates, and other

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advertising material disseminated throughout various States of the United States. Said materials are the same for both corporate respondents in that Electro-Data Enterprises, Inc., acting under an Agreement with Western Union Assurance Company, formulates and distributes these same materials for Western Union. The original mailing of said advertising materials consists of a transmittal window envelope with the name and address of the beneficiary as printed on the policy form plainly visible shown as follows:*

The envelope described and pictured above contains a "Dear Parent" form letter, what purports to be a valid complete insurance policy, an ownership certificate and a postage paid self-addressed envelope as shown below:**

The form letter is addressed to the parents or other relatives of newly inducted servicemen. The name of the serviceman appears as the "insured" on the face of the policy form, together with the name and address of the beneficiary, policy number, dispatch data, face amount of the policy, and signatures and titles of two company officers. The parents or other recipients fill out, sign and return the ownership certificate together with the initial premium payment.

The second mailing does not involve the use of a completed policy form but did include a transmittal and a return envelope, a "Dear Parent" form letter, ownership certificate with a statement or question pertaining to health, and a printed folder titled "Western Union Assurance Company's Servicemen Life Plan," shown as follows:**

The "Test" and the Elmo Matthews mailings contained the same basic materials as the first mailing but substituted in lieu of a completed policy form and ownership certificate, an Ownership Application card to be completed and returned requesting information including duty status and assignment of the insured serviceman. The two mailings differed in that the "Test" mailing included a printed folder describing Western Union's Serviceman Life Plan whereas the Matthews mailing did not, only the Matthews mailing contained a printed IBM machine mailing insert on which the name and the address of the beneficiary is typed and there is a slight variation in the form letter, all shown as follows:**

PAR. 7. By and through the use of these materials with aforementioned acts and practices, statements and representations

* Pictorial envelope omitted in printing.

** Pictorial mailing material omitted in printing.

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and others of a similar import, respondents have represented, directly or by implication:

1. That the insurance offered for sale by respondents was initiated by the serviceman named as the "insured" therein or was issued with his knowledge and consent.

2. That the insurance offered for sale by respondents will be issued regardless of the occupation, military status or duty assignment of the insured in peace or war.

3. That in connection with the sale or solicitation of its insurance policies the respondents received the names and/or addresses of proposed insureds and beneficiaries from or with the approval of the Armed Forces, Department of Defense or other government agencies.

PAR. 8. In truth and in fact:

1. The insurance offered for sale was not initiated by the serviceman named as the "insured" therein and it was not issued with his knowledge or consent.

2. Applications for issuance of policies and applications for reinstatement of lapsed policies were declined by respondents because of insured's military occupation, status and duty assignment.

3. The Armed Forces, Department of Defense or any governmental agency neither gave nor approved nor has given approval for the dissemination of the names and addresses of servicemen, parents of servicemen, or members of servicemen's families to any private insurance company or sales organization other than those selected under P-L 89-214, of which, respondents are not participating members.

Therefore, the statements and representations as set forth in Paragraphs Six and Seven hereof were, and are, false, misleading and deceptive.

PAR. 9. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of insurance of the same general kind and nature as that sold by the respondents.

PAR. 10. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the buying public into the erroneous and mistaken belief that said statements and representations were,

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and are, true and into the purchase of substantial quantities of respondents' policies by reason of said erroneous and mistaken belief.

PAR. 11. The aforementioned acts and practices of respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Thomas H. Link and *Mr. William J. Kelly* supporting the complaint.

No appearance for respondents.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER
MAY 9, 1968

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on February 19, 1968, issued its complaint charging the respondents with unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. The notice of the complaint set the hearing date for 10:00 a.m., April 8, 1968, at the Federal Trade Commission Offices, The 1101 Building, 11th Street and Pennsylvania Avenue, NW., Washington D.C.

Service of the complaint upon respondent Elmo Matthews, individually, was not obtained at least thirty (30) days in advance of the time of hearing set in the notice of the complaint as provided for in Section 3.11(4) of the Federal Trade Commission Rules of Practice, and the hearing examiner on April 2, 1968, entered an order which cancelled the said time and place of hearing and set a prehearing conference in lieu thereof for April 29, 1968.

A letter with attachments dated April 3, 1968, and addressed to the Office of the Secretary of the Federal Trade Commission by the individual respondent Elmo Matthews was received in said office on April 5, 1968, and stamped Treated as Answer. A further letter dated April 25, 1968, with relation to his letter of April 3, 1968, was received in said office from the individual respondent Elmo Matthews on April 29, 1968, and stamped Treated as a Motion. This latter letter asked that the complaint be dismissed against the individual respondent Elmo Matthews without prejudice. Complaint counsel on May 1, 1968, filed a reply to Mr. Matthews' letter of April 25, 1968. In the light of this reply the complaint is being dismissed as to said respondent,

individually, without prejudice.¹

All respondents were served with the order of the hearing examiner setting the prehearing conference for April 29, 1968, but none appeared at the said time and place. All respondents, other than Elmo Matthews, following service of the complaint have failed to file answer thereto as is required by Section 3.12(c) Default of the aforesaid Rules of Practice which provides that failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the complaint and to authorize the hearing examiner, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

FINDINGS OF FACT

1. Respondent Western Union Assurance Company by amendment of its articles of incorporation on April 20, 1966, changed its corporate name to Lincoln Life Insurance Company. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business at 800 North Central Avenue, city of Phoenix, State of Arizona.

Respondent Electro-Data Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business at 1610 North 7th Street, city of Phoenix, State of Arizona.

Respondent Jack P. Stewart is an officer and director of Western Union Assurance Company and Electro-Data Enterprises, Inc., and also an agent for Lincoln Life Insurance Company. He assists in formulating, directing and controlling the acts and practices of corporate respondents named herein, including the acts and practices hereinafter set forth. His address is 86 East Country Club Drive, Phoenix, Arizona.

¹ "REPLY TO THE MOTION OF RESPONDENT ELMO G. MATTHEWS DATED APRIL 25, 1968.

"COME NOW Complaint Counsel and say that:

"It appearing that Elmo G. Matthews stands in relation to all other respondents in this matter as an independent contractor, and that all other said respondents are in default in the premises, and that great public expense would be incurred in further adjudication of the complaint against Elmo G. Matthews, and that Elmo G. Matthews is not now engaged in the business of selling insurance by mail; That Complaint Counsel do not oppose any action that will cause the dismissal, *without prejudice*, of said Elmo G. Matthews as a party to this proceeding."

(Signatures)

Respondent Gordon D. Rutledge is an officer and director of Western Union Assurance Company and was an officer and director of Electro-Data Enterprises, Inc. He assists in formulating, directing and controlling the acts and practices of corporate respondents named herein, including the acts and practices hereinafter set forth. His address is 698 South Catalina, Gilbert, Arizona.

Respondent Mercier C. Willard, Jr., is an officer and director of Electro-Data Enterprises, Inc. He assists in formulating, directing and controlling the acts and practices of said corporate respondent named herein, including the acts and practices hereinafter set forth. His address is 32 West 9th Place, Mesa, Arizona.

Respondent Elmo Matthews is an independent contractor for Western Union Assurance Company. He formulates, composes and disseminates materials in connection with the acts and practices of the said corporate respondent herein named as hereinafter set forth. His address is 3124 North 7th Avenue, Phoenix, Arizona.

2. Respondents are now, and for some time last past have been, engaged as insurers and solicitors of insurance in the business of insurance in commerce as "commerce" is defined in the Federal Trade Commission Act. As part of said business in "commerce," said respondents Electro-Data Enterprises, Inc., and Elmo Matthews, individually, formulate and solicit insurance contracts for respondent Western Union Assurance Company, as insurer to insureds located in various States of the United States other than the State of Arizona in which States the business of insurance is not regulated by State law to the extent of regulating the practices of said respondents alleged in this complaint to be illegal.

3. Respondents, in conducting the aforesaid business, have sent and transmitted, by means of the United States mails and by various other means letters, application forms, contracts, checks and other papers and documents of a commercial and solicitous nature from their place of business in the State of Arizona to prospective purchasers located in various other States of the United States and have thus maintained a substantial course of trade in said insurance contracts, policies and other papers and documents of a commercial and solicitous nature in commerce between and among the several States of the United States.

4. Respondent Western Union Assurance Company, also known as Lincoln Life Insurance Company is licensed, as provided by

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State law, to conduct business only in the State of Arizona. Respondent Electro-Data Enterprises, Inc., is licensed, as provided by State law, to conduct business only in the State of Arizona. Said respondents are not now, and for some time last past, have not been licensed as provided by State law to conduct the business of insurance in any State other than the State designated in this paragraph.

5. Respondents have solicited business by mail in various States of the United States in addition to the States named in Paragraph 4 above. As a result thereof they solicited and entered into insurance contracts with insureds located in many States in which they are not licensed to do business. Said respondents' business practices are, therefore, not regulated by State law in any of those States in which said respondents are not licensed to do business as they are not subject to the jurisdiction of such States.

6. In the course and conduct of said business, and for the purpose of inducing the purchase of said policies, said respondents have made, and are now continuing to make, numerous statements and representations concerning said policies by means of circular letters, policy forms, ownership certificates, and other advertising material disseminated throughout various States of the United States. Said materials are the same for both corporate respondents in that Electro-Data Enterprises, Inc., acting under an Agreement with Western Union Assurance Company, formulates and distributes these same materials for Western Union. The original mailing of said advertising materials consists of a transmittal window envelope with the name and address of the beneficiary as printed on the policy form plainly visible shown as follows:*

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The form letter is addressed to the parents or other relatives of newly inducted servicemen. The name of the serviceman appears as the "insured" on the face of the policy form, together with the name and address of the beneficiary, policy number, dispatch data, face amount of the policy, and signatures and titles of two company officers. The parents or other recipients fill out, sign and return the ownership certificate, together with the initial premium payment.

* Pictorial envelope omitted in printing.

** Pictorial mailing materials omitted in printing.

The second mailing does not involve the use of a completed policy form but did include a transmittal and a return envelope, a "Dear Parent" form letter, ownership certificate with a statement or question pertaining to health, and a printed folder titled "Western Union Assurance Company's Servicemen Life Plan," shown as follows:**

The "Test" and the Elmo Matthews mailings contained the same basic materials as the first mailing but substituted in lieu of a completed policy form and ownership certificate, an Ownership Application card to be completed and returned requesting information including duty status and assignment of the insured serviceman. The two mailings differed in that the "Test" mailing included a printed folder describing Western Union's Serviceman Life Plan, whereas the Matthews mailing did not, only the Matthews mailing contained a printed IBM machine mailing insert on which the name and the address of the beneficiary is typed and there is a slight variation in the form letter, all shown as follows:**

7. By and through the use of these materials with aforementioned acts and practices, statements and representations and others of a similar import, respondents have represented, directly or by implication:

1. That the insurance offered for sale by respondents was initiated by the serviceman named as the "insured" therein or was issued with his knowledge and consent.

2. That the insurance offered for sale by respondents will be issued regardless of the occupation, military status or duty assignment of the insured in peace or war.

3. That in connection with the sale or solicitation of its insurance policies the respondents received the names and/or addresses of proposed insureds and beneficiaries from or with the approval of the Armed Forces, Department of Defense or other government agencies.

8. In truth and in fact:

1. The insurance offered for sale was not initiated by the serviceman named as the "insured" therein and it was not issued with his knowledge or consent.

2. Applications for issuance of policies and applications for reinstatement of lapsed policies were declined by respondents

** Pictorial mailing materials omitted in printing.

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because of insured's military occupation, status and duty assignment.

3. The Armed Forces, Department of Defense or any governmental agency neither gave nor approved nor has given approval for the dissemination of the names and addresses of servicemen, parents of servicemen, or members of servicemen's families to any private insurance company or sales organization other than those selected under P.L. 89-214, of which respondents are not participating members.

Therefore, the statements and representations as set forth in Paragraphs 6 and 7 hereof were, and are, false, misleading and deceptive.

9. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of insurance of the same general kind and nature as that sold by the respondents.

10. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the buying public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' policies by reason of said erroneous and mistaken belief.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents.

2. The complaint herein states a cause of action and the proceeding is in the public interest.

3. The aforesaid acts and practices of the respondents as found in the foregoing Findings of Fact were and are to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute, unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That respondents Western Union Assurance Company, a corporation, also known as Lincoln Life Insurance Company, and its officers, Electro-Data Enterprises, Inc., a corporation, and its officers, and Jack P. Stewart, Gordon D. Rutledge, Mercier C. Willard, Jr., individually and as officers and directors of

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Western Union Assurance Company and/or Electro-Data Enterprises, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any insurance policy or policies, in commerce, as "commerce" is defined in the Federal Trade Commission Act, except in those states where respondents are licensed and regulated by State law to conduct the business of insurance, do forthwith cease and desist from:

1. Using the expressions "No Military Restrictions," "No War Clause" or any other words or terms of similar import or meaning, or representing in any other manner that the insurance offered for sale by respondents will be issued regardless of the occupation, military status or duty assignment of the insured in peace or war.
2. Using any letter or other solicitation material in contacting members of the Armed Forces of the United States or their parents or other relatives, which does not reveal in a prominent place, in clear language and in type at least as large as the largest type used on said material; (a) that said insurance is being offered without the knowledge or consent of the serviceman who appears as the insured therein; and (b) that no Department or Agency of the Federal Government either gave or approved the dissemination of the names and/or addresses of any insured or beneficiary of the insured to the respondents.
3. Using any policy form or similar document, prior to the receipt by respondents of the required premium, which contains the name of the insured, designation of the beneficiary, policy number, or signature of any representative of respondents; or which contains any indicia of a policy issued with prior approval of the insured.
4. Representing, directly or by implication, that the insurance offered for sale by respondents has been issued with the knowledge or consent of, the serviceman who appears as the insured therein; or that any Department or Agency of the Federal Government either gave or approved the dissemination of the names and addresses of any insured or beneficiary of the insured to the respondents.
5. Misrepresenting in any manner the conditions or circumstances under which such insurance was initiated or issued.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Elmo Matthews, individually, without prejudice.

FINAL ORDER

The Commission having stayed the effective date of the initial decision of the hearing examiner by its order of May 31, 1968, so that service of said initial decision could be perfected as to all respondents, and

The Commission now being satisfied that all respondents were properly served with said initial decision on or before July 18, 1968, and

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner, shall, on the 27th day of November, 1968, become the decision of the Commission.

It is further ordered, That Western Union Assurance Company, a corporation, also known as Lincoln Life Insurance Company, and Electro-Data Enterprises, Inc., a corporation and Jack P. Stewart, Gordon D. Rutledge, and Mercier C. Willard, Jr., individually and as officers and directors of Western Union Assurance Company, and/or Electro-Data Enterprises, Inc., shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.
