

Complaint

93 F.T.C.

IN THE MATTER OF
INDIANA DENTAL ASSOCIATION, ET AL.

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

Docket C-2957. Complaint, March 14, 1979 — Decision, March 14, 1979

This consent order, among other things, requires an Indianapolis, Ind. dental association and fourteen component societies to cease establishing or engaging in any policy, act or practice that may induce their members to refuse to submit data requested by third-party payers for benefit determinations; compel third-party payers to alter provisions of health care benefits programs; influence members to render other than independent judgments; or restrict consumers and third-party payers in their choice of dentists and/or dental consultants. Respondents are further required to mail a copy of the complaint and order to each of their members, together with a letter advising them that they are free to choose their own course of action in dealing with dental health care insurance plans.

Appearances

For the Commission: *Larry E. Gray.*

For the respondents: *Baker & Daniels, J.P. Barney and J.R. Jenkins*, Indianapolis, Ind. and *P.C. Ward*, Washington, D.C., of counsel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. 41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. The following definition shall apply in this complaint: "Third-party payer" or "payer" means any entity that provides a program of reimbursement for dental health care services to employees or members of any business organization, and any person, such as an independent claims adjuster, who provides evaluative services in connection with any such reimbursement program.

PAR. 2. Respondent Indiana Dental Association ("IDA") is an Indiana corporation with its principal office at 402 Jefferson Building, One Virginia Ave., Indianapolis, Indiana. IDA has approxi-

mately 2000 members, all of whom are licensed to practice dentistry in Indiana. IDA charters, and is divided into, geographic component societies. Membership in a component society is a condition of membership in IDA. The respondents alleged in Paragraphs Three through Sixteen comprise all the component societies of IDA. The component societies designate representatives who constitute IDA's House of Delegates, which is the governing body of IDA.

PAR. 3. Respondent First District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Steven E. Dixon, 3700 Bellemeade Ave., Evansville, Indiana.

PAR. 4. Respondent Indianapolis District Dental Society, an Indiana corporation, is a component society of IDA with its principal office at the Illinois Building, 17 West Market St., Indianapolis, Indiana.

PAR. 5. Respondent Isaac Knapp Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Emory W. Bryan, Jr., 700 Indiana Bank Bldg., Ft. Wayne, Indiana.

PAR. 6. Respondent Western Indiana District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Robert H. Michaels, 3120 Wabash Ave., West Terre Haute, Indiana.

PAR. 7. Respondent Ben Hur Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Michael A. McDonald, 1606 North Lebanon, Lebanon, Indiana.

PAR. 8. Respondent East Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Paul B. Risk, 610 S. Tillotson Ave., Muncie, Indiana.

PAR. 9. Respondent Eastern Indiana Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. John P. Backmeyer, 2519 East Main St., Richmond, Indiana.

PAR. 10. Respondent Greene District Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Keith M. Broshears, 290 A St., Linton, Indiana.

PAR. 11. Respondent North Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Dennis M. Miller, 3608 Pleasant St., South Bend, Indiana.

PAR. 12. Respondent Northwest Dental Society, a corporation, is a

component society of IDA with its mailing address in care of Dr. Edward Young, 808 Madison St., LaPorte, Indiana.

PAR. 13. Respondent South Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Peter H. Leonard, 2739 Central Ave., Columbus, Indiana.

PAR. 14. Respondent South Eastern Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Elbert P. Combs, 411 Clifty Drive, Madison, Indiana.

PAR. 15. Respondent Wabash Valley Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. F. Wesley Peik, 3429 S. La Fontaine St., Kokomo, Indiana.

PAR. 16. Respondent West Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Lewis J. Urschel, 2204 Scott St., Lafayette, Indiana.

PAR. 17. Members of respondents are engaged in the business of providing dental health care services to patients for a fee and are paid for such services from the patients' personal funds and/or from funds provided under dental health care benefits programs. Except to the extent that competition has been restrained as herein alleged, members of respondents have been and are now in competition among themselves and with other dentists.

PAR. 18. Respondents are engaged in substantial part in representing the pecuniary interests of their members. By virtue of such activities, respondents are corporations organized for the profit of their members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 19. In 1976, total expenditures for dental health care services in the United States were approximately \$8.6 billion. The annual rate of expenditures in Indiana is at least \$150 million.

PAR. 20. In the course and conduct of their businesses, members of respondents:

(A) Receive substantial revenue from private third-party payers and from the Federal Government in payment for rendering dental health care services, which money flows across state lines;

(B) Receive and treat patients from states other than Indiana; and

(C) Utilize and prescribe substantial quantities of drugs, medicines, and other products which are shipped in interstate commerce,

as a result of which the acts and practices hereinbelow alleged are in

or affect commerce within the meaning of the Federal Trade Commission Act, and respondents are subject to the jurisdiction of the Federal Trade Commission.

PAR. 21. A substantial portion of the population of Indiana is covered by dental health care benefits programs administered by third-party payers. Many of such programs include provisions for determination of benefits in advance of treatment ("predetermination") and limitation of coverage to the least expensive adequate course of treatment and require that radiographs ("X-rays") be submitted to aid in benefit determinations. The purpose of such provisions is to contain the cost of dental care. Their efficient utilization requires cooperation from treating dentists.

PAR. 22. For many years past, respondents and their members have formed agreements and engaged in acts, practices, and methods of competition having the purpose or effect of eliminating, preventing, or hindering competition among dentists with respect to cooperation by dentists with dental health care benefits programs containing predetermination and least expensive adequate course of treatment provisions.

PAR. 23. In the course of the conduct alleged in Paragraph Twenty-Two, respondents have requested, urged, and organized their members to refuse to submit X-rays to third-party payers or otherwise to cooperate with such payers by, *inter alia*:

(A) Promulgating, adopting, publishing, and distributing to members "Principles for Determining the Acceptability of Plans for the Group Purchase of Dental Care," a "Manual on Group Funded Dental Care Programs," and other guidelines for dealing with third-party payers, along with forms and information to facilitate adherence to such guidelines;

(B) Encouraging and inducing members to discontinue serving and/or to refuse to serve as dental consultants for third-party payers and to refuse to provide payers with other professional services such as, but not limited to, taking X-rays for use in benefit determination;

(C) Conducting meetings, workshops, and pledge campaigns among members to gain the agreement of individual members not to compete with other dentists in dealing with third-party payers;

(D) Urging dental organizations in other states to pursue courses of conduct similar to that hereinabove described; and

(E) Urging payers, purchasers, and beneficiaries of dental health care benefits plans to eliminate provisions of such plans that the respondents find unacceptable.

PAR. 24. As a result of the acts, practices and methods of competition alleged in Paragraphs Twenty-Two and Twenty-Three:

(A) Competition among dentists in Indiana has been hindered, restrained, foreclosed, and frustrated;

(B) The cost of dental health care services in Indiana has been or may be stabilized or otherwise tampered with;

(C) Consumers have been or may be deprived of the benefits of third-party payers' cost-containing measures, including lower or potentially lower costs for dental health care services and dental health care benefits insurance;

(D) Consumers have been or may be denied the benefits of a second dentist's opinion as to the adequacy of proposed dental treatment; and

(E) Consumers have been limited in their opportunity to select dentists who cooperate with dental health care benefits programs.

PAR. 25. The aforesaid acts and practices constitute unfair methods of competition and unfair or deceptive acts or practices by respondents in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act; and

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

The Commission having considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues

its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Indiana Dental Association ("IDA") is an Indiana corporation with its principal office at 402 Jefferson Building, One Virginia Ave., Indianapolis, Indiana. IDA charters, and is divided into, 14 geographic component societies, more particularly described below:

Respondent First District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Steven E. Dixon, 3700 Bellemeade Ave., Evansville, Indiana.

Respondent Indianapolis District Dental Society, an Indiana corporation, is a component society of IDA with its principal office at the Illinois Building, 17 West Market St., Indianapolis, Indiana.

Respondent Isaac Knapp Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Emory W. Bryan, Jr., 700 Indiana Bank Building, Fort Wayne, Indiana.

Respondent Western Indiana District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Robert H. Michaels, 3120 Wabash Ave., West Terre Haute, Indiana.

Respondent Ben Hur Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Michael A. McDonald, 1606 North Lebanon, Lebanon, Indiana.

Respondent East Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Paul B. Risk, 610 South Tillotson Ave., Muncie, Indiana.

Respondent Eastern Indiana Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. John P. Backmeyer, 2519 East Main St., Richmond, Indiana.

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Respondent Wabash Valley Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. F. Wesley Peik, 3429 South La Fontaine St., Kokomo, Indiana.

Respondent West Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Lewis J. Urschel, 2204 Scott St., Lafayette, Indiana.

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

ORDER

I

It is ordered, That the following definition shall apply in this order: "Third-party payer" or "payer" means any entity that provides a program of reimbursement for dental health care services to employees or members of any business organization, and any person, such as an independent claims adjuster, who provides evaluative services in connection with any such reimbursement program.

II

It is further ordered, That respondents, their successors or assigns, and the officers, agents, representatives and employees of each of them, directly or through any subsidiary, division, or other device, shall cease and desist from engaging in any activity, course of conduct, practice, or policy that in whole or in part:

A. Requests, urges, recommends or suggests that dentists, or has the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pre-treatment and post-treatment reports, analyses and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers;

B. Compels or coerces any third-party payer to incorporate, delete or modify any provision in any existing or proposed dental health care benefits program;

C. Has the purpose of causing or inducing consumers to choose

dentists who do not cooperate with third-party payers, or influencing, to any degree, consumers' choice of dentists based on the degree and/or manner of noncooperation between such dentists and any third-party payer or payers;

D. Has the purpose of compelling, coercing, or inducing any third-party payer to select particular dental consultants for reasons other than the expertise of such consultants; or

E. Has the purpose or effect of influencing any dental consultant to render any opinion other than that which reflects his independent expert judgment.

III

It is further ordered, That within thirty (30) days after this order becomes final, each respondent shall mail to each of its members a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown as "Appendix A" to this order, advising that respondents have abandoned all policies, guidelines and principles that request, urge, recommend or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pre-treatment and post-treatment reports, analyses and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers. Furthermore, the letter shall further advise that dentists are free to choose to deal with any such programs and payers in such manner as they decide individually. In addition to the foregoing, each respondent shall mail a copy of the aforementioned complaint, order, and letter to every person who joins such respondent within five (5) years of the date of service of this order; *provided, however,* that mailing by the Indiana Dental Association will relieve the appropriate component society of the obligation of such mailing to a member of the Indiana Dental Association.

IV

It is further ordered, That, within sixty (60) days after service of this order, and annually on the anniversary date of the original report, for each of the five (5) years thereafter, each respondent shall individually file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

V

It is further ordered, That nothing in this order shall be construed to exempt any respondent from compliance with the antitrust laws or the Federal Trade Commission Act, and the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws and statute.

VI

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

APPENDIX A

(Respondent's Letterhead)

Dear Doctor:

As you may be aware, the Federal Trade Commission (FTC) has been investigating certain activities of the Indiana Dental Association (IDA) and its component societies. IDA and its component societies have voluntarily entered into an agreement with the FTC which resulted in the issuance by the Commission on [date] of a complaint and the entry of a consent order which requires, in essence, that IDA and its component societies cease and desist from certain activities that are concerned with dental health care benefits programs and cooperation by dentists with the administrators of such programs. The order also requires that you be sent a copy of the complaint and order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that IDA and its component societies have abandoned all policies, guidelines and principles which request, urge, recommend or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pre-treatment and post-treatment reports, analyses and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers. You are further notified that you are free to

choose to deal with any such payers and programs in such manner as you decide individually.

Copies of the FTC's complaint and order are enclosed.

Sincerely,

President

Enclosures

Complaint

93 F.T.C.

IN THE MATTER OF
FORD MOTOR COMPANY, ET AL.

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

Docket 9073. Complaint, Feb. 10, 1976 — Decision, March 29, 1979

This consent order, among other things, requires a Dearborn, Mich. manufacturer of motor vehicles, and the Ford Motor Credit Company to incorporate into specified documents a system for determining and accounting for all surpluses realized on repossessed vehicles resold by its dealers and to institute training programs designed to familiarize employees and dealers with their obligations in handling repossessions. Following such training, Ford is required to conduct a series of field audits to verify that dealers are calculating and paying surpluses correctly, and to submit timely compliance reports to the Commission. Additionally, respondents are required to inform dealers of their obligations to pay surpluses on past and future repossessions, and advise customers of their surplus and/or redemption rights, in the manner set forth in the order.

Appearances

For the Commission: *Bruce Carter, Barry Barnes, Dean A. Fournier and David R. Pender.*

For the respondents: *George V. Burbach*, Dearborn, Mich. for Ford Motor Credit Co., *David R. Larrouy*, Dearborn, Mich. for Ford Motor Co., *Micheal Esler, Haessler, Stamer & Esler*, Portland, Ore. for Francis Ford, Inc. and *Carlton Harkrader* and *Thomas Brunner, Wald, Harkrader & Ross*, Washington, D.C. for Ford Motor Co. and Ford Motor Credit Co.

For the intervenor: *Glenn Mitchell, Stein, Mitchell & Mezines*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ford Motor Company, Ford Motor Credit Company and Francis Ford, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

PARAGRAPH 1. *Respondents.* Respondent Ford Motor Company ("Ford") is a Delaware corporation with its office and principal place of business at The American Road, Dearborn, Michigan.

Respondent Ford Motor Credit Company ("Ford Motor Credit") is a Delaware corporation with its office and principal place of business