

IN THE MATTER OF

MIB, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND THE FAIR CREDIT
REPORTING ACT*Docket C-3108. Complaint, March 21, 1983—Decision, March 21, 1983*

This consent order requires a Westwood, Mass. non-profit medical reporting agency, among other things, to cease reporting that a code in a consumer's file has been cancelled or deleted, except to report the cancellation or deletion to a person who was previously informed of the code's existence. The order prohibits respondent from conditioning the release of information to a consumer on his/her execution of a waiver of claims against the firm, and from representing to consumers that their statements concerning disputed items be limited to 100 words or less, unless at the same time, respondent offers to assist the consumer in preparing the statement. Additionally, the firm must timely reinvestigate disputed information; contact, where possible, the source(s) of disputed information or other persons identified by the consumer who may possess information relevant to the challenged data and modify its files accordingly.

Appearances

For the Commission: *William P. McDonough and Stephen P. Fauteux.*

For the respondent: *David B. Lytle, Hogan & Hartson, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Federal Trade Commission (Commission), having reason to believe that MIB, Inc., d/b/a Medical Information Bureau (MIB), has violated provisions of those Acts, and it appearing to the Commission that a proceeding by it in respect to those violations would be in the public interest, the Commission issues this complaint.

1. For the purposes of this complaint, the terms *consumer*, *consumer report*, *consumer reporting agency*, *file*, *person*, and *medical information* are defined as set forth in Section 603 of the Fair Credit Reporting Act (Act).

2. MIB is a nonprofit corporation, organized, existing, and doing business under the laws of Delaware, with its principal office and

place of business located at 160 University Avenue, Westwood, Massachusetts.

3. MIB's membership consists of approximately 700 life insurance companies (members) located throughout the United States and Canada.

4. Among its activities, MIB operates a confidential exchange of information among its members. To effectuate the information exchange, MIB's members are required to report to MIB information concerning insurance applicants received by the members from original medical and other sources, from official records, or from the applicant during the course of an insurance application.

5. All information reported to MIB by its members is reported in coded form pursuant to MIB's Manual, "Official List of Impairments" (Code Manual). The Code Manual contains a list of approximately 190 medical impairments and 7 supplementary nonmedical impairments, each of which is signified by a three-digit numerical code. The Code Manual also contains procedures for reporting these impairments, including requiring the use of a system of letters (as many as five in a sequence following the three-digit impairment code), which indicate among other things, when the impairment first appeared, whether it is present at the time of the application, or whether the condition is under treatment.

6. MIB files the coded information it receives from its members in its computer.

7. MIB uses this coded information to provide its "checking service" to its members. Under the "checking service," a member who has received an insurance application may request from MIB whatever coded information MIB has in its files on the applicant. In response to such a request, MIB transmits a report to the requesting member, either by wire or by mail.

8. These MIB reports bear on consumers' personal characteristics, and they are used in whole or in part for the purpose of serving as a factor in establishing consumers' eligibility for insurance to be used primarily for personal purposes. Therefore, these reports are consumer reports.

9. MIB is regularly engaged on a cooperative nonprofit basis in assembling information on consumers for the purpose of furnishing consumer reports to third parties through the means and facilities of interstate commerce. Therefore, it is a consumer reporting agency.

10. As of at least 1976, MIB maintained coded information on approximately 11 million persons, and in 1979 it received from its members 20,163,964 checking inquiries and 2,262,938 reports. In 1977 MIB received \$9,739,597.00 in assessments and charges from its members.

11. The acts and practices alleged herein took place and are taking

place in the ordinary course and conduct of MIB's activities and have occurred on or after April 24, 1971, the effective date of the Act.

Count I

12. The allegations of paragraphs 1-11 above are incorporated by reference herein.

13. When MIB deletes from its files an adverse item of information because it has become obsolete within the meaning of Section 605(a) of the Act or because it was found inaccurate or unverifiable after a reinvestigation pursuant to Section 611(a) of the Act, in some cases it puts in its records the notation "cancelled" or "purged." In a substantial number of instances the notations have been included in subsequent consumer reports sent to members.

14. The notations described in paragraph 13 have been included in a substantial number of reports used in connection with the underwriting of life insurance involving a principal amount of less than \$50,000 and the item of information was deleted because it was obsolete within the meaning of Section 605 of the Act. By this practice, MIB has failed to maintain procedures to avoid violations of Section 605 of the Act and, therefore, has violated Sections 605 and 607(a) of the Act.

15. The notations described in paragraph 13 have been included in a substantial number of reports in which the item of information was deleted because it was found inaccurate or unverifiable after a reinvestigation pursuant to Section 611(a) of the Act. By this practice, MIB has violated Section 611(a) of the Act.

Count II

16. The allegations of paragraph 1-11 above are incorporated by reference herein.

17. A substantial number of consumers have requested disclosure of the nature and substance of the non-medical information in their MIB files, and have given MIB proper identification. In all such instances MIB requires the consumer requesting disclosure to complete MIB Form D-2 as a prerequisite to obtaining such disclosure. (A copy of Form D-2 is attached as Appendix A). Completion of Form D-2 requires a consumer to, among other things, sign a release stating:

Except as to false information furnished with malice or willful intent to injure and except as to liability for willful noncompliance or for negligent noncompliance as in the Federal Fair Credit Reporting Act (FCRA), I release the MIB and its members and any person who furnishes information to MIB or its members from any claims or suits based on any information disclosed as a result of this request.

18. Under Section 609(a) of the Act, upon request and the showing

of proper identification, a consumer is entitled to, among other things, disclosure of the nature and substance of all information (except medical information) maintained in his or her file by MIB.

19. The requirement of the Form D-2 release for disclosure of the nature and substance of such non-medical information constitutes more than "proper identification." Therefore, MIB has violated and is violating Section 609(a) of the Act.

Count III

20. The allegations of paragraphs 1-11 above are incorporated by reference herein.

21. When consumers inform MIB that they dispute the completeness or accuracy of an item of information in MIB's files, in a substantial number of instances MIB:

a. requires consumers to first complete the MIB Form D-2 which, in turn, requires the consumers to sign a release in MIB's favor, to identify a physician to whom disclosure will be made, and to obtain a non-related witness's signature. By not initiating reinvestigation until the consumer complies with these procedures, MIB, in some instances, fails to reinvestigate the disputed item of information within a reasonable period of time after receiving notice of the consumer's dispute;

b. fails to include as part of its reinvestigation contacting the original sources of the information or such other sources as the consumer identifies in disputing the information as being likely to have information on the subject of the dispute; and

c. fails to record, after reinvestigation, the current status of disputed information.

22. Under Section 611(a) of the Act, if the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is directly conveyed to MIB, MIB must within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute is frivolous or irrelevant. Furthermore, under Section 611(a), if after the reinvestigation the information is found to be inaccurate or can no longer be verified, MIB must promptly delete the information.

23. By the acts described in paragraph 21, MIB has violated and is violating Section 611(a) of the Act.

Count IV

24. The allegations of paragraphs 1-11 above are incorporated by reference herein.

25. When MIB determines after reinvestigation not to modify or delete information that has been disputed by a consumer, in a substantial number of instances it notifies the consumers:

The federal Fair Credit Reporting Act of 1970 provides that you may file a brief statement of disputed accuracy. The statement should contain 100 words or less and it should set forth the nature of the dispute.

26. The two statements in the above notice, read together, suggest that it is the Act that requires the consumer to limit his statement to 100 words or less, when in fact, Section 611(b) of the Act allows MIB to impose such a limitation only if it provides assistance to the consumer in preparing such a statement. Therefore, MIB has violated and is violating Section 611(b) of the Act.

27. The acts and practices set forth in paragraphs 12-26 were and are in violation of the Fair Credit Reporting Act and, pursuant to Section 621(a) of the Act, such acts and practices constitute violations of Section 5(a) of the Federal Trade Commission Act.

Complaint

101 F.T.C.

Request for Disclosure
Submitted to Medical Information Bureau (MIB)
P. O. Box 105, Essex Station, Boston MA 02112

IDENTIFICATION INFORMATION (Please print):

Name: _____
Last name (surname) First name (given name) Middle name

Date of Birth: _____
(month) (day) (year)

Birthplace: _____
Give state (of U. S.), or Province (of Canada); if other, give country

Present Address: _____
(street) (town or city)
(state and zip code) (telephone number)

DISCLOSURE: I request disclosure of the meaning of my MIB record, if any. I understand MIB will require reporting member companies to disclose any medical information in my MIB record to my personal physician.

(name of personal physician)

(street) (city/state) (zip code)

As to non-medical information, I prefer disclosure by the one method checked below. (If method 2 or 3 is checked, insert a date which is about 15 days after you mail this form; also, select an hour between 10:00 AM and 4:00 PM on any weekday except holidays in Massachusetts).

- ☐ 1: By letter to my address as given above.
- ☐ 2: By reverse charge phone call at my phone number given above on

(insert date and hour in Eastern Time Zone)

- ☐ 3: By appointment on _____ at the above MIB office.
(insert date and hour)

Except as to false information furnished with malice or willful intent to injure and except as to liability for willful noncompliance or for negligent noncompliance as in the Federal Fair Credit Reporting Act (FCRA), I release the MIB and its members and any person who furnishes information to MIB or its members from any claims or suits based on any information disclosed as a result of this request.

(insert month, day, and year) _____
Signature of individual requesting disclosure

I, (an adult person), witnessed the above signature and I represent that the person who made the above signature is known to me (but is not related to me), and is the person described above.

Present address of witness:

Signature of witness Street _____
 Town or city _____
 State and zip code _____

Attachment A

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 the respondents having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fair Credit Reporting Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on 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 MIB, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 160 University Avenue in the Town of Westwood, Commonwealth of Massachusetts.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

For purposes of this order, the following definitions shall apply:

A. *The Act* means the Fair Credit Reporting Act, Pub. Law No. 91-508, 15 U.S.C. 1681 *et seq.*

B. The terms *person*, *consumer*, *consumer report*, *file* and *medical information* are as defined in Section 603 (b), (c), (d), (g), and (i), respectively, of the Act.

C. The term *medical source* means a person from whom medical information may be obtained in accordance with Section 603(i) of the Act, namely a licensed physician or medical practitioner, hospital, clinic or other medical or medically related facility which provided or provides the information with the consent of the individual to whom the information relates.

II.

It is ordered, That MIB, Inc. ("MIB"), its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection, preparation, assembly or furnishing of a consumer report shall cease and desist from:

A. Reporting, directly or indirectly, that a code in a consumer's MIB file has been cancelled or deleted, except to report the cancellation or deletion to a person who was previously informed of the existence of the code.

B. Requiring, as a condition for disclosure of information (except the nature and substance of medical information) pursuant to Section 609 of the Act, that the consumer seeking disclosure execute a waiver or release of claims against MIB based on the information disclosed.

C. Failing, if the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer and such dispute is directly conveyed to MIB by the consumer, to reinvestigate the disputed item within a reasonable period of time, unless MIB has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant, *provided* that where the consumer has failed to provide information sufficient to permit MIB to identify in its records the consumer and the item in dispute, MIB may require the consumer to provide such information before initiating a reinvestigation.

D. Failing, in connection with the reinvestigation of a disputed item of medical information pursuant to Section 611 of the Act:

1. to include as part of such reinvestigation a reasonable effort to contact (a) the medical source or sources who originally provided the information upon which the disputed item is based and (b) other medical sources identified by the consumer who may reasonably be expected to have additional information directly relevant to the disputed item;

2. to complete such reinvestigation within a reasonable period of time, *provided* that 30 days shall be presumptively deemed a reasonable period of time, in the absence of unusual circumstances;

3. if after such reinvestigation the disputed item is found to be inaccurate or unverifiable, promptly to delete the item from the consumer's MIB file; and

4. if after such reinvestigation the disputed item is found to be accurate and verifiable but incomplete, to make the item complete by adding to the consumer's MIB file any additional information learned through the reinvestigation and necessary for a proper understanding of the disputed item, including where applicable, the fact of recovery or improvement.

E. Representing, directly or indirectly, to consumers that their dispute statement under Section 611(b) of the Act is limited to 100 words or less, unless MIB at the same time informs the consumer that it will assist the consumer in writing such a statement.

III.

It is further ordered, That MIB mail a copy of this order to all of its members by certified mail, return receipt requested; that MIB deliver a copy of this order to all present and future MIB employees engaged in handling consumer requests for disclosure under Section 609 of the Act or disputes of accuracy or completeness under Section 611 of the Act; and that MIB secure a signed statement acknowledging receipt of a copy of this order from all such employees.

IV.

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

V.

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

IN THE MATTER OF
ETHYL CORPORATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9128. Complaint, May 30, 1979—Final Order, March 22, 1983

This Final Order requires the nation's two leading producers of lead-based antiknock gasoline additives, among other things, to cease announcing price changes in advance of the period contractually required for advance notice to customers, and using a "most-favored-nation" clause in any contract for the sale or delivery of lead-based antiknock compounds. Further, when stating a delivered price for any lead-based antiknock compound, the companies must also quote the product's point of origin price, a separate price for shipment, and allow customers to arrange for their own shipping and delivery. While the order does not prohibit the companies when acting individually from selecting their own customers, establishing their own prices, and selling at a delivered price or point of origin in good faith to meet the equally low price of a competitor, it does not exempt the companies' pricing practices from antitrust law.

Appearances

For the Commission: *Robert A. Burka, Edward T. Colbert, Thomas J. Keary, Stephen C. Palmer, Peter M. Kazon and Raymond T. Diamond.*

For the respondents: *Daniel K. Mayers, John H. Harwood, David Westin and Kathleen M. Russo, Wilmer, Cutler & Pickering, Washington, D.C., for Ethyl Corporation. Daniel M. Gribbon, Allan J. Topol, Terry Coleman and Edward R. Mackiewicz, Covington & Burling, Washington, D.C. and W.E. MacIntyre, in-house counsel, for E.I. du Pont de Nemours and Co. Alan S. Ward, Shirley Z. Johnson, Thomas J. Segal and Phillip A. Proger, Baker & Hostetler, Washington, D.C., Louis R. Sernoff and Michael Kelly, Morgan, Lewis & Bockius, Washington, D.C. and John W. Thomas, in-house counsel, for PPG Industries, Inc. Champ W. Davis and David C. Bogan, Chadwell, Kayser, Ruggles, McGee & Hastings, Chicago, Ill. and James S. Lambe, in-house counsel, for Nalco Chemical Co.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have violated and are now violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceed-