

IN THE MATTER OF

ORKIN EXTERMINATING COMPANY, INC.

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

Docket 9176. Complaint, May 8, 1984—Final Order, Dec. 15, 1986

This Final Order requires an Atlanta, Georgia-based exterminating company to roll back the "lifetime" annual renewal fees on contracts signed prior to 1975 to the fixed fee established prior to a 1980 raise in price. Respondent is also required to notify each affected customer.

Appearances

For the Commission: *Katharine B. Alphin* and *Chris M. Couillou*.

For the respondents: *John C. Staton*, *Michael E. Ross* and *Sylvia M. King*, *King & Spaulding*, Atlanta, Ga.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Orkin Exterminating Company, Inc., a corporation, has violated the provisions of Section 5(a) of the Federal Trade Commission 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 Orkin Exterminating Company, Inc., is a Delaware corporation with its principal place of business located at 2170 Piedmont Road, N.E., Atlanta, Georgia.

PAR. 2. Respondent maintains, and at all times mentioned in this complaint has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Among other services, respondent provides to individuals and businesses ("consumers") services to treat houses, buildings, and other structures ("structures") in order to destroy and protect against termites and other wood-infesting organisms ("termite-control services").

PAR. 4. In numerous instances, in the course of advertising, promot-

ing, selling, and performing its termite-control services, respondent agreed for the life of the structure to reinspect the consumer's structure annually and, if necessary, to either retreat or retreat and repair the structure, provided the consumer paid a specified fixed annual renewal fee.

PAR. 5. In contradiction of the agreements described in Paragraph Four, in numerous instances beginning in [2] 1980 and continuing to the present, respondent has raised, or has attempted to raise, the agreed-upon annual renewal fee for its termite-control services.

PAR. 6. Respondent's actions described above have thus caused substantial and ongoing injury to respondent's customers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

PAR. 7. Respondent's acts and practices as herein alleged were and are to the prejudice and injury of the public and constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

INITIAL DECISION BY

ERNEST G. BARNES, ADMINISTRATIVE LAW JUDGE

APRIL 22, 1985

PRELIMINARY STATEMENT

The complaint herein issued on May 8, 1984, charging Orkin Exterminating Company, Inc., (hereinafter "Orkin") with violation of Section 5(a) of the Federal Trade Commission Act. The complaint alleges that respondent Orkin provides to individuals and businesses services to treat houses, buildings, and other structures in order to destroy and protect against termites and other wood-infesting organisms. In numerous instances, in the course of advertising, promoting, selling and performing its termite-control services, Orkin agreed to reinspect the consumer's structure annually for the life of the structure and, if necessary, to either retreat or retreat and repair the structure, provided the consumer paid a specified fixed annual renewal fee.

In contradiction of the agreements described above, in numerous instances beginning in 1980 and continuing to the present, Orkin has raised, or has attempted to raise, the agreed-upon annual renewal fee for its termite-control services. It is alleged that Orkin's actions in raising or attempting to raise [2] the fixed annual renewal fee have caused substantial and ongoing injury to Orkin's customers that is not outweighed by countervailing benefits to consumers or competition

and is not reasonably avoidable by consumers, and were and are to the prejudice and injury of the public and constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Orkin filed an answer on June 18, 1984, generally denying the charging allegations of the complaint and asserting eleven defenses, including: a claim that the complaint fails to state a violation of law; that the Commission issued the complaint without reason to believe that Orkin had violated the law; that the Commission violated its own policy set forth in its *Operating Manual* to defer to state and local authorities to obtain corrective action in matters primarily intrastate in nature or effect; that the Commission lacks subject matter jurisdiction over the complaint allegations; that the acts and practices of Orkin as alleged in the complaint were and are not to the prejudice and injury of the public and do not constitute unfair acts or practices in or affecting commerce; that the acts and practices alleged to have been committed by Orkin have not caused substantial and ongoing injury to Orkin's customers; that the complaint is barred by applicable statute(s) of limitations; that the alleged unlawful acts and practices have been encouraged, approved, and/or compelled by federal and state regulatory authorities and law and are therefore exempt from the Federal Trade Commission Act; that the consumers alleged to have been injured by Orkin's acts and practices have recognized, accepted, and acquiesced to the alleged misconduct under doctrines of waiver, estoppel, ratification, accord and satisfaction, limitations, and laches; and that the relief proposed is inappropriate, not in the public interest, and is not or would not be authorized by law.

In response to a motion by complaint counsel, not objected to by respondent Orkin, Paragraph 3 of the complaint was amended to add "and wood decay" as an additional contract service falling within the category of services alleged in the complaint as having the fixed annual renewal fee raised in contradiction to agreements with consumers. (Order Amending Complaint, November 15, 1984) Also, in response to a motion by complaint counsel, respondent Orkin's Second Defense (challenging the Commission's "reason to believe" Orkin had violated Section 5(a) of the Federal Trade Commission Act), Third Defense (stating that the Commission had violated its policy stated in the *Operating Manual* to defer to state and local authorities to obtain corrective action in matters primarily intrastate in nature and effect), and the introductory paragraph to Orkin's Twelfth Defense (challenging the Commission's "reason to believe" and "public interest" determinations in issuing the complaint) were stricken. (Order Ruling On Complaint Counsel's Motion To Strike . . . , August 7, 1984) [3]

A prehearing conference was held on August 9, 1984. At the confer-

ence Orkin's counsel was urged to stipulate to the commerce allegations of the complaint. (Prehearing Transcript, pp. 11-14, 60) Thereafter, during the course of pretrial discovery, Orkin stipulated that it maintains, and at all times mentioned in the complaint has maintained, a substantial course of business, including the acts and practices as set forth in the complaint, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. (Finding 3, *infra*)

By motion dated January 30, 1985, complaint counsel has moved for summary decision as to all issues to be resolved in this proceeding. Complaint counsel's motion is supported by the pleadings heretofore filed in this proceeding, depositions of respondent's officials, documents created, sent or received by respondent during the course of its business operations and received by complaint counsel from respondent during the investigation which preceded issuance of the complaint herein or during pretrial discovery, and some few third party documents received by complaint counsel from state agencies and consumers which have been adequately authenticated by complaint counsel for purposes of ruling on this motion.

Respondent has filed an opposition, dated March 1, 1985, to complaint counsel's motion. Respondent has also filed a motion for summary decision in its favor, and has submitted affidavits and depositions from its officials, competitors, consumers, one economic expert, and certain of its documents. Respondent also has submitted statements of material fact which it contends either directly contravene complaint counsel's findings of fact, or raise genuine issues of inference and legal significance that foreclose any entry of summary decision in favor of complaint counsel.

Respondent, additionally, has filed a supplemental brief, dated March 8, 1985, and a reply and answer brief, dated March 27, 1985, which additional briefing is or has been authorized. Complaint counsel filed a reply to respondent's opposition and motion on March 16, 1985, which also was authorized.

Respondent's submissions and arguments contend that: Orkin's alleged breach of contract is not actionable under Section 5 of the Federal Trade Commission Act because it is at most a non-deceptive alleged breach of a putative contractual promise as to which the agreements in question are entirely silent; that Orkin's contracts in issue do not provide for fixed annual renewal premiums but are of an indefinite duration and hence may be terminated after a reasonable period of time; and, that the alleged breach of contracts are not an "unfair act or practice" in violation of Section 5 because there is no unjustified consumer injury. Respondent also contends that any consideration of complaint counsel's requested relief is premature. [4]

Section 3.24 of the Commission's Rules of Practice authorizes any party to move with or without supporting affidavits for a summary decision in his favor upon all or any part of the issues being adjudicated. The granting of such a motion is authorized where the affidavits and other evidence relied upon "show that there is no genuine issue as to any material fact and that the moving party is entitled to such a decision as a matter of law." (Section 3.24(a)(2)) Any such decision shall constitute the initial decision of the Administrative Law Judge.

Section 3.24 closely parallels Rule 56 of the Federal Rules of Civil Procedure. *The Hearst Corporation*, 80 F.T.C. 1011, 1014 (1972) Summary judgment under Rule 56 may be granted only if there is no genuine issue as to any material fact or the inferences to be drawn from the undisputed facts. *United States v. Diebold, Inc.*, 369 U.S. 654 (1962); *Winters v. Highlands Ins.* 569 F.2d 297 (5th Cir. 1978); *Handi Inv. Co. v. Mobil Oil Co.*, 550 F.2d 543 (9th Cir. 1977); *Weiss v. Kay Jewelry Stores, Inc.*, 470 F.2d 1259, 1261-62 (D.C. Cir. 1972) The moving party has the burden of establishing that no genuine issue of material fact exists; all doubts and inferences are resolved against the movant; and summary judgment is improper if conflicting inferences may be drawn from the same evidence. *Exnicious v. United States*, 563 F.2d 418 (10th Cir. 1977) This same standard has been accepted in Federal Trade Commission proceedings. *The Hearst Corporation, supra*; *American Medical Association*, Dkt. 9064, slip op. at 5 (Order Denying Motion of Respondent The American Medical Association ("AMA") For Summary Decision Dismissing The Complaint For Lack of Jurisdiction, Apr. 26, 1976)[94 F.T.C. 701 (1979)].

Full consideration has been given to the findings of fact and legal arguments presented by the parties. The Findings of Fact which follow are based on reliable evidence as to which there is no dispute as to its authenticity or genuineness. A careful study of the evidence relied upon by the parties reveals that there is no genuine issue as to any of the material facts to be concluded from such evidence, or as to the relevant inferences which logically can be drawn from such facts. Therefore, summary decision is appropriate.

All motions not previously ruled upon are denied. Based on the evidence presented by the parties hereto in support of and in opposition to motions for summary decision, the following Findings of Fact are without substantial dispute.

I. FINDINGS OF FACT

1. Orkin Exterminating Company, Inc., ("Orkin") is a Delaware corporation with its principal place of business located at 2170 Piedmont Road, N.E., Atlanta Georgia. (Complaint, ¶1; Answer, Twelfth

Defense, Paragraph 1) Orkin is a wholly-owned [5] subsidiary of Rollins, Inc. (CX 142C) Rollins acquired Orkin on September 10, 1964. (RIR 30)¹ [6]

2. Orkin provides pest-control and exterminating services throughout the United States, but mostly in the Southeast. (Respondent's Motion for Access, p. 2) In 1980, Orkin served customers located in 47 states and the District of Columbia. (CX 142C) As of September 1, 1980, Orkin operated approximately 294 branch offices and 44 district offices. (RIR 32) Branch offices are supervised by the district offices. (CX 142Z9; Russell Dep. p. 9; Raymond Dep. p. 32)

3. Orkin has stipulated that it maintains, and at all times men-

¹ The following abbreviations are used in citations in this decision:

CX	Complaint counsel's exhibits as listed on complaint counsel's Preliminary Document List and amendments and filed in support of complaint counsel's Motion For Summary Decision.
RX	Respondent's exhibits as listed on its Preliminary Document List and amendments filed in support of respondent's Motion For Summary Decision and in opposition to complaint counsel's Motion For Summary Decision.
RIR	Respondent's Responses to Complaint Counsel's First Set of Interrogatories, response to interrogatory #.
RA	Respondent's Answers and Objections To Counsel's First Request For Admissions, response to request for admission #.
CRA	Complaint counsel's First Request for Admissions, request #.
F	Findings of Fact in this initial decision, finding #.
Respondent's Motion for Access	Respondents motion for Issuance of an Order Requiring Access to Documents, dated June 28, 1984.
(Name) Dep.	Deposition of person identified.
(Name) Dep. Ex.	Exhibit to deposition of person identified.
(Name) Aff.	Affidavit of person identified.

The persons whose depositions and affidavits are cited in this decision are identified as follows:

Geiger	Earl Geiger, Vice Chairman of Rollins, Inc. (F 11).
Kimbell	Ron Kimbell, Orkin Commercial Branch Manager (Kimbell Dep. p. 4), formerly Director of Customer Services of Rollins, Inc. (F 47).
Raymond	John Raymond, Director of Administrative Operations of Orkin (F 54, 57).
Rollins	Gary W. Rollins, President of Rollins, Inc. (F 38).
Russell	Robert M. Russell, Vice-President of Government Relations of Orkin (F 61).
Schneider	James M. Schneider, General Counsel of Rollins, Inc. (F 55).
Boudreaux	Dr. Kenneth J. Boudreaux, Professor of Economics and Finance, Graduate School of Business, Tulane University.
Bourgeois	Ernest R. Bourgeois, owner and President, Mr. B's Services, Inc.
Childs	Janet Childs, Receivables Audit Supervisor, Orkin.
Edwards	Jack L. Edwards, retired, formerly President, Ja-Roy Exterminating Co., Inc.
Goodman	Bryant G. Goodman, Branch Manager, Orkin.
Hoffman	William S. Hoffman, an Orkin customer.
Hromada	Charles Hromada, Senior Vice President of Technical Services, Terminix International, Inc.
Jones	Joe Jones, Branch Manager, Orkin.
Landry	Ulysse G. Landry, Jr., owner and operator of Houma Pest Control Company, Inc.
Nolen	Truly D. Nolen, founder and President of Truly Nolen of America, Inc.
Terrebonne	Ellis A. Terrebonne, an Orkin customer.
Thompson	Helen R. Thompson, an Orkin customer.

Portions of depositions of some deponents appear in complaint counsel's motion, in Orkin's motion and opposition, and in complaint counsel's answer submissions. [7]

tioned in the complaint has maintained, a substantial course of business, including the acts and practices as set forth in the complaint, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. (Letter to Katharine B. Alphin from Michael Eric Ross dated August 17, 1984, at paragraph 10; one page letter to Katharine B. Alphin from Michael Eric Ross dated August 24, 1984; RIR 66; *compare* letter to John C. Staton, Jr. from Katharine B. Alphin dated August 21, 1984, at paragraph 9, *with* two page letter to Katharine B. Alphin from Michael Eric Ross dated August 24, 1984)

4. Orkin is stated to be the world's largest termite and pest control company. (CX 142C; Rollins Dep. p. 202) Even though Orkin is the largest termite and pest control company, it apparently has a small market share. (Rollins Dep. p. 203; Geiger Dep. p. 16)

5. To be a provider of termite control services on a small scale requires little capital. (Rollins Dep. pp. 204-205) Chemicals used in termite control are commonly available. (Rollins Dep. p. 205) The techniques used in termite control services are widely known within the industry and can be learned without difficulty. (Rollins Dep. pp. 206-207)

6. Orkin has used a July 1 - June 30 fiscal year for each of the years 1978 through 1984. (RIR 57) Orkin had total net revenues in the amounts indicated in the following fiscal years:

Fiscal Year Ending	Total Net Revenue
June, 1977	\$138,613,108
June, 1978	148,362,959
June, 1979	164,826,769
June, 1980	181,582,829
June, 1981	193,568,292
June, 1983	212,333,107
June, 1984	228,898,037

(RA 4-10)

Orkin had the net profits indicated in the following fiscal years: [8]

Fiscal Year Ending	Net Profit
June, 1977	\$22,428,534
June, 1978	19,258,821
June, 1979	17,140,842
June, 1980	23,744,000*
June, 1981	27,142,000*
June, 1983	30,127,691
June, 1984	31,548,071

(RA 11-17 [*Rounded to the nearest thousand])

Orkin had a net worth of \$65,949,714.89 on June 30, 1980 and a net

worth of \$68,659,753 on June 30, 1984. (RA 18, 19; Respondent's Corrected Answer To Request No. 18 Of First Request For Admissions)

7. Among other services, Orkin provides to individuals and businesses services to treat houses, buildings, and other structures in order to destroy or protect against termites, other wood-infesting organisms, moisture and wood decay. (Complaint, ¶ 3; Answer, Twelfth Defense, Paragraph 3; RA 1; Raymond Dep. pp. 22-23; Rollins Dep. pp. 15-16; Kimbell Dep. pp. 4, 6-7; Russell Dep. p. 13)

8. Orkin has entered into written agreements with its customers concerning the rendering of services to destroy or protect against termites, other wood-infesting organisms, moisture and wood decay. These agreements are hereinafter referred to as "termite contracts." (Geiger Dep. p. 11; CX 1-7, 9-14, 16, 27, 400, 414, 449, 473, 485; RA 2; RIR 59-60) The termite contracts charged a specified sum for the initial treatment provided by Orkin. (CX 1-7, 9-14, 16, 27, 400, 414, 449, 473, 485)

9. Under certain conditions Orkin issued guarantees of its services to destroy or protect against termites, other wood-infesting organisms, moisture and wood decay. These guarantees are hereinafter referred to as "termite guarantees." (Raymond Dep. pp. 18-23; Rollins Dep. pp. 18-19; Russell Dep. p. 13; CX 17-26; RA 3; RIR 61-62)

10. Since prior to 1956, Orkin has used preprinted form contracts and guarantees prepared by Orkin. (Geiger Dep. pp. 11, 21-22, 24-25; CX 1-14, 16, 27, 400, 414, 449, 473, 485; RX 129A-Z46, 685A-B) Orkin salesmen did not have the authority to vary the terms of the preprinted form contracts and guarantees. (Geiger Dep. p. 11)

11. In general, prior to 1966, Orkin offered termite guarantees for continued protection to the treated property for a specified price which lasted for a term of from five to fifteen years. (RIR 4; RX 129A-Z46; Geiger Aff. ¶ 4) On or about January 1, 1966, Orkin began using the term "lifetime" in its [9] termite contracts and/or termite guarantees. (RIR 1) Earl F. Geiger, Vice Chairman of the Board of Rollins, Inc., who was Executive Vice-President of Orkin from 1964 to 1976, originated the "lifetime" guarantee concept for Orkin and proposed its adoption by Orkin. (RIR 2; Geiger Dep. pp. 4-5, 15) Mr. Truly D. Nolen, founder, owner, and President of Truly Nolen of America, Inc., claims to have originated the idea of the lifetime guarantee on termite control services contracts in 1955. (Nolen Aff. ¶ 6) Other Orkin competitors use the lifetime concept. (Hromada Aff. ¶ 5)

12. Concerning the purpose of the lifetime guarantees, Mr. Geiger has given the following testimony:

Q. What was the purpose of these new lifetime guarantees?

A. Well, Orkin at that time was the largest pest control company in the country. We

did 80% of the advertising for the pest control industry, or roughly that. We claimed just about 13% of the business. The obvious strategy was to try to offer a distinctly better service to the public than our smaller competitors could offer. So any time you could enhance your package, your marketing package, you did so.

Q. And that was the reason for the lifetime?

A. Yes. We were able to do it because the primary termiticide at that time was proving to be more successful and more effective than we ever thought it would be.

(Geiger Dep. pp. 16-17)

13. Termite guarantees issued by Orkin include a lifetime retreatment guarantee, a lifetime retreatment and repair guarantee, and a lifetime guarantee on pretreatment work on new construction. (Raymond Dep. p. 19-20)

14. The lifetime retreatment guarantee provides in part that at no extra cost to the customer Orkin will apply any necessary treatment to the premises if infestation occurs during the duration of the guarantee. (Rollins Dep. p. 18; CX 17-22; RIR 61) This type of guarantee is sometimes referred to as a "LC guarantee." (Rollins Dep. p. 18; Raymond Dep. p. 20)

15. The lifetime retreatment and repair guarantee provides in part that at no extra cost to the customer, Orkin will make repairs (up to a stated dollar maximum) to the structure and its contents in order to remedy any new damage caused by subterranean termites, provided that it is established that the new damage occurred after the initial treatment, and that at the time of [10] discovery of the new damage, the damaged areas are infested with live subterranean termites. (Rollins Dep. p. 18; CX 23-26; RIR 61) This type of guarantee is sometimes referred to as a "LR guarantee." (Rollins Dep. p. 19; Raymond Dep. p. 19)

16. Prior to 1969, Orkin's LR guarantees had a liability limitation of \$25,000. In 1969, Orkin adopted a policy of issuing LR guarantees with a liability limitation of \$100,000. (RIR 63)

17. The lifetime guarantee on pretreatment work is the same guarantee as the LR guarantee, except that Orkin's pretreatment guarantee is for new construction and its LR guarantee covers existing structures. (RA 21; CX 150A-B) The lifetime pretreatment guarantee is sometimes referred to as a "PR guarantee." (Raymond Dep. pp. 19-20)

18. Orkin's termite contracts and termite guarantees provide for annual fees to be paid in order to continue the protection that is guaranteed. If the customer abides by the contract, and pays Orkin the specified annual renewal fee, the guarantee is to remain in effect. (CX 1A, 2A, 3, 4A, 5A, 6A, 7A, 9A, 10A, 11A, 12A, 13A, 14A, 16A, 27A, 400A, 414A, 449A, 473A, 485A; Respondent's Motion for Access, pp. 2-3)

19. Orkin's termite contracts and termite guarantees, including those entered into prior to February 1, 1975, that used the term "lifetime," had a "structural modification" clause providing that in the event the premises were structurally modified, altered or otherwise changed after the date of initial treatment, the agreement would terminate, unless a prior written agreement was entered into by the purchaser for Orkin to reinspect the premises, provide additional treatment, and/or adjust the annual renewal fee. (CX 1B, 2B, 4B, 5B, 6B, 7C, 9B, 10B, 11B, 12B, 13B, 14B, 16B, 17A, 18A, 19A-B, 20A-B, 21A-B, 22, 24A-B, 25A-B, 26A-B, 27B, 400B, 414B, 449B, 473B, 485B; RIR 20, 59-62)

20. Before February 1, 1975, Orkin's termite contracts and termite guarantees that included the term "lifetime" did not mention adjustments or increases of the specified annual renewal fee necessary to continue the lifetime guarantees issued with respect to those contracts, absent the treated premises being structurally modified, altered, or otherwise changed after the date of initial treatment. (CX 1A-B, 2A-B, 3, 4A-B, 5A-B, 6A-B, 7A-C, 9A-B, 10A-B, 11A-B, 12A-B, 13A-B, 14A-B, 16A-B, 17A-B, 18A-B, 19A-B, 20A-B, 21A-B, 22, 24A-B, 25A-B, 26A-B, 27A-B, 400A-B, 414A-B, 449A-B, 473A-B, 485A-B; RIR 20, 59-62; Respondent's Motion for Access, p. 3) These termite contracts are hereinafter referred to as "pre-1975 contracts." Likewise, guarantees extended by Orkin to a customer in connection with the execution of a pre-1975 contract are referred to as "pre-1975 guarantees," and customers holding these contracts or guarantees are often referred to as "pre-1975 customers." [11]

21. Numerous pre-1975 contract forms contained a clause stating that the contract, graph and specification sheets, and upon issuance, the guarantee, constituted the complete agreement between the parties, and that the agreement could not be changed or altered in any manner, oral or otherwise, by any representatives of Orkin, unless alterations or changes were in writing and executed by a corporate officer of Orkin under the corporate seal. (CX 400A-B [Form 225 Rev. 1-69]; CX 9A-B; CX 473A-B; CX 10A-B [Form F-19-135 Rev. 11/70]; CX 414A-B; CX 485A-B [Form 225 Rev. 11/70]; CX 11A-B [Form F-19-135 Rev. 9/72]; compare CX 449A-B [Form F-19-135 Rev. 2/73], with CX 13A-B [Form F-19-135 Rev. 11/73]; CX 12A-B [Form F-21-316]; CX 14A-B [Form F-21-316]; CX 16A-B [Form F-21-317]; RIR 59-60)

22. CX 1A is a contract (termed Service Order) dated November 20, 1965, with a customer located in Louisville, Kentucky. The contract provides for a Control and Repair guarantee to be issued. The Annual Renewal Premium is specified as \$17.00. This contract has the follow-

In addition to the initial term specified in Paragraph 1 above, the Guaranty may, at the sole option of the undersigned, be renewed annually for *Lifetime* additional years by making payment of the Annual Renewal Premium on or before the renewal date of each subsequent year and Orkin agrees to reinspect the premises upon receipt of each Annual Renewal Premium Payment.

(The word *Lifetime*, above, was handwritten in a blank space provided in the contract.)

CX 2A is a contract (Service Order) dated November 30, 1966, with a customer located in Louisville, Kentucky. The contract provides for a Lifetime Control and Repair guarantee. The Annual Renewal Fee is specified as \$18.00. The contract has the following provision:

The Guaranty checked above will be issued and delivered to the Purchaser upon completion of initial treatment. Guaranty will be effective as long as payment is made in accordance with the Terms and Conditions of this Service Order.

It is further agreed that Guaranty will provide for an initial term of:

12 months. ORKIN will reinspect the premises upon expiration of the initial term and upon receipt of the Annual Renewal Fee.

Guaranty at the sole option of the Purchaser may be renewed annually by making payment of the Annual [12] Renewal Fee on or before the renewal date of each subsequent year.

CX 3 is a contract (Service Order) dated March 23, 1968 with a customer located in Norfolk, Virginia. This contract provides for a Lifetime Control and Repair guarantee to be issued. The contract provides as follows:

ORKIN CONTINUOUS PROTECTION GUARANTY

Under Orkin's Continuous Protection Plan, the above named property will be reinspected in November 1968 upon prompt payment of \$18.00 (plus tax where applicable), and annually thereafter in November upon payment of \$18.00 (plus tax where applicable _____), beginning in 1969.

(The underlined portions above were handwritten.)

The contract also provided:

Guaranty will be effective so long as payment is made in accordance with the Terms and Conditions of this Service Order.

CX 400A is a contract with a Bethesda, Maryland, customer dated April, 1969, having basic terms identical to CX 3, above.

CX 414A is a contract dated February 5, 1972, with a customer located in Chesterfield, Missouri. This contract provides for a Lifetime Control and Repair guarantee and states as follows:

ORKIN CONTINUOUS PROTECTION GUARANTY

Orkin's Continuous Protection Guaranty will provide protection for the above named property including Annual Reinspections upon payment of the initial charges and an Annual Renewal Payment of \$37.00 starting February 1973 and each February thereafter.

See also CX 421A, an October, 1972, contract with provisions similar to CX 414A, as does CX 439A, a May, 1972, contract with a customer located in Surfside, South Carolina.

CX 4A, a contract (Service Order) dated March 1969, with a customer located in Petersburg, Virginia, provides for a Lifetime Control and Repair guarantee. The Annual Renewal Fee is specified as \$18.00. The contract further provides that:

ORKIN will, AT NO EXTRA COST, reinspect the premises annually during said initial term and upon receipt of the Renewal Fee thereafter. [13]

CX 6A, a contract (Service Order) dated September 25, 1968, with a Brownsville, Texas customer, provides for a Lifetime Control guarantee, and for an Orkin Continuous Protection Guarantee upon the payment of an annual fee of \$20.00.

CX 7A, a contract (Service Order) dated March, 1968, with a W. Columbia, South Carolina customer, provides for a Lifetime Control and Repair guarantee upon payment of an annual renewal fee of \$15.00.

CX 9A, a contract dated December 17, 1969, with a Tulsa, Oklahoma customer, provides for a Lifetime Control and Repair guarantee and an Orkin Continuous Protection Guarantee upon payment of an annual renewal fee of \$30.00.

CX 10A, a blank contract bearing form number F-19-135 REV. 11/70 has provisions for Lifetime Control and for an ORKIN CONTINUOUS PROTECTION GUARANTEE "so long as payments are made in accordance with the Terms and Conditions of this Contract." CX 11, a blank contract bearing form number F-19-135 REV. 9/72 has provisions similar to the provisions of CX 10A.

CX 13 is a blank contract with a form revision date of 11/73, which provides for a Lifetime Control guarantee. The Orkin Continuous Protection Guarantee states that:

Its coverage, including annual reinspection, will be effective for a period of _____ years upon payment of the initial charges and thereafter for a period of _____ years, so long as renewal payments of _____ are made annually.

CX 205G is a contract (Service Order) dated March 10, 1969, with a customer located in St. Francisville, Louisiana, which provides for

a Lifetime Control guarantee and for an Orkin Continuous Protection Guarantee upon payment of \$75.00 annually, to continue "so long as payments are made in accordance with the Terms and Conditions of this Service Order." CX 205R is a 1969 contract with a New Orleans, Louisiana, customer which is similar to CX 205G, with a renewal fee of \$30 annually.

CX 205W is a contract dated July 3, 1974 with a customer named Percy Bullock located in St. Amant, Louisiana. It has the following provision:

ORKIN CONTINUOUS PROTECTION GUARANTEE

The guarantee checked above will be issued to the buyer upon completion of initial treatment. The Guarantee will cover the above named premises and will be subject to the General Terms and Conditions on the reverse side hereof. Its coverage, including annual reinspection, will be effective for a period of 2 years upon payment of the initial charges and thereafter for a period of [14] LIFE years, so long as renewal payments of \$20 are made annually.

(The underlined words were handwritten.)

CX 205Z3 is a contract with the same customer as above, Percy Bullock, dated February 3, 1975. This contract, entered into *after* Orkin changed its guarantee provisions, has the following provision:

ORKIN CONTINUOUS PROTECTION GUARANTEE

The type Guarantee checked above will be issued to the Buyer upon completion of initial treatment. The Guarantee will cover the treated premises and will be subject to the General Terms and Conditions on the reverse side hereof. The Guarantee will be effective for a period of 2 years upon payment of the initial charges and thereafter for a period of *** Life years, so long as renewal payments are made annually. ORKIN guarantees that the first four renewal payments will be \$35.00. Thereafter, ORKIN reserves the right to increase renewal payments by giving written notice to the Buyer in advance of the renewal date. During the effective period of the Guarantee, ORKIN will reinspect the premises at such time as ORKIN may deem necessary, or annually upon the Buyer's request. No failure on the part of the Buyer to request reinspection shall, in any way, affect the Buyer's rights under this contract. The Buyer agrees to make the premises available for reinspection.

(The underlined words were handwritten.)

23. CX 205U is a form letter which Orkin issued to a customer in New Orleans, Louisiana. The complete letter reads as follows:

TREATMENT AND CORRECTIVE MEASURES

Date: April 23, 1967

Re: Property Located at:
785 Brehm Pl.
New Orleans, La. 70121

The treatment and corrective measures necessary to assure you complete protection

