

FTC  
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ANNUAL REPORT

U.S. FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.

## ANNUAL REPORT OF THE FTC FOR FISCAL YEAR 1991

### SUMMARY

The Federal Trade Commission enforces a variety of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts are directed to stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

In addition to carrying out its statutory enforcement responsibilities, the Federal Trade Commission advances the policies underlying Congressional mandates through cost-effective non-enforcement activities, such as consumer education. This report itemizes the Commission's accomplishments in fiscal year 1991.

### MAINTAINING COMPETITION

The Bureau of Competition and the Commission's ten regional offices assisted the Commission in fulfilling its mission of maintaining competition in the U.S. economy. In the merger area, the number of Hart-Scott-Rodino premerger filings for fiscal year 1991 decreased by approximately 32 percent. In fiscal 1991, the Commission reviewed mergers in many sectors of the economy and measures were taken to ensure compliance with Commission orders requiring divestitures and prior approvals of acquisitions.

Outside the merger enforcement area, the Commission continued efforts to eliminate restraints on competition, maintain competition in the health care industry and challenge anticompetitive agreements among competitors, especially competitive restraints involving professionals.

### CONSUMER PROTECTION

The Bureau of Consumer Protection continued its mission, with the assistance of the ten regional offices, to improve market performance by emphasizing market-oriented remedies and disclosure of information so that consumers could make informed purchase choices. In fiscal 1991, the Commission obtained settlements in cases involving flavored wine products, and the deceptive and unfair marketing of "900" number information services to children. In addition, in its first two cases involving environmental claims, the Commission obtained consent agreements prohibiting deceptive ozone-safety claims. Another agreement resulted in the first FTC order dealing with the use of special consumer reports increasingly used by employers in making hiring decisions. More than \$75.5 million in

## MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is devoted to preventing unfair trade practices and promoting competition through enforcement of the Federal Trade Commission Act, Clayton Act, Robinson-Patman Act, and Hart-Scott-Rodino Antitrust Improvements Act of 1976. The Bureau of Competition is primarily responsible for the Maintaining Competition Mission with support from the Bureau of Economics, and the ten regional offices.

The activities of the mission are divided into five major program areas: Premerger Notification, Mergers and Joint Ventures, Horizontal Restraints, Distributional Arrangements, and Single Firm Violations (focusing primarily on monopolization, predation and practices that may facilitate collusion).

The Bureau of Competition is responsible for administering the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and for taking steps to ensure compliance with the program's statutory premerger notification rules. The other four program areas review violations of the antitrust laws in industries in which the Commission has particular expertise including petroleum, chemicals, natural resources, food, transportation, and health. In addition, the Commission reviews suspected collusive behavior among licensed professionals, and provides antitrust policy analysis and studies to increase consumer awareness and to further the understanding of the role of antitrust in a competitive economy.

### PREMERGER NOTIFICATION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") requires Persons meeting certain size requirements who are planning significant acquisitions to file notification with the Commission, and to delay consummation for a prescribed period of time. The premerger notification program was enacted to provide the Commission and the Department of Justice with the opportunity to review proposed transactions and to take enforcement action, if appropriate, to prevent consummation of transactions that violate the antitrust laws. The Commission, along with the Department of Justice is responsible for administering the program and taking steps to ensure compliance with the program's requirements.

During fiscal year 1991, 1,529 transactions were reported to the Commission pursuant to the premerger notification program, a decrease of approximately 32 percent when compared to fiscal 1990. The Premerger Office staff responded to approximately 10,000 inquiries regarding the application and interpretation of the HSR Act and rules.

The Commission released two pamphlets designed to assist the public understanding of the reporting requirements for mergers and acquisitions under the Premerger Notification Rules. Guide I presents a basic introduction to the premerger notification program; Guide II summarizes how to determine whether a

transaction is reportable under the notification and waiting period requirements. The Guides were prepared by the Premerger Office staff and the Compliance Division of the Commission with assistance from the Antitrust Division of the Department of Justice.

A Memorandum of Agreement was entered in July 1991 between the Department of Justice and the Federal Trade Commission with respect to civil penalty actions under the premerger notification provisions of the HSR Act. Under the agreement, the Department will determine within 45 days whether or not it will take any action on a Commission request to initiate a civil penalty suit for-alleged violations of the HSR Act and may appoint Commission attorneys to prosecute such actions. The Attorney General retains full authority over any litigation, including any proposed settlement arrangements.

The Commission initiated four civil penalty actions for alleged violations of the notification and waiting period requirements under section 7A(g)(1) of the HSR Act during fiscal year 1991. Each complaint and accompanying consent settlement was filed in the U.S. District Court for the District of Columbia by the Department of Justice at the request of the Commission. In Reliance Group Holdings Inc./Spectra-Physics Inc., a \$550,000 civil penalty was paid; in Service Corporation International/Sentinel Group, Inc., a \$500,000 civil penalty was paid; in Equity Group Holdings, a partnership controlled by Steven M. and Mitchell P. Rales, an \$850,000 civil penalty was paid in settlement of charges concerning the acquisition of Interco stock; and, in Atlantic Richfield Company/Union Carbide Corporation, each party agreed to pay \$1 million. This \$2 million settlement is the second largest civil penalty ever secured for a violation of the HSR Act.

In addition, the Department of Justice authorized the Commission to file one other complaint charging that stock was acquired in violation of the HSR Act. The complaint in General Cinema Corporation/Cadbury Schweppes p.l.c. seeks the maximum civil penalty under the law.

#### MERGERS AND JOINT VENTURES

This program identified and investigates those mergers, acquisitions, and joint ventures that are likely to result in the lessening of actual or potential competition, increase individual market power and lead to dominant firm behavior, or increase the likelihood of collusion.

During fiscal year 1991 the Commission initiated 45 new full-phase investigations, 33 of which involved requests for additional information under the Hart-Scott-Rodino Antitrust Improvements Act, and continued work on investigations carried over from fiscal 1990. The Commission authorized preliminary injunction actions against seven mergers: E G & G, Inc./Heimann GmbH; Harbour Group Investment, L.P./Diethelm Holding (U.S.A.) Ltd.; Ingersoll-Rand Co./ Universal Bearings Inc.; Instruments SA/INTEVAC, Inc.; Oy Wartsila AB/Computerized Security Systems,

Inc.; University Health, Inc./St. Joseph Hospital; and Wiggins Teape Appleton p.l.c./Boise Cascade Corp. An administrative complaint was issued in Harbour/Diethelm that challenged their proposed formation of a joint venture. After a federal district court granted the Commission's request for a preliminary injunction, the parties abandoned the transaction and agreed to settle charges in a consent agreement. That agreement requires Harbour and Diethelm to obtain prior Commission approval before acquiring any firm engaged in the production of Schmidt-Cassegrain telescopes. The Eleventh Circuit Court of Appeals reversed a federal district court's decision and granted the Commission its request for a preliminary injunction in University Health/St. Joseph after an administrative complaint was issued. The matter was pending in adjudication at the end of the fiscal year. The Commission withdrew its motion for a preliminary injunction to block Wiggins Teape's proposed acquisition of a paper mill after the parties abandoned the transaction. The parties in E G & G/Heimann were allowed to consummate the transaction after they restructured the proposed transaction to eliminate antitrust concerns. The other three transactions were abandoned before the Commission filed for injunctive relief.

An administrative complaint was issued challenging R.R. Donnelley & Sons Co.'s 1990 acquisition of Meredith/Burda Companies. The complaint charged that the acquisition could substantially reduce competition in the provision of high-volume publication gravure printing in the United States and in the western United States. The Commission authorized staff to seek a preliminary injunction in this matter in fiscal 1990.

The Commission issued five divestiture orders to settle antitrust concerns. The order in Atlantic Richfield Company/Union Carbide Corporation requires the divestiture of Union Carbide's propylene glycol and polyether polyol assets in North America; E-Z-EM Inc. agreed to divest its Lafayette, Indiana manufacturing plant and other assets acquired from Lafayette Pharmaceutical, Inc. in 1988; Allegheny Corporation agreed to divest certain title plants or back plants to settle charges concerning its acquisition of most of the title insurance-related assets of Westwood Equities Corporation; and in T&N plc/J.P. Industries Inc., the order required T&N to divest certain engine-bearing assets. The consent order that permitted Roche Holding Ltd.'s acquisition of Genentech Inc. required the divestiture of Genentech's vitamin C assets and Roche's human growth hormone releasing factor assets.

The order in American Stair-Glide Corporation requires the company to grant a license to Cheney Company, Inc.'s technology in the production of curved and straight stairway lifts, and vertical wheelchair lifts. The proposed consent agreement in RWE Aktiengesellschaft/Vista Chemical Company requires RWE to grant a license for the technology used in producing its high-purity alumina.

A consent agreement in Nippon Sheet Glass Company, Ltd./Pilkington PLC settled charges that Nippon's acquisition of

twenty percent of the stock of Libby-Owens-Ford Co. could reduce competition in the North American wired glass market. The proposed order, would prohibit the two firms from jointly manufacturing and distributing wired glass in North America.

The Commission's consent order in Harold A. Honickman/Brooklyn Beverage Acquisition Corp. settled a 1989 administrative complaint challenging the acquisition. The order requires both parties to obtain prior approval for ten years for certain soft drink mergers or acquisitions.

Three other consent agreements, placed on the public record for comment, were pending final action at the end of the fiscal year. The proposed order in PepsiCo, Inc. would require the divestiture of Twin Ports Seven-Up Bottling Company acquired by PepsiCo in 1986 from MEI Corporation; the proposed order in Service Corporation International/Sentinel Group, Inc. requires the divestiture of six specific funeral homes; and the proposed, order in Sentinel Group, Inc. requires the divestiture of funeral homes in Summerville, Waycross and Gainesville, Georgia.

Administrative Law Judges filed initial decisions dismissing two complaints. In Coca-Cola Company/Dr Pepper Co., although the judge held that the acquisition would violate the antitrust laws he ruled that it would not be in the public interest to issue a prior-approval order since the proposed acquisition had not been consummated. The dismissal is on appeal to the Commission. Another complaint challenging the acquisition of Dr Pepper and Canada Dry franchises from San Antonio Dr Pepper Bottling in Coca-Cola Bottling Company of the Southwest was also dismissed. The dismissal is on appeal to the Commission.

The Commission reversed an Administrative Law Judge's decision dismissing a complaint challenging Ukiah Adventist Hospital's acquisition of Ukiah General Hospital on jurisdictional grounds. The case was remanded to the judge for a decision on the merits.

In addition to University Health, R.R. Donnelley and Ukiah Adventist, three other merger cases were in adjudication at the close of the fiscal year: Occidental Petroleum Corp./Tenneco Inc./Owens-Illinois, Inc./Brockway, Inc.; and, Textron Inc./Avdel PLC.

One appeal from a Commission merger decision is pending. Olin Corporation filed a petition for review of the Commission's order, issued in fiscal year 1990, requiring divestiture of FMC Corporation's swimming pool chemical business.

#### HORIZONTAL RESTRAINTS

During fiscal 1991, the Commission continued its efforts to eliminate horizontal restraints such as price fixing and other anticompetitive agreements among competitors -- practices that may generally deny consumers access to the optimal variety, quantity and quality of goods and services at competitive prices, and deny sellers the opportunity to produce, distribute, and sell goods and services at prices they would select under competitive conditions. Through investigation, litigation, and negotiation,

the Commission worked to eliminate unlawful horizontal restraints on trade. In addition, the Commission implements its program by preparing and issuing reports, submitting comments to federal, state and local government agencies, filing amicus curiae briefs in court actions, and issuing advisory opinions when appropriate.

This year, the Commission issued an administrative complaint and accepted two consent agreements with respect to an alleged boycott in Fort Lauderdale of the Cleveland Clinic Foundation. The complaints issued against Dr. Diran M. Seropian, the Medical Staff of Broward General Medical Center and the Medical staff of Holy Cross Hospital, charged the doctor and the medical staffs with conspiring to prevent a provider of alternative health care services from establishing a clinic in the area. The medical staffs entered into consent agreements settling the charges.

Thirteen other consent agreements were placed on the public record for comment during the year. Eleven consent agreements were issued: The Torrington Co. and Universal Bearings Inc. agreed that, when acquiring any needle-roller supplier, they will not consolidate any portion of their businesses prior to consummation of the acquisition. The Madison County Veterinary Medical Association settled charges that the association and others illegally entered into an agreement not to participate in a program offered by the National Animal Welfare Association providing low-cost spaying and neutering services. In nine separate consent agreements, three trade associations, Capital Area Pharmaceutical Society, Chain Pharmacy Association of New York State, and Empire State Pharmaceutical Society; four retail pharmacy chains, Fay's Drug Company Inc., Kinney Drugs Inc., Melville Corporation, and Rite Aid Corporation; and two individuals, Mr. Alan Kadish and Mr. James E. Krahulec, agreed not to enter into any agreement with other pharmacy firms to refuse to participate in any third-party prescription drug program.

Two consent agreements were pending final action at year's end: Connecticut Chiropractic Association was charged with illegally prohibiting its members from offering free or discounted services. Southbank IPA, Inc. and its physician members were charged with restraining competition in the Jacksonville, Florida area by conspiring to fix the fees charged third-party payers. The proposed consent order would require the physicians to dissolve Southbank IPA and its parent company.

Two initial decisions were issued during fiscal 1991. An Administrative Law Judge dismissed, on jurisdictional grounds, a complaint challenging the agreements between the College Football Association and Capital Cities/ABC to televise college football games. The ruling has been appealed to the Commission. In Peterson Drug Company of North Chili, New York, Inc., an Administrative Law Judge prohibited the firm from entering into any agreements with any pharmacy firm to withdraw from any prescription reimbursement plan. This case is a companion case to the consent orders issued this year to Chain Pharmacy Association of New York State, Inc. and others. Peterson Drug appealed this ruling to the Commission, but later withdrew its appeal. The

Commission may determine whether to continue the case on its own motion or to adopt the findings of the initial decision as its own.

Following last year's First Circuit Court of Appeals decision in *New England Motor Rate Bureau, Inc. v. FTC*, the Commission issued a final order against unlawful ratemaking activity in November 1990. The Commission later modified the order to allow the Rate Bureau to file collective rates for the transportation of commodities by motor common carriers in New Hampshire.

In a January decision, the Third Circuit Court of Appeals reversed and vacated the Commission's cease and desist order in *Ticor Title Insurance Co.* The Court held that the companies' agreement to collectively set rates for title search and examination services was protected by the "state action" doctrine. The Commission's petition for certiorari was pending at the end of the year.

The Commission's staff has also provided comments, advice and guidance to governmental bodies and private groups concerning the potential anticompetitive effects of their regulatory and other activities. These advocacy efforts have dealt with a variety of economic sectors, including the marketing and delivery of health care services, regulation of intrastate telecommunication services, gasoline pricing, ownership of radio and television stations, advertising and solicitation by lawyers, cable television regulation, automotive aftermarket crash parts, trucking regulation, taxicab regulation, and bank advertising of trust funds.

#### DISTRIBUTIONAL RESTRAINTS

During fiscal 1991, the Commission continued to investigate restrictions on the distribution of goods from manufacturers to consumers. Such practices can limit sources of supply or restrict channels of distribution in ways that increase prices or reduce quality. Potentially unlawful conduct includes restrictions on resale prices and restrictions on the marketing decisions of firms. In addition, the Commission investigates discrimination in prices, terms of sale, advertising allowances, and other merchandising services that tend to deny competitive opportunities to firms in the distribution chain and other practices that may injure consumers.

The Commission had more than 40 active matters during the year involving alleged distributional practices in a variety of industries such as motion pictures, clothing, furniture, carbonated soft drinks, machine tools and children's toys and games. Administrative litigation continued against Harper & Row and five other major book publishers for alleged unlawful price discrimination under the Robinson-Patman Act.

The Commission accepted three proposed consent agreements for public comment. The proposed orders in *Kreepy Krauly U.S.A., Inc.* and *Nintendo of America, Inc.* prohibit the firms from entering into agreements with dealers to fix retail prices. The com-



plaint accompanying the proposed order in Sandoz Pharmaceutical Corporation charged that the company engaged in an illegal tying arrangement by requiring purchasers of clozapine (marketed exclusively by Sandoz) to purchase patient monitoring services arranged by Sandoz through its Clozaril Patient Management System.

On remand from the United States Court of Appeals for the District of Columbia, the Commission reissued its 1986 order in Boise Cascade Corporation and concluded that competitive injury existed when dealers who received no wholesale discounts lost accounts because Boise offered better prices and services. A second appeal by Boise was dismissed after the Commission accepted a proposal to issue a modified final order prohibiting Boise from knowingly receiving wholesale discounts on office products that are resold by Boise to end-users.

#### SINGLE FIRM VIOLATIONS

The Commission opened eleven new investigations of potential single firm abuse of market power, an activity that injures consumers by reducing output and increasing prices above the competitive level. The program's objective is to prevent or remedy instances in which market power has been created or maintained through anticompetitive behavior through monopolization, or attempts to monopolize, tying arrangements, and non-price predation.

The Commission staff continues its efforts to engage in competition advocacy concerning the reduction of barriers to entry and the elimination of restraints on pro-competitive firm conduct, and to provide legal and economic policy analysis of issues related to single firm anticompetitive behavior.

#### COMPLIANCE

The Compliance Division supports the other programs in the Commission's efforts to assure compliance with Commission orders to cease and desist from certain conduct, orders for divestiture, and other forms of relief.

The Commission modified three of its orders. Union Carbide Corporation's 1977 consent order was modified to allow the company to enter into requirements contracts for longer than one year with several gas distribution companies. The Commission set aside a 1961 order in Firestone Tire & Rubber Company, that prohibited Shell Oil Company and Firestone from using certain types of marketing agreements to sell tires, batteries and other automotive accessories. The order in New England Motor Rate Bureau was modified to allow the Rate Bureau to file collective rates in New Hampshire.

#### CONSUMER PROTECTION MISSION

In fulfilling its Consumer Protection mission, the Commission strives to maintain conditions in the marketplace that allow consumers to make informed purchase choices. To this end, it works to: increase the usefulness of advertising by ensuring that advertising is truthful and not misleading; reduce instances of fraudulent or deceptive sales and marketing practices; and

prevent creditors from engaging in unlawful practices in granting credit, maintaining credit information, collecting debts, and operating credit systems. Under this mission the Commission also conducts activities designed to educate consumers and businesses about their rights and responsibilities under the laws and regulations it administers.

There are five substantive programs within the Consumer Protection Mission: Advertising Practices; Service Industry Practices; Marketing Practices; Credit Practices; and Enforcement. These are supported by the Economic and Consumer Policy Analysis program and a management program that includes the Office of Consumer and Business Education.

#### ADVERTISING PRACTICES

Under this program, the Commission works to ensure that advertising claims are not false or misleading so that consumers can make informed purchases on the basis of truthful information. In fiscal year 1991, the Commission took action on several advertising practices cases, involving food and nutrition advertising, "900" numbers and environmental claims. Eighteen consent agreements were accepted in final by the Commission, including two requiring a total of \$1.7 million in consumer redress. In addition, two administrative complaints were issued by the Commission.

Health claims in food advertising remain prevalent, and the Commission committed to work closely with other government agencies to protect against false or unsubstantiated claims regarding important areas of nutrition. The Commission provisionally accepted or accepted in final form consent agreements involving health claims for products such as vegetable oil, soup, cereal, mineral water, vitamins, and other food supplements. In the first case brought against a manufacturer of alcoholic beverage for alleged deceptive advertising and packaging, the Commission obtained a final consent agreement from the producer of a fortified wine product that requires changes to the packaging of the product.

The Commission issued a unanimous final decision involving nutritional claims by a major cheese manufacturer that should give substantial guidance to advertisers about how the FTC will interpret ads. In accordance with a court order, the Commission completed an amendment to its regulations under the Smokeless Tobacco Act, requiring health warning labels to appear on specialty advertising items given or sold to consumers for their personal use, such as caps, tee-shirts, and key chains.

The Commission filed an administrative complaint challenging the advertising of "900" number information services to children, and accepted consent agreements with two other companies to resolve similar allegations. The Commission also worked to eliminate unfairness or deception in connection with "infomercials" -- paid television advertising which may be represented as an independent program rather than a commercial. Cases in this area included settlements with those who appear in infomercials, as well as, with producers.

Concern for the environment continues to result in advertisements using terms such as "biodegradable," "recyclable," and environmentally or ozone "friendly." In its first two cases involving environmental claims, the Commission obtained consent agreements prohibiting deceptive "ozone safety" claims.

In addition to asking companies to substantiate their environmental claims when appropriate on a case-by-case basis, the Commission also considered possible guidelines on this issue. The Commission held public hearings to consider whether it should issue national voluntary guidelines on environmental advertising, to protect business from conflicting state regulations while ensuring consumers receive truthful and accurate information upon which to base purchasing decisions. The Commission also sought written comment on issues relating to whether additional guidance to the public on environmental advertising and labeling is needed, what form such guidance should take, and what it should cover. A task force was formed with the Environmental Protection Agency and the United States Office of Consumer Affairs to address issues raised by environmental advertising claims.

### SERVICE INDUSTRY PRACTICES

Activities in this program focus on misrepresentations in sales of investment goods and services such as precious metals, rare coins, art and mining projects. In addition to taking action against direct marketers, the Commission continued to investigate and litigate cases involving firms and individuals who enable fraudulent schemes by providing the products involved or other assistance, including suppliers of counterfeit art or misleading appraisals of investment goods. This program also works to eliminate fraud in connection with lottery application filing services. A final settlement with all defendants in one such fraud case resulted in the establishment of a redress fund for consumers of approximately \$47 million.

In eight investment fraud cases, the Commission obtained eleven settlements and a litigated judgment ordering a total of approximately \$9 million in consumer redress. Seven new cases were brought, and one case in litigation was substantially expanded. Three complaints were filed against major investment scams with combined sales of approximately \$20 million. These companies had allegedly defrauded approximately 11,300 customers. The Commission obtained temporary restraining orders with asset freezes and froze assets worth about \$4-5 million. In the case already in litigation, an amended complaint was filed naming another eight defendants and an order freezing \$2-4 million in additional assets was issued.

Actions to prevent deception in the advertising and sale of health care services are also conducted under this program. Health care fraud remains a widespread problem. Many prospective patients base their selection of health care services, in part, on materials that misrepresent the efficacy or success of certain medical procedures or the discomfort and inconvenience they should anticipate from them.

In the health fraud area, two permanent injunctions and \$148,750 in consumer redress was obtained in a case involving the instructor of a permanent makeup workshop charged with misrepresenting the training provided and certification awarded to attendees. A preliminary injunction was obtained in an ongoing case charging a chain of weight-loss clinics with misrepresenting that consumers could adjust their metabolism and lose up to one-and-a-half pounds a day on its diet program. Consent orders were obtained prohibiting three providers of infertility treatments from misrepresenting, or making unsubstantiated claims about, their success rates in achieving births or pregnancies. One order also prohibits the provider from misrepresenting the cost of any infertility treatment, the provider's qualifications to provide those treatments, and any therapeutic or beneficial effect of such treatment. A consumer education brochure was published warning consumers about the health risks and poor weight-loss maintenance results of diet programs. Fourteen investigations of physician-supervised, very-low-calorie diet programs and commercial diet clinics continued.

## MARKETING PRACTICES

The fraudulent telemarketing of consumer goods and services is the primary focus of this program. Two important trade regulation rules, the Funeral Rule and the Franchise Rule, are also enforced under this program.

Commission actions in fiscal year 1991 challenged deceptive practices in marketing products and services such as water purifiers, vacation packages, "free" prizes or awards, invention promotion services, copier supplies and a variety of business opportunities. The Commission filed a complaint against the marketer of a purported AIDS cure, and charged a distributor-franchisor with making false claims regarding the accuracy of a breathalyzer device used in bars and night clubs. As in the investment fraud area, the Commission continued to investigate not only direct marketers, but also those who organize, supply and facilitate fraudulent schemes by providing them with essential services or assistance.

More than \$13 million in redress was ordered in nine deceptive sales cases, including a \$1 million settlement in the first 900 telephone number case brought by the Commission. In one case, a Louisiana operation charged with offering a fraudulent vending machine business opportunity was ordered to pay \$9.9 million in consumer redress. Two companies charged with misrepresenting invention promotion services agreed to pay a total of \$570,000 in redress. In another case, a seller of a pay per use fax machine business opportunity agreed to pay \$100,000 in redress to settle charges that it misrepresented the business opportunity to potential franchisees.

A federal court ordered a minimum of \$7.59 million be refunded to consumers by a maker of heat detectors. The redress order, which may result in as much as \$49.95 million in refunds, followed a Commission order ruling that the company

misrepresented to consumers that the heat detectors could give them enough advance warning to escape safely in most residential fires.

An individual who pled guilty to charges that he conspired to violate the Commission's Franchise Rule, received a jail sentence of three years, and was ordered to pay \$80,500 in consumer redress. In addition, a recommendation that criminal contempt proceedings be brought against a pair of Texas water purifier telemarketers was referred to the U.S. Attorney in Fort Worth. When the defendants subsequently pled guilty to other charges, they received aggravated sentences. An additional ten complaints alleging fraudulent practices have been filed in federal district court. In Funeral Rule enforcement, the Commission obtained five settlements ordering \$197,260 in civil penalties and \$14,270 in consumer redress.

## CREDIT PRACTICES

The Commission as a national enforcement presence in the credit area, continued its commitment to aggressively enforce federal laws to ensure the privacy of credit reports, equal access to credit, fair collection practices, and truthful lending practices.

The Commission accepted final consent agreements in two cases relating to the obligation to notify job or credit applicants when a credit report was used to deny an employment or credit application. Another company charged with discriminating against credit applicants on the basis of age, sex or marital status agreed to pay a \$265,000 civil penalty to settle the charges.

The Commission also worked to enforce the Truth-in-Lending laws to ensure that consumers understand the cost of loans. An agreement with a mortgage company requires payment of \$500,000 in consumer redress to settle charges it gave consumers inaccurate, incomplete, and misleading information regarding annual percentage rates and the size of monthly payments for its adjustable rate mortgages. A consent agreement requiring a mortgage company to pay \$200,000 in redress was accepted by the Commission subject to final approval. Another consent, accepted subject to final approval, settles charges that a company made misleading claims through software and printed materials about the alleged savings of buying a car through financing rather than paying cash.

Fraud and deception in the promotion of credit cards and credit services remains a great concern of consumers. This type of fraud often occurs in the use of "900" numbers to market credit cards and advertising for purported "credit repair" services. In fiscal year 1991, one company agreed to pay \$20,000 to the U.S. Treasury to settle charges that it misrepresented its credit repair services, and the Commission filed three other cases involving credit repair services in which final disposition is pending.

## ENFORCEMENT

Under this program, the Commission enforces its cease and desist orders, the majority of FTC trade regulation rules and special statutes governing practices, such as the labeling of textile, wool, and fur products. The program's efforts encompass investigations, periodic compliance reviews, and, when warranted, rulemaking proceedings. Consumer education and guidance to affected industries are also important to the success of this program.

Under order enforcement, thirty-seven compliance reports were reviewed and forwarded to the Bureau. One hundred and fifteen proposed orders were reviewed for enforceability. A civil penalty judgement ordering \$100,000 in penalties and \$25,000 in consumer redress was obtained against the owner of a truck driving school for alleged violations of a Commission order. In addition, a settlement required a builder to pay a civil penalty of \$595,000 to resolve alleged violations of a Commission order. The program was instrumental in collecting \$54,580 in civil penalties and interest owed by a dance studio that settled with the Commission in an earlier fiscal year.

The Staff and Presiding Officer Reports on proposed amendments to the Mail Order Rule were placed on the public record. The proposed amendments would include extending the rule to cover telephone-order sales and amending the definition of a "properly completed order" for credit sales.

The Commission initiated an industry-wide survey of gasoline distributors to determine compliance with the requirements of the Octane Rule. This survey is a cost-effective means of policing approximately 200,000 retailers and distributors. The survey supplements continuing investigations where mislabeling was suspected. A consumer fact sheet was issued to inform motorists about octane ratings for gasoline and how to determine what grade of gasoline their vehicles need.

A survey assessing home insulation manufacturers, compliance with the R-value Rule continued, and follow-up investigations of certain manufacturers suspected of rule violations were begun.

The rulemaking proceeding to amend the Appliance Labeling Rule continued and the record was supplemented with survey research commissioned by staff about how to make the "Energy Guide" labels required by the Rule more user friendly.

In the Used Car Rule area, with the aid of state and local authorities, inspection "sweeps" of over 500 dealers were conducted in four states and six cities. Cases also were brought in four other states. Along with injunctive relief, a total of \$394,250 in civil penalties was obtained in twenty-seven cases. Litigation was started in fourteen other cases.

In the Textile, Wool and Fur Acts area, five cases were concluded. Three cease and desist orders resolve allegations that the sellers failed to disclose the country of origin of textiles in mail order catalogues or removed country of origin labels from clothing. In two cases involving alleged content mislabeling, injunctive relief and a total of \$165,000 in civil

penalties was obtained. In the Care Labeling Rule area, the Commission filed its first formal action in federal district court.

In the Mail Order Rule area, three cases were resolved with injunctive relief and a total of \$200,000 in civil penalties. A major publisher resolved alleged violations of the Unordered Merchandise Statute with a consent providing injunctive relief and a \$175,000 civil penalty. Finally, a complaint was filed alleging that a hearing aid seller failed to inform consumers, often elderly citizens, about their three-day cancellation rights, as required by the Cooling-Off Rule.

## CONSUMER EDUCATION

The Office of Consumer and Business Education produced thirty-nine new and revised consumer and business publications, some in Spanish. Many of the publications as well as other projects were done as joint efforts with the private and public sectors. More than three million copies of the FTC's consumer and business publications were distributed by the agency.

The Office worked with the National Association of Attorneys General to produce a public service video feature about credit repair scams, which was released via satellite to about 1,000 television stations. The Office also worked with the Alliance Against Fraud in Telemarketing to produce radio spots to caution consumers about infomercials, which were distributed to 500 select stations. Further, the Office worked with AAA and its 1,000 media offices to distribute a message to consumers, which cautioned them about octane overbuying. Joint projects also were done with the National Coalition for Consumer Education ("The Status of Consumer Education in the States"); with the National Association of Consumer Agency Administrators ("The Roundtable Discussion Manual"); and with the Alliance Against Fraud in Telemarketing ("Fraud in Telemarketing Consumer Protection Handbook").

Other outreach efforts included: the newspaper placement of consumer columns with the Bureau Director's byline, which were carried in 342 newspapers; and the placement of promotion brochures for FTC's Best Sellers in 1,500 metropolitan area supermarkets.

## ECONOMIC ACTIVITIES

The Bureau of Economics provides economic support to the FTC's antitrust and consumer protection activities, advises the Commission about the impact of restraints and regulation on competition, and analyzes economic phenomena in the American economy as they relate to antitrust, consumer protection, and regulation.

The primary mission of the FTC is to enforce the antitrust and consumer protection laws. In 1991, the Bureau of Economics continued to provide guidance and support to those activities. In the antitrust area, economists offered advice on the economic merits of potential antitrust actions. Situations where the

marketplace performed well were distinguished from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve market competition.

In the consumer protection area, economists provided estimates of the benefits and costs to consumers of alternative policy approaches. Potential consumer protection actions were evaluated not only for their immediate impact, but also for their longer-run effects on price, product variety, and overall consumer welfare.

Although the FTC is primarily an enforcement agency, it is also charged with analyzing data and publishing information about the nation's industries, markets, and business firms. Much of this work is undertaken by the Bureau of Economics. In 1991, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation.

#### ANTITRUST

In the antitrust area, economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints. Economists also advised the Commission on all proposed antitrust actions. These activities consumed the bulk of the Bureau's resources assigned to directly support the Commission's antitrust responsibilities.

Several studies undertaken by the Bureau also support the Commission's antitrust activities. For example, during 1991, economists participated in a Congressionally-requested study of the Japanese *keiretsu* system of automobile production. In addition, economists continued work on three case studies of the effects of FTC actions in horizontal merger cases.

#### CONSUMER PROTECTION

In the consumer protection area, economists worked with attorney staff to evaluate proposals for full phase investigations, consent negotiations, consent settlements, and complaints. In addition, economists routinely provided day-to-day guidance on individual matters and made policy recommendations directly to the Commission.

In addition to the Bureau's direct support for individual consumer protection matters, staff economists continued work on several consumer protection studies. These included the effects of fat and cholesterol information on consumer behavior, and the effects of department store price advertising. In addition, the Bureau of Economics published a report on the costs and benefits of occupational regulation.

#### REGULATION

In the regulation area, staff economists actively participated in the Commission's Competition and Consumer Protection Advocacy Program. As part of this effort, Bureau staff reviewed



a variety of regulations that raise antitrust or consumer protection issues. Staff comments, filed in response to invitations, include submissions to the Federal Communications Commission on the financial interest and syndication rules, the cellular mobile telephone marketing rules, and 900-number telephone regulations; to the Department of Agriculture on food labeling regulations; and to the Advisory Commission on ocean Shipping on the costs and benefits of ocean shipping conferences. In addition, the Bureau released a study of the relative benefits to consumers and the government of petroleum import tariffs versus sales taxes as a means of raising government revenue.

EXECUTIVE DIRECTION,  
ADMINISTRATION AND MANAGEMENT,  
REGIONAL OFFICES

The Office of the Executive Director provides administrative and management support for the Commission as well as providing management direction to the agency's ten regional offices. The Executive Director administers these functions through a series of divisions including Personnel, Budget and Finance, Procurement and General Services, Information Services, Automated Systems (ASD), and the Library.

AUTOMATED SYSTEMS

During 1991, The Automated Systems Division completed initiatives in direct support services, central services, office services and communication services.

In "direct support," the Litigation Support and Economic Analysis Branch provided important document management and data analysis support for investigations in all three bureaus and several of the regional offices. The Visual Communications Center became a reality. Graphic and video services and technical support are now available to staff. Technical support also expanded to international boundaries as the Automated Systems Division provided support as well as equipment to FTC staff working on Eastern European project initiatives.

In "central systems support," the Commission converted to a state-of-the-art financial accounting system operated by the Department of Interior and linked Budget & Finance staff to the new financial system and the Treasury Department's Electronic Certification System. Personnel Division staff were hooked up to a new Payroll-Personnel System operated by the General Services Administration in Kansas City. The programming support services contract was re-competed and awarded to NMI. A number of enhancements were also made to existing systems on the central Prime computer (MIS, IRIS, OBPT, OSCAR, Pre-Merger) to increase productivity for staff. New initiatives with long--range benefits that got underway included research into integrated text/data/image processing capability to provide more efficient processing and manipulation of the Commission's major records

management workload. CD-ROM technology was introduced in selected offices as pilots.

In "office support," the Automated Systems Division completed the installation of the first Regional Office Local area network in the Cleveland Regional Office. A major analysis was also completed of pc-based relational database systems, with a view toward selecting a standard database management tool for staff attorneys to use for investigations. The goal is to include an improved database product in the inventory of standard PC software that is supported by ASD and the Information Center. Other decisions made for additional standard software available to users were PC-Tools and WordPerfect Office.

Finally, with respect to "communications services," access to a variety of information of interest to external users and maintained in our central computers was greatly facilitated by installing communications software for commonly used protocols. A major upgrade of the Commission's voice message system was also completed that includes more capacity, higher performance and, most importantly, backup in the advent of a power outage.

### INFORMATION SERVICES

The Information Services Division made substantial progress towards providing Commission staff with "text management" capability. The first collection of records being prepared for entry into that system includes documents related to federal court proceedings involving the agency. Through 1982, those records were published in bound volumes. However, publication was curtailed for budgetary reasons. The new capability will provide agency staff with greater access to the same records.

The Information Services Division and Automated Systems Division installed a major enhancement to the Management Information System. That change permits staff to restrict access to individual pieces of information related to the data concerning agency law enforcement and administrative matters recorded in the system. Those restrictions ensure that appropriate information is available within the Commission.

The Division responded to 26,765 consumer complaints and inquiries in 1991, which is the largest number on record and more than 13,000 more than in 1990. In addition, approximately 3,000,000 consumer and business education pamphlets and brochures were distributed. That is approximately 50% more than in 1990, which was also a record year for distribution of those pamphlets and brochures.

Based upon the success of an experiment conducted in 1990, the Division established a long-term contractual relationship with a private firm to assist in the logging, storing, maintaining, retrieving and disposing of the more traditional paper records that the agency collects and generates as part of its law enforcement efforts.

## LIBRARY

The Library maintained the Commission's comprehensive research collection in legal, business, and economic subjects and provided research assistance to FTC staff and the public through a variety of information sources and systems. During 1991, the Library staff responded to approximately 12,000 reference questions, processed over 2,850 interlibrary loan requests, and circulated over 3000 items. The Library introduced CD-ROM technology and databases to the collection this year.

The Library's Information Center continued to train and assist FTC staff in the use of personal computers on related soft-ware, systems located on the agency's central computer, and in obtaining information from the agency's internal computer systems. During fiscal year 1991, Information Center increased its services by providing support in the use of selected audiovisual equipment.

The Information Center trained 1,091 employees in 86 classes on 33 different topics, ranging from computer security to Advance WordPerfect. The staff developed a Regional Office Training Catalog which offered courses available locally as well as on-site specialized training by headquarters staff. In addition to formal training and customer support, the Information Center published a number of instruction sheets on different software packages.

## PROCUREMENT AND GENERAL SERVICES

In addition to providing the day-to-day administrative support to the Commission, the Division of Procurement and General Services completed several initiatives during fiscal year 1991. These accomplishments included the awarding of contracts for: (1) cataloging support for the Library; (2) Over-the-Counter Drug Survey funded by the Food and Drug Administration; (3) redress fund administration; (4) administrative support services contract for an FTC/DOJ office in Poland; and (5) equipment purchases to implement local area networks at Headquarters and in the regional offices. Numerous projects to improve the Headquarters facility were either started or completed. These included: the first floor renovation under a cyclical renovation program; significant improvements to the photocopier program, including both technological and cost efficiency upgrades of the Commission's copiers; skylight renovation contract; installation of a new motor control unit for building mechanical operations; and cleaning of the exterior parapets and statues.

## BUDGET AND FINANCE

The fiscal 1991 appropriation for the Federal Trade Commission was \$76.1 million, including a \$2.0 million supplemental. An additional \$357 thousand in spending authority was carried over from fiscal 1990. The Commission spent \$76.3 million and used 926 work-years in fiscal 1991. This was an increase of 23 work-years over the previous year, continuing the modest upward growth that began in fiscal 1990. Also, the Division of Budget and Finance engaged in a significant effort to

prepare for the conversion to a new accounting system as of October 1, 1991.

#### HUMAN RESOURCE MANAGEMENT

In fiscal year 1991, the Commission continued to build on its human resources staffing level. The agency conducted on campus interviews at 22 law schools and hired 29 law clerks and 10 summer legal interns. Also the agency hired two new economists under its newly acquired delegated examining authority. The Commission was also successful in converting its automated personnel information system thereby giving the agency integrated payroll-personnel capability.

#### REGIONAL OFFICES

The Commission's regional offices continued to play a key role in fulfilling the agency's two missions in fiscal 1991. In addition to engaging in the full range of enforcement and advocacy activities within their respective regions, the regional offices served a valuable "outreach" function by responding to consumer complaints and inquiries, and maintaining contacts with state and local enforcement officials, trade associations, and consumer groups. During fiscal 1991, the regional offices worked to expand their strong working relationships with state attorneys activities undertaken on a cooperative basis with the states.

PART II (INVESTIGATIVE STAGE)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

Allegheny Corporation

(See page 28.)

American Stair-Glide Corporation

(See page 28.)

Connecticut Chiropractic Association

The Connecticut Chiropractic Association agreed not to interfere with its members' business practices of advertising professional services to consumers. The complaint accompanying the proposed agreement alleged that the association conspired with some of its members by adopting an Ethical Code that prohibited its members from offering free services or discounted fees and from advertising these services to consumers, from using advertisements that were not in "good taste," and from advertising unusual expertise unless they have met certain requirements. The complaint further alleged that the association coerced its members to comply with the code by threatening: (1) to influence health insurance companies to reduce reimbursements to patients; (2) to report members to malpractice insurance carriers, and (3) to expel members from the association. According to the complaint, the association's actions restrained competition in the State of Connecticut by depriving consumers of truthful information about the availability, price, and quality of professional chiropractic services. The proposed consent agreement requires the association to amend its Ethical Code to drop these restrictions while allowing the association to continue to restrict members' claims of specialization if they have not met standards established by a recognized chiropractic accrediting agency.

Kreepy Krauly, U.S.A., Inc.

Kreepy Krauly, U.S.A., Inc., a manufacturer of automatic swimming pool cleaning devices, entered into a proposed consent agreement to settle charges that the company illegally entered into written agreements with its dealers concerning the retail prices at which its products are sold. Under terms of the proposed order, Kreepy Krauly is prohibited from entering into or enforcing such agreements with dealers, or coercing dealers to maintain or adhere to

any resale price and, in addition, must notify its officers and distributors that dealers are free to set their own prices for the products to be sold.

Madison County Veterinary Medical Association

(See page 30.)

Medical Staff of Broward General Medical Center

(See page 30.)

Medical Staff of Holy Cross Hospital

(See -- Medical Staff of Broward General Medical Center, page 30.)

Nintendo of America Inc.

Nintendo of America Inc. agreed to settle charges that it obtained agreements from certain of its dealers to sell its home video game hardware at specified price levels. According to the complaint, Nintendo's resale price maintenance activities increased consumer prices and restricted competition among retail dealers. The proposed order prohibits Nintendo from fixing or controlling the retail price of any Nintendo video product, coercing retailers into committing to sell products at pre-determined prices, reducing the supply of products or imposing different credit terms to dealers who sell Nintendo products at prices lower than those suggested by Nintendo or, for five years, terminating dealers for failure to sell at minimum suggested prices. Also, for a period of five years, Nintendo would be required to place a disclaimer on any material in which it suggests resale prices stating that the dealer is free to determine the prices at which it will sell the Nintendo products. The proposed order applies to all Nintendo products, including hardware and home video game software. Nintendo of America Inc., a wholly-owned subsidiary of Nintendo Co. Ltd. of Kyoto Japan, is based in Redmond, Washington.

Nippon Sheet Glass Company, Ltd.

Nippon Sheet Glass Company, Ltd. and Pilkington PLC have agreed to a proposed consent agreement to settle charges that Nippon's 1990 acquisition of a twenty percent interest in Libby-Owens-Ford Co., a wholly-owned United States subsidiary of Pilkington, was likely to reduce competition in the North American market for wired glass. Wired glass is a specialty flat glass used primarily in shower and bath enclosures and in fire-retarding applications for products such as fire-doors. According to the complaint accompanying the proposed consent order, the terms of the Nippon/Pilkington acquisition agreement gave the jointly

owned L-0-F rights to distribute, in North America, the polished wired glass produced by both Pilkington and Nippon, thus eliminating competition between Nippon and Pilkington and increasing the likelihood of collusion among other firms in the market. Under terms of the proposed order, Nippon and Pilkington are prohibited from jointly manufacturing or distributing polished wired glass in North America to customers located in the United States through L-0-F or any other firm without Commission prior approval for a period of ten years. The proposed order maintains Nippon and Pilkington as independent suppliers of wired glass to the United States. A consent agreement accepted last year between the same two firms settled charges that the same acquisition would lessen competition in the float glass market. That order, issued in fiscal year 1990, prohibits Nippon and Pilkington from entering into agreements that would either limit the manufacture of float glass in North America or restrict imports to North America.

#### PepsiCo, Inc.

PepsiCo, Inc. entered into a proposed consent agreement to settle charges that its acquisition of Twin Ports Seven-Up Bottling Company would substantially lessen competition in the production and distribution of carbonated soft drinks in the Duluth, Minnesota area. According to the complaint issued with the proposed order, Twin Ports, a bottler and distributor of Seven-Up and Dr Pepper, sells non-Pepsi brands in competition with the Pepsi brands sold by the franchised Pepsi bottler in the Duluth area. The acquisition thus would increase the likelihood of inter-brand collusion because PepsiCo could raise the price of either its branded soft drinks or the non-Pepsi brand soft drinks that its Twin Ports operation bottles and distributes as a franchise in the area. Under terms of the proposed order, PepsiCo must divest Twin Ports within nine months to an acquirer approved by the Commission. In addition, for a period of ten years, PepsiCo must obtain Commission approval before acquiring the rights to distribute non-Pepsi brands, or before acquiring any person with such rights, in the Duluth area.

#### RWE Aktiengesellschaft

RWE Aktiengesellschaft agreed to settle charges stemming from its \$1.3 billion acquisition of Vista Chemical Company. The complaint issued with the proposed consent agreement alleged that the acquisition would eliminate competition in the market for the manufacture and sale of high purity alcohol process alumina in the world. RWE and Vista are the only two companies that obtain alumina as a by-product in the production of high-purity alcohol used in making catalysts for the petroleum refining, chemical and automotive emissions control industries. The proposed consent order requires RWE to license certain technology for

the production of its alumina and to assist the licensee in the formation and operation of a joint venture company capable of establishing itself as a producer of high-purity alcohol process alumina comparable to that of Vista or RWE.

#### Sandoz Pharmaceuticals Corporation

A complaint filed against Sandoz Pharmaceuticals Corporation alleged that Sandoz engaged in an illegal tying arrangement by requiring patients who purchased clozapine, a drug used in the treatment of schizophrenia, to also purchase distribution and monitoring services marketed and arranged by Sandoz under its Clozaril Patient Management System. Clozapine is sold under the trade name Clozaril and is exclusively marketed in the United States by Sandoz. According to the complaint, the illegal tying arrangement restrained competition and injured consumers by raising the price of treatment and prevented federal, state, and local institutions and private health-care providers from administering their own patient monitoring services. Under terms of the consent agreement, Sandoz will be prohibited from requiring any purchaser of Clozaril to buy other goods or services from Sandoz, or from anyone designated by Sandoz. In addition, Sandoz must provide to any other sellers of clozapine, at reasonable terms, information on patients who have suffered adverse reactions to clozapine. The proposed order does allow Sandoz to refuse to sell the drug to anyone who does not provide adequate monitoring services for patients.

#### Sentinel Group, Inc.

Sentinel Group, Inc. entered into a proposed consent agreement concerning its acquisitions of at least seventy funeral homes in Georgia and Arkansas. The Commission charged that the acquisitions, covering five cities in the two states, reduced competition among area funeral homes and increased the likelihood of collusion among the remaining firms in the five cities. Under terms of the proposed order, Sentinel is required to divest the Mincy-Fulford Funeral Home in Waycross, Georgia and the Erwin-Pettit Funeral Home in Summerville, Georgia within twelve months to a Commission approved acquirer. In addition, for a period of ten years, Sentinel must obtain prior Commission approval before acquiring any funeral home in an area extending fifteen miles outward in any direction from the city limits of Waycross, Georgia; Summerville, Georgia; Gainesville, Georgia; Rome Georgia; Savannah Georgia; and Fort Smith, Arkansas. In a related matter, a proposed consent agreement placed on the public record for comment permitted Service Corporation International to acquire the Sentinel Group, Inc.



### Service Corporation International

The Commission accepted for public comment a proposed consent agreement that would permit Service Corporation International to acquire the Sentinel Group, Inc. According to the complaint accompanying the agreement, the acquisition would substantially reduce competition for funeral services in certain areas of Georgia and Tennessee and increase the possibility of collusion among the remaining establishments providing funeral services in the areas. Under terms of the proposed consent, SCI would be permitted to acquire Sentinel if it divests six specific funeral homes within twelve months: one each in Savannah, Georgia, LaFayette, Georgia, and Soddy Daisy, Tennessee; and three in Chattanooga, Tennessee. In addition, for a period of ten years, SCI must obtain prior Commission approval before acquiring any additional funeral homes in Savannah and LaFayette, Georgia, and in specific suburban areas of Chattanooga, Tennessee. In a related matter, a proposed consent agreement placed on the public record for comment requires Sentinel Group, Inc. to divest several funeral homes. Also during the year, SCI settled a civil penalty action alleging that its acquisition of stock in Centurion National Group, Inc. was in violation of the Hart-Scott-Rodino Act.

### Southbank IPA, Inc.

The twenty-three obstetrician/gynecologist members of Southbank IPA, Inc. agreed not to conspire with others to fix the prices charged for physician services. According to the complaint accompanying the proposed consent order, Southbank, its parent company, Southbank Health Care Corporation, and the twenty-three physicians formed the Independent Practice Association in the Jacksonville, Florida area to contract directly with third-party payers, insurance companies, and employers providing self-insured health benefits to their employees. The complaint alleged that Southbank was a sham independent practice association and that the IPA and its members restrained competition among obstetricians and gynecologists in the Jacksonville area by boycotting third-party payers and attempting to increase the payments paid to the physicians. The proposed order would require the physicians to dissolve Southbank IPA and its parent, and prohibit the physicians from entering into any agreement with any competing physician to set the fees charged for professional services. This consent agreement is the first one in which the Commission has ordered dissolution of a health care organization.

### Torrington Company, The

(See page 32.)

## CONSUMER PROTECTION MISSION

### American Body Armor & Equipment, Inc.

American Body Armor, a manufacturer of bullet resistant vests, was alleged to have falsely represented that its bullet resistant vests had been certified under a voluntary government standard. The company agreed not to make false claims regarding the government certification status of its vests in the future, and to write past purchasers and offer to provide replacement vests at a substantially reduced cost.

### American Enviro Products, Inc.

American Enviro Products has agreed to settle charges that it made allegedly unsubstantiated claims that when placed in a landfill, its "Bunnies" disposable diapers would decompose within three to five years or "before your child grows up," and that they offered significant environmental benefit compared to other diapers. The order prohibits American Enviro from making unsubstantiated degradability claims in the future, and requires environmental benefit claims to be supported by reliable scientific evidence. The order permits the company to make truthful claims that its plastic products will degrade into usable compost when disposed of in municipal solid-waste composting facilities, if related disclosures are made.

### Automatic Data Processing, Inc.

Automatic Data Processing was alleged to have made misleading claims through software and printed materials about the alleged savings of buying a car through financing rather than by paying cash. The order prohibits such misrepresentations in the future.

### Bertolli U.S.A., Inc.

Bertolli U.S.A., the largest marketer of olive oil in the United States, was charged with making allegedly false, misleading and unsubstantiated claims regarding the health benefits of its olive oil and overstating the results of a study on olive oil consumption. The company agreed not to make such misrepresentations in future advertising.

### Dive N' Surf, Inc.

Dive N' Surf, a manufacturer of form-fitting garments, including wetsuits and bathing suits, allegedly failed to label the garments with the constituent fiber content, as required by the Textile Fiber Products Identification Act. The order prohibits future violations of the Act.

### Excell Mortgage Corporation

Excell Mortgage was charged with providing consumers with allegedly inaccurate, incomplete and misleading information about annual percentage rates and the size of monthly payments for adjustable rate mortgages in violation of the Truth in Lending Act and Regulation Z. The company agreed to an order prohibiting future violations of the Truth in Lending Act and Regulation Z, and requiring it to pay consumer redress totalling approximately \$200,000.

### Newtron Products Company, Inc.

Newtron Products and its principals were alleged to have deceptively advertised the performance capabilities of its Newtron Electrostatic Air Cleaner. The order prohibits the respondents from making unsubstantiated representations regarding the performance of any air cleaning product unless it possesses competent and reliable scientific evidence to substantiate those claims.

### O'Neill, Inc.

O'Neill, a manufacturer of form-fitting garments, including wetsuits and bathing suits, allegedly failed to label the garments with the constituent fiber content, as required by the Textile Fiber Products Identification Act. The order prohibits future violations of the Act.

### Pacific Rice Products, Inc.

Pacific Rice Products was charged with making allegedly unsubstantiated health claims in advertisements for its Vita-Fiber Rice Bran cereal. The company agreed to an order prohibiting it from misrepresenting the results of any test or study in connection with the sale or advertising of any food product, and requiring it to have competent and reliable scientific evidence for any health benefit claim for any food product the company advertises in the future.

### Scali, McCabe, Sloves, Inc. & Volvo North America Corp.

Volvo North America and Scali, McCabe, Sloves, Inc., its New York advertising agency, were alleged to have falsely portrayed the comparative performance of Volvo automobiles in the "Bear Foot" ad campaign demonstrating a monster truck running over a row of cars, crushing all but a Volvo station wagon. The Commission alleged that, in fact, in the ads some of the structural supports in the Volvos used had been structurally reinforced, while in some of the competing cars the structural supports had been severed. Volvo and Scali, McCabe each agreed to orders that would prohibit such misrepresentations in the future, and require each to pay \$150,000 to the United States Treasury as disgorgement.

PART II (INVESTIGATIVE STAGE)  
CONSENT ORDERS ISSUED

MAINTAINING COMPETITION MISSION

Allegheny Corporation

Allegheny Corporation agreed in a consent order to divest to a Commission approved acquirer within twelve months its interests in Westwood Equities Corporation, a company that provided real estate records serving eighteen counties in several states. The complaint issued with the consent order charged that the proposed acquisition of most of the title insurance-related assets of Westwood would lessen competition in the production and sale of title plant or back plant information in certain counties located in California, Illinois, Indiana, Tennessee and Washington. Title plants and back plants are records that detail the ownership and interests in real property. Title plant records are updated on a regular basis; back plant records are historical and are no longer updated. In addition to the divestitures, for a period of ten years Allegheny is prohibited from acquiring any interest in specified firms that provide title plant and back plant services to the counties named in the order without prior Commission approval.

American Stair-Glide Corporation

American Stair-Glide Corporation ("ASG") entered into a consent order to settle charges arising from its acquisition of the Cheney Company, Inc. The order requires ASG to grant a non-exclusive perpetual license to Cheney's technology and know-how in the production of curved stairway lifts, straight stairway lifts and vertical wheelchair lifts, and also a perpetual exclusive license to the Cheney name to a licensee pre-approved by the Commission. These lifts are used primarily by the elderly or disabled to move from one level to another in residential homes and commercial buildings. The complaint issued with the consent order alleged that the acquisition eliminated competition and established a dominant firm in the United States in the manufacture and sale of stairway and wheelchair lifts. The order also requires ASG to obtain prior Commission approval before acquiring any interest in a firm engaged in the production, distribution or sale of any curved stairway lifts, straight stairway lifts, or vertical wheelchair lifts in the United States for a period of ten years. The order further prohibits ASG from using the Cheney name in connection with any products sold in the United States. Finally, for a period of five years, ASG is prohibited from entering into any long term sales agreement or any exclusive agreements limiting a distributor's ability to sell the stairway lifts or wheelchair lifts of any other manufacturer.

### Atlantic Richfield Company

Atlantic Richfield agreed to an order requiring it to divest certain assets to settle charges that its \$220 million acquisition of Union Carbide Corporation would substantially reduce potential competition in the manufacture of propylene oxide, the basic feedstock for urethane polyether polyol (UPP) and propylene glycol (PG) production. ARCO and Dow Chemical are the only domestic producers of propylene oxide; ARCO and Union Carbide are leading producers of UPP and PG. The order requires ARCO to divest all of its PG assets acquired from Union Carbide and the UPP assets located in the United States and Canada that it acquired from Texaco. Included with the UPP assets are ARCO's tolling agreement with Texaco to manufacture polyols and a licensing agreement to use Union Carbide's polymer/polyol patent rights and technology. The consent order also prohibits ARCO from suing Texaco for its continuing development of propylene oxide technology and dissolves the agreement that prohibited Union Carbide and Texaco from competing with ARCO in the manufacture or sale of either chemical in the United States or Canada. The consent order contains a ten year prior approval provision for the acquisition of any company engaged in the production of UPP or PG in the United States or Canada. Before the consent order was accepted, the Commission's staff filed a motion for a preliminary injunction to prevent further acquisitions of the assets, rescind the acquisition already consummated, and seek rescission for the parties' violation of the filing and waiting period requirements under the Hart-Scott-Rodino Act. That complaint charged that ARCO obtained beneficial ownership of the Union Carbide assets before complying with the provisions of the premerger notification reporting requirements under the HSR Act. Under terms of a final judgment filed with the complaint, ARCO and Union Carbide agreed to pay civil penalties to settle the Hart-Scott-Rodino charges.

### E-Z-EM, Inc.

E-Z-EM, Inc., a Westbury, New York medical products manufacturer, agreed to a consent order to settle charges that its 1988 acquisition of the barium business of Lafayette Pharmaceutical, Inc. would substantially reduce competition in the market for products used to diagnose problems in the gastrointestinal tract. The complaint accompanying the consent order alleged that E-Z-EM's acquisition created a virtual monopoly and increased the likelihood of collusion in the already highly concentrated barium diagnostic products market. Under terms of the consent order, E-Z-EM agreed to divest all of the acquired assets within twelve months to a Commission approved acquirer. In addition to a prior approval provision for certain future acquisitions, E-Z-EM must seek prior Commission approval of the sale or disposition of any assets to anyone engaged in the barium diagnostic products business for a period of ten years.

#### Madison County Veterinary Medical Association

The Madison County Veterinary Medical Association and four individual veterinarians consented not to conspire with others to refuse to participate in any program that offers low cost veterinary services. The complaint accompanying the consent order alleged that the Medical Association and four Huntsville, Alabama veterinarians, Robert Neil Cole, D.V.M, Donald Butler Popejoy, D.V.M., Billy Joe Renfroe, D.V.M., and Charles L. Smith, D.V.M. restrained competition by conspiring not to participate in a program offered by the National Animal Welfare Association that promoted low cost spays and neuters to veterinarians. The complaint further alleged that the Medical Association and its members illegally agreed to restrict their advertisements in the Yellow Pages of Huntsville, Alabama. Under terms of the order, the Medical Association and the four individual veterinarians are prohibited from collectively refusing to deal or threatening to refuse to deal with a program that promotes the sale to consumers of veterinary services at discounted prices. In addition, the order prohibits the veterinarians, attempt to fix or standardize advertisements and promotionals for veterinary services.

#### Medical Staff of Broward General Medical Center

#### Medical Staff of Holy Cross Hospital

The Medical Staff of Broward General Medical Center and the Medical Staff of Holy Cross Hospital individually agreed to settle charges that they conspired to prevent the Cleveland Clinic Foundation from entering the Fort Lauderdale area. The Cleveland Clinic has a multi-specialty group medical practice offering specialized medical care and ancillary services by salaried physicians and other medical professionals at controlled prices. According to the complaint accompanying the consent order, the two medical staffs and Dr. Diran M. Seropian, Chief of Staff at Broward General, threatened to boycott Broward General and Holy Cross if they affiliated with the Cleveland Clinic. The complaint also charged that the physicians at the hospitals considered the proposed affiliation to be a competitive threat to their fee-for-service form of medical practice. The separate orders prohibit each Medical Staff from entering into any agreement that would restrain competition between the two hospitals and the Cleveland Clinic or any other health care provider. During fiscal year 1991, the Commission issued an administrative complaint to Dr. Diran M. Seropian charging that he also participated in the alleged boycott to prevent competition from the Cleveland Clinic.

#### Medical Staff of Holy Cross Hospital

(See -- Medical Staff of Broward General Medical Center, page 30.)

### Roche Holding Ltd.

Roche Holding Ltd. entered into a consent order to settle charges with respect to Roche's proposed acquisition of Genentech Inc. The complaint accompanying the agreement charged that the acquisition would substantially reduce competition in three areas, the world market for vitamin C, the United States market for therapeutic drugs used in the treatment of human-growth hormone deficiency, and the United States market for the development of CD4-based therapeutics used in the treatment of AIDS/HIV infection. According to the complaint, Genentech, based in California, and Roche, headquartered in Switzerland, are both engaged in the research, development, and marketing of biotechnology therapeutic pharmaceuticals. Under terms of the consent order, Roche must divest its human-growth hormone releasing factor business and Genentech's GLC Vitamin C assets, within twelve months, to a Commission approved acquirer. In addition, for ten years, Roche is required to license its CD4-based therapeutic domestic patents for a specified royalty. The order also prohibits Roche and Genentech from acquiring without prior Commission approval any interest in any company engaged in the clinical development or the manufacture or sale in the United States of any products subject to the proposed order for a period of ten years.

### T&N PLC

A consent order settled antitrust concerns resulting from T&N PLC's acquisition of J.P. Industries, Inc. The complaint accompanying the order charged that the acquisition would lessen competition or tend to create a monopoly in the United States for the manufacture and sale of thinwall bearings used in automobile and truck engines, and tri-metal heavy wall engine bearings used to power large engines, such as those in locomotives and ships. Engine bearings are used to reduce friction between the rotating and stationary parts of engines. Under the order, T&N is required to divest various assets including, certain domestic thin-wall engine bearings assets; tooling and related assets located in Scotland and England for use in U.S. applications, and certain tri-metal heavywall assets, including castings, specifications, and electroplating equipment. The divestitures must be completed within twelve months to a Commission approved acquirer. The order further specifies that if the assets cannot be sold by T&N or, after an additional twelve months by a Commission appointed trustee, T&N will be required to include the J.P. Industries, engine bearings manufacturing facilities in McConnelsville, Ohio along with the other T&N assets to be divested. During the year, the Commission approved two T&N divestitures: certain thinwall engine bearing assets were sold to Automotive Components Ltd., an Australian company; and, the tri-metal heavywall engine bearing assets were sold to Babbitt Bearings, Inc. of Syracuse, New York.

### Torrington Company, The

The Torrington Company and Universal Bearings Inc. agreed to settle charges resulting from Ingersoll-Rand Company's proposed acquisition of Universal. According to the complaint accompanying the consent order, Universal prematurely began consolidating its axle shaft business into Torrington, Ingersoll Rand's wholly-owned subsidiary, during the Hart-Scott-Rodino waiting period. Torrington is engaged in the production of anti-friction devices, including needle rollers, pins, and axle shafts. The complaint further alleged that during this same period of time, Universal allocated the business of its axle shaft customers to Torrington. Under terms of the order Torrington and Universal agreed not to consolidate the production, marketing or any other aspect of their respective businesses with an acquiring person prior to the consummation of any proposed acquisition. Earlier in the year, the Commission authorized its staff to seek a preliminary injunction to block Ingersoll-Rand's acquisition of Universal. The Commission believed that the acquisition would substantially reduce competition in the manufacture and sale of needle rollers, cylindrical steel parts used for anti-friction purposes in bearings for automobile transmissions, drive shafts,,and power steering units. The parties abandoned the transaction before the motion for a preliminary injunction could be filed in a federal district court.

### CONSUMER PROTECTION MISSION

#### American Life Nutrition, Inc.

American Life Nutrition, a wholesale dealer of dietary food supplements, agreed to settle charges it made false and unsubstantiated therapeutic claims in its Chinese-language advertising for five of its products. The order prohibits the respondents from making false and unsubstantiated health efficacy claims for their dietary food supplement products in the future, and orders them to pay for corrective advertising that will also appear in Chinese-language newspapers.

#### Asics Tiger Corporation

Asics Tiger Corporation agreed to settle allegations that it claimed persons wearing its "gel" athletic shoes would suffer fewer impact-related injuries than wearers of other athletic shoes, without having competent and reliable evidence to support the claims. The consent agreement prohibits the company from making unsubstantiated performance claims about its athletic shoes in the future.



### Audio Communications, Inc.

Audio Communications was alleged to have deceptively marketed "900" number information services to children. The company agreed to an order prohibiting it from misrepresenting the number of calls required to receive a free prize or premium or the ease with which a premium can be obtained. The order also requires Audio Communications to explain the material terms and conditions for obtaining a premium, and to prominently disclose the cost of the call and statements regarding the need to obtain a parent's permission to make the call. The company must also provide a reasonable means for the person responsible for paying for the call to avoid unauthorized calls by children, or offer a one-time credit or refund.

### Budget Rent-A-Car

Budget Rent-A-Car agreed to settle charges alleging that it did not disclose to renters that it failed to inspect automobiles subject to recall notices within a reasonable period of time and, if appropriate, make necessary repairs. The order requires Budget to either inspect and repair affected vehicles within a reasonable time after receiving the recall notice, or disclose to renters that the vehicles are subject to safety recall notices and may contain defects.

### Canandaigua Wine Company

Canandaigua Wine Company was charged with allegedly misrepresenting, through packaging, marketing and advertising, that its fortified wine beverage, Cisco, was a low-alcohol, single serving drink, and that the deception led to cases of alcohol poisoning. The order prohibits the company from representing that Cisco is a low-alcohol, single serving beverage, and from encouraging retailers to display it next to low-alcohol products. The agreement also requires Canandaigua to change the shape and color of the bottle, and recall retail displays implying Cisco is a single serving drink.

### CPC International, Inc.

CPC International, a major seller of food products, was charged with making allegedly false, misleading and unsubstantiated advertising claims about the effect of Mazola Corn Oil and Mazola Margarine on serum cholesterol levels. CPC agreed not to make claims concerning the product's ability to reduce the risk of developing heart disease or to reduce serum cholesterol levels, unless at the time such representations are made, they are substantiated with competent and reliable scientific evidence. The FTC investigation was conducted in cooperation with ten states.

### Electronic-Data Systems Corporation

Electronic Data Systems (EDS) has agreed to settle charges that it failed to tell job applicants denied employment based on information in their credit report that the report was at least part of the reason for the denial. The order requires EDS to mail certain of these applicants letters stating the reasons for the denial along with the name and address of the credit reporting agency which supplied the report, and prohibits future violations of the Fair Credit Reporting Act.

### Fertility Institute of Western Massachusetts

Fertility institute and its owner agreed to settle allegations that they made false and unsubstantiated claims about the success rates of their infertility treatments, and with making unsubstantiated claims in the promotion of their services. The respondents agreed not to make misrepresentations regarding their infertility services in the future.

### Guild Mortgage Company

Guild Mortgage Company allegedly provided consumers with misleading, inaccurate and incomplete information regarding the annual percentage rate and the size of monthly payments of its adjustable rate mortgages. The company agreed not to violate the Truth in Lending Act and Regulation Z in the future and to pay \$500,000 in consumer redress.

### Hal Morris

(See -- Money Money Money, Inc., page 35.)

### Haverhills

Haverhills, a mail order company, agreed to settle allegations that it made false and unsubstantiated claims regarding suntanning and fuel-economy devices. The order prohibits Haverhills and its owners from misrepresenting the safety or abilities of such devices in the future.

### IVF Australia, Ltd.

IVF Australia, one of the largest providers of infertility services in the United States, agreed to settle allegations that it misrepresented the success rate of its in vitro fertilization services. The company agreed not to make such representations in the future. The allegations did not concern the quality of the infertility services provided, but only addressed the success-rate claims the company made in its advertisements.

Jerome Russell Cosmetics, U.S.A., Inc.

Jerome Russell and its owner, David J. Marcus, agreed to settle charges that they made false and unsubstantiated ozone safety claims in marketing cosmetics that contain a harmful ozone-depleting substance. The order prohibits respondents from representing that any product containing a Class I ozone-depleting substance will not damage the ozone layer, and from making unsubstantiated claims that a product containing an ozone-depleting substance has environmental benefits.

Lewis Galoob Toys, Inc.

Lewis Galoob Toys agreed to settle charges that it made allegedly false and misleading claims regarding the need for assembly of certain Lewis Galoob toys, the purchase and operation of the toys, and the number of items received when the toys are purchased. The order prohibits Galoob from making misrepresentations in the advertising, labeling, sale or distribution of toys.

Miles, Inc.

Miles was charged with making allegedly unsubstantiated advertising claims about the health benefits of its One-A-Day brand multiple vitamins. The company agreed not make such unsubstantiated claims in the future.

Money Money Money, Inc., & Hal Morris

Money Money Money, Inc. and Hal Morris were charged with making allegedly false claims in a 30-minute commercial advertising the availability of government grants. The infomercial, called "Money Money Money", is one of a series respondents produced. The respondents agreed not to air the infomercial again and agreed to pay \$175,000 for consumer redress.

Nationwide Acceptance Corp.

Nationwide Acceptance settled allegations that it violated the Fair Credit Reporting Act by failing to notify consumers who were denied credit that it considered information from credit bureaus or other third parties. The order requires Nationwide to provide such notices in the future, and to notify consumers to whom it denied credit and to whom it did not give proper notification.

NME Hospitals, Inc.

NME Hospitals, an infertility clinic, agreed to settle allegations that it misrepresented the success rate of its in vitro fertilization services. The company agreed not to make such representations in the future. The allegations

did not concern the quality of the infertility services provided, but only addressed the success-rate claims in advertisements.

Nobody Beats the Wiz, Inc.

Nobody Beats the Wiz, a retailer of electronic goods, allegedly failed to make consumer product warranties available to prospective buyers of its merchandise in violation of the Magnuson-Moss Warranty Act's Pre-Sale Availability of Written Warranty Rule. The company agreed to an order requiring it to make the text of any written warranty on a consumer product costing more than \$15 readily available to consumers, and to instruct retail store managers and assistant managers engaged in the sale of consumer products of their obligations under the Act.

Perrier Group of America, Inc., The

The Perrier Group agreed to settle allegations that it falsely advertised that Perrier sparkling mineral water is not processed or filtered before it is bottled. The consent agreement prohibits Perrier from falsely claiming that any mineral water it sells is unprocessed or unfiltered, or from making false claims regarding the manner in which the water is carbonated.

Richard B. Pallack, Inc.

Richard B. Pallack, Inc. settled allegations that it removed foreign-origin labels from men's clothing in violation of the Wool Products Labeling Act and the FTC Act. The order prohibits future violations of both Acts.

Richard Crew

Richard Crew agreed to settle allegations that he made false and unsubstantiated claims for the EuroTrym Diet Patch, a purported weight-loss product, and that he falsely represented that the program-length commercial, produced by Twin Star Productions, Inc., was something other than a paid commercial. The order prohibits Crew from making unsubstantiated efficacy claims for any product or service and from misrepresenting that a paid advertisement is an independent program.

Robert Francis

Robert Francis agreed to settle allegations that he made false and unsubstantiated claims for the EuroTrym Diet Patch, and that he falsely represented that a program-length commercial, produced by Twin Star Productions, Inc., was something other than a paid commercial. The order prohibits Francis from making unsubstantiated efficacy claims for any

product or service and from misrepresenting that a paid advertisement is an independent program.

Strawbridge & Clothier, Inc.

Strawbridge & Clothier agreed to settle allegations that it failed to disclose whether the textile products in its mail order catalogs were made in the United States, imported or both, and failed to disclose proper generic names of fabrics. The company agreed to an order prohibiting future violations of the Textile Fiber Products Identification Act.

Taylor Woodcraft, Inc.

Taylor Woodcraft agreed to settle allegations that it deceptively represented that its household furniture was made of solid maple or oak, when a number of its pieces contained veneered surfaces. The order prohibits such misrepresentations in the future.

Teleline, Inc.

Teleline settled allegations that it deceptively marketed "900" number information services to children. The company agreed to an order prohibiting it from misrepresenting the number of calls required to receive a free prize or premium, the ease with which a premium can be obtained or the total cost for hearing one complete information service message. The order also requires Teleline to explain the material terms and conditions for obtaining a premium, and to prominently disclose the cost of the call and statements regarding the need to obtain a parent's permission to make the call. The company must also provide a reasonable means for the person responsible for paying for the call to avoid unauthorized calls by children, or offer a one-time credit or refund.

Towne, Silverstein, Rotter, Inc.

Towne, Silverstein, Rotter, an advertising agency, agreed to settle charges that it made allegedly false and misleading claims for certain Lewis Galoob toys regarding the need for assembly of the toys, the purchase and operation of the toys, and the number of items received when the toys are purchased. The order prohibits the ad agency from making misrepresentations in the advertising of Galoob toys in the future.

Twin Star Productions, Inc.

Twin Star Productions, and six Twin Star officers, allegedly made false and unsubstantiated claims in connection with program-length commercials for a weight loss product, a baldness product, and an impotence product. The respondents were also charged with falsely representing that their program-length commercials are something other than paid

commercial advertising. The order prohibits the respondents from making unsubstantiated efficacy claims for any product or service and misrepresenting that a paid advertisement is an independent program. The order also requires Twin Star and five of the six individuals to pay a total of \$1.5 million in consumer redress.

#### United States Sales Corporation

United States Sales Corporation was charged with allegedly failing to disclose the geographic origin of textile products advertised in its mail order catalogs, a violation of the Textile Fiber Products Identification Act. The order prohibits future violations of the Act.

#### Zipatone, Inc.

Zipatone, Inc. and its chief officer agreed to settle allegations that the company made false environmental claims for Zipatone Spray Cement, an adhesive used in commercial art. The agreement prohibits the respondents from representing that any product containing a Class I ozone-depleting substance will not damage the environment, and from making unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

### PART III ADMINISTRATIVE COMPLAINTS

#### MAINTAINING COMPETITION MISSION

#### Diran M. Seropian, M.D.

The Commission charged in an administrative complaint that Dr. Diran M. Seropian illegally conspired with others to prevent the Cleveland Clinic Foundation from establishing a clinic in Northern Broward County, Florida. The complaint charged that Dr. Seropian and the medical staffs of two area hospitals threatened not to refer patients or provide medical services to the hospitals if the Broward General Medical Center entered into an affiliation to provide medical services and privileges to physicians of the Cleveland Clinic. Dr. Seropian, Chief of Staff at Broward General, would be prohibited from refusing to deal with any provider of health care services if an Administrative Law Judge upholds the complaint. During the year, the Commission accepted for public comment separate agreements with the medical staffs of Broward General and Holy Cross Hospital. (See -- Medical Staff of Broward General Medical Center; and Medical Staff of Holy Cross Hospital page 30.)

Harbour Group Investments. L.P.

(See page 43.)

R.R. Donnelley & Sons Co.

The Commission charged that R.R. Donnelley & Sons Co.'s acquisition of Meredith/Burda Companies created a dominant firm in the production of high volume publication gravure printing used in magazines and catalogs. According to the complaint, the acquisition increased concentration and may have substantially lessened competition in the United States by increasing the likelihood of actual collusion among the remaining firms engaged in commercial printing services. In addition to R.R. Donnelley, the complaint also names Meredith Corp. and Pan Associates, L.P., the fifty-fifty owners of Meredith/Burda. The transaction was consummated in September 1990 after the U.S. District Court for the District of Columbia denied the Commission's request for a preliminary injunction.

University Health, Inc.

The Commission issued an administrative complaint challenging the proposed acquisition of St. Joseph Hospital by University Health, Inc. According to the complaint, the acquisition would reduce competition for general acute care hospital services in the Augusta, Georgia area and would also deny patients, physicians, and health care insurers the benefits of open competition based on price, quality and service. The complaint further alleged that the Augusta area was already highly concentrated and that the acquisition would increase the possibility of collusion among other area hospitals. The U.S. Court of Appeals for the Eleventh Circuit unanimously directed the U.S. District Court for the Southern District of Georgia in Augusta to grant the preliminary injunction sought by the Commission to block the proposed acquisition. The appeals court also affirmed the district court's holding that the Commission has jurisdiction under the Clayton Act over asset acquisitions involving solely nonprofit entities. The motion for the preliminary injunction was the first time the Commission has asked a federal court to block a non-profit hospital merger.

CONSUMER PROTECTION MISSION

Phone Programs, Inc.

The Commission issued a complaint charging Phone Programs, Inc. ("PPI") with deceptively and unfairly advertising and, marketing "900" number information services to children. The complaint alleges that PPI misrepresented the content of the story programs and the ease with which children who called could obtain the premiums or gifts offered, and

induced children to call without providing a reasonable means for persons responsible for paying for the calls to exercise control over the transactions.

Viral Response Systems, Inc.

The Commission charged Viral Response Systems and its president with making allegedly unsubstantiated claims that the Viralizer System, a hand-held device that blows heated air and medicated spray into nasal passages, relieves cold symptoms and eliminates colds.

PART III (ADJUDICATIVE STAGE)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

Alan Kadish

(See page 42.)

Brooklyn Beverage Acquisition Corporation

(See -- Harold A. Honickman, page 44.)

Capital Area Pharmaceutical Society

(See -- Alan Kadish, page 42.)

Chain Pharmacy Association of New York State

(See -- Alan Kadish, page 42.)

Empire State Pharmaceutical Society, Inc.

(See -- Alan Kadish, page 42.)

Fay's Drug Company, Inc.

(See -- Alan Kadish, page 42.)

Harbour Group Investments L. P.

(See page 43.)

Harold Honickman

(See page 44.)



### Hoechst Celanese Corporation

Hoechst Celanese Corporation agreed to a proposed consent order to settle charges stemming from Hoechst Aktiengesellschaft's acquisition of Celanese Corporation. The administrative complaint alleged that the acquisition would substantially lessen competition in the manufacture and sale of acetal in world markets, including the United States. Acetal, an engineering thermoplastic, is used as a replacement for metal in small mechanical parts such as the gears and rollers in automobiles, videotape recorders, and lawn sprinklers. The acquisition gave Hoechst AG, the parent of Hoechst Celanese, control of the Ticona Polymerwerke in Germany, an acetal joint venture established by Celanese and Hoechst AG. Although the proposed order would not require the three firms to divest any existing or acquired acetal assets or businesses, it would prohibit the firms from creating or enforcing any agreement that serves to prevent the Hoechst/Daicel Chemical Industries, Ltd. joint venture, Polyplastics Company, Ltd. of Japan, from competing against Hoechst and its subsidiaries in the manufacture and sale of acetal in the United States. Hoechst AG and its two United States subsidiaries, Hoechst Corporation and Hoechst Celanese Corporation, are also prohibited from entering into any agreements with any producer of acetal products to allocate or restrict competition in the market for a period of ten years. A separate consent order was entered in 1987 settling charges that the same acquisition could substantially lessen competition in the United States in the manufacture and sale of polyester staple and polyester filament.

### James E. Krahulec

(See -- Alan Kadish, page 42.)

### Kinney Drugs

(See -- Alan Kadish, page 42.)

### Melville Corporation

(See -- Alan Kadish, page 42.)

### Rite Aid Corporation

(See -- Alan Kadish, page 42.)

## CONSUMER PROTECTION MISSION

### Campbell Soup Company

Campbell Soup agreed to settle allegations that it made unsubstantiated claims that its soups contribute to a diet that reduces the risk of heart disease. The complaint also

alleged that Campbell's advertising linked the low-fat, low-cholesterol content of its soups with reduced risk of some forms of heart disease without disclosing that the soups are high in sodium, and that a diet high in sodium may increase the risk of heart disease. The company agreed to disclose the sodium content for any soup containing more than 500 milligrams of sodium per eight ounce serving in any advertisement that directly or by implication mentions heart disease in connection with the soup.

### Wayne Phillips

Wayne Phillips agreed to settle allegations that he made false and misleading claims in advertising the availability of government grants to consumers to start small businesses through a 30 minute commercial, one of a series called "Money, Money, Money." The consent agreement prohibits Phillips from distributing the commercial and requires him to pay \$50,000 for consumer redress.

## PART III (ADJUDICATIVE STAGE) CONSENT ORDERS ISSUED

### MAINTAINING COMPETITION MISSION

Alan Kadish, Capital Area Pharmaceutical Society, Chain Pharmacy Association of New York State, Empire State Pharmaceutical Society, Inc., Fay's Drug Company Inc., James E. Krahulec, Kinney Drugs Inc., Melville Corporation, & Rite Aid Corporation

In nine separate consent-orders, three trade associations, four retail pharmacy chains, and two individuals are required not to enter into any agreement with other pharmacy firms to refuse to enter into any third-party prescription drug program. The consent orders settled the 1989 administrative complaint against Chain Pharmacy Association of New York State, Pay's Drug Company, Inc., James E. Krahulec, Kinney Drugs Inc., Melville Corporation, and the Rite Aide Corporation, and the two 1990 administrative complaints issued in Empire State Pharmaceutical Society, Inc., Capital Area Pharmaceutical Society, and Alan Kadish, the former president of the Pharmaceutical Society of the State of New York, Inc. Each complaint charged that the associations, pharmacy chains, and individuals conspired with others to refuse to participate in New York State's proposed Employees Prescription Plan designed to reduce the state's cost for the program, and thereby lower the prescription reimbursement rate paid to pharmacies. According to the complaints, the State of New York lost approximately \$7 million after it was coerced into increasing the prices paid to pharmacies under the Prescription Plan. Under terms of the orders, all parties are prohibited from communicating to any pharmacy firm their

individual intentions to enter into any existing or proposed participation agreement for a period of eight years. In addition, for a period of eight years, each respective party is prohibited from advising or communicating with any other pharmacist with respect to entering into a participation agreement involving the prescription reimbursement policies of third-party payers. In 1989 and 1990 the Commission entered consent orders with three other pharmacy chains and four other pharmaceutical societies to settle similar charges relating to the same prescription drug plan: Brooks Drug, Inc.; Carl's Drug Co. Inc.; Genovese Stores, Inc.; Long Island Pharmaceutical Society, Inc.; Pharmaceutical Society of Orange County, Inc.; Pharmaceutical Society of the State of New York; and Westchester County Pharmacy. During fiscal year 1991, an Administrative Law Judge ruled that Peterson Drug Company, headquartered in New York, participated in this same conspiracy to boycott the prescription drug program.

Brooklyn Beverage Acquisition Corporation

(See -- Harold A. Honickman, page 44.)

Capital Area Pharmaceutical Society

(See -- Alan Kadish, page 42.)

Chain Pharmacy Association of New York State

(See -- Alan Kadish, page 42.)

Empire State Pharmaceutical Society, Inc.

(See -- Alan Kadish, page 42.)

Fay's Drug Company, Inc.

(See -- Alan Kadish, page 42.)

Harbour Group Investment, L.P.

Meade Instruments, a subsidiary of Harbour Group Investments L.P., and Celestron International, a subsidiary of Diethelm Holding (U.S.A.) Ltd., entered consent orders to settle charges relating to their plans to create a joint venture. Meade and Celestron proposed to form a fifty-fifty joint venture, Celestron Meade International, that would manufacture and market mid-sized Schmidt-Cassegrain telescopes used in astronomical viewing. According to the administrative complaint, Meade and Celestron are two of the largest manufacturers of these telescopes in the United States and a combination of the two companies would have created a virtual monopoly for the telescopes. The consent orders require Harbour Group and Diethelm Holding to obtain prior Commission approval for ten years before acquiring any,

company that manufactures or sells mid-sized Schmidt-Cassegrain telescopes in the United States. The parties abandoned their planned combination and agreed to the consent order after the U.S. District Court for the District of Columbia granted the Commission's request for a preliminary injunction.

#### Harold Honickman

Mr. Harold A. Honickman and the Brooklyn Beverage Acquisition Corp. agreed to settle charges that the 1987 acquisition of the Seven-Up Brooklyn Bottling Company, Inc. would reduce competition in the production, distribution, and sale of branded carbonated soft drinks in the New York metropolitan area. According to the complaint, as a result of the acquisition, Mr. Honickman and his Brooklyn Beverage subsidiary bottled, distributed, and sold soft drinks in the area under the Pepsi, Canada Dry And Seven-Up names. The Seven-Up assets were later sold. The consent order requires Mr. Honickman to obtain prior Commission approval for ten years before acquiring any interest in a carbonated soft drink bottling operation in the New York metropolitan area. According to the order, prior approval would not be required if notice of the proposed transaction was reported under the Hart-Scott-Rodino Premerger Notification Rules and if Honickman and Brooklyn Beverage divested all overlapping assets within six months before exercising control over the newly acquired assets.

#### James E. Krahulec

(See -- Alan Kadish page 42.)

#### Melville Corporation

(See -- Alan Kadish, page 42.)

#### Rite Aid Corporation

(See -- Alan Kadish, page 42.)

### CONSUMER PROTECTION MISSION

#### Consumer Direct, Inc.

Consumer Direct agreed to settle allegations that it made false and unsubstantiated performance claims about its "Gut Buster" sit-up exercise device, and failed to disclose that the device may break and injure the user. The order requires respondents to warn past purchasers of the Gut Buster's potential for breakage and personal injury, and inform them of the FTC's charges that the product does not tone or strengthen the stomach. The complaint named Consumer Direct and Fitness Quest, which has since changed

its name to The Gut Buster Corporation, and two principals in the companies as defendants.

#### TK-7 Corporation

TK-7 Corporation and its principal, Moshe Tal, agreed to settle charges that they made false and unsubstantiated performance claims for a gasoline additive. The company manufactures and sells various fuel additives under the "TK-7" brand name. The order prohibits unsubstantiated claims regarding the efficacy of any fuel or engine additive in the future.

### INITIAL DECISIONS

#### MAINTAINING COMPETITION MISSION

##### Coca-Cola Bottling Company of the Southwest

An Administrative Law Judge dismissed a complaint that challenged Coca-Cola Bottling Company of the Southwest's acquisition of certain San Antonio Dr Pepper Bottling Co. assets. The administrative complaint charged that the acquisition reduced competition in the production of national brand soft drinks and increased the likelihood of collusion in the San Antonio area. The complaint further alleged that the acquisition would weaken the Big Red Bottling Company, a company comprised of the Dr Pepper Bottling Co. assets not included in the purchase by Coca-Cola. The judge concluded that the relevant product market was broader than defined by the complaint and included national brands, private-label, and warehouse brands of soft drinks. Additionally, the judge defined the geographic market as one larger than the ten county area around San Antonio named in the complaint and found that competition in the market for soft drinks in that area was healthy. The relevant market is characterized by excess capacity, low prices, and low barriers to entry.

##### Coca-Cola Company, The

An Administrative Law Judge refused to issue an order in a 1986 complaint that challenged The Coca-Cola Company's proposed acquisition of Dr Pepper Co. The complaint alleged that the acquisition would reduce competition in the production, distribution, and sale of carbonated soft drinks and soft drink concentrates in the United States. Soon after the start of the administrative proceedings, the shareholders of DP Holdings Inc., the parent of Dr Pepper, terminated the purchase agreement with Coca-Cola. Dr Pepper was later sold to Hicks and Haas. After the transaction was abandoned, the Commission denied a motion to dismiss the complaint and returned the matter to the Administrative Law Judge to determine whether a violation had occurred and

whether a prior approval would be appropriate. The judge found that the acquisition would )save substantially lessened competition but he ruled that it would not be in the public interest to require Coca-Cola to obtain prior Commission approval before acquiring any other concentrate or bottling company.

#### College Football Association

An Administrative Law Judge dismissed a complaint challenging agreements negotiated by the College Football Association ("CFA") to televise certain college football games. The CFA is an association of more than 60 major college football playing institutions. The 1990 administrative complaint alleged that CFA, through agreement with and among its members, has entered into telecast rights agreements with telecasters that restrict competition in the marketing of college football telecasts. The complaint further alleged that CFA and Capital Cities/ABC, Inc. ("Capital Cities") unreasonably restrained competition by entering into agreements that give Capital Cities or entities it owns or controls (including the ABC Television Network and ESPN) exclusive telecast rights to certain college football games. The judge ruled that CFA is a nonprofit association that does not carry on business for its own profit or that of its members, within the meaning of Section 4 of the FTC Act and dismissed the complaint against CFA for lack of jurisdiction. The judge dismissed the complaint without prejudice to allow the Commission to determine whether to proceed against Capital Cities alone. The decision is on appeal to the Commission.

#### Peterson Drug Company of North Chili, New York, Inc.

An Administrative Law Judge ruled that Peterson Drug Company of North Chili, New York, Inc. participated in an illegal boycott of New York State's Employee Prescription Program in an attempt to increase that state's reimbursement rate. The decision upholds a 1989 administrative complaint that charged four other pharmacy chains, one individual, and one trade association with refusing to participate in New York State's proposed employees prescription plan designed to reduce the price the state paid to pharmacies when filing prescriptions for public employees. The Administrative Law Judge ordered Peterson not to enter into any agreements with any pharmacy firm to withdraw from any prescription reimbursement plan. Over the last two years, the Commission has accepted separate consent agreements with three other pharmacy chains and four pharmaceutical associations to settle similar charges relating to the same prescription drug plan: Brooks Drug, Inc.; Carl's Drug Co.; Genovese Stores, Inc.; Long Island Pharmaceutical Society, Inc.; Pharmaceutical Society of Orange County, Inc.; Pharmaceutical Society of the State of New York; and

Westchester County Pharmaceutical Society, Inc. During fiscal year 1991, separate consent agreements settled similar charges alleged in three other 1989 administrative complaints. (See -- Alan Kadish, page 42.)

## CONSUMER PROTECTION MISSION

### Schering Corporation

A Commission Administrative Law Judge ruled that Schering Corporation knowingly advertised and promoted Fibre Trim, a diet aid it markets in the United States, as an effective weight-loss and weight-maintenance product without adequate substantiation. The judge also ruled that Schering did not have substantiation for its claims that Fibre Trim provides the health benefits of a fiber-rich diet, and that its claims that Fibre Trim is a high-fiber supplement were false and misleading. The decision includes an order prohibiting the company from misrepresenting the amount or quality of fiber or other nutrients in Fibre Trim or any other product it sells.

## FINAL COMMISSION ORDERS

## MAINTAINING COMPETITION MISSION

### Adventist Health System/West

The Commission unanimously reversed a 1990 Administrative Law Judge's decision that dismissed a complaint challenging Ukiah Adventist Hospital's and Adventist Health System/west's acquisition of substantially all of the assets of Ukiah General Hospital. The 1989 administrative complaint charged that the acquisition would harm consumers by substantially reducing competition in general acute care hospital services by giving Adventist Health System/West, the parent of Ukiah Adventist, control of three of the five hospitals in the Southeastern Mendocino area of Ukiah, California. The judge ruled that the Commission did not have jurisdiction over asset acquisitions made by not-for-profit entities if the acquisition was not accomplished by merger. The Commission reversed and held that the Clayton Act gives the Commission the necessary authority to challenge asset acquisitions by nonprofit entities. The Commission remanded the case to the judge for a decision on the merits.

### Boise Cascade Corp.

The Commission re-issued a 1986 order that prohibited Boise Cascade Corp. from knowingly accepting illegal discriminatory discounts from office products suppliers that were not available to other retail dealers. On remand from the United States Court of Appeals for the District of

Columbia in 1990, the Commission re-issued its order and concluded that competitive injury existed when other office products retailers who received no wholesale discounts lost accounts to Boise because of its better prices or services. Boise's second appeal was dismissed after the Commission accepted a proposal to issue a modified final order prohibiting Boise from knowingly receiving wholesale discounts on office products that would be resold by Boise to an end-user.

New England Motor Rate Bureau, Inc.

(See page 48.)

CONSUMER PROTECTION MISSION

Kraft, Inc.

The Commission ruled that Kraft misrepresented the calcium content and relative calcium benefit of its Kraft Singles cheese slices in two series of past advertisements. The Commission ordered Kraft not to misrepresent the nutrient or calcium content of any of its cheese or imitation cheese products in the future.

ORDER MODIFICATIONS

MAINTAINING COMPETITION MISSION

Firestone Tire & Rubber Company

At the request of the Shell Oil Company, the Commission reopened and set aside a 1961 order. The administrative complaint had charged that a marketing agreement between Firestone Tire & Rubber Company and Shell requiring Firestone to pay Shell a sales commission on all tires, batteries, and accessories sold to Shell outlets was an unfair method of competition. The order prohibited Shell from using such sales commissions and from promoting the sale of tires, batteries and accessories by any vendor to any person who sold Shell products. In setting aside the order, the Commission noted that there have been significant changes in the law of vertical distribution since 1961.

New England Motor Rate Bureau, Inc.

The Commission reopened and modified a 1990 order to allow the New England Motor Rate Bureau to file collective rates for the transportation of commodities by motor common carriers in the state of New Hampshire. The Rate Bureau's request to set aside the order in its entirety was denied. The order became final in November 1990 after the First Circuit Court of Appeals reversed the Commission's decision and ruled that collective ratemaking by the Rate Bureau was



adequately supervised, and therefore in compliance with the antitrust laws, in the State of Massachusetts.

#### Union Carbide Corporation

The Commission modified a 1977 consent order with Union Carbide Corporation that prohibited Union Carbide from entering into contracts longer than one year with industrial gas distributors. The order settled charges that Union Carbide engaged in certain actions that could substantially lessen competition in the sale of industrial gases and raise entry barriers at both the producer and distributor levels. The Commission modified the order to allow the company to enter into requirements contracts for terms longer than one year with several gas distribution companies, to be owned jointly by the Union Carbide Industrial Gas Division and its employees, and which are to be formed from packaged gas distribution businesses in which the Industrial Gas Division currently has more than a fifty percent interest.

### PRELIMINARY AND PERMANENT INJUNCTIONS

#### MAINTAINING COMPETITION MISSION

##### EG&G, Inc.

The Commission authorized its staff to seek a preliminary injunction to block the proposed acquisition by EG&G, Inc. of Heimann GmbH, a wholly-owned subsidiary of Siemens AG. The Commission believed that the proposed acquisition would result in a monopoly in the United States of X-ray security screening devices used by airlines, government and private industry to detect dangerous materials. EG&G, through its wholly-owned subsidiary, Astrophysics Research Corporation, is the industry leader for X-ray security equipment; Heimann is the largest manufacturer of X-ray screening equipment outside of the United States. The parties restructured the transaction to eliminate the Commission's antitrust concerns.

##### Harbour Group Investments L.P.

(See page 43.)

##### Ingersoll-Rand Company

(See -- The Torrington Company, page 32.)

##### Instruments SA

The Commission authorized its staff to seek a preliminary injunction to block Instruments SA's proposed acquisition of

the Molecular Beam Epitaxy Equipment Division of INTEVAC, Inc. The Commission believed the proposed acquisition would substantially lessen competition in the manufacture and sale of molecular beam epitaxy systems, a process used to grow materials of artificially structured crystals for use in semiconductor and optoelectronic devices. The parties abandoned their acquisition plans before the Commission filed a motion in court requesting a preliminary injunction.

#### Oy Wartsila Ab

The Commission authorized its staff to seek a preliminary injunction to block Oy Wartsila Ab's proposed acquisition of Computerized-Security Systems, Inc. and Winfield Lock Inc. The Commission believed that the proposed acquisition would substantially reduce competition in the manufacture and sale of recordable hotel lock systems. Wartsila, through its wholly-owned subsidiary, Ving Card Systems Inc., and Computerized Security Systems are two of the world's leading suppliers of recordable hotel lock systems. The parties abandoned the acquisition before the Commission could file a motion in federal district court requesting a preliminary injunction.

#### University Health, Inc.

(See page 39.)

#### Wiggins Teape Appleton p.l.c.

The Commission's staff filed a motion in the U.S. District Court for the District of Columbia for a preliminary injunction to block the proposed acquisition by Wiggins Teape Appleton p.l.c. of a Vancouver, Washington paper mill owned by Boise Cascade Corporation. The Commission had reason to believe that the acquisition could substantially reduce competition in the production of chemical carbonless paper in the United States. Chemical carbonless paper, used in business forms and credit-card charge slips, is coated paper that enables writing on the top page to be copied onto pages underneath without the use of carbon paper. Before the court's scheduled hearing on the preliminary injunction, Appleton abandoned the proposed transaction and the Commission withdrew its request for the injunction.

### CONSUMER PROTECTION MISSION

#### Advanced Automotive Technologies, Inc.

The Commission filed a complaint alleging that Advanced Automotive Technologies, Inc. made false and misleading claims in the marketing and sale of its products. The case involves both a diet program and a purported gas saving device. The court issued a temporary restraining order.

The Commission is seeking a permanent injunction and consumer redress.

Agusta Brooks & Saul Irving Brooks

Agusta and Saul Brooks agreed to settle charges in connection with the Commission's case against National Impulse Marketing Corporation and eight individuals. The complaint alleged that the defendants made numerous misrepresentations in selling franchises for the exclusive right to market and service sundry product lines at retail business outlets. The judgment permanently enjoins the defendants from making certain misrepresentations to prospective franchisees and requires the defendants to pay \$397,000 into a consumer redress fund. In addition, Saul Brooks is banned from promoting or selling any franchise or business opportunity for seven years.

Alan David Schwartz

Alan Schwartz, a certified public accountant, agreed to settle charges in connection with the Commission's case against National Impulse Marketing Corporation and eight individuals. The complaint alleged that the defendants made numerous misrepresentations in selling franchises for the exclusive right to market and service sundry product lines at retail business outlets. The judgment permanently enjoins Schwartz from making certain financial misrepresentations to prospective franchisees.

Allied International Corp.

The Commission obtained a settlement with Allied International, d/b/a Fat Magnet, that permanently enjoins Fat Magnet from selling or marketing any diet pills, and from misrepresenting the performance, efficacy or safety of any program or service related to weight control. The company is also prohibited from making any safety, performance or efficacy claims regarding any food, drug or device without substantiation. The corporate defendants and three individuals were also ordered to pay \$750,000 into an escrow account to provide consumer redress.

Amerdream Corporation

The Commission filed a complaint alleging that Amerdream Corporation and Advanced Automotive Technologies, Inc., and their principals, made false and misleading claims in the marketing and sale of their products. The case involves both a diet program and a purported gas saving device. The court issued a temporary restraining order. The Commission is seeking a permanent injunction and consumer redress.

### American Credit Services, Inc.

American Credit Services and its president agreed to settle charges alleging that they misrepresented their ability to improve consumers, credit records or establish credit for them. The consent decree permanently enjoins the defendants from misrepresenting their ability to "repair" consumer credit reports, and requires payment of \$20,000 in disgorgement to the United States Treasury.

### American Idea Management

The Commission obtained a consent judgment to settle allegations that American Idea Management, its two successor corporations, and three individuals misrepresented the nature, quality, and success rate of invention promotion services they have sold to investors. The consent judgment entered prohibits future misrepresentations and requires payment of \$285,000 for consumer redress.

### Applied Telemedia Engineering and Management, Inc.

The Commission filed a complaint charging Applied Telemedia with misrepresenting that consumers who purchased its application filing services for the FCC's wireless cable television systems lottery were highly likely to win a valuable license enabling them to own and operate a wireless cable television station. The court issued a preliminary injunction and ordered a partial freeze of the defendants' assets.

### California Pacific-Research, Inc.

The Commission obtained a judgment against California Pacific Research and its owner for falsely and deceptively claiming that their "New Generation" products prevent baldness and stimulate hair regrowth in those who have male pattern baldness. The court permanently banned the defendants from selling any of the New Generation products and from representing that any such products will reduce excessive hair loss or promote new growth. The defendants were also ordered to pay \$2,000,000 plus court costs.

### Case Equipment Company

Case Equipment Company, the marketer of the "Subli-Color" printing system, agreed to settle allegations that it made numerous false claims to franchisees regarding how easily the system could be operated and the level of support the company provided to purchasers. The consent order prohibits any misrepresentations of the kind alleged in the complaint, and requires defendants to post a \$500,000 bond before marketing any other business opportunity or franchise for ten years. The defendants also agreed to pay \$250,000 to the

Commission for deposit in the United States Treasury for injury caused by the alleged practices.

Collectors' Guild Ltd., Inc., J. Robert LeShufy, & Max Munn

The Commission obtained two settlements in connection with its case against Collectors' Guild Ltd., Inc., the largest mail order seller of art and art-related objects in the United States. The complaint alleged that the defendants were selling fake artworks attributed to Salvador Dali, and portrayed as sound investments. J. Robert LeShufy and Max Munn each agreed to orders prohibiting them from misrepresenting any facts material to a consumer's decision to purchase artwork.

Consolidated Counseling Services

The Commission filed a complaint against Consolidated Counseling Services and its sole proprietor, Mary Oates, alleging that they falsely claimed to work for a "Federal Telemarketing Agency" and targeted previous victims of the telemarketing fraud with more false promises that they had established a redress program for such consumers. "Federal Telemarketing Agency" does not exist, and defendants allegedly claimed that the "agency" had sued or shut down a telemarketer and referred the case to Consolidated Counseling to provide prizes or refunds to consumers who were entitled to receive such prizes and refunds for a fee. The court granted a temporary restraining order and asset freeze. The Commission is seeking a permanent injunction and consumer redress.

Craftmatic/Contour Industries, Inc.

Craftmatic/Contour Industries, and its subsidiary, American Aqua Systems, agreed to settle allegations that they induced consumers to purchase home water treatment systems by misrepresenting that the consumers' tap water was unsafe to drink. The order prohibits defendants from misrepresenting the results of in-home water testing and requires them to pay \$700,000 in consumer redress.

Crofton M. Cooper, Patricia Bedell, & Schoolhouse Coins, Inc.

The Commission obtained a permanent injunction against Crofton Cooper and Patricia Bedell in connection with its complaint against Schoolhouse Coins, Inc. The Commission alleged that the defendants misrepresented that their coins were a low-risk investment and that customers could reasonably expect to resell the coins at substantial profit within a period of a few months to five years after purchase. Cooper and Bedell, officers and principal shareholders of the corporate defendants, are prohibited from making such misrepresentations in the future.

David C. Ascher, Donald R. Cook, Evelyn Klingsberg,  
Garry M. Schaeffer, Mark Zigner, Teresa L. Bowman,  
Newport Gems d/b/a Capital Assets International,  
Paul R. Sherman, Richard Harmon,  
Rime, Inc. d/b/a First Capital Trading Company, &  
United States Gemological Services, Inc.

The Commission obtained eight separate settlements in connection with its complaint against Newport Gems, d/b/a Capital Assets International, RIME, Inc. d/b/a First Capital Trading Company, United States Gemological Services, Inc., and eleven individuals. The Commission alleged that the defendants misrepresented the investment value of semi-precious gemstones they sold to consumers. The Commission also alleged that United States Gemological Services, Inc. ("USGSI", a Los Angeles-area gemstone appraisal firm, and its president, David C. Ascher, aided and abetted the scheme by misrepresenting appraisals of gemstones. The Commission further alleged that Evelyn Klingsberg, also known as Evelyn Wisotsky, assisted in misrepresenting the investment value, qualities, liquidity and appreciation of semi-precious gemstones.

- The consent order with Donald Cook, a telephone sales representative prohibits him from making misrepresentations in future telemarketing sales and requires him to pay \$185,000 for consumer redress.
- The consent order with Evelyn Klingsberg prohibits her from making misrepresentations in the sale of gemstones in the future, and requires her to pay \$200,000 for consumer redress.
- The consent order with Garry Schaeffer, a telephone sales representative prohibits him from making misrepresentations in future telemarketing sales and requires him to pay \$162,500 for consumer redress.
- The consent order with Mark Zigner, one of the owners and operators of Newport Gems and RIME, prohibits him from making misrepresentations in the sale of gemstones in the future and requires him to pay \$425,000 for consumer redress. Zigner also agreed to cooperate with the Commission in any subsequent trial.
- The consent order with Paul Sherman, RIM's sales manager, prohibits him from making misrepresentations in the sale of gemstones in the future and requires him to pay \$365,000 for consumer redress. Sherman also agreed to cooperate with the Commission in any subsequent trial.
- The consent order with Richard Harmon, one of the owners and operators of Newport Gems and RIME, prohibits him from making misrepresentations in the sale of gemstones in the future and requires him to pay \$425,000 for consumer redress. Harmon also agreed to cooperate with the Commission in any subsequent trial.
- The consent order with Teresa Bowman, a telephone sales representative, prohibits her from making misrepresentations in future telemarketing sales and requires her to pay \$80,000 for consumer redress.

- The consent order with USGSI and David Ascher prohibits future misrepresentations of the appraisal value of gemstones, and requires Ascher to pay \$65,000 for consumer redress.

#### David C. Burt

David Burt agreed to settle charges in connection with the Commission's complaint against Uni-Vest Financial Services, Inc. The complaint alleged that defendants misrepresented the risk of investing in precious metals and failed to execute clients, sell orders. The consent decree permanently enjoins Burt from making misrepresentations of the kind alleged in the complaint.

#### Donald R. Cook

(See -- David C. Ascher, page 54.)

#### Dupont Model Management, Inc.

The Commission filed a complaint charging that the defendants made allegedly false claims that Dupont Model Management is a modeling agency and can place consumers in jobs as professional models. The company allegedly operates under different names in at least eight cities. The court issued a temporary restraining order and froze the defendants, assets.

#### Earl Serap

Earl Serap pled guilty to two charges of criminal contempt for withdrawing \$1,200,000 in assets in violation of a court-ordered asset freeze. The charges arose out of the Commission's case against American National Cellular Corporation, which allegedly made false representations in the sale of filing services for the FCC's cellular lottery system. Serap agreed to plead guilty to two charges, and in return the Commission recommended a 20-month prison term for the first charge, 48 months to be suspended plus five years probation for the second, and dismissed a third charge of failing to return \$700,000.

#### Environmental Protection Systems, Inc. & Jesse Nieves

Jesse Nieves agreed to settle allegations that he made false claims in the marketing of water purifiers through his company, Environmental Protection Systems, Inc. The consent order prohibits him from making misrepresentations regarding any water purifier's ability to remove contaminants from tap water, or about any fact material to a consumer's decision to purchase any water purifier or other water treatment device, or any other product or service in the future. The order also requires him to pay \$10,000 for consumer redress.

#### Evelyn Klingsberg

(See -- David C. Ascher, page 54.)

Fax Corporation of America, Inc.

Seymour and Audrey Butan agreed to settle allegations that they falsely represented that they would refund thousands of dollars in fees and deposits to franchisees. The defendants were also charged with allegedly violating the Franchise Rule by failing to make any of the required disclosures to potential franchisees. The consent judgment permanently enjoins the Butans from violating the Franchise Rule in connection with the sale of public fax machine franchises, and from misrepresenting their refund policies. The order also requires them to pay \$100,000 for consumer redress.

Figgie International, Inc.

The Commission obtained a judgment against Figgie International for misrepresenting that its Vanguard heat detector could give enough advance warning to allow consumers to safely escape most residential fires, and that a combined system of heat detectors and smoke detectors could provide significantly greater warning of fire than smoke detectors alone. The court ordered Figgie to pay a minimum of \$7,590,000, and up to \$49,950,000 if necessary, into an escrow account to provide refunds to consumers.

First Capital Financial, Inc.

First Capital Financial agreed to settle charges that it deceptively advertised and marketed "gold card" credit cards. The consent order permanently enjoins two individual defendants from engaging or participating in the telemarketing of any credit-related services in the future. All defendants agreed to relinquish to the Commission assets totaling approximately \$100,000 for consumer redress. This was the first case filed by the FTC involving the use of "900" and "976" telephone numbers in a credit scheme.

Frederick Sullivan

Frederick Sullivan, a salesman, agreed to settle charges in connection with the Commission's case against National Impulse Marketing Corporation and eight individuals. The complaint alleged the defendants made numerous misrepresentations in selling franchises for the exclusive right to market and service sundry product lines at retail business outlets. The judgment permanently enjoins Sullivan from making certain misrepresentations to prospective franchisees and from using any alias or assumed identity in the advertising, marketing or promotion of any investment opportunity.

Garry M. Schaeffer

(See -- David C. Ascher, page 54.)



### Group America, Inc.

Group America and two individuals agreed to settle allegations that they misrepresented the investment potential of their leveraged investments in precious metals and foreign currencies, and falsely represented that an investment in precious metals and foreign currencies was substantially risk-free. Defendants agreed to an order permanently prohibiting them from misrepresenting the risk, profit potential, cost or any other material aspect of any investments or other goods or services they offer for sale, and to a ban of limited duration on certain telemarketing activities. Judgment was also entered against them for \$640,000 in consumer redress.

### Interactive Communications Technology, Inc.

The Commission filed a complaint against three companies and their owners charging them with allegedly misleading consumers by deceptively using "900" number telephone lines to market credit services. The court has issued a temporary restraining order prohibiting the practices and freezing the defendants' assets. The Commission is also seeking a permanent injunction and consumer redress.

### International White Cross, Inc.

The Commission charged the producers and marketers of a purported AIDS cure known as "Immune Plus" with falsely advertising and deceptively marketing the product to consumers. The complaint alleges that the practices cause substantial financial injury to consumers and also may have led individuals in need of other treatments to forgo them. The court has issued a preliminary injunction to halt the practices, and the Commission is seeking a permanent injunction and consumer redress.

### Investment Developments, Inc.

The Commission obtained a permanent injunction against Investment Developments, and ten other defendants, prohibiting them from misrepresenting material terms and information in the sale of amusement game machine business opportunities. The court also ordered the defendants to pay \$9,891,763 for consumer redress.

### Jesse Nieves

(See -- Environmental Protection Systems, Inc., page 55.)

### Jet Set Travel

Jet Set Travel and its owners agreed to settle charges that they made allegedly false representations about vacation packages they offered to consumers. The defendants agreed

to a permanent injunction prohibiting further misrepresentations in connection with any telemarketing sales, and to pay \$12,200 to the United States Treasury.

J. Robert LeShufy

(See -- Collectors' Guild Ltd., Inc., page 53.)

Karin Lynn Norred & Pacific Medical Clinics Management, Inc.

Karin Norred, one of the defendants in the Commission's case against Pacific Medical Clinics Management, Inc., agreed to settle charges that she allegedly misled consumers by falsely advertising that, through the Clinics' "medically safe" program, consumers could adjust their metabolism and lose up to one and one-half pounds a day without dieting or exercise. The order prohibits Norred from misrepresenting the efficacy of any weight loss or health care program, and requires her to pay \$4,000 into a consumer redress fund.

Lawrence E. Jaspon

Lawrence E. Jaspon, the principal promoter of "Mr. Tuff Tire" tire sealant, was sentenced to three years in prison and ordered to pay \$80,500 in restitution after pleading guilty to three criminal charges, including conspiracy to violate the Franchise Rule, contempt of court for violating an order issued in an earlier suit, and interstate transport of fraudulently obtained property. Jaspon also remains liable for consumer redress and civil penalties as a result of the Commission's earlier suit.

Leon Amiel Publisher, Inc.

The Commission filed a complaint against Leon Amiel Publisher, three other companies, and their principals, alleging that they deceptively marketed and distributed purported "limited edition" artworks attributed to well known artists such as Salvador Dali and Pablo Picasso. The court issued preliminary injunctions and froze the assets of all defendants. The Commission is seeking a permanent injunction and consumer redress. The investigation was conducted in cooperation with the U.S. Department of Justice and the U.S. Postal Inspection Service.

Liberty Financial of North America, Inc.

Liberty Financial and its president, John Sperduti, agreed to settle allegations that they misrepresented the investment potential of coins they sold. The Commission also obtained a settlement with Brian Muir, Liberty Financial's former national director of marketing. The defendants agreed to a permanent injunction prohibiting them from making such misrepresentations, and requiring payment of \$224,000 for consumer redress. The action was the result

of a joint investigation conducted by the Arizona Securities Division and the FTC.

Listworld, Inc.

The Commission filed a complaint alleging that the defendants assisted numerous telemarketing boiler rooms nationwide to market credit-related products using false and deceptive claims. The Commission is seeking a permanent injunction and consumer redress.

Magui Publisher, Inc.

The Commission obtained a judgment against Magui and its owner for producing and distributing fake prints by Salvador Dali. The court ordered the defendants to pay \$1,960,000 in disgorgement of unjust profits from the sale of the fake prints, and permanently enjoined them from making any false or misleading claims or unsubstantiated representations about the artworks of Dali or any other artist.

Mandy Enterprises

The Commission filed a complaint alleging that the defendants misrepresented the conditions for obtaining a Visa or MasterCard credit card and other credit-related services. Consumers were allegedly asked to pay for defendants' services by reading off the account numbers from the bottom of their checks, thus authorizing direct debits from consumers' bank accounts. The court granted a temporary restraining order and froze the defendants' assets.

Mark R. Crittenden

The Commission filed a complaint against Mark R. Crittenden, d/b/a Regional Supply Company, Jaime's Supply, Inc., and its two principals, charging them with making allegedly false representations in connection with the sale of photocopier supplies to small businesses and nonprofit organizations. The court issued a temporary restraining order against all defendants, and froze all but one individuals assets.

Mark Zigner

(See -- David C. Ascher, page 54.)

Marshall R. Lurie

Marshall Lurie, d/b/a World Wide Investments, was charged with making allegedly false and deceptive claims about the success rate of placing real estate advertisements in his magazine. The consent judgment prohibits future misrepresentations and requires Lurie to pay \$200,000 for consumer redress.

Max Munn

(See -- Collectors' Guild Ltd., Inc., page 53.)

Michael A. Kaplan

Michael Kaplan agreed to settle charges alleging he made false and misleading claims in selling distributorships for high-tech products, such as energy saving devices and home burglar alarms. A consent order prohibits Kaplan from making any false, misleading or deceptive claims about distributorships he offers for sale in the future.

Michael Jay & Company

The Commission filed a complaint alleging Michael Jay & Company falsely claimed that its credit repair services could remove accurate information, including bankruptcies, from consumers, credit reports. The Commission is seeking a permanent injunction and consumer redress.

Morgan Whitney Trading Group, Inc.

The defendants in the Commission's case against Morgan Whitney Trading Group agreed to settle allegations that they misrepresented the profit and risk potential of investments in platinum, silver, and commemorative medallions. The consent order prohibits defendants from making false representations regarding any investment offerings in the future, and requires them to relinquish personal assets valued in excess of \$1,600,000 for consumer redress.

Mytel International, Inc.

Mytel International and its owner, suppliers of telemarketing boiler rooms that allegedly use deceptive practices to sell photocopier supplies to small businesses and nonprofit organizations, were charged with civil contempt. The Commission alleged that defendants violated an earlier court order to terminate their business relationships with companies they know, or should know, are using deceptive practices to sell their products.

National Alliance of Brokers, Inc.

The Commission obtained a settlement with Rad Brdar in connection with its complaint against two corporations and four individuals, alleging that they deceived consumers in marketing rare coins for investment purposes. Defendant Rad Brdar agreed to a consent order permanently enjoining him from future violations and requiring him to pay \$60,000 for consumer redress.

National Impulse Marketing Corp.

Four individuals agreed to settle charges in connection with the Commission's case against National Impulse Marketing Corporation and eight individuals. The complaint alleged that the defendants made numerous misrepresentations in selling franchises for the exclusive right to market and service sundry product lines at retail business outlets.

NCS Credit Network, Inc.

The Commission filed a complaint alleging that the defendants misrepresented their credit repair services, claiming they could improve consumers' credit histories by removing adverse information from their credit reports, and could obtain major credit cards for consumers regardless of their credit histories.

Newport Gems d/b/a Capital Assets International

(See -- David C. Ascher, page 54.)

Oak Tree Numismatics, Inc.

The Commission obtained a settlement in its case against Oak Tree, three other firms, and three corporate officials. The Commission alleged they falsely represented that their coins were excellent, low-risk investments with low markups, while allegedly selling the coins for as much as seven to eight times their market value. The defendants agreed to a consent judgment which includes permanent injunctions against misrepresentations of the kind alleged in the complaint and requires payment of \$2,750,000 for consumer redress.

Pacific Medical Clinics Management, Inc.

(See -- Karin Lynn Norred, page 58.)

Patricia Bedell

(See -- Crofton M. Cooper, page 53.)

Patriot Alcohol Testers, Inc.

The Commission filed a complaint against two companies and an officer of both companies alleging that they misrepresented the accuracy of the results of the "Patriot 5000" breathalyzer device. The device is placed in bars and nightclubs for patrons to check their breath to determine whether their blood alcohol levels are low enough to permit them to drive. The complaint alleges that the breathalyzers give readings that can vary as much as 75 percent from the user's true blood alcohol level. The court ordered a

temporary restraining order, and the Commission is seeking a permanent injunction, consumer redress, and other relief.

Paul R. Sherman

(See -- David C. Ascher, page 54.)

Properties International, Inc.

The Commission obtained a judgment against the defendants in Properties international for conducting a telemarketing scheme to sell magazine advertising space to owners of undeveloped, unimproved recreational property by making false claims regarding the likelihood customers would sell their property and the price they were likely to obtain. The court ordered the defendants to pay \$1,038,364.82 for consumer redress and prohibited them from making any false or misleading claims in the future.

Prudential Resources, Inc.

Prudential Resources and eight other defendants agreed to settle charges that they allegedly made numerous misrepresentations in their promotion of the Lights Creek mining project. The consent order permanently enjoins the defendants from making specific misrepresentations alleged in the complaint and misrepresentations of any other fact material to a consumer's decision to invest in a mining project or any other investment offering.

Richard Harmon

(See -- David C. Ascher, page 54.)

Rime, Inc. d/b/a First Capital Trading Company

(See -- David C. Ascher, page 54.)

Robert Allen Gold

The Commission obtained a settlement with Robert Allen Gold in connection with its complaint against Ronald Dante, d/b/a Perma-Derm Academy and the "American Dermalogy Association." The complaint alleged misrepresentations regarding the training provided at Dante's "permanent makeup" workshops, the certification awarded to attendees, and that the process is painless and reversible. The consent judgment and order permanently enjoin Gold from future violations of the FTC Act and require him to pay \$5,000 for consumer redress.

### Ronald Dante

Ronald Dante, d/b/a Perma-Derm Academy and the "American Dermatology Association," agreed to settle allegations that he misrepresented the training he provides at his "permanent makeup" workshops, the certification he awards to attendees, and that the process is painless and reversible. The consent decree permanently enjoins Dante from making such misrepresentations and requires him to pay \$143,750 for consumer redress.

### S&L Professional Credit Clinic, Inc.

The Commission filed a complaint alleging that S&L Professional Credit Clinic and its principals misrepresented their credit repair services and their money-back refund guarantee. The Commission is seeking a permanent injunction against such misrepresentations and refunds for consumers who purchased S&L's services.

### Safety Plus, Inc.

The Commission filed a complaint alleging that Safety Plus and its principals made false representations in marketing employment opportunities with the company. The company distributes its products through a network of "manager trainees" it hires to conduct door-to-door solicitations. The complaint alleges that the defendants misrepresented the nature of the jobs and the method for obtaining and the expected level of their compensation system. The court granted a temporary restraining order and froze the defendants' assets.

### Saul Irving Brooks

(See -- Agusta Brooks, page 51.)

### Schoolhouse Coins, Inc.

(See -- Crofton M. Cooper, page 53.)

### Solomon Trading Company, Inc.

The Commission charged Solomon Trading Company and six individuals with allegedly misrepresenting the value of art prints they telemarketed to consumers nationwide. The court granted a temporary restraining order and partial asset freeze. The Commission is seeking a permanent injunction and other relief.

Starlink, Inc.

The Commission has charged Starlink and one individual with allegedly failing to disclose to consumers that they would incur a \$10 charge on their phone bills by dialing a 1190011 number listed in Starlink's advertisements for employment opportunities. The court issued a temporary restraining order and froze the defendants, assets to preserve funds for consumer redress. This is the second case the Commission has brought involving the deceptive use of "900" numbers to promote job opportunities.

Stuart M. Lopata

Stuart Lopata agreed to settle charges in connection with the Commission's complaint against Uni-Vest Financial Services, Inc. The complaint alleged that the defendants misrepresented the risk of investing in precious metals, and failed to execute clients' sell orders. The consent order permanently enjoins Lopata from making misrepresentations of the kind alleged in the complaint.

Technology Licensing Consultants, Inc.

Technology Licensing Consultants agreed to settle allegations that they misrepresented the nature, quality, and success rate of invention promotion services sold to inventors. The consent judgment prohibits future misrepresentations and requires the payment of \$285,000 for consumer redress.

Teresa L. Bowman

(See -- David C. Ascher, page 54.)

T.G. Morgan, Inc.

The Commission filed a complaint charging the defendants with making allegedly false claims regarding the investment and market value of rare coins they sold to consumers nationwide. The court froze the defendants' assets and issued a temporary restraining order. The Commission is also seeking a permanent injunction and consumer redress. The case has been a joint effort with the office of the Minnesota Attorney General.

Traditional Industries, Inc.

Traditional Industries was twice charged with civil contempt in connection with an earlier settlement resolving allegations that the company made false claims concerning the quality and value of photographic packages it sold. The first contempt action alleged that Traditional had failed to bring its sales conduct into compliance with the earlier consent decree. The court ordered Traditional to pay



\$140,000 owed to the Commission, and to refund overpayments made by pre-decree customers in accordance with the terms of the settlement. The second contempt action alleged that the company violated the orders issued in the first contempt action. The Commission is seeking compliance with the earlier orders, as well as additional sanctions, including an order that Traditional cease attempts to collect payments from a specified group of customers.

#### TransWorld Courier Services, Inc.

The Commission obtained a consent order permanently enjoining the defendants from misrepresenting any goods or services they offer for sale in the future, and requiring them to disclose in advertising and promotional materials the cost of calling any "900" number they offer. The order also requires payment of \$1,000,000 for consumer redress, with any funds not used for redress to be deposited in the United States Treasury.

#### United States Gemological Services, Inc.

(See -- David C. Ascher, page 54.)

#### Uni-Vest Financial Services, Inc.

Uni-Vest Financial Services and its president, Charles Hoffecker, agreed to an order requiring payment of \$67,500 for consumer redress to settle allegations that the defendants misrepresented the risk of leveraged investing in precious metals and failed to execute clients' sell orders. In addition, Hoffecker is prohibited from making misrepresentations of the kind alleged in the complaint, permanently banned from telemarketing leveraged investments, banned for five years from telemarketing non-leveraged investments in precious metals, and banned from all forms of telemarketing for two years.

#### U.S. Consumer Promotions, Inc.

U.S. Consumer Promotions, two affiliated companies and three individuals agreed to settle charges that they allegedly made misrepresentations while telemarketing water purifiers to consumers. The consent order prohibits the defendants from engaging in any deceptive practices while selling water purifiers, or any other products or services, in the future.

#### U.S. Oil and Gas Corporation

The Commission obtained its largest telemarketing fraud settlement to date in its case against U.S. Oil and Gas. The Commission's complaint charged three companies and ten individuals with engaging in allegedly false and deceptive sales practices in connection with application filing services they provided for a federal lottery. The lottery

awarded leases for rights to oil and gas resources on parcels of federal land. At the Commission's request, a receiver was appointed to take control of the companies, and was Subsequently authorized to file civil suits, on behalf of separate classes of victims, against several companies and individuals who allegedly aided and abetted the oil and gas lease scam. The civil suits were consolidated with the FTC action. Settlements were reached with some of the defendants in both the FTC and civil actions, providing for broad prohibitions on future deceptive practices as well as consumer redress. As a result of those settlements, a default judgment against a principal of U.S. Oil and Gas, and other funds in the receiver's possession, approximately \$ 47,000,000 is available for consumer redress.

#### U.S. Sales Corporation

The Commission filed a complaint against U.S. Sales and its owner, Dean S. Vlahos, charging them with deceptively using "900" numbers to market information on how to buy repossessed, confiscated, or used cars and other late model automobiles for as little as \$100, and how to obtain secured credit cards from major banks "regardless of consumers' credit histories." The court granted a temporary restraining order and an asset freeze. The Commission is seeking a permanent injunction and consumer redress.

#### Value Investments. Ltd.

The Commission charged Value Investments, two related companies and four individuals with allegedly violating the Franchise Rule by failing to provide proper disclosure documents to potential buyers, and with making multiple misrepresentations in the sale of mortgage loan brokerage business franchises. The court issued a temporary restraining order and an asset freeze. The Commission is seeking a permanent injunction and consumer redress.

#### Vaughn Management, Inc.

The Commission obtained a settlement with three companies and two individuals in connection with telemarketing schemes for travel packages and other products. The defendants agreed to be bound by permanent prohibitions on the kinds of misrepresentations alleged by the Commission, to prominently disclose any costs and conditions for redeeming the awards and the procedures for requesting refunds, and to pay \$160,000 for consumer redress. The order also prohibits the defendants from "factoring" credit card charges, the practice of billing credit card charges on behalf of third parties for sales in which the defendants were not involved.

William Shell, M.D.

Dr. Shell agreed to settle charges that he engaged in allegedly deceptive practices in connection with the sale of "Fat Magnet" diet pills, which the Commission alleged were falsely advertised as capable of helping users lose weight without diet or exercise. The consent judgment permanently enjoins Dr. Shell from making unsubstantiated claims regarding the performance, efficacy or safety of any weight-control food, drug or device he markets to consumers. He is also required to pay \$20,000 for consumer redress.

Winner's Circle of Chicago, Inc.

The defendants in the Commission's case against winner's Circle of Chicago agreed to settle allegations that they made numerous false promises about the value of gifts and prizes being awarded to consumers in connection with a direct mail campaign to sell memberships in camping, resort and buying clubs. The consent decree requires the defendants to clearly disclose to consumers any conditions and fees that must be satisfied before they can receive the offered prize, and prohibits future violations.

CIVIL PENALTY ACTIONS

MAINTAINING COMPETITION MISSION

Atlantic Richfield Company, & Union Carbide Corporation

The Atlantic Richfield Co. and the Union Carbide Corporation each agreed to pay a \$1 million civil penalty to settle charges that they did not comply with the federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when ARCO acquired Union Carbide's urethane polyether polyols and propylene glycol assets. The complaint charged that the parties effectively consummated the acquisition when Union Carbide transferred all benefits and risks of ownership of the chemical assets to ARCO. The complaint further alleged that the acquisition of beneficial ownership occurred before the parties filed the required HSR premerger notification forms. This \$2 million civil penalty is the second largest secured for a violation of the HSR Act. The civil penalty complaint and final judgment were filed in U.S. District Court for the District of Columbia by the Department of Justice, at the request of the Commission. Also during the fiscal 1991, the Commission accepted a consent agreement settling antitrust concerns stemming from the ARCO/Union Carbide acquisition.

Equity Group Holdings

Equity Group Holdings, a general partnership controlled by Steven M. Rales and Mitchell P. Rales, agreed to pay

\$850,000 to settle charges that they violated premerger notification requirements when Equity acquired stock in Interco Inc. The complaint charged that the Rales brothers, Equity, and a newly-formed Rales affiliated limited partnership acquired more than \$15 million of Interco stock before filing the required notification and report form and observing the waiting period required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The complaint further alleged that the partnership, City Capital Associates Limited Partnership, formed by the Rales brothers and two associates, used two corporations as forty-nine percent owners in an attempt to avoid the HSR premerger rules. The complaint was filed in the U.S. District Court for the District of Columbia at the Commission's request by the Department of Justice.

#### General Cinema Corporation

The Commission charged General Cinema Corporation with violating the Hart-Scott-Rodino Antitrust Improvements Act of 1976. According to the complaint filed in the U.S. District Court for the District of Columbia, General Cinema acquired more than \$15 million worth of stock in Cadbury Schweppes p.l.c. between September 1986 and February 1987 without filing notification with the Commission and the Department of Justice. The complaint asks the court to order General Cinema to pay the maximum civil penalty allowed by law. The Department of Justice authorized the Commission to file the complaint in the federal court.

#### Reliance Group Holdings Inc.

Reliance Group Holdings Inc. agreed to pay \$550,000 in civil penalties to settle charges that it violated the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The complaint charged that Reliance acquired a reportable amount of stock in Spectra-Physics, Inc. before filing a formal notification with the Commission and the Department of Justice. Although, certain acquisitions under the HSR Act made solely for the purpose of investment are exempt from the reporting requirements, the complaint charged that this exemption did not apply to the Reliance/Spectra transaction. The Department of Justice, at the request of the Commission, filed the complaint and consent judgment in the United States District Court for the District of Columbia.

#### Service Corporation International

Service Corporation International agreed to pay \$500,000 in civil penalties to settle charges that it violated the premerger notification filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The complaint charged that SCI acquired more than \$15 million of Centurion National Group, Inc.'s stock without notifying the Commission or the Department of Justice as required by the

Hart-Scott-Rodino Act. According to the complaint, SCI was in violation of the HSR Act each day during the period beginning December 30, 1986 and continuing through February 26, 1987, a total of fifty-nine days. The Department of Justice, at the Commission's request, filed the complaint and consent judgment in the United States District Court for the District of Columbia. Also during the year, the Commission accepted a consent agreement for public comment relating to SCI's proposed acquisition of Sentinel Group, Inc.

#### Union Carbide Corporation

(See -- Atlantic Richfield Company, page 67.)

### CONSUMER PROTECTION MISSION

#### A & G Auto Sales

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The Commission is seeking a permanent injunction against further violations and civil penalties.

#### American Automobile Brokers, Inc.

American Automobile Brokers agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used-vehicles offered for sale, failing to disclose on Buyers Guides that were posted the name and address of the dealership and person to contact if a problem should arise, and failing to include language incorporating the Buyers Guide into the final sales contract. The defendants agreed to an order prohibiting future violations and requiring payment of \$3,500 in civil penalties.

#### Aurora Discount Cars

Aurora Discount Cars agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendants agreed to an order prohibiting further violations of the Rule.

#### Auto Brokers, Inc.

The Commission obtained a settlement of charges that the defendants allegedly violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise, failing to disclose whether the vehicle was being sold with or without a

warranty, and failing to include language incorporating the Buyers Guide into the final sales contract. The complaint also alleged that defendants violated the Warranty Disclosure Rule by failing to disclose in a single written document the terms of the warranty and other required information. The consent decree prohibits future violations and requires payment of \$4,250 in civil penalties.

#### BarclaysAmerican Corporation

BarclaysAmerican agreed to settle allegations that it violated the Equal Credit Opportunity Act and its implementing Regulation B, and the Fair Credit Reporting Act by denying credit to applicants who relied on alimony and child support as their primary source of income. The consent decree requires the company to pay \$265,000 in civil penalties and prohibits future violations.

#### Best Buy Auto & Truck Sales

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to display a Spanish language version of the Buyers Guide when the sale was conducted in Spanish, and failing to include language incorporating the Buyers Guide into the final sales contract. The Commission is seeking a permanent injunction against further violations and civil penalties.

#### Bill Haven Cars, Inc.

Bill Haven Cars agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendants agreed to an order prohibiting future violations and requiring payment of \$3,000 in civil penalties.

#### Bishop Brothers Used Cars and Trucks

Bishop Brothers Used Cars and Trucks agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise, and failing to include language incorporating the Buyers Guide into the final sales contract. The defendants agreed to an order prohibiting future violations and requiring payment of \$13,000 in civil penalties.

#### Bob Wade Ford, Inc.

The Commission obtained a settlement in its case against Bob Wade Ford requiring payment of \$3,500 in civil penalties.

The Commission alleged that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise and failing to include language incorporating the Buyers Guide into the final sales contract. The consent decree entered also prohibits future violations of the Rule.

Bob Zimmerman Ford, Inc.

Bob Zimmerman Ford agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendants agreed to an order prohibiting future violations and requiring payment of \$30,000 in civil penalties.

Bonnie & Company Fashions, Inc.

The Commission filed a complaint charging Bonnie & Company Fashions with allegedly violating the Care Labeling Rule by mislabeling some of the clothing it sold. The complaint alleges that the correct care procedure was not listed on some of the garments, part of the care procedure that was listed would harm the product, and the company did not have a reasonable basis for the care information disclosed on the label. The Commission is seeking a permanent injunction against further violations and civil penalties.

Car City, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale and failing to include all the required information in those that were displayed. The Commission is seeking a permanent injunction against further violations and civil penalties.

Carousel Motors

The Commission obtained a settlement requiring payment of \$30,000 in civil penalties to settle allegations that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The consent decree also prohibits future violations of the Rule.

Carrollwood Auto Sales, Inc.

Carrollwood Auto Sales agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem

should arise, and failing to include language incorporating the Buyers Guide into the final sales contract. The defendants agreed to an order prohibiting future violations and requiring payment of \$5,000 in civil penalties.

Classy Chassy Body and Sales, Inc.

Classy Chassy Body and Sales agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendants agreed to an order prohibiting future violations and requiring payment of \$6,000 in civil penalties.

Clean Cars of Tampa, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The Commission is seeking a permanent injunction against further violations and civil penalties.

Credit Car Connection, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on Buyers Guides that were displayed the name and address of the dealership and person to contact if a problem should arise, and failing to include language incorporating the Buyers Guide in the final sales contract. The Commission is seeking a permanent injunction against further violations and civil penalties.

Crestmont Cadillac Corporation

Crestmont Cadillac agreed to pay \$32,500 in civil penalties to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to include language incorporating the Buyers Guide into the final sales contract, and making written statements which alter or contradict the disclosures required by the Rule. The Commission's complaint also alleged violations of the Magnuson-Moss Warranty Act by disclaiming implied warranties, and violations of the Warranty Disclosure Rule by failing to disclose in a single written document the terms of the warranty and other required information. The consent decree also prohibits future violations.

Damark International, Inc.

Damark International agreed to settle allegations that it violated the Mail Order Rule and the Truth In Lending Act



by failing to credit consumers' accounts for returned merchandise within seven days. The consent decree prohibits future violations and requires Damark and its two principals to pay \$150,000 in civil penalties.

David Miller Pontiac, Inc.

David Miller Pontiac agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, and failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise. The complaint also alleged that the defendants violated the Warranty Disclosure Rule by failing to disclose in a single written document the terms of the warranty and other required information. The defendants agreed to an order prohibiting future violations and requiring payment of \$20,000 in civil penalties.

Doro Lee, Inc. d/b/a Brown Hearing Aid Centers

The Commission filed a complaint alleging that Doro Lee d/b/a Brown Hearing Aid Centers, violated the Door-to-Door Sales Rule in connection with the sale of hearing aids. The Commission is seeking a permanent injunction against further violations and civil penalties.

Field Publications, L.P.

Field Publications, publisher of Weekly Reader Books and other book plans, agreed to settle charges alleging that it shipped merchandise without the consent and request of recipients, and tried to obtain payment for this merchandise in violation of the Unordered Merchandise Statute and the FTC Act. The consent decree prohibits such practices in the future and requires Field to pay \$175,000 in civil penalties.

G & H Used Cars, Inc.

The Commission obtained a judgment against G & H Used Cars for violating the Used Car Rule by failing to display the required Buyers Guide on the used vehicles it offered for sale. The order prohibits future violations of the Used Car Rule and requires G & H to pay \$10,000 in civil penalties.

George L. Eyler

George Eyler, owner-operator of United Systems, Inc., a truck driving school, agreed to settle allegations that he violated an earlier FTC order that prohibited him from denying full refunds to students who canceled during the "cooling-off" period, and from misrepresenting the school's affiliation with the trucking industry. The consent decree requires Eyler to pay \$100,000 in civil penalties and

\$25,000 for consumer redress to students whose payments were not properly refunded.

Independent Auto Brokers, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The Commission is seeking a permanent injunction against further violations and civil penalties.

JAK Auto Sales, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The Commission is seeking a permanent injunction and civil penalties.

JS&A Group, Inc.

JS&A Group agreed to settle allegations that it violated the Mail Order Rule by failing to ship BluBlocker sunglasses within the required time, and failing to properly notify consumers of the delays. The company agreed to an order requiring civil penalties of \$50,000 and prohibiting future violations of the Rule.

Kaufman and Broad Home Corporation

Kaufman and Broad Home Corp. agreed to settle charges alleging that it violated an earlier FTC order by failing to make warranty repairs in a timely manner. The consent decree prohibits future violations and requires payment of \$595,000 in civil penalties.

K-Mart Corporation

K-Mart agreed to settle allegations that it violated the Textile Fiber Products Identification Act by mislabeling imported men's shirts. The defendant agreed to an order prohibiting future violations and requiring payment of \$130,000 in civil penalties.

Lloyd McKee Motors, Inc.

Lloyd McKee Motors agreed to settle allegations it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise, and failing to include language incorporating the Buyers Guide into the final sales contract. The defendants agreed to an order prohibiting future violations and requiring payment of \$25,000 in civil penalties.

Louis Lenoff

Bernard Lenoff and Stuart Lenoff, d/b/a Louis Lenoff, agreed to settle charges that they allegedly violated the Fur Products Labeling Act by selling artificially colored fur products labeled as "natural" fur. The defendants agreed not to violate the Act in the future and to pay \$35,000 in civil penalties.

M.A.S.H. Motors, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The Commission is seeking a permanent injunction against further violations and civil penalties.

Michael S. Johnson

The defendants in the Commission's case against Michael Johnson agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise, and failing to include language incorporating the Buyers Guide into the final sales contract. The consent decree prohibits future violations and requires payment of \$5,000 in civil penalties.

Monish Chevrolet-Oldsmobile, Inc.

The Commission filed a complaint alleging that defendants violated the Used Car Rule by failing to display the required Buyers Guide on the windows of used cars offered for sale. The complaint also alleged the dealerships violated the Warranty Disclosure Rule by failing to disclose clearly in a single warranty document the terms of the warranty and other required information. The Commission is seeking a permanent injunction against future violations and civil penalties.

Moore Funeral Homes, Inc.

Moore Funeral Homes agreed to settle allegations that it violated the Funeral Rule by failing to provide written general price lists, casket price lists and outer burial container price lists to consumers seeking to make funeral arrangements. The consent decree prohibits future violations and requires Moore to pay \$100,000 in civil penalties.

Muller Auto Sales, Inc.

Muller Auto Sales agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale and failing to include language incorporating the Buyers Guide

into the final sales contract The defendants agreed to an order prohibiting future violations and requiring payment of \$7,500 in civil penalties.

National Automobile Sales of Florida, Inc.

National Automobile Sales of Florida agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise, and failing to include language incorporating the Buyers Guide into the final sales contract. The defendants agreed to an order prohibiting future violations and requiring payment of \$5,000 in civil penalties.

Nino B. Michael

The defendants in the Commission's case against Nino B. Michael agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The consent decree prohibits future violations and requires payment of \$25,000 in civil penalties.

Olympic Motors, Inc.

Olympic Motors and its owner agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. They agreed to pay a civil penalty of \$4,000 and are prohibited from violating the Used Car Rule in the future.

P&H Motors, Inc.

P&H Motors agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, and failing to include language Incorporating the Buyers Guide into the final sales contract. The defendants agreed to an order prohibiting future violations and requiring payment of \$7,000 in civil penalties.

Peake Memorial Chapel, Inc.

Peake Memorial Chapel and its former owner agreed to settle allegations that they repeatedly violated the Funeral Rule by failing to disclose price and other information as required. The defendants agreed to an order prohibiting further violations and to pay civil penalties of \$40,260 and \$14,270 for consumer redress.

Perkins Funeral Home, Inc.

Perkins Funeral Home and its president agreed to settle charges that they allegedly failed to provide customers with price lists for various funeral goods and services and itemized written statements of what funeral goods and services customers actually chose. The defendants agreed not to violate the Rule in the future and to pay \$10,000 in civil penalties.

Quality Motor Company

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale and failing to disclose on Buyers Guides that were displayed the name and address of the dealership and person to contact if a problem should arise. The Commission is seeking a permanent injunction against further violations and civil penalties.

Ron Hagan Corporation, The

The Ron Hagan Corporation agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale and failing to include language incorporating the Buyers Guide into the final sales contract. The defendant agreed to an order prohibiting future violations and requiring payment of \$20,000 in civil penalties.

Sansing Chevrolet, Inc.

Sansing Chevrolet agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendant agreed to an order prohibiting future violations and requiring payment of \$42,500 in civil penalties.

Sentra Corporation

Sentra Corporation agreed to settle allegations that it failed to ship merchandise and failed to provide customer requested refunds within the time periods required by the Mail Order Rule. The Commission is seeking a permanent injunction against further violations and civil penalties.

Softwear Shoes, Inc., Stephen C. Rattner, & Walter Mendlovitz

Stephen Rattner and Walter Mendlovitz, former principals of Softwear Shoes, Inc., a defunct mail order company, agreed to settle allegations that they violated the Mail Order Rule and Wool Products Labeling and Textile Fiber Products Identification Acts. The Commission sought a permanent

injunction against further violations and civil penalties. Under a consent decree, the defendants are prohibited from further violations.

Striffler Community Funeral Homes

Striffler Community Funeral Homes agreed to settle allegations that it violated the Funeral Rule by failing to provide consumers with a general price list at the times and in the manner required by the Rule. The defendants agreed to an order prohibiting future violations and requiring payment of \$32,000 in civil penalties.

Tasca Lincoln-Mercury, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The Commission is seeking a permanent injunction against further violations and civil penalties.

Terry Smith Honda Cars

Terry Smith Honda Cars agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendant agreed to an order prohibiting future violations and requiring payment of \$15,000 in civil penalties.

Tim Clark Auto Sales, Inc.

Tim Clark Auto Sales agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendant agreed to an order prohibiting future violations and requiring payment of \$10,000 in civil penalties.

Tim Hardy Economy Cars, Inc.

Tim Hardy Economy Cars agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on Used vehicles offered for sale. The defendant agreed to an order prohibiting future violations and requiring payment of \$15,000 in civil penalties.

T.J. Motors, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on Buyers Guides that were displayed the name and address of the dealership and person to contact if

a problem should arise, and failing to include language incorporating the Buyers Guide in the final sales contract. The Commission is seeking a permanent injunction against further violations and civil penalties.

Tom's Motors, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to display a Spanish language version of the Buyers Guide when the sale was conducted in Spanish, and failing to include language incorporating the Buyers Guide in the final sales contract. The Commission is seeking a permanent injunction against further violations and civil penalties.

Track Auto Sales, Inc.

The defendants in the Commission's case against Track Auto Sales agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The consent prohibits further violations of the Rule.

Truck Land, Inc.

Truck Land agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and address of the dealership and person to contact if a problem should arise, failing to display a Spanish language version of the Buyers Guide when the sales were conducted in Spanish, and failing to indicate which of the specific systems were covered by the warranty. The complaint also alleged that defendants violated the Warranty Disclosure Rule by failing to disclose in a single written document the terms of the warranty and other required information. The defendants agreed to an order prohibiting future violations and requiring payment of \$12,500 in civil penalties.

Ultimate Motors, Inc.

The Commission filed a complaint alleging that the defendants violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The Commission is seeking a permanent injunction against further violations and civil penalties.

United Management, Inc.

United Management agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to disclose on posted Buyers Guides the name and

address of the dealership and person to contact if a problem should arise, failing to include language incorporating the Buyers Guide into the final sales contract, and failing to disclose required warranty information regarding duration, systems covered and other matters. The defendants agreed to an order prohibiting future violations and requiring payment of \$30,000 in civil penalties.

Walter Mendlovitz

(See -- Softwear Shoes, Inc., page 77.)

Wetzel and Son, Inc.

Wetzel and Son agreed to settle allegations that it violated the Funeral Rule by allegedly failing to have a general price list that conforms to the requirements of the Rule. The defendants agreed not to violate the Rule in the future and to pay a \$15,000 civil penalty.

Winebrenner Ford, Inc.

Winebrenner Ford agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. The defendant agreed to an order prohibiting future violations and requiring payment of \$10,000 in civil penalties.

APPELLATE COURT DECISIONS

MAINTAINING COMPETITION MISSION

Ticor Title Insurance Company

On January 9, 1991, the United States Court of Appeals for the Third Circuit reversed and vacated in its entirety a final order entered by the Commission. The court ruled that the Commission lacked jurisdiction to bring an enforcement action in this case because Ticor's collective rate setting for title search and examination in Arizona, Connecticut, Montana, New Jersey, Pennsylvania, and Wisconsin were protected from antitrust liability by the state action doctrine. The Commission asked the Third Circuit to rehear the case and suggested a rehearing en banc. The Commission's motion was denied. The Commission, with the approval of the Solicitor General, petitioned the Supreme Court for a writ of certiorari.

ECONOMIC REPORTS COMPLETED

Economic reports usually entail a significant commitment of resources and report original research concerning an issue of current or long term policy interest to the Federal Trade Commission.

Petroleum Tariffs as a Source of Government Revenue, Keith B. Anderson and Michael R. Metzger, February 1991. The study evaluates the desirability of import tariffs on crude



oil and refined petroleum products. Such tariffs would cost consumers between \$2 and \$5 per dollar of revenue raised. Excise taxes, on the other hand, would cost consumers \$1.05 to \$1.13 per dollar of revenue raised.

### ECONOMIC ISSUES SERIES

Economic Issues Papers are literature reviews or policy analyses (rather than original empirical or theoretical work) in a subject area relevant to the Commission's mission.

Costs and Benefits of Occupational Regulation, Carolyn Cox and Susan Foster, October 1990. A review of the literature in the field focusing on empirical estimates of the costs of licensure regulations and alternatives to licensure.

### WORKING PAPERS

Economic Working Papers are preliminary, unpublished work products of the Bureau of Economics, resulting from original research by Bureau staff, either in connection with ongoing agency activities or independent analyses, often requiring very minor allocations of staff time.

Exclusion, Collusion, and Confusion: The Limits of Raising Rivals' Cost, (WP#179), Malcolm Coate and Andrew N. Kleit, October 1990.

The Effect of Subsidized Imports on Domestic Imports: A Comparison of Market Structures, (WP#180), Morris E. Morkre, October 1990.

Estimating Producer Welfare When Input and Output Prices Change Simultaneously, (WP#181), Michael R. Metzger, November 1990.

Rent Increasing Costs: The Antitrust Implications from a Paradox in Value Theory, (WP#182), James A. Langenfeld and John R. Morris, November 1990.

Quality Choice, Trade Policy, and Firm Incentives, (WP#183), James D. Reitzes, January 1991.

Housing Demand and Property Tax Incidence in a Life-Cycle Framework, (WP#184), Seth B. Sacher, January 1991.

Do Employees Regard Wage Cuts and Layoffs as Opportunistic?, (WP#185), John David Simpson, January 1991.

Some Antitrust Concerns of Partial Equity Acquisitions, (WP#186), k. E. Rodriguez, March 1991.

Movements in the Earnings-Schooling Relationship, 1940-1988 (WP#187), Mary T. Coleman, March 1991.

Does North American Labor Demand Adjustment Differ from that in Britain?, (WP#188), Richard Fry, May 1991.

Merger and Regulatory Incentives, (WP#189), Mark D. Williams, May 1991.

Are Judges Smarter than Economists? Sunk Costs, The Threat of Entry and The Competitive Process, (WP#190), Andrew N. Kleit and Malcolm Coate, June 1991.

Bondholder Reaction to increases in Leverage, (WP#191), John Simpson, June 1991.

Antidumping Policy, (WP#192), James D. Reitzes, July 1991.

#### MISCELLANEOUS ECONOMIC POLICY PAPERS

Miscellaneous Economic Policy Papers result from basic research and explore well-defined industrial organization and management strategy questions of interest to the broad policy concerns of the Commission. These papers may be prepared by FTC staff economists or by outside individuals who have been granted access to economic data compiled by the FTC.

Technological Integration of Large Firms, Thomas R. Iosso, July, 1991.

Segment Reporting: The Cost Allocation Issue, Alexander J. Sannella, September 1991.

#### CONSUMER AND COMPETITION ADVOCACY

##### OFFICE OF CONSUMER AND COMPETITION ADVOCACY

The Commission has its Office of Consumer and Competition Advocacy to help to fulfill its responsibilities and activities. Sometimes laws or regulations may cause injury to consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms, and wasting resources. These results may occur because the interests of consumers are not well represented. The basic goal of the advocacy program is to reduce harm to consumers by informing appropriate governmental entities of the potential effects on consumers, both positive and negative, of proposed legislation or rulemaking. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review and information for the staff's work in this area. In fiscal year 1991, the Commission staff submitted 19 comments to federal and state agencies and one professional association. The following is a summary of the advocacy comments completed and submitted in fiscal year 1991.

## NATIONAL ORGANIZATIONS

### American Bar Association: Attorney Provision of Non-Legal Services.

Staff sent a letter to the Ethics Counsel, American Bar Association concerning the competitive effects of proposed amendments to the ABA's Model Rules of Professional Conduct. The letter supported the Standing Committee on Ethics and Professional Responsibility Discussion Draft's approach, finding that law firm diversification has the potential to provide significant benefits to consumers. To counteract any problems, staff suggested adopting narrowly tailored changes to the ABA's Model Rules of Professional Conduct.

## FEDERAL AGENCIES

### Advisory Commission on Conferences in Ocean Shipping: Ocean Shipping Conferences

The Director of the Bureau of Economics testified before the Advisory Commission on Conferences in Ocean Shipping (ACCOS), finding the 1984 Shipping Act to contain some potentially anticompetitive features, and recommending eliminating tariff filing requirements and extending antitrust immunity only if the benefits exceed the costs. The staff asked the ACCOS to consider, in deciding whether the existing regulatory structure should be retained or modified, whether ocean shipping markets differ fundamentally from transportation markets where deregulation has brought tangible consumer benefits or other markets that operate effectively without antitrust immunity.

### Department of Agriculture: Meat Labeling; Perishable Meat Product Labeling.

The FTC staff supported the USDA's proposal to adopt the same definitions as the FDA for standardized terms, such as "low fat" or "light", to prevent consumer confusion. FTC staff also supported the USDA's proposal to allow additional descriptors, such as "lean" or extra lean," on meat and poultry labels.

The FTC staff submitted comments to the USDA's Food Safety and Inspection Service (FSIS) about whether new regulations are needed for the labeling or packaging of certain perishable meat and poultry products. The FSIS proposal was in response to safety concerns that consumers may fail to treat products properly, such as by storing them at room temperature instead of refrigerating them. Staff recommended that the FSIS first determine whether consumers have mishandled chilled meat and poultry products, and if the risk is significant, determine whether labeling or other disclosures could be used to inform consumers about how to handle those products appropriately. In addition, it was

suggested that the FSIS consider a ban on certain types of packaging only if it concluded that disclosures could not overcome any consumer confusion caused directly by the packaging materials used with the products.

Federal Communications Commission: Cable TV Rulemaking; Cellular Telephone Bundling; Digital Radio; Financial Interest and Syndication Rule 1; Financial Interest and Syndication Rules II; Radio Multiple Ownership; and 900 Number Rulemaking.

The FTC staff submitted comments in response to a FCC proposal to redefine what constitutes effective competition for basic cable service. The comments concluded that the FCC should consider the over-the-air reception quality of local broadcast signals, because the cable system's ability to provide improved reception is a critical factor in calculating the system's market power, at least when the basic service package consists mainly of local broadcast channels.

The FCC requested comments on whether to allow cellular customer premises equipment (CPE) and cellular service to be offered on a bundled basis, provided that service is also offered separately at a nondiscriminatory price; and, if so, under what conditions bundling should be allowed. The FTC staff submitted a comment agreeing with the FCC's opinion that consumers most likely would benefit from a regulatory change to allow cellular telephone service providers to bundle both service and CPE into a package and offer it for less than the price of service and equipment sold separately.

In response to an FCC request for comments, the staff suggested a market approach to allocating digital audio radio services, rather than an administrative approach, because it would better serve consumers. The comment concluded that an efficient allocation of spectrum might be achieved by a market in which current users of spectrum could sell their rights to potential digital audio broadcasters.

The staff comment, in response to an FCC Further Notice of Proposed Rulemaking, recommended that the FCC completely repeal its financial interest and syndication rules. The rules forbid television networks from engaging in the domestic syndication of any program or the foreign syndication of independently-produced programs and from obtaining any financial or proprietary right or interest in the exhibition, distribution, or use of programs produced by others, except for the exclusive right to network exhibition in the United States.

In a further comment, the FTC staff's third set since the FCC issued a Notice of Proposed Rulemaking to evaluate the financial interest and syndication rules, the FTC staff

concluded that a four-year phase-out of the rules barring networks from entering the rerun and syndication business would better serve consumers and competition than would a modification that gave the networks only limited access to this market.

The FTC staff submitted a comment in response to a FCC proposal to increase the number of radio and television stations or allow a single entity's ownership interests to cover a larger portion of the U.S. that one entity or person may own. The comment stated that by allowing stations to enjoy the efficiencies associated with joint ownership, stations that might otherwise cease operating might continue broadcasting. Thus, joint ownership could increase variety and competition.

The FTC staff endorsed the efforts of the FCC to foster informed consumer choices and provide appropriate consumer protection in the 900-number industry. The comment concluded that remedies used by the FCC in its proposed rulemaking, such as mandatory preambles, optional blocking, and identification of information providers, could give meaningful protection to consumers. The comment also noted that the FCC's rulemaking was consistent with continued enforcement activity by other regulatory agencies, such as the FTC.

#### Federal Reserve System: Check Transporting Services.

A staff comment was submitted in response to the Federal Reserve System's request for views on proposed changes to its check transportation pricing structure. The comment pointed out that the Federal Reserve's proposed pricing might adversely affect efficiency by causing private competitors to curtail their service or leave the market. FTC staff recommended that the Federal Reserve should determine actual costs of transporting bundled and pre-sorted checks from the bank where first received to the payor bank before replacing its per-check transport fee with a maximum charge, above which the price for transporting checks would not vary with volume.

#### STATES

#### Arkansas: Below-Cost Gas Pricing and Vertical Restraints.

Staff sent a letter to the Arkansas Senate General Assembly in response to their request for comments on the potential competitive effects of the proposed Petroleum Trade Practices Act. FTC staff concluded that enactment of the bill would insulate gasoline refiners and marketers from competition and may thereby cause gasoline prices in Arkansas to increase.

Florida: Regulatory Audit.

A staff comment submitted to the Florida office of the Auditor General advised that some Florida statutes, administered by the Board of Pilot Commissioners and the Board of Medicine, could have anticompetitive effects. By curtailing opportunities for entry into the business of harbor pilotage and fixing the rates, vessel pilots could charge higher prices that can be passed on to consumers. Similarly, prohibiting the use of physician referral fees prevents the useful flow of nondeceptive information about providers to patients. FTC staff suggested that the Office of the Auditor General reevaluate the costs and benefits of these sections of Florida's occupational licensing programs.

Illinois: Motor Carriers; Telecommunications Sunset Study.

A staff letter to the Chairman, Illinois Commerce Commission, about the Commerce Commission's proposed amendments to its rules regulating intrastate trucking, advised that the rules would make entry into the intrastate trucking industry in Illinois more difficult. In addition, the staff stated that relaxing restrictions on entry into the trucking industry has benefitted consumers and competition by increasing choices, improving service, and reducing prices for the transportation of goods.

The staff responded to the Blue Ribbon Telecommunications Task Force's Outline of Purpose and Request for Assistance on Illinois' regulation of intrastate telecommunication services. The comment summarized the theoretical advantages and disadvantages of price-cap regulation compared with rate-of-return regulation of telecommunications service. It stated that price-cap regulation is a promising alternative because it allows firms to retain a portion of costs savings, while rate-of-return provides little incentive to reduce costs because the state's regulatory commission generally mandates that cost reductions be fully rebated to customers.

New Jersey: Physician Dispensing of Drugs.

Staff submitted a letter to the Commerce and Regulated Professions Committee of the New Jersey General Assembly regarding pending legislation that would prohibit physicians from dispensing more than a 72-hour supply of drugs or medicines to any patient, unless the drugs or medicine are dispensed at no charge. FTC staff suggested that the effect of legislation restricting physician dispensing unnecessarily may deprive consumers of the benefits of choice, convenience, and price competition, and recommended that the legislature consider whether less restrictive health and safety standards are sufficient to protect the public.

New Mexico: Lawyer Advertising and Solicitation.

The staff comment in response to a notice by the New Mexico Supreme Court regarding proposed amendments to the New Mexico Code of Professional Conduct. The amendments would establish more restrictive standards in the areas of attorney advertising and client solicitation. FTC staff concluded that the amendments could restrict the flow of truthful and useful information to consumers and impede competition or increase costs to a greater extent than is necessary to achieve consumer benefits. Staff recommended that the Court consider modifying the rules to permit a wider range of truthful communications, and to narrow their prohibitions to target only those representations that pose a clear likelihood of consumer injury.

Virginia: Gas Divorcement Study Commission.

The Director for Litigation of the Bureau of Competition submitted a statement before a joint subcommittee of the Virginia Senate and House of Delegates. The statement argued against divorcement legislation, stating that there is no factual support for the legislation, but rather there are compelling reasons to believe that it would be harmful to competition and to Virginia consumers and visitors.

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