Advancing the Consumer Interest

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EDITORIAL POLICY STATEMENT

Advancing the Consumer Interest is designed to appeal to professionals who explore consumer problems and help to shape consumer behavior and consumer policies. This includes teachers in higher and secondary education, researchers, extension specialists, consumer affairs professionals in business and government, journalists, lawyers, students in consumer science, and other practitioners in consumer affairs.

Manuscripts may address significant trends in consumer affairs.

Suggested content may include:

1. Position papers on important issues in consumer affairs, education, and law.

2. Description and analysis of exemplary education, extension, community, and other consumer programs.

3. Research reported at a level of technical sophistication applicable to practitioners as well as researchers. The emphasis of this research should be on its implications and applications for consumer education, policy, law, etc. The primary question of the reported research should be, "What does this research mean for practitioners?"

4. Application of theories, models, concepts, and/or research findings to problem solutions for target audiences.

5. Articles summarizing research in a given area and expanding on its implications for the target audience.

6. Letters and sustained responses to items previously published in ACI.

The *Guidelines for Authors Submitting Articles* are printed inside the back cover.

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This issue of *Advancing the Consumer Interest* contains articles that embody ACI's mission as a journal that seeks to bring forward the policy implications of interdisciplinary consumer research. Each uses a different methodology to probe an important consumer problem. And each presents policy options or future directions for research.

Professors Julia Marlowe and Raúl Rivadeneyra Santibáñez relate consumer education curriculum to global consumer marketplace. Based upon their own research and experience they propose some major changes to consumer education curricula. They recommend that the courses of study in current programs in consumer fields be reviewed to increase the preparation of students for becoming global consumers as well as employees with international companies. Consumer education curricula, they state, should be updated to provide a solid base for assessing international consumer issues and related policy options; they should expose students and faculty to professionals from other countries; and [they should] provide on-site experiences through study abroad programs, or international internships ideally should be a major part of the curriculum."

Professors Robert Mayer and Robert Nielsen consider an important question related to consumer welfare—whether consumers who should purchase insurance are in fact those likely to obtain it—in the context of an exploratory survey of 244 women primarily from one western state that was taken from a larger National Cancer Institute-funded study examining the impact of genetic testing and family cancer history on the purchase of a variety of types of insurance. Although the results of the limited survey are not definitive, the authors suggest important avenues for the further investigation. Is it risk-averse consumers who already have health insurance who consider cancer insurance policies? Do cancer insurance and life insurance complement each other or substitute for each other? Professors Nielsen and Meyer attack these and other related problems.

Jeff Sovern considers the timely subject of consumer privacy concerns, on the Internet and elsewhere. He proposes an opt-in, rather than an opt-out approach to protecting consumer privacy concerns. Businesses, he states, routinely buy and sell personal information about consumers. Many consumers find this objectionable, but relatively few opt out of that trade. Professor Sovern's article explores that conundrum and argues that businesses have both an incentive and the ability to increase consumers' transaction costs in protecting their privacy and that some marketers do in fact inflate those costs by making it more difficult for consumers to opt out of the sale of their personal information. As a result, he states, "many consumers respond by abandoning efforts to protect their privacy." Sovern suggests an opt-in system—in which firms could not sell consumer information without consumer permission—would eliminate the incentive to inflate transaction costs.

In a carefully researched policy essay, Judge Thomas Dickerson considers the need to improve class action settlements that involve coupons. Coupon settlements may be little more than shams when the attorneys for the plaintiff class and the defendants are the only real beneficiaries, Dickerson reports. The salutary purpose of class actions "may be defeated when attorneys consider their own economic interests before those of the class." Dickerson recommends appropriate methods to design coupon settlements so that consumers actually receive something of value in return for releasing their claims.

The book review of Robert D. Manning's book *Credit Card Nation: The Consequences of America's Addiction to Credit*, is written by Stephen Brobeck, the Executive Director of the Consumer Federation of America. Brobeck has established himself as an expert in consumer difficulties with credit cards, and he offers his recommendation of Manning's explanation of "why banks recently have mailed more than three billion credit card solicitations annually and have currently extended 2.5 trillion dollars in related lines of credit."

This legal digest contains two special sections. The first considers recent developments in the law related to consumer grievances in managed health care organizations. The second considers credit and financial services issues. As Congress debates such matters as a patient's bill of rights and HMO reform legislation, it should be of special interest to consumer affairs professionals to reflect upon the actions of the courts in these areas.

A few words may be spared here to reflect on the passing of Richard L.D. Morse, a leader of the consumer movement who has passed from the scene since the publication of the last issue. Dr. Morse for many years chaired the division of family and consumer economics at Kansas State University. He was a president of ACCI, a long-time board member of Consumers Union, and a leader in other consumer organizations as well. He spent a large part of his career trying to improve the information consumers receive concerning credit, and especially to gain support for and passage of federal Truth in Lending and Truth in Savings legislation. There was no meeting, no phone conversation, no publication, no gathering of any sort that I can recall his attending where he did not persist—sometimes beyond any respectable ending point—in urging those around him to work harder for that cause. And he eventually succeeded in this as in many other consumer oriented objectives that he went after.

Among the many reasons Dick Morse was a great advocate was his appreciation

of consumer history. He was responsible for the posthumous publication of Colston Warne's lectures as a book titled *The Consumer Movement*. He funded and established the Consumer Movement Archives, located at Kansas State University. This is perhaps the most complete and carefully administered such archives anywhere.

It was this editor's privilege to first meet Dick Morse when in 1982 all the past presidents of ACCI (up to that time) were interviewed for the book *ACCI: An Oral History*. The leaders of ACCI have all, without exception, been persons of extraordinary ability and commitment to improving the field of consumer affairs. Among these leaders was Dick Morse, a determined, stalwart proponent of consumer rights.

Consumer Class Actions And Coupon Settlements: Are Consumers Being Shortchanged?

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Law Clerk to Judge Dickerson

Class actions brought in both Federal and State Courts on behalf of consumers victimized by defective or misrepresented goods and services can generate substantial cash or product recoveries. These benefits may be rendered illusory, however, by settling a consumer class action with the issuance of coupons, credits or certificates for the purchase of goods or services from the defendants. The stark reality of coupon settlements is that they may benefit only the attorneys representing the class, who are paid in cash, and the defendants who are relying on a coupon design and redemption process that guarantees that very few coupons will ever be redeemed. The telltale sign of this lawyer's "bargain" is that very few coupon settlement agreements provide for coupon tracking or promise to continue issuing coupons until a specific dollar amount is redeemed. Under these circumstances neither the attorneys for the class nor the defendants may have any interest in making known to the class or the general public the actual redemption rate of settlement coupons.

Low coupon redemption rates make a mockery of the concept that class members should receive value for settling their claims. This is especially true when class attorneys are paid in cash while class members receive only coupons of dubious value. In *In re Domestic Air Transportation Antitrust Litigation*[2], a class action alleging a price fixing conspiracy[3] between nine domestic airlines, the settlement provided for over $400 million in flight coupons and $50 million in cash for attorneys fees and administrative costs. Objectors[4] criticized the proposed settlement as being nearly worthless because of numerous use restrictions, e.g., (1) although transferable to a designated person the coupons could not be sold to coupon brokers or others willing to purchase them, (2) the coupons were useable only in small units so that claimants would simply forget about or not bother to use the coupons, (3) one way flights were excluded, (4) black out periods such as Thanksgiving/Christmas/New Year's were excluded, and (5) tickets purchased with other coupons/awards were excluded. Notwithstanding these objections of the limited value of the flight coupons[5], the settlement was approved[6].

HOW TO MAKE COUPON SETTLEMENTS REAL

An offer of cash allows the Court and the class to more accurately evaluate the settlement's true value[7]. There are occasions, however, when a non-cash settlement of coupons for the purchase of goods or services from the defendant is appropriate and necessary[8]. First, an individual class member's cash recovery may be so small that it is exceeded by the costs of distribution. This reality, known as *de minimus* damages, may justify the denial of class action status. In *Maffei v. Alert Cable TV of North Carolina*[9] class certification was denied because each class member's recovery of $.29 "would conceivably not even cover the cost of postage and stationary for a claimant to notify the court of his inclusion in the class." Second, because of the nature of the underlying transaction, e.g., most low-end retail sales, the names and addresses of class members may never be known. Some courts have responded to both *de minimus* damages and an unidentifiable class by approving of the use of a "fluid recovery" plan for damages distribution. Fluid recovery[10] seeks to put recovered monies to "the[ir] next best use"[11] by rewarding the next best class. Fluid recovery plans may involve a rollback of defendants' prices, escheat to a governmental body, establishment of a consumer trust fund, funding of educational funds or the issuance of coupons to regular customers on theory that they were members of the victimized class. In *Feldman v. Quick Quality Restaurants, Inc.*[12], nearly sixteen million consumers of Burger King fast food products were overcharged $.01 on each purchase. The settlement provided for the issuance of $.50 coupons for the purchase of food to future customers on the theory some, if not all, were repeat customers and, hence, members of the class. Third, the defendant may be impoverished and unable to pay cash to the class. Naturally, as a threshold matter, the defendant must be willing to establish its financial inability to pay cash[13].

TRANSFERABILITY

The distribution of coupons, typically, requires the purchase of specific goods or services that the class member may not want. Consumers would be far better served if the coupons were convertible into cash either by redemption or by being transferable to persons or entities, e.g., coupon brokers, willing to pay cash for them. In *Charles v. Goodyear Tire & Rubber Co*[14]. the credit vouchers were freely transferable as they were in *In re Cuisinart Food Processor Antitrust Litigation*[15], *Willmann v. GTE Corp.*[16], and *Buchet v. ITT Consumer Finance Corp.*[17] Cash convertibility, even at a discount, would be preferable to non-cash redeemable ones. In *Langford v. Bombay Palace Restaurants*[18], the settlement coupons could be redeemed for cash at 30% of their face value while in *Weiss v. Mercedes-Benz*[19] the certificates for the purchase of a new Mercedes were redeemable at one half face value after three years.

REDEMPTION RATE

For the defendants, of course, the most attractive feature of a coupon settlement is that not all of the issued coupons will be redeemed. In fact, the average redemption rates on food and beverage coupons have consistently been between 2% and 6%[20]. In evaluating the merit of a coupon settlement, the only proper means of measuring true value is by estimating the actual redemption rate of the offered coupon. Often experts will be enlisted by a plaintiff's or defendant's counsel to speculate upon potential redemption rates. Such dubious predictions may be challenged by discovery of the effectiveness of similar coupon programs. In *In Re Domestic Air Transportation Antitrust Litigation*[21] objectors took the position that the true value of the flight coupons could be established only by estimating the actual redemption rate after discovery of the redemption rates of the airlines' prior frequent flyer, certificate, and coupon programs.

In *Dunk v. Ford Motor Company*[22] a settlement of coupons redeemable for $400 for the purchase of a new vehicle provided for an estimated redemption, unrebutted by objectors, of 65,000 coupons creating a settlement value of $26 million. On the other hand, in *Dollar v. General Motors Corp.*[23] a settlement of $1,000 coupons for the purchase of new vehicles with an estimated 10% to 45% redemption rate was rejected as providing little benefit to the class.

COUPON TRACKING

A coupon settlement should require post settlement tracking of how many class members actually redeem the coupons. In *In re General Mills Oat Cereal Consumer Litigation*[24], the defendant issued certificates for free boxes of cereal and agreed to submit quarterly reports to ensure that $10 million of cereal products were actually distributed. Notwithstanding rare exceptions such as the reported 94% coupon redemption rate in *In re Sears Automotive Center Consumer Litigation*[25], coupon redemption rates can be very low indeed. In *Perish v. Intel Corp.*[26], 500,000 coupons offering a $50 rebate off of the purchase of a new microprocessor generated only 150 requests from class members for the coupons. And in *In re Cuisinart Food Processor Antitrust Litigation*[27] the claim rate was only 0.54% while the subsequent coupon redemption rate was even lower.

KEEP ON ISSUING

To prevent this emasculation of the settlement concept there should be a 100% redemption of the offered coupons or credits. This means not only that the coupons must be transferable and cash convertible, but that the defendant must continue to issue coupons until the agreed upon cash face value of the settlement is reached. In *Feldman v. Quick Quality Restaurants*[28], the settlement provided for the issuance of food coupons with a minimum value of $.50, which the defendants were required to keep issuing and distributing to consumers until the agreed upon face value of the settlement was reached. This concept has been used in *The Coca-Cola Co. Apple Juice Consumer Litigation* (coupons issued until $5,250,000 redeemed)[29], *Tepper v.Tropicana Products, Inc* ($.50 coupons issued until $1,150,000 redeemed)[30], and *Muller v. Cadbury Schweppes PLC* (coupons issued until $1,100,000 redeemed)[31]. Alternatively, defendants should agree to make up the difference between the actual value of redeemed coupons and the proposed settlement fund by making donations in cash[32], coupons[33], goods[34], or services to charitable organizations.

TIME & METHOD OF REDEMPTION

Equally important in measuring the actual value of a coupon settlement is the time during which redemption must take place and the manner in which the coupons must be redeemed. As for the duration of the redemption the longer the time period the better. Redemption periods of three years [*Donley v. Marshall*[35]], two years [*Charles v. Goodyear Tire & Rubber Co.*[36]], and one year [*Dunk v. Ford Motor Company*[37]] are acceptable. As for the method of redemption, the consumer should not be required to reveal his or her intention to use the coupon or credit until the price is agreed upon. For example, if the retailer is aware that the consumer intends to use a coupon or credit he may increase the sale price to compensate for the reduced payment. This potential problem was circumvented in *Branch v. Crabtree*[38], in which the settlement provided for the issuance of $1,000 certificates toward the purchase of a new or used car. The certificates could be withheld by the consumer until he or she had negotiated the best price. At that point the certificate could be produced for a further reduction in the vehicle price.

THE PROBLEM OF ATTORNEYS FEES

Coupon settlements may provide class counsel with an opportunity for substantial self-dealing. Considering the low redemption rate of coupon settlements, defendants may be willing to pay inordinately high cash fees to class counsel in return for support in promoting a non-cash settlement in which the class receives near worthless coupons. In *In re General Motors Corp. Pickup Truck Fuel Tank Products Liability Litigation*[39] a proposed settlement that provided $1,000 coupons for the purchase of a new truck and $4 million in legal fees was rejected as being of little value to class members. And in *In re Ford Motor Co. Bronco Products Liability Litigation*[40], a settlement providing class members with a "free" inspection, a road atlas and a lantern was rejected as inadequate. Certainly, fee awards should not be based on a percentage of an estimated settlement value that itself is based upon an estimated redemption rate. In *Dunk v. Ford Motor Company*[41] the Court rejected a fee application of $985,000 based upon a percentage of an estimated value of redeemed coupons. The Court held that the percentage method of awarding fees should be used only when the common fund value is certain or an easily calculable sum of money.

To prevent opportunities for abuse, courts may wish to consider requiring that class counsel accept a portion of their fees in the same non-cash consideration being offered in settlement. In *Aburime v. Northwest Airlines, Inc.*[42], class counsel accepted cash and $200,000 in non-transferable credit for travel. The rationale for requiring class counsel to share and share alike with class members is that this ensures value for the non-cash component on the theory that class counsel would not accept as a fee something that is relatively worthless. In the alternative and, at the very least, counsel fees should be based upon the actual recovery to the class. And this requires cash convertibility, transferability, extended redemption periods, post settlement tracking and continued coupon issuance until the amount redeemed equals the promised cash value of the settlement.

CLASS ACTION POLICIES MAY BE DEFEATED

Coupon settlements may be little more than shams when the attorneys for the plaintiff class and the defendants are the only real beneficiaries. The salutary purpose of class actions may be defeated when attorneys consider their own economic interests before those of the class. As noted recently by the Court in *In Re Auction Houses Antitrust Litigation*[43] "Class action lawsuits protect plaintiffs' rights and promote accountability...At the same time, however, the relationship between a plaintiff class and its attorney may suffer from a...divergence of economic interests. The class action mechanism can redound more to the benefit of the attorney... as counsel has an incentive to act in its own best interest...the class action mechanism on occasion has proved to be Janus-faced."

The settlement of consumer class actions with coupons for the purchase of goods or services can be good for the business of defendants and good for the consumer class. Coupon settlements, however, must be carefully designed so that consumers actually receive something of value in return for releasing their claims against defendants. The attorneys for the plaintiff class should be adequately compensated, to be sure, but not at the expense of the persons on whose behalf the class action was bought.

ENDNOTES

[1] Thomas A. Dickerson is a Westchester County Court Judge with a Web Page at http://members.aol.com/judgetad/index.html. Judge Dickerson is the author of Class Actions: The Law of 50 States, Law Journal Press, New York, 1981-2000, updated annually, Web Page at http://members.aol.com/class50/index.html and Travel Law, Law Journal Press, New York, 1981-2000, updated biannually, Web Page at http://members.aol.com/-travellaw/index.html and other articles concerned with consumer law, many of which are available at http://courts.state.ny.us/tandv.html. Ms. Brenda V. Mechmann is Judge Dickerson's Principal Law Clerk.

[2] In re Domestic Air Transportation Antitrust Litigation, 137 F.R.D. 677 (N.D. Ga. 1991)(class certification granted).

[3] See also In re North Atlantic Air Travel Antitrust Litigation, No. 84-1013 (D.C. Cir. Dec. 11, 1985)($30 million in nontransferable air fare reduction coupons worth $50 per transatlantic round trip flight for two year period).

[4] See In Re Domestic Air Transportation Antitrust Litigation, MDL No. 861, U.S.D.C., N.D. Ga., Reply Of Objectors [Andrew Hudders et al] To Plaintiffs' And Defendants' Responses To Objections, November 5, 1992, pp. 24-30.

[5] In re Domestic Air Transportation Antitrust Litigation, 144 F.R.D. 421 (N.D. Ga. 1992)(objectors to proposed settlement granted limited discovery).

[6] In re Domestic Air Transportation Antitrust Litigation, 148 F.R.D. 297 (N.D. Ga. 1993).

[7] In Kahn v. Bell Atlantic NYNEX Mobile, New York Law Journal, June 4, 1998, p. 29, col. 4 (N.Y. Sup.) the Court rejected a proposed settlement offering class members "free airtime" because it could not "make an independent assessment of the value of the airtime."

[8] See e.g., State of New York v. Nintendo of America, Inc., 775 F. Supp. 676, 681-682 (S.D.N.Y. 1991)(coupons for purchase of Nintendo software); Weiss v. Mercedes-Benz of North America, 1995 WL 592273 (D.N.J. 1995)(certificates towards the purchase of new Mercedes); Willmann v. GTE Corp., No. 96-492 (S.D. Ill. June 11, 1996)($5.00 debit cards for long distance calls); Buchet v. ITT Consumer Fin. Corp., 845 F. Supp. 684 (D. Minn. 1994)(certificates for reduced cost of life insurance policies).

[9] Maffei v. Alert Cable TV of North Carolina, 342 S.E. 2d 867, 872 (N.C. Sup. 1986).

[10] See e.g., Gordon v. Boden, 586 N.E. 2d 461 (Ill. App. 1991) (adulterated orange juice; certification granted; fluid recovery approved).

[11] State v. Levi Strauss & Co., 41 Cal. 3d 460, 224 Cal. Rptr. 605, 714 P. 2d 564 (1986).

[12] Feldman v. Quick Quality Restaurants, Inc., New York Law Journal, July 22, 1983, p. 12, col. 4 (N.Y. Sup.).

[13] See e.g., In re Montgomery County Real Estate Antitrust Litigation, 1979-2 CCH Trade Cas. 62,860 (D. Md. 1979) (defendants affirmatively established inability to pay cash).

[14] Charles v. Goodyear Tire & Rubber Co., No. 94-5626 (D.N.J. Dec. 13, 1996).

[15] In re Cuisinart Food Processor Antitrust Litigation, 1983-2 CCH Trade Cas. 65,680 (D. Conn. 1983).

[16] Willmann v. GTE Corp., No. 96-492 (S.D. Ill. June 11, 1996).

[17] Buchet v. ITT Consumer Finance Corp., 845 F. Supp. 684 (D. Minn. 1994).

[18] Langford v. Bombay Palace Restaurants, 1991 US Dist LEXIS 4730 (S.D.N.Y. 1991).

[19] Weiss v. Mercedes-Benz of North America, 1995 WL 592273 (D.N.J. 1995).

[20] See Weinstein, "The Love/Hate Dynamics: Coupons Issued By Manufacturers" 71 Progressive Grocer 117 (May 1992).

[21] In re Domestic Air Transportation Antitrust Litigation, 144 F.R.D. 421 (N.D. Ga. 1992)(objectors to proposed settlement granted limited discovery).

[22] Dunk v. Ford Motor Company, 48 Cal. App. 4th 1794, 56 Cal. Rptr. 2d 483 (1996).

[23] Bloyed v. General Motors Corp., No. 06-93-00113-CV (Tex. 71st Jud. Dist. Harrison Co. Nov. 3, 1993), *rev'd sub nom.* 881 S.W. 2d 422 (Tex. App. 1994), *aff'd on other grounds* 916 S.W. 2D 949 (Tex. 1996).

[24] In re General Mills Oat Cereal Consumer Litigation, No. 94 CH 06208 (Ill. Cir. Ct. Cook Co. July 29, 1994).

[25] In re Sears Automotive Center Consumer Litigation, No. 92-2227 (N.D. Cal. Oct. 29, 1992).

[26] Perish v. Intel Corp., No. CV-75-51-01 (Cal. Super. Ct. Santa Clara Co. June 22, 1998).

[27] In re Cuisinart Food Processor Antitrust Litigation, 1983-2-CCH Trade Cas. 65,680 (D. Conn. 1983).

[28] Feldman v. Quick Quality Restaurants, Inc., New York Law Journal, July 22, 1983, p. 12, col. 4 (N.Y. Sup.).

[29] In re The Coca-Cola Co. Apple Juice Consumer Litigation, No. E-47054 (Ga. Super. Ct. Fulton Co. May 4, 1998).

[30] Tepper v. Tropicana Products, Inc., No. 96-000846 (Fla. Cir. Ct. Manatee Co. Nov. 13, 1998).

[31] Muller v. Cadbury Schweppes PLC, No. 96-0148788 (Conn. Super. Ct. Waterbury Jud. Dist. June 29, 1999).

[32] See Ohio Public Interest Campaign v. Fisher Foods, 546 F. Supp. 1 (N.D. Ohio 1982)(contributions in cash or food to charitable organizations that give away food to the needy).

[33] See Duboff v. SmithKline Beechum (Pa. Ct. C.P. Philadelphia Co. Sept. 23, 1993)(coupon booklets for purchase of 18 SmithKline products; unclaimed booklets to be distributed to charitable organization).

[34] See Gordon v. Boden, No. 89 CH 6531 (Ill. Cir. Ct. Cook Co. July 14, 1995)(if redemptions of orange juice vouchers do not exceed $1 million defendant will fund consumer oriented research and make orange juice donations to schools).

[35] Donley v. Marshall, No. 93 CH 1610 (Ill. Cir. Ct. Cook. Co. Mar. 31, 1998).

[36] Charles v. Goodyear Tire & Rubber Co. No 94-5626 (D.N.J. Dec. 13, 1996).

[37] Dunk v. Ford Motor Company, 48 Cal. App. 4th 1794, 56 Cal. Rptr. 2d 483 (1996).

[38] Branch v. Crabtree, Index No. 15822/89, N.Y. Sup. West. Cty. Oct. 31, 1995.

[39] In re General Motors Corp. Pickup Truck Fuel Tank Products Liability Litigation, 55 F. 3d 768 (3d Cir. 1995), cert. denied 516 U.S. 824 (1996).

[40] In re Ford Motor Co. Bronco II Products Liability Litigation, 1995 WL 222177 (E.D. La. Apr. 12, 1995).

[41] See N. 33, supra.

[42] Aburime v. Northwest Airlines, Inc., No. 3-89-402 (D. Minn. Aug. 16, 1991).

[43] In Re Auction Houses Antitrust Litigation, New York Law Journal, October 2, 2000.

Consumer Education for a Global Marketplace: The Need for an Issue and Policy Focus

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INTRODUCTION: ADDRESSING THE KEY CONSUMER ISSUES

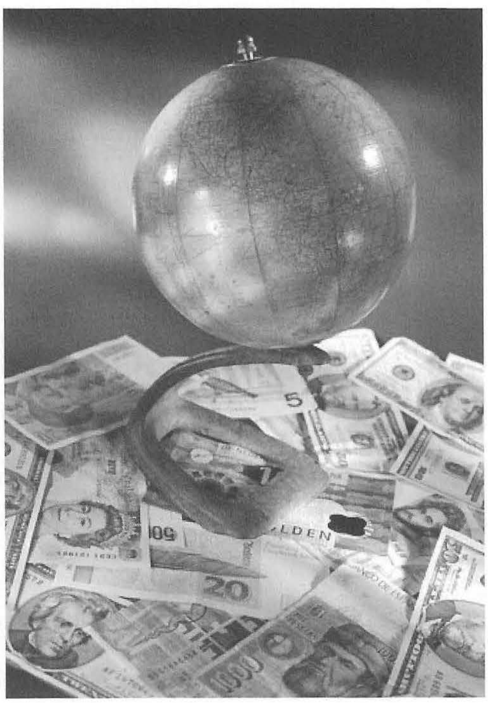
In our increasingly global economy, all consumers are influenced by multinational advances in technology and communications (Pittle, 1999; Williams, 1990; Walstad, 1994; Gardner, 1996). Given that reality, students should develop an international perspective just to operate as informed citizens; for those hoping to compete successfully in the internationalized economy, such a perspective will be essential (Dlabay and Scott, 1996; Bracken and Urbancic, 1997; Saikali and Jain, 1997; Morrison, 1998; Winchip, 1997; Darling, Greenwood and Hansen-Gandy, 1998; Martin, 2000). However, preparing students for the global marketplace is no easy task. Identifying consumer issues in one country is often difficult, and the problem is compounded when the context involves many countries.

Globally, consumers confront an extensive list of complex issues. These are complicated further by political and economic agendas that may not have consumer issues as their focus. In addition to the intricacies of political and economic arguments, consumers must deal with problems of terminology. A simple word like trade, for example, is associated with the interests of multinational corporations. Thus, trade is attacked by protesters, who focus on free trade agreements intended to increase trade. Yet those agreements, and the resulting increase in

trade, make more goods available to consumers more cheaply. Such agreements have proliferated during the previous decade, and new ones continue to be explored (Leapard and Vermallay, 1996; Kling, Alexander, Martinez and McCorkle, 1998).

Economic theory demonstrates the benefits of trade, but benefits may not accrue to various subgroups of consumers equally (McGregor, 1998). A significant amount of discussion has focused on the types of jobs lost and those created as a result of increased trade. Furthermore, consumers in developed countries may benefit more than consumers in less developed countries. The debate about the effects of the global economy on various countries extends into the moral responsibility arena, with some consumers questioning sweat shop practices and low wages ("The Shame of Sweatshops," 1999).

A related social responsibility issue concerns environmental impacts (Davis, 1999). A negative environmental effect may occur from the manner in which a product is manufactured or from the actual use of the product. Moral issues are intertwined in the environmental policy debate as well, with some countries claiming that they are not competitive under certain policies or that they should be able to exploit resources the same way that some of the most developed countries did in the past (McGregor, 1998).



When products are bought and sold internationally, international product standards become an issue (Mayer, 1989: Pittle, 1999). The presence of the Internet enables consumers to buy products directly, with little or no government involvement. Products purchased directly from a foreign country may not meet a consumer's expectations, and, even worse, may not come with any kind of consumer redress (Consumers International, 1999). Consumer movements are new to many developing countries; thus, there is much variation in the levels of consumer redress available (McGregor, 2000). Close attention to policies endorsed by Consumers International is one way to be informed of global consumer interest (McGregor, 2000).

NEED FOR CONSUMER EDUCATION WITH A POLICY FOCUS

Current programs of study in consumer fields need to review curriculum so as to increase preparation of students for becoming global consumers as well as employees with international companies. Curricula should provide a solid base for assessing international consumer issues and related policy options (Martin, 2000). Classroom exposure to professionals from other countries, on-site experiences through study abroad programs, or international internships ideally should be a major part of the curriculum; these experiences will help provide students with an opportunity to gain more a meaningful understanding of global issues.

Consider, for example, the student who has visited markets in a less developed country and has heard from business people who work there. To that student, arguments about the safety of agricultural imports will not be dry policy analysis. He or she will have a context for the issues, which would then come alive with memories of sights, sounds and insights gathered first hand.

Educators must be creative in designing curricula to prepare students for understanding international consumer policy and the global marketplace. A majority of programs in family and consumer sciences offer study abroad opportunities (Andrews, 2000); however, a majority of students do not participate in such programs. Mechanisms for delivering information must be able to reach all consumer economics students. Given that active learning should have a greater impact, it is desirable even in a traditional classroom format, to include innovative methods of involving students (Furco, 1996; Martin, 2000; Winchip, 1997). McGregor (1998) suggests activities that could be incorporated into a classroom, such as developing a continuum of consumer movements for various countries. She also mentions ways of involving international students in helping domestic students understand international consumer issues as well as policy ideology of various countries. Winchip (1997) notes that using non-traditional resources and activities that involve teamwork enhance learning and allow individuals to combine talents and experiences.

The availability of the computer is an ideal way to integrate global consumer issues into the curriculum. Electronic field trips (Sweaney, 1998) enable students to gain current information about various international policy debates without leaving the classroom. Assignments based on information from the Internet can help students realize how small the world is, and that other countries may be even more consumer oriented than the United States of America (Breslauer, 1998; Brown, Nielson and Sullivan, 1997).

Experiences outside the classroom can include community work experiences (service learning), such as working with individuals from other countries or with organizations involved in global policy. Study abroad experiences are the most intensive way to gain an understanding of the global market, and should be a component of the curriculum and made available to as many students as possible. These experiences can be shared with others by having participating students share their knowledge. Though "...it is difficult for any university or college to anticipate, and hence to prepare graduates for every possible career path," (Candy & Crebert, 1991, p. 571), it is helpful if students experience many different situations and people and develop an ability to analyze issues and propose policy solutions. Involving professionals from various countries in developing curriculum is an ideal way to make the curriculum as relevant as possible (Andrews, 2000).

APPLICATION AND IMPACT OF ONE CONSUMER ECONOMICS STUDY TOUR COURSE

The consumer economics program at the University of Georgia (UGA) was revised so as to provide an international focus in many courses. A study tour course is one component of the curriculum, and is designed for upper division students who have been exposed to consumer issues in previous courses. The study tour course is taught annually at one or more sites. Some of the sites are relatively inexpensive and scholarships are available for study abroad courses; thus, most students have the opportunity to participate. Given the increase in trade with Mexico and consumer policy issues that have resulted, Mexico was one of the obvious study abroad sites chosen (Engholm & Grimes, 1997; Kling et al, 1998; Leapard & Vermallay, 1996; Morrison, 1998).

The UGA consumer economics course taught in Mexico at the University of Veracruz was developed by two professors, one from each university. Experiences include activities before leaving for Mexico, field trips and seminars in Mexico, living with Mexican families while in Mexico, written assignments, and follow-up presentations upon returning from Mexico. Students gain knowledge about economic and consumer issues from the various speakers at the seminars and from writing reports. Students learn about consumer protection efforts in Mexico from the Veracruz Director of PROFECO, the government's consumer protection agency. One seminar is designed to integrate cultural awareness and business practices to help students gain knowledge about doing business in another country. Not only do the students gain knowledge from the seminars, but they also gain respect for professionals in another country.

Students increase their understanding and acceptance of another culture through videos during orientation, taking a language and culture class in Mexico, and from living with families. These experiences have helped students overcome their fear of a different language and a different culture. Students have praised the experience of living with families, and they considered the families to be their friends and family.

The cultural experiences have helped students better evaluate consumer policies by giving the students an understanding and appreciation of individuals from another country. One example in which students were thinking of policy issues in the context of Mexicans occurred when a class toured an innovative housing material manufacturing plant in Veracruz. Students asked the plant managers questions about environmental policies associated with the use of the materials, as well as questions about costs and salaries and consumer acceptance of the building materials.

The students who have participated in the study tour experience in Mexico have already reaped some of the direct benefits that the course was designed to deliver. At least three students have been offered jobs upon graduation, in part because of their study abroad experience. Students who did not participate in the study tour course have also benefited. The professor from Mexico who helped teach the course subsequently spent a semester at the University of Georgia, spoke to several classes and worked with some students individually. In this way, students who did not take the study tour course were exposed to information from a Mexican perspective. Some of the students who participated in the course shared their experiences with students in an introductory class. Thus, the impact of the course extended beyond the one course.

SUMMARY: CONSTRUCTING AN INTEGRATED CURRICULUM

An integrated curriculum ideally provides students with opportunities to learn about global consumer issues, analyze policies, and participate in activities designed to help students propose solutions. Follow-up learning through a study tour or service learning experience should improve students readiness for careers in the global economy.

Consumer economic students need to be able to understand and analyze consumer issues, and, in today's world, this means that they must approach many consumer issues from a global perspective. Students will ultimately have careers that require them to operate in a global economy. Those students with knowledge and experience about the international marketplace and an appreciation and respect for various cultures will be in a position to compete for top employment positions and so be better able to contribute to developing policy solutions to problems both in the public and private sectors. Educators must develop curricula that help prepare students for this kind of world. In order to help students operate as informed citizens and compete successfully in the internationalized economy, the curriculum should provide mechanisms for the application of formal, analytical training. Some of this can be accomplished in a traditional classroom setting. Providing guest speakers can give students exposure to other points of view. For lessons and lectures to be more fully understood, however, it is important to provide hands-on and on-site learning experiences. Study tour courses add a realistic dimension and enable students to use their senses and gain useful impressions. Thus, these courses, coupled with a solid all-round course preparation, are workable ways to prepare students as consumers and consumer professionals for the global marketplace.

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Why Do People Buy Cancer Insurance? An Exploratory Study

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Cancer insurance is a type of insurance policy meant to protect people from the financial hardships imposed by cancer. Coverage varies widely. Some policies pay a lump sum upon diagnosis of cancer; others pay a schedule of benefits for the direct costs of cancer treatment, such as hospital stays, drugs, and physician visits; and still others pay a combination of a lump sum and a schedule of benefits. Benefits may also be paid for indirect costs associated with cancer, including loss of earning power, transportation costs, child care expenses, lodging, home care, and counseling. Regardless of the exact policy features, cancer insurance covers a relatively narrow but very common set of medical conditions.

Cancer insurance policies are fairly inexpensive, ranging from as low as $5 per month for a single person under age 29 to approximately $40 per month for a family with a member between 65 and 69 years of age (Hay & Associates, 2000; Norman Wyatt Insurance Agency, 1997). Given its low price, a consumer's attraction to cancer insurance may be understandable, especially when one considers the high likelihood of contracting cancer. Over the course of her lifetime, a woman has a 1 in 3 risk of developing some form of cancer, whereas a man has a 1 in 2 risk of developing cancer (American Cancer Society, 2000).

In promotional materials, cancer insurance suppliers emphasize the risk of cancer with statements like: "Did you know cancer is the leading cause of death in children ages 1-14?" (American Fidelity Assurance Company, 2000). In truth, accidents are the leading cause of death among young people. It is not until after the age of 35 for women and the age of 55 for men that cancer becomes the leading cause of death (Statistical Abstract, 1999). Cancer insurers also point to the inadequacy of health care policies in dealing with cancer's financial costs: "The best health insurance policy in the world doesn't pay all the expenses associated with a fight with cancer!" (Norman Wyatt Insurance Agency, 1997).

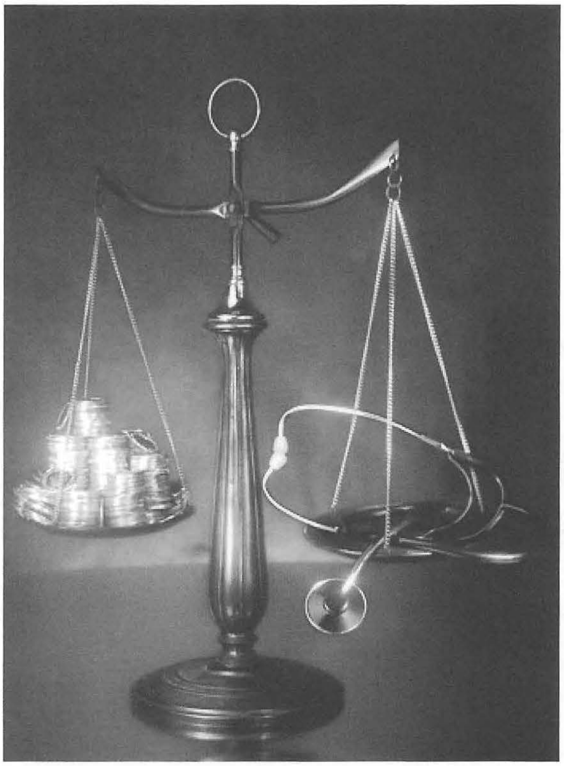
Consumer advocates and some state insurance regulators express concerns about cancer insurance policies. First, advocates compare buying insurance for a single disease, even a serious one like cancer, to buying hubcap insurance for a car (Hann, 1999). They are worried by the possibility that consumers, especially low-income or elderly consumers, will substitute less expensive cancer insurance policies for more expensive but comprehensive health insurance policies (Giese, 1997; Nance-Nash, 1993). Second, consumer advocates and state insurance regulators are troubled by the low benefit or payout rates for cancer insurance policies relative to those for life and health policies (Cropper, 1997). Third, cancer insurance policies are frequently difficult to understand and usually contain numerous exclusions and benefit limitations (Cropper, 1997; Panko, 1998; State of Wisconsin, 1999). Finally, there are allegations of deceptive, misleading, or incomplete advertising practices (Miller, 1996). Although some of these criticisms may be exaggerated or apply equally well to other forms of insurance, they show the skepticism of consumer advocates regarding the value of cancer insurance.

THE GROWTH OF CANCER INSURANCE

Despite concerns about cancer insurance, the market for it is growing. American Fidelity Life Assurance Company (AFLAC) is by far the largest seller of cancer insurance in the United States and Japan with over eight million policies in effect worldwide. AFLAC's sales of cancer insurance have increased by more than 10% per year for the past several years (Hann, 1999), and its net income for 1999 was its best ever (AFLAC, 2000). Firms are also stepping up their efforts to sell cancer insurance by changing the product's name, features, and methods of distribution (Hann, 1999; Koco, 1994). For example, consumers are attracted to the convenience and flexibility of lump-sum payouts, a feature of many cancer insurance policies.

There are several factors behind the growth of cancer insurance, and these factors are likely to remain strong for the foreseeable future. With the aging of the baby boomers, more people are moving into the middle years, during which some of the most common forms of cancer are most prevalent. Also, people who contract cancer are living many years beyond its onset, thereby incurring substantial costs coping with the disease. At the same time that cancer is becoming more common and more expensive to endure, employers are cutting back on health care coverage in general but increasing the availability of cancer insurance and other specified-disease insurance policies through payroll deductions. Similarly, health maintenance organizations, in an effort to reduce costs, are limiting access to cancer-related services, such as seeing specialists, getting second opinions, and having expensive or alternative medical care (Hann, 1999).

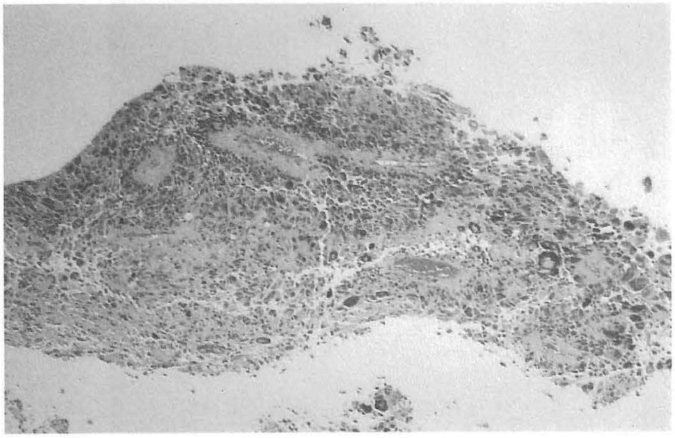
Several states that have banned or limited the sale of cancer insurance have recently reconsidered their restrictions on the sale of cancer insurance policies due to industry pressure. In 1996, Connecticut repealed a 21-year ban on the sale of disease-specific insurance, and in 1998 the state of New York ended a 27-year ban on cancer insurance sales. To address advocates' concerns that consumers may turn to specified-disease policies in lieu of comprehensive medical insurance, New York's Department of Insurance requires that consumers must have comprehensive medical insurance before purchasing a cancer insurance policy. The department also developed minimum loss



ratio regulations that must be met by insurance companies to assure that consumers who purchase cancer insurance policies are guaranteed a minimum level of benefits.

Nevertheless, some states still have reservations about cancer insurance. New Jersey does not permit the sale of cancer insurance, and several other states have recently examined their laws regarding its availability. As a result, California no longer allows consumers over age 65 to purchase cancer insurance policies, and Arizona now requires consumers 65 and older to sign a form acknowledging that the insurance may duplicate existing Medicare coverage. Other states, including Massachusetts, Wisconsin, and Ohio, have expressed concern about cancer insurance policies and have cautioned consumers to examine the policies carefully before making a purchase ("Cancer Insurance..." 1999; Panko, 1998; State of Wisconsin, 1999). The state in which the current study was conducted has no restrictions on the sale of cancer insurance.

Despite warnings from consumer advocates, the popular press, and state insurance regulators, some consumers continue to purchase cancer insurance to protect themselves from the financial threats imposed by the disease. If cancer insurance is as bad as its critics suggest, then it is important that policy makers know who buys it and why. For example, policy makers may be much less likely to act if cancer insurance is purchased primarily by well-educated, wealthy consumers who have ample life and health insurance than if it is bought mainly by poorly educated, low-income consumers who lack other forms of insurance coverage. Assuming that, as the industry asserts, cancer insurance is a valuable product, it is still worth identifying the types of consumers to whom the product appeals and for what reasons so that consumer education and information policies are targeted appropriately.



The study reported here is an exploratory examination of the factors that increase the likelihood that a consumer will purchase insurance policies that provide financial protection in the event of cancer. Are individuals with a family history of cancer more likely to consider such insurance? Are consumers turning to cancer insurance when they lack comprehensive health insurance coverage, or is it risk-averse consumers who already have health insurance who consider cancer insurance policies? Similarly, do cancer insurance and life insurance complement each other or substitute for each other?

STUDY DESIGN

To explore the factors that influence the purchase of cancer insurance, a sample of 244 women primarily from one western state was taken from a larger National Cancer Institute-funded study examining the impact of genetic testing and family cancer history on the purchase of a variety of types of insurance. In the larger study, women from the general population were compared to those who underwent genetic testing for a breast cancer gene mutation. Only the former, untested group is included in the study of cancer insurance reported here. Results from the group undergoing genetic testing are less likely to be applicable to women in the general population because these tested women are likely to have a family history of cancer and because they have been extensively counseled in relation to their genetic status.

Our study of cancer insurance examines factors that may cause women to consider purchasing a cancer insurance policy. The decision whether or not to purchase a cancer insurance policy may be especially important for women, as cancer was the leading cause of death for women age 45-64 in 1997 (Centers for Disease Control and Prevention, 1999). Only nine of the women (4%) in the sample held a cancer insurance policy at the time of data collection, and only 31 (13%) said they had thought about purchasing cancer insurance during the last five years. Because so few women in the sample actually own cancer insurance, we confine our empirical analysis to those women who have considered or not considered purchasing it. The resulting dependent measure is dichotomous; accordingly, logit analysis was used to explore the correlates of considering a cancer insurance purchase. Only those relationships with a p-level of 0.05 or less are reported here.

In examining the correlates of having considered the purchase of cancer insurance, women previously diagnosed with cancer were approximately three times more likely than women without a personal cancer history to have considered purchasing cancer insurance. Of course, women with a personal cancer history might view themselves as needing cancer insurance, but they might also view themselves as good candidates for it if they have been cancer-free for a sufficient amount of time. Additionally, these women might not understand the extent to which a personal cancer history might decrease their insurability. Whatever the reason, women with a personal history of cancer are not dissuaded from thinking about buying cancer insurance.

A woman's personal health assessment was also a predictor of her propensity to consider buying cancer insurance. Women who responded that their health was only "fair" or "poor" were more than three times more likely than women who considered themselves to be in "good" or "excellent" health to have considered purchasing cancer insurance. This seems consistent with the finding that women with a personal history of cancer are more likely to consider purchasing cancer insurance, not less so. (Whether cancer insurers would offer them policies is another matter.) In addition to personal health assessment, respondents were asked to rate their perceived likelihood of living to age 85. There was no relation between answers to this question and the tendency of a person to consider buying cancer insurance.

The research also tested for a relationship between a woman's consideration of cancer insurance and whether or not she had a family history of cancer. Interestingly, no relationship was found between family cancer history and a woman's likelihood of considering a cancer insurance policy. One might have expected that having a relative who had experienced cancer would increase a person's interest in cancer insurance.

Beyond these health-related variables, basic demographic factors were examined to assess their ability to predict whether women had considered a cancer insurance purchase within the past five years. One demographic factor that had predictive power was full-time work; it increased the likelihood that a woman considered a cancer insurance policy by nearly 2.5 time relative to women who were not employed outside the home. This difference may reflect the fact that cancer insurance is frequently sold through employer payroll deductions, or it may reflect the perception that income earned by women is more in need of insurance coverage than the value of home production activities. Having completed high school or graduated from college (controlling for income, work status, and all other variables) increased the likelihood that a woman considered purchasing a cancer insurance policy by more than 3.8 times relative to women who did not complete high school. Given that cancer insurance is not commonly owned or advertised to the extent of other types of insurance, perhaps people with higher levels of education are more aware of cancer insurance than those with less education.

One of the criticisms of cancer insurance is that it may decrease demand for other types of insurance that provide broader coverage. It is therefore important to examine the relationship between cancer and life and health insurance. To do so rigorously, one would need to model the relationship between these three insurance decisions. For example, health insurance for many of these women will be an automatic benefit of their employment or that of their spouse; accordingly, decisions about health insurance may precede or set the context for decisions about life and cancer insurance. Decisions about life and cancer insurance, however, may actually be made simultaneously with each other since both types of insurance are often purchased by individuals as options (even when purchased through payroll deductions). Complex modeling of this type is beyond the purposes of this exploratory paper. We simply report the results of our logit analysis for the consideration of other researchers: there was no relationship between considering the purchase of cancer insurance and the ownership of either health or life insurance policies. Thus, we found support for neither the idea that cancer insurance complements other types of insurance coverage nor for the contention that it substitutes for it.

LIMITATIONS, IMPLICATIONS, AND CONCLUSIONS

The major virtue of the study reported here is that it is the first empirical investigation of consumer purchase intentions with respect to cancer insurance. The study is necessarily exploratory and is characterized by the typical limitations of research that lacks strong predecessors. Like most exploratory studies, the results are based on a sub-optimal sample. The sample used here is small (N=244), confined to women, and fairly homogenous in terms of characteristics such as race and ethnicity. Although the women studied were recruited from what was originally a statewide random sample, attrition and perhaps some degree of self-selection makes it impossible to draw generalizations from the group studied to some larger population.

The study is further limited by the public's lack of familiarity with cancer insurance. Only 40 respondents, or 16% of the sample, actually have such a policy or have considered buying one. It is possible that many respondents had not heard or thought of cancer insurance prior to participating in this study. Thus, the dependent measures in the study are not only highly skewed in their distribution but are of unknown validity and reliability. Among the small number of people who currently hold a cancer insurance policy, no effort was made to differentiate among policies based on their cost, features, or level of coverage—factors that might yield clearer correlates of the propensity to buy cancer insurance.

Keeping in mind the significant limitations of the study, what tentative lessons can be drawn by consumers and their advocates, insurance companies, and public policy makers? The concerns of consumer advocates may be allayed by several of the findings from this exploratory research. First, despite recent sales increases, very few women in our sample have considered purchasing cancer insurance in the last five years (13%), and even fewer have actually purchased a policy (4%). Second, claims that consumers may purchase cancer insurance in lieu of a comprehensive health insurance policy or a life insurance policy were not substantiated. Finally, we found no evidence that low-income consumers considered purchasing cancer insurance at a higher rate than higher-income consumers.

What can the insurance industry learn from the results of our exploratory research? First, despite recent sales growth, only 13% of our sample had even considered purchasing cancer insurance in the last five years. The potential market for cancer insurance remains relatively untouched. Second, we found no evidence that women in our sample are "insuring the hubcaps" and neglecting comprehensive coverage. Consumers in our sample appear to recognize the importance of health and life insurance independent of cancer insurance. This may allay the concerns expressed by consumer advocates and allow for an open dialogue between consumer advocates and industry representatives regarding the optimal features of cancer insurance policies.

Representatives of cancer insurance sellers have stated that selling policies through employers makes it less necessary for them to delve into an applicant's medical history

(Hann, 1999; Koco, 1997). If so, insurers should note that women in our sample with a personal history of cancer were more than three times more likely than women without a personal cancer history to have considered purchasing a policy. Although these women would likely be denied coverage due to their preexisting condition, this suggests some possibility for adverse selection in the market (Zick et al., 2000).

Finally, there was no evidence that a woman's family cancer history influenced her decision to consider a cancer insurance purchase, suggesting that women in our sample are making decisions about cancer insurance based on their own health status rather than their family's medical history. As a result, firms may not benefit from gathering family cancer history, a practice that consumers may regard as intrusive.

Public policy makers are concerned about many of the same issues as consumer advocates and members of the cancer insurance industry. Some states are trying to make the sale of cancer insurance more difficult, while others are lifting restrictions on the sale of this type of insurance. It is likely that most state policy makers want consumers to be able to make up their own minds, based on accurate and readily available information about the value of cancer insurance. The results of this research suggest that the greatest interest in cancer insurance exists among women working outside the home and those with relatively high levels of educational attainment. Initial consumer education efforts might therefore be aimed at these groups. If and when cancer insurance becomes more widespread, education efforts will need to be broadened accordingly to ensure that consumers are provided with accurate information about these relatively new and uncommon policies.

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LOGISTIC REGRESSION RESULTS
"THOUGHT ABOUT BUYING CANCER INSURANCE?"
N=221[a]

Independent Variables	Coefficient	Chi-square	Odds Ratio
Consumer Loss Factors			
Full-time Work[b]	0.896	3.726*	2.450
Part-time Work[b]	-1.684	2.379	0.186
Married	-0.665	1.304	0.514
Minors in Household	-0.050	0.009	0.951
Income	3.87E-6	0.272	1.000
Some College[c]	1.342	3.864*	3.825
College Graduate[c]	1.356	3.793*	3.881
Have Life Insurance	-0.122	0.047	0.886
Have Health Insurance	-0.498	0.639	0.608
Consumer Risk/Supplier Price Factors			
41+ Years Old	-0.147	0.093	0.863
Chance of Living to Age 85[d]	-0.008	0.919	0.992
Family Cancer History	0.221	0.256	1.247
Personal Cancer History	1.131	4.353*	3.099
Reported Poor or Fair Health[e]	1.207	5.065*	3.344
Constant	-2.560		
(-2 log likelihood)		149.372	
Chi-square		32.501**	

*p < .05 **p < .01

[a] Nine subjects with cancer insurance are excluded, and 14 subjects were dropped due to missing values. This results in a sample size of 221.
[b] The omitted group in this series of dummy variables contains those individuals who are not in the labor force.
[c] The omitted group in this series of dummy variables contains those individuals who have a high school education or less.
[d] Respondents were asked to asses the likelihood (0-100% likelihood) that they would live to age 85.
[e] The omitted group contains those individuals who reported that their health was good or excellent.

Helping Consumers Protect Their Personal Information

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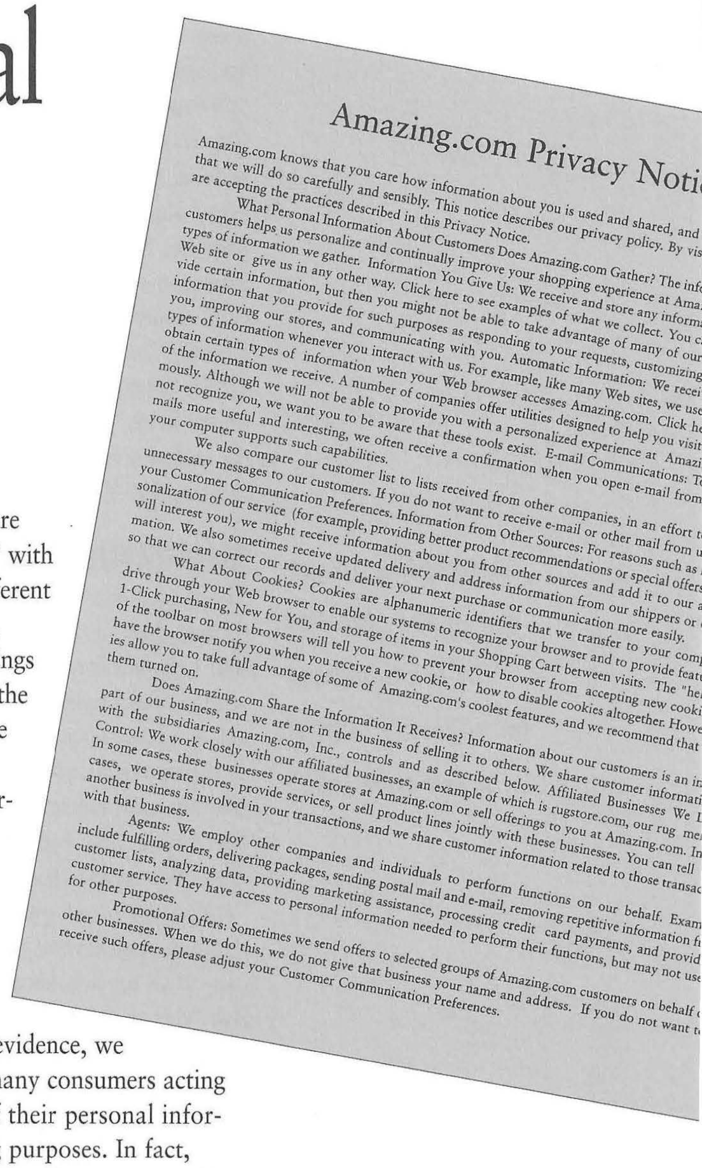

THE OPT-OUT CONUNDRUM

Businesses routinely buy and sell personal information about consumers. Many consumers find this objectionable, but relatively few opt out of that trade. This article explores that conundrum. I argue that businesses have both an incentive and the ability to increase consumers' transaction costs in protecting their privacy and that some marketers do in fact inflate those costs by making it more difficult for consumers to opt out of the sale of their personal information. Many consumers respond by abandoning efforts to protect their privacy. I suggest that an opt-in system—in which firms could not sell consumer information without consumer permission—would eliminate the incentive to inflate transaction costs and produce an outcome in which consumer preferences would be accommodated.

THE TASTE FOR PRIVACY

Over the last decade, numerous polls have explored what consumers say about privacy. The survey results have led privacy expert Alan F. Westin to divide consumers into three groups. (Equifax-Harris, 1996a). Westin describes about 24% of the public as "Privacy Fundamentalists" who reject the view that organizations are entitled to obtain personal information. Sixteen percent of the population are "Privacy Unconcerned," who willingly supply personal information to organizations. The remaining 60% are "Privacy Pragmatists" with different views on different information activities, depending on such things as whether they trust the particular industry, the value for themselves and society if the information is provided, whether the information is relevant, and whether fair information practices are being observed.

Given that survey evidence, we might expect to see many consumers acting to prevent the sale of their personal information for marketing purposes. In fact, however, the percentage of consumers who have opted out is small, estimated at 20% or less. (Peterson, 1991; Lukovitz 1985; Chandrasekaran, 1998).

How can this be reconciled with the survey evidence that suggests that more consumers find the trade in information questionable? One possibility is that the surveys do not report consumer preferences accurately. But other, more persuasive, explanations are possible. Opt-out lists may not accurately reflect consumer interest in opting out to protect their personal information for several reasons.

CONSUMER IGNORANCE OF OPT OUTS AND OF HOW PERSONAL INFORMATION IS USED

Consumers may not take advantage of opt-out lists because they may not know about them. Roughly half the nation's consumers are said to be unaware of mechanisms for deleting their names from marketing lists. (Equifax/Harris 1996b; Culnan, 1993). Indeed, few consumers even understand how much of their personal information is for sale. Many consumers remain largely unaware of how businesses use information about them. (Smith, 1994; Privacy Rights Clearinghouse, 1994; Garfinkel, 1990; Westin, 1997). Consumers may not know firms' information policies because the policies may be hidden from them. (Smith, 1994).

THE DIFFICULTY OF OPTING OUT

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The second reason consumers have not acted to protect their privacy, notwithstanding surveys that suggest considerable consumer concern with confidentiality, has to do with how difficult it is to opt-out. The cost and time required to communicate and negotiate with all the relevant information-gatherers may be substantial. (Swire; Jussawalla & Cheah, 1987). Anne Wells Branscomb described her experiences: "attempting to get out of the clutches of the database managers is almost a full-time job. I can vouch for this, because I have spent the last five years trying to withstand the assault of direct mail marketers on the post office box I rented to relieve the overstuffed mailbox at my home address." (Branscomb, 1994).

Though the Direct Marketing Association (DMA) maintains opt-out lists, its lists are of limited utility. Many direct marketers eschew the DMA mail list, perhaps because DMA charges for it. (Fahey, 1990). Only a fraction of all firms engaged in direct marketing are members of DMA, and some non-members are the companies most likely to misbehave (Consumer Reports, 1991). Registering with DMA also will not help with the mailing lists of political organizations, non-profits, or local retailers. (Carrera, 1995).

EXPLANATIONS FOR THE DIFFICULTY

The reasons consumers experience problems opting out might turn on the motivation of businesses in offering an opt-out system. Although companies may offer opt-out lists for benign reasons, such as maintaining customer good will, other, more cynical, explanations also exist for companies offering opt outs. Some have suggested that businesses adopt opt-out systems to forestall more draconian governmental regulation. (Levin, 1992). Indeed, the DMA—an organization that requires members to comply with its opt-out system—has lobbied extensively against privacy legislation and started its opt-out lists in part to avoid such legislation. (Foxman and Kilcoyne, 1993; Westin and Baker, 1972).

Companies may not be eager to offer opt outs because opt outs cost them valuable information they can sell. For example, one company combined data from grocery stores to create a list of more than half a million supposedly weight-conscious consumers who had purchased low-calorie foods. The company offered the list to sellers of fitness equipment, vitamins, and clothing. (Miller, 1991). The Direct Marketing Association, a trade association, estimated that more than 15,000 consumer mailing lists exist. (Squires, 1996). According to one business executive, the average American's personal information typically moves from one computer to another five times a day. (Moskowitz, 1994). But when consumers opt out, companies can no longer sell their data.

Companies also use customer information to enhance their own marketing efforts. Thus, web sites use "cookies" to monitor Internet viewing and build consumer profiles. (Froomkin, 2000). The information can then be used to tailor offers to particular consumers. Companies that cannot do so might lose sales.

Because firms lose revenue when consumers opt out, they might decide that, for various reasons, they must offer an opt-out plan, but at the same time not want consumers to take advantage of it. These companies might provide an opt-out mechanism without making it easy to use. To put it another way, companies that offer opt-outs have an incentive to increase transaction costs incurred by consumers in opting out.

But why wouldn't consumers respond to the increased transaction costs by forgoing the purchase? Some consumers seem to do just that when it comes to the Internet. Nevertheless, many consumers buy goods and services from sellers that collect personal information. Again, some consumers may not know the uses to which their information is being put. Yet even a knowledgeable consumer may choose to make such purchases.

A rational consumer who understands that buying a particular product means surrendering some privacy or invoking an opt-out should make the purchase if the value to the consumer of having the product exceeds the price plus the lesser of either the cost to the consumer of opting out or the cost to the consumer of the lost privacy. The consumer should focus on the lesser of the cost of opting out or the cost to the consumer of the lost privacy because if the cost of opting out exceeds the value to the consumer of opting out, a rational consumer should not opt out but simply endure the loss in privacy. On the other hand, if the cost of opting out is less than the cost of the lost privacy, a rational consumer should opt out.

If businesses inflate the cost to consumers of opting out, some consumers should respond by declining to buy, and so businesses will lose sales. It therefore seems counterintuitive that businesses will inflate the costs of their customers, especially since those costs do not represent revenues received by the businesses themselves. But a number of businesses generate more revenue from sales of mailing lists than from the products they offer to consumers (Headden, 1997; Smolowe, 1990). Such businesses have an incentive to inflate the costs to consumers of protecting their privacy until the loss of profit from lost products sales to consumers exceeds the loss of profit from the sale of consumer information. Moreover, because many consumers apparently do not know how businesses use their information, the number of consumers who actually decline to buy because of high privacy transaction costs may be low.

This discussion assumes that consumers are rational and knowledgeable about companies' information practices. But what if consumers are not knowledgeable about information practices? Then consumers should buy if the value of the product to them exceeds the price. Consumers who care about their privacy end up losing it, but they do not take that into account in deciding whether to make the purchase. Such purchases reduce society's net welfare but increase the share of the pie provided to sellers, who realize profit both on the sale of something to consumers and the sale of consumers' personal information—which may be another reason why most sellers do not publicize their information practices.

"Companies that offer opt-outs have an incentive to increase transaction costs incurred by consumers in opting out."

Companies use varied techniques to increase consumers' transaction costs. A brochure titled "Privacy Notice," which my local cable company included with its bill, provides an example. Because federal law bars cable television providers from selling subscriber lists unless they give subscribers an opportunity to opt out,[i] my cable company provides the Privacy Notice, though it may not wish consumers to opt out. This Privacy Notice discussed, among other things, how cable subscribers could write to the company to ask that the company not sell their names and other information to third parties. There are at least four reasons why this particular notice may not elicit a response from consumers troubled by the sale of their names to others.

First, the Privacy Notice may be obscured by other papers in the mailing. The Privacy Notice arrived with a bill and the monthly listings for Pay-Per-View, both likely to be of greater interest to consumers than the Privacy Notice. Social scientists have found that many consumers are more likely to focus on "vivid" information—such as the Pay-Per-View Listings, which were written in considerably more exciting prose, with color photographs—than on duller information. (Nisbet and Ross, 1980; Wilson, 1989; Shedler and Manis, 1986). Similarly, consumers focus more on pictures—again, like those in the Pay-Per-View Listings—than on text. (Nisbet and Ross, 1980; Gehring, 1976; Shepard, 1967).

The second reason why consumers may not respond to the Privacy Notice is its length. The brochure is four pages long, and contains 17 paragraphs, 36 sentences, and 1062 words. Many studies have demonstrated the existence of "information overload;" that is, the idea that consumers when overloaded with information either do not make optimal decisions, or that overwhelmed consumers simply overlook relevant information. (Keller and Staelin, 1987; Bergstrom and Stoll, 1990). This is not necessarily irrational behavior: some argue that contracting parties rationally do not read contractual terms because of the cost of reading through the terms and the likelihood that the information provided is not useful. (Katz, 1990). Consequently, some consumers may be deterred from reading the brochure, or at least from finishing it, by its length. An interesting contrast is again provided by the Pay-Per-View listings, which provide only a brief paragraph about each movie or event.

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Some companies have gone in the other direction, providing so little information in such vague terms that consumers are unable to discern what they are being told. For example, some companies state only that they may make offers they "think would be of interest to you." (Schwartz and Reidenberg, 1996). Although some companies may make this limited disclosure in good faith, commentators have suggested that "the vagueness intentionally avoids giving individuals knowledge of actual practices." (Schwartz and Reidenberg, 1996).

A third reason why consumers receiving the Privacy Notice may not read it stems from its prose. Notwithstanding our local Plain Language Law (NY Gen. Obl. L. § 5-702), computer analyses of the text found it extremely difficult, requiring more than a college education for comprehension.

Fourth, the Privacy Notice invites consumers who object to the sale of their personal information to write to the cable company in a separate letter. By contrast, cable subscribers desiring to add a new premium channel can do so over the telephone, either speaking to a person or tapping buttons on their telephone, depending on their preference. The more difficult the opt-out process, the less likely consumers are to avail themselves of it.

My cable company is hardly unique in the presentation of its opt-out policy. In 1996, Congress amended the Fair Credit Reporting Act to provide that information otherwise covered by the statute could be shared among commonly-owned businesses "if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons." (15 U.S.C. § 1681a(d)(2)(A)(iii)). Notwithstanding the "clearly and conspicuously" requirement, the Comptroller of the Currency found the disclosures buried in fine print, and observed that few consumers could recall seeing them (Williams, 1998, Wayne, 1998).

When a merchant provides some information in exciting language with colorful pictures and allows subscribers to make purchase decisions by telephone, while providing the same subscribers a lengthy, uninteresting statement of their rights written in difficult language, calling upon subscribers who object to communicate their views in a separate writing, I wonder how helpful the merchant truly wishes to be to those who do not want their names sold to third parties.

NEGATIVE OPTIONS

The opt-out situation is like "negative-option billing." When consumers join a book or music club, they typically receive from time to time a brochure describing the club's offerings. If members do not decline a selection by a particular date, it is automatically sent to them.

Whether purchases are to be made by negative-option or positive-option has a significant effect on consumer purchases. As one consumer attorney has written, "[a]s a result of such negative-option offerings, many families have acquired an abundance of unwanted items because they failed to return a card within a stated time period." (Craig, 1994). When the Federal Communications Commission (FCC) studied how consumers responded to offers to "unbundle" services by telephone companies, it found that consumers who had to indicate affirmatively that they wished to purchase the optional maintenance plan subscribed about 44% of the time. Consumers who could subscribe by doing nothing—that is, through a negative option—subscribed 80.5% of the time—for a difference of about 36% of the consumers. (Lamont, 1995).

Similar results have shown up in the Canadian cable television industry. When new channels are offered in normal ways, only 25% of customers subscribe, but when made available through negative options, 60% to 70% subscribe. (Walker, 1995). In other words, for many the key factor in the purchasing decision is not the cost or content of the programming, but rather whether they have to act.

One observer has noted that consumers are more likely to make a purchase through a negative-option plan if they do not notice that they are making the purchase. (Craig, 1994). In particular, inexpensive items and services are more likely to be overlooked: "even if the consumer happens to notice the charge, he or she might not devote much attention to it because of the time and effort to determine the cause of the charge and to have it removed from the bill." (Craig, 1994). Privacy might be such an item. In keeping with the normal rule that silence does not operate as acceptance of an offer (Perillo, 1993; Williston, 1991), negative options are regulated in some contexts. Thus, Congress has barred cable operators from charging consumers for services which the consumer "has not affirmatively requested." (47 U.S.C. § 543(f)).

In the area in which negative options are probably most used—book and music clubs—an FTC rule regulates their use. (16 C.F.R. Part 425). That rule requires the promotional material "clearly and conspicuously disclose the material terms of the plan," including the subscriber's obligation to notify the seller if the subscriber does not wish to purchase the particular selection. Sellers must also provide forms that "clearly and conspicuously" disclose that the seller will send the subscriber the selection unless the subscriber returns the form to the seller. These book and music clubs are significantly different from the type of negative options used in information practices because the book and music clubs notify the consumers in advance of the nature of the program and the consumer voluntarily joins the club knowing how the club works. It seems anomalous to regulate the clubs—given that consumers choose to join them—but not information practices—given that many consumers are not even aware of how their information will be used and so cannot be said to have knowingly "joined."

"commercial practices and laws encourage businesses to inflate transaction costs through strategic behavior..."

In sum, existing commercial practices and laws encourage businesses to inflate transaction costs through strategic behavior because by doing so the businesses increase their own gains, albeit at the expense both of the consumers and the total surplus from exchange. They are also inconsistent with other approaches to negative options. By contrast, an opt-in system would eliminate unnecessary transaction costs and encourage firms to provide consumers with the information they need to make choices that reflects their preferences.

THE EFFECT OF AN OPT-IN SYSTEM ON TRANSACTION COSTS

One goal in fashioning rules is to minimize transaction costs. That is especially important in consumer transactions, because the stakes involved are generally so low that large transaction costs may exceed the value of the transaction and make the transaction uneconomic.

Although some transaction costs are inevitable, strategic transaction costs can be avoided by using a system that discourages

"Companies in an opt-in environment do not hide their messages."

parties from generating such costs. An opt-in system would encourage businesses to reduce strategic behavior costs, without giving consumers an incentive to increase them. Unlike the opt-out situation in which merchants provide a message they do not wish the consumer to notice, in an opt-in regime we would see merchants' efforts harnessed to providing a message they want consumers to receive.

Companies in an opt-in environment do not hide their messages. After the FCC, in interpreting the Telecommunications Act of 1996, ruled that phone companies seeking to use phone calling patterns for marketing purposes must first obtain the consumer's permission (63 Fed. Reg. 20,326),[ii] the telephone company in my area attempted to secure that permission. Its representatives both called and sent mailings to subscribers, and also established a toll-free number for consumers with questions. The mailing I received was brief, attractively printed in different colors, and written in plain English. It also prominently promised that "we'll never share this information with any outside company...." A postage paid envelope and a printed form was included for consumers to respond. Consumers who accept the offer need only check a box, sign and date the form, and print their name. The company also offered consumers incentives to sign up —such as a $5 check, two free movie tickets, or a $10 certificate from certain retailers— thus increasing the likelihood that consumers will pay attention to the information. In sum, the company did everything it could to eliminate consumer transaction costs.

Would consumers ever opt in under such a system? It has been estimated that only 5% to 10% of consumers would opt in. (Regan, 1995). On the other hand, consumers have sometimes chosen to forego privacy in favor of obtaining things of greater value to them than their privacy, such as receiving solicitations to buy things that interested them. AOL found that when it enabled its subscribers to opt-out, more than 80% of those who went to the opt-out area did not opt out, but instead asked to be put on more lists. (Kirsh, 1995). Other consumers have also acted to receive selected Internet solicitations. (Federal Trade Commission, 1997; Riordan, 1999). Some companies have persuaded consumers to surrender their privacy by offering them free samples, coupons, or computers. (Richtel, 1999; Munro, 1997; Berry, 1994). And obviously, many consumers have reacted to direct marketing offers by buying the product offered, suggesting that they value some offers. Hence, it appears that consumers do opt in when they gain by doing so.

Nevertheless, few companies can be expected to shift voluntarily to an opt-in system. Accordingly, government should intervene to prohibit the use of consumer information in most contexts without consumer permission.

Marketers view such suggestions with horror because they fear it would destroy the direct-marketing industry. (Knecht, 1995). This seems excessive. Our marketing system is premised on the assumption that consumers are persuadable. Enormous sums are spent to convince consumers of the merits of particular purchases—enough to finance commercial television and radio, underwrite a significant portion of the newspaper and magazine businesses, and, of course, to pay for the direct mail and telemarketing industries, among others. Our economy is a positive-option system, not a negative-option system, in which consumers make purchasing decisions, often—at least so it appears—at the suggestion of marketers. It is ironic that marketers believe in what they do on behalf of others, but doubt they can be effective on their own behalf.

Even in an opt-in system, businesses would still have significant advantages in convincing consumers to opt in. Although companies would have a tremendous incentive to persuade consumers to opt in, no organization would have a comparable reason to discourage consumers from opting in. More than 12 million people are employed in selling and advertising. (Maynes, 1997). Only about 1,000 people work for the two largest consumer information organizations, Consumers Union (publishers of Consumer

Reports) and the American Association of Retired Persons. (Maynes, 1997). Hence, marketers, with their greater incentive and resources, would be able to make a powerful case that consumers should opt in while the opposing viewpoint would probably be much less forcefully expressed. Undoubtedly some consumers would not opt in. But it is also likely that many others would.

RECOMMENDATION: THE ADVANTAGE OF AN OPT-IN SYSTEM

I have argued that under the present regime, in which the trade in consumer information is largely unregulated, businesses have both an incentive and the ability to inflate consumer transaction costs in preventing the use of personal information. As a result, more consumer information is available and more solicitations are made than would be the case if unnecessary transaction costs were eliminated. By contrast, an opt-in system would eliminate the incentive businesses have to inflate transaction costs and thus seems more likely to produce an efficient outcome. Accordingly, government should impose an opt-in system on marketers.

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[i] The Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. §§521-558 (1994).

[ii] The FCC's regulations were later ruled invalid. U.S. West, Inc. v. FCC, 182 F.3d 1224 (10th Cir. 1999), cert. denied, 120 S.Ct. 2215 (2000).

Robert D. Manning, *Credit Card Nation: The Consequences of America's Addiction to Credit.* New York: Basic Books, 2000.

In December, my wife and I received an early Christmas present—a $200 rebate check for last year's bank card purchases. Because we pay off balances in full each month, the bank actually "compensates" us for enjoying the convenience of their service and for borrowing their funds. Even without paying cash rebates, credit card issuers subsidize customers whose awareness, discipline, and solvency allow them to treat their plastic as charge cards. Issuers also make available, to the many cardholders with substantial lines of credit, funds to cover major emergencies and tide the cardholders over between jobs.

In Credit Card Nation, Robert Manning notes all of these card-related consumer benefits but also argues that the plastic is transforming our economy and society in ways we may not consider desirable. Most importantly, the democratization of unsecured credit has eroded the "cognitive connection" between earning money and spending it. Unlike installment loans with their fixed, periodic payments that are usually secured by the property being financed, low minimum-payment credit cards can allow years of consumption financed by growing deficits. In the pre-credit card Dickensian world of Mr. Micawbar, 20 shillings income and 19 shillings expenditure was bliss while 20 shillings income and 21 shillings of expense was misery. In the "credit card nation," 20 shillings income and 25 shillings expenditure can also be bliss for many months or even years.

"The democratization of unsecured credit has eroded the 'cognitive connection' between earning money and spending it."

Manning correctly points out that the erosion of the cognitive connection tends to most adversely affect people with the lowest incomes and fewest assets. In separate chapters based largely on lengthy interviews, he perceptively examines the dynamics and social impacts of reliance on credit card debt by students, lower-income households, displaced workers, and small businesspersons.

The findings of his research on students, released more than a year ago in a separate study, have already raised national consciousness of the issue. To simplify a bit, these young adults often acquire credit cards because of peer pressures and a desire to achieve independence from their parents. Ironically, a significant number are eventually forced to seek parental relief from unsustainable debts. Others who cannot draw on parental resources increase their paid work and cut back, or cut out, their schoolwork. Or, they help ensure a debt-laden future by refinancing credit card debt with students loans, the functional equivalent of the home equity loans now used by homeowners to refinance consumer debt.

In any research based largely on interviews, issues of sampling must be addressed, and Manning does not do so adequately. From reading his book, we have no idea whether the proportion of students with serious credit troubles is 10, 20, or 30. However, he clearly establishes that there is a problem that is getting worse (a finding independently supported by credit counseling services). More importantly, Manning perceptively illuminates the situation of individual debtors in their social and economic contexts.

The other noteworthy contribution of this well-researched book is intelligent analysis of the development of a "credit card nation" over the past half-century. With erudition, he chronicles and explains the evolution of the banking industry and its growing interest in

marketing unsecured debt. This analysis reveals why banks recently have mailed more than three billion credit card solicitations per year and currently have extended 2.5 trillion dollars in related lines of credit.

In part, the coherence and force of this analysis reflect the Weberian and institutionalist theories that Manning, a sociologist, uses to interpret his data. But in places, the theory he applies has limited explanatory power. For example, he uses Max Weber's theory of class to explain that prestige cards were created to relieve the social anxiety of elite card holders who were threatened by the mass marketing of plastic. Yet, by the late 1990s so-called prestige platinum cards were being offered fairly indiscriminately to attract customers of other bank card issuers.

Moreover, he admits no exceptions to his thesis that, in the 1980s and 1990s, expanding bank card lines of credit compensated for declining incomes among low- and moderate-income households. However, in the late 1990s even lower-income families experienced significant income gains. Although he also neglects to point out that a declining savings rate was offset, at least in part, by rising stock ownership, the latter did not directly benefit most low- and middle-income households.

Credit Card Nation is so rich in new information and explanation that a brief review cannot do it justice. Also, the book is a good read, livened by references to films and TV shows as well as to interviews with hundreds of individuals. Despite flaws, the work is a tour de force that helps explain recent economic and social developments. It also represents an ideal supplementary text for any economics or sociology course treating these developments.

Stephen Brobeck,
Executive Director, Consumer Federation of America

Consumer Law: Advances and Setbacks

In the opinion of the editors, the cases digested below "advance" or "set back" the consumer interest. These characterizations reflect opinions of the editors and do not in any way represent policies or positions adopted by ACCI or Advancing the Consumer Interest. Persons with differing viewpoints are encouraged to reply.

SPECIAL SECTION ON HEALTH CARE:

Over the past two decades, the health care system in the United States has increasingly shifted to a managed care model, where managed care entities and health maintenance organizations (HMOs) contract to provided medical services for a fixed fee from each customer. Under this model, if the customer never gets sick, the HMO gets to keep her premium payments. However, if the customer becomes ill, the HMO is responsible for providing medical services, even if the costs exceed the premiums. Unfortunately, this model provides incentives for managed care entities to cut costs by denying coverage and treatment at the expense of consumers. The managed care model has raised several difficult legal issues, in part because HMOs have dual functions: they provide health care (like a doctor) but also decide whether certain types of care should be given under the plan (like an insurance company).

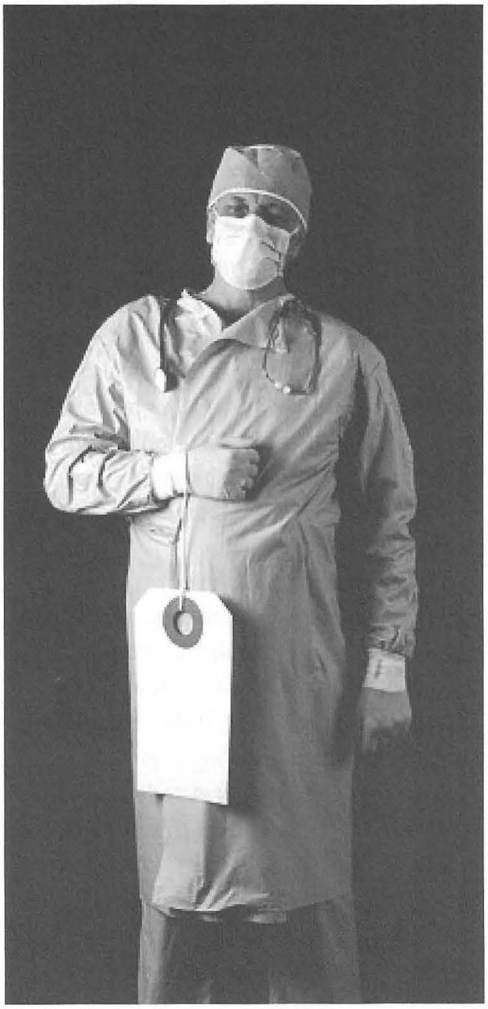
Consumers face various hurdles when pursuing litigation against managed care entities. The vast majority of Americans, who have group health insurance benefits through their employers, are limited in their ability to sue their HMOs by a loophole in the federal Employment Retirement Income Security Act (ERISA), which affects employee health benefits as well as other benefits. ERISA drastically limits the amount consumers can recover if they decide to sue their insurance company over a denied claim. Moreover, judges have the discretion to deny payment of attorneys fees to consumers even if the consumers prevail in court.

Prior to 1987, consumers enrolled in employee health plans could sue their insurance companies under friendlier state consumer laws. But in a 1987 decision (Pilot Life v. Dedeaux), the United States Supreme Court ruled that ERISA "preempts" and indeed, "supercedes" state consumer laws. Because the cost of bringing a lawsuit often exceeds the amount of damages permitted under ERISA, consumers in employee health plans are effectively precluded from suing their HMO even if the claim denial is unfair or fraudulent.

The ERISA loophole, however, does not apply to government employees, people who receive Medicare or Medicaid benefits, and those who hold individual policies. These consumers may sue their HMO, relying on more favorable state laws.

A number of states allow consumers not covered by ERISA to sue HMOs for bad faith breach of contract, a legal doctrine based on the principle that an insurance company has a fiduciary duty to act in the best interest of its customers. Under the "bad faith" doctrine, an insurance company may not deny a claim for benefits unless there is a reasonable basis for the denial. If a consumer shows that the company lacked a reasonable basis for the claim denial, the customer can force the HMO to cover the disputed claim and recover attorneys fees. Furthermore, if the company's conduct is sufficiently egregious, the consumer may recover punitive damages.

Recently courts on both the state and federal levels have dealt with the question of the scope of HMO liability to consumers. The decisions summarized below illustrate several difficult legal questions that courts have recently addressed in determining the scope of HMO liability to consumers. Perhaps the most significant legal hurdle faced by consumers is the ERISA loophole, which effectively precludes many consumers from suing HMOs. Although state consumer laws tend to be more favorable to consumers, in many circumstances these state laws are preempted and superceded by ERISA.



These cases indicate that an HMO decision arising out its function as an insurer are governed by ERISA and cannot be challenged through state laws. However, if a consumer's lawsuit relates to treatment decisions arising out of an HMO's function as a health care provider, then the consumer may proceed with the suit under state law. One problem with distinguishing between the dual functions of an HMO for purposes of determining whether ERISA preempts state law is that, in many situations, HMO decisions involve both treatment and eligibility considerations. In such cases, ERISA precludes consumers from suing under state law.

Although some courts, both at the state and federal levels, have attempted to increase the scope of HMO liability, ERISA remains a significant roadblock to lawsuits brought by consumers against HMOs. Federal legislation that would remove the ERISA "loophole" has been introduced in Congress.

Several important decisions concerning HMO and health insurance law are digested below:

SETBACK: "MIXED ELIGIBILITY/TREATMENT" DECISIONS

Cynthia Herdrich was suffering from lower abdominal pain. When she visited Dr. Pegram, her assigned HMO physician, Dr. Pegram discovered a large mass in Herdrich's abdomen, which indicated appendicitis. Despite the presence of noticeable inflammation, Dr. Pegram did not order an ultrasound at the local hospital. Rather, Dr. Pegram told Herdrich to wait eight days and have the ultrasound at an HMO facility more than 50 miles away. Herdrich's appendix ruptured before the scheduled ultrasound.

Herdrich sued both the HMO and Dr. Pegram for medical malpractice. During the lawsuit, Herdrich established that the physician owners of the health plan received monetary bonuses in profits derived from their decisions to limit medical care. Herdrich also claimed that the HMO's "year-end distribution" program provided incentives for limiting medical care, in violation of the HMO's fiduciary duty to act in the best interest of its patients, as required by ERISA.

The case eventually proceeded to the U.S. Supreme Court, captioned as Pegram v. Cynthia Herdrich, 120 S. Ct. 2143. In delivering the unanimous opinion of the Court, Justice Souter noted that medical determinations in the HMO setting are often "mixed eligibility" decisions involving two practical considerations: (1) "eligibility decisions" (what conditions and procedures are covered); and (2) "treatment decisions" (what is the appropriate medical action). Although fiduciary obligations can apply to the management and administration of an ERISA plan, the Supreme Court refused to extend liability where, as in Herdrich, the dispute results from a "mixed eligibility" question.

However, the Supreme Court acknowledged that mixed eligibility decisions made for "the sole purpose" of benefiting the HMO or its physician would violate the HMO's fiduciary duty under ERISA. Still, the court was hesitant to extend liability even in this hypothetical situation. The court reasoned that in such circumstances the HMO would assert that the physician's decision was based not on financial interest but rather on customary medical practice, which is also the standard legal defense in medical malpractice cases. As such, the patient's claim of breach of fiduciary duty against the HMO would only replicate the state medical malpractice claim against the physician.

Finally, the court reasoned that social judgments about the rationing of care by HMOs involve complicated fact finding that are better handled by the legislature than by the judicial system. Therefore, the Supreme Court left the door open for Congress and perhaps state legislatures to regulate the rationing of medical care provided by HMOs.

PARTIAL ADVANCE: COVERAGE DENIALS

On May 22, 1997, the Texas legislature enacted Bill 386 to protect consumers in their dealings with managed care entities. Specifically, the statute permitted Texas consumers to file lawsuits against managed care organizations (MCOs) for negligent treatment decisions. The statute also required independent review of adverse determinations by MCOs.

Promptly after enactment of Bill 386, several managed care companies filed lawsuits claiming that the statute was preempted by ERISA, which preempts "any and all state laws insofar as they...relate to any employee benefit plan." A case titled Corporate Health Insurance v. Texas Dept. of Insurance, 215 F.3d 526, reached the United States Court of Appeals for the Fifth Circuit.

In deciding whether the Texas statute was preempted by ERISA, the Fifth Circuit Court of Appeals distinguished between two independent functions performed by MCOs: (1) health care insurer; and (2) medical care provider. For example, an MCO can provide administrative support for an insurance plan, which may entail determining eligibility for coverage. At the same time, an MCO can act as an arranger and provider of medical care. State statutes that regulate an MCO's "health care insurer" function (e.g., coverage) would be preempted by ERISA. However, an MCO's conduct that relates to its "medical care provider" function lies within the realm of state regulation. Thus, state statutes that regulate an MCO's capacity as a "medical care provider" would not be preempted by ERISA.

Turning to the Texas Statute's liability provision, the court ruled that the statute limited lawsuits against MCOs related to their "medical care provider" function; e.g., situations where a managed care-employed physician was negligent in providing care. Indeed, the statute included a provision that specifically prohibited liability in situations where the MCO is acting in its "health care insurer" capacity; e.g., disputes arising from the denial of coverage under the health plan.

Do incentives to limit medical care violate the fiduciary duties of managed care organizations?

As such, the provision permitting lawsuits was not preempted by ERISA.

The Fifth Circuit, however, ruled that the statutory provision permitting patients to obtain independent review of "adverse determinations" was preempted by ERISA. The broad definition of "adverse determinations" subject to such review included not only negligent decisions by a physician, but also determinations of coverage by HMOs, which relate to the HMOs function as a "health care insurer."

ADVANCE: EXCESSIVE ASSIGNMENTS TO PROVIDERS

On January 18, 1991, Sheila Jones' three-month-old daughter Shawndale became sick. Mrs. Jones belonged to Chicago HMO. Following the HMO's instructions, Jones called her assigned provider, Dr. Jordan, but the doctor was not available. When Mrs. Jones insisted on speaking with the doctor, she was told that Dr. Jordan would return her call. Dr. Jordan did not return Jones' call until late that evening. After Mrs. Jones described her daughter's symptoms, Dr. Jordan recommended that Jones give castor oil to her daughter.

Should the same principles of negligence that apply to hospitals also apply to HMO's?

When Shawndale's symptoms had not improved by the next day, Mrs. Jones took her to a hospital emergency room. She was diagnosed with bacterial meningitis, which resulted in permanent disability to Shawndale.

Mrs. Jones later sued Chicago HMO, claiming that it negligently assigned her to a physician who served an overloaded population. During the course of the lawsuit, Mrs. Jones established that Dr. Jordan split his time between two offices: the Chicago Heights office, to which Mrs. Jones belonged, and another office in Homewood, Illinois. Although Dr. Jordan was originally only responsible for the Homewood office, Chicago HMO also assigned him to the Chicago Heights office, because he was the only HMO physician willing to serve the low-income membership in that neighborhood. Moreover, Chicago HMO's medical director testified that patients in the Chicago Heights office were not given a choice in physicians; all were assigned to Dr. Jordan. As a result of being assigned to two separate sites, Dr. Jordan was responsible for providing care for over 6,000 patients (over 4,500 of whom were enrolled in Chicago HMO), well over the guidelines established by the federal Health Care Financing Administration. Despite this evidence, both the trial and intermediate appellate courts dismissed Jones' claim for negligence against the HMO.

Jones appealed to the Illinois Supreme Court, which held that HMOs may be held liable under the theory of institutional negligence, also known as direct corporate negligence. In prior cases, Illinois courts had applied the doctrine of institutional negligence to hospitals that made negligent treatment decisions. Those courts recognized that because of the comprehensive nature of operations, hospitals do much more than furnish facilities for treatment. For example, hospitals engage in numerous administrative tasks that go far beyond the scope of medical practice. Thus, in applying the doctrine of institutional negligence to hospitals, Illinois courts expanded hospitals' liability for their negligent conduct so as to comport with the scope of their operations.

After reviewing the history of institutional negligence in Illinois, the Illinois Supreme Court held in Jones v. Chicago HMO LTD. Of Illinois, 191 Ill. 2d 278, that the same principles and rationale that applied to hospitals should also apply to HMOs. The court ruled that because of the way HMOs conduct business, they have a duty to refrain from assigning an excessive number of patients to their providers. "HMOs contract with primary care physicians in order to provide and arrange for medical care for their enrollees. It is thus reasonably foreseeable that assigning an excessive number of patients to a primary care physician could result in injury, as that care may not be provided."

ADVANCE: CLAIM DELAYS

On the face of it, the "bad faith" breach of contract doctrine is a powerful legal tool for consumers. Companies, however, are often able to escape liability for bad faith by simply arguing that the customer's claim was fairly debatable. This defense is particularly strong when an insurance company decides to partially pay a claim, even if the decision not to make full payment of the claim is merely a cost-cutting measure.

Kimberly Zilisch was a passenger in a car driven by her fiancé when the car was struck by another. Zilisch's fiancé died as a result of the accident. Ms. Zilisch was permanently injured and suffered irreparable eye damage. Although Zilisch recovered $146,000 in liability insurance proceeds from the at-fault driver, this amount did not fully compensate her for her severe injuries. Consequently, Ms. Zilisch contacted State Farm to recover from her own underinsured motorist (UIM) coverage policy, which she had previously purchased to insure for extensive losses that would exceed the at-fault driver's policy limit.

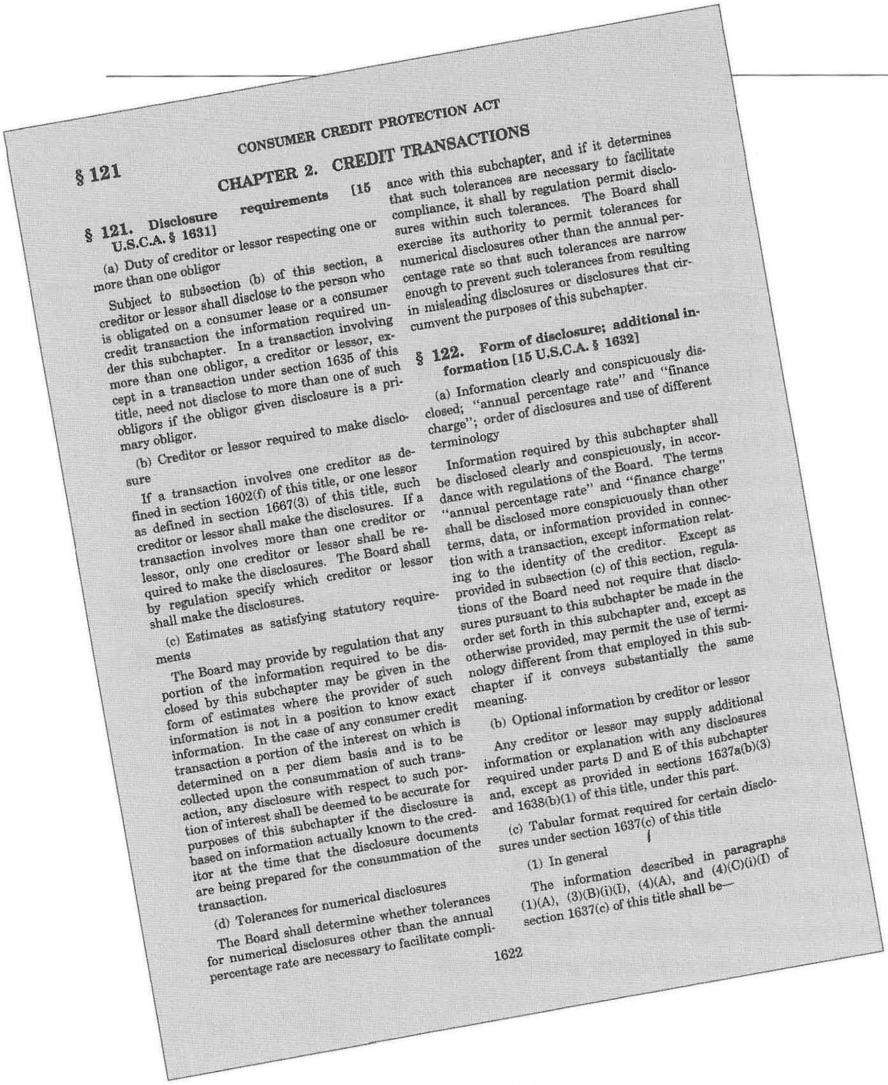
Despite having access to all medical and employment records, State Farm did not investigate and offer to settle the UIM claim until nearly ten months after receiving Zilisch's demand. Even then, State Farm granted its claim representative only the authority to settle the UIM claim in the low range of $55,000 to $75,000, well below the policy limit of $100,000. Ms. Zilisch rejected State Farm's initial offer of $55,000 and the company refused to offer more. When Zilisch and State Farm could not reach a settlement, their dispute proceeded to arbitration and the arbitrator awarded Zilisch $387,500. State Farm then paid the $100,000 policy limit.

Zilisch sued State Farm for bad faith breach of contract. She claimed that State Farm breached its duty of good faith and fair dealing when it deliberately refused to pay the limits for the UIM coverage, even though it knew that the claim was worth substantially more. At trial, Zilisch showed that State Farm set arbitrary goals for the reduction of the claims it paid, and that the company set agents' bonuses and salaries according to how much they saved on claims. The jury awarded Zilisch $460,000 in compensatory and $540,000 in punitive damages.

State Farm appealed the jury verdict and argued that it was justified in refusing to pay the policy limit because Zilisch's claim was fairly debatable. The Arizona Supreme Court in Zilisch v. State Farm Mutual Automobile Insurance Company, 995 P.2d 276, rejected this argument and held that State Farm's lowball offer and delaying tactics constituted bad faith. The court emphasized that although an insurer may assert a fairly debatable claim, the company still has an obligation of good faith towards its customers.

In evaluating State Farm's settlement tactics, the court held that the company has an "obligation to immediately conduct an adequate investigation, act reasonably in evaluating the claim, and act promptly in making a legitimate payment." Furthermore, the court stated that insurance companies should not force their customers to endure needless loopholes to enforce a claim under the policy, nor can the company low ball or delay claims so that the insured will settle for less.

"Although an insurer may assert a fairly debateable claim, the company still has an obligation of good faith toward its customers."



§ 121 CONSUMER CREDIT PROTECTION ACT

CHAPTER 2. CREDIT TRANSACTIONS

§ 121. Disclosure requirements [15 U.S.C.A. § 1631]

(a) Duty of creditor or lessor respecting one or more than one obligor

Subject to subsection (b) of this section, a creditor or lessor shall disclose to the person who is obligated on a consumer lease or a consumer credit transaction the information required under this subchapter. In a transaction involving more than one obligor, a creditor or lessor, except in a transaction under section 1635 of this title, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

(b) Creditor or lessor required to make disclosure

If a transaction involves one creditor as defined in section 1602(f) of this title, or one lessor as defined in section 1667(3) of this title, such creditor or lessor shall make the disclosures. If a transaction involves more than one creditor or lessor, only one creditor or lessor shall be required to make the disclosures. The Board shall by regulation specify which creditor or lessor shall make the disclosures.

(c) Estimates as satisfying statutory requirements

The Board may provide by regulation that any portion of the information required to be disclosed by this subchapter may be given in the form of estimates where the provider of such information is not in a position to know exact information. In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this subchapter if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.

(d) Tolerances for numerical disclosures

The Board shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with this subchapter, and if it determines that such tolerances are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances. The Board shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this subchapter.

§ 122. Form of disclosure; additional information [15 U.S.C.A. § 1632]

(a) Information clearly and conspicuously disclosed; "annual percentage rate" and "finance charge"; order of disclosures and use of different terminology

Information required by this subchapter shall be disclosed clearly and conspicuously, in accordance with regulations of the Board. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identity of the creditor. Except as provided in subsection (c) of this section, regulations of the Board need not require that disclosures pursuant to this subchapter be made in the order set forth in this subchapter and, except as otherwise provided, may permit the use of terminology different from that employed in this subchapter if it conveys substantially the same meaning.

(b) Optional information by creditor or lessor

Any creditor or lessor may supply additional information or explanation with any disclosures required under parts D and E of this subchapter and, except as provided in sections 1637a(b)(3) and 1638(b)(1) of this title, under this part.

(c) Tabular format required for certain disclosures under section 1637(c) of this title

(1) In general

The information described in paragraphs (1)(A), (3)(B)(i)(I), (4)(A), and (4)(C)(i)(I) of section 1637(c) of this title shall be—

1622

SPECIAL SECTION ON TILA AND PAYDAY LENDING:

Congress enacted the Truth in Lending Act (TILA) to assure the meaningful disclosure of credit terms by lenders and to enable consumers to compare the cost of credit from various lenders. To that end, TILA requires lenders to make certain disclosures to their customers. TILA's mandatory disclosures include the amount financed, the finance charge, the annual percentage rate, the total number of payments and the schedule for repayment. Lenders must make the mandatory disclosures "clearly and conspicuously" in writing by grouping them together and segregating them from disclosures not required by the statute. The portion of the contract containing the TILA-mandated disclosures is known in TILA parlance as the federal box.

A consumer may file suit against a lender for failing to comply with TILA's disclosure requirements. If the consumer prevails, TILA automatically entitles her to damages in the amount of twice the finance charge imposed by the lender. Statutory damages under TILA are available even where a consumer is unable to prove that she suffered actual monetary loss. The purpose of statutory damages under TILA is to encourage lawsuits by individual consumers who act as private attorneys general and enforce strict compliance by lenders with the statute's disclosure requirements. Strict compliance with the mandatory disclosure requirements is necessary to promote the standardization of terms and thereby enable consumers to make meaningful comparisons of the credit made available by various lenders.

Two recent cases from the Seventh Circuit Court of Appeals address the availability of statutory damages for violations of TILA's mandatory disclosure requirements. Both cases arise from consumer suits against payday loan companies. Payday loans typically last two weeks in duration and feature annual interest rates of over 500 percent. As security on the loan, the lender obtains a post-dated check from the consumer. The lender pays the consumer a reduced amount in cash, the difference representing the lender's finance charge. At the end of the two week period, the consumer has the option of continuing the loan for an additional two week period by paying the finance charge again. Many consumers "roll over" their loans for multiple periods. Payday loan companies make their profit by lending to consumers who face financial hardship and have no other means of obtaining credit. Regarding efforts to regulate Payday Lending by the states, see Jean Ann Fox, Safe Harbor For Usury: Recent Developments in Payday Lending, ACI, Fall/Winter 1999.

SETBACK: FORMAL VIOLATIONS

In *Brown v. Payday Check Advance*, Inc., 202 F.3d 987 (7th Cir. 2000), the Seventh Circuit Court of Appeals called into question the general rule that statutory damages are available for technical or formal violations of TILA's mandatory disclosure requirements. The plaintiffs in Brown brought suit under

TILA to challenge the loan forms used by Payday Check Advance, Inc. (PCA). The forms used by PCA violated TILA by failing to 1) segregate disclosures not required by federal law from the federal box, 2) provide descriptive explanations of key terms and 3) disclose certain terms more conspicuously than others. The plaintiffs did not seek compensatory damages from PCA, for they suffered no financial loss because of the company's TILA violations. Instead, the plaintiffs sought statutory damages.

Section 1640(a)(2) of TILA provides that, with regard to consumer loans other than open-end credit plans, a creditor shall be liable *only* for violating certain sections of the statute. Those sections mandate certain disclosures, such as the amount financed, the finance charge, the annual percentage rate, the total of payments, and the schedule for repayment. The plaintiffs did not allege that PCA's forms failed to make these mandated disclosures. Rather, the plaintiffs argued that PCA was liable under TILA because it failed to make the disclosures in the proper location on the contract and in the proper technical form-B requirements not listed in section 1640(a).

The issue in Brown was whether a consumer is entitled to statutory damages under TILA where, although the creditor makes the substantive disclosures required by TILA (and listed under section 1640(a)), the creditor fails to make those disclosures in the form required by TILA. The Seventh Circuit answered the question in the negative. Emphasizing the statute's use of the word "only," the court determined that Congress intended to limit damages to sections addressing the substance of the required disclosures and to exclude sections addressing the technical form of those disclosures. The court reasoned: "It would hardly be appropriate to undo Congress's decision by reading matters of form into the substantive provisions for which statutory damages are authorized."

The Brown opinion marks a significant set-back for the protection of consumer rights in the payday lending context, for it is the first federal court of appeals decision to draw the distinction, for purposes of statutory damages, between whether a lender completely fails to make the TILA-mandated disclosures and whether a lender makes the TILA-mandated disclosures but fails to put them in the proper form or place. By limiting the availability of statutory damages, the Brown opinion will discourage suits by private attorneys general and thereby immobilize an effective means of policing compliance with TILA's disclosure provisions.

ADVANCE: MANDATED TILA DISCLOSURES

In payday loan transactions, the lender typically acquires a security interest in the consumer's post-dated check. TILA requires lenders' forms to disclose whether they have acquired a security interest in property—either purchased or not purchased—as part of the credit transaction. Under TILA, lenders must group the security interest disclosure with other federally-mandated disclosures in the federal box.

In *Jackson v. Check 'N Go of Illinois, Inc.*, 193 F.R.D. 544 (N.D. Ill. 2000), Check 'N Go's forms made the security interest disclosure in a statement outside the federal box, in small type, and at the end of a paragraph, written in legalese. The plaintiffs argued that Check 'N Go's failure to make the security interest disclosure in the proper form and place constituted a complete failure to make the security interest disclosure. Having suffered no monetary loss from Check 'N Go's technical violation, the plaintiffs sought statutory damages. Check 'N Go filed a motion to dismiss, citing Brown and arguing that its failure to place the security interest disclosure in the federal box was an error of form, not subject to statutory damages under section 1640(a).

The Northern District of Illinois rejected Check 'N Go's argument. The court explained that, by placing the security interest disclosure outside the federal box, Check 'N Go failed to make the disclosure. Thus, while the Brown court held that placing non-

"By limiting the availability of statutory damages, the Brown opinion will discourage suits by private attorneys general and thereby immobilize an effective means of policing compliance with TILA's disclosure provisions."

federal disclosures in the federal box constitutes a formal violation, the Jackson court held that placing federal disclosures outside the federal box constitutes a substantive violation, subject to statutory damages. The court also held that Check 'N Go failed to make the security interest disclosure by phrasing it in confusing legalese. The court noted the dictionary's definition of "disclosure" and reasoned:

> "[I]t would frustrate the purpose of the disclosure law to read the statute to bar statutory damages when a required disclosure is hidden in the fine print at the end of an indigestible chunk of legalistic boilerplate, and outside the federal box.... That would give lenders a virtually free pass to violate the disclosure requirements by making them inaccessible to borrowers whom they might inadvertently mislead about what they were supposedly disclosing."

Accordingly, the court denied Check 'N Go's motion to dismiss.

From a consumer's point of view, the distinction between the decisions in Brown and Jackson is somewhat illogical. On the one hand, under Jackson, a lender is subject to statutory damages where it places federally mandated disclosures outside the federal box. On the other hand, under Brown, a lender is not subject to statutory damages where it clutters the federal box with disclosures not required by federal law. Diluting the federal box with extraneous disclosures creates just as much confusion and frustration for consumers as removing federally mandated disclosures from the federal box and burying them among legalistic boilerplate.

SETBACK: ARBITRATION CLAUSES AND TILA

In recent years, more and more lenders have drafted their standard form consumer contracts to feature binding arbitration agreements. Lenders draft these agreements to favor their interests: the cost of submitting a grievance to arbitration is often more than most low and middle income consumers can afford; the arbiter is often located outside the consumer's state of residence; and the remedies available through arbitration are more limited than those available through the courts. Lenders propose these agreements to consumers on a take-it-or-leave-it basis, and thereby hinder, from the outset, the efforts of low and middle income consumers to protect their statutory rights. A recent case from the Third Circuit Court of Appeals amplifies the power of arbitration clauses against efforts by private attorneys general to bring class actions based on lenders' TILA violations.

In *Johnson v. West Suburban Bank*, 225 F.3d 366 (3rd Cir. 2000), the plaintiff applied for and received a short-term loan from West Suburban Bank ("the Bank") on July 10, 1998. The loan agreement contained an arbitration clause stating that any dispute arising from the loan must be resolved by binding arbitration. Johnson signed the agreement. Johnson later filed a class action lawsuit challenging certain provisions of the Bank's loan agreements under TILA. The Bank moved to stay the lawsuit and compel arbitration. The district court denied the motion. The question presented to the Third Circuit on appeal was whether TILA precludes arbitration when the plaintiff seeks to assert claims on behalf of a class. The Third Circuit was the first federal court of appeals in the nation to address the question.

The court began by recognizing the federal policy favoring arbitration. Where a party to a contract agrees to arbitrate a statutory claim, federal law holds him to that agreement, unless Congress intended to preclude arbitration of the claim. Johnson argued that Congress meant to preclude arbitration of TILA claims, because there is an inherent conflict between arbitration and the statute's underlying purposes. The district court agreed, declaring that "without the possibility of class action liability looming on a creditor's horizon, there is a very real possibility that these entities will not voluntarily comply with the Truth-in-Lending regulations."

The Third Circuit reversed the district court. The court began by reviewing the language of TILA and its legislative history.

According to the court, although TILA clearly contemplates class actions, no provision in the statute creates a right to bring class actions or reflects congressional intent to exempt claims initiated as class actions from binding arbitration clauses. Nor did the court find any inherent conflict between arbitration and the purposes of TILA. Johnson argued that the prospect of a class action award will deter TILA violations more effectively than the prospect of individual actions. The court countered that the same rights and remedies are available in individual arbitration proceedings as in class actions. The court also rejected the argument that the loss of the class action necessarily meant the loss of effective deterrence to TILA violations. Federal agencies, the court assured, can assume that responsibility where arbitration agreements render class relief unavailable.

The opinion in Johnson marks a significant setback for consumers. If consumers are bound to arbitrate their grievances and required to pay high arbitration costs, private attorney general suits to enforce TILA will become economically unfeasible, and consequently lenders will lose their incentive to abide by TILA's disclosure provisions.

Compiled by Stephen Meili & Marcy Phillips
Center for Public Representation

Ali Abtahi
University of Wisconsin Law School

I.

Johnson applied for and received a short-term loan for $250 from the Bank on July 10, 1998. The loan agreement disclosed an annual percentage rate of 917%, stemming from finance charges of $88 for the two-week loan. Thus, under the agreement, Johnson had to repay the loan by making one payment of $338 two weeks after receiving his $250. The loan agreement also contained the following arbitration clause:

"You and we agree that any claim, dispute, or controversy between us . . . and any claim arising from or relating to this Note, no matter by whom or against whom . . . including the validity of this Note and of this agreement to arbitrate disputes as well as claims alleging fraud or misrepresentation shall be resolved by binding arbitration by and under the Code of Procedure of the National Arbitration Forum . . . ."

The loan agreement further provided:

NOTICE: YOU AND WE WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT BUT HAVE AGREED INSTEAD TO RESOLVE DISPUTES THROUGH BINDING ARBITRATION.

Johnson v. West Suburban Bank

ACCI

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■ Goals of the Organization

To promote the well-being of individuals and families as consumers, nationally and internationally, by identifying issues, stimulating research, promoting education, and informing policy.

To provide for the professional development of the membership by creating, maintaining, and stimulating interactive communication among advocates, business representatives, educators, policy makers, and researchers through publications, educational programs, and networking opportunities.

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Refereed articles are double-blind reviewed. To expedite the review process, the authors should follow these guidelines.

1. Submissions should be accompanied by a cover letter stating that the material in the manuscript will not infringe upon any statutory copyright and that the paper will not be submitted elsewhere while under *ACI* review. (This review normally takes 6 to 12 weeks for refereed papers.) Cover letters should include author's complete address and telephone number.

2. Submit four copies of the manuscript. Articles typically are no more than 2500 words. Longer articles will be considered for review, though the author may be requested to shorten the paper upon acceptance and before publication.

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