

**CONSUMER PROTECTION
IN
KANSAS**

1997 ANNUAL REPORT

of the

**Consumer Protection
Division**

**Office of Attorney General
Carla J. Stovall**

(Submitted pursuant to K.S.A. 50-628)



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699 TTY: 291-3767

CONSUMER HOTLINE
1-800-432-2310

March 20, 1998

TO: The Honorable Bill Graves, Governor
and Members of the Kansas Legislature

I am pleased to provide to you the following report of the Consumer Protection Division of the Office of Attorney General. In 1997, the Consumer Protection Division received and investigated 7,714 written complaints and 2,004 inquiries, resulting in consumer savings of more than **two million dollars**. In addition to restitution, our enforcement efforts in 1997 resulted in judgments and settlements of more than **one and one-half million dollars** in civil penalties and investigative fees, in addition to invaluable injunctive orders against businesses found in violation of the Kansas Consumer Protection Act (KCPA). Although a portion of these judgments may prove uncollectible because the defendants cannot be located or are insolvent and judgment proof, the injunctive relief obtained in these enforcement actions will prevent many of these businesses from preying on Kansas consumers in the future.

Unfortunately, consumer fraud is a "growth industry." Consumer complaints have increased 38.4% in the past year (5,571 to 7,714) and 82.9% over the past two years (4,216 to 7,714). The chart to the right demonstrates the dramatic increase in written complaints received by my Consumer Protection Division over the three years of my administration. This increase in complaints demands additional resources to enable us to adequately meet and serve the needs of the people of the State of Kansas.



Members of my Consumer Protection Division continue to travel throughout Kansas to give educational presentations on consumer issues to schools, civic groups, community organizations and industry associations. In 1997, we made 137 educational presentations, including a series of seminars and conferences addressing fraud and financial exploitation of the elderly. Approximately 7,398 consumers and business persons attended these presentations, not counting the hundreds of people who visited our Consumer Protection booth at the Kansas State Fair. As a result of these educational efforts, I believe more consumers are less likely to fall victim to unscrupulous business practices and more businesses have been made aware of the requirements of the KCPA. In conjunction with our educational efforts, we continue to publish and distribute brochures on a wide variety of consumer topics.

I am proud of the assistance that the Consumer Protection Division provides to Kansas consumers. We participate in consumer protection efforts on not only a state level, but also on a national level through active cooperation with the National Association of Attorneys General (NAAG) and the National Association of Consumer Protection Investigators. Such cooperation is particularly beneficial in combating deceptive and unconscionable business practices by out-of-state businesses. In 1997, we recovered \$159,151.44 in penalties and fees as a direct result of NAAG multi-state working group enforcement efforts.

It is a top priority of this office to protect Kansas consumers from deceptive and unconscionable business practices through a combination of strong, yet fair, enforcement of consumer laws and effective consumer education efforts. I have proposed legislation to strengthen the KCPA in order to better protect our citizens and to more effectively penalize those who prey on consumers.

If my staff or I may be of service to you or your constituents, or if we can answer any questions regarding consumer protection in Kansas, please feel free to contact me.

Very truly yours,



CARLA J. STOVALL
Attorney General

CJS:CSR:tk

**OFFICE OF THE ATTORNEY GENERAL
STATE OF KANSAS**

**CARLA J. STOVALL
ATTORNEY GENERAL**

1997 CONSUMER PROTECTION STAFF

C. Steven Rarrick	Deputy Attorney General
Kristy L. Hiebert	Assistant Attorney General
James J. Welch	Assistant Attorney General
Gail E. Bright	Assistant Attorney General
Terry A. Iles	Assistant Attorney General
Michelle V. Hostetler	Assistant Attorney General

Teresa A. Salts	Special Agent Supervisor
Carole A. Walton	Special Agent
Amy E. Elliott	Special Agent
Michele R. Welch	Special Agent
Branden M. Arnold	Special Agent
Lori J. Denk	Special Agent
Joseph E. Trawicki	Special Agent

* Steven J. Wilhite	Special Agent
* Rodney L. Allen	Special Agent
* Jennifer K. McClafin	Special Agent

Terri Kirby	Secretary
Donna Wells	Secretary
Tiffanie Frisby	Secretary

Laura Proehl	Law Clerk
* Shannon Unruh	Legal Assistant
* Sarah Wiese	Intern
* Stephanie McIntyre	Intern

* Served a portion of 1997. No longer with the Consumer Protection Division.

**SUMMARY OF 1997 LAWSUITS
AND ASSURANCES OF VOLUNTARY COMPLIANCE**

IN THE MATTER OF AMERICA ONLINE

The Attorney General participated in a multi-state group which negotiated an Assurance of Voluntary Compliance with America Online to address deceptive advertising and billing practices of this internet access company. In the Assurance, America Online agreed to refund a portion of the financial losses suffered by consumers. Unfortunately, the company has failed to discontinue its deceptive practices. Consequently, the multi-state group is investigating newly discovered deceptive practices and negotiations are ongoing.

STATE ex rel. v. DEAN BROWN d/b/a FINANCIAL ONE

Dean Brown, d/b/a Financial One, entered into a Consent Judgment on July 9, 1997, for violations of the Kansas Consumer Protection Act relative to his operation of a credit services organization. The defendant's violations included charging consumers for credit services before completing performance and without filing a surety bond with the Kansas Consumer Credit Commissioner; guaranteeing consumers an extension of credit, regardless of the person's previous credit problem or credit history without clearly disclosing the eligibility requirements for obtaining an extension of credit; and advertising the services of a credit services organization without filing a registration statement with the Consumer Credit Commissioner. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act, pay \$300 in investigative fees and expenses and \$100 in civil penalties, and make a \$100 charitable donation.

STATE ex rel. v. DR. CHRISTENSEN'S WELLNESS GROUP, INC.

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, Dr. Christensen's Wellness Group entered into a Consent Judgment on June 5, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The defendant made numerous misrepresentations in its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The defendant did not have any authority from the Board of Healing Arts to practice medicine or from the Board of Pharmacy to advertise or dispense prescription medications. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act and pay \$5,000 in investigative fees and expenses and \$5,000 in civil penalties.

STATE ex rel. v. CONSUMER DEBT RESOURCES, INC.

Consumer Debt Resources, Inc. entered into a Consent Judgment on November 24, 1997, for violations of the Kansas Consumer Protection Act. The defendant's violations included charging consumers for credit services before completing performance and without filing a surety bond with the Kansas Consumer Credit Commissioner; guaranteeing consumers an extension of credit, regardless of the person's previous credit problem or credit history without clearly disclosing the eligibility requirements for obtaining an extension of credit; and advertising the services of a credit services organization without filing a registration statement with the Consumer Credit Commissioner. In the Consent Judgment, the defendant agreed to refrain from further violations of

the Act, pay \$2,500 in investigative fees and expenses and \$2,500 in civil penalties, and refund \$2,773 to Kansas consumers.

STATE ex rel. v. MARCUS DAHN and A-1 ALARMS, INC.

The Attorney General filed a lawsuit against this foreign corporation and its president in Shawnee County District Court on May 14, 1997, for deceptive and unconscionable acts and practices relating to their leasing of home security systems. The Attorney General alleged that the defendants' five-year agreement, which contained an automatic renewal provision for additional five-year terms, was unconscionable since it failed to provide written notice to consumers that the agreement would automatically renew for a five-year term unless the consumer terminated the agreement. In addition, defendants committed numerous violations relating to the door-to-door sales provisions of the Kansas Consumer Protection Act. A settlement was reached with the defendants on December 30, 1997, whereby the defendants agreed to refrain from further violations of the Act and pay \$5,000 in investigative fees and expenses, \$5,000 in civil penalties, and \$1,054 in consumer restitution.

STATE ex rel. v. DESTINY TELECOMM INTERNATIONAL, INC.

The Attorney General filed a lawsuit on October 9, 1997, against this multi-level marketing company based in Oakland, California, for violations of the Kansas Consumer Protection Act. These violations included misrepresentation of earnings capacity for independent representatives, failure to comply with the referral sales statute and door-to-door sales requirements, failure to disclose to consumers the existence of Cease and Desist Orders issued by the Kansas Securities Commissioner and the Kansas Corporation Commission and nonfunctional merchandise. The lawsuit is pending and the Attorney General will seek default judgment exceeding \$2,000,000, in addition to refunds to Kansas consumers of nearly \$35,000.

STATE ex rel. v. JOHN A. EARNSHAW

The Attorney General filed a lawsuit against this sole proprietor in Johnson County District Court in May 1996 for deceptive acts and practices relative to his house moving business. The Attorney General alleged the defendant accepted money to move a house without the requisite authority and failed to move the house as agreed. A Motion for Summary Judgment was filed by the Attorney General in June 1997 and was granted in September 1997. The Court awarded \$14,900 in consumer restitution and \$15,000 in civil penalties. In addition, the Court enjoined the defendant from further violations of the Kansas Consumer Protection Act. The defendant has filed an appeal of the judgment with the Kansas Court of Appeals.

STATE ex rel. v. EQUALNET CORPORATION

EqualNet entered into a Consent Judgment on December 22, 1997, for alleged violations of the Kansas Consumer Protection Act relative to the switching of Kansas consumer's long distance service without their authority or consent. EqualNet "slammed" consumers through their telemarketing efforts which deceptively implied that the consumer was remaining with AT&T as their long distance company. The defendant agreed to comply with Federal Communications Commission (FCC) procedures for verifying telemarketing orders for switching service in addition

to other requirements. The defendants also agreed to refrain from such deceptive acts and practices in the future and to affirmatively state in their telemarketing calls that they are calling to solicit the switch of the consumer's long distance service. EqualNet also agreed to pay \$20,000 in investigative fees and expenses to the Office of the Attorney General on or before February 28, 1998.

***STATE ex rel. v. DON FINE d/b/a UNIVERSITY BENEFITS MARKETING
d/b/a COLLEGE RESOURCE SEMINAR; AND d/b/a COLLEGE RESOURCE CENTER***

Don Fine, operating several differently-named businesses out of Edmond, Oklahoma, entered into a Consent Judgment on October 3, 1997, for violations of the Kansas Consumer Protection Act. The defendant's violations included charging consumers for credit services before completing performance and without filing a surety bond with the Kansas Consumer Credit Commissioner; guaranteeing consumers an extension of credit, regardless of the person's previous credit problem or credit history without clearly disclosing the eligibility requirements for obtaining an extension of credit; advertising the services of a credit services organization without filing a registration statement with the Consumer Credit Commissioner; and misrepresenting that his company's solicitation was an exclusive offer made only to select individuals, when it was, in fact, made to everyone. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act and pay \$1,500 in investigative fees and expenses and \$1,500 in civil penalties.

IN THE MATTER OF FLEMING COMPANIES, INC.

Fleming Companies, Inc. entered into an Assurance of Voluntary Compliance on February 14, 1997, for violations stemming from its sale of frozen turkeys which had been contaminated with limestone dust and other debris. In the Assurance, the respondent agreed to refrain from further violations of the Act, pay \$150,000 investigative fees and expenses and \$50,934.93 in civil penalties, and make charitable donations totaling \$50,000.

***STATE ex rel. v. PATRICK L. FRASER
d/b/a 4-SEASONS CHIMNEY SWEEP COMPANY***

The Attorney General took default judgment on September 19, 1997, against this transient merchant from Nebraska for deceptive advertising, selling services for which he did not have the equipment to provide, and failure to comply with the door-to-door sales requirements of the Kansas Consumer Protection Act. Mr. Fraser was ordered to pay \$585 in consumer restitution, \$4,000 in investigative fees and expenses, and \$24,000 in civil penalties.

STATE ex rel. v. GARTNER OIL COMPANY

The Attorney General filed a lawsuit against this corporation in Shawnee County District Court on October 29, 1996, for deceptive and unconscionable acts and practices relating to the sale of cigarette products to persons under the age of 18. A stipulated Journal Entry was entered against the defendant on October 29, 1997, which held the sale of tobacco products to persons under the age of 18 is an unconscionable act and practice in violation of K.S.A. 50-627. In the Journal Entry, the defendant agreed to refrain from further violations of the Act and pay \$1,500 in investigative fees and expenses and \$1,500 in civil penalties.

TOBACCO SALES TO MINORS INVESTIGATION

An Assurance of Voluntary Compliance was reached with each of the companies listed below as a result of the Attorney General's February 1996 investigation of tobacco sales to minors. The Assurance of Voluntary Compliance alleged the sale of tobacco products to minors is a deceptive and unconscionable act and practice under the Kansas Consumer Protection Act.

- 1) *In the Matter of S & S Foods d/b/a County Market* - \$250 investigative fees (violated AVC 06/09/97).
- 2) *In the Matter of American Drug Stores d/b/a Osco Drug* - \$1,500 investigative fees, \$750 civil penalty, and \$750 charitable donation.
- 3) *In the Matter of Janet Marshall d/b/a Marshall's Convenience Store* - \$200 investigative fees.
- 4) *In the Matter of Bill Oades, Inc. d/b/a Quivira Amoco* - \$750 investigative fees, \$375 civil penalty, and \$375 charitable donation.
- 5) *In the Matter of Lo-Cost, Inc. d/b/a Lo-Cost* - \$750 investigative fees, \$375 civil penalty and \$375 charitable donation.
- 6) *In the Matter of Herman Holtorf d/b/a H & W "C" Store* - \$750 investigative fees, \$375 civil penalty and \$375 charitable donation.
- 7) *In the Matter of Taylor Oil, Inc. d/b/a Amoco of Ottawa* - \$750 investigative fees and \$750 civil penalty.
- 8) *In the Matter of Tanana Oil Corporation d/b/a Miller Mart* - \$750 investigative fees, \$375 civil penalty and \$375 charitable donation.
- 9) *In the Matter of R & A Groceries, Inc. (Dutch Mail)* - \$750 investigative fees and \$750 civil penalty.

STATE ex rel. v. JASON BRADLEY GROVER

Jason Bradley Grover, an individual from Nashville, Tennessee, entered into a Consent Judgment on October 15, 1997, for violations of the Kansas Consumer Protection Act stemming from his solicitations and sales of stereo speakers to consumers. During such solicitations and sales, the defendant failed to comply with the door-to-door sales requirements and misrepresented the quality, suggested retail price, and value of such speakers. In the Consent Judgment, the defendant agreed to refrain from future violations and pay \$850 in investigative fees and expenses and \$850 in civil penalties.

IN THE MATTER OF GS ACQUISITIONS, INC. d/b/a PHYSICIANS WEIGHT LOSS CENTER

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, GS Acquisitions, Inc., d/b/a Physicians Weight Loss Center, entered into an Assurance of Voluntary Compliance on December 29, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The respondent made numerous misrepresentations through its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The respondent did not have any authority from the Board of Healing Arts to practice

medicine or from the Board of Pharmacy to advertise or dispense prescription medications. The respondent agreed to refrain from further violations of the Act and pay \$750 in investigative fees and expenses and \$750 in civil penalties.

***IN THE MATTER OF HEALTH MANAGEMENT GROUP, INC.
d/b/a KELLOGG MEDICAL WEIGHT LOSS CLINIC***

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, Health Management Group, Inc. d/b/a Kellogg Medical Weight Loss Clinic entered into an Assurance of Voluntary Compliance on October 22, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The respondent made numerous misrepresentations in its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The respondent did not have any authority from the Board of Healing Arts to practice medicine or from the Board of Pharmacy to advertise or dispense prescription medications. The respondent agreed to refrain from further violations of the Act and pay \$750 in investigative fees and expenses and \$750 in civil penalties.

IN THE MATTER OF HERMAN'S MEAT, INC.

Herman's Meat, Inc. entered into an Assurance of Voluntary Compliance on February 12, 1997, for violations of the meat and poultry price-per-pound statutes of the Kansas Food Sales Act and the Kansas Consumer Protection Act. The respondent advertised, solicited and sold meat in quantities larger than one pound without disclosing the price-per-pound. In the Assurance, the respondent agreed to refrain from further violations of the Act, pay \$750 investigative fees and expenses and \$375 in civil penalties, and make a charitable donation of \$375.

***IN THE MATTER OF HI-40 CORPORATION, INC.
d/b/a SLIMMER IMAGE WEIGHT LOSS CLINIC***

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, HI-40 Corporation, Inc., d/b/a Slimmer Image Weight Loss Clinic entered into an Assurance of Voluntary Compliance on October 22, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The respondent made numerous misrepresentations in its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The respondent did not have any authority from the Board of Healing Arts to practice medicine or from the Board of Pharmacy to advertise or dispense prescription medications. The respondent agreed to refrain from further violations of the Act and pay \$3,000 in investigative fees and expenses and \$3,000 in civil penalties.

STATE ex rel. v. JOE C. HOLLOWAY d/b/a HILLVIEW STUDIOS

Joe C. Holloway, d/b/a Hillview Studios, a photography business based in Paducah, Kentucky, entered into a Consent Judgment on August 19, 1997, for violations of the Kansas Consumer Protection Act. Specifically, the defendant failed to comply with the door-to-door sales

act requirements and the telemarketing fraud section of the Kansas Consumer Protection Act. In the Consent Judgment, the defendant agreed to refrain from future violations and pay \$2,500 in investigative fees and expenses and \$2,500 in civil penalties. Additionally, the defendant paid \$1,045.40 to the Kansas Department of Revenue after our investigation revealed that such tax had been collected from sales, but not remitted.

STATE ex rel. v. HOME CABLE INCORPORATED
d/b/a HOME CABLE CONCEPTS

The Attorney General filed a lawsuit against this unauthorized foreign corporation in Shawnee County District Court on May 14, 1997, for deceptive and unconscionable acts and practices relating to their sale of home satellite systems. The Attorney General alleged the defendant, through its sales representatives, made numerous misrepresentations during the sales presentation. In addition, the defendant violated the three-day right to cancel provisions and telephone solicitation provisions of the Kansas Consumer Protection Act. The case was removed by the defendant to Federal District Court, and is presently stayed pending the Court's ruling on plaintiff's Motion to Remand to state court.

IN THE MATTER OF HOME OWNER'S LONG DISTANCE, INC.

Home Owner's Long Distance entered into an Assurance of Voluntary Compliance in May of 1997. The Attorney General alleged that the respondent switched Kansas consumers' long distance service through deceptive telemarketing and "negative option" type prize entry forms that required a consumer to place a check in a box indicating they did not want their service switched. The respondent agreed to refrain from such deceptive and unconscionable acts and pay \$500 in investigative fees and expenses.

IN THE MATTER OF HOSIERY CORPORATION OF AMERICA

The Attorney General participated in a multi-state group which negotiated an Assurance of Voluntary Compliance with Hosiery Corporation of America. It was alleged that Hosiery Corporation of America's "free hose" mail solicitations failed to disclose consumers would receive with the free hose, additional hose which they would be required to pay for or return to the company at their expense. The respondent agreed to refrain from further violations and pay \$25,000 in investigative fees and expenses and \$5,000 in civil penalties.

IN THE MATTER OF INTEGRATED HEALTH CARE, INC.
d/b/a PIERCE MEDICAL CLINIC

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, Integrated Health Care, Inc. d/b/a Pierce Medical Clinic entered into an Assurance of Voluntary Compliance on October 22, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The respondent made numerous misrepresentations in its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The respondent did not have any authority from the Board of Healing Arts to practice medicine or from

the Board of Pharmacy to advertise or dispense prescription medications. The respondent agreed to refrain from further violations of the Act and pay \$750 in investigative fees and expenses and \$750 in civil penalties.

***STATE ex rel. v. ROGER K. JAMESON
d/b/a RANDOM ACTS OF KINDNESS***

Roger K. Jameson, d/b/a Random Acts of Kindness, entered into a Consent Judgment on June 2, 1997, for violations of the Charitable Organizations and Solicitations Act and the Kansas Consumer Protection Act. The defendant solicited donations for local children in need, but admitted having no intention to deliver such donations to anyone. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act and pay \$500 in investigative fees and expenses.

IN THE MATTER OF JANZEN SALES & SERVICE

Janzen Sales & Service, a local company which utilized telemarketing in its sales efforts, entered into an Assurance of Voluntary Compliance on October 2, 1997, for violations of the telephone solicitations section of the Kansas Consumer Protection Act. The respondent's employees failed to inquire as to whether an individual was interested in listening to a sales presentation and failed to terminate the call when a negative response was received. The respondent agreed to refrain from further violations of the Act and pay \$375 in investigative fees and expenses and \$375 in civil penalties.

***STATE ex rel. v. KANSAS EXPORT BEEF, INC.,
EDGAR R. MCGINNES, JR. AND KENNETH D. GRIFFIN***

The Attorney General filed a lawsuit and obtained a Temporary Restraining Order on May 9, 1997, prohibiting this Junction City company from conducting business, for violations of the Kansas Food Sales Act and the Kansas Consumer Protection Act. The defendants misrepresented quality, weight, composition, and price of meat and failed to disclose to consumers the defendants' usual practices which, according to the Kansas and United States Departments of Agriculture, were certain to result in adulterated, misbranded or mislabelled product which was certain to reach consumers and certain to have a detrimental effect on those consumers. The lawsuit is pending but default judgment for injunctive relief is anticipated because the business and its principals are now in bankruptcy.

***STATE ex rel. v. EVERETT OLIAN "BUTCH" LAWRENCE III
d/b/a HOMESAVERS OF JOHNSON COUNTY***

In October of 1994, the Attorney General filed a lawsuit against this Kansas City area "equiteer." The defendant purchased the redemption rights of consumers in foreclosure actions for nominal amounts, obtained possession, advertised the house for "rent," and obtained purchase-option contracts from new consumers who thought they were renting the house with the option to buy. The defendant made numerous misrepresentations to consumers at both ends of these transactions. The Attorney General took default judgment for \$23,000 investigative fees and expenses and \$470,000 in civil penalties on April 7, 1997. The defendant is currently in bankruptcy in Kansas City, Kansas.

STATE ex rel. v. MCI TELECOMMUNICATIONS CORPORATION, INC.

The Attorney General filed a lawsuit against MCI Telecommunications Corporation, Inc., on March 27, 1997, for violations of the telephone solicitations section of the Kansas Consumer Protection Act. The defendant provided information indicating it made over 2.4 million telemarketing calls into Kansas in 1996. During those calls, MCI employees neither asked consumers if they could proceed with the sales presentation nor terminated the call when the consumer gave a negative response. After settlement negotiations, the lawsuit was settled for \$125,000 in investigative fees and expenses and \$100,000 in civil penalties.

STATE ex rel. v. ISABEL MANDELKERN, et al.

The Attorney General obtained a Journal Entry of Judgment on December 12, 1997, against defendants Isabel Mandelkern and Flex Pads International, Inc. The Journal Entry was entered pursuant to the State's Motion for Summary Judgment on Damages. The lawsuit, filed by the State on October 14, 1992, alleged that the defendants sold their breast prostheses for an unconscionable amount and that they misrepresented the "custom fit" and endorsements of the prostheses. The Judgment ordered the defendants to pay \$18,478.67 in consumer restitution, \$23,924.95 in investigative fees and expenses, and \$93,000 in civil penalties. The defendants were also permanently enjoined from selling or offering to sell the breast prostheses in excess of five hundred dollars (\$500) each.

STATE v. DAN MARTINEZ d/b/a INSURANCE CLAIMS CONSULTANTS, INC.

The Attorney General filed a lawsuit against Dan Martinez d/b/a Insurance Claims Consultants, Inc., a Wichita individual, on January 3, 1997, alleging the unauthorized practice of law and deceptive and unconscionable business practices. The defendant had no legal training and was not licensed to practice law, but provided legal advice to individuals in the areas of workers' compensation, personal injury and bankruptcy. The defendant admitted providing advice and writing demand letters for more than two hundred (200) clients. A jury trial was conducted in September 1997 and the jury returned a verdict for the State on two of four counts of violations of the deceptive acts and practices section of the Kansas Consumer Protection Act. The remaining issues of the unauthorized practice of law and the unconscionable acts and practices were submitted to the Court for decision. In December 1997, the Court returned a verdict for the State on those issues. As part of the verdict, the Court found the defendant to be practicing law without a license, enjoined the defendant from that activity in the future, and assessed civil penalties in the amount of \$115,500.

***STATE ex rel. v. JAMES CURTIS McCOY
d/b/a SPEAKERS INTERNATIONAL d/b/a DBPA ENTERPRISES
and d/b/a THE JCM GROUP OF INDEPENDENT BROKERS***

The Attorney General filed a lawsuit on March 21, 1997, against James Curtis McCoy for violations of the Kansas Consumer Protection Act from 1991 to the present. This Overland Park-based trainer/speaker gave free presentations in approximately twenty states, during which he sold admission tickets to subsequent seminars and training materials. The defendant consistently failed to return to make the second presentations and failed to deliver the promised materials. Additionally,

the defendant made several misrepresentations concerning his status and accomplishments and did not comply with the door-to-door sales requirements. The lawsuit is pending and the Attorney General is seeking civil penalties, investigative fees, and restitution of nearly \$5,000 to consumers in several states.

IN THE MATTER OF METABOLIC RESEARCH CENTER

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, Metabolic Research Center entered into an Assurance of Voluntary Compliance on October 2, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The respondent made numerous misrepresentations in its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The respondent did not have any authority from the Board of Healing Arts to practice medicine or from the Board of Pharmacy to advertise or dispense prescription medications. The respondent agreed to refrain from further violations of the Act and pay \$1,500 in investigative fees and expenses and \$1,500 in civil penalties.

STATE ex rel. v. NATIONAL QUICK WEIGHT LOSS CENTERS, INC.

The Attorney General filed a lawsuit against this foreign corporation in Johnson County District Court on May 21, 1997, for deceptive and unconscionable acts and practices relating to its nutritional counseling for weight control and involvement with Fen-Phen. The Attorney General alleged the defendant made numerous misrepresentations in its advertisements and sales presentations. In addition, the defendant advertised Fen-Phen weight loss medications without the approval of the Board of Healing Arts or the Board of Pharmacy. The lawsuit is pending with trial scheduled for May 11, 1998.

STATE ex rel. v. NW LAD CO. d/b/a VALUE VISION, et al.

The Attorney General filed a lawsuit against this Kansas corporation in Shawnee County District Court on May 14, 1997, for deceptive and unconscionable acts and practices relating to the sale of home satellite systems. The Attorney General alleged the defendant, through its sales representatives, made numerous misrepresentations during the sales presentation. In addition, the defendant violated the three-day right to cancel provisions of the Kansas Consumer Protection Act. The defendant filed bankruptcy in September 1997 which has just recently been dismissed by the Bankruptcy Court. The lawsuit is in the discovery stage.

STATE ex rel. v. PARADE OF TOYS, INC., WONDERFUL WORLD OF TOYS, INC.; BANDERO CIGAR COMPANY; SOMERSET INVESTMENT, CORPORATION; ALHAMBRA INVESTMENT CORPORATION; ROBERT BOUCKHOUT, et al.

On April 17, 1997, the Attorney General filed a lawsuit, a temporary restraining order and an order of sequestration which was granted by the Johnson County District Court. Defendant Robert Bouckhout's companies advertised and sold toy and cigar distributorships to consumers throughout the United States, deceptively representing an average annual income of \$100,000 could

be earned. The toys were to be current release Disney-licensed merchandise and the cigars were to be first quality. In addition, consumers were promised a variety of services which were never provided. The investigation of this matter failed to find one consumer who recouped their initial investment despite the promises of high earnings. These business opportunities sold for \$14,900 to \$75,000. Trial is scheduled to begin on August 17, 1998.

STATE ex rel. v. PRAIRIEFIELD WATER, INC., d/b/a CULLIGAN WATER

Prairiefield Water, Inc. d/b/a Culligan Water entered into a Consent Judgment on October 22, 1997, for violations of the Kansas Consumer Protection Act relative to its selling of Culligan Water products. The defendant made misrepresentations during sales presentations, violated the three-day right to cancel provisions during door-to-door sales, violated telephone solicitation provisions, and violated the prize notification provisions of the Kansas Consumer Protection Act. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act, and paid \$6,985.10 in consumer restitution, \$5,000 in investigative fees and expenses, and \$5,000 in civil penalties.

STATE ex rel. v. RANCHOUSE FOODS, INC.

The Attorney General filed a lawsuit on June 2, 1997, against this Texas company for violations of the Kansas Food Sales Act and the Kansas Consumer Protection Act (committed via its transient-merchant employees.) The company failed to comply with the door-to-door sales requirements, charged consumers sales tax which was not remitted to the Department of Revenue, and misrepresented the weight and usual price of meat. The lawsuit is pending.

STATE ex rel. v. DONALD CALVIN ROBERTSON d/b/a GET-KLEEN SALES

Donald Calvin Robertson, d/b/a Get-Kleen Sales, a Texas-based company selling cleaning solution, entered into a Consent Judgment on August 7, 1997, for violations of the Kansas Consumer Protection Act. The defendant failed to comply with the door-to-door sales act requirements during solicitations and subsequent sales made within the State. In the Consent Judgment, the defendant agreed to refrain from future violations and pay \$1,250 in investigative fees and expenses and \$1,250 in civil penalties.

STATE ex rel. v. SEARS, ROEBUCK AND CO.

Sears, Roebuck and Co. entered into a Consent Judgment on August 29, 1997, following a multi-state investigation of Sears' deceptive and unconscionable practice of obtaining reaffirmation agreements in violation of federal bankruptcy rules. In the Consent Judgment, Sears agreed to refrain from further violations of the Kansas Consumer Protection Act, refund Kansas consumers and pay \$93,585.17 in investigative fees and expenses and \$65,566.27 in civil penalties. Consumer restitution is expected to exceed \$750,000.

***IN THE MATTER OF SECURITY BANK OF KANSAS CITY
AND R.F.D., INCORPORATED***

Security Bank of Kansas City, which owned the majority of RFD stock and was active in its daily operation, entered into an Assurance of Voluntary Compliance with the Attorney General on

November 4, 1997. After acquiring the stock as payment for the personal debt of the previous owner, Security Bank continued to allow the business to operate and receive deposits until the time it closed in September 1995. Consumers across the country purchased tours which were not provided and some consumers were stranded in the middle of tours. In the Assurance of Voluntary Compliance, the respondent agreed to refrain from further violations of the Act and pay \$536,870.41 in consumer restitution and \$100,000 to the National Tour Association in reimbursement for partial restitution payments made by the travel association to consumers. The respondent also agreed to pay \$25,000 in investigative fees and expenses to the Attorney General in addition to \$25,000 in attorney fees to the National Tour Association.

STATE ex rel. v. THE SENTI-METAL COMPANY

The Senti-Metal Company, based in Ohio, entered into a Consent Judgment on October 3, 1997, for violations of the Kansas Consumer Protection Act relating to its failure to comply with the door-to-door sales requirements. In the Consent Judgment, the defendant agreed to refrain from future violations and pay \$500 in investigative fees and expenses and \$500 in civil penalties.

STATE ex rel. v. SOUTHEASTERN LEASING & EQUIPMENT CORPORATION

Southeastern Leasing & Equipment Corporation entered into a Consent Judgment on May 6, 1997, for violations of the Kansas Consumer Protection Act relative to its leasing of security systems. The defendant violated the door-to-door sales provisions of the Kansas Consumer Protection Act. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act, pay \$500 in investigative fees and expenses and \$3,376.34 in consumer restitution, and make a \$500 charitable donation.

***STATE ex rel. v. JOYCE STUFFLEBEAN & HAROLD STUFFLEBEAN d/b/a
JAWS PEST CONTROL and JAWS CONSTRUCTION COMPANY***

Joyce and Harold Stufflebean entered into a Consent Judgment on March 7, 1997, for violations of the Kansas Consumer Protection Act relative to providing termite treatment and home repair to Kansas consumers. The defendant made numerous misrepresentations during sales presentations, violated the three-day right to cancel provisions during door-to-door sales, and violated telephone solicitation provisions of the Kansas Consumer Protection Act. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act and pay \$6,086 in consumer restitution, \$1,000 in investigative fees and expenses, and \$500 in civil penalties.

STATE ex rel. v. SUPERIOR FOLIAGE, INC.

Superior Foliage, Inc., a plant nursery in Homestead, Florida, entered into a Consent Judgment on November 24, 1997, for violations of the Kansas Consumer Protection Act. The defendant sold several hundred plants which were infested with red fire ants to an Olathe sole proprietorship for resale. Kansas Department of Agriculture regulations required that the plants be either disposed of or picked up by the seller; however, the defendant initially refused to pick up the plants or refund the consumer's money. In the Consent Judgment, the defendant agreed to refrain from future violations and pay \$4,029.50 to the Olathe consumer, \$2,500 in investigative fees and expenses, and \$2,500 in civil penalties.

IN THE MATTER OF SHERROW ENTERPRISES, INC. d/b/a DIET CENTER

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, Sherrow Enterprises, Inc. d/b/a Diet Center entered into an Assurance of Voluntary Compliance on December 29, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The respondent made numerous misrepresentations through its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The respondent did not have any authority from the Board of Healing Arts to practice medicine or from the Board of Pharmacy to advertise or dispense prescription medications. The respondent agreed to refrain from further violations of the Act and pay \$750 in investigative fees and expenses and \$750 in civil penalties.

STATE ex rel. v. THOUSAND ADVENTURES, INC., et al.

The Attorney General filed a lawsuit in Shawnee County District Court on January 16, 1996, for deceptive and unconscionable acts and practices by the defendants in the sales of campground memberships. The defendants enticed consumers to visit their facilities by offering prizes and then used deceptive and unconscionable tactics to persuade consumers to purchase a membership. The campgrounds are not the quality represented by the defendants and the memberships are non-cancelable, even if consumers choose to discontinue their use of the campgrounds. There were also material misrepresentations made about the company's resale program, wherein the company promised to resell a consumer's membership after a certain period of time. In April, 1997, defendant Thousand Adventures of Kansas, Inc. filed a petition for bankruptcy under Chapter 11 in the United States Bankruptcy Court for the District of Kansas. In September, 1997, it was converted to a Chapter 7 bankruptcy. The estate is being liquidated at this time, although it is unlikely there will be enough assets to satisfy most creditors, including the State and the consumers. The state court lawsuit is presently stayed by the pending bankruptcy. Defendant Thousand Adventures, Inc. also filed a petition for bankruptcy under Chapter 11 in the United States Bankruptcy Court for the Southern District of Texas. The Texas Court is currently considering the debtor's motion to convert it to a Chapter 7 bankruptcy.

STATE ex rel. v. TERRIL G. TROUT d/b/a MIDWEST KIRBY

Terril G. Trout, d/b/a Midwest Kirby, entered into a Consent Judgment on April 9, 1997, for violations of the Kansas Consumer Protection Act. The defendant made representations to consumers that a factory recall had been issued on the consumers' Kirby vacuum, necessitating the purchase of an up-grade, when no such recall had been made. In the Consent Judgment, Mr. Trout agreed to refrain from future violations and pay \$1,000 in investigative fees and expenses and \$1,000 in civil penalties.

***STATE ex rel. v. WAL-MART STORES, INC.
d/b/a WAL-MART'S HYPERMART STORE***

Wal-Mart Stores, Inc., d/b/a Hypermart, entered into a Consent Judgment on April 22, 1997, for violations of the meat and poultry price-per-pound statutes of the Kansas Food Sales Act and the Kansas Consumer Protection Act. The defendant advertised, solicited and sold meat in quantities

larger than one pound without disclosing the price-per-pound. In the Consent Judgment, the defendant agreed to refrain from further violations of the Act, pay \$20,000 in investigative fees and expenses and \$10,000 in civil penalties, and make charitable donations totaling \$10,000.

***STATE ex rel. v. RALPH WEBER
d/b/a DIRECTIONAL CONSULTING INSTITUTE***

The Attorney General filed a lawsuit on May 23, 1997, against this self-professed "hypnotherapist" from Minnesota for violations of the Kansas Consumer Protection Act. Mr. Weber (falsely representing himself as "Dr. Weber") conducted seminars during which he purported to help consumers lose weight and stop smoking. In advertising these seminars, Weber exaggerated his success rate and misrepresented use of the patch as poison; represented his program as having AMA-approval, when the AMA was unaware of his program; and promoted and sold tonics which were touted as cures for cancer and heart conditions requiring triple by-pass surgery. Mr. Weber was ordered to pay \$1,007.70 in investigative fees and expenses and \$31,800 in civil penalties.

STATE ex rel. v. JON A. WOLLMAN d/b/a HAPPY CAMPERS

Jon A. Wollman, d/b/a Happy Campers, a Casper, Wyoming-based company selling cleaning solution, entered into a Consent Judgment on August 7, 1997, for violations of the Kansas Consumer Protection Act. The defendant failed to comply with the door-to-door sales requirements and charged consumers an extra amount for "tax", but failed to remit the same to the Department of Revenue. In the Consent Judgment, the defendant agreed to refrain from future violations and pay \$2,500 in investigative fees and expenses and \$2,500 in civil penalties.

IN THE MATTER OF ORPHA YODER d/b/a DIET CENTER

As the result of a three agency investigation conducted by the Office of the Attorney General, the Board of Healing Arts and the Board of Pharmacy, Orpha Yoder d/b/a Diet Center entered into an Assurance of Voluntary Compliance on October 2, 1997, for violations of the Kansas Consumer Protection Act, the Kansas Healing Arts Act and the Kansas Pharmacy Practice Act relative to its involvement with prescription medications for weight control. The respondent made numerous misrepresentations through its advertisements and sales presentations relating to its involvement with the prescription weight loss medications Fen-Phen and Redux. The respondent did not have any authority from the Board of Healing Arts to practice medicine or from the Board of Pharmacy to advertise or dispense prescription medications. The respondent agreed to refrain from further violations of the Act and pay \$1,500 in investigative fees and expenses and \$1,500 in civil penalties.

***STATE ex rel. v. WALTER ZITLOW, COMPLETE HOME SECURITY, INC.
and GARY RICHARDSON d/b/a ALARM PROFESSIONAL SERVICES***

The Attorney General filed a lawsuit against these two businesses and sales representatives in Sedgwick County District Court on April 1, 1997, for deceptive and unconscionable acts and practices relating to the sale of home security systems. The Attorney General alleged the defendants made numerous misrepresentations through its sales representative, Walter Zitlow. In addition, the defendants violated the three-day right to cancel provisions and telephone solicitation provisions of the Kansas Consumer Protection Act. The Attorney General is seeking enhanced penalties against the defendants for targeting the elderly. The average age of the consumer which made a complaint

to this office against the defendants is 74 years old. On April 14, 1997, the Attorney General obtained a Temporary Injunction against defendant Walter Zitlow which prohibits him from making any contact with consumers over the age of 60, unless he provides to our office, within 24 hours, the consumer's name, address and telephone number. The injunction also prohibits defendant Walter Zitlow from making representations regarding tax deductions and insurance reductions. The case is presently in the discovery stage with trial set for April 21, 1998.

CIVIL ENFORCEMENT OF AGENCY ACTIONS

The Consumer Protection Division filed 30 civil enforcement of agency actions to compel compliance with subpoenas issued to suppliers.

CONCLUSION

In conclusion, the above enforcement actions taken by the Consumer Protection Division reflect the priority that the office of the Attorney General has in protecting Kansas consumers from deceptive and unconscionable business practices. We believe a strong, yet fair enforcement of consumer laws, combined with effective consumer education efforts, provide the level of protection to Kansas consumers mandated by the Kansas legislature under the Kansas Consumer Protection Act.

CATEGORIES OF NEW COMPLAINTS

Complaints Filed:	7,714
Complaints Closed:	5,991
Written Inquiries:	2,004
Total Annual Savings:	\$2,076,222.00

	<u>Complaints Received</u>	<u>Percent of Total</u>
Advertising	94	1.22%
Appliances	47	0.61%
Automobiles	1,064	13.79%
Boats, Boating Equipment, Repairs, etc.	10	0.13%
Book, Record and Tape Clubs	33	0.43%
Business Opportunity Services	715	9.27%
Cable Television	29	0.38%
Cemeteries	13	0.17%
Clothing	13	0.17%
Collectibles/Antiques	6	0.08%
Collection Practices	179	2.32%
Computers	78	1.01%
Computer On-Line Services	101	1.31%
Contests	217	2.81%
Credit Code	346	4.49%
Credit Reporting Agencies	42	0.54%
Discount Buying Clubs	29	0.38%
Door-to-Door Sales	57	0.74%
Education	17	0.22%
Employment Services	21	0.27%
Energy Saving Devices (total)	1	0.01%
Failure to Furnish Merchandise (non-mail order)	14	0.18%
Farm Implements/Equipment	15	0.19%
Fire, Heat and Smoke Alarms	0	0.00%
Floor Coverings	46	0.60%
Food Products	43	0.56%
Franchise Sales	0	0.00%
Fund Raising (charities, etc.)	133	1.72%
Funeral Homes and Plans	8	0.10%
Furniture	44	0.57%

	Complaints Received	Percent of Total
Gasoline Pricing and Content	14	0.18%
Health Services (doctors, dentists, hospitals, etc.)	78	1.01%
Assistive Device - Lemon Law	2	0.03%
Health Spas and Weight Salons	50	0.65%
Hearing Aids	17	0.22%
Heating and Air Conditioning	28	0.36%
Home Construction	17	0.22%
Home Improvements	290	3.76%
Interest Rates and Lending Companies (noncredit)	0	0.00%
Invoice and Billing Schemes (noncredit)	20	0.26%
Jewelry	21	0.27%
Kitchenware	0	0.00%
Land Sales/Subdivided Out-of-State	1	0.01%
Land Sales/Subdivided Kansas	563	7.30%
Land Resale Companies	4	0.05%
Loan Finders	40	0.52%
Lotteries	0	0.00%
Magazines	112	1.45%
Mail Order Companies	488	6.33%
Miscellaneous	262	3.40%
Mobile Homes or Manufactured Homes	71	0.92%
Mobile Home Parks and Campers	0	0.00%
Mortgages	41	0.53%
Mortgage Escrow Problems	4	0.05%
Motorcycles and Bicycles	1	0.01%
Moving and Storage	34	0.44%
Multilevel and Pyramid Distributorship Companies	148	1.92%
Musical Instruments, Lessons, etc.	4	0.05%
Negative Selection	4	0.05%
Nurseries, Lawn, Gardening Equipment, etc.	18	0.23%
Nursing Homes	2	0.03%
Office Equipment and Supplies	2	0.03%
Pest Control	11	0.14%
Pets/Animals	19	0.25%
Photo Studios, Equipment and Services	25	0.32%

	Complaints Received	Percent of Total
Product Safety	0	0.00%
Real Estate (houses)	18	0.23%
Real Estate (other than houses)	1	0.01%
Rebates	20	0.26%
Recovery Companies	2	0.03%
Referral Selling	0	0.00%
Satellite Dishes	109	1.41%
Scanning Equipment	13	0.17%
Securities and Investments (not stocks and bonds)	25	0.32%
Security Systems and Services	34	0.44%
Services (general)	203	2.63%
Services (professional)	5	0.06%
Sewing Machines	3	0.04%
Sporting Goods	13	0.17%
Steel Buildings	10	0.13%
Stereos and Record Players	8	0.10%
Sundrys	0	0.00%
Telephone/Service and Long Distance Carriers	342	4.43%
Telephone/800#s, 900#s and International Calls	75	0.97%
Telephone/Slamming	108	1.40%
Telephone/Cellular and Services	73	0.95%
Telephone Solicitations	227	2.94%
Televisions, VCRs and Radios	29	0.38%
Timeshare Sales	5	0.06%
Tobacco Sales	0	0.00%
Toys	2	0.03%
Trade and Correspondence Schools	18	0.23%
Travel Agencies	356	4.61%
Travel and Transportation	0	0.00%
Unauthorized Practice of Law	17	0.22%
Vending Machines	8	0.10%
Warranty Problems	36	0.47%
Water Softeners, Conditioners, Purifiers, etc.	20	0.26%
Work-at-Home Schemes	<u>128</u>	<u>1.66%</u>
TOTAL CASES OPENED	7,714	100.00%

DISPOSITION OF CLOSED COMPLAINTS

	Complaints Closed	Percent of Total
Inquiry or Information Only	450	7.51%
Money Refunded/Contract Cancelled	2,179	36.37%
Merchandise Delivered to Consumer	172	2.87%
Repaired/Replaced Product	150	2.50%
Mediation Only -- No Savings	525	8.76%
No Reply From Consumer	387	6.46%
Unable to Locate Respondent	122	2.04%
Practice Complained of Discontinued	53	0.88%
Respondent Out of Business	135	2.25%
No Basis for Complaint	135	2.25%
No Jurisdiction under KCPA	257	4.29%
Insufficient Evidence to Prove Violation	136	2.27%
Complaint Withdrawn	59	0.98%
Unable to Satisfy Complainant -- no further action	61	1.02%
Referred to Private Attorney	346	5.78%
Referred to County/District Attorney	15	0.25%
Referred to Other Attorney General	206	3.44%
Referred to Other Kansas Agency	74	1.24%
Referred to Small Claims Court	272	4.54%
Referred to Federal Agency (FTC, Post Office, etc.)	75	1.25%
Other	102	1.70%
Lawsuit Complaint Files:		
Respondent Enjoined	21	0.35%
Consent Judgment	35	0.58%
Voluntary Compliance Agreement	21	0.35%
Default Judgment	2	0.03%
Dismissed	1	0.02%
Other	<u>0</u>	<u>0.00%</u>
TOTAL CASES CLOSED	5,991	100.00%

