

2003 ANNUAL REPORT

Consumer Protection & Antitrust Division



Office of Attorney General Phill Kline

(Submitted pursuant to K.S.A. 50-628 and K.S.A. 50-109)

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL



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December 30, 2004

I am pleased to submit the following report detailing the activities of the Consumer Protection and Antitrust Division of this office for the calendar year ending December 31, 2003.

Shortly after assuming office in January 2003, I charged the team in that important division to dedicate themselves to the high ideals that moved the legislature to enact the Kansas Consumer Protection Act (KCPA) more than 30 years ago.

To demonstrate that firm resolve, I directed the division to author a mission statement that built upon the mission I set forth for the entire administration. This statement provides the guiding principles by which my Consumer Protection and Antitrust Division operates on behalf of the citizens of our state and drives the division to focus on true consumer harm and those companies most deserving of enforcement action:

*PHILOSOPHY AND MISSION STATEMENT OF ATTORNEY GENERAL
PHILL KLINE'S CONSUMER PROTECTION AND ANTITRUST DIVISION*

- *The Consumer Protection and Antitrust Division strives to promote human dignity through justice with compassion by carrying out its statutory duties under the KCPA with professional excellence and judicious restraint.*
- *The division exists to promote healthy commerce by investigating and taking enforcement action against deceptive, unconscionable and anti-competitive business practices.*
- *The division strives to minimize the need for such investigations and enforcement action by educating consumers, suppliers and business leaders.*
- *When enforcement action must be taken, the division vigorously prosecutes violators of the KCPA toward the goal of developing a body of case law that protects Kansans from unscrupulous business practices.*

Many positive benefits have arisen from the division's rededication to the original intent of the KCPA. In keeping with this mission, we have formed several task forces within the division each working to protect the most vulnerable Kansans by confronting businesses and con artists who would prey upon them. These include the Vulnerable Adults Task Force (VATF), the Consumer Protection Emergency Response Team (CPERT) and the Incoming Review Committee (IRC).

The efforts of the Consumer Protection and Antitrust Division in 2003, although significant, are expected to culminate in even more benefits to Kansans in the years to follow. The division looks forward to continuing its education and advocacy efforts on behalf of all Kansas consumers and wishes to thank the executive and legislative branches of government for their assistance in this important endeavor.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Phill Kline".

Phill Kline
Attorney General

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

2003 CONSUMER PROTECTION/ANTITRUST STAFF

Bryan J. Brown	Deputy Attorney General
Kristy L. Hiebert	Assistant Attorney General
Joseph N. Molina	Assistant Attorney General
* Rex G. Beasley	Assistant Attorney General
Stacy A. Jeffress	Assistant Attorney General
* Shelley H. King	Assistant Attorney General
James R. McCabria	Assistant Attorney General
Karl R. Hansen	Assistant Attorney General
Kevin Schumaker	Assistant Attorney General
* Teresa A. Salts	Special Agent Supervisor
Erica D. Strome	Special Agent
Jared M. Reed	Special Agent
Angela N. Nordhus	Special Agent
Judy Jenkins	Special Agent
Jerry Howland	Special Agent
Mary Kennedy	Special Agent
Natalie A. Hogan	Special Agent
* Deborah L. Johnson	Special Agent
Sheila Meneses	Special Agent
Larry Larsen	Consumer Specialist
Sarah Elsen	Consumer Specialist
Sarah R. Weeks	Legal Assistant
Connie Ullman	Secretary
Amber Meseke	Secretary
Joanne Kensinger	Office Clerk
Marti Nelson	Office Clerk
Emilie Burkhardt	Law Clerk
* Leslie Hendrix	Law Clerk
Rebekah Gaston	Law Clerk

* Served a portion of 2003. No longer with the Consumer Protection Division.

CATEGORIES OF NEW COMPLAINTS

Complaints Filed:	5,244
Complaints Closed:	7,189
Written Inquiries:	7,178
Total Annual Consumer Restitution:	\$1,689,100

<u>Category</u>	<u>Complaints Assigned to Special Agents</u>	<u>Complaints Processed by Intake Review Committee</u>	<u>Percent of Total</u>
Advertising (general)	20	10	0.57%
Antitrust	5	0	0.10%
Appliances	10	17	0.51%
Assistive Device Lemon Law	3	1	0.08%
Auto	383	225	11.60%
Boats, Boating Equipment, Repairs, etc.	1	2	0.06%
Book, Record & Tape Clubs	4	6	0.19%
Business Opportunity Services	32	13	0.86%
Cable Television	9	10	0.36%
Cemeteries	9	6	0.29%
Charitable Organizations	378	4	7.28%
Clothing	4	4	0.15%
Collectibles/Antiques	4	0	0.08%
Computer - Unsolicited e-mail (spamming)	0	6	0.11%
Collection	156	127	5.40%
Computer - Internet Gambling	0	0	0.00%
Contests/Promotional	118	12	2.48%
Computer - Internet Sales	95	64	3.03%
Computer Online Services	148	32	3.43%
Computers	36	18	1.03%
Contests/Sweepstakes	3	8	0.21%
Credit	204	88	5.57%
Credit Reporting Agencies	29	14	0.82%
Discount Buying Clubs	25	5	0.57%
Door-To-Door Sales	56	11	1.28%
Education	2	5	0.13%
Employment Services	5	3	0.15%
Energy Savings Devices	0	0	0.00%
Failure to Furnish Merchandise (other than mail order)	0	3	0.06%
Farm Implements/Equipment	7	3	0.19%
Faxes Unsolicited	34	4	0.72%
Fire, Heat & Smoke Alarms	0	0	0.00%
Floor Coverings (carpet, etc.)	7	7	0.27%
Food Products	1	5	0.11%

<u>Category</u>	<u>Complaints Assigned to Special Agents</u>	<u>Complaints Processed by Intake Review Committee</u>	<u>Percent of Total</u>
Furniture	15	10	0.48%
Gasohol & Stills	0	0	0.00%
Gasoline Pricing and Contents	5	0	0.10%
Health Services (doctors, dentists, hospitals, etc.)	27	40	1.28%
Health Spas & Weight Salons	32	10	0.80%
Hearing Aids	14	0	0.27%
Heating & Air Conditioning	8	6	0.27%
Home Construction	0	7	0.13%
Home Improvement	89	122	4.02%
Identity Theft	38	8	0.88%
Invoice & Billing Schemes (noncredit code)	2	0	0.04%
Jewelry	5	5	0.19%
Land Sales/Subdivided KS	0	0	0.00%
Land Resale Companies	1	0	0.02%
Loan Finders	37	7	0.84%
Magazine Subscriptions	36	19	1.05%
Mail Order	181	71	4.81%
Medical Equipment/Devices	49	1	0.95%
Medical Discount Cards	38	7	0.86%
Miscellaneous	4	0	0.08%
Mobile Home Parks	0	0	0.00%
Mobile Homes & Manufactured Homes	20	8	0.53%
Mortgage Escrow Problems	1	1	0.04%
Mortgages	25	31	1.07%
Motor Homes/RV's/Campers (anything on wheels)	0	0	0.00%
Motorcycles & Bicycles	1	4	0.10%
Moving & Storage	8	10	0.34%
Multi-level & Pyramid Distributorship Co.	47	6	1.01%
Musical Instruments, Lessons, etc.	0	0	0.00%
Negative Selection	7	0	0.13%
No-Call (enforcement actions)	45	2	0.90%
Nurseries, Lawn, Gardening and Landscape Service & Supplies	6	5	0.21%
Nursing Homes	7	0	0.13%
Office Equipment & Supplies	2	2	0.08%
Pest Control	4	4	0.15%
Pets/Animals	11	10	0.40%

<u>Category</u>	<u>Complaints Assigned to Special Agents</u>	<u>Complaints Processed by Intake Review Committee</u>	<u>Percent of Total</u>
Privacy Issues	1	0	0.02%
Real Estate (houses)	5	12	0.32%
Real Estate (other than houses)	2	2	0.08%
Rebates	17	11	0.53%
Recovery Companies	0	0	0.00%
Referral Selling	1	0	0.02%
Satellite Systems	26	5	0.60%
Scanning Equipment	0	0	0.00%
Securities & Investments (other than stocks & bonds)	2	2	0.08%
Security Systems and Services	22	10	0.61%
Services (general)	238	102	6.48%
Services (professional)	9	15	0.46%
Sewing Machines	0	0	0.00%
Sporting Goods	74	2	1.45%
Steel Buildings	2	0	0.04%
Stereo Equipment	3	2	0.10%
Telephone - 800#s, 900#s and International Calls	18	1	0.36%
Telephone - Cramming	34	1	0.67%
Telephone - Service, Cell Phones & Slamming	588	47	12.11%
Telephone - Prepaid Phone Cards	5	1	0.11%
Telephone Solicitations	26	3	0.55%
Telephone Solicitations/General	51	10	1.16%
Televisions and VCR's	7	9	0.31%
Timeshare Sales	13	3	0.31%
Tobacco Sales	1	0	0.02%
Toys	1	3	0.08%
Trade & Correspondence Schools	31	3	0.65%
Travel	36	26	1.18%
Unauthorized Practice of Law	11	3	0.27%
Vending Machines	3	1	0.08%
Warranty Problems (other than automobiles)	17	8	0.48%
Water Softeners, Conditioners, Purifiers, etc.	7	0	0.13%
Work-at-Home Schemes	13	17	0.57%
TOTAL CASES OPENED	3832	1412	100.00%

2003 DISPOSITION OF CLOSED COMPLAINTS

	<u>Complaints Closed</u>	<u>Percent of Total</u>
Inquiry or Information Only	375	5.22%
Referred to Private Attorney	437	6.08%
Referred to County/District Attorney	108	1.50%
Referred to Other State Attorney General	145	2.02%
Referred to Other Kansas Agency	160	2.23%
Referred to Small Claims Court	382	5.32%
Referred to Federal Agency (FTC, Post Office, etc.)	160	2.23%
Money Refunded/Contract Cancelled	1736	24.17%
Merchandise Delivered to Consumer	78	1.09%
Repaired/Replaced Product	85	1.18%
Mediation Only - No Savings	349	4.86%
No Reply from Complainant	375	5.22%
Unable to Locate Respondent	209	2.91%
Practice Complained of Discontinued	61	.85%
Respondent Out of Business	78	1.09%
Refer to other Country	16	0.22%
No Violation	1073	14.94%
Insufficient Evidence to Prove Violation	264	3.68%
Complaint Withdrawn	109	1.52%
Unable to Satisfy Complainant - No Further Action	33	.46%
Other	196	2.73%
No Jurisdiction under KCPA	95	1.32%
No Jurisdiction - Supplier Declined Mediation	0	0.00%
Lawsuit Complaint Files		
Respondent Enjoined	2	0.03%
Respondent Enjoined/Violations Found	12	0.17%
Consent Judgment	540	7.52%
Voluntary Compliance Agreement	57	0.79%
Default Judgment	13	0.18%
Other Lawsuit	1	0.01%
Defendant Filed Bankruptcy	33	0.46%
Dismissed	1	0.01%
TOTAL CASES CLOSED	7183	100.00%

SUMMARY OF 2003

CONSUMER PROTECTION ENFORCEMENT ACTIONS

State v. Mike Aherns, individually, Mark A. White, individually, and Mike Aherns and Mark A. White d/b/a K.C. Auto Outlets

On April 16, 2003, the Attorney General filed a Petition for deceptive acts and practices related to misrepresentations in lien pay-off and trade-ins. The defendants were named by Wyandotte County DA in a criminal action involving similar transactions and the office determined it was appropriate to dismiss the action without prejudice.

State v. American Auto Consultants, Inc.

On July 9, 2002, the Attorney General filed a Petition for two counts of deceptive contract practices, one count of unconscionable practices, and one count of a deceptive contract term regarding the Defendant's home-based business website services. The Defendant agreed to refund money to the consumer and the case was dismissed without prejudice.

In the Matter of American Lawyer Media, Inc. d/b/a The American Lawyer - Solicitations

On April 18, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with the above company for alleged violations of the KCPA relating to deceptive and/or unconscionable business practices. The Respondent agreed to pay \$3,500.00 in civil penalties and investigative fees.

State v. American Paving Company, Joshua J. Werner d/b/a American Paving Company

On May 15, 2003, the Attorney General filed a Petition for violations of the Kansas Consumer Protection Act regarding compliance with door-to-door sales. A Consent Judgment was filed on September 29, 2003, and the Defendant agreed to pay \$1,500.00 in civil penalties and investigative fees. A companion criminal case was filed for operating without a transient license, a Class A misdemeanor to which the Defendant pled guilty.

State v. Wade Ryan Brown

On September 22, 2003, the Attorney General filed a lawsuit against this individual for unconscionable business practices. The Attorney General alleges that Defendant Brown enters into contracts and accepts payment for services that he knows or has reason to know he will not perform. The case is pending.

State v. Business Options, Inc., a/k/a US Bell, Kurtis Kintzel, individually, and Keanan Kintzel, individually

On November 14, 2003, the Attorney General entered into a Consent Judgment with this company for alleged violations of the KCPA related to slamming long distance services. The Defendants agreed to pay \$25,000.00 in civil penalties and investigative fees.

State v. Michael Cooper, Renaissance TTP, Inc., d/b/a The Tax People.net, d/b/a Advantage International Marketing (AIM)

On May 15, 2001, the Court found that Renaissance TTP Inc. and Michael C. Cooper were operating an illegal pyramid and entered a Temporary Injunction against them. The Court also froze the assets and appointed a Receiver for Renaissance. A copy of the Temporary Injunction can be found on the Court's web site at <http://www.shawneecourt>. In March 2003, Mr. Cooper was found in contempt for failing to cooperate with the receiver and for failing to account for, and deliver to the Court over \$1.7 million dollars from the sale of the company's beach house in Puerto Vallarta, Mexico. Mr. Cooper was then jailed, but was given a temporary release to travel to Mexico with the purpose of returning with the money. Mr. Cooper did not return as ordered, but remained in Mexico. On June 5, 2003, the Court entered judgment against Renaissance and also against Michael Cooper personally for civil penalties under the KCPA in the amount of \$13,220,000.00. The Court also made the Injunction entered on May 15, 2003, final and permanent. On July 14, 2003, the Court entered an additional judgment against Renaissance and also against Michael Cooper personally for consumer damages under the KCPA in the amount of \$13,621,500.00 and for attorneys fees and expenses incurred in the case. Ownership of the Coopers' home was also transferred to the receiver. Thereafter, Mr. Cooper's family joined him in Puerto Vallarta, Mexico where they are now believed to be residing in the condominium complex that the corporation owned. Although Mr. Cooper remains in Mexico he has filed an appeal with the Kansas Court of Appeals. Renaissance TTP Inc., did not appeal the judgment. The next step for this office is to defend the judgment against Mr. Cooper in the appellate court and to look for any assets which could be used to satisfy the judgments.

State v. Gary Gucciano d/b/a Solstice Arms, Inc., SAI, Solstice Arms Int and Solstice Arms

On May 21, 2003, the Attorney General filed a Petition against this sole proprietorship that does custom gunsmithing of firearms and firearms parts kits supplied by consumers for violations of the KCPA relating to unconscionable and deceptive business practices. The Attorney General alleged that consumers were solicited to send money and guns on the promise that services would be rendered in a timely manner and guns returned. Many consumers had been waiting over two years to receive any benefit from their contract. Over 250 guns were seized involving more than 200 consumers. The Defendant entered into a Consent Judgment, the relief including the return of property and restitution to consumers, civil penalties and an injunction to prohibit him from accepting payment prior to rendering services and returning property to consumers who request his service. As of today, the office has been unable to locate approximately ten of the consumers whose property we are holding.

State v. Genuine Parts Company, Inc., d/b/a NAPA, and JETA, Inc., d/b/a Jayhawk Auto Supply

On May 18, 2001, the Attorney General filed a lawsuit against the above named auto parts dealers for inaccurate price scanning equipment and practices. A pretrial conference occurred in October, 2002. This case was settled by a Consent Judgment reached between the parties. Kansas received \$1,750.00.

In the Matter of H&R Block Services, Inc.

On April 17, 2003, along with 42 other states, the Attorney General entered into an Assurance of Voluntary Compliance with this company for automatically adding a fee of \$22 for one of the for-fee optional service Peace of Mind guarantee,(POM) to all consumer tax return preparation invoices without first obtaining the consumer's affirmative acceptance of POM. This multistate investigation resulted in an offer from H&R Block to provide \$2,300,000.00 to the states, of which \$50,000.00 was paid to Kansas.

State v. Thomas W. Hart, d/b/a Hart's Hearing Aid Center

On September 19, 2003, the Attorney General filed a lawsuit against this individual and company for violations of the KCPA regarding deceptive business practices and failure to obey subpoena. Defendant Hart represented that his products and services were covered with a "full money back guarantee" and did not follow through. Hart is now living in San Diego, California. The Attorney General obtained a default judgment against Hart on November 24, 2003. The Court ordered \$60,000.00 in civil penalties, \$12,350.00 in consumer restitution, \$400.00 for investigative fees, as well as additional penalties of \$100.00 per day until Defendant complies with the subpoena.

In the Matter of Holm Automotive, Inc.

On October 17, 2003, the Attorney General entered into a Consent Judgment with Holm Automotive for alleged violations of the KCPA related to deceptive advertising. The Respondent agreed to pay \$2,500.00 in civil penalties and investigative fees.

State v. Leasecomm Corporation, and Microfinancial Incorporated

On May 29, 2003, the Attorney General filed a Consent Judgment with this company for violations of the KCPA. The Defendant agreed to pay \$45,000.00 in civil penalties and \$45,000.00 in investigative fees and expenses.

In the Matter of Lewis Motors, Inc., a Kansas Corporation and Aleta Blu, individually

On November 25, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Lewis Motors, Inc., a Kansas Corporation and Aleta Blu, individually, for alleged violations of the KCPA. The Attorney General alleged that Respondent had misrepresented to the consumer the availability of a rebate to get the consumer to enter into a transaction. The Respondent agreed to pay \$2,000.00 in consumer restitution and \$1,750.00 in civil penalties and investigative fees.

State v. Mark Mason d/b/a RR Custom Paint

On November 6, 2002, the Attorney General filed a lawsuit with this company who does custom painting and modification of model railroad trains for several violations of the KCPA relating to unconscionable and deceptive business practices. The Defendant entered into a Consent Judgment which required restitution and return of the property to consumers. The allegations are similar to those alleged in State v. Gucciano. The office seized over 600 model trains, involving over 200 consumers. We have been unable to locate approximately 5 consumers.

State v. New Horizons TKD, Inc. d/b/a Sixth Street Fitness, Donald Booth, individually, The Club, L.L.C. d/b/a Total Fitness Athletic Center, and Martin Tuley, individually

On October 2, 2002, the Attorney General filed a Petition for deceptive and unconscionable business practices. Sixth Street Fitness represented to prepaid consumers that it had merged with Total Fitness and consumers were required to complete their contracts at that business when in fact no merger had taken place. Sixth Street Fitness continued to accept new memberships after it had reason to believe it would be closing its operations without disclosing that fact to consumers. The Attorney General's Office contacted the third-party vendor that managed automatic withdrawals of payments for the businesses and, most consumers received restitution. Both businesses ceased operations. As a result, the Attorney General agreed to dismiss the case without prejudice.

In the Matter of Noller Automotive Group, Inc.

On November 13, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Noller Automotive Group, Inc. for alleged violations of the KCPA, related to deceptive advertising. The Respondent agreed to pay \$2,000.00 in civil penalties and investigative fees.

In the Matter of Pfizer Inc.

On December 31, 2002, along with 19 other states the Attorney General entered into an Assurance of Voluntary Compliance with Pfizer, Inc. for their promotional practices for Zithromax. The Respondent agreed to pay \$4,000,000.00 to the states, of which \$127,273.00 was paid to Kansas.

State v. Jack Pittaway Jr., d/b/a Pittaway Construction

On February 11, 2003, the Attorney General filed a lawsuit against Jack Pittaway, Jr., d/b/a Pittaway Construction, for violations of the KCPA regarding unconscionable business practices. Defendant Pittaway entered into a contract and accepted payment to perform services that have not been completed to date. An Order for Default Judgment was filed on August 25, 2003, ordering the Defendant to pay \$2,120.31 in consumer restitution and \$10,000.00 in civil penalties.

State v. Pro-Life Campaign Committee, and Pablo Gersten, individually

On May 21, 2003, the Attorney General filed a lawsuit against this individual and company for violations of the KCPA related to registration of a Charitable organization. On September 17, 2003 the office determined it was appropriate to dismiss the action without prejudice due to facts which came to light after filing.

State v. Rural Cellular Corporation, and RCC Holdings, Inc., a subsidiary of Rural Cellular Corporation, f/k/a Triton Cellular, a/k/a Cellular One, a/k/a Unicel

On March 20, 2003, the Attorney General entered into a Consent Judgment with the Defendants for alleged violations of the KCPA and the Kansas No-Call Act, related to provision of cellular phone service. In addition to complaints of being contacted despite being registered on the Kansas No-Call List, consumers complained that Defendants unilaterally changed material terms in their service agreements. The Defendants agreed to pay \$30,000.00 in civil penalties and investigative fees.

State v. Gregory L. Sams, individually, and d/b/a Benefit Reduction Services

On September 17, 2003, the Attorney General filed a lawsuit against this individual and company for violations of the KCPA regarding deceptive and unconscionable business practices. Defendant Sams was a convicted felon whose parole conditions prohibited his handling of other people's money or making contact with elderly people. After leaving prison in 2002, Sams went to work for an insurance company from which he allegedly stole a customer list. He then used confidential information about those consumers to telemarket them and access their bank accounts. He offered discount services to elders for long-term healthcare and savings on prescription drugs. The Attorney General obtained a default judgment on December 30, 2003, which includes \$380,000.00 in civil penalties, \$2,056.25 in consumer restitution, \$1,290.00 in investigative fees. The Missouri Parole Board has revoked Sams' parole, and he has been reincarcerated.

In the Matter of Paul A. Schmitt Music Company, d/b/a Schmitt Music Centers

On March 5, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with above named company for using unconscionable practices when conducting sales to elderly clients. The Respondent agreed to pay \$15,000.00 to the Attorney General's Office, for civil penalties and investigative fees and to pay \$51,695.00 in consumer restitution.

State v. Thomas W. Shavenore

On June 23, 2003, the Attorney General filed a lawsuit against this individual for unconscionable business practices. Defendant Shavenore entered into a contract and accepted payment for siding services that have not been completed to date. The case was dismissed without prejudice.

State v. David Scott d/b/a Slanted Fedora Entertainment

On September 19, 2003, the Attorney General filed a Petition alleging 27 violations of the KCPA. This Kansas company organizes and promotes Star Trek and science fiction related conventions across the country. Allegations include misrepresentations as to which stars will appear at the conventions, failure to comply with refund policies and charging consumers' credit or debit cards without authorization. Defendants filed a motion seeking to dismiss several of the counts as they were not pled with specificity. Pursuant to the Court's ruling, the petition was amended on January 9, 2004. The amended petition contains 120 pages, over 1000 paragraphs, and 67 allegations of KCPA violations. A second amended petition was filed April 8, 2004, containing 80 allegations of KCPA violations. The case is still pending.

State v. Steakhouse Quality Meats Inc., d/b/a Steakhouse Meats, Reem Khashou, Rodney Creighton, and Clayton Simpson

On May 8, 2003, the Attorney General filed a lawsuit against this company for violations of the KCPA relating to "price per pound" and "door-to-door" solicitation violations and violations of the Judgment entered into on October 22, 1998, against its predecessor America's Choice Steak, Inc. and Rodney Creighton. The case is pending.

In the Matter of Superior Toyota, Inc.

On September 15, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with this company for alleged violations of the KCPA relating to an advertisement that contained misleading representations. The Respondent agreed to pay \$2,500.00 in civil penalties and investigative fees.

State v. Joe Taylor, d/b/a Taylor Roofing

On June 19, 2003, the Attorney General filed a lawsuit against this individual and company for unconscionable business practices. The Attorney General alleges that Defendant Taylor entered into a contract and accepted payment for services that have not been completed to date and for which Defendant never intended to perform. Defendant entered an Assurance of Voluntary Compliance wherein he agreed to pay \$44,000.00 in consumer restitution and \$500.00 in civil penalties and investigation fees.

State v. Mark Tilford, individually, and d/b/a Mr. Stitch Upholstery & Tops, Inc., d/b/a MS Interiors, d/b/a Mr. Stitch, Inc.

On March 11, 2003, the Attorney General filed a lawsuit against this company for unconscionable business practices. The Defendant entered into a contract representing that custom remodeling services had been performed and required payment for the same, when in truth the payments were not applied for that purpose and consumers received no benefit for the services or payment. The case is scheduled for trial August 23, 2004.

In the Matter of Wal-Mart Stores, Inc.

On August 20, 2003, the Attorney General along with 42 other state Attorneys General entered into an Assurance of Voluntary Compliance with this company setting tobacco retailing practices with regard to sales to minors. The Respondent agreed to pay \$437,500.00 to the states, of which \$9,486.19 will be paid to Kansas.

State v. Jerry Washburn, individually, and Jerry Washburn, d/b/a Affordable Asphalt Maintenance

On March 19, 2003, the Attorney General filed a lawsuit against this individual and company for alleged unconscionable business practices in violation of the "door-to-door" solicitation laws. Defendant Washburn entered into a contract and accepted payment for services without providing the notice of right-to-cancel. The case is scheduled for trial August 30, 2004.

State v. Joshua Werner

On May 15, 2003, the Attorney General filed a Petition for violations of the Kansas Consumer Protection Act regarding compliance with door-to-door sales. A Consent Judgment was filed on September 29, 2003, and the Defendant agreed to pay \$1,500.00 in civil penalties and investigative fees. A companion criminal case was filed for operating without a transient license, a Class A misdemeanor to which the Defendant pled guilty.

In the Matter of Wolfe's Camera Shops, Inc.

On September 27, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with this company for alleged violations of the KCPA regarding a number of advertisements that contained misleading representations as to benefits of offered incentives and price. The respondent agreed to pay \$2,500.00 in civil penalties and investigative fees.

CONCLUSION

The above enforcement actions taken by the Consumer Protection Division reflect the priority that the Office of Attorney General Phill Kline has in protecting Kansas consumers from deceptive and unconscionable business practices. 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 KCPA.

SUMMARY OF 2003 **ANTITRUST ENFORCEMENT ACTIONS**

State of Kansas ex rel. vs Abbott Laboratories Inc., Geneva Pharmaceuticals, Inc., and IVAX Pharmaceuticals, Inc., formerly known as Zenith Goldline Pharmaceuticals, Inc.

On September 27, 2001, Kansas joined Florida and Colorado in filing a complaint against Abbott Laboratories, Geneva Pharmaceuticals, Inc and IVAX Pharmaceuticals. The case involves the drug Hytrin, a brand-name drug manufactured by Abbott that is prescribed for the treatment of hypertension and benign prostatic hyperplasia ("BPH"). The complaint alleges that certain conduct by these companies prevented generic versions of Hytrin from coming to the market and that this conduct violates the antitrust laws of the United States and Kansas. A settlement has been reached with IVAX Pharmaceuticals. The case involving Abbot Laboratories, Inc. and Geneva Pharmaceuticals, Inc. is still pending.

State of Kansas ex rel. vs BMG Music, Bertelsmann Music Group Inc., Capitol Records Inc., d/b/a EMI Music Distribution, Virgin Records America Inc., Priority Records, L.L.C., MTS Inc., d/b/a Tower Records, Musicland Stores Corporation, Sony Music Entertainment, Inc., Trans World Entertainment Corporation, Universal Music Group, Inc., Universal Music & Video Distribution Corp., UMG Recordings Inc., Warner-Elektra-Atlantic Corp., Warner Music Group Inc., Warner Bros. Records Inc., Atlantic Recording Corp., Elektra Entertainment Group Inc., and Rhino Entertainment Co.

On August 8, 2000, the Attorney General, along with 41 other states and three territories, filed suit in the United States District Court for the Southern District of New York, against the nation's largest distributors of recorded music, affiliated labels and various retailers for price fixing. Also named were retail giants Musicland, which operates more than 1,300 retail outlets under the Musicland and Sam Goody trade names, Trans World, which operates more than 900 stores under the names Camelot, FYE, Music & Movies, Planet Music, Record Town, Saturday Matinee, Spec's Music, Strawberries and the Wall, and MTS Inc. (doing business as Tower Records.) The complaint further targets unnamed co-conspirators "both known and unknown" and calls for the awarding of triple damages to consumers and the assessment of civil penalties against the companies. The complaint alleges that in the early 1990's, recorded music outlets such as Best Buy, Circuit City and Target began to offer stiff competition to mall-based music stores. The Defendants are accused of engaging in an unlawful scheme designed primarily to stop retail outlets from offering music at deep discounts. The parties have agreed to a settlement which included a cash payment of \$13.86 to consumers who made a timely claim, and a contribution of music CD's to the States. Kansas share of the CD's will be distributed to the public libraries. Distribution is expected to be completed by the end of summer 2004.

State of Kansas ex rel. vs Bristol-Myers Squibb Co., Danbury Pharmacal, Inc., and Watson Pharma, Inc. (In Re Buspirone Antitrust Litigation)

This case was first filed by thirty-two states in December, 2001, in the federal district court for the Southern District of New York. Kansas joined the multistate suit in April, 2002. The case involves the anti-anxiety drug BuSpar, which is Bristol Myers Squibb Co.'s name for buspirone. The states' complaint alleged that Bristol-Myers Squibb Co. fraudulently listed its patent for BuSpar in the FDA's Orange Book and that Bristol-Myers Squibb Co. entered into anticompetitive agreements with two companies to prevent distribution of generic buspirone. A settlement has been reached resulting in payments to consumers based upon claims submitted. Calculation and distribution of settlement proceeds for state agencies is pending. The consumer claims have been paid.

State of Kansas ex rel. vs Cardizem

On July 2, 2001, this action was brought by the Attorney General, along with Attorneys General of 26 other states, seeking relief for a series of anti-competitive and illegal acts by which Defendants sought to delay or prevent the marketing of less expensive, generic alternatives to Cardizem CD, a highly profitable, brand-name drug for treatment of chronic chest pains, high blood pressure, and prevention of heart attacks. The parties have agreed to a settlement which must be approved by the court.

State of Kansas ex rel. v. Microsoft

On May 18, 1998, the Attorney General, along with 18 other states and the Department of Justice, filed an antitrust action against Microsoft Corporation in the United States District Court for the District of Columbia. The suit alleged that Microsoft's conduct violated state and federal antitrust laws. In November 1999, the court found that Microsoft had violated the state and federal antitrust laws and caused consumer harm by, *inter alia*, engaging in a series of actions designed to protect its monopoly power. The Court also found that Microsoft demonstrated that it would use its prodigious market power and immense profits to harm any firm that insisted on pursuing initiatives that could intensify competition against one of Microsoft's core products, and that Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The Court issued an order in June 2000 which included remedies involving the reorganization of the structure of Microsoft. Microsoft appealed to the United States Court of Appeals for the District of Columbia which affirmed the Findings of Fact that Microsoft's conduct violated the law, but reversed and remanded the case for further proceedings and consideration of the remedy to be imposed for the illegal conduct. In November 2000, nine states and the Department of Justice entered into a settlement of the case which must be approved by the Court. The State of Kansas and the other non-settling states continued to litigate and submitted a separate remedy proposal. The litigating states presented their case last spring. Although there was significant industry opposition to the DOJ settlement the court approved the settlement while at the same time granting judgment to the litigating states for some, but not all, of the additional relief

suggested by the litigating states. Kansas and the other states are working with Microsoft to insure compliance with the settlement and judgment.

State of Kansas ex rel. vs Salton

Kansas and the Attorneys General of all States (except Minnesota, Missouri and New Mexico), Puerto Rico, and the District of Columbia brought a resale price maintenance, exclusive dealing and monopolization lawsuit against Salton, Inc., claiming that Salton's alleged practices affected the price at which some Salton products (primarily the George Forman Grill) were sold at some retail stores during the period from Jan. 1, 1998 -Sept. 6, 2002. The case has been settled subject to court approval.

Under the proposed settlement, Salton has agreed to pay the States \$7.654 million for claimed damages. This payment will be made in three installments, the last of which is on or before March 1, 2004. Salton will also pay the States \$200,000 for costs and attorneys' fees. Salton has agreed to a court order prohibiting certain conduct in the sale of its indoor contact grills, including agreements to set retail prices.

In view of the difficulty in identifying the millions of purchasers of the George Forman Grills covered by the settlement and the relatively small alleged overcharge per grill, the settlement funds will be distributed in each state on a *cy pres* basis to not-for-profit corporations, charitable organizations, or governmental entities to advance health or nutrition-related causes. Kansas received \$75,000.00 in settlement proceeds. Proceeds were distributed via a court approved *cypress* distribution to four pregnancy maintenance organizations for the advancement of health and nutritional programs.

State of Kansas ex rel. vs. Bristol-Myers Squibb Co. ("BMS"), (Taxol)

Kansas, along with a group of 28 other states, the District of Columbia, Puerto Rico, and the Virgin Islands joined together in the multi-state action that accuses Bristol of acting illegally to keep the cheaper, generic version of Taxol off the market. Suit was filed in the United States District Court for the District of Columbia.

The lawsuit alleges that Bristol knowingly manipulated the US Patent and Trademark Office process by fraudulently securing patents that had no legal validity, which prevented generic drug manufacturers from entering the marketplace until 2000. Bristol's sales of Taxol have totaled at least \$5.4 billion since 1998. A standard course of treatment using the name brand drug can cost between \$6,000 and \$10,000 per patient. A settlement has been reached. Consumers will be paid based upon claims submitted, averaging \$500.00 each. Proceeds of \$260,000.00 recovered for state agencies and Medicaid.

State of Missouri, State of Arkansas, State of Kansas, State of Illinois, State of Iowa and State of Texas, Plaintiffs v. Arch Coal, Inc., New Vulcan Coal Holdings, LLC, and Triton Coal Company, LLC., Defendants.

The State of Kansas, along with five other affected states, sued in Federal District Court seeking an injunction to stop the acquisition of Triton Coal Co. by Arch Coal, Inc. The six plaintiff states represent the largest purchasers of coal from the region in question. The coal industry is highly consolidated, and within the Wyoming

Southern Powder River Basin, even more so. The removal of Triton from the Southern Powder River Basin would concentrate 100% of 8800 Btu coal in the hands of only three producers, and concentrate 86% of the 8400 Btu coal in that region. Kansas utilities purchase more than 96% of the state's coal needs from this region. Price increases for coal resulting from a shrinking competitive market would be passed along in the form of higher utility costs to Kansas residents, businesses, and industrial electric ratepayers. The matter was heard in June and early July, 2004. The court is expected to render a decision by mid-August.

In Re: Kansas Microsoft Litigation

This Microsoft matter is a private class action alleging overcharges by Microsoft on certain software products. Similar matters are pending in state courts throughout the country. Plaintiffs' attorneys have met with varying degrees of success both with regard to the merits of the case, and approval of proposed settlements. The proposed settlement in Kansas did not appear fair to consumers, and the proposed attorneys fees appear disproportionate to the benefit provided by the settlement. The Kansas Attorney General filed an objection to the settlement on behalf of Kansas consumers. Several additional parties filed objections on similar grounds. The court heard the matter in May, 2004, and approved the settlement despite the objections. However, the court has taken the attorneys fees matter under advisement and has not yet rendered a decision as to the amount of fees to be awarded. A supplemental objection was filed by the State for the court's consideration as it reviews the fee matter.

Fatema Azizian, et al. v. Federated Department Stores, Inc., et al.

This matter is a private class action alleging collusion and price fixing in the cosmetics industry. The settlement in this case is questionable and as presented, the true value of the settlement to consumers cannot be determined. There are also concerns with regard to proper notice to consumers. The State of Kansas along with ten other states have filed an objection to the settlement on behalf of consumers in their respective states. Disposition of the matter is pending.

ANTITRUST INVESTIGATIONS

Smithfield acquisition of Farmland Foods

The Kansas Attorney General investigated the competitive effects of the merger of these two entities. While the reduction of competition in any given market is cause for concern, no legal grounds were found to exist upon which this transaction could be successfully challenged. Joint public hearings by the Kansas, Nebraska, and South Dakota Attorneys General were held as part of this investigation.

Caremark acquisition of AdvancePCS

The State of Kansas investigated the competitive effects of the merger of these two entities. While the reduction of competition in any given market is cause for

concern, no legal grounds were found to exist upon which this transaction could be successfully challenged.

Prescription Drugs v. Generic Equivalents

The Kansas Attorney General currently is performing three separate confidential investigations regarding anti-competitive behavior by manufacturers of branded drugs intending to keep generic versions of their respective drugs from coming to market, or inflating the cost of the generic versions of branded drugs.

NO-CALL
ENFORCEMENT ACTIONS

In the Matter of ADT Security Services, Inc.

On November 13, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with ADT Security Services, Inc. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$5,000.00 in civil penalties and investigative fees.

State v. Allen Equity Mortgage, Inc.

On August 12, 2003, the Attorney General entered into a Consent Judgment with Allen Equity Group Mortgage, Inc. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$1,500.00 in civil penalties and investigative fees.

In the Matter of American Residential Funding, Inc.

On October 21, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with American Residential Funding, Inc. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$4,000.00 in civil penalties and investigative fees.

State v. The Ameridebt Group, Inc.

On November 18, 2003, the Attorney General entered into a Consent Judgment with The Ameridebt Group, Inc. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$6,500.00 in civil penalties and investigative fees.

State v. Ameripure Water Company

On May 14, 2003, the Attorney General entered into a Consent Judgment with Ameripure Water Company for violations of the Kansas No-Call Act. The Defendant agreed to pay \$10,000.00 in costs and investigative fees.

State v. Banker's Life & Casualty Company

On January 28, 2003, the Attorney General entered into a Consent Judgment with Banker's Life & Casualty Company for violations of the Kansas No-Call Act. The Defendant agreed to pay \$15,000.00 in costs and fees.

State v. Beyond Marketing Corp.

On October 17, 2003, the Attorney General entered into a Consent Judgment with Beyond Marketing Corp. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$4,000.00 in civil penalties and investigative fees.

In the Matter of Big River Marketing, Ltd.

On May 8, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Big River Marketing, Ltd. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$3,500.00 in civil penalties and investigative fees.

In the Matter of BrainstormUSA, L.L.C.

On August 14, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with BrainstormUSA, L.L.C. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$2,500.00 in civil penalties and investigative fees.

In the Matter of Chalonne Foerster, d/b/a Five Star Cellular

On August 6, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Five Star Cellular for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$10,000.00 in civil penalties and investigative fees.

State v. Debt Management Center, Inc.

On April 14, 2003, the Attorney General entered into a Consent Judgment with Debt Management Center, Inc. for alleged violations of the Kansas No-Call Act. The Defendant agreed to pay \$15,000.00 in costs and fees.

In the Matter of Direct Security Services, Inc.

On April 18, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Direct Security Services, Inc. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$4,000.00 in civil penalties and investigative fees.

In the Matter of Escapes!, Inc., an Arkansas corporation

On August 20, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Escapes!, Inc. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$1,500.00 in costs and investigative fees.

In the Matter of GGIS L.L.P.. d/b/a Gentry Group

On June 13, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with GGIS L.L.P. d/b/a Gentry Group for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$5,000.00 in civil penalties and investigative fees.

State v. Grand Vacations International, Inc.

On March 17, 2003, the Attorney General filed a lawsuit with Grand Vacations International, Inc. for alleged violations of the Kansas No-Call Act. The case is pending.

State v. Grandvista Vacations, L.L.C., a Missouri limited liability company

On January 28, 2003, the Attorney General entered into a Consent Judgment with Grandvista Vacations of the Kansas No-Call Act. The Defendant agreed to pay \$10,000.00 in civil penalties and investigative fees.

State v. Guardian Marketing Services, Corp.

On August 28, 2003, the Attorney General entered into a Consent Judgment with Guardian Marketing Services, Corp. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$4,500.00 in civil penalties and investigative fees.

In the Matter of Hearthside Lending Corporation

On June 25, 2003, the Attorney General entered into an Assurance of Voluntary Compliance for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$4,000.00 in costs and investigative fees.

State v. Heartland Home Finance Inc.

On March 12, 2003, the Attorney General entered into a Consent Judgment with Heartland Home Finance Inc. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$4,000.00 in civil penalties and investigative fees.

State v. Higher Response Marketing, Inc.

On June 6, 2003, the Attorney General entered into a Consent Judgment with Higher Response Marketing, Inc. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$6,000.00 in civil penalties and investigative fees.

State v. Humboldt Corporation Inc.

On October 17, 2003, the Attorney General entered into a Consent Judgment with Humboldt Corporation Inc. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$2,500.00 in civil penalties and investigative fees.

In the Matter of Judson Enterprises, Inc. , and d/b/a K Designers Inc.

On August 20, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Judson Enterprises, Inc. d/b/a K Designers Inc. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$5,000.00 in civil penalties and investigative fees.

State v. Kathryn Blank, individually and d/b/a KB & Associates

On June 26, 2003, the Attorney General entered into a Consent Judgment with KB & Associates for violations of the Kansas No-Call Act. The Defendant agreed to pay \$5,000.00 in civil penalties and investigative fees.

State v. Krane Products, Inc.

On June 3, 2003, the Attorney General entered into a Consent Judgment with Krane Products, Inc. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$2,500.00 in costs and investigative fees.

State v. Lifeline Industries, Inc.

On June 5, 2003, the Attorney General entered into a Consent Judgment with Lifeline Industries, Inc. for violations of the Kansas No-Call Act. The Defendant agreed to pay \$3,000.00 in civil penalties and investigative fees.

State v. Lighthouse Financial Corporation

On October 17, 2003, the Attorney General entered into a Consent Judgment with Lighthouse Financial Corporation for violations of the Kansas No-Call Act. The Defendant agreed to pay \$2,500.00 in civil penalties and investigative fees.

In the Matter of Mortgage Pros, Inc.

On August 20, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Mortgage Pros, Inc. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$4,000.00 in civil penalties and investigative fees.

In the Matter of New Colorado Prime Holdings, Inc.

On August 20, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with New Colorado Prime Holdings, Inc. for alleged violations of the Kansas No-Call Act. The Respondent agreed to pay \$3,000.00 in civil penalties and investigative fees.

State v. Pacesetter Corporation, a Nebraska Corporation

On April 28, 2003, the Attorney General entered into a Consent Judgment with Pacesetter Corporation for violations of the Kansas No-Call Act. The Defendant agreed to pay \$5,000.00 in civil penalties and investigative fees.

State v. Rural Cellular Corporation, and RCC Holdings, Inc., a subsidiary of Rural Cellular Corporation, f/k/a Triton Cellular, a/k/a Cellular One, a/k/a Unicel

On March 20, 2003, the Attorney General entered into a Consent Judgment with the Defendants for alleged violations of the KCPA and the Kansas No-Call Act, related to provision of cellular phone service. In addition to complaints of being contacted despite being registered on the Kansas No-Call List, consumers complained that Defendants unilaterally changed material terms in their service agreements. The Defendants agreed to pay \$30,000.00 in civil penalties and investigative fees.

In the Matter of Satellite Network, Inc.

On September 9, 2003, the Attorney General entered into an Assurance of Voluntary Compliance with Satellite Network, Inc. for alleged violations of the Kansas

2003 NO-CALL COMPLAINTS

Complaints Filed:	1,814
Complaints Closed:	1,906

<u>Category</u>	
No-Call	1,814

2003 DISPOSITION OF NO-CALL CLOSED COMPLAINTS

	<u>Complaints Received</u>	<u>Percent of Total</u>
No Reply From Complainant	11	0.58%
Unable to Locate Respondent	283	14.85%
Respondent Out of Business	16	0.84%
No Violation	312	16.37%
Insufficient Evidence	20	1.05%
Withdrawn	1	0.05%
Other	5	0.26%
Defendant Enjoined & Violations Found	2	0.10%
Consent Judgment	375	19.67%
Assurance of Voluntary Compliance	174	9.13%
Default Judgment	18	0.94%
No-Call Charity	95	4.98%
No-Call Political	2	0.10%
No-Call Polling	103	5.40%
No-Call Established Business Relationship Exemption	203	10.65%
No-Call Express Authorization Exemption	17	0.89%
No-Call Collection Exemption	158	8.29%
No-Call Affirmative Defense - Mistake	31	1.63%
No-Call Affirmative Defense - Business Phone	65	3.41%
Misfiled - Transferred	15	0.79%
TOTAL CASES	1906	100.00%