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FEDERAL TRADE COMMISSION
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Table of Contents

Page

SUMMARY 1
- MAINTAINING COMPETITION 1
- CONSUMER PROTECTION 1
- CONSUMER AND COMPETITION ADVOCACY 2
- ECONOMIC ANALYSIS 2
- ADMINISTRATION AND MANAGEMENT 2

MAINTAINING COMPETITION MISSION 4
- PREMERGER NOTIFICATION 4
- MERGERS AND JOINT VENTURES 5
- HORIZONTAL RESTRAINTS 8
- DISTRIBUTIONAL ARRANGEMENTS 10
- SINGLE FIRM VIOLATIONS 11
- COMPLIANCE 12

CONSUMER PROTECTION MISSION 13
- ADVERTISING PRACTICES 13
- SERVICE INDUSTRY PRACTICES 14
- MARKETING PRACTICES 15
- CREDIT PRACTICES 16
- ENFORCEMENT 17
- CONSUMER AND BUSINESS EDUCATION 18

ECONOMIC ACTIVITIES 19
- ANTITRUST 19
- CONSUMER PROTECTION 20

EXECUTIVE DIRECTION 21
- AUTOMATED SYSTEMS 21
- INFORMATION SERVICES 22
- LIBRARY 23
- PROCUREMENT AND GENERAL SERVICES 23
- BUDGET AND FINANCE 24
- HUMAN RESOURCES 24
- REGIONAL OFFICES 24

Appendix

PART II CONSENT AGREEMENTS ACCEPTED AND PUBLISHED FOR PUBLIC COMMENT 25
MAINTAINING COMPETITION MISSION 25
CONSUMER PROTECTION MISSION 26

PART II CONSENT ORDERS ISSUED 29
MAINTAINING COMPETITION MISSION 29
CONSUMER PROTECTION MISSION 36

PART III ADMINISTRATIVE COMPLAINTS 46
MAINTAINING COMPETITION MISSION 46
CONSUMER PROTECTION MISSION 46

PART III CONSENT AGREEMENTS ACCEPTED AND PUBLISHED FOR PUBLIC COMMENT 48
CONSUMER PROTECTION MISSION 48

PART III CONSENT ORDERS ISSUED 49
MAINTAINING COMPETITION MISSION 49
CONSUMER PROTECTION MISSION 50

INITIAL DECISIONS 52
MAINTAINING COMPETITION MISSION 52

FINAL COMMISSION ORDERS 53
MAINTAINING COMPETITION MISSION 53

ORDER MODIFICATIONS 54
MAINTAINING COMPETITION MISSION 54
CONSUMER PROTECTION MISSION 55

PRELIMINARY AND PERMANENT INJUNCTIONS 56
MAINTAINING COMPETITION MISSION 56
CONSUMER PROTECTION MISSION 56

CIVIL PENALTY ACTIONS 76
MAINTAINING COMPETITION MISSION 76
CONSUMER PROTECTION MISSION 77

APPELLATE COURT DECISIONS 89
MAINTAINING COMPETITION MISSION 89

SUPREME COURT DECISIONS 90
MAINTAINING COMPETITION MISSION 90

ECONOMIC REPORTS, WORKING PAPERS AND POLICY PAPERS 91
ECONOMIC REPORTS 91
ECONOMIC WORKING PAPERS 91
MISCELLANEOUS ECONOMIC POLICY PAPERS 92

CONSUMER AND COMPETITION ADVOCACY 93
OFFICE OF CONSUMER AND COMPETITION ADVOCACY 93
FEDERAL AGENCIES 93
STATES 96

TABLE OF CASES LISTED IN THE APPENDIX 101

SUMMARY

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

In addition to carrying out its statutory enforcement responsibilities, the Commission advances the policies underlying Congressional mandates through cost-effective nonenforcement activities, such as consumer education. This report itemizes the Commission's accomplishments in fiscal year 1992.

MAINTAINING COMPETITION

The Bureau of Competition and the Commission's ten regional offices assisted the Commission in fulfilling its mission of maintaining competition in the U.S. economy. In fiscal year 1992, this included reviewing business practices in order to limit both private and governmental restraints on free and vigorous competition, thus ensuring that consumers have access to adequate sources of goods and services at reasonable, competitive prices. The Commission's enforcement of deregulation efforts helps in lowering costs and prices, lessening inflation, and increasing innovation. In the merger area, the number of Hart-Scott-Rodino premerger filings for fiscal year 1992 increased by approximately 3.9% over the corresponding 1991 figures. In fiscal year 1992, the Commission reviewed mergers in many sectors of the economy, and measures were taken to ensure compliance with Commission orders requiring divestitures and prior approvals of acquisitions.

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

CONSUMER PROTECTION

The Bureau of Consumer Protection, assisted by the regional offices, continued its mission to maintain a well functioning marketplace that allows consumers to make informed decisions on how to spend their money. In fiscal year 1992, the Commission obtained settlements in several cases involving deceptive environmental claims and issued *Guides for the Use of Environmental Marketing Claims* to help reduce consumer confusion and prevent the false or misleading use of environmental terms such as recyclable, degradable, and ozone friendly. Several consent agreements approved by the Commission involved health claims for foods and nutritional supplements, such as low sodium content, fat, and cholesterol. The Commission also issued consent orders in the health care service area, including providers of medically supervised diet programs and providers of infertility treatment services. In law

enforcement efforts directed at preventing fraud, the Commission took action against investment scams and telemarketing fraud, obtaining thirty- six orders with provision for redress or disgorgement. The enforcement of consumer credit laws resulted in many orders containing provisions for consumer redress, disgorgement, and civil penalties. The Commission took action against several credit superbureaus for furnishing consumer reports to various parties for impermissible purposes. In enforcing Commission cease and desist orders, several significant civil penalty settlements were obtained with violators of those orders. The Commission filed its first enforcement actions under the Octane Posting Rule and worked closely with state and local officials to ensure compliance with the Rule. Finally, the Office of Consumer and Business Education produced more than forty-nine new and revised publications and worked with consumer, industry, and government representatives on consumer education campaigns concerning weight loss products and programs, credit repair scams, and advance fee loans.

CONSUMER AND COMPETITION ADVOCACY

A number of federal and state legislatures and regulatory bodies, including the Department of Justice, the Federal Aviation Administration, the Federal Communications Commission, and the Food and Drug Administration, sought the Commission's advice on proposed legislation or regulatory matters. Topics addressed included advertising, antitrust, communications, health care, food labeling, occupational licensing, and transportation.

ECONOMIC ANALYSIS

In fiscal year 1992, Commission economists made policy recommendations and produced reports on topics of interest to the public. While direct support of enforcement, particularly antitrust, activities absorbed the bulk of the resources of the Bureau of Economics, the Bureau was also responsible for analyzing data and publishing information about the nation's industries, markets, and business firms. The Bureau conducted a number of studies on a broad range of antitrust, consumer protection, and regulatory topics. This work resulted in published reports on horizontal mergers and department store reference pricing.

ADMINISTRATION AND MANAGEMENT

In fiscal year 1992, support services to Commission staff focused on ways to improve staff productivity through the increased use of modern information systems technology. A large part of this effort was directed at putting organizations on a computer network to allow multiple users easy access to case-related information.

The Commission's budget increased by thirteen workyears in fiscal year 1992, and its recruitment program continued with selections of attorneys, legal interns, law clerks, and economists. The Personnel Division worked to develop and administer ongoing training and continuing education programs, and the Procurement and General Services Division started and completed numerous projects to improve Commission facilities.

The Information Services Division and other Commission organizations responded to almost forty-three thousand consumer complaints. The Division also continued to respond to requests for records under the Freedom of

Information and Privacy Acts. In addition, approximately three million seven hundred and eighteen thousand consumer and business pamphlets and brochures were distributed through the Division.

MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is devoted to preventing unfair trade practices and promoting competition through enforcement of the Federal Trade Commission Act, the Clayton Act, the Robinson-Patman Act, and the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The mission's purpose is the detection and elimination of antitrust law violations, including collusion, anticompetitive mergers, predatory single firm conduct, and injurious vertical agreements. The Bureau of Competition is primarily responsible for the Maintaining Competition Mission, with support from the Bureau of Economics and the ten regional offices.

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

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

PREMERGER NOTIFICATION

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

The Premerger Notification Office received notifications for one thousand five hundred and eighty-nine transactions during fiscal year 1992, a 3.9% increase over the number of transactions reported during fiscal year 1991. The Commission opened twenty-six investigations to issue requests for additional information. In addition, the premerger staff responded to approximately ten thousand inquiries regarding the application and interpretation of the HSR Act and premerger rules.

On May 19, 1992, the Commission adopted a program designed to assist states' antitrust review of proposed mergers reported to the federal antitrust authorities under the HSR Act. Under the Premerger State Assistance Program,

which will operate in conjunction with the Voluntary Premerger Disclosure Compact of the National Association of Attorneys General, parties submitting additional information and documentation under the second request provision of the premerger rules may voluntarily waive the confidentiality protections under the HSR Act allowing the Commission to disclose certain information and materials concerning the merging parties and the transaction to state antitrust officials. This program will permit the Commission to provide copies of the second requests issued to the parties and redacted copies of third party subpoenas, and disclose the waiting periods relevant to the transaction to interested state antitrust officials. In addition, at the request of the state, the Commission would provide limited assistance in analyzing the merger. In return, the participating states have agreed that they will not demand information from the merging parties during the HSR waiting periods as long as the merging parties provide specific information on the proposed transaction to a designated liaison state.

Nine investigations remained open at the end of the year to review acquisitions that may have violated the reporting and waiting period requirements of the HSR Act. Three of those investigations were opened during fiscal year 1992.

Commission attorneys, acting as Special Attorneys to the United States Attorney General under the Memorandum of Agreement adopted in fiscal year 1991, filed three new complaints under Section 7A(g)(1) of the HSR Act. The complaint in *United States v. Atlantic Richfield Company* alleged that Atlantic Richfield and U.F. Genetics, Inc. (UFG) failed to file notification before UFG acquired beneficial ownership in ARCO Seed Company. Separate consent judgments required ARCO and UFG to pay civil penalties of $290,000 and $150,000, respectively. In *United States v. Beazer PLC*, the British general construction company agreed to pay a civil penalty of $760,000 to settle allegations that it acquired stock in Koppers Company, Inc., valued in excess of $15 million, without notifying the federal antitrust agencies. In *United States v. William F. Farley*, the complaint alleged that Farley acquired stock in West Point-Pepperell Inc., valued in excess of $15 million, without reporting and observing the required waiting period under the premerger rules. Court proceedings are pending in the U.S. District Court in Chicago, Illinois.

Under terms of a consent decree, General Cinema Corporation agreed to pay a $950,000 civil penalty to settle allegations resulting from the acquisition of stock in Cadbury Schweppes plc. The complaint, filed during fiscal year 1991, and the final judgment were filed in U.S. District Court for the District of Columbia.

MERGERS AND JOINT VENTURES

This program identifies and investigates those mergers, acquisitions, and joint ventures that are likely to result in the lessening of actual or potential competition, increase unilateral market power and lead to dominant firm behavior, or increase the likelihood of coordinated interaction or collusion. The program's objective is to protect consumers by preventing mergers and acquisitions that threaten to restrict competition and result in higher prices or other forms of consumer harm in violation of Section 7 of the Clayton Act, or

Section 5 of the Federal Trade Commission Act, and to prevent interlocking directorates that would violate Section 8 of the Clayton Act.

For the first time ever, the Commission and the Department of Justice jointly issued merger guidelines to provide businesses and consumers with the standards employed by the federal antitrust agencies to evaluate the competitive effects of horizontal mergers and acquisitions. According to the 1992 Horizontal Merger Guidelines, the analytical process used by the agencies to determine whether a merger should be challenged consists of five components: market definition including product and geographic market, and/or concentration; the likelihood of potential anticompetitive effects; market entry; efficiencies; and failing and exiting assets. The Guidelines reflect the current state of legal and economic thinking that sound merger enforcement can prevent anticompetitive mergers that threaten our free enterprise system and the welfare of American consumers. The new horizontal guidelines update the Commission's 1982 Statement Concerning Horizontal Mergers and the 1984 Department of Justice Merger Guidelines.

During fiscal year 1992, the Commission initiated five initial phase investigations and thirty-five full phase investigations, approved compulsory process in twenty matters opened during the fiscal year, and continued to work on sixteen investigations carried over from earlier fiscal years.

During fiscal year 1992, five new enforcement matters were initiated, and consent orders requiring divestitures were accepted for public comment and made final in each matter. The consent order in Hanson PLC/Beazer PLC requires divestiture of Cencal Cement Company; the consent order in Service Corporation International/Pierce Brothers Holding Company requires divestiture of four Pierce Brothers funeral homes in the State of California; the consent order in Mannesmann, A.G. allows Mannesmann to acquire Rapistan Corporation but requires it to divest The Bushman Company; the consent order in Rohm and Haas Company/Union Oil Company of California requires divestiture of Unocal's Union Oil Architectural Acrylic Assets; and the consent order in The Vons Companies, Inc. (Vons) requires divestiture of a San Luis Obispo, California supermarket to settle allegations relating to the acquisition of Williams Bros. supermarkets and Vons' sale of a store in the same market.

Five proposed consent agreements placed on the public record for comment during fiscal year 1991 were made final in 1992. The consent order in Nippon Sheet Glass Company, Ltd./Pilkington PLC/Libbey-Owens-Ford Company prohibits certain agreements between the firms involving polished wired glass and float glass; the consent order in PepsiCo, Inc. requires PepsiCo, Inc. to divest Twin Ports Seven-Up Bottling Company within nine months to an acquirer preapproved by the Commission; the consent order in Sentinel Group, Inc. (Sentinel) requires Sentinel to divest three funeral homes in Georgia and Arkansas; the consent order in Alpha Acquisition Corporation (RWE Aktiengesellschaft) (RWE)/Vista Chemical Company requires RWE to license its technology for the production of high purity alumina to a Commission approved acquirer; and the consent order in Hoechst Aktiengesellschaft (Hoechst AG), settling an administrative complaint that challenged the 1987 acquisition of Celanese Corporation, prohibits the German company and its

U.S. subsidiaries from entering into certain agreements that would frustrate the Polyplastics Company Ltd.'s ability to compete with Hoechst AG in the manufacture and sale of acetal in the United States.

The Commission also accepted a consent order settling allegations in a 1991 administrative complaint that challenged the proposed acquisition of St. Joseph Hospital by University Health, Inc. Under terms of the consent order, University Health, Inc. is prohibited from acquiring St. Joseph or any other acute care hospital in the Augusta, Georgia market without prior Commission approval for a period of ten years.

The Commission reversed an Administrative Law Judge's initial decision, and dismissed the complaint in Owens-Illinois, Inc./Brockway, Inc. The Commission found that the acquisition of Brockway was unlikely to lead to anticompetitive behavior in the various relevant markets for food and beverage containers.

The Commission heard oral arguments in two appeals from initial decisions written by Administrative Law Judges. In Textron, Inc., an Administrative Law Judge dismissed the complaint challenging Textron's acquisition of Avdel PLC and ruled that the acquisition did not pose a threat to any product or geographic market in the United States. In Coca-Cola Bottling Company of the Southwest (CCSW), an Administrative Law Judge issued an initial decision in fiscal year 1991 that dismissed the complaint challenging CCSW's acquisition of certain San Antonio, Texas Dr Pepper Bottling Company assets. A Commission decision is pending in both matters.

The federal district court for the District of Columbia dismissed Harold A. Honickman and the Dr Pepper/Seven-Up Companies, Inc.'s challenge of the Commission's denial of Honickman's request for approval to acquire the licensing rights of the Seven-Up Brooklyn Bottling Company and Seven-Up distribution in portions of New York and Long Island. Prior approval is required by a 1991 consent order settling allegations relating to Honickman's 1987 acquisition of Seven-Up Brooklyn Bottling Company, Inc.

The District of Columbia Circuit Court of Appeals accepted the transfer from a district court of a motion for a preliminary injunction brought by Adventist Health System/West. The motion seeks to enjoin the 1991 Commission order finding that the Commission has jurisdiction over asset acquisitions made by not-for-profit entities and remanding the administrative complaint challenging Adventist's acquisition of all the assets of Ukiah General Hospital. An oral argument on the preliminary injunction motion has been scheduled for early in 1993.

The Commission modified a 1990 consent order with T&N PLC to eliminate the company's obligation to divest its remaining inventory of thinwall engine bearings. The original order settled allegations that T&N PLC's acquisition of J.P. Industries Inc. would substantially lessen competition and tend to create a monopoly in the manufacture and sale of thinwall and trimetal heavywall engine bearings in the United States.

Finally, the Commission approved compliance reports received under the reporting provisions of forty-one orders, reviewed and approved applications to sell or license assets under the divestiture provisions of nine consent orders,

and granted three firms' petitions to acquire assets under the prior approval provisions of orders.

HORIZONTAL RESTRAINTS

During fiscal year 1992, the Commission opened forty-four initial phase investigations to analyze and study business practices that seemed to include horizontal restraints, such as price fixing and other anticompetitive agreements among competitors that may deny consumers access to the optimal variety, quantity, and quality of goods and services at competitive prices, and deny sellers the opportunity to produce, distribute, and sell goods and services at prices they would select under competitive conditions.

A particular focus of the program is the health care sector, which has been marked by rapidly rising costs. The Commission has used the antitrust laws to challenge unlawful conspiracies among health care providers, such as price fixing and coercive boycotts of cost containment programs or alternative providers. More generally, this program investigates other professionals such as lawyers and accountants, as well as service industries. Through investigation, litigation, and negotiation, the Commission seeks to eliminate unlawful horizontal restraints on trade.

In fiscal year 1992, the Commission initiated seven new enforcement matters: six proposed consent agreements and one matter involving both court and administrative complaints. Two proposed consent agreements placed on the public record for comment and made final settled separate Commission allegations of collusive behavior among health care professionals. The complaint in Roberto Fojo, M.D. alleges that he conspired with other physicians to withhold medical call services from the emergency room of a Miami, Florida medical center. The complaint in Debes Corporation alleges that six nursing homes in Rockford, Illinois conspired to boycott nurse registries in the area in an attempt to influence the prices charged for services by those registries. Both consent orders place restrictions on health care professionals entering into conspiracies to boycott others in the medical profession.

Four other proposed consent agreements accepted for comment during fiscal year 1992 were pending final Commission action. The Industrial Multiple, a Los Angeles area multiple listing service, has agreed to settle allegations that it unreasonably restricted access to the multiple listing service, limited the contract options member brokers could offer to their clients, and reduced the likelihood of discount commissions or other price competition among brokers; Quality Trailer Products Corporation agreed not to solicit competitors to fix prices or to enter into any conspiracy with any competitor to fix prices; Realty Computer Associates, Inc. (Computer Listing Service) agreed not to interfere with certain business practices of its member brokers including publishing exclusive agency listings; and the American Psychological Association agreed not to restrict its members from using truthful advertising and participating in certain patient referral services.

The Commission used its authority under Section 13(b) of the Federal Trade Commission Act to seek injunctive relief against Abbott Laboratories (Abbott) for conspiring with others to fix, stabilize, or otherwise manipulate rebate bids,

and to guarantee an open market bidding system for a contract to provide formula to infants in Puerto Rico under the Special Supplemental Food Program for Women, Infants, and Children (WIC). A second count in the same complaint alleged that Abbott unilaterally provided information to competing bidders that it preferred an open market system. Complaints were also filed against American Home Products and Mead Johnson & Company charging that they each unilaterally acted to reduce uncertainty in the Puerto Rican WIC program. In a separate administrative complaint, it was alleged that Abbott conspired with others to refrain from advertising to consumers through the mass media. Settlements with American Home Products and Mead Johnson & Company require the companies to deliver 3.6 million pounds of infant formula to the U.S. Department of Agriculture, the agency which administers the WIC program. Allegations regarding Abbott are pending in federal court and in administrative proceedings at the Commission.

Also during the year, the Commission finalized three proposed consent agreements accepted for comment in an earlier fiscal year: the consent order against Connecticut Chiropractic Association prevents it from restraining advertising of professional services to consumers; the consent order in Southbank IPA, Inc. (Southbank) requires the dissolution of Southbank and prohibits the physician members from engaging in price fixing; and the consent order against the Texas Board of Chiropractic Examiners prohibits it from adopting and enforcing rules that prohibit its members from using truthful advertising.

The allegations in the administrative complaint against Diran M. Seropian, M.D. were settled by a consent order that prohibits agreements to refuse to deal with health care providers. The complaint alleged that Dr. Seropian, formerly Chief of Staff of Broward General Medical Center, conspired with its medical staff to prevent the Cleveland Clinic Foundation from establishing a competing health care facility in the area.

The Commission adopted an Administrative Law Judge's (ALJ) initial decision that upheld the complaint against Peterson Drug Company of North Chili, New York. The ALJ ruled that the company illegally engaged in a boycott of New York State's cost containment program for prescription drugs in an effort to increase the reimbursement rate paid to pharmacists for filing prescriptions. This case was a companion case to the consent orders issued last year in Chain Pharmacy Association of New York State.

The Court of Appeals for the Sixth Circuit affirmed in part and remanded in part the Commission's 1989 decision in Detroit Auto Dealers Association, Inc. which held that a dealer agreement on hours of operation was an illegal horizontal restraint. In August 1992, the automobile dealers filed a petition for certiorari; a Supreme Court decision on whether or not to accept the case is pending.

The Supreme Court issued a decision in Ticor Title Insurance Company reversing and remanding the decision of the Third Circuit. The court of appeals had vacated the Commission's order in its entirety and ruled that the companies' agreement to collectively set rates for title search and examination services was protected from antitrust scrutiny by the state action doctrine. The Supreme

Court held that two of the states at issue did not actively supervise the activities of the companies.

At the request of the American Medical Association (AMA), the Commission modified a 1982 order to allow the AMA to provide its member organizations the opportunity to select the manner in which they report compliance with the certification provision of the order.

The year ended with eighty five investigations open in the horizontal restraints program examining potential unfair methods of competition including product market restrictions, restraints on pricing, boycotts, and collusion among competitors, individuals, and professional organizations engaged in the production or distribution of chemicals, food, medical services, and other products and services.

DISTRIBUTIONAL ARRANGEMENTS

This program covers restrictions on the distribution of goods from manufacturers to consumers. Such practices can limit sources of supply or restrict channels of distribution in ways that increase prices or reduce quality. Potentially unlawful conduct includes restrictions on resale prices (and other terms of sale), as well as restrictions on the marketing decisions of firms in the distribution chain. These practices may result from agreements (sought or coerced) between suppliers and purchasers. In addition, the Commission investigates discrimination in prices, terms of sale, advertising allowances, and other merchandising services that may deny competitive opportunities to firms in the distribution chain and other practices that may injure consumers.

During the fiscal year, the Commission opened nineteen new matters and examined potential antitrust concerns in more than fifty active matters involving alleged distributional practices in a variety of industries, including motion pictures, clothing, furniture, carbonated soft drinks, machine tools, and children's toys and games.

In a consent order, Kreepy Krauly USA, Inc. settled allegations that the company illegally entered into agreements with its dealers to maintain suggested retail prices of its automatic swimming pool cleaning devices. The consent order prohibits the firm from entering into agreements with dealers to fix retail prices. At the request of Pioneer Electronics (USA) Inc. (Pioneer), the Commission reopened and modified a consent order to allow the company to withhold cooperative advertising allowances from dealers and to unilaterally terminate dealers that advertise Pioneer products at prices other than those suggested by the company. After the Commission issued an order to show cause, the consent order was further modified to permit Pioneer to unilaterally terminate dealers that sell products at prices lower than the Pioneer suggested retail price.

Administrative litigation under the Robinson-Patman Act is continuing against six book publishers, Harper & Row Publishers, Inc.; MacMillan Inc.; The Hearst Corporation; The Putnam Group; Simon & Schuster; and Random House Inc., for alleged unlawful price discrimination against independent bookstores.

At year's end, twenty investigations remain open examining allegations of exclusive marketing agreements, resale price maintenance, price discrimination, and discriminatory discounts by firms in a variety of industries.

SINGLE FIRM VIOLATIONS

During fiscal year 1992, the Commission opened thirteen new investigations involving potential single firm abuse of market power. In instances where a firm monopolizes a market or uses its market power in one market to affect another (*tying*), output can be reduced and prices can increase above the competitive level, thereby injuring consumers and misallocating society's resources. When there are high entry barriers into the market, these harms can persist for long periods. The program focuses on cases of monopolization or attempts to monopolize, tying arrangements, and processes to create or enhance market power.

During fiscal year 1992, the Commission finalized two proposed consent agreements that were placed on the public record for comment in fiscal year 1991. The consent order in Sandoz Pharmaceuticals Corporation (Sandoz) prohibits the company from engaging in an illegal tying arrangement that required purchasers of clozapine (marketed exclusively by Sandoz) to also purchase patient monitoring services arranged by Sandoz through its Clozaril Patient Management System. The consent order in Nintendo of America Inc. prohibits the company from fixing the retail price at which dealers advertise or sell Nintendo home video game hardware, software, and related products.

At the close of the year, twenty investigations remain open involving monopolization activities in a number of industries, including health care services, industrial supplies and equipment, manufacturing, soft drinks, and physician joint ventures.

The Commission continued its efforts to engage in competition advocacy to promote the reduction of barriers to entry and the elimination of restraints on procompetitive business conduct, and to provide legal and economic policy analysis of issues related to single firm anticompetitive behavior.

COMPLIANCE

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

The Commission modified two of its prior orders. A 1982 order against the American Medical Association and a 1975 order against U.S. Pioneer Electronics Corporation were modified.

The Ninth Circuit Court of Appeals affirmed a 1983 decision by the U.S. District Court in Oregon requiring Louisiana-Pacific Corporation to pay a $4 million civil penalty for failure to divest a fiberboard plant required by a 1979 Commission order. The civil penalty is the largest antitrust penalty awarded to the Commission. Since the Commission order in 1979, Louisiana-Pacific filed two motions with the Commission to modify the order and sought review of Commission denials to modify the order, as well as a federal district court's imposition of the $4 million civil penalty.

CONSUMER PROTECTION MISSION

The Consumer Protection Mission is devoted to maintaining conditions in the marketplace that allow consumers to make informed decisions on how to spend their money. To this end, it works to: increase the usefulness of advertising by ensuring that advertising is truthful and not misleading; reduce instances of fraudulent or deceptive sales and marketing practices; and prevent creditors from engaging in unlawful practices in granting credit, maintaining credit information, collecting debts, and operating credit systems. The Commission also conducts activities designed to educate consumers and businesses about their rights and responsibilities under the laws and regulations it administers.

There are five law enforcement program areas within the mission: Advertising Practices, Service Industry Practices, Marketing Practices, Credit Practices, and Enforcement. The Bureau of Economics and the Office of Consumer and Business Education support the five law enforcement programs.

ADVERTISING PRACTICES

Under the advertising practices program, the Commission works to ensure that advertising claims are not false or misleading so consumers can make informed purchases on the basis of truthful information. In fiscal year 1992, the Commission approved twenty-two consent orders and accepted four additional proposed consent agreements for public comment. In addition, two administrative complaints were issued by the Commission.

Four of the consent orders involved environmental claims, including biodegradable claims for trash bags and two brands of disposable diapers, as well as ozone-friendly claims for a cleaning product. Five other cases concerned health claims for foods and nutritional supplements, such as low sodium content, and low fat and cholesterol claims.

The Commission issued an administrative complaint charging one of the country's largest producers of infomercials and eight other respondents with making false and unsubstantiated claims about the efficacy of a purported cellulite treatment and baldness cure and challenging the independent television program format of the advertising. Four consent orders, two involving infomercials, settled allegations that claims for weight loss and baldness products were false and unsubstantiated, with one infomercial respondent paying $30,000 in redress. One other company agreed to settle allegations that it deceptively and unfairly marketed 900 number information services to children.

In two other cases, the Commission challenged efficacy claims for a cold and allergy treatment device, and for a wrinkle-removing cream, with the order in the latter case requiring disgorgement of $100,000. In its first enforcement action involving alleged violations of the statutory ban on television advertising of smokeless tobacco products, the Commission challenged the use of a tobacco product's name in connection with the sponsorship of televised truck and tractor pulling events. Consent orders with a major national advertiser and an advertising agency settled allegations that they had produced demonstration ads misrepresenting the comparative performance of the advertised car. The

ad agency and advertiser agreed to pay $150,000 each to the U.S. Treasury. Other advertising cases involved superiority claims for a high-octane gasoline, performance claims for two air-cleaning products, and efficacy claims for ultrasonic pest control devices.

The Commission issued *Guides for the Use of Environmental Marketing Claims* to help reduce consumer confusion and prevent the false or misleading use of environmental terms such as recyclable, degradable, and environmentally friendly in the advertising and labeling of products in the marketplace. The goal of the Commission is to protect consumers and to bolster their confidence in environmental claims, and to reduce manufacturers' uncertainty about which claims might lead to Commission law enforcement actions, thereby encouraging marketers to produce and promote products that are less harmful to the environment.

The Commission approved staff comments provided to the U.S. Department of Agriculture and the Food and Drug Administration concerning implementation of the Nutrition Labeling and Education Act of 1990, which governs the nutritional labeling of food products. In addition, staff coordinated with the Environmental Protection Agency (EPA) the monitoring of the advertising of lawn care pesticides.

SERVICE INDUSTRY PRACTICES

The service industry practices program focuses on misrepresentations in the sale of investment goods and services, deception in the advertising and sale of health care services, and deception and anticompetitive effects from the use of standards and certifications. In the investment fraud area, the Commission filed nine new cases in federal district court against investment scams involving sales of wireless cable franchise lottery entries, rare coin investments, precious gemstones, collectible postage stamps, and leveraged precious metals. These companies had estimated sales of over $55 million, and an estimated ten thousand customers were victimized by these firms. During fiscal year 1992, approximately $59 million recovered in investment fraud cases was distributed to fraud victims. The Commission also obtained judgments of more than $18 million against other sellers of investment frauds.

In the health care services area, a $21.5 million redress judgment was obtained in a federal district court case against a chain of weight loss clinics that had falsely claimed that consumers could adjust their metabolism and lose up to one and a half pounds a day on its diet program.

Consent orders were issued for three providers of medically-supervised diet programs under which they would be required to qualify safety claims, have a reasonable basis for claims about the efficacy of their programs in helping consumers to lose weight or maintain that weight loss, and make various disclosures in connection with any future maintenance success claims.

Four additional consent orders were issued against providers of other types of health care services prohibiting the following practices: misrepresenting or making unsubstantiated claims about success rates in achieving births or pregnancies; misrepresenting the results, recovery times or the likelihood of serious adverse complications associated with any cosmetic surgery procedure; misrepresenting the safety, efficacy, side effects, and risks

of a wide variety of cosmetic surgery procedures; and requiring a reasonable basis for claims regarding the efficacy, permanence or likely complications of any surgical procedure for treating bowel-related disease and true representations of the comparative success of this and other reconstructive surgical procedures.

In addition, investigations of major diet programs, hospital providers, and other health care services providers continued. Finally, a major consumer education effort was announced with National Association of Attorneys General (NAAG) and the Food and Drug Administration (FDA) to assist consumers in selecting diet programs and products.

MARKETING PRACTICES

The fraudulent telemarketing of consumer goods and services is a primary focus of the marketing practices program. The Funeral Rule and Franchise Rule are also enforced under this program. The program's antifraud efforts yielded redress and disgorgement orders totalling over $26.7 million in twenty-three cases, and over $1.18 million was distributed to approximately sixty thousand victims of six fraudulent operations or disgorged to the U.S. Treasury because restitution was not feasible.

A federal district court order entitles the Commission to recover more than $9 million in a case involving a company selling information about how to purchase repossessed or forfeited automobiles at auctions and how to obtain credit cards secured by a savings account. A telemarketer of water filters was ordered to pay $7.5 million to settle allegations it misrepresented its product. A company that allegedly made false and misleading claims in the sale of consulting service franchises was ordered to pay over $3 million in consumer redress, plus interest and costs. An operator of a fraudulent employment scheme was ordered to pay $2,343,506 in restitution. Another case against a fraudulent telemarketer offering Florida timeshare resale services resulted in an order to pay over $1.5 million in consumer redress, and require defendants to obtain a $1.5 million bond as a precondition for ever resuming any telemarketing business.

In its pursuit of the support network that enables telemarketing fraud operators to function, the Commission filed two additional complaints against a total of fourteen defendants and initiated a number of other nonpublic investigations of such root operations. In addition, efforts to assure defendants' compliance with existing court orders necessitated initiation of civil contempt proceedings in several cases. Defendants in two cases were found to be in civil contempt of prior court orders.

The Commission obtained settlements in two Franchise Rule enforcement cases, filed complaints initiating four others, and opened a number of nonpublic investigations of Franchise Rule violations. In one case, a real estate franchise firm was ordered to pay $27,500 in civil penalties to settle allegations that it failed to provide all of the pre-purchase information required by the Rule.

In Funeral Rule enforcement, the Commission obtained eight settlements ordering a total of $248,000 in civil penalties. Another settlement required $13,000 in consumer redress in addition to payment of a civil penalty. A permanent injunction was obtained against one funeral home. One additional

complaint alleging violations of the Funeral Rule was filed in federal district court.

The Commission issued a consent order requiring $50,000 in consumer redress to settle allegations that claims made in an infomercial about the availability of government grants to consumers wishing to start their own businesses were false. Consent agreements were accepted for public comment in the first cases in which the Commission challenged rental car firms' failure to disclose certain mandatory charges through computerized reservation systems.

The Commission issued consent orders to two consumer electronics stores, settling allegations that the retailers failed to make the texts of manufacturers' warranties available to consumers prior to purchase. The Commission also issued a complaint against a nationwide marketer of automobile service contracts for failing to honor its contracts and misrepresenting contract coverage.

The Commission issued a complaint against a firm that allegedly made false and unsubstantiated claims about its ultrasonic pest control devices. In addition, a marketer of rodent control devices agreed to a cease and desist order for making false and unsubstantiated claims about its products.

CREDIT PRACTICES

The Commission enforces federal laws to ensure the privacy of credit reports, equal access to credit, fair debt collection practices, and truthful lending practices. Enforcement actions taken during fiscal year 1992 resulted in twelve consent orders containing provisions for consumer redress and/or disgorgement which may amount to over $6.3 million. Seven civil penalty judgments ordering $610,000 were obtained, and consumer redress of over $1.4 million was ordered. Three permanent injunctions were issued, and three additional complaints were filed in federal district court.

Cases involving credit marketing scams and the Fair Credit Reporting Act highlighted the program's agenda. The Commission took action against several *superbureaus* for furnishing consumer reports to various parties for impermissible purposes. One of the nation's largest credit bureaus, which maintains credit information on approximately one hundred and seventy million consumers, agreed to revise and streamline its procedures for ensuring the accuracy of its credit reports and resolving disputes.

A communications company agreed to pay $800,000 in consumer redress to settle allegations that it misrepresented the nature of its credit services and failed to disclose essential cost information about its 900 telephone numbers. A federal district court ordered another company to pay $300,000 in consumer redress to settle allegations that it misrepresented that the gold card credit cards it marketed were similar to Visa or MasterCard. Consumers had to make a call to a 900 number to obtain the cards, which could only be used to purchase merchandise from the defendants' own catalogs. The Commission filed a complaint in federal district court against a third company that allegedly deceptively marketed gold cards and deceptively used 900 telephone numbers.

A vacation broker agreed to settle allegations of marketing bogus $29 certificates for travel to Hawaii. The defendant was ordered to turn over assets, valued at approximately $300,000, to the Commission for consumer redress.

ENFORCEMENT

Enforcement of the Commission's consumer protection cease and desist orders, the majority of Commission trade regulation rules, and special statutes governing practices such as the labeling of textile, wool, and fur products, is the responsibility of this program. Efforts encompass investigations, periodic compliance reviews, and, when warranted, rulemaking proceedings. Consumer education and guidance to affected industries are also important to the success of this program.

As consumers' concerns with the environment and health and safety have increased, so have deceptive claims. Twenty-seven of fifty-three compliance reports and several civil penalty investigations dealt with these issues. Compliance with cases involving fraudulent and deceptive land sales and investments is also a focus of the program. The Commission obtained a $675,000 civil penalty from a major subdivision developer to settle allegations of deception in land sales. A civil penalty of $200,000 was received from a company that allegedly deceptively marketed a sweepstakes package in eight states. A $200,000 civil penalty settlement was obtained in a case involving alleged misrepresentations of the performance of heat and smoke detectors.

The Commission filed its first enforcement actions under the Octane Posting Rule (Octane Rule). Five complaints filed in federal district court resulted in four permanent injunctions and civil penalties of $65,000. In addition, staff evaluated the first year results of an industry survey to assess compliance with the Octane Rule. As a result of the survey and other research efforts, several investigations of gasoline distributors and retailers for possible violations of the Octane Rule's certification and posting requirements were initiated. Further, in recognition that octane fraud occurs primarily at the local distributor and retailer level, the program significantly increased its joint efforts with state and local officials. With the Commission's assistance, five states conducted their own enforcement sweeps of gasoline distributors and retailers.

Staff continued its survey of the marketing of various home insulation products, which generate $300 million in annual sales, to determine compliance with the R-Value Rule. One result was the Commission's first civil penalty case involving the mislabeling of expanded polystyrene. Staff also investigated a major home improvement retailer regarding alleged failures to advertise home insulation in accordance with the R-Value Rule.

Rulemaking proceedings to amend the Mail Order Rule to include telephone orders and the Appliance Labeling Rule to streamline its requirements were continued. Additionally, the Commission obtained two consent decrees providing injunctive relief and a total of $110,000 in civil penalties for noncompliance with the Mail Order Rule.

In other areas, the Commission accepted a settlement resolving alleged Cooling-Off Rule violations and providing for a $15,000 civil penalty. The Commission also accepted three settlements resolving allegations that manufacturers had violated the Textile Fiber Products Identification Act by

failing to correctly identify the fiber content of their garments. The decrees require future compliance with the Act, and one required a $25,000 civil penalty. A civil penalty of $10,000 was obtained in the first Care Labeling Rule case to be litigated. Fifteen Used Car Rule complaints filed in federal district court resulted in thirteen orders requiring injunctive relief and a total of $125,500 in civil penalty payments and in two permanent injunctions.

The enforcement program also initiated the first steps in a regulatory reform project whereby the Commission will review all of its rules and guides to determine whether modification or rescission is needed.

CONSUMER AND BUSINESS EDUCATION

The Office of Consumer and Business Education (OCBE) produced more than forty-nine new and revised publications, some in Spanish, and the agency distributed more than three million seven hundred thousand copies of its education materials. OCBE worked with the National Association of Attorneys General (NAAG) and the Food and Drug Administration (FDA) to produce a video released via satellite to seven hundred stations about weight loss products and programs. As part of that weight loss campaign, OCBE, NAAG, and FDA produced radio public service announcements (PSAs) and offered a free brochure on the subject.

OCBE produced eight radio PSAs voiced by the Chairman for National Consumers Week concerning high priority enforcement topics. Further, the OCBE worked with the American Association of Retired Persons (AARP) to produce a video news release about credit repair scams. With NAAG, OCBE published classified ads in a top circulation tabloid to alert consumers about scams in the areas of credit repair and advance fee loans.

ECONOMIC ACTIVITIES

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

In the competition area, economists offered advice on the economic merits of potential antitrust actions. The economists attempted to distinguish situations where the marketplace performed reasonably well from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve market competition.

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

The Bureau of Economics also analyzed data and published information about the nation's industries, markets, and business firms. In fiscal year 1992, economists conducted a number of studies on a broad array of topics in antitrust and consumer protection.

ANTITRUST

In the antitrust area, economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints by providing economic background information. Economists also advised the Commission on all proposed antitrust actions in terms of conducting economic studies of individual industries and gathered information about sales, assets, profits, and other financial matters from a cross-section of U.S. corporations. The Bureau of Economics focused most of its efforts in this area.

The Bureau also maintained a small research program in support of the Commission's antitrust activities. Economists in this program published a report on the price effects of horizontal mergers on three different industries: titanium dioxide, cement, and corrugated paperboard.

The Bureau also participated in the Commission's competition advocacy program. Economists presented comments to: the Department of Justice concerning television network syndication rules; the Federal Communications Commission about must-carry rules for cable TV, rules for advanced TV, and ownership limits for TV networks; and the Federal Aviation Administration on rules for allocating airport slots.

CONSUMER PROTECTION

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

Bureau economists worked on reports on consumer protection topics of interest to the Commission, such as *Department Store Reference Pricing in Metropolitan Washington*, which was published in 1992. Economists also supported the Commission's consumer protection advocacy program by assisting in drafting comments to the Food and Drug Administration and the U.S. Department of Agriculture concerning nutrition claims and health claims on food labels.

EXECUTIVE DIRECTION

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

AUTOMATED SYSTEMS

During 1992, The Automated Systems Division completed initiatives in direct support services, central services, office services, and communication services.

In direct support services, the Litigation Support and Economic Analysis Branch provided important document management and data analysis support for investigations in all three bureaus and several of the regional offices. Visual communications support for limited graphics and video services also was provided, and technical support was expanded to international boundaries as the Automated Systems Division provided support as well as equipment to Commission staff working on Eastern European project initiatives.

In central systems support services, the Commission completed a major redesign of the staff time and activity reporting system, reflecting commitment to strategic concepts of an integrated corporate database and more useful data management tools in the hands of the users. Integrated full text management software was selected and installed to create a foundation for delivering better text management and retrieval support for Commission staff.

A number of improvements were made to existing systems on the central Prime computer (Management Information System (MIS), Information Retrieval and Indexing System (IRIS), Office Budget Planning and Tracking (OBPT), Office of the Secretary Control and Reporting (OSCAR), and Premerger) to increase productivity for staff. In addition, remote job entry capability for file transfer was established, allowing electronic transfer of payroll and financial data between Denver's IBM and Headquarter's Prime. With this capability, the Commission converted to a state-of-the-art financial accounting system, operated by the Department of Interior, and linked Budget and Finance staff to the new financial system and the Treasury Department's Electronic Certification System. Personnel Division staff were hooked up to a new Payroll-Personnel System operated by the General Services Administration in Kansas City. The programming support services contract was recompeted and awarded to NMI.

New initiatives with long-range benefits that got underway included research into integrated text/data/image processing to provide more efficient processing and manipulation of the Commission's major records management workload. CD-ROM technology was introduced in selected offices as a pilot project. Plans were also put in place to support improved life cycle systems management. The development environment for application systems was successfully separated from the production environment, and a quality

assurance program was initiated to improve testing and evaluation done prior to turning systems over to production.

Several major, multi-year initiatives were also started. A decision was made and a migration plan put in place to shift the Commission's central computing environment from proprietary operating systems to scalable, Unix-based open systems. This includes evolving to a platform of multiple central processing units and servers based on price/performance, redundancy, availability, and specialization considerations unique to the service being performed. An off-the-shelf, object-oriented package was chosen to begin to enable nontechnical clients to access information from the corporate database stored in Oracle. A procurement action was started for a pilot project to verify the productivity gains and increased service to users that may occur as a result of integrating database, text management, and image processing technologies.

In office services, approximately four hundred additional workstations were connected to the Commission's upgraded local area networking system as part of a goal to have the entire Commission, including its ten regional offices, interconnected through a single, high-performance networking system by the end of calendar 1993. All workstations were also upgraded with current versions of core software. Strengthened procedures were put in place for dealing with PC viruses; every PC was scanned for viruses, which were removed if found, and every PC was outfitted with appropriate software to limit the possibility of new viruses reaching the PC. Also, as part of the Commission's computer security program, ongoing reminders were provided to Commission staff on copyright restrictions applicable to computer software and individual responsibilities for adhering to these laws.

Finally, with respect to communications services, expanded data communications capabilities were installed, including X.400 and commonly used protocols (Xmodem, Ymodem, ZModem, and Kermit software). A Local Area Network (LAN) administration program was initiated; our facility management program was expanded to include LAN-related staffing categories; and a LAN Steering Committee was created.

INFORMATION SERVICES

The Information Services Division and the Automated Systems Division worked with representatives throughout the Commission to establish the framework and develop the operating processes for a text management system. That work will serve as the basis for computer programming and agency operating procedural changes in fiscal year 1993. Those changes will provide agency staff and the public with greater access to Commission records.

The Information Services Division responded to eighteen thousand three hundred and eighty one consumer complaints and distributed approximately three million seven hundred and eighteen thousand consumer and business education pamphlets and brochures. In addition, the Division responded to thousands of requests for the Commission's Environmental Guidelines, one of the most highly requested publications issued in recent years.

LIBRARY

The Library maintained the Commission's comprehensive research collection in legal, business, and economic subjects and provided research

assistance to Commission staff and the public through a variety of information sources and systems. During fiscal year 1992, the Library staff responded to over twelve thousand reference questions, processed over two thousand six hundred interlibrary loan requests, and circulated over three thousand items. The Library enhanced its CD-ROM collection and conducted demonstrations and provided support to promote effective Commission staff usage.

The Information Center continued to train and assist Commission staff in the use of personal computers, software, and the central computer systems. The Information Center increased its services by providing support in the use of the newly installed local area networks (LAN) and WordPerfect Office.

The Information Center trained four hundred and forty six employees in sixty six classes on thirty eight different topics, ranging from Computer Security to Advanced WordPerfect. Four new courses were developed for newly acquired software, including Zyindex, Paradox, WordPerfect Office, and LAN Overview. Administration of the training program was simplified by the award of four blanket purchase agreements (BPA's) with training vendors. This enabled the Information Center to increase the variety of topics offered, provide training when staff members need it, and more easily procure training in the regions. In addition to formal training and customer support, the Information Center conducted demonstrations of applications and published a number of instruction sheets on different software packages.

PROCUREMENT AND GENERAL SERVICES

In addition to providing daily administrative support to the Commission, the Division of Procurement and General Services completed several initiatives during fiscal year 1992. These accomplishments included the awarding of contracts for: (1) programming support services; (2) economic analysis and consulting services; (3) consumer redress account administration; (4) administrative support services for Eastern Europe interns to come to the U.S.; and (5) purchase of one hundred computers for headquarters and regional offices. Numerous projects to improve the Headquarters facility were either started or completed. These included: the seventh floor renovation under a cyclical renovation program; lease renewal/competition actions for office space in the 601 building and the Boston, San Francisco, Atlanta, and Chicago Regional offices; the upgrade of 35% of the Commission's copiers in Washington; construction of an outside dining area off the 7th floor cafeteria (completed); and construction of a break room in the print plant.

BUDGET AND FINANCE

The Commission spent its $82.7 million appropriation and used nine hundred and thirty nine workyears in fiscal year 1992. This was an increase of thirteen workyears over the previous year, continuing the modest upward growth that began in fiscal year 1990. Also, the Division of Budget and Finance completed the conversion to a new accounting system.

HUMAN RESOURCES

In fiscal year 1992, the agency conducted on-campus interviews at twenty law schools, and hired eight law clerks, six summer legal interns, and six economists. Numerous enhancements were made to the human resources

program including: streamlining the attorney recruitment process; establishing a time-off award to recognize employee excellence; implementing retirement planning for mid-career employees; and establishing a periodic news bulletin addressing human resource issues.

REGIONAL OFFICES

The Commission's regional offices continued to play a key role in fulfilling the agency's consumer protection and competition missions in fiscal year 1992. In addition to engaging in the full range of enforcement and advocacy activities, the regional offices provided a valuable outreach function by responding to consumer complaints and inquiries, and maintaining contacts with state and local enforcement officials, trade associations, and consumer groups.

APPENDIX

PART II CONSENT AGREEMENTS ACCEPTED AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

American Psychological Association

The American Psychological Association (APA) agreed not to restrict its members from using truthful advertising and participating in certain patient referral services. The complaint accompanying the proposed consent agreement alleged that the APA adopted provisions in its Ethical Principles that prohibited its members from advertising truthful claims about their professional services and psychological care, from soliciting clients, and from joining any patient referral service that charges or pays a participating psychologist based on the number of patients referred. The complaint further alleged that these restrictions deprived consumers of the benefits of competition in the delivery of convenient psychological services, products, and costs. Although the proposed consent agreement would require the APA to eliminate any rules or guidelines that restrict the dissemination of truthful advertising or ban payments by its members to patient-referral services, it would allow the APA to establish policies to detect deceptive representations, monitor the solicitation of testimonial endorsements from certain patients, and require consumer disclosure whenever a psychologist has paid a fee for the referral of business.

Industrial Multiple, The

The American Industrial Real Estate Association and its wholly-owned subsidiary, The Industrial Multiple, agreed to settle allegations that they adopted and enforced illegal membership restrictions on industrial real estate brokers. Industrial Multiple is the sole multiple listing service (MLS) in the Los Angeles area that specializes in and distributes significant numbers of industrial property listings. The complaint accompanying the proposed consent agreement alleged that Industrial Multiple adopted policies that restricted membership to real estate brokers who were primarily engaged in industrial real estate and who met a minimum number and dollar amount of property transactions. The complaint also alleged that The Industrial Multiple prohibited their brokers from accepting exclusive agency listings for property with less than five thousand square feet, required brokers to disclose the total agreed commission involved in any transaction, and prevented brokers from accepting certain contractual terms that would allow the property owner to waive all commission fees. Under terms of the proposed consent agreement, The Industrial Multiple and American Industrial Real Estate Association would be prohibited from, among other things, conditioning membership on the practices listed in the complaint and prohibiting any member from accepting a property published in an exclusive agency listing.

Realty Computer Associates, Inc. d/b/a Computer Listing Service

Realty Computer Associates, Inc. agreed not to limit certain business practices of its member brokers. Realty Computer Associates, Inc., which does business in Missouri under the name Computer Listing Service, provides computerized multiple listings of available real estate properties in Clay and Platte Counties, Missouri to member real estate brokers. According to the complaint accompanying the proposed consent agreement, Computer Listing Service conspired with its members to refuse to publish exclusive agency listings that allow homeowners to waive all commissions or pay a reduced commission whenever the homeowner sells their properties without the assistance of a broker. The complaint further alleged that Computer Listing Service required its members to engage in real estate brokerage full time and to also maintain a real estate office in the Clay/Platte County service area. Finally, the complaint alleged the firm's restrictions on the delivery of real estate brokerage services and membership requirements have reduced consumers' ability to negotiate different agreements beneficial to the sale of residential property and repressed competition from part-time brokers and from brokers located outside of the Computer Listing Service area.

Quality Trailer Products Corporation

Under terms of a proposed consent agreement, Quality Trailer Products Corporation (Quality Trailer) agreed to refrain from conspiring with competitors or from unilaterally urging competitors to fix prices. According to a complaint issued with a proposed consent agreement, Quality Trailer of Azle, Texas invited a competitor, American Marine Industries, based in Shreveport, Louisiana, to increase its prices for certain axle products. The complaint further alleged that if American Marine Industries had accepted the invitation to collude, the resulting agreement would have constituted an agreement in restraint of trade. The proposed consent agreement prohibits, among other things, Quality Trailer from suggesting, requesting, urging, or advocating that a competitor raise, fix, or stabilize prices and from entering into any agreement with any other manufacturer or seller of axle products to raise, fix, or stabilize prices or price levels.

CONSUMER PROTECTION MISSION

CDB Infotek,
Inter-Fact, Inc.,
I.R.S.C., Inc. d/b/a Information Resource Service Company

Three *superbureaus*, firms that buy large volumes of credit and other information about consumers at discounted rates and then resell the data to low-volume buyers, agreed to settle allegations that they failed to adequately ensure that their customers had a legally permissible purpose for obtaining the sensitive information, among other violations of the Fair Credit Reporting Act. The proposed consent agreements settling the allegations require, among other things, that the firms take specific steps to protect the privacy of their reports in the future. These steps include requirements that the respondents conduct periodic audits of customers who have more than one use for reports; obtain

written certifications from new subscribers regarding the use of the reports they expect to order; and verify the identity of all subscribers to ensure that they are engaged in the business they purport to be and that they have permissible purposes for accessing the report.

Dollar Rent-A-Car Systems, Inc.

Dollar Rent-A-Car Systems, Inc. (Dollar) agreed to settle allegations that it failed to disclose certain significant charges and limitations when providing price quotations for its car rentals. The proposed consent agreement settling the allegations requires, among other things, that Dollar disclose to consumers in its ads the existence of any mandatory fuel charges, airport surcharges or other charges not reasonably avoidable by consumers, or restrictions on a driver's age, or, in the alternative, disclose that there are additional charges. In addition, the proposed consent agreement requires that Dollar disclose to consumers, via telephone or in person at any rental location, all fuel charges, charges for additional drivers or any geographic driving restrictions; and disclose to consumers through its computerized reservation system any mandatory fuel charges, other mandatory charges, or charges not reasonably avoidable by consumers.

Isaly Klondike Company, The

The Isaly Klondike Company agreed to settle allegations that it made false claims about the fat and calorie content of its Klondike Lite frozen dessert bars and their effect on consumers' serum cholesterol levels. The proposed consent agreement would prohibit the company from misrepresenting the amount of fat or any other nutrient or ingredient in any of its frozen food products in the future.

Mobil Oil Corporation

Mobil Oil Corporation agreed to settle allegations that it made unsubstantiated claims that Hefty Degradable Trash Bags, when disposed of as trash, decompose and return to nature in a reasonably short period of time, and offer a significant environmental benefit compared to other plastic bags. The proposed consent agreement would prohibit unsubstantiated degradability claims in the future.

Nikki Fashions Ltd., Nicolina Varrichione

Nikki Fashions and its owner, Nicolina Varrichione, agreed to settle allegations that they violated the Textile Fiber Products Identification Act and the Wool Products Labeling Act by removing the country of origin and fiber content labels, and in some instances the care labels, from the garments they sold. The proposed consent agreement would prohibit the company from future violations of the Textile Fiber Products Identification and Wool Products Labeling Acts.

Pompeian, Inc.

Pompeian, Inc. agreed to settle allegations that it made false and unsubstantiated claims regarding olive oil's superiority to vegetable oil in providing health benefits to consumers. The proposed consent agreement would prohibit the respondents from, among other things, representing that eating olive oil lowers cholesterol or is healthier for the heart than eating vegetable oil unless the claims are substantiated by competent and reliable scientific evidence.

Value Rent-A-Car

Value Rent-A-Car (Value) agreed to settle allegations that it failed to disclose certain significant charges and limitations when providing price quotations for its car rentals. The proposed consent agreement settling the Commission allegations requires Value to disclose to consumers in its ads and via telephone any airport surcharges or in the alternative, any additional charges; all charges resulting from a driver's age that are applicable to the contemplated rental, or in the alternative, any additional charges; all geographic driving restrictions that apply where rentals are advertised as having unlimited mileage; restrictions on the unlimited mileage; and all mandatory charges, or charges that are not reasonably avoidable by the consumer, or in the alternative, any additional charges.

PART II CONSENT ORDERS ISSUED

MAINTAINING COMPETITION MISSION

Connecticut Chiropractic Association

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

Debes Corporation, Alma Nelson Manor, Inc.,
Beverly Enterprises - Illinois, Inc., Beverly Enterprises, Inc.,
Park Strathmoor Corporation, Neighbors, Inc., The,
Fairview Plaza Limited Partnership, Yorkdale Health Center, Inc.

Six Rockford, Illinois area nursing homes and two corporations settled allegations that they participated in a boycott of local nurse registries. The complaint accompanying the consent order alleged that the eight firms conspired to boycott the Alpha Christian Registry after it announced a substantial increase in its prices to supply registered nurses, practical nurses, and nursing assistants on a temporary basis to nursing homes. According to the complaint, the firms later threatened to also boycott other nurse registries in the Rockford area. The complaint names: Debes Corporation, Alma Nelson Manor, Inc., Park Strathmoor Corporation, Beverly Enterprises, Inc., Beverly Enterprises - Illinois, Inc., Fairview Plaza Limited Partnership, The Neighbors, Inc., and Yorkdale Health Center, Inc. The consent order prohibits each of the eight firms from threatening to refuse to use the services of any temporary nurse registry and from attempting to interfere with the prices charged by those registries.

Hanson PLC

Hanson PLC agreed to divest Cencal Cement Company (Cencal), a California cement importing company, to a Commission approved acquirer to settle

allegations concerning Hanson PLC's subsidiary's, Kaiser Cement Company (Kaiser), proposed acquisition of Beazer PLC. According to the complaint issued with the consent order, the acquisition would lessen competition in the manufacture and sale of portland cement in a forty eight county northern California area and eliminate competition between Hanson PLC's subsidiary, Kaiser, and Cencal. Cencal, 50% owned by Beazer PLC, owns a deep-sea cement import terminal located at the Port of Stockton, California. The consent order permitted Hanson PLC's acquisition of Beazer PLC, but required that Hanson PLC either sell the 50% share of Cencal it acquired to Ssangyong Cement (Pacific), Inc. (Ssangyong), Cencal's other 50% owner, or acquire Ssangyong's preacquisition interest and then divest the entire Cencal Cement Company to a Commission approved acquirer within twelve months. In addition to the divestiture, for a period of ten years Hanson PLC is prohibited from acquiring any assets or more than 3% of the voting stock of any company that manufactures, sells, or distributes cement in that forty-eight county area of northern California without prior Commission approval.

Kreepy Krauly, USA, Inc.

Kreepy Krauly, USA, Inc., a manufacturer of automatic swimming pool cleaning devices, settled allegations that the company illegally entered into written agreements with its dealers concerning the retail prices at which its products are sold. Under terms of the consent order, Kreepy Krauly, USA, Inc. is prohibited from entering into or enforcing such agreements with dealers or coercing dealers to maintain or adhere to any resale price and, in addition, must notify its officers and distributors that dealers are free to set their own prices for the products to be sold.

Mannesmann, A.G.

Mannesmann, A.G. agreed to settle allegations stemming from its proposed acquisition of Rapistan Corporation, a wholly owned subsidiary of Lear Siegler Holdings Corporation. The complaint accompanying the consent order alleged that the acquisition would substantially reduce competition in the United States in the manufacture and sale of high-speed, light to medium duty conveyor systems used to transport, divert, and sort cartons weighing less than seventy five pounds. The complaint further alleged that the acquisition would eliminate competition between the two firms, permit Mannesmann, A.G. to acquire a dominant market position, and increase the likelihood of collusion. Under terms of the consent order and the hold separate agreement, Mannesmann A.G. was permitted to acquire Rapistan Corporation's assets but was required to divest Mannesmann A.G.'s subsidiary, The Bushman Company, based in Cincinnati, Ohio, to a Commission approved acquirer within twelve months. In addition, Mannesmann A.G. was required for ten years to obtain approval before acquiring any business that manufactures and sells such conveyor systems in the United States. Mannesmann A.G. submitted an application to divest The Bushman Company to Alvey, Inc., a St. Louis, Missouri

manufacturer of unit handling conveyor systems. That application is still pending.

Nintendo of America Inc.

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

Nippon Sheet Glass Company, Ltd.

Nippon Sheet Glass Company, Ltd. (Nippon) and Pilkington PLC agreed to settle allegations that Nippon's 1990 acquisition of a 20% interest in Libbey-Owens-Ford Company (L-O-F), a wholly owned United States subsidiary of Pilkington PLC, was likely to reduce competition in the North American market for wired glass. Wired glass is a specialty flat glass used primarily in shower and bath enclosures and in fire retarding applications for products such as fire doors. According to the complaint issued with the consent order, the terms of the Nippon/Pilkington PLC acquisition agreement gave the jointly owned L-O-F rights to distribute, in North America, the polished wired glass produced by both Pilkington PLC and Nippon, thus eliminating competition between the two firms and increasing the likelihood of collusion among other firms in the market. The consent order prohibits Nippon and Pilkington PLC from jointly manufacturing or distributing polished wired glass in North America to customers located in the United States through L-O-F or any other firm without prior Commission approval for a period of ten years.

PepsiCo, Inc.

PepsiCo, Inc. agreed to settle allegations that its acquisition of Twin Ports Seven-Up Bottling Company (Twin Ports) would substantially lessen competition in the production and distribution of carbonated soft drinks in the Duluth, Minnesota area. According to the complaint accompanying the consent

order, Twin Ports, a bottler and distributor of Seven-Up and Dr Pepper, sells nonPepsi brands in competition with the Pepsi brands sold by the franchised Pepsi bottler in the Duluth area. The complaint alleges that the acquisition would increase the likelihood of interbrand collusion because PepsiCo, Inc. could raise the price of either of its branded soft drinks or the nonPepsi brand soft drinks that its Twin Ports operation bottles and distributes as a franchise in the area. Under the terms of the consent order, PepsiCo, Inc. is required to divest Twin Ports within nine months to an acquirer approved by the Commission. In addition, for a period of ten years, PepsiCo, Inc. must obtain Commission approval before acquiring the rights to distribute nonPepsi brands, or before acquiring any entity with such rights, in the Duluth area. PepsiCo, Inc. requested Commission approval to sell Twin Ports to All-American Bottling Corporation. That application is pending.

Roberto Fojo, M.D.

Dr. Roberto Fojo agreed to settle allegations that he conspired with others to withhold medical services from the North Shore Medical Center, Inc. (North Shore) of Miami, Florida. According to the complaint issued with the consent order, Dr. Roberto Fojo, who at the time of the alleged practices was chairman of North Shore's department of obstetrics and gynecology, and his staff refused to honor and participate in the hospital's policy that provided qualified physicians free privileges in exchange for performing emergency room services. The complaint alleged that the physicians boycotted the emergency room duty in an attempt to coerce the hospital into paying physicians to come to the hospital to take emergency room calls to treat patients needing medical or surgical services. Under terms of the consent order, Dr. Roberto Fojo is prohibited from entering into any agreement with other physicians to withhold emergency room call services at any hospital. The consent order does not prohibit the doctor from entering into agreements with other physicians in his medical partnership to carry on his private medical practice.

Rohm and Haas Company

Rohm and Haas Company agreed to settle allegations that its $175 million proposed acquisition of Union Oil Company of California's (Unocal) six manufacturing facilities, located in California, Illinois, and North Carolina, and other related assets used to produce straight acrylic emulsion polymers, could substantially reduce competition and lead to higher prices and inferior service in the United States for the primary ingredient used in exterior latex house paints. According to the complaint, Rohm and Haas Company, the leading firm in the market with an approximate 82% market share, produces a full line of emulsion polymers, including vinyl acrylics used in the production of interior house paints. The consent order permitted the acquisition but required Rohm and Haas Company to divest Unocal's straight acrylics polymer business technology and licenses to Union Carbide or another Commission approved buyer within one hundred and eighty days. In addition, for ten years, Rohm

and Haas Company must obtain prior Commission approval before acquiring any firm engaged in the production of straight acrylic emulsion polymers.

RWE Aktiengesellschaft

RWE Aktiengesellschaft (RWE) settled allegations stemming from its $1.3 billion acquisition of Vista Chemical Company (Vista). The complaint issued with the consent order alleged that the acquisition would eliminate competition in the world market for the manufacture and sale of high purity alcohol process alumina. RWE and Vista are the only two companies that obtain alumina as a by-product in the production of high purity alcohol used in making catalysts for the petroleum refining, chemical, and automotive emissions control industries. The consent order requires RWE to license to a Commission approved entity certain technology for the production of its alumina and to assist the licensee in the formation and operation of a company capable of establishing itself as a producer of high purity alcohol process alumina comparable to that of Vista or RWE. In January 1992, the Commission approved RWE's request to license the technology used in the production of high purity alcohol process alumina to Discovery Aluminas, Inc. The consent order also requires RWE to obtain prior Commission approval for a period of ten years before acquiring any entity that manufactures, distributes, or sells high purity alumina if that entity had sales of one hundred and twenty five thousand pounds or more in the United States in any six month period.

Sandoz Pharmaceuticals Corporation

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

Sentinel Group, Inc.

Sentinel Group, Inc. (Sentinel) agreed to settle allegations stemming from its acquisitions of funeral homes in Georgia and Arkansas. The Commission's complaint alleged that the acquisitions, covering funeral homes in five cities in the two states, reduced competition among area funeral homes and increased the likelihood of collusion among the remaining firms in the areas. Under the consent order, Sentinel must divest the Mincy-Fulford Funeral Home in Waycross, Georgia and the Erwin-Pettit Funeral Home in Summerville, Georgia within twelve months to a Commission approved acquirer. In addition, for a period of ten years, Sentinel must obtain prior Commission approval before acquiring any funeral home in an area extending fifteen miles outward in any direction from the city limits of Waycross, Georgia; Summerville, Georgia; Gainesville, Georgia; Rome, Georgia; Savannah, Georgia; and Fort Smith, Arkansas.

Service Corporation International

Service Corporation International (SCI) agreed to settle allegations stemming from its acquisition of Pierce Brothers Holding Company. The complaint issued with the consent order alleged that the acquisition, which combined the two largest owners and operators of funeral homes and cemeteries in North America, would substantially lessen competition in the funeral home industry in the San Bernardino/Riverside area of California. Under the consent order, SCI must divest Cortner-Pierce Brothers Chapel of Redland; Pierce Brothers Ingold Chapel of Fontana; Mark B. Shaw Funeral Home of San Bernardino; and Rubidoux Mortuary of Riverside within twelve months to an acquirer preapproved by the Commission. In addition, SCI is required to obtain prior Commission approval for ten years before acquiring any additional funeral homes in the San Bernardino/Riverside area.

Southbank IPA, Inc.

Twenty three obstetrician/gynecologist members of Southbank IPA, Inc. agreed not to conspire with others to fix the prices charged for physician services. According to the complaint issued with the consent order, Southbank IPA, Inc., its parent company, Southbank Health Care Corporation, and twenty-three physicians formed an independent practice association in the Jacksonville, Florida area to contract directly with third party payers, insurance companies, and employers providing self-insured health benefits to their employees. The complaint alleged that Southbank IPA, Inc. and its members restrained competition among obstetricians and gynecologists in the Jacksonville area by boycotting third party payers and attempting to increase the payments paid to the physicians. The consent order requires the dissolution of Southbank IPA, Inc. and its parent and prohibits the physicians from entering into any agreement with any competing physician to set the fees charged for professional services, unless they are participating in a truly integrated joint venture or in a partnership or professional corporation. This is the first

Commission consent order to address the dissolution of a health care organization.

Texas Board of Chiropractic Examiners

The Texas Board of Chiropractic Examiners (Board) agreed not to adopt and enforce rules that prohibit its members from using truthful advertising or soliciting patients. The complaint issued with the consent order alleged that the Board, the sole licensing authority for chiropractors in the State of Texas, restrained competition and injured consumers by restricting truthful advertising about chiropractors' fees, services, and products. The consent order does not restrict the Board from adopting or taking disciplinary action to prohibit false or deceptive advertising. This consent order was modified from the proposed consent agreement originally placed on the public record for comment in 1989 to delete Commission challenges to a number of the Board's Rules of Practice. Among the Board rules deleted from the consent order were prohibitions against publicly displaying food supplements or food supplement brochures in chiropractors' offices, prohibitions against quality advertising not subject to reasonable verification by the public, and prohibitions against offering free x-rays as a means of soliciting patients.

Vons Companies, Inc., The

The Vons Companies, Inc. (Vons) agreed to divest a supermarket in California to settle allegations that Vons attempted to lessen competition in the retail grocery market in the San Luis Obispo area. According to the complaint, Vons sold its grocery store in San Luis Obispo to a drugstore within days of entering into arrangements with Williams Bros. Markets, Inc. (Williams) to purchase eighteen Williams supermarkets in the central coastal area of California. The Vons store was sold to a drugstore operator, who did not intend to operate the store as a retail grocery, at a lower price than was offered by a firm that intended to continue the store's operation as a retail grocery. The sale of the eighteen supermarkets was completed three months later and was inextricably intertwined with the prior Vons' sale, according to the complaint. The complaint further alleged that the two related transactions eliminated competition between Vons and Williams, reduced market capacity, and increased the likelihood of collusion in the market. Under the terms of the consent order, Vons is required to divest its Madison Road supermarket in San Luis Obispo to a Commission approved buyer who will operate the store as a supermarket. Vons must also obtain Commission approval before acquiring a supermarket in San Luis Obispo County for a period of ten years or from acquiring a supermarket anywhere in the United States within nine months after having closed or sold all of its supermarkets within seven miles of the acquired store when such a sale is to a person who will not operate the store as a supermarket.

CONSUMER PROTECTION MISSION

American Enviro Products, Inc.

American Enviro Products, Inc. agreed to settle allegations that it made unsubstantiated claims that when placed in a landfill, its Bunnies disposable diapers would decompose within three to five years or before a child grows up, and that they offer significant environmental benefit compared to other diapers. The consent order prohibits American Enviro Products, Inc. from making unsubstantiated degradability claims in the future, and requires the company to disclose what is meant by environmental benefit claims, if the meaning is not clear from an advertisement's context. The consent order permits the company to make truthful claims that its plastic products will degrade into usable compost when disposed of in municipal solid waste composting facilities, if related disclosures are made.

Automatic Data Processing, Inc.

Automatic Data Processing, Inc. agreed to stop selling or licensing software and printed materials that misrepresent the savings of buying a car through financing rather than by paying cash. The consent order prohibits such misrepresentations in the future.

BelAge Plastic Surgery Center, P.C., George F. Miller, Jr., M.D.

BelAge Plastic Surgery Center and its founder, Dr. George F. Miller, Jr., agreed to settle allegations that they misrepresented the risks, pain, recovery period, and scarring of cosmetic surgery procedures. The consent order prohibits the respondents from making the challenged claims in the future. In addition, the consent order requires the respondents to disclose the adverse risks associated with any cosmetic or plastic surgery procedure.

Bertolli U.S.A., Inc.

Bertolli U.S.A., Inc., the largest marketer of olive oil in the United States, agreed to settle allegations that it made false, misleading, and unsubstantiated claims regarding the health benefits of its olive oil and overstated the results of a study on olive oil consumption. The consent order prohibits such misrepresentations in future advertising.

Circuit City Stores, Inc.

Circuit City Stores, Inc., a national chain of consumer electronics and appliances stores, agreed to settle allegations that it failed to make the text of manufacturers' consumer product warranties available to consumers prior to a purchase, in violation of the Pre-Sale Availability Rule. The consent order prohibits future violations of the Pre-Sale Availability Rule.

Dive N' Surf, Inc. d/b/a Body Glove International

Dive N' Surf, Inc., a manufacturer of formfitting garments, including wetsuits and bathing suits, agreed to settle allegations that it failed to label the garments with the constituent fiber content, as required by the Textile Fiber Products Identification Act. The consent order prohibits future violations of the Textile Fiber Products Identification Act.

Elexis Corp., Frank J. Bianco

Elexis Corp. and its president, Frank J. Bianco, agreed to settle allegations that they falsely claimed their ultrasonic flea collars and in-home pest control devices reduce or eliminate fleas on household pets and in the home. The consent order prohibits the respondents from, among other things, representing that their ultrasonic devices will eliminate fleas on dogs or cats, or that they will reduce or repel fleas and ticks on pets or in indoor environments, without the use of chemicals. The consent order also prohibits the respondents from making any unsubstantiated claims about the performance characteristics of any ultrasonic pest control products Elexis Corp. sells.

Excell Mortgage Corporation

Excell Mortgage Corporation agreed to settle allegations that it provided consumers with inaccurate, incomplete and misleading information about annual percentage rates and the size of monthly payments for adjustable rate mortgages. The consent order prohibits future violations of the Truth in Lending Act and Regulation Z and requires the company to pay consumer redress totalling approximately $200,000.

Exhart Environmental Systems, Inc., Isaac Weiser, Margaret Weiser

Exhart Environmental Systems, Inc., its owner and president, Isaac Weiser, and one other officer, Margaret Weiser, agreed to settle allegations that they made false and unsubstantiated claims for Go'pher It, an electronic stake that vibrates and buzzes when placed in the ground. The Commission alleged that the respondents made unsubstantiated claims that the device is an effective means of eliminating, reducing, or preventing re-entry of rodents and that they falsely claimed it was waterproof and approved by the Environmental Protection Agency. The consent order prohibits the respondents from, among other things, making the challenged claims in the future.

First Brands Corp.

First Brands Corp., maker of Glad trash bags, agreed to settle allegations that it made unsubstantiated claims that the trash bags, when disposed of as trash, will completely break down, decompose, and return to nature within a reasonably short time period and that they offer a significant environmental benefit compared to ordinary, untreated plastic bags. The consent order prohibits First Brands Corp. from making unsubstantiated degradability claims

in the future. In addition, First Brands Corp. must be able to substantiate claims that its bags are environmentally friendly or safe for the environment and must disclose with reasonable specificity what it means by such terms. Attorneys General in ten states assisted the Commission in its investigation.

Good Guys, Inc., The

The Good Guys, Inc., a chain of consumer electronics stores, agreed to settle allegations that it failed to make the text of manufacturers' consumer product warranties available to consumers prior to a purchase, in violation of the Pre-Sale Availability Rule. The consent order prohibits future violations of the Pre-Sale Availability Rule.

Jason Pharmaceuticals, Inc., Nutrition Institute of Maryland

Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, marketers of the Medifast liquid diet program, agreed to settle allegations that they made deceptive and unsubstantiated claims regarding the safety and long-term efficacy of the program. The consent order prohibits the respondents from, among other things, misrepresenting the likelihood of regaining lost weight and making unsubstantiated claims about former patients' success in achieving or maintaining weight loss. The consent order also requires any claim concerning the safety of the diet program to be accompanied by a clear disclosure about the need for physician monitoring to minimize potential health risks.

Keystone Carbon Company

Keystone Carbon Company, a manufacturer of metal parts and bearings, agreed to settle allegations that it failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Fair Credit Reporting Act.

Kobacker Company, The

The Kobacker Company, which retails footwear and accessories, agreed to settle allegations that it failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Fair Credit Reporting Act.

Macy's Northeast, Inc.

Macy's Northeast, Inc. and its retail store subsidiaries agreed to settle allegations that they failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Fair Credit Reporting Act.

McDonnell Douglas Corp.

McDonnell Douglas Corp. agreed to settle allegations that it failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Fair Credit Reporting Act.

Money Store, Inc., The

The Money Store, Inc. and its subsidiaries in fifteen states agreed to settle allegations that they represented to consumers who obtained a second mortgage from the company that they were being charged a lower interest rate than the one on which their actual payments were based. The consent order prohibits the respondents from violating certain provisions of the Truth-in-Lending Act and its implementing regulation, Regulation Z, in the future. In addition, the consent order requires The Money Store, Inc. to make a total of $1,112,000 in adjustments to the accounts of consumers whose loans were amortized using the undisclosed method of calculation which resulted in the higher payments.

National Center for Nutrition

The National Center for Nutrition, a marketer of the Ultrafast liquid diet program, agreed to settle allegations that it made deceptive and unsubstantiated claims regarding the safety and long-term efficacy of its diet program. The consent order prohibits the respondent from, among other things, misrepresenting the likelihood of regaining lost weight, and making unsubstantiated claims about former patients' success in achieving or maintaining weight loss. The consent order also requires any claim concerning the safety of the diet program to be accompanied by a clear disclosure about the need for physician monitoring to minimize potential health risks.

Nestle Food Company

Nestle Food Company, formerly Carnation Company, and Nestle Beverage Company agreed to settle allegations that certain advertisements for Carnation Coffee-Mate Liquid falsely represented it to be a low-fat product when

consumed in amounts normally used on cereal, over fruit or in cooking, and lower in fat than other foods such as whole milk or 2% milk. The consent order prohibits the respondents from, among other things, misrepresenting the amount of total fat, saturated fat, or cholesterol in any milk product or nondairy substitute. In addition, the respondents are prohibited from misrepresenting the amount of total fat, saturated fat, or cholesterol relative to the serving size or amount customarily consumed for any particular use depicted in ads or promotional materials.

Newtron Products Company, Inc., Michael S. Duty, Donald G. Attermeyer

Newtron Products Company, Inc. and its principals agreed to settle allegations that they deceptively advertised the performance capabilities of the Newtron Electrostatic Air Cleaner. The consent order prohibits the respondents from making unsubstantiated representations regarding the performance of any air cleaning product unless it possesses competent and reliable scientific evidence to substantiate those claims.

NME Hospitals, Inc., Continent Ostomy Center

NME Hospitals, Inc. (NME) and the Continent Ostomy Center agreed to settle allegations that they made false claims in ads and promotional materials concerning the success rate and comparative superiority of a surgical procedure they recommend for treating ulcerative colitis and other bowel-related diseases. The Commission alleged, among other things, that NME misrepresented the incidence of slippage and leakage following the procedure and the need for follow-up corrective surgery. The consent order prohibits the allegedly false claims and misrepresentation of the comparative success rate of any reconstructive surgical procedure in the future.

Nu-Day Enterprises, Inc., Jeffrey S. Bland, Healthcomm, Inc.

Nu-Day Enterprises, Inc. (Nu-Day), its owner, Jeffrey S. Bland, and its parent company, Healthcomm, Inc., agreed to settle allegations that they falsely claimed the Nu-Day Diet program could change consumers' metabolisms and enable them to lose weight without exercising. The Commission also alleged that the program-length television format Nu-Day used for making the claims was deceptive. The consent order prohibits the respondents from making similar false and unsubstantiated claims in the future, and requires Nu-Day to disclose during any program-length television commercial that the infomercial is a paid advertisement. In addition, the consent order requires the respondents to pay $30,000 for consumer redress.

O'Neill, Inc. d/b/a Onax, Inc.

O'Neill, Inc. d/b/a Onax, Inc., a manufacturer of formfitting garments, including wetsuits and bathing suits, agreed to settle allegations that it failed to

label the garments with the constituent fiber content, as required by the Textile Fiber Products Identification Act. The consent order prohibits future violations of the Textile Fiber Products Identification Act.

Pacific Rice Products, Inc.

Pacific Rice Products, Inc. agreed to settle allegations that it made unsubstantiated health claims in advertisements for its Vita-Fiber Rice Bran cereal. The consent order prohibits Pacific Rice Products, Inc. from misrepresenting the results of any test or study in connection with the sale or advertising of any food product, and requires it to have competent and reliable scientific evidence for any health benefit claim of its food products.

Patricia Wexler, M.D.

Dr. Patricia Wexler, a New York City dermatologist, agreed to settle allegations that she misrepresented the efficacy of the Omexin hair loss treatment. Dr. Patricia Wexler appeared as an expert endorser in a program length commercial for the product. The consent order prohibits, among other things, Dr. Patricia Wexler from representing that Omexin, or any similar treatment, contains an ingredient that can curtail, reduce, or reverse hair loss or promote hair growth.

Pinkerton Tobacco Company, Inc.

Pinkerton Tobacco Company, Inc. agreed to settle allegations that it violated the Smokeless Tobacco Act of 1986 by advertising its tobacco products at live tractor and truck pulling events known as the Redman Pulling Series and allowing those ads to be broadcast on television. The consent order prohibits the company, when sponsoring an event broadcast subject to FCC jurisdiction, from allowing the brand name, logo, selling message, event name, or color or design feature of its tobacco products or packaging to appear on signs, vehicles, or equipment on which cameras covering the event routinely focus or on company provided clothing of event officials, commentators, competitors or participants. The consent order also limits the manner in which Pinkerton Tobacco Company, Inc. may use the brand name of a smokeless tobacco product within the name of a sponsored event.

Pyraponic Industries II, Inc., Jeffery Julian DeMarco

Pyraponic Industries II, Inc. and its owner, Jeffery Julian DeMarco, agreed to settle allegations that they made false and unsubstantiated claims that their Phototron indoor greenhouse would remove all indoor air contaminants. The consent order prohibits the respondents from making false or unsubstantiated claims for the Phototron or any substantially similar product.

Reproductive Genetics In Vitro, P.C., George P. Henry, M.D.

Reproductive Genetics In Vitro, P.C. and its president, Dr. George P. Henry, agreed to settle allegations that they made false and unsubstantiated claims about the success rate of their in vitro fertilization program. The consent order prohibits the respondents from making unsubstantiated success rate claims in the future. This was the Commission's fourth case challenging success rates claimed by infertility services.

RMED International, Inc., Edward Reiss

RMED International, Inc. and its president, Edward Reiss, agreed to settle allegations that they made unsubstantiated claims that TenderCare disposable plastic diapers will completely break down, decompose, and return to nature within a reasonably short time when disposed of as trash and that they offer a significant environmental benefit compared to other disposable diapers. The consent order prohibits the respondents from making unsubstantiated degradability claims in the future and from representing that any plastic product is degradable or biodegradable or offers a significant environmental benefit compared to other such products, when consumers dispose of them as trash ordinarily disposed of in landfills. The consent order allows the company to make truthful claims that its plastic products will degrade into usable compost when disposed of in municipal solid waste composting facilities, if related disclosures are made.

Sandoz Nutrition Corp.

Sandoz Nutrition Corp., marketer of the Optifast liquid diet program, agreed to settle allegations that it made deceptive and unsubstantiated claims regarding the safety and long-term efficacy of its diet program. The consent order prohibits the respondent from, among other things, misrepresenting the likelihood of regaining lost weight and making unsubstantiated claims about former patients' successes in achieving or maintaining weight loss. The consent order also requires any claim concerning the safety of the diet program to be accompanied by a clear disclosure about the need for physician monitoring to minimize potential health risks.

Scott M. Ross, M.D. d/b/a Mpls. Center for Cosmetic and Laser Surgery

Dr. Scott M. Ross agreed to settle allegations that he falsely implied in advertisements that liposuction is a low-risk procedure without significant discomfort or the need for a lengthy recovery period and that he included before and after photographs in advertisements that misrepresented the results that typically can be achieved through a twenty-five minute liposuction procedure. The consent order prohibits Dr. Scott M. Ross from, among other things, misrepresenting the results, recovery times, or the likelihood of serious adverse complications associated with liposuction or any other cosmetic surgery procedure.

Slender You, Inc.

Slender You, Inc. agreed to settle allegations that it made false and unsubstantiated weight loss claims for the continuous passive motion (CPM) exercise tables it manufactures and sells to health and fitness centers. The consent order prohibits Slender You, Inc. from making misrepresentations in the advertising, labeling, packaging, sale, or distribution of its CPM exercise tables and from misrepresenting the benefits of any diet or fitness program it offers in the future.

Spanish Telemarketing Industries, Inc.,
Nikolas Telemarketing Industries, Inc.,
Sylvia George, Inc., Stewart Brown

Spanish Telemarketing Industries, Inc., Nikolas Telemarketing Industries, Inc., Sylvia George, Inc., and Stewart Brown agreed to settle allegations that they made false weight loss claims for Faja Fantastica, a weight loss regimen, in Spanish language television commercials. The consent order prohibits the respondents from, among other things, claiming the Faja Fantastica or any other substantially similar product or service will cause an individual to lose weight without increasing physical exercise or without decreasing calorie intake. The consent order also requires the respondents to pay $100,000 for consumer redress.

St. Ives Laboratories, Inc.

St. Ives Laboratories, Inc. agreed to settle allegations that it deceptively packaged and falsely advertised that its St. Ives A Retinyl Palmitate Treatment Cream is, contains, or has the same wrinkle removing effect as, a prescription drug known as Retin-A. The consent order prohibits the company from, among other things, representing that its St. Ives A skin cream or any other nonprescription cream is, contains, or has the same effect as, another manufacturer's prescription drug. In addition, the company is required to pay $100,000 to be deposited in the U.S Treasury.
Sun Company, Inc., Sun Refining and Marketing Co.

Sun Company, Inc. and its subsidiary, Sun Refining and Marketing Co., agreed to settle allegations that they made unsubstantiated claims that Sunoco high-octane Ultra 93.5 and Ultra 94 gasolines are superior to other gasolines in providing power and acceleration. The consent order prohibits the respondents from making the challenged claims in the future.

Tech Spray, Inc., Richard Russell

Tech Spray, Inc. and its owner, Richard Russell, agreed to settle allegations that they made false and unsubstantiated environmental claims in marketing electronic equipment cleaning products. The company produces a variety of

cleaning products bearing labels containing claims such as ozone friendly or CFC free. The Commission alleged, however, that some of their products contained Class I and Class II ozone depleting substances. The consent order prohibits the respondents from, among other things, representing that any product containing such substances is ozone safe or ozone friendly or that any such product will not damage or deplete ozone in the upper atmosphere.

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

Volvo North America Corp. (Volvo) and Scali, McCabe, Sloves, Inc., its New York advertising agency, agreed to settle allegations that they falsely portrayed the comparative performance of Volvo automobiles in an ad campaign, which demonstrated a monster truck running over a row of cars, crushing all but a Volvo station wagon. The Commission alleged that, in fact, some of the Volvos used had been structurally reinforced and that in some of the competing cars, structural supports had been severed. The consent orders prohibit such misrepresentations in the future, and require each respondent to pay $150,000 to the United States Treasury as disgorgement.

Winning Combination, Inc., The, Andrew Lessman

The Winning Combination, Inc. and its president, Andrew Lessman, marketers of a nutritional supplement called Essential Factors with Oxy-Energizer, agreed to settle allegations that they falsely claimed that scientific tests have proven the supplement can prevent fatigue and tiredness. The consent order prohibits the respondents from making the challenged claims in the future and from misrepresenting the existence, content, validity, results, conclusions, or interpretations of any test or study. In addition, the consent order requires that all claims that a product prevents fatigue or tiredness or provides energy beyond its caloric value be substantiated by scientific evidence.

PART III ADMINISTRATIVE COMPLAINTS

MAINTAINING COMPETITION MISSION

Abbott Laboratories

The Commission alleged that Abbott Laboratories conspired with others to refrain from advertising infant formula directly to consumers. According to the administrative complaint, Abbott held discussions at meetings of the Infant Formula Council to draft guidelines to prohibit mass media advertising directly to consumers and agreed to exchange information with its competitors concerning their plans for other types of advertising and product promotionals. The administrative complaint further alleged that Abbott Laboratories requested health care professionals to ask other manufacturers of infant formula to stop consumer advertising. Abbott Laboratories, based in Illinois, is the nation's leading manufacturer of infant formula, and produces the Similac and Isomil brands of formula through its Ross Laboratories division.

CONSUMER PROTECTION MISSION

Griffin Systems, Inc., Gennaro J. Orrico, Alfonso S. Giordano, Robert W. Boughton

The Commission alleged that Griffin Systems, Inc., its president, Gennaro J. Orrico, its vice president, Alfonso S. Giordano, and its former president, Robert W. Boughton, made several false, unsubstantiated, and misleading claims in order to sell Vehicle Protection Plan service contracts for consumers' automobiles. The Commission alleged, among other things, that the respondents falsely represented that service contracts would fully cover repair costs for an unlimited number of claims, failed to disclose significant limitations on rental allowances, unfairly hindered consumers' ability to contact the company, and then refused to pay claims on the grounds that consumers had not received authorization for repairs.

Sonic Technology Products, Inc., W. Lowell Robertson, Brian Phillip Jobe

The Commission alleged that Sonic Technology Products, Inc. and two of its officers, W. Lowell Robertson and Brian Phillip Jobe, made false and unsubstantiated claims about their ultrasonic pest control devices. The Commission alleged, among other things, that the respondents falsely claimed the PestChaser and PestRepeller devices eliminate flea and rodent infestations in the home.

Stouffer Food Corp.

The Commission alleged that Stouffer Food Corp. made deceptive claims in print advertisements for Lean Cuisine frozen entrees. The Commission alleged, among other things, that the company falsely claimed the entrees are low in sodium.

Synchronal Corp., Synchronal Group, Inc., Smoothline Corporation, Omexin Corporation, Ira Smolev, Richard E. Kaylor,
Thomas L. Fenton, Steven Victor M.D., Ana Blau a/k/a/ Anushka

The Commission alleged that Synchronal Corp., one of the nation's largest producers of program length television commercials, made false and unsubstantiated efficacy claims for the Omexin System for Hair, a purported baldness cure, and for the Anushka Program, a purported cellulite treatment. The administrative complaint also named three related companies; Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; the principals of the companies, Ira Smolev, Richard E. Kaylor, and Thomas L. Fenton; and Dr. Steven Victor and Ana Blau a/k/a Anushka, who appeared in infomercials as expert endorsers.

PART III CONSENT AGREEMENTS ACCEPTED AND PUBLISHED FOR PUBLIC COMMENT

CONSUMER PROTECTION MISSION

American Family Publishers

American Family Publishers agreed to settle allegations that it violated the FTC Act when it hired collection firms and knowingly approved or assisted their use of deceptive debt collection practices. According to the complaint issued in 1990, American Family Publishers used debt collection agencies to send consumers deceptive attorney collection letters that were on the letterhead of attorneys. In fact, the Commission alleged, no attorneys were actively or substantially involved in the collection of the debts at issue, and no legal action was about to be initiated if the debts were not paid. The proposed consent agreement requires American Family Publishers, among other things, to instruct its debt collectors to comply with the Fair Debt Collection Practices Act in the future.

Phone Programs, Inc.

Phone Programs, Inc. agreed to settle allegations that it deceptively and unfairly advertised and marketed 900 number information services to children. The proposed consent agreement prohibits the company from making misrepresentations regarding free gifts or the content of its programs. It also requires the company to include a clear statement giving children a chance to hang up without charge and provide a means for parents to prevent unauthorized calls by their children.

PART III CONSENT ORDERS ISSUED

MAINTAINING COMPETITION MISSION

Diran M. Seropian, M.D.

Dr. Diran M. Seropian, a Fort Lauderdale, Florida plastic surgeon and former Chief of Staff of Broward General Medical Center, agreed to settle allegations from a 1991 administrative complaint that he conspired with the medical staff of Broward General to prevent the Cleveland Clinic Foundation from establishing a competing medical facility in Northern Broward County, Florida. Under terms of the consent order, Dr. Diran M. Seropian is prohibited from, among other things, entering into any agreement with the medical staff of Broward General or others to refuse to deal with physicians of the Cleveland Clinic Foundation or any other provider of health care services.

Hoechst Celanese Corporation

Hoechst Celanese Corporation agreed to settle allegations from a 1989 administrative complaint that its parent company's, Hoechst Aktiengesellschaft (Hoechst AG), acquisition of Celanese Corporation would substantially lessen competition in the manufacture and sale of acetal in world markets, including the United States. The consent order prohibits the firms from entering into any agreements with any producer of acetal products to divide markets through licensing restrictions. Acetal, an engineering thermoplastic polymer, is used as a replacement for metal in small mechanical parts such as gears and rollers in automobiles, videotape recorders, and lawn sprinklers. The acquisition gave Hoechst AG a 50% share in two acetal joint ventures, the Ticona Polymerwerke in Germany, and the Polyplastics Company, Ltd. of Japan. The consent order also prohibits Hoechst AG and its subsidiaries from acting as an exclusive selling agent of Polyplastics and from increasing their ownership in Polyplastics above 50% without the prior approval of the Commission for a period of ten years.

University Health, Inc., University Health Services, Inc., University Health Resources, Inc.

University Health, Inc. and two of its subsidiaries, University Health Services, Inc. and University Health Resources, Inc., agreed to settle allegations that their proposed acquisition of St. Joseph Hospital would reduce competition for general acute care hospital services in the Augusta, Georgia and Aiken, South Carolina area. According to the 1991 administrative complaint, the acquisition would deny patients, physicians, and health care insurers the benefits of open competition based on price, quality, and service and would increase the possibility of collusion among other hospitals in the area. The acquisition was abandoned after the U.S. Court of Appeals for the Eleventh Circuit directed the U.S. District Court for the Southern District of Georgia to grant the Commission's request for a preliminary injunction to ban the transaction. The request for a preliminary injunction was the first time the Commission asked

a federal court to block a nonprofit hospital merger. The consent order prohibits University Health, Inc. and its two subsidiaries from acquiring St. Joseph Hospital or any other acute care hospital in the Augusta, Georgia and Aiken, South Carolina area without prior Commission approval for ten years.

CONSUMER PROTECTION MISSION

Campbell Soup Company

Campbell Soup Company agreed to settle allegations contained in a 1989 administrative complaint that its advertisement linked the low fat, low cholesterol content of most of its soups to a reduced risk of some forms of heart disease, but failed to disclose that its soups were high in sodium and that diets high in sodium increase the risk of heart disease. The consent order requires Campbell Soup Company to disclose in certain future advertisements for its soups both the sodium content of the soup and the recommended maximum daily limit on sodium intake.

Tower Loan of Mississippi, Inc.

Tower Loan of Mississippi, Inc. agreed to settle allegations that it violated the Truth-in-Lending Act by failing to include the cost of mandatory credit insurance in its disclosure of finance charges and annual percentage rates and unfairly required consumers to sign statements that they had purchased the insurance voluntarily. The consent order, among other things, prohibits further violations of the Truth-in-Lending Act and requires the company to offer certain consumers an opportunity to cancel their insurance and obtain a cash refund or a credit to their account. The refunds and credits could result in as much as $5,000,000 in redress for consumers.

Viral Response Systems, Inc., Robert S. Krauser

Viral Response Systems, Inc. and its president, Robert S. Krauser, agreed to settle allegations that they made false and unsubstantiated claims regarding the efficacy of their Viralizer System for treating colds and allergies. The Viralizer System is a hand held device, similar to a portable hair dryer, that blows warm, dry air and medicated sprays into nasal or oral passages. The consent order prohibits the respondents from misrepresenting the effectiveness of the Viralizer System and requires them to possess at least one adequate and well-controlled, double-blind clinical study or, alternatively, FDA approval, to support any claim that the Viralizer System can or will eliminate, relieve, or reduce temporarily cold or allergy symptoms.

Wayne Phillips

Wayne Phillips agreed to settle allegations that he made false and misleading claims in advertising the availability of government grants to consumers to start small businesses through a thirty minute commercial, one of a series called

Money, *Money*, *Money*. The consent order prohibits Wayne Phillips from distributing the commercial and requires him to pay $50,000 for consumer redress.

INITIAL DECISIONS

MAINTAINING COMPETITION MISSION

Textron, Inc.

An Administrative Law Judge ruled Textron, Inc.'s acquisition of Avdel PLC did not pose a competitive threat to any product or geographic market in the United States. The Commission issued an administrative complaint in 1989 after a negotiated federal court consent order prohibited Textron, Inc. from taking control of the Avdel PLC assets. The administrative complaint alleged that the acquisition could substantially lessen competition by increasing the likelihood of collusion in the design, manufacture, and sale of blind rivets and fasteners necessary to join two or more sheets of material for use in airplanes, trucks, buses, and other vehicles. Complaint counsel appealed the Administrative Law Judge's decision, and the Commission heard an oral argument during the fiscal year.

FINAL COMMISSION ORDERS

MAINTAINING COMPETITION MISSION

Owens-Illinois, Inc.

The Commission reversed an Administrative Law Judge's (ALJ) decision and dismissed the complaint that challenged the acquisition of Brockway, Inc. by Owens-Illinois, Inc. According to the 1988 administrative complaint, the acquisition could substantially reduce competition in the manufacture and sale of glass containers in the United States. The ALJ ruled that the acquisition combined two of the three largest domestic glass container producers and made Owens-Illinois, Inc., the largest producer in a highly concentrated market. The ALJ ordered the divestiture of the Brockway, Inc. assets. According to the Commission final order, the evidence on balance did not support the allegations that the acquisition was anticompetitive, would tend to create a monopoly, or increase the probability of collusion among the remaining manufacturers in the production of glass containers in the United States.

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

The Commission adopted an Administrative Law Judge's (ALJ) decision that upheld the complaint against the Peterson Drug Company of North Chili, New York, Inc. The ALJ held that the company engaged in an illegal boycott of the state's cost containment program for prescription drugs in an attempt to increase the reimbursement rate paid to pharmacies. The 1989 complaint alleged that the respondent refused to participate in New York State's proposed Employee Prescription Program designed to reduce the price the state paid to pharmacies when filling prescriptions for public employees. According to the Commission final order, the respondent is prohibited from, among other things, entering into any agreement to boycott or withdraw from third party prescription reimbursement agreements.

ORDER MODIFICATIONS

MAINTAINING COMPETITION MISSION

American Medical Association

At the request of the American Medical Association (AMA), the Commission reopened and modified a 1982 order that prohibited, among other things, the AMA from restricting truthful, nondeceptive advertising by physicians. The order also required AMA member organizations to certify that they would adhere to the order. The Commission modified the order to allow the AMA to provide its member organizations the opportunity to select the manner in which they report compliance with the certification provision of the order. Under the modification, members will have the choice of supplying the certification that they adhere to the order as originally required in 1982 or allowing the AMA to review member organization's ethical codes of conduct to ensure that they are not interfering with any physician's use of truthful advertising or with the compensation offered physicians for professional medical services.

Pioneer Electronic (USA) Inc.

The Commission modified a 1975 consent order which settled allegations that U.S. Pioneer Electronics Corporation (USPEC) fixed the prices at which dealers could sell Pioneer products. The order was modified to allow Pioneer Electronic (USA) Inc. (Pioneer), successor to USPEC, to withhold cooperative advertising allowances from and to unilaterally terminate dealers that advertise its products at prices other than those suggested by the company. After the Commission issued a show cause order, the consent order was further modified to permit Pioneer also to terminate dealers unilaterally who sell Pioneer products at prices other than the suggested resale prices. The Commission declined, however, to delete provisions in the order prohibiting Pioneer from refusing to deal with retailers who will not enter agreements to advertise Pioneer products at a suggested price or a provision preventing Pioneer from intimidating, coercing, or delaying shipments to dealers who do not adhere to suggested advertising prices.

T&N PLC

The Commission reopened and modified a 1990 consent order with T&N PLC to eliminate the company's obligation to divest its remaining inventory of thinwall engine bearings. The original order settled allegations that T&N PLC's acquisition of J.P. Industries Inc. would substantially lessen competition and tend to create a monopoly in the manufacture and sale of thinwall and tri-metal heavywall engine bearings in the United States. The Commission determined that the potential harm to the respondent's ability to compete outweighed any further need to require a divesture.

CONSUMER PROTECTION MISSION

Removatron International Corp.

The Commission modified a 1988 order requiring Removatron International Corp. to cease making certain claims about its electronic, radiofrequency, hair removal device. The Commission determined that new evidence was sufficient to eliminate a provision requiring the company to affirmatively disclose that there is no evidence that its device provides anything more than temporary hair removal. The Commission declined to find that evidence sufficient to support a claim that the device provides permanent hair removal. The company is still prohibited from making unsubstantiated hair removal claims.

PRELIMINARY AND PERMANENT INJUNCTIONS

MAINTAINING COMPETITION MISSION

Abbott Laboratories, American Home Products, Mead Johnson & Company

The Commission filed complaints in U.S. District Court for the District of Columbia against the three leading manufacturers of infant formula, Abbott Laboratories (Abbott), American Home Products, and Mead Johnson & Company. The complaints alleged that the companies conspired with others to fix prices and guarantee an open market bidding system for a program to provide formula to infants in Puerto Rico under the Special Supplemental Food Program for Women, Infants, and Children (WIC) and that all three companies unilaterally provided information to their competitors that reduced uncertainty in the bidding process for that program. The Commission also filed an administrative complaint against Abbott for conspiring with others not to advertise to consumers through the mass media. Abbott, of Illinois, manufactures and sells Similac and Isomil brands of infant formula; American Home Products, headquartered in New York City, manufactures and sells SMA and Nursoy brands of formula through its Wyeth-Ayerst Laboratories division; and Mead Johnson & Company, a wholly owned subsidiary of Bristol-Myers Squibb Company, manufactures and sells Enfamil and Prosobee. Settlements with American Home Products and Mead Johnson & Company require the companies to deliver a total of three million six hundred pounds of powdered infant formula to the U.S. Department of Agriculture, the agency which administers the WIC Program. Allegations against Abbott are pending in the court.

CONSUMER PROTECTION MISSION

Academic Guidance Services, Inc.

Academic Guidance Services, Inc., a firm that licenses the right to sell college financial aid information to students through its Undergraduate Scholarship Matching Service, allegedly overstated licensees' earnings potential, consumer response to solicitations, and the service it offers licensees. In the complaint, the Commission alleged that the defendants misrepresented the earning potential a licensee can reasonably expect to make, misrepresented that a licensee can expect that 25% or more of the students will respond to a direct mail solicitation for the financial aid information service or that 3 to 4% of those solicited will purchase the service (in fact, the Commission alleged, substantially fewer students respond to the solicitations or purchase the information), and misrepresented that they will provide any licensee, as needed, assistance by knowledgeable representatives. The court issued an order temporarily barring the alleged misrepresentations and freezing the defendant's assets.

Advanced Automotive Technologies, Inc., Robert H. Morrison, Jr.,

Amerdream Corporation, Frank J. Sarcone

The Commission obtained an agreement with Robert H. Morrison, Jr., a director of Advanced Automotive Technologies, Inc., to stop falsely representing, among other things, that his product, the Petro-Mizer, increases gas power by more than 28%, increases horsepower by more than 11%, and reduces automobile emissions. The order prohibits Advanced Automotive Technologies, Inc. from making any false or misleading statement in marketing any after market automotive product, and requires Robert H. Morrison, Jr. to pay $35,000 for consumer redress. In January 1992, the court entered a default judgment against Amerdream Corporation, Advanced Automotive Technologies, Inc., and the president of both companies, Frank J. Sarcone. The judgment includes permanent prohibitions on the challenged practices, which also included the marketing of a diet plan called the Ultimate Solution Diet Program, and the payment of nearly $675,000 in consumer redress.

AFS, Inc. d/b/a American Financial Service, Daniel Klibanoff, Listworld, Inc., Robert Crooks

Two companies and their principals agreed to settle allegations that they marketed, and assisted telemarketing boilerrooms nationwide in marketing, credit-related products to consumers using false and deceptive claims. The Commission alleged, among other things, that the defendants and their client telemarketers falsely claimed that they were affiliated with financial institutions and knew certain consumers were eligible to receive low-interest credit cards. The settlements prohibit the defendants from, among other things, making or assisting others to make any of the misrepresentations alleged in the complaint and misrepresenting or failing to disclose any material fact in connection with products or services they sell. In addition, the consent orders require the defendants to immediately stop providing services to clients who engage in deceptive acts or practices. The settlement with Daniel Klibanoff, president and owner of the two companies, would, in addition, permanently ban him from directly engaging in any telemarketing business.

American Microtel, Inc., Halo Holdings Group, First Atlantic Equity Corporation, Condima, Inc., James Greenbaum, Charles Davis, Bill Whitely, Eric Kyle, Danny Sterk

The Commission alleged that American Microtel, Inc., its parent company, two other firms, and several officials of the companies misrepresented their application preparation and filing service for lotteries to operate wireless cable television systems. Several defendants agreed to preliminary injunctions prohibiting the challenged practices, and two others agreed to temporary restraining orders which also impose a limited freeze on their assets. The Commission is seeking a permanent injunction and consumer redress.

American Processing Systems, Inc., Ronald Gray, Philip Malina,

Norbert Hancock

The Commission alleged that American Processing Systems, Inc. and two of its officers, Ronald Gray and Philip Malina, assisted telemarketers who use deceptive means to sell water filters and other products by, among other things, arranging for bank processing of the telemarketers' credit card transactions. The complaint also names Norbert Hancock, who was allegedly affiliated with entities that provided the credit card processing. The Commission is seeking a permanent injunction and consumer redress.

Buyers Club International d/b/a Diversified Fulfillment Services, Edward Gagle, Lynda Field

Buyers Club International d/b/a Diversified Fulfillment Services (Buyers Club) and its president, Edward Gagle, agreed to pay $50,000 in redress to settle the allegations against them, are prohibited from factoring credit card slips through a merchant account not their own, and are required to disclose material information necessary to prevent consumers from being misled. Lynda Field agreed to pay $9,685 for consumer redress and be bound by the same restrictions as Buyers Club International and Edward Gagle.

Carl Grodin, Gayle Gunn, George Anderson, Golden Sands Development, Inc., Houston R&R, Inc., Jack Edwards a/k/a Gale Jackson, Lloyds International, Inc., Lloyd Sharp, Marcel, Edwards, Hall & Associates, Merlyn Berg, Reese T. Houston, Roger Swayze, Roy Bonn, Sharp & Anderson, Steven Borque a/k/a J.W. Hall, Vern Jensen, White Rock Mining, Inc.

In the case against eleven individuals and six companies to settle allegations that they misrepresented the success, value, and investment risk of three Nevada ore mining projects, the Commission obtained three settlements and a redress judgment.

- The consent order with Carl Grodin, a bookkeeper for one of the mining projects, prohibits him from misrepresenting the value or quantity of gold or silver ore in mining claims, the degree of risk or potential investment profit in ore purchase contracts, plans to construct processing or pilot test plants, or the past or likely future earnings of any customer. The order also requires him to pay $26,000 for consumer redress. Carl Grodin also agreed to pay $24,000 to settle an allegation of civil contempt for opening and depositing receipts in a corporate bank account, in violation of the court's temporary restraining order and asset freeze.
- Merlyn Berg agreed to pay $34,000 in satisfaction of a judgment against him alleging he misrepresented the progress that was occurring in the mining project through newsletters that he wrote to consumers.
- The consent order with Vern Jensen, a salesperson for one of the mining projects, prohibits him from misrepresenting the value or quantity of gold or silver ore in mining claims, the degree of risk or potential investment

profit in ore purchase contracts, plans to construct processing or pilot test plants, or the past or likely future earnings of any customer. The order also requires him to pay $50,000 for consumer redress.
- The Commission also obtained a judgment holding the remaining defendants liable for $6,975,420 for consumer redress. (The court previously granted the Commission's motion for partial summary judgment against these defendants and entered permanent injunctions against them). The court-appointed receiver determined that the defendants presently have no assets to satisfy the judgment.

C & L Industries, Inc., Ramon Haas, Thomas W. Bodiford

C & L Industries, Inc. and its two owners agreed to settle allegations that they used a deceptive award promotion telemarketing scheme to sell water purifiers and other items, by quitting the telemarketing business altogether and paying $165,000 for consumer redress.

Caribbean Clear, Inc., Jerry Minchey, Patricia Benton

Caribbean Clear, Inc., its owner Jerry Minchey, and a former officer, Patricia Benton, agreed to settle allegations that, among other things, they made false claims about the effectiveness of their swimming pool purifier and violated the Franchise Rule by making unsubstantiated earnings claims. The consent decree prohibits the defendants from making misrepresentations of the type alleged in the complaint or violating the Franchise Rule in the future and requires them to notify all former franchisees and known purchasers of the purifiers about the risks of using the product as advertised. The order also requires the defendants to pay $10,000 for consumer redress.

Carol Walker

The Commission obtained a settlement with Carol Walker in connection with its case against World Travel Vacation Brokers, Inc. The Commission alleged that the defendants deceptively marketed certificates for vacation trips to Hawaii. The consent order prohibits Carol Walker from making the kinds of misrepresentations alleged in the complaint and requires her to pay approximately $300,000 for consumer redress.

Continental Trading International, Ltd., RCI Trading, Inc., Axiom III Corporation

Continental Trading International, Ltd., RCI Trading, Inc., and Axiom III Corporation agreed to settle allegations they deceptively marketed a gold mining investment scheme. The consent order prohibits the defendants from making misrepresentations about the sale of gold or other precious metals for

future delivery or about any other investment opportunity. The defendants also agreed to have a judgment entered against them for $500,000.

Credit One Services, John P. Ruggeri, Nancy G. Ruggeri

The Commission alleged that Credit One Services and its principals, John P. Ruggeri and Nancy G. Ruggeri, made false claims that consumers who have filed for bankruptcy can legally establish clean credit records by purchasing the defendants' file segregation program and that the program is connected with the federal government and is legal. The court issued a temporary restraining order prohibiting the challenged practices and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

David L. du Pont

The Commission obtained two judgments against David L. du Pont for civil contempt. In each instance, the court found that David L. du Pont had operated new businesses in violation of court orders. The second contempt order against David L. du Pont permanently bans him from participating in any modeling business and requires him to pay into a consumer redress fund.

Dean S. Vlahos

The Commission alleged that Dean S. Vlahos, a defendant in the US Sales Corp. telemarketing fraud case, was in criminal contempt for advertising automobile auction information without posting a performance bond. A 1991 district court order requires Dean S. Vlahos to post a $75,000 performance bond prior to advertising car auction or credit card information services.

Delta American Financial Services Corporation,
Delta Financial Services, Inc., Lee Larson Elmore

The Commission alleged that Delta Financial Services, Inc., Delta American Financial Services Corporation, and Lee Larson Elmore misrepresented, among other things, that they routinely obtained unsecured loans for people with poor credit histories. The Commission is seeking preliminary and permanent injunctions and consumer redress.

Don David Wilson, LCI, Inc. d/b/a Franchise Contract Managers

The settlement with Don David Wilson and LCI, Inc. d/b/a Franchise Contract Managers prohibits them from marketing or selling franchises for ten years, from making specified misrepresentations in the sale of franchises, business opportunities, or investment opportunities, and from violating the Franchise Rule. In addition, the consent order restricts their performance of franchise consulting services and requires them to pay $17,000 for consumer redress.

Donald C. Bullock

Donald C. Bullock, president of Solomon Trading Company, agreed to settle allegations in connection with his role in the allegedly deceptive promotion of art works by Solomon Trading Company. The settlement with Donald C. Bullock prohibits him from falsely representing that art works or any investment offerings are good, low-risk investments that are likely to appreciate significantly within several years. It also prohibits him from falsely representing that such investments are highly liquid or that buyers can be found within a reasonably short time.

DuPont Model Management, Inc., David L. du Pont

The Commission obtained a judgment against DuPont Model Management, Inc. and its president, David L. du Pont, for falsely claiming, among other things, that Dupont Model Management, Inc. is a modeling agency and can place consumers in jobs as professional models. The order, among other things, requires the defendants to pay $2,343,506 for consumer redress.

Earl Serap

Earl Serap agreed to settle Commission civil allegations by turning over a 1985 Rolls Royce and any assets traceable to $2,200,000 he admitted to withdrawing immediately before and after a court-ordered asset freeze. The settlement stems from the Commission's case against American National Cellular Corp., in which the Commission alleged that the defendants misled investors about the costs and profitability of winning a right to build cellular telephone systems. A default judgment was previously entered against Earl Serap when he failed to return $700,000 of the funds withdrawn as the court ordered. The consent order replaces the earlier default judgment, includes broad prohibitions against the kinds of misrepresentations Earl Serap allegedly made in inducing consumers to invest in the cellular telephone lottery, and requires him to disclose in future brochures and contracts the high-risk nature of such investments. Funds from liquidation of the automobile, and any other funds recovered, will go toward consumer redress.

Factory Direct, Inc., Vendorline, Inc., Claude A. Blanc, Jr.,
Michelle Hartzheim, Michael Lynch,
James Plagman, Sr. a/k/a/ Robert Meyers,
Richard A. Wilby a/k/a/ Rick Wilby and Rick Adams, Mary Beth Woods

The Commission alleged that Factory Direct, Inc., Vendorline, Inc., and six individuals made numerous false promises to induce consumers to invest in vending machine business opportunities. The Commission alleged that the defendants have operated under at least a dozen different company or trade names, and when investors complained, the companies frequently disappeared. The court issued a temporary restraining order prohibiting the challenged

practices against both corporations and the individual who controls them and froze all of the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

Federal Coin Repository, Ichak Listenger

The Commission alleged that Federal Coin Repository and its president, Ichak Listenger, misrepresented, among other things, that their coins are excellent, low-risk investments and that they have consistently appreciated in value. The Commission is seeking a permanent injunction and consumer redress.

Feelin' Great International, Inc., James R. Quincy

The Commission alleged that James R. Quincy violated a 1988 federal district court order that required him to post a bond and to make certain required disclosures to consumers in his operation of a telemarketing firm that sells Caribbean and Florida vacation travel packages. The court issued a temporary restraining order prohibiting the challenged practices and froze the assets of James R. Quincy and his firm, Feelin' Great International, Inc.

First American Trading House, Inc., James F. Settembrino, Linda H. Settembrino

Linda H. Settembrino and James F. Settembrino agreed to settle allegations that they misrepresented, among other things, that leveraged investments in precious metals acquired through their program are low-risk and can be expected to generate high rates of return within a short period of time. The court issued a default judgment against First American Trading House, Inc. and awarded a monetary judgment "in the amount of total consumer losses...to be determined at a later date." James F. Settembrino agreed to be banned from the telemarketing of investments altogether. Linda H. Settembrino agreed to be prohibited from engaging in unlawful practices in connection with the sale of precious metals or other investment programs she offers for sale.

Golden Oak Numismatics, Ronald H. Michel

The Commission alleged that Golden Oak Numismatics and its president, Ronald H. Michel, made false and misleading representations to induce consumers to invest in coins with as much as a 100% mark up. The court issued a temporary restraining order prohibiting the challenged practices and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

GTP Marketing, Inc., Telstar Marketing Network, Inc., H S Marketing, Inc., Unitel Marketing Consultants, Inc., MBC Group, Inc., Todd Alan Arnold, Stephen Gregg Echols, Pat Arnold

GTP Marketing, Inc., four other firms, and three individuals agreed to settle allegations that they used a deceptive award notification scheme to market water purifiers and home security systems. The consent order prohibits the defendants from making the types of misrepresentations alleged in the complaint and requires them to obtain a $1,000,000 performance bond before engaging in any telemarketing activity in the future.

Hannes Tulving, Jr.

Hannes Tulving, Jr. agreed to settle allegations that, among other things, he created and maintained an artificial coin market to induce the purchase of coins at inflated prices. The consent decree prohibits the defendant from, among other things, misrepresenting the degree of risk or any other fact material to a consumer's decision to purchase any investment offering and imposes a monetary judgment which will be partially satisfied by payment of $260,000 for consumer redress.

Health Care Products of Colorado, Inc., Robert Weeks

The Commission filed a complaint alleging that Health Care Products of Colorado, Inc. and its president, Robert Weeks, ran a deceptive prize-promotion telemarketing scheme to sell vitamins and hair and skin care products. The Commission alleged that the value of the awards did not exceed the price of the products in numerous instances; the awards were not randomly selected; and, although the company shipped the ordered products immediately, in numerous instances it never shipped the purported awards to consumers who made purchases. The Commission is seeking to permanently prohibit the scheme and to order Robert Weeks to pay consumer redress.

Henry Eldon Stricker, Karen Lynn Stricker

The settlement with Henry Eldon Stricker and Karen Lynn Stricker prohibits Karen Lynn Stricker from making specified misrepresentations in the sale of franchises, business opportunities, or investment opportunities and from violating the Franchise Rule. In addition, Henry Eldon Stricker would be banned for life from promoting or selling any franchises or business opportunities. The consent order also requires the defendants to pay $211,500, and turn over other assets with an estimated value of $280,000, for consumer redress.

Intellipay, Inc., Alfa International, Inc.,
Intellisystems Communications, Inc., Hi-Tech Phones, Inc.,
Victor F. Valentino, Beverly McCall Valentino, Franco Valentino,
Ronald J. Roscioli, Terry Swofford

Intellipay, Inc., Intellisystems Communications, Alfa International, Inc., Hi-Tech Phones, Inc., and their officers allegedly misrepresented the profit

potential and costs of the pay telephone franchises, services, and training available to prospective franchisees. It was also alleged that the defendants failed to provide potential franchisees with various disclosure documents required by the Commission's Franchise Rule. The federal district court issued a temporary restraining order halting the alleged misrepresentations and rule violations and freezing the assets of the defendants and their officers to preserve funds for consumer redress.

Interactive Communications Technology, Inc.,
Goodale Communications, Inc. d/b/a Audio Arts 900 Services, Inc.,
David Goodale

Interactive Communications Technology, Inc., Goodale Communications, Inc. d/b/a Audio Arts 900 Services, Inc., and their principal, David Goodale, agreed to settle allegations that they misrepresented the nature of their credit services and failed to disclose to consumers essential cost information about their 900 telephone numbers. The consent order prohibits future misrepresentations of the type alleged in the complaint and requires the defendants to pay $800,000 for consumer redress.

International Assets Trading Co., Inc., Garry Schaeffer, Thomas V. Lopes, GEM Sciences International, Sarabeth Koethe

The Commission alleged that International Assets Trading Co., Inc., its principal officers, Garry Schaeffer and Thomas V. Lopes, GEM Sciences International, and its CEO, Sarabeth Koethe, misrepresented, among other things, the market value of gemstones they offered as investments to consumers. The court issued a temporary restraining order prohibiting the challenged practices, appointed a receiver for the corporation, and froze its assets and those of its named officers. A preliminary injunction was issued prohibiting GEM Sciences International and Sarabeth Koethe from misrepresenting through their appraisal services either the value of gemstones or other investment offerings and requiring them to affirmatively disclose that purchasing gemstones is a high-risk investment. The Commission is seeking a permanent injunction and consumer redress.

International White Cross, Inc.

The Commission obtained a settlement with International White Cross, Inc. regarding their involvement in the manufacturing and marketing of a purported AIDS cure called Immune Plus. The Commission alleged that the defendants falsely claimed, among other things, that the product could cure AIDS or AIDS-related complex (ARC), eliminate or reduce AIDS or ARC symptoms, and cause individuals who had tested HIV-positive to become HIV-negative. The consent orders prohibit the allegedly false claims and require $1,675 in refunds to be paid to consumers who purchased the product. The Commission

was able to limit consumer injury by filing suit before the product was marketed nationwide.

Ion Technology Systems, Inc., Pamela J. Besh, Kenneth Baer, John Ross

Ion Technology Systems, Inc. and its principal officers, Pamela J. Besh, Kenneth Baer, and John Ross, agreed to settle allegations that they falsely represented, among other things, that the water filters they sold removed at least 98% of a wide range of contaminants, would kill or eliminate bacteria in 10,000 or more gallons of water for at least four years, and were approved or recommended by the Environmental Protection Agency. The consent order prohibits the defendants from making the misrepresentations alleged in the complaint and requires them to disclose the terms and conditions of purchasing any products or services they sell in the future. Judgment was entered against Ion Technology Systems, Inc. for $7,500,000, but the company presently does not have sufficient assets to satisfy the judgment. Defendants Pamela J. Besh, Kenneth Baer, and John Ross are required to pay a total of $50,000 for consumer redress.

Jeanette Caroline Deutsch

The settlement with Jeanette Caroline Deutsch prohibits her from making specified misrepresentations in the sale of franchises, business opportunities, or investment opportunities and from violating the Franchise Rule. In addition, the consent order requires her to pay $25,000 for consumer redress.

K&M Marketing, David Wetherill, K&M Marketing II, Inc.,
Healthway Products, Inc. d/b/a Healthway Products of Texas,
Continental Sales, Inc.,
Nationwide Products & Research Development, Inc.,
Wave Crest Ltd., Inc., D.L.W., Inc., Dennis Poletti, James Alpert,
John Woods

The Commission alleged that K&M Marketing, David Wetherill, six corporations, and three other individuals made false claims that consumers would receive awards of substantial value if they purchased the defendants' vitamins, cosmetics, or other merchandise. David Wetherill owns six of the seven named companies. The court issued a temporary restraining order prohibiting the challenged practices and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

M & H Associates, Tamona Enterprises, Inc., Paul Hower,
Daniel W. Mitnick

M & H Associates and its partners agreed to settle allegations that they misrepresented, among other things, that the gold card credit cards they marketed to consumers through their 900 number telephone services were

functionally similar to Visa or Mastercard credit cards, when, in fact, consumers could only use the cards to buy items from certain catalogs. The defendants agreed to pay $300,000 for consumer redress and to be bound by prohibitions against assisting others in making the same representations.

Mandy Enterprises, Inc., Frances Witz, Gustavo Garces, James Witz

Mandy Enterprises, Inc. and its owners and operators agreed to settle Commission allegations that they misrepresented to consumers their credit card program and misrepresented an information call as being toll free when in fact it was not free for consumers outside of Hilton Head Island, South Carolina. The agreement prohibits the defendants from misrepresenting the availability, quality, nature, or total cost of their credit-related services and requires them to disclose the conditions a consumer must meet to qualify for a credit card, such as whether a minimum security deposit is required. The settlement also requires the defendants to pay the $2,300 frozen by the temporary restraining order for either consumer redress, or if redress is impracticable, for deposit in the U.S. Treasury.

Mary Oates d/b/a Consolidated Counseling Services

Mary Oates d/b/a Consolidated Counseling Services agreed to settle allegations that she falsely claimed to work under contract for a nonexistent Federal Telemarketing Agency and that for a fee, the company would deliver to consumers prizes that they should have received from other telemarketers but never did. The consent order prohibits the defendant from making the types of misrepresentations alleged in the complaint, requires her to obtain a $25,000 performance bond before entering the telemarketing business in the future, and requires her to pay $5,000 for consumer redress.

M.D.M. Interests, Inc., Southwestern Media Group,
National Lottery Hotline, Max K. Day, Michael Day

M.D.M. Interests, Inc., Southwestern Media Group, National Lottery Hotline, and two of M.D.M. Interests, Inc.'s officers, Max K. Day and Michael Day, agreed to turn over various assets and to discontinue assisting a network of telemarketers who falsely represented to consumers that they could obtain a Visa or MasterCard credit card, regardless of their credit history, by making a $50 call to a 900 number. The court had previously issued a temporary restraining order, prohibiting the challenged practices, and frozen the defendants' assets. The previously frozen assets will be turned over to the Commission pursuant to these settlements, and will be used to establish a consumer redress fund. If redress is not practical, the money will be deposited in the U.S. Treasury.

MDMS Technologies d/b/a Metro Communications Group,
Gerald L. Foreman, James L. Smith, MCG-San Bernardino,

Mark M. Sabraw

MDMS Technologies d/b/a Metro Communications Group, its principals, Gerald L. Foreman and James L. Smith, one of its dealers, MCG-San Bernardino, and its president, Mark M. Sabraw, agreed to settle allegations that they misrepresented their application preparation and filing service for lotteries to operate wireless cable television systems. The settlement includes prohibitions as well as broad limitations on future participation in any government sponsored license lottery. The settlement also requires the defendants to provide an extensive disclosure document to customers before closing any sale and to forfeit to the Commission all previously frozen assets which may be used to fund a consumer redress program.

Michael Jay & Company, Inc., Michael Jay, Andra Jay

Michael Jay & Company, Inc. and two of its officers, Michael Jay and Andra Jay, agreed to settle allegations that they falsely claimed that their credit repair services would remove negative but accurate information from consumers' credit reports. The consent decree, among other things, prohibits the defendants from misrepresenting that they can or will improve the credit report of any person and requires them to pay $10,000 for consumer redress.

Michael L. Zabrin Fine Arts Ltd., Michael L. Zabrin

The Commission alleged that Michael L. Zabrin Fine Arts Ltd. and its owner, Michael L. Zabrin, sold fake art works as creations of Marc Chagall, Pablo Picasso, and Salvador Dali to art dealers who then sold them to consumers. The court issued a temporary restraining order, and later a preliminary injunction, against the company and Michael L. Zabrin halting the alleged practices. The complaint was filed under seal in October 1990 and remained under seal pending related legal proceedings until March 1992.

National Business Consultants, Inc., Robert Namer

The Commission obtained a judgment against National Business Consultants, Inc. and its president, Robert Namer, for making false and misleading claims in the sale of consulting service franchises and failing to provide required disclosures to potential franchisees, in violation of the Franchise Rule. The order prohibits the defendants from making the types of misrepresentations alleged in the complaint and from violating the Franchise Rule in the future. In addition, the court ordered the defendants to pay $3,019,377 plus interest for consumer redress, as well as the Commission's costs in bringing the case.

National Credit Savers, Inc.

The Commission alleged that National Credit Savers, Inc. deceptively marketed gold card credit cards and deceptively used 900 telephone numbers. The court

entered a temporary restraining order enjoining the challenged practices and froze the defendant's assets. The Commission is seeking a permanent injunction and consumer redress.

National Energy Specialist Association, Frank Newbraugh

National Energy Specialist Association (NESA), a self-described trade association of marketers who sell energy saving products to consumers, and its executive director, Frank Newbraugh, allegedly made false statements that they carefully investigate applicants for membership and then offer memberships only to those with a high degree of skill and proven energy savings expertise. The complaint alleges that, in fact, all any marketer had to be to become a member was to submit an application and pay a fee. The complaint also alleges that although NESA claims to be a nonprofit coalition dedicated to cost efficient solutions to the nation's energy problems, its programs are intended to boost sales of its for profit business members. The Commission is seeking a permanent injunction and consumer redress.

NATTC, Inc., Douglas P. McGee

NATTC, Inc. and its owner, Douglas P. McGee, agreed to settle allegations that they misrepresented vacation travel packages to the Bahamas and Hawaii. The consent judgment, among other things, prohibits the defendants from misrepresenting any material fact in connection with any telemarketing activity in the future, requires them to disclose any material restrictions on or costs for obtaining any telemarketed goods or services before accepting any payment, and requires them to pay $15,600 for consumer redress.

Osborne Precious Metals, Osborne Stern and Company, Douglas Osborne

Osborne Precious Metals allegedly misrepresented or failed to disclose the fees and commissions associated with the leveraged investments in precious metals that they market by telephone. The respondents allegedly misrepresented to consumers that investments in precious metals yield high profits in a short period of time with little risk of loss. The Commission is seeking to permanently prohibit the challenged practices and to order the defendants to pay consumer redress.

Pacific Medical Clinics Management, Inc., James Norman Wells

The Commission obtained a judgment against Pacific Medical Clinics Management, Inc. and its principal, James Norman Wells, for falsely advertising that, through their medically formulated program, consumers could adjust their metabolism and lose up to one and one half pounds a day. The order prohibits the defendants from, among other things, misrepresenting the efficacy

of any weight loss or health care program in the future and requires them to pay $21,551,669 for consumer redress.

Passport Internationale, Inc., Incentive Internationale Travel, Inc., Direct Mail Express, Inc., U.S. Trade Distributors, Inc., David Saltrelli, Michael Panaggio

The Commission alleged that Passport Internationale, Inc., its owners, and several other firms deceptively marketed travel packages to consumers through a network of telephone salesrooms and allegedly aided and abetted the telemarketers in deceiving consumers. The court issued a temporary restraining order prohibiting the challenged practices and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

Pioneer Enterprises, Inc., Great Western Printing, Premier Marketing of America, Inc., Pro Life Marketing, Regency Marketing Enterprises, Inc., 21st Century II, 21st Century Marketing, Inc., Sunshine Promotions, VitaSystems Enterprises, Inc., Vita Tek Marketing, Richard J. Secchiaroli, Christopher A. Easley

The Commission obtained a temporary order halting a prize promotion telemarketing firm scheme business under a variety of names. The Commission's complaint alleged that the firm made unsolicited telephone calls and mailed notifications to consumers stating they had won a valuable award such as a vacation trip, a car, cash, or jewelry. The defendants then allegedly made numerous false and misleading statements in order to induce the recipients to purchase vitamins, water purifiers, or other merchandise at prices ranging from several hundred to several thousand dollars -- prices that exceeded the value of the prize awards, according to Commission documents. The Commission also alleged that the defendants aided and abetted other telemarketers in running similar schemes to market their products.

PM Marketing Masters, Inc., Precious Metals & Gems, Inc., Donald E. Gaines, Phillip C. Ruttan

The Commission obtained a judgment against Donald E. Gaines and PM Marketing Masters, Inc. The court found that the defendants made numerous false claims in promoting a timeshare resale operation. The order prohibits the defendants from making the kinds of misrepresentations alleged in the complaint and from billing consumers' credit card accounts on behalf of third parties. The order also requires them to obtain a $1,500,000 performance bond before resuming any telemarketing activity and to pay $1,500,000 for consumer redress.

- Precious Metals & Gems, Inc. and its owner, Phillip C. Ruttan, agreed to settle allegations stemming from their participation in the operation. The Commission alleged that these defendants aided and abetted Donald

E. Gaines by, among other things, opening bank accounts for him, providing him with office space, and depositing his credit card sales drafts for collection. The consent order prohibits the defendants from, among other things, making misrepresentations of the type alleged in the complaint, billing charges to consumers' credit card accounts on behalf of third parties, and failing to disclose consumers' rights to cancel a purchase. In addition, the defendants are required to pay $20,000 to the U.S. Treasury.

Reese Scott Brutzman, Woodmar Corporation d/b/a Republic Rare Coins, Shelmar Corporation of Beverly Hills d/b/a Beverly Hills Coin Gallery, Plano Corporation of Los Angeles

The Commission obtained a judgment against Reese Scott Brutzman, Woodmar Corporation d/b/a Republic Rare Coins, Shelmar Corporation of Beverly Hills d/b/a Beverly Hills Coin Gallery, and Plano Corporation of Los Angeles. The Commission alleged that the defendants misrepresented, among other things, the value, investment risk, and profit potential of their rare coins. The order prohibits the defendants from, among other things, making any misrepresentations in the promotion and sale of coins, bullion for investment, or any other investment offering and requires the defendants to pay $1,773,8336 for consumer redress.

Regional Supply Company, Mark R. Crittenden, Jaime's Supply Inc., Jamie Reiber

Mark R. Crittenden, owner of an office supply company doing business under the name Regional Supply Company, among others, and Jamie Reiber, an officer of Jaime's Supply Inc., a telemarketing firm, agreed to stipulated final judgments and orders to settle Commission allegations that they made false representations in connection with the sale, shipment, and billing of photocopier supplies to businesses and nonprofit organizations nationwide. Under the settlements, Mark R. Crittenden is also required to post a performance bond for the benefit of future customers, prior to engaging in any future telemarketing activity, and to pay approximately $250,000 in consumer redress.

Rene F. La Treill a/k/a Ray La Treill

The Commission obtained a settlement with Rene F. La Treill a/k/a Ray La Treill in connection with its complaint against Newport Gems d/b/a Capital Assets International, RIME, Inc. d/b/a First Capital Trading Company, United States Gemological Services, Inc., and eleven individuals. The Commission alleged that the defendants misrepresented the investment value of semiprecious gemstones they sold. The consent decree prohibits Rene F. La Treill from misrepresenting the value of any investment offering he makes,

requires him to disclose to future consumers the risks of investing in gemstones, and requires him to pay $1,500,000 for consumer redress.

Scherling Photography, Inc., Patrick T. Scherling, Orlando K. Scherling

Scherling Photography, Inc. and its presidents, Patrick T. Scherling and Orlando K. Scherling, agreed to settle allegations that they made false claims about the value and quality of film and enlargement processing services provided to consumers who purchased them in partially prepaid packages. The consent order prohibits the defendants from making the types of misrepresentations alleged in the complaint in the future.

Seymour Butan

The Commission obtained an order holding Seymour Butan, a defendant in its case against Fax Corporation of America, Inc., in civil contempt for violating an asset freeze the court issued at the Commission's request. The Commission alleged that Seymour Butan was in contempt following thirty-four trips he made to Atlantic City, where he gambled at least $152,750 in violation of the freeze. The order requires the defendant to pay back the funds he spent, plus interest, and pay reasonable attorney's fees incurred by the Commission.

Sporicidin Company, Robert I. Schattner, T.J. Schattner

The Commission alleged that Sporicidin Company and its two principal officers, Robert I. Schattner and T.J. Schattner, falsely advertised the effectiveness of Sporicidin Cold Sterilizing Solution. The Commission requested that the court issue a preliminary injunction pending the outcome of a proceeding before a Commission Administrative Law Judge.

Starlink, Inc., Frank J. Fioravanti

Starlink, Inc. and its president, Frank J. Fioravanti, agreed to settle allegations that they misrepresented 900 number telephone services for employment opportunities. The consent order prohibits the defendants from advertising, marketing, or selling any information concerning employment opportunities in the future and requires them to pay $70,000 for consumer redress.

T.G. Morgan, Inc., Michael W. Blodgett

T.G. Morgan, Inc. and its president, Michael W. Blodgett, agreed to settle allegations that they made false claims regarding the investment and market value of rare coins they sold to consumers nationwide. The consent order prohibits the defendants from misrepresenting any material fact about coins or any other investments they sell and requires them to make certain disclosures to future investors. The order also requires the defendants to turn over several

million dollars worth of assets to provide funds for consumer redress. The case was a joint effort with the Minnesota Attorney General's Office.

Unimet Credit Corporation, Unimet Trading Corporation

The Commission filed a complaint against Unimet Credit Corporation and Unimet Trading Corporation, companies that serve as suppliers and consumer financing providers for telemarketers of leveraged investments of precious metals throughout the United States. The defendants allegedly made numerous and substantial misrepresentations about the risk, profit potential, commissions, and fees associated with the investments. The Commission is seeking a permanent injunction and consumer redress.

Uni-Vest Financial Services, Inc., Michael Zambouros, Roger Zilbert

The Commission obtained a settlement with Michael Zambouros and Roger Zilbert in connection with its case against Uni-Vest Financial Services, Inc. (Uni-Vest) and several other individuals. The Commission alleged that the defendants falsely claimed their precious metals were a low-risk investment and charged fees to consumers higher than, or in addition to, those they claimed to charge for investments in precious metals. The Commission also alleged that the defendants promised to get consumers' permission before executing buy and sell orders, but failed to do so, and failed to execute clients' sell orders quickly.

- The consent order with Michael Zambouros, a former vice-president and co-owner of Uni-Vest, prohibits him from making misrepresentations of the type alleged in the complaint. In addition, the order bans Michael Zambouros from telemarketing any investment products for five years and requires him to pay $45,000 for consumer redress.
- The consent order with Roger Zilbert, a sales manager for Uni-Vest, prohibits him from making misrepresentations of the type alleged in the complaint. In addition, the order bans Roger Zilbert from telemarketing any investment products for seven years and requires him to pay $2,500 for consumer redress.

U.S. Rarities, Inc., James A. Fullwood, Robert C. Ramos

U.S. Rarities, Inc. and its co-owners, James A. Fullwood and Robert C. Ramos, agreed to settle allegations that they falsely represented the coins they marketed as excellent investments likely to generate substantial profits in a short period of time. The consent order prohibits the defendants from, among other things, misrepresenting any fact material to a consumer's decision to purchase any coin, investment, or telemarketed product and requires them to obtain a $25,000 performance bond before they engage in any coin, investment, or telemarketing sales. The individual defendants, who filed for bankruptcy, also agreed to have a judgment entered against them in the amount of $1,750,000.

US Sales Corp., Dean S. Vlahos

The Commission obtained a judgment against US Sales Corp. and its owner, Dean S. Vlahos, for deceptively using 900 numbers to market information on how to buy repossessed, confiscated, or used cars and other late model automobiles for as little as $100 and how to obtain secured credit cards from major banks regardless of consumers' credit histories. The order prohibits the defendants from making the challenged misrepresentations in the future and requires them to obtain a $75,000 performance bond before engaging in media advertising of any automobile or credit card information service. In addition, the defendants are required to pay over $9,000,000 for consumer redress.

Voices for Freedom, Phone Base Systems, Inc., Barbara Wyatt, William von Meister, Todd Wyatt

The Commission alleged that Voices for Freedom (VFF), Barbara Wyatt, and Todd Wyatt misrepresented that VFF was a nonprofit, charitable organization and that substantial proceeds from the sale of Desert Shield/Desert Storm bracelets would be used to operate a message center for U.S. troops in the Persian Gulf. The court issued a preliminary injunction prohibiting the challenged practices and froze the defendants' assets. Subsequently, VFF, Barbara Wyatt, and Todd Wyatt agreed to a settlement that prohibits them from making misrepresentations of the type alleged in the complaint and to pay $120,000 to the U.S. Treasury. In addition, Todd Wyatt agreed to be barred from the financial management or disbursement of funds for any charitable or nonprofit organization.

- Phone Base Systems, Inc., a telecommunications service bureau, agreed to settle similar allegations stemming from its role in the operation. The consent order prohibits the defendant from making the types of misrepresentations alleged in the complaint.
- William von Meister, former president of Phone Base Systems, Inc., also agreed to settle similar allegations. The consent decree prohibits him from making misrepresentations as to the nonprofit or charitable nature of any organization for which money is sought and requires him to meet certain requirements before representing that he is doing fundraising on behalf of a nonprofit or charitable organization in the future.

Western Trading Group, Ltd., Jon A. Gentile, Sam Kingsfield

The Commission alleged that Western Trading Group, Ltd. and its officers misrepresented that investments in precious metals yield high profits in a short period of time with little risk of loss. The Commission is seeking to permanently prohibit the challenged practices and to order the defendants to pay consumer redress.

World Wide Classics, Inc., World Wide Classics of Indiana, Ronald T. Schaefer, Janet Alexander, Christopher de Jesus

The Commission alleged that World Wide Classics, Inc., World Wide Classics of Indiana, and officers of the companies, Ronald T. Schaefer, Janet Alexander, and Christopher de Jesus, misrepresented the investment potential of stamps they sold to consumers. The court issued a temporary restraining order prohibiting the challenged practices, appointed a receiver for the corporations and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress. This is the Commission's first case alleging fraud in the sale of stamps and related collectibles.

CIVIL PENALTY ACTIONS

MAINTAINING COMPETITION MISSION

Atlantic Richfield Company, U.F. Genetics a/k/a Sunseeds Genetics, Inc. and S.S. Genetics Inc.

The Atlantic Richfield Company agreed to pay $290,000 in civil penalties, and U.F. Genetics a/k/a Sunseeds Genetics, Inc. and S.S. Genetics Inc. (UFG) agreed to pay $150,000 in civil penalties, in two separate consent judgments, to settle allegations that they violated the premerger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The complaint alleged that UFG acquired beneficial ownership of ARCO Seed Company from Atlantic Richfield in 1986 without notifying the federal antitrust agencies. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys acting under special authorization of the United States Attorney General. UFG's obligation to pay the civil penalty will be subordinated to the claims of creditors under a stipulation filed in U.S. Bankruptcy Court for the Northern District of California.

Beazer PLC

Beazer PLC paid a $760,000 civil penalty to settle allegations that it failed to notify the Commission and the Department of Justice before it acquired stock in Koppers Company, Inc. (Koppers) valued in excess of $15 million. According to the complaint, Beazer PLC, a British general construction company, formed a partnership, BNS Partners, to acquire stock in Koppers and later became the sole owner after purchasing the Koppers interests owned by partners in a second newly formed firm. The complaint and final judgment were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the United States Attorney General.

General Cinema Corporation

General Cinema Corporation paid $950,000 in civil penalties to settle allegations that it violated the premerger notification requirements when it acquired stock in Cadbury Schweppes plc. According to the complaint, filed in U.S. District Court for the District of Columbia in January 1991, General Cinema Corporation filed a premerger notification and report form after it had already acquired and accumulated Cadbury Schweppes plc stock in excess of $15 million. Under terms of the consent judgment, the civil penalty was required to be paid to the U.S. Treasury within fifteen days after the judgment was entered. The Department of Justice, at the request of the Commission, filed the complaint and final judgment.

William F. Farley

Commission attorneys acting under a special authorization from the United States Attorney General filed a complaint for civil penalties alleging that William F. Farley violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Act. According to the complaint, filed in the U.S. District Court for the Northern District of Illinois, William F. Farley acquired stock in West Point-Pepperell, Inc. of West Point, Georgia, in excess of $15 million without notifying the federal antitrust agencies. William F. Farley, through Farley Inc., and West Point-Pepperell, Inc. are both engaged in the manufacture and sale of hosiery and other textile products. The complaint seeks the maximum civil penalty under the law.

CONSUMER PROTECTION MISSION

Academic International, Inc.,
American International Acceptance Corporation,
Academic Acceptance Corporation, George Victor Mathews

Academic International, Inc., American International Acceptance Corporation, Academic Acceptance Corporation, and their president, George Victor Mathews, agreed to settle allegations that they engaged in unfair, deceptive, and discriminatory credit-related practices in promoting, selling, distributing, and financing encyclopedias and other reference materials. The Commission alleged, among other things, that the defendants discriminated against black applicants, in violation of the Equal Credit Opportunity Act; contacted consumers' employers regarding consumers' delinquent debts and threatened consumers with arrest or imprisonment if they did not pay their debts, in violation of the Fair Debt Collection Practices Act; and failed to tell applicants who were denied credit based on their credit report, the name and address of the credit reporting agency that provided the report. The consent order prohibits, among other things, future violations of the Equal Credit Opportunity and Fair Debt Collection Practices Acts and requires the defendants to pay a $150,000 civil penalty.

Akbar Ghoreyan d/b/a A & G Auto Sales

Akbar Ghoreyan d/b/a A & G Auto Sales agreed to settle allegations that he violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale. The consent decree prohibits future violations of the Used Car Rule and requires the defendant to pay a $7,500 civil penalty.

Andrew J. McGann & Son Funeral Home,
Andrew J. McGann, Sr., Andrew J. McGann, Jr.

Andrew J. McGann & Son Funeral Home, Andrew J. McGann, Sr., and Andrew J. McGann, Jr. agreed to settle allegations that they failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendants to pay a $75,000 civil penalty.

Artistic Greetings, Inc.

Artistic Greetings, Inc., a national advertiser of stationery products, agreed to settle allegations that it violated the Mail Order Rule by failing to ship merchandise within the required time, to advise consumers of their cancellation rights, and to issue prompt refunds. The consent order prohibits future violations of the Mail Order Rule and requires the defendant to pay a $20,000 civil penalty.

Avatar Holdings, Inc., Avatar Properties, Inc., Avatar Communications, Inc., Avatar Communications of Arizona, Inc., Rio Rico Properties

Avatar Holdings, Inc. and four subsidiaries agreed to settle allegations that they violated a 1974 Commission cease and desist order by misrepresenting the investment value and development potential of property in Florida and Arizona. The consent order prohibits future violations of the Commission's order and requires the defendants to pay a $675,000 civil penalty.

Best Buy Auto and Truck Sales, Raymond A. Montoya

Best Buy Auto and Truck Sales and its owner, Raymond A. Montoya, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used cars and trucks offered for sale and failing to use a Spanish language version of the Buyers Guide when sales were conducted in Spanish. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a $5,000 civil penalty.

Bonnie & Company Fashions, Bonnie Boerer

Bonnie & Company Fashions and its president, Bonnie Boerer, were ordered to pay a $10,000 civil penalty in a decision upholding allegations that they violated the Care Labeling Rule by mislabeling some of the clothing they sold. The complaint alleged that the correct care procedure was not listed on some of the garments, part of the care procedure that was listed would harm the products, and the company did not have a reasonable basis for the care information disclosed on the labels. This was the first Care Labeling Rule case to be litigated.

Cameron D. Henderson

Cameron D. Henderson, former president of the now defunct Star Service & Petroleum Company, agreed to settle allegations that he violated the Commission's Octane Rule by overstating the octane levels of the gasoline he sold. Cameron D. Henderson agreed to pay a $10,000 civil penalty, half each to Missouri and the U.S. Treasury, and to be bound by prohibitions against future violations of the Octane Rule. This case was developed in conjunction with the Missouri Attorney General's Office and was filed in state court in Missouri at the same time the Department of Justice filed in federal district court at the request of the Commission.

Cassill Motors, Dwayne M. Cassill

Cassill Motors and its owner, Dwayne M. Cassill, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and that they failed to disclose the terms of the warranty to consumers in a single written document, in violation of the Warranty Disclosure Rule. The consent decree prohibits future violations of the Used Car and Warranty Disclosure Rules and requires the defendants to pay a $10,000 civil penalty.

Credit Car Connection, Inc., Steve Foreman

Credit Car Connection, Inc. and its owner, Steve Foreman, agreed to settle allegations that he violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and failed to include on the Buyers Guide all of the information required by the Rule. The consent order prohibits future violations of the Used Car Rule.

Croyste Toyota, Inc., Allen S. Roys

Croyste Toyota, Inc. and its president, Allen S. Roys, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and violated the Warranty Disclosure Rule by failing to provide customers with required warranty information. The consent decree prohibits future violations of the Used Car Rule and Warranty Disclosure Rules and requires the defendants to pay a $22,500 civil penalty.

D. C. Credit Services, Inc., David Cohen

D. C. Credit Services, Inc. and its former president, David Cohen, each agreed to settle allegations that they violated the Fair Debt Collection Practices Act by threatening and harassing consumers from whom they attempted to collect debts. The Commission alleged, among other things, that the defendants used obscene language, threatened to use violence, contacted consumers at their jobs, and falsely represented that they were attorneys and that nonpayment would result in arrest or imprisonment. The consent decrees prohibit future

violations of the Fair Debt Collection Practices Act and require the defendants to inform consumers in writing that they have a right to have the company stop communicating with them. In addition, the order against David Cohen requires him to pay a $100,000 civil penalty, and the order against D. C. Credit Services, Inc. requires it to pay a $30,000 civil penalty.

Douglass-Marsh, Inc. d/b/a Douglass Funeral Service

Douglass-Marsh, Inc. d/b/a Douglass Funeral Service agreed to settle allegations that it failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendant to pay a $20,000 civil penalty.

Elliston Funeral Home, Edward Olenec

Elliston Funeral Home and its owner, Edward Olenec, agreed to settle allegations that they failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendants to pay a $50,000 civil penalty and $13,000 for consumer redress.

Figgie International, Inc.

Figgie International, Inc. agreed to settle allegations that it violated a 1987 Commission order prohibiting it from making certain misrepresentations about the performance of heat and smoke detectors. The Commission alleged that Figgie International, Inc. represented that tests conducted by the U.S. Fire Administration showed heat detectors would sound an alarm soon enough to provide the necessary warning for safe escape when, in fact, the heat detectors did not provide the necessary warning in at least two of the tests. The consent decree prohibits future violations of the order and requires Figgie International, Inc. to pay a $200,000 civil penalty.

F.J. Higgins Funeral Home, Inc.

F.J. Higgins Funeral Home, Inc. agreed to settle allegations that it failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendant to pay a $22,500 civil penalty.

Frederick A. Stein d/b/a F.A. Stein Oil Company

Frederick A. Stein d/b/a F.A. Stein Oil Company agreed to settle allegations that he violated the Commission's Octane Rule by, among other things, failing to certify the octane rating of gasoline he sold to service stations and other distributors. The consent decree prohibits future violations of the Octane Rule and requires the defendant to pay a $10,000 civil penalty.

Goble's Fortuna Mortuary, James G. Widdoes

Goble's Fortuna Mortuary and its principal operator, James G. Widdoes, agreed to settle allegations that they failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendants to pay a $28,000 civil penalty.

Hern Oldsmobile-GMC Truck, Inc., Thomas J. Hern

Hern Oldsmobile-GMC Truck, Inc. and its principal shareholder, Thomas J. Hern, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and failed to disclose on the Buyers Guide all of the information required by the Rule. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a $15,000 civil penalty.

Independent Auto Brokers, Inc., Rex Goins

Independent Auto Brokers, Inc. and its president, Rex Goins, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a $5,000 civil penalty.

JAK Auto Sales, Inc., Mike Jabra

JAK Auto Sales, Inc. and its owner, Mike Jabra, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a $5,000 civil penalty.

J.J.'s Mae, Inc. d/b/a Rainbeau, Marc Bussin, Kieran Maybury

J.J.'s Mae, Inc. d/b/a Rainbeau, a manufacturer of exercise wear, its president, Marc Bussin, and its vice-president Kieran Maybury, agreed to settle allegations that they mislabeled garments sold to retailers, in violation of the Textile Fiber Products Identification Act. The consent order prohibits future violations of the Textile Fiber Products Identification Act and requires the defendants to pay a $25,000 civil penalty.

J.M. Posey and Sons, Inc.

J.M. Posey and Sons, Inc. agreed to settle allegations that it failed to provide consumers with a general price list and a list of casket prices, in violation of the

Funeral Rule. The consent decree requires the defendant to pay a $20,000 civil penalty and prohibits future violations of the Funeral Rule.

John Michael Auto Sales, Inc., John Michael

John Michael Auto Sales, Inc. and its owner, John Michael, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and that they failed to disclose the terms and conditions of warranty and other information, in violation of the Warranty Disclosure Rule. The consent decree prohibits future violations of the Used Car and Warranty Disclosure Rules and requires the defendants to pay a $3,000 civil penalty.

LeClair Industries, Inc., Armond F. LeClair,
Perma R Products of Mississippi, Inc.,
Perma R Products of Tennessee, Inc.

LeClair Industries, Inc., the manufacturer and marketer of Perma R Plus home insulation, agreed to settle allegations that it overstated the R-value of the product, in violation of the R-Value Rule. The Commission's complaint and consent order also names Perma R Products of Mississippi, Inc., Perma R Products of Tennessee, Inc., and the president of all three companies, Armond F. LeClair. The consent order prohibits future violations of the R-Value Rule and requires the defendants to pay a $5,000 civil penalty.

Lonnie R. Divine

The Commission alleged that Lonnie R. Divine, a door-to-door magazine marketer, failed to give consumers the forms they needed to cancel their subscriptions, in violation of the Commission's three-day Cooling-Off Rule. The Commission also alleged that he misrepresented when consumers would begin receiving their magazine subscriptions. Lonnie R. Divine has sold magazines and other publications throughout the United States under numerous business names including: Union Circulation Company, Public Marketing Association, Marketing Associated Groups, Inc., and Publishers Entry Service. The Commission is seeking civil penalties and a permanent injunction.

Marquez, Inc. d/b/a Miracle-Ear Hearing Aid Center,
Mark Marquez

Marquez, Inc. d/b/a Miracle-Ear Hearing Aid Center and its owner, Mark Marquez, agreed to settle allegations that they violated the Cooling-Off Rule, in connection with door-to-door sales of hearing aids, by failing to provide consumers with the required summary notice and notice of cancellation forms. The consent decree prohibits future violations of the Cooling-Off Rule and requires the defendants to pay a $15,000 civil penalty.

M.A.S.H. Motors, Inc., Mohammad Al Shoeibi

M.A.S.H. Motors, Inc. and its owner, Mohammad Al Shoeibi, agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale. They agreed to pay a civil penalty of $5,000 and are prohibited from violating the Used Car Rule in the future.

McNevin Cadillac, Michael McNevin

McNevin Cadillac and its owner, Michael McNevin, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a $22,500 civil penalty.

Midwest Petroleum Company

Midwest Petroleum Company, a gasoline wholesaler, agreed to settle allegations that it violated the Commission's rule concerning octane posting and certification by overstating the octane levels of the gasoline it sold. The consent decree prohibits future violations and requires the defendant to pay a $50,000 civil penalty to the U.S. Treasury and a $50,000 civil penalty to the state of Missouri. This case was developed in conjunction with the office of the Attorney General of Missouri and was filed in the state court in Missouri at the same time it was filed in federal district court by the Department of Justice at the Commission's request.

Mohsen A. Rastcheez d/b/a Adel Motors

Mohsen A. Rastcheez d/b/a Adel Motors agreed to settle allegations that he violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used cars he offered for sale and violated the Commission's Warranty Disclosure Rule by failing to provide customers with required warranty information. The consent decree prohibits future violations of the Used Car and Warranty Disclosure Rules.

Montrose Valley Funeral Home, Inc.

Montrose Valley Funeral Home, Inc. agreed to settle allegations that it failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule.

Nationwide Credit, Inc. d/b/a Credit Claims & Collections

Nationwide Credit, Inc. d/b/a Credit Claims & Collections agreed to settle allegations that it violated the Fair Debt Collection Practices Act by threatening and harassing consumers from whom it attempted to collect debts. The Commission alleged, among other things, that the defendant's employees used obscene language, threatened to use violence, contacted consumers at their jobs, and falsely represented that they were affiliated with the government. The consent decree prohibits future violations of the Fair Debt Collection Practices Act and requires the defendant to inform consumers in writing that federal law prohibits a debt collector from harassing them. In addition, the order requires the defendant to pay a $100,000 civil penalty.

Outdoor World Corp.

Outdoor World Corp., a membership campgrounds operator, agreed to settle allegations that it violated a 1990 Commission order by representing that consumers would receive prizes or awards without fully disclosing the costs consumers must pay to receive the prize, award, or service. The decree prohibits future violations of the order and requires the defendant to pay a $200,000 civil penalty.

Perkits Yogurt, Inc., P.Y. Restaurants, Inc., Perkits, Inc., Samuel C. Evans, Patricia L. Evans, Samuel C. Evans, III, Katherine Evans

The Commission alleged that Perkits Yogurt, Inc., and others, failed to provide potential buyers of its frozen yogurt franchises with information required by the Commission's Franchise Rule. The Commission complaint alleges that the defendants did not provide the appropriate disclosure documents to potential buyers within the time period required under the rule, and in numerous instances, the documents the defendants did provide were incomplete. The Commission is seeking a permanent injunction and civil penalties.

Quality Motor Co., Tommy Overturff

Quality Motor Co. and its owner, Tommy Overturff, agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on the windows of used cars offered for sale. They agreed to pay a civil penalty of $5,000 and are prohibited from violating the Used Car Rule in the future.

Ralston Purina Company

Ralston Purina Company agreed to settle allegations that it violated the Mail Order Rule by failing to ship promotional merchandise in a timely manner, to advise consumers of their cancellation rights and to issue prompt refunds. The consent decree prohibits future violations of the Mail Order Rule and requires the defendant to pay a $90,000 civil penalty. This was the Commission's

second Mail Order Rule case involving promotional items that were purchased with proof-of-purchase coupons or labels, or a combination of coupons or labels and cash.

Restland Funeral Home, Inc., Laurel Land Funeral Home, Inc., Singing Hills Funeral Home, Inc., Bluebonnet Hills Funeral Home, Inc., Laurel Land Funeral Home of Fort Worth

The Commission alleged that Restland Funeral Home, Inc. and its four subsidiaries failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The Commission is seeking a permanent injunction and civil penalties.

Robert E. Blake, Mid Central Services, Local Finance Co., Bluff City Finance Co., Inc., OK Loan Services of Oklahoma City, Signature Loan Service, Sooner Loan of Tulsa, Time Finance Company of Oklahoma City, Time Finance of Tulsa, Reliable Finance Co., Inc., Service Finance Co., Inc.

Robert E. Blake and nine small loan companies he operates in Oklahoma and Tennessee agreed to settle allegations that they violated the Equal Credit Opportunity Act by discriminating against credit applicants on the basis of age, sex, marital status and source of income. The Commission's complaint also named Mid Central Services of Memphis, owned by Blake, which provided bookkeeping and computer services to his loan companies. The consent order with the Oklahoma companies prohibits future violations of the Equal Credit Opportunity Act and requires Local Finance Co. to pay a $38,500 civil penalty. The consent order with the Tennessee companies prohibits future violations of the Equal Credit Opportunity Act and requires Bluff City Finance Co., Inc. to pay a $16,500 civil penalty.

Robert E. Wilhelm Funeral Home, Inc.

Robert E. Wilhelm Funeral Home, Inc. agreed to settle allegations that it violated the Funeral Rule by failing to provide consumers with a general price list of funeral goods and services. The consent order prohibits future violations of the Funeral Rule and requires the defendant to pay a $20,000 civil penalty.

R&R Motors, Ronald Sweet, Randall Sweet

R&R Motors and its owners, Ronald Sweet and Randall Sweet, agreed to settle allegations the they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and failed to disclose on the Buyers Guide all of the information required by the Rule. The consent order prohibits future violations of the Used Car Rule and requires the defendants to pay a $6,000 civil penalty.

Scala Memorial Home, Inc., Henry Scala

Scala Memorial Home, Inc. and its owner, Henry Scala, agreed to settle allegations that they failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendants to pay a $12,500 civil penalty.

Snyder's Used Cars, Inc., Ronald Snyder, Sr., Ronald Snyder, Jr., R.M. Snyder, Jr., Motors, Inc.

Snyder's Used Cars, Inc. and its principals agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and violated the Commission's Warranty Disclosure Rule by failing to provide customers with required warranty information. A consent decree prohibits future violations of the Used Car and Warranty Disclosure Rules.

TeleComm, Inc., Christine Ranaghan Forte, Richard P. Forte, Sr.

TeleComm, Inc. and two of is principal officers, Christine Ranaghan Forte and Richard P. Forte, Sr., agreed to settle allegations that they violated the Franchise Rule by failing to provide prospective franchise buyers with disclosure documents required by the Rule. TeleComm, Inc., a firm that sold dealerships for public access facsimile machines, agreed to comply with the Franchise Rule in the future.

Tom's Motors, Inc., Thomas E. Stewart, Jr.

Tom's Motors, Inc. and its owner, Thomas E. Stewart, Jr., agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on used vehicles offered for sale, failing to display a Spanish language version of the Buyers Guide when the sale was conducted in Spanish, and failing to include language incorporating the Buyers Guide in the final sales contract. The defendants agreed to an order prohibiting future violations of the Used Car Rule and requiring payment of a $14,000 civil penalty.

Tork & Associates, Inc., Jonathan Tork

The Commission alleged that Tork & Associates, Inc. and its president, Jonathan Tork, violated the Cooling-Off Rule in connection with door-to-door magazine sales. The Commission is seeking a permanent injunction and civil penalties.

Tower Loan of Mississippi, Inc.

Tower Loan of Mississippi, Inc. (Tower) agreed to settle allegations that, among other things, it violated the Equal Credit Opportunity Act by refusing to extend credit to elderly applicants or requiring them to have younger co-signers, failed to provide applicants with written notice that they had been denied credit, or failed to include specific reasons for credit denial. The Commission also alleged that Tower failed to tell applicants who were denied credit that information in their credit reports was at least part of the reason for the denial, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Equal Credit Opportunity and Fair Credit Reporting Acts and requires the defendant to pay a $175,000 civil penalty.

TRW, Inc.

TRW, Inc., one of the nation's largest credit bureaus, agreed to settle allegations that, among other things, it failed to assure the maximum possible accuracy of the consumer credit information it compiles and sells to credit grantors and employers nationwide, in violation of the Fair Credit Reporting Act. The consent order requires the defendant, among other things, to adopt procedures to prevent the occurrence of mixed-file errors, to reinvestigate information disputed by a consumer within thirty days, and to require purchasers of prescreened lists to make a firm offer of credit to every person who appears on the list. The order also requires that TRW, Inc. ensure that third parties who purchase credit reports for resale to employers specify that the reports will be used for employment purposes and notify consumers whenever it issues a report for such purposes containing public information likely to adversely affect the consumer's ability to obtain employment.

WhiteHead, Ltd., Walter J. Wright, Richard J. Wall

WhiteHead, Ltd. and its officers, Walter J. Wright and Richard J. Wall, allegedly failed to provide potential franchise buyers for galleries that sell used and antique furniture on consignment with information required by the Commission's Franchise Rule. The Commission is seeking a permanent injunction and civil penalties.

Why USA, Inc., Why USA Franchise Corporation,
Why USA Development Corporation, Gregory Dean Hague

Why USA, Inc., a real estate brokerage firm, Why USA Franchise Corporation, Why USA Development Corporation, and its officer, Gregory Dean Hague, agreed to settle allegations that, among other things, they failed to disclose to potential franchisees all the prepurchase information required by the Commission's Franchise Rule. The consent decree prohibits future violations of the Franchise Rule and requires the defendants to pay a $27,500 civil penalty.

William P. Wright

The Commission alleged that William P. Wright failed to certify and correctly post on gasoline pumps the correct octane ratings for gasoline, in violation of the Octane Rule. The Commission is seeking a permanent injunction and civil penalties.

Wright Companies

Wright Companies agreed to settle allegations that it failed to certify and correctly post on gasoline pumps, including gasoline blended with fuel oxygenates such as alcohol, the correct octane ratings for gasoline, in violation of the Octane Rule. The consent order prohibits future violations of the Octane Rule.

APPELLATE COURT DECISIONS

MAINTAINING COMPETITION MISSION

Detroit Auto Dealers Association, Inc.

On January 31, 1992, the Court of Appeals for the Sixth Circuit affirmed in part and remanded in part the Commission's 1989 decision in Detroit Auto Dealers Association, Inc. that a dealer agreement on hours of operation was an illegal horizontal restraint. A petition for certiorari was filed and a Supreme Court decision is pending.

Louisiana-Pacific Corporation

On June 24, 1992, the Court of Appeals for the Ninth Circuit affirmed the 1983 ruling by the district court in Oregon that ordered Louisiana-Pacific Corporation to pay a $4,000,000 civil penalty for failure to divest a Rocklin, California fiberboard plant as required by a 1979 Commission order. The civil penalty is the largest antitrust penalty awarded to the Commission. The Circuit Court's opinion came after protracted litigation stemming from two motions by Louisiana-Pacific Corporation to modify the Commission order and an appeal of the federal district court order that imposed the civil penalty.

SUPREME COURT DECISIONS

MAINTAINING COMPETITION MISSION

Ticor Title Insurance Company

On June 12, 1992, the Supreme Court reversed and remanded the decision of the Third Circuit that held that an agreement among insurance companies to collectively set rates for title search and examination services was protected from antitrust liability by the *state action* doctrine. The Supreme Court upheld the Commission's decision that the *state action* defense did not apply to Montana and Wisconsin due to inadequate state supervision of the rate setting scheme. The Court directed the Third Circuit to reach a decision on the applicability of the defense for the states of Connecticut and Arizona.

ECONOMIC REPORTS, WORKING PAPERS AND POLICY PAPERS

ECONOMIC REPORTS

Economic Reports usually entail a significant commitment of resources and describe original research concerning an issue of current or long-term policy interest to the Commission.

Case Studies of the Price Effects of Horizontal Mergers, Laurence Schumann, Robert P. Rogers, and James D. Reitzes, April 1992. The studies examine the aftermath of mergers in three industries: titanium dioxide, cement, and corrugated paperboard. The studies find a mixture of results with likely procompetitive outcomes in cement and paperboard, and a potentially large anticompetitive outcome in titanium dioxide (depending on the model specification).

An Analysis of Department Store Reference Pricing in Metropolitan Washington, Ronald S. Bond and R. Dennis Murphy, September 1992. This report presents empirical evidence on the likely consumer injury associated with department store reference pricing, the common pricing strategy in which sale prices are contrasted prominently with regular prices in newspaper advertising. The study concludes that although regular prices claimed by department stores are higher than consumers would likely find elsewhere, the sale prices are generally quite competitive.

ECONOMIC WORKING PAPERS

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

Efficiencies Without Economists: The Early Years of Resale Price Maintenance, (WP#193), Andrew N. Kleit, April 1992.

Market-Share Quotas, (WP#194), James D. Reitzes and Oliver R. Grawe, April 1992.

Beyond the Rhetoric: An Inquiry into the Goal of the Sherman Act, (WP#195), Andrew N. Kleit, August 1992.

Advertising Restrictions as Rent Increasing Costs, (WP#196), John R. Morris and James A. Langenfeld, May 1992.

The Minimum Optimal Steel Plant and the Survivor Technique of Cost Estimation, (WP#197), Robert P. Rogers, August 1992.

Auctions Under Increasing Costs: Coordination Problems and the Existence of an Asymmetric Equilibrium, (WP#198), David Reiffen, August 1992.

MISCELLANEOUS ECONOMIC POLICY PAPERS

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

The Relative Impact of Industry Structure and Business Strategy on Business Unit Performance: An Empirical Test of the Beard and Dess Model, Dilip Mirchandani, March 1992.

Firm Size and the Nature of Innovation within Industries: The Case of Process and Product R&D, Wesley M. Cohen and Steven Klepper, April 1992.

Cooperation v. Rivalry and Factors Facilitating Collusion, David I. Rosenbaum and Leslie D. Manns, May 1992.

CONSUMER AND COMPETITION ADVOCACY

OFFICE OF CONSUMER AND COMPETITION ADVOCACY

The responsibilities and activities of the Office of Consumer and Competition Advocacy involve a wide range of regulations. Sometimes laws or regulations may cause injury to consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms, and wasting resources. Those results may occur because the interests of consumers are not well represented. The basic goal of the advocacy program is to reduce harm to consumers by informing appropriate governmental entities of the potential effects on consumers, both positive and negative, of proposed legislation or rulemaking, when asked by an appropriate entity to provide comment. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review, and information for the staff's work in this area. In fiscal year 1992, the Commission staff submitted twenty three comments to federal and state agencies. The following is a summary of the advocacy comments completed and submitted in fiscal year 1992.

FEDERAL AGENCIES

Department of Justice: Network Syndication Consent Decrees.

Bureau of Economics staff submitted comments on a proposal to remove from the consent decree injunctions against CBS, ABC, and NBC that ban them from acquiring a financial interest in, or engaging in the syndication of, certain television programs. According to the comment, given current market conditions, concerns about network market power have diminished, and the order's prohibitions are not necessary to ensure against either monopsony or monopoly power, but instead may inhibit efficient contract arrangements. Thus, staff concluded that the proposed modifications would be in the public interest.

Federal Aviation Administration: Slot Allocation.

The Bureau of Economics filed comments with the Federal Aviation Administration (FAA) on proposed amendments to the regulations governing allocation and transfer of landing slots at four high density traffic airports: Chicago's O'Hare, Washington's National, and New York's LaGuardia and Kennedy airports. The proposed changes, based on FAA empirical study data, are designed to encourage competition by making marginally used slots available to new entrants or limited participants. Staff recommended that the FAA's use or lose standard could have a greater effect on carriers with fewer slots, and, in the absence of market power, impose significant restrictions on slot transfers that may impede the efficient reallocation of slots from lower to higher-valued uses. Staff concluded that the FAA's findings do not suggest that the proposed changes to the existing slot allocation and transfer rules would necessarily increase slot usage. Additionally, staff suggested that a more efficient manner of encouraging high slot use might be to disqualify air carriers from participating in slot lotteries in the future if they sell lottery slots too quickly.

Federal Communications Commission: Advanced Television (ATV) Licensing; Must Carry Rule; TV Station Ownership.

Bureau of Competition staff filed comments in response to a Federal Communications Commission (FCC) notice of proposed rulemaking, recommending using flexibility in the FCC's proposed plan to introduce ATV, and allowing market forces to influence whether ATV should replace conventional television. Economic efficiency considerations suggest that the determination of how much spectrum to allocate to ATV should be guided by market forces. Staff also suggested allowing broadcasters more time for constructing ATV facilities, rather than requiring construction within two years of receiving a permit, and using a lottery rather than comparative hearings to allocate ATV licenses when the number of eligible applicants is greater than the number of licenses to be awarded.

The San Francisco Regional Office and the staff of the Bureau of Economics filed comments with the FCC expressing opposition to a reinstatement of the FCC's must-carry rules requiring cable television systems to carry the signals of local television stations. Staff advised that a must-carry requirement could force cable systems to carry relatively low-rated stations in place of programming that cable subscribers value more highly. Additionally, in examining whether must-carry rules could provide competitive benefits by preventing cable systems from acquiring or exercising market power in advertising markets, staff concluded that there is insufficient evidence of such a possible problem to justify adoption of new must-carry rules.

Bureau of Economics staff filed comments in response to an FCC notice of proposed rulemaking, supporting the FCC's proposals to relax the rules and policies concerning television station ownership. The proposed rules would permit common ownership of more stations nationwide, allow cross-ownership of one AM, one FM, and one television station in a market or permit the cross-ownership of television and AM stations, and permit common ownership of television stations with overlapping signal contours. Applying the Merger Guidelines analysis of antitrust product and geographic markets and other relevant factors to available data, staff found there might be many potential combinations that would not raise competition concerns in local markets. Staff also found that the national ownership limits were based on measures that did not appear to raise competition concerns, because the relevant scale of competition is local. Unless there are no potential efficiencies from such transactions, or the cost of case-by-case adjudication is very high, there would appear to be little justification for a blanket ban. Staff recommended instead a case-by-case approach.

Federal Reserve Board: Regulation Z, Home Equity Disclosure Rules.

Bureau of Consumer Protection staff supported retaining most of the current Regulation Z requirements about lenders' disclosures of initial discounted rates

for home equity lines of credit. According to the comment, it is in the lender's interest to tell consumers what its actual promotional rates are. To avoid frequent updating of pre-printed forms and other materials due to rate fluctuation, staff recommended allowing lenders to disclose the rate orally or otherwise. Staff opposed expanding a provision that now permits using three representative payment scenarios to one requiring similar treatment for every option offered.

Food and Drug Administration: Food Labeling.

Bureau of Consumer Protection and Bureau of Economic staff submitted comments on the Food and Drug Administration's (FDA) proposed rules that would implement the Nutrition Labeling and Education Act of 1990 (NLEA). The comments focused on how the regulations could both help consumers looking to improve their diets and affect innovation in food markets. Staff concluded that while most of the proposed rules would provide valuable nutrition information to consumers, they may have some unintended effects. For example, the proposed regulations would prohibit truthful, quantitative claims about nutrient content as well as brand to brand comparisons. Staff suggested that the FDA reconsider such aspects of the proposed regulations, and offered some suggestions to enhance the effectiveness of the proposals.

Office of the U.S. Trade Representative: Executive Liaison.

Bureau of Economics staff participated in interagency deliberations concerning market access barriers that U.S. companies have encountered in the People's Republic of China. The investigation included China's failure to publish laws or regulations pertaining to customs requirements and testing and certification requirements. The Office of the U.S. Trade Representative determined that such barriers have prevented or delayed the entry of U.S. products into Chinese markets, effectively priced U.S. products out of the Chinese market, or have discriminated against U.S. exports in favor of domestic products or those of another country.

Securities and Exchange Commission: Small Business Initiatives.

Bureau of Economics staff submitted comments in response to a Securities and Exchange Commission (SEC) notice of proposed rulemaking to simplify and expand exemptions to various disclosure and reporting requirements for small business issuers. For Regulation A, the SEC proposed to allow firms to test the waters by circulating a prospective offering announcement before beginning a public offering, to adopt a revised disclosure form, and to increase the ceiling for offerings from $1.5 million to $5.0 million. For Rule 504 of Regulation D, the SEC proposed to remove advertising restrictions on offerings and remove resale restrictions on independent investors who purchase the securities issued. Staff supported the proposed changes, concluding that the proposals are likely to reduce capital costs for small businesses and enhance competition and the

efficiency of capital markets. However, to avoid the concurrent possibility that reduced disclosure and more liberal resale might precipitate an increase in fraudulent activity, staff suggested that the SEC may wish to monitor future experience to ensure that the antifraud and civil liability protections against misleading resales protect investors sufficiently. Staff also suggested that the SEC consider indexing the ceilings for the regulations, to provide greater certainty and obviate the need to revise the ceilings repeatedly to take account of inflation.

U.S. Department of Agriculture: Food Labeling Regulations.

Bureau of Consumer Protection and Bureau of Economics staff submitted comments, in response to a notice of proposed rulemaking, on the U.S. Department of Agriculture's (USDA) proposed rules that would govern nutritional labeling of meat and poultry products. According to the comments, the regulations would provide valuable nutrition information to consumers; however, they would also eliminate many factual claims that could help consumers make better food choices and increase producers' incentives to improve the nutritional composition of their products. Staff suggested that the USDA reconsider these aspects of the proposed regulations, and offered some suggestions to enhance the effectiveness of the proposals.

STATES *California: Motor Fuel Pricing; Funeral Rule Testimony; Pharmacy Access.*

In response to an invitation from a California state legislator, Bureau of Competition staff provided comments on S.B. 2371, proposed legislation to make refiners that operate retail gasoline stations liable for setting their wholesale prices too high in relation to their retail prices. Refiners could be liable regardless of whether there is any injury to competition, and would not be permitted to avoid liability by showing that their prices were set to meet equally low prices of a competitor. Staff concluded that the legislation would likely be anticompetitive and could result in California consumers and visitors paying a higher price for gasoline.

The San Francisco Regional Office testified before the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development about the Commission's regulation of the funeral industry. The testimony addressed the degree to which consumers in need of funeral services are subject to unfair business practices, outlining the Commission's Funeral Rule, recent enforcement experience, and the status of the review of the Rule. Staff concluded that as industry compliance with the Funeral Rule increases and as consumers become increasingly knowledgeable about the use of price information and about purchase options available from providers, consumer injury will continue to abate.

In response to an invitation from a California state legislator, the Office of Consumer and Competition Advocacy provided comments on S.B. 1986, a

proposal to limit the ability of health insurance companies to arrange for pharmacy services through contracts with nonresident pharmacy firms by prohibiting exclusive contracts with them and by requiring that resident firms be allowed to contract to provide services on the same terms. According to the comment, without volume through out-of-state sources, a would-be contracting provider may be unable to offer lower price terms or additional services. And by letting any other provider match the terms of a contract with a nonresident pharmacy, the bill would dampen the incentives for pharmacies to compete with each other. Because all other pharmacies could free ride on its contract, a nonresident provider may be unwilling to bear the costs of developing a proposal. Therefore, staff concluded that the prohibitions of S.B. 1986 may discourage competition among pharmacies, in turn raising prices to consumers and unnecessarily restricting consumer choice in prepaid health care programs, without providing any substantial public benefit.

Colorado: Motor Fuel Pricing Amendment.

The Director of the Denver Regional Office testified before the State, Veterans, and Military Affairs Committee of the Colorado State Senate, finding that S.B.92-203, a bill to broaden prohibitions against below cost retail pricing of gasoline, could raise gas prices for consumers in Colorado. In his testimony, the Director explained that the bill may inhibit vigorous competition and add costs to the distribution of gasoline in Colorado that do not exist in other states.

Kansas: Motor Fuel Marketing Act.

The Denver Regional Office and Bureau of Competition staff submitted comments in response to an invitation from the Kansas State Senate for views on H.B. 2628, which would regulate below cost sales of gasoline in Kansas. According to the comment, the legislation would tend to insulate gasoline refiners and marketers from competition and thereby cause gasoline prices in Kansas to increase. Additionally, the bill could inhibit vigorous competition and add costs to the distribution of gasoline in Kansas that do not exist in other states. The comments concluded that the legislation would likely be anticompetitive and cause Kansas consumers and visitors to pay higher prices for gasoline.

Maine: Optometry Regulation.

Boston Regional Office staff testified before the Maine House Committee on Business Legislation on a bill, L.D. 1866, to remove several key restrictions on the commercial practice of optometry in Maine. The Maine legislature was encouraged to eliminate state laws that prevent optometrists from practicing in retail settings and affiliating with corporations because such restrictions increase costs and restrict consumers' access to eye care without providing countervailing consumer benefits. According to the testimony, restrictions of these types of business formats prevent the formation and development of

forms of professional practice that may be innovative, more efficient, provide comparable or higher quality services, and offer competition to traditional providers.

Michigan: Funeral establishment and Cemetery Regulation.

The Cleveland Regional Office submitted comments on legislation to amend a state statute regulating the licensing and operation of funeral establishments and cemeteries. The staff advised that removing Michigan's prohibition of joint ownership or operation could make possible new business formats and may promote efficiencies that ultimately could result in lower prices to consumers. However, the bill's general prohibition of bundling products and services at discounted prices may, in some cases, prevent the achievement of some of those efficiencies, if the prohibition is broader than necessary to prevent harm to consumers.

New Hampshire: HMO Pharmacy Access.

The Office of Consumer and Competition Advocacy submitted comments in response to an invitation from the New Hampshire State Senate for views on H.B. 470, a bill to require any HMO that solicits bids to become a preferred provider of pharmacy services for the HMO's subscribers to contract with any pharmacy that meets the bid. Staff concluded that the legislation may have the unintended effect of raising costs and restricting the number and types of prepaid health care programs from which consumers may choose, and that, if enacted, the bill may make it more difficult for HMO's to offer programs with cost-saving pharmaceutical coverage.

Ohio: Credit Repair.

The Bureau of Consumer Protection submitted comments to the Ohio State Senate on S.B. 323 to regulate credit repair clinics. The comment supported the bill's requirement that credit services organizations provide consumers with specified written disclosures prior to the execution of a contract, detailing, among other things, both the consumer's rights under the Fair Credit Reporting Act and the lack of any right to have accurate information removed from a credit history. The comment strongly supported the bill's prohibition of receiving payment before services are provided. Because these firms rarely can provide the services they promise, such a requirement would put them out of business. Staff strongly supported the legislation, as representing a valuable contribution to combatting the serious problem of credit repair fraud.

South Carolina: Legislative Audit, Medical Boards.

The Office of Consumer and Competition Advocacy submitted comments in response to a request from the South Carolina General Assembly Legislative Audit Council on possible restrictive or anticompetitive practices in the state

statutes and regulations of the South Carolina Boards of Pharmacy, Medical Examiners, Veterinary Medical Examiners, Nursing Examiners, and Chiropractic Examiners. The comments noted that generally there appeared to be no major competition problems raised. The present regulations concerning physician solicitation and referral fees could raise serious competition problems, but those regulations were apparently being revised. Staff suggested that the regulations about veterinarians' use of solicitors be studied to determine whether they are having an anticompetitive effect in practice.

Texas: Dallas Love Field; Medical Boards.

The Dallas Regional Office and the Bureau of Economics staff submitted comments in response to an invitation from the Dallas City Council for views on the potential modification of the current federal restrictions on Dallas Love Field (Love Field). Federal law now prohibits commercial airlines from providing nonstop service, direct service, or connecting service between Love Field and destinations outside of Texas, Louisiana, Arkansas, Oklahoma, and New Mexico (the five-state area). The Council's proposal would maintain the current prohibition against nonstop service to points outside of the five-state area, but would permit carriers to publicize and provide direct and connecting service to such destinations through points within the five-state area. Staff concluded that the modification would likely increase airline competition, provide added convenience, and reduce congestion at Dallas/Fort Worth International Airport. As a result, consumers in Dallas, Fort Worth, and elsewhere could benefit substantially. Some of the benefits that could result include lower airfares to certain locations, lower parking and commuting costs, and reduced delays.

The Dallas Regional Office submitted comments in response to a request from the Texas Sunset Advisory Commission on the possible restrictive or anticompetitive practices in the state statutes of the Texas Boards of Optometry, Dentistry, Medicine, Podiatry, Pharmacy, and Veterinarians. For optometry, the staff recommended removing prohibitions against lay persons working or entering into partnerships with commercial locations. For dentists, the staff recommended removing a ban on solicitation. And for several professions, the staff recommended removing restrictions on advertising claims of superiority. Staff cautioned that although the prohibition on physician and veterinarian referral fees could benefit consumers by preventing deception or abuse, the regulations to control referral fee abuse should not be so broad that they inhibit procompetitive practices. Staff also recommended that physicians be allowed to dispense drugs, subject to reasonable requirements related to public health and safety.

Utah: Motor Fuel Marketing Act.

The Denver Regional Office and Bureau of Competition staff submitted comments in response to an invitation from the Utah Department of Commerce,

Legal Affairs Office, requesting comments on the Utah Motor Fuel Marketing Act and proposed amendments to it. The comments cited state and Department of Energy studies that strongly questioned the premise of both the Act and the proposed amendments that refiners who own retail outlets sell gasoline to those outlets at below cost prices in an attempt to drive franchised and independent retailers out of business. If the bill passes, staff stated, short term price discounts designed to attract new customers may be deterred and refiners may be prevented from realizing all the economies of vertical integration which can often reduce transaction and search costs and lower prices to consumers. The comments concluded that the legislation would be anticompetitive and likely to cause Utah consumers and visitors to pay higher prices for gasoline.

TABLE OF CASES LISTED IN THE APPENDIX

Respondent Name	*Pages*
Abbott Laboratories	46, 56
Academic Acceptance Corporation	77
Academic Guidance Services, Inc.	56
Academic International, Inc.	77
Advanced Automotive Technologies, Inc.	57
AFS, Inc. d/b/a American Financial Service	57
Akbar Ghoreyan d/b/a A & G Auto Sales	77
Alfa International, Inc.	64
Alfonso S. Giordano	46
Allen S. Roys	79
Alma Nelson Manor, Inc.	29
Amerdream Corporation	57
American Enviro Products, Inc.	36
American Family Publishers	48
American Home Products	56
American International Acceptance Corporation	77
American Medical Association	54
American Microtel, Inc.	57
American Processing Systems, Inc.	58
American Psychological Association	25
Ana Blau a/k/a/ Anushka	47
Andra Jay	67
Andrew J. McGann, Jr.	78
Andrew J. McGann, Sr.	78
Andrew J. McGann & Son Funeral Home	78
Andrew Lessman	45
Armond F. LeClair	82
Artistic Greetings, Inc.	78
Atlantic Richfield Company	76
Automatic Data Processing, Inc.	36
Avatar Communications, Inc.	78
Avatar Communications of Arizona, Inc.	78
Avatar Holdings, Inc.	78
Avatar Properties, Inc.	78
Axiom III Corporation	60
Barbara Wyatt	74
Beazer PLC	76
BelAge Plastic Surgery Center, P.C.	36
Bertolli U.S.A., Inc.	36
Best Buy Auto & Truck Sales	78
Beverly Enterprises - Illinois, Inc.	29
Beverly Enterprises, Inc.	29
Beverly McCall Valentino	64

Bill Whitely 57
Bluebonnet Hills Funeral Home, Inc. 85
Bluff City Finance Co., Inc. 85
Bonnie & Company Fashions 78
Bonnie Boerer 78
Brian Phillip Jobe 46
Buyers Club International d/b/a Diversified Fulfillment Services 58
C & L Industries, Inc. 59
Cameron D. Henderson 79
Campbell Soup Company 50
Caribbean Clear, Inc. 59
Carl Grodin 58
Carol Walker 59
Cassill Motors 79
CDB Infotek 26
Charles Davis 57
Christine Ranaghan Forte 86
Christopher A. Easley 70
Christopher de Jesus 74
Circuit City Stores, Inc. 36
Claude A. Blanc, Jr. 62
Condima, Inc. 57
Connecticut Chiropractic Association 29
Continent Ostomy Center 40
Continental Sales, Inc. 66
Continental Trading International, Ltd. 60
Credit Car Connection, Inc. 79
Credit One Services 60
Croyste Toyota, Inc. 79
Daniel Klibanoff 57
Daniel W. Mitnick 66
Danny Sterk 57
David Cohen 79
David Goodale 64
David L. du Pont 60, 61
David Saltrelli 69
David Wetherill 66
D. C. Credit Services, Inc. 79
Dean S. Vlahos 60, 73
Debes Corporation 29
Delta American Financial Services Corporation 60
Delta Financial Services, Inc. 60
Dennis Poletti 66
Detroit Auto Dealers Association, Inc. 89
Diran M. Seropian, M.D. 49
Direct Mail Express, Inc. 69
Dive N' Surf, Inc. d/b/a Body Glove International 37

D.L.W., Inc. 66
Dollar Rent-A-Car Systems, Inc. 27
Don David Wilson 61
Donald C. Bullock 61
Donald E. Gaines 70
Donald G. Attermeyer 40
Douglas Osborne 69
Douglas P. McGee 69
Douglass-Marsh, Inc. d/b/a Douglass Funeral Service 80
DuPont Model Management, Inc. 61
Dwayne M. Cassill 79
Earl Serap 61
Edward Gagle 58
Edward Olenec 80
Edward Reiss 42
Elexis Corp. 37
Elliston Funeral Home 80
Eric Kyle 57
Excell Mortgage Corporation 37
Exhart Environmental Systems, Inc. 37
Factory Direct, Inc. 62
Fairview Plaza Limited Partnership 29
Federal Coin Repository 62
Feelin' Great International, Inc. 62
Figgie International, Inc. 80
First American Trading House, Inc. 62
First Atlantic Equity Corporation 57
First Brands Corp. 38
F.J. Higgins Funeral Home, Inc. 80
Frances Witz 66
Franco Valentino 64
Frank J. Bianco 37
Frank J. Fioravanti 72
Frank J. Sarcone 57
Frank Newbraugh 68
Frederick A. Stein d/b/a F.A. Stein Oil Company 81
Garry Schaeffer 64
Gayle Gunn 58
GEM Sciences International 64
General Cinema Corporation 76
Gennaro J. Orrico 46
George Anderson 58
George F. Miller, Jr., M.D. 36
George P. Henry, M.D. 42
George Victor Mathews 77
Gerald L. Foreman 67
Goble's Fortuna Mortuary 81

Golden Oak Numismatics 63
Golden Sands Development, Inc. 58
Good Guys, Inc., The 38
Goodale Communications, Inc. d/b/a Audio Arts 900 Services, Inc. 64
Great Western Printing 70
Gregory Dean Hague 88
Griffin Systems, Inc. 46
GTP Marketing, Inc. 63
Gustavo Garces 66
Halo Holdings Group 57
Hannes Tulving, Jr. 63
Hanson PLC 29
Health Care Products of Colorado, Inc. 63
Healthcomm, Inc. 41
Healthway Products, Inc. d/b/a Healthway Products of Texas 66
Henry Eldon Stricker 64
Henry Scala 86
Hern Oldsmobile-GMC Truck, Inc. 81
Hi-Tech Phones, Inc. 64
Hoechst Celanese Corporation 49
Houston R&R, Inc. 58
H S Marketing, Inc. 63
Ichak Listenger 62
Incentive Internationale Travel, Inc. 69
Independent Auto Brokers, Inc. 81
Industrial Multiple, The 25
Intellipay, Inc. 64
Intellisystems Communications, Inc. 64
Interactive Communications Technology, Inc. 64
Inter-Fact, Inc. 26
International Assets Trading Co., Inc. 64
International White Cross, Inc. 65
Ion Technology Systems, Inc. 65
Ira Smolev 47
I.R.S.C., Inc., d/b/a Information Resource Service Company 26
Isaac Weiser 37
Isaly Klondike Company, The 27
Jack Edwards a/k/a Gale Jackson 58
Jaime's Supply Inc. 71
JAK Auto Sales, Inc. 81
James A. Fullwood 73
James Alpert 66
James F. Settembrino 62
James G. Widdoes 81
James Greenbaum 57
James L. Smith 67
James Norman Wells 69

James Plagman, Sr. a/k/a Robert Meyers 62
James R. Quincy 62
James Witz 66
Jamie Reiber 71
Janet Alexander 74
Jason Pharmaceuticals, Inc. 38
Jeanette Caroline Deutsch 65
Jeffery Julian DeMarco 42
Jeffrey S. Bland 41
Jerry Minchey 59
J.J.'s Mae, Inc. d/b/a Rainbeau 81
J.M. Posey and Sons, Inc. 82
John Michael 82
John Michael Auto Sales, Inc. 82
John P. Ruggeri 60
John Ross 65
John Woods 66
Jon A. Gentile 74
Jonathan Tork 87
K&M Marketing 66
K&M Marketing II, Inc. 66
Karen Lynn Stricker 64
Katherine Evans 84
Kenneth Baer 65
Keystone Carbon Company 38
Kieran Maybury 81
Kobacker Company, The 39
Kreepy Krauly, USA, Inc. 30
Laurel Land Funeral Home, Inc. 85
Laurel Land Funeral Home of Fort Worth 85
LCI, Inc. d/b/a Franchise Contract Managers 61
LeClair Industries, Inc. 82
Lee Larson Elmore 60
Linda H. Settembrino 62
Listworld, Inc. 57
Lloyd Sharp 58
Lloyds International, Inc. 58
Local Finance Co. 85
Lonnie R. Divine 82
Louisiana-Pacific Corporation 89
Lynda Field 58
M & H Associates 66
Macy's Northeast, Inc. 39
Mandy Enterprises, Inc. 66
Mannesmann, A.G. 30
Marc Bussin 81
Marcel, Edwards, Hall & Associates 58

Margaret Weiser 37
Mark Marquez 83
Mark M. Sabraw 67
Mark R. Crittenden 71
Marquez, Inc. d/b/a Miracle-Ear Hearing Aid Center 83
Mary Beth Woods 62
Mary Oates d/b/a Consolidated Counseling Services 66
M.A.S.H. Motors, Inc. 83
Max K. Day 67
MBC Group, Inc. 63
McDonnell Douglas Corp. 39
MCG-San Bernardino 67
McNevin Cadillac 83
M.D.M. Interests, Inc. 67
MDMS Technologies d/b/a Metro Communications Group 67
Mead Johnson & Company 56
Merlyn Berg 58
Michael Day 67
Michael Jay 67
Michael Jay & Company, Inc. 67
Michael L. Zabrin 68
Michael L. Zabrin Fine Arts Ltd. 68
Michael Lynch 62
Michael McNevin 83
Michael Panaggio 69
Michael S. Duty 40
Michael W. Blodgett 72
Michael Zambouros 73
Michelle Hartzheim 62
Mid Central Services 85
Midwest Petroleum Company 83
Mike Jabra 81
Mobil Oil Corporation 27
Mohammad Al Shoeibi 83
Mohsen A. Rastcheez d/b/a Adel Motors 83
Money Store, Inc., The 39
Montrose Valley Funeral Home, Inc. 84
Motors, Inc. 86
Nancy G. Ruggeri 60
National Business Consultants, Inc. 68
National Center for Nutrition 39
National Credit Savers, Inc. 68
National Energy Specialist Association 68
National Lottery Hotline 67
Nationwide Credit, Inc. d/b/a Credit Claims & Collections 84
Nationwide Products & Research Development, Inc. 66
NATTC, Inc. 69

Neighbors, Inc., The 29
Nestle Food Company 40
Newtron Products Company, Inc. 40
Nicolina Varrichione 28
Nikki Fashions Ltd. 28
Nikolas Telemarketing Industries, Inc. 43
Nintendo of America Inc. 31
Nippon Sheet Glass Company, Ltd. 31
NME Hospitals, Inc. 40
Norbert Hancock 58
Nu-Day Enterprises, Inc. 41
Nutrition Institute of Maryland 38
OK Loan Services of Oklahoma City 85
Omexin Corporation 47
O'Neill, Inc. d/b/a Onax, Inc. 41
Orlando K. Scherling 71
Osborne Precious Metals 69
Osborne Stern and Company 69
Outdoor World Corp. 84
Owens-Illinois, Inc. 53
Pacific Medical Clinics Management, Inc. 69
Pacific Rice Products, Inc. 41
Pamela J. Besh 65
Park Strathmoor Corporation 29
Passport Internationale, Inc. 69
Pat Arnold 63
Patricia Benton 59
Patricia L. Evans 84
Patricia Wexler, M.D. 41
Patrick T. Scherling 71
Paul Hower 66
PepsiCo, Inc. 31
Perkits, Inc. 84
Perkits Yogurt, Inc. 84
Perma R Products of Mississippi, Inc. 82
Perma R Products of Tennessee, Inc. 82
Peterson Drug Company of North Chili, New York, Inc. 53
Philip Malina 58
Phillip C. Ruttan 70
Phone Base Systems, Inc. 74
Phone Programs, Inc. 48
Pinkerton Tobacco Company, Inc. 41
Pioneer Electronic (USA) Inc. 54
Pioneer Enterprises, Inc. 70
Plano Corporation of Los Angeles 71
PM Marketing Masters, Inc. 70
Pompeian, Inc. 28

Precious Metals & Gems, Inc. 70
Premier Marketing of America, Inc. 70
Pro Life Marketing 70
P.Y. Restaurants, Inc. 84
Pyraponic Industries II, Inc. 42
Quality Motor Co. 84
Quality Trailer Products Corporation 26
Ralston Purina Company 85
Ramon Haas 59
Randall Sweet 86
Raymond A. Montoya 78
RCI Trading, Inc. 60
Realty Computer Associates, Inc. d/b/a Computer Listing Service 26
Reese Scott Brutzman 71
Reese T. Houston 58
Regency Marketing Enterprises, Inc. 70
Regional Supply Company 71
Reliable Finance Co., Inc. 85
Removatron International Corp. 55
Rene F. La Treill a/k/a Ray La Treill 71
Reproductive Genetics In Vitro, P.C. 42
Restland Funeral Home, Inc. 85
Rex Goins 81
Richard A. Wilby a/k/a Rick Wilby and Rick Adams 62
Richard E. Kaylor 47
Richard J. Secchiaroli 70
Richard J. Wall 87
Richard P. Forte, Sr. 86
Richard Russell 44
Rio Rico Properties 78
R.M. Snyder, Jr. 86
RMED International, Inc. 42
Robert C. Ramos 73
Robert Crooks 57
Robert E. Blake 85
Robert E. Wilhelm Funeral Home, Inc. 85
Robert H. Morrison, Jr. 57
Robert I. Schattner 72
Robert Namer 68
Robert S. Krauser 50
Robert W. Boughton 46
Robert Weeks 63
Roberto Fojo, M.D. 32
Rockford, Illinois Nursing Homes 29
Roger Swayze 58
Roger Zilbert 73
Rohm and Haas Company 32

Ronald Gray	58
Ronald H. Michel	63
Ronald J. Roscioli	64
Ronald Snyder, Jr.	86
Ronald Snyder, Sr.	86
Ronald Sweet	86
Ronald T. Schaefer	74
Roy Bonn	58
R&R Motors	86
RWE Aktiengesellschaft	33
Sam Kingsfield	74
Samuel C. Evans	84
Samuel C. Evans, III	84
Sandoz Nutrition Corp.	43
Sandoz Pharmaceuticals Corporation	33
Sarabeth Koethe	64
Scala Memorial Home, Inc.	86
Scali, McCabe, Sloves, Inc.	44
Scherling Photography, Inc.	71
Scott M. Ross, M.D. d/b/a Mpls. Center for Cosmetic and Laser Surgery	43
Sentinel Group, Inc.	34
Service Corporation International	34
Service Finance Co., Inc.	85
Seymour Butan	72
Sharp & Anderson	58
Shelmar Corporation of Beverly Hills d/b/a Beverly Hills Coin Gallery	71
Signature Loan Service	85
Singing Hills Funeral Home, Inc.	85
Slender You, Inc.	43
Smoothline Corporation	47
Snyder's Used Cars, Inc.	86
Solomon Trading Company	61
Sonic Technology Products, Inc.	46
Sooner Loan of Tulsa	85
Southbank IPA, Inc.	34
Southwestern Media Group	67
Spanish Telemarketing Industries, Inc.	43
Sporicidin Company	72
S.S. Genetics Inc.	76
St. Ives Laboratories, Inc.	44
Starlink, Inc.	72
Stephen Gregg Echols	63
Steve Foreman	79
Steven Borque a/k/a J.W. Hall	58
Steven Victor M.D.	47
Stewart Brown	43
Stouffer Food Corp.	46

Sun Company, Inc. 44
Sun Refining and Marketing Co. 44
Sunseeds Genetics, Inc. 76
Sunshine Promotions 70
Sylvia George, Inc. 43
Synchronal Corp. 47
Synchronal Group, Inc. 47
T&N PLC 54
Tamona Enterprises, Inc. 66
Tech Spray, Inc. 44
TeleComm, Inc. 86
Telstar Marketing Network, Inc. 63
Terry Swofford 64
Texas Board of Chiropractic Examiners 35
Textron, Inc. 52
T.G. Morgan, Inc. 72
Thomas E. Stewart, Jr. 86
Thomas J. Hern 81
Thomas L. Fenton 47
Thomas V. Lopes 64
Thomas W. Bodiford 59
Ticor Title Insurance Company 90
Time Finance Company of Oklahoma City 85
Time Finance of Tulsa 85
T.J. Schattner 72
Todd Alan Arnold 63
Todd Wyatt 74
Tommy Overturff 84
Tom's Motors, Inc. 86
Tork & Associates, Inc. 87
Tower Loan of Mississippi, Inc. 50, 87
TRW, Inc. 87
21st Century Marketing, Inc. 70
21st Century II 70
U.F. Genetics 76
Unimet Credit Corporation 72
Unimet Trading Corporation 72
Unitel Marketing Consultants, Inc. 63
University Health, Inc. 49
University Health Resources, Inc. 49
University Health Services, Inc. 49
Uni-Vest Financial Services, Inc. 73
U.S. Rarities, Inc. 73
US Sales Corp. 73
U.S. Trade Distributors, Inc. 69
Value Rent-A-Car 28
Vendorline, Inc. 62

Vern Jensen	58
Victor F. Valentino	64
Viral Response Systems, Inc.	50
Vita Tek Marketing	70
VitaSystems Enterprises, Inc.	70
Voices for Freedom	74
Volvo North America Corp.	44
Vons Companies, Inc., The	35
W. Lowell Robertson	46
Walter J. Wright	87
Wave Crest Ltd., Inc.	66
Wayne Phillips	51
Western Trading Group, Ltd.	74
White Rock Mining, Inc.	58
WhiteHead, Ltd.	87
Why USA Development Corporation	88
Why USA Franchise Corporation	88
Why USA, Inc.	88
William F. Farley	77
William P. Wright	88
William von Meister	74
Winning Combination, Inc., The	45
Woodmar Corporation d/b/a Republic Rare Coins	71
World Wide Classics, Inc.	74
World Wide Classics of Indiana	74
Wright Companies	88
Yorkdale Health Center, Inc.	29