

CONSUMER PROTECTION 1980



Annual Report of the Consumer Protection Division
OFFICE OF ATTORNEY GENERAL
ROBERT T. STEPHAN
State of Kansas

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



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 15, 1981

4-15-81
CONFIDENTIAL

The Honorable John Carlin
Governor

and

Members of the Kansas Legislature

I am pleased to report to you that for the second consecutive year the Attorney General's Consumer Protection Division has exceeded \$1 million in recoveries and savings to Kansas consumers. In fact, 1980 statistics show savings and recoveries of \$1,625,300.51, vs. \$1,144,125.71 in 1979.

I believe this new high is first and foremost a tribute to the efforts of division personnel, but it is also a result of greater accessibility to the division through the installation of a toll-free consumer hotline and an intensive consumer education program undertaken by my consumer protection staff.

The following pages attempt to summarize consumer protection complaints, cases and statistics for 1980. This factual data, however, is representative of relief from considerable frustration Kansas consumers feel when they fall victim to con artists, unscrupulous business practices or even misunderstandings that involve their hard-earned money.

If my staff or I can be of service to you or your constituents, or if we can answer any questions you might have, please feel free to contact us.

Very truly yours,

ROBERT T. STEPHAN
Attorney General

RTS:naw/m

INTRODUCTION

The Consumer Protection Division of the Office of Attorney General Robert T. Stephan, for the second consecutive year, exceeded \$1 million in recoveries and savings to Kansas consumers. The number of complaints and inquiries received in 1980 surpassed the number of complaints received the previous year by over 100.

This increase can be attributed partly to the installation of a toll-free number in the Consumer Protection Division (1-800-432-2310), and partly to the efforts of the division to maintain public education as one of its main objectives.

During the spring and summer of 1980, the Consumer Protection Division initiated its "Consumer Awareness Program" whereby representatives from the division appeared in nearly every county of the state and spoke to various groups regarding their rights as consumers and advised them where to turn should they need assistance. Senior citizen groups were the main area of concentration for the division's presentations, but consumer protection personnel also spoke to other groups such as high school and college classes, business groups and civic organizations. They appeared on radio and TV stations across the state. The response to the program was excellent, and many times division personnel were assisted by the county or district attorneys in the counties where they were speaking.

The Attorney General's Consumer Protection Division has continued publication of the "Consumer Corner" column which is released weekly to over 100 Kansas newspapers. The column usually depicts actual cases that have been received and advises the consumer regarding what remedies may be available to him to satisfactorily resolve his complaint.

Under the direction of Robert T. Stephan, 1980 has been a very successful year for the Consumer Protection Division of the Office of the Attorney General. Not only has the caseload for the division increased, but so have the number of inquiries received via telephone. During 1981 it is hoped the services offered by the Consumer Protection Division can be made more visible to the public by continuing public education efforts through a second "Consumer Awareness Program." It is hoped consumer education on the local level will better enable this office to reach its primary goal: protection of the rights of Kansas consumers and the prevention of deception, misrepresentation and unconscionability practiced by too many and detected by too few.

STATISTICS FOR 1980

| | |
|-----------------------|----------------|
| Total Cases Received: | 4,297 |
| Total Cases Closed: | 4,126 |
| Total Annual Savings: | \$1,625,330.51 |

CASES CLOSED IN 1980

| <u>CLOSING CODE</u> | <u># CLOSED</u> | <u>% OF TOTAL</u> |
|---|-----------------|-------------------|
| 1- Inquiry or Information Only | 1,321 | 32.02 |
| 2- Referred to Private Attorney | 53 | 1.28 |
| 3- Potential Violator Out of Business | 63 | 1.53 |
| 4- Merchandise Repaired, Replaced or Delivered | 1,642 | 39.80 |
| 5- Referred to County or District Attorney | 151 | 3.66 |
| 6- Referred to Other Agency | 492 | 11.92 |
| 7- Referred to Small Claims Court | 49 | 1.19 |
| 8- No Jurisdiction | 189 | 4.58 |
| 9- Unable to Locate Violator | 61 | 1.48 |
| 10- No Basis | 52 | 1.26 |
| 11- Unable to Satisfy Complainant Further Action Not Warranted | 29 | .70 |
| 12- Voluntary Assurance of Discontinuance | 11 | .27 |
| 13- Court Cases Closed | 13 | .32 |
| | | |
| TOTAL CASES CLOSED | 4,126 | 100.00 % |

CASES RECEIVED IN 1980

| <u>OPENING CODE</u> | <u># OPENED</u> | <u>% OF TOTAL</u> |
|--|-----------------|-------------------|
| 1- Magazine | 158 | 3.68 |
| 2- Home Improvement | 179 | 4.17 |
| 3- Furniture and Appliances | 242 | 5.63 |
| 4- Jewelry | 43 | 1.00 |
| 5- Cameras, Photography | 124 | 2.89 |
| 9- Discount Buying | 7 | .16 |
| 10- House Movers & Storage | 25 | .58 |
| 11- Trade Schools | 31 | .72 |
| 13- Automobiles | 668 | 15.55 |
| 14- Health Clubs | 7 | .16 |
| 15- Building Construction | 41 | .95 |
| 18- Lotteries & Sweepstakes | 35 | .81 |
| 20- Business | 210 | 4.89 |
| 23- Hearing Aids & Optical Equipment | 37 | .86 |
| 24- Pesticides | 22 | .51 |
| 31- False Advertising | 45 | 1.05 |
| 32- Collection Agencies/Credit Bureaus | 202 | 4.70 |
| 33- Real Estate | 93 | 2.16 |
| 37- Charities | 23 | .54 |
| 46- Landlord/Tenant | 50 | 1.16 |
| 47- Mobile Homes | 78 | 1.82 |
| 48- Animals | 13 | .30 |
| 53- Miscellaneous | 929 | 21.62 |
| 56- Medical Problems | 49 | 1.14 |

| | | |
|-----------------------------|-------|----------|
| 63- Inquiries | 210 | 4.89 |
| 66- Door-to-Door | 47 | 1.09 |
| 67- Mail Orders | 641 | 14.93 |
| 68- False Billing | 25 | .58 |
| 69- Boats, Aircrafts, Bikes | 32 | .74 |
| 70- Nursing Homes | 7 | .16 |
| 71- Energy | 24 | .56 |
| | <hr/> | <hr/> |
| TOTAL | 4,297 | 100.00 % |

SUMMARY OF 1980 LAWSUITS

STATE, ex rel.,
v.
LOFTIN ENTERPRISES, INC., QUALITY POOL CONSTRUCTION, INC.

The complainants were continually assured that a completion date would be met for the installation of their swimming pool when actual work toward the construction was much too slow to meet the deadlines. This suit was filed on December 2, 1980, and is pending.

STATE, ex rel.,
v.
LOGAN AND TAYLOR, INC.

Donald I. and Gene Landry purchased a residence listed by Logan and Taylor, Inc., which was represented as having two woodburning fireplaces. Based upon this representation, the complainants purchased the home and thereafter attempted to build a fire in the basement fireplace. They discovered that the basement fireplace was not an operable woodburning fireplace. This was the basis for their claim. The attorney general was unable to resolve this dispute with the defendant and it was necessary to file suit in the Shawnee County District Court for damages of \$5,000 and civil penalties of \$2,000 for each of eight deceptive or unconscionable practices. Suit was filed on October 15, 1980, and the case has not yet been scheduled for jury trial.

STATE, ex rel.,
v.
MODERN WAREHOUSE

This action was filed in January, 1980, after mediation efforts to obtain a refund due a consumer on defective carpet failed. Within two weeks, an offer to settle for the original figure was made, and the suit was dismissed upon receipt of the check. Recovery to the consumer was \$662.

STATE, ex rel.,
v.
GREENBRIER REAL ESTATE

Suit was filed against the real estate agency for alleged misrepresentations made to consumers in the sale of two houses. Following discovery, a settlement of \$1,150 was reached as to one of the two counts, in which the buyers had purchased a lot which was smaller than they had been told. While an offer of settlement was also made as to the second count, which the attorney general believed was reasonable, the consumers believed they deserved more. Accordingly, this action was dismissed without prejudice to the consumers so that they could proceed privately if they wished.

STATE, ex rel.,
v.
PARIS AUTO PAINT

This case involves misrepresentations allegedly made concerning the way a car would look following repainting. As the finished product varied materially from what had been promised, suit was filed on the consumer's behalf. Discovery is near completion, and trial should be set for early in 1981. The amount in controversy is \$387.

STATE, ex rel.,
v.
V. J. LANE, WOODLAWN CEMETERY ASSOCIATION, UNKNOWN CEMETERY
CORPORATIONS, AND THE BROTHERHOOD STATE BANK

This action was filed on June 13, 1979, in the District Court of Wyandotte County, Kansas. K.S.A. 1979 Supp. 17-1366, et seq. It was alleged in the petition that the cemetery in question had been abandoned and that the city of Kansas City should be required to provide for the maintenance of the cemetery.

The city of Kansas City intervened and filed an answer which, among other things, questioned the constitutionality of the act. Motions for summary judgment were filed by both the state and the city. These were argued to the court on October 26, 1979. On December 21, 1979, the court held the act was "constitutionally infirm," being in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Articles 1 and 2 of the Kansas Bill of Rights by

providing for the "taking" of private property without compensation and due process.

An appeal was perfected by the attorney general to the Kansas Supreme Court, with oral arguments taking place on June 11, 1980. The court's decision, reported at 228 Kan. 389, upheld the constitutionality of the act in all respects and remanded the matter to the district court for a factual determination of whether the cemetery was abandoned.

Following discovery, a hearing was held on December 17, 1980, at which time the district court found Woodlawn Cemetery to be abandoned and transferred title and control of the cemetery to the city of Kansas City, which also received moneys contained in accounts held by defendant. A journal entry was prepared to reflect this and the case was closed.

STATE, ex rel.,
v.
VANTAGE PRODUCTIONS, SAM AND CHERYL COSTA,
TOM MINOVITCH, AND TERRY LONG

On May 31, 1980, a country-western concert that had been billed as featuring Jim Ed Brown, Helen Cornelious and the Bellamy Brothers was to be performed at the Municipal Auditorium in Topeka. However, no definite arrangements to hold the concert were ever made, although over \$6,700 worth of tickets were sold. All those responsible for the concert disappeared, but through quick action a bank account containing some of the ticket proceeds was attached when the consumer suit was filed. Judgment by default was granted, and individual refunds were sent out to 320 individual ticket-buyers. The total amount of recovery was \$2,041.

STATE, ex rel.
v.
LEO KING

This lawsuit was filed against an auto mechanic for work which was allegedly performed on a consumer's vehicle. Discovery has just been commenced, with the total recovery sought being \$969.

STATE, ex rel.,
v.
BROTHERHOOD STATE BANK AND TRUST COMPANY

A petition was filed in July, 1980, against defendant bank on behalf of consumers who had taken out a loan from the bank five years earlier and who had secured the note with a mortgage on their

home. The note was set up to have a 25-year amortization but only a five-year maturity, leaving the balance to either be paid in a "balloon" or refinanced at the prevailing interest rate. The suit is based on the bank's alleged failure to make the nature and effect of this type of financing known to the consumers in a clear and understandable fashion. A motion to dismiss was filed by defendant and following oral arguments, the district court ruled on December 9, 1980, that the motion be denied. The case is now proceeding to discovery.

STATE, ex rel.,
v.
MIKE ROBERTSON AND NATIONAL ENERGY SAVINGS CORP.

The above action involved the sale of gasoline saving devices and the plans to adapt cars to achieve the same result, which allegedly increased mileage from 50 to 100 percent. Seven consumers with claims totaling \$666 were represented in the suit, which sought to recover these sums and to halt the sale of these devices in the state. Service upon the defendants was made in Arizona. No answers have been filed.

STATE, ex rel.,
v.
GARRY GELLNER, d/b/a INDEPENDENT BROKERS ADVISORS,
RON VAN ORDEN, d/b/a BUSINESS GROWTH ARCHITECTS

This case seeks to have a business practice enjoined in Kansas whereby a consumer retains a company to put him in contact with still other firms who can provide loans, business counseling and similar services. The potentially deceptive element lies in the nature of the initial agreement; for while the consumer obligates himself to pay certain amounts (both directly and in the form of long-distance telephone calls charged to his number), the firms are not obligated to achieve anything concrete on his behalf. The petition requests injunctive relief and damages in the amount of \$389, representing the telephone bill incurred by the consumer. Both defendants have answered.

STATE, ex rel.,
v.
CHARLES MAYERNIK, d/b/a C. M. CONSTRUCTION COMPANY

Defendant did remodeling in the Dodge City area and contracted to perform work in a couple's home. The terms of the contract were not met and \$850 remained due and owing. Following discussions with the defendant, a consent judgment was filed. The amount was to be paid back in monthly installments of \$25 or more.

Upon learning in October, 1980, that only \$95 had been paid, this office renewed its efforts. By December, 1980, the payments were being made again, after an action for contempt was considered.

STATE, ex rel.,
v.
MIDWESTERN DISTRIBUTION, INC., TRACTOR 8377, INC.;
B & D MOTOR PARTS, INC.

This lawsuit was initiated in July, 1980, against the first two of the above defendants, with the third added subsequently. The essence of the matter concerns the operation of the individual tractor corporation, 8377, by a driver who was also made president and shareholder. The corporation contracted with Midwestern to haul loads, with the profits going to pay off the truck, which was also provided by a wholly-owned subsidiary of Midwestern, B & D Motor Parts, Inc.

The petition alleged that the agreements entered into by the driver gave Midwestern an unconscionable amount of control over the affairs of the tractor corporation. One such power was the unlimited right to demand payment upon five days notice, in full, for all operating expenses which had been advanced. Failure to make payment resulted in the sale by Midwestern of the tractor corporation's stock, thus releasing the driver and leaving him with no equity to show for his labor.

A motion to dismiss was filed by defendants Midwestern and B & D Motor Parts. Following oral argument on November 24, 1980, in Ft. Scott, Kansas, the matter was taken under advisement by the trial court, where it remains at this time.

STATE, ex rel.
v.
MIDWESTERN DISTRIBUTION, INC.; TRACTOR 8140, INC.;
B & D MOTOR PARTS, INC.

Same as the proceeding case, although the facts regarding the driver are somewhat different. Also, this case is now under advisement by the court following a motion to dismiss.

STATE, ex rel.,
v.
BLO-RITE INSULATION, INC.

This action involved a company which installed foam insulation in the homes of consumers, and was initiated following an investigation in the Great Bend area which revealed that the door-to-door sale provisions of the act (K.S.A. 50-640) were violated and that repairs

made following installation were inadequate. Discovery has been initiated which involved the collection of damage estimates and the inspection of the four residences involved.

STATE, ex rel.,
v.
NON-SMOKE CLINIC, INC.

Following the receipt of a number of complaints from consumers regarding the operations of Non-Smoke Clinic, Inc., the Attorney General's office began an investigation. This inquiry revealed that the clinic was engaged in the solicitation and sale of services (in the form of "group hypnosis" sessions) whereby participants would be helped to quit smoking. However, in case they had not done so after their third session, the offer stated their money would be refunded. The complaints for the most part concerned the failure of the clinic to make such refunds.

On November 17, 1980, a consent judgment was entered into by which refunds would be sent out commencing on December 1, 1980, with a list of those receiving such refunds sent to the Attorney General by December 15, 1980. Following the failure of the clinic to comply with any of these terms, contempt proceedings were instituted in the District Court of Shawnee County.

STATE, ex rel.,
v.
PHILADELPHIA AND NATIONAL TRADE, INC.

A petition was filed on November 15, 1977, for civil penalties, restitution and other relief. The defendant sold a business opportunity involving the operation of pantyhose vending machines. The lawsuit alleged that by selling the distributorships, the company violated the Consumer Protection Act by engaging in "bait and switch" tactics and by misrepresenting to the buyers that they would receive an exclusive territory for operation of the machines so they would vend a specific number of sales per day. The suit also alleged that the sales transactions were unconscionable as being excessively one-sided and of no material benefit to the consumer.

Service of process and interrogatories were served. Defendant answered the petition, but failed to answer the interrogatories. Kansas counsel for the defendant has since withdrawn from the case. Judgment was subsequently entered against the defendant and the return of all moneys paid by Kansas consumers was ordered by the court. To date, this office has been unsuccessful in getting the judgment satisfied.

STATE, ex rel.,
v.
C. & J. MOTORS, INC.; DAVID STUDNA, JOE STUDNA

A petition was filed by the state of Kansas in the United States District Court for the District of Kansas on July 1, 1977, alleging the defendants violated the Federal Motor Vehicle Cost Information and Savings Act and the Consumer Protection Act, in that they reset the odometer on a 1975 Nova Chevrolet to indicate less mileage than the actual mileage on the vehicle. The state requested under the federal law that the defendant pay to the ultimate purchaser of the 1975 Nova Chevrolet damages in the amount prescribed by the court and pay civil penalties to the state, and that his dealer's license be permanently revoked in the State of Kansas. Mr. Studna had a wholesale dealer's license and had also been found guilty of rolling back an odometer under the same federal law in Nebraska by Chief Judge Erbaum. Based on the Nebraska case, the Kansas Motor Vehicle Department revoked Mr. Studna's dealer's license. That revocation was appealed to the Shawnee County District Court and was upheld. Subsequently, Mr. Studna turned in his dealer's license and plates.

A pretrial order was drawn and a list of witnesses and exhibits were exchanged.

The trial took place on May 23, 1980. The court found that the corporate defendant, C. & J. Motors, had violated the Federal Motor Vehicle Cost Information and Savings Act and the Consumer Protection Act in that the odometer of the 1975 Nova Chevrolet had been reset while owned by the corporate defendant. A \$1,500 penalty was levied against the corporate defendant. However, the court found that the state had failed in its burden to prove that the individual defendants should be held responsible for the odometer rollback.

STATE, ex rel.,
v.
SKAGGS MOTORS, INC.

The suit against Skaggs Motors, Inc. was filed on June 19, 1978, and a copy of the summons and petition were served on June 20, 1978. The petition alleged the defendant advertised a diesel truck with 50,000 miles with a major in-frame overhaul; however, defendant failed to disclose to the consumer that the truck, subsequent to the major in-frame overhaul, required additional repairs. The repairs were made only to keep the truck running and defendant utilized salvage parts in lieu of new or rebuilt parts. The mechanic who

worked on the truck advised defendant the truck was in need of repair and should only be sold over the auction block in order that a warranty not be given on said truck.

Interrogatories were subsequently exchanged and the defendant deposed the state's complaining witness.

On September 18, 1980, this matter was tried. The evidence at trial disclosed that the truck in question had experienced serious problems after the major in-frame overhaul. These problems took place at a time prior to the purchase of the truck by the defendant. The court found that the state had failed in its burden to establish that the defendant knew, or should have known, about the problems experienced by the prior owner. Thus, the court held that the evidence did not establish a violation of the Kansas Consumer Protection Act.

The judge did find that the "disclaimer of warranty" provision as contained in the contract was in violation of K.S.A. 50-639. This provision was struck from the contract.

STATE, ex rel.,
v.
RALPH GARCIA, d/b/a GARCIA'S AUTORAMA

This lawsuit was filed on September 8, 1978, and alleged the defendant advertised a vehicle as being a 1969 Chevrolet Z-28 Camaro. A Z-28 Camaro commands a higher market price than a normal Camaro. The vehicle in question was not a Z-28 Camaro. The odometer reading for the pseudo Z-28 was also incorrect. The petition requests the difference of value between the two types of vehicles.

On October 10, 1980, a summary judgment was entered against the defendant with respect to the violation of the Kansas Consumer Protection Act. The only issue that remains for trial is the amount of damages owing. A pretrial date has been set.

STATE, ex rel.,
v.
LOWELL POUNDS, d/b/a POUNDS MOTORS

In response to a complaint filed in the attorney general's office, a letter of inquiry was sent to Lowell Pounds asking him to respond to the complaint. Mr. Pounds did not respond and a subpoena was subsequently issued commanding Mr. Pounds to appear to discuss the complaint. Mr. Pounds also failed to respond to the subpoena. As a result, the attorney general filed a petition asking the court to:

(1) enjoin the defendant from selling or advertising any merchandise in the state of Kansas; (2) revoke or suspend the defendant's dealer's license; and (3) assess costs to the defendant.

A consent judgment was sent to defense counsel, but was never signed. Because of the failure of the defendant to plead or otherwise respond to the state's petition, a motion for default judgment was filed and set for hearing. The defendant failed to show at the hearing on the motion and a default judgment was entered against him.

STATE, ex rel.,
v.
SKYLINE CORPORATION AND CLELL BARB, d/b/a
CLELL BARB COMPANIES

This case originated in the sale of a "travel trailer" home by Clell Barb. The trailer was manufactured by the Skyline Corporation. The complainants in this case began to experience problems with the trailer almost immediately after its purchase. Despite repeated attempts by the defendants to rectify the existing problems, the trailer continued to be uninhabitable. Because the defendants refused to return the purchase price to the complainants, the attorney general filed suit seeking to have the contract declared null and void and to have all moneys paid by the complainants returned to them.

The petition alleged the defendant, Clell Barb, told the complainants the travel trailer could be used as a full-time residence when, in fact, they knew, or should have known, it could not. The petition also alleged the defendant, Clell Barb, or his agent, misrepresented several material facts in connection with the sale. The petition seeks to have these practices declared deceptive and unconscionable as provided for in the Kansas Consumer Protection Act.

The petition also alleged the defendant, Skyline Corporation, knew the complainants were living in the trailer as a full-time residence. Further, an agent for Skyline promised if the complainants continued to have problems that Skyline would refund their money. The petition seeks to have the above practices declared to be deceptive and unconscionable. In addition, the petition alleged it was an unconscionable business practice for the Skyline Corporation to manufacture for sale such a defective product and then refuse to return the purchase price to the consumer when demand was made.

The state's petition was filed on December 13, 1979, and interrogatories were served on both defendants thereafter. The defendants have deposed the complainants and the state has deposed Clell Barb, Gary Davidson and Eugene Reynolds, (the Skyline representative who dealt with the complainants).

Discovery is complete and the matter is set for a January 27, 1981 pretrial.

STATE, ex rel.,
v.
J. D. SCHRINER, SHANE HOMES, INC., AND
KIMBERLY DEVELOPMENT, INC.

This petition was filed on April 30, 1979, alleging the defendants had misrepresented several material facts to the complainants in connection with the sale of a modular home. Most important of these misrepresentations was the defendant's promise that the electrical bills would not exceed approximately \$130 when, in fact, they had approached \$300. Further, the petition alleges the defendant misrepresented material facts of: (1) workmanship, (2) heating and cooling capacity, and (3) insulation. The petition seeks to have the acts of the defendants declared unconscionable and deceptive as provided for in the Kansas Consumer Protection Act.

Interrogatories have been exchanged and answered. The state had deposed Joe Mendoza, a repairman who worked on the house. Further discovery must be completed by February 1, 1981.

STATE ex rel.,
v.
THE SPORTS CAR SHOPPE, LTD., MARION ADAMS, AND
RICHARD HAITBRINK

A petition was filed against the defendants on March 30, 1977. It was alleged the defendants sold the car as having only minor damage. Also, defendants were accused of failing to have the automobile inspected pursuant to K.S.A. 8-1854 and refusing to lawfully assign the title of the car to the consumer as required by K.S.A. 8-135(c)(7). Richard Haitbrink was subsequently dismissed from the action.

In November, 1979, the state was finally successful in obtaining a check for \$1,000 from the remaining defendants as settlement of this matter. The attorney general forwarded the "Release of Claim" form and check to the complainant. An order of dismissal was subsequently prepared by the state and signed by the court.

STATE, ex rel.,
v.
BOB SAYRE, d/b/a BOB SAYRE SALES

This petition was filed on May 3, 1979. It alleged the defendant represented to the complainant that the complainant's pick-up was sufficient in size to hold the camper the defendant subsequently sold

to the complainant, when, in fact, the pick-up would not hold the camper. The petition asked that this representation be declared as deceptive and unconscionable business practices pursuant to K.S.A. 50-626(b)(3) and K.S.A. 50-627. Further, the defendant sold the camper "as is," which is in violation of K.S.A. 50-639.

Depositions of the complaining witnesses were taken. On September 24, 1979, a pretrial conference was held. At this conference the possibility of settlement was discussed and all parties agreed to attempt to settle the matter. As a result, an offer of settlement was made by the state. The defendant rejected this offer, but submitted a counter offer, whereby he agreed to repay the approximate value of damages. This amount was agreed upon as settlement. An order of dismissal with prejudice was then entered.

STATE, ex rel.,
v.
LOMBARDO INTERNATIONAL TRUCKS, INC.

This petition was filed on May 17, 1979, alleging the defendant committed an unconscionable and deceptive business practice in connection with repairs the defendant performed on complainant's truck. In this regard, by defendant's own admission, unauthorized work was performed. As a result, the complainant's truck engine was damaged. The petition seeks damages for the repair costs and loss of earnings.

Interrogatories have been exchanged by both sides. The defendant presented the plaintiff with a request for production of documents, which essentially sought the records from which the damages were computed. These documents have been supplied.

A pretrial was held on April 23, 1980, and the trial date was set for October 7, 1980. At that time the state put on its first two witnesses. The court had scheduled the matter to take no more than the afternoon. This was not sufficient and a date for the remainder of the trial has been set.

STATE, ex rel.,
v.
RON STICKNEY, d/b/a RON STICKNEY PAINTING

This petition was filed on August 15, 1979, alleging the defendant failed to complete a contract for the painting of a home, although he accepted full payment for said contract. The petition sought to regain the contract price and an injunction against future violations of the Kansas Consumer Protection Act.

The defendant subsequently moved from Topeka. Service of process was finally obtained in October of 1979. The defendant failed to appear and a default judgment was entered against him. Attempts at collection, to date, have been unsuccessful.

STATE, ex rel.,
v.
U.S. INDUSTRIES, INC., d/b/a ISEMAN MOBILE HOMES,
AND TIM IRVINE

This petition was filed on April 30, 1979, seeking rescission of a contract entered into between the defendant, U.S. Industries, and the complainant. The state alleged the defendant, Tim Irvine, a salesman for U.S. Industries, misrepresented the contract terms to the complainant in that he assured them the sale would include credit life insurance when, in fact, it did not. Further, the petition asked the court to void the contract on the grounds it was unconscionable for the reason that, at the time of the sale, there was no reasonable probability the complainant understood the terms of the contract and further, there was no reasonable probability of payment.

The defendant, Tim Irvine, and the complaining witness were deposed. After this time a settlement was agreed upon whereby the defendants paid \$3,000 to the complainant. An order of dismissal with prejudice was then entered.

STATE, ex rel.,
v.
RONALD GENE THOMISON, d/b/a THOMISON AUCTIONS,
AND MRS. O. E. WALKER, AND MRS. O. E. MARTIN

This action was filed on September 25, 1979, alleging the defendant advertised certain items of personal property as being antique, when, in fact, they were not. The action claims the representations amounted to violations of the Kansas Consumer Protection Act. An answer has been filed by the defendants.

Interrogatories and a request for admissions were filed by the state. The defendant, Thomison, failed to answer the request within 30 days and the state moved for a summary judgment based upon the alleged admissions. This motion has been denied and state is now proceeding with discovery.

STATE, ex rel.,
v.
EDUKAN, d/b/a CLARK'S SCHOOL OF BUSINESS, CAMDEN MCKINLEY,
JOE SWALLWELL, NORTHWESTERN NATIONAL INSURANCE COMPANY,
THE WESTERN CASUALTY AND SURETY COMPANY

A petition was filed on September 3, 1980, alleging violations of the Kansas Consumer Protection Act and the Proprietary School Act,

in connection with a medical assistants program offered by Clark's. The petition alleges that the defendants represented that: a) students who had completed the program would be allowed to sit for a certification exam for the American Association of Medical Assistants, b) graduates would find a good market for their training at a starting salary commensurate with their advanced education, and c) the placement service was effective in obtaining employment for graduates. The petition alleges the above representations were false or misleading and asks for damages, penalties and injunctive relief.

Interrogatories have been submitted to the plaintiff by two of the defendants.

STATE, ex rel.,
v.
DANIAL A. BURWELL, D. C.

A petition was filed on January 18, 1980, alleging violations of the Kansas Consumer Protection Act for practicing without a chiropractor's license and other misrepresentations. The lawsuit seeks restitution and injunctive relief. The state's claims are based on the defendant's representations that Blue Cross/Blue Shield would cover services rendered by the defendant. In fact, Blue Cross/Blue Shield had notified the defendant that they would no longer pay claims to the defendant's patients. Additionally, the defendant's license had been revoked at a time when he continued to offer his services.

The state obtained a temporary injunction against the defendant precluding his practicing chiropractic pending trial of this matter. The defendant's deposition is set for January 13, 1981 at which time the state has requested to inspect his records to obtain the names of those Kansas consumers who have been damaged.

STATE, ex rel.,
v.
HAROLD V. MATNEY AND ROBERT PINET, d/b/a
MEMORY GARDENS ASSOCIATION AND
THE INSURANCE COMPANY OF NORTH AMERICA

A petition was filed in November, 1980, seeking restitution and injunctive relief under the Kansas Consumer Protection Act. This petition also alleges that the two cemeteries in question are "abandoned" pursuant to K.S.A. 17-1366. This lawsuit also seeks to rectify problems with the permanent maintenance fund.

The state contends that the defendants have dealt with Kansas consumers in an unconscionable manner and that such actions are in violation of the Kansas Consumer Protection Act.

STATE, ex rel.,
v.
FUTURE HOMES INSPECTION, INC.,
FLOYD D. PARRY AND PAMELA S. PARRY

This petition was filed on October 20, 1980. The state contends that the defendants have misrepresented the quality of home inspections that they perform. Three consumers relied on these representations and have been damaged as a result. The lawsuit seeks restitution for these consumers and injunctive relief. The matter is presently being negotiated in hopes of settlement.

STATE, ex rel.,
v.
RAY JORDAN AND CLIFF JORDAN,
d/b/a EXPANSO MANUFACTURING COMPANY

This petition was filed on July 9, 1980. The state alleged that the defendant accepted \$1,000 as a down-payment for an Expanso room addition. The work was to be performed within two weeks after Christmas, 1979. To date the work has not been performed. The petition contends that the defendants have violated the Kansas Consumer Protection Act.

To date, service of process has not been obtained on the defendants.

STATE, ex rel.,
v.
NATUR-ALL INTERNATIONAL, BILL KEHO, KEITH PROBASCO

This suit, filed on January 15, 1980, sought restitution and injunctive relief. The suit maintained that the defendants promised, in connection with the promotion of vitamin distributorships, that the defendants would provide training and supplies. Also, certain commissions were promised. The petition alleged that consumers who chose to sell for the defendants had no reasonable opportunity to earn the sums promised. Also, the defendant's other promises failed to materialize.

The defendants could not be located for service of process and this petition was dismissed without prejudice.

STATE, ex rel.,
v.
MICHAEL GALLAGHER, EDWARD GALLAGHER,
CHARLES GALLAGHER, PAT GALLAGHER, MATHEW GALLAGHER

The petition was filed on September 16, 1980, seeking restitution and injunctive relief. The state contended that the defendants solicited and entered into contracts whereby they promised to

weatherproof roofs. Low estimates were given, but upon completion exorbitant prices were charged. The petition also asserts that the defendants misrepresented their experience and business addresses. Door-to-door sales statutes were also violated.

The state, assisted by the Thomas County Attorney, Perry Murray, was successful in obtaining a temporary injunction precluding the defendants from doing business in Kansas pending resolution of this matter. To date, service has not been obtained upon the defendants.

STATE, ex rel.,
v.
HEART DISEASE RESEARCH FOUNDATION

This was an action brought against an alleged charitable organization. In May, 1980, an injunction was granted which prohibits the organization from soliciting contributions in the state of Kansas until it has properly registered and complied with Kansas Charitable Solicitation Act.

STATE, ex rel.,
v.
NATIONAL AMATEUR SPORTS FOUNDATION

This action was brought in June, 1980, pursuant to the Charitable Solicitation Act. Defendant utilized a survey with its solicitation for funds to aid athletes. An injunction was granted whereby defendant was prohibited from soliciting contributions until it fully complies with the applicable registration statutes.

STATE, ex rel.,
v.
AMERICAN COUNCIL OF THE BLIND, INC.;
ARLISS HENDERSON MANAGEMENT COMPANY, INC.;
AMERICAN COUNCIL OF THE BLIND ENTERPRISES AND SERVICES, INC.

This action was brought under the Charitable Solicitation Act and seeks to enjoin the charitable organization, American Council of the Blind, from soliciting contributions in Kansas until it fully complies with state law, including registration with the secretary of state. Defendant operates a thrift store and solicits donations in the form of used household goods from Kansans. There is a dispute as to whether American Council of the Blind is soliciting contributions in Kansas through an agent, American Council of the Blind Enterprises and Services in contravention of the Act, with American Council of the Blind Enterprises and Services acting as a professional fund raiser.

STATE, ex rel.,
v.
COLUMBIA RESEARCH CORPORATION

This action was filed against an Illinois corporation. The defendant sent solicitations offering a certificate purportedly entitling consumers to "vacations" in Nevada, Florida or California and solicited a charge of \$15.95 for each vacation package.

In August, 1979, a consent decree was entered into with Columbia Research Corporation. The consent decree specified numerous representations and statements Columbia Research Corporation was either prohibited from making or required to make in order that the solicitation not be deceptive. Also, the refund policy was revised. Those Kansans entitled to refunds were to submit their claims to the attorney general by December 31, 1979. Refunds were to be mailed within 45 days. One hundred thirty-six Kansans properly filed claims.

Columbia Research Corporation failed to make payment as required. The Illinois Attorney General's Office assisted in registering the judgment. On August 7, 1980, an order was entered in Illinois for the State of Kansas showing Columbia Research Corporation indebted to the Kansas attorney general in the amount of \$2,499.59. The judgment remains unsatisfied as Columbia Research Corporation is no longer doing business. A payment of \$500 was received during August, 1979. This amount was distributed among the complainants on a pro rata basis this past September as it is highly unlikely there will be further money.

STATE, ex rel.,
v.
PAT MULLIN, d/b/a MULLIN EXTERIOR DESIGNING

An action was filed against defendant alleging deception in connection with a contract to furnish and install a patio cover. The petition alleged defendant guaranteed the roof section would not leak, but when he was notified of a problem shortly after installation, he refused to comply with the guarantee, correct the problem, or refund the contract price. Restitution of \$680.51, as well as a civil penalty is requested. Attempts to serve defendant have been unsuccessful, but efforts are continuing.

STATE, ex rel.,
v.
FRAGRANCES UNLIMITED, INC.; THOMAS HIGGS

Defendant entered into a consumer transaction with two Kansans whereby an inventory and services were sold to the purchaser with the purchaser agreeing to assemble and package air fresheners to

be resold by the seller and distributed. The petition alleged the defendant seller engaged in deceptive and unconscionable acts in connection with this transaction.

A judgment by default was granted in March, 1980. The consumer was granted \$4,700 in damages and the state was granted a civil penalty of \$2,000. The writ of execution was returned unsatisfied, as no property was found.

STATE, ex rel.,
v.
INTERSTATE BUSINESS MARKETING, INC.;
HUFF & SON ASSOCIATES; JOHN HUFF; MAX HUFF

In April, 1979, a petition was filed against defendants' Colorado businesses. Defendant promised to nationally expose the consumer's business as being for sale in exchange for a fee. A journal entry of consent judgment provides that defendants agree to cease doing business in Kansas and to not solicit or advertise or enter into any advertising agreements or contracts with Kansas residents, as well as pay \$5,075 to the state. This amount represents refunds for consumers and costs. During March of 1980, the final payment was made. Six consumers received the agreed upon refund.

STATE, ex rel.,
v.
ARTHUR DONALD MACK

In November, 1979, proceedings were instituted against the defendant seeking to recover a civil penalty for defendant violating a previous court order. Defendant solicits advertising for a magazine, "Today's Policeman," and has allegedly mailed billing statements to persons in Kansas in an attempt to create an impression of an existing obligation to pay for advertising without having entered into a valid contract within six months preceding the date of that billing. In April, 1980, the defendant agreed to pay \$1,225 to the state. Restitution was made in the amount of \$237 to individuals who had made a payment as a result of violative conduct by defendant.

STATE, ex rel.,
v.
PHILIP M. PARKER, d/b/a PHOTOGRAPHY BY PHIL PARKER

In November, 1979, an action was filed against the defendant. The petition alleges defendant committed deceptive acts while engaging in the business of taking and selling photographs. Defendant took photographs at quarterhorse shows, accepting payment in advance in many

instances, but failed and refused to provide either the photograph or the refund. During June, 1980, an order was entered whereby the defendant was ordered to pay \$500 to the attorney general. Two hundred dollars was paid directly back to the consumers and two hundred fifty dollars was retained in the attorney general's court cost fund. Defendant is enjoined from taking photographs and in connection therewith, accepting payment for the finished photographs but failing to either make reasonable efforts to do the work or refund the money received.

STATE, ex rel.,
v.
D & E ENTERPRISES, INC., d/b/a/ VEGAS INTERNATIONAL
TRAVEL AND TOURS

This action was filed against a Nevada corporation in April, 1980. Vegas International contacted Kansas consumers by telephone and sold vacation certificates. A consent judgment was entered into with Vegas International. The company was prohibited from making certain representations. Additionally, consumers were allowed sixty days in which to file claims requesting refunds. Claims totaled more than \$3,500. On August 25, 1980, the court awarded the attorney general a monetary judgment of \$2,555.36. Actually recovered was \$1,449.62. Efforts to secure full payment were unsuccessful. Vegas International is out of business and without assets.

STATE, ex rel.,
v.
KEN BUELTEL AND SARGENT, INC.; WALTER SCOTT

This petition was filed in June, 1980. The petition alleged that the defendant engaged in a deceptive and an unconscionable act in connection with a real estate transaction. The action was dismissed with prejudice upon the defendant paying \$500 to the consumer as actual damages.

STATE, ex rel.,
v.
UNITED FRATERNAL ORDER OF PEACE OFFICERS ASSOCIATION,
ROSE MARY EVANS

In January, 1980, a proceeding to recover a civil penalty was commenced. Defendants solicited advertisers for its publication. In 1974, an order had been entered which prohibited certain practices and required specific disclosures by defendants in their solicitation of advertisers. Solicitations for advertising in United Peace Officers Yearbook violated the Court's order. The defendant paid \$1,000 to plaintiff.

STATE, ex rel.,
v.
BUSINESS MEN'S VENTURE

This action was filed in January, 1980, in an effort to halt the growth of a pyramid scheme. Business Men's Venture was an alleged club with an office in Missouri. Business Men's Venture consisted of all persons who purchased a membership for a cost of \$1,000. Emphasis was placed on recruiting new members with the representation being made that up to \$64,000 could be expected as the result of one purchasing a membership for \$1,000. The named defendants were temporarily enjoined from promoting and perpetuating the solicitation and sale of memberships in Business Men's Venture.

STATE, ex rel.,
v.
SPACE-MOR, INC.

A petition was filed in March, 1980, against a Missouri corporation. The company sold add-on units for mobile homes and, although it entered into contracts with Kansans to manufacture and deliver units, defendant failed and refused to comply with the written agreement. Judgement by default was granted. Defendant is to pay \$19,857 with \$11,357 restitution, \$8,000 civil penalties, \$500 court cost fund. Defendant is enjoined from doing business in Kansas. The judgment remains unsatisfied. Defendant is no longer in business and there are no known assets.

STATE, ex rel.,
v.
ROBERT KAUL, d/b/a CAPITOL AWARDS

A petition was filed in October, 1980, seeking to enjoin defendant from selling or advertising any property or services in Kansas until defendant complies with a subpoena duly issued. Injunction was granted in December, 1980.

STATE, ex rel.,
v.
NITE LITE CORPORATION

In June, 1980, a petition was filed against this Florida corporation. Defendant solicited and sold telephone sticker strips to Kansans but failed to deliver same or make a refund. Defendant cannot be located at this time.

STATE, ex rel.,
v.
NATIONAL FARMERS ORGANIZATION

In October, 1980, a consent judgment was entered into with National Farmers Organization, an Iowa corporation, as a result of National Farmers Organization's attempts to collect delinquent membership dues. National Farmers Organization contended its contract with members was a three-year automatically renewable contract which continued in effect unless proper cancellation notice was given. The attorney general contended it was an unconscionable practice to attempt to collect the back dues at this time based on an automatically renewable contract provision in light of the fact that National Farmers Organization had allowed large sums to accumulate before beginning this collection effort. As a result of the consent judgment and other negotiations, the number of individuals National Farmers Organization can attempt to collect from is reduced, and the amount it can attempt to collect is limited. Debts cancelled as a result of this consent judgment total over \$1 million.

STATE, ex rel.,
v.
GLEN BISHOP

In December, 1980, a petition was filed against Glen Bishop. The petition alleged defendant entered into contracts with consumers whereby defendant agreed to perform home repairs and household improvements. Prepayment was accepted but defendant has failed to complete the contracts or make refunds to the consumers. The right to cancel a door-to-door sale was not given by the defendant as required by the Consumer Protection Act. An injunction, actual damages, civil penalty, and costs are sought.

CONCLUSION

The previously listed cases are only a fraction of the complaints handled by the consumer protection division. Most complaints are settled without going to court. The Office of the Attorney General will continue its efforts to provide Kansans with an efficient and effective consumer protection division. It is the attorney general's sincere hope that 1981 will reflect even greater results for Kansas consumers through their access to the Attorney General's Consumer Protection Division.

If additional information or assistance is required, members of the Legislature and their constituents are encouraged to contact the consumer protection division:

Office of Attorney General Robert T. Stephan
Kansas Judicial Center
2nd Floor
Topeka, Kansas 66612