

CONSUMER PROTECTION 1983



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



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-8298

To: The Honorable John Carlin
and Members of the Kansas Legislature

With pride I again submit to you the annual report of my Consumer Protection Division.

Statistically it has been a good year again, saving or recovering for Kansas consumers over \$600,000. Reviewed in this report are some cases which involved a great deal of staff time and substantial recovery to Kansas consumers, such as the case against the Fedders Corporation or the work that has been performed by my staff in assisting consumers with complaints regarding General Motors cars subject to the recent Federal Trade Commission-GM agreement. Many of our cases, however, involve a relatively small amount of money, but for Kansas consumers the cases represent frustration in the marketplace and money they can ill afford to lose.

I am proud of the service we are able to provide these consumers and stress to my staff that they must be handled with a great deal of sensitivity. My primary goal through consumer protection is to assist the consumer, no matter how small or insignificant his complaint may seem.

I appreciate the support consumer protection in Kansas has received in the past from the Governor and the Legislature, and ask for your continued assistance in protecting the rights of Kansas consumers.

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

Very truly yours,

A handwritten signature in cursive script that reads "Robert T. Stephan".

Robert T. Stephan
Attorney General

INTRODUCTION

1983 was an exciting year for Attorney General Robert T. Stephan's Consumer Protection Division. In addition to the lawsuits which are summarized in this report, there were numerous other cases which have been or are being resolved without the necessity of court intervention.

One of the major cases in this latter category involved a settlement with the Fedders Corporation whereby Fedders agreed to reimburse consumers or repair or replace defective air conditioning units. Over 500 claims were received and, as of this writing, approximately two-thirds of these have been resolved.

Another case of interest and concern involves a settlement between the Federal Trade Commission and General Motors. In 1980, the FTC initiated a proceeding against General Motors because thousands of consumers complained they were experiencing serious problems with certain types of GM transmissions, gasoline engines, and diesel engines. In November, 1983, after three years of legal disputes, the FTC and GM settled the complaint.

The settlement of the FTC complaint establishes a new arbitration program. The Consumer Protection Division has assembled a kit to assist Kansans who have experienced problems with GM vehicles in their claims.

The leading complaint category for 1983 against involved mail order companies, with automobile complaints a fairly distant second. A new complaint category was created in 1983 for telephone solicitations. This was necessitated as a result of the increasingly large number of complaints generated by this method of marketing. After utilizing this category for only six months, it was the fifth largest category of complaints.

The attorney general and members of the division continued their efforts in the field of consumer education. They gave speeches to numerous schools, clubs, and other organizations and took part in panel discussions and seminars throughout the state.

DISPOSITION OF CLOSED COMPLAINTS

	Complaints Closed	Percent of Total
Inquiry or Information Only	328	7.40
Referred to Private Attorney	93	2.10
Referred to County/District Attorney	23	.52
Referred to Other Attorney General	244	5.51
Referred to Other Kansas Agency	43	.97
Referred to Small Claims Court	121	2.71
Referred to Federal Agency (FTC, Post Office, etc.)	185	4.18
Money Refunded/Contract Cancelled--amount	1,120	25.28
Merchandise Delivered	445	10.04
Repaired/Replaced	152	3.43
Mediation Only--No Savings	300	6.77
No Reply From Complainant	166	3.75
Unable to Locate Respondent	48	1.08
Practice Discontinued	23	.52
Respondent Out of Business	156	3.52
No Basis	48	1.08
No Jurisdiction	189	4.27
Insufficient Evidence	57	1.29
Withdrawn	53	1.20
Unable to Satisfy Complainant--Further Action Not Warranted	50	1.13

	Complaints Closed	Percent of Total
Voluntary Compliance Agreement	5	.11
Other	61	1.38
Lawsuit Complaint Files	521	11.76
a. Insufficient evidence	(0)	(0)
b. Merchandise delivered	(72)	(1.62)
c. Money refunded/contract concluded--amount	(32)	(.72)
d. No jurisdiction	(0)	(0)
e. Practice discontinued	(27)	(.61)
f. Repaired/replaced	(0)	(0)
g. Respondent enjoined	(389)	(8.79)
h. Unable to locate respondent	(0)	(0)
i. Other	<u>(1)</u>	<u>(.02)</u>
TOTAL CASES CLOSED	4,431	100%

CATEGORIES OF NEW COMPLAINTS

CASES RECEIVED	4,666
CASES CLOSED	4,431
TOTAL ANNUAL SAVINGS	\$614,194.47

	Complaints Closed	Percent of Total
Miscellaneous	339	7.27
Aluminum Siding	3	.06
Advertising	78	1.67
Appliances	95	2.04
Automobiles	425	9.11
Boats, Boating Equipment, Repairs, etc.	4	.09
Book, Record and Tape Clubs	21	.45
Business Opportunity Services	82	1.76
Cable Television	1	.02
Clothing	30	.64
Cemeteries	11	.24
Collection Practices	122	2.61
Contests	84	1.80
Credit Reporting Agencies	6	.13
Credit Code	96	2.06
Discount Buying Clubs	34	.73

	Complaints Received	Percent of Total
Door-to-Door Sales	20	.43
Encyclopedias	7	.15
Energy Savings Devices	18	.39
Failure to Furnish Merchandise (other than mail order)	30	.64
Farm Implements/Equipment	45	.96
Fire, Heat & Smoke Alarms	0	0
Floor Coverings	11	.24
Food Products	9	.19
Fund Raising (charities, etc.)	13	.28
Franchise Sales	0	0
Funeral Homes	2	.04
Furniture	32	.69
Gasoline Pricing	3	.06
Gasoline Content	11	.24
Gasohol and Stills	1	.02
Government Agencies	0	0
Health Services (doctors, dentists, hospitals, etc.)	49	1.05
Health Spas and Weight Salons	36	.77
Hearing Aids	7	.15
Heating and Air Conditioning	478	10.24
Home Improvements	131	2.81

	Complaints Received	Percent of Total
Home Construction	14	.30
Hypnosis (smoking, weight loss, etc.)	2	.04
Inquiries	16	.34
Insurance	1	.02
Invoice and Billings Schemes (noncredit code)	11	.24
Interest Rates and Lending Companies (other than credit code)	10	.21
Jewelry	110	2.36
Kitchenware	6	.13
Land Sales (subdivided out of state)	8	.17
Land Sales (subdivided Kansas)	1	.02
Land Resale Companies	0	0
Landlord/Tenant	24	.51
Loan Finders	1	.02
Lotteries	0	0
Magazines	198	4.24
Mail Order Companies	975	20.90
Mobile Homes and Campers (sales/service)	29	.62
Mobile Home Parks	0	0
Motorcycles and Bicycles	8	.17
Moving and Storage	24	.51
Multilevel and Pyramid Distributorship Companies	69	1.48

	Complaints Received	Percent of Total
Musical Instruments, Lessons, etc.	3	.06
Nurseries, Gardening Equipment, etc.	17	.36
Nursing Homes	2	.04
Office Equipment and Supplies	29	.62
Pest Control	9	.19
Pets/Animals	13	.28
Photo Equipment and Services	28	.60
Photo Studios and Companies	39	.84
Referral Selling	0	0
Real Estate (houses)	20	.43
Real Estate (other than houses)	2	.04
Securities and Investments (other than stocks and bonds)	45	1.82
Services (general)	21	.45
Services (professional)	0	0
Sewing Machines	13	.28
Sporting Goods	6	.13
Stereos and Record Players	6	.13
Stocks and Bonds	0	0
Sundries	0	0
Telephone Solicitations	242	5.19
Televisions and Radios	58	1.24
Toys	7	.15

	Complaints Received	Percent of Total
Trade and Correspondence Schools	27	.58
Travel Agencies	6	.13
Travel and Transportation	53	1.14
Utilities	26	.56
Vending Machines	0	0
Warranty Problems	20	.43
Water Softeners, Conditions, Purifiers, etc.	5	.11
Work-at-Home Schemes	<u>88</u>	<u>1.89</u>
TOTAL	4,666	100.0%

SUMMARY OF 1983 LAWSUITS

IN RE: THE DEPARTMENT OF ENERGY STRIPPER WELL EXEMPTION LITIGATION

In January, 1983, this office intervened in the above case in the United States District Court for the District of Kansas. Judgment was entered against various oil companies for violations of Department of Energy regulations which were in force during the 1970's. The oil companies had deposited funds in an escrow account pending the outcome of the action. The issues still to be determined are: How much money is in escrow and how much should there be; and, to whom should the moneys be awarded. It appears there is (or should be) something between 750 million and 2 billion dollars on deposit. We have joined with other states in urging that the money should be awarded to the states on a proportional basis.

STATE, ex rel, v. HUDSON OIL CO., INC., et al

This action was filed in November, 1983, against the company and Mary Hudson Vandagriff, individually, and as chairman of the board and chief executive officer of the company. It is based on allegations that Mrs. Vandagriff ordered certain employees to alter the pumps at various stations. The alleged effect was to give purchasers less gasoline than was indicated on the pump.

STATE, ex. rel, v. QUIK-DRI, INC., DRI-DOWN, INC., DONALD E. MUNDY

This action was filed in April, 1982, to halt deceptive practices in the agricultural area. Both Quik-Dri, Inc. and Dri-Down, Inc., two Nebraska corporations, were served with process. A consumer had purchased a Dri-Down grain dryer for \$3,250. The seller misrepresented the dryer and its characteristics and benefits. The dryer has never worked. The lawsuit sought an injunction, contract cancellation, full restitution to consumers, civil penalties, and expenses.

In June, 1982, judgment by default was entered for the plaintiff and against the defendant Dri-Down, Inc. Dri-Down, Inc. was ordered to pay \$5,750 and enjoined from selling grain dryers in Kansas. On October 1, 1982, Dri-Down, Inc. filed a Chapter 11 petition in bankruptcy.

In March, 1983, the lawsuit was settled. Defendant Quik-Dri, Inc. agreed to pay \$3,250 to the consumer and not do business in Kansas.

STATE, ex rel, v. DENNIS ASBURY,
d/b/a/ LYDEN INDUSTRIES

On January 4, 1983, a lawsuit was filed against Dennis Asbury, doing business as Lyden Industries. Asbury contacted consumers and agreed to place an advertisement for them in an American Energy Guide. He received payment from the consumers, but failed to publish the guide as promised, or make refunds.

In December, 1983, the defendant agreed to make refunds in excess of \$1,200. Partial payment has been received and the remaining amount is due in January, 1984.

STATE, ex rel, v. ALAN CHAVIS, d/b/a AMFICO,
a/k/a AMERICAN FIDELITY COMPANY

In March, 1983, an action was filed against Alan Chavis of Texas. Chavis promotes and distributes an envelope stuffing scheme. A fee of \$15 is charged participants. The lawsuit asked for an injunction, civil penalties, refunds for damaged consumers, and expenses and costs.

Chavis avoided service of process for some time. On August 24, 1983, we received judgment by default against Chavis. He is enjoined from promoting, selling, or distributing his work-at-home programs in Kansas as he has done in the past. He is to pay \$1,000 for refunds, \$500 for expenses, and \$7,200 for civil penalties. Chavis has failed to make payment. Efforts are being made to have the judgment satisfied.

STATE, ex rel, v. SUNSET ADVERTISING, INC.,
HORIZON PRODUCTIONS, SCOTT WALKER

On August 10, 1983, an action was filed against the named defendants. Horizon Productions sold vacation and portrait certificates through telephone solicitations for a charge of \$39.95. The defendants made false representations in the solicitations and failed to perform as promised.

On October 25, 1983, judgment was obtained. The defendants are permanently enjoined from soliciting, promoting, selling, or distributing vacation and portrait certificates in Kansas. Further, a total of \$19,000 is to be paid.

The defendants have left the area without paying the judgment. Slightly less than \$1,400 was available to satisfy consumer claims which totalled \$6,500. Money received was distributed on a prorata basis.

STATE, ex rel, v. COLONIAL DISTRIBUTING
STATE, ex rel, v. RIO GOLD ENTERPRISES
STATE, ex rel, v. CENTRAL ADVERTISING SPECIALTY HOUSE

Each of the above cases was filed against an out-of-state company doing business in Kansas by means of telephone solicitations of small businesses and sole proprietorships. In each case, virtually the same situation would occur, i.e., the consumer would be promised a valuable prize or gift if an order would be placed for a certain number of ball-point pens, key rings, calendars, etc., which would bear the name, address, and telephone number of the business and which could be distributed for advertising purposes. While the price per item would be high (\$1.50 for a pen), the items were represented to be of high quality and the receipt of the valuable prize or gift was assured.

In no case did either the merchandise or the prize meet the representations. When the prize was sent at all, it would be worth only a fraction of the alleged value, while the pens, key rings, etc., would be of a type available locally for much less. Following institution of suit, each company agreed to refund all moneys paid in by consumers filing complaints, and also agreed to refrain from certain deceptive practices in the future. These agreements were in the form of consent judgments filed with the court, with the result that any violation in the future would be subject to contempt penalties. Total savings in the above cases equaled \$1,100.

STATE, ex rel, v. WESTERN USA MARKETING, INC.
STATE, ex rel, v. QUALITY ENTERPRISES
STATE, ex rel, v. NATIONWIDE PROMOTIONS, INC.

Each of these cases is similar to those which were listed above as having been successfully closed with refunds to the purchasers of telephone-ordered merchandise. However, in that the companies allowed default judgments to be taken against them, no consent judgment was possible. Additionally, the lack of any reachable assets precluded any refunds to consumers.

STATE, ex rel, v. MAGIC WRITER COMPANY
STATE, ex rel, v. BUSINESS MARKETING ASSOCIATES

These are more recently-filed cases in the area of telephone solicitation scams, and it is expected that similar relief will be sought when the cases are further advanced.

STATE, ex rel., v. IFG LEASING

A rural family in the southeastern part of the state wished to improve its hog-raising operations. After receiving information about a new type of structure used to house pigs that contained elements of solar heating, an agreement was made with the defendant for a long-term lease, at the end of which time the building would be paid off entirely. The building proved to be defective in a number of respects in its construction. Additionally, it retained heat during the summer months so as to make it unusable.

This action was commenced following unsuccessful negotiations with defendant as to the warranty problems. Since defendant initiated proceedings with an action against the consumers for payment in federal district court, the State's action was also filed there. Following discovery and prior to trial, the two actions were settled, with the consumers agreeing to forego the amounts already paid to IFG (\$5,697) and the company relinquishing any further claims on the balance of the purchase contract (\$64,856).

STATE, ex rel., v. CUTLASS CARPETS, INC.

This consumer action was filed against the defendant, a Georgia-based manufacturer of carpet, on the basis that it had failed to honor the implied warranty of merchantability established by Kansas law in all consumer transactions. Some carpet sold by a Kansas retailer to a consumer proved to be defective, and when defendant, as the manufacturer, declined to make any refund or replacement, suit was brought.

The case went to the district court on a motion for summary judgment, in that the only questions which existed were ones of law, i.e., did the Kansas Consumer Protection Act apply to defendant? In ruling defendant was liable, the court ordered it to take the necessary steps to replace the carpet.

Following negotiations, the manufacturer gave the retailer a credit equal to the retailer's cost (\$1,944). The retailer had earlier reimbursed the consumer his cost, so all injured parties were compensated.

STATE, ex rel., v. BROTHERHOOD
BANK & TRUST CO.

A petition was filed in July, 1980, against defendant on behalf of consumers who had taken out a loan from the bank five years earlier and who had secured the notes with mortgages on their homes. The notes were set up to have a 25-year amortization, but only a 5-year maturity, leaving the balance to either be paid in a "balloon" or refinanced at the prevailing interest rate. The suit was

based on the bank's alleged failure to state the existence and effect of the balloon payment feature.

The court ruled that as the statute of limitations had run, the action was out of time and should be dismissed. An appeal was filed by this office to the Court of Appeals which reversed the lower court, holding that statutes of limitation do not run against the Attorney General when he is exercising authority under the Kansas Consumer Protection Act. The Court of Appeals also found it is the State of Kansas, and not an individual consumer, who is the real party in interest in a consumer suit brought by the Attorney General, in that the public welfare is being protected.

The case was remanded for further proceedings to the district court. Before trial, a settlement was reached which gave the consumers the difference between the loan they had with the bank and the one which they had had to get to pay off the balloon. This amount totaled \$3,202.

STATE, ex rel, v. J. F. STRAW,
d/b/a HERITAGE EXCHANGE

The defendant, Heritage Exchange, is the brainchild of J. F. Straw of Georgia and was billed as a "group banking" organization. For an initial membership fee, a consumer could obtain low cost or free banking services, although such services were not actually offered. For an additional fee, a consumer could sell the program to others, and then receive a portion of the money he or she brought in. It is this feature which violates the Kansas Consumer Protection Act, as a form of pyramid or multi-level sales operation.

Following institution of a legal action to enjoin the operation of the Exchange in this state, the defendant answered on his own behalf, with a motion to dismiss on jurisdictional grounds. This motion was denied, at which time defendant retained local counsel. After discovery, both sides moved for summary judgment. The court granted the motion of the State of Kansas, finding that the scheme was based on referral sales techniques by which a consumer was promised a benefit in the future if he could enroll others in the scheme, but only after he had paid all of his money up front. The defendant was, accordingly, enjoined from further activity in this state.

Defendant's appeal from the ruling of the trial court is now pending before the Court of Appeals.

STATE, ex rel, v. SHERI FARLEY,
d/b/a CATHERINE & COMPANY

This lawsuit stemmed from complaints received from a number of fraternities and sororities who had paid defendant over \$6,000 for merchandise

which was never delivered, despite repeated promises to do so by the defendant, who also refused to return any of the money. This provided the basis for the state's suit, as it was alleged that the defendant did not have the intent to deliver the material and made material representations throughout the transactions.

At the present time, a motion is pending with the District Court of Douglas County, Kansas, concerning the failure of defendant to appear for a scheduled deposition. The State has asked for judgment by default, as well as its costs.

STATE, ex rel. v. FINANCIAL RESEARCH AND
DEVELOPMENT, INC., UNIFIED BROKER CONSULTANTS, INC.,
INDEPENDENCE BROKER CONSULTANTS, INC.,
JACK CHOATE, ROBERT JONES, and CHARLES NAUDET

This lawsuit was filed in November, 1982, naming the above parties as defendants. The petition alleged that each defendant participated in a scheme by which consumers who wished to become loan brokers paid \$7,790. The materials received in return proved to be of dubious worth, while the references given later were found to be linked directly with the defendants' businesses.

Following institution of suit, an agreement was reached whereby defendants would cease doing business in this state, and would refund \$7,500 in a period of installments. To date, \$6,000 has been repaid and forwarded to the consumer.

STATE, ex rel., v. GLENDALE CEMETERY ASSN., et al.

In addition to enforcing the Kansas Consumer Protection Act, the Attorney General also enforces other laws on behalf of consumers. One of these concerns cemeteries which have been abandoned and are in a state of disrepair. One such cemetery was the Glendale Cemetery located in rural Mitchell County. The Association itself was defunct, so the county was looked to for future maintenance. A settlement was reached whereby title to the cemetery passed to the county, which will hereafter be responsible for keeping the grounds in good order. In past years, this office has also used this law (K.S.A. 17-1365, et seq.) to require clean-up of urban cemeteries as well as rural ones.

STATE, ex rel., v. FIRST CREDIT FINANCE

Another area in which Attorney General Stephan's office has been active is that of protection of consumers from unfair debt collection practices.

Although Kansas has no specific legislation which parallels the federal Fair Debt Collection Practices Act, the Kansas Consumer Protection Act has been held specifically applicable to debt collection agencies. This company was sued twice by the Attorney General, in each case because the forms being used gave the impression that legal action had been taken or was immediately pending. They also contained misleading statements about the creditor's rights and the consumer's liabilities.

The defendant agreed to stop using the forms, and has further agreed to let the Attorney General's office review other forms to insure compliance with the law.

STATE, ex rel., v. DENNIS EMMETT,
JAMES RAY HOUSTON, WILLIAM
EDWARD VARSO, and
GARY P. YANNIBELLI, d/b/a FIVE STAR PRODUCTIONS
and NEW FACES PRODUCTIONS

Defendants held themselves out to be talent scouts, putting together a series of video recordings of "new faces" for movies, television, etc. The application itself cost \$10, with actual participation in a screen test \$135 more. Very few of the tests were ever held in this part of the country, although numerous complaints were received from persons who had sent in their application fees. After the suit was filed, defendants Emmett and Houston were determined to be those persons principally responsible.

Default judgment was taken against the defendants after they failed to allow discovery, and any further activities of the companies were enjoined. Simultaneously with this, the defendants were found guilty of numerous criminal violations in Los Angeles, and have been taken into custody.

STATE, ex rel., v. AMERICAN FARM
AND RANCH SUPPLY COMPANY

The defendant is a Missouri company which operated a buying club for farmers and those persons interested in selling agricultural supplies and buildings. Following complaints by two Kansas consumers that the program had been misrepresented to them, an investigation was made which culminated in this lawsuit. The company has agreed to cease doing business in Kansas, and is making payments to the consumers in restitution. To date, each consumer has received \$1,000 back, with another \$1,500 due to each one.

STATE, ex rel, v. NORTH AMERICAN SERVICES, INC.

This suit was filed on behalf of five Kansas businesses who had contracted to use defendant's debt collection service. For an initial fee, the service offered to collect debts, including the use of legal action, from "hard-core" debtors, without taking the usual percentage. The suit alleged that minimal efforts were made by the company, after which time they would recontact the businesses and request a percentage of whatever they could now collect, on top of the initial fee, which ranged from \$280 to \$600.

Settlement was reached before trial which resolved the alleged violations of the consumer act, and refunded \$1,441 to consumers.

STATE, ex rel, v. BENSAR CORPORATION

The Bensar Corporation was an Ohio company which sold video games and pinball machines to persons owning businesses in this state. One transaction involved the sale of a new pinball machine for \$900 to a couple in southeastern Kansas. Upon receipt, the machine was found to be inoperable, and clearly not new. Suit was filed after the company failed to live up to its warranty obligations and/or refund the purchase price.

After default judgment was taken, the company filed for bankruptcy in Ohio. A claim has been filed for the \$2,000 in civil penalties which were awarded to the State, as well as the actual damages. While the outlook is unclear for the damages, the claim for civil penalties should be non-dischargeable, even in bankruptcy.

STATE, ex rel, v. LOWELL DALTON,
d/b/a DALTON BROTHERS ANTIQUES

Suit was filed against a Wichita antique dealer after a consumer discovered that a lamp which he purchased as a genuine Tiffany was in fact a reproduction worth at most ten percent of the purchase price of \$4,000. The case is in the discovery stage.

STATE, ex rel, v. WALT KEITH, d/b/a
NATIONAL SATELLITE SYSTEMS, INC.

The defendant dealt with several consumers who purchased satellite dish receivers for their own personal use, as well as entering into franchise

agreements to sell dishes to others. Defendant's failure to fully perform any of the agreements, even after a period of months and demands that he do so, led to the institution of this action. The matter is now before the District Court of Wyandotte County on the state's motion for default judgment, in that the defendant has failed to appear for a scheduled deposition or answer any interrogatories or requests for documents which have been made.

STATE, ex rel. v. MATNEY, et al.

This action filed November, 1980, and sought a variety of remedies, including actual damages and injunctive relief under the Kansas Consumer Protection Act. It was alleged that the defendants, who were both the owners of six separate cemetery corporations and the corporations themselves, had failed to deliver burial markers upon need by the consumer. Further portions of the petition alleged that the cemeteries were abandoned under state law, and that permanent maintenance trust funds had not been maintained as required by law.

Following extensive discovery, a settlement agreement was reached as to a portion of the lawsuit in February, 1982. The permanent maintenance funds were restored in the form of trust accounts in a bank (for a total of \$206,000), and the owners agreed to sell their interests by January 1, 1983. Such a sale was made to an established Kansas City firm which already owned and operated other cemeteries, and which agreed, as part of the sale, to provide those markers which had been purchased previously on a pre-need basis.

After further discovery into the marker situation, a motion for summary judgment has been filed with the court. The motion would hold the former owner, Norman Anderson, liable for the markers which were sold during the time of his ownership, since state law required the establishment of individual merchandise trust funds, which was not done. Although information on the wholesale amount of contracts outstanding is still being collected, it is anticipated the figure will be in excess of \$200,000.

STATE, ex rel, v. PETROLEUM CORP. OF AMERICA

This company, like approximately two dozen others, solicited Kansas consumers during 1983 to participate in the oil and gas lease lottery conducted by the Bureau of Land Management of the United States Department of the Interior. Federal lands are leased for a period of several years to the person or company whose name is drawn at random from a group of applicants who have each paid \$75. The company solicited persons to buy their management skills and expert advice as to which parcels to apply for, with the guarantee that the person would win a lease and that, if no major oil company wishes to sublease, the company would pay a fixed sum in the area of \$30,000 to \$50,000. The suit

alleged that consumers were not informed as to the following facts; that the odds of obtaining a lease were very small (1 in 2,000), that the land placed in such lotteries was not known to have or be near any oil or gas deposits, and that the companies did not have access to any information not available to the general public for little or no charge.

Prior to discovery, the company agreed to cease soliciting consumers in this state and refunded \$8,296 to the two consumers who had invested from Kansas.

STATE, ex rel, v. EAGLE OIL & GAS

Another suit involving an oil and gas leasing company, which was apparently the largest one in the business. Default judgment was taken for nearly three-quarters of a million dollars, with a garnishment made on annuities deposited in a California insurance company. Before payment was made, a federal court in south Florida enjoined the state from further proceedings, based on the fact that another, more recent lawsuit there involved the Federal Trade Commission and the defendant company. The state intends to contest the exercise of the court's jurisdiction over the state suit, which is in no way connected with the Florida proceeding.

STATE, ex rel, v. THOMPSON AND
MARSHALL PETROLEUM, INC.

A third action concerning an oil and gas leasing company, this matter was also taken to default judgment, and has been referred to a Florida attorney for an attempt to collect the \$15,556 awarded by the court.

STATE, ex rel, v. HOSIERY
CORPORATION OF AMERICA, INC.

Defendant has engaged in the mail order business relating to the sale of hosiery as well as a variety of gift items for home and personal use. Defendant's failure to send items when they have been ordered, billing for items received in the mail but not ordered, and failure to credit consumers for returning merchandise, led to the filing of the petition on March 8, 1982. Defendant's answer was filed May 13, 1982. The credit collection agency employed by Hosiery Corporation to make collections has been notified of the status of the complaint.

After settlement discussions with the defendant, a consent judgment was filed with the court on June 10, 1983. By that consent judgment, Hosiery Corporation of American paid \$2,000 as investigation fees and agrees to resolve all complaints. To date, all but a few of the complaints have been resolved.

STATE, ex reL, v. RAY JORDAN and CLIFF
JORDAN, d/b/a EXPANSO MANUFACTURING COMPANY

This action was filed July 9, 1980, as a result of defendants' failure to build an Expanso room addition after accepting \$1,000 as a down payment. A journal entry of default judgment was filed on August 18, 1981, against Ray Jordan, who has been ordered to pay actual damages of \$1,000 to the complainants. In addition, he was ordered to pay investigation fees in the amount of \$500.

The Missouri Attorney General's office was contacted regarding filing the judgment in Missouri, pursuant to the Uniform Reciprocal Enforcement of Judgments Act. That judgment has been filed, and the sheriff is attempting to serve the defendants in order that the judgment may be enforced.

STATE, ex reL, v. NATUR-ALL INTERNATIONAL,
BILL KEOHO and KEITH PROBASCO

The petition was filed on January 15, 1980, alleging defendants had engaged in a multilevel marketing scheme in connection with the sale and promotion of vitamin distributorships. Promised training, supplies, and commissions were not delivered. As defendants could not be located for service of process, the original petition was dismissed and refiled on October 6, 1981. Personal service was obtained on Bill Keoho, both individually and as president of Natur-All International. On February 8, 1982, plaintiff took default judgment against defendants in the amount of \$44,000 in civil penalties, \$14,876.40 in actual damages, and \$1,000 in investigation fees. A permanent injunction was also granted which prohibits defendants from doing business in the State of Kansas. The judgment has not been paid. We are waiting on some type of notification from Sedgwick County as to their success in locating Bill Keoho.

STATE, ex reL, v. MARTIN F. BURIK,
d/b/a E.R.A. ACTION REALTY;

and

ANN E. MEADE, ASSOCIATE
BROKER, E.R.A. ACTION REALTY

This lawsuit was filed on October 21, 1982, against the defendants who had served as real estate agents on the sale of a house to the complainant in

Ottawa, Kansas. Defendant Meade represented to the complainant that the real estate contract included the requirement for a termite inspection prior to the sale of the house, when, in fact, the contract did not include this provision. There was also misrepresentation by defendant Meade as to the cause of a worn spot in the carpeting. Defendants filed an answer on November 16, 1982, and, in addition, filed a countersuit against Hazel Gieber, the complainant, joining her as a third party defendant, alleging slander and libel. The countersuit against the complainant was dismissed, and the original action was settled with a payment made to Mrs. Gieber. CASE CLOSED.

STATE, ex rel, v. C. GEORGE COOPER,
d/b/a MECHANICAL MUSIC MANUFACTURING

This lawsuit was filed in Sedgwick County in February, 1983, in response to complaints that the defendant was not filling orders or refunding money. Defendant operates a mail order business that supplies parts for repair of musical instruments and musical equipment. Orders placed with the defendant were either partially filled or not filled at all. In response to the initiation of this action, the defendant made full restitution to each of the complainants, and the lawsuit was dismissed. CASE CLOSED.

STATE, ex rel, v. JEWELART, INC.

The original lawsuit in this case was filed on November 30, 1981, against the defendant which was a mail order company operating out of California. The catalogues mailed out advertised mostly jewelry. When customers placed an order, the checks were cashed, but the merchandise was never received by the customer. The company refused to satisfy the complaints or to refund any money. A default judgment was entered on May 11, 1982, in which the defendant was ordered to reimburse Kansas consumers in the amount of \$1,630.72, pay \$15,250 in civil penalties, and \$500 in investigation fees. In July, 1982, defendant filed for bankruptcy in the Central District of California under Chapter 11 of the bankruptcy code. A proof of claim has been filed with the court.

A second lawsuit was filed against the same defendant on May 26, 1982, due to the continued complaints received by our office. Due to the pending bankruptcy action, a proof of claim has been filed in the bankruptcy court in the amount of \$931.43, which represents the amount of actual claims by Kansas consumers. At this time, it appears extremely doubtful that any refunds will be received.

STATE, ex rel., v. SMM MAIL
ORDER MARKETING, INC.

This lawsuit against a defendant engaged in the mail order business was filed on November 30, 1981. Defendant had failed to mail or send ordered merchandise or to refund the consumers' money. A default judgment was taken on July 14, 1982, in which defendant was ordered to return the sum of \$1,616.98 to Kansas consumers, pay civil penalties in the amount of \$29,500, and pay \$1,000 in investigation fees. As defendant is a California corporation, this judgment was entered and registered in California by the California Attorney General's office on October 22, 1982. Defendant filed for bankruptcy under Chapter 7 of the bankruptcy code, and a proof of claim in the amount of \$32,728.50 was filed on behalf of Kansas consumers. It appears doubtful that any refunds will be made.

STATE, ex rel., v.
DANIEL 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. On March 24, 1981, plaintiff's motion for partial summary judgment was granted, and defendant was permanently enjoined from doing business in Kansas. Defendant was ordered to make available to plaintiff documents needed to determine the names of Kansas residents who had received services from defendant. The files have never been made available, and our office has not been successful in serving defendant with an order to appear and show cause why contempt should not issue for having failed and refused to obey the orders of the court. Subsequent information from Dr. Burwell's former partners indicates Dr. Burwell is no longer residing in Kansas.

STATE, ex rel., v. TIME
ELECTRONIC CORPORATION, et al.

The original petition in this action was filed on May 12, 1983, alleging the defendants had offered for sale watches and other items of jewelry through redemption of coupons that had been available for purchase by consumers from the Manhattan, Kansas Jaycees. However, defendants have failed to ship the watches or to make refunds.

These defendants were restrained from doing business in Junction City and Atchison, Kansas. A consent judgment was signed by the defendants and filed in October, 1983; defendants agreed to pay \$2,000 and satisfy all complaints. While most of the complaints have been resolved, defendants have failed to comply with the other provisions of the consent judgment.

STATE, ex rel, v.
EFFINGHAM COOPERATIVE ASSOCIATION

Defendant is a co-op engaged in the purchase, sale, and storage of grain and feed in Effingham, Kansas. In the course of selling feed to individual Kansas consumers, defendant has used a "buggy scale" which has been declared inaccurate by the Division of Weights and Measures of the Kansas State Board of Agriculture. Plaintiff has alleged that defendant's continued use of the buggy scale to weigh ordered feed has led to weight shortages on the part of Kansas consumers. A petition was filed in April, 1983, and defendants have answered. Discovery is now proceeding.

STATE, ex rel, v. MAX BYERS,
d/b/a SONNY'S AUTO SALES

This lawsuit was filed on February 4, 1983, due to Mr. Byers' refusal to satisfactorily respond to two separate complaints filed with our office. One complaint centered around the sale of a used carburetor as a new carburetor and the other consisted of false representations made during the sale of a used car. Defendant was served February 7, 1983, but failed to file an answer or otherwise plead. The motion for default judgment was filed on March 10, 1983; the defendant filed for a Chapter 13 bankruptcy on March 17, 1983. Pursuant to the bankruptcy plan, defendant agreed to pay to the State ten percent of the total amount claimed in the petition. This amounts to roughly \$600, which is sufficient to fully reimburse both consumers.

STATE, ex rel, v. MONTGOMERY AUDIO VISUAL;
CARROLL MONTGOMERY, a/k/a MONTY MONTGOMERY

This lawsuit was filed March 30, 1983, in response to numerous complaints. Defendant runs a mail-order audio-visual company. In each case, complainant has ordered merchandise, paid cash, and never received the items ordered. Defendant has refused to make any refunds on several occasions. Discovery is ongoing.

STATE, ex rel, v. ROGER AUWATER,
d/b/a MAJESTIC ENTERPRISES, INC.

This petition was filed on July 18, 1983, in the Shawnee County District Court. Defendant Roger Auwater has been doing business in Missouri as Majestic Enterprises, Inc. It appears he is no longer doing business as this company. Our complaints indicate he was engaged in the sale of birthday and

activity calendars to Kansas consumers. In the sale of the calendars, consumers signed a contract with the defendant for which the consideration was to be advertising that was sold for the calendars by these consumers. Subsequently, proof and documentation of the sale of the advertising was to be supplied to defendant; defendant was to print the calendars with the advertising and also with the birthdates and important dates of the consumers. To date, defendant has failed to deliver the calendars or to refund any of the moneys paid. Default judgment was taken in November, 1983, in the amount of \$8,572.50. Arrangements are being made with the Missouri Attorney General's office to file the judgment there.

STATE, ex reL, v. CODY SINGLETREE, d/b/a
CODY SINGLETREE, THE COMPANY

This petition was filed on August 15, 1983, in the Ford County District Court. Defendant Cody Singletree does business in Kansas soliciting and selling agreements to create and produce jingles, commercials, advertising, and radio productions. On September 17, 1982, defendant contracted with a Kansas consumer to produce a radio advertisement in exchange for a down payment of \$1,835. Default judgment in the amount of \$4,835 was taken in December, 1983; attempts are being made to locate the defendant.

STATE, ex reL, v. MARK GARCIA

This lawsuit was filed November 23, 1983, in response to a complaint concerning repairs performed by Mr. Garcia on a 1973 Volkswagen. The defendant was to perform a valve job, install new struts, align the front end, change the oil, eliminate a loud, banging noise, and correct the problem of the car continuously dying for \$500. In addition, he was to repair the problems with the front end suspension for an additional \$300. Mr. Garcia failed to correct these problems and, in addition, performed negligent work on the car which included incorrectly adjusting the automatic choke, incorrectly repairing the steering, incorrectly setting the timing, stripping two nuts on the oil pan, and causing the speedometer and odometer to cease functioning. Once the defendant files an answer, we will proceed with discovery.

STATE, ex reL, v. UFI, et al.

This petition was filed on December 30, 1982, alleging that defendants were a multilevel marketing scheme in violation of the Kansas statutes. The company was premised on the purchase of grocery receipts from Kansas consumers for a price of one percent of the total amount of the grocery

receipt, up to \$500 per month. In addition, members could earn referral commission fees of one percent on the grocery receipts of members they signed up through five levels. A default judgment was taken against the company on March 21, 1983. A motion to set aside the default judgment has been filed on behalf of the defendants. This motion has been dismissed by the defendants and a journal entry will be filed. Defendants are permanently enjoined from doing business in the state of Kansas. CASE CLOSED.

STATE, ex rel., v. MEDIA ONE, INC.

This lawsuit was filed December 28, 1983. The petition alleges violations of the Kansas Consumer Protection Act by the defendant corporation, Media One, Inc. It is more specifically alleged that defendant engaged in the offer for sale and sale of electronic game machines known as "Split Second 2" to consumers residing in Kansas, as well as consumers residing in other states. These electronic game machines were purchased by consumers and were subject to a repurchase agreement entered into between the consumer and the defendant; the repurchase agreement stated the terms and conditions of the guarantee of satisfaction of the consumer offered by the defendant which included a refund to the consumer. To date, defendant has failed to honor the terms of the repurchase agreement. We are waiting for defendant to be served and file an answer before proceeding to discovery.