

2001 ANNUAL REPORT

Consumer Protection & Antitrust Division



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

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



State of Kansas

Office of the Attorney General

CONSUMER PROTECTION / ANTITRUST DIVISION

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CARLA J. STOVALL
ATTORNEY GENERAL

June 1, 2001

CONSUMER HOTLINE
1-800-432-2310

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

I am pleased to provide to you the report of the Consumer Protection/Antitrust Division of the Office of Attorney General. In 2001, the Consumer Protection/Antitrust Division received and investigated 7,891 written complaints and 4,415 inquiries, resulting in consumer savings of **\$9,292,356.00**. Our enforcement efforts in 2001, in addition to obtaining judgments and settlements for restitution, civil penalties and investigative fees, also obtained invaluable injunctive orders against businesses found in violation of the Kansas Consumer Protection Act (KCPA).

The first chart to the right illustrates the increase in written complaints received by my Consumer Protection/Antitrust Division since 1995, the beginning of my administration.

The second chart to the right illustrates the efforts and additional resources we have committed to address the increase in consumer complaints from 1995 through 2001. These additional resources, paid for with funds recovered from violators of the KCPA, have enabled us to make significant strides in our investigative efforts. I am very pleased we were able to use these additional resources to meet and serve the needs of the people of the State of Kansas.

Members of my Consumer Protection/Antitrust Division continue to travel throughout Kansas to give educational presentations on consumer issues to schools, civic groups, community organizations and industry associations. In 2001, we made 90 of these educational presentations. Approximately 5,800 consumers and business persons attended these presentations, not counting the thousands of people who visited our Consumer Protection booth at the Kansas State Fair. In conjunction with our educational efforts, we continue to publish and distribute brochures on a wide variety of consumer topics. We also maintain a Consumer Protection website to provide online assistance to consumers.



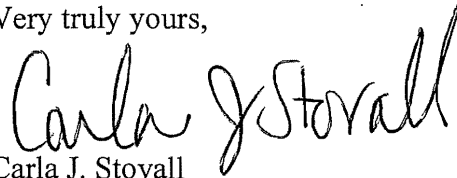
As a result of these educational efforts, I believe more consumers are less likely to fall victim to unscrupulous business practices and more businesses have been made aware of the requirements of the KCPA so they can avoid unintentionally violating the Act.

In addition to the above, we participate in consumer protection efforts on a national level through active cooperation with the National Association of Attorneys General (NAAG) and the National Association of Consumer Protection Investigators. Such cooperation is particularly beneficial in combating deceptive and unconscionable business practices by out-of-state businesses.

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

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

Very truly yours,



Carla J. Stovall
Attorney General

CJS:CSR

OFFICE OF THE ATTORNEY GENERAL
STATE OF KANSAS

CARLA J. STOVALL
ATTORNEY GENERAL

2001 CONSUMER PROTECTION/ANTITRUST STAFF

	C. Steven Rarrick	Deputy Attorney General
	Kristy L. Hiebert	Assistant Attorney General
	James J. Welch	Assistant Attorney General
*	Gail E. Bright	Assistant Attorney General
*	Frances R. Brunner	Assistant Attorney General
	Rex G. Beasley	Assistant Attorney General
*	Terry D. Hamblin	Assistant Attorney General
	David L. Harder	Assistant Attorney General
	Stacy A. Jeffress	Assistant Attorney General
	Shelley H. King	Assistant Attorney General
	James R. McCabria	Assistant Attorney General
	Teresa A. Salts	Special Agent Supervisor
	Amy E. Elliott	Special Agent
	Michele R. Welch	Special Agent
*	Lori E. Denk	Special Agent
*	Joseph E. Trawicki	Special Agent
	Tiffanie A. Walters	Special Agent
*	Angelia J. Crawford	Special Agent
	J. Michael Enzbrenner	Special Agent
	Judy Jenkins	Special Agent
	Jerry Howland	Special Agent
	Mary Kennedy	Special Agent
	Katrina Rice	Special Agent
	Susan Labrador	Special Agent
	Larry Larsen	Consumer Specialist
	Deborah Johnson	Legal Assistant
*	Linda Gifford	Secretary
	Connie Ullman	Secretary
	Sheila Meneses	Secretary
	Judy Copeland	Secretary
*	Angela Kriley	Secretary-Part time
	Amber Meseke	Secretary-Part time
*	Amy Kramer	Law Clerk
*	Jeffrey King	Law Clerk

* Served a portion of 2001. No longer with the Consumer Protection Division.

CATEGORIES OF NEW COMPLAINTS

Complaints Filed:	7891
Complaints Closed:	8332
Written Inquiries:	4415
Total Annual Savings:	\$9,293,356

<u>Category</u>	<u>Complaints Received</u>	<u>Percent of Total</u>
Advertising (general)	87	1.10%
Antitrust	36	0.46%
Appliances	57	0.72%
Assistive Device Lemon Law	0	0.00%
Auto	896	11.35%
Boats, Boating Equipment, Repairs, etc.	8	0.10%
Book, Record & Tape Clubs	28	0.35%
Business Opportunity Services	218	2.76%
Cable Television	29	0.37%
Campgrounds	4	0.05%
Cemeteries	8	0.10%
Charitable Organizations	55	0.70%
Clothing	15	0.19%
Collectibles/Antiques	11	0.14%
Collection	283	3.59%
Computer - Internet Gambling	1	0.01%
Computer - Internet Sales	282	3.57%
Computer Online Services	151	1.91%
Computers	161	2.04%
Contests/Sweepstakes	159	2.01%
Credit	523	6.63%
Credit Reporting Agencies	85	1.08%
Discount Buying Clubs	93	1.18%
Door-To-Door Sales	87	1.10%
Education	24	0.30%
Employment Services	23	0.29%
Energy Savings Devices	1	0.01%
Failure to Furnish Merchandise (other than mail order)	10	0.13%
Farm Implements/Equipment	37	0.47%
Faxes Unsolicited	44	0.56%

<u>Category</u>		<u>Percent of Total</u>
Fire, Heat & Smoke Alarms	1	0.01%
Floor Coverings (carpet, etc.)	21	0.27%
Food Products	23	0.29%
Funeral Homes and Plans	3	0.04%
Furniture	73	0.93%
Gasohol & Stills	0	0.00%
Gasoline Pricing and Contents	186	2.36%
Health Services (doctors, dentists, hospitals, etc.)	212	2.69%
Health Spas & Weight Salons	85	1.08%
Hearing Aids	15	0.19%
Heating & Air Conditioning	30	0.38%
Home Construction	28	0.35%
Home Improvement	264	3.35%
Invoice & Billing Schemes (noncredit code)	20	0.25%
Jewelry	17	0.22%
Land Resale Companies	2	0.03%
Loan Finders	77	0.98%
Magazine Subscriptions	92	1.17%
Mail Order	323	4.09%
Medical Equipment/Devices	31	0.39%
Miscellaneous	3	0.04%
Mobile Home Parks	1	0.01%
Mobile Homes & Manufactured Homes	60	0.76%
Mortgage Escrow Problems	2	0.03%
Mortgages	71	0.90%
Motorcycles & Bicycles	8	0.10%
Moving & Storage	25	0.32%
Multi-level & Pyramid Distributorship Co.	178	2.26%
Musical Instruments, Lessons, etc.	1	0.01%
Negative Selection	27	0.34%
Nurseries, Lawn, Gardening and Landscape Service & Supplies	16	0.20%
Nursing Homes	0	0.00%
Office Equipment & Supplies	9	0.11%
Pest Control	17	0.22%
Pets/Animals	13	0.16%
Photo Studios, Equipment & Services	25	0.32%
Privacy Issues	5	0.06%

<u>Category</u>	<u>Complaints Received</u>	<u>Percent of Total</u>
Real Estate (houses)	29	0.37%
Real Estate (other than houses)	7	0.09%
Rebates	29	0.37%
Recovery Companies	0	0.00%
Referral Selling	0	0.00%
Satellite Systems	69	0.87%
Scanning Equipment	8	0.10%
Securities & Investments (other than stocks & bonds)	18	0.23%
Security Systems and Services	60	0.76%
Services (general)	508	6.44%
Services (professional)	16	0.20%
Sewing Machines	1	0.01%
Sporting Goods	18	0.23%
Steel Buildings	4	0.05%
Stereo Equipment	7	0.09%
Telephone - 800#, 900#s and International Calls	153	1.94%
Telephone - Cramming	29	0.37%
Telephone - Service, Cell Phones & Slamming	908	11.51%
Telephone - Prepaid Phone Cards	16	0.20%
Telephone Solicitations	212	2.69%
Televisions and VCR's	20	0.25%
Timeshare Sales	23	0.29%
Tobacco Sales	0	0.00%
Toys	0	0.00%
Trade & Correspondence Schools	49	0.62%
Travel	133	1.69%
Unauthorized Practice of Law	24	0.30%
Vending Machines	2	0.03%
Warranty Problems (other than automobiles)	108	1.37%
Water Softeners, Conditioners, Purifiers, etc.	29	0.37%
Work-at-Home Schemes	31	0.39%
TOTAL CASES OPENED	7891	100.00%

2001 DISPOSITION OF CLOSED COMPLAINTS

	<u>Complaints Closed</u>	<u>Percent of Total</u>
Inquiry or Information Only	371	4.45%
Referred to Private Attorney	240	2.88%
Referred to County/District Attorney	21	0.25%
Referred to Other State Attorney General	232	2.78%
Referred to Other Kansas Agency	85	1.02%
Referred to Small Claims Court	134	1.61%
Referred to Federal Agency (FTC, Post Office, etc.)	44	0.53%
Money Refunded/Contract Cancelled	3072	36.87%
Merchandise Delivered to Consumer	114	1.37%
Repaired/Replaced Product	166	1.99%
Mediation Only - No Savings	634	7.61%
No Reply from Complainant	629	7.55%
Unable to Locate Respondent	196	2.35%
Practice Complained of Discontinued	144	1.73%
Respondent Out of Business	96	1.15%
No Violation	304	3.65%
Insufficient Evidence to Prove Violation	174	2.09%
Complaint Withdrawn	101	1.21%
Unable to Satisfy Complainant - No Further Action	71	0.85%
Other	29	0.35%
No Jurisdiction under KCPA	380	4.56%
No Jurisdiction - Supplier Declined Mediation	2	0.02%
Lawsuit Complaint Files		
Respondent Enjoined	5	0.06%
Respondent Enjoined/Violations Found	544	6.53%
Consent Judgment	337	4.04%
Voluntary Compliance Agreement	123	1.48%
Default Judgment	10	0.12%
Defendant Filed Bankruptcy	59	0.71%
Dismissed	15	0.18%
TOTAL CASES CLOSED	<u>8332</u>	<u>100.00%</u>

SUMMARY OF 2001

CONSUMER PROTECTION ENFORCEMENT ACTIONS

State v. Zeyad Mousa Abu-Naim & Gladys Gomez, d/b/a G & Z Toys, d/b/a Z & G Toys

On August 15, 2001, the Attorney General entered into a Consent Judgment with Zeyad Mousa Abu-Naim and Gladys Gomez, d/b/a G & Z Toys and d/b/a Z & G Toys for violations of the Kansas Consumer Protection Act (KCPA) related to failure to provide consumers with a three-day right to cancel and representing that all prices included applicable tax when they did not collect or remit sales tax to the Kansas Department of Revenue. The Defendants agreed to be enjoined from future violations and to pay \$1,000.00 in civil penalties and investigative fees.

In the Matter of Access Direct Telemarketing, Inc.

On February 16, 2001, the Attorney General entered into an Assurance of Voluntary Compliance with this company for alleged violations of the KCPA related to failure to terminate telemarketing calls upon receipt of a negative response. The Respondent agreed to be enjoined from future violations and to pay \$7,500.00 in civil penalties and investigative fees.

State v. America's Tele-Network Corporation

On February 15, 2001, the Attorney General entered into a Consent Judgment with America's Tele-Network Corporation for violations of the KCPA related to slamming consumers' long distance telephone services without authorization. In addition to injunctive relief and restitution, America's Tele-Network agreed to pay \$200,000.00 in civil penalties and investigative fees.

State v. Associated Financial Solutions, Inc. and John F. Usher

On June 8, 2002, the Attorney General entered into a Consent Judgment with Associated Financial Solutions, Inc. for violations of the KCPA and the Credit Services Organization Act related to the promise to provide credit services and then the failure to complete the services. The Defendants agreed to refrain from future violations and to pay \$10,000.00 in civil penalties and investigative fees.

State v. Richard H. Birkenshaw and Claudia Fernandez, d/b/a Sunglass World and Sunglass World, Inc.

On September 7, 2001, the Defendants entered into a Consent Judgment with the Attorney General's Office for violations of the KCPA, including door-to-door sales act violations, use of false reference prices, and charging, but failing to remit, sales tax. The Defendants, based in Belleaire Bluffs, Florida, agreed to pay \$2,500.00 in civil penalties and investigative fees and to refrain from future violations.

State v. Bridgestone/Firestone, Inc.

On November 8, 2001, the Attorney General entered into a Consent Judgment with Bridgestone/Firestone, Inc. for violations of the KCPA related to misrepresentations of the safety of its tires. The Defendant agreed to review recall/refund denials and have them reviewed by an independent arbitrator at no cost to the consumer, if the consumer requested. The Defendant also agreed to pay \$527,500.00 in civil penalties and investigative fees.

State v. Jonathan Burke and Carlton Ray Foley Jr.

On September 21, 2001, the Attorney General entered into a Consent Judgment with the Defendants for violations of the KCPA related to the failure to give a three-day right to cancel and collecting a charge of "sales tax" without remitting it to the Kansas Department of Revenue. The Defendants agreed to refrain from future violations and to pay \$500.00 in civil penalties and investigative fees.

State v. Melvin Claphan, d/b/a T & W Termite and Pest Control

On July 19, 2001, the Attorney General entered into a Consent Judgment with Melvin Claphan d/b/a T & W Termite and Pest Control, for violations of the KCPA. Claphan represented himself as being properly licensed by the Kansas Department of Agriculture to apply pesticides, when he was not; represented that the services he provided met the minimum standards required, when they did not; and represented that his services were guaranteed, when they were not. The Defendant agreed to be enjoined from future violations and judgment was entered against him in the amounts of \$5,399.00 for consumer restitution and \$20,000.00 for civil penalties and investigative fees.

State v. CNS Global International, Inc., et al.

On May 21, 2001, the Attorney General obtained a Default Judgment against CNS Global International, a Pennsylvania company, for violations of the KCPA related to deceptive marketing practices, failing to comply with the FTC Franchise Rule, and failing to provide products and services as promised. The Defendant was ordered to be enjoined from future violations, to pay \$10,545.00 in consumer restitution and to pay \$60,000.00 in civil penalties and investigative fees.

State v. College Resource Management, Inc.

On October 24, 2001, the Attorney General entered into a Consent Judgment with this scholarship-finder company, based in Grand Prairie, Texas, for violations of the KCPA and the Credit Services Organizations Act related to the promise of certain financial services and benefits which it does not provide or are available for free. The Defendant agreed to refrain from future violations and to pay \$20,000.00 in civil penalties and investigative fees.

In the Matter of Egghead.com, Inc.

This on-line retailer sold computer and technology related products. The company filed for bankruptcy protection in San Francisco in mid-August 2001. In a motion filed on September 6, 2001, Egghead stated that it was planning to sell its customer database, contrary to its straight-forward privacy policy that it would not "under any circumstances" sell its customer database. Along with other states, Kansas signed onto an Objection to Debtor's Motion To Sell Certain Assets of the Debtor Free and Clear of Liens, Claims and Interests. The states believed that the proposal of Egghead.com to sell its customer database constituted an unfair and deceptive practice in violation of their state laws since Egghead.com, Inc., had failed to seek the opt-in consent of its customers, and had provided an opt-out notice to customers that was unfair and deceptive. The court approved the proposed Egghead sale and overruled the states' objections.

State ex rel. v. Abolfazl Fakhari, Individually, d/b/a Best Buy Imports Auto Sales, and Asghar Javadi, Individually, d/b/a Best Buy Imports Auto Sales

On January 14, 2000, the Attorney General obtained a Default Judgment against Defendants, for violations of the KCPA related to failure to disclose that it was a dealership, limiting the implied warranty of merchantability by selling vehicles "as is - no warranty," and failure to provide a three-day right to cancel for selling vehicles away from the ordinary place of business. The Defendants were ordered to be enjoined from future violations, to pay \$1,208.38 in consumer restitution, and to pay \$21,000.00 in civil penalties and investigative fees.

In the Matter of Fleming Companies, Inc.

On February 5, 2001, the Attorney General entered into an Assurance of Voluntary Compliance with Fleming Companies, Inc., for violations of the KCPA related to the deception resulting from the mislabeling of various grades of ground beef as higher quality ground chuck and ground round. The Respondent agreed to refrain from such acts and to pay \$150,000.00 in civil penalties and investigative fees.

State ex rel. v. Forrest (Bud) Foster, Individually, and d/b/a Bud Foster Enterprises, and Kristian Kane, Individually, and d/b/a Bud Foster Enterprises, and Carlson Auction Service, Inc.

On September 14, 2000, the Attorney General obtained a Default Judgment against Forrest (Bud) Foster and Kristian Kane and a Consent Judgment against Carlson Auction Service, Inc., for violations of the KCPA related to failure to deliver titles to vehicles purchased by consumers. Defendant's Foster and Kane were ordered to be enjoined from doing business in the State of Kansas, to pay \$70,000.00 in civil penalties, \$1,000.00 in investigative fees and \$16,838.13 in a judgment to Third-Party Plaintiff Carlson Auction Service, Inc. Defendant Carlson Auction Service, Inc., agreed to assign certificates of title to purchasers of the vehicles.

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

On May 18, 2001, the Attorney General filed a lawsuit against the above named auto parts dealers for inaccurate price scanning equipment and practices. The parties are engaged in discovery. A jury trial is scheduled for early spring of 2002.

State v. Drayton Gibbes, d/b/a Future Now

On May 21, 2001, the Attorney General entered into a Consent Judgment with Drayton Gibbes for violations of the KCPA related to the failure to give a three-day right to cancel and failure to have a transient merchant's license. The Defendant agreed to be enjoined from future violations and to pay \$5,000.00 in civil penalties and investigative fees.

State v. Gary P. Jones, d/b/a Gary P. Jones Paving and Seal Coating

On June 18, 2001, the Attorney General filed a lawsuit against the Defendant, based in St. Charles, Missouri, for numerous violations of the KCPA in connection with his solicitation and sales of asphalt paving services which targeted elderly consumers. The allegations include misrepresentations about his status/affiliation and usual price of services, unconscionable pricing, and failure to comply with the door-to-door sales act. The lawsuit is pending.

State v. Al Khatib and John or Jane Does 1-10, Individually, and d/b/a National Sales

On October 16, 2001, the Attorney General entered into a Consent Judgment with Ali Khatib, individually and National Sales Expo, Inc., for numerous violations of the KCPA, including deceptive advertising and failing to disclose that the merchandise was counterfeit. The Defendants agreed to be enjoined from future violations and to pay \$2,000.00 in civil penalties and investigative fees. Defendants are currently in violation and efforts to enforce the judgment continue.

State ex rel. v. Patrick Kilgore and Airfax Systems, Inc.

On May 24, 2001, the Attorney General obtained a Default Judgment against Airfax System operating out of Liberty, Missouri, for violations of the KCPA during its door-to-door solicitations and sales (including referral sales practices) of vacuum sweepers. The Defendants were ordered to restrain from the sale or advertisement of any merchandise or services within the State of Kansas.

State v. Victor J. Lang, Jr., individually and Hays Fire Extinguisher Sales and Service, Inc.

On May 31, 2001, the Attorney General entered into a Consent Judgment with Victor Lang for violations of the KCPA related to installing equipment that Defendant was not licensed to install and billing and accepting payment for servicing that was not done. The Defendant agreed to be enjoined from future violations and to pay \$6,000.00 in civil penalties and investigative fees.

State v. Wendall Durand Martin

On August 15, 2001, the Attorney General entered into a Consent Judgment with Wendall Durand Martin for violations of the KCPA related to failing to provide consumers with a three-day right to cancel and representing that items were sold at a discounted price when Defendant could not substantiate that the items were ever sold at a higher amount. The Defendant agreed to be enjoined from future violations and to pay \$1,000.00 in civil penalties and investigative fees.

State ex rel. v. Michael P. Mason d/b/a Budget Paving

On December 29, 1999, the Attorney General obtained a Default Judgment against the Defendant, operating out of Hutchinson, Kansas, for violations of the KCPA during his door-to-door solicitation and sales of asphalt paving services. The Defendant was enjoined from the sale or advertising of any merchandise or service within the State of Kansas.

In the Matter of Midway Motors, Inc.

On November 9, 2001, the Attorney General entered into an Assurance of Voluntary Compliance with Midway Motors, Inc. The Attorney General alleged that Midway Motors, Inc., made false and misleading representations to consumers. The Respondent agreed to refrain from future violations and to pay \$2,000.00 in civil penalties and investigative fees.

State v. Millennium Industries, Inc., d/b/a Premier Consumer Services

On July 10, 2001, the Attorney General obtained a Default Judgment, with a Consent Judgment attached, on Millennium Industries, Inc., for violations of the KCPA related to its operation of a credit services organization and for violations stemming from the telemarketing of its services. The Defendant agreed to be enjoined from future violations, to pay consumer restitution, and to pay \$6,000.00 in civil penalties and investigative fees.

State v. National Money Service, Inc., d/b/a USA Credit

On September 28, 2001, the Attorney General entered into a Consent Judgment with National Money Service, Inc., d/b/a USA Credit, for violations of the KCPA and the Credit Services Organization Act in its solicitation of consumers to obtain low-interest credit cards. In the Consent Judgment, the Defendant agreed to be enjoined from future violations, pay restitution to consumers, and pay \$2,500.00 in civil penalties and investigative fees.

State v. New Beginning Credit Association, Inc.

On July 13, 2000, the Attorney General filed a lawsuit against New Beginning Credit Association, Inc., a company based in Nashville, Tennessee, for violations of the Credit Services Organizations Act. The lawsuit is pending.

State v. Northstar Industries, Inc. and Robert L. Paul, individually and d/b/a Northstar Industries, and d/b/a Fashion Connection

On July 13, 2001, the Attorney General entered into a Consent Judgment with the Defendants for violations of the KCPA related to deceptive advertising, failure to disclose that the merchandise was counterfeit, and failure to give a three-day right to cancel. Defendants agreed to be enjoined from future violations and to pay \$1,000.00 in civil penalties and investigative fees.

State ex rel. v. Garrett J. Ogden, d/b/a The Stone Company, d/b/a Ogden Construction Company

On March 7, 2001, the Attorney General obtained Summary Judgment against Garrett J. Ogden, individually. Defendant Ogden was enjoined from doing business in Kansas, ordered to pay \$84,014.72 in consumer restitution, \$40,000.00 in civil penalties and \$500.00 in investigative fees. On March 23, 2001, the Attorney General obtained a Default Judgment against The Stone Companies, Inc., and its corporate charter was permanently revoked. The company was ordered to pay \$79,489.36 in consumer restitution, and \$40,500.00 in civil penalties and investigation fees. Defendants violated the KCPA by accepting money from consumers for home improvement and landscaping property or services, and then failing to provide the property or services.

State v. Bradley S. Pitler, d/b/a Art Collection

On April 9, 2001, the Attorney General filed a lawsuit against Bradley Pitler for violations of, primarily, the door-to-door sales portion of the KCPA committed during the solicitation and sales of black velvet paintings. The lawsuit was filed after initial talks with the Defendant concerning a Consent Judgment failed; however, the lawsuit was dismissed, as the office was unable to obtain service on this transient merchant.

State v. Publishers Clearing House d/b/a PCH

On October 19, 2001, the Attorney General, along with 25 other state Attorneys General, entered into a Consent Judgment with Publishers Clearing House for violations related to misleading sweepstakes solicitations to entice consumers to order products. Defendant agreed to make changes to some of its policies, pay penalties of \$1 million, pay \$14 million to cover costs associated with the litigation, and pay \$19 million for restitution to high activity customers. Of this total amount, Kansas will receive \$38,461.00 in penalties, an additional payment of \$100,000.00, and \$2,606.85 in cost reimbursement plus restitution to high activity customers.

State v. Readers Digest

On February 26, 2001, the Attorney General and 32 other states entered into an Assurance of Voluntary Compliance with Readers Digest. The Attorney General alleged that the Respondent used misleading sweepstakes solicitations to entice consumers to order products, magazines and collectibles. Readers Digest agreed to refrain from such acts and to pay \$2.16 million to the states involved in the Assurance, including \$75,000.00 to Kansas.

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

On October 19, 2000, the Attorney General filed a lawsuit and obtained a Temporary Restraining Order (TRO) against Michael Cooper and Renaissance TTP for deceptive marketing claims and violations of the state's prohibition against referral sales schemes. In promotional materials the company claimed to have more than 50,000 participants in its home-based business tax-reduction scheme who were paying the company \$100.00 per month for prepaid tax advice. This was generating in excess of \$5,000,000.00 per month in revenue to the company. The company claimed to have participants in all 50 states. On October 11, 2000, agents of the Kansas Attorney General's Consumer Protection Division assisted agents of the Internal Revenue Service Criminal Investigation Division and the United States Postal Inspection Service in executing federal criminal search warrants at the company's properties in Topeka, Kansas. Cash and other assets were seized with an approximate value of \$8.9 million dollars. The United States Attorney in Kansas filed a forfeiture action against the seized assets. That action alleged that the assets were the result of mail fraud and money laundering. Additional assets were seized with a second search warrant in April 2001. After an evidentiary hearing in the Attorney General's lawsuit to convert the TRO into a Temporary Injunction, the Court found that the Defendants were operating an illegal pyramid scheme, and that they had engaged in other acts in violation of the KCPA too numerous to itemize. The Court entered a Temporary Injunction which froze the Defendants' bank accounts, appointed a receiver for the company and revoked its authority to do business in Kansas. The Defendants filed an appeal with the Kansas Court of Appeals, but the Injunction remained in effect. The appeal was dismissed by the Court and the matter is back before the District Court to make the injunction permanent and to assess damages and penalties. A Federal Grand Jury is still hearing evidence. The Internal Revenue Service Criminal Investigation Division and the United States Postal Inspection Service continue their investigations and the Internal Revenue Service Civil Division is now investigating. Copies of some of the federal documents may be obtained through links from <http://www.cjonline.com/community/taxpeople>. A copy of the Memorandum Decision and Order of Temporary Injunction may be obtained from the Court Decisions section of the Shawnee County District Court's website at <http://www.shawneecourt.org>.

State v. Roger D. Schneider

On August 20, 2001, the Attorney General entered into a Consent Judgment with Roger D. Schneider of Elwood, Nebraska, for violations of the door-to-door sales act portion of the KCPA resulting from his solicitations and sales of various merchandise, including tennis shoes, t-shirts and sunglasses. In the Consent Judgment, the Defendant agreed to pay \$500.00 in civil penalties and investigative fees.

State v. Ira Smolev, individually and Triad Discount Buying Service, Inc.

On December 21, 2001, the Attorney General entered into a Consent Judgment with Triad Discount Buying Service, Inc., its related companies and owner Ira Smolev. Defendants paid more than \$9 million to settle charges brought by the Federal Trade Commission and state Attorneys General that they misled consumers into accepting trial club memberships and obtained consumers' billing information from telemarketers without the consumers' knowledge or authorization. Consumers then were enrolled in the clubs and charged up to \$96.00 in yearly membership fees. Of the \$9 million, \$8.3 million was returned to consumers in restitution. A total of \$750,000.00 was paid to the Attorneys General for investigative fees, of which Kansas received \$10,000.00.

State v. James Snell

On February 22, 2000, the Attorney General filed a lawsuit against James Snell of Lawrence, Kansas, in connection with solicitations to consumers to "rent-with-the-option-to-purchase" homes in an equity-skimming scheme. The Defendant offered homes to consumers on a rent-to-own basis, but failed to remit rent payments to the mortgage companies. Consumers on the other end of the deal, who were told that the Defendant would sell their homes for them, learned of the foreclosures on their homes after being told that their homes were being rented out and monies were being paid to the mortgage companies. The lawsuit is pending.

State v. Technobrand, Inc.

On November 14, 2001, the Attorney General and 14 other State Attorneys General entered into an Assurance of Voluntary Compliance with Technobrand, Inc. The Attorneys General alleged that Technobrand, Inc., made false and misleading representations to consumers. The Respondent agreed to pay each state involved in the Assurance \$7,000.00 for a total of \$105,000.00.

State v. Telco Partners, Inc.

On June 14, 2001, the Attorney General filed a lawsuit against this Pennsylvania corporation for placing or maintaining sweepstakes drop boxes to collect authorizations for a personal 800 number service in violation of a provision of the state's "slamming law" which makes such boxes illegal. The lawsuit is pending.

State v. Samantha J. Tolbert, d/b/a KMH Enterprise

On October 19, 2001, the Attorney General filed a lawsuit against Samantha J. Tolbert, d/b/a KMH Enterprises, alleging violations of the KCPA related to: failure to disclose that the business was a dealership; failure to disclose that the vehicle had been materially damaged in a flood; failure to provide a three-day right to cancel; limiting the implied warranty of merchantability by selling the vehicle "as is - no warranty;" and failure to disclose that the vehicle had previously been leased. The lawsuit is pending.

State v. Top Secrets, Inc., and Thomas M. Michaels

On August 24, 2000, the Attorney General filed a lawsuit against this Kansas company for operating a pyramid-type referral-sales scheme and obtained a Temporary Restraining Order shutting down the business and a Sequestration Order seizing several bank accounts totaling approximately \$40,000.00. On June 8, 2001, after the corporation filed for bankruptcy, the Defendants entered into

a Consent Judgment in the amount of \$20,000.00. A criminal investigation by federal authorities is pending.

State v. US Republic Communications, Inc.

On February 28, 2001, the Attorney General entered into a Consent Judgment with US Republic Communications, Inc., for violations of the KCPA related to cramming - adding services (web-page design) to consumers' telephone bills without authorization - and slamming. In addition to injunctive relief and restitution, US Republic Communications agreed to pay \$75,000.00 in investigative costs and civil penalties.

State v. Carter Whalen, d/b/a Pacific Consolidation Services

On July 9, 2001, the Attorney General entered into a Consent Judgment with Carter Whalen for violations of the KCPA related to deception resulting from his operation of a credit services organization which did not comply with the requirements of the Kansas Credit Services Organization Act. The Defendant agreed to be enjoined from future violations, to pay consumer restitution and to pay \$2,500.00 in civil penalties and investigative fees.

State v. Kevin Edward Wilkinson

On August 27, 2001, the Attorney General entered into a Consent Judgment with Kevin Edward Wilkinson for violations of the KCPA related to misrepresentations in the sale of roofing materials. The Defendant agreed to be enjoined from future violations and to pay \$650.00 in consumer restitution and \$100.00 in investigative fees.

State v. Charles R. Wood Oil Company, Inc., d/b/a Wood Oil, d/b/a Wood's Mini Mart

On October 12, 2001, the Attorney General filed a lawsuit against this Leavenworth, Kansas company, for numerous violations of the KCPA in connection with unconscionable gasoline price increases. The lawsuit is pending.

State v. Willie D. Young, Henry Darin Pierce, Jackie Scott Young, Dennis D. Perkins, and Larry W. Perkins, individually and collectively, d/b/a Perfection Paving, d/b/a Trail Paving, and d/b/a WDY Paving

On November 20, 2001, the Attorney General obtained a Default Judgment against the above named individuals, based primarily in Oklahoma and Tennessee, for numerous violations of the KCPA in connection with their solicitation and sale of asphalt paving services, targeting elderly consumers. The allegations included misrepresentations about their status/affiliation and usual price of services, unconscionable pricing, and failing to comply with the door-to-door sales act. The Defendants were enjoined from future violations, ordered to pay \$15,545.00 in consumer restitution, and ordered to pay \$97,500.00 in civil penalties and investigative fees.

State v. Walter Zitlow, Complete Home Security, Inc., and Gary Richardson, d/b/a Alarm Professional Services

On April 1, 1997, the Attorney General filed a lawsuit in Sedgwick County District Court against this sales representative and two businesses for deceptive and unconscionable acts and practices relating to the sale of home security systems. The lawsuit sought enhanced penalties for violations against the elderly. The average age of the consumers who filed complaints with the

Attorney General's Office against the Defendants was 74 years old. On February 2, 2000, the District Court entered Findings of Fact and Conclusions of Law in favor of the state for more than \$128,000.00 in consumer damages and \$1.3 million in civil penalties. On March 7, 2000, Defendant Walter Zitlow filed Chapter 7 bankruptcy just prior to the Judgment being entered. After obtaining a ruling in the bankruptcy case that the Attorney General's Office was not subject to the automatic stay, the District Court signed and entered the final Journal Entry of Judgment in the underlying case on July 26, 2000. The Bankruptcy Court recently declared civil penalties and consumer restitution non-dischargeable.

Internet Drug Cases

The Attorney General filed one lawsuit in February 1999 and five lawsuits in June 1999 against various Internet companies, doctors and pharmacies for deceptive and unconscionable practices which violated the KCPA and the Pharmacy Practice Act. These lawsuits stemmed from the Internet sales of Meridia, Phentermine, Viagra and Propecia. Both Meridia and Phentermine are controlled substances. The office obtained Temporary Restraining Orders restraining the Defendants from doing business in the State of Kansas. Two Motions to Dismiss, based on lack of jurisdiction, were denied.

State v. DVM Enterprises, Inc., d/b/a Cybrxpress, John S. Stiverson, a/k/a Scott Stiverson, d/b/a Stivercorp and d/b/a Online Physicians, Daniel Thompson, M.D., and Home Prescription Services (A Journal Entry of Default was filed on Stiverson, and a Consent Judgment was entered into with Home Prescription Services. DVM and Dr. Thompson were granted Summary Judgment by the District Court and the State has appealed.)

State v. Confimed.com, L.L.C., d/b/a Vsource and confimed.com, and H. Levine (Confimed.com, a dissolved L.L.C., was granted Summary Judgment. The Court ruled in favor of Dr. Levine, and the Kansas Supreme Court affirmed the lower court ruling in its opinion dated January 25, 2002.)

State v. Roy Alivio, Bo Platt, Male Clinic, L.L.C., David Hairhoger, d/b/a Community Drug of Pittsburgh, Miles Jones, M.D. and Rick Williams, M.D. (The State entered into a Consent Judgment with Hairhoger, Williams, Alivio and Platt; a Journal Entry of Default was filed on the other Defendants.)

State v. Viapro, Inc., and William Clemans, M.D. (The State settled this case involving the sale of prescription drugs over the internet with Defendant Clemans by Consent Judgment which included an injunction prohibiting future sales. Viapro did not answer the State's petition and the State is proceeding to obtain a Default Judgment.)

Gas Price Gouging

On September 11, 2001, approximately 140 gas stations in the State of Kansas participated in price gouging at the pumps. The Attorney General entered into an Assurance of Voluntary

Compliance with the following companies in which each agreed to refund all consumers who purchased fuel at \$2.49 per gallon or above. Under the AVC, each company agreed to pay a fee of \$250.00 to the Kansas Attorney General's Office and \$750.00 to the September 11 Fund for each company owned station that raised prices to \$2.49 per gallon or higher.

Aday's Speedy Mac

A.M. Conoco

Beto Inc., d/b/a Beto Junction Truck Plaza

Brumit Oil Co., Inc., d/b/a Petro and Pantry

Casey's General Stores, Inc., d/b/a Casey's

CC of Hays, Inc., d/b/a Golden Ox Truck Stop

Cedar Valley Investments, L.L.C., d/b/a Amoco Food Shop, and d/b/a Amoco Travel Center

Collingwood Grain, Inc.

Conoco Food Mart

Dara's Fast Lane, Inc.

Dietz 66

Dodge City Cooperative Exchange

Doris' Market & Wholesale, L.L.C., d/b/a Doris' Market

Double Duty, L.L.C., d/b/a Oasis Car Wash

Driftwood Carrier Corp., d/b/a Driftwood Convenience Store

EGV Convenience, L.L.C., d/b/a Quicker Market

Gasmart USA

Gordon's Inc., d/b/a Gordon Convenience

Gottschalk Enterprises, Inc., d/b/a Gottschalk Total Enterprises

Green Service

Janzen Oil, Inc., d/b/a Holiday Food Plaza 66

Jeymanco Inc., d/b/a Shulte Country Store

KT's Short Stop, Inc., d/b/a KT's Short Stop

Leiszler Oil Co., d/b/a Texaco Short Stop

Lucky Stop, L.L.C.

Maurice Coulter d/b/a The General Station and d/b/a Suppesville Coastal

Midway Co-Op Association

Miller Mart d/b/a A & A #2, Inc.

New Oil Company of Kansas d/b/a New Oil

Pitt Express, Inc.

Ray's Mini Mart

Ridgepoint Convenience Store, Inc., d/b/a Ridgepoint Convenience, Inc.

Saco Petroleum, Inc., d/b/a Amoco Snappy Store

*Shop Quik Stores, L.L.C., d/b/a Shop Quick, d/b/a Food Mart, d/b/a Texaco Travel Center and
d/b/a Amoco*

Texaco Food Mart

The Depot, Inc., d/b/a Amoco

TJG Corporation d/b/a Solomon Travel Center

Triple S Ranch

Vista L.L.C. VR Stores d/b/a U-Do

Wilcops, Inc., d/b/a Quick Stop

Worthing Oil, Inc., d/b/a The Last Stop
Zipz Management, Inc., d/b/a USA Credit

SUBPOENA ENFORCEMENT ACTIONS

The following have been enjoined from doing business in the State of Kansas by virtue of Default Judgments entered on Petitions to Enforce unanswered subpoenas:

State v. Robert Reece, d/b/a Reece Review (St. Louis, Missouri)

State v. Brian Nicholson, d/b/a D & M Vacuum (Hays, Kansas)

State v. Gold Step Credit Corporation (Lancaster, California)

State v. Unlimited Performance Products (California)

CONCLUSION

The above enforcement actions taken by the Consumer Protection Division reflect the priority that the Office of Attorney General Carla Stovall has in protecting Kansas consumers from deceptive and unconscionable business practices. Strong, yet fair enforcement of consumer laws, combined with effective consumer education efforts, provide the level of protection to Kansas consumers mandated by the Kansas Legislature under the KCPA.

SUMMARY OF 2001 **ANTITRUST ENFORCEMENT ACTIONS**

State of Kansas ex rel. vs Abbott Laboratories Inc. (Hytrin)

On September 27, 2001, Kansas joined Florida and Colorado in filing a complaint against Abbott Laboratories and Geneva Pharmaceuticals, Inc. The case involves the drug Hytrin, a brand-name drug manufactured by Abbott that is prescribed for the treatment of hypertension and benign prostatic hyperplasia ("BPH"). The complaint accuses Abbott of unlawfully preventing generic competition to Hytrin by engaging in a series of baseless and repetitive patent infringement lawsuits designed to prevent generic manufacturers from marketing their version of the drug. The complaint alleges that Abbott also attempted to enforce a fraudulently obtained patent against certain generic manufacturers to further its Hytrin monopoly and, when this failed, entered into an illegal agreement wherein Abbott agreed to pay Geneva not to market its generic version of Hytrin. The above mentioned conduct violates the antitrust laws of the United States and Kansas. The case is pending.

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

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

State of Kansas ex rel. vs Cardizem

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

State of Kansas ex rel. vs Hoffmann-LaRoche, Inc., Roche Vitamins, Inc., Aventis Animal Nutrition, S.A., Aventis Animal Nutrition, Inc., Daiichi Pharmaceutical Co. Ltd., Eisai Co. Ltd, Takeda Vitamin and Food USA, and BASF Corporation

On December 5, 2000, the Attorney General, together with Attorneys General of the other 49 states, the District of Columbia, and Puerto Rico, filed a lawsuit in the United States District Court for the Southern District of New York against the above named companies for engaging in a conspiracy to fix the prices of vitamins. This suit sought to recover damages for state agencies for overcharges in the purchase price of vitamins or products containing vitamins. Twenty-two Kansas agencies provided purchase information. The case was settled for a gross payment to the State of Kansas of \$448,438.57. The net proceeds were paid out to the state agencies that provided purchase information.

State of Kansas ex rel. v. Microsoft

On May 18, 1998, the Attorney General, along with 18 other states and the Department of Justice, filed an antitrust action against Microsoft Corporation in the United States District Court for the District of Columbia. The suit alleged that Microsoft's conduct violated state and federal antitrust laws. In November 1999, the court found that Microsoft had violated the state and federal antitrust laws and caused consumer harm by, *inter alia*, engaging in a series of actions designed to protect its monopoly power. The Court also found that Microsoft demonstrated that it would use its prodigious market power and immense profits to harm any firm that insisted on pursuing initiatives that could intensify competition against one of Microsoft's core products, and that Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The Court issued an order in June 2000 which included remedies involving the reorganization of the structure of Microsoft. Microsoft appealed to the United States Court of Appeals for the District of Columbia which affirmed the Findings of Fact that Microsoft's conduct violated the law, but reversed and remanded the case for further proceedings and consideration of the remedy to be imposed for the illegal conduct. In November 2000, nine states and the Department of Justice entered into a settlement of the case which must be approved by the Court. Significant industry opposition to the settlement exists. The Court heard evidence on the settlement on March 6, 2002. The decision to approve or disapprove the settlement is under advisement. The State of Kansas and the other non-settling states are continuing to litigate and have submitted a separate remedy proposal. The hearing on the separate remedy proposal began on March 11, 2002.

State of Kansas ex rel. vs Mylan

This case involves two anti-anxiety drugs. In 2001, a national \$100 million settlement with pharmaceutical giant Mylan Laboratories was finalized, filed and approved by the United States District Court in Washington, D.C. State Attorneys General and the Federal Trade Commission accused Mylan in 1998 of orchestrating an illegal astronomical price increase – more than 2000 percent – for two generic drugs, lorazepam and clorazepate, used to treat Alzheimer's disease and other afflictions. Under the terms of the settlement, \$28 million of the settlement funds were earmarked for reimbursement to state agencies nationwide which were damaged by the price increase. The remaining \$72 million will be made available for a nationwide distribution to individual consumers injured by the price increases. A plan to identify and distribute funds to those consumers was submitted to the District Court. Once the court grants approval to the states'

distribution plan, nationwide notice will be published, and a settlement administrator will supervise the process of refunding claims. Attorney General Stovall will ask the Court to approve a consumer claim period of 90 to 120 days. Any funds left over after individual claims are processed will likely be distributed by the states to charitable organizations benefitting the elderly, with the approval of the Court. In addition to the payment of restitution and damages in the settlement, Mylan agreed to the inclusion of certain restrictions in its supplier agreements in order to restore competitive balance to the pharmaceutical market, and to reimburse the states for up to \$8 million in legal and investigative costs.

State of Kansas ex rel. v. The American Optometric Association, Johnson & Johnson Vision Products, Inc., d/b/a Vistakon, Bausch & Lomb, Inc., Contact Lens and Anterior Segment Society, Inc., American Society of Contact Lens Specialists, Society of Eye Care Specialists, Eye Care Management Group, Vision Enhancement Council International, Society of Contact Lens Specialists, National Association of Contact Lens Specialists, L. Edward Elliott, John A. Gazaway, Richard Hopping, Paul Klein, James C. Leadingham, Melvin Remba, Lee Rigel, Ronald Snyder, Jack Solomon, William David Sullins, Jr., and Stanley Yamane

In 2001, the Attorney General, along with 31 other states, joined in lawsuits filed in the United States District Court for the Middle District of Florida, Jacksonville Division, in 1994, 1997, and 1998 against The American Optometric Association (AOA); Johnson & Johnson Vision Products, Inc. (Vistakon); Bausch & Lomb, Inc. (B&L); CIBA Vision (CIBA); and 13 individual optometrists for conspiring to restrain trade in the sale and distribution of disposable contact lenses in violation of state and federal antitrust laws. The cases have been settled and approved by the Court. The terms of the settlements vary with each of the Defendants, but generally involve a claim period for contact lens purchasers to register for benefits packages which include coupons for discounts on future purchases, eye care practitioner visits, and products. Johnson & Johnson guaranteed that its benefits package would have a value of \$30 million dollars and Bausch & Lomb guaranteed that its benefits package would have a value of \$9.5 million dollars. In addition, cash payments were made by: Johnson & Johnson of \$25 million dollars; Bausch & Lomb of \$8 million dollars; American Optometric Association, \$750,000.00; and the individual Defendants \$104,000.00. Claims for reimbursement of the fees and expenses, including notice and other costs of the private class plaintiffs' counsel and the states, will be made at a fairness hearing, and, if granted, the total claims will probably exhaust the cash components of the settlements.

INVESTIGATIONS

The following are companies that are being investigated for Antitrust violations.

State of Kansas ex rel. vs Commercial Paper Products

State of Kansas ex rel. vs Salton

State of Kansas ex rel. vs Sorbates

