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Consumer News: Banks

(continued from page 135)

billion dollar profit in 1990. Increasingly, non-banks are trying to get a piece of this lucrative business, and the nation's largest banks are fighting back with legal and regulatory action. "This is a life-and-death struggle," according to bank consultant Edward E. Furash. "The banks can't afford to lose this war."

The banks already have lost some of their market share, primarily to two major competitors, Sears, Roebuck & Company and American Telephone and Telegraph. Sears issued the first no-fee Discover card five years ago, and today thirty-eight million are in circulation. AT&T's Universal credit calling card is a no-fee Visa or MasterCard with an annual interest rate over one percent below what major banks charge. The communications giant got around Visa and MasterCard's bank-only membership rule by buying a small Georgia bank to issue the cards. In its first year, 8.3 million of the cards were issued in what was considered to be a saturated market.

"By 1995, they (non-banks) could easily have fifty to sixty percent of the market," said Donald J. Auriemma, president of his own consulting firm in Garden

City, N.Y. "Non-bank players have deeper pockets. They're moving market share, and they're a real threat." Non-banks' share of the credit card market has nearly quadrupled to eighteen percent since 1986.

Banks claim that these new competitors should be subject to the same regulations they are. Currently, non-bank card issuers need not meet the same capital requirements as the major banks. "All we want is a level playing field," said Alex W. Hart, chief executive of MasterCard International Inc. Like Visa, MasterCard is an association of banks and savings and loans which control the credit card companies.

Whether banks will ultimately be able to keep most non-banks out of the credit card business may ultimately depend on the battle between Sears and Visa which is currently being waged in federal court. In May 1990, a Sears subsidiary bought a failing Utah thrift, MountainWest Savings and Loan, which already had a Visa membership. Sears planned to market over 1.5 million no-fee "Prime Option" Visa cards through the bank, but Visa refused to issue the cards. In February, a Utah federal district judge ordered Visa to issue the cards, but recently the 10th U.S. Circuit Court of Appeals reversed. The court ruled that the preliminary injunction was improper,

stating it "did not find persuasive" MountainWest's contention that a delay would cause it "irreparable harm."

"This is only a temporary setback for the credit-card carrying consumer," said Philip Purcell, chairman of Dean Witter Financial Services Group, Sears' financial subsidiary.

Sears has two options. It may appeal to the U.S. Supreme Court or return to federal district court in Utah for a trial on the merits of its antitrust and state unfair practices law claims. At issue in a trial would be two Visa bylaws. One prohibits competing card companies, such as Sears and American Express, from issuing Visa cards. The other would prohibit banks which issue Visa cards for organizations or companies from giving more than twenty-five percent of their credit-card business to a non-bank. This rule was put in place after AT&T started issuing Visa cards through a small bank in Columbus, Georgia.

"We believe allowing Sears to issue Visa cards would not be in the best interests of the consumer, primarily because it would reduce competition between two brands, Visa and Discover," said David Brancoli, a spokesman for Visa. "It would be like selling Big Macs at a Burger King."

Indices to Volume 3

The **Indices to Volume 3** were prepared by the Editors. The fourth issue of each volume of the *Loyola Consumer Law Reporter* contains indices for that volume. At five-year intervals, the indices will be compiled and published as a separate volume.

AUTHOR INDEX

The following is an alphabetical list of lead articles and recent case commentaries published in Volume 3 of the *Loyola Consumer Law Reporter*. The volume, issue, and page number, separated by colons, are listed after the title of the article. The year of publication is listed in parenthesis.

- ALAKA, Aida M., *Granting Contested Telephone Rate Increases Without Evidentiary Hearing Violates Due Process*, 3:4:144 (1991).
- ALAKA, Aida M., *Third Party Contractual Risks Not Covered By Builder's Risk Insurance Policy*, 3:2:65 (1991).
- BARNES, Elizabeth A., *Insurance Company Had No Duty To Notify Loss Payee Of Policy's Expiration Or Policyholder's Failure To Renew*, 3:3:105 (1991).
- BARNES, Elizabeth A., *Manufacturer Of Board Game Not Liable For Suicide Of Player*, 3:1:25 (1990).
- BARRISH, Johnathan, *Iowa Supreme Court Denied Right Of First Refusal To Agricultural Property Mortgagors*, 3:3:107 (1991).
- BARRISH, Johnathan, *Public Utilities' Recoupment Of Charitable Contributions Through Rate Structure Violates The First Amendment*, 3:1:29 (1990).
- BAUMHART, James E., *The Better Business Bureau: Administrator Of Ethics Through Self-Regulatory Programs*, 3:4:134 (1991).
- BERNSTEIN, Leonard A., *Disclosure Requirements For Mortgage Transfers: New Amendments To The Real Estate Settlement Procedures Act*, 3:3:86 (1991).
- BRANDHORST, Timothy, *Connecticut Consumers Protected Against Deceptively Advertised Manufacturer's Rebates*, 3:1:31 (1990).
- BRANDHORST, Timothy, *New York Court Upholds Rent Control Regulation Which Broaden The Definition Of Family To Include Adult Lifetime Partners*, 3:3:108 (1991).
- BURNHAM, Scott J., *The Regulation Of Rent-To-Own Transactions*, 3:2:40 (1991).
- DARROW, John A. and Lobdell, David W., *Maximizing Federal Deposit Insurance Corporation's Insurance Of Deposits*, 3:2:58 (1991).
- DJORDJIC, Mira, *The Indiana Supreme Court Held That A Household Exclusion Clause Does Not Violate Public Policy*, 3:3:104 (1991).
- DJORDJIC, Mira, *The United States Su-*

preme Court Denies Consumers, As Indirect Purchasers, Standing To Sue Under The Clayton Act, 3:1:20 (1990).

ELLIS, Astrid E., *Insurance Agent May Have Bound Company To Temporary Insurance Policy Despite Misrepresentation By Insured*, 3:4:146 (1991).

ELLIS, Astrid E., *Investors Who Relied On Tax Opinions May Not Recover Back Taxes And Interest Paid For Disallowed Deductions*, 3:2:71 (1991).

GRABER, Elizabeth A., *College's Failure To Provide Educational Service Is No Defense To Nonpayment Of Student Loans*, 3:2:64 (1991).

GREENBERG, Eric F., *The Changing Food Label: The Nutrition Labeling And Education Act Of 1990*, 3:1:10 (1990).

GREENBERG, Eric F., *Green Issues Are Ripe: The Regulation Of Environmental Marketing Claims*, 3:3:80 (1991).

GUEMMER, Suzi, *Debtor Entitled To Rescind Consumer Credit Transaction For Creditor's Failure To Disclose Debtor's Right To Choose Insurance Carrier*, 3:1:28 (1990).

GUEMMER, Suzi, *Evidence Of Side Agreement Between Lender And Borrower Not Admissible To Show Modification Of Loan Agreement*, 3:3:101 (1991).

HESSE, Richard A. and Simon, Mitchell M., *Serving The Needs Of Both The Consumer Of Legal Services And The Profession Through The Application Of Consumer Protection Statutes To Lawyers*, 3:4:116 (1991).

HUGHES, Timothy T., *The Federal Trade Commission's Approach To Regulating Health Claims In Food Advertising*, 3:1:4 (1990).

KOLE, Karen V., *Specialized Legal Clinics Assist Unrepresented Consumers: A Local Success Story - Sleeping With The Enemy? No, We Work With Them*, 3:3:92 (1991).

KOLE, Karen V., *Specialized vs. General Clinical Legal Education: Or, Problems With Being A Brain Surgeon After a Family Practice Internship*, 3:4:126 (1991).

KUZMENKA, Suzanne, *Trademark Licensor Held Not Liable Because It Did Not Substantially Participate In The Production, Marketing, Or Distribution Of The Defective Product*, 3:2:69 (1991).

LOBDELL, David W. and Darrow, John A., *Maximizing Federal Deposit Insurance Corporation's Insurance Of Deposits*, 3:2:58 (1991).

McKENNA, Stephen, *Imposing Penal Sanctions For Breach Of Home Improvement Contract, In The Absence Of Fraud, Is Involuntary Servitude*, 3:2:72 (1991).

McKENNA, Stephen, *No Strict Liability For Manufacturer Of Unavoidably Unsafe Blood-Clotting Agent Which Gave Woman AIDS*, 3:4:141 (1991).

MILEW, Rosemary G., *An "As Is" Clause In A Deed Of Conveyance Does Not Protect Responsible Parties Against Strict Liability For Clean Up Costs Under CERCLA*, 3:1:26 (1990).

MILEW, Rosemary G., *Recreational Use Statute Immunized Landowners From Liability For Personal Injuries*, 3:3:100 (1991).

NAWRACAJ, Richard E., *Exclusive Warranties Failing In Essential Purpose Do Not Prevent Consequential Damage Re-*

covery, 3:2:67 (1991).

NAWRACAJ, Richard E., *The Second Circuit Holds That An Anti-Discrimination Provision Of The Fair Housing Act Applies To Human Models In Advertisements*, 3:4:140 (1991).

RICH, Nancy J., *The Clean Air Act Amendments Of 1990: Clean Air At What Cost?*, 3:2:46 (1991).

SIMON, Mitchell M. and Hesse, Richard A., *Serving The Needs Of Both The Consumer Of Legal Services And The Profession Through The Application Of Consumer Protection Statutes To Lawyers*, 3:4:116 (1991).

TROPPE, Frank J., *Bankruptcy Court Holds Debtor Responsible For Obsessive-Compulsive Use Of Credit Card*, 3:2:68 (1991).

TROPPE, Frank J., *Eighth Circuit Holds That Insurer's Duty To Make Certain Coverage Available Was Not Breached By Failure To Explain Such Coverage*, 3:4:143 (1991).

URBANIK, Linda J., *Federal Bankruptcy Code Does Not Preempt State And Local Utility Termination Procedures*, 3:3:103 (1991).

URBANIK, Linda J., *National Traffic And Motor Vehicle Safety Act Partially Preempts Defective Design Claim*, 3:1:22 (1990).

SUBJECT INDEX

The following is an alphabetical list of subjects in the field of consumer law. Lead Articles and Recent Case commentaries published in Volume 3 of the *Loyola Consumer Law Reporter*. The volume, issue, and page number, separated by colons, are listed after the title of the article. The year of the publication is listed in parenthesis.

ADVERTISING

Environmental
Green Issues Are Ripe: The Regulation Of Environmental Marketing Claims, 3:3:80 (1991).

Federal Trade Commission
The Federal Trade Commission's Approach To Regulating Health Claims In Food Advertising, 3:1:4 (1990).

Food
The Changing Food Label: The Nutrition Labeling And Education Act Of 1990, 3:1:10 (1990).

Housing
The Second Circuit Holds That An Anti-Discrimination Provision Of The Fair Housing Act Applies To Human Models In Advertisements, 3:4:140 (1991).

Racial Discrimination
The Second Circuit Holds That An Anti-Discrimination Provision Of The Fair Housing Act Applies To Human Models In Advertisements, 3:4:140 (1991).

Rebates
Connecticut Consumers Protected Against Deceptively Advertised Manufacturer's Rebates, 3:1:31 (1990).

BANKRUPTCY

Credit Card Debts
Bankruptcy Court Holds Debtor Responsible For Obsessive-Compulsive Use Of Credit Card, 3:2:68 (1991).

Releases
Bankruptcy Court Holds Debtor Responsible For Obsessive-Compulsive Use Of Credit Card, 3:2:68 (1991).

Utility Bills
Federal Bankruptcy Code Does Not Preempt State And Local Utility Termination Procedures, 3:3:103 (1991).

CONSTITUTIONAL

Procedural Due Process
Granting Contested Telephone Rate Increases Without Evidentiary Hearing Violates Due Process, 3:4:144 (1991).

Involuntary Servitude
Imposing Penal Sanctions For Breach Of Home Improvement Contract, In The Absence Of Fraud, Is Involuntary Servitude, 3:2:72 (1991).

Free Speech
Public Utilities' Recoupment Of Charitable Contributions Through Rate Structure Violates The First Amendment, 3:1:29 (1990).

Racial Discrimination
The Second Circuit Holds That An Anti-Discrimination Provision Of The Fair Housing Act Applies To Human Models In Advertisements, 3:4:140 (1991).

CONSUMER CREDIT

Commercial Loans
Evidence Of Side Agreement Between Lender And Borrower Not Admissible To Show Modification Of Loan Agreement, 3:3:101 (1991).

Mortgages
Disclosure Requirements For Mortgage Transfers: New Amendments To The Real Estate Settlement Procedures Act, 3:3:86 (1991).

Debtor Entitled To Rescind Consumer Credit Transaction For Creditor's Failure To Disclose Debtor's Right To Choose Insurance Carrier, 3:1:28 (1990).

Iowa Supreme Court Denied Right Of First Refusal To Agricultural Property Mortgagors, 3:3:107 (1991).

CONSUMER PROTECTION ACTS

Antitrust
The United States Supreme Court Denies Consumers, As Indirect Purchasers Standing To Sue Under The Clayton Act, 3:1:20 (1990).

Attorneys
Serving The Needs Of Both The Consumer Of Legal Services And The Profession Through The Application Of Consumer Protection Statutes To Lawyers, 3:4:116 (1991).

CONTRACT LAW

Disclaimers
An "As Is" Clause In A Deed Of Conveyance Does Not Protect Responsible Parties Against Strict Liability For Clean Up Costs Under CERCLA, 3:1:26 (1990).

Service Contracts
Imposing Penal Sanctions For Breach Of Home Improvement Contract, In The Absence Of Fraud, Is Involuntary Servitude, 3:2:72 (1991).

CREDIT CARDS

Release In Bankruptcy
Bankruptcy Court Holds Debtor Responsible For Obsessive-Compulsive Use Of Credit Card, 3:2:68 (1991).