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49. Fair Packaging and Labeling Act, Pub. L. No. 89-755, 80 Stat. 1296 (1966) (codified at 15 U.S.C. 1451 et seq. (1982)).
50. American Bar Association Standing Committee on Dispute Resolution, *Alternative Dispute Resolution: A Movement That Is Changing the Administration of Justice 8* (distributed at the Chicago Conference on Bar Association Leadership, Sept. 8-9, 1988).
51. *Id.* at 2.
52. *Id.* See also E. FINE & E. PLAPINGER (Eds.), *ADR AND THE COURTS, A MANUAL FOR JUDGES AND LAWYERS* (1987).
53. Note, *Consumer Protection by the State Attorneys General: A Time for Renewal*, 49 NOTRE DAME LAWYER 410, 411 (1973).
54. *Id.*
55. The selection of the states surveyed in this article was based on suggestions made by a spokesperson for the National Association of Attorneys General. The information in this section was acquired through documents provided by and telephone conversations with Assistant Attorneys General in the offices surveyed.
56. R. FISHER & W. URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (1983).
57. The Attorney General Consumer Protection Division, *Guidelines for Consumer Interviews* 16-17 (1988).
58. Office of the Maryland Attorney General, *Binding Arbitration by the Office of the Attorney General, Resolution of Consumer Disputes: The Attractive Alternative to Litigation 1* (1988).
59. COUNCIL OF BETTER BUSINESS BUREAUS, INC., *BBB ARBITRATION, A NATIONAL PROGRAM OF DISPUTE RESOLUTION, THE COMMON SENSE ALTERNATIVE 1* (1981).
60. See *supra* note 57.
61. Maryland's Uniform Arbitration Act, MD. CTS. & JUD. PROC. ANN. 3-201 (1974).
62. These statistics were confirmed by the Director of the Complaint Handling Unit on October 19, 1988.
63. These statistics were obtained from the Chiefs of Local Services of the Massachusetts Department of the Attorney General on September 20, 1988.
64. Department of the Attorney General, Commonwealth of Massachusetts, Fiscal Year '88 Annual Report, Local Consumer Services 2 (Jan. 1988).
65. *Id.*
66. *Id.* at 5.
67. *Id.*
68. These offices are located in Austin, Dallas, El Paso, Houston, Lubbock, McAllen and San Antonio.
69. Wisconsin Department of Justice, Office of Consumer Protection, Vol. XVIII, 1987 Annual Report, Consumer Protection and Antitrust Report 1.
70. *Id.* at 4.

MISSISSIPPI REQUIRED BY FEDERAL LAW TO PASS ON SHARE OF COST OF CONSTRUCTING NUCLEAR POWER PLANT TO RETAIL RATEPAYERS

The United States Supreme Court recently held that an order of the Federal Energy Regulatory Commission which allocated the costs of power purchased from a newly constructed nuclear facility among Mississippi Power & Light Company and the other subsidiaries of Middle South Utilities, pre-empted a prudence inquiry by a state utility commission into the management decisions leading to the construction of the facility. *Mississippi Power & Light v. Mississippi ex rel. Moore*, 108 S. Ct. 2428, 101 L.Ed.2d 322 (1988). The Court further held that in setting retail prices for power, a state utility commission is required to allow a utility to recoup costs incurred through its purchase of wholesale power at a price set by the federal commission. The Court concluded that the Supremacy Clause of the United States Constitution compelled the state commission to allow Mississippi Power & Light Company to recover costs incurred as a result of payments for the federally mandated allocation through its retail rates. As a result of this decision, Mississippi ratepayers will face rate increases for power capacity that will not be used and will bear the cost burden of Mississippi's membership in an interstate power pool.

Background

Mississippi Power & Light Company ("MP&L" or "the Company") provides electric power to 333,000 customers. The Company, along with Middle South Utilities' ("MSU") three other

subsidiaries, is part of an energy supply system serving Arkansas, Mississippi, Missouri, and Louisiana. The Federal Energy Regulatory Commission ("FERC" or "the Commission") regulates the Company's wholesale sale of electricity, while the local Mississippi Public Service Commission ("MPSC") regulates its retail sales.

While MSU's generating plants were mainly fueled with oil or gas through the 1950's and into the 1960's, the system in the late 1960's planned to meet projected increases in energy demand by requiring each of its subsidiaries to construct a nuclear power plant. Although MSU originally assigned MP&L the construction of Grand Gulf 1 and 2, two nuclear facilities in Port Gibson, Mississippi, the Company was unable to finance the project alone. Accordingly, MSU formed a new subsidiary, Middle South Energy, Inc. ("MSE"), which acquired title to the Grand Gulf properties and hired MP&L to build and operate the plants. In 1974, MPSC authorized the plants' construction, noting MP&L's status as part of an integrated energy system.

In the late 1970's, it became clear that future demand for electricity would be less than had been anticipated, thus, the Grand Gulf capacity was unnecessary. As a result of the reduced projected demand for electricity, along with cost overruns and regulatory delays, construction of Grand Gulf 2 was halted. Grand Gulf 1 was completed in the belief that the relatively low cost of nuclear fuel would cause its power to be less expensive than that of alternative sources.

Although the original estimated cost of both nuclear facilities had been approximately \$1.2 billion, the actual cost to complete Grand Gulf 1 was more than \$3 billion. Consequently, the cost per kilowatt of capacity rose from an estimated

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RECENT LEGISLATIVE ACTIVITY

Telephone Message Services

Louisiana requires advertisements for telephone calls to "976" services to include the specific charges for these calls. A fine of no more than \$100 per day is imposed for each day that advertisements violate this requirement. In addition, courts will not enforce collection actions on billings for these services where the advertisements violate this requirement. Effective July 9, 1987. **La. Rev. Stat. Ann. § 51:1731 (West 1987 & Supp. 1988).**

Pennsylvania requires that a warning of any cost be provided prior to the presentation of a telephone message. All charges for calls to message services must be itemized on the bill and include the title of the message dialed. Telephone companies must provide to consumers a list of the names and addresses of telephone services at no charge. Telephone companies must also provide consumers the option to block access to these services without charge. Effective during 1988. **To be codified in 66 Pa. Cons. Stat. Ann. § 2905 (Purdon 1979 & Supp.).**

Washington requires that local telephone companies provide consumers the opportunity to block access to telephone message services provided to them, for a charge, through an exclusive telephone number prefix. The local telephone company must inform consumers of the availability of a blocking service through a bill insert as well as through publication in the local telephone directory. Effective October 1, 1988. **Wash. Rev. Code Ann. § 80.36.500 (1962 & Supp. 1989).**

Credit Repair

Florida and Massachusetts regulate credit improvement services which provide for the consolidation of credit extended by other creditors. The credit improvement service must either post a bond or maintain a trust fund account to cover payments for services which have not been fully performed. The credit improvement service must inform consumers of their right, under federal law, to review credit reports at no charge. Consumers must also be informed of the extent to which credit improvement services can change credit reports. Effective June 30, 1987 in **Florida. Fla. Stat. Ann. § 817.7001 (West 1976 & Supp. 1988).** Effective July 23, 1987 in **Massachusetts. Mass. Gen. Laws Ann. ch. 93, § 68A (West 1985 & Supp. 1988).**

Telephone Sales

California recently expanded registration requirements for telephone solicitors to include sellers of coins and other items. The failure to register is a misdemeanor. In addition, sellers of securities who are currently exempt from the definition of telephonic solicitors are required to meet with customers in person before completing sales in order to retain their exemption. Effective September 18, 1987. **Cal. Bus. & Prof. Code § 17511.1 (West 1987 & Supp. 1988).**

Florida has enacted restrictions upon unsolicited telephone sales of consumer goods, real estate improvements, cemetery lots, and time share estates. A telephone solicitor must identify the nature of the call and immediately discontinue the presentation when the potential customer indicates no interest in listening. Consumers can request a listing in the telephone book indicating that the consumer does not desire solicitation calls. Telephone solicitors are prohibited from calling consumers who have this listing, as well as those who have unlisted numbers. Telephone solicitors are subject to fines and injunctions if they violate this law. Effective October 1, 1987. **Fla. Stat. Ann. § 501.059 (West 1972 & Supp. 1988).**

Home Improvement

New York requires home improvement contracts to be in writing and to state the name and address of the contractor. The contract must identify completion dates, state any contingencies which would change the completion date, and describe the materials to be provided. All payments prior to completion are required to be deposited by the contractor in a trust account. In lieu of a trust account, a contractor may obtain a surety bond. The statute provides various penalties for violations of its disclosure requirements. Effective date July 27, 1987. **N.Y. Gen. Bus. Law § 770 (McKinney 1984 & Supp. 1988); see also N.Y. Lien Law § 70 (McKinney 1966 & Supp. 1988).**

Oklahoma prohibits misrepresentation, deception or any falsity by a home repair contractor, and any transaction in which a consumer pays a price which unreasonably exceeds the value of the services or materials is illegal. In addition, a contractor is prohibited from impersonating a federal or state official for the purpose of inducing a property owner to enter into a transaction for home repairs. Effective November 1, 1988. **To be codified in Okla. Stat. Ann. tit. 15, § 765.1 (West 1983 & Supp.).**

Health Clubs

Washington requires contractors performing work on a residential structure of four or fewer units to provide the consumer with a disclosure statement where the contract exceeds \$1,000. This requirement also applies to contracts for commercial structures where the contract exceeds \$1000 but is less than \$60,000. The disclosure statement must reflect that the contractor is registered with the state of Washington and that the contractor has posted a bond or cash deposit for the purpose of satisfying any claims that the work was inferior. The disclosure statement must also explain the possibility of a subcontractor's or supplier's lien and the consumer's right to request the original lien release from each subcontractor or supplier. Contractors can not sue for payment for services rendered without proving that they provided the consumer with a copy of the disclosure statement. Effective July 1, 1989. **Wash. Rev. Code Ann. § 18.27.114 (1978 & Supp. 1989).**

Travel

California now requires promoters of travel programs to register with the Attorney General, pay a \$50 fee, and file their business address and other information with the Attorney General prior to doing business in the state. Travel promoters must also file copies of their travel certificates. Effective September 12, 1988. **To be codified in Cal. Bus. & Prof. Code § 17540 (West 1987 & Supp.).**

New York has made it unlawful for travel service providers to reserve more than the agreed upon amount on a customer's credit card without the prior written consent of the customer. Effective January 1, 1989. **To be codified in N.Y. Gen. Bus. Law § 525 (McKinney 1984 & Supp.).**

Sale of Pets

New York has enacted a law to protect consumers from unhealthy pets. The law requires pet dealers to refund the purchase price of the animal or to permit an exchange where a veterinarian has determined the animal to be unfit for purchase. An animal is unfit for purchase if within 14 days of the purchase a veterinarian diagnoses illness, congenital malformation, or a contagious disease. The consumer may choose between returning the animal for a full refund, exchanging the animal for a healthy animal, or keeping the animal and receiving reimbursement for expenses incurred in treating the animal. Any reimbursement for expenses incurred in treating the animal must not exceed the purchase price of the animal. Effective January 1, 1989. **To be codified in N.Y. Gen. Bus. Law § 740 (McKinney 1984 & Supp.).**

California requires tanning facilities to provide consumers a written warning of the dangers of ultraviolet light. The tanning facility must have a knowledgeable operator present at all times and require users to wear protective eye-wear. Users must sign a consent form acknowledging that they have read and understood the warnings and agree to use the protective eye-wear, and are limited to the maximum time recommended by the manufacturer. Users under the age of 18 must have a consent form signed by a parent or guardian while users under 14 must be accompanied by a parent or guardian. Injuries requiring medical attention must be reported in writing to the California Department of Consumer Affairs as well as to the Federal Food and Drug Administration. A copy of the report must also be sent to the injured customer. Effective September 12, 1988. **To be codified in Cal. Bus. & Prof. Code § 22700 (West 1987 & Supp.).**

Oklahoma requires health clubs to register with the county clerk and regulates written contracts for services of over six months. The health club must post a bond or letter of credit where it receives monthly payments which are partly for future services. Initiation fees are prohibited on contracts of less than one year. The club must pay pro rata refunds if the club closes and fails to provide alternative facilities within eight miles. If a member dies or is physically unable to use the club for 30 consecutive days, the club must pay a pro rata refund. Effective November 1, 1987 with respect to all contracts executed after that date. **Okla. Stat. Ann. tit. 15, § 775 (West 1966 & Supp. 1988).**

Wisconsin has enacted financial responsibility and employee staffing requirements for health clubs. A health club may not accept more than \$75 for future services unless the club establishes a bond or escrow account of at least \$25,000. The health club must have an employee on duty during all hours of operation who is trained in first aid and cardiopulmonary resuscitation. Effective March 1, 1989. **Wis. Stat. Ann. § 134.70 (West 1974 & Supp. 1988).**

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