CFAnews

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CONSUMER FEDERATION OF AMERICA

Senate Votes To Raise Fuel Economy Standards

In a major victory for consumers, the Senate adopted comprehensive energy legislation in June that includes a significant increase in automobile fuel economy standards.

"After two decades of doing nothing, and years of talk but no action, the Senate has finally taken a huge step toward lowering our oil consumption and our dependence on foreign oil," said CFA Research Director Mark Cooper.

The measure, which passed 65-27, requires automakers to increase their corporate average fuel economy (CAFE) standards to a fleet-wide average of 35 miles per gallon by 2020, up from the current 25 miles per gallon.

Significantly, the requirement applies to light trucks and sport utility vehicles as well as passenger cars. To win passage, however, supporters agreed to remove a requirement that automakers continue to improve fuel economy by four percent a year after 2020.

"Increasing fuel efficiency is the sweet spot of energy policy," Cooper said. If this measure is signed into law, the nation will consume 100 billion gallons less gasoline in the next decade, cut imports by 15 percent, and reduce greenhouse gas emissions by 1 billion tons, he said.

Moreover, from the consumer point of view, the measures pay for themselves, with savings on gasoline outweighing any increases in automobile costs necessary to bring about the fuel economy gains.

In the weeks leading up to the Senate vote, CFA made a major push to help win passage of the CAFE increase. These efforts included releasing a report on the impact of rising gasoline prices, providing a closer analysis of gas prices on rural households, testifying before a House committee, analyzing an automobile industry-backed amendment, and presenting the results of public opinion surveys.

Households See 85 Percent Increase in Gasoline Costs

A CFA-Consumers Union study showed, for example, that households are spending about $1,000 more per year for gasoline than they were just five years ago, an 85 percent increase.

Cooper, who presented the report's findings in testimony before the House Judiciary Committee, said the lack of investment in refining capacity and other market failures have resulted in record prices for consumers and record profits for the oil industry.

Additional CFA research shows that rural households have been particularly hard hit by these increases, because they drive more, get fewer miles per gallon, consume more gasoline, and spend more on gasoline.

Trucks, in particular, get 30 percent fewer miles per gallon on average than passenger cars, and they are kept on the road 11 percent longer.

Because of these differences, the burden of recent increases in gasoline prices falls more heavily on rural households than on non-rural households, the research shows. These households have seen an increase in their gasoline bills of almost $1,300 in the past five years.

The burden on rural households is heightened by their lower incomes. While urban households have seen gasoline expenditures increase from about 2.4 percent of income to about 3.5 percent, for rural households the increase has been from about 3.3 percent to about 5.4 percent.

Rural Households Benefit from CAFE Increase

"One of the great myths of the fuel economy debate," Cooper said, "is the claim that increasing the fuel standards will hurt rural households." "The auto industry is more than willing to propagate this myth, because inefficient pick-up trucks are among their highest profit models," he added.

In fact, an analysis of direct consumer costs for vehicles getting 35 miles per gallon, assuming that the vehicle is purchased using a loan, shows that fuel economy pays for itself. The reduction in gasoline expenditures is greater than the increase in monthly loan payments.

For rural households, the savings are likely to be twice as large as for urban households, and their tendency to keep vehicles on the road longer compounds that benefit.

In an effort to stave off the tougher standard ultimately adopted by the Senate, automakers promoted their own "compromise" fuel economy measure.

Industry "Compromise" Flawed

According to CFA's analysis, that measure would have set fuel efficiency targets that are too low, allowed manufacturers too long to meet those targets, kept the National Highway Traffic Safety Administration in charge of determining efficiency targets, and overturned the Environmental Protection Agency's authority to reduce greenhouse gas emissions under the Clean Air Act.

This approach would produce "at best, between one-third and one-half of the gasoline savings that are justified," Cooper said.

In turning aside this amendment and adopting strong fuel economy standards, the Senate reflected a strong shift in public opinion on the issue.

A national survey commissioned by CFA and released in May found that a large majority of Americans are deeply concerned about the nation's dependence on oil imports. They see this dependence as increasing gas prices, threatening future gas supplies, and funding terrorism.

Because of these concerns, a large majority of Americans support increases in CAFE standards of a magnitude included in the Senate bill, even when these higher standards increase the price of cars.

Additional Reforms Urged to Alleviate Gas Price Spikes

In his testimony before the House Judiciary Committee, Cooper outlined additional steps that Congress and the Administration should take to help alleviate future gas price spikes.

(Continued on Page 2)

Fee-based Brokerage Account Rule Overturned

Bowing to an appeals court decision overturning the fee-based brokerage account rule, the Securities and Exchange Commission announced in May that it was asking for a 120-day stay of the ruling but would not seek further review of the decision.

"The decision by the SEC not to appeal the ruling is the right one for investors," said CFA Director of Investor Protection Barbara Roper.

She also supported the stay sought by the commission as reasonable in light of the transitional issues involved in converting the fee-based brokerage accounts either to advisory accounts or to commission-based accounts.

The U.S. Court of Appeals for the District of Columbia Circuit issued its 2-1 ruling in March, vacating the rule that had allowed brokers to receive fees for advice without triggering the protections of the Investment Advisers Act.

Unlike brokers, investment advisers are required to act in their clients' best interests and must provide up-front disclosure of material information, including any conflicts of interest that could bias their recommendations.

Rule Deprived Investors of Important Protections

Since it was first proposed in 1999, CFA has vigorously opposed the fee-based brokerage account rule both for what it did do — open up a gaping loophole that allows brokers to charge for advice without being regulated as advisers — and for what it didn't do — provide meaningful restrictions on the personalized advice brokers can offer without triggering regulation under the advisers act.

The court decision vacating the rule "represents an important step forward for investors, because it clears away a bad rule," Roper said, but more remains to be done to create a rational, pro-investor policy for the regulation of financial professionals.

In fact, the ruling, when combined with the SEC's failure to adequately restrict the advice brokers can offer without being regulated as advisers, has the perverse effect of making method of compensation rather than services offered the primary determinant of regulatory status, she said.

The solution, she said, is to develop a regulatory policy that requires all those who give personalized investment advice to be regulated as advisers, just as Congress intended when it adopted the Investment Advisers Act, and to prevent those who do not provide personalized investment advice from holding themselves out to the public as advisers.

In addition, she advocated development of a uniform, plain English disclosure document for brokers, investment advisers, and financial planners that covers key information investors need to make an informed choice both among various types of financial professionals and among individual providers.

Study Underway

When the SEC adopted the fee-based brokerage account rule, commissioners acknowledged that lines between the various types of financial professionals had become blurred. They have commissioned an independent study by the RAND Corporation to help them determine whether additional regulatory or legislative measures are needed.

In announcing their decision to seek a temporary stay of the court ruling, the SEC noted that RAND had agreed to expedite the study, with completion now expected by the end of the year.

"If the SEC follows up on the court decision by creating a pro-investor policy for the regulation of investment professionals, it will be an enormous and long-overdue victory for investor protection and rational regulation," Roper said. "Failure to do so would perpetuate a market in which providers who use virtually identical titles and offer seemingly identical services are subject to very different standards."

Research Wrap-up

African-Americans Pay Higher Auto Loan Rates

African-Americans pay much higher auto loan rates than do other Americans, and this "rate gap" has increased, according to a CFA analysis of Federal Reserve Board data released in May.

On 2004 loans for new car purchases, blacks paid a typical rate of 7.0 percent, compared with a typical rate of 5.0 percent for all borrowers. On used car loans, African-Americans typically paid 9.5 percent, compared with a typical rate of 7.5 percent for all borrowers.

This two percentage point rate gap compares with rate gaps of 1.3 percentage points and 1.2 percentage points respectively for 2001 new and used car loans reported by the Fed.

Moreover, a far higher percentage of African-Americans than other borrowers paid auto loan rates of at least 15 percent.

For new car loans, 6 percent of African American borrowers paid this much in 2004, compared with just 2 percent of all Americans. For used car loans, 27 percent of black borrowers paid this much, compared with only 13 percent of all borrowers.

"It's hard to believe that any differences in credit-worthiness explain all of these rate gaps," said CFA Executive Director Stephen Brobeck.

* * *

Survey Finds Poor Understanding of Real Estate Services

Although most Americans view real estate agents, brokers, and services favorably, they show poor understanding of these services and object to specific industry practices, according to a comprehensive consumer survey released by CFA in June.

"Taken as a whole, the survey results suggest that consumers value the services provided by agents and brokers, and have usually had good experiences with these agents and brokers, but that their views are positive in part because of their lack of awareness of specific industry practices that could harm their interests," Brobeck said.

Brobeck analyzed data collected for AARP in June 2006 by the Opinion Research Corporation.

When asked general questions about their views of the industry, over two-thirds of survey respondents and nearly three-quarters of those who have worked with a broker in the past five years indicated that they view agents and brokers and their practices favorably. Even higher percentages of those who have utilized industry services recently view their own agent favorably.

When asked what specific real estate services they find useful, however, only half said that agents and brokers are useful in helping sellers price their home, helping buyers evaluate home prices, and in helping sellers and buyers negotiate price. Less than three-fifths (58 percent) said that agents are useful in listing homes, helping buyers search listings, and closing the sale.

These responses seem to "reveal a lack of knowledge of the industry and perhaps a little skepticism," Brobeck said. That lack of knowledge was more clearly reflected in other survey findings.

For example, only about one-third knew that the local multiple listing service is the most complete source of information about homes for sale, and only about one-quarter knew that commissions can be negotiated. Even among those who have used real estate services recently, less than a third knew that commissions can be negotiated.

Consumers Critical of Practices, Policies

Despite their overall favorable ratings of the industry, consumers tended to be more critical when asked about specific practices that are widespread throughout the industry.

• About three-fifths said that a five to six percent commission on a $300,000 home sale is too high.

• Over half responded that a "dual agent" cannot effectively represent the financial interests of buyers and sellers.

• Two-thirds said there is a potential conflict of interest when seller and buyer agents work for the same company.

• Fewer than one-fifth said buyer access to a local multiple listing service should require signing an exclusive agreement with a broker, while three-fifths said access should be available to those who pay a fee.

"Consumers also tend to object to public policies advocated by much of the industry," Brobeck said.

For example, a majority expressed disapproval of state minimum service laws (60 percent) and of agents' practicing while serving on state commissions (55 percent). Large numbers also expressed disapproval of states' requiring Internet-based services to maintain an in-state office (49 percent) and of states' prohibiting agent rebates to buyers (42 percent).

In releasing the survey findings, Brobeck called on state real estate commissions to more energetically inform potential buyers and sellers about real estate services and advocated required distribution of an information brochure at first contact with an agent or broker.

On the Web
www.consumerfed.org/pdfs/Auto_Loan_Press_Release_5-7-07.pdf
www.consumerfed.org/pdfs/Real_Estate_Survey060107.pdf

Fuel Economy Standards

Continued from Page 1

These include:

• creating a strategic refinery reserve and strategic product reserve dedicated to ensuring that we have excess capacity sufficient to discipline pricing abuses;

• forming a joint task force of federal and state attorneys general to monitor the structure, conduct and performance of gasoline markets, with an emphasis on unilateral actions that raise prices;

• adopting a national policy that promotes the research, production, and use of biofuels; and

• providing effective oversight by federal antitrust authorities to monitor unilateral actions that result in oil price increases.

The Senate bill included several provisions consistent with those goals, including a measure to ban price gouging during federal emergencies.

The legislation prohibits price increases that are unconscionably excessive or that indicate that the seller is taking unfair advantage of unusual market conditions to increase prices unreasonably. The prohibition would be enforced by the Federal Trade Commission and state attorneys general.

Under current law, the federal government only has the authority to review whether oil companies are fixing prices through collusion. It cannot investigate possible market manipulation, such as artificially restricting supply.

CFA and CU endorsed the proposed prohibition on price-gouging "as a first step in protecting consumers from excessive and unfair gasoline costs."

Fate of CAFE Increase in House Uncertain

The House has begun its own consideration of energy legislation, but House Energy and Commerce Committee Chairman John Dingell did not permit inclusion of any provision to increase fuel economy standards in the legislation moving through that committee in June.

Instead, the legislation focuses on other energy efficiency and conservation issues, including setting new standards for a number of appliances.

Chairman Dingell indicated he would consider fuel economy standards in the fall, when the committee takes up climate legislation. However, Rep. Edward J. Markey (D-MA) has said he will attempt to add a CAFE standard provision to the energy legislation when it is considered on the House floor.

On the Web
www.consumerfed.org/pdfs/CFA_S_1419_6-13-07_Full_Senate.pdf
www.consumerfed.org/pdfs/Senate_Commerce_Auto_Industry_Comparison.pdf
www.consumerfed.org/pdfs/Senate_Auto_Comparison_letter.pdf
www.consumerfed.org/pdfs/Senate_Auto_Comparison_Release.pdf
www.consumerfed.org/pdfs/CFA_Cost-Benefit_Analysis_of_10_in_10,_June_07.pdf
www.consumerfed.org/pdfs/Rural_Benefits_of_CAFE.pdf
www.consumerfed.org/pdfs/PR-Rural_6-13-07.pdf
www.consumerfed.org/pdfs/Mark's_Statement_from_teleconf_6-6-07.pdf

Court Overturns Retail Price Maintenance Ban

On a 5-4 vote in June, the U.S. Supreme Court overturned the ban on retail price maintenance agreements.

These agreements prevent discounters from offering products to the public at whatever price they choose. Consumers have saved hundreds of billions of dollars over the years because of the ban, said CFA Research Director Mark Cooper.

As a result of the decision, agreements between manufacturers and retailers to set minimum prices will no longer constitute an automatic violation of antitrust laws. Instead, the agreements will be judged on a case-by-case basis to determine whether they inhibit market competition.

The ruling will make it more difficult for discounters and small businesses to challenge large manufacturers, Cooper said. "It gives manufacturers and dealers a weapon to use against discounters, which will raise prices and stifle competition," he added.

The majority justified its decision based on the contention that establishing minimum resale prices can, in some cases, benefit competition.

That "bogus" economic theory has "been thoroughly discredited in both the academic literature and in real world markets," Cooper said. Writing the dissent, Justice Stephen Breyer agreed.

"The only safe predictions to make about today's decision are that it will likely raise the price of goods at retail and that it will create considerable legal turbulence," he wrote.

CFAnews
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Food Safety Update

FDA Urged To Withdraw Cloned Meat Proposal

In comments submitted to the agency in May, CFA called on the Food and Drug Administration (FDA) to withdraw its draft risk assessment on animal cloning.

The agency released its draft risk assessment in December, tentatively concluding that milk and meat from cloned animals are as safe to eat as food from conventional animals and announcing its intention to permit their sale without labeling.

CFA sharply criticized the decision to permit the sale of these products on the grounds that: it is not justified by the science the agency has presented; the agency's process has been biased in favor of action favorable to the cloning industry; and FDA has ignored the wishes of the American people in order to advance the interests of a narrow group of businesses.

"The egregious nature of these actions is compounded by the decision to forego labeling," said Chris Waldrop, Director of CFA's Food Policy Institute

Numerous independent polls have shown that a majority of consumers are uncomfortable with cloning and do not want to consume products from cloned animals, even if the FDA says they are safe.

"If the FDA allows these products into the marketplace without any identifying label information, consumers will have no way of knowing whether the food they're purchasing has come from cloned animals, and they won't be able to avoid it if they want to," Waldrop said.

In its comment letter, CFA urged FDA not to withdraw the voluntary moratorium on use of these products in the food supply and instead to seek peer-reviewed studies on the basic safety of meat and milk from cloned animals, including a consideration of the number of negative outcomes of pregnancy and premature deaths in cloned animals.

CFA also urged FDA to request a study by the Department of Health and Human Services of the ethics of cloning, including the ethics of "depriving Americans of the information they need to ... use their food dollars in a manner consistent with their moral, ethical, and religious views."

Meanwhile, Sen. Barbara Mikulski (D-MD) and Rep. Laura DeLauro (D-CT) have introduced bills (S. 414, H.R. 992) that would require food from cloned animals to be labeled. CFA has endorsed the bills.

* * *

CFA Advocates Mandatory Produce Safety Standards

The FDA needs to develop strong mandatory, enforceable regulations to ensure the safety of fresh produce, CFA wrote in a June comment letter to the agency.

As recent produce-related foodborne illness outbreaks make clear, "the current system for ensuring the safety of fresh produce is seriously deficient," Waldrop said.

"The FDA needs to develop strong mandatory, enforceable food safety regulations in order to adequately protect consumers, ensure the safety of fresh produce, and regain consumer confidence in both the agency and the safety of the food supply," he added.

In its letter, CFA outlined key steps FDA should take, including:

• developing uniform standards for use of manure, water, hygiene, and sanitation;

• developing a uniform system for efficient trace-back of products;

• requiring producers and processors to keep a written Hazard Analysis Critical Control Point (HACCP) plan outlining how they are monitoring and controlling possible points of contamination in their processes; and

• conducting on-site audits of each farm and firm at least once per growing season.

CFA also urged FDA to work closely with the produce industry and the research community to support "a well planned and coordinated program of applied research aimed at determining science-based criteria and standards for implementing good agricultural practices in produce."

* * *

Coalition Opposes Moving Produce Safety to USDA

Concerns about the effectiveness of FDA's recent produce safety efforts have led some to recommend transferring FDA's food safety responsibilities to the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS).

Members of the Safe Food Coalition wrote to the House Agriculture Committee in May strongly opposing any such move.

USDA suffers from an inherent conflict of interest between its primary purpose of promoting the production and sale of agriculture commodities and its responsibility for assuring the safety of meat and poultry products, the groups noted in their letter.

When those responsibilities have come into conflict, food safety often loses out, they wrote.

Instead, Congress should consolidate food safety responsibilities within an independent food safety agency responsible solely for protecting public health, they wrote.

Absent such a step, Congress should:

• bolster the staff and resources of the FDA, so that it can perform the food safety functions Congress has mandated;

• modernize food safety laws as recommended by the 1998 National Academy of Science study;

• provide USDA with specific authority to develop and enforce microbiological criteria, including microbiological performance standards;

• pass legislation giving both FDA and USDA clear recall authority for contaminated food products and require both agencies to disclose to consumers the retail establishments involved in food recalls; and

• provide both agencies with the ability to assess civil and criminal penalties for companies that routinely violate food safety laws.

"The recent attention surrounding the FDA's ability to protect the food supply is a result of a lack of resources, not a lack of will or expertise," Waldrop said. "Nothing in the record suggests that USDA would do a better job of implementing programs now administered by the FDA."

* * *

Bills Would Undermine Federal Meat Inspection System

Meanwhile, anti-consumer bills have been introduced in both the House and Senate (H.R. 1760, S. 1149) to permit interstate shipment of state-inspected meat.

These bills are "hazardous to the health of American consumers and a threat to U.S. products in international trade," CFA and the United Food and Commercial Workers Union wrote in an April letter to the Senate.

Under the Federal Meat Inspection Act, owners of small plants can choose to be inspected by state rather than federal inspectors, but the products of those facilities can only be sold in the state in which they are produced.

Numerous published reports by the USDA's Office of Inspector General (OIG) – including an October 2006 report – clearly show that state inspection systems are not "equivalent" to federal inspection and that state and federal regulators have continued to allow plants that pose safety hazards to sell their products to the public.

"Bills to permit the sale of state-inspected meat are perennials in Congress, but Congress has always examined the evidence and failed to act on them," Waldrop said. "It should do so again."

On the **Web**
www.consumerfed.org/pdfs/CFA_Comments_Produce_6.12.07.pdf
www.consumerfed.org/pdfs/letter_to_House_Ag_Cmte_re_food_safety05.08.07.pdf
www.consumerfed.org/pdfs/UFCW_CFA_letter_State_Inspected_Meat_SENATE.pdf

Bush Nominee To Head CPSC Withdraws

Faced with strong opposition from Democratic senators, the National Association of Manufacturers (NAM) lobbyist nominated by President Bush to head the Consumer Product Safety Commission (CPSC) withdrew his nomination in May.

Consumer groups, including CFA, had opposed the nomination of Michael E. Baroody on the grounds that, in his position as Executive Vice President of NAM, he had overseen efforts to dilute safety proposals pending before the Commission and weaken the very agency he was nominated to lead.

"The CPSC Chairman should champion product safety and work to uphold the mission of the agency without predisposition or bias," said CFA Senior Counsel Rachel Weintraub. "Mr. Baroody's record of advancing a public policy agenda that would weaken health and safety protections for consumers made him ill-suited to lead this critical federal safety agency."

Consumer groups released documents in April outlining the anti-consumer activities undertaken by NAM while Baroody was leading its advocacy efforts. These included: opposing a CPSC proposal to improve safety standards for baby walkers; opposing a petition from consumer organizations to improve the way that consumers find out about recalls of potentially dangerous children's products; and attempting to dilute guidelines companies use to determine whether they must report substantial product hazards.

"The American public, under law, must have a CPSC Chairman who has the expertise and commitment to put consumer protection and child safety first," the groups stated in releasing the documents. They urged Congress to reject the nomination.

Adding to concerns about his anti-consumer record on safety issues, it was revealed in May that Baroody was to receive a departing payment of $150,000 from NAM when he stepped in to the CPSC job.

Although the payment was considered an "extraordinary payment" under federal ethics rules that would have required him to remove himself for two years from consideration of CPSC matters involving the association, Baroody maintained that it would not prevent him from considering matters involving companies that are members of the association.

That revelation appears to have sealed Baroody's fate.

Meanwhile, the CPSC has been without a quorum since January, rendering the agency unable to vote on any issue, engage in rulemaking, or levy civil or criminal penalties. Sen. Mark Pryor (D-AR) has introduced legislation, supported by CFA, that would extend the quorum of the CPSC for an additional six months.

By late June, the administration had still not nominated anyone to chair the Commission.

"The controversy around the Baroody nomination focused attention on the important mandate of the CPSC's role as the nation's top watchdog for the safety of consumer products, and particularly children's products," Weintraub said. "We urge the administration to nominate a candidate who can help strengthen the agency and its mission to make products safer."

On the **Web**
www.consumerfed.org/pdfs/Baroody_Press_release_april_26_final.pdf
www.consumerfed.org/dpfs/CPSC_Baroody_white_paper_final.pdf

Investor Protection Update

House Votes To Delay Investor Protections

The House voted 267-154 in June to further delay implementation of the internal controls provisions of the Sarbanes-Oxley Act for small public companies.

The vote came on an amendment by Rep. Scott Garrett (R-NJ) and Rep. Tom Feeney (R-FL) to the Financial Services Appropriations Act for fiscal year 2008. The amendment would prevent the SEC from spending any money to implement the requirement for small companies in the coming year.

Companies with under $75 million in market capitalization have already been granted two delays by the SEC. The congressional vote to delay implementation for an additional year came despite changes adopted in the standard earlier this year to reduce costs and ease compliance.

CFA, Consumer Action, Consumers Union, and U.S. PIRG wrote to members of the House urging them to oppose the amendment.

Noting that five years have elapsed since the Sarbanes-Oxley Act was adopted, they wrote, "Any public company that has not brought its internal controls up to standard has only itself to blame. Moreover, such companies do themselves and their shareholders a grave disservice."

SOX Delivers Investor Benefits

At the large and mid-size companies where it has been fully implemented, the Sarbanes-Oxley Act has uncovered thousands of serious control weaknesses, most often accompanied by financial misstatements. Two years into compliance, however, those numbers have begun to drop.

Among compliant companies, for example, the number of material control weaknesses reported dropped 35 percent from 2005 to 2006, and the number of restatements dropped 14 percent. In contrast, non-compliant companies saw a 20 percent increase in reported control weaknesses and a stunning 40 percent increase in financial restatements.

"The internal control requirements of the Sarbanes-Oxley Act are among the most important protections adopted to address pervasive accounting problems at our public companies," the groups wrote. "Where they have been implemented, they have brought benefits to shareholders that far outweigh their costs.

"With additional steps having now been taken to further reduce the cost of implementation, it is long past time that all public companies were brought into compliance."

CFA Investor Protection Director Barbara Roper called the cost savings from non-compliance "chimerical." "In an efficient market, those who are perceived to be at risk of having weak financial reporting will be forced to pay a higher price for capital," she said.

In 2006, companies that issued financial restatements underperformed the Russell 3000 by 20 percent, while those reporting material weaknesses underperformed the index by 18 percent.

"Congress is doing small companies no favor when it delays implementation of the very steps that can help them get their books in order," she said.

As of late June, a companion amendment had not been added to the Senate appropriations bill. However, key members from both parties have indicated their support for delaying implementation, including Senate Small Business and Entrepreneurship Chairman John Kerry (D-MA) and Ranking Member Olympia Snowe (R-ME).

Court To Decide Scheme Liability

The U.S. Supreme Court has agreed to hear a case over whether those who participate in a scheme to defraud investors can be held liable when they violate the securities fraud laws but do not themselves make misleading statements to investors.

The case accepted by the court is Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. and Motorola, Inc.

However, any decision in the Stoneridge case is also expected to determine the fate of the case against the investment banks who are charged with having engaged in a scheme to defraud Enron investors. That case has so far returned over $7 billion for defrauded investors.

"What's at stake here is whether those who actively engage in schemes to defraud investors can be held accountable for their actions," Roper said. "Failure to do so would deal a severe blow not just to defrauded investors' chance of recovery but to the integrity of the securities markets as a whole."

CFA joined with AARP and U.S. PIRG to file an amicus brief in the case in support of the petitioner.

The case is scheduled to be heard in the coming year.

Court Takes Middle Road on Pleading Standards

Meanwhile, the court issued a ruling in another case in June regarding what level of proof investors must provide in pleading statements regarding whether the defendant acted with an intent to defraud.

In an 8-1 decision in the case Tellabs Inc. V. Makor Issues & Rights Ltd, the court took a fairly moderate approach, stating that the inference of fraudulent intent must be "at least as compelling as any opposing inference of nonfraudulent intent."

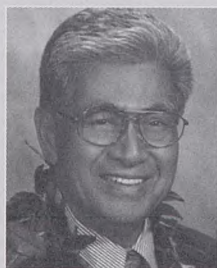
In the Stoneridge case, the SEC had sought to intervene on behalf of investors, but was over-ruled by the Solicitor General's Office after the Treasury Secretary, other financial regulators, and the president himself intervened.

In the Tellabs case, the SEC and Department of Justice filed an amicus brief that, had it been upheld by the court, would have set a much higher bar for investor lawsuits

"Although the number of securities fraud lawsuits has dropped dramatically in recent years, the business community continues to try to chip away at shareholders' legal rights," Roper said. "It is highly disappointing that the administration has chosen to abandon its traditional support for investors on these important issues."

37th Annual Awards Dinner

Governor Kathleen Sebelius



Sen. Daniel Akaka

Jean Ann Fox

Kenneth Harney

The Consumer Federation of America honored distinguished consumer service at its 37th annual Awards Dinner in June.

Kansas Governor Kathleen Sebelius and Sen. Daniel Akaka (D-HI) received Philip Hart Public Service Awards.

The Esther Peterson Consumer Service Award was presented to CFA Consumer Protection Director Jean Ann Fox.

Longtime *Washington Post* Writers Group columnist Kenneth Harney received the Betty Furness Consumer Media Service Award.

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