

CPSC In Reauthorization Battle

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Product liability legislation now before the Senate would drastically alter the ability of consumers and workers to collect in court for injuries from dangerous products page 3

Consumers were the victims of a Federal Court decision in May overturning the CPSC ban of urea-formaldehyde foam insulation page 4

by David I. Greenberg,
CFA Legislative Director

The public's desire for a greater government commitment to remove dangerous products from the marketplace helped boost the Consumer Product Safety Commission to victory in two critical Committee votes in late April and early May. The result was legislation reported by the House Energy and Commerce Committee granting the CPSC significantly higher funding targets and a five-year reauthorization period, facilitating the Commission's release of information to the public, clarifying its ability to assess civil penalties, and restoring its jurisdiction over fixed site amusement rides.

The key leadership in the House Commerce Committee effort was provided by Congressman Henry A. Waxman (D-CA), Chairman of the Health and Environment Subcommittee.

Chairman Waxman carried out the promise he made at Consumer Assembly 1983 to seek to restore the CPSC manpower levels and counteract the disastrous impact of the 33% cut in funding the Administration forced upon the Commission in the 1981 Reauthorization.

Waxman's first hurdle came in his Subcommittee markup on April 19th. Five of the six Subcommittee Republicans (the lone exception: Representative Matthew Rinaldo, R-NJ) were joined by 3 Democrats in opposing the authorization levels and time period set out in the Waxman bill which started at \$47 million for FY 1984, and increased to \$57 million by the fifth year, FY 1988. Congressman Richard Shelby (D-AK) and William Dannemeyer (R-CA) led the fight to cut back these figures to approximately \$32-\$39 million for a maximum period of three years.

At the same time, Congressman Howard Nielsen (R-UT) sought to elimi-

nate the legislation's mandatory personnel floors, a provision considered critical by Commission supporters to stop the Office of Management and Budget (OMB) campaign to undermine the CPSC through back door personnel cuts. These anti-CPSC initiatives were defeated 11-8.

Having lost all test votes—including a 10-9 vote on Congressman Ron Wyden's (D-OR) amendment to restore CPSC jurisdiction over fixed site amusement rides—the Commission's opponents attempted to block the Subcommittee's reporting of the bill by claiming the absence of a quorum. That attempt failed, too, as Congressmen John Dingell (D-MI), Tim Wirth (D-CO), Mickey Leland (D-TX), and Jim Scheuer (D-NY) arrived to provide the necessary quorum to send the bill to full Committee.

After the Subcommittee vote, business lobbyists assured all listeners that the outcome would be different in full Committee. Despite these predictions of doom, several delays stretching over 10 days, and the vocal, near unanimous opposition of Committee Republicans, Congressman Waxman and other Commission supporters fought off all gutting amendments, including the key substitute amendment put forward by Congressman Shelby. Ultimately, the Waxman/CPSC bill (H.R. 2668) was reported completely intact by the Committee on May 3 by a 19-15 vote.

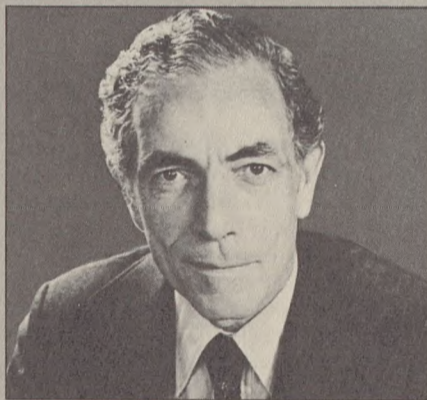
That same week, the House HUD/Independent Agencies Appropriations Subcommittee met in executive session and approved a \$34.5 million appropriation for the CPSC in fiscal 1984. That figure was lower than Commission supporters had hoped it would be; an effort may be made to amend that figure when the Appropriations bill comes to the floor.

Meanwhile, the Senate reauthorization bill (S. 861) is expected to reach the floor in early to mid-June, when holds placed by Senators Jesse Helms (R-NC) and Wendell Ford (D-KY) are expected to be lifted.

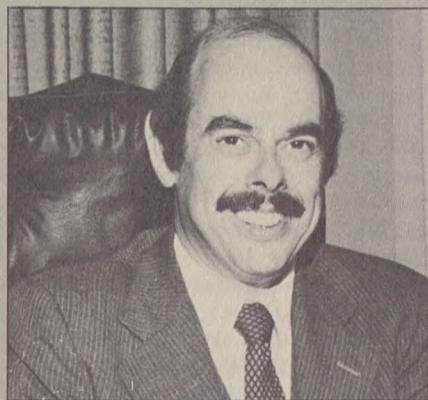
The message in all this action is mixed. Notwithstanding its victories in the House Commerce Committee, the CPSC still faces major hurdles in both the House and the Senate. But the House committee action does suggest that the CPSC's fortunes are on the upswing.

13th Annual Awards Dinner

The Consumer Federation of America will hold its 13th Annual Awards Dinner on Thursday, June 16th at the Capitol Hilton Hotel. The dinner will honor Senator Claiborne Pell and Congressman Henry A. Waxman with the Philip Hart Public Service Award; J. C. Turner, President of the International Union of Operating Engineers, with the Philip Hart Distinguished Consumer Service Award, and Molly Sinclair of *The Washington Post* with the Outstanding Consumer Media Service Award. Special recognition for a lifetime of service to consumers will be given to Congressman Benjamin S. Rosenthal.



Senator Claiborne Pell



Henry A. Waxman



J. C. Turner



Molly Sinclair



Benjamin S. Rosenthal

New Natural Gas Study Discredits Industry Report

by Glenn Nishimura,
CFA Legislative Representative

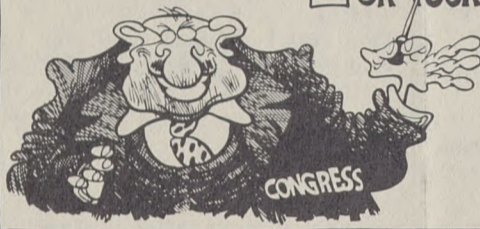
The Consumer Federation of America, in conjunction with the Independent Gas Producers Committee (IGPC), released a study in early May sharply critical of the recent Shell Oil Company study which purported to show the benefits of old gas decontrol. Charging the industry study was "fundamentally flawed and grossly misleading to Congress and the American public," the joint CFA/IGPC analysis showed the additional reserves that would result from the decontrol of old gas are far below those claimed by the Shell study.

At the center of the debate over decontrol of natural gas is the question of old gas (gas drilled before 1977). The Reagan Administration and major gas producers contend that decontrol of old gas would result in increased supplies. Consumer groups, as well as diverse segments of the industry, oppose such a move on the grounds that it would result in dramatically higher gas prices without bringing new supplies, and would fundamentally change the pricing relationship between the major oil companies and independent drillers. By decontrolling the price of old gas, new gas prices would fall correspondingly, ultimately stifling new exploration drilled by independents.

ECONOMICS QUIZ

Q. IN THE AMERICAN FREE MARKET SYSTEM, IF NATURAL GAS IS DEREGULATED AND YOU DON'T LIKE WHAT YOUR LOCAL GAS COMPANY CHARGES, YOU CAN BUY YOUR GAS FROM:

- YOUR LOCAL GAS COMPANY
 YOUR LOCAL GAS COMPANY
 OR YOUR LOCAL GAS COMPANY



KANSAS CITY TIMES/STAR

as well as shallow gas now available under the NGPA."

Further evidence damaging the credibility of the Shell study came from the Department of Energy, a supporter of old gas decontrol. Like CFA and IGPC, DOE calculated that only 5 to 10 tcf would be added to old gas reserves under the Administration's decontrol bill.

Furthermore, a 1982 CFA study conducted by Lower and Agnes Tabah, demonstrated that the decontrol of old gas would provide a windfall of \$40-70 billion to the 20 largest gas producers, who own over 72% of the old gas reserves. This finding, along with the fact that 75% of new exploration is undertaken by independent drillers, and not by major producers, seriously undermines the Administration's claims.

The major alternative to the Administration's plan is the Natural Gas Consumer Relief Act, introduced by Representative Richard Gephardt (D-MO) and Senator Nancy Kassebaum (R-KS). In addition to maintaining controls on old gas, the legislation would roll back prices, limit future increases, extend controls on new gas for two years, and eliminate unfair contract provisions. Both bills are supported by a broad coalition of consumer, labor and industry groups.

Manipulating the Numbers

The Shell Oil study, which has gained the attention of key decisionmakers in Congress during the past month, claimed to show that under decontrol of old gas 52 trillion cubic feet (tcf) of "new" old gas would be discovered. But the CFA-IGPC analysis revealed fundamental flaws in both the Shell methodology and its assumptions.

"Properly analyzed, the figures show only 5.67 tcf of additional reserves would come about from decontrol of old gas, a far cry from the 52 tcf claimed by Shell Oil," said Ann Lower, CFA Energy Specialist and co-author of the study. "Moreover, the fact that the entire supply of old gas must be deregulated, means that the marginal cost of that 5.67 tcf is 10 times the price of deep

Consumer Federation of America's

Thirteenth Annual Awards Dinner

Thursday, June 16, 1983
Capital Hilton Hotel

For reservations call:
Karen Eppsteiner, 387-6121

Consumer Education Conference Held

The Coalition for Consumer Education held its second annual State Coordinator Conference in late April in Washington. Forty-eight coordinators from 45 states attended the conference to learn better organizing techniques and to exchange ideas and experiences with other state consumer education leaders on how to build and maintain an effective state network.

Speakers at the conference included government, consumer, academic and business leaders. Among the speakers were CFA Executive Director Stephen Brobeck; Professor Stewart Lee, editor of the ACCI newsletter; Alex Grant, FDA Associate Commissioner for Consumer Affairs, and Grace Richardson, Consumer Affairs Director for Chesebrough-Pond's and Co-Chairman of the SOCAP Consumer Ed Committee. Virginia Knauer, Special Assistant to the President for Consumer Affairs, and Robert Worthington, Assistant Secretary for the U.S. Department of Education, also spoke.

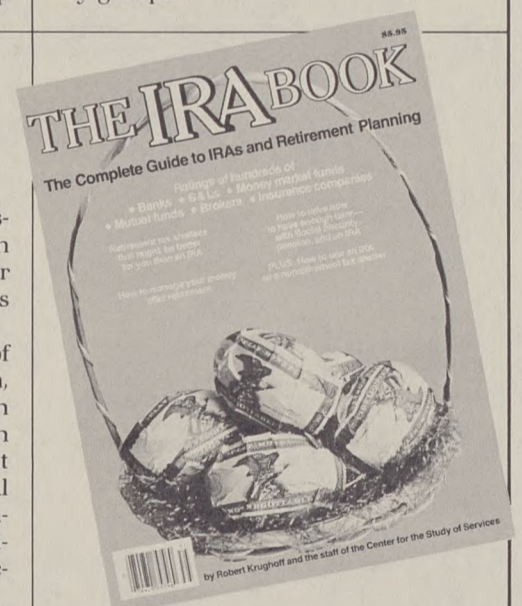
The second day of the conference was devoted to workshops at which each participant developed a state action plan for their state consumer education network. The various coordinators discussed how to best utilize available resources, as well as develop new re-

sources. The coordinators also discussed priority consumer issues in their state and how their consumer education networks could best address those issues.

Judy Cohart, Executive Director of the Coalition for Consumer Education, also released the findings of a Coalition survey of state coordinators which "shows consumers are concerned not only with the high cost of essential goods and services, but also with unemployment and their own vulnerability stemming from a lack of good objective consumer information."

Among the state coordinators attending the conference were several members of CFA-affiliated groups: Bob Adamo, R.I. Consumers Council; Mary Creech, SCAN; Sue Giesberg, Consumer Federation of California; Helen-Kay Kreizenbeck, Idaho Consumer Affairs; Al Luzi, Concerned Consumers League; Phyllis Rowe, Arizona Consumers Council; Bette Samuels, Iowa Consumers League, and Bob Jackson, North Carolina Consumers Council.

The Coalition was founded by CFA in 1981 in response to cutbacks in federal spending on consumer education programs. Now an independent organization, the Coalition numbers more than 2,500 members.



Individual Retirement Accounts are a gift from the U.S. Congress to help us plan for a comfortable retirement. But choosing the right IRA is not easy. A new publication by Robert Krughoff and the staff of the Center for the Study of Services, publisher of the Washington Consumers' CHECKBOOK, helps take away some of the guesswork, however.

The publication looks at the basic facts about IRAs, the alternatives to IRAs, what institutions offer the best plans, and the advantages and disadvantages of various types of investments from bank accounts to common stocks. Already, 85,000 copies of the book have been sold.

The IRA Book is available for \$5.95 per copy from the Center for the Study of Services, 1518 K Street, N.W., Suite 406, Washington, D.C. 20005.

CFAnews

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Product Liability Legislation Undercuts Safety, Justice

EDITOR'S NOTE: S. 44, the Product Liability Act, sponsored by Senator Robert Kasten (R-WI) preempts state product liability law and substitutes a federal code. If enacted, it would apply to injuries to consumers and workers caused by all products—from automobiles to drugs to asbestos to industrial machinery. After six hearings over the last 2 years, S. 44 is currently pending before the Senate Commerce Committee.

by David I. Greenberg,
CFA Legislative Director

The debate over the future of product liability law has moved out of Capitol Hill cloakrooms and onto the *Today Show*, *McNeil-Lehrer Report*, and *Good Morning America*. This shift from back channels to prime time produces an important change in the tone and substance of the public discussions about federal product liability legislation. Gone are the technical, lawyerly terms. Instead, attention now turns to the core political and policy issues.

Innocent Victims v. Ignorant Manufacturers

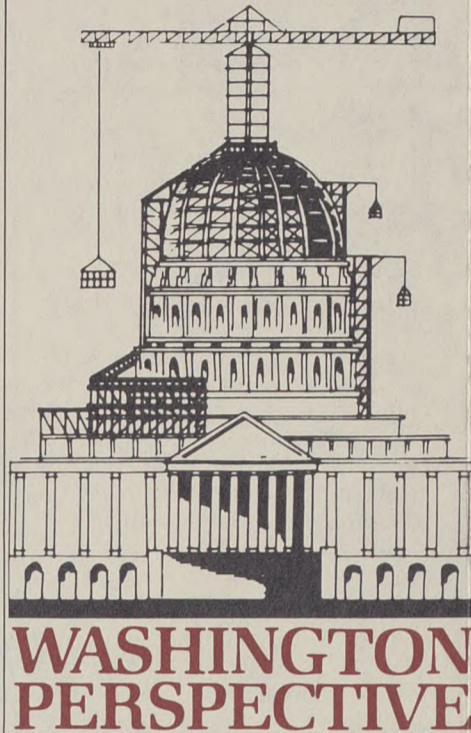
Perhaps the key controversy in the legislation revolves around the changes it imposes on the law of product design and warning. These are the lawsuits in which injured victims assert that a product was either designed in a way making it unreasonably dangerous, or failed to contain a warning or instructions to remove that danger.

Currently, the law in many major states concentrates only on whether the manufacturer's product design or

Under the Kasten bill, the one party which could have prevented injury through research and development... the one party who makes literally millions of dollars from selling the product, ultimately bears no legal or financial responsibility. The victims absorb the entire cost.

failure to warn produced a dangerous defect. The proponents of S. 44 want to shift the issue to the manufacturer's conduct. The bill would insulate manufacturers from liability unless injured plaintiffs prove negligence. Thus, *wrongful conduct* becomes the touchstone of liability rather than *dangerous conduct*.

What this means in political and policy terms is simple. The legislation



chooses innocent manufacturers over the innocent victims of their dangerous conduct. For example, hundreds or thousands of consumers and workers would be unable to recover for exposure to a hazardous chemical—no matter how great the danger, no matter how serious the harm—if the manufacturer demonstrates it could not have known of the risks.

So under the Kasten bill, the one party which could have prevented injury through research and development, the one party with the opportunity to buy liability insurance to pay for those injuries, and the one party who makes literally millions of dollars from selling the product, ultimately bears no legal or financial responsibility. The victims absorb the entire cost.

Safety v. Danger

Proponents of the legislation consistently trumpet it as an engine for safety. But the elimination of strict liability in design and warning cases is the strongest argument that the impact of the bill is actually the reverse. Insulating manufacturers from liability for creating unintentional or nonnegligent dangers removes an important economic incentive for safety. The enlightened states now say to manufacturers, "If you act dangerously, you pay." In the design/warning area, S. 44 says, "You only pay when you are negligent." It doesn't take an engineering genius to see which rule creates stronger encouragement to be safe. Nor does it require political genius to understand why groups as diverse as the AFL-CIO, the American Society for the Prevention of Blindness, the Asbestos Victims of America, the American Public Health Association and DES Action oppose the legislation.

Lawyers v. People

It seems nobody likes lawyers these days. Those pushing the product liability bill press that fact every chance they get—arguing that only lawyers benefit from the current system and attacking the fees that victims' lawyers receive under the contingency system.

Now, consumer groups have fought lawyers in the past on issues like no-fault insurance and will no doubt square off against them again in the future. But as long as victims of dangerous products are stuck with a system that requires them to go to court to collect damages, the issue is the basic standard of liability to be applied by courts and juries, not lawyers and their fees. We will be glad to open negotiations with manufacturers on a compensation system that eliminates lawyers entirely. Until that comes to pass, however, we will not be diverted from seeking justice through the courts.

Funeral Rule Survives

In a major consumer victory, Congress has allowed the Federal Trade Commission's proposed funeral rule to go into effect. Under the 90-day Congressional veto procedure, both the House and the Senate had to pass a resolution rejecting the rule in order to prevent its implementation. The 90-day period expired on May 15.

"The move to veto the rule never got off the ground," said Glenn Nishimura, CFA's Legislative Representative. "The success of the funeral rule is a significant victory—an indication of a swing of support to consumers that was forecast by the results of last November's election."

In early May, the Commerce, Transportation and Tourism subcommittee headed by Congressman James Florio (D-NJ) held hearings on the proposed rule and recommended to the full Energy and Commerce Committee that the rule be left intact.

Barring a successful court challenge by the funeral directors, the rule will go into effect on January 1, 1984. It would require itemized price disclosure, while prohibiting misrepresentation and certain unfair practices.

FTC Reauthorization Hearings Begin

In 1982, having failed to pass a bill reauthorizing the Federal Trade Commission, Congress forced the FTC to operate under a stopgap appropriations act. But under pressure from the appropriations committees this year, both the House and Senate appear to be headed toward approving a new FTC authorization.

In the House, a reauthorization bill should be brought to the floor within the next two months. Ushered through the Commerce, Transportation and Tourism subcommittee and the full Energy and Commerce Committee by Congressman James Florio (D-NJ), the bill calls for increased funding levels over the next three fiscal years, which would rise from the present \$63.6 million to \$70.7 million in 1984 to \$80.9 million in 1986.

Also, a suitable compromise on the professions issues was agreed by all parties, including the American Medical Association (AMA), and the definition of "unfairness" was codified in the bill. Of equal importance were issues not included: an attempt to limit Commission authority by narrowly defining "deception," and a cap on the amount of civil penalties that the Commission could assess in consumer protection cases.

"All in all, the bill that has come out of the Committee is a reasonable compromise which assures that the Commission can continue to function as the chief consumer protection arm of the federal government," said Glenn Nishimura, CFA Legislative Representative.

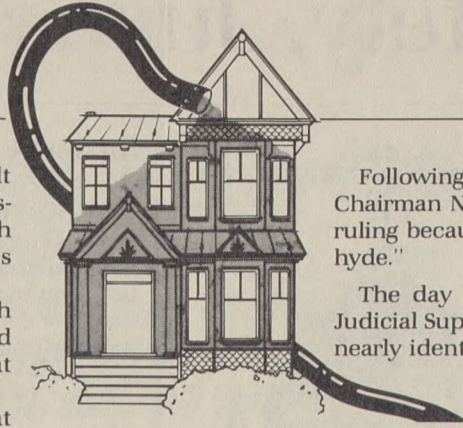
Nishimura warned, however, that the bill will have formidable opposition when it comes to the House floor: "Congressman William Dannemeyer (R-CA) was successful last year in cutting the funding levels approved by the Committee, and he will probably try to repeat that performance this session." Nishimura expressed optimism that with the new make-up of the House, any such attempt would be unsuccessful. But, he added, "we're going to have to work hard to solidify our support for the bill."

On the Senate side, mark-up of an FTC reauthorization bill before the Commerce Committee headed by Senator Bob Packwood (R-OR) is expected in June. There are indications that, contrary to what they have already agreed to in the House bill, the AMA will be moving to place more stringent restrictions on the FTC in the Senate version of the reauthorization bill. If they attempt to do so, the issue of special exemptions for professionals will once again take the spotlight, Nishimura predicted.



Call your Representatives and urge them to support the FTC Reauthorization Bill approved by the House Energy and Commerce Committee, and oppose any moves on the House floor to reduce the agency's funding levels.

Court Rules Against Consumers on UFFI



The Formaldehyde Institute won a court battle, but as a result American consumers could lose their health," said CFA Legislative Director David Greenberg, following a decision by the U.S. Fifth District Court to overturn the Consumer Product Safety Commission's ban on ureaformaldehyde foam insulation.

The court ruled that, although the evidence shows problems with UFFI, the Commission should have undertaken a more lengthy and exhaustive study of the health hazards involved, including at what levels the insulation might present a threat.

"The Commission's defense of its investigations persuades us that UFFI is not completely innocent," the court said. "We agree that taken as a whole, the complaints do identify a real problem."

The court decision, however, criticized the CPSC for projecting that an estimated number of cancers could develop in the exposed population. The court said it was "not good science" to make those projections based upon a single experiment, although the original study was confirmed by two independent studies.

The court also criticized the CPSC for surveying too many complaint homes for off-gassing levels, rather than a random sampling of homes.

The Facts Remain

Greenberg was critical of the court ruling because "it focused too much on procedural problems with the Commission's ban and not enough on the established health hazards," he said.

"We're talking about people's lives. It seems the agency's expertise should have carried the day. No matter what the court said, it's not going to change the fact that formaldehyde insulation is dangerous."

The Consumer Product Safety Commission has filed with the Fifth District Court for a rehearing of the case, but no decision has yet been reached to reopen the case.

Following the court ruling, 23 members of Congress wrote CPSC Chairman Nancy Harvey Steorts, urging the Commission to fight the ruling because of "the dangerous health effects caused by formaldehyde."

The day following the Fifth Circuit decision, the Massachusetts Judicial Supreme Court upheld a statewide ban on UFFI based on data nearly identical to that used by the CPSC in issuing its ban.

Industry Comeback Unlikely

Despite the lifting of the ban, because of the widespread citizen awareness of the risks of UFFI manufacturers are unlikely to resume production of the foam insulation industry. In fact, despite the court's opinion that UFFI was an "effective" insulation, industry spokesperson Lee Edes, Executive Director of the Insulation Contractors Association of America, admits there are real problems with the foam insulation. "Even while the business was in its heyday, there was some question about the effectiveness of that product because of its shrinkage."

An estimated 500,000 homes were insulated with UFFI prior to the federal ban. Congressman Silvio Conte (D-MA) introduced legislation in the last Congress to provide financial benefits to homeowners who removed the insulation.

A number of health hazards have been associated with formaldehyde off-gassing from the foam insulation. Among the possible reactions are eye, nose and throat irritation, memory loss, nausea and vomiting, respiratory complications and many asthma-like symptoms. Laboratory studies have also linked formaldehyde off-gassing with cancer. The CPSC received more than 2,000 consumer complaints about formaldehyde-related illness before it voted to ban the foam insulation in early 1982.

Interest Rates, Foreign Loans Hinder Economic Recovery

Testifying in mid-May on credit conditions and economic recovery before the Domestic Monetary Policy Subcommittee of the House Banking Committee, CFA Executive Director Stephen Brobeck cited statistics to show key economic indicators are well below levels of the late 1970s. He argued that consumer interest rates have depressed consumer spending on financed purchases, and he presented figures demonstrating the strong association between mortgage interest rates and housing starts, and between car loan rates and new domestic auto sales. Rising rates help account for the 50% decline in housing starts and 35% drop in auto sales between 1978 and 1982, as well as the more recent increases in these indicators, he said.

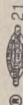
Brobeck also suggested that rising personal bankruptcies and escalating rates on consumer deposits do not adequately explain the persistence of high consumer loan rates, which remain 3-4 percentage points above levels of the mid-1970s. "Bankruptcy losses represent a miniscule percentage of consumer credit extended—about 1/10 of one percent," he said. "And banks still hold an estimated \$280 billion of consumers' money in low or no-interest bearing accounts."

Massive international lending and recent hikes in state usury ceilings have been especially influential in pushing up rates, according to Brobeck. Between 1979 and 1982, with their foreign loans, banks transferred \$100 billion out of the U.S. "This loss of domestic credit tended to push up rates, and now that several Third World borrowers have defaulted on principal payments, banks are keeping consumer rates artificially high to build up their services," Brobeck told the subcommittee. Higher state ceilings have allowed banks to charge higher rates, which they have done, he said.

Brobeck concluded by offering three suggestions to Congress: Defeat Federal preemption of state usury ceilings. Reduce the Federal deficit. And restore standby authority for credit controls as a tool for restricting such nonproductive uses of credit as many corporate takeovers and unsound international loans.

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