



## Congress Leaves Terror Insurance Issue To States

Congress adjourned for the year without passing terrorism insurance legislation, increasing pressure on states to act immediately to guarantee availability of affordable terrorism coverage.

Although the House passed legislation, H.R. 3210, in late November, the Senate failed to act.

With about 70 percent of commercial reinsurance policies that include terrorism coverage due to expire January 1, that leaves it to the states to act to prevent an insurance crisis.

"The states are now playing catch-up because they did little to prepare for this worst case scenario," said CFA Insurance Director J. Robert Hunter. "But the sky will not fall if the states take prompt steps to guarantee coverage and control sky-rocketing rates."

CFA has repeatedly urged states to prepare for just this eventuality, writing to all state insurance commissioners in mid-November, for example, outlining steps to guarantee availability and affordability of terrorism coverage that do not require congressional action.

CFA reiterated that message in late December, as Congress left for the year without resolving the issue.

Specifically, to assure affordability, CFA urged states to:

- require insurers to specify the price for terrorism coverage on a separate line item of the insurance bill;
- require insurers to disclose rate-making methods and data to be used prior to any rates' becoming effective; and
- pre-approve all insurance rates.

### States Should Act To Ensure Availability

CFA also urged states to call the National Association of Insurance Commissioners (NAIC) into emergency session to consider ways states can make terrorism insurance available and maximize the spread of the risk through FAIR plans or reinsurance approaches.

As part of that process, CFA suggested NAIC convene representatives that represent a higher risk for terrorism coverage to urge them to collaborate by using such methods of self-insurance as the Federal Risk Retention Act.

So long as states properly regulate the market, no federal back-up is needed for policies sold to individuals and small businesses, as these risks are spread all over the nation and can easily be insured for little or no price increase, Hunter added.

Finally, CFA urged states to reject most insurer requests to exclude terrorism coverage.

"Certainly, there is no need for such exclusions for personal lines or small commercial insurance risks," Hunter said. "Larger commercial risks may require

the exclusion if the reinsurance market for terrorism is unavailable."

Unfortunately, early signs were not encouraging. The *Wall Street Journal* reported that "the vast majority" of state insurance commissioners, meeting by conference call on the day Congress adjourned, had said they would approve the exclusions that had been requested by Insurance Services Office, Inc., which produces standardized policy forms used by most insurers.

Only California, New York, and Connecticut indicated they would not approve the exclusions, according to the *Journal* article.

"No state needs to allow terrorism exclusions for home insurance, since homes are spread throughout the nation, and terrorists are not about to target

homes," Hunter said. "The ISO request should be immediately rejected by all states."

This follows earlier missteps by commissioners, who, instead of preparing to step in to meet the emergency, actually voted at the December NAIC meeting to roll back their oversight of commercial insurance.

Specifically, an NAIC committee voted 18-4 in December to adopt a new Property and Casualty Commercial Rate and Policy Form Model Law which would, among other things, exclude some lines of insurance from any rate filings at all and eliminate the requirement for any supporting documentation of rate filings in other lines of insurance.

The model law also would remove the requirement that insurers receive prior

approval of policies for many commercial transactions.

"If states adopt the model law, insurers could add terrorism exclusions at will and hike prices with no controls," Hunter said. "To actively invite such activity by loosening the regulatory reins at this time is beyond belief."

Congress is expected to take up the issue again when it returns in late January.

### Credit Insurance Overcharges Hit \$2.5 Billion

Inaction by state insurance regulators is also an important cause of rising credit insurance overcharges, which reached \$2.5 billion in 2000, according to a report released in November by CFA and the

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## States Propose Strong Microsoft Settlement

The state attorneys general who refused to sign on to the Department of Justice's proposed settlement of the Microsoft antitrust case filed a proposed settlement of their own in December that has won high praise from consumer advocates.

"Unlike the ineffective settlement proposed by the Justice Department, this remedy would protect consumers and put an end to Microsoft's illegal and abusive practices," said CFA Research Director Mark Cooper.

"By promoting competition and consumer options, the states' proposal would save consumers billions of dollars, encourage innovation in the software industry, and promote consumer choice," he added.

The proposed settlement was filed by attorneys general from nine states and the District of Columbia.

CFA, Consumers Union, U.S. Public Interest Research Group, Media Access Project and 10 state consumer organizations had written to the attorneys general shortly before the deadline for filing a settlement proposal supporting their decision to push for a stronger remedy.

In that letter, the groups urged the attorneys general to propose strong remedies in five key areas that the Microsoft-DOJ proposal "grossly mismanaged":

- effective enforcement, including substantial penalties for failure to comply;
- meaningful access by software developers to technical specifications and interfaces to develop products that run on the Windows platform;
- ability of computer manufacturers to install non-Microsoft products free from fear of retaliation;
- real choices for consumers between

Microsoft and non-Microsoft products, assured by a desktop and boot screen that are competitively neutral; and

- protections in the business and government markets.

### Consumers, Competition Fully Protected

"The proposed remedy effectively deals with all these issues in a way that will fully protect consumers and competitors alike," CFA, CU, and MAP wrote in a statement on the proposed settlement.

Specifically, the groups praised the states' proposal on the grounds that it would protect the freer creation, distribution, and use of software, both by requiring Microsoft to license unbundled versions of Windows and include Java and by requiring disclosure of code to all middleware developers, not just Microsoft application developers.

It also "advances genuine respect for end user preferences" by: ensuring neutral desktops that can contain non-Microsoft products, by protecting manufacturers who choose other products from retaliation, and by requiring Microsoft to port all Windows applications to rival operating systems, such as LINUX or Apple.

It ensures swift and meaningful enforcement, by proposing a special master to oversee implementation and an independent compliance group insulated from Microsoft.

And it creates an incentive for Microsoft to comply with the remedy by establishing substantial penalties, including fines and, ultimately, opening of the operating system, should Microsoft return to its anticompetitive practices.

In contrast to the DOJ proposed settlement, which would "largely let Microsoft

determine what future behavior is appropriate and argue over future enforcement, this settlement contains self-executing, bright line tests to force future pro-consumer, pro-competitive behavior," Cooper said.

### Private Case Remedy "Grossly Inadequate"

Meanwhile, a settlement has also been proposed in separate private antitrust litigation against Microsoft that would require the company to put software and computers into some of the nation's poorest schools.

CFA, MAP, and U.S. PIRG wrote to the judge overseeing the case in November to express their opposition to the proposed settlement in its current form.

The groups outlined three fundamental problems with the proposed settlement:

- it does not adequately remediate the harm Microsoft has caused, which includes tens of billions of dollars in overcharges to consumers;
- because the financial penalty embodied in the settlement is so small, it will have little or no deterrent effect; and
- the structure of the settlement appears to assist, rather than restrain, Microsoft's effort to extend its power in the educational market, which has to date been dominated by Apple.

"Microsoft was found to have violated the law by a unanimous *en banc* ruling of an Appeals Court," the groups wrote. "It would make a mockery of the antitrust laws to allow such a monopolist to settle consumer claims by putting a few pennies on the dollar into a fund that is then used to distribute the very products that have been the instrument of

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# Ambitious Agenda Faces Banking Committee

Speaking at CFA's financial services conference in November, Senate Banking Committee Chairman Paul Sarbanes (D-MD) laid out an ambitious program for the committee and pledged to give consumer and investor protections a prominent place on that agenda.

Although the September 11 terrorist attack forced the committee to refocus its attention on other issues, such as financial system stability and security, he said, the committee is already beginning to return to the consumer issues it temporarily set aside.

Key issues, he said, will include: financial literacy, banking access for low- and moderate-income individuals, predatory lending, including payday lending, privacy, credit card abuses, securities disclosure, and securities analyst conflicts of interest.

"In the past, we've had to fight uphill battles even to get hearings on some of these issues," he said.

While it may not be possible, or even appropriate, to legislate in all of these areas, well conducted hearings can promote progress, both by exposing abuses and thus encouraging industry to abandon harmful practices and by spurring federal agencies to act, he said.

## Needs of Unbanked Among the Most Pressing

Sen. Sarbanes put special emphasis in his remarks on the need to bring the



SEC Chairman  
Harvey Pitt

Sen. Paul  
Sarbanes (D-MD)

unbanked into the system.

"If we can get the people who are outside the system into the financial mainstream — with all the protections that exist there — they can become full players in the working of our economy, which is tremendously important," he said.

It is also part of the solution to the predatory lending problem, he said, as are efforts to promote financial literacy. "We're trying to address that issue [predatory lending] on a whole range of fronts," he added.

The terrorist attack, although it shifted attention away from consumer issues temporarily, also should refocus us on "our basic responsibility ... to continue to fight for the principles we believe in," he said, and "to ensure that our society stands for the kind of decency and justice in our dealings with one another that are fundamental to our democratic society."

Securities and Exchange Commission Chairman Harvey Pitt discussed "how investor interests are driving the SEC's current and planned initiatives" and called on consumer groups to work in partnership with the SEC "to ensure that U.S. markets are transparent and hospitable to the entire spectrum of investors."

## Disclosure, Enforcement Reform Top SEC Priorities

Two priorities for the commission, Pitt said, are "improving financial disclosure to put more understandable and better information into the hands of investors and a program of real time enforcement that will speed investigations and limit investor losses."

While our current disclosure system is "the best in the world," it is based "on the now far too narrow concept of periodic, that is quarterly and annual, reporting," he said.

"I passionately believe that our disclosure system can be strengthened and supplemented, so that it will put information into investors' hands more promptly and better help investors sort through the massive amounts of materials they now receive, but which are often not user friendly," he said.

This will include efforts:

- to ensure that financial statements "read plainly, easily, and simply, but not if doing so comes at the expense of mask-

ing, obscuring, or skewing a public company's true financial status;"

- to promote greater comparability among and clarity of *pro forma* disclosures; and

- to impose a new obligation on companies to "disclose unquestionably significant information whenever it arises and becomes available, instead of being able to wait to disclose the information when the next-scheduled quarterly or annual report is due."

In the area of enforcement, Pitt said he hopes to move the agency toward a "real time enforcement" policy that "aims to improve our protection of investors by enabling us to act quickly and expeditiously."

"Our goal is to provide more effective and quicker recompense for investors, and better coverage of the markets with our limited enforcement resources," he said.

Finally, Pitt announced SEC plans to convene the first-ever "Consumer Summit," broadcast over the Internet, designed to give all Americans "an opportunity and an avenue to weigh in on the broad policy objectives that ultimately could impact their ability to send their children to college or retire comfortably."

"We aren't here just to listen to corporate America's concerns. We want to hear the concerns of America's investors," he said.

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Center for Economic Justice (CEJ).

Consumer credit insurance is insurance sold in connection with a loan that is designed to pay off the loan in the event the borrower dies (credit life), is disabled (credit disability), or becomes unemployed (credit unemployment). Credit property insurance pays to repair or replace property purchased (or pledged as collateral) with the loan.

In 2000, consumers paid about \$6 billion for credit insurance. Had states implemented the credit insurance rate standards of the National Association of Insurance Commissioners (NAIC), however, consumers would have paid only \$3.5 billion.

Based on that analysis, the study concludes that consumers paid \$2.5 billion in overcharges in 2000, or 75 percent more than they should have had to pay. For credit unemployment insurance, the overcharge was 1,000 percent.

"In many states, credit life and credit disability insurance offers such poor value that consumers should not purchase it unless they are over age 50 or in poor health or both," said CFA Life Insurance Actuary James Hunt.

"In most states, officials should lower maximum rates allowed, better enforce those rate caps, limit the sale of excessive amounts of credit life insurance, and cor-

rect unfair refunds when debts are refinanced," he added.

## Loss Ratios Below Recommended Standards

The most important measure of the reasonableness of credit insurance benefits in comparison to cost is the loss ratio.

CFA has recommended that states set a minimum loss ratio of 70 percent. NAIC model statutes and regulations for credit insurance specify a 60 percent minimum loss ratio.

Yet, by 2000, the combined loss ratio for all coverages was only 34.2 percent, down from 42.5 percent in 1995. Credit unemployment and credit property had loss ratios of 5.8 percent and 14.7 percent respectively, while credit life and credit disability had loss ratios of 40.7 percent and 46.1 percent respectively.

Credit insurance is regulated by the states, and in almost every state the law empowers the insurance commissioner to disapprove credit life and disability premiums if the benefits provided are not reasonable in relation to the premiums.

Yet the CFA/CEJ report found that almost half the states were failing to enforce existing loss ratio standards. Other states without loss ratio standards were failing to protect credit insurance consumers from excessive charges.

"A decade ago, CFA reported on the

poor value of credit life insurance," Hunter said. "Today, consumers receive even worse value for this insurance than they did back then."

"Our review of state activities shows that, while a number of states have taken steps to improve the situation for credit insurance consumers, almost half of state insurance regulators have failed to take the most basic steps to protect these consumers — simply enforcing existing laws and regulations," said CEJ Executive Director Birny Birnbaum.

## States Fail To Enforce Standards

The report criticized 23 states for failing to enforce existing credit life and/or credit disability loss ratio standards. In contrast, consumers in Maine, Virginia, New York, Pennsylvania, Maryland, and New Jersey receive relatively good value for credit life and credit disability insurance, with loss ratios of near 60 percent or greater, the report found.

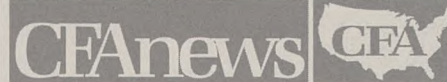
No state enforces credit unemployment rate standards, although a few have taken steps in recent years to improve the situation, including Texas, Virginia, Maryland, and Iowa.

Even in those states that do a better job of regulating credit life and disability rates, the failure to effectively regulate credit unemployment, leave of absence, and property rates undermines the life and disability efforts, because three or more of the coverages are typically sold as a package.

CFA and CEJ sent copies of the report to state insurance commissioners in November and called on them to more aggressively enforce credit insurance laws: by lowering credit life and disability insurance *prima facie* rates, disproving excessive credit unemployment and credit property rates, and stopping the abuses of single premium credit

insurance.

The report and a news release on the report are available on the CFA website at [www.consumerfed.org/credins.pdf](http://www.consumerfed.org/credins.pdf) and [www.consumerfed.org/credinspr.pdf](http://www.consumerfed.org/credinspr.pdf) respectively. Extensive additional information on the terrorism insurance issue is also available on the website, including at [/disaster\\_terrorism\\_insurance\\_no\\_passage\\_pr2.PDF](http://disaster_terrorism_insurance_no_passage_pr2.PDF), a news release outlining in more detail steps states should take to address the problem.



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that abuse."

"Far from remedying the damage, [such a settlement] would inflict additional harm upon the injured class of consumers by extending Microsoft's monopoly products and diminishing the effectiveness of the antitrust laws."

They urged the court to disapprove the proposed settlement.

Additional information on this issue is

available on the CFA website at [www.consumerfed.org](http://www.consumerfed.org), including the group letter to the AGs at [www.consumerfed.org/Groups\\_letter\\_to\\_AGs\\_20011205.PDF](http://www.consumerfed.org/Groups_letter_to_AGs_20011205.PDF), a news release on the letter at [/groups\\_letter\\_AGs\\_20011205\\_release.PDF](http://groups_letter_AGs_20011205_release.PDF), and a letter on the proposed private settlement at [/classaction\\_letter\\_20011127.pdf](http://classaction_letter_20011127.pdf).



## Internet Complaints Continue To Rise

Consumer complaints continue to rise, with Internet complaints making it into the "top ten" most common complaints for the first time in 2000, according to the tenth annual consumer complaint survey released in November by CFA and the National Association of Consumer Agency Administrators (NACAA).

"Internet complaints have been rising rapidly over the last few years and have made it to our top ten list for the first time," said NACAA Executive Director Wendy Weinberg. "While there are many benefits to shopping over the Internet, consumers need to be aware of the risks."

The survey asked consumer agencies across the country to list the categories that generated the most consumer complaints in 2000.

### Auto Sales, Household Goods Top List of Complaints

Auto sales and household goods led the list, with 73 percent of agencies including these items on their lists. Other common

areas of complaints, and the percentage of agencies listing them, were: home improvement (70 percent), auto repair (65 percent), credit/lending (55 percent), collection (25 percent), utilities (20 percent), and Internet, landlord-tenant, mail order, and telemarketing (all at 15 percent).

"Debt related complaints are rising in our surveys," noted CFA Consumer Protection Director Jean Ann Fox. This raises special concerns during times of economic hardship, she said. "The more desperate people are for money, the easier it is for con artists to prey on them."

The largest increase in complaints from 1999 to 2000 involved the Internet and utilities, according to the survey, with Internet complaints rising an average of 62 percent among all agencies surveyed, and utilities complaints rising an average of 52 percent.

The most common types of Internet complaints concerned merchandise ordered over the Internet, problems with auctions, and problems with Internet Service Providers. The most serious com-

plaints against utilities included bait and switch fees, billing errors, and disappearing "minutes" on pre-paid telephone calling cards.

The survey also asked complaint agencies to name the industry in which companies are most likely to go out of business. That list was headed by home repair contractors, followed by furniture stores, health studios, travel agencies, and Internet service providers.

### Companies That Go Under Pose Added Risks

"Companies that go out of business may leave a consumer with no recourse after the consumer makes a deposit for goods or services," Fox said. "In times of economic downturn, it can be expected that consumers' problems with folding companies will only multiply."

This is particularly troubling, Weinberg added, because it can be "quite difficult for consumer agencies to track down companies that close down, even if they reopen under

another name."

Consumers need to be particularly careful when dealing with home repair companies, since they are both third on the list for most frequent complaints and at the top of the list of companies likely to go out of business, they warned.

The survey also showed that consumer protection agencies are struggling to protect the public under increasing caseloads and decreasing budgets.

While NACAA members handled on average eight percent more complaints in 2000, they saw no corresponding increase in their budgets. Worse, since 1996, budgets for the agencies have grown only three percent, while caseloads have grown 58 percent.

The report and a news release on the report are available on the CFA website at [www.consumerfed.org/NACAA\\_CFA\\_surveyrpt2001.pdf](http://www.consumerfed.org/NACAA_CFA_surveyrpt2001.pdf) and [/NACAA\\_CFA\\_surveypr2001.pdf](http://www.consumerfed.org/NACAA_CFA_surveypr2001.pdf) respectively.

## At the Agencies

### FEDERAL TRADE COMMISSION

The Federal Trade Commission (FTC) in December approved **Nestle's \$10.4 billion purchase of Ralston Purina**. To win approval, the companies had only to agree to sell two of Ralston's dry cat food brands. CFA Associate Director Arthur Jaeger had written to FTC Chairman Timothy Muris earlier in December reiterating CFA's opposition to the merger on the grounds that it will "lead to consolidation in the already dangerously concentrated U.S. pet food industry." The merged company will control roughly 45 percent of the overall pet food market and an even higher percentage of the dry pet food market, Jaeger noted. "Consumers are best served by vigorous, competitive markets. This merger will produce the opposite," he said.

### FEDERAL RESERVE BOARD

The Federal Reserve Board issued new rules in December to curb **predatory mortgage lending** practices. The Fed acted to limit "flipping," the refinancing of mortgages to produce more fees for lenders and brokers, within the first year of the mortgage. It also: lowered the threshold of fees and interest rates triggering disclosure under the Home Ownership and Equity Protection Act, limited the ability of lenders to levy prepayment penalties, and clarified that lenders will be deemed in violation of the law if they fail to verify loan application information. It failed, however, to prohibit lenders from refinancing into high-cost loans zero-interest and low-interest loans provided to low-income consumers by government and non-profit agencies. National Consumer Law Center (NCLC), which commented on the proposed rules on behalf of low-income consumers, praised the Fed for "recognizing the severity of predatory mortgage lending" and for "beginning to address the problem by tightening the regulations for high-cost loans and prohibiting certain unfair practices." "There is much more to be done, however, before America's neighborhoods are no longer facing the blight of foreclosure brought on by the legal, but unethical and unconscionable

practices of predatory lenders," said NCLC Managing Attorney Margot Saunders.

### FOOD AND DRUG ADMINISTRATION

The Food and Drug Administration (FDA) held a public hearing in December on the **Prescription Drug User Fee Act**, which is due to be reauthorized next year. CFA Legislative Director Travis Plunkett testified at the hearing and praised the agency for its efforts "to solicit input about PDUFA from the people whose health and

safety is most directly affected by it: patients and consumers." Plunkett explained CFA's view that "PDUFA has not provided a net benefit to the public health," because it: has made FDA financially dependent on an industry it regulates, creating a conflict of interest that could compromise drug safety; sets inappropriate and potentially dangerous performance goals; and drains resources from other critically important FDA public health functions. To solve these problems, CFA recommends

adequately funding FDA from general revenues or, absent adequate independent funding, erecting a strong "fire-wall" between the disbursement of user fees and the performance by the FDA of its mandated responsibilities. CFA also recommends overhauling PDUFA's performance goals to put public health first, give FDA greater flexibility in implementing the performance goals, and to allow for greater differentiation within the standard and priority review categories.

## On the Hill

### Creditors' Attorney Calls Bankruptcy Bill Bad Idea

A prominent creditors' attorney has said the bankruptcy legislation being considered in Congress would "disrupt the system and drive up the cost of bankruptcy for debtors and creditors," according to a December article in the Lexington Herald-Leader. Richardo I. Kilpatrick, President of the American Bankruptcy Institute, reportedly predicted that, if the bill is enacted, it will bring the bankruptcy system to a halt. This view has already been expressed by bankruptcy judges and debtors' attorneys, but has been resisted by creditors, who are aggressively pushing the legislation. "It is a sign of how harsh and unbalanced this bill is that even creditors' attorneys are criticizing it," said CFA Legislative Director Travis Plunkett. Although the conference committee continued to meet, Congress adjourned for the year without taking additional action.

### Vote on Anti-consumer Broadband Bill Delayed

House leaders announced in December that they would delay until next March a vote on legislation, H.R. 1542, that would allow the regional Bell companies to provide high-speed Internet services across regional boundaries before opening their local markets to competition. This was a

blow to the Bell companies, which had pushed hard for a vote on the bill before the end of the year. CFA has opposed the bill on the grounds that it would jeopardize competition in both local telephone and advanced Internet services markets. The bill would remove one of the strongest incentives the Bells have to open their local markets to competition and deny competitors access to the existing local phone network, access they need in order to provide consumers with an alternative to the Bells' high-speed Internet service, said CFA Research Director Mark Cooper. "This bill would be a boon for the Baby Bells, but a disaster for consumers," he said. The bill faces strong opposition in the Senate from Commerce Committee Chairman Ernest F. Hollings (D-SC), who has vowed to block it.

### Pediatric Exclusivity Bill Passes Minus One Loophole

Congress cleared legislation in December designed to promote testing of medicines for use on children. While supporting its underlying goal, CFA has opposed the legislation on the grounds that it does too little to keep costs down for consumers. In a small but significant victory for consumers, the final bill did not include a loophole that would have given Bristol-Myers another three years of protection from competition for its diabetes drug, Glucophage. "We're glad

that Congress stopped Bristol-Myers' outrageous attempt to manipulate the patent laws for their own benefit," Plunkett said, "but the overall effect of the bill will be to drive up already skyrocketing drug prices by delaying the introduction of generic alternatives."

### Terrorist Attack Used To Push Gun Show Loophole Bill

Sen. John McCain (R-AZ) and Americans for Gun Safety have used the threat of terrorist attack as an argument for passing Sen. McCain's compromise gun show bill. In fact, however, that argument exposes the bill's serious shortcomings, said CFA Project Director Susan Peschin. "The whole premise behind closing the loophole is to make sure all firearm sales at gun shows are treated equally," Peschin explained. "The McCain gun show bill would do the opposite." The problem, she said, is that the bill sets a 24-hour time limit for law enforcement to conduct background checks for sales by private individuals, but most gun shows occur on weekends when courts are closed. The solution, she said, is passage of "The Gun Show Background Check Act," sponsored by Sen. Jack Reed (D-RI), which would apply uniform standards to all sales at gun shows and provide up to three business days for the background checks.



## Fifth Circuit Deals Blow To Food Safety

In a decision that seriously undermines food safety, the U.S. Court of Appeals for the Fifth Circuit ruled in December that the U.S. Department of Agriculture has virtually no authority to control the presence of disease causing organisms in raw meat and poultry products.

The decision, which involved USDA's efforts to close Supreme Beef Processors after the company failed three sets of Salmonella tests over a period of almost a year, went far beyond the basic issue of enforcing pathogen limits in a beef grinding plant.

The Fifth Circuit, referring to a 1974 case, *APHA vs. Butz*, stated that Salmonella alone is not an adulterant in raw meat and poultry, since "normal cooking practices for meat and poultry destroy the Salmonella organism, and therefore the presence of Salmonella in meat products does not render them 'injurious to health' ..."

The Fifth Circuit then quoted the 1974 case, saying, "American housewives and cooks are not stupid, and their methods of preparing and cooking food do not ordinarily result in salmonellosis."

"This assertion is 30 years out of date and ignores current public health data," said Carol Tucker Foreman, Director of CFA's Food Policy Institute.

"A substantial portion of Salmonella food poisoning is caused by contaminated meat touching other foods," she noted. "Today we eat almost half of our meals away from home. Neither 'housewives' nor judges control what happens in a restaurant kitchen."

Although USDA officials have acknowledged privately that the decision basically strips the department of power to control food poisoning bacteria in raw meat and poultry, the Bush Administration has responded by proposing only minor regulatory adjustments.

### Administration Fails To Respond

"The court has gutted a major part of the nation's food safety system, and USDA wants to apply a band-aid," Tucker Foreman said. "If USDA cannot control pathogens in a major portion of the food supply, it is fair to ask why we're spending \$800 million annually for meat and poultry inspection."

Members of the Safe Food Coalition, including CFA, met with Under Secretary for Food Safety Elsa Murano in December to convey their concerns.

They were joined afterwards by Former Agriculture Secretary Dan Glickman, Sen. Richard Durbin (D-IL), and Sen. Hillary Clinton (D-NY) for a news conference calling on Congress and the Bush administration to take steps to better protect the food supply.

Specifically, the groups asked Congress to:

- rewrite the federal meat inspection act to provide clear government authority to test for Salmonella and other pathogens and to shut down plants that consistently fail to meet minimum pathogen standards; and
- to provide extra funds for more federal plant inspectors to oversee beef grinding, increase Salmonella testing, and

reassess meat and poultry safety inspection plans.

They called on the administration to support these legislative efforts and to:

- assure that grinding plants are producing clean, safe meat and poultry by requiring suppliers to certify that their products are relatively free of pathogens and apply antimicrobial treatments to all trimmings coming into their plants, among other things;
- continue to test for Salmonella in all meat and poultry plants and withdraw inspectors from those plants that USDA says are unaffected by the court decision if they repeatedly fail Salmonella tests;
- make public through the Internet and news releases information on plants that repeatedly fail Salmonella tests and from which inspectors cannot be withdrawn as a result of the court decision; and
- reassess and approve in advance all plants' Hazard Analysis and Critical Control Point or safety inspection plans to assure they are producing clean, safe products.

"The Supreme Beef decision presents the administration and Congress with a choice," the groups said in a written statement. "They must determine whether to side with the least responsible meat and poultry companies ... telling the public that, when it comes to eating meat and poultry, it's buyer beware. Or they can accept and act on their obligation to protect public health."

### Supreme Court Denies Cable Market Limit Appeal

In another consumer court case, the

Supreme Court announced in December that it would not hear an appeal brought by CFA, Media Access Project, Consumers Union, Center for Media Education, and others regarding limits on the market share a single company can hold in the cable television market. The Federal Communications Commission had set a 30 percent cap on the amount of the pay television market a single company can serve, but the U.S. Court of Appeals for the District of Columbia ruled last March that the 30 percent limit was arbitrary and capricious. The FCC did not join the consumer groups' appeal and has instead begun a new proceeding to rewrite the rules.

### Supreme Court Ruling Favors Credit Bureaus

The Supreme Court ruled in November that a lower court had improperly extended the filing deadline in an identity theft case against TRW Inc. and Trans Union LLC. The decision overturned an appeals court decision last year that the two-year statute of limitations does not begin until the consumer discovers the wrong-doing. CFA signed on to an *amicus brief* filed by the National Association of Consumer Advocates which argued that the interpretation of the statute of limitations ultimately adopted by the Supreme Court would seriously diminish the ability of individuals to bring lawsuits and thus would erode the primary incentive Congress provided to encourage reporting agencies to meet their obligations to protect the integrity and confidentiality of individual consumer reports.

## Holiday Spending Cuts Less than Expected

As they prepared to shop for the holidays, consumers planned holiday spending cuts that are less than might be expected in light of the nation's worsening economic outlook, according to the second annual holiday spending survey released in November by CFA and the Credit Union National Association (CUNA).

Consumers do plan to cut back on holiday spending this year, according to the survey conducted in late October by Opinion Research Corporation International, but not much more than last year. And fewer consumers are worried about their debt.

Of the 1,019 consumers surveyed, over one in four (28 percent) said they plan to spend less this holiday season than last year, compared with only 13 percent who plan to increase holiday spending. Still, a majority (57 percent) said they plan to spend the same as last year. On last year's survey, 24 percent planned to spend less, 18 percent planned to spend more, and 56 percent planned to spend the same.

"Given significant declines in consumer confidence and the rise in unemployment, some reduction in holiday spending plans is not at all surprising, but our results suggest that the contraction in holiday spending may not be as pronounced as we might have expected," said CUNA Chief Economist Bill Hampel.

Another surprising finding of the survey is that fewer consumers this year are worried about paying off current and future debts. The percentage of consumers concerned about meeting monthly payments on current consumer debt (excluding mortgage debt) fell from 48 percent last year to 39 percent this year. Moreover, the percentage of those with credit card debt who expressed concern at being able to pay off credit card balances resulting from holiday spending also declined significantly, from 35 percent last year to 27 percent this year. "For the first time in a decade, we have seen a sharp drop in consumer concern about paying off debt," said CFA Executive Director Stephen Brobeck.

The survey suggests several reasons for this change. In addition to cutting back holiday spending, consumers plan to finance less of this spending with credit card debt. Also, fewer of the surveyed consumers are currently carrying credit card debt. "Certainly one important reason for the drop in consumer concern about paying off debt is that a growing number of Americans are paying off or managing their consumer debts effectively," Brobeck said.

**CFAnews**

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