IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE EX REL. CITIFINANCIAL, INC.,

Petitioner,

vs. **CASE NO. 081254**

JOHN T. MADDEN, Judge, Marshall County, and
PAUL W. LIGHTNER,

Respondents.

BRIEF *AMICUS CURIAE* OF THE AMERICAN FINANCIAL SERVICES ASSOCIATION AND THE CONSUMER CREDIT INDUSTRY ASSOCIATION IN SUPPORT OF CITIFINANCIAL, INC.'S PETITION FOR A WRIT OF PROHIBITION

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May it please the Court:

The American Financial Services Association ("AFSA") and the Consumer Credit Industry Association ("CCIA"), for their brief *amicus curiae* in support of the Petition of CitiFinancial, Inc. for a Writ of Prohibition, state:

INTERESTS OF *AMICI CURIAE*

AFSA is the national trade association for the consumer credit industry protecting access to credit and consumer choice. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

AFSA has provided services to its members for over ninety years. AFSA's officers, board and staff are dedicated to continuing this legacy of commitment through the addition of new members and programs, and increasing the quality of existing services.

CCIA was originally organized in 1951 as the Consumer Credit Insurance Association to be the trade association of insurance companies underwriting consumer credit insurance products sold by lenders and assuring loan repayment in the event of consumer/debtor death or disability. The scope of activity evolved as new insurance products were introduced to the marketplace, products like credit property, credit unemployment, and collateral protection. More recently this industry - providing consumers with the financial security of knowing debt will be repaid or assets protected in the event of unexpected but foreseeable events - has introduced non-insurance debt and asset protection products.

CCIA promotes high ethical standards for the business of consumer credit insurance, related lines of insurance, and other consumer credit protection products and services. Whether credit insurance or debt and asset protection products, individuals and financial services providers are regularly confronted with changing compliance expectations. CCIA provides the professional staff and infrastructure enabling members to decrease time spent researching new issues and increase the accuracy and usefulness of information.

A number of AFSA's and CCIA's members offer credit insurance to their customers in West Virginia. This credit insurance is offered on forms approved by the West Virginia Insurance Commissioner at premiums approved by the Insurance Commissioner. Per West Virginia statutes, the credit insurance is written by insurers licensed to offer and write insurance in West Virginia.

Though this action was initially only a simple action related to Lightner's failure to timely pay a loan he obtained from CitiFinancial, Lightner has turned this garden-variety collection action into a judicial referendum on the entire consumer credit and credit insurance industries, including AFSA's and CCIA's members doing business in West Virginia. The Circuit Court missed an opportunity to return this action to its proper status as a collection action when it denied CitiFinancial's Motion for Dismissal, for a Stay, and for Partial Summary Judgment. Now, CitiFinancial has been placed in the position of defending itself from claims in Circuit Court that the West Virginia Legislature has committed to the expertise and jurisdiction of the Insurance Commissioner.

AFSA and CCIA's brief will provide needed background for the Court with regards to the nature and purposes of credit insurance. AFSA and CCIA's brief will also explain how the decision by the Circuit Court to ignore the express statutory structure allowing CitiFinancial to offer the disputed coverage at the rates offered to Lightner, as well as the delegation of primary jurisdiction by the Legislature to the Insurance Commissioner, will lead to unintended litigation over credit insurance premiums. That litigation will, in turn, damage the credit industry, the insurance industry and consumers in West Virginia by potentially reducing the availability of credit insurance, a beneficial product for West Virginia consumers.

This Court should therefore grant CitiFinancial's Petition for a Writ of Prohibition.

FACTUAL BACKGROUND

What is Credit Insurance?

Credit insurance is term insurance designed to repay all or a part of the borrower's debt on the occurrence of certain specified events.

There are several forms of credit insurance and each provides protection against a different contingency that could affect the ability of a borrower or the borrower's surviving heirs to repay his or her outstanding credit balance. The four basic forms of credit insurance are (i) credit life insurance; (ii) credit disability insurance (also referred to as credit accident and sickness insurance); (iii) involuntary unemployment insurance (also referred to as loss of income insurance); and (iv) credit property insurance. Credit life insurance is similar to a traditional term life insurance policy; however, upon death of the borrower, the proceeds of the policy are used to pay off the borrower's debt with any excess proceeds paid to the borrower's estate. Credit disability insurance as well as involuntary unemployment insurance pays all or a part of a borrower's monthly loan payment in the event he or she becomes totally disabled or loses income as a result of involuntary unemployment. Finally, credit property insurance pays to repair or replace property purchased with the proceeds of a borrower's loan or property used as collateral for a loan.

Why Do People Buy Credit Insurance?

The factors that lead individuals to purchase credit insurance are many. Borrowers having a favorable opinion of credit insurance overwhelmingly cited the security or sense of security provided by credit insurance as motivation for their purchase.[1] Furthermore, when borrowers were asked what factors weighed on their decision to select a particular lender, borrowers generally emphasized convenience.[2]

Benefits of Credit Insurance

One of the most significant benefits of credit insurance is that such insurance provides security to many borrowers who could not secure equivalent insurance. Many critics of credit life insurance assert that borrowers are able to secure term life insurance at a rate that is significantly less than credit life insurance. Although supporters of credit insurance would certainly debate that premise, regardless of whether equivalent insurance is more affordable as a general matter than credit insurance, critics overlook the fact that a significant number of borrows cannot secure insurance equivalent to credit insurance or cannot secure such insurance at an affordable price.[3] For example, while older individuals and those in poor health may be rejected for term life insurance or may only be able to secure term life insurance at a tremendous cost, no physical examination is generally required for credit life insurance and the premium rate

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1 Thomas A. Durkin, *Consumers and Credit Disclosures: Credit Cards and Credit Insurance*, FEDERAL RESERVE BULLETIN 201, 212 (April 2002), http://www.federalreserve.gov/pubs/bulletin/2002/0402lead.pdf. [Attached as Exhibit 1 to this Brief.]

2 Anthony W. Cyrnak & Glenn B. Canner, *Consumer Experiences with Credit Insurance: Some New Evidence*, ECONOMIC REVIEW: FEDERAL RESERVE BANK OF SAN FRANCISCO 5, 12 (Summer 1986 No. 3), http://www.frbsf.org/publications/economics/review/1986/86-3_5-20.pdf. [Attached as Exhibit 2 to this Brief.]

3 Anthony W. Cyrnak, Credit Insurance: Beauty or Beast?, Federal Reserve Board of San Francisco Weekly Newsletter (Oct. 10, 1986), http://www.frbsf.org/publications/economics/letter/1986/el86-41.pdf. [Attached as Exhibit 3 to this Brief.]

for credit insurance is typically constant for all borrowers.[4] For such borrowers, credit insurance may be the only means by which they are able to provide security for themselves or their families. The CCIA summarized this position by explaining that "[w]e can agree that higher income consumers who can afford large amounts of life insurance probably do not need credit insurance . . . . We can't agree that applies to most consumers."[5] Moreover, on October 10, 1986, the Federal Reserve Board of San Francisco published an article in its weekly newsletter that concluded that "[f]or older borrowers, or for borrowers that cannot afford or medically qualify for regular life insurance . . . credit insurance may be worthwhile" and that "[f]or many borrowers, credit insurance can conveniently fulfill a legitimate need for protection against loan default."[6]

Another significant benefit provided by credit insurance is that credit insurance can be made available in small amounts of coverage at a relatively economical price. As the CCIA has explained, credit insurance may be an attractive option for those consumers that do not desire large amounts of insurance coverage.[7] Assume, for example, that a consumer wishes to purchase life insurance to protect against a $6,000 debt, but does not desire insurance beyond that amount. The three year cost of credit insurance for that amount would be approximately $90. However, the three year cost for a $50,000 term life insurance policy would be approximately $475. While a traditional term life insurance policy for $6,000 in theory might be less expensive than credit insurance, no ordinary insurance agency will provide coverage for such a small amount.

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4 *Id.*

5 CONSUMER CREDIT INDUSTRY ASSOCIATION, COST EQUATION: CREDIT LIFE AND TERM LIFE INSURANCE, http://www.cciaonline.com/consumers.nsf/consinfo1.htm. [Attached as Exhibit 4 to this Brief.]

6 Cyrnak, *supra* note 3.

7 CONSUMER CREDIT INDUSTRY ASSOCIATION, COST EQUATION: CREDIT LIFE AND TERM LIFE INSURANCE, http://www.cciaonline.com/consumers.nsf/consinfo1.htm. [Attached as Exhibit 5 to this Brief.]

Therefore, for those consumers that seek insurance with relatively small coverage and do not seek to be overinsured, credit insurance provides a cost effective insurance solution.

Another benefit of credit insurance that is often overlooked by critics and supporters of credit insurance alike is that credit insurance is extremely convenient for consumers. It is clear from surveys of those who purchased credit insurance that convenience is a major factor in borrowers' decision-making process regarding credit insurance. In fact, 58.6% of borrowers have indicated that they purchased credit insurance directly from a lender either because it "was available from the lender" or for "convenience."[8] Credit insurance provides a convenient solution for consumers seeking security for themselves and their families. Credit insurance is typically offered by the lender that extends credit to the borrower and policy premiums become part of the loan principal, to be repaid to the lender. This saves borrowers the time and effort of investigating and securing a separate insurance provider and making separate payment arrangements, which may raise the possibility of unintentionally forgetting to make a loan payment.[9] Critics of credit insurance often fail to account for this benefit, although it is one that certainly seems important to consumers.

What Do Consumers Think About Credit Insurance?

Whether due to convenience, monetary savings, or simply the fact that insurance is available to them, borrowers are absolutely clear on one point – they like credit insurance. Multiple surveys and research conducted on credit insurance have proven this point beyond doubt. For example, in 2001, over 90% of consumers that had purchased credit insurance on

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8 Cyrnak, *supra* note 3, at 12.

9 WELLS FARGO FINANCIAL, CREDIT ACCIDENT AND HEALTH INSURANCE (2008), http://financial.wellsfargo.com/consumer/insurance/resourceCenter/credit/basics.html. [Attached as Exhibit 6 to this Brief.]

installment credit held a favorable opinion of the insurance.[10] Furthermore, 94.2% of borrowers who purchased such credit insurance indicated that they would purchase it again.[11] It is also important to note the lack of negative responses regarding credit insurance from consumers who had purchased such insurance. The percentage of borrowers that reported that they were dissatisfied with credit insurance purchased in connection with mortgages or installment credit were 1.6% and 2.6% respectively.[12] Even more revealing, there were no respondents that reported being very dissatisfied with their purchase of credit insurance.[13]

Although the wide range of benefits provided by credit insurance are likely reflected in the broad satisfaction of borrowers that have purchased credit insurance, research has indicated a number of particular factors that have led to this high approval. Research indicates that borrowers with favorable opinions of credit insurance tend to emphasize the "security or sense of security" that such insurance provides.[14] Another major factor cited by borrowers for their favorable opinions of credit insurance was that credit insurance is good for those individuals at risk due to age, health, or other factors.[15] These responses reinforce the conclusion that consumers like credit insurance because of the protection and sense of security that it provides.

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10 Durkin, *supra* note 1, at 211.

11 *Id.*

12 *Id.* at 212.

13 *Id.* at 212, tbl.14.

14 *Id.* at 212.

15 *Id.*

LEGAL ARGUMENT

The entire business of insurance, at every level, is risk avoidance. Consumers buy insurance to limit their risk of loss due to various events. Insurers offer risk reduction to consumers, and then in turn spread the risk over a pool of purchasers in order to limit the insurer's risk. Insurers further limit their risk by doing business in states with stable, predictable laws which allow them to offer their products at stable, reasonable premiums.[16]

Credit insurance follows this pattern. As noted above, consumers purchase credit insurance in order to reduce their risk of default on loans.[17] Creditors offer the insurance both as a courtesy to their customers who desire the product as well as a way to limit the risk of default to the creditor. In addition, creditors and insurers are more likely to offer their products at a reasonable cost in a market without an excess of risk making their costs too high to do business.

Allowing litigants such as Lightner to file collateral litigation outside of the process set forth by statute undermines the balanced, well-crafted statutory structure put in place by the Legislature. The Legislature granted the Insurance Commissioner exclusive and primary jurisdiction over such matters. Allowing Lightner's claims to move forward contravenes those goals. If Lightner's judicial challenge to approved rates is allowed to proceed, the legal process created by the Legislature to ensure risk reduction will be undermined, and consumers, creditors and insurers will be damaged in the process. Creditors and insurers will face a riskier legal

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16 *See, e.g.*, OFFICE OF INSURANCE COMMISSIONER OF WEST VIRGINIA, THIRD PARTY CAUSES OF ACTION: EFFECTS OF WEST VIRGINIA INSURANCE MARKETS, 4-5, 46-47 (Feb. 2005), http://www.wvinsurance.gov/reports/pdf/third_party_causes_action_effects.pdf. [Attached as Exhibit 7 to this Brief.]

17 *See supra* note 1 and accompanying text.

environment, which may affect the availability of credit insurance.[18] Consumers may ultimately not have the option to purchase a product they have repeatedly stated they value and desire.

I. West Virginia's Consumer Credit and Protection Act specifically allows a creditor to offer credit life, credit disability, involuntary unemployment and credit property insurance at rates filed with the Insurance Commissioner.

W. Va Code § 46A-3-109(b)(3) states: "The premium or identifiable charge for the insurance required or obtained by a creditor **may equal, but may not exceed the premium rate filed by the insurer with the Insurance Commissioner**." (emphasis added). The types of insurance covered by W. Va. Code § 46A-3-109(b)(3) are credit life, credit disability, involuntary unemployment and credit property insurance.

CitiFinancial charged Lightner the exact same credit life, credit disability and credit property rates that the insurance company had approved by the Insurance Commissioner. Thus, the premiums complained of by Lightner were explicitly approved of using the process set forth by the Legislature.

II. West Virginia's Consumer Credit and Protection Act delegates the determination as to the reasonableness of charges for credit insurance to the Insurance Commissioner, and challenges to those rates are within the primary jurisdiction of the Commissioner.

W. Va. Code § 46A-3-109(a)(4) states that charges for other benefits, including insurance but "are of a type which is not for credit," are permitted if reasonable in relation to the benefits presented by the insurance. "**The determination of whether the charges therefore are reasonable in relation to the benefits shall be determined by the Insurance Commissioner**." *Id.* Consistent with that statute, the Legislature delegated the review and approval of all insurance premiums, including premiums for credit insurance, to the Insurance Commissioner, so that insurers could expect uniform, predictable review of premiums. W. Va. Code § 33-2-3(a).

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18 *See supra* note 16.

When a litigant such as Lightner asserts a claim before a court of the state of West Virginia, and that claim requires resolution of issues committed to the regulatory expertise of an agency, "the judicial process [must be] suspended pending referral of such issues to the administrative body for its views." *United States v. Western Pac. .R.R.*, 352 U.S. 59, 63-64 (1956). *See also Reiter v. Cooper*, 507 U.S. 258, 268–69 (1993); *Energy Development Corp. v. Cabot Oil and Gas Corp.*, 2006 U.S. Dist. LEXIS 86786, *9-10 (S.D.W.Va. Nov. 30, 2006) (staying proceedings in a case so that Public Service Commission could resolve issues committed to its expertise).[19]

The purpose of allowing the Insurance Commissioner to have primary jurisdiction over determination of the appropriateness of insurance premiums is twofold, and both purposes enhance the goals of risk reduction. First, the Insurance Commissioner has specialized knowledge and expertise allowing her to properly evaluate an issue as complex as insurance premiums, an issue "beyond the conventional experience of judges." *State of West Virginia ex rel. Bell Atlantic – West Virginia, Inc. v. Ranson*, 201 W. Va. 402, 411, 497 S.E.2d 755, 764 (1997); *see also Energy Development Corp. v. Cabot Oil and Gas Corp.*, 2006 U.S. Dist. LEXIS 86786, *9-10 (S.D.W.Va. Nov. 30, 2006); *State ex rel. The Chesapeake and Potomac Telephone Co. of West Virginia v. Ashworth*, 190 W. Va. 457, 551, 438 S.E.2d 890, 894 (1993). In other words, the doctrine of primary jurisdiction enhances decision making in a highly complex area.

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[19] The doctrine of primary jurisdiction is similar to the doctrine of subject matter jurisdiction, which normally should be determined at the outset of a case: "The urgency of addressing problems regarding subject matter jurisdiction cannot be understated because any decree made by a court lacking jurisdiction is void." *State ex rel. TermNet Merchant Services, Inc. v. Jordan*, 217 W.Va. 696, 701, 619 S.E.2d 209, 213 (2005) (citing *State ex rel. Hammond v. Worrell,* 144 W.Va. 83, 106 S.E.2d 521 (1958), *rev'd on other grounds, Patterson v. Patterson,* 167 W.Va. 1, 277 S.E.2d 709 (1981)). See also *Hinkle v. Bauer Lumber & Home Bldg. Center, Inc.,* 158 W.Va. 492, 211 S.E.2d 705 (1975) ("Whenever it is determined that a court has no jurisdiction to entertain the subject matter of a civil action, the forum court must take no further action in the case other than to dismiss it from the docket.").

Second, and perhaps more importantly, committing the review of insurance premiums to the primary jurisdiction of the Insurance Commissioner allows for stability, a key to risk management and avoidance. Granting the Insurance Commissioner primary jurisdiction to evaluate and approve premiums ensures that evaluation and approval will take place under stable, predictable standards. For example, the U.S. Supreme Court has held that determination of issues by agencies with "expert and specialized knowledge" promotes uniformity and consistency in the regulation of business, and assists courts in technical and specialized fields. *Western Pac. R.R.*, 352 U.S. at 64–65. Indeed, other state courts have held that "[o]rderly procedure and administrative efficiency demand that the regulatory body be vested with authority to make preliminary determination of legal questions which are incidental and necessary to the final legislative act." *McGehee v. Mid S. Gas Co.*, 235 Ark. 50, 57 (1962).

Courts have repeatedly applied the primary jurisdiction doctrine in cases challenging insurers' practices. The California Supreme Court noted the benefits of the primary jurisdiction doctrine in *Farmers Ins. Exch. v. Superior Ct. of Los Angeles County*, 826 P.2d 730 (Cal. 1992): "It is readily apparent that a court would benefit immensely, and uniformity of decisions would be greatly enhanced, by having an expert administrative analysis available before attempting to grapple with such a potentially broad-ranging and technical question of insurance law." *Id.* at 745. Also, the court recognized that the insurance commissioner's expertise "might eliminate the need for a trial or might resolve major elements of dispute." *Id.* at 743.

Courts regularly apply the doctrine of primary jurisdiction in cases involving insurance regulation to promote judicial uniformity and economy. At issue in *Birmingham Hockey Club, Inc. v. National Council on Compensation Ins., Inc.*, 827 So. 2d 73 (Ala. 2002), for example, was the proper amount that should be charged for workers' compensation premiums and whether certain pricing practices constituted fraud, unjust enrichment or otherwise violated State law. The Alabama Supreme Court agreed that "the issues involved in this action come within [the Department of Insurance's] jurisdiction because of the technical questions raised and because expertise in insurance matters and in rate-setting is required to resolve these issues." *Id.* at 82. Moreover, the court recognized that applying the primary jurisdiction doctrine would "assist this Court, and may alleviate entirely the need for resort to judicial relief in this case." *Id.* at 83.

In *Irvin v. Liberty Life Ins. Co.*, No. 00-2719, 2001 U.S. Dist. LEXIS 2935 (E.D. La. 2001), the court stayed an action pending investigation and "exhaustive regulatory examination" by the South Carolina Department of Insurance into whether the industrial life insurance policies at issue were in compliance with State insurance statutes and regulations prohibiting rate discrimination on the basis of race. In doing so, the court recognized that insurance commissioners "are uniquely situated to make these determinations, and they are empowered to do so by virtue of their authority to examine and investigate unfair or deceptive insurance trade practices." *Id.* at *8–*9. The court recognized that the administrative investigation, as well as possible subsequent administrative hearings, would produce a record that would assist the court in litigation over the policies at issue. *Id.* at *9.

Thus, the doctrine of primary jurisdiction allows for orderly, uniform interpretation of a state's insurance laws, which serves to reduce an insurer's risk of litigation and inconsistent interpretations of governing law.[20] If an insurer is at risk of litigation over premiums, that risk will be reflected in higher premiums and, potentially, a decision to refuse to offer the disputed product in a given market. Thus, the Legislature made the policy decision to commit the

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[20] OFFICE OF THE INSURANCE COMMISSIONER, *supra* note 16, at 5.

evaluation of premiums to the Insurance Commissioner so that insurance companies, and in turn, consumers, can rely on the stability granted by that review.

It is clear that lack of stability in a given market directly impacts both the insurance products available and the rates at which those products may be offered. For example, the Legislature passed a bill in 2004 requiring the Insurance Commissioner to evaluate the effect of West Virginia's laws allowing third parties to an insurance contract to directly sue a carrier for unfair trade practices, a practice contrary to that in most states and one which exposes insurers to a higher likelihood of litigation.[21] After analyzing the history of third party lawsuits in West Virginia and the economic effects of that litigation, the Insurance Commissioner concluded in a report issued in February 2005 that :

> [West Virginia's position] is in the minority, and this minority position has deleterious effects on the insurance climate of the state. The result is an insurance climate that is overly litigious and premium rates are higher because of it. The evidence in this report is robust and comes from several credible sources. . . . The economic evidence provided, supported by the academic community, has indicated that the costs associated with the third party doctrine increases the cost of insurance in the state . . . . These higher costs are ultimately shifted forward to insurance consumers. . . . The anticipated result will be better for insurance consumers and insurance carriers alike. It is reasonable to expect downward pressure on insurance costs and increased competition as carriers find West Virginia a better place to conduct the business of insurance.[22]

In other words, the increased risk of litigation both increases premiums and discourages carriers from offering insurance products to West Virginia consumers. Insurance companies must evaluate the risk inherent in a market, and either refuse to enter the market or pass that risk on to consumers in the form of higher premiums.

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21 W. Va. Code § 33-2-15b. In other states, a third party has an administrative remedy before the Insurance Commissioner, much like the administrative remedy granted Lightner under the West Virginia Insurance Code, a remedy Lightner has not availed himself of.

22 OFFICE OF THE INSURANCE COMMISSIONER, *supra* note 16 at 46-47.

III. Selective Judicial Review Of Credit Insurance Premiums Will Create Turmoil And Uncertainty In The Insurance And Financial Services Marketplace.

This Court is being asked by Lightner to second-guess the Insurance Commissioner's approval of the rates CitiFinancial's customers were charged for credit insurance. If this Court allows such a challenge to move forward outside of the administrative process set forth by the Legislature,[23] all creditors and insurers will be subject to an unknown number of lawsuits over the reasonableness of the premiums charged for all types of insurance.

The Insurance Commissioner found in a study completed only three years ago that excessive litigation drives up insurance premiums, and gives rise to the risk that insurers will not choose to do business in West Virginia.[24] If the reasonableness of rates that are not only statutorily permitted by the Consumer Credit and Protection Act but are also filed with and approved by the Department of Insurance are allowed to be attacked by someone other than the Insurance Commissioner, then it will have a chilling effect on the sale of all insurance products in the state of West Virginia. No lender or insurance company will want to offer its customers an insurance product if it can be subject to suit for allegedly "charging" excessive rates, even though the rates have been filed with and approved by the Department of Insurance. Similarly, insurance companies will be reluctant to offer insurance in a jurisdiction where, despite having

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[23] Allowing Lightner to collaterally challenge the premiums charged CitiFinancial's customers in this forum is not only contrary to statutory mandate. Allowing such a lawsuit to continue also raises serious separation of powers issues pursuant to West Va. Const. Art. V § 1 because the evaluation and approval of premiums has been committed by the Legislature to an administrative agency established by the Legislature. *See also Frymier-Halloran v. Paige*, 193 W. Va. 687, 694, 458 S.E.2d 780, 787 (1995) ("administrative agencies are active players in the divisions of powers, and . . . their actions are entitled to respect from . . . the courts."); *State ex rel. County Court of Marion County v. Demus*, 148 W. Va. 398, 401, 135 S.E.2d 352, 355 (1964).

[24] OFFICE OF THE INSURANCE COMMISSIONER, *supra* note 16, at 46-47.

rates that are filed with and approved by the Department of Insurance, they are subject to suit for charging excessive rates.

If the risk of offering credit insurance rises and creditors cease offering their customers the opportunity to purchase credit insurance, some consumers most in need and desirable of credit insurance may not be able to purchase it. Credit insurance is a reasonably-priced way for consumers to limit their risk when conventional term insurance is not practicable. In fact, credit insurance may be the only reasonably-priced product on the market which allows these consumers to reduce their risk.[25] Consumers have repeatedly stated they value the opportunity to purchase credit insurance—by one count 90% of consumers that had purchased credit insurance on installment credit held a favorable opinion of the insurance[26] and 94.2% of borrowers that purchased such credit insurance indicated that they would purchase it again.[27] If credit insurers left the market in West Virginia, these consumers would be deprived of a product they clearly value and wish to buy. This result would be contrary to the policy set forth by the Legislature—policy which recognizes that credit insurance serves a social good and should be offered to consumers in West Virginia.

If Lightner's challenge to the approved insurance premiums charged CitiFinancial's customers is allowed to proceed in contravention of the primary jurisdiction granted to the Insurance Commissioner, consumers, creditors and insurers will be faced with the economic reality of higher risk, higher premiums and fewer choices.

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25 Cyrnak, *supra* note 14.

26 Durkin, *supra* note 7, at 211.

27 *Id.*

IV. Referral of Lightner's claim to the Insurance Commissioner will not deprive him of a remedy.

If the Circuit Court were ordered to either dismiss or stay Lightner's claims concerning the reasonableness of the premiums charged CitiFinancial's customers, Lightner will not be deprived of a remedy. W. Va. Code § 33-20-5(d) provides that:

> Any person or organization aggrieved with respect to any filing which is in effect may demand a hearing thereon. If, after such hearing, the commissioner finds that the filing does not meet the requirements of this article, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this article, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective.

In addition, W. Va. Code § 33-20-9(b) also provides that:

> Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after notice and hearing, may affirm or reverse such action.

Thus, if his claim is dismissed, to the extent Lightner truly believes that he has been charged an unreasonable premium,[28] he may avail himself of the procedures in W. Va. Code § 33-20-5(d) or § 33-20-9(b), either of which would entitle him to an administrative hearing conducted in compliance with W. Va. Code § 29A-5-1. The Circuit Court could also stay Lightner's claim

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28 In addition, if Lightner thought, upon reflection, that the premiums charged for the credit insurance products he voluntarily bought were too high, he could have canceled the policies at any time and received a refund of the unearned premiums. He never did that. In other words, Lightner received the full benefit of the credit insurance he chose to purchase, but now wants to complain about the price—a price fully disclosed at the outset.

and request the Insurance Commissioner to conduct a hearing concerning the reasonableness of the premiums charged by CitiFinancial. The Legislature has provided Lightner a remedy. He should be required to invoke it.

CONCLUSION

Major surveys conducted in the last twenty-five years indicate that borrowers appreciate the benefits of credit insurance and are happy that they purchased credit insurance. It appears that consumers have weighed the variety of benefits that credit insurance may provide, including security, convenience, and cost and have determined that credit insurance provides the security that they desire for themselves and their families. The Legislature has recognized this benefit, and has allowed consumers to limit their risk by purchasing credit insurance in West Virginia, and has provided creditors and insurers the risk reduction they need by allowing them to offer the insurance at approved rates and by granting primary jurisdiction over premium approval to the Insurance Commissioner. The Circuit Court's order upset the balance struck by the Legislature, a balance which benefits consumers, and improperly expanded statutorily-available remedies.

The Circuit Court exceeded it legitimate powers when it denied CitiFinancial's Motion for Dismissal, for a Stay, and for Partial Summary Judgment. When a circuit court exceeds it legitimate jurisdiction and exposes a defendant to the burden of clearly unwarranted claims, a writ of prohibition must issue. *See State ex rel. Chemtall, Inc. v. Madden*, 216 W. Va. 443 (2004); *State ex rel. Abraham Linc. Corp. v. Bedell*, 216 W. Va. 99 (2004); *State ex rel. Farber v. Mazzone*, 213 W. Va. 661 (2003); *State ex rel. State Auto Ins. Co. v. Risovich*, 204 W. Va. 87 (1998).

Accordingly, this Court should grant CitiFinancial's Petition for a Writ of Prohibition.

Dated: June 10, 2008

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CERTIFICATE OF SERVICE

I, James D. McQueen, Jr., hereby certify that a true and exact copy of the foregoing **BRIEF *AMICUS CURIAE* ON BEHALF OF THE AMERICAN FINANCIAL SERVICES ASSOCIATION AND THE CONSUMER CREDIT INDUSTRY ASSOCIATION IN SUPPORT OF CITIFINANCIAL, INC.'S PETITION FOR A WRIT OF PROHIBITION** was served via U.S. mail, postage prepaid, with a courtesy copy by facsimile transmission on June 11, 2008 to the following counsel of record:

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Consumers and Credit Disclosures: Credit Cards and Credit Insurance

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Over the past three decades, much of the federal consumer-protection legislation for credit has required that certain items of information be disclosed to consumers in mandatory formats at specified times. The most prominent legislation in this area is the Truth in Lending Act. Provisions of the original Truth in Lending Act, enacted as Title I of the Consumer Credit Protection Act in 1968, were extensive and detailed. Since then the act has been amended and expanded many times as markets and needs have changed.

Under the original act, the Federal Reserve has the responsibility for writing the implementing rules, which it has carried out with its Regulation Z. Because this law is so critical for federal consumer-protection policy in the credit area and because it imposes significant compliance costs on creditors, questions have been raised about its effects on consumers' understanding and behavior.

Assessing the direct effects of disclosure legislation in these areas is difficult. For example, an apparent increase in consumers' understanding of credit matters might be explained by improved disclosure laws, but it might also be explained by advances in education, more widespread and frequent use of credit, or by more-effective solicitations for credit, advertisements, and publications that are not specifically tied to disclosure requirements.

Regarding consumer behavior, some consumers may use less credit after the introduction of expanded disclosures if the required information persuades them that credit is expensive. Others may not change their use of credit at all or might even increase their credit use if the required disclosures either confirm their previous view that credit is affordable or increase their confidence that using credit is a desirable option.

In terms of competition, knowing what conditions might otherwise have prevailed in the marketplace in the absence of required disclosures is not possible. And many other factors affect competition, including the number and size of competitors, production costs, and the information conditions prevailing when the disclosure rules are implemented.

The Congress well understood the difficulty of predicting specific outcomes when it passed Truth in Lending. Rather than suggesting that the purpose of the act was to change markets or consumer behavior in some precise manner, the Congress instead stated less specifically that the act's intent was to improve information conditions generally so that consumers could avoid being "uninformed." Section 102 of the act states, "It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. . . ." Presumably, informed consumers could then make choices that are most appropriate to their individual circumstances.

Even though measurement of the precise effect of particular disclosure requirements on credit-use behavior or competition is problematic, one can study consumers' reports of their views about marketplace information conditions and their uses of required disclosures. To this end, the Federal Reserve Board and others have periodically sponsored and analyzed consumer surveys on disclosure matters since 1969, when the original act was implemented.[1] Over the years, survey questions have covered consumers' experiences with a variety of credit and related products, including mortgages, home equity loans, installment credit, credit cards, and credit insurance. In this article, the results of two surveys undertaken in 2001 of consumers' opinions about information availabil-

1. See Board of Governors of the Federal Reserve System, *Annual Report on Truth in Lending for the Year 1970* (Washington: Board of Governors of the Federal Reserve System, 1971); National Commission on Consumer Finance, *Consumer Credit in the United States: The Report of the National Commission on Consumer Finance* (Washington: Government Printing Office, 1972); Thomas A. Durkin and Gregory Elliehausen, *The 1977 Consumer Credit Survey* (Washington: Board of Governors of the Federal Reserve System, 1978); Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett, "Home Equity Lending: Evidence from Recent Surveys," *Federal Reserve Bulletin*, vol. 80 (July 1994), pp. 571–83; Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett, "Recent Developments in Home Equity Lending," *Federal Reserve Bulletin*, vol. 84 (April 1998), pp. 241–56; and Thomas A. Durkin, "Credit Cards: Use and Consumer Attitudes," *Federal Reserve Bulletin*, vol. 86 (September 2000), pp. 623–34.

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ity are examined in the context of the earlier survey findings. The new data focus on consumers who use two, sometimes controversial, financial products—credit cards and credit insurance. When relevant, consumers' attitudes toward and experiences with these products are compared with earlier survey findings regarding these and other credit products.[2]

Surveys of Credit Card Users

Consumer surveys have shown that from 1970 to date, growth in the number of credit card accounts and their use has been substantial.[3] By 1995 about three-fourths of American families held at least one credit card and about two-thirds of families held a general-purpose card with a revolving feature ("bank-type" cards like Discover, MasterCard, or Visa). Much of the growth of consumer credit in recent years has been in the form of revolving credit, of which credit card credit is the largest component.[4] Card holding has grown within all income segments of the population, and by 1995, about 95 percent of households in the highest income quintile held bank-type cards.[5]

1. Frequencies of behaviors concerning credit card use, within groups of respondents, 2001

Percent

Group and behavior	Percent
All families	
Have general-purpose credit card with a revolving feature ("bank-type" credit cards)	72
Holders of a general-purpose card with a revolving feature	
Acquired a new bank-type card account in past year	20
MEMO: Proportion of those who acquired a new bank-type card account in past year	
Account is first bank-type card	15
Account is second bank-type card	22
Account is third or more bank-type card	63
Account resulted from a solicitation	84
Holder looked for information about card accounts	25
Have three or more bank-type credit card accounts	41
Have outstanding balance greater than $1,500 on bank-type credit card accounts after most recent payment	35
Have transferred a balance to another bank-type credit card account in the past year	20
Hardly ever pay outstanding balance in full	29
Have paid a late fee in the past year	30

SOURCE. Surveys of Consumers.

The January 2001 survey on credit cards shows that the proportion of families that hold bank-type credit cards appears to have continued to grow since 1995 and has risen to about 72 percent of families in the contiguous forty-eight states (table 1).[6] There is also turnover in the cards held as current holders acquire both replacement accounts and additional card accounts. About 20 percent of consumers with bank-type cards in January 2001 reported that they had obtained one or more new accounts during the previous year. A small proportion of the new accounts were the first such accounts for those who previously did not have any bank-type cards, but most were additional or replacement accounts for those already possessing similar cards. The survey found that among those with any bank-type cards, about 41 percent held three or more such accounts.

Desired Information

The ready availability of new card accounts often raises questions about the usefulness of the information on credit terms provided through required disclo-

2. The surveys in 2000 and 2001 that are cited in this article were undertaken by the Survey Research Center of the University of Michigan for the Credit Research Center of the McDonough School of Business, Georgetown University, and used questionnaires designed by the author. In the January 2001 survey on credit cards, 506 interviews were conducted; in the September–October 2001 survey on credit insurance, 1,006 interviews were conducted. The other surveys cited in this article were undertaken by the University of Michigan Survey Research Center for the Federal Reserve Board, except the 1995 and 1998 Surveys of Consumer Finances that were undertaken by the National Opinion Research Center of the University of Chicago for the Federal Reserve Board and the 1969 and 1970 Truth in Lending Surveys undertaken for the Federal Reserve Board by Chilton Research Corp.

3. Durkin, "Credit Cards: Use and Consumer Attitudes," pp. 623–26.

4. Consumer credit covers most short- and intermediate-term credit extended to individuals. It includes revolving credit (credit card credit and balances outstanding on unsecured lines of credit) and nonrevolving credit (such as secured and unsecured credit for automobiles, mobile homes, trailers, durable goods, vacations, and other purposes). Consumer credit excludes loans secured by real estate (such as mortgage loans, home equity loans, and home equity lines of credit). Revolving consumer credit is often referred to as "open-end" consumer credit, and nonrevolving consumer credit is often referred to as "closed-end" consumer credit.

Open-end and closed-end credit are the terms used in Regulation Z (Truth in Lending) to describe revolving and nonrevolving consumer credit. The regulation carefully defines open-end credit as "consumer credit extended under a plan in which (i) the creditor reasonably contemplates repeated transactions; (ii) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that the outstanding balance is repaid" (Regulation Z 226.2(a)(10)). Closed-end consumer credit is then defined as "other than open-end credit" (Regulation Z 226.2(a)(20)).

5. Durkin, "Credit Cards: Use and Consumer Attitudes," table 2, p. 626.

6. There is a confidence interval around all statistics from surveys. For example, with 95 percent confidence the population value would be within ±4.6 percentage points of this proportion.

2. Desired information on new credit card accounts, within groups of respondents, 2001

Percent

Desired information	Those with no bank-type cards		Those with bank-type card	
	Important[1]	Most important	Important[1]	Most important
Rates/finance charges	66	60	67	54
Annual/membership fee	13	1	27	10
Late/penalty fee	8	2	9	2
Grace period	7	4	8	3
Fixed/variable rate	4	1	7	5
Minimum payment	2	*	9	3
None	5	5	3	3
Other responses[2]	18	10	22	10
Do not know	17	17	10	10
Total	...	100	...	100
MEMO: Do not want another card (excluded from other percentage calculations)	9	...	*	...

1. Adds to more than 100 percent because respondents could give up to two answers.

2. Examples include information on the credit limit, on credit insurance, on product insurance, and on frequent flyer benefits.

* Less than 0.5 percent.

. . . Not applicable.

SOURCE. Surveys of Consumers.

sures (some of which creditors might have disclosed anyway). To ascertain opinions about information considered useful, the 2001 survey first asked consumers about information they would like to have if they were opening a new credit card account. Specifically, consumers both with and without bank-type card accounts were asked what they would like to know about the credit terms if they were shopping for a general-purpose credit card like Visa or MasterCard. The question was asked in an open-end form so as not to produce any preconceived response, and respondents were permitted to give up to two responses. Consumers giving more than one answer were also asked which item they considered most important.

Although respondents offered a variety of answers concerning important credit terms, cost items predominated—notably percentage rates and finance charges, which are the main focus of the required disclosures. About two-thirds of those who did not have a bank-type credit card indicated that interest rates or finance charges were important terms, and three-fifths said that these were the most important terms they would want to know (table 2).

Among those currently holding such cards, the proportion indicating that interest rates and finance charges were important was also about two-thirds. Only slightly more than half (54 percent), however, cited these measures as the most important terms to consider if they were seeking a new card account. In opening a new or replacement account, those who already have one or more general-purpose credit cards assign a higher level of importance to annual fees, fixed versus variable rates, and even frequent flier miles than those who do not have such cards. Finally, 10 percent of consumers with bank-type cards said that they did not know which term was most important, likely because, for some of them, two or more terms were equally important. Among those without any bank-type card accounts, the proportion indicating that they did not know which term was most important to them reached 17 percent.

To ascertain a relative ranking of the importance of various credit terms, including primary cost terms, all respondents with bank-type credit cards were asked a further series of questions about the terms they considered most important. The questions did not require consumers specifically to rank terms in order of importance, largely because of the difficulty in a telephone interview for respondents to recall the

3. Importance of credit terms among holders of bank-type credit cards, 2001

Percent

Credit term	Very important	Somewhat important	Not too important	Not at all important	Do not know
Amount of the annual fee	76	19	3	2	*
Annual percentage rate of interest	78	13	5	5	*
Length of grace period	42	41	11	6	1
Amount of the credit limit	36	41	13	9	*
Length of time to pay off account if making minimum payment	52	18	15	14	1
Amount of minimum payment	30	37	19	14	*
Rewards like cash back, merchandise, or frequent flyer miles	25	31	20	24	1

* Less than 0.5 percent.

SOURCE. Surveys of Consumers.

complete list to be ranked. Instead, the survey asked respondents how important various terms were to them, and their responses about importance provided the underpinnings for a constructed ranking.

Ordering credit terms according to the proportion of respondents who reported that a certain term was either "very important" or "somewhat important" shows that annual fees and annual percentage rates took the top two spots (table 3). These cost terms were followed in order by other credit terms such as length of grace period, amount of the credit line, length of time to repay if making the minimum payment, and amount of the minimum payment itself. (The order changes slightly if ranked only according to terms judged "very important.") Rewards like frequent flier miles fell into last place among the terms explored.

New Accounts

The survey also asked those opening new card accounts in the year before January 2001 whether the new account was established through a solicitation from a card issuer or through action initiated by the consumer. Interview results indicate that most of the new accounts opened during that year—more than four-fifths of the relatively small sample of new account holders—were established through a solicitation (table 1).

The consumers with new accounts were also asked whether they had attempted to obtain any information about other credit card companies or card accounts before opening the new account—in effect whether they had engaged in any credit-shopping activities. In response, 25 percent of the small sample of new account holders replied that they had sought some additional information (table 4). The number of holders of new bank-type credit card accounts who also sought additional information is necessarily small (in this case, only eighteen respondents on an unweighted basis) in a survey of limited sample size, and so findings are not precisely estimated and are, at best, only indicative. Nonetheless, the proportion of this small group who sought information and focused on percentage rates or fees and charges is very similar to survey findings from larger surveys in past years concerning the kinds of information looked for in closed-end credit disclosures. Likewise, the high proportion of information seekers saying that they were able to find the information sought, 91 percent, also closely matches the results of the earlier, larger surveys of users of closed-end credit.

Perceptions of Information Availability

Following the credit-shopping question, a series of questions queried all respondents with bank-type card accounts about their perceptions of information availability for such accounts. The first question asked about the degree of difficulty in obtaining useful information about credit terms. This question and some further questions made a distinction between respondents' views of their own experiences with information and their conception of the experiences of others. The questioning specified this differentiation because a previous survey of credit card holders indicated that reports about consumers' own experiences might well differ from their views of the experiences of unknown others, a finding dubbed the "other-guy effect."[7]

Almost two-thirds (65 percent) of holders of bank-type card accounts in the 2001 survey reported believing that useful information on credit terms was

7. See Durkin, "Credit Cards: Use and Consumer Attitudes," p. 628.

4. Consumers who engaged in search for credit information, selected years, 1977–2001

Percent

Item	1977	1981	1994	1997	2001
Tried to obtain information[1]	26	26	37	33	25
Kind of information sought (percentage of those who sought information)					
Interest rates	73	83	81	88	85
Fees and charges	12	30	16	14	25
Able to obtain information sought (percentage of those who sought information)	91	96	95	88	91

1. For 1977, percentage of families with closed-end installment debt outstanding; for 1981, 1994, and 1997, percentage of families that had incurred closed-end installment debt in the past year; for 2001, percentage of holders of bank-type credit cards who had acquired a new card in the previous year.

SOURCE. 1977 Consumer Credit Survey; Surveys of Consumers.

5. Opinions of consumer credit users concerning ease of obtaining information on credit terms and on adequacy of information provided, selected years, 1977–2001

Percent[1]

Opinion	1977	1981	1994	1997	2001	
					For self	For others
Ease of obtaining useful information on credit terms						
Very easy	23	28	23	23	21	11
Somewhat easy	39	48	48	49	44	32
Somewhat difficult	29	21	23	25	26	36
Very difficult	8	4	5	3	6	11
Do not know	1	*	1	*	3	9
Total	**100**	**100**	**100**	**100**	**100**	**100**
Creditors provide enough information						
Yes	44	65	62	61	65	49
Some do/Some do not	13	7	5	9	2	4
No	38	27	30	29	31	43
Do not know	4	1	2	1	1	4
Total	**100**	**100**	**100**	**100**	**100**	**100**

NOTE. Components may not sum to 100 because of rounding.

1. For 1977, percentage of families with closed-end installment debt outstanding; for 1981, 1994, and 1997, percentage of families that had incurred closed-end installment debt in the past year; for 2001, percentage of holders of bank-type credit cards.

* Less than 0.5 percent.

SOURCE. 1977 Consumer Credit Survey; Surveys of Consumers.

either "very easy" or "somewhat easy" to obtain for themselves (first panel of table 5). In contrast, only 6 percent believed that obtaining this information was "very difficult." This finding is comparable to the results of the same question asked about perceived difficulties in obtaining information on closed-end credit accounts in earlier surveys, but it differs substantially from current respondents' views of the experiences of others with credit card accounts. Fewer than half of holders of bank-type cards believed that it was easy for others to acquire useful information on credit terms.

A related follow-up question produced a similar outcome. When queried about whether credit card companies usually provide enough information to enable them to use credit cards wisely, about two-thirds of respondents answered affirmatively; when the same question was asked about their perception of the experience of others, slightly less than half answered affirmatively (second panel of table 5). The question was asked in this manner not with the expectation of learning something about respondents' view of what was "wise," but rather with the goal of comparing the results with those for the same question asked in the past of users of closed-end installment credit. Again, current responses are quite similar to previous experience with questioning about closed-end credit, at least after 1977 when responses were different, possibly reflecting the relative newness of Truth in Lending disclosures at that time and consumers' lack of experience with them.

Another question explored further the distinction between views about personal experience with credit cards and that of others. This question asked whether "your general purpose credit card(s) with a revolving feature that give(s) you the option of paying part of the balance made managing your finances easier or more difficult?" Almost 90 percent of respondents replied that such cards made managing finances either easier or that there was no difference; only about 10 percent indicated that managing finances was more difficult (table 6).

When asked further why credit cards have made managing finances easier, the majority of respondents stressed aspects of flexibility, especially the smoothing of expenditure and repayment that credit cards permit. The smaller proportion who did not find that credit cards made managing finances easier most

6. Opinions of credit users concerning the effects of credit cards on personal financial management, 2001

Percent

Opinion	2001	
	For self	For others
Credit cards make managing finances		
Easier	73	53
No different	16	2
More difficult	10	40
Do not know	2	5
Total	100	100

NOTE. Components may not sum to 100 because of rounding.

SOURCE. Surveys of Consumers.

7. Overall satisfaction of consumers with credit, by type of credit, selected years, 1981–2001

Percent[1]

Opinion	1977	1994		1997		2001
	Closed-end installment	HELC	Installment	HELC	Installment	Bank-type credit card
Overall satisfaction with credit						
Very satisfied	77	69	56	75	63	48
Somewhat satisfied	18	27	32	21	29	42
Not particularly satisfied or dissatisfied	3	2	5	*	4	5
Somewhat dissatisfied	2	2	2	*	1	5
Very dissatisfied	1	1	5	2	3	1
Do not know	*	*	*	1	*	*
Total	**100**	**100**	**100**	**100**	**100**	**100**

NOTE. Components may not sum to 100 because of rounding.

1. For 1977, percentage of families with closed-end installment debt outstanding; in 1994 and 1997, percentage of families with open home equity lines of credit (HELC, with or without an outstanding balance, first column for each year) or with closed-end installment debt outstanding incurred in the past year (second column for each year); in 2001, percentage of holders of bank-type credit cards.

* Less than 0.5 percent.

SOURCE. 1977 Consumer Credit Survey; Surveys of Consumers.

often noted the possibility of overspending and overextending financial resources through credit card use.

The generally favorable view concerning the effect of credit cards on their personal financial management contrasts sharply with consumers' perceptions of the experiences of other people. Just over half (55 percent) of respondents indicated that, in their view, credit cards made finances of the "other guy" easier or no different. In contrast, 40 percent said that the finances of others were made more difficult by credit cards—four times the proportion with a negative view of the effect of credit cards on their own finances. The most common reasons for this contention were concerns about overspending, too much debt, and a continuing cycle of debt among the unknown other consumers.

The generally favorable view of respondents about information availability and their own circumstances is heartening in that it seems to suggest directly and indirectly that many people are relatively satisfied with their ability to obtain and use the information currently disclosed. This generally favorable attitude contrasts with respondents' perspectives on the experiences of others, whom they appear to regard as more vulnerable. Unknown others are considered less able to obtain and use information or to manage their finances well when using credit cards.

The generally favorable attitude toward personal experience with credit cards is supported by results of a later segment of the interview concerning overall satisfaction with credit cards. The final question asked, "Overall, how satisfied are *you* [emphasis stressed by interviewer] with your general-purpose credit card(s)?" The question requested a response on a five-point scale ranging from "very satisfied" to "very dissatisfied." About nine in ten indicated they were "very" or "somewhat" satisfied and only about one in twenty reported dissatisfaction (table 7). Only about 1 percent of respondents indicated that they were very dissatisfied. The pattern of responses to this question is much like earlier findings concerning installment credit and home equity credit lines, especially if the very satisfied and those who are somewhat satisfied are lumped together. The number who are dissatisfied remains quite small across the years and across credit types.

Truth in Lending and Information

An intriguing question about Truth in Lending is whether it has had a long-term effect on consumer awareness, understanding, and behavior. A question in the survey of credit card users in 2000 indicated that consumer awareness of annual percentage rates associated with credit card accounts, using the procedure for measuring awareness established by the National Commission on Consumer Finance in 1972, had increased dramatically in the three decades since implementation of the law.[8] Awareness, according to the National Commission's approach, had increased from 27 percent of credit card holders before Truth in Lending, to 63 percent in 1970 (fifteen months after implementation), to 71 percent in 1977, and in

8. Because in an interview study the researcher typically does not have access to the actual contract for verification of stated annual percentage rates (APRs), researchers associated with the National Commission on Consumer Finance devised the concept of "awareness zones" to measure knowledge of APRs in interviews. If a respondent reported an APR within a range deemed to be reasonable on the basis of a survey of current market practices, then the respondent was characterized as "aware." If the respondent gave a response outside the range or answered "do not know," then the individual was listed as "unaware." Although this procedure obviously is somewhat inexact for measuring actual awareness of APR charges on actual credit transactions, it does permit a broad look at the phenomenon, and it allows comparisons over time. For further discussion of the awareness zones used by the National Commission and to make comparisons with survey findings in 2000, see Durkin, "Credit Cards: Use and Consumer Attitudes," pp. 630–31.

8. Opinions of credit users concerning helpfulness of Truth in Lending statements, by type of credit, selected years, 1981–2001

Percent[1]

Opinion	1981	1994		1997		2001
	Installment	HELC	Installment	HELC	Installment	Bank-type credit card
Helpful	53	60	46	58	58	60
Not helpful[2]	45	32	49	39	39	29
Do not know	2	8	5	3	3	11
Total	**100**	**100**	**100**	**100**	**100**	**100**

NOTE. Components may not sum to 100 because of rounding.

1. For 1981, 1994, and 1997, percentage of families that had incurred closed-end installment debt in the past year; in 1994 and 1997, percentage of families with open home equity lines of credit (HELC), with or without an outstanding balance; in 2001, percentage of holders of bank-type credit cards.

2. Includes respondents who did not recall receiving statement.

SOURCE. Surveys of Consumers.

2000 to 85 percent and 91 percent, respectively, for the "narrow" and "broad" definitions of awareness employed in the 2000 survey. The 2001 survey confirmed the long-term rise in the awareness level to year 2000, with awareness recorded in 2001 under the same definitions at 82 percent and 88 percent (not shown in table), a result within the normal range for statistical variation. The 2001 survey also asked several additional questions related to Truth in Lending, specifically about consumers' understanding and use of Truth in Lending information on bank-type credit cards. Again, the questions were the same ones employed in the past to study information use for closed-end credit.

The first question stated that the "federal Truth in Lending Law requires that credit card companies provide consumers with written statements of credit costs when a new account is opened and as part of the monthly bill." Then the interviewer asked "Is the Truth in Lending statement helpful in any way?" Sixty percent of consumers with bank-type credit cards indicated in 2001 that the Truth in Lending statement was helpful, whereas 29 percent responded that it was not (table 8). These results are broadly similar to past findings, although the proportion that found it helpful is a bit higher, and the proportion that did not find it helpful a bit lower, than responses about Truth in Lending statements on various forms of closed-end credit in most past measurements. About 11 percent of respondents maintained that they did not know whether the statement was helpful or not, a percentage that was a bit higher than on earlier surveys.

When quizzed further, "In what way is it helpful?" almost half of those indicating in 2001 that the statement was helpful responded with a generic response that it provided general information on terms and conditions (figures not in table). Thirteen percent specifically mentioned that it provided information on interest rates or finance charges, and about 10 percent said that it provided a good reference document if problems arose.

Another follow-up question in 2001 asked both those who felt the statement was useful and those who did not how the Truth in Lending statement could be made more helpful. Slightly more than two-fifths of those indicating that it was already helpful said that they did not know how it could be made more helpful (not in table). Another 15 percent said that it could not be made more helpful, but about 28 percent of these favorable responses mentioned issues of format and clarity: It could be clearer, simpler, easier to understand, written in lay terms, or have larger print.

Among the three-tenths of respondents who indicated that the Truth in Lending statement was not helpful, again about two-fifths said that they did not know how it could be more helpful, but almost half of the group contending that the statement was not helpful mentioned various format and clarity issues. A number of consumers responded with a variety of other things they considered potentially useful. These answers ranged from sending a representative to consumers' homes to explain account terms to enforcing the laws and making the Truth in Lending Act mandatory reading for all consumers entering into credit contracts.

The survey next asked respondents directly about whether the Truth in Lending statement had affected their decision to use credit cards in any way. About 18 percent of respondents indicated that the statement had affected their decisions, whereas 77 percent said it had not (not in table). About 5 percent said they did not know. Among the minority of consumers who reported that the Truth in Lending statement had affected their credit decision, about half said that it helped in deciding whether to obtain a card and in choosing which card. A bit more than one-fourth of this group said that it made them more cautious in using credit.

9. Consumers' agreement with observations about Truth in Lending statements, selected years, 1977–2001

Percent[1]

Statement and opinion	1977	1981	1994	1997	2001
Truth in Lending statements are complicated					
Agree strongly	38	31	41	49	45
Agree somewhat	35	37	36	32	30
Disagree somewhat	11	18	13	11	9
Disagree strongly	5	8	5	5	8
Do not know	12	6	5	2	8
Total	**100**	**100**	**100**	**100**	**100**
Some information on Truth in Lending statements is not very helpful					
Agree strongly	20	16	21	23	28
Agree somewhat	39	41	43	42	38
Disagree somewhat	16	23	19	21	18
Disagree strongly	5	6	9	10	7
Do not know	20	14	8	3	9
Total	**100**	**100**	**100**	**100**	**100**
Truth in Lending makes people more confident when dealing with creditors					
Agree strongly	31	28	24	26	26
Agree somewhat	42	44	46	43	41
Disagree somewhat	12	14	17	19	15
Disagree strongly	5	6	8	10	11
Do not know	11	8	5	2	7
Total	**100**	**100**	**100**	**100**	**100**
Most people read their Truth in Lending statements carefully[2]					
Agree strongly	8	7	9	7	19
Agree somewhat	19	24	26	22	30
Disagree somewhat	33	38	34	35	22
Disagree strongly	31	26	27	34	24
Do not know	9	5	4	1	5
Total	**100**	**100**	**100**	**100**	**100**

NOTE. Components may not sum to 100 because of rounding.

1. For 1977, percentage of families with closed-end installment debt outstanding; for 1981, 1994, and 1997, percentage of families that had incurred closed-end installment debt in the past year; for 2001, percentage of holders of bank-type credit cards.

2. In 2001, this question was asked about the individual respondent: "I read the Truth in Lending statement carefully."

SOURCE. 1977 Consumer Credit Survey; Surveys of Consumers.

Over the years, consumer surveys have also asked about general perceptions of Truth in Lending statements. It is clear from the responses to this line of questioning that typical credit users consider Truth in Lending statements to be complicated: Consistently about two-thirds to three-fourths of consumers somewhat or strongly agree with the statement that Truth in Lending statements are complicated (table 9). Likewise, about three-fifths to two-thirds of consumers somewhat or strongly agree that some information on the statements is not very helpful.

On the positive side, approximately seven-tenths of respondents affirm the view that Truth in Lending makes people more confident when dealing with creditors, a result that may be an additional benefit of the law. Consumers may feel that the statements are complicated and that not every element is always useful, but they appear to like knowing that the behavior of creditors is being monitored. The only striking difference in the responses of consumers over time to this sequence of questions again appears related to the "other-guy" effect: Only about three-tenths of respondents to earlier surveys have agreed with the view that most consumers read their Truth in Lending statements carefully. After a change in wording in 2001 to focus this question on the individual, rather than on consumers in general, about half of the respondents reported that they read the statements carefully themselves. This result likely reflects a degree of "yea saying" by respondents to give the interviewer what might be perceived as an answer that is in some sense correct. It probably also mirrors, however, a degree of belief among consumers that they exercise reasonable care themselves but that others may be less inclined to do so.

Surveys of Credit Insurance Users

Credit life insurance repays a debt upon the death of the insured debtor, while credit disability insurance (sometimes called credit accident and health insurance) and credit involuntary unemployment insurance make the periodic payments on a debt if any of the insured events occur. The products have long been controversial because some observers see such insurance as involving a high and unnecessary cost for sometimes beleaguered credit users. They believe that creditors are often too aggressive in selling credit insurance, both because it earns sales commissions from the insurance companies, which may be affiliates, and because it mostly protects the creditors by guaranteeing repayment of debts upon death, disability, or involuntary unemployment of a debtor. A frequent complaint is that the price is too high, making the loss ratio—which is the proportion of total premiums returned to consumers who suffer an insured loss—too low. In this view, the insurance company simply keeps too much of the premium dollars.

Others see the product as safeguarding not creditors, but rather underinsured individuals and their families who could otherwise face financial uncertainty and distress from an unpaid debt in the event of an uninsured personal disaster. In this view, consumers buy the insurance because they want it, not because it is sold overly aggressively. Furthermore, in this view, loss ratios are reasonable because states set the rates at a level that provides sufficient benefits to the insured without jeopardizing the financial viability of the insurance companies.[9]

Because of the controversial nature of this product, the original Truth in Lending Act in 1968 contained a special disclosure for credit insurance that remains unchanged today. In order for the credit insurance premium to be excluded from the finance charge and the annual percentage rate, the creditor must provide a written disclosure of the cost and notification that the purchase is voluntary (not a factor in the decision to extend credit). After receiving these disclosures, the consumer must specifically affirm the purchase in writing.

This approach makes Truth in Lending treatment of the purchase of credit insurance unlike any other component of a credit transaction, but it has not eliminated concerns about sales of this product. Detractors argue that creditors are still overly aggressive in selling credit insurance, despite the separately signed disclosure that purchase is voluntary. In large part because of this contention, surveys sponsored by the Federal Reserve and others over the years have examined consumers' views about various aspects of the purchase of credit insurance, including their acceptance of the product and their views of the sales process.[10]

Sales-Penetration Rate

The survey in September–October 2001 of consumer attitudes toward credit insurance shows that the frequency of purchase of credit insurance on closed-end consumer installment credit, generally referred to as the sales-penetration rate, has declined sharply in recent years. (Closed-end installment credit is the only kind of credit for which comparison of consumer-survey findings over time is possible because past surveys of credit insurance users did not look at insurance on other types of credit.) From sales penetration exceeding three-fifths of borrowers in 1977 and 1985, the ratio fell to only slightly more than one-fifth in 2001 (table 10). This decline mirrors the falloff in the proportion of life insurance in force represented by credit-related insurance over approximately the same time period.[11] In 2001 the penetration rate on junior-lien mortgage and credit card credit is similar to the rate on installment credit, with the rate on first-lien mortgage credit a bit higher.[12]

9. Ultimately, the dispute over the appropriate loss ratio on credit insurance is a pricing issue that is beyond the scope of this article, which deals only with surveys concerning consumer acceptance of credit insurance and attitudes toward it. The maximum permitted rate in a state, called the prima facie rate, is governed by state law or regulation with the intent of producing a loss ratio that provides sufficient benefits to consumers while protecting the solvency of insurance companies operating in the state. Those who favor a higher loss ratio for credit insurance believe either that the benefits to consumers are insufficient under the state's regulation or that the loss ratio in the state does not meet the state's own requirement; consequently, they want states to require credit insurance companies to lower prices sufficiently to raise the loss ratio to a preferred level.

10. Earlier survey results are found in the following sources: Charles L. Hubbard, ed., *Consumer Credit Life and Disability Insurance* (Athens, Ohio: College of Business Administration, Ohio University, 1973); Thomas A. Durkin and Gregory E. Elliehausen, *The 1977 Consumer Credit Survey* (Washington: Board of Governors of the Federal Reserve System, 1978); Robert A. Eisenbeis and Paul R. Schweitzer, *Tie Ins Between the Granting of Credit and Sales of Insurance By Bank Holding Companies and Other Lenders*, Staff Studies 101 (Board of Governors of the Federal Reserve System, 1979); Anthony W. Cyrnak and Glenn B. Canner, "Consumer Experiences with Credit Insurance: Some New Evidence," Federal Reserve Bank of San Francisco, *Economic Review* (Summer 1986), pp. 5–20; and John M. Barron and Michael E. Staten, *Consumer Attitudes Toward Credit Insurance* (Norwell, Massachusetts: Kluwer Academic Publishers, 1996).

11. According to the *Life Insurers Fact Book 2000* (Washington: American Council of Life Insurers, 2000), at year-end 1999 there was $213 billion of credit life insurance in force, about 1 percent of the total of life insurance in force in the United States. The volume of credit life insurance in force peaked in 1989 at $260 billion, which represented about 3 percent of life insurance in force at that time.

12. Some of the credit insurance reported on first-lien mortgage credit may possibly be other kinds of term life insurance purchased at or near the time of mortgage origination that meets the description of credit-related insurance in the minds of consumer respondents. This possibility would be less likely with junior-lien credit and especially with insurance on installment credit because the typical amounts of credit are smaller and less likely to generate a search for an alternative or separate life insurance plan.

10. Distribution of sales penetration rates for credit insurance, by type of credit, selected years, 1977–2001

Percent

Ownership	1977	1985	2001	2001		
	Installment credit			First mortgage	Second mortgage/HELC	Credit card
Have	63.9	64.7	22.7	32.1	22.9	20.1
Do not have	30.1	33.1	74.4	60.5	65.1	73.9
Do not know/Decline to answer	6.0	2.2	2.9	7.4	12.0	6.0
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

SOURCE. 1977 Consumer Credit Survey; Surveys of Consumers.

Some consumers do not purchase credit insurance apparently because creditors do not always offer it, or at least not vigorously enough for consumers to be aware of any sales effort. In the 1977, 1985, and 2001 surveys, about half of nonpurchasers of credit insurance on installment credit indicated that the product was never offered to them (first panel of table 11). Only a small (and declining) proportion of nonpurchasers said that the creditor recommended the product.

Not surprisingly, a higher proportion of those purchasing insurance said that the creditor had offered or recommended the product, but the proportion of consumers who have felt pressured to purchase appears to have declined over the years. In 1977 about two-fifths of purchasers indicated that the creditor had strongly recommended or even required purchase. By 2001 this proportion had declined to less than one-fifth, and only about one purchaser in twenty among a smaller number of purchasers felt that they were led to believe that purchase was required.

A relatively small but rising proportion of consumers who said the creditor never mentioned the product also said they had purchased it. This finding probably represents the rising prevalence of post-purchase telemarketing and mail solicitation in recent years.

11. Distribution of recommendation to purchase credit insurance and opinions of credit insurance by users of installment credit, selected years, 1977–2001

Percent

Item	1977		1985		2001	
	Insurance	No insurance	Insurance	No insurance	Insurance	No insurance
Recommendation						
Never mentioned	7.1	51.6	14.8	45.2	15.4	53.3
Offered	15.0	22.6	44.7	35.5	53.2	33.9
Recommended	33.1	17.0	16.4	12.9	12.2	4.1
Strongly recommended	13.2	2.3	6.3	2.6	11.5	3.4
Required	26.1	. . .	13.8	. . .	5.1	. . .
Other (includes self initiated)	3.5	.6	*	*	*	*
Do not know/Decline to answer	2.1	5.9	3.9	3.9	2.6	5.3
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
MEMO: Insurance purchase irrelevant to creditor's decision to grant credit[1]	80.3	91.0	94.2	96.2	86.5	97.0
Opinion						
Good	86.7	59.8	89.9	56.4	88.5	32.3
Good with qualifications	8.6	18.9	2.9	8.3	3.8	6.1
Neither good nor bad	2.1	9.1	1.9	6.4	3.2	13.9
Bad with qualifications	*	2.7	*	2.6	*	1.6
Bad	2.2	9.5	5.2	26.3	4.5	46.0
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Purchase again?						
Yes	n.a.	. . .	94.3	. . .	94.2	. . .
No	n.a.	. . .	5.7	. . .	5.8	. . .
Do not know/Decline to answer	n.a.	. . .	*	. . .	*	. . .
Total	. . .	. . .	100.0	. . .	100.0	. . .

NOTE. Components may not sum to 100 because of rounding.

1. Excludes those who said insurance was required.

* Less than 0.5 percent.

n.a. Not available.

. . . Not applicable.

SOURCE. 1977 Consumer Credit Survey; Surveys of Consumers.

Another possibility is "insurance packing," that is, including insurance in the loan without notifying the consumer, but this seems unlikely in most cases. Respondents were not asked directly about insurance packing, but they were asked whether they believed that purchase of the insurance made any difference in whether the creditor was willing to grant the credit. In each year, a few respondents answered affirmatively. In each of the three surveys, a large majority of both insurance purchasers and nonpurchasers believed that purchasing credit insurance was irrelevant to this decision by installment lenders.

Consumer Attitudes toward Credit Insurance

Although sales penetration has fallen in recent decades, it seems that the favorable attitudes toward the product among those who purchase credit insurance on installment credit have not changed over time. In 2001, more than 90 percent of installment credit users with credit insurance indicated a favorable attitude toward the insurance (the product is "good" or "good" with some qualification)—almost the same proportion as in 1977 and 1985 (second panel of table 11). Furthermore, about nineteen in twenty purchasers of credit insurance on installment credit in 2001 say that they would purchase it again—the same proportion as in 1985, the only other observation date available (third panel of table 11).

The consistently favorable attitudes among insurance purchasers contrast sharply with the views of those who do not purchase the product. Nonpurchasers reporting that the product is good or good with some qualification fell from more than three-fourths in 1977 to only about three-eighths of respondents in 2001, while unfavorable attitudes among nonpurchasers jumped sharply. The unfavorable attitude toward credit insurance among nonpurchasers likely is an important reason for their not purchasing the product.

Results of the 2001 survey also show that favorable attitudes among purchasers of credit-related insurance apparently are not limited to those who purchased it on installment credit. About three-fourths of first-mortgage credit users with credit-related insurance also held a favorable attitude toward the insurance product, a proportion reaching 90 percent among junior-lien credit users (table 12). In each case, those with the same kinds of credit outstanding but without credit insurance held much different views, likely a cause of their decision not to purchase insurance. The most unfavorable attitudes overall were held by those with no closed-end credit of any type outstanding (middle column, lower panel of table 12).

In addition to requesting an expression of attitudes, as a follow-up question the survey asked, "Why do you say that?" to ascertain the reason for the favorable or unfavorable attitude. The survey recorded up to two responses to this question. As might be expected, criteria for the viewpoint expressed differed sharply between those who had favorable and those who had unfavorable perceptions of credit

12. Distribution of consumer opinions of credit insurance, by type of credit and ownership of insurance, 2001

Percent

Opinion	Mortgage		Junior mortgage/HELC		Installment credit[1]	
	Insurance	No insurance	Insurance	No insurance	Insurance	No insurance
Good	74.7	35.6	90.7	34.8	88.5	31.3
Good with qualifications	2.1	3.6	*	8.0	3.8	5.9
Neither good nor bad	4.5	10.6	7.2	9.4	3.2	13.5
Bad with qualifications	.8	1.2	*	2.9	*	1.6
Bad	9.9	46.0	*	44.9	4.5	44.6
Do not know/Decline to answer	8.0	2.9	2.1	*	*	3.1
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Opinion	Any closed-end credit		No closed-end credit	Credit card	
	Insurance	No insurance	No insurance	Insurance	No insurance
Good	77.6	37.0	30.0	56.6	35.4
Good with qualifications	2.4	3.7	.9	1.9	2.4
Neither good nor bad	5.0	9.7	3.2	5.6	6.3
Bad with qualifications	.6	1.0	.4	*	.9
Bad	8.4	45.5	48.1	30.4	46.6
Do not know/Decline to answer	5.9	3.0	17.3	5.6	8.5
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

NOTE. Components may not sum to 100 because of rounding.

1. Attitudes about credit insurance among installment credit users in 2001 reported in table 11 are repeated here for completeness and ease of comparison.

* Less than 0.5 percent.

SOURCE. Surveys of Consumers.

13. Reasons cited for opinions of credit insurance, within groups of respondents, 2001

Percent

Reason[1]	Any closed-end credit		No closed-end credit
	Insurance	No insurance	No insurance
Most frequently cited reasons for saying credit insurance is good			
Protects property/purchase for purchaser/survivor	74.0	77.0	75.6
Good for individuals at risk because of age, health, and so on	9.7	7.5	9.4
Insurance is a good idea	6.7	8.9	9.4
Provides sense of security	4.1	*	*
Protects credit rating	4.5	*	*
Not expensive	*	4.2	*
Most frequently cited reasons for saying credit insurance is bad			
Too expensive	**	40.3	46.7
Risk of insured event is low	**	21.6	27.7
Overlaps with other insurance	**	3.1	4.3
Too profitable for insurer	**	4.7	3.7
Debt is a bad idea	**	21.8	9.5
Insurance is a bad idea (not further specified why)	**	6.7	*
Not needed if there are no survivors	**	*	4.3
Survivors would be better off selling property instead	**	*	3.9

1. Respondents could supply up to two reasons.
* Less than 3 percent.
** Not enough cases for distribution.
SOURCE. Surveys of Consumers.

insurance. Those who had favorable perceptions of it tended to focus on the security or sense of security it provides, while those who had unfavorable perceptions tended to focus more on the cost and the absence of any need, on their part, for more insurance (table 13).

The survey also asked respondents for their opinions concerning the usefulness of the Truth in Lending disclosure they received at loan closing. The introductory question regarding this topic asked, "The federal Truth in Lending Act now requires that lenders and creditors give consumers a written statement of credit costs, including costs of credit insurance. Did you receive such a statement on this loan?" All those recalling such a statement (about 58 percent of those with credit insurance) were then asked whether they kept the statement and whether the information about credit insurance was helpful in any way.

Among those recalling that they received the Truth in Lending statement, 86 percent said they saved it, and 61 percent said it was helpful. About 27 percent said the statement was not helpful, and 12 percent were not sure (percentages not in a table). Among those who said that the statement was helpful, the reasons indicated most frequently were that it explained the coverages in more detail (mentioned by 39 percent) or that it served as a useful reference (mentioned by about 18 percent).

Some final questions in the 2001 survey reveal a few more details about the purchase of credit-related insurance and the viewpoints of purchasers of insurance on the various credit products. About 45 percent of purchasers of insurance on either first-mortgage or installment credit indicated that the product was offered at the time of the credit application; most of the rest said that it was offered after the credit was approved, and a few respondents did not recall the time of offer (first panel of table 14). The correspond-

14. Distribution of timing of credit insurance transactions and satisfaction with credit insurance, by type of credit, 2001

Percent

Question and response	Mortgage	Junior mortgage/ HELC	Installment credit
When offered?			
At application	45.3	61.9	42.3
After approval	23.0	30.9	37.2
After loan documents signed	24.3	3.1	11.5
Self initiated	1.0	*	*
Do not know/Decline to answer	6.4	4.1	9.0
Total	**100.0**	**100.0**	**100.0**
Satisfied?			
Very	25.8	50.0	26.9
Somewhat	56.5	33.3	63.5
Neither satisfied nor dissatisfied	11.3	11.1	3.8
Somewhat dissatisfied	1.6	5.6	2.6
Very dissatisfied	*	*	*
Do not know/Decline to answer	4.8	*	3.2
Total	**100.0**	**100.0**	**100.0**
Purchase again?[1]			
Yes	71.0	77.8	94.2
No	24.2	22.2	5.8
Do not know/Decline to Answer	4.8	*	*
Total	**100.0**	**100.0**	**100.0**

NOTE. Components may not sum to 100 because of rounding.

1. Opinions concerning whether users of installment credit would purchase credit insurance again, reported in table 11, are repeated here for completeness and ease of comparison.

* Less than 0.5 percent.

SOURCE. Surveys of Consumers.

ing proportions among the smaller number of junior-lien credit users were a bit different: A somewhat higher proportion recalled that the offer was made at the application. Regardless of when the insurance was offered, more than 80 percent of each group of credit users reported current satisfaction with the specific credit-insurance product purchased, with the fraction reaching 90 percent among installment credit users (second panel of table 14).

Finally, the proportion that indicated a willingness to purchase credit insurance again was also high among current purchasers in each group of credit users, although it was lower among mortgage credit users than among those with installment credit (third panel of table 14). As with the other attitude measures, the willingness of users of credit insurance to repurchase it seems to indicate that they feel considerably better about the product than its critics.

Conclusion

Conclusively evaluating the direct effects of disclosure legislation like Truth in Lending on either consumer behavior or the functioning of the credit marketplace is never a simple matter because there are always competing explanations for observed phenomena. From consumer surveys over time, however, it seems likely that disclosures required by Truth in Lending have had a favorable effect on the ready availability of information on credit transactions. There are no corresponding measurements for the years before Truth in Lending, but it is difficult to imagine that two-thirds or more of credit users would have reported in those years that obtaining credit information was "somewhat easy" or "very easy." Furthermore, the pricing information that consumers most often report they want is precisely the items the required disclosures emphasize.

Although it seems unlikely that consumers spend a great deal of time thinking about information conditions in consumer credit markets, they do not appear to have widespread complaints either. They seem mostly satisfied with recent credit experiences, and they believe that Truth in Lending makes people more confident when dealing with creditors. This is not to say that required disclosures could not be improved. Aside from whether disclosures might help consumers more by focusing on some different concept of credit cost, an issue not discussed in this article, some changes in timing of the disclosures might benefit consumers. Consumers also report in the surveys that disclosures might be clearer. The survey results suggest that much of consumers' dissatisfaction with credit information is based more on a desire for clarity and simplification than on a demand for more information. Views about the situation of other consumers, however, are less favorable; many respondents seem to think that other consumers do need more information.

There are, of course, some remaining problems in consumer credit markets. The surveys seem to indicate that most consumers have benefited from the ready availability of credit cost disclosures, but anecdotal reports that abusive practices still affect some consumers suggest the need for improvements in financial literacy and for appropriate enforcement efforts against remaining illegal practices.

The relative consistency of responses to the lines of questioning in these surveys is heartening in that there does not seem to be evidence of a view that the credit information situation has worsened over time, despite more complicated consumer credit products and more widespread credit use. With respect to credit insurance, because the views of users and nonusers seem so divergent, it seems important that the views of users be given sufficient weight in considering public policies in this area. According to the views expressed by many users of credit insurance, eliminating this product by regulation could be disadvantageous to them. □

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Consumer Experiences With Credit Insurance: Some New Evidence

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Credit insurance is a product that has been steeped in controversy for many years. This article examines several issues surrounding the marketing and sale of credit insurance through a recent survey on consumer experiences with the product. Survey findings indicate that credit insurance is purchased frequently, that consumers generally do not feel pressured into buying the product, and that consumers view credit insurance quite favorably. Past abuses in the marketing and sale of credit insurance therefore may have been overstated or have declined in recent years.

The sale of credit insurance in connection with extensions of consumer credit has been a controversial subject for many years. Sold by various types of financial institutions and some retailers, credit insurance is designed to repay a borrower's debt in the event of his death or disability. Credit insurance has been controversial because of its alleged high cost in many states and because of allegations of abusive marketing and sales practices. The credit insurance industry has responded to such criticisms by arguing that rates are reasonable in view of the circumstances under which credit insurance is sold. Also, while acknowledging the existence of some abusive practices in the past, industry representatives argue that most abuses have been eliminated in recent years.

Credit insurance will likely remain a controversial product. A strong rise in consumer debt during the 1980s has caused both consumer advocates and some governmental authorities to take note once again. Recently, the Federal Reserve's Consumer Advisory Council, an advisory group consisting of 30 financial industry, regulatory, and consumer representatives, expressed interest in credit insurance practices and the attitudes of borrowers toward them. Also of late, mandatory competitive rate bidding (for credit insurance) in Massachusetts has been the object of intense scrutiny by industry observers.[1] Pressures for greater banking deregulation and attempts by some banking organizations to gain permission to conduct specific new insurance activities, such as underwriting and selling home mortgage insurance, also have called attention to insurance practices.[2]

Finally, considerable discussion has arisen concerning an amendment to the Federal Reserve System's Regulation Y. This amendment eliminates a longstanding requirement that bank holding company subsidiaries proposing to engage in the underwriting of credit insurance demonstrate public benefits in the form of a rate reduction (see Box).

In view of the continuing interest in credit insurance, it seems worthwhile to examine the nature of this product and to review some of the issues surrounding it. This paper also reports some new evidence on the frequency of credit insurance pur-

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Table 3

Specific Source of Credit Insurance and Reason for Selection of Source, 1985

	Percent
Specific source	
Lender	89.9
Other firm	10.1
Total	100.0
Reason for selection of lender*	
Required	8.2
Was available from lender	28.6
Convenience	30.1
Automatically included with loan	14.1
Cost	4.1
Other	14.9
Total	100.0
Reasons for selection of source other than lender*	
Cost	13.6
Familiarity	36.4
Other	50.0
Total	100.0

*First reason cited for selection by respondent.

SOURCE: University of Michigan, Survey Research Center, Survey of Consumer Attitudes, December 1985.

Table 4

Consumer Perceptions of Recommendations by Creditor About Purchasing Credit Insurance in 1977 and 1985

(Percent Distribution of Families)

	Families with credit insurance		Families without credit insurance	
Responses	1977	1985	1977	1985
Never mentioned	7.1	14.8	51.6	45.2
Mentioned but not recommended	15.0	44.7	22.6	35.5
Recommended	33.1	16.4	17.0	12.9
Strongly recommended	13.2	6.3	2.3	2.6
Required	26.1	13.8	n.a.	n.a.
Other*	3.5	**	0.6	**
Don't know	2.1	3.9	5.9	3.9
Total	100	100	100	100

*Includes respondents who said they requested insurance.

**Less than 0.5 percent.

n.a. not applicable

SOURCE: Durkin and Elliehausen, *1977 Consumer Credit Survey* and University of Michigan, Survey Research Center, Survey of Consumer Attitudes, December 1985.

FRBSF WEEKLY LETTER

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Credit Insurance: Beauty or Beast?

Credit insurance on consumer loans is big business in the United States. In 1985, nearly 70 million credit life insurance policies with coverage of almost $200 billion were insuring individual borrowers against default on car loans, personal loans, and other extensions of consumer credit. Some form of credit insurance covered approximately 70 percent of all closed-end (nonrevolving) consumer loans made in 1985.

Given such figures, it is tempting to conclude that credit insurance is well-understood and highly desired by the borrowing public — a view frequently expressed by credit insurance underwriters and the lenders who sell such insurance. Critics of the credit insurance industry, however, have long argued that much of the "popularity" of credit insurance is due to other factors, including borrower ignorance of alternatives to credit insurance and coercive practices by lenders.

Such sharply divergent views have created intense debate over credit insurance. This *Letter* examines some long-standing consumer issues surrounding the credit insurance product. The analysis concludes that credit insurance often can fulfill the legitimate needs of borrowers at a reasonable cost, although premium rates in some states may be excessive. Also, borrowers should carefully assess their need for this product, be aware of potentially abusive sales practices, and recognize their legal rights to refuse the purchase of credit insurance or to seek it from an alternate source.

Purpose of credit insurance

Credit insurance is sold to borrowers in connection with the extension of consumer credit by a lender, usually a financial institution or retailer. It is designed to ensure the repayment of a borrower's debt in the event of death, disability, or loss of property. Lenders typically purchase credit insurance from underwriters on a group basis. The lender holds the policy and issues a certificate of insurance to the borrower. The lender is named beneficiary and directly receives any payments made on submitted claims.

There are three basic types of credit insurance: credit life, credit accident and health (A&H), and credit property insurance. Credit life insurance, which may be bought as single or joint coverage (typically, spouses), is the most commonly purchased type of credit insurance and provides for loan repayment in the event of the borrower's death. It is normally written as declining term insurance in which coverage decreases as the loan is repaid.

A&H insurance is designed to repay a borrower's debt during any period in which a borrower suffers a loss of income due to illness or injury. A&H policies often feature a "retroactive" clause that requires a borrower to be disabled for a specified time period (usually from seven to thirty days) before insurance payments begin. A&H insurance entails greater risk of loss to the underwriter and is more difficult to administer (e.g., more than one claim may be filed).

Credit property insurance is a third type of credit insurance and insures property purchased with the proceeds of a borrower's loan or property used as collateral for a loan. Credit property insurance, like credit life and A&H, is underwritten by several types of firms: specialty companies that engage more or less exclusively in credit insurance, full-line insurance companies, and "captive" insurance companies — those owned by a single lender or group of lenders.

Advantages and disadvantages

In addition to providing debt default protection, credit insurance (particularly credit life insurance) has characteristics that distinguish it from other types of insurance and may provide important advantages to some individuals. Unlike regular life insurance, it is conveniently sold through creditors and can be made available in very small amounts of coverage. The premium rate is constant and does not depend on the size

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and term of the loan or the insured's health or age (although it is usually not made available to borrowers over 65). Generally, no proof of insurability is required, and credit insurance cannot be cancelled.

Critics of credit insurance, however, argue mainly that its cost is excessive and that its sale has been characterized by abusive practices, particularly coercion.

Excessive cost?
The issue of "excessive" cost remains open to debate. Lenders argue that premium rates for credit insurance reflect the relatively high processing and administrative costs associated with policies of a small average size. They also argue that credit insurance is subject to an "adverse selection" process in which insured persons of disparate ages and health conditions pay identical premium rates — a practice not found in most other types of insurance in which premiums more directly reflect risk. Nevertheless, available evidence suggests that credit insurance rates in some states are higher than needed to cover the sum of claims, reasonable lender compensation, and normal profits to insurance underwriters.

Since states regulate credit insurance rates, much of the controversy has focused on their rate-setting practices. Those who blame states for causing high rates therefore suggest that the solutions, such as competitive rate bidding or the elimination of separate charges for credit insurance, also lie with the states.

Currently, most states establish prima facie maximum rates (quoted in cents per hundred dollars of insurance) at levels designed to generate some targeted "loss ratio" (the ratio of premiums paid to premiums collected). Many states have adopted a target loss ratio of 60 percent, a figure recommended by the National Association of Insurance Commissioners. Maximum rates and actual loss ratios vary widely, however. Some states (e.g., Alabama, Louisiana, and South Carolina) permit creditors to charge up to $1.00 per hundred of credit life insurance. Others set maximum rates at much lower levels: California at $.40; Maine, $.40; New Jersey, $.39; and New York $.28.

These differences are not trivial, especially in view of the small differences in the state-to-state cost of providing credit insurance. In Alabama, the premium for credit life insurance (including interest charges on the financing of the insurance premium) for a $6,000, 48-month loan at a 15 percent annual percentage rate would be approximately $340. In New York, premiums for the same coverage would be about $80.

Since credit insurance is readily obtainable in all states despite widely varying premium rates, maximum rates in many states probably could be lowered without reducing the availability of credit insurance. Although lenders and insurers argue to the contrary, past experiences do not seem to support them. Massachusetts, for example, recently required some creditors to obtain three competitive bids when choosing a credit insurance underwriter. As a result, credit insurance rates charged by lenders affected by this regulation declined about 50 percent from the state maximum of $.50 to approximately $.28 with no observable decrease in insurance availability. A similar experience was recorded in Canada in 1976 when maximum rates were reduced from approximately $.65 to $.35.

Those who believe the cost of credit insurance is excessive point to the sale of credit insurance at the maximum allowable rate in most states. This practice occurs for two reasons. First, lenders are generally prohibited from charging more for credit insurance than they themselves pay. Second, lenders are typically compensated for credit insurance sales through a portion of the collected premiums (up to 60 percent in some states). Thus, lenders as well as insurers profit from charging higher premiums.

A lender's ability to charge borrowers the maximum allowable premium rate may be abetted by the public's unfamiliarity with the alternatives to credit insurance and, to some degree, by the public's insensitivity to the cost when it is combined with monthly loan payments. When priced as a lump sum, the total cost of credit insurance may be apparent. But when financed with a loan (as it usually is), the increase to the monthly loan payment is commonly only a matter of several dollars or less. Thus, many borrowers may be insensitive to the cost of lender-provided credit insurance — particularly in view of what they may perceive to be the high cost of searching for alternative sources of credit insurance.

Abusive sales practices?

Many borrowers voluntarily purchase lender-provided credit insurance as a matter of convenience and out of a desire to minimize search costs. Others, critics argue, are explicitly (and illegally) pressured into buying the lender's credit insurance as a condition for receiving credit. (In certain states it is legal for a creditor to require borrowers to obtain credit insurance. Federal laws, however, prohibit lenders from specifying that it be purchased from a particular source. Moreover, whenever credit insurance is required, the "Truth-in-Lending" Act mandates that its cost be included in the annual percentage rate quoted for the loan.)

The issue of tie-in sales of credit insurance has serious implications given the importance of the function of granting credit in our economy. Seller coercion, however, may be subtle or explicit and is difficult to measure. As a result, its extent has always been a matter of debate.

A 1985 Federal Reserve-sponsored survey provides some support for the view that tie-ins are not perceived by borrowers as an important problem. The survey revealed that 65 percent of consumer loans studied were covered by credit insurance, 90 percent of which was purchased from the lender. Although 20 percent of borrowers who purchased credit insurance said it was either "required" or "strongly recommended," only 4 percent of borrowers felt that their decision to purchase credit insurance made a difference in the lender's decision to grant the loan. In addition, 90 percent of borrowers who purchased credit insurance thought that credit insurance was a "good" idea, and 95 percent were inclined to purchase it again.

Conclusion

This *Letter* has examined certain consumer issues related to credit insurance while leaving the question as to whether borrowers should purchase credit insurance in specific instances unanswered. For many borrowers credit insurance can conveniently fulfill a legitimate need for protection against loan default — and at a reasonable price in many states. For others, it may represent a costly and needless "extra."

Borrowers need to assess their overall financial status when considering the purchase of credit insurance. If a borrower has sufficient regular life insurance or assets with which to repay existing loans in the event of death or disability, credit insurance may be a poor purchase. In addition, credit insurance is less advantageously priced for younger borrowers who can usually add coverage to an existing term life policy at less expense. For older borrowers, or for borrowers who cannot afford or medically qualify for regular life insurance, however, credit insurance may be more worthwhile.

Borrowers should always compare the credit insurance rate being charged with their state's maximum allowable rate. A borrower should also be aware of the benefits and qualifying provisions of his credit insurance policy and of his right to refuse a particular lender's credit insurance in favor of other sources.

A 1985 survey of borrower attitudes toward credit insurance provides evidence that borrowers do not view coercion to buy credit insurance to be an important problem. Efforts on the part of the credit insurance industry and insurance regulators to eliminate past alleged abuses continue to improve the insurance product provided borrowers. Nevertheless, individual borrowers still should carefully assess their own need for credit insurance.

Anthony W. Cyrnak

Editorial comments may be addressed to the editor (Gregory Tong) or to the author .... Free copies of Federal Reserve publications can be obtained from the Public Information Department, Federal Reserve Bank of San Francisco, P.O. Box 7702, San Francisco 94120. Phone (415) 974-2246.

COST EQUATION: CREDIT LIFE AND TERM LIFE INSURAN

Periodically, credit insurance critics advise consumers to forego credit life insurance in f insurance.

Often, that's misguided advice.

They fail to explain **the difference between term life and credit life insurance.**

The better explanation helps consumers compare value and cost to buy only as much in they need or can afford.

We can agree that higher income consumers who can afford large amounts of life probably do not need credit insurance.

We can't agree that applies to most consumers.

We know when it comes to life insurance many consumers are uninsured or underinsure Either they don't have any or they have only a little. A 1999 study found that 25 percent households have no life insurance at all.

If most consumers don't have insurance or enough insurance, they do have debt. Total non-mortgage consumer debt in the U.S. rose to $1.5 trillion at the end of 2000. R about one-seventh of this debt ($212 billion) is protected by credit life insurance. With those numbers in mind, let's look at the cost/value equation between credit life and renewable term life insurance.

We'll compare:

- credit life decreasing term insurance to insure the average-size closed-end loar this kind of policy ($6,000) for a typical loan period of three years,
- to the cost for a $50,000 renewable term life insurance policy.

We'll compare the costs for a three-year period.

We'll make the comparison at a rate of 50 cents per $100 for credit life insurance and 3($100 of term life insurance plus a $25 annual policy fee.

We'll use those rates because the one for credit life insurance is the average 200 I rate 1

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U.S. while the rate for term life is fairly typical and standard.

The total three-year credit life insurance cost would be $90.

The term life insurance would cost $175 the first year. Every year the rate and the c life may increase as the insured person ages.

The three-year cost of the $50,000 term life policy would actually add up to $475.

Because of the policy fee, a $6,000 term life insurance policy would have a three-year c $79, **but no ordinary insurer would issue such a small amount.**

If all you want or can afford is credit life insurance, then term life insurance simply does needs and credit insurance is the right answer.

On the other hand if you can afford the higher amount of term life insurance, and it mee insurance needs - including debt repayment, then term life insurance may be the right a

Telling consumers to buy term life insurance instead of credit life insurance witho their individual circumstances is the wrong answer.

Only you know what you need and can afford.

WELLS FARGO FINANCIAL

Credit Accident and Health Insurance

Credit Insurance can be a smart protection, especially for those who have invested into real estate loans. See below for commonly asked questions. If you still need information, please contact your local store.

Who is eligible?

Most people are eligible for these products. Applicants simply have to answer health questions and must meet work employment requirements.

How affordable is it?

The balance on the loan is the amount insured (assuming this amount does not exceed the maximum limit), so you will never pay for more insurance than you need. The policy premiums are added to your monthly payment so there are no extra payment dates to keep track of.

What's the difference between Credit Life and Term Life Insurance?

Characteristic	Credit Life Insurance	Term Life Insurance
Policy Premiums	Becomes part of the loan payment. This means that premium payments are included in the monthly loan payment; eliminating the possibility of forgetting a payment.	It is not connected to a loan. You must make separate payment arrangements.
Physical Examination	There is no physical examination required.	Physical examination is usually required.
Death Benefit	Will forgive all or part of the balance on specified loans. The death benefit – and therefore the premium – is adjusted monthly.	Will pay a specified death benefit to the beneficiaries of the policy upon death of the insured. The death benefit is only adjusted when the policy is renewed.
Policy Size	Customized to the needs of each individual loan. There is no minimum.	Since term life insurance is not usually tied to any specific debt, the size of the policy is determined by you.
Coverage	Designed to only cover a specific personal loan. The benefit is only used to repay the debt.	Is designed to protect the beneficiary. The death benefit is paid to the beneficiary who can decide how to spend the money.

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Is Credit Insurance right for me?

It is important to remember that everyone's circumstances are different and while credit insurance may be the best solution for one person, it may not be the best for another. Credit insurance is only one of many solutions offered through Wells Fargo Financial. Please feel free to contact a representative in order to find out the best way to take care of your insurance needs.

Who can I talk to about applying for coverage?

Please feel free to contact your local Wells Fargo Financial branch for more information.Use our Branch Locator to find the nearest Wells Fargo Financial location.

*Not all insurance coverages available in all states. Coverages are subject to policy terms, conditions, and limitations. Credit insurance is available only in connection with an extension of Credit. Please check with your local branch for restrictions, including maximum amount of insurance and term limitations.

Credit insurance products are underwritten by Centurion Life Insurance Company of 800 Walnut St., Des Moines, IA 50309 and Assurant of 11222 Quail Roost Drive, Miami, FL 33157. Centurion Life Insurance Company is licensed in all states except ME, NY, and VT. Centurion Life Insurance Company, NAIC Company Code 62383 is domiciled in Iowa. Underwriter varies by state and coverage type. Centurion Life Insurance Company is an affiliate of Wells Fargo Financial, Inc.

The creditor is not acting as a broker to you but as an agent for the insurance company. The creditor and/or its affiliates, including insurance company affiliates expect to earn profits from the sale of credit insurance products.

Credit insurance is optional and not required. Loan decisions are not impacted by decision to purchase credit insurance.

Third Party Causes of Action:

Effects on West Virginia Insurance Markets

Provided by the
Offices of the Insurance Commissioner

February 2005

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I. Introduction

Insurance contracts, by their very nature, are made between two parties. The insured party desires protection from unforeseeable risks, and the insurance carrier provides that protection for a fee. A classic example of insurance protection occurs when a hailstorm damages a home's roof: the homeowner files a claim against his insurance carrier and payment is made to the homeowner to indemnify him for the loss. Occasionally, the nature of these two-party contracts extends protection to claims made by parties outside the contract. These protections are extended to "third party," or "extra-contractual" claimants, and their rights and protections are also a vital part of the insurance environment. An example of third party coverage occurs when a motorist collides with a parked car: the parked car owner has a claim against the motorist and, indirectly, against the motorist's insurance carrier. In a well-crafted insurance environment, all parties to an insurance setting are treated justly. But if the balance is disrupted, the insurance mechanism does not work efficiently. This report, prepared for the West Virginia Legislature, addresses the insurance environment with respect to third party rights, and makes recommendations about the proper role of the law in this context.

The efficiency of West Virginia's insurance environment with respect to the right of third party claimants has come under much scrutiny. This is a result of our state extending more legal rights to third party claimants than the vast majority of the states. Our courts have extended special rights to third parties by allowing them to directly sue an insurance carrier for unfair trade practices in the settlement process. In most states, this claim has an administrative remedy: the alleged injured party lodges his or her complaint with the insurance commissioner. Given the mixed approach in different jurisdictions, we ask about the ramifications of one approach versus the other. Those that argue for the continuation of the current approach contend that, absent this protection, third parties can be coerced by the insurance carrier since the insurance company has no contract with the third party and thus no business interest in prompt and complete settlement. The other side argues that extending this right to parties outside of the traditional contract compromises the relationship between the carrier and its insureds. Further, it induces insurance carriers to practice "defensive" settlement practices to avoid getting sued. As a result of this combination of defensive settlements and unfair trade practices awards, the argument goes that the cost of doing insurance business is higher in West Virginia and the risk exposure to the carrier is greater. These higher costs are, in part, passed on to all insurance customers and the legal environment dissuades potential entrants from entering our market. The result, according to this argument, is an insurance climate in West Virginia that is unfavorable for consumers and companies alike.

This is not a new issue, but rather one that has been discussed for many years. The motivation for the present study and this report was provided by H.B. 4004, enacted by the Legislature in 2004. This bill requires, among other things, that the West Virginia Insurance Commissioner report to the Legislature on third party causes of action. This report, under W.Va. Code §33-2-15b, is required to include:

(1) The legal history of the creation of a third party causes of action brought pursuant to Unfair Trade Practices Act as codified in article eleven of this chapter;

(2) An analysis of the impact of third party causes of action upon insurance rates and the availability of insurance in this state;

(3) A summary of the types of data which the commissioner utilized in preparing the analysis: *Provided*, That the commissioner will not disclose information which is otherwise confidential: *Provided, further*, That if the commissioner is unable to obtain data which he or she considers necessary to preparing a full analysis, the commissioner shall state in the report;

(A) The reasons that he or she was not able to obtain the data;

As a result, it is clear that the costs associated with third party causes of action are considerable.

IV. Conclusions and Recommendations of the Commissioner

The conclusions that follow from the evidence are that West Virginia's legal approach to third party causes of action is in the minority, and this minority position has deleterious effects on the insurance climate of the state. The result is an insurance climate that is overly litigious and premium rates that are higher because of it. The evidence in this report is robust and comes from several credible sources.

The legal analysis demonstrates convincingly that West Virginia's legal protections of the third party rights in an insurance context give protections that are beyond the original intent of the Unfair Trade Practices Act. This has resulted in a disproportionate number of UTPA filings under this protection of the law, and a fundamental shift in the business practices of insurance carriers. It appears that they have taken on a practice of defensive claims settlement practices and are spending a much higher than average effort defending themselves in court.

The economic evidence provided, supported by the academic community, has indicated that the costs associated with the third party doctrine increases the cost of insurance in the state, and particularly among auto lines. These higher costs are ultimately shifted forward to insurance consumers. This evidence comes from economic theory, econometric support, and comparisons of national and regional data on bodily injury claims. Additionally, the evidence shows that claims practices in West Virginia are tilted considerably toward unfair claims settlement violations when compared to other states.

As a result of this evidence, it is the opinion of the Commissioner that this situation be changed. We must return to the consumer protections originally intended by the Unfair

Trade Practices Act. These protections provide for prompt, fair and equitable treatment of consumers. However, these protections do not extend beyond complete indemnification or to enriching those outside of the insurance contract. We believe that the current interpretation of the law extends protections beyond its original intent.

We suggest a change that will move examination of insurance companies from the courts to the Insurance Commission. The Commission has the administrative authority, plus the specialized skills and knowledge about insurance transactions that cannot be duplicated by the court system. The Commission is the rightful place for the business practices of insurance carriers to be examined. To do this, the private third party cause of action must be eliminated.

The anticipated result will be better for insurance consumers and insurance carriers alike. It is reasonable to expect downward pressure on insurance costs and increased competition as carriers find West Virginia a better place to conduct the business of insurance.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE EX REL. CITIFINANCIAL, INC.,

Petitioner,

vs. **CASE NO. 081254**

JOHN T. MADDEN, Judge, Marshall County, and
PAUL W. LIGHTNER,

Respondents.

MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*
ON BEHALF OF
THE AMERICAN FINANCIAL SERVICES ASSOCIATION
AND THE CONSUMER CREDIT INDUSTRY ASSOCIATION
IN SUPPORT OF CITIFINANCIAL, INC.'S
PETITION FOR A WRIT OF PROHIBITION

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May it please the Court:

The American Financial Services Association and the Consumer Credit Industry Association ("AFSA" and "CCIA" or "the Associations"), respectfully move the Court for leave to file an Amicus Curiae brief in this action. The Associations seek Amicus Curiae status solely to file an Amicus Curiae brief on the issue of subject matter jurisdiction and do not seek to submit any testimony in this matter. As grounds for this Motion, the Associations state this case has a potentially severe impact on their members and on the regulatory process by which the Legislature of the State of West Virginia has determined that rates should be set and that their brief will be helpful to the Court in ruling on important threshold issues presented in this action. Furthermore, the parties in this action will not be inconvenienced or unduly prejudiced by permitting the Associations to file an Amicus Curiae brief.

Respectfully submitted,

AMERICAN FINANCIAL SERVICES ASSOCIATION AND THE CONSUMER CREDIT INDUSTRY ASSOCIATION CITIFINANCIAL, INC.,

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CERTIFICATE OF SERVICE

I, James D. McQueen, Jr., hereby certify that a true and exact copy of the foregoing **MOTION FOR LEAVE TO FILE A BRIEF*AMICUS CURIAE* ON BEHALF OF THE AMERICAN FINANCIAL SERVICES ASSOCIATION AND THE CONSUMER CREDIT INDUSTRY ASSOCIATION IN SUPPORT OF CITIFINANCIAL, INC.'S PETITION FOR A WRIT OF PROHIBITION** was served via U.S. mail, postage prepaid, with a courtesy copy by facsimile transmission on June 10, 2008 to the following counsel of record:

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