Garland W. Binns, Jr.
Horne, Hollingsworth & Parker, P.A.
Attorneys at Law
401 West Capitol, Suite 501
Post Office Box 3363
Little Rock, AR 72203
Telephone: (501) 376-4731
Facsimile: (501) 372-7142
Email: gbinns@hhandp.com

DECEMBER 2000

U P D A T E

News of Developments in the Financial Sector and Related Areas

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Reverse Stock Splits

Gaddy v. Phelps County Bank, 20 S.W.3d 511 (Mo.banc 2000) involved a case where the defendant Bank did a reverse stock split and its minority shareholders received cash in lieu of fractional shares. The minority shareholders filed suit based upon the theory that the reverse stock split violated the Missouri Constitution in that the stock split constituted the taking of private property for private use without the consent of the owner and that the stock split violated fundamental principles of equity, fair dealing and shareholder protection. In reviewing the facts, the court noted that a majority of the Bank's shareholders approved an amendment of the Bank's articles of agreement and under the amended articles, a reverse stock split was authorized. The court pointed out that upon purchasing their stock, the minority shareholders consented to the right of the majority shareholders to amend the Bank's articles of agreement. The court rejected the minority shareholders' argument that a reverse stock split was not permitted unless specifically authorized by state statutes. The court held that a shareholder in a corporation tacitly consents to any subsequent amendment of articles of incorporation designed to enable the corporation to conduct its business in a more profitable manner, and that the reverse stock split was not a taking of the minorities' shares without their consent.

Liability of Assignees

In *Ramadan et al v. Chase Manhattan Corp.*, No. 99-5709 (October 6, 2000), the United States Court of Appeals for the Third Circuit held that an assignee of a retail installment contract would not be liable for an automobile dealer's Truth in Lending Act violation that was apparent only by referring to documents that were transmitted to the assignee but not assigned. The automobile dealer was said to have violated the Truth in Lending Act by including all of the amount paid for an extended warranty as an amount paid to others on behalf of the buyer while failing to disclose that it had retained part of the sum as a commission. The violation was not apparent on the face of the retail installment contract or any other documents that were assigned, and the Truth in Lending Act did not establish assignee liability based either on documents that were not assigned or on the assignee's actual knowledge. The assignee could not be made liable for an automobile dealer's Truth in Lending Act violation by the dealer's inclusion of a clause on assignee liability required by the Federal Trade Commission. The clause, which was legally required and not subject to negotiation, stated that an assignee was liable for violations to the same extent as the assignor. However, the Truth in Lending Act made assignees liable only for violations that were apparent on the face of the assigned documents. Since the Federal Trade

Commission could not contravene the Truth in Lending Act by regulation, the required clause had to be interpreted in light of the Truth in Lending Act and could not expand assignee liability. The case is reprinted in [Current Binder] *Fed. Banking L. Rep. (CCH) ¶ No. 100-477.*

NASD Arbitration

The National Association of Security Dealers, Inc. ("NASD") has a voluntary program for a two-year period that will allow parties with claims between $50,000.01 to $200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators which would otherwise be required under the NASD's Code of Arbitration Procedure. The NASD believes that the pilot program should result in lower arbitration fees and quicker resolution of arbitration claims for participants. The *Single Arbitrator Pilot Program* is reprinted in NASD Manual (CCH) Rule 10336 and is available on the NASD web site at *http://www.nasdadr.com/arb_code.asp.*

Fair Credit Reporting Act

In a recent letter regarding the application of the Fair Credit Reporting Act ("FCRA") to the extension of credit for commercial purposes, the Staff of the Federal Trade Commission ("FTC") expressed its opinion that the FCRA was applicable. Specifically, the issue dealt with a credit report on the personal credit or other history of an individual who is a principal, owner, or officer of the entity that is applying for a loan (or who is serving as a guarantor). Because the information is "collected in whole or in part for the purpose of (assisting evaluation of) the consumer's eligibility for credit (or other authorized purpose)," the Staff said that the overwhelming weight of authority is that such a report is a "consumer report," regardless of the unauthorized purpose to which the information may in fact be used by the party procuring the report citing *Yang v. Government Employees Ins. Co.,* 146 F.3d 1320, 1325 (11th Cir. 1998) and a number of other cases. As a result, a credit report on an owner or principal of an entity applying for a commercial loan, may not be obtained without the individual's written permission. The Staff's opinion letter is available on the FTC's web site at *http://www.ftc.gov/os/statutes/fcra/ tatel baum.htm*.

Taxpayer Information Web Site

Recently, the Internal Revenue Service ("IRS") announced a new web site "*Taxpayer Rights Corner*" for taxpayers seeking information about their rights when dealing with the IRS. The web site consolidates taxpayer rights information in one place and may be accessed at *http://www.irs.gov/ind_info/txpyr_rights/index.html.*

Court Decisions

Collins v. Fred Haas Toyota, 21 S.W. 3d 606 (Tex. App.-Houston [1st Dist.] 2000) held that the advertised "cash price" of a used car was the price that the dealer offered a car in the ordinary course of business to all customers and not the higher price that ultimately was agreed upon and stated in the retail installment contract with the buyer, and buyer was not required to have had knowledge of the dealer's lower advertised price to have established the "cash price."

Ford Motor Company v. Motor Vehicle Board, 21 S.W. 3d 744 (Tex. App.-Austin 2000) held that a dealership's abuse of wholesale price adjustment program offered by the manufacturer was grounds for termination of the dealership's franchise agreement.

Peters v. Jim Lupint Oldsmobile Co., No. 99-2783 (8th Cir. 2000) held that an automobile purchaser who suffered no actual damages from the dealer's failure to disclose its receipt of insurance commissions could not recover for a claimed violation of the Truth in Lending Act since only actual damages could be recovered for such a violation.