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# WARRANTIES AND GUARANTIES

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## HEARINGS

BEFORE THE  
SUBCOMMITTEE ON COMMERCE AND FINANCE  
OF THE  
COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE  
HOUSE OF REPRESENTATIVES  
NINETY-FIRST CONGRESS

SECOND SESSION

ON

**H.R. 18056**

A BILL TO IMPROVE WARRANTY PRACTICE AND THUS IMPROVE THE COMMERCE OF THE UNITED STATES

**H.R. 10690, H.R. 12656, and H.R. 16782**

BILLS TO AUTHORIZE THE FEDERAL TRADE COMMISSION TO SET STANDARDS TO GUARANTEE COMPREHENSIVE WARRANTY PROTECTION TO THE PURCHASERS OF MERCHANDISE SHIPPED IN INTERSTATE COMMERCE

**H.R. 13390**

A BILL TO ASSIST IN THE PROTECTION OF THE CONSUMER BY REQUIRING FULL DISCLOSURE OF THE TERMS AND CONDITIONS OF GUARANTEES

**H.R. 18758, H.R. 19293, and S. 3074**

BILLS TO PROVIDE MINIMUM DISCLOSURE STANDARDS FOR WRITTEN WARRANTIES AND GUARANTIES OF CONSUMERS PRODUCTS AGAINST DEFECT OR MALFUNCTION; TO DEFINE MINIMUM FEDERAL CONTENT STANDARDS FOR SUCH WARRANTIES AND GUARANTIES; AND FOR OTHER PURPOSES

SEPTEMBER 29, 30, AND OCTOBER 1, 1970

**Serial No. 91-79**

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ORGANIZATIONS REPRESENTED AT THE HEARINGS

- American Retail Federation, James M. Goldberg, vice president, Government Affairs Division.
- Association of Home Appliance Manufacturers, George P. Lamb, general counsel.
- Electronic Industries Association, J. Edward Day, special counsel, Consumer Electronics Group.
- Federal Trade Commission, Hon. Miles W. Kirkpatrick, Chairman.
- Gas Appliance Manufacturers Association, Inc., Thomas Nichol, Jr., general counsel.
- National Home Furnishings Association:
  - Breuner, Wallace E., Jr., director and chairman, Warranty and Guaranty Committee.
  - Johnson, Spencer A., vice president for Government affairs.
- National Small Business Association:
  - Lewis, John, executive vice president.
  - Rothwell, Thomas, special consultant.

## WARRANTIES AND GUARANTIES

TUESDAY, SEPTEMBER 29, 1970

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

This morning the Subcommittee on Commerce and Finance begins hearings on consumer products. These hearings are directed at one of the most serious problems facing the American consumer today—that of product reliability.

Far too many of us have suffered the irritation and annoyance which result from seeking redress under a guarantee on a defective product only to learn firsthand that "The bold print giveth, and the fine print taketh away."

Our purpose in these hearings is to develop a record from which we can draft legislation which will insure that guarantees given on consumer products will be understandable, effective, and enforceable. The Chair understands the complexity of the subject matter and recognizes that this will not be an easy task. On the other hand, he believes very strongly that such legislation will be of great benefit not only to the consumer but also to responsible businessmen by restoring consumer confidence in them and their products and protecting them from unscrupulous competitors who use fraudulent guarantees as a competitive device.

(The text of H.R. 18056, H.R. 10690, H.R. 12656, H.R. 16782, H.R. 13390, H.R. 18758, H.R. 19293, and S. 3074 and departmental reports thereon follow:)

[H.R. 18056, 91st Congress, 2d session, introduced by Mr. Staggers (for himself and Mr. Springer) on June 11, 1970]

## A BILL

To improve warranty practice and thus improve the commerce of the United States.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Consumer Warranty Act  
4 of 1970".

5                   CONGRESSIONAL FINDINGS AND PURPOSE

6       SECTION 1. Congress finds that the free flow of con-  
7 sumer products and services and open competition in guaran-  
8 ties relating to those products and services are interdepend-  
9 ent; and Congress further finds that it is in the interest of  
10 the commerce of the United States that consumers receive  
11 complete disclosure of the terms and conditions of any guar-

1 anty of merchandise or services, and that guaranties not be  
2 marketed deceptively.

3 It is the purpose of this Act to provide for full disclosure  
4 of warranty terms, and to prevent the sale of consumer prod-  
5 ucts and services by the use of deceptive guaranties that af-  
6 fect commerce.

7 DEFINITIONS

8 SEC. 2. As used in this Act—

9 (a) "Guaranty" or "warranty" shall mean:

10 Any express statement of guaranty or warranty, or any  
11 description, sample, or model or any affirmation of fact or  
12 promise, whether in advertising or otherwise, made by the  
13 guarantor to the purchaser, which relates to consumer prod-  
14 ucts or services and becomes part of the basis of the bargain,  
15 as to that description, sample, model, affirmation, or promise.  
16 It is not necessary to the creation of a guaranty or warranty  
17 that the guarantor use formal words such as "warranty" or  
18 "guaranty" or that he have a specific intention to make a  
19 guaranty or warranty, but any affirmation merely of the  
20 value of the consumer products or services or any statement  
21 purporting to be merely the guarantor's opinion or com-  
22 mendation of the consumer products or services does not  
23 create a guaranty or warranty as to that affirmation or  
24 statement.

25 (b) "Consumer products" means goods that are nor-

1 mally used for personal, family, or household purposes and  
2 that actually cost the purchaser more than \$25. "Consumer  
3 products" do not include real property or securities.

4 (c) "Guarantor" means any person who gives or offers  
5 to give a warranty or guaranty, including the warranty  
6 provided for by section 4 of this Act.

7 (d) "Purchaser" means the first buyer at retail of any  
8 consumer products or services to whom a guaranty is offered  
9 or given, and any other person who is entitled by the terms  
10 of such guaranty to enforce against the guarantor the obliga-  
11 tion of the guaranty.

12 (e) "Services" means repairs or other work actually  
13 costing more than \$25 performed on consumer products.

14 (f) "Supplier" means any person engaged in the busi-  
15 ness of making consumer products available to consumers,  
16 either directly or indirectly.

17 (g) "Deceptive guaranty" means: (i) a guaranty or  
18 warranty that contains an affirmation, promise, description,  
19 or representation that is either false or fraudulent, or that,  
20 in the light of all of the circumstances, would mislead a  
21 reasonable man exercising due care; or fails to contain in-  
22 formation that is necessary, in light of all of the circum-  
23 stances, to make the guaranty or warranty not misleading  
24 to a reasonable man exercising due care; and (ii) a guar-  
25 anty or warranty created by the use of such terms as "guar-

1 anty" or "warranty," if the terms and conditions of such  
2 guaranty or warranty so limit its scope and application as  
3 to deceive a reasonable man.

4 (h) "Commission" means the Federal Trade Com-  
5 mission.

6 DISCLOSURE OF WARRANTY AND GUARANTY PROVISIONS

7 SEC. 3. (a) In order to improve the information avail-  
8 able to consumers, prevent deception, and improve compe-  
9 tition in the marketing of warranties and guaranties, the Com-  
10 mission is authorized to establish regulations requiring the full  
11 and conspicuous disclosure of the terms and conditions of ex-  
12 press statements of warranties and guaranties relating to con-  
13 sumer products, and disclaimers of warranties and guaranties,  
14 express or implied; and the manner and form in which such  
15 information must be presented or displayed to the purchaser,  
16 including representations in advertising, labeling, and point  
17 of sale information: *Provided, however,* That nothing in this  
18 section shall be deemed to authorize the Commission to pre-  
19 scribe the duration of guaranties or warranties given, to re-  
20 quire that products or components be guaranteed or war-  
21 ranted, or to undertake similar action to prescribe the scope  
22 and substance of substantive terms of warranties and  
23 guaranties.

24 (b) Regulations pursuant to subsection (a) of this sec-  
25 tion shall provide that the warranty or guarantee—

1 (1) is expressed in simple and readily understood  
2 terms;

3 (2) clearly and conspicuously discloses the name  
4 and address of the guarantor and, where applicable, the  
5 name and address of any person or persons, or the iden-  
6 tification of any class of persons authorized to perform  
7 the obligations set forth in the warranty or guaranty.

8 (c) Regulations pursuant to subsection (a) of this sec-  
9 tion may provide, among other things, that the warranty or  
10 guaranty—

11 (1) describe the parts of the product which are cov-  
12 ered by the warranty or guaranty;

13 (2) state the nature of the damage and defects  
14 which are covered by the warranty or guaranty;

15 (3) disclose the duration of any obligations under  
16 the warranty or guaranty;

17 (4) state the conditions, if any, which the person  
18 claiming under the warranty or guaranty must fulfill be-  
19 fore the guarantor will perform his obligations;

20 (5) state the time at which and the manner in which  
21 the guarantor will perform his obligations;

22 (6) state the period of time within which, after  
23 notice of malfunction or defect, the guarantor shall re-  
24 pair, replace, or otherwise perform any obligations under  
25 the warranty or guaranty;

1           (7) disclose the characteristics or properties of the  
2           products, or parts thereof, that are not covered by the  
3           warranty or guaranty;

4           (8) not contain words or phrases which would mis-  
5           lead reasonable men as to the nature or scope of the war-  
6           ranty or guaranty;

7           (9) state the step by step procedure which the  
8           owner should take in order to obtain performance of  
9           any obligation under the warranty or guaranty;

10          (10) state any means available for quick informal  
11          settlement of any warranty or guaranty dispute.

12          (d) Subject to the provisions of subsection (e) of this  
13          section, functions and proceedings under subsections (a) and  
14          (b) of this section shall be subject to sections 552 and  
15          559, inclusive, of title 5, United States Code (Adminis-  
16          trative Procedure) and to sections 701 to 706, inclusive,  
17          of said title 5.

18          (e) Regulations established by the Commission under  
19          subsections (a) and (b) of this section shall be effective  
20          after notice thereof is published in the Federal Register,  
21          interested parties are given an opportunity to comment  
22          thereon within a reasonable time, and such regulations are  
23          approved on a record after opportunity for a public agency  
24          hearing.



1 Act for any supplier (i) to commit an act prohibited under  
2 section 5 of this Act, or (ii) to violate any regulation validly  
3 issued under the authority of section 3 of this Act.

#### 4 RESTRAINING VIOLATIONS

5 SEC. 7. Whenever the Commission has reason to believe  
6 that any person is engaged in, or is about to engage in, an  
7 act prohibited by section 5 of this Act, or a violation of any  
8 regulation validly issued under the authority of section 3 of  
9 this Act, and that injunction thereof pending the issuance of  
10 a complaint by the Commission under section 5 of the Fed-  
11 eral Trade Commission Act, and until such complaint is dis-  
12 missed by the Commission or set aside by the court on re-  
13 view, or the order of the Commission to cease and desist  
14 made thereon has become final within the meaning of section  
15 5 of the Federal Trade Commission Act, would be in the  
16 interest of the public—the Commission by any of its attor-  
17 neys designated by it for such purpose may bring suit in a  
18 district court of the United States to enjoin said violation.  
19 Upon a proper showing of need the court, in its sound discre-  
20 tion, may grant a temporary restraining order or preliminary  
21 injunction without bond: *Provided, however,* That if a com-  
22 plaint under section 5 of the Federal Trade Commission Act  
23 is not filed within sixty days of the issuance of the restraining  
24 order or preliminary injunction, the order or injunction shall  
25 be dissolved and of no further force and effect.

1        SEC. 8. The district courts of the United States shall  
2 have jurisdiction to restrain violations of section 5 of this  
3 Act upon application by the Attorney General. The court  
4 may at any time grant such injunctive relief as it deems  
5 appropriate. Whenever it appears to the court that the ends  
6 of justice require that other persons should be parties in  
7 the action, the court may cause them to be summoned  
8 whether or not they reside in the district in which the court  
9 is held, and to that end process may be served in any district.

10        SEC. 9. (a) When a guarantor, (i) in any action  
11 brought by the Attorney General under section 8 of this  
12 title, has been enjoined from committing any act or practice,  
13 whether after final adjudication or by consent decree, or  
14 (ii) in any proceeding brought by the Federal Trade Com-  
15 mission under section 5 of the Federal Trade Commission  
16 Act with respect to acts or practices alleged to be unfair  
17 or deceptive within the meaning of section 6 of this Act,  
18 has been ordered to cease and desist from that act or prac-  
19 tice, and the order shall have become final within the mean-  
20 ing of section 5 of the Federal Trade Commission Act either  
21 after adjudication or by consent decree, any purchaser claim-  
22 ing to have been adversely affected by the act or practice  
23 giving rise to such injunction or order may bring suit against  
24 said guarantor, and may recover actual damages, and the  
25 costs of suit, including reasonable attorney's fees, and, when

1 appropriate, restitution, reformation, rescission, and other  
2 equitable relief. No such suit shall be barred from the district  
3 courts of the United States by reason of the citizenship of  
4 the parties, or the amount in controversy.

5 (b) Irrespective of whether an attorney's fee is assessed  
6 against a defendant, the court may inquire into the reason-  
7 ableness of the fee agreed upon between the consumer and  
8 his counsel, and revise that fee as the circumstances warrant.

9 SEC. 10. A final judgment or decree rendered in any pro-  
10 ceeding brought by the United States under section 8 of this  
11 Act to the effect that a defendant has engaged in an unfair or  
12 deceptive practice within the meaning of this Act shall be  
13 prima facie evidence against that defendant in any action or  
14 proceeding brought by any other person against the defend-  
15 ant under section 9 of this Act, as to all matters respecting  
16 which said judgment or decree would be an estoppel as be-  
17 tween the defendant and the United States: *Provided, how-*  
18 *ever,* That this section shall not apply to consent judgments  
19 or decrees entered before any testimony has been taken.

20 SEC. 11. An action which may be brought in a United  
21 States district court under this Act may be brought in any  
22 district in which the claim arose or in which the defendant  
23 resides, is found, has an agent, is licensed to do business, or  
24 is doing business.

25 SEC. 12. Any proceedings under section 9 of this Act  
26 shall be brought within one year after the termination of the

1 proceeding under section 8 of this Act or the proceedings  
2 under section 5 of the Federal Trade Commission Act on  
3 which it is predicated.

4       SEC. 13. Whenever the Attorney General has reason to  
5 believe that any person under investigation may be in pos-  
6 session, custody, or control of any documentary material, or  
7 may have knowledge of any fact, relevant to an act prohibited  
8 by section 5 of this Act, he may, prior to the institution of  
9 a proceeding, under section 8, issue in writing, and cause  
10 to be served upon such person, a civil investigative demand  
11 requiring such person to produce the documentary material  
12 for examination or to answer in writing interrogatories per-  
13 taining to such knowledge.

14       Each such demand shall—

15             state the nature of the conduct alleged to constitute  
16             the unlawful act which is under investigation;

17             describe the class or classes of documentary mate-  
18             rial to be produced thereunder with such definiteness and  
19             certainty as to permit such material to be fairly identi-  
20             fied;

21             propound with definiteness and certainty the written  
22             interrogatories to be answered; and

23             identify the custodian to whom such material shall  
24             be furnished, or the person to whom such answers shall  
25             be made.

1 No demand shall—

2 contain any requirement which would be held unrea-  
3 sonable if contained in a subpoena duces tecum issued by  
4 a court of the United States in a proceeding brought  
5 under section 8 of this title or if propounded in an inter-  
6 rogatory directed to a defendant in any such proceed-  
7 ings; or

8 require the production of any documentary evidence,  
9 or the disclosure of any information which would be priv-  
10 ileged from disclosure if demanded by a subpoena duces  
11 issued by a court of the United States, or by an inter-  
12 rogatory propounded, in any proceeding under section 8  
13 of this title.

14 Demand may be served at any place within the terri-  
15 torial jurisdiction of any court of the United States.

16 The provisions of sections 4 and 5 of the Antitrust Civil  
17 Process Act (7t Stat. 549, 551; 15 U.S.C. 1313, 1314)  
18 apply to custodians of material produced pursuant to any  
19 demand and to judicial proceedings for the enforcement of  
20 any such demand made pursuant to this section.

21 MISCELLANEOUS PROVISIONS

22 SEC. 14. Nothing in this Act shall prevent the maker of  
23 any guaranty from designating representatives to perform the  
24 obligations of any guaranty, but no such designation shall

1 relieve the maker of the guaranty from his responsibilities  
2 under the guaranty made.

3 SEC. 15. Nothing in this Act shall be construed to pre-  
4 vent a supplier from selling a service contract covering parts  
5 and/or labor to the first purchaser at the time of sale.

6 SEC. 16. Remedies for breach of implied warranties  
7 may be limited or liquidated by contract. Consequential dam-  
8 ages may be limited or excluded unless the limitation or  
9 exclusion is unconscionable. Limitation of consequential dam-  
10 ages for injury to the person is unconscionable.

11 SEC. 17. (a) As part of their responsibilities to protect  
12 consumers against acts that are unlawful under this Act, the  
13 Attorney General and the Commission shall annually report  
14 to the President and the Congress on the effectiveness of this  
15 Act.

16 (b) The Commission shall, in addition, undertake an  
17 inquiry into the marketing and performance of warranties,  
18 guaranties, and other postsale service and repair obligations,  
19 the deficiencies attendant thereto of greatest economic signifi-  
20 cance to consumers, and the most effective means of im-  
21 proving the marketing and performance of such obligations  
22 consistent with maintaining a free, competitive, and dynamic  
23 interstate commerce. The Commission shall provide a report

1 on these matters within two years from the date of enactment  
2 of this Act.

3       SEC. 18. Except as is provided in section 4, this Act  
4 shall not annul, alter, or affect in any manner the meaning,  
5 scope, or applicability of any Federal or State law, including  
6 but not limited to the Federal Trade Commission Act and  
7 laws concerning the provision of goods and services to con-  
8 sumers; or limit in any way the availability of rights or  
9 remedies under such law.

[H.R. 10690, 91st Congress, 1st session, introduced by Mr. O'Hara (for himself and Mr. Moss) on April 29, 1969;  
[H.R. 12656, 91st Congress, 1st session, introduced by Mr. Podell on July 8, 1969;  
and  
[H.R. 16782, 91st Congress, 2d session, introduced by Mr. Corman on April 7, 1970,  
are identical as follows:]

## A BILL

To authorize the Federal Trade Commission to set standards to guarantee comprehensive warranty protection to the purchasers of merchandise shipped in interstate commerce.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act be cited as the "Consumer Full Warranty Pro-  
4       tection Act of 1969".

5                               SCOPE OF WARRANTY PROTECTION

6       SEC. 2. Every contract for the sale of goods sold by every  
7       manufacturer, who ships goods in interstate commerce or  
8       whose activities affect interstate commerce shall carry an  
9       implied warranty by the manufacturer that—

1           (a) the title conveyed is good and the transfer  
2           rightful; and

3           (b) the goods are delivered free from any security  
4           or other lien or encumbrance of which the buyer at the  
5           time of contracting has no knowledge.

6           SEC. 3. All goods shipped or sold by every manufacturer  
7           who conducts business in interstate commerce or whose activi-  
8           ties affect interstate commerce shall carry an implied war-  
9           ranty of merchantability from the manufacturer. To meet this  
10          requirement, the goods must at least be such as—

11          (a) pass without objection in the trade under the  
12          contract description;

13          (b) are fit for the ordinary purposes for which such  
14          goods are used;

15          (c) are free from defects of materials or workman-  
16          ship;

17          (d) run, within the variations permitted by the  
18          agreement, of even kind, quality, and quantity within  
19          each unit and among all units involved;

20          (e) are adequately contained, packaged, and  
21          labeled;

22          (f) conform to the promises or affirmations of fact  
23          made on the container or label; and

24          (g) meet all other similar standards and require-

## 3

1       ments established by regulation of the Commission pur-  
2       suant to section 9 of this Act.

3       SEC. 4. When the manufacturer of goods who conducts  
4       business in interstate commerce or whose activities affect  
5       interstate commerce has reason to know at the time of con-  
6       tracting that the goods are required for a particular purpose  
7       and that the buyer is relying on the manufacturer's skill or  
8       judgment to select or furnish suitable goods, there shall arise  
9       an implied warranty that the goods are fit for that purpose—

10       (a) If the buyer does not deal directly with the manu-  
11       facturer, but through a retailer or distributor, and that re-  
12       tailer or distributor has reason at the time of contracting  
13       to know that the goods are required for a particular purpose  
14       and that the buyer is relying on the retailer's or distributor's  
15       skill or judgment to select or furnish suitable goods, then  
16       that retailer or distributor shall be deemed to have impliedly  
17       warranted that the goods are fit for that purpose.

18       (b) If the retailer or distributor can show that he con-  
19       veyed to the manufacturer information about (1) the buyer's  
20       particular purpose for the goods and (2) the buyer's reli-  
21       ance on the manufacturer's skill and judgment to select suit-  
22       able goods and if it is customary in the trade for the manufac-  
23       turer to act upon this information, then warranty of fitness  
24       for purpose shall run from the manufacturer.



1 the contract has examined the goods or the sample as fully  
2 as he desires or has refused to do so, there is no implied  
3 warranty with regard to defects which an examination ought  
4 to have readily revealed to him.

5 CLARITY AND CONCISENESS OF WARRANTY

6 SEC. 7. The manufacturer of goods subject to the  
7 provisions of this Act shall attach to the item sold a tag  
8 on which is printed the instructions for proper use of the  
9 merchandise and the terms and conditions of the warranty.  
10 The warranty shall express in simple and readily under-  
11 stood terms the extent of the buyer's warranty protection  
12 and shall be accurately captioned. To meet these require-  
13 ments the warranty must—

14 (a) clearly and conspicuously disclose the name and  
15 address of the person making such warranty and, where  
16 applicable, the name and address of any person or  
17 persons, or the identification of any class of persons  
18 authorized to carry out the warranty: *Provided*, That  
19 the manufacturer shall not be permitted to contract  
20 away ultimate responsibility for the performance under  
21 the warranty;

22 (b) provide a detailed statement of the terms and  
23 conditions of the warranty which shall include, where  
24 applicable, but is not limited to, a description of—

1           (1) the parts of the merchandise which are  
2 covered by the warranty;

3           (2) the nature of the damage and defects which  
4 are covered;

5           (3) the duration of the warranty which shall  
6 be at least one year measured from the time of  
7 delivery of the product to the buyer except where  
8 in the opinion of the Commission a warranty of  
9 greater or lesser duration would be more appro-  
10 priate;

11           (4) the conditions, if any, which the person  
12 claiming under the warranty must fulfill before the  
13 warrantor will perform his obligations under the  
14 warranty;

15           (5) what costs, if any, must be borne by the  
16 person claiming under the warranty; and

17           (6) the time at which and the manner in which  
18 the warrantor will perform his obligation.

19           (c) summarize the provisions of the warranty in  
20 clear, concise, and readable terms without unnecessary  
21 and meaningless disclaimers.

22 *Provided*, That the manufacturer express the warranty in  
23 such manner as to unambiguously state the warranty stand-  
24 ards required by this Act and make clear that any other  
25 provisions of the warranty are in addition to, not modifica-



- 1           (c) supply promptly to their own or their agents  
2 servicing centers all repair parts and components re-  
3 quired for servicing of goods covered by the warranty;
- 4           (d) provide without cost such technical manuals  
5 and other information, including technical analysis and  
6 factory representatives, necessary for the prompt and  
7 satisfactory correction of all damaged and defective  
8 products;
- 9           (e) develop procedures for servicing which will  
10 insure prompt repair or replacement of defective goods,
- 11           (f) bare the entire cost of maintaining their own  
12 service facilities;
- 13           (g) fully and promptly compensate their service  
14 representatives for work done under the warranty in an  
15 amount equal to that which the servicing agent would  
16 receive for like service rendered to retail customers who  
17 are not entitled to warranty coverage, including such  
18 items as parts, service charges, labor charges, shipping  
19 and storage costs, overhead and a reasonable profit; and
- 20           (h) establish a reserve fund and set aside such spare  
21 parts as, in the Commission's opinion, would be sufficient  
22 to meet the warranty obligations required by this Act  
23 even though the manufacturer were to go out of busi-  
24 ness or were to cease production of that product.

## 1 PROMULGATION OF REGULATIONS

2 SEC. 10. The authority to promulgate regulations gov-  
3 erning the content and coverage of warranties and the estab-  
4 lishment and operation of servicing facilities required by the  
5 provisions of this Act shall be vested in the Federal Trade  
6 Commission.

## 7 RECORDKEEPING

8 SEC. 11. (a) Each manufacturer subject to the provi-  
9 sions of this Act shall prepare, compile, and maintain at its  
10 principal place of business such records as the Commission  
11 shall prescribe with respect to—

12 (1) warranties given and service representative  
13 contracts and agreement entered into or extended by  
14 such manufacturer;

15 (2) claims made against such manufacturer upon  
16 such warranties and upon such contracts and agreements;

17 (3) legal action instituted in prosecution of such  
18 claims;

19 (4) action taken by such appliance manufacturers  
20 with respect to each such claim and demand; and

21 (5) the time, manner, and terms of ultimate settle-  
22 ment of each such claim.

23 (b) Upon demand made by any duly authorized officer

1 or employee of the Commission during business hours of any  
2 business day, each appliance manufacturer shall grant to such  
3 officer or employee access to all such records to inspect, eval-  
4 uate the contents of, and make copies of all or any part of  
5 these records.

6 (c) Under such regulations as the Commission shall pre-  
7 scribe from time to time each manufacturer shall transmit to  
8 the Commission in January of each year a report which shall  
9 include a full, complete, and accurate summarization of the  
10 information which the manufacturer is required to keep under  
11 subsection (a) of this section.

12 (d) Those reports shall be placed on file at the Com-  
13 mission and appropriate index prepared and the reports  
14 and index shall be available for inspection by the public dur-  
15 ing business hours.

16 (e) On or before April 1 of each year, the Commission  
17 shall transmit to Congress a report containing a report on  
18 the information received from the manufacturers and includ-  
19 ing the Commission's comments and recommendations.

#### 20 COMMISSION ENFORCEMENT

21 SEC. 12. It shall be a violation of section 5 (a) (1) of  
22 the Federal Trade Commission Act (15 U.S.C. 45 (a)) for  
23 any person or corporation subject to the provisions of this  
24 Act to—

25 (a) fail to comply with any requirement imposed

1 upon such manufacturer by or pursuant to this Act or  
2 to violate any prohibition contained in this Act; or

3 (b) wrongfully decline or fail to fulfill any obligation  
4 to any buyer or any service representative imposed by  
5 or pursuant to this Act or by the terms of any warranty  
6 or service contract entered into pursuant to the require-  
7 ments of this Act.

8 In any action initiated pursuant to this section for the re-  
9 covery from any manufacturer of any civil penalty for the  
10 violation of a final cease and desist order, each day of the  
11 continuance of the violation of each separate provision of  
12 that order shall be deemed a separate offense.

13 CRIMINAL PENALTIES

14 SEC. 13. (a) Whoever, being (1) a manufacturer sub-  
15 ject to the provisions of this Act, (2) an officer, employee,  
16 or agent of such manufacturer who is charged with a duty  
17 to comply with any requirement imposed by this Act,  
18 (3) a person obligated by contract or agreement entered  
19 into with such manufacturer to comply on behalf of such  
20 manufacturer with any such requirement, or (4) an officer,  
21 employee, or agent of any such person who is charged by  
22 such person with a duty to discharge this obligation, willfully  
23 fails to affix to any new merchandise, or to enclose in the  
24 package of new merchandise, or willfully removes, alters, or

1 in any way defaces any item required to be included with  
2 such merchandise, before such goods are delivered to any  
3 other person for distribution in or affecting interstate com-  
4 merce, or for the transfer of possession to the buyer, shall be  
5 fined not more than \$10,000 or imprisoned not more than five  
6 years, or both.

7 (b) Whoever, being obligated by this Act, or by  
8 regulations drawn pursuant to this Act, to prepare, compile,  
9 and maintain records in compliance with section 10 (a) of  
10 the Act, willfully fails to accord access to such records in  
11 compliance with section 10 (b) of this Act, shall be fined  
12 not more than \$10,000, or imprisoned not more than five  
13 years, or both.

14 (c) Whoever, being obligated by this Act, or by regu-  
15 lations drawn pursuant to this Act, to make any report under  
16 section 10 (c) of this Act—

17 (1) willfully fails to file such report within the  
18 period of time prescribed by section 10 (e) of this Act;

19 (2) files any such report containing any informa-  
20 tion which is false or misleading, with knowledge or  
21 with reason to believe that such information is false or  
22 misleading;

23 (3) files any such report from which there has  
24 been omitted any information required by this Act, or  
25 by any rules or regulations promulgated under this

1 Act, to be contained therein, with intent to conceal  
2 such information;

3 shall be fined not more than \$10,000, or imprisoned not  
4 more than five years, or both.

#### 5 BUYER'S REMEDIES

6 SEC. 14. The holder of a valid warranty shall be entitled  
7 to bring a civil suit against any manufacturer who has vio-  
8 lated any of the first eight sections of this Act to recover,  
9 where appropriate, a sum equal to—

10 (a) the retail purchase price paid or agreed to be  
11 paid for such merchandise by the first buyer, or in the  
12 case of goods furnished in exchange for trading stamps  
13 or other tokens of value, the highest retail price for the  
14 purchase of a substantially identical item, and

15 (b) the amount of damages reasonably foreseeable  
16 as a consequence of the manufacturer's failure to meet the  
17 requirements of this Act.

18 A judgment entered in favor of the plaintiff in any such  
19 action may be conditioned, in the discretion of the court,  
20 upon the transfer by the plaintiff to the defendant of all  
21 right, title, and interest of the plaintiff in the merchandise  
22 which was the subject of the action, but any such condition  
23 shall include terms effective to save the plaintiff harmless  
24 for any liability, expense, or damage arising from such trans-  
25 fer or removal.

## 14

1       SEC. 15. In addition to the judgment awarded under  
2 section 14, the holder of a valid warranty shall also be  
3 entitled to a sum equal to the aggregate amount of all costs  
4 and expenses (including attorney's fees) determined by the  
5 court to have been reasonably incurred by the plaintiff.

6       SEC. 16. Where it is shown by the prevailing plaintiff  
7 that the defendant has failed for more than sixty days to  
8 comply fully with any obligation imposed on such defendant  
9 by this Act, the plaintiff shall also be entitled to recover from  
10 the defendant an indemnity in such amount, not less than  
11 \$100 nor more than \$5,000, as the court shall determine  
12 to be proper unless the defendant shows by substantial  
13 evidence just cause for such failure.

14       SEC. 17. Nothing contained in this Act shall bar the  
15 institution, by the holder of a valid warranty, of any legal  
16 action in any court of competent jurisdiction of any State  
17 for the assertion of any claim made under the laws of  
18 that State against any person or corporation warranting  
19 the merchandise arising from any damage to or defect in  
20 any such item.

## DEFINITIONS

21  
22       SEC. 18. As used in this Act—

23           (a) "Commission" means the Federal Trade Com-  
24 mission;

25           (b) "goods," "merchandise," "item," and "prod-

## 15

1     uct" are interchangeable and mean any motor vehicle,  
2     machine, appliance, device, product, or commodity  
3     which is distributed by any means for ultimate purchase  
4     and use or consumption by any individual, partner-  
5     ship, corporation, association or other legal entity, which  
6     normally retails for at least \$10;

7     (c) "warranty" means an instrument by which a  
8     manufacturer assumes legally enforceable liability to  
9     correct, without cost to the holder of the warranty,  
10    damage to or defects in goods manufactured, assembled,  
11    produced, or distributed by such manufacturer at or  
12    after the time of transfer of possession of such goods  
13    to the buyer;

14    (d) "buyer" means any person who obtains pos-  
15    session (1) by the terms of a sale at retail or a contract  
16    or agreement for sale at retail, or (2) in exchange  
17    for or in redemption of trading stamps or any other  
18    tokens of value which have been issued by retail mer-  
19    chants in connection with the sale to consumers of  
20    merchandise or commodities of any kind, or (3) by  
21    transfer during the lifetime of the warranty from a  
22    person defined as a "buyer" by this subsection;

23    (e) "manufacturer" means any individual, partner-  
24    ship, corporation, association, or other legal relationship

1       which manufactures, assembles, produces, gathers, or  
2       distributes goods in interstate commerce;

3       (f) "retailer" or "retail dealer" means a person  
4       engaged in business in one or more States in (1) the  
5       retail sale of new goods of any category, or (2) the  
6       furnishing of such new goods in exchange for or in the  
7       redemption of trading stamps or any other tokens of  
8       value issued in connection with the sale of merchandise  
9       of any kind;

10       (g) "distributor" means any individual, partner-  
11       ship, corporation, association, or other legal relationship  
12       which stands between the manufacturer and the retailer  
13       in purchases, consignments, or contracts for sale;

14       (h) "service facility" means any facility operated  
15       by a manufacturer or by another person under contract  
16       from the manufacturer for the performance of obligations  
17       imposed on the manufacturer under the terms of war-  
18       ranties given by such manufacturer pursuant to the  
19       provisions of this Act; and

20       (i) "service representative" means a person who under-  
21       takes by contract or agreement with a manufacturer to per-  
22       form at the expense of such manufacturer any inspection or  
23       correction of damage to or defect in goods under the terms  
24       of a warranty.

## EFFECTIVE DATE

1

2       SEC. 19. This Act shall take effect six months after the  
3 date of its enactment: *Provided*, That the Commission may  
4 by regulation postpone for an additional twelve month pe-  
5 riod, the effective date of this Act with respect to any class  
6 or type of good if it is found that such a postponement would  
7 be in the public interest,

[H.R. 13390, 91st Congress, 1st session, introduced by Mr. Halpern on August 7, 1969]

## A BILL

To assist in the protection of the consumer by requiring full disclosure of the terms and conditions of guarantees.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That Congress hereby declares that it is the purpose of this  
4       Act to insure that a consumer will receive a complete and  
5       clear disclosure of the terms and conditions of any guarantee  
6       on merchandise sold at retail and of any guarantee on serv-  
7       ices rendered.

8       SEC. 101. This Act may be cited as the "Guarantee  
9       Disclosure and Product Servicing Act of 1968".

10       SEC. 102. As used in this Act—

I—O

1 (1) "Commission" means the Federal Trade Com-  
2 mission.

3 (2) "Guarantee" means—

4 (A) with respect to merchandise, a statement or  
5 representation made by a manufacturer or retailer of  
6 merchandise, whether or not the term "guarantee" or  
7 "warranty" is actually used, to the effect that such man-  
8 ufacturer will correct, without cost to a purchaser or  
9 upon specified terms, any damage to or defects in the  
10 merchandise at or after the time of delivery of posses-  
11 sion of such merchandise to the purchaser thereof; and

12 (B) with respect to services, a statement or repre-  
13 sentation made by a person engaged in business in ren-  
14 dering services, whether or not the term "guarantee"  
15 or "warranty" is actually used, to the effect that such  
16 person will correct, without cost to a purchaser or upon  
17 specified terms, any deficiency in the quality or effective-  
18 ness of the services at or after the time of rendition of  
19 the services.

20 (3) "Guarantor" means a person who gives or has  
21 given a guarantee with respect to merchandise or services.

22 (4) "Interstate commerce" means commerce within the  
23 District of Columbia, the Commonwealth of Puerto Rico,  
24 or any possession of the United States, or between any place

1 in a State and any place in another State, or between places  
2 in the same State through another State.

3 (5) "Merchandise" means any motor vehicle, machine,  
4 appliance, device, article, product, or commodity which is  
5 distributed by any means for ultimate purchase and use or  
6 consumption by individuals within any State.

7 (6) "Person" means an individual and any partner-  
8 ship, corporation, association, or other legal entity.

9 (7) "Purchaser" means the first buyer of any merchan-  
10 dise or services to whom a guarantee is given or has been  
11 given with respect to such merchandise or services, and any  
12 other person who is entitled by the terms of such guarantee  
13 to enforce against the guarantor the obligation of such  
14 guarantee.

15 (8) "Service affecting interstate commerce" means any  
16 service of any kind which is rendered (A) within the Dis-  
17 trict of Columbia, the Commonwealth of Puerto Rico, Guam,  
18 the Virgin Islands, the Canal Zone, or American Samoa, or  
19 (B) within any other State through the use in whole or in  
20 part of any facility for interstate commerce, any instru-  
21 mentality of interstate commerce, or any article, product,  
22 commodity, or material which is, has been, or may be  
23 distributed in interstate commerce.

24 (9) "State" means each of the several States of the

1 United States, the District of Columbia, the Commonwealth  
2 of Puerto Rico, Guam, the Virgin Islands, the Canal Zone,  
3 and American Samoa.

4 DISCLOSURE OF TERMS AND CONDITIONS

5 SEC. 103. (a) No person shall introduce or deliver for  
6 introduction into interstate commerce any merchandise with  
7 respect to which any guarantee is made by such person, or  
8 sell any merchandise made in whole or in part of any item  
9 which has been shipped in interstate commerce with respect  
10 to which any guarantee is made by such person, unless that  
11 person clearly and conspicuously discloses on the merchandise  
12 or on a tag attached to the merchandise—

13 (1) the name and address of the person making  
14 such guarantee;

15 (2) where applicable, the name and address of any  
16 persons, or the identification of any class of persons, other  
17 than the person named in paragraph (1), authorized to  
18 carry out the guarantee: *Provided*, That the guarantee  
19 shall then explicitly state which party has the ultimate  
20 responsibility for performance under the guarantee; and

21 (3) a detailed statement of the terms and conditions  
22 of the guarantee which shall include, where applicable,  
23 but is not limited to, a description of—

24 (A) The part or parts of the merchandise  
25 which are covered by the guarantee;

1           (B) The nature of the damage and defects  
2           which are covered by the guarantee;

3           (C) The duration of the guarantee;

4           (D) The person or persons to whom the  
5           guarantee is extended;

6           (E) The conditions, if any, which the person  
7           claiming under the guarantee must fulfill before the  
8           guarantor will perform his obligations under the  
9           guarantee: *Provided*, That if a purchaser must in-  
10          dicate to the guarantor, within a stated time after  
11          the purchase, that he desires to have his purchase  
12          covered by the guarantee, then the guarantor shall  
13          include a stamped and properly addressed post card  
14          which contains a clear and conspicuous disclosure  
15          of such condition for this purpose;

16          (F) What costs, if any, must be borne by the  
17          person claiming under the guarantee;

18          (G) The time at which, and the manner in  
19          which, the guarantor will perform his obligations  
20          under the guarantee; and

21          (H) What parts and types of damage and de-  
22          fects are not covered by the guarantee.

23          (b) Each person who renders any service affecting in-  
24          terstate commerce with respect to which any guarantee is

1 made by such person shall, upon the completion of the per-  
2 formance of that service, deliver to the purchaser thereof a  
3 written instrument which clearly and conspicuously dis-  
4 closes—

5 (1) the name and address of the person making  
6 such guarantee;

7 (2) where applicable, the name and address of any  
8 persons, or the identification of any class of persons, other  
9 than the person named in paragraph (1), authorized  
10 to carry out the guarantee: *Provided*, That the guarantee  
11 shall then explicitly state which party has the ultimate  
12 responsibility for performance under the guarantee;

13 (3) the nature of the service rendered, the time and  
14 place at which that service was rendered, and the iden-  
15 tity of the purchaser of that service; and

16 (4) a detailed statement of the terms and conditions  
17 of the guarantee, which shall include but is not limited  
18 to, a description of—

19 (A) the object sought to be attained through  
20 the performance of such service;

21 (B) the nature of each deficiency in the service  
22 which is covered by the guarantee;

23 (C) the duration of the guarantee;

24 (D) the person or persons to whom the  
25 guarantee is extended;

1 (E) the conditions, if any, which the person  
2 claiming under the guarantee must fulfill before the  
3 guarantor will perform his obligations under the  
4 guarantee: *Provided*, That if a purchaser must in-  
5 dicate to the guarantor, within a stated time after  
6 the performance of the services, that he desires to  
7 have the performance covered by the guarantee,  
8 then the guarantor shall deliver to the purchaser a  
9 stamped and properly addressed post card which  
10 contains a clear and conspicuous disclosure of such  
11 condition for this purpose;

12 (F) what costs, if any, must be borne by the  
13 person claiming under the guarantee;

14 (G) the time at which, and the manner in  
15 which, the guarantor will perform his obligations  
16 under the guarantee; and

17 (H) what deficiencies in the service are not  
18 covered by the guarantee.

19 ABBREVIATED DESCRIPTION AND RULEMAKING

20 SEC. 104. (a) The Commission shall by rulemaking  
21 proceeding develop a simple and clear system of describing  
22 and classifying the different types of guarantees. This abbre-  
23 viated description of the scope of the guarantee shall appear,  
24 along with the duration of the guarantee, as the title of every  
25 document setting forth the information required by section

1 103, and shall be in larger and bolder type than the detailed  
2 disclosure of the terms and conditions of such guarantee.

3 (b) The Commission is authorized to prescribe such  
4 additional rules and regulations as may be necessary or  
5 proper in carrying out the provisions of section 103 of this  
6 Act. Such rules and regulations may include, but are not  
7 limited to, a description of the methods to be used to assure  
8 that the information required by section 103 will be clearly  
9 disclosed to the purchaser in a manner which will not mis-  
10 lead him as to the terms and conditions of the guarantee.

11 DISCLOSURE REQUIRED IN ADVERTISING

12 SEC. 105. (a) No person shall state or otherwise repre-  
13 sent in any advertisement in interstate commerce or affecting  
14 interstate commerce that any merchandise or service is guar-  
15 anteed unless that person also discloses—

16 (1) the abbreviated description of the scope of the  
17 guarantee as provided in section 104 of this Act;

18 (2) the duration of the guarantee; and

19 (3) the name of the person making such guarantee:

20 *Provided*, That any person whose advertisement offers to sell  
21 such guaranteed merchandise or service through the mails  
22 shall disclose in the advertisement the complete terms and  
23 conditions of such guarantee, as required by sections 103 and  
24 104.

25 (b) For the purposes of this section, the term "adver-

1 tisement in interstate commerce" includes, but is not lim-  
2 ited to—

3 (1) the advertising of merchandise or services  
4 through any means or instrumentality of interstate  
5 commerce;

6 (2) the advertising of any merchandise which is  
7 made in whole or in part of any item which has been  
8 distributed in interstate commerce; and

9 (3) the advertising of any service affecting inter-  
10 state commerce.

11 **PERFORMANCE**

12 **SEC. 106. (a)** No person shall make any guarantee as  
13 to any merchandise which has been or will be introduced into  
14 interstate commerce or which is made in whole or in part of  
15 any item which has been distributed in interstate commerce,  
16 or as to any service affecting interstate commerce, if he  
17 knows or has reason to believe that the person, or any sub-  
18 stantial number of the persons, authorized to carry out the  
19 guarantee do not have adequate facilities or materials to carry  
20 out the guarantee or will not in fact normally carry out the  
21 guarantee according to its terms.

22 (b) No person shall use the term "guarantee" or  
23 "warranty" in conjunction with the sale or offering for sale  
24 of any merchandise which has been or will be introduced  
25 into interstate commerce or which is made in whole or in

1 part of any item which has been shipped in interstate com-  
2 merce, or of any service affecting interstate commerce, if the  
3 terms and conditions of such guarantee so limit its scope or  
4 application as to deceive a reasonable and prudent prospective  
5 purchaser as to the extent of its coverage.

6 ENFORCEMENT

7 SEC. 107. (a) The Commission is authorized and di-  
8 rected to prevent any person from violating the provisions of  
9 this title or rules or regulations issued pursuant to this title.  
10 Any violation of such provisions, rules, or regulations shall  
11 be deemed to be a violation of section 5 (a) of the Federal  
12 Trade Commission Act ( 15 U.S.C. 45 (a) ).

13 (b) Whenever the Commission has reason to believe  
14 that a person has violated or is about to violate the provisions  
15 of section 103, 104, or 105 of this title, and that it would be  
16 in the public interest to enjoin such violation until complaint  
17 is issued by the Commission under the Federal Trade Com-  
18 mission Act and such complaint dismissed by the Commission  
19 or set aside by the court in review, or until order to cease and  
20 desist made thereon by the Commission has become final  
21 within the meaning of the Federal Trade Commission Act,  
22 the Commission may bring suit in the district court of the  
23 United States or in the United States court of any territory,  
24 for the district or territory in which such person resides or  
25 transacts business, to enjoin such violation, and upon proper

1 showing, a temporary injunction or restraining order shall be  
2 granted without bond.

3 **PENALTIES**

4 SEC. 108. (a) Whoever willfully violates a provision of  
5 this title shall forfeit and pay to the United States a civil  
6 penalty of not more than \$10,000 for each violation. Such  
7 penalty may be recovered in a civil action brought by the  
8 Attorney General at the request of the Commission in a  
9 district court of the United States. Nothing contained in this  
10 subsection shall bar the recovery under section 5 (1) of the  
11 Federal Trade Commission Act (15 U.S.C. 45 (1)) of a  
12 penalty for the violation of a cease and desist order of the  
13 Commission.

14 (b) Whoever willfully removes, alters, or renders il-  
15 legible any information placed upon merchandise, or any  
16 tag attached to merchandise, in compliance with section 103  
17 of this Act before such merchandise is delivered to the actual  
18 custody of the purchaser of such merchandise shall be fined  
19 not more than \$5,000, or imprisoned not more than six  
20 months, or both. Such removal, alteration, or rendering il-  
21 legible with respect to each article of merchandise shall  
22 constitute a separate offense.

23 **EFFECTIVE DATE**

24 SEC. 109. The provisions of this Act shall take effect on  
25 July 1, 1970.



1 to be attached to or installed in any real property without  
2 regard to whether it is so attached or installed.

3 (2) An "express warranty (guaranty)" is created as  
4 follows:

5 (a) Any affirmation of fact or promise made by  
6 a supplier to/the purchaser which relates to a consumer  
7 product or service and becomes part of the basis of the  
8 bargain creates an express warranty that the consumer  
9 product or service shall conform to the affirmation or  
10 promise.

11 (b) Any description of a consumer product which  
12 is made part of the bargain creates an express warranty  
13 that the consumer product shall conform to the  
14 description.

15 (c) Any sample or model which is made part of  
16 the basis of the bargain creates an express warranty that  
17 the consumer product shall conform to the sample or  
18 model.

19 It is not necessary to the creation of an express warranty  
20 that the supplier use formal words such as "warranty" or  
21 "guaranty" or that he have a specific intention to make a  
22 warranty, but an affirmation merely of the value of the  
23 consumer product or service or a statement purporting to be  
24 merely the supplier's opinion or commendation of the con-  
25 sumer product or service does not create a warranty.

1       (3) "Purchaser" means the first buyer at retail of any  
2 consumer product or service to whom a warranty (guaranty)  
3 is offered or given, and any other person who is entitled by  
4 the terms of such warranty (guaranty) to enforce against  
5 the warrantor the obligations of the warranty.

6       (4) "Reasonable and necessary maintenance" consists  
7 of those operations which the person guaranteed reasonably  
8 can be expected to perform or have performed which are  
9 necessary to keep any consumer product operating in a pre-  
10 determined manner and performing its intended function.

11       (5) The term "repair" may at the option of the war-  
12 rantor include replacement with a new, identical, or equiva-  
13 lent consumer product.

14       (6) The term "replacement" shall include the refund-  
15 ing of the actual purchase price of the consumer product less  
16 reasonable depreciation based upon actual use if the war-  
17 rantor is unable to effect replacement and repair is not pos-  
18 sible or cannot be timely made, or if the person guaranteed  
19 is willing to accept such refund in lieu of repair or replace-  
20 ment.

21       (7) "Supplier" means any person (including any part-  
22 nership, corporation, or association) engaged in the business  
23 of making a consumer product available to consumers, either  
24 directly or indirectly.

25       (8) "Warrantor" means any supplier or other third

1 party who gives or offers to give an express warranty  
2 (guaranty).

3 (9) The term "without charge" means that the war-  
4 rantor (s) cannot assess the person guaranteed for any costs  
5 the warrantor or his representatives incur in connection with  
6 the required repair or replacement of a warranted (guaran-  
7 teed) consumer product. The term does not mean that the  
8 warrantor must necessarily compensate the person guaran-  
9 teed for incidental expenses. However, if any incidental ex-  
10 penses are incurred because the repair or replacement is  
11 not made within a reasonable time or because the warrantor  
12 imposed an unreasonable duty upon the person guaranteed  
13 as a condition of securing repair or replacement, then the  
14 person guaranteed shall be entitled to recover such reasonable  
15 incidental expenses in any action against the warrantor.

#### 16 DISCLOSURE REQUIREMENTS

17 SEC. 3. (a) In order to improve the adequacy of infor-  
18 mation available to consumers, prevent deception, and im-  
19 prove competition in the marketing of consumer products,  
20 any supplier warranting (guaranteeing) a consumer product  
21 (actually costing more than \$5) in writing against defect or  
22 malfunction shall fully and conspicuously disclose in simple  
23 and readily understood language the terms and conditions of  
24 said warranty (guaranty) pursuant to any regulations  
25 issued by the Federal Trade Commission under procedures

1 specified in subsection (b) of this section. Such regulations  
2 may require inclusion in the written warranty (guaranty)  
3 of any of the following items among others:

4           (1) The clear identification of the names and ad-  
5           dresses of the warrantors.

6           (2) Identity of the party or parties to whom the  
7           warranty (guaranty) is extended.

8           (3) The products or parts covered.

9           (4) A statement of what the warrantor will do in  
10          the event of defect or malfunction—at whose expense—  
11          and for what period of time.

12          (5) A statement of what the person guaranteed  
13          must do and expenses he must bear.

14          (6) Exceptions and exclusions from the terms of  
15          the warranty (guaranty).

16          (7) The step-by-step procedure which the person  
17          guaranteed should take in order to obtain performance  
18          of any obligation under the warranty (guaranty), includ-  
19          ing the identification of any class of persons authorized  
20          to perform the obligations set forth in the warranty  
21          (guaranty).

22          (8) The availability of any informal dispute settle-  
23          ment procedure for any warranty (guaranty) dispute.

24          (9) A recital that legal remedies are available to

1 any person guaranteed if the warrantor has not complied  
2 with the provisions of the warranty (guaranty).

3 (10) A recital that any person guaranteed who  
4 successfully pursues his legal remedies may recover the  
5 reasonable costs incurred, including reasonable attor-  
6 neys' fees.

7 (11) The time at which the warrantor will perform  
8 his obligations.

9 (12) The period of time within which, after notice  
10 of malfunction or defect, the warrantor will repair,  
11 replace, or otherwise perform any obligations under the  
12 warranty (guaranty).

13 (13) The characteristics or properties of the prod-  
14 ucts, or parts thereof, that are not covered by the  
15 warranty (guaranty).

16 (14) The elements of the warranty (guaranty) in  
17 words or phrases which would not mislead reasonable  
18 men as to the nature or scope of the warranty (guar-  
19 anty).

20 (b) The Federal Trade Commission is authorized to  
21 determine in accordance with section 553, title 5, United  
22 States Code, upon a public record after opportunity for an  
23 agency hearing structured so as to proceed as expeditiously  
24 as practicable, the manner and form in which information  
25 with respect to any written warranty (guaranty) against

1 defect or malfunction of a consumer product or service shall  
2 be clearly and conspicuously presented or displayed so as  
3 not to mislead the reasonable, average purchaser, when such  
4 information is contained in advertising, labeling, point-of-  
5 sale material, or other representations in writing. Nothing in  
6 this Act shall be deemed to authorize the Commission to  
7 prescribe the duration of warranties (guaranties) given or to  
8 require that a product or any of its components be war-  
9 ranted (guaranteed).

10 DESIGNATION OF WARRANTIES (GUARANTIES)

11 SEC. 4. (a) Any supplier warranting or guaranteeing  
12 a consumer product (actually costing more than \$5) in writ-  
13 ing against defect or malfunction shall clearly and conspicu-  
14 ously designate such warranty (guaranty) in the following  
15 manner unless exempted from doing so by the Federal Trade  
16 Commission pursuant to section 10 of this Act:

17 (1) If the written warranty (guaranty) incorporates  
18 the Federal minimum standards for warranty (guaranty)  
19 set forth in section 5 of this Act, then it shall be conspicu-  
20 ously designated a "full (statement of duration)" warranty,  
21 guaranty, or word of similar meaning.

22 (2) If the written warranty (guaranty) does not incor-  
23 porate the Federal minimum standards for warranty (guar-  
24 anty) set forth in section 5 of this Act, then it shall be con-

1 conspicuously designated a "partial" warranty, guaranty, or  
2 word of similar meaning.

3 (b) Statements or representations such as expressions  
4 of general policy concerning customer satisfaction which are  
5 not subject to any limitations are excluded from sections 3, 4,  
6 and 5 of this Act but shall remain subject to the provisions  
7 of the Federal Trade Commission Act and requirements in  
8 subsection (c) of section 11 of this Act.

9 FEDERAL MINIMUM STANDARDS FOR WARRANTY

10 (GUARANTY)

11 SEC. 5. (a) Any supplier warranting or guaranteeing  
12 consumer products in writing against defect or malfunction  
13 must undertake at a minimum the following duties in order to  
14 be deemed to have incorporated the Federal minimum stand-  
15 ards for warranty (guaranty) :

16 The duties—

17 (1) to repair, or replace if repair is not possible or  
18 cannot be timely made, any malfunctioning or defective  
19 warranted (guaranteed) product;

20 (2) within a reasonable time; and

21 (3) without charge.

22 In fulfilling the above duties the warrantor shall not  
23 impose any duty other than notification upon any person  
24 guaranteed as a condition of securing repair or replacement  
25 of any malfunctioning or defective consumer product unless

1 the warrantor can demonstrate that such a duty is reasonable.  
2 In a determination of whether or not any such additional  
3 duty or duties are reasonable, the magnitude of the economic  
4 burden necessarily imposed upon the warrantor (including  
5 costs passed on to the purchaser) shall be weighed against the  
6 magnitude of the burdens of inconvenience and expense  
7 necessarily imposed upon the person guaranteed.

8 (b) The above duties extend from the warrantor to the  
9 purchaser.

10 (c) The performance of the duties enumerated in sub-  
11 section (a) of this section shall not be required of the war-  
12 rantor if he can show that damage while in the possession  
13 of the person guaranteed or unreasonable use (including  
14 failure to provide reasonable and necessary maintenance)  
15 caused any warranted (guaranteed) product to malfunction  
16 or become defective.

17 (d) Disclosure requirements—

18 (1) When making a warranty (guaranty) in writing  
19 against defect or malfunction which incorporates Federal  
20 minimum standards, the warrantor shall cause it to be  
21 labeled a "full (statement of duration)" warranty guaranty,  
22 or word of similar meaning.

23 (2) The disclosure requirements and Commission au-  
24 thorization in section 3 of this Act shall apply to any  
25 warranty (guaranty) in writing against defect or malfunc-

1 tion of a consumer product (actually costing more than \$5)  
2 which incorporates Federal minimum standards: *Provided*,  
3 *however*, That it shall be mandatory for the warrantor issuing  
4 a written warranty (guaranty) in compliance with Federal  
5 minimum standards to cause the disclosure of the duration  
6 of the warranty (guaranty) period measured either by time  
7 or by some relevant measure of usage such as mileage to the  
8 purchaser prior to the time of purchase.

9                   FULL AND PARTIAL WARRANTING OF A  
10                                   CONSUMER PRODUCT

11           SEC. 6. Nothing in this Act shall prohibit the selling of  
12 a consumer product which has both full and partial war-  
13 ranties (guaranties) if such warranties (guaranties) are  
14 clearly and conspicuously differentiated.

15                                   SERVICE CONTRACTS

16           SEC. 7. Nothing in this Act shall be construed to prevent  
17 a supplier from selling a service contract to the purchaser in  
18 addition to or in lieu of a warranty (guaranty) if such con-  
19 tract fully and conspicuously discloses in simple and readily  
20 understood language the terms and conditions.

21                                   DESIGNATION OF REPRESENTATIVES

22           SEC. 8. Nothing in this Act shall be construed to pre-  
23 vent any warrantor from designating representatives to per-  
24 form duties under the warranty (guaranty): *Provided*, That  
25 such warrantor equitably compensates such designated rep-

1 representatives, but no such designation shall relieve the war-  
2 rantor of his direct responsibilities to the person guaranteed  
3 or make the representative a cowarrantor.

4 LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

5 SEC. 9. (a) There shall be no express disclaimer of  
6 implied warranties to a purchaser if any express warranty  
7 (guaranty) of a consumer product (actually costing more  
8 than \$5) against defect or malfunction is made by a sup-  
9 plier to a purchaser in writing.

10 (b) For purposes of this Act, implied warranties may  
11 be limited in duration to the duration of an express warranty  
12 (guaranty) of reasonable duration, if such limitation is con-  
13 scionable and is set forth in clear and unmistakable language  
14 and prominently displayed on the face of the warranty  
15 (guaranty).

16 FEDERAL TRADE COMMISSION

17 SEC. 10. In addition to the authority given in sections  
18 3 and 5 of this Act pertaining to disclosure, the Federal  
19 Trade Commission is authorized to establish rules pursuant  
20 to section 553, title 5, United States Code upon a public  
21 record after an opportunity for an agency hearing structured  
22 so as to proceed as expeditiously as practicable, to define  
23 in detail the duties set forth in subsection (a) of section 5 of  
24 this Act and their applicability to warrantors of different  
25 categories of consumer products with "full" warranties

1 (guaranties), and to determine when a warranty (guaranty)  
2 in writing against defect or malfunction does not have to be  
3 designated either "full (statement of duration)" or "partial"  
4 in accordance with section 4 of this Act.

5 REMEDIES

6 SEC. 11. (a) Congress hereby declares it to be its  
7 policy to encourage warrantors to establish procedures where-  
8 by consumer disputes are fairly and expeditiously settled  
9 through informal dispute settlement mechanisms. Such in-  
10 formal dispute settlement procedures should be created by  
11 suppliers in cooperation with independent and governmental  
12 entities and should be supervised by some governmental or  
13 other impartial body.

14 (b) It shall be a violation of section 5 (a) (1) of the  
15 Federal Trade Commission Act (15 U.S.C. 45 (a) (1) ) for  
16 any person (including any partnership, corporation, or asso-  
17 ciation) subject to the provisions of this Act to fail to comply  
18 with any requirement imposed on such person by or pursuant  
19 to this Act or to violate any prohibition contained in this  
20 Act.

21 (c) (1) The district courts of the United States shall  
22 have jurisdiction to restrain any supplier from making a  
23 deceptive warranty (guaranty) with respect to a consumer  
24 product or service in an action by the Attorney General.  
25 The court may, pursuant to the general standards govern-

1 ing the issuance of injunctions in civil actions, at any time  
2 grant such injunctive relief as it deems appropriate. When-  
3 ever it appears to the court that the ends of justice require  
4 that other persons should be parties in the action, the court  
5 may cause them to be summoned whether or not they reside  
6 in the district in which the court is held, and to that end  
7 process may be served in any district.

8 (2) For the purposes of this subsection, a "deceptive  
9 warranty (guaranty)" means: (i) a guaranty or warranty  
10 that contains an affirmation, promise, description, or repre-  
11 sentation that is either false or fraudulent, or that, in the  
12 light of all of the circumstances, would mislead a reasonable  
13 man exercising due care; or fails to contain information that  
14 is necessary, in light of all of the circumstances, to make the  
15 guaranty or warranty not misleading to a reasonable man  
16 exercising due care; and (ii) a guaranty or warranty cre-  
17 ated by the use of such terms as "guaranty" or "warranty",  
18 if the terms and conditions of such guaranty or warranty  
19 so limit its scope and application as to deceive a reasonable  
20 man.

21 (d) If any person guaranteed or protected by a service  
22 contract shall finally prevail in any suit or proceeding for  
23 breach of an express or implied warranty (guaranty) or  
24 service contract obligation on a consumer product, he shall

1 be allowed by the court of competent jurisdiction to recover  
2 as part of the judgment a sum equal to the aggregate amount  
3 of cost and expenses (including attorneys' fees based on  
4 actual time expended) determined by the court to have been  
5 reasonably incurred by such person guaranteed or protected  
6 by a service contract for or in connection with the institu-  
7 tion and prosecution of such suit or proceeding unless the  
8 court in its discretion shall determine that such an award of  
9 attorneys' fees would be inappropriate: *Provided*, That any  
10 person guaranteed, in a suit for breach of warranty, must  
11 have afforded the maker(s) of that warranty a reasonable  
12 opportunity to cure the breach to be eligible for such cost  
13 and expenses.

14 (e) Any person damaged by the failure of a supplier to  
15 comply with any obligations assumed under an express or  
16 implied warranty (guaranty) or service contract subject to  
17 this Act may bring suit in an appropriate district court of the  
18 United States subject to the jurisdictional requirements of  
19 section 1331, title 28, United States Code, or in any State  
20 or District of Columbia court of competent jurisdiction.

21 SAVING PROVISION

22 SEC. 12. Nothing contained in this Act shall be con-  
23 strued to repeal, invalidate, or supersede the Federal Trade  
24 Commission Act (15 U.S.C. 41 et seq.) or any statute  
25 defined therein as an antitrust Act.

## 1 SCOPE

2 SEC. 13. (a) The provisions of this Act and the powers  
3 granted hereunder to the Federal Trade Commission and  
4 Attorney General shall extend to all sales of consumer  
5 products and services affecting interstate commerce.

6 (b) Labeling and disclosure requirements of a State with  
7 respect to written warranties against defect or malfunction  
8 of a consumer product inconsistent with those set forth in  
9 sections 3, 4, or 5 of this Act shall not be applicable to  
10 warranties complying with any of those provisions.

## 11 SEPARABILITY

12 SEC. 14. If any provision of this Act is declared un-  
13 constitutional, or the applicability thereof to any person or  
14 circumstance is held invalid, the constitutionality of the  
15 remainder of the Act and the applicability thereof to other  
16 persons and circumstances shall not be affected thereby.

## 17 EFFECTIVE DATE

18 SEC. 15. (a) Except for the limitations in subsection  
19 (b) of this section, this Act shall take effect six months  
20 after the date of its enactment but shall not apply to con-  
21 sumer products in the stream of commerce prior to such date.

22 (b) Those requirements in this Act which cannot be  
23 reasonably met without the promulgation of rules by the  
24 Federal Trade Commission shall take effect six months after  
25 the final publication of such rules; *Provided*, That the Fed-

1 eral Trade Commission, for good cause shown, may pro-  
2 vide designated classes of suppliers up to an additional six  
3 months to bring their written warranties (guaranties) into  
4 compliance with rules promulgated pursuant to this Act.

5 (c) The Federal Trade Commission shall promulgate  
6 rules implementing this Act as soon as possible after enact-  
7 ment but in no event later than six months after the date  
8 of enactment.

FEDERAL TRADE COMMISSION,  
Washington, D.C., December 3, 1970.

Hon. JOHN E. MOSS,  
*Chairman, Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR CHAIRMAN MOSS: On September 29, 1970, I appeared before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce to present the Commission's views on H.R. 18056 and S. 3074. At that time you requested that the Commission furnish the Subcommittee its comments on H.R. 10690, 91st Congress, 1st Session, a bill "To authorize the Federal Trade Commission to set standards to guarantee comprehensive warranty protection to the purchasers of merchandise shipped in interstate commerce." The Commission supports the general purpose and objectives of H.R. 10690 to improve warranty practice.

Before detailing our specific comments to the language of some of the sections of H.R. 10690, there is one general comment which the Commission believes should be made at the outset about the nature of the resources which will be required to administer this bill. As H.R. 10690 is presently drafted, it contemplates in effect a full and complete supervision by the designated administering authority over all the warranties now being offered in the marketplace. Although we have no firm estimate of the number of different products covered by warranties today nor of the number of manufacturers and sellers offering warranties with their products, it is not unreasonable to assume that product warranties presently being offered number well over the thousands.

In our judgment, effective and meaningful administration of the bill's provision would require the administering body to examine the text of every warranty offered in the marketplace in order to check its conformity to the Act's provisions. Further, the administering authority will have to examine the manufacturers' and retailers' performance under their warranties and will also have to collect data on the reasonable life expectancy of each warranted product, the propensity of the product to require servicing and other data relevant to the question of whether the duration of the warranty should be lengthened or shortened. Finally, the administering agency will have to make such inspections and investigations as are necessary to enable it to determine whether adequate service facilities and parts inventories are being maintained in order to provide the promised performance under the warranty as set forth in Section 9 of the bill.

The Federal Trade Commission has been designated under the bill as the administering agency. While the Commission has the expertise to perform these enforcement duties, it lacks the resources with which to carry out these responsibilities. Nor does it envisage, on the basis of its experience of past increases allowed to it to take care of normal expansion or to enable it to assume new statutory duties under new legislation that it would ever be assigned adequate resources to administer this bill through the normal budgetary and appropriation processes.

The Commission presently has an authorized professional staff of approximately 700 persons located at its Washington headquarters and in its eleven field offices. In discharging its present statutory responsibilities, these 700 professional employees are responsible for enforcing the overall strictures of Section 5 of the Federal Trade Commission Act prohibiting all practices which are unfair or deceptive to consumers or to competition. They must additionally enforce the Truth-in-Lending Act against an estimated 750,000 retail establishments, monitor the advertisements and selling practices of all American businesses engaged in interstate commerce and examine the major mergers entered into by American companies. Finally, they are responsible for the screening of the labeling and packaging of all retail consumer products other than food and drugs and checking the flammability of fabrics on the market and the accuracy of labels and records on all textile, wool and fur products.

Accordingly, we strongly urge that the bill be amended so as to provide for the specific annual appropriations required in order to carry out the bill's mandate over the first three years of the bill's effective life [such as was provided for under S. 4459 establishing a statutory office for consumer affairs]. Only if the bill contains within its provisions sufficient funding to enable the designated agency to carry out its mandate, would the Commission be in a position to affirm to you that it is willing and able to carry out the enforcement duties provided for.

Beyond these general observations on the importance of adequate enforcement of this bill, the Commission recommends that consideration be given to the following comments respecting specific provisions of the bill.

Section 2 of the bill, whose short title is the "Consumer Full Warranty Protection Act of 1969," includes the warranties of title and against infringement found in Section 2-312 of the Uniform Commercial Code, but does not include other provisions found in that section, such as methods for excluding or modifying the warranty. The Commission is not aware of any consumer problems arising from breach of the warranties of title and against infringement, and thus does not see the necessity for this provision.

We believe that Section 3 should be amended so that it applies to both manufacturers and retailers. Recent decisions under the Uniform Commercial Code have held the manufacturer liable under an implied warranty of merchantability even though there has been no privity of contract. In this regard the bill is consistent with existing law. However, the provisions of this section seem to exempt the retailer or distributor from any warranty responsibility. While it is clear that the manufacturer should be responsible for defects of design, material, packaging and workmanship, it is equally clear that retailers also must be responsible to consumers for breaches of warranty offered with goods sold by them especially where they advertise the warranty or otherwise rely on it as an inducement to purchase or where the breach of warranty is due to any derelictions on their part such as subsequent damages or improper installation. In this way consumers can look either to the manufacturer or to the person from whom they purchased the product for recompense. Any liability over or between the seller and the manufacturer can be provided for by these parties at the time of their original transaction.

Section 4 of the bill imposes the implied warranty of fitness on manufacturers which is defined in the Uniform Commercial Code, Section 2-315. This implied warranty is simply that if the seller has reason to know that the goods are required for a particular purpose and that the buyer is relying on the manufacturer's judgment to select or furnish goods suitable for that purpose, there shall arise an implied warranty that they are fit for that use.

Section 4(a) is the only section of the bill which purports to make a retailer or distributor a warrantor. It imposes the implied warranty of fitness on them if the mentioned conditions are satisfied. "Retailer" is defined in Section 18(f) as one engaged, in part, in "the retail sale of new goods. . . ." We perceive no reason for excluding retailers of used or second-hand goods from the applicable provisions of this bill. Section 4(b) provides that a retailer or distributor can avoid liability under the implied warranty of fitness if he can show that he conveyed to the manufacturer information about (1) the buyer's particular purpose for the goods, and (2) the buyer's reliance on the manufacturer's skill and judgment to select suitable goods and if it is customary in the trade for the manufacturer to act upon this information. The Commission supports Section 4(b) enabling retailers and distributors to shift this implied warranty to the manufacturer under certain circumstances. The Commission is of the belief that an implied warranty of fitness should primarily emanate from the manufacturer under circumstances where proper notice is conveyed to the manufacturer.

Section 5 of the bill provides, as does Section 2-313 of the UCC, for the creation of express warranties that the goods will conform to any affirmation of fact made by the manufacturer to the buyer which relates to the goods, to any description of the goods, or to any sample or model if they are made a part of the basis of the bargain.<sup>1</sup>

While this section gives the consumer some added protection in that it explicitly provides for creation of express warranties between a manufacturer and buyer (defined in section 18(d), in part, as a purchaser at retail), thus avoiding problems of privity, there appears to be no reason for excluding retailers, who may make promises in addition to those made by a manufacturer, from the section's coverage. We would, thus, recommend including retailers as well as manufacturers within the coverage of this section.

Section 6 of the bill permits a manufacturer to agree to additional express warranties but prohibits it, with one exception, from subtracting "from the warranties guaranteed to the buyer" by the bill, presumably the implied warranties created by Sections 2-4.

Section 2-316 of the UCC sets forth the language and conduct necessary to exclude or modify implied warranties. Section 6 of H.R. 10690 would deny a manufacturer, with one exception, the opportunity to exclude or modify implied warranties. That exception provides that if a buyer before entering into a contract has fully examined the goods or sample or has refused to do so, there is not an implied warranty with regard to defects which an examination ought to have

<sup>1</sup> Section 5 of the bill has Section 5(a) and 5(c), but no 5(b). This is apparently an oversight and can be remedied by numbering line 11, page 4, as 5(b).

readily revealed to him. This provision is taken from Section 2-316(3)(b) of the UCC and results in a restatement of the old "buyer beware" concept. For example, such a provision would require a new car purchaser to examine the exterior painted surfaces of his new car before buying it or assume the risk of a defective paint job if the defect would have been readily revealed to him. Clearly, this is a provision which has no place in a bill intended to provide consumers with effective warranty protection. Thus, while supporting Section 6, the Commission recommends elimination of this provision from the bill. We would also recommend that this section prohibit retailers, as well as manufacturers, from subtracting from the warranties guaranteed by the bill.

Section 7 of the bill requires disclosure of the terms and conditions of the warranty, and the instructions for proper use. The disclosures are required to be made on a tag to be attached to the item. In many instances it would not be feasible to place all of the information required by this section on a tag.

A further objection to this section is its imprecision. It requires the disclosure of the terms and conditions of "the warranty," without specifying whether it means only the terms and conditions of any express warranty made by a manufacturer or of the terms and conditions of any express warranty and of the implied warranties created by the bill. The language of the section would seem to indicate that it applies to express warranties only. For example, it refers to "the warranty," and Section 18(c) defines "warranty," in part, as "an instrument." "Instrument" is commonly defined as a written document, thus the warranties covered by Section 7 appear to be express warranties, rather than implied ones. Further, Section 7(a) requires disclosure of the name and address of the person "making" the warranty. Express warranties are "made" by a manufacturer or seller, whereas implied warranties are created by operation of law. Also, the detailed statement of the terms and conditions of the warranty required by Section 7(b) (1)-(6) is the type of specific statement which is tailored to describe the terms of an express warranty rather than the general standards and requirements goods must meet to satisfy the implied warranties created by the bill. In addition, Section 7(c) seems to permit disclaimers of the warranty, while Section 6 prohibits, with one exception, disclaimers of implied warranties.

However, the proviso clause beginning at line 22 of page 6 does seem to require an explanation of the implied warranties of title, merchantability, and fitness required by the bill. We are concerned that as Section 7(b)(3), as now drafted, during the period before the administering agency was able to make its determination about the propriety of warranty periods less than or in excess of the one year period provided for, the section could operate to reduce the warranty periods currently being offered by sellers (where they exceeded one year) or force some manufacturers or sellers to withdraw their warranties where these were currently extended for less than one year periods pending Commission action.

Clearly it is not the purpose of the bill to discourage offering warranties but rather to make sure that they are meaningful to a consumer and not advertised or implemented in such a way that they are unfair either to consumers or competitors. In order to avoid injuring the rights of either consumers or manufacturers, we urge that this section be amended so that it authorizes the administering agency to issue regulations fixing the duration of specific warranties where it finds that such regulation is necessary in order to protect consumers from unfairness or deception.<sup>2</sup>

There also appears to be an inconsistency between Section 7(b)(5) permitting imposition of certain costs on the person claiming under the warranty, and Section 9 and 18(c) of the bill.

Section 8 provides that the benefits of the warranty will be accorded to a retail purchaser who buys the goods from the original retail purchaser during the warranty period. This provision is necessary because a number of manufacturers have restricted warranty protection to the original buyer. As the term "retail purchaser" is not defined in the bill, it is believed that the term "buyer" should be used in this section.

Detailed provisions respecting the servicing responsibilities of manufacturers are set forth in Section 9. It obligates the manufacturer to repair or replace

<sup>2</sup> We note that Section 19 specifically authorizes the Commission to suspend the effectiveness of the Act for an additional twelve month period with respect to any class or type of product if such postponement would be in the public interest. We do not believe that this section cures the possible adverse effects of the automatic nature of Section 7(b)(3) since problems with respect to the appropriateness of the duration periods of specific warranties by specific manufacturers should not compel the Commission to suspend the operation of the *entire* Act for the entire class of products involved in order to deal with these problems. Moreover, determinations as to the necessity of such postponement because of warranty duration problems could require an extensive period of time on the part of the Commission.

promptly and without cost to the buyer, merchandise which fails to meet the warranty standards of the bill. The section does not indicate when, and under what conditions, a manufacturer must replace, rather than repair, a defective warranted product. A consumer should not be submitted, for example, to repeated unsuccessful efforts by a manufacturer to repair a product. This section should define fully the manufacturer's replacement obligation.

Under Section 9(a) and (h) the Commission is required to establish standards regarding the number and location of service facilities and the volume of spare parts inventories necessary to be maintained in order to meet the warranty obligation. In view of the wide diversity of products covered by warranties, we do not believe that this authorization should be framed, as Section 9 does, in mandatory terms. Rather, we believe it would appear more reasonable merely to authorize the Commission to lay down regulations on these points if, in its judgment, they are necessary to ensure the proper performance by the warrantor of its warranty obligations.

Paragraph (f) states that the manufacturer must bear the entire cost of maintaining its own service facilities.<sup>3</sup> The necessity for such a provision is not apparent. If this provision refers to service facilities of the manufacturer, it is unnecessary. If it is intended to refer to facilities maintained by others, it should be eliminated. The burden on the manufacturer should be to bear the costs of servicing, not necessarily the cost of the facilities which may be utilized. Small manufacturers could be very adversely affected by this provision. Moreover, this section could well discourage manufacturers from permitting independent service operators or retailers from performing warranty work which again would not seem to promote either the interest of consumers or the small businessman who is prepared to specialize in retail distribution or service and repairs.

Paragraph (g) provides that service representatives must be compensated for warranty work in an amount equal to the rates charged by the representative to retail customers. While the difficulty in obtaining adequate warranty service is due in part to the failure of the manufacturer to provide adequate compensation to those doing the work, this section may go too far in giving the retailer almost a license to overcharge the manufacturer. In the automobile industry, for example, it is not uncommon for a dealer to have several retail rates for different types of customers. The section should provide that the compensation will at least be equal to the minimum rates charged to any other customer for like services.

In paragraph (h) the Commission is charged with the responsibility of determining the adequacy of a reserve fund and stock of spare parts a manufacturer must maintain to insure that its warranty obligations will be performed should it go out of business or discontinue production of the warranted product. Again, the Commission believes that it is not capable of the specific regulation contemplated by this section of the thousands of different manufacturers covered by the bill, and this cannot support this section.

Also, since Section 4 of the bill would make retailers or distributors warrantors under certain circumstances, this section should define their service obligations. Such a definition would also be consistent with our recommendation in earlier sections that certain warranties flow from retailers as well as manufacturers.

Section 11 prescribes in some detail the records and reports which must be maintained and filed by the manufacturer. Section 11(c) requires every manufacturer subject to the Act to file an annual report with the Commission covering (1) the warranties given and service representative contracts and agreements entered into or extended by such manufacturer; (2) claims made against such manufacturer upon such warranties and upon such contracts and agreements; (3) legal action instituted in prosecution of such claims; (4) action taken by such appliance manufacturers with respect to each such claim and demand; and (5) the time, manner, and terms of ultimate settlement of each such claim. Again, this section illustrates the magnitude of the resources which the administering agency must have in order to carry out its statutory mandate under the bill.

Section 12 makes a violation of the bill a violation of Section 5(a)(1) of the Federal Trade Commission Act. This section should be strengthened by authorizing the Commission to seek preliminary injunctions in the district courts to bring to an immediate halt any practice which violates the Act. In addition, Section 13 contains a number of criminal penalties for various violations of the Act, such as the failure to include warranty information, or for removing or defacing such information, or failure to maintain required records or make timely reports.

Sections 14-17 relate to the buyer's remedies under the bill. Section 14 provides that the holder of a valid warranty is entitled to sue a manufacturer violating

<sup>3</sup> The first word in paragraph (f) is misspelled.

any of the first eight sections of the bill, to recover the purchase price paid or agreed to be paid<sup>4</sup> for the merchandise by the first buyer and the amount of damages reasonably foreseeable as a result of the manufacturer's failure to comply with the bill. Section 15 also entitles the buyer to recover all costs and expenses, including attorney's fees, which he incurred. If a manufacturer-defendant has failed for more than sixty days to comply with the Act, Section 16 entitles a prevailing plaintiff to recover an additional sum not less than \$100 nor more than \$5,000. Section 17 is a denial of preemption of State laws in respect to recovery in State courts for damages or defects in any merchandise under warranty. The consumer would thus have a choice of statutes under which to proceed.

The Commission recommends amending Section 14 so as to enable a consumer to bring a cause of action for violation of Section 9 relating to repair or replacement of warranted goods. The Commission also favors, as I intimated at the time of my appearance before your subcommittee, that to the extent a consumer remedy is provided for in any warranty legislation, that such remedy not be subject to any jurisdictional amount in controversy, such as that required by S. 3074. It is also recommended that, due to the initial costs which a plaintiff would still incur in a lawsuit, a provision be included requiring warrantors, in the event of a warranty dispute, to submit to binding arbitration. Since an arbitration remedy can be formulated and administered in a variety of ways, we recommend that the administering agency be authorized to lay down the standards to which this arbitration remedy must conform. We would finally suggest that final Commission cease-and-desist orders finding warrantors in violation of the Act be accorded *prima facie* effect in subsequent private suits.

The definition of the terms used in the bill are in Section 18. The applicability of the bill to virtually everything on the market normally retailing for at least \$10 is achieved by the broad definition of goods in paragraph (b). With regard to the definition of manufacturer, it is questioned whether that definition is sufficiently broad to cover such companies as Sears, Montgomery Ward, Western Auto, and Penneys which should be considered to be both manufacturers and retailers.

By direction of the Commission.

MILES W. KIRKPATRICK, *Chairman.*

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DEPARTMENT OF JUSTICE AND SPECIAL ASSISTANT  
TO THE PRESIDENT FOR CONSUMER AFFAIRS,  
*Washington, D.C., October 6, 1970.*

Hon. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice and the Office of Consumer Affairs on consumer product warranty legislation. Among the bills presently under consideration by your Committee are S. 3074, the Consumer Products Warranty and Guaranty Act, which passed the Senate on July 1, 1970, and H.R. 18056, the Administration's Consumer Warranty Act of 1970, which you introduced by request. The following views are framed primarily in terms of these measures.

As Assistant Attorney General McLaren stated in his March 11, 1970 testimony before the Senate Commerce Subcommittee on the Consumer, there are three ways to attempt to improve consumer warranty practices. One can take measures to induce improvement in the performance of the free market; exert direct legislative or administrative control over the market; or lend the court's assistance to consumers for enforcement of warranty obligations.

Rather than imposing extensive legislative or administrative control, we believe that there is a very substantial value in maintaining markets as free and diverse as is feasible. Generally, so long as the buyer is informed of and adequately understands whatever services are offered, a supplier should be free to offer consumer products with no warranties, with comprehensive warranties, or with warranties limited in substantive content and duration to any extent he chooses. In turn, the consumer should have available for choice a flexible spectrum of post-sale services which sellers may offer. He should, in our view, have the opportunity to buy cheap goods as well as expensive goods, and to buy a wide range of service

<sup>4</sup> This provision seems to result in inequitable treatment of different classes of consumers. While it may simply be a drafting oversight, we question the fairness of permitting some purchasers to recover only what they have actually paid for the merchandise, while allowing others, who have paid nothing, to be enriched by the amount they *agreed* to pay.

obligations. The operation of free market choices will lead to an upgrading in the quantity and quality of services warranted.

Within this underlying framework, as we see it, product warranty legislation requires three substantive functions: to provide greater meaning to warranties offered; to ensure full and fair disclosure to consumers of warranty terms and conditions; and to better the machinery for enforcement of basic warranty obligations. A fourth requirement is that any legislative provisions fashioned toward these ends must be responsible and workable. The Administration's bill, H.R. 18056, was developed with these requirements in mind, and we would like to discuss each of them in terms of that bill's provisions.

First, the major thrust of Administration action is to improve the quality of market practices with respect to warranties. In many cases the "fine print" is so complex as to be unintelligible to the ordinary buyer; in others the big print is misleading. The practice is common of heralding a fine-sounding warranty—which turns out to be rather limited—while disclaiming any common-law implied warranty of fitness. In effect, the seller is offering something with one hand while taking back more with the other.

The Administration bill would induce an upgrading in these warranty practices in two substantive ways. Section 5 would flatly prohibit deceptive guaranties with respect to a consumer product or services, defined in accordance with the Uniform Commercial Code to include not only labelled warranties and guaranties which are deceptive but any false, fraudulent or misleading affirmation, promise, description or representation with respect to the product or services, written or oral. Moreover, what is misleading would include not only actual statements but also failure to provide information necessary to prevent deception. An act so prohibited is declared under section 6 to be an unfair and deceptive practice within the meaning of section 5 of the Federal Trade Commission Act, and thus to FTC cease-and-desist action. In addition, deceptive guaranties may be enjoined in the Federal courts by the FTC (section 7) and the Attorney General (section 8).

The other substantive provision would enact as Federal law the common-law and Uniform Commercial Code implied warranty of fitness for ordinary use with respect to products covered by the bill. However, consistent with our aim to ensure continuation of the widest range of choices open to consumers, this warranty can be disclaimed and the product sold on an "as is" basis, if the disclaimer is made clear and accurate. The one exception to disclaimer—and the sole place in the measure where substantive content is imposed on the supplier's choice of post-sale services to be offered—is where the terms "warranty" or "guaranty" are used in connection with the product's sale. The effect of this is to assure to consumers that the minimum commercial content of these terms would be fitness for ordinary use. Failure to perform the obligations of this implied warranty is prohibited under section 5, and thus also made subject to the cease-and-desist and injunctive action outlined above.

These provisions, with minimal impact on the legitimate range of choices among post-sale obligations as between buyers and sellers, would have an important effect on the market. We would expect such measures, coupled with FTC rule-making authority discussed below, to induce a substantial enhancement of the quality of warranties and guaranties, and the quality of information made available to consumers.

Second, in addition to prohibiting deceptive guaranties, section 3 of the Administration bill requires full and conspicuous disclosure of the terms and conditions of express statements of warranties, as well as of disclaimers of express or implied warranties. The Federal Trade Commission is given rulemaking authority to establish regulations having the force of law, to ensure that the warranty is expressed in simple and readily understood terms and to prescribe the manner and form of disclosure. This provides for full disclosure to consumers, while leaving to market choice the content of that disclosure.

Our third consideration is enhanced protection against failure to meet basic warranty obligations. The Administration would meet this need in the responsible fashion of the Consumer Protection Act. As we have noted, the Justice Department or the FTC would bring suits against violation of FTC disclosure rules, deceptive guaranties, or failures to perform fitness-for-use warranty obligations. After such a successful "triggering" action consumers could bring Federal suit for damages (section 9), with contested judgments in favor of the United States serving as *prima facie* evidence (section 10). These consumer actions, it is emphasized, are eased by provision for attorneys' fees. Class actions, in turn, would be made possible by provision barring citizenship or amount-in-controversy limitations against district court suit.

Our final requirement is that legislation be responsible and workable. The Administration bill, we believe, is workable in its keying of new Federal law to the familiar Uniform Commercial Code. Thus there should be no difficulty in interpretation and applicability of these provisions. The "triggering" process of prior agency action, in addition, avoids a potential for swamping the Federal courts with a mass of litigation. This device avoids turning Federal district courts into local small claims courts, and assures their use for a public selection of cases of widespread economic impact. At the same time, full contractual remedies remain available to the locally-aggrieved consumer in his local courts.

This bill, we also believe, represents a responsible approach to the problem. This is a new Federal step in a broad area with ramifications not yet wholly known. Existing studies have dealt with narrow product lines. The field is still far from fully explored. Thus the Administration measure has concentrated primarily on major consumer products and services, with applicability at this time extending to items actually costing \$25 or more. In addition, looking to provide the foundation for future responsible legislative steps it has in section 17(b) directed a full study by the FTC, for report in two years, on all economic aspects significant to consumers in the marketing and performance of warranties in relation to maintenance of a free, competitive and dynamic interstate commerce.

The Administration bill differs in major respects from S. 3074. The latter, for example, imposes a considerable degree of substantive content in its Federal minimum standards for warranty and authorizes FTC administrative control in defining that content. It extends coverage, even at this early stage in Federal legislation on the subject, to virtually all consumer products, while limiting such coverage to written warranties. It gives an appearance of opening the Federal courts to independent consumer actions of little general significance, though its retention of amount-in-controversy requirements of 28 U.S.C. § 1331 makes unlikely any real consumer relief on an individual or class-action basis. Finally, it opens the State courts to such independent actions based on the Federal law, but with provisions which inadequately balance the recovery of attorneys' fees as between plaintiffs and defendants. Aside from these major points, S. 3074 also presents a number of other difficulties and ambiguities.

The Administration bill, whose major provisions we have outlined, is a practical step forward in this field. Consistent with maintenance of a free and diverse market in consumer goods and their post-sale services, we believe the bill will be a responsible and effective initial measure to improve the quality of market offering and response in the area of product warranties.

Sincerely yours,

RICHARD W. McLAREN,  
*Assistant Attorney General, Antitrust Division.*

VIRGINIA KNAUER,  
*Special Assistant to the President for Consumer Affairs.*

Mr. Moss. I am very pleased to welcome as our first witness this morning the very distinguished Senator from the State of Utah, the Honorable Frank Moss.

#### STATEMENT OF HON. FRANK E. MOSS, A U.S. SENATOR FROM THE STATE OF UTAH

Senator Moss. Thank you, Mr. Chairman, Mr. Keith. I do appreciate the opportunity of appearing briefly this morning because I believe the necessity for this legislation is great and I appreciate the the opening remarks of the chairman.

During the early months of this session the Consumer Subcommittee of the Senate devoted considerable time and energy—including 5 days of hearings—to developing sound legislation in the area of consumer warranties and guaranties. This action was prompted by a large number of letters received by the Consumer Subcommittee from American consumers decrying warranty and guaranty practices and complaining about the generally poor reliability of consumer products.

With the cooperation of all members of the Senate Commerce Committee, Senator Magnuson and I fashioned a piece of legislation which we believe would alleviate many consumer problems in the warranty and guaranty area.

The legislation would promote consumer understanding by requiring those people giving warranties to clearly and conspicuously disclose the terms of the warranty and by telling the consumer what to do if his guaranteed product becomes defective or malfunctions.

The legislation would provide minimum warranty protection for consumers by prohibiting the disclaimer of implied warranties when a supplier of consumer products guarantees in writing consumer products against defects or malfunctions.

The legislation would assure the performance of warranties by providing for meaningful consumer remedies if a warrantor fails to perform as promised. A consumer may pursue his remedies in court and be awarded, as a part of his recovery if successful, costs incurred during litigation.

And finally, this legislation would create incentives for building more reliable products. Each supplier who decides to give a "full" warranty or guaranty would play the warranty game by the same rules as every other supplier issuing a "full" warranty. The consumer could look to the warranty duration of consumer products which are fully guaranteed as indicators of the product reliability potential of these products. Thus, consumers shopping for product reliability could differentiate between reliable and less reliable products on the basis: (1) of the type of warranty given—either a "partial" or "full", and (2) the duration of the "full" warranties.

I am confident that S. 3074 provides a sound legislative solution for consumer warranty problems. I urge this subcommittee to take favorable action as soon as possible on a similar bill.

Thank you for the privilege of appearing before you today to issue this brief comment.

Mr. MOSS. By what vote was S. 3074 passed in the Senate?

Senator MOSS. I think it was unanimous.

Mr. MOSS. That was my recollection. I wanted to check.

Mr. KEITH, do you have any questions?

Mr. KEITH. There must be some since it cannot be that perfect. Usually legislation from the Senate requires many changes on the House side.

Senator MOSS. Well, we are glad you are getting down to it.

Mr. KEITH. It is nice to have you here, Senator.

Senator MOSS. Thank you, Mr. Keith.

Mr. KEITH. May I inquire as to whether or not the consumers are carrying on correspondence with this subcommittee the same way they are on the Senate side or have they just looked to the other branch for a means of accomplishing their objectives? What mail have we had on this subject?

Mr. MOSS. I cannot speak for the committee, but I can speak personally. I have had a very considerable volume of mail, I would say now totaling well in excess of over a thousand letters.

Mr. KEITH. Is that so?

Mr. MOSS. That is correct.

Mr. KEITH. I wonder what is generating it because I am——

Mr. MOSS. I am an author of a bill.

Mr. KEITH. Was it favorable or unfavorable mail?

Mr. MOSS. It would depend entirely on what you call favorable. If you mean to ask whether it reflects consumer discontent, it does.

Mr. KEITH. I think this dialog had better continue in private.

Senator MOSS. I am sure it is a very live subject.

Mr. MOSS. I would like at this time to acknowledge the presence of Congressman John G. Schmitz of California, who has just been elected a member of this Committee on Interstate and Foreign Commerce and assigned to the Subcommittee on Commerce and Finance. We welcome you aboard and do you have any questions you would like to ask at this time?

Mr. SCHMITZ. No, I have not been here long enough to even furnish the basis of a good question yet.

Mr. MOSS. Thank you, Senator. I do appreciate the work which has gone into S. 3074 and the strong consensus which has developed behind it.

Mr. KEITH. I am wondering if by chance Senator Moss' staff or he himself has had a chance to peruse H.R. 18056, which deals with the same subject matter and has been field by Mr. Staggers for himself and Mr. Springer.

Senator MOSS. I had looked at that earlier but I must confess I have not studied it recently and I just came back into town this morning early, so I probably could not respond very well to a question on it, although I would be glad to undertake it if there is some technical matter.

Mr. KEITH. No; thank you.

Mr. MOSS. Thank you very much.

Senator Norris Cotton of New Hampshire has a statement he would like to present to the committee this morning.

Welcome, Senator Cotton, it is good to have you with us today. Please proceed as you see fit.

#### STATEMENT OF HON. NORRIS COTTON, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator COTTON. Thank you, Mr. Chairman. As ranking minority member of the Senate Committee on Commerce which reported out S. 3074 in virtually identical form to the bill which you presently have before you, I feel that I would be derelict in my responsibility if I did not voice to you my concern over one significant aspect of that bill. I should note that but for the flaw to which I wish to direct your attention, which may unfortunately prove to be a fatal flaw, this is essentially a good piece of legislation.

A somewhat similar bill was forwarded to our committee by the administration. That bill and the original bill which had been introduced by the chairman of our Senate Committee on Commerce, Mr. Magnuson, were worked on extensively both by staff and by the committee. Extensive hearings were held at which the reports of the President's Task Force on Appliance Warranties and of the President's Task Force on Automobile Warranties were received and confirmed by the testimony of a number of witnesses. It may be fairly said that there is, in fact, a problem with respect to automobile and household appliance warranties. A problem which probably requires a legislative solution along the lines contained in S. 3074.

At the same time, I cannot overemphasize the fact that so far as the record before our committee shows, the warranty problem is confined to household appliance and automobile warranties. In apparent recognition of this fact, the bill as originally introduced by Senator Magnuson prudently confined itself to warranties on consumer products containing thermal, mechanical, or electrical components. That definition very neatly covered the household appliance and automobile warranty areas without affecting other areas as to which no need for legislation had been demonstrated. The hearings we conducted were held on that original bill and by and large, staff consideration was similarly limited until we were very far down the road of the legislative process. At that time the provisions of the bill were expanded to undertake comprehensive Federal regulation of warranties and guarantees with respect to all consumer products subject only to the limitation that such products actually cost more than \$5.

I am convinced that it will be futile to attempt to fully regulate warranties and guarantees given with respect to all consumer products. The attempt to do so can only result in dissipation of the regulatory effort, resulting in total nonenforcement at worst or sporadic ad hoc enforcement at best. The impossibility of the duty we would be imposing upon the regulatory agency was given recognition by our Commerce Committee by incorporation of a \$5 minimum purchase price upon the applicability of the provisions of the bill. This arbitrary \$5 minimum not only will not ease the regulatory burden as intended (the administration had recommended incorporation of a \$25 minimum purchase price), but also will limit the effectiveness of the legislation in the area where it is needed. If passed in its present form, I predict that you will see a flood of poorly made consumer appliances priced at \$4.99.

For these reasons I urge your committee to consider amendments which would (1) limit the legislation to the target area it was originally intended to cover, by defining consumer products in terms of those containing thermal, mechanical, or electrical components, and (2) increase the coverage of that target area, by eliminating the arbitrary \$5 minimum which is presently incorporated in the bill.

Mr. Moss. Thank you, Senator Cotton, for taking time out of your busy schedule to share your views with us this morning.

Senator COTTON. Thank you, Mr. Chairman, for allowing me to appear before this distinguished committee on this important matter.

Mr. Moss. Our next witness is the Honorable Miles Kirkpatrick, Chairman, Federal Trade Commission.

Mr. Chairman, it is a pleasure to welcome you not only as the Chairman but the new Chairman of the Federal Trade Commission. I have high hopes that your tenure in that position will be a very successful and productive one.

**STATEMENT OF HON. MILES W. KIRKPATRICK, CHAIRMAN,  
FEDERAL TRADE COMMISSION**

Mr. KIRKPATRICK. My hopes coincide with yours, sir. I very much welcome the opportunity to appear before this subcommittee.

I am here to express the views of the entire Commission on the Consumer Warranty Act of 1970. That is H.R. 18056 and S. 3074, both of which are designed to improve warranty practices. May I just

interject long enough to say this, that my Commission has taken no position on your bill, sir, which is H.R. 10690. The only position that we have taken with respect to affirmative requirement that there be warranties is that which is set forth in our automobile warranty report which was issued earlier this year. Unfortunately, we did not receive notice of these hearings until Friday, so that I was unable to in that time obtain a Commission position on H.R. 10690. So, I will confine my remarks, if I may, to the S. 3074 and H.R. 18056.

Mr. MOSS. That is fine.

Mr. KIRKPATRICK. The general purpose of H.R. 18056 is to insure that consumers receive complete disclosure of the terms and conditions of any guaranty of merchandise or services and to insure the elimination of deceptive guarantees employed in the marketing of products and services. Legislation of the type typified by this bill is directed at one of the most serious consumer problems existent today—that of product reliability. Consumers have a right to be assured that the product purchased today will continue to operate tomorrow. Consumers are concerned with the adequacy of guarantees and warranties on the goods they buy. We must strive to promote product integrity and create a market environment in which the consumer can have confidence. Such an environment will be of benefit not only to the consumer but to the businessman as well. Consumerism and the interests of business are not separate or in opposition to one another. It is as important to one as it is to the other that business provide quality goods and services.

President Nixon in his consumer message of October 30, 1969, defined "consumerism" in the seventies as meaning that we have adopted the concept of "buyer's rights." He focused specific attention on warranties and guarantees and reactivated the Task Force on Appliance Warranties and Service and directed it to report on the need for legislation with respect to warranties on household appliances and in other fields.

That task force, which consisted of the Secretaries of Commerce and Labor, the Chairman of the Federal Trade Commission, and the Special Assistant to the President for Consumer Affairs was originally created to:

Encourage improvements in the quality of service and repairs.

Assure that warranties and guarantees say what they mean and mean what they say.

Let the consumer know how long he may expect the product to last if properly used.

Determine whether Federal legislation is needed.

On January 8, 1969, the report of the Task Force on Appliance Warranties and Service was published. It concluded that the underlying and basic problem which must be solved is how to persuade or compel a manufacturer and the retailer to provide the purchaser of a major appliance with a meaningful guarantee which they will honor in both letter and spirit subsequent to the sale. It recommended that the household appliance industry disclose more fully the terms of the warranties and improve warranty performance.

While it is apparent there has been some effort by industry to improve warranties and service in the major appliance field, nevertheless, all problems associated with warranty performance have not

been resolved, and it is unlikely that collective voluntary action will provide an effective solution to warranty abuses.

Certainly, consumers have a right to be assured that they will receive complete and clear disclosure of the terms and conditions of any warranty on merchandise or service. The failure of the guarantee to set forth clearly and in understandable language the nature and extent of the guarantee is a common complaint. Buyer confidence in the seller's integrity is not enhanced when the seller unfairly leads the buyer to believe he is getting more than he actually does. The consumer must be provided with information whereby he is able to make an intelligent, informed judgment.

As is demonstrated in the task force report, consumer problems with warranties are not confined solely to deceptive terminology. Consumers are concerned as well with the adequacy and fairness of warranties on goods that they buy. While it is important that warranties say what they mean, it is just as important that they afford some meaningful assurance of product reliability to the consumer. The terms "guarantee" and "warranty" themselves lead a customer to believe that the guarantor stands behind his product. Too often, however, the guarantee has not been used as a vehicle to provide customer assurance of product reliability. In some instances it has been used more as a device to limit the responsibility of the seller—often negating altogether the implied warranties of fitness and merchantability. Another basic cause of consumer dissatisfaction with service provided under a guarantee or warranty is the failure of some guarantors to fulfill the obligations set forth in the guarantee to the extent and in the manner expected by the consumer.

The Commission's concern for the question of warranties is reflected most forcefully in its report on automobile warranties published in February of this year. In that report the Commission concluded that the quality control of automobiles is unsatisfactory, that the warranty coverage putatively provided by manufacturers is inadequate, and that the industry response to the problem has been insufficient to protect the public. The Commission recommended the enactment of an Automobile Quality Control Act which would place a statutory obligation on manufacturers to provide consumers with defect-free automobiles in compliance with minimum standards of quality, durability, and performance, and to repair defective automobiles and automobile parts which do not conform to such standards.

The Commission's conclusion, in respect to the automobile industry, was based on known facts and conditions peculiar to that industry, such as past industry response to consumer needs, the cost of automobiles to consumers, and the importance to the public of having safe, defect-free vehicles.

While the Commission has not conducted studies of other products in such depth, and, therefore, cannot at this point say whether legislation establishing mandatory warranty standards and performance for such products is now necessary, the Commission does believe that informative, accurate, clear, and fairly written warranties, backed up by warrantors who deliver what they promise, are essential to our free market economy, and that legislation to insure these consumer rights is necessary.

It is the purpose of H.R. 18056 to provide for full disclosure of warranty terms, and to prevent the sale of consumer products and services by the use of deceptive guarantees that affect commerce.

The Commission endorses those objectives and believes that legislation in this area will provide substantial protection to the public. The Commission suggests, however, that consideration be given to certain modifications which would serve, in our view, to strengthen and clarify the bill's provisions. Some of the modifications which I will suggest are contained in the warranty legislation passed by the Senate, S. 3074, which is similar in many respects to H.R. 18056, while other suggested modifications are found in neither bill.

The terms of the House bill would apply to consumer products and services which actually cost \$25 or more. This limitation would, in our view, exclude from the scope of the bill numerous consumer products, such as toasters, irons, hair curlers and dryers, razors, some radios, and clocks, et cetera. The Commission suggests, therefore, that consideration be given to place the value limitation at \$5, as contained in the Senate-passed version.

Neither the subject bill's definition of "purchaser" in section 2(d), nor the provisions of S. 3074 provide for the transfer of guarantee protection to subsequent purchasers. The Commission is of the opinion that any guarantee should go with the product, and that transfer of guarantee protection should be mandatory.

Like its Senate counterpart, section 3 of the subject bill requires suppliers warranting consumer products to clearly and conspicuously disclose the terms and conditions of their warranties pursuant to regulations to be established by the Federal Trade Commission. Establishment of those regulations shall be subject to sections 552 and 559, of the Administrative Procedure Act and shall be approved on a record after opportunity for a public agency hearing. We would suggest that this section be modified to permit the Commission to establish the regulations authorized by the section under its informal rulemaking procedure. The formal rulemaking procedure prescribed by this section, with its requirement for a record and opportunity for full cross-examination, might be unnecessarily cumbersome and time consuming. The Commission's considerable experience with informal rulemaking, both with respect to trade regulation rules under our informal rulemaking power and under section 6(g) of the Federal Trade Commission Act, has demonstrated that this procedure can result in relatively quick action while adequately protecting the rights of all interested parties.

The Senate's version of this warranty legislation contains a provision, not included in the House bill, which requires a warrantor to clearly and conspicuously designate his warranty as "full" or "partial," establishes certain minimum duties for warrantors with "full" warranties, and authorizes the Federal Trade Commission to define and presumably enlarge those duties by regulations, as well as to determine their applicability to warrantors of different categories of consumer products. We are of the opinion that inclusion of such a provision in the House bill would be a desirable addition.

The Commission also suggests that the implied warranty of fitness created by section 4 of H.R. 18056 be further clarified by adding the following sentence to section 4(a):

Such implied warranty of fitness shall include, for purposes of this Act, a warranty that the product (1) is safe under conditions of ordinary use, (2) is free from defects in materials, manufacture, or workmanship, (3) will perform in accordance with any representations, written or oral, made by the supplier in marketing the product, and (4) will provide reasonably satisfactory performance under conditions of ordinary use.

We also suggest that a section 4(d) be added to the bill, as follows:

(d) A warranty that the consumer product is safe under conditions of ordinary use shall be implied in every sale of a consumer product by a supplier. Any attempted disclaimer or exclusion of the implied warranty set out in this subsection shall be deemed a deceptive guaranty and shall have no effect.

The Commission strongly endorses section 7 of the House bill authorizing the Commission to seek preliminary injunctions aimed at bringing to an immediate halt any practice which violates the act, authorization for which is not found in the bill as passed by the Senate.

Section 9 of the House bill provides for suits by purchasers at the conclusion of a successful Government action. The Commission supports this provision. The question arises whether the rights of purchasers to bring suit for damages should be enlarged by modifying the bill to permit a private action without awaiting a previous proceeding by the Commission or the Attorney General. On this issue the Commission's position at this time is predicated upon its desire to determine first whether the protection afforded by H.R. 18056, if strengthened in the respects now proposed by the Commission, would be adequate as a major first step in this area. If found inadequate by experience, the Commission believes that any necessary amendment could be proposed in the light of such experience.

Section 10 of the House bill provides that a final judgment or decree rendered in any proceeding brought by the United States under this act shall be prima facie evidence in any subsequent private action. The Commission proposes that this provision be enlarged to provide that any final order enjoining any practice declared unlawful by this act, entered by the Commission on the facts after a full hearing, shall also constitute prima facie evidence in any subsequent private action. This amendment would accomplish two purposes: (1) it would render considerable assistance to purchasers in instituting private actions seeking redress, and (2) it would place the Commission's enforcement authority under the bill on an equal footing with the Department of Justice.

Section 13 of the bill provides the Attorney General with authority to issue a civil investigative demand to any person under investigation for possible violation of the act, subject to certain provisions of the United States Code. As we interpret these provisions, materials produced pursuant to any such demand would not be available to the Commission. The Commission suggests, therefore, that these provisions of section 13 be modified in this respect so that such materials will be made available to the Commission under proper liaison arrangements with the Department of Justice.

Since section 4 of this bill adds a Federal implied warranty to every sale of a consumer product to a purchaser, it is the Commission's understanding that the preemptory provisions of section 18 do not cut back on whatever rights are presently available to purchasers under State laws. With this understanding, the Commission endorses

the provisions of section 4, with the modifications which have already been suggested.

In conclusion, the Commission supports the objectives of H.R. 18056, but suggests consideration of the modifications which I have just proposed. As modified, we feel that this legislation will provide substantial guarantee protection to consumers.

I thank you, sir, for the privilege of being here.

Mr. MOSS. Thank you, Mr. Chairman, and I would like to state my very strong concurrence in the statement contained in the second paragraph of your prepared text on page 1.

"Consumerism and the interests of business are not separate or in opposition to one another. It is as important to one as to the other that business provide quality goods and services." And I hope that that is in every sense the guiding principle that will be followed by this committee in its deliberations in the course of these hearings and the subsequent marking up and reporting of legislation.

I would like to request that the Commission as promptly as possible forward to the committee its comments on H.R. 10690.<sup>1</sup> We would like to have the views of the Commission on all these bills at the time of markup.

Mr. KIRKPATRICK. We would be very glad to get at that immediately, sir.

Mr. MOSS. Mr. Keith.

Mr. KEITH. No questions at this time, Mr. Chairman. That was a very helpful statement on the part of Chairman Kirkpatrick.

Mr. KIRKPATRICK. Thank you, sir.

Mr. MOSS. And in keeping with the custom of this subcommittee, in order to encourage early attendance, we recognize members as they arrive.

Mr. Schmitz?

Mr. SCHMITZ. No questions.

Mr. MOSS. Mr. Harvey.

Mr. HARVEY. Pardon me. This is a new practice, Mr. Chairman.

Mr. MOSS. No; we have been doing this for some time.

Mr. HARVEY. What are the present powers of the Commission, Mr. Chairman, with regard to providing regulations in this subject area?

Mr. KIRKPATRICK. We would have, Congressman, a general power under section 5 to bring cases and to bring rulemaking proceedings in deceptive and unfair situations where guarantees or warranties—the usual cases where a guaranty or warranty is either deceptively stated or advertised or, in fact, promulgated without any intention of compliance with it. But I think we have actually very broad powers.

Mr. HARVEY. Do you have the power to require the full and conspicuous disclosure of the materials and conditions of express statements of warranties and guaranties as set forth here?

Mr. KIRKPATRICK. I think we might have that power, yes, sir.

Mr. HARVEY. At the present time.

Mr. KIRKPATRICK. I think that might be within our power.

Mr. HARVEY. In other words—

Mr. KIRKPATRICK. If we had shown as the basis for it, sir, that there had been deception and there had been a violation of section 5. I think we would first have to show that there was reason to exercise the jurisdiction we have.

<sup>1</sup> See p. 60, for text of the Federal Trade Commission's report on H.R. 10690.

Mr. HARVEY. But I think the Commission does have the power by regulation to get into this subject area at the present time.

Mr. KIRKPATRICK. Yes, sir; and may I say that in speaking now I am speaking for myself and not for the Commission, of course

Mr. HARVEY. Is it expected that this legislation will lengthen the terms of guaranties, for example, or—

Mr. KIRKPATRICK. I would not anticipate that its intention was to in any way touch on that matter, really. I think there is an express provision in the proposed legislation that there shall be—I forget the precise terms of it but—

Mr. HARVEY. Well, it provides in section 3, that it shall not enlarge the scope or get into the substantive terms of the warranty or guaranty.

Mr. KIRKPATRICK. Yes, sir.

Mr. HARVEY. But my question is, do you expect that the practical effect of this legislation is going to change existing warranties and guaranties, making them from the consumers standpoint better? Is it going to lengthen the guaranties? Is it going to make them require greater compliance by the manufacturer or—

Mr. KIRKPATRICK. I would hope, Congressman Harvey, that the effect would be through the more complete and full and fair disclosure to produce a benign effect on the kind of warranty and guaranty that would be involved because people do not disclose, I think, the niggardly or not very attractive propositions, nor will they want to disclose a guaranty that is on its face unattractive.

Mr. HARVEY. Is it, therefore, anticipated that this legislation will result in a greater cost to the manufacturer? A greater cost of operations of his business?

Mr. KIRKPATRICK. I would not anticipate that the manufacturer who has a substantial guaranty and warranty program, that it would increase his costs in any undue way, sir.

Mr. HARVEY. Well—

Mr. KIRKPATRICK. There is nothing in either the two items of legislation to which I addressed myself, that compels the manufacturer to warrant or guarantee anything. That is up to him. That is a question of the disclosure that is made.

Mr. HARVEY. So, you do not anticipate that it would bring about any additional costs?

Mr. KIRKPATRICK. I had not thought of it in those terms, sir.

Mr. HARVEY. Nor any reason why the manufacturer would come in and say they would have to increase the price of the products for change in guaranty?

Mr. KIRKPATRICK. I would not anticipate that to be of any substantial concern, sir.

Mr. HARVEY. Thank you very much. I compliment you on your statement.

Mr. KIRKPATRICK. Thank you.

Mr. HARVEY. That is all the questions I have, Mr. Chairman.

Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Chairman, you are, I suppose, familiar with the Senate bill as well as the House bill, S. 3074?

Mr. KIRKPATRICK. Yes, sir.

Mr. ECKHARDT. As I understand, and I just glanced at it, section 11 of that bill, paragraph (e), seems to provide for a direct suit by a person claiming to have been injured by the breach of warranty in Federal court. Is that the way you understand it?

Mr. KIRKPATRICK. Yes.

Mr. ECKHARDT. Now, how does the House bill, H.R. 18056, differ from this, if it does?

Mr. KIRKPATRICK. Yes, sir; I believe that in the House bill—let me just get the bill. I believe the House bill had a triggering provision as I recall it. That is to say that the consumer was not given a right to bring suit for violation of the act except after a successful proceeding had been brought by the Department of Justice.

Mr. ECKHARDT. In other words, that would be in general the same triggering device provided in the administration's consumer class action bill.

Mr. KIRKPATRICK. That is my recollection of this bill, yes, sir. Of course, class actions are not provided for in the Senate bill, as you know. That is, in the Senate bill that is before us today.

Mr. ECKHARDT. Well, actually, they are not specifically excluded, as I understand, but since title 28, section 1331, is required as a prerequisite for the action, I suppose they would be in effect, outlawed.

Mr. KIRKPATRICK. That would be my notion of it, sir.

Mr. ECKHARDT. Now, at least theoretically, if you had a class injured in excess of \$10,000, say a great number of persons buying some earthmoving equipment, I assume you could have a class action because there is no specific provision in that bill that I know of, that prohibits a class action, but I am not familiar with the details of the bill.

Mr. KIRKPATRICK. I believe that the decisional law is, sir, that there should be no accumulation of the parts of the class action for the purpose of the jurisdictional requirement of \$10,000.

Mr. ECKHARDT. Oh, yes, that certainly is correct. But assuming, for instance, that Brown and Root purchased a number of earthmoving bulldozers, each of which cost considerably over \$10,000, and the defect was one which completely destroyed the value of the equipment for the use needed; at least theoretically, this would constitute a class. The only thing that destroys the possibility of a class action in the ordinary consumer suit is the fact that one may not aggregate the claims in order to make up the consumer suit, and that is the way, as I understand it, that the bill denies class actions. Is that the way you understand it?

Mr. KIRKPATRICK. That, I think, is a very fair statement, yes, sir.

Mr. ECKHARDT. Now, there is a rather strange thing about that bill. It utilizes title 28, section 1331, which, as you correctly point out, requires the \$10,000 amount in controversy. In most instances where a case arises under Federal law and it arises under the commerce power, 1331 does not apply. Is that the way you understand it?

Mr. KIRKPATRICK. In my experience that is certainly true of the antitrust laws, for example.

Mr. ECKHARDT. That would be right, and as a matter of fact, I forget the section that controls it.

Mr. KIRKPATRICK. Without regard to the jurisdictional amount, yes, sir.

Mr. ECKHARDT. Yes. The amount involved in controversy is immaterial. For instance, a case that arises under section 301(a) of the Labor Act, in which a suit is brought on the basis of a breach of a labor agreement either by the employer or the union—

Mr. KIRKPATRICK. Yes.

Mr. ECKHARDT (continuing). Would not involve amount in controversy and unless you specifically provide in the statute itself that a jurisdictional amount comes into play, as I understand it, the general rule would be that the amount in controversy would not be involved. The amount in controversy, of course, would come into play if the matter came up under some other power of Congress rather than the commerce power and it would apply in a diversity of citizenship suit but it would not apply in a suit arising under the commerce power as would be the case of a suit under S. 3074, if it were not for the specific provision. Is that not correct?

Mr. KIRKPATRICK. I am not sure that I agree with that, sir. My understanding is that the jurisdictional amount is in any event required whether the suit is brought under excess legislation or not, and is waived only when the legislation under which the suit is brought itself provides for such a waiver. Now, perhaps that is what you said. I was not sure I followed you.

Mr. ECKHARDT. No. I did not exactly. As a matter of fact, I think I said the opposite.

Mr. KIRKPATRICK. I think you did, too, sir.

Mr. ECKHARDT. And I understand your wide experience, not on the Commission, of course, but as a lawyer, a practicing lawyer in the field. As I understand the law with respect to jurisdictional amount, 1331 applies to cases which arise under the court's jurisdiction by virtue of diversity of citizenship. I understand that generally speaking, a case which arises under Federal law, which law is one under the commerce power of Congress, is entertainable by a district court without regard to the amount in controversy; but, of course, if the statute specifically provides a necessary amount in controversy, then this requirement is brought in by virtue of the statutory language. Now, I may be wrong about that.

Mr. KIRKPATRICK. With respect, that is not my understanding of the law, sir.

Mr. ECKHARDT. My understanding of the law brings up the question in my mind—and perhaps the question would arise whether the law is what you feel that it is or what I feel that it is—as to why we should specifically provide a \$10,000 amount in controversy involving a suit on a warrant when, in effect, this excludes the availability of the Federal court in something like 99.9 percent of the cases. You would agree that it does, would you not?

Mr. KIRKPATRICK. I would not disagree with that, yes.

Mr. ECKHARDT. For instance, let us suppose that a person bought a Mercedes at a cost of, say \$10,000 and there was a defect in its construction. It would be very difficult to imagine the cost of repair reaching the \$10,000 amount in controversy, is that not correct?

Mr. KIRKPATRICK. I think that is right, sir, yes.

Mr. ECKHARDT. Then we may say that section 11(e) of the Senate bill affords very, very little relief to the consumer, may we not?

Mr. KIRKPATRICK. I have the difficulty with it that you state, sir.

Mr. ECKHARDT. Now—

Mr. HARVEY. Will you yield right there, Mr. Eckhardt?

Mr. ECKHARDT. Surely.

Mr. HARVEY. In what respect does 11(e) change existing law? Does not the consumer at the present time have the same remedies that are

already set forth in 11(e)? For example, cannot the consumer go into Federal court if he meets the jurisdictional requirements?

Mr. ECKHARDT. Let me readily concede that that is true, because, of course, a suit could only be brought under diversity jurisdiction and 1331 would certainly apply in that case.

Mr. HARVEY. My point, Mr. Eckhardt, was, and I am not sure that I made it, was that I do not see how 11(e) in the Senate bill adds anything really because it seems to me, that the consumer today has these same powers to go into Federal court if he meets the jurisdictional requirements and to sue under it.

Mr. ECKHARDT. Oh, I agree.

Mr. HARVEY. Under a breach of contract for these particular things, so actually, I do not see how it adds anything.

Mr. ECKHARDT. It may conceivably add something in the unusual case I described with respect, say, to earthmoving equipment that is worth over \$10,000, in that a plaintiff could go into court even if he could not show diversity but that is the only place, I understand, where it would add anything and I would like the witness to comment on that point.

Mr. KIRKPATRICK. Well, I think that we start with the basic proposition that whether the law is as you think it to be or as I think it to be, but I do have the problem and I think that what I would like to do is go back and study this aspect of it and perhaps include that in a further report because I am inclined to agree with the direction of your question. I do not see that the consumer, except as violation of the particular provisions of this act, may give him new causes of action, I do not see that the jurisdictional problem that you state is fairly met.

Mr. Moss. Mr. Guthrie, will you prepare an opinion and have it available to the committee and we will hold the record to receive it. Is there objection? Hearing none, it is so ordered.

(The following memorandum was received for the record:)

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., October 5, 1970.*

MEMORANDUM

To: Hon. John E. Moss, Chairman, Subcommittee on Commerce and Finance, House Interstate and Foreign Commerce Committee.

From: Robert F. Guthrie.

Subject: Whether requirement of jurisdictional amount under 28 U.S.C. 1331 must be met unless specifically waived by statute under which action in Federal district court is being brought.

On September 29, 1970, in hearings before the Subcommittee on warranty legislation, the question developed in a colloquy between Congressman Eckhardt and Chairman Kirkpatrick of the Federal Trade Commission as to whether the jurisdictional amount of \$10,000 required by 28 U.S.C. 1331 must be satisfied in any action brought in a district court of the United States, unless the statute under which the action is brought specifically waived the jurisdictional amount, Congressman Eckhardt asserted that cases brought under laws enacted under the commerce power of the Congress can be brought in Federal district courts without regard to the amount in controversy. Chairman Kirkpatrick tended to disagree with this viewpoint.

Section 1337 of title 28, United States Code, provided:

§ 1337. Commerce and antitrust regulations. The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act

of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

Several cases have held that the Federal district courts have such original jurisdiction without regard to the amount in controversy. See particularly *Bloomfield Steamship Co. v. Sabine Pilots Ass'n.* (262 Fed 345 (1959)); cert. den. 368 U.S. 802).

Mr. MOSS. Mr. ECKHARDT.

Mr. ECKHARDT. Mr. Chairman, I really do not think that any dispute that we may have as to what the law is without a specific provision requiring a \$10,000 jurisdictional amount in a specific bill makes any difference to yours and my interpretation of this act because, whether this has to be done explicitly or not, it is done here. So, we know that the jurisdictional amount is applicable. The only point I was making in response to Mr. Harvey's question—

Mr. KIRKPATRICK. I think you are right.

Mr. ECKHARDT (continuing). Is simply this, that as I understand it, under existing law if an individual, say, buying a Mercedes automobile discovered a basic flaw in that automobile and sought to bring a suit on that flaw on the basis that it violated an implied warranty of suitability for the use intended, he would presently be required to show diversity of citizenship in order to get into Federal district court, because there would be no Federal jurisdiction in such a case. Therefore, he would be confronted with the jurisdictional requirement of 1331 that the amount in controversy for the single transaction be in excess of \$10,000.

Now, if this bill were passed, he would still be confronted with the requirement of showing \$10,000 in controversy, but he would not have to show that there was diversity of citizenship. That is the only difference that I understand to be involved in the case, so in both cases he would be ultimately denied the use of the Federal court. But in the case in the other hypothetical that I raised, that is, a case in which earthmoving equipment was involved and the amount of damage to the party having bought the equipment—by virtue of the breach of the implied warranty—was in excess of \$10,000, he could get into court without this act on the basis of diversity if he could show it, but he could get into court even if there were not diversity, if this act were passed. As I understand it, this is all this act would really do with respect to extending to an individual the right to bring a lawsuit immediately.

Mr. KIRKPATRICK. Well, I do point out, though, that (e) of this section 11 does provide that claim may be brought in any State court as well as—

Mr. ECKHARDT. That is right.

Mr. KIRKPATRICK. So there may be substantial rights created here in State courts where there are no jurisdictional amounts.

Mr. ECKHARDT. Assuming, of course, that the Federal act enlarges the State law with respect to implied warranty of suitability.

Mr. KIRKPATRICK. Yes; and I would think in many cases it would.

Mr. ECKHARDT. And, of course, it would also follow that if the right is established federally, it would be enforceable either in Federal court or in State court, but the Federal court might be blocked for usage in protecting that right by an inadequate jurisdictional amount. That would be correct, would it not?

Mr. KIRKPATRICK. The use of the Federal courts would, if you and I are correct in our views, not be available in the instance of these

small claims. However, I do not, myself, necessarily fault the State courts as a forum to which those claims perhaps could and should be brought.

Mr. ECKHARDT. The thing that is really blocked, though, by the provision of this act, and by the jurisdictional amount involved, is the class action, because unless this is available in State court on as lenient a rule as rule 23 the class action would have to show that each of the cases arose from the same transaction. This would, for instance, be the law in the State of New York.

Mr. KIRKPATRICK. I follow you; yes.

Mr. ECKHARDT. So, really, this blocks effectively the use of rule 23, does it not?

Mr. KIRKPATRICK. Well, it would, of course, to the extent that access to the Federal court is denied but as you know, sir, many States do have class actions and I have not analyzed obviously, the class actions of all of the 50 States, but Pennsylvania, for example, has, I think, if I recollect correctly, a rather liberal class action section. I may be wrong on that but many States do.

Mr. ECKHARDT. If am not mistaken, there are approximately six States that provide a rule very similar to rule 23, but the majority position in the United States is that a class action may only be brought where the action arises out of an event based upon a single transaction, for instance, a stockholder suit involving some type of stock fraud. A class action would not be available, for instance, in the State of New York, or I believe in most of the States of the United States, in a situation where a number of different automobile salesmen for the same company sold, in different transactions, automobiles to different individuals. I believe that is the case.

Mr. KIRKPATRICK. I simply do not know the answer. I could not put it in terms of numbers. But I am sure you are right that many jurisdictions are so limited, sir.

Mr. ECKHARDT. I, perhaps, should not ask you about H.R. 10690 because I do not think you have necessarily looked into that with respect to this case.

Mr. KIRKPATRICK. I have not, sir.

Mr. ECKHARDT. But, I think you have been asked to examine that act and when you do, I would certainly like a comment concerning the question, first, of whether or not there is a triggering device for action by an individual without going first through the Federal Trade Commission and, second, if there is not, whether there is any provision which effectively blocks class actions under that provision as there is in S. 3074.

Mr. KIRKPATRICK. I would be very happy to comment on that, sir. (See report dated December 3, 1970, on p. 60.)

Mr. ECKHARDT. Thank you, sir.

Mr. MOSS. Mr. Stuckey?

Mr. STUCKEY. I have no questions, Mr. Chairman.

Mr. MOSS. Mr. Chairman, we appreciate your statement and we will look forward to the further comments. I would assume that the Commission, at the staff level, at least, is fairly well prepared to make recommendations on H.R. 10690, in view of the fact that it was introduced in July 1969?

Mr. KIRKPATRICK. Yes. I would hope we could do so very promptly, sir.

Mr. Moss. Thank you.

Mr. KIRKPATRICK. Thank you, indeed, for the privilege of being here.

Mr. Moss. Our next witness will be Mr. Wallace Breuner of the National Home Furnishings Association. Mr. Breuner, it is a pleasure to welcome you. It might interest the committee to know that Mr. Breuner is a member of a very distinguished California family, headquartered in my congressional district, for well over a century.

**STATEMENT OF WALLACE E. BREUNER, JR., DIRECTOR AND CHAIRMAN, WARRANTY AND GUARANTY COMMITTEE, NATIONAL HOME FURNISHINGS ASSOCIATION, ACCOMPANIED BY SPENCER A. JOHNSON, VICE PRESIDENT FOR GOVERNMENT AFFAIRS**

Mr. BREUNER. Thank you for that little advertisement.

I am Wallace E. Breuner, Jr., of Oakland, Calif. I live in Oakland. And I am accompanied by Mr. Spencer A. Johnson, vice president for government affairs for the National Home Furnishings Association.

I have spent my entire business career with the John Breuner Co., Inc., which operates 10 home furnishings stores in northern California. I am a director of the National Home Furnishings Association (formerly known as National Retail Furniture Association), and chairman of the association's warranty and guaranty committee. I appreciate this opportunity to present the views of the association on guaranty legislation as proposed in H.R. 18056, H.R. 10690, and S. 3074.

The National Home Furnishings Association is an organization of over 9,000 of the Nation's home furnishings retailers. NHFA takes an active position on legislative proposals and government activity that affects the home furnishings industry. Our association has maintained a longtime interest in warranty and guaranty legislation. We carefully studied the January 1969 report of the President's task force on warranties in the appliance industry. Our industry is convinced that any legislative pattern established for warranties and guaranties in the appliance industry eventually will be broadened to include many other consumer products. We reflected this viewpoint in our testimony in January 1970 at the Senate hearings on warranty and guaranty legislation.

Basically, NHFA supports the right of a seller to voluntarily offer a guaranty with his merchandise, but NHFA does not support legislative proposals that would require mandatory guaranties. We would like to briefly outline our interest in guaranties, both as a consumer benefit and as a sales tool for retailers. Then we will identify some of the principal concerns of the home furnishings industry that should be examined as your committee considers guaranty legislation.

Earlier this year, NHFA conducted an opinion poll in which we obtained the views of about 600 of our members on certain legislative issues. That opinion poll revealed that 66 percent of our members feel that a product warranty is an important factor to the customer as she considers the purchase of appliances, and 68 percent feel the warranty is an important factor to the customer in the purchase of bedding. In addition, 47 percent of our members feel that the warranty is important to customers who are considering the purchase of furniture.

In keeping with these views of our members, NHFA supports the concept of full disclosure to the customer of the terms and conditions of any warranty offered. Although we believe that voluntary industry action is the best method for providing consumer satisfaction, we do not believe that responsible retailers will fear legislation requiring clear disclosure of what a warranty promises, or does not promise, to the customer. We recognize the fact that all warranties do not give the customer clear and understandable information about the warranty protection offered. If your committee concludes that legislation is the only means by which the problems of warranties and guaranties can be made truly meaningful to the customer, then legislation such as the Senate-passed bill, S. 3074, appears to be a realistic approach. We are in accord with the Senate-passed bill because it recognizes the practical problems faced by guarantors and because it takes specific steps to meet those problems.

#### VOLUNTARY WARRANTIES, NOT MANDATORY WARRANTIES

As I have indicated, we support the concept of voluntary warranties. The seller, be he manufacturer or retailer, should be left free to voluntarily decide whether or not to offer a warranty on his product. If warranties were made mandatory, the customer would be denied the opportunity to make an important choice, the choice of whether or not to purchase a less expensive item with no warranty or to purchase a similar item with a warranty, perhaps at a higher price. Legislation forcing sellers to provide warranties could eliminate sales of merchandise "as is" with no warranty.

Traditionally, warranties have been an element of competition. In the home furnishings industry, TV manufacturers have competed for customers by providing longer and more comprehensive warranties. Color TV tube warranties have increased from 1 year, to 2 years, and now 3 years, as competition increases, and technology improves. Mass merchandisers, on the other hand, often shun warranties altogether in order to put a more attractive price on their merchandise. The right of the seller to adjust warranties to compete effectively in the marketplace is an important principle that should be maintained.

Therefore, legislation requiring mandatory warranties should not be enacted by Congress.

#### STORE POLICIES OF "CONSUMER SATISFACTION GUARANTEED"

Promises by a store of "your satisfaction assured," "satisfaction guaranteed," or "we guarantee your complete satisfaction or your money back," are used by many retailers throughout the country. Many of these statements of store policy provide a substantial degree of reassurance that has built lasting consumer confidence for many retailers. In backing up these statements of store policy, many home furnishings retailers go far beyond manufacturer guaranties in making good their promises of customer satisfaction. Legislation could never accomplish these results. Because general offers of satisfaction are not product guaranties, NHFA urges that offers to guarantee satisfaction not be prohibited in any guaranty legislation that this committee might develop or approve.

## LIMIT LEGISLATION TO WRITTEN GUARANTIES OF THE PRODUCT

Similarly, customers often discuss the value or usefulness of a product with a salesperson before making a purchase. Although we recognize that any significant direct promise made to a customer regarding the performance of the product would and should be considered a guaranty, much of the discussion between a customer and a salesperson consists primarily of opinion or affirmation of value. These statements are not given as guaranties, nor are they considered to be product guaranties by the vast majority of customers. Therefore, NHFA recommends that any disclosures required for guaranties be limited to written guaranties only, and that mere "puffing" of a product by a salesperson not be considered a guaranty.

## RETAILER AS FRANCHISEE OR AGENT OF GUARANTOR

In the home furnishings industry, retailers regularly serve as exclusive outlets in their community for the products, or a particular line of the products, or a particular manufacturer. In many cases, these distribution arrangements, openly and legally arrived at, have some of the characteristics of a franchise relationship. The independent home furnishings retailer, however, has no control over the terms and conditions of the guaranty offered by his manufacturer-supplier. Therefore, a retailer should not be included in guaranty legislation as a representative or agent of the manufacturer who could be held legally responsible for performance of the manufacturer-guarantor under the terms of manufacturer's product guaranty.

Each of these items we have just discussed are covered satisfactorily both in H.R. 18056 and in the Senate-passed guaranty bill. We have some additional concerns, however, that are not treated in H.R. 18056 and that should be considered by this committee.

## SALE OF SERVICE CONTRACTS

In addition to offering written guarantees, some manufacturers and/or retailers give the customer the option of purchasing a service contract—particularly on major appliances. In effect, the service contract is a type of insurance policy that assures the customer that she will pay no more than the cost of the service contract to have the appliance maintained and repaired for 1 year, 2 years, 3 years, or as many of 5 years after the end of the guaranty period. Often, service contracts are sold to the customer at the time of the original purchase of the appliance. NHFA has no objection to telling the customer at the time of the sale about the availability of a service contract. H.R. 18056 specifically permits the sale of service contracts "to the first purchaser at the time of sale," but H.R. 18056 does not clearly state whether or not the sale of service contracts is permitted at any time subsequent to the time of the initial sale of the product to the customer.

Not all retailers sell service contracts. Sometimes, the first knowledge a customer has about the availability of a service contract is when a serviceman visits her home in response to a repair call. The service contract has become a major consumer aid that should not be taken away by a new Federal guaranty law. Therefore, NHFA suggests

that the sale of service contracts should not be denied to a customer but should be permitted not only at the time of the sale of the product by the original seller, but at any subsequent time and by service and repair firms as well as by other retailers of the product.

#### REFUND OF PURCHASE PRICE

In some cases, it is impossible to satisfy an unreasonable customer either through repair or replacement of a product. Sometimes, consumer satisfaction can be provided only by a refund that permits a customer to do business with another store. Therefore, refund of the purchase price should be the equivalent of complete performance of a guaranty. The refund could be either a total refund or a refund on a pro-rata basis, if the refund method is explained in the guaranty or in other written material provided to the customer.

#### LISTING OF CONSUMER'S LEGAL REMEDIES

To keep a guaranty as clear and understandable as possible, the guarantor should not be required to include in the written guaranty a listing of the legal remedies available to the customer if the guarantor does not perform on his guaranty promises. If the customer must be informed of the legal remedies available to her, the guarantor should be permitted to include this information in a separate written statement delivered to the customer within a reasonable time of the sale.

#### IMPLIED WARRANTY OF FITNESS

Some guarantors have used written warranties as defensive devices to limit their responsibilities to customers by disclaiming any implied warranty that the product is suitable for its intended use. In the recent opinion poll referred to earlier in our testimony, we learned that 76 percent of NHFA members feel that the use of disclaimers of a product's implied warranty of suitability for ordinary use should be limited. Therefore, NHFA recommends that any guaranty legislation approved by this committee prohibit disclaimers of a product's implied warranty of fitness for ordinary intended use, but at the same time permit the guarantor to limit the duration of any implied warranty to the duration of the written warranty.

#### MERCHANDISE IN COMMERCE

Home furnishings retailers handle large numbers of consumer products, many of which, although similar, are produced by different manufacturers. If guaranty legislation is enacted, there would be many practical difficulties in getting the correct new guaranty tag or certificate delivered to the customer with merchandise already in stock. Therefore, NHFA recommends that any new guarantee legislation apply only to merchandise manufactured after the effective date of the bill and that retailers not be required to revise the guaranties on merchandise already in stock or in their warehouse.

In summary, NHFA supports disclosure of the terms and conditions of any guaranty that may be voluntarily offered, but NHFA is opposed to legislation that would require mandatory guaranties. If guaranty legislation is supported by this committee, it should be

patterned after the bill passed by the Senate following extensive hearings and careful committee consideration.

Thank you.

Mr. MOSS. Thank you, Mr. Breuner.

Mr. Schmitz?

Mr. SCHMITZ. I would just like to comment first, before I ask a minor question, that being a former resident of Sacramento during my State's legislative days, I am also one of your satisfied customers.

Mr. BREUNER. Thank you, Mr. Schmitz.

Mr. SCHMITZ. Just a question, perhaps Mr. Breuner, or perhaps the chairman, are any of the bills before us here, do any of the bills contain a mandatory guaranty requirement?

Mr. MOSS. H.R. 10690.

Mr. SCHMITZ. Thank you.

Mr. MOSS. Mr. Harvey?

Mr. HARVEY. I have no questions. Fine statement.

Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. I want to compliment you for your statement because you answered, before the end of it, a question I was about to ask you in the first of it, I believe.

You raised the question of not requiring any specific warranty and not legislating in the area of warranty, but I was at that time troubled by the question of a sort of a negative warranty that negatives implied warranty of suitability for use. You later stated that your association did not oppose, as a matter of fact, I understand you support legislation that would prevent an express negative of the warranty for fitness for use, but you would like to have the one exception, that you be permitted to put a time limit even on the implied warranty for fitness of use. Do I understand you right on that?

Mr. BREUNER. Correctly. That is correct.

Mr. ECKHARDT. I wonder if you need even to qualify it to that extent. I would assume that the warranty of fitness for use would generally only assure that the product was usable for the purpose intended, and that the question of duration would pretty well depend on the question of reasonableness. For instance, let us suppose that one of your competitors, not your company certainly, manufactured a chair with a little dowel pin in the back that would immediately shear off when a 190-pound man sat on the chair. But the company put out an express warranty stating that any defect as a result of placing a weight in excess of 150 pounds on the chair is not guaranteed. That would be a kind of negating of the warranty of fitness for use. And you would say that that should be condemned and can properly be condemned?

Mr. BREUNER. Yes.

Mr. ECKHARDT. But, then, why permit them to say that the implied warranty for fitness for use in this respect shall only be in effect for, say, a year? I assume that under your qualification they could negative the implied warranty of fitness for use after a year.

Now, it is possible that after a chair has been used a year it has already served what one should reasonably expect to be its useful period. I rather doubt that. I think it would rather vary on the basis of the product. But it worries me to permit negating of an implied warranty of fitness for use even on such a time basis. What do you think about that?

Mr. BREUNER. Do you feel that there is any limit to that? Is there some limit in your mind? What would be the limit, to answer your question with a question?

Mr. ECKHARDT. I believe it is a common law question, as the whole question of implied warranty for fitness of use is a common law question, and at least in most jurisdictions I suppose it is a common law question that might be governed by statute.

Mr. BREUNER. For instance, how long should an upholstery fabric wear; do you know?

Mr. ECKHARDT. What the jury says it should wear. That is the way we decide most questions of time.

Mr. BREUNER. Reasonable.

Mr. ECKHARDT. That is right.

Mr. BREUNER. Except you never know how things are used.

Mr. ECKHARDT. I should have said within reason, you are correct. It would have to be on some standard and if the jury went too far out of line, for instance, if they said that some 25-year-old fabric should never have ripped when a child jumped on it with her high heels, I assume that would go a little beyond the scope that would be permitted to the jury.

Mr. BREUNER. You are hitting some of the questions that I deal with day to day as the manager of a store. I think there has to be some limit to it.

Mr. ECKHARDT. But it would seem to me that it ought to be limited on the basis of reasonableness rather than on a specific contractual negating of implied warranty for fitness for use. That is just a thought.

Mr. BREUNER. Actually, in our business we do use the term reasonable satisfaction and I think that retailers have gone way beyond what manufacturers do in taking care of consumers now. That is my own personal business and we try to run a quality business. I am not saying that everybody runs their business that way. But I base—we have a table based usually on the quality of the merchandise we use for prorating complaints.

Mr. ECKHARDT. Now, on another question: as I understand it, the Senate bill does not require an actual form of warranty unless the manufacturer desires to place some warranty on the product. I think there is some merit to this approach. Perhaps the Senate bill does not follow the right procedure. Maybe we ought to think about it a little. But it seems to me that once a warranty is issued, practically speaking, it has a lot of the same problems with regard to the consumer understanding it as an insurance policy. Perhaps even more, because I do not suppose a man is as much expected to read the fine print when he buys, say, a washing machine as he is when he buys a policy of life insurance. It would seem rather reasonable to me that these forms of warranty be in something of a common form or that they not be in the kind of tricky legal language that, in effect, deprives the consumer of protection. So, it seems to me that it is quite reasonable to say that if a warranty is to be offered at all, it should fall into one or a number of common, understandable categories. Would you agree with that?

Mr. BREUNER. Correct. That is what the Senate bill, I think, tries to do.

Mr. ECKHARDT. Thank you very much.

Mr. Moss. Are there further questions? If not, we thank you for your appearance. I assure you your views will be given careful consideration in the course of the committee deliberations.

Mr. BREUNER. Thank you very much.

Mr. Moss. The next witness is Mr. Thomas Nichol, Jr., general counsel, Gas Appliance Manufacturers Association. Mr. Nichol.

**STATEMENT OF THOMAS NICHOL, JR., GENERAL COUNSEL, GAS APPLIANCE MANUFACTURERS ASSOCIATION, INC.**

Mr. NICHOL. My name is Thomas Nichol, Jr. I am a member of the bar of the State of New York and am general counsel for the Gas Appliance Manufacturers Association, a national trade association whose over 500 members manufacture the majority of all gas appliances and related equipment produced in the United States. I am grateful for this opportunity to present to you the views of that association, on behalf of the industry it represents, regarding the several bills being considered at these hearings; namely, the proposed Consumer Products Warranty and Guaranty Act (S. 3074), the Consumer Warranty Act of 1970 (H.R. 18056), and the Consumer Full Warranty Protection Act of 1969 (H.R. 10690).

These bills are of great interest and equally great importance to my association because so many of our members manufacture products of the consumer type—gas ranges, gas water heaters, gas incinerators, gas house-heating equipment and the like, upon which they provide warranties. Similarly, another large segment of our membership manufactures accessories which become part of the finished product which the consumer buys or of the systems of which those products become a part. Among these categories would be controls, pressure regulators, valves, and the like.

Certain of the basic purposes of the bills before us today are purposes with which we wholeheartedly agree, and they represent ends toward which my association and others in our or collateral industries have been voluntarily at work for some time, as I shall describe to you later on. Principal among these purposes are: To insure that the consumer gets a warranty he fully understands; and to insure that the warrantor fully lives up to his promise.

No one can disagree with these aims, but the three bills before us today illustrate how substantial can be the differences in approach as to how to accomplish them—or perhaps, how not to accomplish them.

One problem in my opinion, seems common to all three bills is that of deciding what property is to be covered. Two of them (namely, S. 3074 and H.R. 18056), relate to sales of and warranties on “consumer products” which are defined as “those normally used for personal, family, or household purposes.”<sup>1</sup>

We have no quarrel with this definition, since we believe it easily covers the domestic type gas appliances for example, ranges, water heaters, furnaces, incinerators, et cetera made by our members, but in other fields it leaves some possibly troublesome questions. It appears to us that the breadth of the definition seems to gather in a

<sup>1</sup> The definitions of these two bills are: H.R. 18056—“consumer products” means goods that are normally used for personal, family, or household purposes and that actually cost the purchaser more than \$25. S. 3074—the term “consumer product” means any tangible personal property, normally used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed.

number of items which are either not normally the subject of a warranty (at least, an express warranty) or not in those categories which we suspect these proposed statutes are intended to reach. For example, is it intended that the provisions of the proposed law are to cover foods, cosmetics, clothing, dentures, or patent medicines? We are mindful that, in its earlier days in the Senate, S. 3074 was addressed to products having electrical, mechanical, or thermal components. This seemed to us to make a good deal of sense, since it was presumably the electrical, mechanical, or thermal components that went awry and exasperated the householder; however, they have disappeared from the definition in the bill in its present condition, and perhaps for good reason, although we suspect that they might reappear. H.R. 10690,<sup>1</sup> contains a much broader definition, without any limitation to the personal, family, or household categories, but with the requirement that the item retails for at least \$10. Thus, presumably H.R. 10690, with its numerous and detailed requirements about warranty tags, service facilities and the like, would presumably apply equally to a raw sirloin steak selling for \$10.50 or a Boeing 747, if I have read the bill correctly.

Dollar limitations are set in the three bills, whereby the product covered must cost less than a specified amount in order to come within the purview of the bill—H.R. 18056 sets \$25, H.R. 10690 sets \$10 and S. 3074 sets \$5. While these figures would not affect the industry we represent, since gas appliances normally cost more than \$25, we suggest that all three figures are too low. Applying these low dollar limits would extend the working of the statute to purchases where its protective provisions are not—as a practical matter—really needed. Additionally, such low limitation puts on the seller the obligation of complying with the statute in sales so small that the extra work and responsibility are hardly justified. By the same token, it places in the hands of the consumer a lot of complicated procedure which could be applied in respect of a rather small sale. It must be borne in mind that the dollar limitation marks the spot where all the provisions of the statute—and some of them would be rather detailed and complicated—take effect and start the wheels turning. For the \$5.01 sale, it seems like providing a blunderbuss to kill a sparrow.

We urge that the scope and the dollar limitation have careful study with a view to practicality and workability.

Another matter which is common to the three bills is provision for clarification of warranties. In some places the language of the bills is almost identical, and we believe it needs simplification itself. We feel that we are somewhat old hands at this, since well over a year ago we prepared and put out to our members a list of the basic elements of a product warranty, as we saw them. In addition, we have prepared and furnished to our members skeleton forms of greatly simplified warranties, proving that the "legalese" and the long list of disclaimers which were formerly so popular were unnecessary in warranties. We are gratified to see what we think is a genuine improvement by way of simplification and clarification in the warranties our industry is using. But to turn to some of the provisions in the bills as to what a warranty may say in order to have its terms clear:

<sup>1</sup> Sec. 18(b) of H.R. 10690 says, "goods," "merchandise," "item," and "product" are interchangeable and mean any motor vehicle, machine, appliance, device, product, or commodity which is distributed by any means for ultimate purchase and use or consumption by any individual, partnership, corporation, et cetera.

First, all three bills would have the warrantor state in the warranty "the times at which the warrantor (or guarantor) will perform his obligations."

Unless we have misunderstood what is intended, we view this as an impossibility. What is the warrantor supposed to say about something which he cannot answer in advance? When the warrantor will perform will depend on what repairs he has to make, how accessible or inaccessible the malfunctioning product is and a number of other factors which will vary from case to case. We have no disagreement with provisions which will make life uncomfortable for a manufacturer who is genuinely dilatory and disinterested about his warranty claims, but we do think the reliable manufacturer should not be asked a crystal ball type of question. Similarly, two of the bills would require the manufacturer to state also "the period of time within which, after notice of malfunction or defect, the warrantor will repair, replace or otherwise perform his obligations." We find some difficulty in understanding the two requirements; namely, that the warrantor state the time at which he will perform his obligations and also state the period of time within which he will perform his obligations.

Secondly, two of the bills would have the warranty state "the characteristics or properties of the products or parts thereof that are not covered by the warranty."

We all understand that the warranty may not cover certain parts and that the buyer is certainly entitled to know what is not covered. It would seem that if the warranty clearly shows what it does not cover by naming in commonly understood terms the parts to which it does not extend—for example, ("This warranty does not cover the tires"—"This warranty does not cover the enamel finish on the doors"—"This warranty does not cover the picture tube")—that should be enough. Reciting the "characteristics or properties" of the television picture tube might, if taken literally, get into some rather technical language, which would perhaps satisfy the statute but not the householder. If the parts not covered have complicated or highly technical names, we believe it would still be possible to say something simpler than going into the "characteristics or properties" in every instance.

All three bills adopt, either verbatim or nearly so, the language of section 2-313 of the Uniform Commercial Code, which provides the creation of express warranties through affirmation, promise, description, and sample. We think this is good, since such provisions have been State law for some time and have thus had a chance to get established and interpreted. The effect is merely to carry into interstate sales or sales affecting interstate commerce something with which people are already familiar at the State level.

All three bills rely heavily on the Federal Trade Commission to deal with matters of proper disclosure in warranties and related detailed questions. This is probably necessary, since there is no other agency similarly equipped; however, in certain instances the delegation of authority to the Commission is far too broad, in our opinion. For example, in H.R. 10690 warranties are required to be at least 1 year in duration, "except where in the opinion of the Commission a warranty of greater or lesser duration would be more appropriate".

This would allow the Commission to tell a manufacturer his warranty is not long enough and had better be doubled. "What would be the economic effect on the manufacturer and the competitive effect

on his fellow manufacturers?" Such a provision ignores the entire competitive aspect of warranty duration. Similarly, H.R. 10690 would require a manufacturer to, "establish service facilities \* \* \* in such quantity and location as the Commission shall deem appropriate," thus giving the Commission practically the power of life and death over the businessman.

We feel strongly that any legislation of this sort which makes broad delegations to or requires rulemaking and similar activities of the Commission should specifically make such activities subject not only to the provisions of title 5 U.S.C. 552-559; namely, the Administrative Procedure Act, but also subject to sections 701-706 of that title, relating to judicial review.

## H.R. 18056

Turning to the bills individually: This bill takes a simple and direct approach to the warranty question by requiring the Federal Trade Commission to establish regulations requiring full and conspicuous disclosure of warranty terms. Then the bill makes it a prohibited activity to make a deceptive warranty to fail to live up to one's warranty obligations. Provision is made for the Federal Trade Commission or the Attorney General to enjoin violations. When a warrantor has been so enjoined by the Attorney General or is under a final cease-and-desist order by the Commission, any purchaser adversely affected may sue him for damages and, when appropriate, equitable relief such as rescission; if the manufacturer has been enjoined as rescission; if the manufacturer has been enjoined by the Attorney General such is prima facie evidence against him in a civil action. The Attorney General is given broad investigative powers, including the right to demand documentary evidence, similar to the powers he has in anti-trust matters.

Under this bill if the manufacturer refrains from giving any deceptive warranties and lives up to his warranty obligations, he can keep out of trouble. The Attorney General or the Commission are the watchdogs and the disciplinarians. Since the dissatisfied customer cannot sue until after the Attorney General has obtained an injunction against the manufacturer or the Commission has a final cease-and-desist order in effect, the act would not be—what some other acts certainly would be—an invitation to litigation. If the customer still wants to sue, his way will be made vastly easier if he can wait for the Attorney General to get an injunction and then use it as prima facie evidence.

We think this bill was thoughtfully drawn, and if there is to be legislation of this sort, it has much to recommend it.

## S. 3074

This bill is no stranger to us, as we did battle with it over at the Senate last winter. We are most gratified to see that many of the points we objected to and on which we urged change last winter, have in fact been changed. That does not mean we claim credit.

S. 3074 would have the Federal Trade Commission establish rules regarding proper disclosures in warranties to prevent deception. It would establish itself minimum standards for a written warranty

against defect or malfunction. These standards would require the warrantor to repair or replace, if repair is not possible or cannot be timely made, any malfunctioning or defective warranted product, within a reasonable time and without charge. Such a warranty must be labeled a "full" warranty, with a statement of the duration. If the warrantor gives a warranty not meeting the minimum standards mentioned above, it must be labeled a "partial" warranty.

The warrantor is exempted from his duties to repair, et cetera, if he can show that the damage or lack of maintenance occurred while the product was in the possession of the person guaranteed. Provision is made for injunction in an action by the Attorney General and for suit by the aggrieved owner of the malfunctioning item. Implied warranties cannot be waived if an express warranty is given.

As to specific provisions, we were disturbed last winter and are still not happy about the wording of section 2(6), which says:

The term "replacement" shall include the refunding of the actual purchase price of the consumer product less reasonable depreciation based upon actual use if the warrantor is unable to effect replacement and repair is not possible or cannot be timely made, or if the person guaranteed is willing to accept such refund in lieu of repair or replacement.

As we read this provision, there are two different circumstances in which replacement shall mean refund. One is: If the warrantor is unable to effect replacement and repair is not possible or cannot be timely made. The other is: If the person guaranteed is willing to accept the refund. Could not the person guaranteed say, "I don't want repairs. I elect to get money back and you have to give it to me"?

Among the things which may be required in the written warranty is a statement that legal remedies are available to the person guaranteed if the warrantor has not complied with the warranty, and a statement that if the person guaranteed wins his suit, he may get his costs and attorney's fees, too. We feel that the consumer knows legal remedies are available to him, but this sounds almost like an invitation to sue. By the same token, if the person guaranteed sues and is not successful, why should he not pay the warrantor's attorney's fees? This could be accomplished by requiring the plaintiff to furnish a bond to cover defendant's attorney's fees. The cost of the bond would be borne by the defendant if he lost.

We feel that this bill observes something quite basic; namely, that if the seller wants to sell without a warranty and the buyer wants to buy without a warranty, they are free to do so.

The provisions of section 5(c) strike us as somewhat unrealistic. These excuse the warrantor from his duties if he can show that damage or unreasonable use or lack of maintenance while in the possession of the person guaranteed caused the malfunction. To be sure, there may be some things which would be quite evident—damage from fire, bearing burnt out for lack of oil, to mention a couple, but in these situations the owner is not apt to try to collect under a warranty claim. Where the damage or its cause is more subtle, what is the manufacturer to do? I am informed that some washing machines break down if a heavy bedcover is put in. I assume this leaves no particular clue, once the cover has been removed. The product is in the control and possession of the owner exclusively, so why should he not be required to show—except in cases where the

trouble is quite patent—affirmatively that the problem was not because of his acts or omissions?

H.R. 10690

This proposed law would, among other things, require a manufacturer to—

Attach to goods sold a tag with instructions for use and a clear statement of the terms of the warranty;

Establish his own service facilities (the cost of which he is forbidden to share with anyone else), or designate service representatives—all in such quantity and locations as the FTC may designate;

Supply promptly all spare parts and components for servicing and (without cost), “technical manuals \* \* \* technical analysis and factory representatives”;

Establish a reserve fund and set aside spare parts to cover warranty obligations in case he went out of business or stopped producing that item; also

Keep records—open to FTC inspection—and report annually to the FTC a summarization thereof (which FTC opens to the public) regarding warranties given; service representative contracts made; claims received; suits started on such claims; what the manufacturer did about the claims; and what was the ultimate settlement.

Failure to comply with the act is made a violation of the FTC Act. Anyone who wilfully fails to affix or enclose any notice or other item required to go with new merchandise, or to give FTC free access to the records the act requires him to keep or to file a timely and accurate report under the act is subject to a fine of up to \$10,000, a jail term of up to 5 years, or both.

Perhaps the most unusual part of the bill, in my opinion, is the several sections covering “buyer’s remedies.” These provide that a warranty holder may sue a manufacturer who has violated any of the first eight sections of the act to recover “where appropriate” the price he paid for the goods plus his foreseeable damages. The manufacturer’s violation of some section of the act is not required to be one whereby the warranty holder was prejudiced, but hopefully a court would insist on that. The court may provide that the successful warranty holder plaintiff give back to the manufacturer the goods which were the subject of the action but the plaintiff must be protected from any liability or expense in connection with the transfer or removal. In the case of a furnace, this might involve considerable expense for the manufacturer, who has already paid back the purchase price plus “foreseeable” damages.

In this case this is not enough, the plaintiff also gets his attorney’s fees out of the manufacturer and, under section 16, something unusual. Under that section, if the plaintiff can show that the manufacturer failed for more than 60 days to comply with any obligation imposed on the manufacturer under the act (please note that it need not be an obligation of which the noncompliance affected the plaintiff in any way), he is entitled to recover from the defendant an “indemnity” of not less than \$100, nor more than \$5,000.

The following section 17 provides that nothing contained in the act shall bar the warranty holder from starting suit in the State

courts too. Instead of preempting from the States the subject matter of the bill, this unusual section appears to preserve to the buyer all his rights under State laws, possibly including suit against the same manufacturer in the State courts. I am not sure what the legal effect of this provision might be, but it is susceptible of being construed to mean that the well-established doctrines of *res judicata* and estoppel no longer bar a second suit if the defendant is a manufacturer and the plaintiff is a consumer.

In section 3 we find a list of the qualities which goods must possess in order to meet the imposed implied warranty of merchantability. This is largely drawn from the Uniform Commercial Code (namely, that goods are fit for the ordinary purposes for which such goods are used, *et cetera*), but there is added to the list the requirement that the goods, "meet all other similar standards and requirements established by regulation of the (Federal Trade) Commission \* \* \*". This language would appear to be a wide open delegation to the Commission to apply "similar" standards and requirements for every "motor vehicle, machine, appliance, device, product or commodity" covered by the act. This omnibus language seems so vague and loose that the delegation appears of questionable constitutionality.

Section 5 provides how an express warranty is created. The language is lifted from the Uniform Commercial Code, which says that the seller creates an express warranty by any description of the goods which is made part of the basis of the bargain. But the bill replaces the word seller with the word "manufacturer" (who rarely, if ever, sells directly to the buyer). Thus, any description which becomes part of the bargain appears to commit the manufacturer who may thereby be warranting that his product will conform to whatever description some independent retailer over whom he has no control might care to give a buyer so as to make a sale.

Study of the provisions of H. R. 10690 has left us with the unfortunate impression that, although its principal aim is to help the consumer, it does so by spanking the manufacturer. We fear that its enactment would produce a chaotic condition with severe economic reverberations. Based on these impressions, we take the liberty of urging that it not be seriously considered for enactment.

We do not know whether your committee is fully informed on some of the steps which industries have been taking voluntarily to correct some of the situations against which these bills are aimed. If you do not know, perhaps that is our fault. I mentioned earlier that we have been working for many months on a program for simplification of warranties, and I have attached to the copies of this statement filed with your committee, a copy of our "Basic Elements of a Product Warranty." We hope that it might be a useful comparison to the lists of elements of a warranty which appear in these bills and that it might suggest areas in which those lists could be shortened or simplified.

Mr. Moss. Without objection, the "Basic Elements of a Product Warranty," will be included immediately following the statement.

Mr. NICHOL. Thank you, sir.

My association has been at work, with others, on the development of fact tags to be attached to appliances, the improvement of manuals and consumer literature and many other points. The Gas Appliance Manufacturers Association, together with the Association of Home

Appliance Manufacturers, have formed a body known as the Major Appliance Consumer Action Panel (MACAP). This panel is composed of persons active in and knowledgeable about consumer affairs. Its function is to receive from any source complaints about appliance performance, transmit such complaints through the trade associations to the manufacturers concerned and then follow up with both the consumer and the manufacturer until the matter is disposed of.

We are well informed as to reasons why some people feel legislation in this field is essential. We prefer to feel that it is not essential and that the problems existing are best attacked by improved communications and the realization of all concerned that good business demands good supplier-customer relations.

The problems are complex. If they are to be dealt with by legislation, that legislation will be a troublemaker unless it is carefully thought out and free of any punitive element or desire to favor one side at the expense of the other.

(Basic Elements of a Product Warranty follow:)

#### BASIC ELEMENTS OF A PRODUCT WARRANTY

1. It should clearly set forth:
  - (a) The name and address of the warrantor.
  - (b) To whom the warranty is extended.
  - (c) Geographical limitations, if any.
  - (d) The product or specific parts thereof covered and against what.
  - (e) The specific time (not longer than the reasonable expected service life) for which the product (or parts thereof) are covered and when this time starts.
  - (f) In case of a claim under the warranty:
    - (i) Exactly what the warrantor and/or seller will do, where and at whose expense.
    - (ii) Exactly what the owner must do, where and at whose expense.
2. All language should be clear, concise, simple and avoid "legalese."
3. Exceptions, disclaimers or exclusions should be limited to those the warrantor considers actually necessary and should be *fully* and *clearly* stated, with the same prominence as the affirmative statements.
4. The printing should be clear, well-spaced, and easy to read rapidly. "Small print" items should be avoided.
5. Any heading or title should be fully descriptive and accurate. (Headings such as "Ten year warranty" should be avoided if any coverage under the warranty is for a shorter period. Also, where the manufacturer agrees to replace defective parts but without payment of incidental labor or service charges, the warranty should be designated as a "Limited" or "Parts" warranty.)

Mr. NICHOL. Thank you very much.

Mr. MOSS. Mr. Schmitz?

Mr. SCHMITZ. No questions. In fact, I have to leave for the floor. I have the duty desk.

Mr. MOSS. Mr. Harvey?

Mr. HARVEY. No, I have no questions but it is a very, very fine statement, a very good analysis of the three bills. Whether we agree or disagree with the analysis, it indicates you have done considerable work and we appreciate it very much.

Mr. NICHOL. Thank you, sir.

Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. I am interested, sir, in your bedcover example. Do you mean to tell me that if my wife put a bedcover in the washing machine and the washing machine seems to perform properly, but it is fatally destroyed by the bedcover being in it, that the manufacturer ought to be permitted to come in later and say he will not repair the

machine because it was never designed for bedcovers if he does not give notice of that fact?

Mr. NICHOL. Certainly, I think he has to give notice of that, Mr. Eckhardt. The point I intended to make there was that there are many things that can damage an appliance which do not leave a clue as to whether they arose through misuse, improper maintenance, inadequate maintenance, or something else.

Mr. ECKHARDT. Well, I would assume that the example I gave would be a typical case of failure to comply with an implied warranty of suitability for use: the machine seems to operate, there is no notice that a bedcover may not be used in it, and when it is used, the machine is injured.

Now, do you feel that the law should permit some kind of a warranty to provide that if the machine has been used for materials of excessively heavy quality, this should not be warranted, even though it would be warranted under an implied warranty of suitability for use? Do you feel that such a negative warranty should be permissible?

Mr. NICHOL. If I understand you correctly, you are asking whether I feel that there should be a recovery here if there was no notice or have I misunderstood you, sir?

Mr. ECKHARDT. Well, let us put it this way. Suppose there is not notice as such—of course, there is no way a manufacturer can anticipate all the fabrics that a housewife might put in a washing machine, but suppose the warranty is worded in the most carefully guarded legal terms to protect the manufacturer and you buy a machine and you have got a warranty connected with it that guarantees it for a year but there is a little provision in small print that if excessively heavy fabrics are put in this machine, injury as a result therefrom is not guaranteed. Do you feel that such a warranty should be permitted to limit the implied warranty for suitability of use that would have been included if there had been no explicit warranty whatever?

Mr. NICHOL. Yes, I do, sir, because this is the type of case that falls in limbo, I think.

Mr. ECKHARDT. Well, let me give you another example. I understand that under H.R. 18056 anything under the value of \$25 is not covered, and under S. 3074 anything under the value of \$5. Well, let us assume that you buy a toaster and it burns out the first time you put bread in it. The fibers simply burn out and it is not usable after that time. You paid \$3.75 for the toaster, let us say, or \$4.95 would perhaps be a little better example. But in examining the toaster, you find a little tag that came along when you bought it saying that if this toaster is used in areas where the electrical voltage fluctuates above 110 volts the warranty will not cover the matter. Well, actually, in your area the voltage is 115 volts.

Do you feel that this kind of warranty should be permissible without control whatsoever?

Mr. NICHOL. Yes, I do.

Mr. ECKHARDT. Suppose it made the limit 100 volts?

Mr. NICHOL. You know what will happen if you take a 32 voltage bulb and put it in a 110 volt socket.

Mr. ECKHARDT. Suppose the warranty was limited to areas where the current is not over 100 volts. I know no country where the ordinary voltage runs that low, so that would virtually negative the entire

warranty with respect to the toaster burning out. Do you think that should be permitted?

Mr. NICHOL. Yes.

Mr. ECKHARDT. Suppose it was 75 volts, so you had to buy a transformer to use the toaster. Do you think that would be a reasonable warranty?

Mr. NICHOL. That if the notice attached said——

Mr. ECKHARDT. You know——

Mr. NICHOL. No warranty?

Mr. ECKHARDT. Suppose there is a tag in the box somewhere and the salesman says, by the way, note you have got a warranty with this object. It is right there in the box. So, you buy the \$4.95 toaster, plug it in, it burns out, and you look at this little tag and it says this toaster is only to be used with a transformer which will reduce the current to 75 volts. Do you think that is proper?

Mr. NICHOL. It seems to me in each of your examples you stress the fact that there was something small, something in fine print, maybe just laid in the box with it. We are certainly against that. If there are going to be limitations, if there is going to be any information given about proper use, I think it must be given in a manner so that the customer or the householder, the purchaser, is going to be aware of that.

Mr. ECKHARDT. You want to put that in——

Mr. MOSS. Will the gentleman yield?

Mr. ECKHARDT. Sure.

Mr. MOSS. Let us take the case just a step further. In the Washington area I assume that we have a 120-volt system; 60 cycle, 120 volt. Now, do you think that a retailer should be permitted to offer for general sale through wide advertising, perhaps, of the bait type, loss leader type, that \$4.95 toaster which was designed to operate on 110 volts and would not be guaranteed if it had a voltage above that?

Mr. NICHOL. Do I think that should be allowed?

Mr. MOSS. Yes.

Mr. NICHOL. I think that would very closely come to section 5 of the Federal Trade Commission Act.

Mr. MOSS. I just wanted to understand what the parameters of our judgment might be——

Mr. NICHOL. Mr. MOSS, I think——

Mr. MOSS. Because the answers tended to lead me into thinking that you were willing to accept a type of merchandising which I do not think reputable merchants would engage in.

Mr. NICHOL. No. I think if you and I go out and buy a toaster in a reputable store, we expect it to be a toaster suitable for use on 110, 115 volt line with the variations that normally might come in such a line.

Mr. MOSS. As a matter of fact, we sort of expect that there is an implied warranty——

Mr. NICHOL. I think so.

Mr. MOSS. That it is going to work for the purpose for which sold.

Mr. NICHOL. I think so.

Mr. HARVEY. Will the gentleman yield to answer a question? What is section 5 of the FTC act that you referred to?

Mr. NICHOL. That would be unfair business practices, Mr. Harvey, and the section covers bait advertising and the like.

Mr. HARVEY. Thank you.

Mr. ECKHARDT. Well, let us take a specific example. Let us say that a particular manufacturer finds that he can buy a great number of toasters very cheaply in Czechoslovakia, or, say, in Hong Kong, and let us say that where these toasters are manufactured they work fine because the voltage is say, 110 volts. But if they are used in at 115 volts, they burn out. He knows it, but he knows that in many instances they will not burn out before a month or so. He can make a considerable profit by engaging in this kind of business.

Now, granted, if he did not provide any kind of warranty, as a matter of a common law—assuming it were practical to bring a suit for \$4.95, and I do not think it is, but I suppose the Federal Trade Commission could act in this area—the person who bought the defective toaster could claim that it never was made for use under the circumstances in which it was sold and he could recover his \$4.95. But you are telling me that you think it should be permissible for him to attach to this toaster a warranty which provides that it is not guaranteed for use at voltages over 110 and the housewife should be under the duty to assume that the warranty is not something that protects her and gives her more rights than she has got at common law. She has got to anticipate that it destroys her rights at common law and that the seller may avoid even his common law duty to pay her back the \$4.95 she paid for it.

Mr. NICHOL. I think, sir, that—I am a great believer in keeping the implied warranty of merchantability, so I do not want to leave an erroneous impression as to that. But I believe in respect of warranty matters, in the case where the customer is adequately informed, he then takes it upon himself the responsibility.

Mr. ECKHARDT. The case I am describing is a case that is prohibited, as I understand H.R. 18056 and S. 3074, except for the fact that the toaster sold for under \$5. And in the case of H.R. 18056, \$25. Frankly, I go the other way from you. I do not think there should be a bottom price limitation and I do not see any reason for it. If you are cheated for a low-priced product, you are cheated just as badly; or at least the culpability may be just as large as in a case of a more expensive product.

Mr. NICHOL. Well, of course, Mr. Eckhardt, take H.R. 10690 and some of the recordkeeping requirements that this bill would impose.

Mr. ECKHARDT. Well, let me point out that I am not referring to H.R. 10690. I recognize much of your criticism should be looked into carefully before this bill would be passed, but I am talking about H.R. 18056 and S. 3074, which do not require any warranty. They simply say that you may not make a warranty that removes the implied warranty which exists at common law—or under statutory law in many places—of suitability for use; they provide, if you make any kind of warranty, though you are not required to make any, that you properly designate whether the warranty is a full warranty or partial warranty; and these warranties are otherwise regulated. I do not see that they impose any objectionable restrictions on a manufacturer of a product at any price.

Mr. NICHOL. Well, as I pointed out, sir, so far as my industry is concerned, and that is the one I am speaking for, the \$5 limit, the \$10 limit or the \$25 limit is meaningless because we would be in any of these three bills. My criticism of the dollar limitations was hopefully

one of the practicability of somewhat important ponderous legislation on a 25-cent sale.

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. MOSS. Thank you, Mr. Nichol.

The committee will now adjourn until tomorrow morning at 10 a.m., when we will again meet here in this room for a continuation of the hearings.

(Whereupon, at 12:05 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, September 30, 1970.)

## WARRANTIES AND GUARANTIES

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WEDNESDAY, SEPTEMBER 30, 1970

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met, at 10 a.m. pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman), presiding.

Mr. Moss. The subcommittee will be in order.

The first witness this morning will be Mr. J. Edward Day, special counsel, consumer products division, Electronic Industries Association. It is pleasant to welcome you back without all of the burdens of the Post Office Department on your shoulders.

### STATEMENT OF J. EDWARD DAY, SPECIAL COUNSEL, CONSUMER ELECTRONICS GROUP, ELECTRONIC INDUSTRIES ASSOCIATION

Mr. DAY. Thank you, sir. Nice to be here this morning.

My name is J. Edward Day. I am special counsel for the consumer electronics group of the Electronic Industries Association and I appear here representing the great majority of manufacturers of consumer electronic products consisting of television, radios, phonographs, and tape equipment.

We appreciate the desire of the subcommittee to grapple with the problem of increased protection for consumers. We feel that the record of our industry on concern for the consumer is good. Our goal is to produce a safe and wellmade product available at a price which will be attractive to the consumer.

Our industry represents about \$5 billion of annual sales volume at the manufacturer's level, of which about \$2.5 billion is in television and \$2.5 billion in other products. This would represent about \$8 billion in annual sales volume at retail.

There are about 90 million television sets in use in the United States today, of which about 64 million are black and white and 26 million are color. Annual sales are about 13 million television receivers, divided approximately evenly between color and black and white. We estimate that there are 500 million units in total of the four products we represent in American homes.

There are about 15 domestic manufacturers of television receivers and about 10 major importers who sell under their own label in this country. There are some very large and some very small companies in this group, and many more small companies who manufacture tape equipment, radios, phonograph, and audio components. The

companies we represent are intensely aware of the importance of consumer satisfaction and fair treatment of the consumer.

We have in excess of 200,000 people employed in the manufacturing and related aspects of the four products represented by our division. Our business is unusual in a most important respect affecting consumers. Our prices have been going down over the years instead of up. Retail prices of consumer electronic products, even in this era of almost constant inflationary pressure, have shown a dramatic decline since their first appearance in the Bureau of Labor Statistics Consumer Price Index. Using the 1957-59 standard of 100, television reconstructing the figures, was 125.7 in 1951, but for last year, the average for television receivers was 80.1. There has been a similar trend in phonographs, radios, and tape recorders.

We are an intensely competitive business not only among the American manufacturers, but with foreign manufacturers who accounted for about 2.4 million units of television receivers sold in the United States under foreign labels in 1969.

Some of the companies use a one-step distribution system where they sell directly to retailers. Others use a two-step system utilizing distributors. There are approximately 20,000 full-line consumer electronic retailers who sell our products, and perhaps another 20,000, such as general merchandise stores, which sell some of our items.

In contrast to industries such as automobiles and gasoline, we have very little in the way of the captive dealer in our business. Most of our retailers are selling more than one manufacturer's product and the goods pass title when they go to the distributor or directly to the retailer.

In our group, we have a consumer affairs council made up of executives of many of the leading manufacturers. We have a full-time consumer affairs coordinator to work with the council.

We have only a handful of customer complaints per month received by our group, that is, by our trade association, and we send these for prompt handling by the organization most directly involved.

Various ones of our members have embarked on their own programs of special emphasis on consumer satisfaction. For many of them this has taken the form of specialized consumer affairs departments with special responsibilities for consumer information, consumer safety and product satisfaction.

We favor without reservation guidelines designed to assure that warranties are in clear language, that they are not too involved and legalistic, and that they are carried out fully and fairly. The Federal Trade Commission already has a considerable amount of authority in this area, and to the extent they do, this obviates the need for duplicating legislation.

Warranty provisions vary in our industry and different companies are continually offering new warranty provisions. This is because the warranty is a major competitive aspect of this business. Often, for example, a warranty for a television set as a whole is a parts warranty lasting for a period from 90 days up to 1 year. Often there is a separate warranty for the picture tube which may run for as long as 2 or 3 years. Many consumer electronic companies offer labor in their warranties but this is usually limited on television receivers to 90 days. At frequent intervals, one company or another in our industry announces a significant change in the warranties it offers—all as part of intense competition.

A broadening of warrant protection is not practical to an equal degree for all companies. Small, or regional companies, may find it difficult to provide extensive repair services. Some businesses have well organized repair facilities run by the manufacturer while other companies may depend upon their distributors, retailers, or service agents for repair services.

We realize that S. 3074 does not require that a warranty be given or that a particular kind of warranty be given. There may be a "full" warranty or a "partial" warranty or no warranty. However, we submit that to expect a company to say or advertise that it gives a "partial" warranty may turn out to be like expecting it to say or advertise that it has only a "mediocre" product. When Senator Moss testified here yesterday, he said in discussing S. 3074:

Thus, consumers shopping for product reliability could differentiate between reliable and less reliable products on the basis: (1) of the type of warranty given—"partial" or "full", and (2) the duration of the "full" warranties.

There would be pressure on companies under S. 3074 to use the so-called "full" warranty. This would be true despite the fact that "full" warranty provisions are so long and complicated they would work against rather than toward what should be the prime goal—simplification and brevity of warranty provisions.

Providing an overly liberal warranty shoots up the price and could make the product less competitive in the contest for the consumer dollar. Providing broad warranty protection is a major expense for a manufacturer. Any legislation which tends to make it necessary, as a practical matter, for manufacturers to increase their warranty protection and to provide labor without charge is bound to increase the costs of the manufacturer. The end result could be substantial increases in the price that the consumer pays for the product. If Federal warranty legislation is passed and it creates uncertainty as to what the additional cost to the manufacturer would be, the manufacturer, as a matter of good business judgment, might well have to include additional margin in his price to take care of these uncertainties. Eventually, these uncertainties might be reduced by decisions of the courts or the Federal Trade Commission. But during the early days a manufacturer who decided to offer a warranty would very probably have to raise his price. His alternative, which he might decide to follow, would be to offer no warranty at all. This is a possibility. We believe that some manufacturers would conclude they had to follow that course—or decide to avoid offering any warranties at all. Some might conclude that this would be the only practical out since longer term warranties, including the cost of labor together with unresolved uncertainties as to warranty liability, would add far too much to the price of the product.

Particularly in the current posture of this industry, where sales are down, it simply would not be feasible to make across-the-board price increases to pay for radically expanded warranties. No one has to buy this kind of product. The consumer electronics manufacturers are scrambling in competition with many other industries for the consumer's hard pressed discretionary dollar. Even those consumers who would keep buying if the prices go up might be motivated to buy the smaller, less expensive models.

Not only might Federal warranty legislation, as we see it working in this industry, hurt the consumer by the possible efforts which

might be made by some manufacturers to avoid warranty protection entirely, but in addition, such efforts to avoid creating a warranty will inevitably result in the customer being told less about the set when he buys it. Some manufacturers could, as we see it, end up being confined to stating meaningless generalizations.

You may ask—why not offer everyone a service contract instead of a warranty? But how is the customer better off as a result of a Government decision to bring this about? Service contracts are offered today. But they are offered not as a substitute for warranties—they follow the warranty.

Every time you reduce the choices and the variations and the chance for trying to offer something different, you tend to squeeze out the small operators, the less heavily financed operators, the less known operators, not only among manufacturers but among retailers. Many retailers in a competitive field such as this are able to stay in business by offering less service and appealing to those customers who prefer to buy on that basis at a lower price.

Tight money and inflation and all the rest are doing enough already to put a damper on business. Our companies do not have a large amount of unused money somewhere that will make it possible for them to offer a lot more service without having it cost the customers an equivalent amount.

I would like now to move from the concerns we have about the general concepts to our concerns about the specific provisions.

S. 3074 would cover a wide variety of warrantors and products. Many indefinite phrases in the bill such as “unreasonable duty upon the person guaranteed: (sec. 2(9)), “conscionable” (sec. 9(b)), “reasonable and necessary maintenance” (sec. 2(4)), “within a reasonable time,” (sec. 2(9)), have to be applied to an unpredictable cross-section of products and circumstances. Neither the manufacturer nor the consumer could have a proper degree of certainty as to what his responsibilities and his rights would be under the bill until numerous ambiguities and uncertainties were cleared up one by one in the courts.

We do not see how a manufacturer, who in our industry normally has no direct control over the dealer, could be 100-percent sure he was complying with the requirement, for example, of section 5(d)(2) of S. 3074, that he “cause the disclosure of the duration of the warranty \* \* \* prior to the time of purchase.”

We are concerned about the broad power of the Federal Trade Commission under S. 3074 to determine the manner in which the various requirements for a warranty under section 3(a) are to be presented. We are particularly concerned about what might be prescribed as to subsections (9) and (10) on legal remedies. We can see the required description of available legal remedies turning out to be lengthy, complicated, and highly negative in tone. We do not think there should be an automatic or mandatory allowance for attorney’s fees.

We do not see how the manufacturer, without knowing the particular location and circumstances, can be expected, under section 3(a)(11) of the Senate bill to know the time at which the warrantor will perform his obligations. We do not see how the manufacturer can be expected to know, under section 3(a)(12), the period of time within which repairs will be made.

We very much oppose H.R. 10690. It was admirably described and criticized here yesterday and we will not repeat those points. For the reasons covered earlier in this statement we do not think that offering of a warranty should be required by law. We have much experience in our industry with statutory recordkeeping requirements and we can testify that they can cause enormous difficulties and should not be imposed unless there is no other way to approach the problem.

We submit that H.R. 10690 is alarmingly punitive—with high potential fines and threats of long prison sentences for relatively technical and minor infractions. "Willfully" is not defined or confined. It is subject to being construed as constructive or assumed intent to do or not do the particular act. It is not in the public interest to lend congressional credence to an attitude which says that business in general is suspect and that consumers will only be treated fairly by American enterprise if a whole series of Federal remedies and Federal enforcement actions is provided.

We are gratified that S. 3074, as passed by the Senate, omitted a class action provision. And we hope that if legislation is recommended, there will be a continuation of leaving out that provision. We are convinced that class action provisions would not strike at fly-by-night operators and other real culprits. Instead, these provisions could well subject legitimate businesses, such as we represent, to unjustified expense and harassment by persons motivated by desire for personal gain rather than protection of consumers.

We realize that the rules of the Federal courts are directed toward trying to avoid some of the more frivolous or far-fetched attempts at class action suits. However, we can all see from the reading of our daily newspapers the extensive publicity and sensational attention which accompanies the filing of large class action proceedings. We seldom see anything in the newspapers as to whether the attempted suit has been dismissed at some subsequent date as not meeting the requirements of the Federal rules or of orderly court procedure. But a large part of the damage is already done by the publicity of the charges—which may be totally unjustified—against a company in a highly competitive line of business. A headline saying "One Billion Dollar Consumer Suit Filed Against the Kokomo Television Company" would be seriously damaging to Kokomo in competition, even though the suit was frivolous or was eventually dismissed as not meeting rule 23 requirements.

The Chief Justice of the United States has warned about the undesirability of class action legislation from the standpoint of further overloading the calendars of the already undermanned and overburdened Federal courts.

We urge that if a bill is to be recommended, that it should provide for preempting inconsistent State legislation.

We seriously doubt if there is genuine public demand for this type of warranty legislation. It should not be passed simply as a symbol of devotion to consumerism. In the real world these problems of consumer complaint and frustration are best worked out between the parties involved—the purchaser on one hand, and, on the other hand, the seller who values his reputation and his customer relations. The cases where the difficulty is not worked out are the definite exception.

It is not in the public interest to point toward the courthouse every time there is a problem. It is not in the public interest to assume that

businessmen generally are shysters and cheats. It is important to leave some room in the marketplace for the smaller firms—the newer firms—the ones with a less assured competitive status.

I appreciate the opportunity, Mr. Chairman, to appear before your subcommittee today.

Mr. Moss. I thank you very much for appearing, and before recognizing Mr. Eckhardt for some questions, I would merely like to comment that the warning of the Chief Justice as to what we should or should not do as a committee of the Congress impresses me none whatsoever. I think he stepped out of his appropriate role in attempting to advise us by mentioning a particular piece of legislation which is clearly within the province of this committee, the class action bill.

The decision as to whether or not it should be passed should rest upon a proper hearing record and upon the judgment, the collective judgment of the Congress. The court is there to interpret after we write, and they have taken great liberties in that direction. I do not want them now to start preauditing the proposals submitted and filing their comments in advance of the action.

I think it also raises serious questions as to the Chief Justice's ability to deal with such cases, should they come before him, in an objective manner. So, I am not at all impressed by that.

The Chair recognizes the gentleman from Texas, Mr. Eckhardt.

Mr. ECKHARDT. Mr. Chairman, may I comment briefly on the point that the chairman has made first, before further questioning the witness.

I would like to say that if the interpretation that Mr. Day has made of the Chief Justice's remarks is correct, and if the Chief Justice did in fact make a statement that class actions were not desirable, I would entirely concur with the chairman's statement. Frankly, I did not read that statement that way and I have sent for it. I do not know whether we have it yet or not. I have it in my office and I recall when it was made.

But if I may say what I think the Chief Justice said, it was something like this, that Congress should at all times pay attention to the nature of legislation which it enacts, with respect to the load that it will place on the Federal courts. And as I recall, he mentioned class actions as one of those areas in which an additional load would be placed on the Federal courts, not commenting whether the court should be enlarged and thereby embrace such legislation or the appointments of more Federal judges should be made, or whether the course should be in the other direction.

Now, I agree with the Chief Justice that attention should be paid to the enlargement of the Federal court dockets and also to our supplying sufficient Federal judges to try the cases, but I do not believe that any reasonable man can say that people's rights should be hewed down to a size that fits a particular level of judiciary manning, and I do not think he said that. If he did say it, and if he denounced the class action procedure as such, I would certainly agree that the chairman's remarks are most appropriate and that this certainly exceeds his authority and enters into the field of Congress.

Mr. HARVEY. Would the gentleman yield on that so that I can get my comments also on it at this time.

I think we would all agree that the Chief Justice wears two hats. He is first of all, of course, a Justice on the Supreme Court of the United States dealing in substantive and procedural law, but at the

same time he is chief administrator of our Federal court system as well. And I think that we would agree that he was speaking here clearly as administrator and in his responsibilities as such with a problem that was clogging the courts.

I thought it was a very valid comment.

Mr. MOSS. Well, the Chair would only state that in making the comment I did, I did it very advisedly because had he confined himself to the desirability of the Congress taking cognizance of the possible impact upon the courts of legislative enactments, I think that would have been totally appropriate in his role as chief administrative officer of the courts.

Mr. HARVEY. Well, if——

Mr. MOSS. When he mentions a single piece of legislation, as illustrative, then I think he has acted in a manner which prejudices, in some degree, at least, the objectivity one would expect that he would keep, because he cannot finally separate his two functions. He is a member of the court. He does participate in the decisional process of the court.

Mr. HARVEY. If the Chair will yield just for one——

Mr. MOSS. The gentleman from Texas has the floor.

Mr. HARVEY. If the gentleman from Texas will yield——

Mr. ECKHARDT. I will yield to my colleague.

Mr. HARVEY. The Congress does just what the chairman was saying. It does thrust additional duties upon the court but at the same time, it does not take the step which should follow and that is providing additional judges.

Mr. MOSS. We have provided about 150 since this member became a Member of the House. I should say probably closer to 200.

Mr. HARVEY. But not at the time that we thrust the additional duty upon the court. We have enlarged the whole system, that is true.

Mr. MOSS. In cognizance of the fact that we have created additional responsibilities.

The gentleman from Texas.

Mr. ECKHARDT. Will the witness agree with me that, as well as refraining from referring to persons in industry as shysters and cheats, or assuming that they are, we should also not assume that lawyers are shysters. I have heard so much talk about the abuse of these consumer proceedings as if the mere affording of relief to people will result more in lawyers making a bonanza out of this than affording the relief.

Do you go along with that assumption?

Mr. DAY. Well, of course, I am opposed to referring to lawyers as a group as shysters and I have not done so in any of my comments on this subject and hope I never will. I do feel, however, that some of the testimony and objections you may be referring to result from the situation that could arise in these class action situations and has in class action cases in other fields.

Mr. ECKHARDT. May I ask you for a case that is an example of such an abuse of class action in Federal court?

Mr. DAY. Well, the *Playboy* case is a much-cited example of a situation where there is a very small amount potentially available at the very most for any one individual member of the class and it was only by a lawyer organizing the whole case and promoting it that

anybody would ever consider going to court at all to try and recover \$8 on a surcharge made by Playboy Clubs.

Mr. ECKHARDT. As a matter of fact, it would not have been practical to bring such a case unless there were a class action process available and, therefore, Playboy could have continued its activity without being in any way checked if there were not that machinery for recovery. Is that not correct?

Mr. DAY. Well, I think that you could have gone—if anybody had wanted to do so—they could have gone into a court and gotten a decision on a particular individual which would have created a precedent and Playboy probably would have seen that they had to pay the other people.

Mr. ECKHARDT. Well, frankly, I do not see why if everyone who wants to recover his \$8 has to spend, say, \$500, I can see no reason in the world why Playboy would feel threatened. It might just continue its process.

Now, I understand the court did decide in that case that the process was sufficiently fraudulent to give recovery; did it not?

Mr. DAY. Well, I do not know whether they said fraudulent, but there was recovery and there was \$8 in credit allowed to each member at the Playboy Club.

Mr. ECKHARDT. Now, I would like to ask you how many fly-by-night manufacturers of television sets are there?

Mr. DAY. None.

Mr. ECKHARDT. How many fly-by-night manufacturers of automobiles are there?

Mr. DAY. None that I know of.

Mr. ECKHARDT. Now, does not this warranty statute go more toward manufacturers of this nature than to the kind of business which may include within its total structure the persons whom you call fly-by-nights?

Mr. DAY. Well, it covers every variety of businesses and, of course, our business, as I touched on here briefly, is conducted quite differently than the automobile business in that we have no control over our dealers. And some dealers, as you would find right here in Washington, provide quite a bit of service and, as was mentioned by one of the witnesses yesterday, their program is consumer satisfaction at any price.

Others who are not fly-by-nights but are able to sell purely on the basis of discounting practices do not have as generous service policies.

But it is much more within the discretion of the retailer than it is in the automobile business because we do not have authorized dealers in the sense they do where they control them.

Mr. MOSS. Would the gentleman yield?

Mr. ECKHARDT. I yield.

Mr. MOSS. It is true, is it not, that a few of your major manufacturing members do in fact franchise dealers?

Mr. DAY. There are some.

Mr. MOSS. I can name them if you would like me to.

Mr. DAY. There are some. There is almost every kind of arrangement with dealers that you can have.

Mr. MOSS. Is it not also true at least in two or three of these instances that the franchise is regarded as a very valuable property?

Mr. DAY. Yes, it is, but they may, Mr. Chairman, also be selling other people's make of television——

Mr. MOSS. I recognize——

Mr. DAY (continuing). In the same store.

Mr. MOSS (continuing). There are varying requirements by the manufacturer that go to the nature of service facilities.

Mr. DAY. That is true.

Mr. MOSS. In one instance there is a national service organization maintained by the manufacturer so that some of the characteristics of automobile franchising are very clearly practiced by some of the members of your organization. The diversity of membership creates, of course, substantial support for the generalized statement, but applying it to specific interests, the nature of franchising is very, very similar to that of the automobile industry.

Mr. DAY. Well, yes. In the servicing organization that you speak of, that is a separate organization run by that manufacturing company and that is a rather unusual way of handling servicing in our industry, but you are absolutely correct, that it does exist.

Mr. MOSS. I thank the gentleman.

Mr. ECKHARDT. On page 5 of your statement, Mr. Day, you say that to expect a company to advertise that it gives a partial warranty may turn out to be like expecting it to say it has a mediocre product.

Now, is that not likely to be the case? If a company is not willing to give the full warranty—which, as I read this statute, requires that the company will fulfill the duty of repairing or replacing, if repair is not possible, any malfunctioning, defective matter which was warranted, that it will do so within a reasonable time and that it will do so without charge—it would seem to me that perhaps the product is a mediocre product that the company is unwilling to warrant in this manner.

Mr. DAY. Well, that is an important part of what I was attempting to say, Mr. Eckhardt, and that is that I think that some companies do try to adjust their price to stay competitive by giving less in the warranty.

Mr. ECKHARDT. Well, let me——

Mr. DAY. And as far as calling it partial, I do believe that this differentiation of terms between full and partial is a completely new thing on the warranty scene. It is a manufactured pair of words. There have been parts warranties and parts and service but I think "partial" sounds like it is not very good.

Mr. ECKHARDT. Well, of course, S. 3074 does not require that any warranty be given but merely states that the warranty, if given, shall be one which comports with minimum standards or else that it be clearly labeled as a partial warranty.

Now, as I read that, it gives the manufacturer the option of simply selling his product with an implied warranty of suitability for use which the courts can spell out with respect to whether or not the warranty has been breached, or with a warranty within the standards set out in the bill. Do you consider this too confining?

Mr. DAY. Well, I think it greatly adds to the complexity of describing what you are doing. I think a typical situation we would end up with would be a full warranty for 90 days, a partial warranty for maybe a year for the set as a whole, and a partial warranty for 2 years for the picture tube. So that you have a complexity of situations there because

I think it would be out of the question for most companies to give a full warranty for the period on which we typically give the parts warranty on the picture tube.

Mr. ECKHARDT. But what do you do now?

Mr. DAY. Well, we describe very briefly that it is a 90-day warranty including labor on the set as a whole and a 2-year or 3-year warranty on the picture tube. And we do not include labor during the 2-or 3-year period on the picture tube. It is only during the first 90 days.

Mr. ECKHARDT. Well, do you not think that could fit into S. 3074 without your changing your practices substantially?

Mr. DAY. Well, I think that we would fit into it some way or another but I do not think that this word "partial" is a good way to bring it about because it is a loaded word which makes it sound like it is something mediocre when in fact, it is only a method of keeping the price within bounds.

Mr. ECKHARDT. Well, let me point out on page 10 of S. 3074, section 6, "It is provided that nothing in this Act shall prohibit the selling of a consumer product which has both full and partial warranties if such warranties are clearly and conspicuously differentiated."

Now, it would seem to me the example you gave me would quite well fit into that provision.

Mr. DAY. It could be done. I do not like to have to use the word "partial," however. I would rather use the words "parts warranty" and "parts and service warranty".

Mr. ECKHARDT. Well, if it is partial, why not tell the public it is partial? What is wrong with that?

Mr. DAY. Perhaps it is semantics but I feel that "partial" sounds inadequate and half-baked and mediocre.

Mr. ECKHARDT. Well, perhaps it is half-baked and mediocre. If your competitor is able to give a full warranty I suppose the public would be quite justified in determining that your product is mediocre.

Mr. DAY. Well, you can go to various clothing stores and buy very adequate suits of clothes at a variety of prices, some of them at three times the price of the others. But the fellow who sells at the low price does not advertise it as a cheap suit or an inadequate suit or something like that. He builds it up as though it is just as good as that \$300 suit.

Mr. ECKHARDT. Well, do you think that is good?

Mr. DAY. Well, I do not see that it hurts anybody.

Mr. ECKHARDT. Of course, this bill does not prevent you from building up your product and advertising in any manner you want to. The only thing you cannot do is put a warranty or guarantee on your product that is partial unless you say so. Now, what is wrong with that?

Mr. DAY. Well, I would say it is a matter of the way the word strikes me.

Mr. ECKHARDT. Of course, you do not have to warrant it at all and then you can puff the product all you want in your advertising and there is no action under this bill that I read, but you simply cannot put a warranty on the product unless that warranty truthfully states that it is either whole or partial.

Mr. DAY. Well, I think the manufacturer would not be able to puff the product. I think the exception for puffing only applies to such things as what a salesman in the store might say in the height of his enthusiasm. But I think with no warranty at all, the manu-

facturer would be unable to say much of anything about the quality or the durability of the product.

Mr. ECKHARDT. Where do you find that in the bill?

Mr. DAY. Well, wherever the exception is for the puffing in the Senate bill. Let us see where it is. It is the bottom of page 10 in the version I have.

"It is not necessary to the creation of an express warranty that the supplier use formal words such as warranty or guarantee or that he have a specific intention to make a warranty, but an affirmation merely of the value of the consumer product or service or a statement purporting to be merely the supplier's opinion or commendation of the consumer product or service does not create a warranty."

Well, I think that—

Mr. ECKHARDT. That permits all kinds of advertising, does it not, in which you state that you believe your product is the finest on the market, that it is superior to all other color TV sets. This may be limited by other Federal Trade Commission of FCC regulations, I do now know, but it certainly is not limited by this provision.

The only thing you cannot do is give a warranty or state a warranty or guarantee in any other words, but you can say that it is the supplier's opinion or give commendation or you can do all of the normal things that advertisement does. You just cannot imply that you are giving a warranty, as I read this.

Mr. DAY. Well, some manufacturers, as I point out, could decide and might well decide not to give any warranty and to rely only on general statements, but warranty provisions are a very important competitive feature in this business, and I think many companies might decide that it was not practicable to go on an "as is" basis.

Mr. ECKHARDT. I have no further questions.

Mr. MOSS. Mr. Harvey?

Mr. HARVEY. Mr. Day, I just have a couple of questions. How do warranties for a foreign electronic product compare with those on domestic? Are they generally the same?

Mr. DAY. There is a great variety but the major foreign manufacturers that are selling in this country are competitive on warranties; yes, sir.

Mr. HARVEY. On a television set, for example, is a typical warranty on a Japanese set—

Mr. DAY. Picture tube, 2 years.

Mr. HARVEY (continuing). 90 days parts and labor, 2 or 3 years on the picture tube? Is that the same as on the domestic sets?

Mr. DAY. Yes; that is so, Mr. Harvey.

Mr. MOSS. Would the gentleman yield?

Mr. HARVEY. Yes.

Mr. MOSS. Is it not true that on the smaller dimension television receivers, particularly in color, that a great many of the tubes are of Japanese manufacture even though incorporated into domestically produced sets?

Mr. DAY. Oh, yes. There are not only many foreign parts in American-produced sets but there are many sets being sold under American names that are in fact made in Japan and there are many sets being sold under American firms' names that are made by factories of those American firms in Taiwan.

Mr. MOSS. I thank you for yielding.

Mr. HARVEY. Let me just say this. You mentioned that one of the alternatives that the manufacturer would have would be to offer no warranty at all. Is there danger in your judgment, that the manufacturer, rather than increase costs, would simply advertise his product at a certain particular rate and then go to a service contract right along with the set?

Mr. DAY. Yes, I think some of them would, particularly in the lower end of the price scale. For example, in the television business, on a few of the higher priced sets, at the upper end of the line, there are longer periods for service than the 90 days I speak of. But I think it would depend on the price of the product and the situation of that particular manufacturer in the competitive scheme of things.

Mr. HARVEY. In other words, he is not going to go to that alternative if his competition is offering a warranty?

Mr. DAY. Probably not.

Mr. HARVEY. I did not notice in your statement, or maybe I overlooked it, any comments about H.R. 18056, introduced by Mr. Staggers and Mr. Springer.

Mr. DAY. Well, I did not comment, you are correct, Mr. Harvey. There is nothing in my statement on H.R. 18056. I would not give quite such good marks to that administration bill as one of the witnesses yesterday did who analyzed each of the bills with care. H.R. 18056 is far more acceptable to an industry like ours than the other bills. But I think one technical aspect of it is that it uses certain terms in a different way than they are used in the Uniform Commerce Code—terms that are about the same in H.R. 18056 as the UCC but not quite. We can see confusion arising as to construction of some of those terms in the administration of that act if it became law in contrast to the Uniform Commercial Code.

Many of these provisions and definitions, as you undoubtedly know, are either taken from or are pretty close adaptations of provisions that are in the Uniform Commercial Code, which is in effect in all but one State.

Mr. HARVEY. Are these terms the same ones you referred to in your statement—"reasonable time," "conscionable," and so forth?

Mr. DAY. No. Some of them are different. An example of one of those is the definition of guarantee or warranty is a modified version of what is in the Uniform Commercial Code where the definition there is of express warranties and guarantees. The Uniform Commercial Code permits a merchant to exclude or modify a warranty. The code permits a merchant to expressly create a warranty and at the same time to negate and limit certain other warranties. This includes modifying the implied warranty of merchantability.

We do not know just how this would fit in relation to this administration bill or the Staggers-Springer bill. The bill, of course, has no requirement for a warranty and none for—no provision for the use of the "full" and "partial" alternatives. However, Mr. Kirkpatrick yesterday, as you recall, did urge that if the—I guess I should not call it the administration bill—H.R. 18056—if that is adopted, that it should include the "full" and "partial" feature.

Mr. HARVEY. Have you prepared any amendments to any of these bills or are you simply telling us that what we should do is enact no legislation at all?

Mr. DAY. We are hoping you will enact no legislation at all; yes, we are.

Mr. HARVEY. I have no further questions, Mr. Chairman.

Mr. MOSS. Mr. Schmitz?

Mr. SCHMITZ. I think that you may have answered most of my questions through Mr. Harvey.

I want to congratulate you on your testimony. I have been waiting for someone in the last day and today to get to what I consider a problem that has not been gotten to. I think you got to it in the last lines on page 10 and I just wonder if that sentence would refer to all the legislation that we have under discussion here or just to H.R. 10690.

I am specifically referring to your statement:

It is not in the public interest to lend congressional credence to an attitude which says that business in general is suspect and that consumers will only be treated fairly by American enterprise if a whole series of Federal remedies and Federal enforcement actions is provided.

I happen to agree with that statement, but I just wonder if you feel from looking at these bills that it pertains to all the legislation or just H.R. 10690.

Mr. DAY. Well, I think I am referring there principally to the punitive provisions, the long prison sentences for not filing reports and for not keeping records, and so on, of H.R. 10690.

I think some of the discussion and some of the reports I have seen, committee reports I have seen, on various items of legislation in this consumer field do tend to stultify industry in general more than is justified.

Mr. SCHMITZ. Of course, I am not only a conservative on this. I think I even go back to, I think it was Alexander Pope who said, "To protect man from the fruits of his folly is to fill the world with fools," and I just wonder if Federal enactment of this type of legislation is not enhancing that.

I have always felt that the best warranty or guarantee is the desire of a business to stay in business, which they are not going to if they do not carry through on their product.

I just feel you are absolutely correct on page 12 when you say, "In the real world these problems of consumer complaint and frustration are best worked out between the parties involved." In fact, I would like to call on you if I have to write a minority report and maybe I can get some help from you.

Mr. DAY. Thank you, sir.

Mr. SCHMITZ. That is all.

Mr. ECKHARDT. Mr. Chairman—

Mr. MOSS. Well, I would like to deal with a couple of points. One, the congestion of the Federal courts which is conjured up by your statement. I recall a few years ago, after laboring for approximately 11 years, we secured the enactment of a piece of legislation which is commonly referred to as the "Freedom of Information" Act and the strong objection of the Department of Justice as stated before the committee rather specifically was that we would create unbelievable congestion in the Federal courts. And yet that congestion has not been created. And a great many practitioners have found that the existence of the statute has made it unnecessary to go to Federal court. And it has been very beneficial to them and to many businesses.

I would like to take another example of these fears that we are constantly having raised before the committees of the Congress. You have cited, and I think with great justification, the very proud record of the American electronics industry in consistently bringing down the price of its product, from 125.7 in 1951, using a constant dollar evaluation, to 80.1 today. And yet, I sat on this committee when we by law required the all-channel television receiver and we were told that we were going to price it out of the market. The American public could not afford it.

I said then I have infinite confidence in the ability of the American businessman to compete and overcome these difficulties. In that process we created very valuable property rights all around this Nation, greatly expanded the ability to communicate, to entertain, and to inform.

And here now about 10 years later we find that instead of sending the cost up, the cost has gone down. My faith in American business was fully justified. The faith of the Interstate and Foreign Commerce Committee of the House and the Commerce Committee of the Senate was fully justified.

But now, as to whether or not business is always being cast in the role of cheat or taking the last possible advantage of the consumer, I think that business ought to listen very closely to the consumer and I do not think they are doing it today, I think perhaps more in the industry that you represent than in the automobile industry. I get a tremendous amount of mail as chairman of this committee from complaining customers—and for the benefit of my colleague from California, I can identify in some of those complaints some extremely conservative constituents of yours and mine, names I recognize well.

I happen to have had an automobile just a few years ago and after 2 long years of diligently taking it back and having it serviced almost weekly I finally got it to work about the time I traded it off, and that is not an unusual experience for the American consumer. And I think we have too many of these instances to say that we can leave this totally to the marketplace.

You mentioned the fact that increasingly in the electronic field, we have components that come from all parts of the globe, with varying degrees of production control, and we have many products which a customer buys off the shelf. He thinks, after all, it has a brand name that he has known for years. He thinks it is a domestically produced product and if he looks very carefully, very carefully, he might find somewhere there the words that it was made somewhere else.

But he does not look that carefully. Maybe he should. And he may find when he goes to get a replacement that there is no replacement. And I have had that experience as a consumer. I do not want to have us enact punitive legislation, legislation that is unrealistic, legislation that is going to impair the ability of the domestic manufacturer and the domestic merchant to compete and to prosper. But there is an obligation to a consuming public and in many of the areas the spectrum of competition is far narrower than perhaps in electronics. The choices are not that great.

And I do not think we go out looking for business in this committee. That has not been my experience. My experience as chairman is that I have great difficulty in trying to find the time to schedule the things

that people are demanding, not that I am demanding but that the people are demanding.

And so, my advice is that—constructive criticism, fine. I think it is very helpful to us. We do not have all the knowledge in the world here.

Mr. SCHMITZ. Will the chairman yield?

Mr. MOSS. Moving to assure fair dealing while not damaging anyone, I think, is a legitimate responsibility. The regulation of commerce is one of the things that is assigned by the Constitution to the Congress and to no one else, not to the Executive but to the Congress.

Mr. ECKHARDT. Will the chairman yield?

Mr. MOSS. The chairman yields first to the gentleman from California, because inferentially I referred to him and then to the gentleman from Texas.

Mr. SCHMITZ. I am just wondering if the chairman is aware of the fact that one of the major polls recently with regard to a question that they have asked for many years about the great dangers that people consider facing them, that the danger of big Government has now come up to or passed over 50 percent as the major concern of the people of this country, whereas the fears of business, and so forth, have subsided more recently.

My remarks were not to say that people do not have legitimate complaints about some businesses but I think you have got to balance off the complaints, legitimate complaints of people regarding business and the legitimate complaints of people regarding the growth of Government intervention.

Mr. MOSS. I would only suggest that a poll on the specific matter of reliability of merchandize might produce an entirely different response than that as to the general bigness of Government. In California, as the gentleman knows, we are faced with a great deal of growth in the cost of government, and it is at the local and State level and not the Federal level that the cost has increased most.

I ask the gentleman from Texas to take the chair.

Mr. ECKHARDT (presiding). Just one matter. We had discussed the question of Chief Justice Burger's speech and I think it would be appropriate to set the record straight as to what he said.

I certainly agree with Mr. Harvey that he does have a dual role and I think he was really addressing himself to his role as administrator of the judiciary in his speech. He said:

As Dean Roscoe Pound said 64 years ago, the work of the court in the 20th century cannot be carried on with the methods and machinery of the 19th century.

And he talked about revising the machinery of the judiciary. And in connection with the point quoted by the witness, he said:

As to the future, I can do no more than emphasize that the Federal court system is for a limited purpose and lawyers, the Congress, and the public must examine carefully each demand they make on that system. People speak glibly of putting all the problems of pollution, of crowded cities, of consumer class actions, and others, in the Federal courts. We should look more to State courts familiar with local conditions and local problems.

Now, that is what he said. Frankly, I do not disagree with him but I do not see it as an attack on class actions. I merely wanted to set the record straight on that. I said the same thing in the Record on August 11 and predicted that this statement would be used by witnesses before this committee on the point.

Mr. DAY. Yes. Well, at the time I prepared that sentence that you are referring to, I did have the statement before me. I am reminded now—it seems to me that the tone of his remarks and the use of the word “glibly” there tends to be more than just pointing out there is a problem. I think that it can be interpreted as raising doubts about the desirability of this type of legislation in his role as the top expert witness on what the conditions of the courts in fact are.

Now, commenting on the chairman’s statement about the cries of alarm and calling wolf, and so on, in other connections, those no doubt do exist, although on this matter of price, it is heavily affected by the fact that such a large number of these television receivers today are made in foreign countries, and that whole problem is becoming an issue now.

But the Freedom of Information Act, for example, the fact that it is on the books, enables people like me, and I have done it, using it as a lawyer with Federal departments and they know it is on the books and they know it is very specific and you do not have to go to court.

But on a situation where a phonograph, for example, might turn out to have some defect, where the sound level does not hold steady under certain conditions, the proper normal way to get that straightened out is for people to go to the responsible retailer they dealt with and the retailers with their manufacturers and get a correction made if it is a defect. We question whether it is wise to motivate some one to attempt to organize a big lawsuit over that subject when in fact the cost of having that defect repaired may be \$8 or \$9. I think it is much better not to interfere with the normal efforts to straighten out that situation through relations with the customers and the effort of a big part of retailers to want to satisfy their customers, I think it is a mistake to interfere with that by getting one of these enormous lawsuits started because it is hard to tell what a manufacturer would feel he could do in the way of meeting his warranty requirements, for example, once such a suit has been begun.

Mr. Moss. (presiding). My only comment on that would be it has been my experience, and I have had experience in dealing with average customers, that the only thing they want is to have the product work, and the last thing they want is to become a part of a lawsuit. It is only under the greatest of frustration that they seek the alternative. In fact, many of them just give up, finally call in a serviceman totally unrelated to the organization or manufacturer, and have the repairs made and pay the bill and figure, well, that is a loss.

Mr. DAY. I agree, Mr. Chairman.

Mr. ECKHARDT. Will the chairman yield?

Mr. DAY. But under some of these class action bills, the miscellaneous customer who may or may not have this kind of a problem has to vote “No” in order not to be included in the lawsuit.

Mr. Moss. Under some, but I doubt that this would become a major problem.

Mr. ECKHARDT. Mr Chairman, the chairman was out of the room at the time I initiated a comment with respect to Justice Burger’s speech. I really did not mean to open the entire discussion of the validity of class actions but merely to point out that Chief Justice Burger, as I read his statement, was commenting within a very limited area. He referred not only to class actions if misused as overloading the courts but to attempts to solve the problems of pollution, for

instance. I certainly would not assume that Justice Burger meant by that that Congress should pass no laws making certain actions with respect to emissions in the air. He certainly would not argue that we should not do that.

I really only opened this question to read into the record his actual language.

Mr. MOSS. Well, as the chair indicated, he has no intention of instituting the practice of seeking from the courts advice on legislative matters.

I agreed to yield to the gentleman from Michigan.

Mr. HARVEY. Well, I really had made no request, Mr. Chairman.

Mr. MOSS. You had earlier before I went out to answer the phone.

Mr. HARVEY. No. That is fine. Thank you. I will say this, since we are in a discussion here that normally takes place in executive session rather than a public hearing, but I will say this.

I am concerned, Mr. Day, on this bill about what it is going to do to cost, the cost of the product. Mr. Kirkpatrick said yesterday that the administration bill, in his judgment, would add nothing to the cost of products because really, it was aimed at deceptive warranties rather than increasing the scope of the warranty or lengthening the period or anything whatsoever. But my chairman and my good friend has mentioned, for example, what we did on television sets and the all-channel receiver as an example of how Congress did increase or, let us say, improve what the consumer received and yet did not increase the price.

But I would say to you that I do not think that is true in the automobile industry and I will say to him that I sat on this committee also while we have increased what the automobile shall contain as to the seatbelt, which approximately 30 percent of the people use. The price of the automobile went up. We have provided that they must contain shoulder harnesses which some 2 percent of the people now use. The price of the automobile went up. We provided that they must contain headrests and the price of the automobile has gone up.

And I can say this to you and to this committee, that if you provide that the scope of the warranty on automobiles is to be increased, that the price of the automobile is going to go up.

It may be that the American people want better warranties on automobiles but they are going to have to pay a better price in order to get it and it is just that simple.

Mr. MOSS. It is this simple with me, that if I, in the case I referred to, and the particular car I referred to, had gotten what was set forth very clearly and concisely in the warranty, I would have been completely happy, but it took me 2 years to do it.

Mr. HARVEY. Well, I do not think, Mr. Chairman, there is any question here but that all of us agree that we want the warranties to spell out clearly just exactly what they shall provide and what services they shall provide and I do not think there is any doubt about that at all. But—

Mr. ECKHARDT. Will the gentleman yield?

Mr. HARVEY. Yes.

Mr. MOSS. This particular warranty did spell it out very clearly. I did not object to the manner in which it was spelled out. I only objected to the manner in which the obligation incurred by the warranty was met.

Mr. HARVEY. None of us want defective warranties.

Yes, I yield to the gentleman.

Mr. ECKHARDT. I certainly agree with the gentleman. I do not think S. 3074 spells out the warranty or requires any warranty at all. What it merely says is that the warranty must be properly and accurately designated.

Mr. DAY. Mr. Eckhardt, could I comment in connection with your earlier question on that? Senate bill 3074 does in the definitions section we were talking about earlier on page 10, say that a warranty is created by any description of a consumer product which is made part of the bargain. And it is true, I can conceive of certain types of generalized praiseworthy statements that might not be considered a description of the product or that might fit into this exception down below. I think while it does not—of course—it does not require a warranty—I think it does mean that very little of substance could be said to the purchaser without having created a warranty.

Mr. ECKHARDT. Well, I read that merely to say that if I am buying a horse, and if the seller is going to tell me the horse has not got the heaves he cannot have the heaves or else you are guilty of warranting that he does not have it. I think that is a perfectly proper requirement. He does not have to say whether he has got the heaves or has not got the heaves. He is not required to make a statement. But if he makes a statement and his statement is part of the bargain, it is a warranty.

Now, I would understand it to be a warranty anyway whether this statute were enacted or not. Would you not assume that to be the case?

Mr. DAY. Well, that might come under the sample or model portion of the definition, that you are looking at the horse, but I certainly do not advocate selling horses with the heaves.

Mr. ECKHARDT. Or automobiles with a bad differential?

Mr. DAY. No, sir. Although in that connection—

Mr. ECKHARDT. Or television sets with a bad tube, but what (b) says is "any description of a consumer product which is made a part of the bargain"—now, that means a part of the contract—"creates an express warranty that the consumer product shall conform to the description."

Do you not consider that to be plain common law, contract law at the present time?

Mr. DAY. Well, I think it is a matter of interpretation. I would have to have specific examples of what the manufacturer was going to say. Certainly, none of them that I know of are interested in selling sets with bad tubes and a 2- or 3-year warranty on the picture tube is a good warranty.

But speaking of the automobile industry, I am sure you have all seen specific examples just in recent months from the newspapers of the importance of warranties on the price because at least one major manufacturer has announced quite a major cutting back on the warranty provision in order to try and keep the price from going up too much.

Mr. ECKHARDT. Well, he can do that under this act, is what I am trying to point out. He does not have to make any warranty at all under this act. He may make a full warranty but if he does, it must in fact be a full warranty. He can't make a full warranty on certain parts of the automobile and certain performance of the automobile

and he may make a partial warranty on other parts. All he has got to do if he makes a warranty, is accurately describe it.

Now, what is wrong with that?

Mr. DAY. Well, part of my problem, and I think of all of the witnesses—

Mr. ECKHARDT. Why does that raise a problem?

Mr. DAY. We are talking about three different bills with three different approaches plus a fourth bill which would be the one that would result if you pass a bill and then it goes to conference, and I—

Mr. ECKHARDT. Will you excuse me a moment? I am talking about S. 3074.

Mr. DAY. Yes.

Mr. ECKHARDT. And with respect to that, do you not agree with my interpretation of it?

Mr. DAY. Well, I agree subject to the fact that I do not think you and I get the same reaction from the use of the word "partial," and I think that I also feel that it will not be practicable for most manufacturers in this competitive field to give only very generalized statements that would fit within this definition as creating no warranty. And I want to assure the chairman that I am not here to—

Mr. ECKHARDT. May I say this? I hope that that is true—

Mr. DAY. Yes.

Mr. ECKHARDT (continuing). Because I would hope—

Mr. DAY. I do, too.

Mr. ECKHARDT (continuing). Manufacturers would either give no warranty or they would give one in which they are agreeing that the defective part will be repaired or replaced.

Mr. DAY. Well, I do not want the chairman to feel I came here to say do nothing and we are perfect and all that. I do, in discussing this variety of bills, want to urge that consideration be given to letting us continue the great variety of approaches that are used by the manufacturers and to attempt to improve the warranty field through the working of the competitive forces in this industry. I am not saying we are perfect or that we think nothing at all is appropriate.

Mr. Moss. Well, I want to thank you for appearing and I assure you that your statement and your comments will be helpful to the committee. After all, that is the reason we have hearings, to receive the views of both industry and of consumer groups.

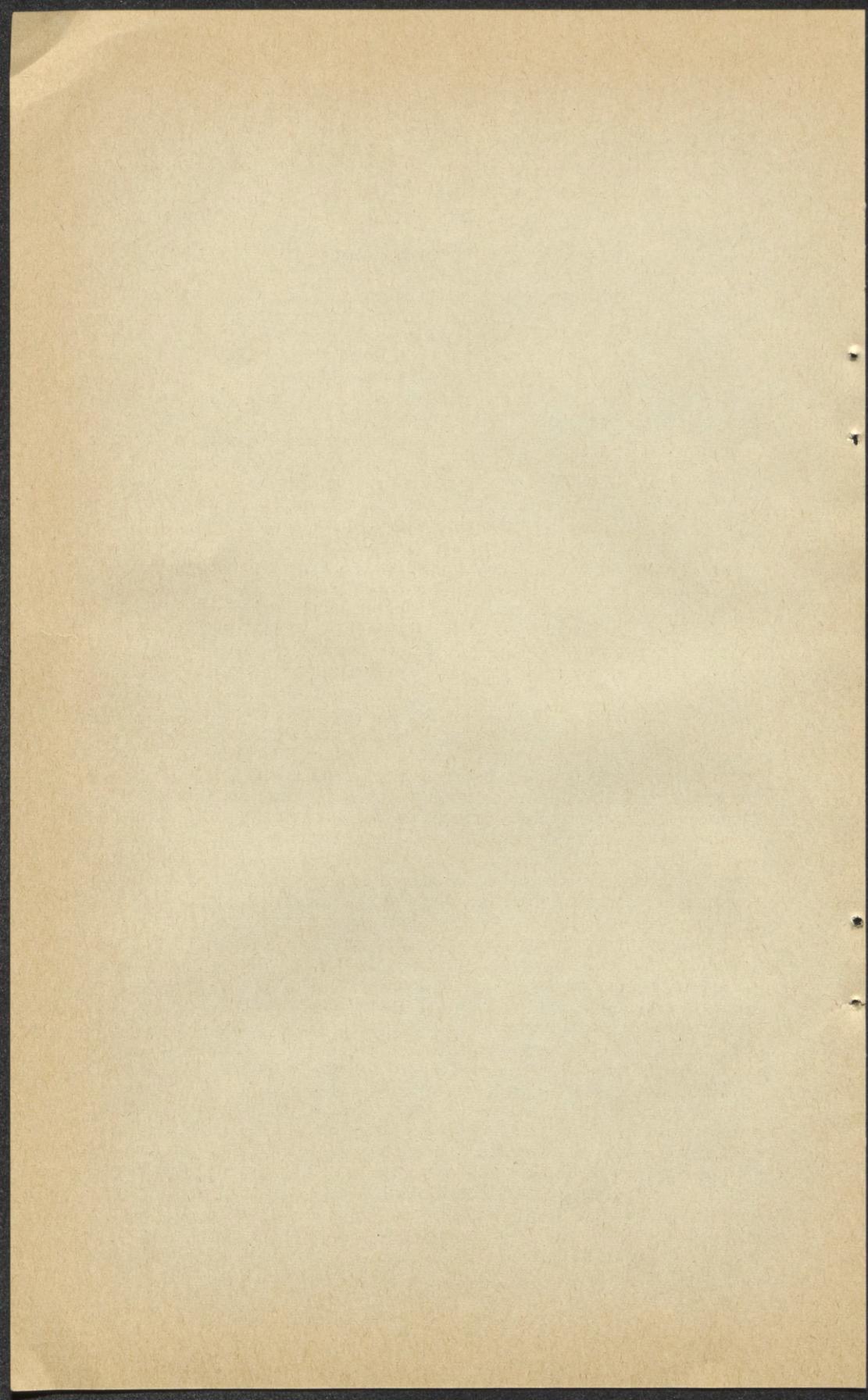
The committee will now adjourn until 10 o'clock tomorrow morning. The chair apologizes to the witnesses scheduled. The House, however, determined to meet earlier today than is normal. A rollcall is now underway and, of course, under the rules we may not sit during general debate and we have several bills scheduled for debate. So, until 10 tomorrow morning.

For those who may want to file statements, the record will be held open without objection, to receive such statements.

The committee will stand adjourned until 10 o'clock tomorrow morning.

Mr. DAY. Thank you, Mr. Chairman.

(Whereupon, at 11:30 a.m., the hearing was adjourned, to reconvene at 10 a.m., Thursday, October 1, 1970.)



## WARRANTIES AND GUARANTIES

THURSDAY, OCTOBER 1, 1970

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman), presiding.

Mr. Moss. The subcommittee will be in order. My apologies for being late, but I was held up.

The first witness this morning will be Mr. James M. Goldberg, vice president of Government Affairs Division, American Retail Federation.

### STATEMENT OF JAMES M. GOLDBERG, VICE PRESIDENT, GOVERNMENT AFFAIRS DIVISION, AMERICAN RETAIL FEDERATION

Mr. GOLDBERG. Mr. Chairman, members of the subcommittee, my name is James M. Goldberg, I am vice president—Government Affairs Division, American Retail Federation, a national organization which, through its 50 State and 28 national retail trade association affiliates, represents more than 800,000 retail establishments across the country.

The federation has long advocated clear and meaningful guarantees offered on products sold to the consumer. While guarantees are primarily the creation of the manufacturer, the federation is cognizant of the opportunity of retailers to work with manufacturers to voluntarily develop programs directed toward the improvement of guarantee practices.

Consequently, the federation was pleased to work with the Association of Home Appliance Manufacturers and the Gas Appliance Manufacturers Association in supplying essential information to the President's Task Force on Guarantees, which completed an exhaustive study of the problems associated with guarantees early this year.

Stimulated by the work of the task force, at least four of the national trade associations affiliated with the federation launched independent programs designed to simplify and improve guarantees.

The National Retail Merchants Association, which represents department and specialty stores across the country, developed two industry guides outlining the features that both retailers and consumers should look for in guarantees.

The Association of General Merchandise Chains adapted the long-standing "FTC Guides Against Deceptive Advertising of Guarantees" into a folder made available to thousands of retail store buyers.

The National Home Furnishings Association published a 6-page instructive article in its trade magazine explaining and clarifying guarantees for its members.

The National Appliance and Radio-TV Dealers Association has been urging manufacturers to adopt a one sentence guarantee.

In addition, many individual companies have included information on guarantees in their catalogs and other point-of-sale material.

#### MAJOR APPLIANCE CONSUMER ACTION PANEL

Following the White House Task Force Report, the federation offered its cooperation to AHAM and GAMA, which had joined in sponsoring the Major Appliance Consumer Action Panel. MACAP, as the group is known, is a nongovernment, nonindustry panel which acts as the "court of last resort" for those consumers who have problems with major appliances, whether these problems deal with guarantees or not.

In addition to this clearinghouse function, MACAP has also been conducting several studies on problems associated with the production, distribution, and servicing of major appliances. These studies, I understand, are due to be completed within a few months.

We have been heartened by our participation in the MACAP project, because retailing feels that this has demonstrated that industry can work together with consumers to solve problems—without resorting to Government intervention.

#### SENATE HEARINGS

Accordingly, the federation testified in January of this year at hearings of the Senate Consumer Subcommittee on S. 3074, one of the bills which is now before this subcommittee. At that time, we expressed hope that industry could solve its own problems.

The federation also expressed its deep concern that in attempting to solve problems connected with guarantees, S. 3074 had gone beyond disclosure—which we believe to be the answer—to impose severe restrictions on the content of guarantees themselves.

We are pleased that the Senate committee adopted many of the suggestions made in our testimony and that S. 3074, as it was overwhelmingly passed by the Senate on July 1, 1970, had become primarily a disclosure bill rather than a repressive, standard-setting measure which would have meant the end of many guarantees now being offered.

Unfortunately, however, many problem areas remain in S. 3074. The general thrust of our remaining comments this morning could be applied equally to the other measures pending before this subcommittee.

#### FTC REGULATORY AUTHORITY

First, the regulatory authority conferred on the Federal Trade Commission by S. 3074 is vast. We fear that such an open ended delegation will lead to the end of advertising of guarantees, much like the Truth-in-Lending Act has virtually dried up credit advertising. Such a move, we believe, would have an adverse effect on consumers by depriving them of needed information before they shop.

Section 3(b) of S. 3074 authorizes the FTC to prescribe, after public hearings, the manner and form in which information with respect to written guarantees shall be clearly and conspicuously displayed in "advertising, labeling, point-of-sale material, or other representations in writing."

Given the lengthy list of items the prospective purchaser should be told in section 3(a), it is entirely conceivable that the Commission would require all these items and others to be included in all advertising. As a practical matter, that would spell the end of guarantee advertising.

We urge that this grant of authority be limited to disclosures within the written guarantee itself. The Commission would still be free to use its section 5 authority to halt unfair or deceptive advertising of guarantees, the same authority it now possesses.

Further, we urge that the Commission also be limited in the amount of information it can cause to be disclosed. Section 3(a) of the bill notes that FTC regulations may require the inclusion of any of 14 enumerated items, "among others". This latter language leaves the door open for overzealous regulators to require the disclosure of so much information that the consumer may actually be misled, rather than helped.

#### DESIGNATION OF WARRANTIES (GUARANTEES)

Second, sections 4 and 5 of the bill establish Federal minimum standards for guarantees and cause guarantees in which parts and labor are provided to be called "full" guarantees, while all others must be designated as "partial" guarantees.

These designations, we believe, may actually tend to confuse consumers. Consider, for example, the retailer or manufacturer who provides a parts and labor guarantee only on certain designated parts of a consumer product. The guarantee does not cover the entire product, but could be called, in accordance with section 4 and 5, a "full guarantee".

The same manufacturer may provide a parts-only guarantee on another product, but have this guarantee cover the entire product. Is this any less a "partial" guarantee than so-called "full" coverage of only part of a product?

We suggest, therefore, that the bill be modified so that those guarantees which meet the standards in section 5 be labeled as a "parts and labor" or "parts and service" guarantee, while others be labeled a "parts" guarantee. We believe that this type of designation will be more beneficial and meaningful to the consumer.

Such a designation would also avoid conflict with the "satisfaction guarantees" which many retailers offer and which are specifically permitted—and exempted from coverage of sections 3 through 5—in section 4(b) of the bill.

These guarantees, made without limitation, would still be subject to the FTC Act. We urge the subcommittee to continue to permit their use.

#### REMEDIES

Third, section 11(e) of S. 3074 was inserted, according to the Senate Commerce Committee report, "to make explicit the fact that this legislation has no effect on the present ability of consumers to pursue

their remedies in Federal courts by instituting class actions nor does the bill affect class action availability in State court proceedings."

We urge this subcommittee to carefully review this portion of the bill. The failure of a guarantor to perform those obligations which he undertakes in a guarantee is an individual problem between the guarantor and purchaser. We believe that this problem is best solved individually, and not through group action.

One need only to look at the history of class actions under the Truth-in-Lending Act to see how they are abused in the name of consumer protection. Many pending suits alleging violations of the disclosure requirements have been directed at large, national companies. To our knowledge, no class action suits have been directed at any of the small companies which have been cited in FTC complaints for allegedly violating this law.

#### SCOPE OF COVERAGE

Fourth, section 13(a) of S. 3074 extends the authority granted to the Federal Trade Commission and the Attorney General under the bill to all sales of consumer products and services affecting interstate commerce.

Yet, section 13(b) indicates that only those State disclosure and labeling requirements inconsistent with sections 3 through 5 of the bill are not applicable. We believe that this subsection is inconsistent with the intent expressed in the preceding subsection.

Because the Federal Trade Commission is empowered, under section 10, to detail the duties of the maker of a full warranty, we urge that this committee and the Congress, as it has done in the past with the Federal Hazardous Substances Act and the Flammable Fabrics Act, express the intent and desire of Congress to preempt all State activity in this area.

To do otherwise in this era of consumer mobility and national and regional product distribution would lead to chaos and would cause a vast array of problems for warrantors and guarantors.

Congress preempted only State disclosure laws in the Truth-in-Lending Act. In the more than 1 year since truth-in-lending has been in effect, we have seen many States move beyond disclosure to the point where the confusion which existed before its passage has returned, and where Congress will be unable to solve the problem without adding stringent preemption sections to future bills which amend truth-in-lending.

#### CONCLUSION

We have tried to outline the major problem areas in S. 3074. There are other, more technical, changes which could be made to make the bill an even better measure.

We believe that industry is moving quickly, voluntarily, to solve many of the problems associated with guarantees. As we told the Senate Consumer Subcommittee, we are not convinced that legislation can, or should, provide the total answer.

However, if this subcommittee decides to pursue the legislative approach, rather than encourage the continuing voluntary approach, we offer the help of the retail industry to help implement the changes we have suggested and those others which would truly make S. 3074 a better consumer measure.

Mr. Moss. Thank you, sir.

Mr. Harvey?

Mr. HARVEY. I gather that you are opposed to S. 3074; is that correct?

Mr. GOLDBERG. I think in its present form, yes, Mr. Harvey. I think there are, as I pointed out, some problem areas in it which we feel would make it very difficult to live with. I would hope that those areas can be cleaned up by this subcommittee.

Mr. HARVEY. Have you considered H.R. 18056 as introduced by Mr. Staggers and Mr. Springer?

Mr. GOLDBERG. Yes, sir.

Mr. HARVEY. Are you opposed to that bill?

Mr. GOLDBERG. I think S. 3074 takes a better approach.

Mr. HARVEY. Than H.R. 18056?

Mr. GOLDBERG. Yes. As was pointed out yesterday, some of the definitions in H.R. 18056 are somewhat inconsistent with the Uniform Commercial Code, and the definitions in S. 3074 are more consistent with that, and as I say, I think that S. 3074 does take a better approach to the problem.

Mr. HARVEY. And I take it you are opposed to H.R. 10690.

Mr. GOLDBERG. Yes, sir. That is far more than a disclosure bill which, as I said, we believe would provide a great deal of the answer to the problems that now exist.

Mr. HARVEY. In your judgment, would the Senate bill add to the cost of the product being sold?

Mr. GOLDBERG. I think that would depend upon what the Federal Trade Commission required under section 10. You know, the Commission is given the authority to detail those duties that the makers of a full or a partial warranty must perform in order to fulfill that warranty. And I think that depending on what the Commission required, the cost of providing a warranty might significantly increase.

Mr. HARVEY. I have no further questions.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Goldberg, how would you change 11(e)?

Mr. GOLDBERG. Well, 11(e) deals with the bringing of individual suit for failure of a supplier to comply with obligations assumed under a guaranty. This, we believe, is an individual problem and should be solved individually.

Mr. ECKHARDT. Well, how does this fail to solve it individually? It simply says:

Any person damaged by the failure of the supplier to comply with any obligations assumed under an express or implied warranty or service contract subject to this act may bring a suit in an appropriate district court of the United States subject to jurisdictional requirements of 1331.

It just sounds to me like that section provides that he can bring whatever kind of suit he brings on any other matter that is in violation of law.

Mr. GOLDBERG. As I said, to the extent that this subsection would permit a class action to be brought for breach of a warranty, I think that to that extent the subsection should be changed. I do not think a class action is an appropriate type of remedy in a breach of warranty situation.

Mr. ECKHARDT. Why not? Why is it any different from another situation in which a class action should be brought? For instance,

some action by the board of directors of a corporation which results in injury to the stockholders: class action is appropriate there. Why is it not also appropriate here? In both cases a great number of persons are injured in the same way.

You are generally familiar with the language of rule 23, are you not?

Mr. GOLDBERG. Yes, sir.

Mr. ECKHARDT. Rule 23 requires that the injury be of the same type. It requires that class action process be the most appropriate and effective way of giving relief. It really gives very wide discretion to the court. It has been guarded by the courts, I think, reasonably well. Why is it not applicable here if it should be applicable in other cases?

Maybe you are against it altogether and think that rule 23 ought to be changed.

Mr. GOLDBERG. No. I think the problem here is that the failure to perform under a warranty takes place when I take a defective product back to where I bought it or take it back to the manufacturer and say you made a guaranty on this product, please fix it in accordance with the terms of the guaranty. And he either refuses or is unable to.

I think it is very difficult in that situation to find how the warrantor or guarantor hurt or caused injury to a great number of people, and, of course, in a class action, all it takes is one consumer who has been hurt in that manner to go to the courthouse and say, I am bringing an objection on behalf of all of the purchasers of a given automobile or all of the purchasers of a given product.

Mr. ECKHARDT. Well, not necessarily. As I read the rule, the class must be representative of the group. The court might, for instance, refuse to entertain the suit where one consumer comes in on grounds that he has not really shown that others are similarly situated. If that is not shown, the court dismisses the case as a class action or treats it as an individual action at the first level of pretrial.

Mr. GOLDBERG. I wish that would be sufficient to reverse the harm that had already been done to the defendant. It has been our experience that these—

Mr. ECKHARDT. What harm is done to him at that stage?

Mr. GOLDBERG. Well, in terms of the publicity attendant to the filing of the suit. When the papers are filed at the courthouse, the harm that X Motor Co. has been sued for \$3 million in a class action alleging failure to perform under a guaranty. When and if the case is dismissed, the defendant is usually not vindicated in the same manner in the press as he has been accused.

Mr. ECKHARDT. Well, if somebody files a suit against me for writing a hot check I may or may not have written it and the man who filed it may or may not have filed his suit in good faith. If he has not, I might have a suit against him. But in the case of any suit, the person against whom the suit is filed to some extent suffers. Why protect this situation if you do not protect others and why is a class action any different from any other suit?

Mr. GOLDBERG. Well, I just think that the numbers of people involved and the size of the damages alleged in a class action makes it somewhat more newsworthy than an individual action filed by a consumer against a retailer or a manufacturer for failure to perform under a guaranty. And I think that, as I said, the failure to perform is more of a one to one relationship between the guarantor and the purchaser.

Mr. ECKHARDT. Now, what kind of appliances do the persons belonging to your association sell?

Mr. GOLDBERG. All kinds. They would sell all of the types of products that would be covered by this act.

Mr. ECKHARDT. Do they sell anything that costs more than \$10,000 per item?

Mr. GOLDBERG. Very few, I would say.

Mr. ECKHARDT. Well, section 1331 of title 28 of the United States Code permits a suit in Federal court only if the amount in controversy is \$10,000 or more. The case of *Snyder* versus *Harris* has held that in a class action there must be at least one member of the class with the requisite amount in controversy involved in a suit.

Can you envisage any great load or avalanche of suits that are likely to be filed in Federal court under such circumstance?

Mr. GOLDBERG. Under that section, no, sir, but 11(e) would permit actions to be filed in State courts and as you know, many State courts would entertain a class action where the class alleged would cover all of the purchasers throughout the country, not necessarily confined to that individual State. So, it is a question of the choice of forum. If you cannot get into Federal court under 1331, you could find a friendly State court, bring the same action, and have the same effect that I talked about.

Mr. ECKHARDT. Well, if the State desires, as a matter of policy, to extend the right of class action to persons injured, do you think we at the Federal level should deny the right, to a person injured in a State, to utilize the machinery of the State court afforded by the State under its legislative policy?

Mr. GOLDBERG. Well, I would hate to see as a matter of governmental policy the Federal Government dictating too many things to the States but as I said, I think in this situation a class action is an inappropriate remedy.

Mr. ECKHARDT. Well, let me ask you, would you amend the act by simply striking 11(e) altogether and not making it a part of the relief under this bill, a damage suit by an individual against a supplier?

Mr. GOLDBERG. Off the top of my head, I would say that would be one approach to amending it.

Mr. ECKHARDT. If you did that, then the sole remedy that the individual could follow would be through the Federal Trade Commission; is that correct?

Mr. GOLDBERG. Well, I believe that—would not the individual still have the remedy in State court as an individual remedy?

Mr. ECKHARDT. Well, as I understood, you also wanted this to preempt the field of warranty. If it preempted the field of warranty—

Mr. GOLDBERG. In terms of disclosure.

Mr. ECKHARDT. (continuing) And limited the remedy to FTC procedure, it would simply close off a State suit on any type of warranty.

Mr. GOLDBERG. It seems to me that failure to perform under a guaranty is in many respects similar to failure to perform under a contract and would not the individual still have that remedy?

Mr. ECKHARDT. Well, now, let me see. In your statement here you say:

Because the Federal Trade Commission is empowered under section 10 to detail the duties of the maker of a full warranty, we urge that this committee and the Congress as it has done in the past with Federal Hazardous Substances Act

and the Flammable Fabrics Act, express the intent and desire of Congress to preempt State activity in this area.

That is in the area of warranty, as I understand it.

To do otherwise in this area of consumer mobility and national and regional product distribution would lead to chaos and would cause a vast array of problems for warrantors and guarantors. Congress preempted only State disclosure laws.

And then you discuss that point.

So, logically, if you eliminate the availability of an individual suit under this act and then you permit this act to preempt the field of warranty, you simply give the injured person his sole remedy through a Federal commission. Is that what you—

Mr. GOLDBERG. I would not want to deprive an individual consumer of an individual remedy.

Mr. ECKHARDT. I see. What you would do, then, is change 11(e) to provide, "Any person damaged by the failure of a supplier to comply with any obligations assumed under an express or implied warranty of service contract subject to this act may bring suit in an appropriate district court of the United States," and just like you have got, "subject to the requirements of section 1331 or in any State or District of Columbia court of competent jurisdiction except that he may not in the latter case bring a class action."

Is that what you want?

Mr. GOLDBERG. I think so.

Mr. ECKHARDT. Well, now, suppose you do that and a great number of persons buy a mixmaster, let us say—I do not mean to use a trade name, I am using it as a generic term here—which has faulty bearings in the motor, and these bearings wear out. It could be proved that they wear out because they are made out of solder instead of steel or made out of a light substance. So everybody's stirring machine breaks down after about a month of use because of the single common defect.

The appliance costs, let us say, \$40. So everybody who is so injured has to sue separately. Is that the case?

Mr. GOLDBERG. Well, as I understand the case you are talking about, and as I understand S. 3074, there would not be a breach of the warranty unless the maker of the mixmaster, with the lowercase "m", failed to either repair or replace within a reasonable time without charge.

Mr. ECKHARDT. Yes. Let us assume the maker simply denies that there is any fault in this product, and you are in the position where, in order to get your recovery, you are going to have to prove that there was a basic flaw. He says, Well, you put too much ice in there and it stalled the motor and that is what made the thing break down, or you did something else wrong, you put too heavy a load on it or used the wrong current or let it spin free without any substance in it.

So, you have got to come in and prove that that particular product was faulty, that is, faulty in design and in manufacture.

So, to get your 40 bucks back, you go and get you an engineer and you follow discovery proceedings. You take a deposition against experts of the company. You get permission to examine the machinery that made the mixmaster and you also employ counsel. You employ expert witnesses to testify for you. And then you recover your 40 bucks, having spent about \$4,000 to accomplish this objective.

Now, that would be a rather unhappy situation for the purchasers of faulty mixmasters; would it not?

Mr. GOLDBERG. Well, I would answer that in two ways. One, I would hope that if the problem were as widespread as you suggested that the Federal Trade Commission might move in and take action.

Second, I think that 11(d) provides that if successful, you could recover your costs and attorney's fees.

Mr. ECKHARDT. But under your suggestion, you cannot even bring your case as a class action, so you could not use this section. Well, I guess you could if you brought it as an individual case, but let me see. What does it say? What section are you referring to?

Mr. GOLDBERG. 11(d).

Mr. MOSS. 11(d), page 14, line 3.

Mr. GOLDBERG. "If any person guaranteed or protected by a service contract shall finally prevail in a suit for breach of an express or implied warranty."

Mr. ECKHARDT. Well, I suppose that would be one avenue, but, of course, you would recover that to pay you back. Let us say you were a person earning, say, \$15,000 a year and it was necessary for you to bring a suit that would require you to put up about \$4,000 to finance it. That would cut out a lot of purchasers of mixmasters; would it not? I mean, you would not be able to raise that amount of money in the first place until you got your recovery from the court and perhaps you would not win. Then you would have sunk their \$4,000 to no avail.

Mr. GOLDBERG. Well, it just seems to me that the same argument logically follows on a class action. You have to put up certain costs to pay your expert witnesses, to file court papers, to hire an engineer, if that is necessary.

Mr. ECKHARDT. Well, but the only thing is that your class action will finance the case. The amount of recovery would not be for \$40 but, we will say, 100 times \$40. Or maybe a thousand. So, the amount involved in the case would justify the bringing of the suit.

I would very much hate to take a suit as a lawyer with \$40 at the end of the road and the possibility of recovering attorney's fees under this bill, having to sue separately for hundreds of persons in order to get their recovery singly. It would seem to me that if that is going to be the channel of recovery, and a lengthy suit, each suit to recover the \$40 and the costs which may be \$4,000, is to be thrown on the court, it seems to me that is a terribly heavy load for the courts to bear. Do you not agree? Do you think it is efficient to bring the kind of suit I am describing for the recovery of a \$40 damage?

Mr. GOLDBERG. I think, as I said, that the breach of a warranty is an individual problem and if this bill provides that the successful consumer who prevails in an individual action for breach of warranty is entitled to recover his costs and attorney's fees, and if the attorney recovers his fee, then it should make no difference to the attorney whether it is an individual action or a class action.

If the attorney is reluctant to bring an individual action because he will not make a big fee, because he will not get his percentage of the contingent fee in a class action situation, I think that is a rather sorry indictment of the attorney involved.

Mr. ECKHARDT. Well, I have had some experience in going to court and asking the court to set a fee for my services and it would be awfully

difficult for me to go to a judge and say, look, Judge, I got my client's 40 bucks back. I tried this case for about a year and I think I probably put roughly—for a year's work on the case—\$30,000 worth of legal efforts into it, and I think you ought to give me a reasonable fee of \$30,000 for that \$40 recovery I got for Joe Bloke.

If I had the audacity to say that, I do not think I would want to practice in that judge's court again. I mean, it would be perfectly silly for me to come into court and ask for a fee for the kind of services that would be necessary to recover against a manufacturer in a case like, for instance, this case that I read about in the paper today about "GM Seeks End of Probe of Truck Wheels".

If I had to bring the action for a single truck and then come in and ask the court to pay me a high fee for services that involved repairing a truck wheel that ran up to, say, a couple of hundred bucks, it just would not seem to me to be logical to limit these suits in such a way that they had to be tried one at a time. And I cannot see how you can urge that.

Mr. GOLDBERG. Well, I think that we just differ on that point, Mr. Eckhardt.

Mr. ECKHARDT. You feel a strong religious adherence to this idea of individual suits and that is the reason you oppose class actions.

Mr. GOLDBERG. I believe it is an individual problem, yes, sir.

Mr. ECKHARDT. Thank you, sir.

Mr. MOSS. I think the matter has been covered fairly fully.

That will be all, then. Thank you.

The next witness is Mr. George P. Lamb, general counsel, Association of Home Appliance Manufacturers.

Mr. Lamb, I want to express the Chair's appreciation of your courtesy in permitting Mr. Goldberg to precede you as a witness.

#### STATEMENT OF GEORGE P. LAMB, GENERAL COUNSEL, ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

Mr. LAMB. Thank you, Mr. Chairman.

It will take me a minute to get my papers organized here.

Mr. Chairman, members of the panel, I am very pleased to be here this morning to testify on S. 3074, H.R. 18056, and H.R. 10690.

Before I proceed, I would like to identify myself just a little bit further. In addition to being general counsel of the Association of Home Appliance Manufacturers, I think it would be well for the committee to know that I have handled legal problems in the appliance industry since as far back as 1937, and in addition to that, I have practiced actively before the Federal Trade Commission for about 36 years and I have been intimately acquainted with the Commission's operations and also with matters of this sort.

This morning I feel that, first of all, you ought to know a little bit about the Association of Home Appliance Manufacturers. It was organized in 1966, largely to deal with the many problems in the consumer protection area. It is made up of the Consumer Productions Section of the National Electrical Manufacturers Association, which was withdrawn from that association, the old association called AHLMA, which was the washer and dryer association. In this new association they put together a great many, a very substantial number

of the products in both the major appliance field and in the portable field. In the majors, air conditioners, dehumidifiers, dish washers, disposers, home laundry equipment, humidifiers, ranges, and refrigerators. And in the portable, just a few—blenders, broilers, can openers, coffeemakers, and so forth.

We represent about \$7 billion worth of the products that are being talked about in the consumer protection area.

Mr. Moss. I will not bother at this moment to pursue the question of can openers.

Mr. LAMB. I would like, Mr. Chairman, to have my statement placed in the record.

Mr. Moss. Indeed. Without objection, your statement will be placed in the record in its entirety and you may summarize.

Mr. LAMB. And I would also like to have placed in the record three exhibits.

Mr. Moss. Do you have extra copies of those?

Mr. LAMB. I will hand them over. One which covers AHAM recommended guidelines on content of warranties, a list of the companies that belong to the association, which includes Admiral, Air-Temp, General Electric, and so forth, and an exhibit B, which is a pamphlet that describes MACAP, which has been referred to by previous witnesses.

I would like to have those marked as exhibits and placed in the record.

Mr. Moss. Let me just check them.

Mr. LAMB. I will endeavor to separate out some of the more important points that we would like to cover as far as these pieces of legislation are concerned. But before doing that—

Mr. Moss. Is there objection to the inclusion of the three items submitted for the record? The Chair hearing none, the statement and exhibits are received for the record at this point.

(Mr. Lamb's prepared statement and exhibits referred to follow:)

STATEMENT OF GEORGE P. LAMB, GENERAL COUNSEL, ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

I am George P. Lamb, General Counsel of the Association of Home Appliance Manufacturers (AHAM). The association's members manufacture such major home appliances as refrigerators, home laundry equipment, air conditioners, humidifiers, dehumidifiers, and automatic dishwashers; and such portable appliances as toasters, coffeemakers, hair dryers, irons, waffle irons, and so on. A list of the members and of the products with which the association is concerned is attached to this statement as Exhibit A.

I am happy to have the opportunity of appearing before the Subcommittee on Commerce and Finance to discuss S. 3074, H.R. 10690, and H.R. 18056, which deal with the important subject of warranties and guarantees. The home appliance industry's interest in the subject is very real, but I fear the "consumer problem" with respect to appliance warranties has been exaggerated. Were there a significant degree of dissatisfaction with warranty terms or performance under the warranties it would be reflected in sales of the industry's products. Yet there are approximately one billion major and portable appliances in use in the nation's homes today; and more than 25 million major appliances and 75 million portable appliances are sold annually. We believe these products add immeasurably to the comfort and well being of the American people. We would regret to see any legislation enacted that could, by imposing unnecessary burdens, diminish the service the appliance industry is providing the American public, or increase unnecessarily the cost of our products.

We hear that complaints on failure to perform under appliance warranties crowd into government agency files; that complaints about appliance and auto-

mobile warranties constitute "a majority" of the "4,000 letters" received each month by the office of the Special Assistant to the President For Consumer Affairs; that complaints about appliance warranties are the "second most numerous" kind of complaint received by that office. Our own statistics are not in accord with these claims.

During the past two and one half years the association has been acting as a "clearinghouse" for complaints from consumers about any aspect of the performance and use of appliances. Each complaint is sent to the manufacturer of the product that is the subject of the complaint. If the manufacturer is not able to resolve the complaint satisfactorily, the association's staff attempts to assist.

This service is now under the surveillance of a Major Appliance Consumer Action Panel, sponsored by the Association of Home Appliance Manufacturers, the Gas Appliance Manufacturers Association, and the American Retail Federation. The panel is composed of eight persons who work professionally in consumer-interest fields. The availability of AHAM's "consumer complaint" service has been publicized by newspaper columnists, in magazines, and on radio. It is described in a brochure on the Action Panel, which has recently received wide distribution. A copy of the brochure is attached as Exhibit B.

During the two and one half years the service I have just described has been available, a total of 1,571 complaints about major appliances have been received. Warranties have been the subject of 125 of these complaints. The office of the Special Assistant to the President For Consumer Affairs has sent 94 of the 1,571 complaints; the Department of Commerce has sent 8; and the Federal Trade Commission has sent 10. Some 87 complaints about portable appliances, not all related to warranties, have been received this year; and 88 were received last year.

The appliance industry, indeed few industries, can claim that its products or services are without flaw, or that its customers are completely satisfied. Even one complaint should be a cause of concern for a supplier of goods and services and for an industry. With 253 million major appliances and 693 million portables in use in American homes, however, the data I have just given do not indicate a need for legislation that would unnecessarily deprive the public of access to appliances, or increase their cost.

Before I turn to the provisions of the warranty bills being considered, let me emphasize that AHAM and its members stand foursquare behind clarity and honesty in warranties and in advertising, labeling, and point-of-sale materials that describe the warranties. They stand foursquare behind prompt and satisfactory performance of the obligations assumed by a warrantor. Whether the extent of deception with respect to warranties and their descriptive materials and the failure or inability of warrantors to perform require new federal legislation they leave to Congress to decide. They believe most members of their industry already comply with reasonable disclosure requirements, and that they strive to see that the obligations they assume under their warranties are promptly fulfilled. They are, however, very strongly opposed to legislation that would go beyond a proven need, would interfere unnecessarily with normal marketing processes, and would add unduly to the cost of supplying products for the American public—a cost the public would inevitably bear.

With this background in mind, I will discuss in some detail the provisions of S. 3074, since that bill has already been enacted by the Senate. Then I shall refer to portions of H.R. 10690 and H.R. 18056 that have not been covered by my comments on the Senate bill.

We have no objection to the disclosure requirements in (1) through (7) of Section 3(a) of S. 3074, and comparable provisions in the House bills. They would require disclosure of the identity of the warrantor, an identification of the person to whom the warranty runs, the parts and defects covered, and so on. These requirements conform generally to Recommended Guidelines on the Content of Warranties, approved by the association's Board of Directors on January 31, 1969, attached as Exhibit C. We are opposed to the disclosure requirements in (8) through (14) of Section 3(a), S. 3074. Some would unnecessarily tend to destroy consumer confidence in the warrantor, and in American industry generally. Others would be impossible to state. All would clutter a written warranty. None is necessary to "provide minimum disclosure standards for written warranties and guaranties of consumer products against defect or malfunction," the stated purpose of the bill.

Subsection (8) would require a statement of the availability of informal dispute settlement procedures. We are, as I have told you, proud of our informal dispute settlement procedures, but requiring that its availability be made known in every manufacturer's warranty would tend to perpetuate a given procedure.

Such a requirement could also discourage rather than encourage the establishment of such procedures by other industries.

Subsections (9) and (10), which would require the disclosure of legal remedies for breach of a warranty would be difficult to fulfill, and not really be helpful to a consumer. Most consumers know that some legal remedy is available for breach of a warranty; and no warranty tag could go beyond this to tell each purchaser where a court in which he may sue is located, how a complaint should be filed, et cetera. Parenthetically, if a duty of disclosure of legal remedies is to be imposed on warrantors of consumer products, it should also be imposed on others who may be guilty of breach of contract or a breach of duty to customers, patients, patrons, or clients.

It would also be difficult for a warrantor to state with certainty the period of time within which warranty obligations would be performed, as would be required by subsections (11) and (12). The time within which a product may be repaired or replaced under the terms of a warranty depend upon many variables: whether the purchaser lives in an urban area or in a remote rural area; the availability of servicemen; the nature of the defect or malfunction requiring service; whether a plant making parts is struck; whether rail or truck deliveries are being made on time; even on the weather.

The requirement of subsection (13), that "characteristics or properties" not covered by a warranty be listed, is repetitious of subsection (6), which we have endorsed. Hence (13) is not needed.

The intent of subsection (14), that warranties be clearly stated and in terms that are not deceptive, is laudable; but it is not necessary since it repeats the prefatory statement in Section 3(a). Read with Section 3(b), subsection (14) could give the Federal Trade Commission authority to prescribe the words to be used in warranties.

Section 3(b) would give the Commission authority to promulgate rules prescribing "the manner and form in which information with respect to any written warranty" should be stated. It is not clear what is meant by "manner and form." If the intent is to allow the Commission to prescribe layout, size of type, color, et cetera, of warranties or written statements concerning them, the Commission's task would indeed be a formidable one, and the time available for the performance of its other duties would be impaired.

The Commission can better serve industry and the consumer by attacking specific instances of deception in connection with warranties, than by undertaking the Herculean task of prescribing "manner and form" of disclosure for warranties for the thousands of products imported into the United States or manufactured and sold by American industry. The Commission's task would be made even greater by the authorization to the Commission to prescribe the "manner and form" for "advertising, labeling, point-of-sale material, or other" written representations of warranties.

The Commission now has authority to institute adjudicative proceedings under Section 5 of the FTC Act, when there is deception in a warranty or in advertising, labeling, et cetera. The Commission should be given resources with which to exercise this authority to the extent that is necessary to curb deception. It should not be burdened with the impossible responsibility of becoming in effect the layout editor for warranties given by American industry.

Sections 4(a)(1) and (2), 5(d)(1), and 6 of S. 3074 would require that warranties be labeled as "full" or "partial." A "full" warranty would be one under which the warrantor undertakes to repair or replace a defective product, within a reasonable time, without charge. Anything less would be a "partial" warranty. AHAM is in accord with the intent of these sections, which is that the title or heading of a warranty not be misleading "as to the nature and extent of the warranty coverage actually provided." (See paragraph E of Exhibit C.) "Full" and "partial" are not, however, terms used by industry. They probably would not be readily understood by the consumer. The terms most frequently used to distinguish warranties are "Parts and Service" (a "full" warranty) and "Parts Only" (a "partial" warranty). We believe the continued use of the usual industry terms should be permitted.

The duty to be placed by Section 5(a) on a warrantor who gives a full warranty—the duty to repair or replace a defective product, within a reasonable time, and without charge, is a duty any warrantor who gives a "parts and service" warranty should assume. The section becomes very troublesome, however, when it is joined with Section 10 of S. 3074. The latter would authorize the Federal Trade Commission "to define in detail the duties set forth in subsection (a) of section 5 . . . and their applicability to warrantors of different categories

of consumer products . . ." Repair and replace are fairly well defined by S. 3074 (Section 2(5) and (6)), and "without charge" has a well understood meaning. Consequently, the only part of the duty imposed by Section 5(a) that would require any definition is "within a reasonable time."

Just as it would be impossible for a warrantor to state with assurance the time within which he would meet his obligations under a warranty (as he would be required to do under Section 3(a)(11)), so it would be impossible for the Federal Trade Commission to prescribe "a reasonable time" within which warranty obligations should be met, even for one category of product. Attempting to prescribe such periods of time for many categories of product would again be a Herculean task for the Commission, and one that could have little practical effect in assisting the consumer.

A responsible warrantor, whether he is a manufacturer or a retailer, attempts to provide warranty service "within a reasonable time," if only for selfish reasons. He wants "repeat" customers. If he is unable to provide that service, he is thwarted not by intent, but by the availability of competent servicemen, and by other factors mentioned in the discussion of Section 3(a)(11). The Federal Trade Commission's definition of "reasonable time" will have little effect in determining the actual time within which service can be provided in a given instance.

In connection with definitions, I want to insert a comment on the definition of "repair." The term is defined by Section 2(5) to include replacement "at the option of the warrantor." Replacement is defined by Section 2(6) to include a refund of the price paid by the purchaser, less reasonable depreciation "if the person guaranteed is willing to accept such refund . . ." There is some doubt as to whether or not the "at the option of the warrantor" in Section 2(5) is implicitly included in Section 2(6); or whether, if the warrantor exercises his option to replace a product, the purchaser then has the option of obtaining a refund of the purchase price instead of a replacement.

This doubt should be removed, and any legislation on this point should make it clear that the option to refund the purchase price should be the warrantor's. Since the price paid by a purchaser includes the dealer's and the distributor's mark-up, in refunding the price paid by the purchaser, a manufacturer-warrantor would be giving the purchaser more than he (the manufacturer) received from the dealer or distributor. If a manufacturer-warrantor is to assume this obligation, the option should be his, not that of the purchaser.

Returning to the analysis of Section 5, a proviso in subsection (d)(2) would make it mandatory that a warrantor "cause the disclosure of the duration of the warranty \* \* \* to the purchaser prior to the time of purchase." This proviso is intended to assure that the purchaser knows the duration before he takes a package home and opens the carton in which the product was sold. Again the intent is admirable, the implementation does not recognize realities.

It would be difficult enough for a retailer-warrantor to be sure that sales personnel on the floor always tell prospective purchasers the duration of a warranty. It would be impossible for a manufacturer-warrantor to be sure that the information is given to prospective purchasers. If the problem with respect to disclosure of the duration of warranties is serious enough to require federal legislation, a manufacturer-warrantor should be required only to include the information in any point-of-sale materials he provides. The duty of actual disclosure should be placed on the person who meets the purchaser face-to-face, or on his immediate employer.

Section 8 would permit a warrantor to designate representatives to perform warranty obligations provided the representative is "equitably" compensated. It is not clear what is meant or intended by the words "equitably compensated." The method of compensation differs among appliance manufacturers. Some compensate dealers who perform the manufacturer's warranty obligation by the payment of money for each service call. In so doing they have built the cost into the wholesale price. Other manufacturers rely on their dealers to perform warranty service, and therefore do not include the cost of service in the wholesale price. The theory of the latter manufacturers is that a dealer who pays for warranty service from his mark-up will be more conscientious with installation and service, and that consumers will be better satisfied because unnecessary service calls are avoided. If Section 8 is to become law, we recommend that the option of manufacturers as above described be preserved by striking from Section 8: "\* \* \* , that such warrantor equitably compensate such designated representative, by \* \* \* "

Opposition has already been expressed to vesting broad authority to establish rules to govern the giving of warranties, as Section 10 would do, especially when a violation of a rule would be a violation of the FTC Act.

We suggest that the following language be substituted for the pre-emption provision in Section 13(b): "It is hereby declared that it is the express intent of Congress to supersede any and all laws of the states or political subdivisions thereof insofar as they may now or hereafter establish any requirements or provisions with respect to warranties (guarantees) relating to consumer products, which are in any way inconsistent with the requirements and prohibitions of this Act."

Section 15 prescribes an effective date of six months after enactment of the legislation, though the legislation would "not apply to consumer products in the stream of commerce prior to" the effective date. We recommend that the exemption provided by Section 15(a) cover "consumer products held in inventory by a dealer, distributor, or manufacturer on the effective date."

Most appliances are placed in shipping cartons when they leave the assembly line. They are held in inventory for varying periods of time, depending upon the demand for them. To require that those not actually moving "in the stream of commerce" as of a given date be uncrated, new warranties inserted, and the products placed in new cartons would be unnecessarily wasteful.

The preceding comments adequately cover provisions of H.R. 18056, with one or two exceptions. Section 7 of the Staggers-Springer bill, H.R. 18056, would permit the Federal Trade Commission to seek a temporary restraining order or preliminary injunction to enjoin a threatened violation of the bill itself or of Section 5 of the FTC Act. The order or injunction would be dissolved if the Commission had not filed a complaint to institute adjudicative proceedings within 60 days after the order was issued. We have in the past endorsed bills that would give the Commission similar authority. We do not retreat from that endorsement now.

H.R. 18056 would also prohibit the disclaimer of implied warranties of fitness for use and merchantability except in "language which in common understanding" would bring a purchaser's attention to the exclusion. We think this provision is consistent with the bill's stated purpose: achieving complete disclosure of warranty terms and eliminating deception.

Parts of H.R. 10690 are, however, cause for concern. The bill would apply only to manufacturers, not to retailers or importers. It would impose an implied warranty, of a year's duration, that any goods shipped (not necessarily sold) in interstate commerce conform to requirements set forth in Section 3. One of these would be a requirement that the goods "meet all other similar standards and requirements established by regulation of the [Federal Trade] Commission . . ." This provision—

The authority Section 7(b)(3) would give to the Commission to set the duration of warranties,

The authority Section 9(a) would vest in the Commission to prescribe the location and quantity of service facilities a manufacturer would be required to maintain,

The authority Section 9(h) would give the Commission to require each manufacturer to "establish a reserve fund" to meet its warranty obligations should it go out of business,

The authority Section 10 would give the Commission "to promulgate regulations concerning the content and coverage of warranties . . ." and

The authority Section 11(a) would give the Commission to prescribe record-keeping requirements.

would indeed make the five Presidentially-appointed Commissioners commissars of American manufacturing.

This broad delegation of authority H.R. 10690 would make to the Federal Trade Commission, the mandatory warranty obligations it would impose, the onerous labeling and record-keeping requirements it would establish (Sections 7 and 11), and other provisions of the bill require extended analysis if the bill is to be given serious consideration.

The Association of Home Appliance Manufacturers shares with the Subcommittee on Commerce and Finance a deeply held conviction that warranties should be clearly stated and advertised, and that obligations undertaken by a warrantor should be fulfilled as promptly as possible. AHAM's members do not oppose legislation that is designed to eliminate fraud and deception in the making of warranties and in fulfilling their obligations, and applies equally to anyone who gives a warranty: manufacturers, assemblers, retailers, and importers. They oppose legislation that would go beyond this and would interfere with freedom of contract, inject the Federal Trade Commission into marketing decisions, and impose unrealistic demands and obligations on suppliers of goods and services.

(The exhibits referred to follow:)

## EXHIBIT A

*AHAM Major Members.*—Admiral, Airtemp, Amana, Arvin, Blackstone, Carrier, Corning, Design & Manufacturing, Ebco, Fedders, Norge, Friedrich, Frigidaire, General Electric and Hotpoint, In-Sink-Erator, KitchenAid-Hobart, Litton (Atherton Division), Magic Chef, Maytag, McGraw-Edison, Albion, Speed Queen, One Minute, Philco-Ford, Tappan, Vernco, Westinghouse, Whirlpool, White Consolidated, Franklin, Gibson, and Kelvinator.

*Products.*—Air conditioners, dehumidifiers, dishwashers, disposers, home laundry, humidifiers, ranges, and refrigerators.

*AHAM Portable Members.*—Corning Glass Works, Cosco Appliances, Essex International, General Electric, General Time, Seth Thomas, Westclox, Hoover, KitchenAid-Hobart, Lux Time, McGraw-Edison, Bersted, Laurinberg, Toastmaster, Merit, Richmond Cedar, Salton, SCM Corporation, Proctor-Silex, Shetland Floorcare, Schick, Scovill Manufacturing, Dominion, Hamilton Beach, Son-Chief Electrics, Sunbeam, John Oster, Swing-A-Way, Udico, Waring, Welby, West Bend, and Westinghouse.

*Products.*—Blenders, broilers, can openers, coffeemakers, cornpoppers, portable food mixers, stand food mixers, fry pans, hair dryers, dry electric irons, steam and spray electric irons, electric knives, toasters, toothbrushes, waffle irons, and others.

### What is MACAP?

MACAP—the Major Appliance Consumer Action Panel—is a group of independent consumer experts voicing consumer views at the highest levels of the major appliance industry.

### What does MACAP do?

MACAP receives comments and complaints from appliance owners, studies industry practices and advises industry of ways to improve its service to consumers. It also reports to consumers and recommends ways to get the best performance from their appliances.

### Handling individual complaints

Individual complaints are forwarded by MACAP to a senior executive of the manufacturer of the product involved. Action taken to resolve the complaint is reviewed—and if the action taken does not satisfy the consumer, MACAP makes specific recommendations to the manufacturer.

### Information Needed When Reporting Appliance Problems

You can facilitate efficient handling of your appliance problem by including the information below in your communications with your service agency, the manufacturer, or MACAP.

- ★ Your name, address and telephone number.
- ★ Kind of appliance, brand, model and serial number.
- ★ Dealer's name and address.
- ★ Service agent's name and address if different from dealer.
- ★ Location of appliance.
- ★ Clear description of problem and service required.

MACAP suggests you make a record of the pertinent information above at the time-of-purchase and keep the record with your instruction manual for easy reference.

**MACAP**

Major Appliance Consumer Action Panel  
20 North Wacker Drive  
Chicago, Illinois 60606  
(312) 236-3165

# MACAP Representing Consumers at the Highest Level of Industry

## MACAP'S RECOMMENDATIONS TO CONSUMERS

**Panel members**

Dr. Virginia F. Cutler, MACAP Chairman; Family Economics and Home Management Department Chairman, Brigham Young University

Dr. Elsie Fetterman, Family Economics Specialist, University of Connecticut

Mrs. Virginia T. Habeeb, Editor/Author

Miss Dianne McKeig, Executive Director, Michigan Consumers Council

Dr. Aurelia Toyer Miller, Director, Bureau of Research and Program Resources, National Board, YWCA

Dr. Beatrice Paolucci, Professor, Department of Family Ecology, College of Human Ecology, Michigan State University

Mr. Frederick E. Waddell, Director of Education and Research, Credit Counseling Center of Michigan

Dr. Mary Purchase, Associate Professor, Department of Design and Environmental Analysis, Cornell University

**Major Appliances Represented**

Dehumidifiers Home Laundry Equipment  
Dishwashers Ranges  
Disposers Refrigerators and Freezers  
Gas Incinerators Room Air Conditioners  
Humidifiers Water Heaters

**Sponsoring Organizations**

Association of Home Appliance Manufacturers  
Gas Appliance Manufacturers Association  
American Retail Federation

★  
★  
★  
★

**To get satisfaction from your appliance . . .**

Study your instruction manual. Find out how to receive all the benefits the appliance was designed to give you.

Know your service agency and the provisions of your appliance warranty.

Check with installer, electrician or plumber, the household wiring and gas lines for adequacy and safety.

Budget for appliance repairs and replacement.

Keep warranties, use and care manuals, sales receipts and record of service history of all appliances for ready reference.

★  
★

Check plugs, fuses, pilots and controls — review instruction manual. More than one third of service calls are unnecessary when this is done.

When you require service, call your dealer, the service agency he recommends, or an organization "franchised" by the manufacturer to repair your brand.

★

If a problem develops which you cannot resolve locally write or call the manufacturer giving all details.

★

If you are not satisfied with the action taken by the manufacturer, write or call MACAP collect, 20 North Wacker Drive, Chicago, Illinois 60606, Telephone 312-236-3165.

MACAP will study your problem and make a recommendation for solution.

## EXHIBIT C

## AHAM RECOMMENDED GUIDELINES ON CONTENT OF WARRANTIES

## A. A guarantee or warranty should clearly set forth:

- (1) The name and address of the warrantor or other identification adequate to locate the warrantor.
- (2) To whom the warranty is extended.
- (3) The product or parts thereof covered.
- (4) The specific time for which the product or parts thereof are covered.
- (5) In case of a claim under the warranty: (a) Exactly what the warrantor will do and at whose expense, and (b) exactly what the owner must do and at whose expense.

B. All language should be clear, concise, and simple.

C. All exceptions or exclusions which are considered as conditions to maintaining the warranty in force should be set forth with the same degree of prominence.

D. The printing should be clear, well-spaced and easy to read rapidly. "Small print" items should be avoided.

E. Care should be taken to make sure that a heading or title used in connection with a warranty does not mislead the customer as to the nature and extent of the warranty coverage actually provided.

Approved by AHAM's Board of Directors January 31, 1969.

Mr. LAMB. Mr. Chairman, yesterday you made a point when Mr. Day was testifying, that business ought to listen to the consumer more.

That statement indeed has previously had some impact on the appliance industry.

Now, throughout the history of this industry the manufacturers have endeavored to manufacture products which will keep your food in proper condition, will wash your clothes, will cook your food, and to do all those things that lessen the burden in your household. In doing this, the great majority of the manufacturers have quality controls and they engage in design engineering which is endeavoring to produce the finest and the highest quality products that can be made and sold at the cheapest possible price to the consumer.

Now, for many years we thought that the consumer was the person that kept us in check. When we manufactured a product that was no good, it soon went off the market because we could not sell it. The consumer voted whether or not our products were any good.

However, in recent years, I would say in the last 10 years, this situation has changed greatly. You not only have to have the consumer vote on buying your product so that you know that she wants this can opener or that washing machine or that dryer because it functions and performs the way she wants it to, but you also have to answer a lot of questions and also have to live up to your warranties and you have to provide repair service, and you have to satisfy the desire of the consumer to teach her how to use the product and tell her what to do if it goes wrong, and provide service as rapidly as possible.

In addition, we have to continuously answer questions of the legislatures, of the Senate and the House, about what we are doing.

Now, 3 years ago when it appeared that there was a possibility for guaranty/warranty legislation, after all my years of experience in this field of trade regulation, I felt that there was no need for any guaranty/warranty legislation, that section 5 of the Federal Trade Commission was sufficient. It prohibited unfair methods of competition or unfair or deceptive acts or practices.

As a matter of fact, I went to see the then Chairman of the Federal Trade Commission, Mr. Dixon, and I said to him, I do not think we need any guaranty/warranty legislation. What you need are additional appropriations to properly enforce the Federal Trade Commission Act.

He said, well, I think you are right about that. The real problem in the guaranty/warranty area is those guaranties and warranties which are deceptive, which have fine print in them and which are not carried out when the consumer asks that they be carried out.

I begged him to come to the Congress and say this to the Congress. Instead he persuaded President Johnson to set up a task force to go into the question of what was going on in the major appliance industry. Not the portables, just the majors. And that task force was set up and was made up of the Secretary of Commerce, Secretary of Labor, the Chairman of the Federal Trade Commission, and the Consumer Adviser to the President. That happened to be Betty Furness at that time.

That committee was set up and the Association of Home Appliance Manufacturers cooperated 100 percent with those folks that did the actual work in getting into the warranty and guarantee question, and it was to determine whether or not any legislation was needed.

Now, many questions were addressed to us in the home appliance industry by that task force which we attempted to answer, and I have with me this morning our report which we gave to the task force in answer to all the questions that they propounded to us.

Now, I feel that this would be too burdensome to place in the record, but I am going to give this report to the committee, for the chairman to peruse or any member of the committee in the course of your study of this legislation, to see what our answers were to some of these very technical questions.

What are you doing about educating servicemen? What is the situation as far as servicemen are concerned? That is covered in this report. What kind of guidelines have you had as far as false advertising is concerned? What have you done to implement it? And so on.

Now, that type of question with regard to warranties and guaranties in the major appliance industry is answered pretty much by this report.

Now, realizing—may I hand this to the chairman?

Mr. Moss. Yes, indeed. I will be very interested in it because your statement is, of course, very persuasive. You are talking about a business with which I was intimately connected about the time you say you started. I was a dealer. And so I have had not only a background but an interest.

What do you do to a buyer who bought a product from a top quality manufacturer, as I did, a six burner gas range. I had every reason to expect that it would be an outstanding appliance after it was installed—it had two burners for which you could preset the temperature. You are familiar, I suppose, with that type.

Mr. LAMB. Yes.

Mr. Moss. And they did not work. The logical thing was to call the dealer. The dealer came over and checked it and he had to call someone else.

When I sold the house in Alexandria after having had the range for 8 years, I still had four working burners and two that did not work.

I offered to buy from the manufacturer two nonautomatic burners and was told that there were none manufactured that could fit the range. The range was put in a kitchen that was remodeled and it would have been very difficult to remove it from the kitchen without doing some major remodeling.

I was never able to get the automatic burners to work. I was never able to get any kind of an adjustment of price. I was never able to secure nonautomatic burners. So, what we had planned as being adequate for our needs was never adequate for our needs. I do not know whether all buyers of those ranges had the same experience. The burner was a component manufactured by a reputable manufacturer of control-type burners.

Mr. LAMB. Well, let me tell you—

Mr. MOSS. But they did not work.

Mr. LAMB. Let me tell you what you could do now. There never has been any procedure, was not any procedure for a long time, to deal with this type of complaint.

Mr. MOSS. You mean this?

(Referring to exhibit B.)

Mr. LAMB. Under present circumstances, there are guidelines in this book which spell out what the manufacturer will do, what he should do, in these warranties; suggest what he should do. It discusses how you can find out what to do about the very problem that you mentioned.

Now if you did not get any satisfaction from your retailer—

Mr. MOSS. I did not get any from the manufacturer.

Mr. LAMB. And you wrote to the manufacturer and did not get any satisfaction—

Mr. MOSS. I phoned him.

Mr. LAMB. What would happen would be this. You could now either address your communication to the Gas Appliance Manufacturers Association. This particular illustration that you give would go to them first, in the first instance.

Mr. MOSS. I might say it was one of those certified ranges with the seal of approval of the Gas Appliance Manufacturers Association on it.

Mr. LAMB. I think in a little while you are going to have an opportunity to get right from the horses mouth, because Mrs. Dunkel of the Gas Appliance Manufacturers Association is here and Mr. Doyle is here and I am sure they will be very happy to specifically answer your question in the gas field. I have no jurisdiction over gas ranges.

Mr. MOSS. I merely mention it as illustrative of the problem.

Mr. LAMB. It is a very good illustration.

Mr. MOSS. I might say I was never treated with anything but courtesy and understanding.

Mr. LAMB. But you did not get any satisfaction. What you would do now, your complaint would go to the Gas Appliance Manufacturers Association or you could go directly to MACAP and MACAP is being widely publicized through TV programs and radio programs and in the trade press, and so forth.

It is pretty difficult to get all the American public to understand that there is such a situation but it does exist and it is going out all the time and we are getting complaints.

Now, the complaint in the first instance probably at the present time, 1970, would be resolved by the manufacturer much more rapidly because of things that have happened in recent years, but if you did not get satisfaction under present procedures, MACAP with these folks on it—and you look at your list there and you will see that the chairman of that is Virginia Cutler, who was the head of the Home Economics Department of Brigham Young University. You will also see some very nationally known consumer writers for magazines and for newspapers.

That group sits as an auditing group. They call themselves the “court of last resort.” I think that is a kind of a dignified—I thought that was the Supreme Court of the United States, but notwithstanding, they are the last group that will take a look at this. And they have been looking at these complaints now for about 6 months and they expect to make a report some time in November as to their progress.

Statistically, at this point there are about three to 400 complaints in process, but there were only 19 that were unresolved during the period that they are going through.

Mr. Moss. When was MACAP organized?

Mr. LAMB. I believe it was organized last April. It was organized last April and it—

Mr. Moss. April 1970.

Mr. LAMB. Yes; 1970. And it has had a number of meetings and, as a matter of fact, it has been extremely active, a very interesting group of people that have been assembled here to take a look at this problem.

Now, statistically, there were—in the last year and a half, AHAM instituted a complaints procedure of its own before MACAP was actually brought into existence. MACAP was brought in to try to make sure that these procedures were functioning properly in the public interest.

Now, the last report I have here, there were 1,571 complaints about major appliances which were received by AHAM. Warranties have been the subject of 125 of these complaints. The bills before us here, there were only 125 complaints. The Office of the Special Assistant to the President for Consumer Affairs has sent 94 out of the 1,571 complaints. The Department of Commerce has sent eight and the Federal Trade Commission has sent 10.

Some 87 complaints about portable appliances not at all related to warranties have been received this year and 88 were received last year.

Now, in many of the speeches that have been made by sincere folks in the consumer protection movement, you have heard there have been 10,000, 15,000 complaints, 3,800 a month, 4,000 a month, and so on. Three years ago when Betty Furness was in the office that is now held by Virginia Knauer, I went to her and I said we want to resolve these complaints. We would like to have them. Give them to us. Let us process them.

Well, I had an awful time getting them and I almost got to the point where I was going to file a suit under the Information Act. In fact, I drew the complaint and I indicated that if I did not get them voluntarily, maybe I would have to go into the district court to get them because we felt they were being exaggerated and we wanted to

resolve them because it is no good for the appliance industry not to resolve these problems. It is bad public relations. It hurts our sales. And we want to get them resolved as rapidly as possible.

Finally, just about the time when Miss Furness was leaving her office, they decided to give them to us and we started to process them, and believe it or not, there were not anywhere near as many as there were in the speeches. Far less. And there were not as many in this warranty area.

Now, after we broke that logjam—we cannot do it at the FTC because the complainant there as you know, under the law they have to keep them confidential. They cannot give you copies of the complaints. They do not, and they have always had a policy along those lines not to.

Now, some of them seem to be funneled through the Department of Commerce that have gotten into both places, both the FTC and Department of Commerce. That is the reason for us getting the eight that we did from the Department of Commerce. But this procedure is set up to try to resolve these points.

Now, when Congressman Eckhardt was speaking on the point of how do you get redress for the injury, we feel that, first of all, the industry ought to correct this thing right now. If you have got a justified complaint, the policy of the Association of Home Appliance Manufacturers and the other major appliance associations is to get justification within a reasonable period of time to process this to the complete satisfaction of the consumer.

Mind you, there are many illustrations of this that makes it almost impossible. We had a complaint, for example, in the city of Chicago about not servicing a major appliance in the south part of Chicago. What turned out to be the answer? We made a careful investigation of that and found out that the serviceman would not go into the area where this particular product was because he had been in there several times and he had had the tires taken off his service truck, had all his tools stolen, and he refused to go into that area. I think you are going to have to have a Brink's truck to take some of these servicemen in, or have to have a police car.

Mr. ECKHARDT. We cannot get them to come into Georgetown—

Mr. LAMB. Maybe it—

Mr. ECKHARDT (continuing). Promptly.

Mr. LAMB. It is not the same reason, though, I do not think; is it, Congressman? Is it because the hippies are living over there now?

Mr. MOSS. I would only observe without meaning to be at all facetious that they did get in there to deliver and install the appliance.

Mr. LAMB. The appliance got there; that is correct, Congressman, but it is interesting when you get down to the bottom of it what some of the reasons are for this, and obviously, we as an industry are trying to solve those problems. We are not brushing them under the rug at all. We are trying to find ways and means to solve it.

Now, in addition, in addressing myself to Congressman Eckhardt's question of how you get redress, I personally feel that these complaints are complaints that are individual in nature most of the time. True enough, there may be instances where the class situation does enter and where it may be a correct method of seeking redress. But most of them, the very large number of them, of this 1,500 I am talking

about here, they are individual complaints that do not resemble each other at all. They would not be the subject really, proper subject, for a class action suit.

We think that the small claims courts in this country ought to be beefed up. In examining this question there are two things that ought to be done. No. 1, if the Congress of the United States wants to solve this for the consumer, the small consumer, wants to have him get justice, we ought to set up some kind of a grant-in-aid system with our small claims courts so that people can get rapid justice.

As a matter of fact, I suggested before the Senate Commerce Committee, and I was on a TV program yesterday afternoon on this subject, I suggested that we ought to have mobile courts. We ought to have buses that have a small claims judge on board and a Government attorney and perhaps one of these attorneys that we are spending the \$58 million of the taxpayers' money for in OEO that Justice—Chief Justice Burger spoke about the other day when he was talking about class actions. We ought to have a bus go into these areas where the people are complaining the most, and believe it or not, the FTC study of 1968 points out where the real cancerous problem is and it is among the poor. It is among the unsophisticated. It is among the ignorant. And that is where the real problem is.

The FTC found that out and I assume gave that study to your committee. If not, I will be very happy to furnish a copy.

Mr. Moss. I recognize that many complaints are because the buyer of an appliance fails to read the instructions.

Mr. LAMB. No doubt about it.

Mr. Moss. And, therefore, they are not operating according to the user's manual. I recognize that. And I recognize that they also fail to read warranties or guarantees. But I also recognize that frequently they are sold merchandise which is represented to be current, new in the factory carton, and you take a serial number and check it and you will find they are 3 or 4 years old. There is no warranty on them unless that retailer assumes the obligation which has expired under the manufacturers agreement. And those are being sold in our major metropolitan areas day in and day out by some of the heaviest users of advertising.

Mr. LAMB. If those out-of-age appliances are being misrepresented they should be prosecuted, of course, under the——

Mr. Moss. You can take almost any newspaper and you know precisely what I am speaking of.

Mr. LAMB. Yes. If the advertising is fraudulent and deceptive they ought to be prosecuted by the FTC and if the buyer did not get what he bargained for, he should do something about it. He should take it back to the dealer or he should sue the dealer if it is a defective device.

(The following letter was received for the record:)

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS,  
Washington, D.C. October 5, 1970,

HON. JOHN E. MOSS,  
Rayburn House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN MOSS: During my testimony before the Subcommittee on Commerce and Finance on October 1, you commented on merchandise sold in cartons that may be three or four years old, and therefore has no warranty from the manufacturer. (See pages 162-163 of the transcript of the hearings.)

I should have made it clear in my testimony that I believe appliance manufacturers' warranties invariably run from "the date of original purchase" or from "the date of original installation."

I will appreciate your inserting this letter in the printed record of the hearings, preferably as a footnote at the end of line 11, page 163 of the transcript.

Very truly yours,

GEORGE P. LAMB,  
*General Counsel.*

Mr. LAMB. Now, we have a proposal here of guidelines for success with major appliance called Your New Appliance. And it says—one of the interesting things that we find in the service and repair area, a woman calls, the first thing we say now is, did you plug it in, and you would be surprised how many times a brand new appliance is not plugged in and they call up to say that it does not work.

In this simple list here we recommend, read your warranty and understand it. Save your warranty. Register it with your appliance dealer. Do you know who to call if repair under the warranty is needed? This is the type of thing we are now—

Mr. Moss. On the question of registering it with your appliance dealer, in some instances is not that registering a granting away of some of your rights, a limitation of your rights? You accept, then, a warranty which is drastically limited as to what it covers and as to the type of protection it accords you.

Mr. LAMB. I think you are protecting yourself more by registering it.

Mr. Moss. I have read a few of them that I refused to register because in my judgment, they limited my rights rather than protecting me.

Mr. LAMB. I think you can have a legitimate difference of opinion on that.

Mr. Moss. I think that is quite possible.

Mr. LAMB. I think, Congressman, the first day of your hearings you mentioned the fact, in answer to a question from Congressman Keith, that your office had received some 1,000 complaints with regard to appliances.

Mr. Moss. With regard to consumer products.

Mr. LAMB. Consumer products.

Mr. Moss. And I believe I stated that the majority of them dealt with automobiles.

Mr. LAMB. Yes. Would you mind having your staff prepare the ones that are in the appliance industry and send them to AHAM?

Mr. Moss. I think most of them I forwarded on to the manufacturers.

Mr. LAMB. Oh, did you? Have they been resolved, do you know?

Mr. Moss. In the case of appliances, I would have to run a check. In the case of automobiles, I can say without any equivocation, they have not been resolved.

Mr. LAMB. Well, as far as—

Mr. Moss. And I continue to get correspondence on both from factories, dealers, and users.

Mr. LAMB. Well, from the standpoint of the appliances that are in our field, the list that I have placed in the record, I respectfully ask you if you will get your staff to furnish those to us because if they have not been resolved I would like to see that they get resolved.

Mr. MOSS. Of course, I will have to go back and check with my people as to whether or not they have been resolved.

Mr. LAMB. We would be very happy if you would do that.

Mr. MOSS. I would be very happy to cooperate with you in taking a poll in my district as to the attitude of the people on the appliances they have bought.

Mr. LAMB. If it is bad, we have got to know about it.

Mr. MOSS. I say I would be very happy to cooperate with you on such a polling of my district—

Mr. LAMB. I am sure our companies would be glad to cooperate.

Mr. MOSS (continuing). To determine the nature of the complaints.

Mr. LAMB. What the problems are is what we want to know because we have to find solutions to them.

Mr. MOSS. I think that would be a more timely and more meaningful response than just the measure of those who have become so aggravated they wrote me.

Mr. LAMB. We do not think you can legislate morals. We do not think you can solve—

Mr. MOSS. I do not think you can legislate morals either.

Mr. LAMB. I do not think you can solve all these problems by legislation. We have examined our conscience and we are trying to do a better job.

Mr. MOSS. For that I congratulate you.

Mr. LAMB. We are placing the best people in trying to solve this and we are going to stay at this problem until we bring it into a comfortable focus. It has not been comfortable for us for the last 4 or 5 years.

Mr. MOSS. I think you should know, and I believe I speak the consensus of this committee in saying that we recognize the overwhelming majority of merchants in this Nation desire to have good relations with their customers. I know, having myself been a merchant, that sometimes the merchant has as many problems with his supplier as his customers have and as much difficulty in getting adjustments as the customer has.

Mr. LAMB. To be a little more specific, I have four or five points that I would like to make.

Obviously, we favor full disclosure of the essential information in warranty. We are opposed as you will see in this text, the fine print. We furnished all our warranties to FTC about 3 years ago, we furnished them to the Knauer office and we have resubmitted the ones that have been reexamined and you would be very much interested in seeing—

Mr. MOSS. As the author of the Information Act, I join you in favoring full disclosure.

Mr. LAMB. You would be interested in seeing the changes that have taken place in the last 3 years. The manufacturers have taken a good square look at their warranties and they have made some very substantial changes.

Now, we want better point-of-sale material. We want better labeling. We want truth in advertising. We want this whole thing to be cleaned up. We support the first seven parts of section 3(a) of S. 3074 without any question.

Now, on page 5 of my statement, I refer to sections 9 and 10, which would require the disclosure of legal remedies for breach of a

warranty, that it would be difficult to fulfill and not really helpful to the consumer. Most consumers know that some legal remedy is available for breach of warranty and no warranty tag could go beyond this to tell each purchaser where a court in which he may sue is located, how a complaint should be filed, et cetera.

Parenthetically, if a duty of disclosure of legal remedies is to be imposed on warrantors of consumer products, it should also be imposed on others who may be guilty of breach of contract or breach of duty to customers, patients, patrons, and clients.

We do not think it is necessary to clutter up the warranty with a recitation of the specific legal remedies because it varies from one State to the other, varies from one set of facts to the other.

Now, thirdly, we oppose the broad authority given to the Federal Trade Commission in rulemaking in 3(b).

The Senate Commerce Committee in its report which was filed May 18, 1970, Report No. 91-876, on page 18, explains section 3(b) and what it is supposed to do. It says:

Subsection (b) of section 3 establishes the procedures under which the Federal Trade Commission shall promulgate rules relating to warranty disclosure. Such regulation shall be promulgated in accordance with section 553 of title V of the United States Code. Upon a public record, after opportunity for an agency hearing, structured so as to proceed as expeditiously as practical, the language describing the type of procedure which the Commission is to follow in promulgating rules under S. 3074.

Now when the Chairman of the Federal Trade Commission testified here, he wanted simple rulemaking. We want it simple, too, but we want to make sure that if they are going to make a rule under this, under S. 3074 or any one of these bills that calls for rulemaking, we want a notice of this. We do not want this done in a back room. We want it filed in the Federal Register. We want to have an opportunity to comment on it. We want to have an opportunity to appeal it if it is unreasonable.

We do not want any lengthy cross-examination. We want it handled as expeditiously as possible.

Now, this particular explanation here that is on page 18, section 3, is a compromise and it would, we believe, assist us in these particular areas where the Trade Commission is asking for rulemaking. We are concerned that under this rulemaking procedure they might write a sample warranty. For example, Jules Steinberg of the National Appliance, Radio and TV Dealers Association has been asking for a one-sentence warranty for a long long time and it is just possible he might get in and persuade the Trade Commission there should be a one-sentence warranty. We think the language of these warranties should be made up by each manufacturer to suit their own situation. And so far as the reasonable time for performance is concerned, this varies all over the country. If you are in a metropolitan area it is one thing. If you are in a rural area it is another thing. So that the time element involved here is one that we do not think that if the Federal Trade Commission prescribed to, you had to fix a gas stove in Alexandria, Va., within 4 days and the part of that—it was an old gas range that had been around for, say, 15 years, it is possible they may have difficulty getting the part.

As a matter of fact, right here I would like to give you an illustration of a service contract and it happens to be a personal one. Nine years

ago, Mrs. Lamb had an operation that she had difficulty recovering from. It was going to take a couple of months, and she was bedridden and I brought her one of those new RCA television sets with the remote control, so from her bed she could click it and it would change the channels and push up the sound, and so forth.

When I purchased that they explained to me that this is a delicate thing, that this gadget can wear out and it works on a sound basis and you have got a warranty on it, I believe it was for 90 days, but this is a delicate thing and it is something new that we have got.

I took out a service contract on it. I think it cost me \$75 a year. I have had a service contract on that set for 9 years and I think RCA would like to put that set in a museum. I think they would like to buy it back from me because the last time that they fixed it, it had to have a new tube and it had to have the third one of these clickers and they had to make one. The gadget that sent the sound waves, they did not have them any more and they had to make one for that set because they had contracted with me under the service contract to do it and they did it and that set is still functioning as it was 9 years ago. I would say just as good as the way it did 9 years ago.

This obviously presents a problem to the manufacturer when you take out one of those, that it perpetuates the appliance forever.

Now, we agree with Mr. Day, we also agree with Mr. Goldberg and Mr. Nichol, on this question of full or partial. Our feeling is that—these are words that have just been recently invented. They are not known in the marketplace. We think that the warranty ought to spell out whether it is for parts or parts and service because that is an understandable one and it can be written in in that form.

I do not think the customers are going to understand this "full" and "partial" and I doubt seriously whether the dealers throughout the United States will understand what "full" and "partial" mean because it has not been part of the nomenclature used in the trade.

Several of our companies are worried about the question of replacement, repair, or refund, and on page 9 of my testimony I deal with that question.

Specifically, the method of distribution from one company to another varies. Some of the companies have a markup that is large enough so that the dealer is required to perform on the—he has to for the service and the repair. One of our major companies in the country does it that way. Others reimburse their dealers. Others reimburse their wholesalers.

We also feel that this repair, replace, or refund should be at the option of the warrantor rather than at the option of the consumer because after all, if this is directed toward the manufacturer, there has been a markup and the price at which—if the consumer has the option of taking a refund or stating that he wants a refund rather than a replacement, it could be done on the basis without depreciation or forcing the manufacturer to pay a much larger sum of money.

Now, I have been very much interested in the question that Congressman Harvey has asked the last two witnesses with respect to the cost of this. Now, I do not think we should kid ourselves. If you are going to require a lot of things to be done that are not now being done, somebody is going to have to pay for it and who in the end pays for it? We are in a capitalistic competitive system and obviously, as long as

we are in a profit motive, profit system, obviously, the companies that make these products have to make a profit or they are stuck. Or they are not going to go along with it. And the consequences are when costs increase, they have to recoup those costs.

Mr. Moss. Mr. Lamb, I am very interested in that. What are you going to be required to do in the way of warranty now that you are not already in most instances representing to your customers will be done?

Mr. LAMB. Well, what about this expensive recordkeeping?

Mr. MOSS. Do you not keep records?

Mr. LAMB. That is going to cost money.

Mr. MOSS. What is the purpose of my filling out an IBM card? Do you not keep those records now?

Mr. LAMB. Yes, we do.

Mr. MOSS. What additional records are you going to be required to keep?

Mr. LAMB. I think, for example, under——

Mr. MOSS. Let us get down to actually what it is you are going to be required to keep.

Mr. LAMB. I think under H.R. 10690 we probably would have to do a lot more than we do at the present time.

Mr. MOSS. You know, for 22 years I have been legislating and for 22 years I have been hearing the same lament and if even part of the allegations were true, as to the impact our actions would have upon American business, I do not think anyone could buy anything.

Mr. LAMB. You do not like that argument of increased cost.

Mr. MOSS. I do not like that argument at all because it does not come in here well supported. If you want to bring in figures——

Mr. LAMB. All right.

Mr. MOSS. If you want to bring in estimates and want to give me a definitive list of additional recordkeeping that would be required, then I think you would tend to support what you say.

Mr. LAMB. Well, let me see if I can——

Mr. MOSS. But the broad generalizations, at least to this member, are not convincing.

Mr. LAMB. Let me see if I can do that for you.

Mr. MOSS. And I do not like to have unnecessary recordkeeping imposed on anybody by law. I do not like the records that I have to keep for my tax purposes. I am irritated by them.

Mr. LAMB. You and I both.

Mr. MOSS. But this statement as to additional cost—if present warranties, as they are generally conveyed to the public, are being met, then what is proposed here is merely a formalizing of this arrangement.

Mr. LAMB. I think it is probably a risk to ever make as general a statement as I made.

Mr. MOSS. I think it is a great risk.

Mr. LAMB. But I will try to buttress it further.

Mr. MOSS. I wish you would because it would be helpful to us and I think in the process of preparing the data, it would be very helpful to you.

(The following letter was received for the record:)

LEE, TOOMEY & KENT,  
Washington, D.C., October 8, 1970.

Hon. JOHN E. MOSS,  
Rayburn House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN MOSS: When I testified before the Subcommittee on Commerce and Finance on October 1 on S. 3074 and related warranty bills, you asked that I provide you with concrete information on how the bills might add to a manufacturer's costs, and thus possibly increase the retail prices of appliances. Several people active in the industry have been through S. 3074 to give me their views on how the bill might increase their costs. While they have not had time to make estimates in dollars and cents, they have pointed out the following ways in which their costs, or those of other manufacturers, might be increased should S. 3074 in its present form become law.

1. Section 2(6) defines "replacement" to include a refund of the "actual purchase price of the consumer product less reasonable depreciation based upon actual use" apparently at the purchaser's option. Making such a refund could result in a manufacturer's paying a purchaser more than the manufacturer received from a distributor or retailer in the first sale of the product. The anticipated cost of making these refunds would have to be included in the manufacturer's price at first sale. This point was mentioned in my printed statement, page 9.

2. The authority given the Federal Trade Commission to issue regulations under Section 3(b) to prescribe the "manner and form" in which warranties, advertising and labeling materials, and possibly the words in which warranties would be expressed could result in a warrantor's having to change his printed warranties and promotional materials frequently. This would add to a warrantor's costs.

3. Having to tell purchasers that they can sue for breach of warranty, under 3(a) (9) and (10), could encourage litigation which a warrantor would have to defend, at a price. Purchasers have the present right to sue for a breach of warranty as they should; but there is no need to stimulate suits when voluntary means of settling disputes are more effective.

4. Being compelled to repair or replace a defective product within a time stated in a warranty and prescribed by the Federal Trade Commission, under Sections 3(a) (11), 5(a), and 10, or face the risk of a law suit, could require that a warrantor have available at all times service facilities to meet emergency situations, though the facilities might be idle a large part of the time. Again there would be additional costs. As I said in my statement, I am convinced that appliance manufacturers attempt to provide warranty service "within a reasonable time," but to be required at all times to meet a deadline imposed by the Federal Trade Commission would be costly and an unnecessary burden.

5. As several witnesses told the Subcommittee, requiring that a "parts only" warranty be labeled a "partial" warranty, under Section 4(a) (2), would discredit the "parts only" warranty, and could lead to its abandonment. A warrantor would either go to a "full" warranty or he would give no warranty. If he took the latter course, he could suffer loss of sales, and the public would lose any benefits there may be in a "parts only" warranty. If he went to a "full" warranty, he would have to assume the expense of providing service. This could add to the costs of the warranty, and could be especially detrimental to a small manufacturer.

6. As I said in my prepared statement, to require that warranties conform to the statute and to the Federal Trade Commission's rules unless they are actually "in the stream of commerce" on the date the statute or rule becomes effective could cause unnecessary expense. A warrantor would have to uncrate products held in his or his distributors' inventory to insert new warranties. (See pages 11-12 of my printed statement.)

I repeat the appliance industry's dedication to complete disclosure of the terms of a warranty, to the elimination of fraud and deception in the wording or use of warranties, and to as prompt performance of warranty obligations as is possible. I hope that any federal legislation on warranties will not impose unnecessary and unrealistic demands on warrantors. I repeat the request that you send the Association of Home Appliance Manufacturers any complaints you receive regarding its members' products.

Sincerely yours,

GEORGE P. LAMB,  
General Counsel,  
Association of Home Appliance Manufacturers.

Mr. LAMB. Well, in my capacity as general counsel for AHAM, I am also testifying on product safety, for example, and some of the requirements of product safety.

Mr. MOSS. We also have that before this committee.

Mr. LAMB. Well, you will probably be hearing me again some time because—

Mr. MOSS. I hope so.

Mr. LAMB (continuing). In this area of product safety, some of the suggestions that are being made that we are going to have to do, it is not only recordkeeping but if we have to prepare prototypes and submit them and have them approved and all this, this is going to be a long, drawn out procedure.

Mr. MOSS. We have not taken you down that road yet.

Mr. LAMB. Well, we are going to hopefully be ready for you when the time comes. In other words, this performance problem does have—we have some difficulties with it, and the question of the option of the warrantor has some difficulties with it, and we think perhaps that should be changed.

Now, the designation of the representative—I speak of that on page 9—representative who should be the one that repairs the product under the warranty, this varies from company to company, as I indicated earlier.

Now, there is one important provision on—

Mr. MOSS. Would it be reasonable, do you think, to require somewhere along the line, either through your industry association or otherwise, that in franchising the dealer, that there be some reasonable showing that he is either prepared in his own shop or through appropriate contracts to service the product he sells?

Mr. LAMB. This is a very, very difficult situation.

Mr. MOSS. It is a difficult situation. Very difficult for the user.

Mr. LAMB. It is leaning in that direction, there is no doubt about it. It is leaning in that direction. I think in the franchise area, it appears to me that a lot of the dealers that exist today that do not have service and do not have any kind of repair facilities—now, I bought a television set here from one of the discount houses and that is one of the questions I asked of them. What happens if this thing goes wrong? I bought it from you in its original carton.

Mr. MOSS. Did you check the date and the age?

Mr. LAMB. Yes; I did, and they gave me the name of a repairman and I have had him out a couple of times and he is very good and the set has functioned and I have been quite satisfied with it. But we recognize this problem of being specific with regard to what the responsibilities of the dealer as well as the wholesaler and the manufacturer and as you know, there is legislation pending in the Congress on the franchising over in the Senate and I think there is similar legislation pending here in the House.

Now, there is one situation which has been mentioned by other witnesses that I would like to call your attention to and it is on page 11 of my testimony, the second full paragraph. We suggest that the following language be submitted for the preemption provision in section 13(b). It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter establish any requirements or provisions with respect to warranties (guarantees)

relating to consumer products, which are in any way inconsistent with the requirements and prohibitions of this act.

Now, as you know, many of the States have gotten legislation also in this general area and when these companies are doing business on a national basis and there is one situation in New York and a different one in Illinois, and so on, and we are also subject to Federal legislation, it does bring a great deal of confusion and we think that a preemption provision would be very much in order.

Now, in summary, the disclosure provisions, we feel that 1 through 7 in section 3(a) of S. 3074, that we are pretty much doing right now. We are complying with it. So, we feel that the Federal Trade Commission as far as rulemaking is concerned, that you as a committee ought to look at this real carefully as to how much authority you are going to give them.

The more and more I examine this rulemaking situation, the more complicated it becomes. Over in the Senate, for example, I was taking a position on another piece of legislation where there was rulemaking and originally when we were talking about this back in 1961 when the Trade Commission finally decided they had under their law the right to make rules, what they were doing was trying to bring everybody in under a rule at the same time so everybody would start off at the same point.

For example, if there was an unfair method of competition or an unfair or deceptive act or practice that was rampant in a particular industry, rather than proceed on a case by case basis they wanted to bring them all in at the same time, promulgate a rule, and then start the race over again and if somebody violated that rule, then an individual proceeding would be brought against that particular individual.

Mr. HARVEY. Could I ask a question right there, Mr. Chairman?

Mr. MOSS. Certainly.

Mr. HARVEY. In your judgment, does the FTC have the authority at the present time, under the present statute, to enact rules to cover deceptive warranties?

Mr. LAMB. I never thought they did.

Mr. HARVEY. You were here when Mr. Kirkpatrick testified the other day, were you not?

Mr. LAMB. Yes; I was.

Mr. HARVEY. And you heard him say he thought they did.

Mr. LAMB. Yes.

Mr. HARVEY. Would you disagree?

Mr. LAMB. I think it ought to be tested in court. Mr. Dixon said we have assumed this, so why doesn't somebody contest it in court and see whether we do have it.

You know, they did not recognize that they had it until 1961. After that act was enacted in 1914, it took them a long time.

Mr. MOSS. I believe they recognized it after the old Committee on Legislative Oversight had the Federal Trade Commission Chairman—

Mr. LAMB. In 1961 it was Chairman Dixon.

Mr. MOSS. Just before Dixon came. We completed the hearings in 1960 and filed our report under the chairmanship of Congressman Harris and I think the committee asserted that the Commission did have jurisdiction in that particular area and that it should exercise it and it was after that that they started to exercise it.

Mr. LAMB. Well, I do not want—rulemaking is really just in a minor sense in this legislation. I do not want to get into it in depth. Some day, perhaps, I will if there is another bill that is pending here that comes up for discussion. But I feel in the rulemaking area we have got to have the protection of the Administrative Procedures Act and we have got to have the protection of the right to appeal and without that, I think you as Congress, if you delegate that authority to the Federal Trade Commission the way it is being bandied about now, I think it would be held unconstitutional under the *Schechter* case. It would be an illegal delegation of legislative authority to an administrative agency.

Mr. HARVEY. Mr. Chairman, could I ask the witness also to comment at this time on H.R. 18056 as introduced by Mr. Staggers and Mr. Springer?

Mr. LAMB. I comment on that, Mr. Harvey, to a limited extent in the paper which I filed.

Mr. HARVEY. I will read that over carefully. I have not had a chance to read it yet, of course.

Mr. LAMB. Yes. I do cover it—

Mr. HARVEY. Page 12.

Mr. LAMB. Yes. That is right. Page 12. The two paragraphs, paragraphs 1 and 2. I think it is—to be more accurate, start at the last paragraph on page 11. That is where I comment on it.

Mr. HARVEY. Well, I have not had a chance to read it. I am just trying to find out generally what your position is. Am I correct in saying that you generally oppose any legislation in this field?

Mr. LAMB. Well, you know, personally—I am talking personally now—as a lawyer, as one who has practiced before the FTC for a long time, I think when you beef up the FTC and they start performing what they are supposed to do under section 5—it looks like it is being beefed up. All the criticism that came from the Bar Association and came from Mr. Nader, the whole thing is being very drastically reorganized and I think if you are going to get effective action in this area, you have got to give them enough money and you have got to keep the heat on them so that they have a real active, vigorous staff.

Now, I think these 11 field offices that they have set up around the country, if you staff them properly and you give them enough money to operate, I think you are going to see a big change. I think Congress ought to take another look at them about a year from now and see how well they are getting along with these 11 offices because that is what the Trade Commission was designed to do. When Congress enacted that law in 1914 that is what it was enacted to do.

Many of the things said in these reports did have some semblance of truth in them. After all, I have tried a lot of cases down there and I knew their personnel well. There are many very dedicated men down there. There are others that were not.

Mr. HARVEY. I wonder if we could just summarize your position here for a minute so that we will understand it. Since we have not had a chance to read your statement, we want to know whether you are opposed to any legislation or whether you favor one of these bills in particular.

Mr. LAMB. I would say, Congressman Harvey, if you use S. 3074 as your basic document, and you eliminate from it those points that I have made here this morning, that you will come close to having a piece of legislation that we could live with.

I do not like to take the position on behalf of the Association of Home Appliance Manufacturers that no legislation is needed because many of the people in the industry feel that it might add to the clarity in this situation. We are not trying to be obstructionists, in other words. What we are trying to do is to help you——

Mr. HARVEY. I think we understand.

Mr. LAMB (continuing). With legislation that we can live with——

Mr. HARVEY. Let me ask this other question.

Mr. LAMB (continuing). To solve the problem.

Mr. HARVEY. If we stay away from the scope and the length of the warranty, do we run the risk nevertheless of adding to the cost of the item?

Mr. LAMB. I think you do and I think if you put this rulemaking in and have the Federal Trade Commission making rules with regard to the reasonable time and manner and form and all this, I do not think that they should have the right to write our warranties for us. I think they have a right to proceed against us if we have warranties that are deceptive.

Mr. HARVEY. My point is: What if we provided in the legislation that they shall not have the right to regulate with regard to the scope or the length of the warranty?

Mr. LAMB. I think under those circumstances that it would be a pretty definite feeling that we could comply with this. I mean, we would be in favor of it. I do not think we could oppose it under those circumstances. That is what I meant by my comments and my five points.

I think if you look at those and if they have the validity that I think they have, that perhaps you can come up with something that would be satisfactory as far as our people are concerned.

I expressed my own personal view back earlier about the lack of need for the legislation if the Federal Trade Commission Act were properly enforced. And I think that it looks to me at this point like there is a movement in that direction. But they are going to have to have money to get staff and they are going to have to have enthusiastic staff in order to do it and I believe those 11 field offices will do a great deal.

Now, I think if you go back and look at that 1968 report of the Commission here in Washington on their examination of what the problems were in the marketplace, it answers an awful lot and that is rapid enforcement would be a deterrent in my opinion, to those that are the fringe group in the marketplace that are cheating. Something ought to be done about it.

Mr. HARVEY. Let me just say you have been a very helpful witness to the committee. I apologize to you for having to leave but since the House decided not to take up any business today, I had long ago made other plans.

Mr. LAMB. Thank you very much, Congressman Harvey.

Mr. MOSS. Were you through?

Mr. LAMB. I am finished.

Mr. MOSS. Mr. Eckhardt.

Mr. ECKHARDT. I understand that your organization is one of those organizations that sponsors MACAP along with the Gas Appliance Manufacturers Association, American Retail Federation.

Mr. LAMB. That is correct, Congressman.

Mr. ECKHARDT. But, of course, MACAP operates, as I understand, independently and is a nonprofit organization.

Mr. LAMB. That is correct, sir.

Mr. ECKHARDT. Do you know what MACAP's position is with respect to whether or not there should be legislation in this field?

Mr. LAMB. I do not know. I know they are very much interested in it. They can speak for—they will have to speak for themselves. They are independent of us.

Mr. ECKHARDT. May I ask, are they to appear here, Mr. Chairman?

I understand they are not presently scheduled to appear, but if they are in effect a consumer-oriented group which is sponsored by your groups, I would assume that your position would not be far from theirs with respect to their recommendations as to whether legislation should be passed.

Mr. LAMB. I do not really know and I sincerely hope that they will not be very far away. It will be—if they are called, it will be interesting to see what they have to say because as counsel for AHAM, I am certainly not going to allow any of the staff, if I have anything to do with it, to influence what they are going to say. They are going to say what they think and we are going to stay completely away from it. As a matter of fact, their testimony could be completely inconsistent with what I have said here this morning.

Mr. ECKHARDT. Would you feel that Federal legislation concerning warranties should establish minimum standards?

Mr. LAMB. No, I do not. I think it can, if—there are some standards, yes. I think some of these, like clarity and who is doing the warranting, and so on, if those are the standards; yes, sir.

Mr. ECKHARDT. Would you think it proper for Federal legislation to require full disclosure of contents, coverage, by the warranty?

Mr. LAMB. Yes, I do.

Mr. ECKHARDT. And, of course, I suppose everyone would agree that the wording should be clear and simple.

Mr. LAMB. Very definitely. We are trying to do that right now. You know, it is an individual company matter. It is not an association matter. As a matter of fact, Mr. Steinberg has urged upon me many times to prepare a suggested uniform warranty for our industry and frankly, I think if I did, it has a possibility of violating section 1 of the Sherman Act and section 5 of the FTC Act as being in restraint of trade.

Mr. ECKHARDT. Perhaps the Federal Trade Commission should establish a general warranty and permit manufacturers to use it if they so desire with some indication that it is that warranty.

Mr. LAMB. They probably could do that under their assumed rulemaking.

Mr. ECKHARDT. Yes. Would you feel that there should be an explicit division of responsibility between guarantors and consumers?

Mr. LAMB. Yes, I do.

Mr. ECKHARDT. Would you feel that there should be statutory prohibition of disclaimer clauses for product merchantability and fitness?

Mr. LAMB. We have had some problems with that. There has been a difference of opinion in our industry but I think basically at this point most of the companies have come around to the position that there should be no disclaimers on because they recognize the Uniform

Code and they also recognize that this is something they cannot do anything about.

Mr. ECKHARDT. And would you feel that there should be conspicuous stipulation of exceptions to the warranty?

Mr. LAMB. Very definitely.

Mr. ECKHARDT. I believe that many of your views are sort of in accord with mine, but I always run into one difficulty. I try to find accord with industry witnesses. I go along with requiring an administrative agency to comply strictly with due process, not just within the limitations of the Constitution but in truth and in fact.

Furthermore, I am inclined to keep an administrative agency in the area of full disclosure and in sweeping areas like not permitting disclaimer, although I think that can be done by a statute probably, as well as any other way. But on the other hand, I have always had the old-fashioned notion that though the courts are slow, cumbersome, and costly, the possibility of a lawsuit is probably the best encouragement for honesty in the marketplace. But I have a great deal of difficulty with some industry witnesses in going along with me on that point, particularly with respect to rule 23. Now, what do you think about that?

Mr. LAMB. Well—

Mr. ECKHARDT. You recognize in the first place that rule 23 is practically written out of this bill by 1331 being included?

Mr. LAMB. Yes, I understand that. Yes, I agree with you on that.

Now, I am quite familiar with rule 23. I defended it in a case in the U.S. district court in Utah in 1963, 3 years before they amended the rule in its present form where it was much more difficult to bring a class action and I was in Judge Ritter's court and it was a case of the *Utah Pie Company v. Pet Milk Company*. Mr. Joseph Alioto, the present mayor of San Francisco, was suing the Pet Milk Co. on behalf of the Utah Pie Co. and all other frozen fruit pie companies—the action was brought on behalf of the Utah Pie and all other frozen fruit pie companies contiguous to the Safeway Stores throughout the United States.

Now, I made a motion to dismiss on several grounds which I will not get into and I won the motion. It was dismissed. And in giving the dismissal, the judge had some comments something like—this has been quite a while back so I will have to more or less paraphrase it. He said, "Mr. Lamb, I decided in your favor because I had a previous class action suit here in this court which was brought on behalf of 13 known and named uranium miners and 350 unnamed uranium miners who mined uranium on the southern slope of the Colorado Plateau." And he said the suit was for \$3,500,000 and the jury brought in a verdict for that amount, \$2,500,000 for the 13 named miners and \$1 million for the unnamed. And he said, "I have got a million dollars over here in the bank and we cannot find any of those unnamed miners."

Now, this was an illustration of what happened in one of those cases. Now, under rule 23—

Mr. ECKHARDT. He could have dismissed that case there for the failure of a sufficiently representative group, could he not?

Mr. LAMB. Yes, but he did not.

Mr. ECKHARDT. Perhaps he should have looked a little more deeply into the uranium mining industry on the southern slope.

Mr. LAMB. Well, he certainly did not want to get himself in another can of worms and that is the reason he dismissed my case.

Mr. ECKHARDT. Well, now, in your case the problem was on the other side of the plaintiff-defendant situation, as I understand it. This was——

Mr. LAMB. I was the defendant.

Mr. ECKHARDT (continuing). An attempt to join a great number of defendants who actually were unknown.

Mr. LAMB. No. A great number of plaintiffs.

Mr. ECKHARDT. I see.

Mr. LAMB. In other words, Utah Pie was a frozen fruit pie company that was selling to Safeway Stores some of their goods, and Pet Milk was selling others under a label, private label, and there were frozen fruit companies around the country that were contiguous to the Safeway Stores that Utah Pie said should be getting some of the private label business of those Safeway Stores.

Mr. ECKHARDT. I see.

Mr. LAMB. And——

Mr. ECKHARDT. I think I get it straight. The point you are making, I think, is a very well taken point and that is that the court has to be very careful in utilizing its authority under rule 23 to determine whether or not this case is best handled as a class suit, whether or not the plaintiffs are a representative class, and, of course, basically whether or not the case arises from a sufficiently similar situation of law and fact as to make it properly a class action.

But within those limitations it seems to me the courts have done a pretty good job and I would suggest that the courts have continually done a better job as they devise their guidelines for multidistrict suits. Would you not agree?

Mr. LAMB. I think they are. I was heartened the other day when Mr. McLaren said to the Senate Commerce Committee that the Judicial Conference is greatly concerned about the increase in the number of these cases, rule 23 cases that are being brought.

Now, I had a tabulation of them which I placed in the record and I unfortunately do not have it with me here today but I would be glad to furnish it to you if you would like to have it.

Mr. ECKHARDT. I would like to have it personally.

Mr. Moss. Without objection, the record will be held open at this point to receive it.

(The following information was received for the record:)

#### CLASS ACTION LITIGATION

##### SMOG CASES

##### *Northern District of Illinois*

*Action.*—*State of New Mexico v. General Motors, AMA, et al.*

*Class.*—All other governmental bodies and all people in New Mexico.

*Claim.*—Injury to the environment and economy of the State by virtue of defendants' violation of Section 1 of the Sherman Act.

*Action.*—*State of New Jersey v. General Motors, AMA, et al.*

*Class.*—All other governmental bodies and all people in New Mexico.

*Claim.*—Same as in the New Mexico case.

*Action.*—*State of Connecticut v. General Motors, AMA, et al.*

*Class.*—All other governmental bodies and all people in Connecticut.

*Claim.*—Same as in the New Mexico case.

*Action.*—*City and County of Denver v. General Motors, AMA, et al.*

*Class.*—All residents of these political subdivisions.

*Claim.*—Same as in the New Mexico case.

*Action.*—*Keane, et al v. General Motors, AMA, et al.*

*Class.*—All residents of the City of Chicago.

*Claim.*—Injury to business, professions and property by virtue of violation of Sherman Act. Seeks damages in the amount of one billion dollars trebled.

*Action.*—*State of Illinois v. General Motors, AMA, et al.*

*Class.*—All people in the State of Illinois and all political subdivisions of the State.

*Claim.*—Same as in the *Keane* case. Seeks mandatory injury directing defendants to install pollution control devices on all cars in the State back to 1953.

#### *Eastern District of Pennsylvania*

*Action.*—*Philadelphia, Baltimore, Pittsburgh and Erie, et al. v. General Motors, AMA, et al.*

*Class.*—All governmental bodies and citizens in the United States.

*Claim.*—Same as in the New Mexico case.

*Action.*—*Morgan v. General Motors, AMA, et al.*

*Class.*—All crop farmers in the United States.

*Claim.*—Injury to crops by virtue of violation of the Sherman Act.

*Action.*—*County of Lackawanna, et al v. General Motors, AMA, et al.*

*Class.*—All governmental bodies and citizens in the United States.

*Claim.*—Same as in the New Mexico case.

#### *Southern District of New York*

*Action.*—*State of New York, et al v. General Motors, AMA, et al.*

*Class.*—All political subdivisions and citizens of the State.

*Claim.*—Same as in the State of New Mexico. Also seeks mandatory injury similar to the one sought by the State of Illinois.

#### *Central District of California*

*Action.*—*Grossman, et al v. General Motors, AMA et al.*

*Class.*—All residents in the United States.

*Claim.*—Same as in the State of New Mexico case.

*Action.*—*Handy, et al v. General Motors, AMA, et al.*

*Class.*—All metropolitan areas of United States, the residents thereof and all purchasers of automobiles using gasoline.

*Claim.*—Same as in the New Mexico case.

*Action.*—*Perlsweig v. General Motors*

*Class.*—All California purchasers of General Motors automobiles within the last four years.

*Claim.*—Anti-pollution devices installed on vehicles do not comply with California law.

#### OTHER CASES

*Action.*—*Kaufman v. The Dreyfus Fund, et al.* (D.C.N.J. 1968)

*Class.*—All externally managed mutual funds.

*Claim.*—Seeks damages against the investment advisors of all such mutual funds for violation of the Securities Exchange Act.

*Action.*—*Ralph Pfau d/b/a Victor Pharmacy v. Charles Pfizer, et al and Cronley v. Charles Pfizer, et al* (D.C.S.D. Ind. 1969).

*Class.*—All consumers, retailers and other purchasers in the State of Indiana who have not filed a claim or otherwise requested inclusion in the New Drug Settlement Proposal or any purported class action.

*Claim.*—Injury for violation of the Sherman Act.

*Action.*—*Mangano v. American Radiator* (D.C.D.C. 1969)

*Class.*—All record owners of new housing units of four families or less built in the United States during the period 1962-1966.

*Claim.*—Damages for overcharges on plumbing fixtures. It is alleged that damages of from \$30.00 to \$60.00 per housing unit were sustained by members of the class.

*Action.*—*Greater Washington Chapter of Americans for Democratic Action, et al v. District of Columbia National Bank, et al.* (D.C.D.C. 1969)

*Class.*—All persons who have been extended personal loans, discounted in advance, by all lending institutions in the District of Columbia.

*Claim.*—To recover damages for alleged violation of the usury laws of the District of Columbia.

*Action.*—*Robert A. Holstein, et al v. Montgomery Ward & Co., Inc.* (Illinois Circuit Court of Cook County, 1968)

*Class.*—All charge account customers who did not request exclusion from Montgomery Ward's credit life and disability insurance coverage on their charge accounts. The class is alleged to exceed six million persons.

*Claim.*—Unfair and deceptive practices.

*Action.*—*Yannacone v. Montrose Chemical Co.* (S.D.N.Y. 1969 Civ. 4504)

*Class.*—All people of the United States, not only of this generation but of those generations yet unborn.

*Claim.*—Injury to the full benefit, use and enjoyment of the environment and natural resources of the United States from the production, distribution and use of DDT.

*Action.*—*Cesar Chavez v. Melvin R. Laird, Secretary of Defense* (D.C.D.C. 1969)

*Class.*—All migrant farm workers of Delano, California.

*Claim.*—To enjoin the Department of Defense from purchasing table grapes in excess of the amount purchased in 1967.

*Action.*—*Siegel v. Chicken Delight, Inc.* (D.C.N.D. California—Civil No. 46271, 1969)

*Class.*—All persons, partnerships and corporations who are now or previously were Chicken Delight franchisees at any time after January 4, 1963.

*Claim.*—To recover damages for violation of the antitrust laws.

*Action.*—*Twyman d/b/a Bill's Union Service Station v. Blue Chip Stamp Co.* (D.C.C.D. California Civil Action 66-1522-F)

*Class.*—12,000 independent service station operators throughout California who distribute blue chip trading stamps.

*Claim.*—Alleged violation of the Sherman and Robinson-Patman Acts.

*Action.*—*Boshes et al. v. General Motors* (D.C.N.D. Ill. E.D. 1968).

*Class.*—All purchasers of General Motors automobiles in the past four years.

*Claim.*—Alleges a conspiracy between the car divisions of General Motors resulting from the fixing of car prices by General Motors Central Office. Plaintiff's counsel states that the charges sought will exceed \$12 Billion.

*Action.*—*Dayton v. General Motors* (Madison Circuit Court, Kentucky 1969).

*Class.*—All purchasers of approximately 695,000 General Motors cars in Kentucky from the year 1958 to July 3, 1969.

*Claim.*—That "price stickers" attached to the cars were fraudulent under the Common Law of Kentucky in that they do not reflect the actual retail prices of the cars and are used wilfully, maliciously, fraudulently and inflate retail prices for General Motors dealers.

*Action.*—*Anthony, et al. v. General Motors, Kelsey Hayes Corp., et al.* (Superior Court, Los Angeles County 1969).

*Class.*—All owners of General Motors three-quarter ton trucks who received a May 28, 1969 letter from General Motors stating that a possible safety hazard could develop if the trucks were overloaded beyond their recommended capacity.

*Claim.*—For damages incident to wheel replacement.

*Action.*—*Bizer v. General Motors et al.* (Superior Court Arizona, County of Maricopa, 1969).

*Class.*—Same as *Anthony* case.

*Claim.*—Same as *Anthony* case.

*Action.*—*Heiserman v. General Motors, et al.* (Superior Court, Los Angeles County, 1969).

*Class.*—Same as *Anthony* case.

*Claim.*—Same as *Anthony* case.

*Action.*—*Rabuse v. General Motors* (Superior Court, Los Angeles County, 1969).

*Class.*—Owners of all vehicles subject to a carbon monoxide recall campaign.

*Claim.*—Damages for loss of use.

*Action.*—*Heiserman and Rabuse v. General Motors* (Superior Court, Los Angeles County, 1969).

*Class.*—Owners of all vehicles that have been subject to a General Motors recall campaign.

*Claim.*—Damages for loss of use.

*Action.*—*Bolton Oldsmobile, Inc. et al. v. General Motors* (D.C.E.D. Pa. 1969).

*Class.*—All Oldsmobile dealers who have been terminated or not renewed and all dealers who were threatened with termination or non-renewal within the last three years.

*Claim.*—Violation of "Dealers Day in Court Act" and antitrust laws and breach of contract and tort.

*Action.*—*Schneider v. Associates Finance Co., et al* (Superior Court, Los Angeles County, 1969).

*Class.*—All borrowers from defendant Finance Company who purchased group creditor life or disability coverage in connection with their loan transactions.

*Claim.*—To recover sums paid by co-defendant insurance company to defendant finance company out of the aggregate premiums collected from members of the class when loss experienced on Master Group Creditor Life and Disability Insurance Policies proved favorable.

*Action.*—*Stevens v. Household Finance Corporation, et al* (Superior Court, Los Angeles County, 1969).

*Class.*—Same as in *Schneider* case.

*Claim.*—Same as in *Schneider* case.

*Action.*—*Ratner v. Chemical Bank New York Trust Company* (S.D.N.Y. 1969).

*Class.*—All persons who have Master Credit purchase accounts with defendant, and whose accounts on the monthly billing date most immediately prior to the institution of this action required the payment of no finance charge applicable to the prior balance, but would require the payment of such a charge, applicable to a balance of \$1.00 or greater owing on said billing date, if not paid in full within twenty-five days thereafter, and before receipt of the next billing statement.

*Claim.*—Violation of the Consumers Credit Protection Act of 1969 (Truth-in-Lending).

*Action.*—*Andrucci, et al v. Gimbel Brothers, Inc.* (D.C.W.D. Pa. 1969)

*Class.*—All revolving credit account customers.

*Claim.*—Violation of the Consumer Credit Protection Act of 1969 (Truth-in-Lending).

We understand that there have been five other truth-in-lending class actions instituted against national companies but we are unaware of the names of the cases.

*Action.*—*Dennis, et al v. Sears Roebuck & Co.* (Supreme Court of Tenn. 1969)

*Class.*—All revolving charge account customers in Tennessee.

*Claim.*—Violation of the Tennessee Usury Laws.

Mr. LAMB. There are cases brought like this, you know. On behalf of those born and unborn. On behalf of all the people of the State of New Mexico. So and so, John Doe, versus the General Motors Corp. on behalf of all of the citizens of the city of Chicago.

Now, there are over 100 cases like this. Now, to me just looking at those cases on their face, it tells me we had better take another look at this, I think, if rule 23 had a requirement that you could not bring the suit unless you had the consent.

Now, you can define consent as oral, written, any way you want, but there had to be a demonstration of consent to bring it on their behalf. Now, I look back in history—

Mr. ECKHARDT. It would write out rule 23, as I understand it.

Mr. LAMB. No; I would not think so. Turn your mind back to the history of English law and you remember some of those old cases we read years ago. My goodness, I have been away from it 35 years and I have not researched this point but I remember the class suit at that time was designed to save the time of the courts. There was a common question of law and a common question of fact and if a farmer down the stream thought he had a better case than eight farmers up the stream, he could say do not put me in that. I am going to bring my own suit. That is how it functioned at that time.

Mr. ECKHARDT. Without getting too deeply into rule 23 and its general desirability, I would like to draw your attention to section 11(e) of this bill which I think has been correctly interpreted as permitting a class action under State law based upon the Federal question involved in this legislation.

Mr. LAMB. Yes.

Mr. ECKHARDT. Now, do you not feel that, given the processes available to the Federal court, particularly under the very careful

work that has been done by the Judicial Panel on Multidistrict Litigation, a class action could be tried better in the Federal judiciary than in the State judiciary under that section?

Mr. LAMB. I do not necessarily.

Mr. ECKHARDT. If the section permitted it?

Mr. LAMB. I do not necessarily, no.

Mr. ECKHARDT. Well, let us take a situation like this. I read in the paper this morning that General Motors has been charged by the Federal Trade Commission with having a faulty wheel on some of its pickup trucks and I recognize—I referred to it before—that this is a question in dispute. I do not mean they did have faulty wheels. They say they did not.

Mr. LAMB. That is right. I read that article.

Mr. ECKHARDT. And some say they did. In a situation like that, if this were the basis of a consumer class action and if it were brought in Federal court, it would be possible to limit it to the single suit in the first place, and in that single suit to affix or to establish General Motors' total responsibility with respect to that particular issue of pickups.

Mr. LAMB. I think that is a classic example of the kind of class suit that—

Mr. ECKHARDT. That should be permitted.

Mr. LAMB. That is correct.

Mr. ECKHARDT. Incidentally, I might point out that General Motors would probably settle it, because they would then be in a position to settle on the claims. Perhaps their operation that year was not faulty from any standpoint of intentional fault, but simply was somewhat experimental, they could carry the cost of the experiment, which they had paid for, into later models.

But let us assume that a suit were brought in California, which has quite liberal class action processes, as I understand it, on the same basis, purporting to represent all persons similarly situated, and another in Illinois, which likewise has a rather liberal class action process.

It would seem to me that it would be almost impossible for General Motors to settle either of those suits without encouraging the other one to develop into a larger and larger and snowballing type of suit or even encouraging suits in some four other States that have rules like rule 23.

Now, I am suggesting that if section 11(e) opens the field for an action by a consumer where, for instance, the implied warranty of suitability for use is purported to be limited by an illegal warranty that restricts use, it would seem to me desirable from the industry standpoint to permit that action in Federal court, particularly with the restrictions that you suggest respecting pre-emption. Incidentally, I want to point out right here on your restriction, it does not fall in the part that I was criticizing because your restriction has to do only, as I understand it, with pre-empting the standard of the warranty—

Mr. LAMB. That is correct.

Mr. ECKHARDT. —rather than a suit under a warranty—

Mr. LAMB. That is correct.

Mr. ECKHARDT. —which is a quite different thing, I think. But I just want to suggest to you in closing here that 11(e) might be better drawn if it simply reversed Snyder versus Harris with respect to the amount in controversy. I do not have any objection to having a

minimum in controversy of \$10,000. As a matter of fact, you might want to jump that up to \$25,000 or even higher. But it seems to me that Snyder versus Harris makes class actions in Federal courts completely closed out in Section 11(e) and I merely suggest to you that it might be better not to close it out.

Mr. LAMB. Mr. Eckhardt, I think the whole subject of class action warrants a great deal of study. I do not think we should jump into legislation at this point. I think there has been enough doubt raised about these mammoth suits that are being brought now in the form that I expressed to you. I think there is enough doubt about whether or not this will solve the consumer's problem where he has got a defective consumer product of some kind.

We want to solve those problems and I do not think class actions do that.

Mr. ECKHARDT. Let me say this. You have got to do one of two things. You have either got to massively enter the field with administrative process under the Federal Trade Commission or you are going to have to recognize an effective process of law, or perhaps perfect the process of law, to deal with it in the courts.

Now, frankly, I would rather follow the second course but it surprises me that many quite conservative representatives of industry seem to prefer the administrative process to the legal one.

Mr. LAMB. I want to say this, Mr. Chairman. I am happy to have been here this morning and it may be if I have some additional thoughts to express as long as your record is open, could I submit them?

Mr. MOSS. You can submit them, certainly, and I think we have agreed that you are going to submit some supportive material for the allegations as to cost. (See p. 148 for cost figures.)

Mr. LAMB. That is right.

Mr. MOSS. Are there any further questions? If not, I want to thank you. I think it has been very productive.

(Mr. Lamb submitted the following letter for the record:)

SPEED QUEEN,  
A DIVISION OF MCGRAW-EDISON CO.,  
Ripon, Wis., October 26, 1970.

Mr. GEORGE LAMB,  
General Counsel, Association of Home Appliance Manufacturers.

DEAR MR. LAMB: This report is a summary of my comments in the Warranty and Guarantee Sub-Committee meeting conducted in Washington on 10-23-70. I am addressing myself to operating and distribution problems and will refrain from any comments on the legal ramifications.

The easiest way for me to make our position clear is to give examples of problem situations. These examples are selected because they are typical, not the unusual which is sometimes done to make a point.

*Example No. 1*

Recently, I had occasion to be in a remote small city in Texas (population 21,000). My trip was prompted as a third attempt to set up Factory Authorized Service for a non-servicing dealer.

We finally found a man to handle this function. Coincidentally, he appeared to be the only one in the market. This was confirmed by local dealers and also he was handling service for three other manufacturers.

The operator was asked what he would expect to be paid on a per-call basis. His response was \$10.00. He volunteered that he was being paid \$10.00 per call by one company, \$6.50 plus 10 cents per mile by another and his regular out-of-warranty rates by another. I asked him what his out-of-warranty rates were and he replied "\$6.50 per call regardless of the length of time". He was then asked

if he didn't think it was inconsistent for him to ask more in-warranty than out-of-warranty. He replied that large companies have more money so why shouldn't they pay for it. It is noteworthy that there were no servicing dealers in this town, and that no manufacturer regardless of size could economically justify factory service (a man working for his company). He also stated he was considering giving up one line which paid \$6.50.

*Example No. 2*

The company received an invoice for \$29.95 for a call made in a small city in Montana. We know from experience that this charge should be about \$15.00. What do you do? Pay the claim, deny the claim, call the dealer or send a man to Montana to try to educate him so as to reduce future problems. Obviously, the least expensive way to handle it, unless the situation is too "wild" is to pay him.

*Example No. 3*

A large self-servicing retailer in any city in the U.S. sends an invoice for \$700.00 to \$800.00 (Some retailers are larger than their factory suppliers). Assume the invoice is not properly substantiated. Some charges are excessive and the dealer has a complete satisfaction policy so in many cases there is nothing wrong with the product. The customer wanted blue not harvest gold. What do you do? You know if you deny the claim the dealer will deduct the amount from his next invoice. If the dealer is large enough you probably end up paying all or most of the bill to protect the marketing position.

Now let us address ourselves to the legislation drawing on the Examples to explain the problems involved. First of all, let me state that each of these study cases present a common characteristic. That is a lack of effective cost control by the supplier. This can be reduced by personal contact and elaborate control systems such as computers. In every instance, the cost will climb catastrophically if the conditions are right for it. The proposed legislation will produce these conditions.

Proposed legislation S 3074, HR 10690 and HR 18056 tend to force the manufacturer to "inboard labor". This is done specifically in the Sec. 4 (a)(1) and (2), 5(d)(1) and of S 3074 which requires warranties to be labeled as "full" or "partial". No company could survive with a "partial" warranty if his competitors had a "full" warranty.

Also Sec. 8 which requires equitable compensation for warranty performed does the same thing.

Perhaps an explanation of "inboarding labor" is in order. This is the trade means the cost of labor is buried in the price of the product and the company pays for the labor either by doing the service himself, establishing an independent Factory Authorized Service or reimburses the self-serving dealer.

If this kind of legislation is enacted, I visualize the following long-range results:

1. It discriminates against small business.

(a) Many companies would establish factory-owned service where it is now being performed by independent dealers or service companies because the costs will rise in paying for service.

(b) It diminishes the dealer function. He would be entitled to less profit and he would be less important as a marketing function. Example: A factory could use institutional advertising and sell his product by mail order or a banana stand operation because the factory picks up the chips anyway. The dealer function as we know it today would gradually change or disappear.

(c) A small manufacturer would be unable to sell in some markets because *he could not afford the controls to protect his costs*. These costs would have to be passed on to the consumer or he would go out of business.

(d) A new company could not even get started because he could not afford the controls. The cost would be too great when the company is small.

2. Cost to the consumer would steadily if not catastrophically rise. This will show up in the cost of new merchandise and the cost of regular out-of-warranty service. As in-warranty rates go up out-of-warranty rates will follow. Even large companies cannot totally control these costs. Refer to Example #2. Suppose the dealers prepared a fictitious invoice but used a proper serial number. An attempt on your part to control this would cost more than paying the bill. Result, costs go up. The situation would be ripe for exactly what has happened in auto insurance or Medicare. Are we prepared to pay this price to eliminate the occasional problem that presently exists?

Recommendations:

1. Any national legislation should include total pre-emption. Otherwise, we end up going down the primrose path anyway. It would just take a little longer.

2. The law should recite that service is a retail function and therefore a dealer responsibility. He has a vested interest and is on the scene where control is easier and less costly. This makes the dealer more important, not less important.

3. If the manufacturer elected to sell to a dealer that is non-servicing or "unable" to render service then the manufacturer would be responsible for setting up Factory Authorized Service or Factory Service. "Unable to render" service would cover the dealer going out of business, relocating, or transient customers. The servicing dealer should be required to render service on a product he sells regardless of whether he sold that particular machine. The manufacturer could work out a method of compensation. This would cover the transient "customers".

The total impact of such legislation would be to assure the customer of service at the least possible cost. It would buttress the dealer function, not tend to destroy it. It would prevent the over zealous salesman from selling to a dealer not capable of providing good service because then his company would become liable.

It would make the manufacturer careful about his dealer selection and training.

It would make it possible for a new company to get started because he could establish a network of good servicing dealers and supplement with service companies to cover additional markets.

It would protect the consumer at the least cost without giving away a vital piece of our heritage, the right of small business to exist and develop into big business.

While there are many in the industry equally or better qualified than I to do so, I would be glad to spend an evening with one of the key legislators in an effort to get reasonable amendments to the proposed legislation. If you think this idea has any merit, I would be glad to place my efforts at your disposal.

If you think this analysis would be useful to any of the other committee members, feel free to use it at your discretion.

LEE STODDARD.

Mr. Moss. Our next witness is Mr. Thomas Rothwell.

**STATEMENT OF THOMAS ROTHWELL, SPECIAL CONSULTANT, NATIONAL SMALL BUSINESS ASSOCIATION; ACCOMPANIED BY JOHN LEWIS, EXECUTIVE VICE PRESIDENT**

Mr. ROTHWELL. Mr. Chairman, members of the committee, may I introduce Mr. John Lewis, who is the executive vice president of the National Small Business Association and ask permission for him to sit at the table while the testimony is given.

Mr. Moss. Oh, certainly.

The National Small Business Association, is that manufacturing, retailing, distribution, or a combination of all three?

Mr. ROTHWELL. Well, I think Mr. Lewis probably could give a more dependable answer to that, Mr. Chairman.

Mr. LEWIS. Mr. Chairman, you are correct. It covers manufacturing, distribution, service, and professional elements of the small business community.

Mr. Moss. And what is the definition of small business for purposes of membership?

Mr. LEWIS. For purposes of membership, our constitution and by-laws specify that we will follow the standards established by the Small Business Administration or other governmental agencies.

Mr. Moss. What happens if there is a conflict? Which do you follow? Which is the guiding one?

Mr. LEWIS. We attempt to follow the standards established by the Small Business Administration primarily. However, you recognize, of course, that there are exceptions even within the Small Business Administration. For example, it depends on the particular industry whether or not there is dominance in that industry by certain firms. Our members are never dominant in their industry.

Mr. MOSS. All right. You may proceed.

Mr. ROTHWELL. It may be well, Mr. Chairman, to add the statistical—as I understand it, there are some 35,000 members of this organization and they represent over 500 different industry categories organized along the standard industry categories and classifications.

Mr. Chairman, and members of the committee, my name is Thomas A. Rothwell. I appear here as special consultant to the National Small Business Association and I wish to thank the committee for the opportunity to appear on the subject of warranty-guaranty legislation.

There can be no dispute but that the warranty-guaranty problem is both real and significant. Some abuses do exist. As to the structuring and publication of guarantees, and as to manufacturer performance thereunder, the subject matter is unfortunately complex and it will require a full measure of legislative wisdom and resourcefulness to enact a measure that will be both fair and effective.

One of the distinguished jurists on the Supreme Court pointed out some years ago that, "It makes a difference whether you start with a question, or with an answer." If one approaches this problem of performance guarantees with the prejudice and conviction that producers are at best a greedy lot, seeking to palm off inferior and shoddy products on an unsuspecting public for outrageously high prices, then broad gage and punitive legislation would seem to be in order. Perhaps this always has been the popular view, attributing a selfish, if not sinister character to the producing class generally. Serious students as well as the objective observer, must of necessity view this approach as unrealistic, superficial and, most importantly, unworkable. The producers of goods are no different as a class than any other economic group. They respond to the same motivational prods, and are subject to identical social and economic influences.

Thus, we suggest as an assumption that no one or no class is at fault, and that the proposed legislation should not be an attempt to fix fault on any element in the economic community, but instead is an attempt to define and provide a remedy for a specific problem. Add to this assumption the truism that an effective remedy results only from a proper diagnosis. Thus, until the doctor knows what is wrong with the patient and why, his prescriptions are mere guesses.

Thus, the two most pertinent inquiries are:

(1) Why is there such uneven performance on the part of the producer relating to warranties?

(2) What can be done to improve the quality of product warranties?

I suggest as a philosophic framework, gentlemen, that the answer to the first question at least in part, is that the overall thrust of both economic regulation and business evolution since the 1920's has been "more and cheaper," rather than "more and better." Under our Nation's antitrust policy the producer has been systematically deprived of any means of control, or the option to give any direction to the marketing of his products. In the last 15 years a philosophy has emerged that postulates that, "Once a producer has sold a product he loses all further right to control its use or disposition."

This applies as to price, channels in which it is sold, territories or classes of customers to be served by various elements in the distribution system. Chaotic distribution has been encouraged and protected by law.

Unless the producer can exercise reasonable control in the marketing of his product, there will continue to be uneven performance on the part of the producer relating to warranties. How can there be meaningful warranties when manufacturers may neither select nor discipline the resellers of his products? To meet this problem, an additional subsection is proposed. H.R. 18056 could employ the following proviso to section 14, page 12, line 22:

Nothing in this act shall prevent the maker of any guaranty from (a) requiring the resellers of his consumer product to provide the purchaser with reliable information regarding installation, use, maintenance, safety and service and (b) Designating representatives including any or all suppliers to perform the obligations of any guaranty, but no such designation shall relieve the maker of the guaranty from his responsibilities under the guaranty made.

A similar addition to S. 3074 could be made in section 8, page 10, line 22, of that proposal.

We would like to restate our support for the principles underlying the various proposals being reviewed by this committee. We agree that there should be fair and definite "rules of the road" relating to the advertising of warranty-guaranty and the performance of such commercial promises. A full measure of wisdom is peculiarly required. We have already noted in this statement that:

As to the structuring and publication of guarantees, and as to manufacturer performance thereunder, the subject matter is unfortunately complex and it will require a full measure of legislative wisdom and resourcefulness to enact a measure that will be both fair and effective.

The problem of framing a guaranty policy that would not disadvantage small producers is most difficult and perplexing. We do not agree that the rulemaking process governing the "affirmative disclosures necessary" can be prudently left to the discretion of the FTC. Interpreted literally, sections 3 and 4 of S. 3074 would tend to make the advertising function stilted and inflexible.

Another defect in the proposed legislation is found in the definition of express guaranty. Oral statements by anyone in the chain of distribution could become express warranties, binding on the producer. This results also from the broad definition of supplier in both S. 3074 and H.R. 18056.

Inadequate study has been given, in our opinion, to the impact of the proposed legislation especially from the point of view of the small producer. It is recommended that the committee initiate an investigation as to the relationship of producer control of marketing patterns to the preservation of product quality, and a formulation of sound public policy in relation thereto. Among other things this would require a modification of some judicially developed absolutes that have been appended to our antitrust laws.

In reference to certain products, such as television, warranty policies today are described as inboarded when they are included in the sales price, and outboarded when a service contract is offered at an extra charge as an ancillary aspect of the purchase and sale transaction. This legislation preempts the field in favor of inboarded warranties.

Perhaps this is an appropriate decision, or it may be otherwise. Do consumers get better service and better quality products with in-

boarded warranties rather than outboarded warranties? This requires a factual determination. In theory, a rather strong case can be made for the encouragement of outboarded warranties, as embodied in a continuing service contract.

This legislation in its present form seems adverse to the interests of small-scale enterprise for several reasons:

(a) The duties imposed raise additional barriers to market entry as they build in an additional cost of doing business. In the case of a regional producer, whose products may be distributed nationally, the potential exposure to the absolute liability provisions may constitute an insuperable burden.

(b) This proposed legislation presumes the existence of a large number of skilled mechanics and service people available on a standby basis. The plain fact is that, as a result of our overall cultural environment, there is no such pool of service people available for a producer to call upon to discharge his obligations under this bill.

It is indisputable that service people are difficult to obtain, train and keep. If the maintenance of a service staff becomes a condition precedent to a promise of product quality, only large-scale enterprise, and perhaps even well-established enterprise, can successfully undertake such an investment in people.

(c) The legislation as presently drafted, may have the effect of compelling producers, especially the small-scale producers, to make an affirmative disclaimer of express guarantees or performance guarantees. This, despite the fact that such a course could sharply limit the producers' opportunities to market their products. The net result in such case would be to diminish the availability of product guarantees to consumers as well as opportunity for small-scale enterprise. If such occurs, surely the legislation will have missed its mark.

Finally, the proposed legislation will increase prices for many categories of consumer products.

Adjournment pressures upon this Congress tend to prevent complete study of the effect and the application of proposed legislation. Particularly with respect to the legislation before this committee there are no known answers as to the impact on marketing or on advertising, how it will affect the small producer, how he can establish service centers, et cetera. The small businessman is unusually competitive and flexible. So long as the ground rules are fair, he will thrive. Let us be sure that those ground rules are both fair and workable.

Mr. Moss. Mr. Eckhardt.

Mr. ROTHWELL. Mr. Chairman, I would like to add a postscript to this because in sitting here listening to the testimony of the prior witnesses, it is clear that this testimony comes in not a clean slate. I am sorry to the extent that it is repetitive, but it was not intended to be overly provocative or challenging but it does represent some very serious problems that we would like to bring to the attention of this committee on behalf of the non-General-Electric, nonappliance industry type of business enterprise that will be covered under this legislation.

Mr. Moss. You may proceed.

Mr. ROTHWELL. I have finished my statement, Mr. Chairman.

Mr. Moss. Mr. Eckhardt.

Mr. ECKHARDT. Mr. Chairman, are we closing the testimony in this hearing?

Mr. Moss. We will have completed the witnesses who have requested the opportunity to be heard.

Mr. ECKHARDT. Mr. Chairman, I have no questions of this witness but I would like to be assured that we might leave the record open for any such communication as may be given to the committee from MACAP.

Mr. Moss. Without objection, the record will be held open until Wednesday of next week to receive such statements and responses to questions as are necessary to complete the record.

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. Moss. I do have a few questions. One deals with the statements made on page 5, that the legislation seems adverse to the interests of small-scale enterprise.

I know that in 22 years of legislating I have had a great deal of interest in small-scale enterprise and I also have a great deal of interest in consumer problems, and I do not find that the two are in conflict. What are these additional duties imposed and the additional barriers to market entry which the legislation—and for purposes of this discussion, let us take the Senate bill—would impose which are not already imposed upon the small producer and the large producer?

Mr. ROTHWELL. We agree with the chairman's lead-in comment, that the interests of small business and the interests of the consumers are totally consistent. We would endorse that heartily.

The chairman asks how explicitly the interests of small-scale enterprise would be affected by the formalizing at least as embodied in S. 3074, of guarantee requirements.

Very well. Let us assume that the law will be as a result of the work being done in the House and the Senate, in this session of Congress, that would make it unlawful for anyone to advertise a full guarantee who was not prepared to come in within a week, let us say, and fix whatever went wrong with the appliance, equipment, or product. Let us assume that the Federal Trade Commission has a rule which says that you advertise a full guarantee only if you can come in within a week.

Let us further assume, too, that we have a producer in Omaha, Nebr., who is making a pump, a pump such as is used in basements for moisture or water discharge purposes, or a pump such as is used in one of the dishwashers that many of us have at home.

Let us assume that this is a small regional producer that has an opportunity to sell an order to a Chicago wholesaler for redistribution in the Chicago market.

It seems to me that he would have two options, if the law were changed by this S. 3074 together with the anticipated Federal Trade Commission regulations, that such a producer would have two options. He could either have that pump sold in the Chicago market without guarantee, which, of course, would limit his commercial opportunity, or he would have to make an investment in some kind of service facilities for that pump in the Chicago area.

Mr. Moss. How does he service it now?

Mr. ROTHWELL. It is sent back to the factory. It is replaced.

Mr. Moss. Is there anything here that says it could not be required to be sent back to the factory?

Mr. ROTHWELL. Well, no; but the—if, you cannot say, full warranty for the pump—

Mr. Moss. I think the full warranty goes to whether or not you provide labor and parts or whether you provide only parts.

Mr. ROTHWELL. But is there not a—does not S. 3074 give the Federal Trade Commission power to set the time in which the repairs are made if it is a service contract? Within a reasonable time?

Mr. Moss. It does indeed say reasonable time and does that mean that we are going to have an arbitrary rule? Is not reasonableness fairly well construed in law?

I recall a hearing before this committee about 2 years ago when we had Judge Friendly, I believe, down from the second circuit in New York to give us testimony on the history of the judicial construction of the term "reasonableness." I would commend to you those hearings because there seemed to be no problem from the standpoint of the courts in construing reasonableness, and I would assume there would be no great problem from the standpoint of the Federal Trade Commission in imposing the standard of reasonableness.

Mr. ROTHWELL. Well, Mr. Moss, please do not think us captious or attempting to see problems where none exist.

Mr. Moss. I am not. Let me say again that I speak not only as a fairly experienced legislator but that I was in the retail business. I do have some very intimate knowledge of these problems. But I also have listened over the years to the conjuring up of all sorts of hobgoblins about what would happen if this committee moves on legislation.

We passed on the floor of the House a week ago a bill that had been before this committee for 4 years, not changed greatly from the time of its introduction but at the time of its introduction there was almost unanimous opposition to it.

It passed the floor without a dissenting vote because we took the time, we looked it over with great care, and we knocked down every one of the fears that were raised as to the great damage that was going to be done.

As a matter of fact, a great part of the industry was very happy to have the bill.

We are going to probably move through the full committee next week and on to the floor a bill which 18 months ago nobody wanted, the broker-dealer insurance bill. Now, it seems as if almost everyone wants it. So, these kinds of generalized statements without again as I indicated to Mr. Lamb, some supportive information, do not impress me because I have heard them too often. I never recall a bill that I have not heard the same kind of allegations on.

Now, I stand willing to be convinced that you are correct, but not just on a sweeping statement of generalities. And I think that is all you offer us.

Mr. ROTHWELL. Mr. Chairman, I have no defense for any element of the business community that makes a practice of coming before congressional committees and crying wolf.

Mr. Moss. Yes, I know, and I am not asking you to defend them. I am asking you to give us supporting information.

Mr. ROTHWELL. And I am saying to you that this is not our purpose. We are not here to tell you do not enact legislation. We come in with the opposite message. We say, please, enact legislation which creates fair, certain, and equitable rules of the road for all parties of the commercial enterprise. We do not say this legislation is unnecessary.

We do say that the committee is not writing on a clean slate either as I am not testifying against a clean slate. For example, 10 years ago —

Mr. MOSS. I am not saying that what you are telling us is incorrect if you can support it. I merely ask you to support it.

Mr. ROTHWELL. Mr. Chairman, 10 years ago the Federal Trade Commission issued, after I think some careful deliberation, some guide as to the deceptive advertising of guarantees.

Mr. MOSS. They issued that after they were roasted—Mr. Kintner was the Chairman and they were roasted very severely by the predecessor committee of this subcommittee and as a result, they got off their, to use the vernacular, their duffs and they moved into an area where they said previously they had no jurisdiction.

We told them to let the courts determine whether they had jurisdiction or not.

Mr. ROTHWELL. Mr. Chairman, I do not want to leave the record in the shape where I can be, by some careful reader, accused of having deceived or deluded anyone. These were not trade regulation rules. They were guides. I have them here.

Mr. MOSS. Oh, yes. I know what they are. I think the record is clear on it. You characterized them correctly and I merely was placing in context the nature or the chronology of the Commission's action. That is all.

Mr. ROTHWELL. One of the things that we suggest is why have not these guides worked to eliminate the problems to which they were addressed? Question No. 1.

Question No. 2. Why was it necessary to depart from the plan of these guides which I think I would be willing to endorse? Why would not these guides make a reasonably good starting point for model legislation? We get into areas such as, well, the prior witnesses testified, the difficulties in the marketplace, the partial guarantee, and so forth, the specific words used in the statute, not being very susceptible to intelligent use in the marketplace. Prior witnesses have mentioned that.

In our statement we mention the fact that the word "guarantee" with all of its legal sanctions now can be an oral promise. Now, that does not appear in the guides. It does appear in the Uniform Commercial Code but that is to a different purpose.

In an earlier Senate version, Mr. Chairman, the definition of guarantee had the two magic words "in writing," and we questioned whether it was an inadvertence.

Mr. MOSS. Would not the mere removal of those words create a legislative history indicating an intent that the Senate had at the time of removal?

Mr. ROTHWELL. Yes, and this then poses a problem, as we tried to point out.

Mr. MOSS. I am addressing myself really to what is on five. "(a) The duties imposed raise additional barriers to market entry as they build in an additional cost of doing business. In the case of a regional producer"—and most producers are regional—"whose products may be distributed nationally"—and many of these regional producers are very, very significantly national producers—"the potential exposure to the absolute liability provisions may constitute an insuperable burden."

I think there that we would then have to say, "assuming that the Federal Trade Commission is going to adopt totally unreasonable rules and regulations."

Mr. ROTHWELL. No, Mr. Moss, no. I think many of the—

Mr. MOSS. An insuperable burden.

Mr. ROTHWELL. I think many of the rules and regulations that have been adopted in the decisions of the Federal Trade Commission are inimical to and really contravene the purpose of the statute. They have been known to be narrow and technical—

Mr. MOSS. Indeed they have been.

Mr. ROTHWELL (continuing). From the point of view of the consumer and this legislation is designed to say to the consumer, it might—there might be reasonable grounds for dispute as to whether a week would not be a reasonable time. But yet, a week might be impossible for our Omaha pump manufacturer in terms of his performance without assuming an additional cost of doing business. And he has got a—

Mr. MOSS. Is he not required now—is it not implicit that he be reasonably prompt in repairing the pump that he has a warranty on?

Mr. ROTHWELL. Reasonable under the circumstances that exist. That is required now and with that we are most content, but what this legislation proposes to do is to give power to an administrative body to impose an arbitrary rule, the form of which we do not know as yet. We point this out to the committee saying that it is a weak and spongy point in this legislation which overall we endorse and of which we approve.

Mr. MOSS. Would you want us to spell out by statute what would be a reasonable period of time?

Mr. ROTHWELL. Ah, there is the rub. Which way do you go?

Mr. MOSS. You leave flexibility; do you not?

Mr. ROTHWELL. Yes; you do.

Mr. MOSS. And how can we do it without giving the power to the regulatory agency?

Mr. ROTHWELL. By modifying or by bringing the traditional force of negative law into what is essentially an affirmative code. That is, it is one thing to say that it shall not be an unreasonable time in terms of the interests and the situation of our Omaha pump producer, more than a week—cannot be more than a reasonable time for him, but mind you, excuse the expression, if I may, Mr. Moss—

Mr. MOSS. Why should we assume that it would take longer for the Omaha pump producer to service a pump than it would take for a local distributor to service a pump? In order to avoid maintenance of regional parts depots, a great many companies depend upon air transportation to move supplies in and out or move parts back and forth in order to cut back on a lot of other costs. The transportation cost is not that great. So, the assumption which might have been valid when we were relying primarily on surface transportation is not necessarily as valid today. There are means of very quick transportation.

Mr. ROTHWELL. May I speak to that point, Mr. Chairman, and I have two separate very brief answers to make.

No. 1, the market into which our Omaha producer is trying to get a foothold is a market in which there is a lot—in which there is a concern called Sears, Roebuck that does have on a standby basis a warehouse full of all sorts of equipment and fully employed service people. That is one answer to the market barrier problem.

The other, in terms of reasonable time, and the chairman evokes air transportation—I am today waiting for a set of documents that were mailed to me 3 weeks ago from Minneapolis.

Mr. MOSS. I said air transportation, not mail.

Mr. ROTHWELL. Airmail to the——

Mr. MOSS. I suggest that there are quicker ways of getting documents of any size——

Mr. ROTHWELL. I am somewhat embarrassed——

Mr. MOSS (continuing). Than by air mail.

Mr. ROTHWELL (continuing). Before my colleague over at the Department of Justice because of the absence of those documents and I can only trust that he understands I do not have them yet.

Now, this is——

Mr. MOSS. Whatever disadvantage you have in dealing with the competition of Sears, Roebuck, your manufacturer, unless he is able to service at about the same pace as Sears, Roebuck, is going to continue to suffer the disadvantage whether or not this legislation is enacted.

Mr. ROTHWELL. Yes; but he can today say his product is guaranteed, although his guarantee might be a little slower than that offered by Sears, Roebuck.

If this legislation is enacted in its present form and if the rule-making authority follows its typical course, he might have to decide whether, (a), to try to get on the market without a guarantee, or, (b), whether to gamble and endure the expense of a service organization up in Chicago. This is a specific response to a market entry barrier circumstance.

Mr. MOSS. Then, let us take (b). "This proposed legislation presumes the existence of a large number of skilled mechanics and service people available on a standby basis."

I can think of few bodies of men that are less likely to make such a presumption than the Members of the Congress, who have dealt with the OEO programs over a number of years and various other programs to expand training opportunities, to bring more people into the service industries. We know that there is no pool of men and the servicing of a guaranteed product is not changed here. You still have to find a serviceman to service it.

Mr. ROTHWELL. But, you see, once again—last summer——

Mr. MOSS. Is that the only thing you are concerned with?

Mr. ROTHWELL. By no means. Last summer I handled the sale of a business in New Jersey to a larger company in another business. The business was sold—it was a business that ran training schools for automotive and air-conditioning mechanics. It was founded after World War II by an enterprising individual and had become extraordinarily successful—branches in Newark, N.J.; Chicago, Ill.; and Indianapolis, Ind. Three ranges of schools turning out mechanics, automobile mechanics, and air-conditioner mechanics.

The proprietor and founder in his middle years decided to sell the business because he found that the success of his business depended upon whether or not he could get teachers.

Now, he had employed as teachers for the automotive side of the course garage foremen, mechanics who had risen a bit in the ranks and then would leave the garage and come to him and be members of his faculty in the schools. He found that the same program which

the chairman spoke of, the OEO programs, that he was merely training teachers for Government employ and he could no longer keep his faculty. His faculty was turning over at such a rate and he had to up the amounts of salary he was paying them so many times and so frequently that he decided to sell the business.

Now, I handled that transaction and I can speak with, I think, as much feeling as the committee chairman. I am certain the committee does not feel that there is a large body of skilled service people. I know none of us are that ingenuous. I merely point out that if there is such reward and punishment legislation and if the legislation will advantage those who have the skilled people, then it must conversely be disadvantageous to the small who do not.

Mr. Moss. Well, of course, this discussion could continue for some period of time because obviously, if the large organization—we will take your Sears, Roebuck example—is advantaged today, they would be no more greatly advantaged if this legislation is enacted than they are at the present time. If they can give prompt service today, it is an inducement in selling.

Mr. ROTHWELL. It is a competitive edge.

Mr. Moss. It is a competitive advantage, and it would remain so whatever we do.

Mr. ROTHWELL. Yes. Well, this would give the Sears, Roebuck—and I have no particular beef against them—but it would give the larger concerns that have got a pool of labor and skilled mechanics available, it would give them an opportunity to advertise a guarantee in federally sponsored terminology and yet deprive the smaller producer who under his circumstances doing the very best he can and formidably well, many times, it may deprive him of that opportunity. Mr. Chairman, you know—

Mr. Moss. You know, you imply something that I, when I was a small businessman, and many of my friends who are small businessmen, do not concede, that small business has to have the opportunity to be less responsible than large business. I have found as a rule I can do business with a small businessman and usually come out ahead in both the quality of the service and the personal interest that I receive from them. And yet, the whole predicate of your statement, in my judgment, is a plea to give them the opportunity to be less responsible—

Mr. ROTHWELL. No, we do not—

Mr. Moss (continuing). To the needs of their clients or their customers than the large businessman. And I do not think that your members would agree with you at all—

Mr. ROTHWELL. Mr. Chairman—

Mr. Moss (continuing). In that presentation. I do not know how you arrived at it but in my judgment, they would not underwrite it at all.

Mr. ROTHWELL. Mr. Chairman, I have failed abysmally in my task today if I leave that impression.

Mr. Moss. You leave that impression with me. I cannot speak for my colleagues, but that is the impression that I have drawn from your statement, that you plead for a special type of treatment that would tolerate a far less responsible relationship with the customer than we would expect of the larger concern.

Mr. ROTHWELL. No. For the purposes of the record, of course, I have to reject that as a characterization. As I say, if it is——

Mr. MOSS. I have reflected your remarks very accurately.

Mr. ROTHWELL. That is not at all the case but we want a set of ground rules that impinge upon the small and the large with fairness.

Mr. MOSS. Believe me, this committee will seek to deal equitably——

Mr. ROTHWELL. Now, this committee, and I will not, of course, characterize, at least, I will try not to offensively characterize, but it is perfectly natural that this committee should deal with the subjects of major economic importance—automobiles, appliances, the electronic industry, heavy construction, and so forth—and we are here to suggest that there are a host of other parties in interest whose voices have not been heard and we ask that the legislation be viewed from the point of view of their interest, not that there should be no rules but let the rules be fair to all.

Mr. MOSS. That is precisely what this committee seeks, is to let the rules be fair to all.

Mr. ROTHWELL. Then, there is no difference between us.

Mr. MOSS. And we would not want to do otherwise. It is in that spirit that I have made the observations I have made. I do not think there are very many members of this committee who have major manufacturers in their area. I certainly do not. They have small manufacturers. None has any greater desire to see the major remain in business than the small remain in business. Certainly, that has not been my record. But in the summation in your statement, the points made on page 5 (a), through (c) on 6, I would be less than candid if I did not state the reaction I had to them for this record.

Mr. LEWIS. Mr. Chairman, may we have your permission to supplement this statement?

Mr. MOSS. You may submit it for consideration; yes.

(The supplemental statement referred to was not received by the committee at the time of printing.)

Mr. MOSS. Any further questions?

Mr. ECKHARDT. No, I have none, Mr. Chairman.

Mr. MOSS. If not, the committee will now stand adjourned.

(The following statement and letter were received for the record:)

STATEMENT OF PROF. WILLIAM F. WILLIER, DIRECTOR, NATIONAL CONSUMER LAW CENTER, BOSTON COLLEGE LAW SCHOOL

The National Consumer Law Center is grateful for the opportunity to be heard concerning this important legislation. Since the invitation came only on Monday, there has not been time to consider all aspects of all of the bills before the Subcommittee. Professor George Gordin of our staff testified in March concerning S. 3074 before the Senate Subcommittee. We are gratified that the Bill which emerged from Committee and passed the Senate incorporated a number of Professor Gordin's suggestions. For example, the scope of the Bill has been expanded to include all consumer commodities.

There is no need for me to elaborate upon the problem to which these bills address themselves. There has been ample documentation of those problems, and this Committee has elicited from witnesses an elaboration of those problems. Further, the Federal Trade Commission Study concerning automobile warranties and the Senate Committee's own Study and hearings contain much documentation. The problem is quite simple: The consumer simply is not getting what he has come to expect in goods and services that he buys.

Certain difficulty exists by virtue of confusion concerning certain concepts, confusion in the minds of consumers, lawyers and judges. A warranty is a legally

enforceable obligation of a seller. It resembles any other contractual obligation except that the manner of performance may not be entirely clear. For example, if a person contracts to paint a house, performance calls for painting that house. If a warranty is that a product is not defective, how does one perform "no defects?" Thus, in terms of performance, it often comes to what are the remedies of the buyer when the obligation is not fulfilled.

The concept of warranty goes to *quality* of goods and services. Most consumers think of a warranty (or "guaranty" as it is sometimes called) as that impressive looking piece of paper that comes with motor vehicles, appliances and the like. H.R. 10690 seems to give this meaning to warranty by its definition. But a warranty is *not* a piece of paper, but an obligation of the seller which may or may not be evidenced on that piece of paper. In fact, over a period of 200 years, courts have created other warranties implied by law which become obligations of sellers.

Few consumers realize that every merchant warrants his goods to be merchantable under Section 2-314 of the Uniform Commercial Code. They think that the only obligation of a seller is on that piece of paper and if there is no piece of paper, there is no obligation. The warranty of merchantability, which is quoted almost verbatim in H.R. 10690, creates an undertaking on the part of the seller that goods are fit for their ordinary purpose, that they conform to trade standards, that they conform to claims on the packages or labels and that they are adequately packaged, among other undertakings. These criteria are not exclusive, and courts are free to find other criteria for determining whether or not goods are merchantable.

The problem is that the same Uniform Commercial Code, in Section 2-316, allows the merchant to absolve himself of this minimum obligation *imposed by law*. This is often done by some statement written in connection with the express warranties which are actually given or on some piece of paper evidencing the transaction between buyer and seller. Not only is the buyer frequently unaware that such a warranty exists, but he does not understand what the seller is doing when he takes away that legally imposed warranty.

Another concept is that of express warranty. No seller or manufacturer presently need give such a warranty—in other words, undertake any obligation except those imposed by law. In the case of manufacturers not dealing directly with buyers, such warranties are gratuitous, but are used to induce the retail purchase of their products. The common express warranty of a manufacturer is that there are such defects, it really goes to the ordinary fitness of those goods and they probably are covered by the legally imposed warranty of merchantability. The Bills before this Committee really raise the question of whether Congress should impose by law certain minimum warranties additional to those already imposed or implied in law.

Finally, there is considerable confusion as to the remedies to which a buyer is entitled when warranty obligations are breached. Under Section 2-711 of the Uniform Commercial Code, a buyer may reject goods which do not comport with the warranties given or, if he has accepted them, may revoke his acceptance in most cases. Once he has done this, he is entitled to cancel the contract, get any money he has paid back and then get consequential and incidental damages resulting from the breach. Nothing says that he is entitled to have the goods repaired or parts replaced. In short, this is a remedy often given in connection with an express warranty of "no defects" which the buyer otherwise does not have at law. Again, buyers have come to expect that this is their only remedy and, of course, this may well be the remedy they most want in order to solve a particular problem.

Unfortunately, the Uniform Commercial Code also allows sellers to exclude or modify the *remedies* to which the buyer is otherwise entitled by law. In the typical manufacturer's "warranty" this takes the form of limiting the consumer's remedy to replacement of parts, often with further limitations as to how this remedy will be rendered by the seller or manufacturer. Technically, exclusion or modification must under the law be "by agreement" of the parties.

Surely a buyer cannot agree to limit or modify remedies he does not even know he has. Often the language in these "written warranties" in connection with durable goods is such that they do not delineate the warranty obligation and the remedies for its breach so that they often become confused and unclear.

An effective Federal Law must do two things: first, it must impose certain minimum standard warranties upon manufacturers and sellers of consumer goods and afford buyers with simple, effective remedies to take care of the usual kinds of problems; second, it must forbid the denial of consumer rights (implied warranties and remedies for their breach) already given by law. S. 3074 as well

as H.R. 10690 both come close to achieving these goals. Neither directly imposes minimum warranty standards, but both require minimum remedies when such warranties are in fact given. Both would deny the right to disclaim implied warranties. H.R. 10690 grants the consumer remedies in addition to the replacement of defective parts and in that respect may lead a court to believe the remedies already extant under the Uniform Commercial Code are displaced. This language should be carefully written or deleted as unnecessary so long as it is clear that existing remedies are not displaced.

In Massachusetts the Governor recently signed some of the most far-reaching legislation in the warranty field. Of course, it would be very difficult for a single state to attempt to set minimum standards and impose them upon nationwide manufacturers. This was not attempted although the temptation was great. I should call the Subcommittee's attention to the fact that the Bill was passed by a Democratic legislature but signed by a Republican Governor. This is typical of consumer protection legislation in Massachusetts: it is frequently bipartisan in its promulgation and enactment. Leaders of both parties recognize consumer needs and attempt to meet them year after year. But the Massachusetts law does, however, achieve the second goal which I have set for Federal legislation: Implied warranty of merchantability cannot be disclaimed or modified by agreement; there can be no modification of remedies already provided by law for breach of the implied warranties; no modification of remedies for breach of express warranties, such as limitation to replacement of parts, will be effective unless the manufacturer can meet those obligations within the state.

Nothing in the new Massachusetts Law prohibits or deters a manufacturer or seller from giving any express warranties he wishes or any additional remedies he wishes to a buyer. We are retaining the minimum warranties and minimum remedies already provided by law. The third part of the Bill in effect deters manufacturers from requiring that consumers send goods at their cost and expense outside the Commonwealth for their repair or replacement. It does not prohibit this provision, but leaves the buyers with all of his other remedies if that is a limitation on the remedy for breach of that express warranty.

While neither S. 3074 as it passed the Senate nor H.R. 10690 achieves the goals the Center would like to see in their entirety, both go a long way toward meeting the needs of consumer buyers in the United States. The Center endorses the enactment of either of these Bills by the House of Representatives.

GENERAL MOTORS CORP.,  
Detroit, Mich., October 2, 1970.

Hon. JOHN E. Moss,  
U.S. House of Representatives,  
Washington, D.C.

DEAR MR. MOSS: The consideration being given by your Subcommittee on Commerce and Finance to proposed legislation regarding warranties is of substantial interest to General Motors.

Rather than comment on specific portions of the proposed legislation, we believe it would be more appropriate for us to let you know what General Motors has been doing recently in the area of automobile warranties. We recognize, and have recognized, that this is a troublesome area. However, we believe we have made progress in eliminating problems to customer and dealer misunderstanding in regard to the provisions of automobile warranties. We urge that any proposed legislation be carefully considered in light of this progress and the fact that the automobile warranties historically have been competitive.

Let me turn then, to a brief description of what General Motors and its dealers have been doing within the last two years in the following areas:

#### 1971 MODEL PASSENGER CAR WARRANTY

In a determined effort to make the GM warranty for 1971 model passenger cars more readable and, therefore, more understandable for the consumer, the provisions of the warranty have been grouped under the following categories:

- What is warranted and for how long.
- What is not covered by the warranty.
- Manufacturer's obligations.
- Owner's obligations.

What to do if there is a question regarding warranty.

A copy of the 1971 Buick warranty is attached for your information. The warranties for the 1971 Chevrolet, Pontiac, Oldsmobile, and Cadillac passenger cars are identical in format and virtually identical in wording.

## DEALER FRANCHISE

Effective November 1, 1970, General Motors will offer to its dealers a revised franchise agreement titled the Dealer Sales and Service Agreement which will replace the current Dealer Selling Agreement. More emphasis is being placed on service. We are very much aware that the keystone to the mutual success of GM and its dealers is customer satisfaction with the total values in the vehicle purchased, including the usefulness of the vehicle in fulfilling transportation needs without undue interruption.

We and our dealers recognize that automotive sales and service functions go hand in hand. A new motor vehicle must be finally inspected and prepared for delivery by the selling dealer, and the owner normally expects to return the vehicle to the dealer for correction should the need for correction develop.

The customer also normally returns the vehicle to the selling dealer for required maintenance and repair service. Quality service by a dealer always generates a substantial portion of his repeat new motor vehicle sales.

The importance that must be attached to quality dealer service in effectively fulfilling the transportation needs of owners of General Motors motor vehicles is emphasized by the specific service responsibilities that the dealer assumes under the provisions of the new Dealer Sales and Service Agreement.

Every dealer is expected to provide—without charge to the owner—warranty, special policy and campaign adjustments for every owner of a vehicle (for which the dealer is franchised) who requests such service, regardless of where the vehicle was originally purchased.

The Agreement also includes provisions relating to the dealer's compliance with service standards and motor vehicle safety requirements. Other provisions relate to the establishment of a trained service organization. Still other provisions pertain to the mechanical equipment, special tools and inventories or replacement parts the dealer will require.

Provisions have also been added regarding the assistance provided to the dealer by the GM car divisions to help the dealer fulfill properly its service responsibilities.

## MECHANIC TRAINING

General Motors recently announced another "job entry" training program for auto mechanics. Under the program, GM dealers participate in a cooperative vocational education program aimed at training high school students to become mechanics. More than 1,600 GM dealers from all 50 states have expressed interest in the program.

The program involves the joint efforts of dealers and high school vocational instructors to provide on-the-job training for students taking courses in automotive mechanics. The student mechanics will attend school half-time during their senior year. The other half of the time they will work for pay in dealers' service departments. Upon graduation, it is anticipated the students will become full-time employes of the dealerships, at which time they are then eligible to take additional courses at GM Training Centers.

Under the GM Training Center Program which began in 1953, mechanics receive training in 30 centers located strategically across the United States in areas of high vehicle and dealer density. In 1969 alone, 96,835 mechanics received nearly 2.5 million man-hours of free classroom and shop instructions at a cost of approximately \$7.5 million to General Motors.

In addition to the training program involving the high school students, GM previously had developed three other "job entry" training activities so that persons with limited experience can obtain training to help them qualify as auto mechanics. These programs are:

1. Dealer Cooperative Work Training Program, which is designed to upgrade dealer service personnel who have mechanical aptitude but who lack mechanical training. This nine-week program covers body or mechanical repairs, and alternates two or three week periods of instruction at the GM Training Center with two week periods of on-the-job training in the dealership.

2. Advanced Vocational Training is offered to graduates of high schools and vocational trade schools. Young men, employed by GM dealers are enrolled in an intensive 240-hour advanced training course.

3. Project Transition (which was initiated by the Department of Defense) is designed to help members of the armed forces learn job skills before they return to civilian life. Special six-week courses in auto mechanics are offered at GM Training Centers near military bases. On completion, each trainee is offered a job opportunity with a GM dealer. The training is offered without charge to the serviceman, the armed forces, or the GM dealers.

In 1968, more than 3,000 persons received training under these programs while in 1969 this number increased to almost 5,300 people.

From the foregoing, it is evident that General Motors has proceeded on its own to improve the availability of mechanic trainees and to upgrade the skills of existing mechanics. This is being accomplished without financial assistance from any outside source and without cost to dealers.

The following information appears exactly as it did in my letter of March 23, 1970, to Senator Frank E. Moss. I requested Senator Moss to include that letter in the record of the warranty hearings held by his Consumer Subcommittee.

#### DEALER COMPENSATION FOR PERFORMANCE OF WARRANTY REPAIRS

Beginning May 1, 1969, General Motors increased its compensation to dealers for labor expended in performing warranty repairs.

We now markup the dealers' base labor costs by 220% instead of the 200% markup previously used. For a dealer who has a base labor rate of \$3.50 per hour for mechanics, the new markup means an increase of 70¢ per warranty labor hour, or a total of \$7.70. In addition, dealers receive reimbursement for mechanics, eligible fringe benefits at 150% of the costs. For example, if the dealer paying his mechanics \$3.50 per hour has fringe benefit costs of 50¢ per hour he would receive fringe benefit reimbursement of 75¢ per warranty labor hour. This amount added to the \$7.70, results in a warranty reimbursement rate of \$8.45 per hour—on a base labor cost of \$3.50 per hour.

Over the years General Motors has furnished replacement parts needed for warranty work to the dealer at no charge, and currently pays the dealer 25% of the regular dealer parts cost for handling.

General Motors is continuing its policy of paying a warranty advance to its dealers. Under this policy, each dealer receives an amount equal to his warranty claims for an average month. This advance is adjusted periodically to reflect changes in his average. As a result, the dealer is working with General Motors money and does not have his capital tied up in warranty claims receivable.

As a matter of policy, General Motors studies warranty reimbursement on a continuing basis.

#### CUSTOMER COMPLAINTS

To assist customers who want to know how and where to register complaints of unsatisfactory service, each of the GM car divisions now includes in the Owner's Manual given to each purchaser, a simple three step procedure for the owner to follow. These steps are:

1. Discuss the problem with a member of dealership management.
2. Contact the local zone office, if the dealer could not readily resolve the problem.
3. Contact the divisional owner relations office in the event satisfaction is not achieved from the first two steps.

The addresses and telephone numbers of the zone offices and the divisional owner relations office are listed in the Owner's Manual.

GM was the first auto manufacturer to cooperate with the Better Business Bureau in its "BBB Hot Line" to expedite customer complaints regarding automobile service problems. In dealing with complaints, BBB urges they first be handled at the local bureau and dealer level. If results are not obtained there, the complaint is referred to the National Bureau which puts the problem directly before an executive of the manufacturer for action and receives a report on the action taken.

In an effort to be of greater assistance, General Motors prepared and sent to each local BBB office a booklet showing the three step procedure by which an owner can register a complaint. The booklet also contains the addresses and telephone numbers of the zone offices and divisional owner relations office for each of the car divisions.

In many localities—and in all but two states—there are either official agencies or voluntary organizations which are devoted to consumer interests. GM has just furnished each of these 111 groups with a booklet listing the addresses of all zone and home offices of the car divisions. This booklet enables each group to contact the appropriate office regarding a consumer complaint. In addition, each group was advised of the address of the executive in the corporation who handles owner relations, along with his offer of assistance.

Last year, personnel of the car divisions held over 2,400 special meetings—most of them dinner meetings—with entire dealership organizations. The purpose was to create a renewed awareness of the importance of treating people like they

themselves would want to be treated. Over 62,000 dealer employes and our sales and service organizations were exposed to the theme "a rising tide lifts all boats"—stressing the benefits to every employe—regardless of his job—of maintaining good owner relations.

#### FIELD SERVICE PERSONNEL

Last year, we reported to the Federal Trade Commission that the GM car divisions had 914 field service personnel whose primary responsibility is to assure that customers are able to obtain all necessary service repairs and to handle complaints if customers are not satisfied. On December 31, 1969, there were 1,065 men in this capacity—an increase of over 16% in one year.

Moreover, there are approximately 1,600 additional field employes who are available to assist in handling service problems. This total includes 920 district sales managers who, in their frequent contacts with dealers, review dealer service performance in an effort to eliminate any conditions causing complaints.

#### PARTS AVAILABILITY

In 1969, General Motors consolidated its car division parts distribution activities into the GM Parts Division and charged it with the responsibility of procuring and distributing replacement parts to car dealers through a network of 50 warehouses. It should be noted the Parts Division is independent of the car divisions. It has made an excellent beginning in providing better service to dealers. It is maintaining an improved parts availability in all warehouses.

The Parts Division recently developed a computerized system for use by GM dealers in ordering parts from the local warehouse. The new system is called Remote Automatic Parts Input for Dealers (RAPID). The system began at the end of 1969 on a pilot basis, and already is being used by over 700\* dealers. We anticipate that during 1970, approximately 100 dealers per month will be added to the system. Although the availability of equipment is a limiting factor, we expect to have all sections of the country represented in the system by the end of 1970.

These dealers no longer phone or mail parts orders, but instead send all orders to the warehouse via leased electronic equipment which is installed in the dealership. With the RAPID system dealers receive faster delivery of parts and are better able to provide service for their customers. When priority delivery of parts is necessary, RAPID dealers can receive information regarding parts availability and shipping dates from the warehouse in approximately one hour.

In this connection, all GM parts warehouses are linked through a computer system. In the situation where a car is inoperative, if the replacement part is not immediately available in the warehouse nearest the dealer, the part can be located at any warehouse for shipment to the dealer.

We believe it significant that complaints concerning parts availability (for all car models) have been substantially reduced in the first two months of 1970 compared to 1969.

#### TIRE WARRANTY

Last year, we advised the FTC that tire service agreements had been developed by the five tire manufacturers which supply original equipment tires to General Motors and that such agreements were being offered to GM car dealers by the tire manufacturers. Under the agreements, the dealers make adjustments on tires, including tire warranty adjustments, without the necessity of prior contact with the tire company or a local tire dealer. Claim forms are sent by the dealer directly to the tire manufacturer. Under this arrangement, the owner is spared the inconvenience and possible misunderstanding which might arise when there is a question as to whether the unsatisfactory condition reported by the owner is attributable to the tire or to the vehicle.

During the past year, over 80% of our dealers have signed agreements and are now able to handle adjustments in connection with customers' complaints regarding tires.

#### DEALERSHIP FACILITIES

During the last five years (1965 through 1969) more than 7,100 (or 51%) of the GM dealers have spent approximately \$735,000,000 for new or improved facilities to better serve their customers. This added over 315 million square feet of land and over 33 million square feet of building area. In the year 1969 alone,

\*1,200 as of Oct. 1, 1970.

GM dealers added almost 41 million square feet of land area and well over four million square feet of building area.

It should be noted that approximately 78% of the building area, and 35% of the outside area, is used for service operations.

#### SERVICE RESEARCH AND DEVELOPMENT SECTION

General Motors has recently established a Service Research and Development Section to improve service to customers.

This Section is responsible for the development of information, procedures and techniques which will enable our dealers to improve their skills in accurately and promptly diagnosing vehicle problems as well as to improve their service and repair capabilities. To achieve these ends, the Section will thoroughly re-search existing procedures and equipment relating to diagnosis and repair. Wherever possible, the Section will improve upon—and develop new—procedures and equipment in those areas.

Improvements in procedures and techniques will be disseminated through the car divisions. Improvements in existing equipment, or ideas for new equipment, will be made readily available to the equipment industry.

The foregoing is a brief summary of the voluntary efforts being made by General Motors to reduce and eliminate complaints regarding warranty repairs on automobiles. As we said before, we believe this shows we have voluntarily made substantial recent efforts to improve customer service in this area and these efforts will be pursued vigorously. We realize there will continue to be problems but we are working hard to do a better job for our customers. We would hope you would take this into account in considering enactment of any legislation which would place restrictions on automobile and truck warranties.

It would be appreciated if you would make this letter a part of the record.

Sincerely,

MACK W. WORDEN, *Vice President.*

# 1971 BUICK NEW VEHICLE WARRANTY

AND  
POLICY ON OWNER  
SERVICE



Owner's Name \_\_\_\_\_

Street Address \_\_\_\_\_

City and State \_\_\_\_\_

Vehicle Identification No. \_\_\_\_\_

Date of Delivery to First Retail Purchaser  
(Service Date if Applicable) \_\_\_\_\_

**IMPORTANT-THIS FOLDER ALONG WITH THE PROTECT-O-PLATE MUST BE KEPT WITH THE VEHICLE AT ALL TIMES AND MADE AVAILABLE TO AN AUTHORIZED BUICK DEALER IF WARRANTY WORK BECOMES NECESSARY. THE FOLDER AND THE PROTECT-O-PLATE SHOULD REMAIN WITH THE VEHICLE AT TIME OF RESALE.**

PART NO. 1236774



MARK OF EXCELLENCE

AUTHORIZED SELLING DEALER PLATE IMPRINT

Delco Energizer Dealer Use This Side



**DELCO ENERGIZER SERVICE  
ADJUSTMENT CERTIFICATE**



Owner's Name .....

Street .....

City ..... State .....

Energizer Number ..... Mileage .....

Buick Vehicle Identification Number .....

Date Vehicle Purchased .....

Date Energizer Replaced .....

Owner's Signature .....

Energizer Dealer Name ..... State .....

City ..... State .....

Owner's Adjusted Cost of New Energizer \$ .....

for.....months.

(No charge if replaced within the 12 month, 12,000 mile coverage of the Buick New Vehicle Warranty.)

## 1971 BUICK NEW VEHICLE WARRANTY

### WHAT IS WARRANTED AND FOR HOW LONG

Buick (Buick Motor Division, General Motors Corporation) warrants to the owner of each 1971 model Buick passenger car that for a period of 12 months or 12,000 miles, whichever first occurs, it will repair, or at its option replace, any defective or malfunctioning part of the car — except tires which are warranted separately by the tire manufacturer.

The 12 month/12,000 mile warranty period shall begin on the date the car is delivered to the first retail purchaser or, if the car is first placed in service as a demonstrator or company car prior to sale at retail, on the date the car is first placed in such service.

This warranty covers only malfunctions resulting from defects in material or workmanship.

### WHAT IS NOT COVERED BY THE WARRANTY

This warranty does not cover:

1. Malfunctions resulting from misuse, negligence, alteration, accident, or lack of performance of required maintenance services;
2. The replacement of maintenance items (such as spark plugs, ignition points, positive crankcase ventilator valve, filters, brake and clutch linings) made in connection with normal maintenance services;
3. Loss of time, inconvenience, loss of use of the car or other consequential damages;
4. Any car on which the odometer mileage has been altered and the car's actual mileage cannot be readily determined; or
5. Any car registered and normally operated outside the United States or Canada. The warranty for these cars shall be that authorized for the country in which the car is registered and normally operated.

### BUICK'S OBLIGATIONS

1. Repairs qualifying under this warranty will be performed by any authorized Buick dealer within a reasonable time following delivery of the car to the dealer's place of business.
2. Buick will pay the authorized Buick dealer for the repair or replacement under the warranty of any part of the car found to be defective, or the cause of a malfunction.
3. During the first 90 days of the warranty period, any authorized Buick dealer will make the following service adjustments, if needed, at no charge to the owner:
  - Wheel alignment and balancing
  - Adjustments to the carburetor, distributor points or timing, drive belts, transmission, clutch and brake system
  - Cleaning of fuel, cooling or brake systems
  - Tightening of bolts, fasteners and fittings

### OWNER'S OBLIGATIONS

1. After the first 90 days of the warranty period, the service adjustments specified in item 3 of "Buick's Obligations" are considered to be items of normal maintenance resulting from use and are to be paid for by the owner.
2. The car must be delivered to an authorized Buick dealer's place of business during regular business hours for performance of the service adjustments as specified in item 3 of "Buick's Obligations", or for the performance of warranty repairs. The dealer must be furnished with the Protect-O-Plate for preparation of the work order to be signed by the owner.
3. The owner is responsible for the following required maintenance services which may be performed by any repair outlet regularly performing such services:

**ENGINE OIL**—Maintain at proper level. Change every 4 months or 6,000 miles, whichever first occurs, or every 2 months or 3,000 miles, whichever first occurs, depending upon type of car service. See Owner's Manual for details as to change frequency, oil quality and viscosity.

**ENGINE OIL FILTER**—Replace at first oil change and every second oil change thereafter.

**CHASSIS LUBRICATION**—Lubricate suspension every 4 months or 6,000 miles, whichever first occurs. Maintain all oil and fluid levels.



This is the only express warranty applicable to 1971 model Buick passenger cars and Buick neither assumes nor authorizes anyone to assume for it any other obligation or liability in connection with such cars.

### WHAT TO DO IF THERE IS A QUESTION REGARDING WARRANTY

The satisfaction and goodwill of owners of Buick products are of primary concern to Buick dealers and Buick Motor Division. In the event a warranty matter is not handled to your satisfaction, the following steps are suggested:

1. Discuss the problem with your Buick dealership management.
2. Contact the Buick Zone Office closest to you as listed in the Buick Owner's Manual.
3. Contact the Owner Relations Manager at the address below.

**BUICK MOTOR DIVISION**  
**GENERAL MOTORS CORPORATION**  
 Flint, Michigan 48550

## TIRES

Tires are covered by the tire manufacturer's guarantee. While the guarantees of the various tire manufacturers vary in language, they provide in general that passenger car tires installed as original equipment at the factory are guaranteed to the owner to be free from defects in material and workmanship for the life of the original tread, as follows:

The tire manufacturer will, at its option, repair the tire without charge or make a pro rata allowance based on the amount of wear on the original tread toward the purchase of a new tire at the tire manufacturer's current Adjustment Base Price for any tire which is found by the tire manufacturer to be defective. Transportation costs and taxes must be paid by the owner and service charges may be made in some instances.

In addition, during the life of the original tread of the tire, passenger car tires are also guaranteed to the original purchaser in normal passenger car use against road hazard occurrences such as blowouts, fabric breaks, cuts, bruises and snags, which in the opinion of the tire manufacturer, render the tire unserviceable. Damage from punctures, running flat, fire, wrecks, chain cuts, irregular wear, abuse, etc. are not covered. Adjustments under the road hazard guarantee are made in the same manner as those under the basic guarantee.

The above described tire guarantees are the only ones issued by the tire manufacturers, and they specifically provide that consequential damages are not covered by the guarantees.

Any authorized Buick dealer will assist you in requesting an adjustment if this becomes necessary. For the added convenience of owners, many Buick dealers are equipped to handle tire warranty adjustments on tires provided by Buick on 1971 Buick cars.

## POLICY ON BUICK OWNER SERVICE

**1. New Vehicle Warranty and Protect-O-Plate**—A car is eligible for warranty service only if it qualifies under the provisions of the warranty and the owner possesses a Protect-O-Plate issued by Buick for such car. This folder and the Protect-O-Plate should be delivered to the person to whom you sell your car.

**2. Delivery**—To help you secure maximum satisfaction with your car, it has been serviced and conditioned according to Buick's established pre-delivery service and adjustment check sheet by the authorized Buick dealer who sold you your car.

**3. Maintenance Services**—The 1971 Buick Owner's Manual contains important maintenance recommendations in addition to the required maintenance services set forth in the warranty. Read the 1971 Buick Owner's Manual carefully and follow the recommendations therein to help assure enjoyable and satisfactory operation of your car. Proper maintenance and care of your car will help you achieve lower overall operating costs. Also, regular and proper maintenance by competent technicians will help you avoid conditions arising from negligence which are not covered by the Buick New Vehicle Warranty.

**4. Warranty Service—United States and Canada**—If you are touring or in the event you move, service under the Buick New Vehicle Warranty will be performed by any Buick dealer in the United States or Canada. In all other cases, it is recommended that warranty services be performed by the authorized Buick dealer who sold you your car because of the dealer's continued and personal interest in you.

**5. Warranty Service—Foreign Countries**—The Buick New Vehicle Warranty set forth in this folder also applies to your car if you are touring in a foreign

country and the car is registered and normally operated in the United States or Canada.

Where authorized General Motors dealer service is not available in the country in which you are touring and warranty repairs become necessary, you should obtain paid receipts covering the work from the service station or garage that performed the necessary repairs. Upon your return to the United States, a statement of the circumstances relative to the warranty work performed, along with the paid receipts, should be given to your Buick dealer for review and reimbursement consideration.

**6. Demonstrators and Company Vehicles**—On a Buick car which has been in dealer or General Motors service (such as demonstrators, driver training cars or company vehicles), the warranty time and mileage limitations are calculated from the date the car is first placed in service by the dealer or General Motors.

**7. Production Changes**—Buick and authorized Buick dealers reserve the right to make changes in passenger cars and passenger car chassis manufactured and/or sold by them at any time without incurring any obligation to make the same or similar changes on passenger cars and passenger car chassis previously manufactured and/or sold by them.

**8. Paint and Other Appearance Items**—Imperfections in paint, trim or other appearance items are normally apparent and corrected during new car pre-delivery conditioning. For your protection, we suggest that if you find any paint or appearance imperfection, you call it to the attention of your Buick dealer without undue delay, as normal deterioration due to use and exposure is not covered by the Buick New Vehicle Warranty.

**DELCO ENERGIZER (BATTERY)**

If the Delco Energizer in your car should fail under normal service due to a defect in material or workmanship after the 12 month, 12,000 mile New Vehicle Warranty expires, but before the car has been in operation 36 months, it can be replaced on a pro rata adjustment basis. You will be given credit toward the purchase of a new Delco Energizer of equal or greater capacity based on the number of months remaining in the 36-month period commencing with the start of the New Vehicle Warranty. Contact an authorized Buick or Delco Energizer dealer for further information on such adjustments.

The provisions of Delco Energizer service adjustments do not apply (A) to failure in service due to misuse, negligence or accident, including but not limited to improper installation, freezing, failure to have Energizer inspected regularly and filled with colorless, odorless drinking water when needed, use of electrolyte other than "battery grade" sulphuric acid solution of a specific gravity recommended by Delco-Remy Division of General Motors Corporation, or (B) to costs for recharging the Energizer or for the use of a rental Energizer.

**Note:** Energizer service will usually be handled by your selling dealer; however, if service is required after regular business hours or while touring, call Delco from anywhere in the United States free of charge for the location of your nearest United Delco dealer. Simply dial 800-243-0355; or in Connecticut, call collect 325-4336.

**DELCO ENERGIZER SERVICE ADJUSTMENT CERTIFICATE**

Mileage at Time Energizer Replaced .....

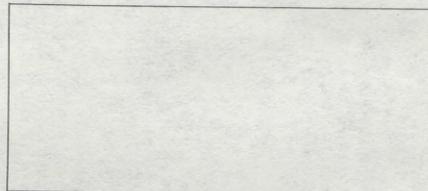
Date Energizer Replaced .....

The replacement new Energizer is warranted for the unexpired portion of the New Vehicle Warranty but for not less than 90 days from the above date.

DEALER'S SIGNATURE

Buick Dealer Use This Side

Protect-O-Plate Imprint Here



Date Vehicle Purchased .....

Energizer No. .... Mileage .... Replacement Date .....

Buick Dealer Code No. ....

City ..... State .....

Owner's Adjusted Cost of New Energizer \$.....for.....months  
(No charge if replaced within the 12 month, 12,000 mile coverage of the Buick New Vehicle Warranty.)

(Whereupon, at 12:40 o'clock p.m., the hearing was adjourned.)



