Consumer Credit 1997

Alvin C. Harrell, Oklahoma City University School of Law

Available at: https://works.bepress.com/alvin_harrell/183/
III. Truth in Lending Act (TLA) Developments

Thomas B. Hudson discussed the Growtong Motors decision,2 in which the plaintiff argued among other things that a sale of a car at a price above book value is a TILA violation. Absent other factors this is a specious argument at best, and in Growtong Motors it was properly rejected. The plaintiff then argued that the dealer was raising the retail price for credit sales, and this claim appropri-ately survived a motion to dismiss with regard to the dealer. On this issue the second- ary market finance company asserted the TILA section 131(a) defense that it is not liable for dealer violations unless they are apparent on the face of the loan documents. The plaintiff argued that the Federal Trade Commission Holder-in-Deed/Consumer-Debtir section of the TILA modified this, but the magistrate disagreed.3 The TILA and RICO claims against First Merchants (the secondary market financier) were rejected; but state fraud claims survived.4 Mr. Hudson then discussed potential methods of proving that dealer sales prices are marked up only in credit sales (a TILA violation if the mark up is not included in the disclosed finance charge), as well as typical hidden finance charge allegations under state law and RICO.

IV. Update on the Gibson and Paro Cases—Willie Ed Johnson Dead?

Mark Dupier, General Counsel of Mercury Finance Co., began his presentation by describing the efforts of Mr. Dupier to deal with the financial turmoil of 1977. Mercury Finance is a player in the indirect auto finance and truck manufacturers market lending, submarine lending. As a leader in the industry, Mercury has been hit by the FRB regarding RESPA/TILA reform, primarily in the form of suggestions received from consumer groups. Home purchase disclosure programs mentioned in these suggestions (A) all closing costs would be included in the APR; (B) the note rate would be disclosed plus the dollar total of all closing costs; or (C) a note rate including all closing costs would be disclosed, but the borrower would have no closing costs.5 Mr. Dupier indicated that the FRB is very interested in these proposals (the FRB is required to formulate and submit proposals to Congress for possible legislation to improve its TILA/RESPA disclosures).6 Large mortgage lenders reportedly favor proposals for "building" closing costs because they believe their size will enable them to achieve efficiencies that will provide competitive advantages over smaller lenders. Consumer groups also favor these approaches, creating some political momentum in support of these proposals. But see infra Pt. XIV.

1. At least one year the program was approved in Dallas, Texas and was sponsored by the Consumer Credit Counseling Service of Greater Houston. The meters installed in this area are reported to have reduced credit card and cash withdrawal abuses by $150 to $200,000.
2. The emphasis in this paper is on proposals to allow the consumer to pay for the franchise in instalments.
4. See generally Alan B. Schwartz on "Aggregate Error Rate" in Loan Firms' Credit and Consumer Finance, S.C. 62 (1979) (with comments).
VI. Non-Filing Insurance Litigation

Douglas N. Campbell described the status of important non-filing insurance litigation. He suggested that these cases currently constitute some of the most important consumer litigation in this country. He noted the irony of plaintiffs' lawyers' allegations that claims are not to be paid (after years of other litigation seeking payment of claims) on grounds that it is not insurance, and the argument that the consumer has standing to attack a creditor's arrangements designed to protect the creditor from risks associated with non-filing practices. He cited several recent cases involving this issue. Four new cases were also noted and discussed.

These cases were said to be significant because they signal the arrival of a new group of lawyers, previously focusing on personal injury/product liability/ securities law, who have been attracted by the potential for consumer recovery through the legal instrumentality doctrine. Federally regulated financial institutions have the greatest degree of preemption, consistent with the traditional federalism concept for the federal thrift regulator (to the extent that some federal thrift executives seem oblivious to state law).

In re, federally regulated deposit insurance institutions are subject to comprehensive (and, many would say, overly intrusive) federal regulation, including not only social considerations such as the Community Reinvestment Act (CRA) requirements but subjective regulatory oversight of management as the quality of management. In contrast, finance companies are regulated primarily at the state level, and much less intrusively, in part due to the lack of federal deposit insurance. For an interstate finance company lender, this means compliance with 30 different sets of state laws, with no federal preemption, though such compliance is necessary to some extent in any event, even for banks in states that permit branching. The umbrella of federal preemption is not complete (for example, enforcement of security interest is a matter of state law). Thus, consumer financial services providers generally fall into one of two categories: they either are regulated primarily at the federal or state level. To some extent the competition between these alternative models reflects the tension between the states and the federal government, a tension that dates from the beginning of the republic. Thus, for example, when the federal banking agencies expand permissible banking activities or otherwise seek to provide competitive advantages (e.g., federal preemption) to national banks, basic issues of federalism are implicated, beyond the narrow financial services issues.

Of course many consumer financial services providers combine different types of entities, perhaps using a federally regulated branch as a "click-and-mortgage" while funneling some operations into an affiliated state-chartered entity. This in turn creates new issues involving affiliation transactions. The Bank Act, and possibly management interference. An important consideration is whether each option for the cost and burdens that result. A full awareness of these costs and burdens is necessary to a viable analysis of the issues. The options, scenarios discussed by Mr. Dreher include: (1) a bank engaged in interchangeable manufacturing finance; (2) a financial company direct lender; (3) a financial company indirect lender; (4) a credit card/home equity lender with a direct loan program; (5) a credit card bank; (6) the rent-a-bank (partnering with a bank or "hiring" the bank's access to the payments system, federal preemption of most state law); (7) a Utah industrial loan company; and (8) the federal thrift charter as part of a diversified unitary holding company.

VIII. RESPA

Marsha L. Williams discussed the Real Estate Settlement Procedures Act (RESPA), including the FRB mandate to reconcile differences between the TILA-RESPA and RESPA, the new Department of Housing and Urban Development (HUD) settlement booklet; the required aggregate accounting for escrow calculations; the HUD Statement of Policy 1996-1, on computer loan origination systems (CLOS); disclosures by telephone and/or electronic media; and the August 6, 1997 letter from Federal Housing Commissioner Nicholas Retsinas re captive reinsurance programs. Ms. Williams also discussed some of the new HUD proposals governing mortgage broker compensation.

IX. The Role and Effectiveness of Consumer Disclosures

Richard J. Mousberg discussed the role and effectiveness of consumer disclosures. He noted that facilitation of consumer comparison shopping is an important and legitimate purpose of consumer disclosures. In contrast, consumer disclosures alone cannot fully inform consumers as to the complete content and legal effect of contracts, and in any event a full understanding of all of the legal issues is probably beyond the contemplation of most consumers. On the other hand, the level of consumer understanding in most contractual transactions probably compares favorably with the accuracy of critical media reporting on consumer finance issues. Nonetheless the burden and complexity of disclosing disclosures has now been added to the complexity of the loan documents, to the point of informational overload. Mr. Mousberg suggested that the shift from paper to electronic communications may provide an opportunity to revisit the basic approach to consumer disclosures.

He advocated as a possible solution a three-layered disclosure format, with the first layer providing only the basic information about the transaction, in a very simple format. Those wanting more information could request a second, more detailed set of disclosures (the second layer). Those wishing even more information could review the contract itself (the third layer). In a sense the first layer would be the equivalent of the current federal box, but it would be more mean-
ingeful and likely to be read if provided in isolation. The second layer would provide the remainder of the current required disclosures.

X. Avoiding Marketing Errors

Professor Gene A. Marsh discussed how "the folks in marketing can put you in court." He noted that consumer plaints’ lawyers are looking for the case that will bring a tear to the eyes of the jurors, as opposed to the technical regulatory violation. He argued that the tear-jerker cases are often the result of excess zeal in marketing. The high market penetration rates that are sought by the marketing department may seem proof of involuntary transactions to a consumer advocate.

Professor Marsh noted that money and credit are viewed in society as having special connotations that do not apply to sales of soap or soft drinks. In the context of credit transactions it is easier to allege fiduciary-like obligations that would never be alleged in the context of soap and soft drink sales. The nature and reputation of financial institutions reinforces this perception. As a result some courts are more likely to deviate from established principles of law with regard to financial issues as opposed to non-financial law.

The Court has exacerbated the situation when the marketing of financial services is combined with the marketing of goods or other services, especially, when the auto salesmen sell financial products as well as the car. Sales techniques, standards, and practices suitable for used car dealers may be inappropriate for financial products.

In particular sales manuals or incentive systems that encourage sales practices such as "sweetheart deals" or loan flipping are very dangerous. Advertising multiple loan renewals ("loan flipping") as a "line of credit" may be deceptive if loan closing costs are being charged for each renewal (rather than a true line of credit). Dealer training manuals specifying or encouraging "hard sell" techniques may backfire in court. In-house warnings that the creditor is pursuing dangerous practices may be subject to discovery and could be devastating to the creditor's case.

How can indirect lenders protect against liability for dealer abuses? If a lender is aware of such problems in numerous prior cases and continues to buy paper from the dealer, it becomes difficult to proclaim total innocence. Involvement in the sales process is another risky practice, unless the lender uses that involvement to effectively control and impose compliance requirements on the dealer. Door-to-door or traveling sales efforts are an obvious danger sign, due to the difficulty of monitoring sales practices. It is also dangerous to ignore a rise in the number of consumer complaints, conversely, an independent consumer satisfaction program administered by the lender may substantially reduce these risks. And of course, knowingly buying paper from dealers or home improvement contractors who are unlicensed, without permission, regularly use drugs or alcohol, or have been fired, or have a history of perpetrating blatant consumer frauds may be an invitation to disaster.

XI. Fair Lending

Anne Forney and Robert J. Flennia Jr. spoke on fair lending issues, including recent changes to the Equal Credit Opportunity Act and proposed revisions to Regulation B. The latter are designed in part to create a privilege for lenders self-testing efforts, to encourage self-tests as a compliance tool. The scope of the proposed privilege is more narrow than many creditors would like, and lenders may not list the privilege on the CRA.

Mr. Flennia noted that the proposed privilege is much broader than that provided in the new federal Justice Department settlement on fair lending practices and only the information may be in the hands of a third party who discloses something (thereby cancelling the privilege) or is not subject to the privilege. The privilege is also not applicable in litigation on issues unrelated to fair lending. Mr. Flennia also noted that proposed model forms for adverse action under the Credit Repair Act were published July 1, 1997.

Anne Forney reported on recent fair lending marketing enforcement under the FTC Consumer Credit and Consumer Credit Act involving a small loan company in Chicago. The primary alleged violation was a failure to give the adverse action notices required under the ECOA and FCRA, and a failure to use the proper terminology when informing about an applicant’s marital status. This reflected the perceived importance of these notices and this terminology to federal regulators, suggesting that creditors have a duty to comply with these requirements. The Consumer Credit Act provides for a civil penalty of $40,000, and contains an unusual proviso that means that lenders can tailor their operations to a variety of alternative legal environments.

11. Home Equity Lending

Mark S. Edelman and Arthur J. Rotkoff spoke on state law issues in home equity lending. Before covering state law issues, Mr. Edelman noted four federal laws that impact home equity lending.

Mr. Edelman then described the basic array of state law "choreography" for home equity lenders (in some cases in conjunction with creditors other than the lender who is in position to coordinate between purchase money and consumer credit, mortgage, and the finance companies, and third-party lien financiers, meaning that lenders can tailor their operations to accommodate any variety of alternative legal environments). In some cases increased regulatory burdens can be avoided by tailoring transactions to fit, within certain interest rate and other limitations. License fees, record-keeping requirements, branching strategies, and minimum net worth requirements also should be considered. As a result, lenders have considerable flexibility in terms of choosing the applicable legal environments.

Arthur Rotkoff discussed related litigation issues, including the search for new plaintiffs’ theories to attack home equity lenders’ practices. The widespread spread litigation is typical: no court has held since the mid-1980s that the law does not generally permit such cases to proceed. But cases continue to fall into an effort to create new legal theories to combat perceived unfairness and other illegal practices.

Lawrence Young then described the new Texas Home Equity Lending Law. This has been previously discussed by Mr. Young in the preceding issue of the Quarterly Report, so that discussion will not be repeated here.

12. UCC Article 9 Issues and Developments

David B. McCrean described current secured transaction issues and recent developments. Among the most interesting cases was In re Church, where the buyer of an auto failed to obtain a new certificate of title in the buyer’s name. As a result the purchaser money security interest was perfected as the lien was never entered on the certificate of title, and the secured party was left with an unsecured claim to bankruptcy. The Court rejected the argument by the secured party that the vehicle was not property of the estate because the buyer never transferred title, and the argument that the court should impose a constructive trust in favor of the creditor because the buyer fraudulently avoided the security interest.

In re Leach a secured party was unprotected because the wrong creditor was listed on the lien form. And in TCT Federal Credit Union v. New Country Dodge, Inc. the secured party was able to recover from a dealer who failed to record the lien as required under New York law. Mr. McCrean also noted some of the cases holding incorrectly, in your author’s view that the Bankruptcy Code preempts state law lien entry grace periods.

Regarding enforcement of security interests, Mr. McCrean held that Barrett v. Harwood, holding that where a police officer was present during a repossession, but sought only to prevent violence and not to facilitate the repossession, there was no violation of constitutional due process. In Namou v. Linebarger, the dealer repossession of a car after the dealer was unable to sell the purchaser’s contract in the secondary market. The trial court allowed the purchaser to recover in the car from the security interest on the grounds that the repossession was improper because the purchaser’s contract did not make the purchaser’s rights contingent on a subsequent sale of the contract.

In DeMery v. Rieker, the borrowers were injured during a repossession and initially recovered in their own lawsuit—$40,000 dollars. The amount was reduced in the order of the debt for the security interest was perfected as the lien was never entered on the certificate of title, and the secured party was left with an unsecured claim to bankruptcy. The Court rejected the argument by the secured party that the vehicle was not property of the estate because the buyer never transferred title, and the argument that the court should impose a constructive trust in favor of the creditor because the buyer fraudulently avoided the security interest.


acted the repossession agent was upheld. In *Patricia v. Wks Auto Company, Inc.*, the notice of intent to retain the collateral in satisfaction of the debt under Uniform Commercial Code section 9-505(2) was held to be inadequate because the notice did not specifically inform the debtor of that fact. In *Chrysler Credit Corporation v. Koons*, the court held that a debtor's verbal objection to repossession was not sufficient to create a breach of the peace. And in *National Bank v. Cegi*, the court wrongly concluded that notice of a repossession sale sent by regular mail ten days in advance of the sale was inadequate.

XIV. Bankruptcy and TILA/RESPA Reform

Robert E. McKewon spoke on legislative developments in Washington, D.C. He described efforts to include some kind of a "needs" test in consumer bankruptcy cases. He noted that the consumer finance industry has supported efforts to simplify the TILA and RESPA disclosures, and would like to see such disclosures administered by a single, independent regulatory agency such as the FRB. He noted that the FRB has a well-deserved reputation for acting on a timely basis and for raising above shifting political winds, in contrast to some other federal administrative agencies and executive branch departments.

Mr. McKewon reported, however, that the TILA/RESPA reform effort has become highly politicized, with some participants seeking fundamental changes to these laws. Some of the resulting proposals are very controversial and probably face an uphill battle to pass (the debt ceiling is coming up in Congress). One danger is that a compre-

hesive federal real estate mortgage law might be used to further usurp an area of state law that is inherently local and traditionally is within the purview of the states. One proposal would impose on lenders a fiduciary-type obligation to determine what loan products are "suitable" for the borrower, much as securities brokers have an obligation to help investors find suitable investments under federal law. This could be a blinding loan default on the lender, and would represent a dramatic departure from traditional contract law.

The contentions nature of the debates on these issues probably means that consensus cannot be achieved in the 105th Congress. The lack of any overriding cred-

its and the generally satisfactory way that courts are handling these issues also militate against fundamental legislative change, despite the obvious need for TILA/RESPA reform.

George Wallace now described the prospects for bankruptcy reform. Unlike TILA/RESPA reform, there is a crisis in the consumer perspective terms of the consumer bankruptcy expl-

osion. He noted that this is the 100th anni-

versary of the original Bankruptcy Act of 1898, the 60th anniversary of the Chandler Amendment of 1938, and the 26th anniversary of the Bankruptcy Reform Act of 1978.

There is a widespread perception that the current Bankruptcy Code unnecessarily drains personal financial resources, and that the costs of this to society have now become excessive. This is reinforced by the rising tide of consumer bankruptcy filings, in many cases by consumers with good incomes and an ability to significantly repay their debts. This perception creates a possible win-

ning opportunity for bankruptcy reform.

Surveys consistently indicate that the vast majority of Americans believe in freedom of contract and personal financial responsibility, and do not favor wholesale discharge of debt absent real financial need. This contrasts dramati-

cally with the view among some academ-

ics and bankruptcy lawyers that bank-

ruptcy should be available as a policy mechanism to routinely rewrite private contracts which are apparently deemed by some to be inherently invalid. Thus the competing bankruptcy proposals reflect the dramatic polarity of thinking on these fundamental issues.

The current proposals before Congress (H.R. 2200 and S. 1301) largely reflect the traditional view of contract and bank-

ruptcy law, as illustrated by the proposed "needs" testing for Chapter 7 (though not Chapter 13). For example, in H.R. 2200 debtors who earn less than 75% of na-

tional median income for a family of equal size would continue to have the choice of filing under Chapters 7 or 13. Those above the 75% level who could pay at least 20% of unsecured debt would be limited to Chapter 13. Zero payment under Chapter 7 would be prohibited if at least $5 per month or 20% of unsecured debt would have to be paid. It is estimated that this would affect 20-30% of bank-

ruptcy filers in need of assistance. S. 1301 includes some similar provisions but also contains some provi-

sions considered troublesome by many creditors.

XV. The UCC Article 9 Revisions

Edward J. Heiser, Jr. and Professor Fred H. Miller described the proposed Uniform Commercial Code (UCC) Ar-

ticle 9 revisions. They suggested that the system is fa-

ciliarly familiar to readers of the Quarterly Report, along with the fact that the consumer issues have been contentious and controversial. Professor Miller described the National Conference of Commissioners on Uniform State Laws (NCCUSL) policy goals as seeking to avoid increased litigation and rigid rules that would im-

pose liability for technical errors. Moreover, it is intended to avoid rules that ben-

efit a small subset of borrowers at the expense of borrowers as a group. In the same time the result must be widely en-

 procurate or the entire exercise becomes academic.

For some, this is a political solution, so political compromises are nec-

essary to avoid determined opposition. For example, the highly regarded and widely enacted UCC Article 3 and 4 revisions have thus far failed in New York because consumer advocates have ini-

iated on nonuniform provisions that are unacceptable to the banking industry. Thus, there is a continual risk that nar-

row interests will defeat needed improve-

ments in state uniform laws, and this risk must be accommodated to some extent. Mr. Heiser described the current pro-

posed UCC Article 9 consumer provi-

sions. Noting that the creditor view that the currently proposed changes would inappropriately penalize consumer lend-

ers. The most troubling proposal was one that would combine a right to prevailing party attorney fees with a statutory penalty for mis-

ora and technical errors. There is a con-

cern about the likelihood of some minor error generating massive liability for the plaintiff's attorney fees, thus providing a new engine for litigation and an unfair litigation climate in which the creditor's prospects for recovery would be nil. Thus creditors believe the proposed reciprocal attorney fee provision is not reciprocal at all, but one-sided and creates a key preda-

citulation (the statutory penalty) is applicable only to one side (the creditor). Mr. Heiser argued that this proposal would be as mood illusory in this üzere, a satisfac-

tory compromise was subsequently reached.

Professor Miller and Mr. Heiser agreed that many issues, such as the choice between actual damages, the re-

buttalable presumption rule, the absolute bar rule and the statutory penalty, should be left to the individual states. Professor Miller noted that the Drafting Committee was originally instructed to retain all existing consumer protections and see if any others should be added. But this has not worked as it became apparent that the delicate balance of mechanisms could be appropriate, that simply do not work in conjunction with certain exist-

ing provisions such as the statutory penal-

ity.

Professor Miller and Mr. Heiser also criticized the proposed mandatory right of reinstatement, as inconsistent with the essential voluntary nature of credit trans-

actions.

Regarding the proposed required post-

sale notice of deficiency, Professor Miller noted that under current section 9-504(2) the requirement to account for a surplus is functionally equivalent to the proposal except that the proposal extends the rule to cover deficiencies. It would, however, override the local bankruptcy deficiency, which presumably require some form of accounting in any event. Mr. Heiser countered that the new require-

ments provide new opportunities for law-

suits over the minor and technical errors that are inevitable in the context of high-

volume notification procedures. Credit-

ors want to supply a general notice and provide the details only on request, which seems a reasonable compromise. This discussion by Mr. Heiser and Professor Miller suggested to several observers that it would be possible to further refine the 1997 proposals to better satisfy both sides.

XVI. New Fair Credit Reporting Requirements

Anne Fortney and Linda Dubnow described the new Fair Credit Reporting Act (FCRA) requirements, that described the new requirement for furnish-

ers of information to provide more accurate information, to correct and update any erroneous information, and to provide notice of disputed information. There is also a duty to provide notice of voluntarily closed accounts and notice of the month and year that delinquency and cens-

sure enforcement efforts began. These elaborate dispute resolution procedures improve the ability of consumers to collect on the terms of compliance burdens on root creditors. There are also new rules govern the sharing of information among affiliates (including require-

ments) and imposing new duties on us-
ers of consumer reports. The definition of adverse action is the same as under the ECOA, but now applies more broadly, e.g., to deposit transactions. The form and required contents of adverse action notices are described in the FCA. Use of consumer reports for employment purposes is subject to new rules. Ms. Fortney noted that the old staff commentary for the Act is now obsolete to some extent, but there is currently no effort underway to revise or update this.

Linda Dubnov additionally discussed the new duties for users of consumer reports. Two new purposes are allowed, and there are new requirements for the adverse action notice. Consumer reports may also include information outside the traditional credit report format, e.g., Department of Motor Vehicles drivers licensing or driving record data. As noted, employment and deposit account uses are also covered. Thus the FCRA adverse action notice requirements may be triggered inadvertently in a variety of contexts. Once these requirements are triggered, the full adverse action notice requirements must be met. Some very subtle permutations of this scenario were described by Ms. Dubnov. She noted that if adverse action is not taken, the consumer is not entitled to a consumer report, and giving a copy in such circumstances may constitute a violation.

Realizing on Collateral
Edward A. Gledhill covered creditor efforts to realize on personal property and real property collateral, noting the latest trends in real estate foreclosure law. He described the California anti-deficiency laws for real estate loans. He also discussed UCC personal property repossession and commercially reasonable sales. He noted the recent case of Bank of America v. Galloway, holding that a creditor violates the UCC by giving notice of a private sale and then selling the collateral at a sealed bid auction sale.

Electronic Marketing of Financial Services
Nan E. McConnell discussed the use of the Internet to market financial services. She predicted $20 billion in Internet business, with $2 billion of this in financial services. So the question is, how do financial institutions capitalize on this? The Internet is more than just a tool for virtual telemarketing; it requires new and creative approaches to the use of interactive corporate websites. The Internet can be used not only to attract new customers, but to educate customers and to create new synergies in conjunction with other marketing and customer service activities. But this new potential also creates opportunities for new legal liabilities: for example, the ability to communicate offers to the consumer in a less convenient way.

Interactive website offers the greatest potential for opportunities and pitfalls. The Internet may project a firm's services into jurisdictions that the firm or others do not want the firm to enter. Among other things, licensing and disclosure requirements are implicated. Proper disclaimers must be on the website to avoid such liabilities. This is an example of how inadequate state laws can inhibit the development of desirable commercial practices, thereby inviting federal preemption and possibly ill-advised federal regulation.

Consumer Arbitration
Thomas Hudson and Robert Cooper addressed arbitration in consumer credit cases; their program materials include a review of all consumer credit arbitration cases decided from January 1994 to October 1997, providing a valuable resource for those interested in arbitration. Mr. Hudson noted that, among other things, a well-drafted arbitration clause can result in the likelihood that the creditor will be considered an attractive target from the perspective of consumer plaintiffs' lawyers. Other important procedural issues include efforts to convert sympathetic economic factors into creative new theories of law. This is well for consumers, but efforts to achieve a class action settlement or a jury verdict and a large punitive damages award. Moreover, isolated creditor abuses, exceptionally neat or sympathetic consumers, or other egregious circumstances may create causes of action under traditional legal principles; in some instances this will result in bad facts and aberrational case law along with the sound decisions recognizing appropriate consumer remedies.

Thus it can be expected that plaintiffs' lawyers will continue to attack even legitimate practices on creative grounds, though responsible parties on both sides will avoid the more extreme positions and practices. Hopefully this traditional process will continue to promote an evolution of accepted legal principles and development of the kind of consensus that will allow the continuing expansion of consumer-related financial services within the parameters of reasonable consumer safeguards.

Recent Developments of Interest
Effect of the Supreme Court's decision in Ruud. Other proposals are considered a real threat; such as the proposal to allow realization of uninsured debt only if the creditor agrees to turn the debt over to the trustee (see above) as another way to limit the value of the collateral. This is considered to be real-