

***MAYER, BROWN, ROWE & MAW LLP'S***  
***SUPREME COURT DOCKET REPORT***  
**OCTOBER TERM, 2003 – NUMBER 8**

Today the Supreme Court granted certiorari in one case of potential interest to the business community. Amicus briefs in support of the petitioner are due on Friday, March 5, 2004, and amicus briefs in support of the respondent are due on Monday, April 5, 2004. Any questions about this case should be directed to Miriam Nemetz (202-263-3253) in our Washington office.

***Truth In Lending Act — Cap On Statutory Damages For Failure To Disclose Finance Charge.*** The Truth In Lending Act (“TILA”), 15 U.S.C. §§ 1601 *et seq.*, imposes disclosure requirements in a broad range of consumer credit transactions. As originally enacted in 1968, the statute allowed individuals to recover from a creditor that has failed to disclose a finance charge “twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than \$100 nor greater than \$1000 \* \* \* .” Consumer Credit Protection Act § 130(a). As subsequently amended to permit actual damages and to cover additional types of credit transactions, TILA’s civil damages provision now states:

[A]ny creditor who fails to comply with any requirement imposed under this part \* \* \* with respect to any person is liable to such person in an amount equal to the sum of –

(1) any actual damages sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in the transaction, (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of the monthly payments under the lease, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1000, or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$200 or greater than \$2,000.

15 U.S.C. § 1640(a).

The Supreme Court granted certiorari in *Koons Buck Pontiac GMC, Inc. v. Bradley Nigh*, No. 03-377, to decide whether Section 1640(a) caps at \$1,000 the non-compensatory damages for failure to report a finance charge accurately, or whether instead plaintiffs are entitled to recover twice the amount of the finance charge even when that amount exceeds \$1,000. In the decision below, the Fourth Circuit concluded that, as amended, the \$1,000 cap on statutory damages applies only to subsection (2)(A)(ii). 319 F.3d 119 (2003). A dissenting judge opined

that the legislative history of the statute reflects that Congress intended the \$1,000 cap to apply to both subsection (2)(A)(i) and subsection (2)(A)(ii). *Id.* at 130-132.

The Court's decision should be significant to all businesses that engage in transactions subject to TILA. The Fourth Circuit's interpretation of Section 1640(a) greatly increases these companies' potential liability for failure to disclose finance charges accurately.

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**MAYER, BROWN, ROWE & MAW LLP WORLDWIDE**

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BRUSSELS  
Square de Meeus 35  
B1000 Brussels, Belgium  
+322.502.5517

HOUSTON  
700 Louisiana Street  
Suite 3600  
Houston, Texas 77002-2730  
713.221.1651

PALO ALTO  
Two Palo Alto Square  
3000 El Camino Real  
Suite 2-300  
Palo Alto, California 94306  
650.331.2000

CHARLOTTE  
214 N. Tryon Street, Suite 3800  
Charlotte, North Carolina 28202  
704.444.3500

LONDON  
11 Pilgrim Street  
London EC4V 6RW  
+44.0.20.7248.4282

PARIS  
13 Avenue Hoche  
75008 Paris, France  
+33.1.53.53.43.43

CHICAGO  
190 South LaSalle Street  
Chicago, Illinois 60603-3441  
312.782.0600

LOS ANGELES  
350 South Grand Avenue  
25th Floor  
Los Angeles, California 90071-1503  
213.229.9500

WASHINGTON  
1909 K Street, N.W.  
Washington, D.C. 20006-1101  
202.263.3000

COLOGNE  
Kaiser-Wilhelm-Ring 27-29  
50672 Cologne, Germany  
+49.221.577.1100

MANCHESTER  
Canada House  
Chepstow Street  
Manchester M1 5FW  
+44.161.236.1612

INDEPENDENT MEXICO CITY  
CORRESPONDENT  
Jáuregui, Navarrete, Nader y Rojas, S.C.  
Torre Arcos  
Paseo de los Tamarindos No. 400-B  
Floors 7, 8 and 9  
Col. Bosques de las Lomas  
05120 Mexico, D.F.  
+525.267.45.00

FRANKFURT  
Bockenheimer Landstrasse 98-100  
D-60323 Frankfurt/Main, Germany  
+49.69.79.41.00

NEW YORK  
1675 Broadway  
New York, New York 10019-5820  
212.506.2500