

# Outlook

Spring 2004  
77 Summer Street, 10th Fl.  
Boston, MA 02110  
617 542-8010  
www.nclc.org

NATIONAL CONSUMER LAW CENTER

Protecting  
Vulnerable  
Consumers  
and  
Promoting  
Marketplace  
Justice

NATIONAL  
CONSUMER LAW  
CENTER

## Inside Outlook

Spring 2004

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## Historic Gains for Minority Car Buyers in Loan Bias Settlement

In a major victory for African-American and Hispanic car buyers, General Motors Acceptance Corporation has agreed to settle a class action lawsuit over loans made to minority customers of the auto finance giant.

The lawsuit against GMAC charged that African-American and Hispanic car buyers pay more for credit as a result of its finance charge 'markup' policy. For decades, GMAC (the nation's second largest auto lender), authorized dealers arranging financing for them to increase the interest rate on customers' contracts beyond that required by the customers' credit rating. This markup was not disclosed to the consumer. Expert reports submitted to the court concluded that minority auto finance customers of GMAC

were marked up more frequently and at significantly greater rates than white customers with comparable credit ratings.

"This represents a significant

step for all GMAC customers," said Stuart Rossman, director of litigation at NCLC. "Prior to this lawsuit, there were no limits on how much GM dealers could mark up loans.

(continued on page 3)



NCLC's Deanne Loonin greets U.S. Senator Paul Sarbanes (D-MD) at a financial services forum in December 2003 at which Loonin spoke on credit counsel abuses. The conference was sponsored by the Consumer Federation of America.

Photo courtesy InCharge

## NCLC, NACA Plan FCRA Web Library

NCLC and NACA are jointly preparing a Fair Credit Reporting Act internet library thanks to an anonymous donor who generously directed unclaimed settlement funds to the two organizations to create a shared website dedicated to FCRA litigation documents.

"This FCRA virtual library will be a tremendous resource for attorneys preparing FCRA cases," said NCLC's Tony Rodriguez, coordinator for the database. "This is a first-of-its-kind for consumer law issues and we hope it will be a prototype for internet-based litigation libraries on other

substantive issues."

Rodriguez, who expects to have the database up and running later this spring, plans it to be very user-friendly with material searchable by several different criteria. Documents will include legal briefs,

(continued on page 12)

# NCLC STAFF

## NATIONAL CONSUMER LAW CENTER



Donna Bertko, Customer Service Manager  
 Dimonika Bizi, Administrative Assistant  
 Carolyn Carter, Of Counsel  
 Alys Cohen, DC Office, Attorney  
 Suzanne Cutler, Development Director  
 Danijela Djukic, Assistant to Director of Finance  
 Richard DuBois, Development Director  
 Emilio Englade, Editorial Assistant  
 Stephen Gardner, Advice and Assistance, Of Counsel  
 Shannon Halbrook, Publisher's Assistant  
 Charles Harak, Attorney  
 Robert Hobbs, Deputy Director  
 John Howat, Energy Advocate  
 Margaret Kohler, Director of Finance  
 Svetlana Ladan, Executive Assistant  
 Denise Lisio, Supervising Legal Editor  
 Deanne Loonin, Attorney  
 Willard P. Ogburn, Executive Director  
 Debbie Parziale, Office Manager  
 John Rao, Attorney  
 Tony Rodriguez, DC Office, Attorney  
 Stuart Rossman, Director of Litigation  
 Elizabeth Renuart, Attorney  
 Margot Saunders, DC Office, Managing Attorney  
 Eric Secoy, Legal Editor  
 Jon Sheldon, Attorney  
 Stacy Smith, Publications Assistant  
 Dorothy Tan, Legal Editor  
 Steve Tripoli, Advocate  
 Olivia Wein, DC Office, Attorney  
 Shirllron Williams, DC Office, Office Administrator  
 Odette Williamson, Attorney  
 Donna Wong, Publications Director  
 Chi Chi Wu, Attorney

## Outlook

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 National Consumer Law Center  
 OUTLOOK  
 77 Summer Street, 10th Fl.  
 Boston, MA 02110  
 617 542-8010  
 scutler@nclc.org

Dear Friends and Colleagues:

We're off to a productive start this year as you can see in this issue of OUTLOOK. We've been active in many issues, on many fronts, but one of the activities with which we're particularly pleased is the loan bias case settlement against GMAC. It provides for real and constructive change in the practice of dealer-arranged financing and should save consumers millions of dollars.

We're also excited about a new virtual FCRA library that is being planned. We expect to have the website up and running later this spring. This is a joint effort with NACA which would not have been possible without the support of generous donor.

Other donors have helped to underwrite our work on RALs, debt counseling, predatory lending, arbitration, student loans, energy efficiency, and much more. Our donors are helping NCLC to change the marketplace. We sincerely thank them all - we've listed our most recent contributors on pages 10 and 11.

And if your name is not on the current list, I hope you'll make a donation so we can include you next time. Of course we welcome large gifts, but we also really appreciate more modest ones. Every little bit truly helps. The donations add up and together enable NCLC to stand and fight against consumer abuses, rather than turn away for lack of funding. We need your support - please make a donation today.

Willard P. Ogburn  
 Executive Director

We're depending on your support because low-income consumers are depending on ours.

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# Auto Finance by the Numbers

**\$500 billion** - outstanding auto loans in 2001

**\$45 billion** - interest paid annually on these loans

**\$1000+** - average per loan cost of undisclosed finance charges and dealer kickbacks

**25.9%-41.7%** - annual percent of customers assessed GMAC markups from 1/99-4/03

**53.4%** - percent of African-American GMAC customers who received subjective markup compared to 28.2% of white customers

**\$412** - average difference between the markup African-Americans customers of GMAC paid compared to white borrowers

**9.01%** - average annual rate African-Americans pay on new car loans, compared to 7.38% for all other households. Hispanics pay average annual rate of 8.52%

Source: Consumer Federation of America, *The Hidden Markup of Auto Loans*, 1/04

# Car Loan Bias Case Settled

(continued from page 1)  
This settlement will save consumers tens of millions of dollars each year and will positively change the dynamics of dealer-arranged financing," said Rossman.

GMAC has agreed to impose a 2.5 percent markup cap on loans with terms up to 60 months, and a cap of 2 percent on extended term loans. Before the case was filed in

**"The markup cap in this settlement amounts to an approximate annual savings of over \$60 million dollars for GMAC customers..."**  
- Mark A. Cohen

1998, GMAC had no markup cap limits on any of its consumer auto loans. While the case was being litigated, GMAC imposed a cap of 4 percent in 2001 and 3 percent in 2002.

According to Professor Mark A. Cohen of Vanderbilt University, who analyzed GMAC transaction data, the settlement will bring substantial benefits to consumers. "The markup cap in this settlement amounts to an approximate annual savings of over \$60 million dollars for GMAC customers, based on data examined for the lawsuit, said Cohen. "Approximately 90,000 GMAC customers should benefit each year by receiving lower rate auto loans," he said.

GMAC also has agreed to institute a substantial credit program designed to provide

minority car buyers with special rate financing. The credit program follows a comparable program that Nissan Motor Acceptance Corp. is implementing under the terms of a settlement agreement reached last year in a similar case brought by NCLC and the same group of lawyers.

The GMAC program will extend to African-American and Hispanic customers throughout the United States and will offer no less than 1.25 million pre-approved qualified applicants 'no markup' loans over the next five years. "The settlement will even benefit those consumers who chose not to avail themselves of this affirmative offer since the notice letters will inform them of the actual rate they qualified for without a markup," said Rossman. "Armed with this information, educated consumers can be more effective and successful participants in the loan market," he said.

**"Approximately 90,000 GMAC customers should benefit each year by receiving lower rate auto loans."**  
-Mark A. Cohen

In addition, GMAC has agreed to change its contract forms to disclose that the customer's interest rate may be negotiable and that the dealer may retain a portion of the finance charge

paid by the customer, and to contribute \$1.6 million toward programs aimed at educating and assisting consumers. Shortly after the settlement was announced, the National Automobile Dealers Association, as well as Toyota Motor Credit and Ford Motor



Stuart Rossman

Credit Co. (both named defendants in other cases filed by NCLC and its co-counsel) announced voluntary adoption of markup disclosure policies.

NCLC has served as co-counsel in the lawsuit with the Law Offices of Clint W. Watkins, the Gilmore Law Offices, Terry & Gore, P.C., Bernstein Litowitz Berger & Grossmann LLP, and Grant & Roddy. For more information about the settlement, visit [www.nclc.org](http://www.nclc.org).

# NCLC Model Laws Are Legislative Templates

NCLC has been writing model laws since it was founded 35 years ago. Our first model, the National Consumer Act, was designed to reform consumer credit. It became the model for the Wisconsin Consumer Act which successfully countered industry-backed usury regulations in the Uniform Consumer Credit Code.

Since that early success we've continued to write many model laws, most recently on several troubling consumer issues: arbitration, refund anticipation loans, and debt management.

## Model RAL Act

Four states and one municipality have laws regulating refund anticipation loans. North Carolina's are the most comprehensive, including provisions that require disclosures, postings, and

registration of RAL distributors.

Using the North Carolina law as a base template, NCLC's Model Act adds a number of important new protections, explained Chi Chi Wu, NCLC's expert on RALs. It

"Another important feature is that it gives consumers private rights of action to recover damages, costs and attorney fees."

- Chi Chi Wu

limits RAL fees, prohibits debt collection abuses by tax preparers, prevents referrals to check cashers, and requires mandatory disclosures. In addition, it requires registration and bonding to ensure state oversight and assure compliance with the Act.

## Fannie Mae Foundation Supports Asset Preservation

In recognition of the Center's work building wealth in low-income communities by fighting predatory lending and promoting homeownership, the Fannie Mae Foundation has awarded the Center a \$50,000 grant for general support.

"We're delighted to receive this generous award from the Fannie Mae Foundation," said Willard P. Ogburn, NCLC executive director. "I think it reflects a recognition that we stand at a critical juncture in the struggle to protect consumer assets from exploitive lending practices," said Ogburn. "Millions of

families are losing precious home equity savings and have no other assets to provide them any economic security."

Under the grant the Center will train hundreds of attorneys and lay advocates nationwide in techniques for combating all types of predatory lending (including home equity abuses and high-cost, short-term credit such as payday lending) and preventing home foreclosures. It will also support efforts to develop public policies aimed at building wealth in economically disadvantaged areas across the United States.

"Another important feature is that it gives consumers private rights of action to recover damages, costs and attorney fees," explained Wu. "If enacted, the consumer protections included in this Model Act will give real benefit to the growing numbers of consumers who are sold RALs."

## Mandatory Arbitration Act

Although many attorneys and legislators are concerned about mandatory arbitration clauses, there is a misperception that states can do little about them because of federal laws preempting state action.

NCLC's Steve Tripoli explains, "A federal legislative fix is the end-goal, but current realities dictate state-level action as a necessary pre-requisite to any federal solution."

NCLC has developed a model law that avoids such preemptions and demonstrates that

"A federal legislative fix is the end-goal, but current realities dictate state-level action as a necessary pre-requisite to any federal solution." - Steve Tripoli

states have broad authority to regulate despite the Federal Arbitration Act.

The NCLC model preserves legal rights such as class actions and statutory or equitable remedies. It puts limits on arbitration in insurance transactions and on consumer arbitration. It provides for cost disclosures in arbitration agreements and for the regulation of arbitration

service providers.

## Debt Management Act

Many states regulate debt management practices in some way, but for the most part these laws are weak and under enforced, according to NCLC's Deanne Loonin.

Typically, a consumer using a debt management or consolidation plan pays a lump sum to a credit counseling agency which forwards the funds to the consumer's creditors. The agencies charge fees to set up the plan as well as monthly fees. Creditors offer concessions to consumers who pay their debts back through such plans. Some agencies pressure consumers into enrolling in the plans even when they are unlikely to help the consumers get out of debt.

To help ensure that states considering new regulations for debt consolidation practices enact consistent and strong, consumer-friendly laws, NCLC and the Consumer Federation of America have jointly released a model law to protect consumers using debt management services.

The National Conference of Commissions on Uniform State Law has also convened a drafting committee for a Consumer Debt Counseling Act

*The RAL, arbitration, and debt management model acts are available on NCLC's website: [www.nclc.org](http://www.nclc.org).*

[www.nclc.org](http://www.nclc.org)

# Grant Works to Expand Energy Efficiency Programs

NCLC has received a grant from the Energy Foundation to help relieve the financial



Charles Harak

burden of skyrocketing home energy bills on low-income families by advocating for the expansion of state energy

efficiency programs.

"The need for energy efficiency is more critical than ever," said Charles Harak, an attorney at NCLC. "Investments in efficiency programs by utility companies, government, and nonprofit organizations are a proven way to lower energy costs for low-income families and bring greater economic justice to the marketplace," said Harak. "We are grateful for the Energy Foundation's support and its leadership on this issue," he said.

Under the grant, the Center will offer a combination of research help, policy analysis,

and information to advocacy groups that are pursuing energy efficiency gains. A resource guide of model consumer protection policies will be distributed to advocates as well, covering termination of utility service, serious illness protections, winter moratoria, payment plan rules, and more.

The Center will devote additional resources to specific initiatives in New York and Washington. In New York, NCLC will work with local nonprofit groups to tap unclaimed utility funds (from unclaimed deposits, dividend checks, accounts payable, or employee checks/benefits) to support low-income bill payment assistance and energy efficiency programs. Estimated unclaimed utility funds in New York range from \$3 million to \$4 million annually.

In Washington, the Center will work with local advocates to increase the level of funding by gas utilities for energy efficiency programs. In

"Investments in efficiency programs by utility companies, government, and non-profit organizations are a proven way to lower energy costs for low-income families and bring greater economic justice to the marketplace."

- Charles Harak

addition to providing advocacy support, the Center will research current levels of efficiency investments by gas utilities and distribute a report with its findings and recommendations.

## Ford Grant Equips Lawyers and Advocates to Fight Predatory Loans

Over the past year NCLC and the National Housing Law Project have been busy training hundreds of lawyers and advocates how to effectively attack and defend against predatory mortgage lending practices. The goal of the program is to create a national community of skilled practitioners who can defend low-income Americans against exploitive home loans.

With support from a two-year grant from the Ford Foundation, training sessions have thus far been held in Oakland, Calif., Richmond, Va., Indianapolis, In., and Austin, Tex. The trainings have sparked enthusiastic support by local advocates in each community.

The trainings feature presentations from local experts on certain aspects of local or state law as a supplement to the federal law training provided by NCLC and NHLP.

Each workshop also covers the lending and counseling aspects of the Department of Housing and Urban Section 8 homeownership program.

Four additional predatory lending trainings will be held in 2004, starting with a session in cooperation with the State Bar of New Mexico in Albuquerque, March 12-13, 2004. For more information on predatory lending trainings, please contact NCLC's Boston office.

## When asked what they liked best about last year's conference, attendees said:

"Best conference I've attended in my 30 years of practice. Keep up the superb work!"

"Huge range of subject matter, excellent speakers, and ability to access resource materials from all breakout sessions in the [conference] book and CD ROM."

"Being in the company of so many fantastic attorneys and advocates. It was a very well-organized conference and the speakers were very high quality and provided very useful information."

"I loved hearing 'success' stories, how the practitioners got to where they did, i.e., got a successful judgment."

"Opportunities to be introduced to new issues and concepts plus being brought up to speed on those we already knew about."

"Opportunities to learn more about how to shift more power to our people."

"How helpful and how willing the speakers and participants were to share info and documents and ideas."

"Provided new and important information and strategies for cases I am working on."

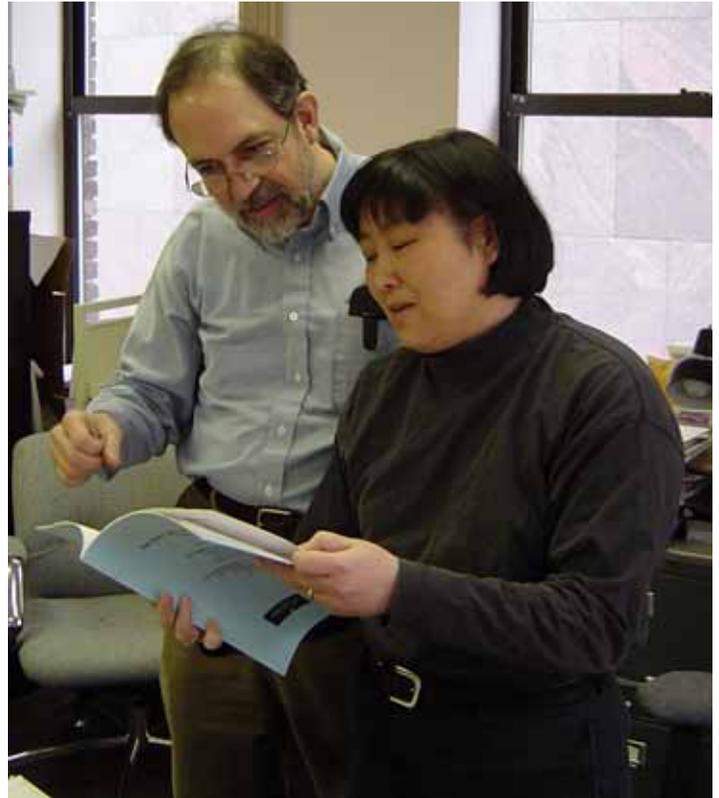
## This year's conference will be even better!

# Consumer Rights Litigation Conference

November 5-8, 2004  
Boston MA

Find out more in our Conference brochures and on our website ([www.nclc.org](http://www.nclc.org)) in early July.

## Fair Debt Collection Training



Robert Hobbs, NCLC deputy director, is shown conferring with Donna Wong, publications director, as they prepare for NCLC's *Fair Debt Collection Practices Training Conference* held in Kansas City February 21-22. The National Association of Consumer Advocates co-sponsored the two-day training.

Speakers included Dick Rubin, Peter Barry, David Phillipps, Cary Flitter, Hobbs, Ian Lyngklip, Dale Pittman, Cathleen Combs, Scott Mauer, and Mike Kinkley.

## Harak Honored by MASSCAP

The Massachusetts Community Action Program honored NCLC's Charlie Harak with the President's Award last fall in recognition of his "consistent service to the cause of promoting self-sufficiency [by poor people] in the Commonwealth," and particularly for his low-income energy work.

"Charlie has been working on behalf of low-income energy and utility customers for more than 20 years," said Willard P.

Ogburn, NCLC executive director. "He's one of the best energy advocates in the country and we're pleased to see him publicly recognized. Congratulations to him."

MASSCAP is a statewide network of 25 multi-service agencies that provide basic support and training services to thousands of low-income and elderly resident in Massachusetts.

## Offering Solutions to Predatory Lending

Margot Saunders, managing attorney of NCLC's Washington, D.C. office, was invited to testify last November at a joint hearing of two Congressional subcommittees on the need to protect homeowners from abusive credit practices. In her testimony, Saunders stressed that strong enforcement of existing laws alone would not solve the problem of predatory lending. "Many of the standard predatory characteristics of problem mortgage loans are perfectly legal under the current regime of federal, and most state, laws," Saunders pointed out in her written statement.

Saunders offered several specific policy recommendations to policymakers. They included placing strict limits on the financing of points and closing costs and holding loan purchasers (assignees) liable for legal claims and defenses that could have been raised against the loan originator.

## Opposing Proposed Bankruptcy Rules

John Rao, an NCLC staff attorney and board member of the National Association of Consumer Bankruptcy Attorneys, recently urged the

Bankruptcy Rules Committee to reject proposed amendments to the Federal Rules of Bankruptcy Procedure. The amendments, which have been proposed by the Executive Office of the United States Trustees, would burden debtors with onerous document production requirements, increase costs for financially-strapped debtors, and raise serious privacy concerns.

In comments submitted for NACBA in January, Rao warned that the new rules would make it much harder for lower income debtors to retain bankruptcy counsel. "It will encourage them to seek less costly alternatives such as using petition preparers or representing themselves pro se," he warned.

## Securing \$4.5 Million for Energy Efficiency in Arkansas

Historic, new legislation was adopted in Arkansas last year that will provide funding for a new low-income energy efficiency program to be delivered by local community action agencies. John Howat, an energy advocate at NCLC, worked closely with the Arkansas Association of Community Action Agencies to ensure that appropriate program evaluation measures were implemented to support the program's long-term success.

Howat is optimistic about the

prospects for the program. "Funding is likely to reach \$4.5 million per year, with additional amounts added as more utility companies opt to participate."

## Monitoring Debt Cancellation Contracts and Suspension Agreements

In response to a request for information from the Federal Reserve Board, NCLC and three other consumer groups outlined numerous pitfalls associated with debt cancellation contracts and debt suspension agreements.

In a letter submitted by NCLC, the Center for Economic Justice, Consumer Federation of America, and Consumers Union, the consumer groups answered the Board's questions regarding the similarities and differences among credit insurance, debt cancellation contracts, and debt suspension agreements. Although all three products appear to be nearly identical, DCCs and DSAs provide fewer benefits to consumers than credit insurance and typically cost more. The comments warned that vital consumer protections that exist in state credit insurance regulations do not exist for debt cancellation contracts and debt suspension agreements. As a result, these products have very little—or no—value relative to the fees paid for them.

# NCLC's Message to Consumers: Avoid Tax Time RALs

"Would you pay between 70 and 700 percent annual interest to borrow your own money?" That's the question that Chi Chi Wu, an NCLC attorney, asked consumers at a February news conference in Boston on refund anticipation loans, the usurious short-term loans that are secured by a taxpayer's expected tax refund.

According to Wu, RALs are another form of high-cost lending that should be avoided at all costs. "RALs are a terrible deal for consumers," said Wu. "They are siphoning hundreds of millions of dollars out of the pockets of struggling families into the hands of RAL lenders," she said.

RALs are aggressively marketed by income-tax preparation companies. They advertise 'Instant Refunds'

**"They are siphoning hundreds of millions of dollars out of the pockets of struggling families into the hands of RAL lenders."**

- Chi Chi Wu

or 'Quick Cash' for their cash-strapped customers, disguising the fact that they are selling advance loans on anticipated tax refunds.

"The tax preparers present it as, 'Oh, you should get the rapid refund,'" said Ann Haynes, a Brockton, Mass. resident who has purchased RALs and spoke at the news conference with Wu and officials from the Commonwealth of Massachusetts. "I

don't think people are aware of how much it's costing them, because they do need the money." Haynes and several family members have been RAL customers for years, and she says the cumulative cost to

Hard-Earned Tax Dollars of Low-Income Americans." According to the report, approximately 12.7 million RALs were taken out during the 2002 tax-filing season, up from 12.1 million in 2001. RALs

**"Would you pay between 70 and 700 percent annual interest to borrow your own money?"**

- Chi Chi Wu

their struggling families has been steep. "I'm sure it's been many thousands of dollars," she said.

NCLC and the Consumer Federation of America recently released a report, "All Drain, No Gain: Refund Anticipation Loans Continue to Sap the

cost the average taxpayer from \$34.95 to \$104.95 in fees, plus an additional \$30-\$40 in administrative fees. Even more disturbing is that over 50 percent of RAL consumers are recipients of the federal earned income tax credit, despite the fact that EITC recipients only

constitute 15 percent of all taxpayers. The EITC is the largest federal anti-poverty program, with over \$36 billion provided to over 20 million families last year.

"What frustrates me most about Refund Anticipation Loans is they are avoidable," said Massachusetts Department of Revenue Commissioner Alan LeBovidge. "Taxpayers who file their tax returns by telephone or computer can receive their state refund in approximately three and a half days, or faster if they use direct deposit," said LeBovidge.

NCLC's work on refund anticipation loans has been made possible by the support of the Annie E. Casey Foundation and the George H. and Jane A. Mifflin Memorial Fund.

## Nominees Sought for Countryman

Since the first Vern Countryman Consumer Law Award was presented in 1990 to Henry J. Sommer for his leadership in promoting the field of consumer law, the Countryman Award has quickly become *the* top honor for consumer attorneys. Winners include some of the most highly regarded consumer advocates in the country.

In 2003 NCLC was most proud to honor Dan Hedges of West Virginia. We applaud his commitment to the rights of low-income Americans, his creative and effective use of the legal system, his zeal for justice,

and his many accomplishments in the field of consumer law. (see story next page).

Each year NCLC presents the Countryman Award to a legal services or other public interest attorney whose special contributions to the practice of consumer law have strengthened and affirmed the rights of low-income Americans. The award presentation is a highlight of the Awards Luncheon each year at NCLC's Consumer Rights Litigation Conference, this year in Boston, November 5-8.

If you know of an outstand-

ing attorney who is deserving of this recognition, please email [Suzanne Cutler at \[scutler.nclc.org\]\(mailto:Suzanne.Cutler@scutler.nclc.org\)](mailto:Suzanne.Cutler@scutler.nclc.org) for information on the nomination process.

Our guidelines are simple: the nominee must have demonstrated excellence in working on low-income consumer or energy issues for at least 10 years; or recently obtained legal relief through judicial, administrative, or legislative action which benefitted a large number of low-income consumers.

We welcome your help in identifying the next deserving recipient!

Over Three Decades,  
Dan Hedges Teaches  
a Real-Life Lesson:  
One Person Really  
Does Have the Power  
to Change Things for  
the Better



Dan Hedges

### Former Countryman Recipients

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# 2003 Recipient VERN COUNTRYMAN AWARD DANIEL F. HEDGES

*NCLC is most proud to know Dan Hedges and to honor him with the Vern Countryman Award, presented to him in October at our National Consumer Rights Litigation Conference in Oakland. (See page 8 for more on the award.) In considering a recipient for this year's Vern Countryman Award, we received many outstanding letters of support on Dan Hedges' behalf. We share with you a few of their comments.*

"Dan is one of the most gifted and most committed lawyers I've ever met." – F. Paul Bland, Jr., Trial Lawyers for Public Justice

"Dan was the key drafter of our State's consumer statutes, that are among the most progressive in the nation ...more than any other individual whom I have ever known, Dan Hedges has (using both courts and legislation) used the legal system to advance the interests of the less fortunate – in lasting and substantial ways – particularly in the areas of consumer law and consumers' rights." – Larry V. Starcher, Justice, West

Virginia Supreme Court of Appeals

"State supreme court justices, federal district judges, and state trial judges have stated to me that Dan is responsible for more law being made in West Virginia than any other lawyer in the State's history. Dan has been able to do this through an uncanny understanding of the court systems and a magnificent ability to put together cases for the greatest impact..." – Bren J. Pomponio, Mountain State Justice

"Dan is one of the nation's premier consumer attorneys and one of the truly great Legal Services attorneys that have graced our movement. His creativity, his courage, and the massive size and scope of his accomplishments are legendary. He is a genius at turning complicated cases into easily understood stories of right and

"One is left to marvel at his ingenuity, dedication, stamina and versatility that somehow permit him to keep these many and varied items of complex litigation moving forward simultaneously..." – John T. Copenhaver, Jr., United States District Judge

"I am not exaggerating when I tell you that Dan Hedges has done more for social reform through the legal system than any other private practitioner in the history of this state. No issue is too small or too large for Dan to take on when he believes there is an injustice and a legal underpinning for its challenge...West Virginia is lucky that Dan Hedges lives and practices law in this State." – Darrell V. McGraw, Jr., West Virginia Attorney General

"...Virtually anything that affects the lives of West

"...Dan Hedges has done more for social reform through the legal system than any other private practitioner in the history of this state."

- Darrell V. McGraw, Jr., West Virginia Attorney General

wrong...He's like Superman: wherever injustice appears, Dan is there to save the day...he is an extraordinary human being..." – Irv Ackelsberg, Community Legal Services

Virginia's low-income population, Dan has been more than willing to take on for more than 30 years. – Kathleen E. Keest, former Countryman Award winner

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# Thank You!

We are grateful to the donors listed on these pages who so generously supported NCLC in 2003. Our advocacy on behalf of low-income consumers is dependent on the gifts of many - thank you.

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# Burdge Makes a Difference with Cy Pres Awards



Ron Burdge

Ron Burdge is always looking for a way to help another victimized consumer. But no matter how many clients he or his fellow consumer attorneys are able to help, he is well aware of the magnitude of the situation. "No one sees as much grief and heartache from consumer abuse as we do, because we see it every day," said Burdge, an attorney who specializes in auto fraud cases in Dayton, Ohio. "Even though it can easily feel like just another client who got ripped off by a car dealer, we cannot forget that we're in a unique position to foster a longer-term solution to the problem," he said.

One way attorneys can leverage their impact, says Burdge, is by including an effective

cy pres remedy in their case settlements. "Defendants may not like having to pay money to a consumer protection organization that they know is out there helping people enforce their rights," he said. "But in the appropriate circumstances, it's one of the best things we can do."

First and foremost, damages should go directly to consumers. But when money cannot be distributed feasibly to class members, a cy pres remedy allows the leftover funds to be used in the interest of class members. A cy pres award also prevents the corporate wrongdoer from keeping ill-gotten gains.

Burdge has directed several cy pres awards to NCLC, and believes its role as a critical resource

for attorneys is of tremendous value to consumers nationwide. He sees cy pres as a way to help strengthen the consumer bar. "No one helps us do what we do, every day, as much as NCLC, and I strongly believe that we need to give back some of what has been so generously given to us," he said.

According to Executive Director Will Ogburn, cy pres from Burdge and other lawyers have enabled the Center to support a growing network of consumer attorneys across the country, as well as engage in advocacy redressing consumer

abuse and defending bedrock consumer protection statutes.

"We're enormously appreciative of Ron's efforts to secure cy pres for the Center and his encouragement of others to do the same," said Ogburn. "The Center is a strong advocate for consumers, and often industry does not want cy pres funds directed to us," he said. "So when it gets down to the tough negotiations over effective cy pres remedies, we rely on the tenacity of attorneys like Ron who dig in their heels and stand up for consumers and NCLC."

## Cy Pres

We extend special thanks and appreciation to the following people who have directed cy pres funds to the Center since the last issue of OUTLOOK.

Peter F. Barry  
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\*Robert Bonsignore was inadvertently omitted from the list of cy pres donors identified in the Fall 2003 OUTLOOK. We apologize for the oversight.

# Thank you

# Court Overturns Rollback of AC Efficiency Standards

A federal appeals court recently overturned the Department of Energy's rollback of tougher standards for air conditioners that had been issued by the Clinton administration in January 2001. The 2<sup>nd</sup> Circuit Court of Appeals in New York ruled the Department violated federal environmental laws by rolling back the regulation that required manufacturers to increase the efficiency of residential air conditioners by 2006.

"It's a tremendous victory for consumers," said NCLC's Charles Harak. "By reinstating higher efficiency standards, families and especially low-income consumers, will reap the rewards through billions of dollars saved in electricity

costs," said Harak. NCLC intervened in an amicus brief in the case, *Natural Resources Defense Counsel v. Abraham*, Sec. of DOE, in which a number of other consumer and environmental groups and state attorneys general also participated.

The court ruled that the Energy Policy and Conservation Act allows the Department of Energy to increase, but never to decrease, the efficiency standards for appliances. Air conditioner efficiency is rated by a seasonal energy efficiency ratio, or SEER. The Clinton administration had promulgated a higher standard ("SEER 13" is 30% higher than the current SEER 10 standard established in 1987) for air conditioners.

# FCRA Virtual Library

(continued from page 1)

complaints, interrogatories, requests for documents, depositions, jury instructions, public information such as SEC documents, and more. Access to the confidential library will be limited to litigators with FCRA claims who themselves agree to submit documents to the database and who meet criteria designed to insure that they are consumer-friendly.

Ira Rheingold, NACA executive director, is working closely with Rodriguez on the website. An informal advisory group includes Richard Rubin, Joanne Faulkner, Len Bennett, Ian Lyngklip, Robert Hobbs, and Chris Kittell.

Please help by submitting documents for inclusion in the database. Contact Rodriguez at [arodriguez@nclcdc.org](mailto:arodriguez@nclcdc.org).

Upon taking office, the Bush administration rolled back the SEER 13 standard to SEER 12.

While the Department of Energy and air conditioner manufacturers claimed that implementing the SEER 13 standard would drive up costs for low-income households, this claim was strongly re-

butted by NCLC advocates. "There is no question that the higher standards will mean lower energy costs for consumers," said Harak. "It will also reduce electricity demand by 14,500 megawatts a year, the equivalent to the output of about 48 average-size power plants," he said.

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