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ATTORNEY GENERAL OPINION NO. 87- 47

Judith K. Stringer
Consumer Credit Commissioner
217 S.E. 4th Street, 4th Floor
Topeka, Kansas 66603-3501

Re: Consumer Credit Code--Insurance; Insurance in
General; Consumer Credit Insurance; Property and
Liability Insurance

Synopsis: In determining the limitations on a creditor's sale
of insurance, a distinction must be drawn between
consumer credit sales and consumer loans. A
further distinction is made between consumer credit
insurance and property insurance which is related
to a consumer credit transaction. Cited herein:
K.S.A. 16a-1-301; 16a-3-301; 16a-4-202; 16a-4-301.

* * *

Dear Ms. Stringer:

We have received a request for reconsideration and
clarification of particular statements made in Attorney
General Opinion No. 87-3. As you were the party requesting
that opinion, we are providing you with these subsequent
comments.

In Attorney General Opinion No. 87-3 we quoted at pages 6 and
7 K.S.A. 16a-4-202 and concluded, based on that statute, that
the amount of insurance is limited to the lesser of either the
amount of the debt or the value of the property. We feel
compelled to expand on this proposition and thereby attempt to
clarify it.

A consumer credit transaction includes consumer credit sales and consumer loans. K.S.A. 16-1-301(11). The type of transaction and the type of insurance are relevant factors in determining the limitations on the amount of insurance for which a creditor may contract or receive a separate charge.

(a) Consumer credit sales, as defined in K.S.A. 16a-1-301(10).

Limitations on the amount of consumer credit insurance and benefits are provided in K.S.A. 16a-4-202. Consumer credit insurance does not include insurance on property. K.S.A. 16a-4-102. The limitations on the amount of consumer credit insurance are (with limited exceptions):

"(a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

"(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable." K.S.A. 16a-4-202(1). (Emphasis added.)

In short, the statute requires that the coverage not initially exceed the debt, and that the coverage decline with the installment schedule. See generally Fonseca, Handling Consumer Credit Cases, Vol. 1, §12:9 (3d ed. 1986).

Limitations on property insurance are provided in K.S.A. 16a-4-301. A key provision of the statute is subsection (1)(a) which states:

"A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless (a) the insurance covers a substantial risk of loss of or damage to

property related to the credit
transaction. . . ."

Simply stated, the insurance must relate to property which the consumer credit transaction involves. In a consumer credit sale, we have opined in Attorney General Opinion No. 87-3, that to be considered "property related to the credit transaction," the property must be that which can be the subject of a security agreement within the limitations of K.S.A. 16a-3-301 and the FTCA.

A second limitation is found in K.S.A. 16a-4-301(1)(b), which states that "the amount, terms and conditions of the insurance" must be "reasonable in relation to the character and value of the property insured. . . ." The property therefore cannot be unreasonably overinsured.

A third limitation appears in K.S.A. 16a-4-301(1)(c), which requires that the insurance be "reasonable in relation to the terms of credit." This limitation focuses on the credit agreement, as opposed to the value of property.

In summary, we perceive three limitations on property insurance involved in a consumer credit sale: the insurance is limited to property related to the transaction, it must be reasonable in relation to the character and value of the property, and it must be reasonable in relation to the terms of credit. It is our opinion that the amount of insurance is restricted to the lesser of these three limitations.

(b) Consumer loans, as defined in K.S.A. 16a-1-301(13).

Limitations on insurance which is related to a consumer loan are similar to those related to a consumer credit sale, however, the restrictions are less exacting.

For consumer credit insurance, K.S.A. 16a-4-202 applies, limiting the coverage to the initial debt, with coverage declining with the installment schedule. The statute does not distinguish between consumer credit sales and consumer loans.

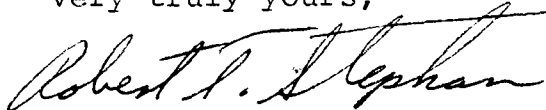
Regarding to property insurance, a distinction is made between consumer loans and consumer credit sales. This difference arises when considering what property is related to the credit transaction. As previously noted, K.S.A. 16a-4-301 requires that the insurance must cover a "substantial risk of loss of or damage to property related to the credit transaction."

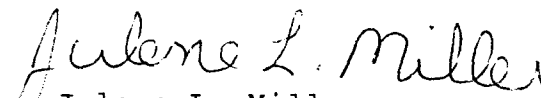
The limitations of K.S.A. 16a-3-301 do not apply to consumer credit loans. However, property related to a consumer loan may not include household goods, as defined by 16 C.F.R. §444., unless the creditor has a valid purchase money security interest or a possessory non-purchase money security interest. Other restrictions on the type of property which is related to the transaction must be examined on a case-by-case basis to determine the conscionability of the transaction when the conscionability is put into issue by the debtor. See Wille v. Southwestern Bell Tel. Co., 219 Kan. 755, 758-59 (1976), for factors to consider in determining conscionability. In other words, while we cannot say that the grant of an interest in property pursuant to a consumer loan is per se unconscionable, unconscionability may be raised as a defense to the lender's claim.

Having discussed what kind of property may be related to a consumer loan, we turn now to the question of the amount of insurance which a creditor may contract for in relation to that loan. The insurance may cover only that property which is related to the transaction. The amount of insurance must be reasonable in relation to both the character and value of the property, and to the terms of credit. K.S.A. 16a-4-301(1).

Reasonableness is a question of fact. We, therefore believe that, in a consumer loan, the amount of insurance could exceed either the value of the property, or the amount of debt. However, as a prerequisite to a creditor contracting for the insurance, the insurance must cover property related to the transaction.

Very truly yours,


ROBERT T. STEPHAN
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