The University of Oklahoma
COLLEGE OF LAW

ORIGINAL

P994413 2000
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August 25, 2000

April M. Major, Attorney
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580
amajor@ftc.gov

Re: High-Tech Warranty Project--Comment, P994413

Dear Ms. Major:

Thank you for your letter dated August 21, 2000, inviting me individually to comment in relation to the above topic.

As you may know, I am Executive Director of the National Conference of Commissioners on Uniform State Laws (NCCUSL), as well as a law professor. NCCUSL, in cooperation with the American Law Institute, is working on an update to Uniform Commercial Code (UCC) Article 2 on sales of goods, to which the Magnuson-Moss act relates. NCCUSL recently also prepared the Uniform Computer Information Transactions Act (UCITA), already enacted in two states. Since both of those statutes are referred to in the Federal Register notice for the above topic, I will be responding with comments on behalf of NCCUSL. The following comments are submitted by me in my individual capacity, however, and do not necessarily reflect the views of NCCUSL, its leadership, or Commissioners. They also do not necessarily reflect views of the institution at which I teach.

Both the projects to amend UCC Article 2 and to prepare UCITA have been ongoing for approximately a decade. Both were begun with and have involved the participation of the American Bar Association. Both have been the focus of much publicity, including legal education programs, articles in publications, and invitations to all interested parties or groups to participate in the preparation of the statutes. As a result, drafting committee meetings, which are open, have been attended by in many cases over 100 persons, all of whom are given an opportunity to speak and to observe the debate as the drafting committee formulates the statute

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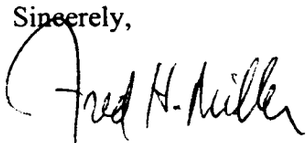
in open meeting. In this process, there virtually is no issue that has not been considered, and often reconsidered. Moreover, in the case of UCITA, which is completed, considerable discussion continued in the enacting states of Virginia and Maryland, and some of the resolutions worked out there were adopted as amendments to UCITA by NCCUSL this month.

I suggest to you that this process represents an ideal example of how government (NCCUSL Commissioners are all representatives appointed by their states, and many NCCUSL projects have included participation from the federal level as well), industry, and consumers can work together to produce a uniform legislative product that clarifies the law, makes it more easily ascertainable, and reduces costs of compliance with it. This process also invariably produces legislation that is balanced, for all interests have an equal voice and compromises within acceptable policy emerge when the positions of various interests are able to be considered and understood because of open discussion. The key to adoption in the statute of a position advocated in this process is how well it has been thought through and the soundness of the policy reflected. Moreover, in that specialized legislation such as UCITA and the UCC must relate to the larger body of state contract and property law, the NCCUSL process is an excellent vehicle to meld the various state efforts that may exist on a legal subject into a uniform whole, and to best accommodate the fit of the resulting product into the general body of state law, as well as the developed consumer protection laws in the various jurisdictions (which both UCITA and Article 2 leave in force).

In some instances, a uniform act may be opposed by certain interests, even though it is supported by a majority of the interests upon which it impacts. This is true of UCITA, and it may prove to be true of amended Article 2. Given the NCCUSL process, this is not likely the consequence of bad policy choices. Rather, often these objections are based on an unwillingness to compromise, or disappointment that more of the objecting interest's "wish list" is not contained in the legislation. However, the test of a uniform act in a democracy must be whether it improves the law on an overall basis and is in the interest of the public as a whole. If that is the case, any mandate that emerges from a less participatory source that changes the balance struck serves neither the law nor our form of government.

I appreciate the opportunity to submit these comments.

Sincerely,



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