

**UNITED STATES DISTRICT COURT  
for the  
EASTERN DISTRICT OF NEW YORK**

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ALLEN and SHARON SCHNEIDER, on behalf	:	
of themselves and all others similarly situated,	:	<b>CV 97-837 (NG)(CLP)</b>
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<b>Plaintiffs,</b>	:	<b>MOTION BY THE FEDERAL</b>
	:	<b>TRADE COMMISSION FOR</b>
-against-	:	<b>LEAVE TO FILE MEMORANDUM</b>
	:	<b>OF LAW AS AMICUS CURIAE</b>
CITICORP MORTGAGE, INC. AND CITICORP,	:	
	:	
<b>Defendants.</b>	:	
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The Federal Trade Commission (“FTC” or “Commission”) respectfully moves for leave to file a memorandum of law as *amicus curiae* opposing the proposed settlement given preliminary approval by the Court on November 14, 2003. Courts in this circuit have held that a district court has broad discretion to permit or deny amici appearances in any given case. *United States v. Gotti*, 755 F. Supp. 1157 (E.D.N.Y. 1991); *Onondaga Indian Nation v. State of New York*, 1997 U.S. Dist. Lexis 9168 (N.D.N.Y. June 25, 1997); *United States v. El-Gabrownny*, 844 F. Supp. 955 (S.D.N.Y. 1994). Additionally, “the customary role of an amicus is ‘to aid the court and offer insights not available from the parties.’” *SEC v. Bear Stearns & Co.*, 2003 U.S. Dist. LEXIS 14611 (S.D.N.Y., Aug. 25, 2003) quoting *United States v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992). As evidenced by the attached memorandum, the Commission is able to provide insight about the proposed settlement and act as “an objective, neutral, dispassionate friend of the court.” *Gotti* 755 F. Supp. at 1159.

Furthermore, the Commission’s ability to best represent the public interest is evidenced, *inter alia*, by the fact that in the courts of appeals, where *amicus* briefs are routinely filed, a

United States agency like the Commission may file an *amicus curiae* brief as a matter of right, whereas non-government *amicus curiae* are required to obtain either consent of the parties or leave of the court. *See* FRAP Rule 29.

The Commission is an independent law enforcement agency whose mission is to promote the efficient functioning of the marketplace by protecting consumers from unfair or deceptive acts or practices and to increase consumer choice by promoting vigorous competition. The FTC's primary legislative mandate is to enforce the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.* ("FTC Act"), which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>1</sup>

Pursuant to this authority, the Commission routinely brings enforcement actions to further both its consumer protection and competition (antitrust) missions. Commission enforcement actions routinely seek monetary relief, including refunds for consumers. In fiscal year 2002, for example, the Commission obtained 73 administrative orders and federal district court judgments ordering the payment of over \$155 million in redress programs, including the drafting and mailing of notices, the processing of consumer claims, and the payment of cash refunds to consumers. The FTC typically dispenses millions of dollars in redress to consumers each year.

The Commission also has experience with non-pecuniary and other redress programs, including programs involving product discounts, computer upgrades and other forms of relief.

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<sup>1</sup> The FTC Act provides the Commission with broad enforcement authority and jurisdiction over most segments of the economy. Certain entities, such as depository institutions and common carriers are wholly or partially exempt from FTC jurisdiction, as is the business of insurance. In addition to the FTC Act, the Commission has enforcement responsibilities under more than 40 statutes.

*See, e.g., American Body Armor and Equipment, Inc.*, 118 F.T.C. 982 (1994) (respondent ordered to provide a 40% discount on replacement body armor); *Apple Computer, Inc.*, 124 F.T.C. 184 (1997)(respondent ordered to provide personal computer upgrade kits at less than half the original list price); *Sharp Electronic Corp.*, Docket No. C-4002 (Order Mar. 7, 2001)(respondent ordered to upgrade handheld personal computers for a shipping and handling fee of \$10); *FTC v. Access Resource Services, Inc.*, No. 02-60226 (S.D. Fla. Nov. 4, 2002)(respondent ordered to stop collection on and forgive an estimated \$500 million in outstanding consumer charges, return to consumers all uncashed checks and pay the FTC \$5 million); and *United States v. Mercantile Mortgage Co., Inc.*, No. 02C 5079 (N.D. Ill. Aug. 23, 2002)(respondent ordered to refinance loans of certain borrowers on favorable terms and pay \$250,000 to the FTC).

Finally, the Commission has been granted *amicus* status by other courts to comment on whether proposed consumer class action settlements were fair, reasonable or adequate and the reasonableness of attorneys' fees. *See Erikson v. Ameritech Corp.*, No. CH 18873 (Cir. Ct. Cook County, Ill. Sept. 18, 2002); *Carter v. ICR Serv. Inc.*, No. 00-C-2666-W (N.D. Ala. Sept. 6, 2002); and *Haese v. H&R Block*, No. CV-96-423 (Dist. Ct. of Kleberg County, Tex. June 24, 2003).

Class action coupon settlements, which are often hard to value, require rigorous scrutiny, particularly when coupled with agreements by defendants to pay high attorneys' fees to class counsel. Based on its responsibilities and experience in this area, the Commission respectfully suggests that the Court may benefit from having its views on the proposed class action coupon settlement and the reasonableness of attorneys' fees and costs in this case. The Memorandum of

Federal Trade Commission as Amicus Curiae Regarding the Proposed Class Action Coupon Settlement is attached hereto for the Court's consideration.

Dated: \_\_\_\_\_

Respectfully submitted,

William E. Kovacic  
General Counsel

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