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Lender Has No Responsibility for Statutory Disclosures Where Seller Arranges Credit and Lender's Disclosures Would Be Duplicative.

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CASE NOTES

CONSUMER CREDIT—Multiple Creditors' Responsibility for Truth-in-Lending Disclosures—Lender Has No Responsibility for Statutory Disclosures Where Seller Arranges Credit and Lender's Disclosures Would Be Duplicative

Manning v. Princeton Consumer Discount Co.,

533 F.2d 102 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

Plaintiff Manning agreed to purchase a used car from Springfield Dodge, Inc. (Springfield) on March 2, 1974, and made a cash down payment of three hundred dollars. Springfield, in order to obtain financing for the balance of the purchase price, obtained information from Manning in the form of income, assets, and expenses and passed this to Princeton Consumer Discount Company (Princeton). Acting on this information, Princeton agreed to loan Manning $1,190.00 for the automobile purchase. Springfield and Princeton had made similar credit arrangements on other occasions.[1]

On March 11, 1974, Springfield asked that Manning return to its offices, and from there she was driven to the offices of Princeton. Manning had been informed of the terms of the loan contract by a Springfield officer before the trip. While at Princeton, an agent made disclosures for the consumer loan that were required by section 1639 of the Consumer Credit Protection Act.[2] Neither Springfield nor Princeton, however, made disclo-

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1. Between June 1973 and June 1974 there were fourteen similar credit transactions between the codefendants. Manning v. Princeton Consumer Discount Co., 397 F. Supp. 504, 506 (E.D. Pa. 1975), *aff'd*, 533 F.2d 102 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

2. Consumer Credit Protection Act, Subchapter I, 15 U.S.C. §§ 1601-1665 (1970 & Supp. V 1975). A creditor extending a consumer loan must disclose the following:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.
(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.
(3) The total amount to be financed . . . .
(4) [A]mount of the finance charge.
(5) The finance charge expressed as an annual percentage rate . . . .
(6) The number, amount, and the due dates or periods of payments scheduled to repay the indebtedness.
(7) The default, delinquency, or similar charges payable in the event of late payments.

sures required for a "credit sale."[3]

After signing the documents, a check was drawn, payable jointly to Manning and Springfield. Thereafter, Manning endorsed the check and assumed possession of the automobile.

Manning brought an action under the Consumer Credit Protection Act[4] against both dealer and lender for alleged failure to make required disclosure of terms in connection with the credit sale. The district court entered summary judgment for plaintiff in her class action suit against the dealer, but denied the same motion as against the lender. Plaintiff and dealer appealed to the Court of Appeals for the Third Circuit. Held—*Affirmed.* A seller has sole responsibility under the Truth-in-Lending Act (TIL) for statutory disclosure where the seller has arranged for the extension of credit, and subsequent disclosures by a lender in such instances would duplicative.[5]

The purpose of the Consumer Credit Protection Act is to provide the consumer with sufficient credit tools, through standardized disclosure requirements, to permit an intelligent and meaningful credit shopping decision.[6] Under the authority of TIL, the Federal Reserve Board is empow-

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(8) A description of any security interest held or to be retained or acquired by the seller . . . .

Id. § 1639 (1970).

3. The Consumer Credit Protection Act defines "credit sale" in part as "any sale with respect to which credit is extended or arranged by the seller." *Id.* § 1602(g) (1970). Regulation Z establishes that the phrase "arrange for the extension of credit" means:

> to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit
> (1) Receives or will receive a fee . . . or
> (2) Has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the extension of credit.

12 C.F.R. § 226.2(h) (1976). Regulation Z is codified at 12 C.F.R. §§ 226.1 to .1002 (1976). A credit sale requires disclosures identical to those prescribed for a consumer loan under 15 U.S.C. § 1639 (1970) and in Regulation Z § 226.8(b) and (d). However, the credit sale requires the following additional disclosures:

(1) The cash price of the property or service purchased.
(2) The sum of any amounts credited as down payment (including any trade-in).
(3) The difference between the amount referred to in paragraph (1) and the amount referred to in paragraph (2).

15 U.S.C. § 1638 (1970); *see* 12 C.F.R. § 226.8(b), (c) (1976).

4. 15 U.S.C. §§ 1601-1681 (1970 & Supp. V 1975). Subchapter I of the Consumer Credit Protection Act, Consumer Credit Cost Disclosure, is commonly known as the Truth-in-Lending Act.

5. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 105-06 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

6. *See, e.g.*, Bissette v. Colonial Mortgage Corp., 340 F. Supp. 1191, 1193 (D.D.C. 1972), *rev'd on other grounds*, 477 F.2d 1245 (D.C. Cir. 1973); Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 276 (S.D.N.Y. 1971); U.S. CODE CONG. & AD. NEWS 1962-63 (1968). "It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the

ered to issue regulations and advisory opinion letters to effectuate congressional intent.[7] In accomplishing the Act's purpose, the courts have expanded the application of TIL by consistently applying a liberal construction to the Act's disclosure requirements.[8] This liberal reading of the Consumer Credit Protection Act has manifested itself in multiple-creditor transactions in which the courts have attached liability to extenders of credit who have not fallen within the purview of TIL until well after the consumer has become contractually committed.[9]

The typical multiple-creditor consumer contract has involved an initial creditor who made no disclosures under TIL and led the purchaser to believe that a cash transaction was involved and then assigned the "cash" contract to a financial institution at an appropriate discount.[10] The Act clearly defines a creditor as one who regularly extends or arranges for the extension of credit for which a finance charge is required[11] and who extends such credit to consumers.[12] Accordingly, it has been argued that a financial

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various credit terms available to him and avoid the uninformed use of credit . . . ." 15 U.S.C. § 1601 (Supp. V 1975) (amending 15 U.S.C. § 1601 (1970)).

7. The Act provides that implementing regulations shall be prescribed by the Federal Reserve Board. 15 U.S.C. § 1604 (1970). For cases upholding authority of the Board to issue regulations which express the intention of Congress, *see* N.C. Freed Co. v. Board of Governors of the Fed. Reserve Sys., 473 F.2d 1210, 1213 (2d Cir.), *cert. denied*, 414 U.S. 827 (1973); Gardner & N. Roofing & Siding Corp. v. Board of Governors of the Fed. Reserve Sys., 464 F.2d 838, 840 (D.C. Cir. 1972); Strompolos v. Premium Readers Serv., 326 F. Supp. 1100, 1103 (N.D. Ill. 1971); Richardson v. Time Premium Co., [1969-1973 Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 99,272, at 89,239 (S.D. Fla. 1971). *But see* Mourning v. Family Publications Serv. Inc., 411 U.S. 356 (1973) (usurpation of legislative power). For cases extending great weight and deference to advisory opinion letters of the Board see Philbeck v. Timmers Chevrolet, Inc., 499 F.2d 971, 976 (5th Cir. 1974); Barksdale v. Peoples Financial Corp., 393 F. Supp. 112, 115 (N.D. Ga. 1975); Kroll v. Cities Serv. Oil Co., 352 F. Supp. 357, 363 (N.D. Ill. 1972). *But see* Stefanski v. Mainway Budget Plan, Inc., 326 F. Supp. 138, 142 (S.D. Fla. 1971), *rev'd on other grounds*, 456 F.2d 211 (5th Cir. 1972) (not binding authority as to questions of interpretations of federal law).

8. N.C. Freed Co. v. Board of Governors of the Fed. Reserve Sys., 473 F.2d 1210, 1214 (2d Cir.), *cert. denied*, 414 U.S. 827 (1973); Bostwick v. Cohen, 319 F. Supp. 875, 877 (N.D. Ohio 1970). *See generally* Smyer, *A Review of Significant Legislation and Case Law Concerning Consumer Credit* (pt. 1), 6 ST. MARY'S L.J. 37 (1974); Annot., 11 A.L.R. Fed. 815 (1972); Annot., 14 A.L.R.3d 330 (1967).

9. *See* Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955, 964 (N.D. Ill. 1972).

10. *See, e.g.*, Joseph v. Norman's Health Club, Inc., 386 F. Supp. 780 (E.D. Mo. 1974), *rev'd on other grounds*, 532 F.2d 86 (8th Cir. 1976); Kriger v. European Health Spa, Inc., 363 F. Supp. 334 (E.D. Wis. 1973); Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955 (N.D. Ill. 1972).

11. The Truth-in-Lending Act indicates that creditor "refers only to creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise." 15 U.S.C. § 1602(f) (Supp. V 1975) (amending 15 U.S.C. § 1602(f) (1970)).

12. Garza v. Chicago Health Clubs Inc., 347 F. Supp. 955, 963 (N.D. Ill. 1972).

institution which discounts a cash transaction is not a creditor because credit extended is commercial credit and thus is not extended directly to a consumer.[13]

In opposition to this "noncreditor" argument the majority of the courts have held that a finance company which is a secondary, discount creditor falls within the Act's definition of a creditor since the seller has served as nothing more than a conduit for the consumer credit that was actually extended by the loan institution.[14] Accordingly, the conduit theory has provided the courts with a means of holding the secondary creditor liable in multiple-creditor transactions for failure of *either* creditor to disclose.[15] This theory received limited statutory sanction with the adoption in 1974 of section 1614 of the Truth-in-Lending Act.[16]

The Court of Appeals for the Third Circuit in *Manning v. Princeton Consumer Discount Co.*[17] reviewed a question of law similar to that presented in the conduit situations. While pointing out that distinctions existed between the typical conduit case and the facts presented in *Manning*, the court based its holding on the premise that the transaction accomplished by Springfield was one which fell within the statutory definition of a credit sale. This was predicated upon the assumption that a credit sale is a sale consummated between buyer and seller wherein the seller arranges for the extension of credit. To support this position the court pointed out that "arranging credit" is defined by Regulation Z[18] as providing, or offering to provide, credit which is to be extended by another, in which a fee will be paid or the seller has knowledge of the credit terms and participates in the

13. *See* 15 U.S.C. § 1603 (Supp. V 1975) (amending 15 U.S.C. § 1603 (1970)).

14. In establishing the basis of the conduit theory, it has been held:

> [A]ssignees of consumer retail installment sales contracts who regularly extend or arrange for the extension of credit to consumers through the assignors of such contracts may themselves be 'creditors' within the meaning of, and subject to liability under Truth in Lending. To put it another way, lenders may not escape TIL status as creditors by using sales companies as 'front men.'

Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955, 964 (N.D. Ill. 1972).

15. Kriger v. European Health Spa, Inc., 363 F. Supp. 334, 335 (E.D. Wis. 1973); Philbeck v. Timmers Chevrolet, Inc., 361 F. Supp. 1255, 1261 (N.D. Ga. 1973), *rev'd on other grounds*, 499 F.2d 971 (5th Cir. 1974); Glaire v. La Lanne-Paris Health Spa, Inc., 117 Cal. Rptr. 541, 547 (1974); *see* Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955, 964 (N.D. Ill. 1972); *cf.* Starks v. Orleans Motors, Inc., 372 F. Supp. 928, 930 (E.D. La.) (term "routed" used rather than conventional conduit terminology), *aff'd*, 500 F.2d 1182 (5th Cir. 1974); Owens v. Modern Loan Co., [1969-1973 Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 99,099, at 88,941 and 88,944 (W.D. Ky. 1972).

16. 15 U.S.C. § 1614 (Supp. V 1975) reads:

> Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter which may be brought against the original creditor in any credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

17. 533 F.2d 102 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

18. 12 C.F.R. § 226.2(h) (1976).

contract preparation.[19] Because Springfield had extended or arranged credit by receiving a five percent referral fee, it was declared a creditor.[20] Springfield attempted to counter the argument that it was a creditor by asserting that the statute required *both* the receipt of a fee and participation in the contract preparation.[21] The court summarily dispensed with that argument as contrary to the clearly expressed terms of the definition and determined that Springfield became a creditor by the sole act of accepting the referral fee.[22]

In *Manning* the finance company had become a creditor by actually extending credit directly to the plaintiff, and the dealer was judicially declared a creditor as a result of its arranging for the extension of credit. Unlike previous conduit cases, the court was confronted with two creditors who independently fell within the Act's purview. The court was not required, therefore, to utilize the conduit theory, and the district court expressly rejected the plaintiff's argument under that theory by pointing out that the circumstances did not involve an assignment so that the logic of cases dealing with that situation was inappropriate.[23]

The court also dealt with the plaintiff's argument that section 1631[24] of TIL requires that *each* creditor in a transaction disclose credit information and dispensed with this approach by stating that section 1631 was inapplicable to this multiple-creditor transaction.[25] Instead, the court held section 226.6(d) of Regulation Z to be the regulation governing the multiple-creditor transaction in question.[26] The decision noted that the requirements of disclosure for a credit sale were set out in subparagraphs (b) and (c) of regulation 226.8[27] and that those pertinent to a consumer loan were

19. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 104 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

20. *Id.* at 104.

21. *Id.* at 104.

22. *Id.* at 104.

23. Manning v. Princeton Consumer Discount Co., 390 F. Supp. 320, 326 (E.D. Pa. 1975), *aff'd*, 533 F.2d 102 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976). *But see* Hinkle v. Rock Springs Nat'l Bank, 538 F.2d 295, 296-97 (10th Cir. 1976) (seller of mobile homes and bank *both* had a duty of disclosure under TIL).

24. 15 U.S.C. § 1631 (Supp. V 1975) (amending 15 U.S.C. § 1631 (1970)).

25. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 105 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

26. *Id.* at 105. Section 226.6(d) reads:

> If there is more than one creditor in a transaction, each creditor shall be clearly identified and shall be responsible for making only those disclosures required by this part which are within his knowledge and the purview of his relationship with the customer. If two or more creditors make a joint disclosure, each creditor shall be clearly identified. *The disclosures required under paragraphs (b) and (c) of § 226.8 shall be made by the seller if he extends or arranges for the extension of credit.* Otherwise disclosures shall be made as required under paragraphs (b) and (d) of § 226.8.

12 C.F.R. § 226.6(d) (1976) (emphasis added).

27. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 105 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

delineated in subparagraphs (b) and (d).[28] Therefore, since the omissions of which plaintiff complained were those required for a credit sale, liability for the failure to disclose fell upon the seller.[29] To support its position, the court noted that the third sentence of regulation 226.6(d) states that the *seller* is responsible for credit sale disclosures where he arranges or extends credit.[30]

In reviewing the plaintiff's interpretation of the regulation, the Third Circuit rejected a "fail-safe" approach which would have required the secondary creditor to disclose information which would be identical to and needlessly duplicative of information provided by the seller. The court reasoned that the consumer would not be better served "by giving him two sheets of paper, rather than one, when both contain exactly the same data."[31]

The *Manning* holding implies that since the purpose of the TIL Act is to provide the consumer with information that will meaningfully contribute to his credit shopping decision, the courts will not needlessly burden the creditor by requiring multiple disclosures which contribute nothing to the consumer's understanding. The "[l]et the creditor disclose"[32] philosophy of consumerism has, according to *Manning*, some finite bounds. Clearly, Springfield met the Act's definition of creditor by converting a cash sale into a credit sale and accepting a five percent referral fee. These acts constitute a "credit sale" and regulation 226.8(c) requires disclosure.[33] The courts uniformly agree with the interpretation of the Federal Reserve Board on the mechanics of creating such a sale.[34]

The *Manning* court's point of departure is the determination of what disclosures are required of a loan creditor when it extends credit to a consumer subsequent to a related credit sale. Prior to this decision, it was assumed that the consumer loan creditor must independently make disclosures under regulation 226.8(d), regardless of any prior creditor's disclo-

28. *Id.* at 105.
29. *Id.* at 105. For text of § 226.6(d), see note 26 *supra.*
30. *Id.* at 105.
31. *Id.* at 105.
32. *See* Mourning v. Family Publications Serv., Inc., 411 U.S. 356, 377 (1973).
33. 12 C.F.R. § 226.8(c) (1976).
34. *Compare* Stefanski v. Mainway Budget Plan, Inc., 456 F.2d 211, 212 (5th Cir. 1972); Walker v. College Toyota, Inc., 399 F. Supp. 778 n.3 (W.D. Va. 1974), *aff'd per curiam*, 579 F.2d 447 (4th Cir. 1975); Starks v. Orlean Motors, Inc., 372 F. Supp. 928, 931 (E.D. La.), *aff'd*, 500 F.2d 1182 (5th Cir. 1974); Puckett v. Georgia Homes, Inc., 369 F. Supp. 614, 618 (D.S.C. 1974), *with* Correspondence from G. L. Garwood, Adviser, Federal Reserve System, June 26, 1973, [1969-1974 Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 30,986; Correspondence from Frederic Solomon, Director, Federal Reserve System, June 4, 1970, *id.* ¶ 30,399; Correspondence from Robert P. Forrestal, Assistant Secretary, Federal Reserve System, Oct. 16, 1969, *id.* ¶ 30,497; Correspondence from Robert P. Forrestal, Assistant Secretary, Federal Reserve System, Sept. 5, 1969, *id.* ¶ 30,154.

sures.[35] It is uncontested that Princeton made appropriate disclosures to plaintiff as required by the Act.[36] In the court's opinion, however, any disclosure required under regulation 226.8(d) which would merely duplicate prior disclosures made in compliance with regulation 226.8(c) is not required, and impliedly the loan creditor is relieved of any responsibility or liability in the event the initial creditor was remiss in his statutory obligations.

In a 1970 Federal Reserve Board advisory opinion letter which addressed similar hypothetical facts, it was noted that:

> The lending institution, however, could make disclosures under the loan provisions of §§ 226.8(b) . . . and (d) . . . of the Regulation, or the builder-arranger and the lending institution could join in making a single disclosure statement under §§ 226.8(b) . . . and (c) . . . as a credit sale.[37]

Though this unofficial correspondence may be interpreted as contrary to the holding in *Manning*, the district court cited this letter as consistent with its holding,[38] apparently on the premise that the choice of the word "could" established only a permissive duty to disclose. When coupled with the court's concept that little, if anything, would be accomplished by requiring an identical disclosure, the lower court's decision that the lender enjoys no responsibilities for disclosure under these circumstances takes on pragmatic significance in that a lending institution had statutorily qualified as a creditor by extending credit to a consumer, and yet the court held that the Act expressly relieved the lender of any requirement to disclose.[39] The basis for the holding was that the consumer would realize little or no benefit if the information in question was previously made available or required by the Act to have been previously disclosed.

Since the appellate court addressed each of the conduit cases cited by the plaintiff,[40] it would be tenuous to assume that the holding in *Manning* is precisely applicable to contract assignment cases as well. The court expressly noted, however, that in each of those cases section 226.6(d) of Regula-

35. *See, e.g.*, Kriger v. European Health Spa, Inc., 363 F. Supp. 334, 336 (E.D. Wis. 1973); Philbeck v. Timmers Chevrolet, Inc., 361 F. Supp. 1255, 1261 (N.D. Ga. 1973), *rev'd on other grounds*, 499 F.2d 971 (5th Cir. 1974); Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955, 964 (N.D. Ill. 1972).

36. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 104 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

37. Correspondence from Frederic Solomon, Director, Federal Reserve System, June 4, 1970, [1969-1974 Transfer Binder] CONS. CRED. GUIDE ¶ 30,399.

38. Manning v. Princeton Consumer Discount Co., 397 F. Supp. 504, 506 (E.D. Pa. 1975), *aff'd*, 533 F.2d 102 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

39. *Id.* at 506.

40. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 106 n.4 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

tion Z was not argued or considered.[41] This leaves the impression that a different outcome might have been reached had such an argument been properly presented. In light of the fact that the parties here, and those in the conduit cases who made initial consumer contact, are arrangers of credit and therefore creditors under the Act, the logic of *Manning* may possibly be utilized to place the burden of disclosure upon the seller and thereby dissolve the fictional conduit theory of assessing liability.

Although *Manning* is a departure from traditional concepts involving creditor liability and is arguably in conflict with previous Federal Reserve Board interpretations,[42] it nevertheless is a logical, common sense approach in a field now infamous for its extensive disclosure requirements.[43] *Manning* requires the creditor who offers to arrange or extend credit *prior* to the signing of any contract to bear the burden of the regulations imposed by TIL.[44] By using the conduit theory, previous decisions had considered and rejected the argument that the Act does not require disclosures after the establishment of the initial contractual relation.[45] Nonetheless, *Manning* implies that enforcement must follow the purpose set out in section 1601 and that the statute would have explicitly set forth duplicative disclosure requirements had that been the legislative intent.[46] *Manning*, therefore, represents a refinement in consumer credit disclosure philosophy by replacing the comprehensive disclosure requirement with only selected, applicable duties to be determined by economic reasoning and sound commercial logic. The decision represents a reversal of a trend of consumer-oriented decisions by limiting statutory disclosures under TIL to terms which provide meaningful and nonrepetitive information to the credit-shopping consumer.

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41. *Id.* at 106 n.4. *But see* Meyers v. Clearview Dodge Sales, Inc., 539 F.2d 511, 521 (5th Cir. 1976).

42. *See* Federal Reserve Board Correspondence cited note 34 *supra.*

43. *See generally* Landers, *The Scope of Coverage of the Truth in Lending Act*, 1976 AM. B. FOUND. RES. J. 565 (1976).

44. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 105 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).

45. *See* Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955, 964 (N.D. Ill. 1972).

46. Manning v. Princeton Consumer Discount Co., 533 F.2d 102, 106 (3d Cir.), *cert. denied*, 97 S. Ct. 173 (1976).