SUPREME COURT OF NEW JERSEY
DOCKET NO. 57,572

HILDA PEREZ, on Behalf of Herself and All Others Similarly Situated, Plaintiff - Appellant -vs- RENT-A-CENTER, INC., Defendant - Respondent:	:	**CIVIL ACTION** **ON CERTIFICATION TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION** **Docket No. Below: A-3379-03T1** Sat Below: Judges Hon. James J. Petrella, J.A.D. Hon. Jack L. Lintner, J.A.D. Hon. Lorraine C. Parker, J.A.D.

BRIEF OF AMICUS CURIAE LEGAL SERVICES OF NEW JERSEY

LEGAL SERVICES OF NEW JERSEY
MELVILLE D. MILLER, JR.

100 METROPLEX DRIVE
SUITE 402
EDISON, NEW JERSEY 08818-1357
(732) 572-9100

ATTORNEYS FOR AMICUS CURIAE

On the Brief:

David McMillin, Esq.
Christopher Hill, Esq.

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INTRODUCTION

On behalf of low-income New Jersey residents, *amicus* Legal Services of New Jersey (LSNJ) urges this Court to reverse the Appellate Division's decision granting summary judgment to defendant Rent-A-Center and dismissing plaintiff's claims that Rent-A-Center charged unconscionable and usurious interest rates vastly exceeding 30% per year for transactions primarily involving necessary items such as furniture and household appliances.

LSNJ's clients and constituents include many rent-to-own customers -- including many customers of Rent-A-Center -- who have been negatively impacted by the exorbitantly high cost of rent-to-own merchandise that they sought to purchase. Many have also been harmed by the substantial losses that occur when payments cannot be maintained because they have become overextended -- often through multiple rent-to-own contracts -- or suffered a financial setback, and items that have been paid for several times over must be returned.

BACKGROUND: RENT-A-CENTER, THE RENT-TO-OWN INDUSTRY,AND LOW-INCOME CONSUMERS

In the early 1960's, David Caplovitz conducted a ground-breaking study of the sale of furniture and basic household electronic goods to low-income families who had recently moved into new government-subsidized housing projects. What he found

was astonishing.[1] As a result of information asymmetries, lack of access to transportation,[2] formal and informal targeted marketing, misplaced trust, and the absence of effective price competition, the costs that lowest-income families faced in furnishing a home routinely exceeded, by substantial amounts, the costs faced by families with higher incomes. The title of the book reporting the study, "The Poor Pay More," has entered the English language as a common phrase. There is, however, little common recollection of what products Caplovitz was studying, and why.

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[1] See David Caplovitz, The Poor Pay More: Consumer Practices of Low-Income Families (1963).

[2] If the credit markets are reasonably competitive, then competition among RTO dealers would force interest rates down to a level which would truly reflect the inherent risk involved in the transaction. However, the RTO credit markets are not reasonably competitive. Since most low income consumers generally lack the resources to shop far and wide for the best bargain on a particular product, the fact that RTO stores are typically located long distances from each other cuts against a reasonably competitive RTO credit market. RTO stores do not compete for common customers, but rather serve a localized clientele. Therefore no competitive incentive exists to reduce the effective RTO interest charges and, absent regulation, RTO consumers will be charged unfairly high interest rates.

Eligio Pimentel, Renting-To-Own: Exploitation Or Market Efficiency?, 13 Law & Ineq. 369, 394-95 (1995), citing Eric Schnapper, Comment, Consumer Legislation and the Poor, 76 Yale L.J. 745, 752 (1967) (arguing that low income consumers are pressured into purchasing goods in their community and are kept from shopping in other neighborhoods by "the inconvenience of a time-consuming trip to a more affluent area").

Careful observers, however, recognize that today the "Poor Pay More" phenomenon is as firmly entrenched today as ever in the household goods market, and has been skillfully consolidated -- and turned into a highly profitable enterprise -- through the development and rapid expansion of the rent-to-own industry.[3]

Rent-to-own outlets today are ubiquitous in New Jersey's low-income communities. Defendant Rent-A-Center, "the largest operator in the United States Rent-to-own industry," operated at 50 locations in New Jersey as of December 31, 2004.[4] Rent-A-Center has at least one store or franchise in virtually every urban center in New Jersey, including Asbury Park, Bayonne, Bloomfield, Bridgeton, Burlington, Camden, East Orange, Elizabeth, Irvington, Jersey City, Neptune City, New Brunswick, Newark, Passaic, Paterson, Perth Amboy, Plainfield, Trenton, Union City, Vineland, and West New York.[5] Rent-A-Center operates corporate-owned stores in New Jersey under the name Rent-A-Center, and franchises stores under the name ColorTyme. In other states, Rent-A-Center operates under other names, as well, including the Get It Now name used for all of its stores in

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[3] See, e.g., Pa 523-34; Ronald Paul Hill, Stalking the Poverty Consumer: A Retrospective Examination of Modern Ethical Dilemmas, 37 J. Bus. Ethics 209, 214-16 (2002).

[4] Rent-A-Center, Inc. Form 10K dated March 8, 2005, at 1, 5.

[5] Rent-A-Center web site store search feature at www.rentacenter.com.

Wisconsin, which sell goods through retail installment contracts.[6]

Rent-to-own businesses sell appliances, consumer electronics, furniture, and other goods and services using standardized documents in the form of renewable "leases" rather than standard installment sales contracts. A typical rent-to-own contract provides for weekly "rental" payments over period of a year or more with an option to return the item and forfeit all payments made up to that point, or to purchase the item at or before the end of the lease term. Typical retail installment contracts, on the other hand, reflect an immediate purchase (with or without immediate transfer of title) and a schedule of payments over time based on a disclosed annual percentage rate. Under standard rent-to-own contracts, consumers build no equity with their payments. If the consumer misses a single payment, the goods are subject to immediate return or repossession. The merchant can then charge a reinstatement fee (if a payment is more than 10 days late), require the customer to enter into a new rent-to-own agreement, or transfer the goods to a new rent-to-own customer. See, e.g., Pa 413. Although the typical weekly payments of $10 to $25 (on lower-priced items) may seem small, the total rental payments often reach many times the retail

[6] Rent-A-Center, Inc. Form 10K dated March 8, 2005, at 10, 11.

price of the item, and multiple contracts are common. A typical installment sales contract with similar terms would have an interest rate/APR of 80 to 120% or more.[7] Rent-A-Center repeatedly asserts that its higher costs justify these extremely high rates, but makes no effort to document or to quantify these costs.

Rent-A-Center does not operate with a single transaction structure nationwide, but rather varies its transactions in several states. As noted above, in Wisconsin, Rent-A-Center's 21 stores are operated by a subsidiary of Rent-A-Center under the name Get It Now. Rent-A-Center's Get It Now stores do not engage in rent-to-own transactions, but rather offer merchandise "through an installment sale transaction."[8] The standard interest rate in Get It Now transactions is 29.9%.[9] In Minnesota, Rent-A-Center operates several stores offering only

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[7] Jane Kolodinsky, et al., Time Price Differentials in the Rent-to-Own Industry: Implications for Empowering Vulnerable Consumers, 29 International J. of Consumers Studies 119, 122 (2005) (published study by one of Ms. Perez's experts in this case concluding that average rate on weekly rent-to-own contracts for a variety of items was 106.78%, and the average rate on monthly contracts was 85.70%); Lynn Drysdale & Kathleen E. Keest, The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About the Rule of Usury in Today's Society, 51 S.C. L. Rev. 589, 616 & n.150.

[8] Rent-A-Center, Inc. Form 10K dated March 8, 2005, at 10-11.

[9] Manoj Hastak, Regulation of the Rent-to-Own Industry: Implications of the Wisconsin Settlement with Rent-A-Center, 23 J. Pub. Policy and Marketing 89, 92 (2004).

lease transactions with no option to purchase. Even Rent-A-Center's New Jersey agreements vary from its national model, providing "increased disclosures and longer grace periods that were instituted as part of the injunctive relief."[10]

Extent and Industry Consolidation. Rent-to-own is very big business. In August 1998, Renters Choice, Inc. paid about *$900 million* to acquire its biggest competitor, Rent-A-Center, Inc. As of December 31, 1998, the company -- which took the name Rent-A-Center -- had 2,126 company-owned stores, 324 franchisees through its ColorTyme subsidiary, and annual revenue of $809.7 million. *See* Pa 524. For the year ended December 31, 2004, Rent-A-Center's annual revenue had grown to more than $2.3 billion.[11] As the Federal Trade Commission reported in April 2000, "The rent-to-own industry has undergone substantial consolidation over the last several years. While the industry was once characterized by relatively small regional chains and independent 'mom–and-pop' stores, today two national chains, Rent-A-Center and Rent-Way, own nearly half of all the rent-to-own stores in the country. In 1998, both of these firms more than doubled in size through the acquisition of competing chains." Pa 524. Rent-A-Center and Rent-Way continue to

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[10] Rent-A-Center, Inc. Form 10K dated March 8, 2005, at 11.

[11] Rent-A-Center, Inc. Form 10K dated March 8, 2005, at 23.

maintain large market shares in the rent-to-own industry, and have been joined by a third publicly-owned national chain, Aaron Rents -- which has been so profitable that it recently appeared on Business Week's list of the top 100 small companies in the United States.

As of April 2004, the Association of Progress Rental Organizations (APRO), a national rent-to-own trade association, reported that RTO is a $5.98 billion a year industry serving about 2.9 million customers per year. Thus, the average RTO customer is spending over $2,062 a year or $172 per month on RTO merchandise.[12]

1. A Brief History of Consumer Credit and Rent-to-Own Contracts

Today's rent-to-own industry in the United States operates on the model of the "hire-purchase" agreement, which developed in England in the mid-19th century as a method of selling pianos.[13] By the end of the 19th century, the English hire-purchase concept had been adopted only to a limited extent in the United States, most notably by the Singer Sewing Machine Company. In several early cases, Singer agreements closely resembling modern rent-to-own contracts were held to be sales

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[12] Kathleen E. Keest, et al., The Cost of Credit: Regulation and Legal Challenge 106 (Supp. 2004)

[13] David L. Ramp, Renting to Own in the United States, Clearinghouse Review, (December 1990) 797, 797 & n.2.

contracts. See Singer Sewing Mach. Co. v. Holcomb, 40 Iowa 33 (1874); Singer Mfg. Co. v. Smith, 40 S.C. 529(1894).

As the use of consumer credit in the United States grew and diversified from sewing machines to automobiles and other consumer goods in the 20th century, the hire-purchase transaction form did not follow. Retail installment contracts became the dominant -- and virtually exclusive -- form of extending credit for consumer purchases.

At the same time, the judicial concept of the "time-price differential," under which credit sellers argued that their retail installment contracts were exempt from state-law usury law limits on interest rates, developed and spread. (As discussed in Point I, infra, New Jersey's criminal usury law does apply to rent-to-own contracts.) Most state courts adopted the time-price doctrine. Several state courts, however, did not follow the trend, holding that the legislative language and intent of typical usury statutes applied in the same way to seller financing of sales of goods as to other types of loans. See, e.g., Seebold v. Eustermann, 13 N.W. 2d 739 (Minn. 1944); Hare v. General Contract Purchase Corp., 249 S.W. 2d 973 (1952).

At the same time, criticism of the effects of the time-price doctrine -- and in particular its effect of allowing high-interest loans that took advantage of vulnerable consumer borrowers -- grew. As a result, beginning as early as the

1950's, legislatures in every state enacted retail installment sales laws, which set explicit limits on credit sales of goods -- including limitations on interest rates -- and by and large abrogated the judicial time-price doctrine.

Rent-to-own contracts, however, began to re-emerge in the United States consumer market -- on a far larger scale than before. By constructing new arguments that this largely disused type of transaction fell outside the bounds of the new retail installment sales laws, the modern rent-to-own industry was born in the 1960's, and developed rapidly throughout the next three decades. Pa 523. (As discussed in Point II, infra, New Jersey's Retail Installment Sales Act does apply to rent-to-own contracts.) As uncertainties grew as to whether courts would agree with the industry's arguments that retail installment sales laws did not govern its transactions, the industry trade association began a massive lobbying campaign in the early 1980's to pass state laws specific to rent-to-own transactions, and specifically exempting rent-to-own transactions from limitations on interest rates.

The campaign was very successful, with 46 states and the District of Columbia enacting legislation viewed as favorable by the industry. As the FTC Bureau of Economics report on its survey of rent-to-own customers described these statutes, "Generally, the state [rent-to-own] laws were passed with the

active support of the industry. *The industry views these laws as providing a safe harbor legal environment* that specifies the disclosures and conduct required of the industry and clearly defines rent-to-own transactions as leases rather than credit sales." Pa 529 (emphasis added; citations omitted). The only significant exceptions today are Minnesota (where although there is a rental-purchase statute, the state's retail installment sales law continues to apply to rent-to-own transactions), Vermont (where, although an industry supported law was enacted, the Attorney General has promulgated regulations requiring the disclosure of Annual Percentage Rates in rent-to-own transactions), and Wisconsin and New Jersey (the only two states in which the legislature had declined to enact industry-supported rent-to-own legislation).

2. What's Different About Today's Rent-to-Own Industry

a. Basic Household Goods

The modern rent-to-own industry focuses on durable consumer goods that are widely viewed as necessities or near-necessities. For the year ended December 31, 2004, 52% of Rent-A-Center's revenue came from furniture and household appliances.[14] According to a Federal Trade Commission survey of rent-to-own customers in 1999-2000, furniture and lamps accounted for 36.4% of rent-to-own transactions, and household

[14] Rent-A-Center, Inc. Form 10K dated March 8, 2005, at 6.

appliances accounted for 25.0%. Together, 61.4% of rent-to-own transactions fell into these categories. Pa 572. The top ten categories of merchandise rented, according to the survey, accounting for 79.8% of all rent-to-own transactions, were televisions, sofas, washers, VCRs, stereos, beds, dryers, refrigerators, chairs, and dining tables. Pa 573.

Rent-to-own merchants focus on "upselling" -- convincing customers who initially obtain more modest items to enter into additional transactions for more expensive goods as time goes on.[15] Not only does this increase transaction volume -- it also tends to overextend consumers -- especially low-income consumers -- at a point where they have paid substantial amounts for more basic purchases, but before they have made enough payments to be close to ownership.

b. Targeting Low-Income Consumers

While earlier incarnations of rent-to-own transactions, such as pianos and sewing machines, were not typically designed to appeal to lower-income consumers, today's industry is quite different. It is widely recognized that rent-to-own

[15] Alix M. Freedman, Peddling Dreams: A Marketing Giant Uses Its Sales Prowess To Profit on Poverty, The Wall Street Journal (Sept. 22, 1993), at A1

corporations today focus the lion's share of their marketing efforts on low-income consumers.[16]

The statistical evidence shows that industry's marketing hits its target. The Federal Trade Commission's survey of rent-to-own customers in 1999-2000 found that 59% of rent-to-own customers had incomes below $25,000, 73% had a high school education or less, 31% were African-American, and 41% were members of a racial or ethnic minority group. Pa 516, 562-63, 565. APRO, the national RTO trade association, reports that almost half of RTO customers have annual incomes under $36,000, more than 75% have annual incomes under $50,000, and more than 65% have a high school education or less.[17] To the same effect, a report commissioned by one of Rent-A-Center's predecessors in interest "found that 61% of the respondents surveyed in 1994 had personal earnings less than $20,000 and 29% earned less than $10,000."[18]

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[16] See, e.g., Jonathan Sheldon & Carolyn L. Carter, Unfair and Deceptive Acts and Practices, 477 (6th ed. 2004).

[17] See APRO, RTO Industry Statistics, www.aprovision.org/industrystats.html.

[18] National Consumer Law Center, et al., Testimony before the Committee on Financial Services Subcommittee on Financial Institutions & Consumer Credit regarding H.R. 1701, The Consumer Credit Protection Act (July 12, 2001), available at http://www.consumerlaw.org/initiatives/test_and_comm/content/rto_test_content.html (visited May 19, 2005) at n.21, citing Warren B. Rudman, "Market Survey Results and Economic Analysis" (Feb. 1994) at 14 (report to the Board of Directors of Thorn EMI PLC

It is unquestionably important to provide low-income consumers with opportunities to purchase furniture, appliances, and other durable goods at fair prices. The unregulated operation of rent-to-own outlets that charge exorbitantly high prices and impose onerous credit terms, however, is neither socially beneficial nor necessary. Customers expect uniform application of consumer protection laws, and can readily be fooled into bad bargains when the laws are not applied uniformly to merchants offering similar products. At the same time, merchants who operate lawfully within the 30% of criminal usury statute –- which can be done, as attested by many retail stores throughout New Jersey, and indeed by Rent-A-Center's Wisconsin operations offering retail installment contracts at an interest rate under 30% –- are placed at a competitive disadvantage, especially when prices are difficult to compare.

c. Absence of Robust Competition

Substantial evidence suggests that the rent-to-own market functions in a less-than-perfectly-competitive environment, and that this contributes to inflated prices for rent-to-own customers. First, the record indicates that rent-to-own deals are exclusively tie-in transactions, in which the rent-to-own dealer sets not only the "cash price," but also the weekly or

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concerning the operations of the Rent-A-Center Division of Thorn Americas Inc.).

monthly payment amount, and the total of payments necessary to acquire ownership. Indeed, it appears, consistent with the experience of Legal Services clients, that third-party financing of rent-to-own transactions is virtually or completely non-existent. In other words, the rent-to-own dealer always gets to finance the deal. See Till v. SCS Credit Corp, 541 U.S. 465, 480-83, 124 S.Ct. 1951, 1962-63, 158 L. Ed. 2d 787 (2004) (plurality opinion rejecting the assumption that the subprime auto loan market is "fully competitive," in part because "used vehicles are regularly sold by means of a tie-in transaction, in which the . . . terms of the financing are dictated by the seller").

Second, the consolidation of much of the industry in the hands of three large companies, with Rent-A-Center occupying a dominant position, has the effect of reducing competitive pressure.

Finally, the evidence of constraints on the functioning of competitive forces also comes from rent-to-own companies themselves. As one rent-to-own company, Premier Rental-Purchase, states on its public web site:

> Consolidation [in the rent-to-own industry] has not tended to lower consumer prices nor resulted in increased consumer value. Today, over 40% of the industry has been consolidated into two public companies, Rent-A-Center (acquired by Renter's Choice) and Rent-Way. This massive consolidation has

> lead [sic] to the elimination of competition in most small and mid size cities throughout the entire United States.[19]

Meanwhile, rent-to-own firms recognize that price competition is essentially absent from the list of sales methods that are effective at rent-to-own stores. As a national rent-to-own trade association, RTO Online, puts it,

> **SELL PRODUCT, NOT PRICE**
> Why tell people up front they can't afford your product? Remember that we have a narrow market to draw from. Prospects may not understand what they get for $24.95 a week. But they know that's a heckuva lot of money. Sell your product and services first. Talk cost only when the customer has already decided he wants your stuff.[20]

d. Government Warnings to Consumers

New Jersey's attorney general has warned consumers about the dangers of rent-to-own transactions -- including their "astronomical" cost, deceptive marketing pitches, and the risk of substantial loss absent an early return or a completed purchase:

> **Rent-to-Own, An Alternative to Purchases?**
> Rent-to-Own (RTO) companies have profited greatly in recent years from those who need a household appliance, but fear they will not qualify for credit or a layaway plan.

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[19] http://www.premierrents.net/about/overview.htm (visited May 23, 2005).

[20] RTO Online, Ten Pearls of Rent to Own Wisdom http://www.rtoonline.com/Content/Contributor/Onlooker/10PearlsOfRenttoOwnWisdom071002.asp (visited May 23, 2005).

> Claims of "no credit hassles," "no down payment," and "low weekly payments" are attractive. What consumers don't realize is the final cost may be more than double the retail value of the item.
>
> For example, a washer selling for $404 finally cost $1,002 after 18 monthly payments of $55.69. A television valued at $500 finally cost $1,400 after a consumer paid $17.95 per week for 78 weeks. This large margin of profit has resulted in the spiraling growth of rental-purchase outlets nationwide.
>
> You may find out that you not only pay more than the item is worth, but that it can be repossessed with no compensation for payments already received. Loss of invested monies may also apply if the item is defective and returned, or if payments are missed during the time an item is being repaired. Many forms of abusive collection and repossession practices by RTO companies have been reported.
>
> . . .
>
> The RTO stores will argue that the enormous overcharge on items is not an interest charge, but a charge for services. The value of the service provided is definitely questionable and you should be certain you are not being deceived by the offer of low weekly or monthly payments. [21]

Other state Attorneys General and bank regulatory agencies have warned consumers away from rent-to-own transactions, as well:

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[21] New Jersey Attorney General, Consumer Brief, Rent to Own: An Alternative to Purchase?, available at http://www.njconsumeraffairs.gov/brief/rent.htm (visited May 17, 2005).

Iowa

The total you pay can be astronomical, and rent-to-own can be risky. . . .

The ads are appealing, especially for lower-income persons and people without a strong credit record: "Get a TV for only $14 a week! No waiting, no credit hassles."

But an ad telling the whole story might say: "How to pay $1200 for a $300 TV."

Rent-to-own can be very expensive. People ordinarily will pay several times the usual retail value of a product. Why? Because rent-to-own “sticker prices” usually are very high, and because payments usually run for 12 to 18 months. In the TV example, you might pay $14 for 87 weeks –- or $1218! If instead you “paid yourself” and set aside $14 a week, you could buy the TV in 22 weeks for $300 -- and save $918.

Rent-to-own also can be risky. If you default on a payment during those 18 months, the item might be repossessed -- with you losing credit for all the payments made. (You also must be careful that you aren't buying a used TV or appliance without knowing it, although the law says a used product should be labeled as used.)[22]

Maryland

If you need a television, major appliance or furniture but you don't have the cash or credit to buy it outright, you might be tempted to go to a rent-to-own store. These stores advertise that you can take home the item immediately, simply by agreeing to make a weekly or monthly payment. You're obligated only to pay each rental payment as it comes due, and you are free to end the

[22] Iowa Attorney General Consumer Advisory, Rent to Own: Know the Cost, available, available at http://www.state.ia.us/government/ag/consumer/advisories/rent_to_own.html (visited May 17, 2005)

arrangement by returning the merchandise to the store.

This arrangement may sound convenient, but it comes at a very high price. Buying on a rent-to-own plan will often cost you double what you would pay for the item with cash, on layaway, or on an installment plan.

For example, a new $400 washing machine purchased on an 18-month installment plan at the maximum allowable interest (24%) would cost $480 total. Under an 18-month rent-to-own plan, you'd typically pay $1000 or more for the same washing machine. Plus, the rent-to-own washing machine might be a couple of years old and previously rented to many other people.[23]

Minnesota

The Rent-to-Own Trap

Rent-to-own stores often target low-income consumers who do not have credit cards. These stores charge the equivalent of 100 to 125% average annual interest rates. Rent-to-own businesses offer items such as televisions, washers and dryers, refrigerators, couches, and more. They set up short-term rental-purchase agreements. No down payment or credit check is usually required. The renter pays over time to "rent" an item. If the renter makes all the required payments, the renter then owns the item. The catch is, the renter usually makes payments that add up to much more than the cost of the item, or the cost of the item bought through a traditional credit card. Rent-to-own deals should be avoided when other options are available.[24]

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[23] Maryland Attorney General, Rent to Own: Worth the Convenience? http://www.oag.state.md.us/consumer/edge109.htm (visited May 17, 2005).

[24] Minnesota Attorney General, The Credit Handbook http://www.ag.state.mn.us/consumer/finance/CreditHnbk/credithnbk_4.htm#Chapter%206:%20%20Other%20Issues (visited May 18, 2005).

3. Evidence That Most Low-Income Consumers View Rent-to-Own Contracts as Sales

Nearly every major study supports the conclusion that a sizeable majority of rent-to-own customers are in the market to buy, and not to rent, from the instant they approach a rent-to-own store. The statistics canvassed below confirm what common sense and economic theory both predict. Common sense tells us that ordinary consumers want furniture and appliances that will last them for the long run -- and have not interest in an "option to return" these items after they have become a part of their home. Economics tells us that returning goods after making payments approximating or exceeding fair market value (which happens within the first third of the term of the agreement in a typical rent-to-own contract) and forfeiting all claims to any equity in the goods is simply a bad deal -- and not something a reasonable consumer would voluntarily decide to do under ordinary circumstances.

Studies have repeatedly documented that a substantial majority of rent-to-own customers plan to buy the items they obtain through rent-to-own transactions, and that approximately the same substantial majority of rent-to-own customers do complete the deal through to the point of ownership. Results have been remarkably consistent, showing an intent-to-purchase rate and an actual purchase rate of approximately 70% -- more

than two-thirds of rent-to-own customers. These studies are summarized below.

The FTC Study. Between December 1998 and February 1999, the Federal Trade Commission surveyed more than 500 rent-to-own customers nationwide. One of the three major goals of the survey was to determine whether rent-to-own transactions typically result in the purchase of the merchandise involved in the transaction. Pa 516. The FTC survey concluded that rent-to-own customers purchased 71.4% of merchandise for which they entered into contracts more than two years before the survey. Pa 576, 587. As the authors noted, this category of transactions -- those entered into more than 2 years before the survey -- provides "the most accurate estimate of the percentage of rent-to-own merchandise purchased by rent-to-own customers. . . . For these transactions, sufficient time had elapsed to allow the customer to make all of the payments required to obtain ownership of the merchandise (which is typically 18 to 24 months in most rent-to-own agreements)." Pa 576. In addition, the survey found customers purchased 89.9% of items on which they made payments for 6 months, and returned only 10.1% of these items. Pa 592.

In examining customer intentions at the time of entering into rent-to-own transactions, the FTC survey found that 66.7% of rent-to-own customers intended to purchase the merchandise

they obtained at the time they entered into a rent-to-own transactions, and that 86.6% of customers who intended to purchase actually did purchase. Pa 517, 588.

Another significant finding of the FTC survey was that purchases for the cash price at rent-to-own stores -- or even purchases early in the term of the agreement -- were very unusual. Indeed, only 3.3% of purchases of rent-to-own merchandise were completed at any time before at least 3 months of payments had been made. Pa 590.

The Hill, Ramp, Silver Wisconsin Study. A study based on in-depth interviews with 50 rent-to-own customers in low-income neighborhoods in Wisconsin reported in 1998 that respondents frequently reacted with surprise to the suggestion that they might have had any other intention than to buy:

> [W]hen terminability was defined and described to them by the interviewer, informants stated that it was not important to their decision to shop at RTO outlets. One respondent asserted that returning the merchandise "never crossed my mind. I needed it. I didn't want to terminate [the contract and return the merchandise]." Most informants believe that termination goes against their original intention of eventual ownership when entering into their RTO contracts and that it would just make it necessary to acquire the same products elsewhere.
>
> One additional aspect of terminability involves the perceived level of investment by the consumer. For example, a common reason for not terminating is that consumers had invested too much money toward ownership to stop making

> payments. This belief persisted even in the face of the knowledge that they were paying much higher prices than those charged by traditional retail stores. ("If I continued to pay for it, I would have bought it twice.") Informants often believed that ending their contractual relationships with RTO outlets would be like throwing money away. In one case, a respondent declared that the merchandise was "over halfway paid for. . . . I had to finish my obligation.[25]

The Minnesota Study. In connection with discovery in court cases in Minnesota in the late 1980's, it was possible for one of the Legal Services attorneys for the rent-to-own customers in that case to analyze data from Minnesota Rent-A-Center stores. The results were consistent with the results of the Federal Trade Commission and other subsequent studies:

- 66% of items that were in inventory at any time during the company's 1989 fiscal year were purchased by customers through payoff after the full term of the agreement, early payoff, or outright sale.
- 73% in 1988, and 77% in 1989, of the company's revenue "was derived from RTO transactions in which the unit was

[25] Ronald Paul Hill, David L. Ramp, and Linda Silver, The Rent-to-Own Industry and Pricing Disclosure Tactics, 17 J. Public Policy & Marketing 3, 6 (1998).

ultimately purchased through a regular payout or early payoff of the contract.[26]

Rent-A-Center's Own Study. Rent-A-Center's own expert, Dr. A. Charlene Sullivan, analyzed a sample of "new units that had entered the inventory of [five New Jersey Rent-A-Center stores] between May 2000 and August 2001." Pa 924. Examining the final disposition of the units, she found that 70% of the units reached their final disposition -- that is, they had been either purchased or written off -- after two "rental cycles." She further found that **more than 75%** of the units that reached final disposition were purchased by customers. Pa 925-26 (26.0% of units were purchased at the end of the term of a customer's rent-to-own agreement, 37.9% were purchased by exercise of an early purchase option with payment of 50% of the remaining periodic payments and 50% of the contractual "fair market value," and 11.5% were purchased in a cash sale after being returned to the store by at least one customer).

Rent-A-Center makes much of another set of statistics set forth in Dr. Sullivan's report examining outcomes on an agreement-by-agreement basis, claiming a 25% rate of purchase and contending that purchases are thus not characteristic of most rent-to-own transactions. See, e.g., Defendant-

[26] David L. Ramp, Renting to Own in the United States, 24 Clearinghouse Rev. 797, 799-800 (December 1990).

Respondent’s Brief in Response to Plaintiff’s Petition for Certification at 5, 8. This agreement-by-agreement methodology, however, is the same method used in prior industry studies purporting to find low purchase rates, and is deeply flawed because rent-to-own customers frequently enter into multiple agreements with respect to the same item. As the situation was summarized in recent Congressional testimony:

> [B]oth the RTO industry and the FTC statistics show [that] the customer base for RTO transactions are among the poorest Americans. The FTC statistics also show that the vast majority of these customers enter into these transactions as a method of purchasing goods. . . .
>
> The interesting distinction is between the FTC statistics and the industry statistics on this point. The FTC says that seventy percent of RTO merchandise is purchased. The industry indicates in its promotional materials for this bill that "only 25 percent to 30 percent of rental-purchase customers actually pursue the ownership option." The difference between these statistics is that the FTC is counting people and the industry is counting contracts.
>
> The reason for the difference in the numbers is that RTO customers frequently "refinance" their RTO contracts and continue making payments. Ultimately customers end up owning RTO goods. The 25% rate of initial contracts being completed all the way to purchase is more an indication of the industry's collection practices than it is an indication of customer intent to purchase. The income levels of most RTO customers creates ample opportunity for bumps in the customer's economic road that will adversely affect the ability of the customer to consistently continue to pay $19.99 a week to an RTO dealer over a period of 18 to 21 months. This is why the reinstatement

> protections in the governing law are so crucial to the customer. When a customer has defaulted on an RTO contract, some credit for weeks of past payments must be applied toward the purchase of the item. As the industry statistics show, the ultimate purchase will frequently not occur until the customer has entered into two or three RTO contracts for the same or a similar item.[27]

Notably, the FTC study declined to use an agreement-by-agreement analysis of RTO transactions in seeking "to determine whether rent-to-own transactions typically result in the purchase of the . . . merchandise." See Pa 516.

LEGAL ARGUMENT

B. New Jersey's 30% Criminal Usury Limit Applies to Goods Transactions

The fundamental issue in this case is whether the Appellate Division erred in its unprecedented application of the time-price doctrine as a limitation on the application of New Jersey's 30% criminal usury limit in basic consumer transactions. Examination of the plain language of the criminal usury statute, N.J.S.A. 2C:21-19, its legislative history, judicial precedent, and public policy relating to the usury laws and the time-price doctrine, all compel the conclusion that the

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[27] National Consumer Law Center, et al., Testimony before the Committee on Financial Services Subcommittee on Financial Institutions & Consumer Credit regarding H.R. 1701, The Consumer Credit Protection Act (July 12, 2001), available at http://www.consumerlaw.org/initiatives/test_and_comm/content/rto_test_content.html (visited May 19, 2005).

criminal usury law establishes an upper limit on consumer credit costs in rent-to-own transactions and other types of consumer loans for purchases of cars, appliances, furniture, and other basic goods.

1. **The Plain Language of the Criminal Usury Statute Includes Goods Transactions Within its Scope**

New Jersey's criminal usury statute provides in relevant part as follows:

> A person is guilty of criminal usury when not being authorized or permitted by law to do so, he:
>
> (1) Loans or agrees to loan, directly or indirectly, *any money or other property* at a rate exceeding the maximum rate permitted by law; or
>
> (2) Takes, agrees to take, or receives *any money or other property* as interest on the loan or on the forbearance of *any money or other interest* in excess of the maximum rate permitted by law.
>
> For the purposes of this section and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties of the transaction, *any loan or forbearance* with an interest rate which exceeds 30% per annum shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation, limited liability company or limited liability partnership any rate not in excess of 50% per annum shall be a rate authorized or permitted by law.

N.J.S.A. 2C:21-19(a) (emphasis added). The statute speaks in broadest possible terms, prohibiting excessive rates on any type of loan (whether a loan of money or of anything else) or on any

type of forbearance (whether of money or of any other interest), and involving any type of interest (whether paid or to be paid in money or in any other form). Most importantly for purposes of this case, the statute also sets an independent upper limit of 30% on interest rates in all consumer credit transactions -- not just those involving loans of money, but "any loan or forbearance" at all.

It is inescapable that rent-to-own transactions, in which most consumers intend to and do purchase necessary items for their homes, and other credit sales fall squarely within common dictionary definitions of "forbearance" -- according to Webster's Ninth New Collegiate Dictionary, "a refraining from the enforcement of something (as a debt, right, or obligation) that is due" -- since the seller at all times claims a legal right either to continued payments or return of the goods themselves.

2. **The Legislative History of the 1981 Revisions to New Jersey's Lending Statutes Confirms the Broad Application of the Criminal Usury Law**

i. New Jersey's Lending Statutes -- Including the Retail Installment Sales Act Governing Credit Sales of Goods -- Were Amended Concurrently, Together With the Criminal Usury Statute

The Appellate Division's unprecedented restriction of the criminal usury law does not consider the legislative history of the 1981 amendments to New Jersey's statutes governing nearly

every imaginable type of consumer credit, including the Retail Installment Sales Act ("RISA"), which since 1960 had set limits on the interest rates in transactions involving the sale of goods.

Because of extraordinarily high market interest rates prevalent in the late 1970's and early 1980's, New Jersey passed legislation in 1981 in the form of a single bill, S. 3005, that removed interest rate caps that had been eclipsed by rising market rates in no fewer than 10 different lending statutes, governing loans including "installment loans; education loans; advance loans (overdraft accounts and credit cards); small business loans. . . ; loans of less than $5,000; second mortgages; loans made by savings and loan associations; credit union loans; retail installment loans . . . ; retail charge accounts; home repair loans and insurance premium financing." Pa 212. The bill in parallel fashion removed the interest rate cap provision from RISA and each of the other existing credit statutes.

On the same day, another bill sponsored by the same legislator, S. 3101, was passed into law, amending New Jersey's criminal usury statute by reducing the criminal usury limit for loans to individuals to 30% per year. Governor Byrne signed the two bills at the same time, and concurrently issued a statement making explicit the relationship between them, stating in no

uncertain terms that “I would not sign S-3005 without the lowering of the criminal usury rate to 30 percent. Strict adherence to that law will be demanded.” Pa. 215.

The clear implication of the concurrent enactment of the two interrelated bills is that the legislature understood that the existing criminal usury statute *had since its enactment* applied to any and all types of credit, including those numerous types of credit -- such as retail installment sales -- as to which additional, lower civil statutory limits applied. When the legislature determined that the lower civil statutory limits had become untenable because of changes in market conditions, it amended the criminal usury statute to provide what would thenceforth provide a single 30% limit applicable to all types of individual credit transactions.

Rent-A-Center’s position, and the Appellate Division’s holding, that RISA constituted a single outlier among the many credit limit statutes amended in 1981 -- and that as to all of the others, the legislature intended to replace the prior limit with a new one, while as to RISA, it intended to replace the prior limit with no limit at all -- does not bear scrutiny. The clear legislative purpose of RISA when it was enacted in 1960 was “to protect the consumer from predatory sellers and financers,” and, in particular, “more specifically [to define] ‘time price differential’ *and the maximum rate of the*

differential which may be applied to different classifications of goods." Steffenauer v. Mytelka & Rose, Inc., 87 N.J. Super. 506, 515-16 (Ch. Div. 1965) (citing N.J.S.A. 17:16C-41, in its 1965 form), aff'd, 46 N.J. 299 (1966). To posit that the legislature abandoned this purpose in 1981 without any expression of its intent to do so, by way of a silent assumption that the judicially-created time-price doctrine applied to the criminal usury law despite the absence of any judicial precedent to that effect, and by treating RISA in a jarringly different way than each of the other credit statutes amended in S. 3005, runs counter to common sense and to relevant canons of statutory interpretation.

ii. Concurrent Legislative Enactments Should Be Read *In Pari Materia*

The New Jersey Supreme Court follows the general rule of reading related statutes *in pari materia*. State ex rel. G.C., 179 N.J. 475, 481-82 (2004). ("When reviewing related statutory provisions we generally consider them *in pari materia,* harmonizing their meaning with the Legislature's intent."); accord State v. Green, 62 N.J. 547, 554-555 (1973) ("Statutes *in pari materia* are to be construed together when helpful in resolving doubts or uncertainties and the ascertainment of legislative intent.").

In Fried v. Kervick, 34 N.J. 68 (1961), the New Jersey Supreme Court specifically noted that statutes that were adopted

on the same day should be read *in pari materia*. The court stated that

> The statute being assailed . . . was adopted by the Legislature on the same day as the amendment to [the other statute]. The similarity of their subject matter, even though the latter is general in scope while the former is special, renders inescapable the conclusion that they are *in pari materia*, at least to the extent that both are reflective of the same type of legislative philosophy.

Id. at 70-71; accord State v. Tillem, 127 N.J. Super. 421 (App. Div. 1974) (noting the particular importance of considering together statutory provisions "passed at the same time to effectuate a given result or to overcome a certain evil"); Norman J. Singer, Sutherland Statutes and Statutory Construction §51:3 (6th ed. 2000) ("[T]he rule that statutes *in pari materia* should be construed together has the greatest probative force in the case of statutes relating to the same subject matter passed at the same session of the legislature, especially if they were passed or approved or to take effect on the same day.") (citations omitted).

As recently as March 2005, the Appellate Division stated that statutes "can be jointly applied so as to give effect to the language and purpose of each, and that nothing in statutory history or elsewhere prevents that reconciliation." American Fire and Cas. Co. v. New Jersey Div. of Taxation, 375 N.J. Super. 434, 449 (App. Div. 2005).

And in Suecharon v. Director, Div. of Taxation, the Tax Court stated that statutes that "appear to cover the same subject area . . . may be deemed *in pari materia*." Suecharon v. Director, Div. of Taxation, 20 N.J. Tax 371, 380 (Tax 2002). The court continued, "[i]t is a general rule of statutory construction that in such a case, the Legislature presumably had in mind the previous statutes concerning the same subject matter. . . . In the absence of an express repeal, the new provision is presumed to be in accord with the legislative policy embodied in prior statutes. Accordingly, they should be construed together and even if in apparent conflict, construed in harmony if reasonably possible." Id.

Precisely these conditions exist in this case. RISA –- both before and after the 1981 amendments -- and the criminal usury statute share the purpose of protecting consumers from unconscionable contracts. As made clear by Governor Byrne in his statement upon signing both of the 1981 bills, these statutes and their concurrent amendment in 1981, address of the same subject matter and thus should be read *in pari materia*.

3. **Precedent and Public Policy Interests Weigh Strongly Against Permitting Rates Exceeding 30% Through an Unprecedented Extension of the Time-Price Doctrine**

Until the decisions below, no New Jersey court had extended the time-price fiction to preclude the application of New Jersey's criminal usury law in any reported case, or to our knowledge in any unreported case. Each of the three cases cited by Rent-A-Center and by the Appellate Division below, Steffenauer, Sliger, and Saul, applied the time-price doctrine exclusively to New Jersey's *civil* usury statute.

Indeed, in the only reported case to consider the issue, the Appellate Division in Saul specifically noted that its exemption of an auto transaction from the civil usury law under the time-price doctrine did not leave the credit costs of the transaction unregulated, because the transaction was still subject to "a limitation by reason of the criminal usury statute, N.J.S.A. 2C:21-19(a)." Saul v. Midlantic Nat'l Bank/South, 240 N.J. Super. 62, 66 n.1 (App. Div. 1990).

The time-price doctrine "is a legal fiction derived from English case law [Beete v. Bidgood, 7 Barn. & Cress. 453, 108 Eng. Rep. 792 (K.B. 1827)] which distinguishes credit extended in connection with sales from loans subject to usury law, at least under certain circumstances." Kathleen E. Keest and Elizabeth Renuart, The Cost of Credit 406 (2d ed. 2000). The doctrine employs "the strained

judicial fiction that merchants don't receive 'interest' when selling their goods on time." Steven W. Bender, Rate Regulation at the Crossroads of Usury and Unconscionability, 31 Houston L. Rev. 721, 727 (1994)

Since the time of the Depression, the time-price doctrine has attracted a substantial degree of criticism. Courts and commentators have regularly recognized that there is no economic basis for drawing a distinction between interest on a loan of money and a "time-price differential" -- which is in substance nothing more or less than interest on a loan in the amount of the purchase price, extended by the seller to the borrower. Nor is there any textual basis for reading a typical usury statute that applies to any "loan or forbearance" -- a formulation that can be traced back to the English usury statute enacted during the reign of Queen Anne -- as strictly limited to a loan of "money and not of anything else" (a reading relied upon by the Appellate Division below).[28] See, e.g., Raoul Berger, Usury in Installment Sales, 2 Law & Contemp. Probs. 148 (1935); Note, Judicial and Legislative Treatment of "Usurious" Credit Sales, 71 Harv. L. Rev. 1143 (1958); Kathleen E. Keest, et al., The Cost of Credit: Regulation and Legal Challenges 406, 408 & n.36

[28] "Here, the transactions between Perez and Rent-A-Center were essentially for the rental of goods. There was no loan or forbearance of money. Therefore, the transactions fall within the time-price differential exception to the usury laws." Perez, 375 N.J. Super. at 87.

(2d ed. 2000) (discussing the logical inconsistencies inherent in the time-price doctrine; noting that "[t]he time-price usury exemption no longer applies to consumer credit transactions in most jurisdictions;" and collecting cases).

In adopting the time-price doctrine in cases involving New Jersey's *civil* usury law, New Jersey courts have indicated a substantial degree of concern with respect to the potential for the application of the time-price doctrine to undermine the protections afforded to vulnerable consumers under the usury laws. Thus, in Steffenauer, a case involving a commercial transaction (the credit sale of machines and related equipment for a coin-operated dry cleaning business) the court explicitly discussed the "general approach" to explaining the time-price doctrine:

> The reason is that the statute against usury is striking at and forbidding the exaction or receipt of more than a specified legal rate for the hire of money and not of anything else; and a purchaser is not like the needy borrower, a victim of a rapacious lender, since he can refrain from the purchase if he does not choose to pay the price asked by the seller.

Steffenauer, 87 N.J. Super. at 511-12, citing General Motors Acceptance Corp. v. Weinrich, 262 S.W. 425 (Mo. App. 1924). The court went on to reason that the statutory interest rate limit that was then part of RISA applied in consumer transactions, and, indeed, that RISA was "obviously designed to protect the

consumer from predatory sellers and financers," particularly "in the purchase of goods which in our present day society are considered necessaries." Id. at 516. RISA thus, at that time, ensured by its own terms that consumers would be protected against illegally high interest rates. Applying the time-price doctrine for the first time in New Jersey in a case involving a *commercial* purchaser, therefore, did not invoke the policy concerns about losing important protections for vulnerable consumers. The RISA rate limit was still in place to provide protection for consumers.

Similarly, in Saul v. Midlantic Nat'l Bank/South, 240 N.J. Super. 62 (App. Div. 1990), the court explicitly noted that the transaction at issue was the "purchase of a luxury automobile," which not coincidentally exceeded the $10,000 limit on transactions subject to RISA. Id. at 74. This is precisely the type of discretionary purchase that fits squarely within the reasoning employed by courts for more than a century.[29]

[29] New Jersey Department of Banking and Insurance regulations treat the civil and criminal usury laws quite differently for preemption purposes, and provide for far broader preemption of New Jersey's general civil usury law than they do with respect to New Jersey's criminal usury law. See N.J.A.C. 3:6-12.1(c)(1) (excluding criminal usury from the scope of the state bank parity law). These regulations provide that state-chartered depository lenders in New Jersey can claim the same preemption from the general civil usury law as their federally-chartered counterparts, but that they cannot do so with respect to the criminal usury law.

As the Minnesota Supreme Court has recognized in refusing to extend the scope of the time-price doctrine,

> [The time-price doctrine] in its inception recognized the social conditions of the nineteenth century and the era of laissez-faire mercantilism that existed at that time. These cases usually involved items of high price which the buyer ordinarily could not afford to purchase with cash and a buyer and seller substantially on equal footing in bargaining over price and credit charges. The doctrine was expanded to cover items less unique and costly, but it was not until the practice of installment buying became a common consumer practice that it gained wide acceptance. This application of the exception to the usury law did a disservice to the original concept of that law, which was to protect weak and needy persons from the overreaching of economically superior renters of capital. It is apparent that the bargaining position of installment buyers may be as disadvantageous today as that of borrowers. Thus, *any expansion of this doctrine must be justified in light of the economic needs and social attitudes as they now exist*.

Rathburn v. W.T. Grant Co., 219 N.W.2d 641, 648 (Minn. 1974) (emphasis added).

In short, this case brings before the Court an opportunity to review the basis on which past decisions have adopted the time-price doctrine in New Jersey, in the context of transactions that are widely recognized as unusually high-priced and involving in large measure goods that constitute basic household necessities. As commentators have often noted, concern for precedent and past reliance in setting prices may weigh in favor of continuing to apply prior decisions and

deferring possible changes to the legislature. In this case, however, the Court is reviewing a criminal usury claim as to which there is no prior case from any court on which any party might justifiable have relied in exceeding the 30% limit. To the contrary, existing case law has uniformly held that the 30% limit *does* apply. There is no danger of unfair surprise or unforseeable economic effects. Rent-A-Center is a large, sophisticated public company, and it is virtually tautological that Rent-A-Center knows, and has continuously evaluated, the calculated risk it is runs by using its rent-to-own model in New Jersey rather than, for example, the retail installment contract model adopted in its Wisconsin stores.

C. The Retail Installment Sales Act Applies to Rent-to-Own Transactions

1. The Plain Language of RISA Includes Rent-to-Own Transactions Within its Scope

The Retail Installment Sales Act explicitly includes rent-to-own contracts within its scope under two separate provisions in its definition of "retail installment contract."

The first prong of the definition includes "a security agreement, chattel mortgage, *conditional sales contract, or any other similar instrument.*" N.J.S.A. 17:16C-1(b) (emphasis added). Rent-A-Center's contracts are clearly conditional sales contracts. The fact that the rent-to-own customer can purchase

the product by exercising an option, which is a condition of sale, shows that RISA should control rent-to-own contracts.

The second prong of the definition goes on make clear that transactions using the form of a lease to accomplish the goal of a sale (whether conditional or unconditional) are included within the statute's scope, by incorporating "any contract for the . . . leasing of goods by which the . . . lessee agrees to pay as compensation a sum substantially equivalent to or in excess of the value of the goods, and by which it is agreed that the . . . lessee is bound to become, or has the option of becoming, the owner of such goods upon full compliance with the terms of such retail installment contract." It would be difficult to construct statutory language that more precisely describes the form of Rent-A-Center's contracts.

Under these contracts, the customer undisputedly must agree to pay an amount in excess of the value of the goods in order to buy them or even to keep them until the end of the term of the contract, and has the option of becoming the owner of the goods "upon full compliance with the terms of" the contract. Rent-to-own contracts are created precisely so that consumers -- most of whom intend to and do purchase the goods -- can have the goods now and make weekly or monthly payments towards ownership by paying more than the retail price for the item.

Rent-A-Center, however, argues that the phrase "agrees to pay" under one possible interpretation -- that "agrees" means "unconditionally agrees" -- evinces a legislative determination to exclude RTO contracts from the scope of the Act. This reading flies in the face of both language and logic when the phrase is considered in context. The first -- and more expansive -- prong of the definition includes not only

"conditional" (as well as unconditional) sales contracts, it goes still further to include any other similar instruments, as well. It makes little sense to conjecture that the legislature could have intended the succeeding clause to be limited to unconditional agreements without signaling in some way that this is the case. Even so, the express inclusion of purchase options in the second prong of the definition itself shows that the intent could not have been to limit the scope to unconditional agreements.

Any remaining ambiguity in the phrase "agrees to pay" should be resolved in favor of the consumers for whose protection RISA was enacted. New Jersey courts have a long and distinguished history of holding that consumer laws should be construed in the broadest terms to protect consumers. In Garcia v. L&R Realty, Inc., for instance, the court stated that "we recognize[] . . . that consumer fraud laws must be liberally construed in favor of the consumer, and that the legislative concern is for the victimized consumer, not the occasionally victimized seller." Garcia v. L&R Realty, Inc., 347 N.J.Super. 481, 492 (App. Div. 2002)(citing Scibek v. Longette, 339 N.J. Super. 72, 78 (App. Div. 2001).

New Jersey's Retail Installment Sales Act "is obviously designed to protect the consumer from predatory sellers and financiers." Steffenauer v. Mytelka & Rose, Inc., 87 N.J.

Super. 506, 516 (Ch. Div. 1965), aff'd 46 N.J. 299 (1966). Accordingly, it is appropriate to construe its scope provisions broadly to achieve the legislature's consumer protection goals. See In re Sloan, 285 F. Supp. 1, 6 (D. Ohio 1968) ("[T]his Court should construe [Ohio's RISA] so as to afford the broadest protection to the public, for there is little doubt that the Retail Installment Sales Act is one having a public purpose designed for the consumer's protection."), overturned on other grounds, Johns v. Ford Motor Credit Co., 551 N.E.2d 179 (Ohio 1990). Indeed, "[i]t is not the meaning of isolated words, but the internal sense of the law, the spirit of the correlated symbols of expression, that we seek in the exposition of a statute. The intention emerges from the principle and policy of the act rather than the literal sense of particular terms, standing alone" Alexander v. New Jersey Power & Light Co., 21 N.J. 373, 378-379 (1956); accord Green v. Continental Rentals, 292 N.J.Super. 241, 252 (Law Div. 1994) ("The intention of the legislature emerges from the principle and policy of the enactment, rather than from the literal sense of the particular terms standing alone.").

Either by a literal reading or by construing RISA with a liberal interpretation in favor of the consumer, RISA applies to rent-to own contracts.

2. The Great Weight of Authority Prior to the Decision Below Supports the Application of RISA to Rent-to-Own Transactions

Until the decision below, New Jersey courts have consistently viewed rent-to-own transactions as credit sales, or retail installment contracts, by focusing on the realistic function of the transaction as opposed to the form of the agreement. In Green v. Continental Rentals, the court found that "the [rent-to-own] agreements in question are security interests, not leases," 292 N.J. Super. 241, 257 (Ch. Div. 1994), and therefore held that the rent to own contracts were retail installment contracts governed by RISA. The court in Green found that it was essential to focus on the function of the transaction over the form of the agreement because "[i]t is clearly established in this state, as elsewhere, that remedial legislation is liberally construed to accomplish its social purpose," and because "[t]he expectation of the consumer is that he will make all of the required payments and own the property." Id. at 252-53.

The decision in Green has continued to be persuasive, as at least additional two New Jersey courts have also come to the same conclusion as the court in Green in unreported decisions included in the record in this case. See Robinson v. Thorn Americas, Inc., No. CAM-3697-94 (Law Div. Oct. 20, 1995) (Weinberg, J.), at Pa 121-22 ("As I review the similarities and

differences [between rent-to-own agreements and standard retail installment contracts], it is my opinion that the rent-to-own agreement is an "other similar type agreement," and, therefore, is controlled within the scope and language of the Retail Installment Sales Act."); Robinson v. Thorn Americas, Inc., No. CAM-3697-94 (Law Div. Jan. 24, 1997) (Fluharty, J.), at Pa 131 (" I think Judge Alterman's opinion [in Green v. Continental Rentals] is well-reasoned and seems to comport with the general public policy of the state in holding that rent to own agreements are covered by RISA.").

Courts in other states have also held that rent-to-own transactions fall within the scope of their states' retail installment sales laws. In Rent-A-Center v. Hall, 510 N.W.2d 789 (Wis. App. 1993), for instance, the Wisconsin Court of Appeals focused on "[c]utting through the form of the transaction to get to its substance." Id. at 794. When analyzing a Rent-A-Center agreement, which like the present case was constructed in the form of a rental with an option to purchase, and finding that it was subject to Wisconsin's retail installment sales law, the court found that where "the option price is minimal when compared to either the cost of the goods, their fair market value, or what has already been paid for their use, the 'economic reality' is that no lessee in a 'right mind' would fail to exercise the purchase option. This is especially

true where, as here, the lessee is using the rental payments to purchase the property." Id. at 795 n.9.

Many other courts across the country have also held that their respective states' retail installment sales acts apply to rent-to-own transactions. Many of these cases are collected in Ms. Perez's main brief in the Appellate Division, at 18 n.11; see also Kathleen E. Keest, et al., The Cost of Credit: Regulation and Legal Challenges 270 n.289 (2d ed. 2000 and Supp. 2004).

In addition to cases considering the application of retail installment sales statutes, the function of rent-to-own contracts as installment sales has also been widely recognized in the bankruptcy context. "Most bankruptcy courts have had little difficulty in finding rent-to-own contracts to be disguised installment sales with security agreements." 6 Collier on Bankruptcy §722.03 (15th rev. ed. 2005) (collecting cases).

D. New Jersey's Criminal Usury Statute Applies to Rent-to-Own Transactions Even if RISA Does Not

The arguments that RISA applies to rent-to-own contracts are strong –- and have carried the day in New Jersey courts prior to the decisions below in this case. And the evidence provided by the concurrent amendment of RISA and the criminal usury law in 1981 clearly illustrates the absence of any

legislative intent, stated or unstated, to extend the time-price doctrine to New Jersey's criminal usury statute.

This Court need not, however, rely on a determination that rent-to-own transactions are governed by RISA in order to conclude that the 30% criminal usury limit applies. Like the installment sale in Saul v. Midlantic Nat'l Bank/South, 240 N.J. Super. 62 (App. Div. 1990) -- which exceeded the $10,000 limit on RISA's scope, id. at 69-70 -- rent-to-own contracts correctly analyzed as sales transactions would, even if found to be technically outside the scope of RISA, still be subject to "a limitation by reason of the criminal usury statute, N.J.S.A. 2C:21-19(a)." Id. at 66 n.1.

E. Ms. Perez's Claims That Rent-A-Center's Unconscionable Contract Terms Violate the Consumer Fraud Act Survive Whether or Not the Criminal Usury Law and RISA Apply

Count I of Ms. Perez' complaint alleges that the terms of RAC's contracts are unconscionable, and seeks damages for violations of the New Jersey Consumer Fraud Act. Pa15. While Ms. Perez' allegations look to the criminal usury law as the reference point for determining unconscionability, id. (Rent-A-Center charges customers "a time differential in excess of 30% per annum which renders Defendant's contracts unconscionable as a matter of law"), the question of unconscionability under the Consumer Fraud Act is clearly a separate, independent

determination. See Federal Trade Comm'n v. Sperry & Hutchinson Co., 405 U.S. 233, 244, 92 S.Ct. 898, 905, 31 L.Ed.2d 170 (1972); Murphy v. McNamara, 416 A.2d 170, 175 (Conn. Super. Ct. 1979) ("The unfair trade practices condemned by [Connecticut's UDAP statute] are not confined to those that were illegal at common law or prohibited by statute.") (citations omitted).

There is no dispute that the Consumer Fraud Act applies to the transactions at issue in this case; indeed, across the entire country, "[t]here is no reported case where a company has questioned whether a UDAP statute [such as the Consumer Fraud Act] applies to RTO transactions." Jonathan Sheldon & Carolyn L. Carter, Unfair and Deceptive Acts and Practices 478 (6th ed. 2004).

Thus, regardless of its holdings with respect to RISA and the New Jersey criminal usury statute, the Appellate Division erred in granting summary judgment dismissing Ms. Perez's Consumer Fraud Act unconscionability claim, which is viable even if it is determined that either or both the other two statutes do not reach the transactions in this case.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the Appellate Division's decision granting summary judgment in favor of Rent-A-Center in this case.

Dated: June 10, 2005

Respectfully submitted,
LEGAL SERVICES OF NEW JERSEY, INC.

By: _____
Melville D. Miller, Jr.

By: _____
David McMillin

Of Counsel:
Christopher Hill, Esq.