THE AFFIDAVIT

The modern world of human affairs would grind to an immediate halt if the fundamental truths and underlying facts in any matter or transaction could not be established or asserted—a bill, an oath, a ledgering or bookkeeping, a statement of facts, are the life blood of the legal and commercial world. These and more are all examples of the Affidavit.

The *affidavit,* when properly used, especially when leveraged by your standing as a secured party, is the most powerful instrument available in protecting, defending, and asserting your sovereignty. For this reason, it is incumbent upon you to become practiced in its use and in your ability to recognize its many forms.

AFFIDAVITS BACK ALL ADHESION CONTRACTS

If you are unable to recognize when affidavits are being solicited, you may be the unwitting dupe of another parties' attempt to create a binding contract. By the signature of your own hand, or before you became of legal age, the signature of your parent or other authority such as a physician, have been signing you into bondage since you were born. Certificate of Live Birth, application for a driver's license, and IRS form 1040, a voter's registration, and every single document that the system desires others to be bound or obligated by, is, or requires, an affidavit.

When signed, they represent an oath, or Commercial Affidavit, executed under penalty of perjury, "true, Correct, and complete". Affidavits may also occur in a court setting where testimony (oral) is stated in judicial terms by being sworn to be "the truth, the whole truth, and nothing but the truth, so help me God." In chapter 5 we will explore some strategies that you can use to avoid this solicitation to contract.

MAXIMS OF THE AFFIDAVIT

Before we get into the structure, form, and requirements of the formal affidavit, with examples, let's develop a deeper comprehension and understanding of the purpose, and important maxims that govern their use.

1. First and foremost, *in commerce, truth is sovereign*—and the Sovereign tells only the truth. *Your word is your bond.* If truth were not sovereign in commerce, *i.e.,* all human action and inter-relations, there would be no basis for anything. No basis for law and order, no accountability, there would be no standards, no capacity to resolve anything. It would mean "anything goes", "each man for himself, and "nothing matters". That's worse than the law of the jungle. "To lie is to go against the mind". Oriental proverb: "Of all that is good, sublimity is supreme."

2. In commerce *for any matter to be resolved, it must first be expressed.* No one is a mind reader. You have to put your position out there—you have to state what the issue is in order to have something to talk about and resolve. A person must put himself on the line and assume a position, take a stand, as regards the matter at hand. One who is not damaged, put at risk, or willing to swear an oath on his commercial liability for the truth of his statements and legitimacy of his actions, has no basis to assert claims or charges and forfeits all credibility and right. Legal Maxim: "He who fails to assert his rights has none."

3. *He who leaves the battlefield first, looses by default.* This means that an affidavit which is un-rebutted point for point stands as "truth in commerce" because it hasn't been rebutted and has left the battlefield. Governments allegedly exist to resolve disputes, conflicts and truth. Governments allegedly exist to be substitutes for the dueling field and the battlefield for disputes. Conflicts of affidavits of truth are resolved peaceably, reasonably, instead of by violence. So people can take their disputes into court and have them all opened up and resolved, instead of going out and marching ten paces and turning to kill or injure. Legal Maxim: "He who does not repel a wrong when he can, occasions it".

4. *An un-rebutted affidavit stands as truth in commerce.* Claims made in your affidavit if not rebutted, emerge as the truth of the matter. Legal Maxim: "He who does not deny, admits."

5. *An un-rebutted affidavit becomes the judgment in commerce.* There is nothing left to resolve. Any proceeding in a court, tribunal, or arbitration forum consists of a contest, or duel, of commercial affidavits wherein the points remaining un-rebutted in the end stand as truth and matters to which the judgment of the law is applied.

6. A lien or claim can be satisfied only though a *point by point rebuttal* of an affidavit, resolution by jury, or payment.

No court or judge can overturn or disregard or abrogate somebody's affidavit. The only one who has any capacity or right or responsibility or knowledge to rebut your affidavit, is the one who is adversely affected by it. Just as no one can know what your truth is, it's the affected parties responsibility and obligation to issue their own affidavit and to speak on their own behalf.

COMMERCIAL LAW IS PRE-JUDICIAL

Another important concept to understand as a sovereign, if you should go before the court, because it establishes the basis for keeping your matter in the private, is that Commercial Law is non-judicial, in fact, pre-judicial (not prejudice). It is the only

foundation by which government or any court system can possibly exist or function. All that courts are ultimately adjudicating and making rules about, are the fundamental precepts of Commercial Law.

Now to get an idea of all the fun that you've been missing out on by hot knowing about affidavits, not even knowing that you could ASK FOR ONE, here is an example of how to leverage your knowledge of Commercial Law and the power of the affidavit.

In commerce there are two phases; assessment, and collection. The Assessment aspect, is about determining who owes who, what, why, how much, and for what reason. The collection aspect is based in International commerce that has existed for more than 6000 years. It is based on Jewish Law and the Jewish grace period, which is in units of three; three days, three weeks and three months. This is why you get 90 day letters from the IRS.

Remember, commercial processes are non-judicial. They are summary processes (short, concise-without a jury).

THE POWER OF THE AFFIDAVIT

Now, the IRS creates the most activity of Commercial Collection in the entire world. The collection process is relatively valid, although the IRS is not registered to do business in any state. Did you understand what you just read? The IRS is NOT REGISTERED TO DO BUSINESS OR PERFORM COMMERCIAL MATTERS IN ANY STATE. So how do they get all the money they get? ANSWER: because you give it to them without requesting a *proof of claim* from them or even if they were "licensed" to give you offers based on "arbitrary" estimations.

However, this is where things get very interesting. Remember the assessment phase? THERE IS NO VALID ASSESSMENT. The IRS has, and never can, and never will, and never could, EVER issue a valid assessment lien or levy. It's not possible.

First of all, in order for them to do that there would have to be paperwork, a *Trite Bill* in Commerce. There would have to be *sworn Affidavits* by someone that this is a true, correct and complete and not meant to deceive, which, in commerce is, essentially "the truth, the whole truth and nothing but the truth" when. Now, nobody in the IRS is going to take commercial liability for exposing themselves to a lie, and have a chance for people to come back at them with a True Bill in Commerce, a true accounting. This means they would have to set forth *the contract, the foundational instrument with your signature on it,* in which you are in default, and a list of all the wonderful

goods and services for which you owe them money; or a statement of all the damages that you have caused them, for which you owe them.

To my knowledge, no one has ever received goods or service from the IRS for which they owe money. I personally don't know of anyone that has damaged anybody in the IRS that gives them the right to come after us and say that "you owe us money because you damaged me". The assessment phase in the IRS is non-existent, it is a complete fraud.

This is why these rules of Commercial Law come to our rescue. T. S. Eliot wrote a wonderful little phrase in one of his poems:

"We shall not cease from exploration, and the result of all our exploring will be to arrive at the place at which we began and know it for the first time."

This is the beginning, and this is the end. This closes the circle on the process.

One reason why the super rich bankers and the super rich people in the world have been able to literally steal the world and subjugate it, and plunder it, and bankrupt it and make chattel property out of most of us is because they know and use the rules of Commercial Law and we don't.

Because we don't know the rules, nor use them, we don't know what the game is. We don't know what to do. We don't know how to invoke our rights, remedies and recourses. We get lost in doing everything under the sun except the one and only thing that is the solution.

No one is going to explain to you what and how all this is happening to you. That is never going to happen. These powers-that-be have riot divulged the rules of the game. They can and do get away with complete fraud and steal everything because no one knows what to do about it.

SOLUTION

What CAN you do about it? YOU CAN ISSUE A COMMERCIAL AFFIDAVIT. You don't have to title it that, but that's what it is. You can assert, in your affidavit, "I have never been presented with any sworn affidavits that would provide validity to your assessment. It is my best and considered judgment that no such paperwork or affidavit exists." At the end of this document, you put demands on them. They must be implicit and then you state, "Should you consider my position in error ..."

You know what they have to do now, don't you? They must come back with an affidavit which rebuts your affidavit point for point, which means they have to provide the paper

work with the real assessment, the true bill in commerce, the real sworn affidavits that would make their assessment or claims against you valid.

No agent or attorney of a fictitious entity can sign an affidavit for the corporation. How can they swear as fact that the corporation has done or not done ANYTHING? They do not have the standing. They cannot and never will provide you with this. This means your affidavit stands as truth in commerce.

Note: An even more streamlined and sophisticated approach in dealing with the IRS is to send them a package with a letter and an IRS power of attorney requesting a determination of your tax status. This is more powerful because you have completely drawn them into your power. Now they have two choices, sign the papers you have given them permission to prepare on your behalf, UNDER PENALTY OF PERJURY, or give you a determination. This approach puts you out of the business of having to 'prove that your not a taxpayer' by offering them the opportunity to admit this themselves. Or they can fill out their own death warrant. Which do you think they will choose?

DEFINITIONS

In its formal expression, an *affidavit* is a statement of facts that chronicle the events of a particular commercial or legal matter, reduced to writing, and sworn to or affirmed before a person legally authorized to administer an oath or affirmation such as a notary. The person making the statement is technically known as the *affiant* or *deponent.* The affidavit usually contains statements that you can attest to, based on your experience, and may also contain statements based on the observations of others if you indicate this by adding that the information is based on your 'information and belief.

You may sometimes see affidavits titled and referred to as "Affidavits of Truth" or "Affidavits of Facts". This is informal and redundant—all affidavits are about truth and facts. Here are some formal definitions and types of *affidavits* and the definition for *declaration* since this is used in the definition for affidavit from Blacks Law 6th Edition:

1. Affidavit. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.

2. Affidavit of defense. An affidavit stating that the defendant has a good defense to the plaintiff’s action on the merits; e.g. affidavit filed with motion for summary judgment.

3. Affidavit of inquiry. By court rule in certain states', substituted service of process may be had on absent defendants if it appears by affidavit of plaintiff s attorney, or other person having knowledge of the facts, that defendant cannot after diligent inquiry, be served within the state.

4. Affidavit of merits. One setting forth that the defendant has a meritorious defense (substantial and not technical) and stating the facts constituting the same. See affidavit of defense.

5. Affidavit of notice. A sworn statement that affiant has given proper notice of hearing to other parties to action.

6. Affidavit of service. An affidavit intended to certify the service of a writ, notice, summons, or other document or process. In federal courts, if service is made by a person other than a United States Marshall or his deputy, he shall make affidavit thereof.

7. Affidavit to hold to bail. An affidavit required in many cases before the defendant in a civil action may be arrested. Such an affidavit must contain a statement, clearly and certainly expressed, by someone acquainted with the fact, of an indebtedness from the defendant to the plaintiff, and must show a distinct cause of action.

8. Declaration. A common-law pleading, the first of the pleadings on the part of the plaintiff in an action at law, being a formal and methodical specification of the facts and circumstances constituting his cause or action. It commonly comprises several sections or divisions, called "counts", and its formal parts follow each other in this general order: Title, venue, commencement, cause of action, counts, conclusion. The declaration at common law, answers to the "libel" in ecclesiastical and admiralty law, the "bill" in equity, the "petition" in civil law, the "complaint" in code and rule pleading, and the "count" in real actions. The term "complaint' is used in the federal courts and in all states that have adopted Rules of Civil Procedure.

ELEMENTS & FORMATS

There are two forms of the affidavit, court brief format and letter. If your matter is private, use the letter format. The court brief format requires a case number and must be in the standard legal form. If you write an affidavit in a private matter which then ends up in the courts, you could rewrite it in legal format; however, it is not necessary since you can submit the affidavit in letter form as an exhibit. .

On the facing page is an example of the court brief form of a generic affidavit. You can use it as a template for creating your own. The required elements in order are the Title, Venue, notice, introduction, statements of fact, date and signature block, and the notary block for notary information and seal.

The following Affidavit is Bare Sample format:

AFFIDAVIT

OREGON STATE)
) Scilicet.
County of Jackson)

"Indeed, no more than (affidavits) are necessary to make the prima facie case." United States v. Kis, 658 F.2nd, 526, 536 (7th Cir. 1981); Cert Denied, 50 U.S. L.W. 2169; S. Ct. March 22, 1982

That I, _____, a living breathing man (or woman), being first duly sworn, depose and say and declare by my signature that the following facts are true to the best of my knowledge and belief.

THAT, on

THAT,
THAT

Further Affiant Sayeth Not.

Done this ___day of February 2004 A.D.

Your name – Affiant

ACKNOWLEDGEMENT

SUBCRIBED TO AND SWORN before me this ___day of _____, A.D. 2006, a Notary, that_____, personally appeared and known to me to be the man whose name subscribed to the within instrument and acknowledged to be the same.

_____ Seal;
Notary Public in and for said State My Commission expires; _____

NOTE; If you are going to use an affidavit in support of a critical point that others have experience on, we suggest that you ask those individuals come forward and provide their own affidavit in support of your case. The weight of 10 or 20 affidavits as compared with just a few, delivered with all the legal force possible, is hard to overlook or dismiss.

AFFIDAVIT OF TRUTH

PENNSYLVAINA STATE)
) Scilicet
County of **Philadelphia)**

"Indeed, no more than (affidavits) is necessary to make the prima facie case." United States v. Kis, 658 F.2nd, 526, 536 (7th Cir. 1981); Cert Denied, 50 U.S. LW. 2169; S. Ct. March 22, 1982

That I, **Benjamin Freedom Franklin,** a living breathing man, being first duly sworn, depose and say and declare by my signature that the following facts are true, correct and complete to the best of my knowledge and belief.

THAT, the Affiant is a flesh and blood man, and is sovereign in a collective capacity with other sovereigns.

THAT, the Affiant's rights "...existed by the law of the land long antecedent to the organization of the State." (Hale v. Henkel, 201 U.S. 43)

THAT, the Affiant's rights exist even in light of the U.S.-Bankruptcy aka The National Emergency and that includes the right of redemption.

THAT, under Article I, Section I of the Oregon Constitution, "the people have all power" and the Affiant as one of the people that can exercise any power.

THAT, Affiant is 'of the people' and is above the corporate government called 'State of Oregon' / STATE OF OREGON, operating in a de-facto bankrupt capacity/status.

THAT, Affiant filed a UCC Financing Statement (UCC-1) in **Pennsylvania** State, UCC Filing Number 7112-862-4129-5 on **October 10, 2004,** to perfect a security interest to initiate redemption as a matter of right.

THAT, the Affiant is the Secured Party creditor and authorized representative of the corporate fiction-entity / Debtor (Ens legis) identified as **BENJAMIN FREEDOM FRANKLIN**
under necessity.

THAT, Affiant caused to be filed, a Superior Security Interest and Lien upon the property of the Debtor and in the Debtor's name filed first in line and first in time, over and above the State of Oregon and that all property is exempt from levy.

THAT, the State of Oregon cannot show nor provide a superior interest in the said property as identified upon the Security Agreement held by the Affiant, (see for reference; Wynhammer v. People, NY 378).

THAT, the Affiant/Secured Party is flesh and blood and the corporate fiction/Debtor/Ens legis as appearing upon any UCC filing is 'artificial' and was created in the contemplation of law (commerce) AND THE TWO ARE NOT THE SAME, FOR ONE IS REAL, THE OTHER IS FICTION.

THAT, any discrimination or injury caused by the State of Oregon to recognize the two distinct entities, the one real and the other artificial agrees to such injuries and to the associated damages as established by the Affiant and the State, by and through it's agents by said agreement, is estopped from defense or rebuttal in the matter and agrees that the Affiant may proceed by Tort for damages.

THAT, this Affidavit if not rebutted point for point by any man, representing the State of Oregon at any level, in any matter, at any time within 7 days upon receipt, these facts stand as true in the both the private and public record... as true.

NOTE: Maxim of Law: 1. In Commerce - Truth is sovereign. 2: For a matter to be resolved, it must be expressed. Point of Law - Silence equates to agreement.

Further Affiant Sayeth Not. ;

Done this 4th day of July 2006 A.D.

"Without Prejudice" Authorized Representative, Attorney-ln-Fact

_____

Benjamin F. Franklin
for BENJAMIN FREEDOM FRANKLIN (copyright), ENS LEGIS

ACKNOWLEDGEMENT

SUBCRIBED TO AND SWORN before me this 4th day of July, A.D. 2006, a Notary, that **Benjamin Freedom Franklin,** personally appeared and known to me to be the man whose name subscribed to the within instrument and acknowledged to be the same.

Notary Public in and for said State
My Commission expires; ___
Seal

The following Affidavit is used after Conditional Acceptance for Value for Proof of Claim:

Certified Mail Number

John Henry Doe
c/o 6880 S. Broadway
Tucson, Arizona 85746
Secured Party

Dan the Man dba
Loan Resolution Specialist
SHYSTER BANK
1665 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401 Respondent

RE: Account #_
Contract #__

AFFIDAVIT OF NOTICE OF DEFAULT

State of)
) Scilicet
County)

NOTICE TO AGENT IS NOTICE TO PRINCIPAL
NOTICE TO PRINCIPAL IS NOTICE TO AGENT

I, _____, herein 'Affiant," having been duly sworn, declares that by affidavit that of the non-response of the Respondents/parties to the contract entitled, CONDITIONAL ACCEPTANCE FOR VALUE FOR PROOF OF CLAIM (CAFV), hereinafter, are in full agreement regarding the following: -

1. THAT Affiant is competent to state the matters included in his/her declaration, has knowledge of the facts, and declared that to the best of his/her knowledge, the statements made in his/her affidavit are true, correct, and not meant to mislead;

2. THAT Affiant is the secured party, superior claimant, holder in due course, and principal creditor having a registered priority lien hold interest to all property held in the name of the Debtor; JOHN HENRY DOE, evidenced by UCC-I Financing Statement #_____ filed with the Secretary of State of the State of _____.

3. THAT Respondent, Dan the Man, is herein addressed in his private capacity, but in his public capacity as **director, agent, Governor,... or ...a citizen and resident of the State of _____ and is participating in a commercial** enterprise with his co-business partners (or employees), including but not limited to **State, Corporation, SHYSTER BANK, etc.,** hereinafter collectively referred to as "Respondent";

4. THAT the governing law of this private contract is the agreement of the parties supported by the Law Merchant and applicable maxims of law;

5. THAT Affiant at no time has willingly, knowingly, intentionally, or voluntarily agreed to subordinate their position as creditor, through signature, or words, actions, or inaction's;

6. THAT Affiant at no time has requested or accepted extraordinary benefits or privileges from the Respondent, the United States, or any subdivision thereof;

7. THAT Affiant is not a party to a valid contract with Respondent that requires Affiant to perform in any manner, including but not limited to the payment of money to Respondent;

8. THAT on **September 22, 2002,** Affiant sent a CONDITIONAL ACCEPTANCE FOR VALUE FOR PROOF OF CLAIM (document for discovery) to the Respondent requesting proof of claim as to the **loan contract #_____, (or whatever the purpose was of the CAFV)** in regards to proof of **what was loaned, bank money or bank credit (or whatever),** and other various proofs of claim to support a valid lawful contract.

9. THAT Respondent had **10 (or 7 or 3 depending upon circumstances and time!)** days to respond with proof of claim, point for point, however elected to remain silent or otherwise refused to provide said proof of claim(s) and therefore has failed to state a claim upon which relief can be granted and has agreed and stipulated to the facts and agreed that the undersigned Secured Party can only discharge said debt via the remedy provided by Congress via HJR-192 with Bill of Exchange or other appropriate commercial paper.

10. THAT Respondent has dishonored Affiant's CAFV by not providing Proof of Claim(s) in respect to **their Loan Contract, etc.** This dishonor in now deemed a charge against the Respondent.

Further Affiant sayeth not.

Dated this ____ day of _____, 2006.

Your Name Here, Affiant

ACKNOWLEDGEMENT

SUBSCRIBED AND SWAORN TO before me; a Notary Public for said County and State, I do hereby certify that on this ___ day of _____ 2006 the above mentioned appeared before me and executed the foregoing. Witness my hand and seal:
_____ Seal;
Notary Public
My Commission expires.

NOTE; As you have learned, make adjustments as to your 'signature' block(s) on all your documents... where you sign, i.e.:
Without Prejudice
Authorized Representative- Attorney-ln-Fact
...Your name here..., Secured Party, in behalf of DEBTOR NAME HERE®, Ens legis

The following affidavit is an EXCEPTIONAL affidavit as to its content, and it is included here for your edification:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BANK ONE, N.A.,
Plaintiff,
v.
Case No. 03-047448-CZ Hon. E.. Sosnick
AFFIDAVIT OF WALKER F. TODD, EXPERT WITNESS FOR DEFENDANTS

HARSHAVARDHAN DAVE and PRATIMA DAVE, jointly and, severally,
Defendants.
Harshavardhan Dave and Pratima H. Dave C/o 5128 Echo Road Bloomfield Hills, Ml 48302 Defendants, *in propria persona*
Michael C. Hammer (P41705) Ryan O. Lawlor (P64693) Dickinson Wright PLLC Attorneys for Bank One, N.A. 500 Woodward Avenue, Suite 4000 Detroit, Michigan 48226 (313)223-3500_____

Now comes the Affiant, Walker F. Todd, a citizen of the United States and the State of Ohio over the age of 21 years, and declares as follows, under penalty of perjury:

1. That I am familiar with the Promissory Note and Disbursement Request and Authorization, dated November 23, 1999, together sometimes referred to in other documents filed by Defendants in this case as the "alleged agreement" between Defendants and Plaintiff but called the "Note" in this Affidavit. If called as a witness, I would testify as stated herein. I make this Affidavit based on my own personal

knowledge of the legal, economic, and historical principles stated herein, except that I have relied entirely on documents provided to me, including the Note, regarding certain facts at issue in this case of which I previously had no direct and personal knowledge. I am making this affidavit based on my experience and expertise as an attorney, economist, research writer, and teacher. I am competent to make the following statements.

PROFESSIONAL BACKGROUND QUALIFICATIONS

2. My qualifications as an expert witness in monetary and banking instruments are as follows. For 20 years, I worked as an attorney and legal officer for the legal departments of the Federal Reserve Banks of New York and Cleveland. Among other things, I was assigned responsibility for questions involving both novel and routine notes, bonds, bankers' acceptances, securities, and other financial instruments in connection with my work for the Reserve Bank's discount windows and parts of the open market trading desk function in New York. In addition, for nine years, I worked as an economic research officer at the Federal Reserve Bank of Cleveland. I became one of the Federal Reserve System's recognized experts on the legal history of central banking and the pledging of notes, bonds, and other financial instruments at the discount window to enable the Federal Reserve to make advances of credit that became or could become money. I also have read extensively treatises on the legal and financial history of money and banking and have published several articles covering all of the subjects just mentioned. I have served as an expert witness in several trials involving banking practices and monetary instruments. A summary biographical sketch and resume including further details of my work experience, readings, publications, and education will be tendered to Defendants and may be made available to the Court and to Plaintiffs counsel upon request.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

3. Banks are required to adhere to Generally Accepted Accounting Principles (GAAP). GAAP follows an accounting convention that lies at the heart of the double-entry bookkeeping system called the Matching Principle. This principle works as follows: When a bank accepts bullion, coin, currency, checks, drafts, promissory notes, or any other similar instruments (hereinafter "instruments") from customers and deposits or records the instruments as assets, it must record offsetting liabilities that match the assets that it accepted from customers. The liabilities represent the amounts that the bank owes the customers, funds accepted from customers. In a fractional reserve banking system like the United States banking system, most of the funds advanced to borrowers (assets of the banks) **are created by the banks themselves** and are not merely transferred from one set of depositors to another set of borrowers.

RELEVANCE OF SUBTLE DISTINCTIONS ABOUT TYPES OF MONEY

4. From my study of historical and economic writings on the subject, I conclude that a common misconception about the nature of money unfortunately has been perpetuated in the U.S. monetary and banking systems, especially since the 1930s. In classical economic theory, once economic exchange has moved beyond the barter stage, there are two types of money: money of *exchange* and money of *account*... For nearly 300 years in both Europe and the United States, confusion about the distinctiveness of these two concepts has led to persistent attempts to treat money of account as the equivalent of money of exchange. In reality, especially in a fractional reserve banking system, a comparatively small amount of money of exchange (e.g., gold, silver, and official currency notes) may support a vastly larger quantity of business transactions denominated in money of account. The sum of these transactions is the sum of credit extensions in the economy. With the exception of customary stores of value like gold and silver, the monetary base of the economy largely consists of credit instruments. **Against this background, I conclude that the Note, despite some language about "lawful money" explained below, clearly contemplates both disbursement of funds and eventual repayment or settlement in money of**

account (that is. money of exchange would be welcome but is not required to repay or settle the Note). The factual basis of this conclusion is the reference in the Disbursement Request and Authorization to repayment of $95,905.16 to Michigan National Bank from the proceeds of the Note. That was an exchange of the credit of Bank One (Plaintiff) for credit apparently and previously extended to Defendants by Michigan National Bank. Also, there is no reason to believe that Plaintiff would refuse a substitution of the credit of another bank or banker as complete payment of the Defendants' repayment obligation under the Note. This is a case about exchanges of money of account (credit), not about exchanges of money of exchange (lawful money or even legal tender).

5. Ironically, the Note explicitly refers to repayment in "lawful money of the United States of America" (see "Promise to Pay" clause). Traditionally and legally, Congress defines the phrase "lawful money" for the United States. Lawful money was the form of money of exchange that the federal government (or any state) could be required by statute to receive in payment of taxes or other debts. Traditionally, as defined by Congress, lawful money only included gold, silver, and currency notes redeemable for gold or silver on demand. In a banking law context, lawful money was only those forms of money of exchange (the forms just mentioned, plus U.S. bonds and notes redeemable for gold) that constituted the reserves of a national bank prior to 1913 (date of creation of the Federal Reserve Banks). See, Lawful Money, *Webster's New International Dictionary* (2d ed. 1950). **In light of these facts, I conclude that Plaintiff and Defendants exchanged reciprocal credits Involving money of account and not money of exchange: no lawful money was or probably ever would be disbursed by either side in the covered transactions.** This conclusion also is consistent with the bookkeeping entries that underlie the loan account in dispute in the present case. Moreover, it is puzzling why Plaintiff would retain the archaic language, "lawful money of the United States of America," in its otherwise modern-seeming Note. It is possible that this language is merely a legacy from the pre-1933 era. Modern credit agreements might include repayment language such as, "The repayment obligation under this agreement shall continue until payment is received *in fully and finally collected funds,"* which avoids the entire question of "In what form of money **or credit** is the repayment obligation due?"

6. *Legal tender,* a related concept but one that is economically inferior to *lawful money* because it allows payment in instruments that cannot be redeemed for gold or silver on demand, has been the form of money of exchange commonly used in the United States since 1933, when domestic private gold transactions were suspended (until 1974).. Basically, legal tender is whatever the government says that it is. The most common form of legal tender today is Federal Reserve notes, which by law cannot be redeemed for gold since 1934 or, since 1964, for silver. See, 31 U.S.C. Sections 5103, 5118 (b), and 5119 (a).

Note: I question the statement that fed reserve notes cannot be redeemed for silver since 1964. It was Johnson who declared on 15 Marcy 1967 that after 15 June 1967 that Fed Res Notes would not be exchanged for silver and the practice did stop on 15 June 1967 - not 1964. I believe this to be error in the text of the author's affidavit.

7. Legal tender under the Uniform Commercial Code (U.C.C.), Section 1-201 (24) (Official Comment), is a concept that sometimes surfaces in cases of this nature. The referenced Official Comment notes that the definition of *money* is not limited to *legal tender* under the U.C.C. *Money* is defined in Section 1-201 (24) as "a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations." The relevant Official Comment states that "The test adopted is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected." Thus, I conclude that the U.C.C. tends to validate the classical theoretical view of money.

HOW BANKS BEGAN TO LEND THEIR OWN CREDIT INSTEAD OF REAL MONEY

8. In my opinion, the best sources of information on the origins and use of credit as money are in Alfred Marshall, MONEY, CREDIT & COMMERCE 249-251 (1929) and Charles P. Kindleberger, A FINANCIAL HISTORY OF WESTERN EUROPE 50-53 (1984). A synthesis of these sources, as applied to the facts of the present case, is as follows: As commercial banks and discount houses (private bankers) became established in parts of Europe (especially Great Britain) and North America, by the mid-nineteenth century they commonly made loans to borrowers by extending their own credit to the borrowers or, at the borrowers' direction, to third parties. The typical form of such extensions of credit was drafts or bills of exchange drawn upon themselves (claims on the credit of the drawees) instead of disbursements of bullion, coin, or other forms of money. In transactions with third parties, these drafts and bills came to serve most of the ordinary functions of money. The third parties had to determine for themselves whether such "credit money" had value and, if so, how much. The Federal Reserve Act of 1913 was drafted with this model of the commercial economy in mind and provided at least two mechanisms (the discount window and the open-market trading desk) by which certain types of bankers' credits could be exchanged for Federal Reserve credits, which in turn could be withdrawn in lawful money. Credit at the Federal Reserve eventually became the principal form of monetary reserves of the commercial banking system, especially after the suspension of domestic transactions in gold in 1933. Thus, credit money is not alien to the current official monetary system; it is just rarely used as a device for the creation of Federal Reserve credit that, in turn, in the form of either Federal Reserve notes or banks' deposits at Federal Reserve Banks, functions as money in the current monetary system. In fact, a means by which the Federal Reserve expands the money supply, loosely defined, *Is* to set banks' reserve requirements (currently, usually ten percent of demand liabilities) at levels that would encourage banks to extend new credit to borrowers on their own books that third parties would have to present to the same banks for redemption, thus leading to an expansion of bank-created credit money. In the modern economy, many non-bank providers of credit also extend book credit to their customers without previously setting aside an equivalent amount of monetary reserves (credit card line of credit access checks issued by non-banks are a good example of this type of credit), which also causes an expansion of the aggregate quantity of credit money. The discussion of money taken from Federal Reserve and other modern sources in paragraphs 11 et seq. is consistent with the account of the origins of the use of bank credit as money in this paragraph.

ADVANCES OF BANK CREDIT AS THE EQUIVALENT OF MONEY

9. Plaintiff apparently asserts that the Defendants signed a promise to pay, such as a note(s) or credit application (collectively, the "Note"), in exchange for the Plaintiffs advance of funds, credit, or some type of money to or on behalf of Defendant. However, the bookkeeping entries required by application of GAAP and the Federal Reserve's own writings should trigger close scrutiny of Plaintiffs apparent assertions that it lent its funds, credit, or money to or on behalf of Defendants, thereby causing them to owe the Plaintiff $400,000. According to the bookkeeping entries shown or otherwise described to me and application of GAAP, the Defendants allegedly were to tender some form of *money* ("lawful money of the United States of America" is the type of money explicitly called for in the Note), securities or other capital equivalent to money, funds, credit, or something else of value in exchange (money of exchange, loosely defined), collectively referred to herein as "money," to repay what the Plaintiff claims was the *money* lent to the Defendants. **It is not an unreasonable argument to state that Plaintiff apparently changed the economic substance of the transaction from that contemplated in the credit application form, agreement, note(s), or other similar instrument(s) that the Defendants executed, thereby changing the costs and risks to the Defendants.** At most, the Plaintiff extended its own *credit* (money of account), but the Defendants were required to repay in *money* (money of exchange, and *lawful money*

at that), **which creates at least the inference of inequality of obligations** on the two sides of the transaction *(money,* including *lawful money,* is to be exchanged for *bank credit).*

MODERN AUTHORITIES ON MONEY

10. To understand what occurred between Plaintiff and Defendants concerning the alleged loan of *money* or, more accurately, *credit,* it is helpful to review a modern Federal Reserve description of a bank's lending process. See, David H. Friedman, MONEY AND BANKING (4th ed. 1984)(apparently already introduced into this case): "The commercial bank lending process is similar to that of a thrift in that the receipt of cash from depositors increases both its assets and its deposit liabilities, which enables it to make additional loans and investments. . . . When a commercial bank makes a business loan, it accepts as an asset the borrower's debt obligation (the promise to repay) and creates a liability on its books in the form of a demand deposit in the amount of the loan." (Consumer loans are funded similarly.) Therefore, the bank's original bookkeeping entry should show an increase in the amount of the asset credited on the asset side of its books and a corresponding increase equal to the value of the asset on the liability side of its books. **This would show that the bank received the customer's signed promise to repay as an *asset,* thus *monetizing* the customer's signature and creating on its books a liability in the form of a demand deposit or other demand liability of the bank.** The bank then usually would hold this demand deposit in a transaction account on behalf of the customer. Instead of the bank lending its *money* or other assets to the customer, as the customer reasonably might believe from the face of the Note, the bank *created* funds for the customer's transaction account without the customer's permission, authorization, or knowledge and delivered the *credit* on its own books representing those funds to the customer, meanwhile alleging that the bank lent the customer *money.* If Plaintiff's response to this line of argument is to the effect that it acknowledges that it lent credit or issued credit instead of money, one might refer to Thomas P. Fitch, BARRON'S BUSINESS GUIDE DICTIONARY OF BANKING TERMS, "Credit banking," 3. "Bookkeeping entry representing a deposit of funds into an account." But Plaintiffs loan agreement apparently avoids claiming that the bank actually lent the Defendants *money.* They apparently state in the agreement that the Defendants are obligated to repay Plaintiff principal and interest for the "Valuable consideration (money) the bank gave the customer (borrower)." The loan agreement and Note apparently still delete any reference to the bank's receipt of actual cash value from the Defendants and exchange of that receipt for actual cash value that the Plaintiff banker returned.

11. According to the Federal Reserve Bank of New York, money is anything that has value that banks and people accept as money; money does not have to be issued by the government. For example, David H. Friedman, I BET YOU THOUGHT. ... 9, Federal Reserve Bank of New York (4th ed. 1984)(apparently already introduced into this case), explains that banks create new money by depositing IOUs, promissory notes, offset by bank liabilities called checking account balances. Page 5 says, "Money doesn't have to be intrinsically valuable, be issued by government, or be in any special form...."

12.The publication, Anne Marie L. Gonczy, MODERN MONEY MECHANICS 7-33, Federal Reserve Bank of Chicago (rev. ed. June 1992)(apparently already introduced into this case), contains standard bookkeeping entries demonstrating that *money* ordinarily is recorded as a bank asset, while a bank *liability* is evidence of *money* that a bank owes. The bookkeeping entries tend to prove that banks accept cash, checks, drafts, and promissory notes/credit agreements (assets) as *money* deposited to create credit or checkbook money that are bank *liabilities,* which shows that, absent any right of setoff, banks owe *money* to persons who deposit *money.*. Cash (money of exchange) is money, and credit or promissory notes (money of account) become money when banks deposit promissory notes with the intent of treating them like deposits of cash. See. 12 U.S.C. Section 1813 (l)(1) (definition of "deposit" under Federal Deposit Insurance Act). The Plaintiff acts in the capacity of a lending or banking institution, and the newly issued credit or money is similar or equivalent to a promissory note, which may be treated as a deposit of money when received by the lending bank. Federal Reserve Bank of Dallas publication MONEY AND BANKING, page 11, explains that when banks grant loans, they create new money. The

new money is created because a new "loan becomes a deposit, just like a paycheck does." MODERN MONEY MECHANICS, page 6, says, "What they [banks] do when they make loans is to accept promissory notes in exchange for credits to the borrowers' transaction accounts." The next sentence on the same page explains that the banks' assets and liabilities increase by the amount of the loans.

COMMENTARY AND SUMMARY OF ARGUMENT

13. Plaintiff apparently accepted the Defendants' Note and credit application (money of account) in exchange for its own credit (also money of account) and deposited that credit into an account with the Defendants' names on the account, as well as apparently issuing its own credit for $95,905.16 to Michigan National Bank for the account of the Defendants. One reasonably might argue that the Plaintiff recorded the Note or credit application as a loan (money of account) from the Defendants to the Plaintiff and that the Plaintiff then became the borrower of an equivalent amount of money of account from the Defendants.

14. The Plaintiff in fact never lent any of its own pre-existing money, credit or assets as consideration to purchase the Note or credit agreement from the Defendants. (Note: I add that when the bank does the forgoing, then in that event, there is an utter ***failure of consideration*** for the "loan contract".) When the Plaintiff deposited the Defendants' $400,000 of newly issued credit into an account, the Plaintiff created from $360,000 to $400,000 of new money (the nominal principal amount less up to ten percent or $40,000 of reserves that the Federal Reserve would require against a demand deposit of this size). The Plaintiff received $400,000 of credit or money of account from the Defendants as an asset. GAAP ordinarily would require that the Plaintiff record a liability account, crediting the Defendants' deposit account, showing that the Plaintiff owes $400,000 of money to the Defendants, just as if the Defendants were to deposit cash or a payroll check into their account.

15. The following appears to be a disputed fact in this case about which I have insufficient information on which to form a conclusion: I infer that it is alleged that Plaintiff refused to lend the Defendants Plaintiffs own money or assets and recorded a $400,000 loan from the Defendants to the Plaintiff, which arguably was a $400,000 deposit of money of account by the Defendants, and then when the Plaintiff repaid the Defendants by paying its own credit (money of account) in the amount of $400,000 to third-party sellers of goods and services for the account of Defendants, the Defendants were repaid their loan to Plaintiff, and the transaction was complete.

16. I do not have sufficient knowledge of the facts in this case to form a conclusion on the following disputed points: None of the following material facts are disclosed in the credit application or Note or were advertised by Plaintiff to prove that the Defendants are the true lenders and the Plaintiff is the true borrower. **The Plaintiff is trying to use the credit application form or the Note to persuade and deceive the Defendants into believing that the opposite occurred and that the Defendants were the borrower and not the lender. The following point is** undisputed: The Defendants' loan of their credit to Plaintiff, when issued and paid from their deposit or credit account at Plaintiff, became money in the Federal Reserve System (subject to a reduction of up to ten percent for reserve requirements) as the newly issued credit was paid pursuant to written orders, including checks and wire transfers, to sellers of goods and services for the account of Defendants.

CONCLUSION

17. Based on the foregoing, Plaintiff is using the Defendant's Note for its own purposes, and it remains to be proven whether Plaintiff has incurred any financial loss or actual damages (I do not have sufficient information

to form a conclusion on this point). In any case, the inclusion of the "lawful money" language in the repayment clause of the Note is confusing at best and in fact may be misleading in the context described above.

AFFIRMATION

18. I hereby affirm that I prepared and have read this Affidavit and that I believe the foregoing statements in this Affidavit to be true. I hereby further affirm that the basis of these beliefs is either my own direct knowledge of the legal principles and historical facts involved and with respect to which I hold myself out as an expert or statements made or documents provided to me by third parties whose veracity I reasonably assumed. Further the Affiant sayeth naught.

At Chagrin Falls, **Ohio**
December 5, 2003 _____
WALKER F. TODD (Ohio bar no. 0064539) Expert witness for the Defendants Walker F. Todd, Attorney at Law

NOTARY'S VERIFICATION

At Chagrin Falls, Ohio December 5, 2003
On this day personally came before me the above-named Affiant, who proved his identity to me to my satisfaction, and he acknowledged his signature on this Affidavit in my presence and stated that he did so with full understanding that he was subject to the penalties of perjury.

Notary Public of the State of Ohio

From: The Redemption Manual, 4th Ed.