

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr, Circuit Court Judge

Case No. 2009-CP-10-2433

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SC Court of Appeals

ORIGINAL

Floyd E. Jernigan Respondent,

v.

Suzanne Boone Katz and Bank of America, N.A. Defendants,

Of Whom Suzanne Boone Katz is Respondent,

And Bank of America, N.A. is Appellant.

RECORD ON APPEAL
VOLUME II OF III

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Certificate of Counsel

Certificate of Compliance

Proof of Service

1 A. Yes.

2 Q. After the cat's out of the bag, you already went to
3 the police, had the report filed, right?

4 A. Right.

5 Q. He had been arrested, right?

6 A. Right.

7 Q. Your sons found about it, right?

8 A. Right.

9 Q. You had all of that to deal with then at that point,
10 right?

11 A. Right.

12 Q. Only then did the bank say, we can't comment on his
13 state of mind. Isn't that right?

14 A. Right.

15 Q. That's all I have. Thank you, ma'am.

16 THE COURT: Any recross?

17 MR. ABNEY: No, Your Honor.

18 THE COURT: All right. Ms. Katz, you need some
19 water or anything?

20 WITNESS: I'm okay. Thank you.

21 THE COURT: Pardon?

22 WITNESS: I'm okay. Thank you.

23 THE COURT: I just want to ask you one question.

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q. Did the bank ever tell you that your ex-husband, if he
2 was on-line on his account number 4502 that he could choose
3 -- to pay on-line bills, he could choose from your account
4 to pay those bills and that was because he had not been
5 removed back in '04? Did anybody ever tell you that from
6 the bank.

7 A. I'm sorry. Would you ask me again.

8 Q. All right. Did the bank ever tell you that your ex-
9 husband, in January of '07, had access to your account
10 through his account to pay bills on-line and he could pay
11 out of your account, in January of '07?

12 A. No.

13 Q. Did anybody ever tell you that?

14 A. No.

15 Q. Did they ever tell you that the reason that existed in
16 January of '07 was because the bank had failed to remove
17 him in '04? Did they tell you that?

18 A. Yes.

19 THE COURT: Okay. All right. Thank you very
20 much. Does anybody have any questions?

21 MR. ABNEY: No, Your Honor.

22 THE COURT: You may step down. Thank you very
23 much. You want to call your next witness?

24 MR. EDWARDS: Ms. Katz rests.

25 THE COURT: Okay. Any motions from the

1 Plaintiff?

2 MR. WAGGONER: No, sir.

3 THE COURT: Any from the cross-plaintiff?

4 MR. EDWARDS: No, sir.

5 THE COURT: Any from the Defendant, Bank of
6 America?

7 MR. ABNEY: We have a motion for non-suit, Your
8 Honor, voluntary non-suit.

9 THE COURT: I'll be glad to hear you. Why don't
10 we take each cause of action against each party separate,
11 if we may.

12 MR. ABNEY: Very well. First cause of action
13 from the plaintiff, Floyd Jernigan, is defamation. To
14 recover for defamation, he's got to show false defamatory
15 statement, unprivileged communication, false on the
16 defendant's part in publishing the statement and
17 actionability. Substantial truth is an absolute defense to
18 a claim for defamation and any communication made on the
19 subject matter in which the person communicating has an
20 interest or duty is qualified as privilege if made to a
21 person with a corresponding interest or duty. If
22 communication is privileged, Your Honor, the plaintiff's
23 got to show actual malice on the part of the bank. In this
24 case, Your Honor, the statements that are alleged to be
25 defamatory were absolutely true. The bank employees Ms.

1 Katz spoke with following discovery of the transactions
2 told her that the payments would require some affirmative
3 conduct on Dr. Jernigan's part. No one at the bank told
4 her that Dr. Jernigan had to have intended to steal these
5 funds. And Jernigan has not shown that these statements
6 were false. In fact, they were true as established by the
7 Bank of America employees who have testified that the only
8 way these transactions could have occurred is by Dr.
9 Jernigan picking the 8854 account.

10 Moreover, Dr. Jernigan has conceded he doesn't recall
11 the actual session when he sat down and made these
12 payments. He's conceded also that he was aware all along
13 that the 8854 account was right there in his on-line
14 profile after January 2004, all the way up until the time
15 these payments were made. And with regard to this theory
16 that the account being frozen had something to do with
17 these payments, Dr. Jernigan conceded on the stand that
18 after reviewing the statement, that there's clearly debit
19 activity going on in that account on the dates that these
20 payments were made. There's check activity, debit card
21 transactions and electronic transfers. They've provided no
22 evidence, Your Honor, that this restriction had anything
23 whatsoever to do with the disputed payments that are at
24 issue with this case. And the reason why, Your Honor, that
25 no one ever brought this up over the disputed payments, was

1 because to this day no one thinks for the bank that that
2 restriction had anything whatsoever to do with these
3 transactions. Because they've established no untrue
4 statement claim for defamation should fail.

5 Also, Your Honor, any statements made to Ms. Katz
6 about the transactions would be subject to qualified
7 privilege. Obviously, the bank speaking to their customer
8 about this transaction has to speak, has to tell their
9 understanding of what happened. Therefore, because it was
10 in a privileged situation, the bank speaking to its
11 customer, the statements would be privileged and because of
12 that, the plaintiff has to show actual malice on the part
13 of the bank in making the statement. And there's been
14 absolutely no evidence that anyone made statements with the
15 intent to harm Dr. Jernigan in this case.

16 And, finally, special harm is also a requirement in
17 the defamation claim that Dr. Jernigan suffered no special
18 harm. He admitted that his employers took no adverse
19 action against him and that he remained gainfully employed
20 in a job that he was happy with throughout the entire
21 period when the charges were pending.

22 And, therefore, we would argue that the defamation
23 claims be dismissed.

24 THE COURT: Okay. I'll be glad to hear you, Mr.
25 Waggoner.

1 MR. WAGGONER: Your Honor, you don't just have to
2 say somebody stole, you can hint that somebody stole.
3 That's called defamation by insinuation. I suggest that
4 Officer d'Keegan [phonics], Sergeant d'Keegan's testimony
5 is that he got the clear impression as a white collar
6 investigator, and after speaking to the bank, that a crime
7 had been committed and if he had not gotten that
8 impression, we wouldn't be here today, I think were his
9 words. But it's clearly evidence from which the fact
10 finder might find an insinuation to the police and, of
11 course, to Ms. Katz as she's been fairly clear to testify
12 that a theft had occurred, not an inadvertence. There's
13 been multiple testimony that there was no evidence, nobody,
14 counting Ms. Katz or the police.

15 THE COURT: No evidence of what now?

16 MR. WAGGONER: There was no suggestion -- I'm
17 sorry -- no evidence of any suggestion to the police or to
18 Ms. Katz that this was an inadvertence, potentially an
19 inadvertent slip of the mouth, so to speak. Insinuation to
20 both Ms. Katz, who was told to go and file a police report.
21 You don't do that if there's no insinuation of a crime.
22 And to the police officer who investigated it, was that a
23 crime, meaning a deliberate use of an access code ---

24 THE COURT: I think it's the testimony was to
25 file a police report ---

1 MR. WAGGONER: Correct.

2 THE COURT: --- of the incident and file a fraud
3 report with the bank.

4 MR. WAGGONER: Correct. But that combination
5 with what they told the police sets up this insinuation,
6 both to Ms. Katz and certainly to the police, that a crime
7 has been committed. And ---

8 THE COURT: Well, I mean, from the testimony,
9 from the testimony, he knew he had access to her account
10 and he knew he wasn't supposed to have access. He had
11 monitored that account. Plus in order to transfer the
12 funds out of her account, whether it was done intentionally
13 or unintentionally when he chose the payment method, and I
14 can understand he could have intentionally chose her
15 account rather than his account and that would be real easy
16 to do. It depends upon how it's set up on the screen. But
17 let's assume factually he did it intentionally. Why
18 wouldn't that be a fraudulent or a crime?

19 MR. WAGGONER: Because the ---

20 THE COURT: I understand that -- a prosecutor
21 probably wouldn't want to prosecute based on those facts,
22 but why wouldn't that technically be a crime if, in fact,
23 he went in and intentionally chose her account to pay his
24 own bills, knowing he was supposed to be off of that
25 account? Obviously, he knew he had access to the account

1 because he had monitored it looking for those checks of
2 insurance refund and other funds that she had cashed with
3 both names on them.

4 MR. WAGGONER: He testified, Your Honor, that he
5 had no awareness of any connection ---

6 THE COURT: Well, I know. He just testified I
7 don't know.

8 MR. WAGGONER: Right.

9 THE COURT: But that's not what -- that's not
10 what the track record shows as far as going back and seeing
11 his access to the computer.

12 MR. WAGGONER: Well, the insinuation, again,
13 wasn't that this could have been an inadvertent click. It
14 was that it was -- that he, with knowledge, went into her
15 account. And that's a crime ---

16 THE COURT: I understand what you're saying, but
17 I'm not so sure that insinuation goes to defamation. It
18 may go to negligence and a breach of the duty of
19 negligence, but not defamation.

20 MR. WAGGONER: Well, there are cases that
21 establish defamation by insinuation, specifically *Tyler*
22 *versus Macks Stores*. Here insinuation is actually more or
23 less a positive assertion that is also maliciousness ---

24 THE COURT: Well, where's the maliciousness?

25 MR. WAGGONER: Well, that's typically ---

1 THE COURT: I mean, where is it malicious? I
2 mean, all the bank did was go file the report and basically
3 they closed down shop and didn't do anything and didn't
4 cooperate with anybody after that.

5 MR. WAGGONER: Well, the bank ignored Ms. Katz's
6 extreme agitation and concern.

7 THE COURT: And how does that affect your client?

8 MR. WAGGONER: And told her not to talk to our
9 client. And I would argue that that's evidence of malice.
10 They denied him his rights.

11 THE COURT: Okay. All right. Anything else?
12 I'm going to grant the motion on the defamation. What's
13 the next cause of action?

14 MR. ABNEY: Malicious prosecution, Your Honor.
15 Jernigan would have to satisfy for a malicious prosecution
16 claim the institution of judicial proceedings by or at the
17 insistence of the Defendant, termination of such proceeds
18 in the plaintiff's favor, malice in instituting the
19 proceedings, one of probable cause and injury or damage to
20 plaintiff. In determining if probable cause exist, the
21 Court must consider the facts from the point of view of the
22 prosecuting party. The question is not what the actual
23 facts were, but what the prosecuting party actually
24 believed them to be. Visa vie Broad River Electric Co-op.

25 As an initial matter, Your Honor, the malicious

1 prosecution claim fails because the party who instituted
2 and continued the criminal proceedings against Dr. Jernigan
3 was Ms. Katz, not the bank. Katz initially reported the
4 matter to the police department.

5 THE COURT: Well, the bank initially told her to
6 go file the report.

7 MR. ABNEY: I understand that, Your Honor. She
8 initially went and filed the report. The case was closed
9 in April of 2007. Ms. Katz had her money back. What she
10 says is that she was told to file the police report in
11 order to get her money back. She had it and she continued
12 to press it. And, Your Honor, what she conceded on the
13 stand was once she was aware that the warrants officer was
14 out trying to contact Dr. Jernigan, she told him that Dr.
15 Jernigan isn't going to call the police back and he isn't
16 going to answer the door if they come to see him. But the
17 bank had no involvement in any of that. All that's there
18 that the bank had any involvement whatsoever in this
19 prosecution for the entire period was simply Ms. Katz -- is
20 simply Ms. Katz testimony that initially she was told that
21 in order to get her money back, she needed to make a police
22 report.

23 THE COURT: Okay. Anything else?

24 MR. ABNEY: The only evidence, Your Honor, that
25 -- we were talking about Sergeant d'Keegan earlier, the

1 only evidence, you know, of any contact direct between the
2 bank and any member of law enforcement is d'Keegan's
3 testimony that he had one conversation after the case had
4 been initially closed out with someone from the bank, whose
5 name he can't remember, whose position he does not know,
6 and he only says he asked, Your Honor, was how would
7 someone access another person's account on-line. And that
8 person told him, well, you need an access code. And that's
9 a true statement.

10 THE COURT: Yeah. But in this situation it
11 wasn't. If they'd done an investigation before they told
12 the police officer that, it would have been a different
13 statement from the police officer.

14 MR. ABNEY: Well, Your Honor, there's no evidence
15 that this was anything more than a police officer calling
16 up a bank teller and having a -- posing a hypothetical.
17 All he said is that he asked someone, whose name he can't
18 recall, how do you get in someone else's account. I mean,
19 I think if you asked me that, I would be, well, you
20 probably need a pass code or something like that. But
21 there's no evidence that the bank was -- convinced the
22 police department to continue this proceeding. And there's
23 absolutely nothing in any of the written records from the
24 police department about any conversation whatsoever with
25 the bank throughout this entire period. So to call the

1 bank the prosecuting ---

2 THE COURT: Don't you think that's probably
3 because once the bank found out they'd made a mistake, they
4 stonewalled everybody and just cut off all communication
5 with everybody, including their customers and the police
6 and ran everything through the legal department, including
7 these letters that they sent to Mrs. Katz?

8 MR. ABNEY: I don't think that's the case, Your
9 Honor. I mean, I think what the testimony has showed is
10 that Ms. Katz was told out of the gate everything we know
11 today about how this transaction happened. The bank
12 screwed up. We told her that night that the bank screwed
13 up in failing to eliminate his access. What we know today
14 about how these transactions occurred is that Floyd
15 Jernigan clicked on the 8854 account and made payments from
16 his wife's account. There's been no information throughout
17 this litigation that's altered that opinion about how this
18 happened. There's nothing we know now that changes our
19 understanding of what occurred when these payments were
20 made. That's what she was told initially. She was told
21 facts. And no one -- she's admitted she understood what
22 they were talking about, that he had to pick the account.
23 Well, today, if you ask anybody at the bank how this
24 occurred, he had to pick the account.

25 THE COURT: Okay.

1 MR. ABNEY: This restriction theory -- today we
2 still don't -- no one thinks this had any impact whatsoever
3 and there's no basis -- I mean, it's not established that
4 it should or that it does or that it did.

5 THE COURT: Okay. Thank you very much. Mr.
6 Waggoner?

7 MR. WAGGONER: Your Honor ---

8 THE COURT: I'm sorry. Is there anything else
9 you wanted to tell me? I didn't mean to cut you off?

10 MR. ABNEY: Let me just check, Your Honor. Oh,
11 and as -- I'm sorry. As for the issue of the bank's
12 failure to investigate this issue of the restriction, Dr.
13 Jernigan testified that he had that one conversation when
14 the bank called him to ask about how -- I mean, to ask if
15 it was okay to put his money into her account to reimburse
16 her for these payments, and that he doesn't recall any
17 discussion whatsoever with whomever he talked with at the
18 bank about how these transactions occurred at that time.
19 At no point did he contact the bank. He's admitted, not a
20 single time, even after the police had contacted him twice
21 and he knew that his wife was quote, pressing the matter,
22 he never contacted the bank to say, well, can you look into
23 this restriction? I mean, did this have any impact? Could
24 that may be what caused this problem? No one brought it to
25 our attention. The only allegation we heard, only theory

1 we'd ever heard about how these transactions might have
2 occurred was Ms. Katz telling Mr. Navarez that there was
3 possibly an overdraft situation. But we knew that wasn't
4 the case because one checking account did not serve, as Mr.
5 Navarez said, as overdraft protection for another account.
6 And Dr. Jernigan testified he had overdraft protection
7 supplied by a credit card. He had an overdraft like four
8 days before these transactions occurred. And the overdraft
9 funds were supplied from a credit card. And there's -- you
10 can look at the statements. There's no -- I mean, there's
11 just no question he had plenty of money to cover these
12 transactions. So it wasn't the case that he had
13 insufficient funds and anybody could look at -- just
14 knowing and working with the bank that that situation was
15 completely impossible or that theory just didn't have legs.
16 We would quickly say, as Mr. Navarez did to Ms. Katz, well
17 that didn't happen. I mean, it didn't happen that way. No
18 one ever brought up this theory about the account being
19 somehow frozen and that causing the default to the other
20 account, and causing the things to come from 8854 until we
21 were sitting in a deposition or preparing for a deposition,
22 like the day before. It was the first time that we had
23 ever seen that allegation. Your Honor, it's not in the
24 complaint. The complaint absolutely says that the default
25 occurred due to insufficient funds in Dr. Jernigan's

1 account.

2 So the idea that, you know -- I mean, I feel like
3 we're -- that I'm sort of on trial for that, that we didn't
4 respond early enough because they've said that we denied it
5 through discovery requests. No one ever brought to our
6 attention what Dr. Jernigan thought happened until we were
7 well into this litigation. So the notion that we should
8 have gone and researched this issue, trying to find out
9 whether a no check activity restriction could have caused
10 these transactions, just doesn't fly.

11 To this day, we still don't think it had any impact
12 whatsoever. And we've looked at the transactions showing
13 that there was activity, debit activity occurring in that
14 account on the day these transactions occurred.

15 THE COURT: Thank you very much. Mr. Waggoner.

16 MR. WAGGONER: The debit activity, Your Honor,
17 that's causing -- that was coming out of the bank -- I'm no
18 computer expert and I'm no bank expert. All we asked is
19 that the bank tell us the truth. And if you see the
20 pleadings, you will see that throughout almost the entire
21 litigation, this notion of restricted or frozen account has
22 been denied. You have the pleadings, you'll see it.

23 Sergeant ---

24 THE COURT: Now we're talking about malicious
25 prosecution, okay?

1 MR. WAGGONER: Correct, right.

2 THE COURT: That's what we're talking about.

3 Malicious prosecution. I think he got far afield on that
4 issue. I'll be glad to hear you.

5 MR. WAGGONER: Okay. And I don't have any kind
6 of prepared memo at this point, but I'm going to respond to
7 the suggestion that Sergeant d'Keegan walked into teller
8 and said, hey, what have you got to do -- that wasn't his
9 testimony. He was asked in very clear terms, did you
10 identify yourself as a police officer? Did you tell them
11 you were investigating a complaint of unauthorized access
12 to an account? Did the person you speak with seem to have
13 authority, seem to have knowledge? Yes, yes, yes. He did
14 not walk into the bank and go to somebody in the corner and
15 say, hey, well, how do you do this? He was led to believe
16 that a crime had been committed. Now, it is true that the
17 police ultimately -- that the second, if you will, roll-up
18 of the case was initiated by Ms. Katz. But her testimony
19 is that had she -- the prosecution initially was started by
20 -- at the direction of the police, of the bank in that they
21 told Ms. Katz to call the police. It cooled down but it
22 was not ---

23 THE COURT: It more than cooled down. They had
24 dismissed it.

25 MR. WAGGONER: Right.

1 THE COURT: They had closed the file.

2 MR. WAGGONER: Correct.

3 THE COURT: That's a lot more than cooling down.

4 MR. WAGGONER: All right. It had slowed to the
5 point where they had closed the file. And admittedly, she
6 reopened it.

7 THE COURT: And the bank didn't have anything to
8 do with that.

9 MR. WAGGONER: The bank did not -- we do not
10 suggest that the bank had anything to do with that. We
11 suggest that the bank started it and it festered and she,
12 she continued. The bank certainly did nothing to stop it.
13 They just forgot about it, despite Ms. Katz's rather
14 energized insistence on explanation or the mechanics.

15 THE COURT: Okay. All right. I'm going to grant
16 his motion on malicious prosecution.

17 MR. WAGGONER: All right, sir.

18 MR. ABNEY: Thank you, Your Honor. A claim for
19 negligence requires a showing of duty or care owed by the
20 defendant to the plaintiff, breach of that duty and damages
21 resulting therefrom.

22 Now, if the theory is that the negligence was -- a
23 claimed breach of duty is that the bank's alleged statement
24 to Ms. Katz, there is no cause of action for negligent
25 slander or negligent defamation. I mean, they've got to

1 show actual malice. Otherwise, the claim just doesn't
2 exist. If the breach of duty is the failure to remove Dr.
3 Jernigan, I mean, that duty is a contractual duty under the
4 deposit account agreement and it's not up to Dr. Jernigan,
5 it would be up to Ms. Katz. So Dr. Jernigan would have no
6 claim for that negligence. Even assuming there was a duty
7 owed, there's no proximate cause here. As we pointed out
8 just a minute ago, Dr. Jernigan has testified that after
9 January he went into Bank of America in January of 2004,
10 renounced his ownership to this account. He sat down in
11 February of 2004, looks on-line and can still see the
12 account. It's right there in his on-line profile. He
13 clicked on that account on more than one occasion after
14 January 2004 and you heard his testimony, he knew when he
15 clicked on that account that he should not be able to view
16 access to that account. He should not be able to access
17 it. If at any time between 2004 and 2007 he called -- if I
18 came in to a banking center and told them that I wanted to
19 renounce ownership of this account and it's still showing
20 up in my on-line profile, we wouldn't be here. I
21 understand and I'm not denying that the bank made a mistake
22 in failing to remove his access, but he had more of a hand
23 in it and certainly as much of a hand in these transactions
24 ultimately occurring as they did, as the bank.

25 THE COURT: Okay. Taking the evidence most

1 favorable to the non-moving party, that motion's denied.

2 Any other cause of action?

3 MR. ABNEY: As to Ms. Katz?

4 THE COURT: We're through with the plaintiff,
5 right, all your causes of action.

6 MR. WAGGONER: He's addressed all that we have
7 too, Your Honor.

8 THE COURT: Right.

9 MR. ABNEY: So the only remaining cause of action

10 ---

11 THE COURT: Would be Ms. Katz. Have you got
12 motions on that?

13 MR. ABNEY: Yes, Your Honor. As to the
14 negligence claim, any breach of -- I mean any failure by
15 the bank to remove Dr. Jernigan's access is a breach and is
16 a breach sounding in contract. It's not a tort claim. I
17 mean, there's no negligent infliction of emotional distress
18 claim in this circumstance. If the bank screwed up and
19 ---

20 THE COURT: You don't think the bank has a duty
21 to remove, and do it correctly and properly, when a client
22 -- a customer comes in and both customers agree that one
23 customer goes off the account. You don't think the bank
24 has a duty to do it properly, and that's a duty the bank
25 owes under negligence. You don't believe that?

1 MR. ABNEY: If there's a duty, it's a
2 contractual.

3 THE COURT: You don't think that's a duty for the
4 bank to do it correctly?

5 MR. ABNEY: I'm not saying that there's no
6 obligation to do it correctly. I'm just saying if there is
7 any such duty, it is a duty under contract. I mean, she is
8 a customer. It's a customer/bank situation. We're not
9 fiduciaries of the customer. We have an agreement with
10 them about how that deposit account will be handled. And
11 if we make a -- if we fail under that agreement, we've
12 failed in contract.

13 THE COURT: So you think the only reason
14 negligence should go is because it should be contract not
15 negligence. Is that your position?

16 MR. ABNEY: Well, that's certainly our position.
17 And I not saying necessarily the only reason it goes, but
18 it's clearly a basis for it to be dismissed.

19 THE COURT: Okay. Anything else on the negligent
20 cause of action?

21 MR. ABNEY: Nothing further on the negligence
22 cause of action.

23 THE COURT: Okay. All right. Excuse me.

24 MR. ABNEY: Well, I'm sorry, Your Honor, just on
25 the motion ---

1 THE COURT: I'm sorry, what?

2 MR. ABNEY: I'm sorry. I need to clarify this,
3 under South Carolina law there is no claim for negligent
4 infliction of emotional distress.

5 THE COURT: I'm not talking about negligent
6 intentional emotional distress. I'm just talking about
7 simple negligence. Duty, breach of duty, proximate cause
8 and damages.

9 MR. ABNEY: And, Your Honor ---

10 THE COURT: That's what I'm talking about and
11 that's what I'm asking about. I'm not talking about the
12 emotional distress, okay?

13 MR. ABNEY: Understood.

14 THE COURT: Understand?

15 MR. ABNEY: Okay.

16 THE COURT: Okay. I'll be glad to hear you.

17 MR. EDWARDS: I think there is a duty that rises
18 out of that context to do it and do it right. I think
19 that's both negligence and it may also be a contract
20 theory, and they're both alternative remedies for the same
21 type of wrong.

22 I also think that they owe their customer a duty in a
23 general sense, but certainly in this case when she asked
24 specifically for a full investigation, the bank testimony
25 is, we could have done it, but we didn't. She asked them

1 specifically for that and they still didn't look into his
2 account, do anything other than say, no, he had to do it
3 deliberately. Even when she tells them she had heard the
4 comment overdraft protection, well, the bank testified that
5 he may have been mistaken when he said overdraft
6 protection. They didn't tell her that. They told her,
7 that can't be. Overdraft can't -- it can't be because the
8 checking account doesn't go to a checking account and so
9 that's not true. He's still doing it deliberately.

10 THE COURT: All right. Let me ask you a
11 question. I haven't read the pleadings. I briefly looked
12 at them before we started. Now, your negligent cause of
13 action, is that a straight negligent cause or is that an
14 actual cause of action, which is not negligence, which is
15 emotional distress, which is a cause of action independent
16 of negligence. Which have you sued for?

17 MR. EDWARDS: Negligence.

18 THE COURT: Negligence?

19 MR. EDWARDS: Negligence, recklessness, and gross
20 negligence given the knowing violation of the ---

21 THE COURT: And I think you also sued for
22 contract. Is that correct?

23 MR. EDWARDS: That's correct.

24 THE COURT: Okay. Those two causes of action?

25 MR. EDWARDS: Yes, sir.

1 THE COURT: Anything else you want to tell me?

2 MR. EDWARDS: The negligence cause of action --
3 I think there are several duties that were breached here.

4 THE COURT: I understand. Taking the evidence
5 most favorable to the non-moving party, motion denied on
6 the negligence. Now, let's go to the contract. I'll be
7 glad to hear you on the contract. I think he's got to
8 elect at some point in time. I think he's got to elect
9 which way he goes assuming he survives the contract issue.

10 MR. ABNEY: On the contract issue, really, it's
11 more the fact that she doesn't have any damages. She
12 doesn't have any contract damages. There would be
13 absolutely no emotional distress damages recoverable in
14 contract. And she was reimbursed for the funds that were
15 missing from her account immediately. And so she has --
16 one element of a contract claim is ---

17 THE COURT: It was supposed to have been privacy,
18 an invasion of privacy, I believe, isn't it? Is that
19 correct?

20 MR. ABNEY: Not against the bank.

21 MR. EDWARDS: Not against the bank, but she did
22 testify to an invasion of privacy.

23 THE COURT: Pardon?

24 MR. EDWARDS: No ---

25 THE COURT: I mean, why do you -- contract

1 action, okay? So assuming the bank didn't breach the
2 contract by not removing the ex-husband from the account,
3 which they were obligated to do, where has she been -- any
4 damage?

5 MR. EDWARDS: Special damages.

6 THE COURT: Pardon?

7 MR. EDWARDS: Special damages ---

8 THE COURT: Okay.

9 MR. EDWARDS: --- that go along with contract.

10 If you know of a special circumstance at the time of
11 contract, it's deemed to be made part of the contract. And
12 if you know it and you breach the contract and the damages
13 that you knew were reasonably certain to occur occurred,
14 they're responsible for those special damages. The
15 testimony, uncontroverted testimony is that she had a
16 conversation -- had an argument in front of ---

17 THE COURT: And the contract damages are -- what
18 did they lose and any consequential as a result of that
19 breach. Most contract actions, per se, don't necessarily
20 cover special damages. Now, there's some causes of action
21 that do. I think that's -- go ahead. I didn't mean to
22 interrupt you.

23 MR. EDWARDS: I hear what you're saying.

24 THE COURT: I mean, I just don't think special
25 damages for a breach of contract is necessarily true in

1 every contract. Now, I may be wrong. But is that correct?

2 MR. EDWARDS: That is correct. Special damages
3 only come into play when there's a special damage that's
4 likely to occur on the breach of the contract. And whoever
5 the breaching party is knows the special circumstances ---

6 THE COURT: So how has she been damaged? She got
7 the money back almost within forty-eight hours.

8 MR. EDWARDS: Yes, sir.

9 THE COURT: There's been no testimony that she
10 lost any economic benefit because of that forty-eight hours
11 without the funds. I mean, where's there been any damage
12 from a contractual basis?

13 MR. EDWARDS: Well, the contractual special
14 damages would be the emotional issues and the stress that
15 she put the bank on notice of.

16 THE COURT: Well, I don't think you can get
17 emotional damages from a contract breach. I don't think.

18 MR. EDWARDS: I think in a general sense ---

19 THE COURT: Pardon me? You think what?

20 MR. EDWARDS: In a general standard contract
21 sense, I would say that's true, but when there's special
22 circumstances surrounding the contract and they have notice
23 of certain damages that are likely to occur ---

24 THE COURT: I mean, at best for the contract
25 she's got nominal damage. She was without eleven hundred

1 dollars for maybe twenty-four to forty-eight hours. I just
2 don't buy into your special damage argument, I'm sorry, on
3 this situation.

4 MR. EDWARDS: All right, sir. My argument is
5 that they knew of the damage, the emotional issues and the
6 financial issues that they knew what was likely to happen
7 if they didn't adhere to the contract. And when they
8 didn't adhere to the contract what they knew was going to
9 happen happened, and that makes them responsible.

10 THE COURT: Anything you want say about that?

11 MR. ABNEY: Sure. Your Honor, it may be the case
12 that there are occasions when special damages are awarded
13 for breach of contract, but there's still got to be
14 economic damages.

15 THE COURT: I understand. I don't disagree with
16 you.

17 MR. ABNEY: Thank you. That's all I have..

18 THE COURT: I'm going to grant his motion on the
19 contract. Primarily -- well, I guess -- no, I'm not
20 because I think she's probably entitled to at least nominal
21 damages for the time she was without the eleven hundred
22 dollars. So taking the evidence most favorable to the non-
23 moving party, that motion's denied. Okay.

24 MR. ABNEY: Okay.

25 THE COURT: All right. Are you ready to call

1 your first witness.

2 MR. ABNEY: I am.

3 THE COURT: Pardon?

4 MR. ABNEY: I am, Your Honor.

5 THE COURT: I'm sorry. Are there any other

6 motions? Does that cover all the motions?

7 MR. EDWARDS: None from Katz.

8 MR. WAGGONER: None from the Plaintiff.

9 MR. ABNEY: We call Kimberly Steele, Your Honor.

10 THE COURT: Mr. Edwards, at some point in time,

11 I'm going to require you to elect on the contract versus

12 the negligence.

13 MR. EDWARDS: Yes, sir.

14 THE COURT: Okay. You'll have to decide which

15 way to go -- you want to go, because I don't think you can

16 go necessarily both ways.

17 MR. EDWARDS: Are you asking me now? If you're

18 asking me now, I can give you an answer.

19 THE COURT: Well, yeah. If we can get it over

20 with.

21 MR. EDWARDS: I'll proceed on negligence, gross

22 negligence.

23 THE COURT: Okay. All right.

24 THE CLERK: Place your left hand on the bible and

25 raise your right.

1 Do you swear or affirm the testimony you shall give
2 the Court in the trial of this case shall be the truth, the
3 whole truth and nothing but the truth, so help you God?

4 WITNESS: I do.

5 THE CLERK: Thank you. Please be seated. Ma'am,
6 for the record, if you would please state your name,
7 spelling your last name.

8 WITNESS: My name is Kimberly Steele,
9 S-t-e-e-l-e.

10 **KIMBERLY STEELE,**

11 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **DIRECT EXAMINATION**

13 **BY MR. ABNEY:**

14 Q. Ms. Steele, you were an Assistant Solicitor with the
15 Charleston County Solicitor's Office in 2007, correct?

16 A. Yes.

17 Q. And what types of criminal matters did you handle?

18 A. I handled all types. I primarily handled white collar
19 crime, though.

20 Q. Did you handle a criminal matter involving Floyd
21 Jernigan's unauthorized access of his ex-wife's bank
22 account?

23 A. I did.

24 Q. And how did you become involved?

25 A. The case was eventually assigned to me.

1 Q. And when did you receive, when did you receive the
2 case?

3 A. I want to say in the summer of '07.

4 Q. And how was the case ultimately disposed?

5 A. It was dismissed.

6 Q. And who made the decision to dismiss it?

7 A. I made the decision.

8 Q. Did you perform an investigation of your own prior to
9 dismissal?

10 A. I did.

11 Q. And in connection with your investigation, did you
12 receive a file related to this matter from the police
13 department?

14 A. I did.

15 Q. You ordinarily receive police files when you're
16 assigned a case in the Solicitor's Office?

17 A. Yes.

18 Q. If you could turn with me to the exhibit binder, which
19 is tabbed -- at tab thirty. And within tab thirty,
20 specifically the document marked solicitor 84.

21 A. Yes.

22 Q. And this is a police department witness list, correct?

23 A. That's correct.

24 Q. And is this a form or document that you are familiar
25 with as a solicitor?

1 A. Yes.

2 Q. It was a document you ordinarily received from the
3 police department, correct?

4 A. Yes, that's correct.

5 Q. And is one purpose of the document, as you understand
6 it, for the police department to identify to the solicitor
7 the witnesses in connection with a criminal matter?

8 A. Yes.

9 Q. Okay. And looking at solicitor number -- solicitor
10 document 84, the only witness that's listed here is Suzanne
11 Boone, correct?

12 A. That's correct.

13 Q. And this document's dated May 14, 2007?

14 A. Yes.

15 Q. And in your view of the file, did you see any
16 indication that the bank had any discussion with Bank of
17 America? I'm sorry, that the police had had any discussion
18 with Bank of America?

19 A. No, not in looking at the witness list. No.

20 Q. And did any of the police officers that you spoke
21 with, do you recall any of them saying that they had spoken
22 with Bank of America?

23 A. I don't recall a specific conversation to that.

24 Q. You don't recall whether they said it or not?

25 A. That's correct.

1 Q. And did you speak with anyone at the bank in the
2 course of your investigation?

3 A. I believe that I did.

4 Q. Okay. And did you contact them or did they contact
5 you?

6 A. I believe I contacted them.

7 Q. And what were you looking to find out from the bank?

8 A. I was trying to determine if there was any evidence
9 supporting that the funds transferred were done with some
10 type of criminal or malicious intent. You know, when I had
11 the case, the question wasn't whether Mr. Jernigan -- it
12 was an affirmative action on his part and he had done it.

13 I was trying to prove the criminal intent and if there was
14 anything I could get from anyone to substantiate that.

15 Q. Did the bank tell you -- the people that you spoke
16 with at the bank tell you that the bank had made an error
17 in 2004 in failing to eliminate Dr. Jernigan's access to
18 the account on-line?

19 A. Yes. I recall a conversation, I do not know with who,
20 but I recall a conversation saying, yes, they had failed to
21 -- he had been taken off the account but he was -- still
22 had on-line access that he should not have had.

23 Q. And did the bank tell you that the payments would
24 still require some affirmative conduct on Dr. Jernigan's
25 part to make the payments?

1 A. Yes.

2 Q. Did the bank tell you anything regarding an opinion as
3 to Dr. Jernigan's state of mind in making the payments?

4 A. No.

5 Q. They couldn't confirm for you one way or the other
6 whether he did it intentionally or not?

7 A. That's correct. No one could say.

8 Q. And they actually wouldn't say in your conversation,
9 right? They wouldn't comment on his state of mind?

10 A. I don't, you know, I don't recall my specific
11 conversation and my specific person I talked to, but I
12 remember calling Bank of American, different numbers,
13 different people, trying to see if anybody could say, you
14 know, he intentionally did this with a criminal intent,
15 this is why. And I could not ascertain that from anybody.

16 Q. And nobody could tell you that?

17 A. That's correct.

18 Q. In any of your conversations, did anyone at the bank
19 encourage you to continue with the prosecution?

20 A. No.

21 Q. And, in fact, your ultimate decision to dismiss the
22 case against Dr. Jernigan was based largely upon your
23 discussions with the bank, correct?

24 A. Yes. That and the lack of evidence, yes.

25 Q. Did you speak with Ms. Katz in connection with your

1 investigation?

2 A. I did.

3 Q. And did Ms. Katz tell you whether -- did she convey to
4 you her belief regarding whether Dr. Jernigan did this
5 intentionally?

6 A. Yes. It was her belief that he maliciously and
7 intentionally did this, just out of maliciousness.

8 Q. So she insisted that Dr. Jernigan intended to steal
9 the money?

10 A. Yes.

11 Q. Did you repeatedly inform Ms. Katz in the course of
12 your investigation that you didn't think that there was
13 evidence to prosecute?

14 A. I did.

15 Q. And it would be a very difficult case to prove?

16 A. Yes.

17 Q. Did she pressure you to continue prosecuting the case?

18 A. She definitely did want the case to be prosecuted.
19 She was insistent that it was done maliciously.

20 Q. She was insistent that the case be prosecuted?

21 A. That's correct.

22 Q. Did you -- if you'll turn to solicitor 51.

23 A. 51 within the 30?

24 Q. Yeah. I'm sorry. It's within exhibit 30. It'll say
25 51 at the bottom.

1 A. Okay.

2 Q. And there's a typewritten note. Do you believe this
3 to be a note that you created?

4 A. I believe this is a note that I typed.

5 Q. Okay. Now, could you -- do you mind reading the note
6 into the record, please?

7 A. Yes. Larry Todd, parenthesis, prelim notes,
8 parenthesis, says, in quotation marks, shouldn't be
9 prosecuted. Restitution made immediately. Just a divorce
10 pissing match. Probably can't prove the transfer wasn't a
11 mistake, end quote. I have reviewed the file and agree. I
12 called victim. She was not happy to say the least that I
13 told her I was going to dismiss charge as it was not
14 anything that I was going to prosecute in general sessions
15 before twelve jurymen and get a guilty
16 verdict/prosecutorial discretion. We spoke at length. She
17 has an affidavit that husband quote, gave to bank in
18 January regarding this account/matter. I made her no
19 promises, but asked her to drop it by and we'll review.
20 She says he is a liar, a passive aggressive, etcetera,
21 etcetera, etcetera, that controls the purse strings and did
22 this on purpose to get her because he is VA retired and she
23 was supposed to get half of that, and when she did
24 something to enforce that, he did this in retaliation. I
25 believe all of that but not sure if this case here is

1 prosecutable. I told her at least if he did it again, we
2 would then have a pattern and next time he can't as easily
3 claim mistake.

4 Q. Did Ms. Katz tell you that Dr. Jernigan's a liar?

5 A. According to this typed note, yes.

6 Q. And is that -- based on your recollection, is that
7 generally -- is that the substance of what she told you?

8 A. That was the general substance of my conversations
9 with her is that -- it was apparent that this was a very
10 nasty divorce.

11 Q. Did Ms. Katz tell you that Dr. Jernigan took the money
12 in retaliation against her for some issue related to VA
13 benefits?

14 A. She felt that it was -- I remember a conversation with
15 her, she felt that this was being done because she was
16 trying to enforce something of her getting money with VA in
17 their divorce settlement.

18 Q. Did Ms. Katz ever tell you that she would attempt to
19 get some information from the bank to assist you in your
20 prosecution?

21 A. I asked her if she could try to find me a contact or
22 someone at the bank that could give me that information,
23 yes.

24 Q. If you'll turn within, again, Exhibit 30, to solicitor
25 47?

1 A. Okay.

2 Q. And at some point during your investigation, did you
3 receive this letter, that solicitor 47, from Ms. Katz?

4 A. Yes. If this was in the solicitor's file, then this
5 would have been a letter that I received.

6 Q. Okay. And the second line of the paragraph says, the
7 purpose of this letter is to determine the exact
8 circumstances which led to Floyd E. Jernigan being able to
9 access my personal account and to remove these funds. I am
10 requesting a thorough investigation in this matter and a
11 written report stating the facts. Did you ever receive a
12 letter from the bank in response to this letter from Ms.
13 Katz?

14 A. No, I don't believe that I did.

15 Q. Would you turn to Exhibit 6 in the binder? This is
16 Bank of America's Exhibit 6.

17 A. Yes, I'm here.

18 Q. And this is a letter from William Navarez dated August
19 3rd, 2007 to Ms. Boone, now Katz. Looking down at the
20 fourth paragraph, second sentence, while I understand the
21 extent of distress this matter has caused you, I cannot
22 determine or comment on the state of mind or intent of Mr.
23 Jernigan accessing the account in question through our on-
24 line banking service. And, again, had you ever seen this
25 letter before this litigation?

1 A. No, this was not given to me.

2 Q. Was the substance of what I just read ever conveyed to
3 you from Ms. Katz?

4 A. No, not that I recall.

5 Q. If you had received Exhibit 6, this letter from Mr.
6 Navarez in August of 2007, do you think this prosecution
7 would have stayed open as long as it did?

8 A. No. I probably would have highlighted that and
9 dismissed it even sooner.

10 Q. No further questions. Thank you, Ms. Steele.

11 THE COURT: Cross-examination, Mr. Waggoner? Who
12 wants to go first. It doesn't matter.

13 MS. FLUMIAN: I'm taking silence meaning I can go
14 first, Your Honor.

15 THE COURT: Okay. Can I ask a question first.

16 **EXAMINATION**

17 **BY THE COURT:**

18 Q. He was never indicted, right?

19 A. I never indicted the case.

20 Q. There was no nol pros?

21 A. It was -- yeah, it was just dismissed.

22 Q. It had to be nol prosse. At what date did you make a
23 decision not to prosecute? Is there anything in your file
24 to reflect that?

25 A. Yeah, I mean, there's -- I signed something saying

1 case dismissed.

2 Q. Okay.

3 A. And I sent a letter to Ms. Boone. And what I signed
4 and the letter is in here, is in the file.

5 Q. What was that date?

6 A. Let me see. It was officially dismissed by me on
7 March 19th of 2008.

8 Q. March the 19th ---

9 A. March 19th of '08 is when I officially signed what we
10 call our dismissal or status change form.

11 THE COURT: Okay. All right. Thank you. Thank
12 you, ma'am. Please proceed.

13 **CROSS-EXAMINATION**

14 **BY MS. FLUMIAN:**

15 Q. Good afternoon, Ms. Steele.

16 A. Good afternoon.

17 Q. I would like to start by asking you a little bit about
18 when you first received this case. You indicated earlier
19 that you believe it was sometime in the middle of the
20 summer of 2007. Were you the first Solicitor on this case?

21 A. I wasn't. This case was reassigned to me from Amy
22 Harold.

23 Q. Okay. Can you tell me, do you recall the date in
24 particular on which you were assigned this case?

25 A. It looks like, according to a note in the file,

1 solicitor's 3, it was officially assigned to me somewhere
2 around August of '07, August 27, '07.

3 Q. Okay. And before that, as you mentioned earlier, I'm
4 sorry. Her name is Amy ...

5 A. Harold.

6 Q. Harold was working on the case prior to you?

7 A. That is correct.

8 Q. All right. I want to ask you a question now about the
9 page in which you claim that is your typed note. And I'm
10 sorry, I'm not positive I have that page right in front of
11 me. Is that fifty-eight?

12 A. Fifty-one.

13 Q. Fifty-one. Okay. And you claim you wrote this note,
14 this typed note?

15 A. I believe that I wrote this note. The typed -- I
16 believe that the typed note is mine. The writing, there's
17 writing here and that's not mine.

18 Q. Okay. And do you recognize whose handwriting it is?

19 A. No.

20 Q. Okay. And do you see whether or not there's a date, a
21 handwritten date on this note?

22 A. There are multiple dates written on the note.

23 Q. Okay. On the left side of the page, can you read that
24 handwritten note to use?

25 A. Yes. The one in the circle?

1 Q. In the circle?

2 A. Yeah. It's 7/13/07. Vick came by with docs. It
3 looks like, see envelope. Will go to bank to figure out
4 how defendant did this.

5 Q. Okay. So even though you weren't assigned this case
6 until August 22nd, would you agree that there appears
7 there's a note written on this piece of paper on 7/13/07?

8 A. Yes. Yes.

9 Q. Okay. Do you know how that could have possibly have
10 been?

11 A. It could have been that this case was given to me at
12 some point by Amy to look at and be assigned to me and to
13 look at it and dismiss it, and the official assignment of
14 the case going to me didn't happen until the date I said,
15 which I believe was the August of '07. Is that right?

16 Q. Okay. So even though -- take a look at page --
17 solicitor 48. Can you tell me what this is? Can you
18 please read for us the handwritten note at the bottom of
19 the page?

20 A. Susan, out of an abundance of precaution, case is
21 being reassigned to Assistant Solicitor Kim Steele. Amy.

22 Q. And can you tell me what the date is on that letter?

23 A. The date is August 22nd, 2007.

24 Q. Okay. So we have two pieces of evidence which
25 indicate you did not have this case until August 22nd?

1 A. Officially being reassigned to me through our case
2 management system, yeah. I mean, I very well could have
3 had this file in my office and already be doing things and
4 we just didn't officially do it. I don't recall.

5 Q. At the time you typed up this note, which I don't
6 believe -- do you recall when you might have typed up the
7 note?

8 A. No. At some point. It's not dated. I did not type a
9 date or any -- or note it, so I don't ...

10 Q. Is it fair to say at that point you believed that you
11 had all the facts that you needed to review the case and
12 had already given preliminary thought that, in fact, you
13 were very likely to not pursue the case?

14 A. Can you repeat that again? I'm sorry.

15 Q. Is it fair to say at the time you wrote this note,
16 this typed note, that you had already come to sort of a
17 preliminary conclusion, and were not thinking that you were
18 going to pursue the case?

19 A. Yeah.

20 Q. Did you feel that you had enough facts at that time to
21 make that conclusion?

22 A. Yes. I felt that this was going to be a hard, very
23 hard, if not impossible case to prosecute in a criminal
24 court the minute it was ever given to me.

25 Q. I want to ask you, your sentence quote, I told her at

1 least if he did it again, you would have a pattern and the
2 next time he can't as easily claim mistake. Were you under
3 the impression that somehow this could have happened again?
4 Meaning, did you not know that the bank had corrected the
5 negligence on their part, they had failed to remove him
6 from the account. Were you aware that he had been removed
7 at this point or not?

8 A. That had already -- he had already been removed and it
9 had been fixed before I ever had the case, before the case
10 ever came to the Solicitor's Office, I believe.

11 Q. So why is it that you would have thought that he could
12 have -- there could have been a pattern if he'd done it
13 again?

14 A. Well, I think what the note is saying, and what I
15 would mean is that from my conversations with everyone, he
16 admitted he did this. The question was whether it was a
17 mistake or not. There was no way that I could go into a
18 courtroom and prove that he maliciously and intentionally
19 did this. Now, if this was a case where, you know, I have
20 to dismiss this but six months later he does this again,
21 and then six months later he does this again, then I'll
22 have a pattern, then I'll be able to say, you know, he
23 can't claim mistake three, four, five times. But, you
24 know, he's saying it's happened once. He paid the money
25 back. He says it's a mistake.

1 Q. I'm wondering, can you tell me, at that point did you
2 understand that he had been allowed to remain on on-line
3 access and that's how this occurred? Or were you under the
4 impression that somehow he had logged in onto her account
5 on her user name and password?

6 A. Repeat that again?

7 Q. At this point, at the time which you'd written this
8 note, were you under the impression that he had been --
9 that there had been a mistake on the bank's part, which
10 allowed him to remain on-line, or had to remain on-line
11 access on this account? Or were you under the impression
12 that he had actually logged in to her on-line profile and
13 had put in account numbers?

14 A. I mean, both. Before I ever got this file, it was
15 explained to me that an affirmative action was done on his
16 part to make this happen, and it was because the bank had
17 failed to block him from the on-line access.

18 Q. Okay.

19 A. I mean, I knew that before I ever saw the file,
20 basically. I mean, right when I got it.

21 Q. Okay.

22 A. That was explained to me.

23 Q. Did you ever speak with Sergeant d'Keegan?

24 A. I am sure I did. I don't recall a specific
25 conversation with him, but I'm sure at some point I did. I

1 was probably asking for, you know, if he had any more
2 evidence or anything.

3 Q. Were you present at the preliminary hearing?

4 A. No.

5 Q. Have you ever worked with Sergeant d'Keegan before?

6 A. Yes.

7 Q. Would you consider him to be a truthful person?

8 A. Yes.

9 Q. If he'd indicated to you that he had spoken with the
10 bank, would you believe that the statements he made would
11 be truthful?

12 A. I would.

13 Q. When you spoke to Ms. Katz, were you under the
14 impression that she -- the information she provided to you
15 was something she had just conjured up or was it something
16 that the bank had actually informed her of?

17 A. Repeat that again.

18 Q. When you spoke with Ms. Katz and she gave to you her
19 version of the events or her complaint ---

20 A. Uh-huh (affirmative).

21 Q. --- did you have a sense of whether or not she had
22 conjured up her thoughts or whether or not the bank had
23 provided her that information?

24 A. Well, it depends on what thought? I mean, what
25 thoughts. What information are you talking about that she

1 gave to me?

2 Q. You indicated earlier, I believe, when Mr. Abney was
3 examining you and said that she said that this was a
4 deliberate action on his part, and that he had done so
5 intentionally. I'm asking you now do you, from your sense
6 of her conversation with you, is that something that she
7 had conjured up on her own or was that in part or in full
8 information that they had given her?

9 A. I believe it was in part on a whole -- the part about
10 that it was an affirmative on his part being done, was a
11 given. That was never a question.

12 Q. Okay. What do you understand was his affirmative
13 action?

14 A. Somehow going on-line and entering in bill pay
15 information and hitting this account.

16 Q. Okay. And so did you ever understand whether or not
17 he'd gone onto his on-line bill pay or hers?

18 A. I didn't understand exactly how it had happened. I
19 don't recall.

20 Q. Okay. And you did have communication with the bank
21 about this investigation of this case?

22 A. At some point I did, yes.

23 Q. And no one at the bank ever said to you, he went on in
24 his on-line bill pay or he went on to her on-line bill pay?

25 A. I don't recall, I don't recall asking that specific

1 question.

2 Q. Okay. So whether or not he'd gone onto his, you don't
3 recall if you ever asked that?

4 A. No, I was trying to just figure out if they could
5 provide any evidence of his criminal intent and something I
6 could use to prove that it was a criminal and malicious
7 intent on his part.

8 Q. And what kind of evidence were you looking for in
9 regards to proving criminal intent?

10 A. I don't know what, I don't know what evidence they
11 could have given me. I was just trying to see if there was
12 anything anybody could provide to me that I could take this
13 to court and say it was maliciously and a criminal thing
14 and not just a mistake, something that I could use.

15 Q. Do you recall in your deposition I asked you this
16 questions, what kind of evidence would you be looking for?
17 Do you recall what your answer was at that time?

18 A. I don't. I don't recall exactly what it was.

19 Q. Okay. I am going to ask you to please read page 44.
20 Okay, at line 13, you were asked either by myself, or
21 actually Mr. Edwards, what facts would you have needed to
22 prove the criminal intent that you were looking for?
23 Answer?

24 A. Do you want me to read my answer?

25 Q. Yes, please?

1 A. Is that what you're asking? In this case, I mean, I
2 would have, I would have had to have somehow know his state
3 of mind and his intention. I mean, a statement from him
4 saying, I did this intentionally or that he, if he did not
5 have access to the account and he had to somehow steal a
6 password or hack in, maybe would have showed criminal
7 intent, something like that.

8 Q. Okay. So fair to say that what you felt would have
9 most like showed criminal intent on behalf of Dr. Jernigan
10 would have perhaps been hacking or stealing a password to
11 get into this account. That would have been evidence such
12 that would have proven criminal intent?

13 A. Possibly.

14 Q. Okay. And did they ever indicate to you that Dr.
15 Jernigan stole a password or hacked into an account in any
16 way, shape, or form in this case?

17 A. No. They never said that he'd hacked in or stolen
18 anything, no.

19 Q. Okay. So he didn't use her username, he didn't use
20 her pin number?

21 A. I don't know what he used. But, you know, they never
22 said that he hacked in or that he stole something in order
23 to gain access.

24 Q. So they've indicated to you that he hadn't done those
25 things? That he hadn't actually stolen? They didn't say

1 to you, that didn't occur? Is that fair to say?

2 A. Repeat the question again.

3 Q. The bank didn't -- in the absence of information, they

4 didn't say Dr. Jernigan didn't steal a password. Dr.

5 Jernigan didn't have to use her username and password.

6 They didn't say those things to you? I realize that's a

7 double negative.

8 A. I mean, not that I recall specifically that.

9 Q. What do you recall the bank specifically saying?

10 A. My recollection of this is vague. I remember trying

11 to talk with someone at the bank and having a -- trying to

12 get them to be able to tell me anything and it was just

13 that, yes, it was an affirmative action. But that that's

14 really all that they could tell me. No one was really able

15 to explain the process that he had to go and the different

16 screens he had to do and all of that. I never got that

17 information.

18 Q. Did the bank ever indicate to you whether or not they

19 had made any mistakes in this case?

20 A. I know that they hadn't -- they had failed to block

21 his on-line access.

22 Q. And what did you understand that to mean?

23 A. That he had been taken off the account, but that he

24 still was able to see her account via computer.

25 Q. And isn't it true that once you understood that Dr.

1 Jernigan had still remained on-line access to this account,
2 that you decided to dismiss the charges?

3 A. State that again. You were going fast.

4 Q. Isn't it true that once you understood that Dr.
5 Jernigan had been allowed to remain on-line access on this
6 account that you dismissed the charges?

7 A. Once I had learned that?

8 Q. Yes. Once you had communicated with the bank and the
9 bank said to you, our mistake. We should have removed him
10 from on-line access. Was it not at that point which you
11 decided you would never be able to determine criminal
12 intent?

13 A. That was one of my -- one of several things of why I
14 didn't think I could prove this, yeah.

15 Q. What were the other things?

16 A. The fact that he freely admitted that he had done it,
17 that it was -- he did it, and that he was saying it was a
18 mistake. And, also, my conversations with Ms. Katz, where
19 it was very clear to me that this was a very nasty divorce
20 going on, a very ugly situation, and I felt like this
21 criminal case was being pushed just kind of in a back and
22 forth retaliation, ying and yang, between the two of them
23 and their divorce proceeding that was going on.

24 Q. But you also understood, didn't you, that the bank had
25 failed to remove Dr. Jernigan from her account, and they

1 had both requested that that be done. You did understand
2 that, did you not?

3 A. Yes.

4 Q. And you did understand that without that failure on
5 the bank's part, these transactions never would have
6 happened?

7 A. Yeah.

8 Q. Okay. I also want to ask you a little bit in regards
9 to this idea that Ms. Katz failed to provide to you any
10 letters from the bank. Did she actually provide to you Mr.
11 Navarez's phone number?

12 A. I believe that she did. I believe there's a note in
13 my file.

14 Q. I believe it's on page seventeen, the solicitor's
15 file.

16 A. Okay. Hang on. Okay. Yes.

17 Q. So she did provide you not only his name, but his
18 phone number as well, correct?

19 A. Per my handwritten note, yeah.

20 Q. Okay. And she also gave you names of other
21 individuals at the bank, did she not?

22 A. I believe that there's at least one other one in here.
23 I don't recall.

24 Q. On page thirty-five.

25 A. Okay.

1 Q. And on page fifteen.

2 A. Okay. I don't know what fifteen ...

3 Q. Fifteen, does it not read B of A, Assistant Vice
4 President, Calhoun Street, Bernadette Dewitt, and then
5 there's a phone number?

6 A. All right. Wait a minute. I'm on the wrong thing
7 now. Yes.

8 Q. Okay. So she gave you the name of Mr. Navarez. On
9 page fifteen, she provided to you the name of Bernadette
10 Dewitt. And she also provided to you on page thirty-five
11 the names of Derrick Lamont and Sean Lowery. Isn't that
12 correct? And their phone numbers.

13 A. I can definitely tell you that on the handwritten note
14 on page, I believe it's eighteen, where I put my, you know,
15 per -- hang on. Which one says per my conversation with
16 her? The first one.

17 Q. Fifty-one.

18 A. No, that's not it. You referenced three different
19 pieces of paper. One was solicitor 15, one was solicitor
20 35, and then there's a third one that you were just
21 referencing.

22 Q. Seventeen.

23 A. Seventeen, okay. Okay. Seventeen, I would say that
24 per my notes William Navarez's name and number would have
25 been given to me by her because my notes say, phone call

1 with Suzanne Boone.

2 Q. And on page thirty-four and thirty-five, are you --
3 can you tell me on page thirty-four, does that not reflect
4 a phone call from Suzanne Boone?

5 A. Wait a minute. Let me go back. You asked about
6 fifteen and thirty-five, as to whether she gave me those
7 names or not. On fifteen, it is a handwritten note to me,
8 Bank of America, Assistant Vice-President, Calhoun Street,
9 Bernadette Dewitt with a number. She very well may have
10 given me that.

11 Q. Okay.

12 A. That may have come from her. That may have been me
13 trying to call, you know, the Bank of America fraud line or
14 whatever that I would call and someone else giving me that.
15 It could have come from her. I just don't recall. And
16 then the same with the third one that you're referencing,
17 this ---

18 Q. Can you tell me what page thirty-four is.

19 A. As well as thirty-five. I'm going to answer that
20 first question.

21 Q. Okay.

22 A. That's the same thing. And my answer to that one is,
23 I have the name of two people in the legal department and a
24 number. Whether she gave me that name or number, I cannot
25 say. Now -- okay. Now, to number thirty-four.

1 Q. What is page thirty-four?

2 A. Page thirty-four is a message note.

3 Q. Okay. And does thirty-five appear -- who is the
4 message from?

5 A. It looks like Suzanne Boone.

6 Q. Can you tell me, does page thirty-four appear to be
7 the front side of page thirty-five?

8 A. Possibly.

9 Q. Okay. So is it maybe fair to assume that she, meaning
10 Ms. Katz, also gave you the names that appear on page
11 thirty-five in that phone conversation that you had with
12 her?

13 A. Yes. But that -- it's very -- it's likely.

14 Q. Okay. So with the exception of Bernadette Dewitt, you
15 acknowledge that she gave you at least three names and
16 phone numbers of bank employees, correct? And perhaps ---

17 A. I acknowledge that on that one, that she did give me
18 that per my notes. And I will acknowledge on this one,
19 what I wrote on the back, it could have been that she gave
20 me these numbers as well. I don't recall.

21 Q. Okay. So at least three names and numbers were
22 provided to you by Suzanne Katz in regards to this
23 investigation are individuals you should speak with at Bank
24 of America. Is that fair to say?

25 A. No, that's not what I said. I said, one definitely.

1 Two others, possibly.

2 Q. Well, actually three others.

3 A. Three others, possibly. Because there's two names on
4 this one.

5 Q. Okay. So fair to say she didn't exactly hide the ball
6 from you here. She actually at least provided you one
7 important name and number for you to call?

8 A. Yes.

9 Q. And did you?

10 A. I believe that I did, but I don't specifically
11 remember a conversation.

12 Q. That's all I have.

13 THE COURT: Mr. Edwards, cross-examination?

14 MR. EDWARDS: Yes, please.

15 **CROSS-EXAMINATION**

16 **BY MR. EDWARDS:**

17 Q. Good afternoon, Ms. Steele. I'm not sure I quite
18 understand a few things and so I wanted to ask you for some
19 clarification. I thought that I heard you say earlier that
20 one of the things that you would have -- that would have
21 been sufficient to give you criminal intent, would have
22 been some sort evidence of use of an access code or pin
23 number. Is that right?

24 A. No, I did not say that? Not sufficient evidence to go
25 forward with a criminal case.

1 Q. No, I understand that, sure. Not by itself. But you
2 had been told by the bank what?

3 A. I had been told by the bank that he was taken off the
4 account previously during a divorce proceeding, but that
5 his on-line access was not blocked, and therefore, he could
6 get into that account, and that was a mistake on their
7 part.

8 Q. Okay. Did they tell you anything else? That they
9 made a mistake and that he could have ---

10 A. I just said that. That was a mistake on their part.

11 Q. Didn't they tell you that he had selected the account?

12 A. They said it had to have been an affirmative action on
13 his part.

14 Q. And that wasn't enough for you to ascertain any kind
15 of criminal intent?

16 A. Not by itself, no.

17 Q. That the affirmative act, having selected from a drop-
18 down menu, to click on it and then click send five
19 different times, wasn't enough for criminal intent in your
20 mind?

21 A. Not when he is saying that he did it -- that he did do
22 it, but he did it by accident. He chose the wrong one.

23 Q. Okay. So if this has been a capital murder case and
24 he had said I did it, but it was an accident, that would
25 have been all right with you?

1 A. No. I mean, I ---

2 Q. I don't understand the difference.

3 A. I have to be able to prove, beyond a reasonable doubt,
4 that he did this with a criminal intent, that it just
5 wasn't a mistake.

6 Q. Okay. Or ---

7 A. And that, you know, the fact that he's saying, I did
8 it, it was an accident, and he immediately paid the funds
9 back wasn't enough. That's not enough to take this to a
10 trial and prove it.

11 Q. What does that have to with intent?

12 A. What does what have to do with intent?

13 Q. What you just said? That he did it, but it was a
14 mistake. The bank told you he had to have selected the
15 account, right?

16 A. Yeah.

17 Q. And then you said in response to deposition testimony.

18 Okay. Maybe that wasn't enough. What else would you need?
19 Maybe some sort of evidence that he'd had accessed, by
20 access ID or pin code or testimony to that effect. Do you
21 remember that?

22 A. No, I don't specifically remember. If you'll give me
23 a page reference or something again.

24 Q. Page 44, line 13.

25 A. Yes.

1 Q. What facts would you have needed to prove the criminal
2 intent that you were looking for. Answer, in this case, I
3 mean, I would have, I would have had to have somehow a
4 state of mind, his intention. I mean, a statement from him
5 saying I did this intentionally. Do you find many
6 criminals, people charged with crime that usually say, I
7 did this intentionally, in your experience?

8 A. Yes. We often do get cases where we actually have a
9 confession and then we have motions on whether it's
10 admissible or not admissible, yes.

11 Q. Frequently?

12 A. There are -- yes.

13 Q. When it doesn't happen, you just give up?

14 A. No. I evaluate the case.

15 Q. You go on or that he -- if he did not have access to
16 the account and he had somehow steal a password or hack in,
17 maybe would have showed criminal intent, something like
18 that. Isn't that what you said in your deposition?

19 A. That is what I said in the deposition. If, you know,
20 if he -- if he didn't have -- in white collar crime cases,
21 what is usually the case is, you know, the parties don't
22 know each other and they don't have access to each other's
23 accounts, so usually I have, in my white collar crime
24 cases, I have someone who has stolen someone's mail or bank
25 information and used that somehow to hack in, computer

1 fraud, to get into the account. They clearly, you know --
2 it's very clearly that they're intentionally stealing
3 information and opening mail or doing something to access
4 it.

5 Q. Well, on page fifteen of your file, you have a
6 handwritten note. Do you see that? Is that your
7 handwriting?

8 A. Yes.

9 Q. You said, Bank of America, Assistant Vice President,
10 Calhoun Street, name, phone number. Met on Friday. Did
11 you meet with her?

12 A. No.

13 Q. You agree that says, met on Friday?

14 A. It says met on Friday eight to ten days. But I did
15 not meet with her.

16 Q. What does that mean?

17 A. I don't know what that means. It may have been
18 whoever I was talking to -- somebody met with her on
19 Friday. It could have been that ---

20 Q. Somebody from your office met with her on Friday?

21 A. No. It says, met on Friday eight to ten days. I
22 never met with her. It could have been, could have been
23 Ms. Katz saying that she met with her on Friday, something
24 like ten days. I don't know. But I did not meet with this
25 lady.

1 Q. Did you speak with her?

2 A. I don't, I don't directly -- I don't recall who,
3 exactly, I spoke with.

4 Q. Did you call her?

5 A. I probably did, but I can't definitely say that I
6 called her.

7 Q. Do you remember talking to anybody?

8 A. I remember talking to a person or two at the bank. I
9 don't remember who it was and who their name was.

10 Q. And did you jot down notes of those conversations?

11 A. Not good notes, if I did. I mean, I ---

12 Q. Could this be one of them?

13 A. It could be.

14 Q. You see where it says, may have used their shared PIN
15 number?

16 A. Uh-huh (affirmative).

17 Q. You wrote that, right?

18 A. That's my handwriting.

19 Q. Okay. So you've got the bank telling you he had to
20 have done it affirmatively, selected the account. You've
21 got that information. Now, you've got a note here you
22 spoke to somebody, in your handwriting, that says, may have
23 used their shared PIN number. But you said in your
24 deposition it was something you were looking for. Now
25 you've got both notes.

1 A. If it's a shared PIN number, it's a PIN number he has
2 well that he uses for his stuff. So that's not stealing,
3 that's not stealing someone's password.

4 Q. Did you ask Ms. Katz if they had a shared PIN number?

5 A. I don't specifically remember asking her that.

6 Q. Did you ask Dr. Jernigan if they had a shared PIN
7 number?

8 A. I'm a Prosecutor. I'm not allowed to speak to the
9 Defendant.

10 Q. So you didn't ask Ms. Katz anything about this?

11 A. I asked her questions. I don't specifically recall
12 that I asked her that question.

13 Q. Well, if you would have asked her this question, she
14 would have said, no.

15 A. I don't -- I can't respond to that. I don't know what
16 she would have said.

17 Q. Are you saying that you did ask her? You didn't ask
18 her, did you?

19 A. I don't recall whether I did or didn't ask her. I
20 don't recall asking her a specific question about a PIN
21 number. I answered that.

22 Q. Let's assume that you did ask her and she said, no, we
23 don't have a shared PIN number. Now, you've got the bank
24 saying, he had to select affirmatively and her statement
25 that he did not have access to her PIN number. But you

1 have a bank employee telling you that may have been how he
2 got in there. Now you've got two of those things that
3 you're looking for. Is that enough for you?

4 A. Can you repeat your hypothetical again?

5 Q. It's not a hypothetical. You had the bank tell you
6 affirmatively he had to select the account.

7 A. Yes, it was an affirmative action.

8 Q. And you said in your deposition that you accessed PIN
9 numbers, if he had that, some sort of evidence that he had
10 accessed it that way, it would have been something you were
11 looking for to ascertain criminal intent. And you've got

12 your note here about a phone number and a bank employee
13 with a note that says, may have used their shared PIN
14 number. And I -- if you didn't follow through on that, and
15 you didn't investigate that, that's fine, just tell me.

16 But if you did it ---

17 A. I don't recall getting involved in -- no, I don't
18 recall following up on that. I don't know where you're
19 going now.

20 Q. You don't recall. You don't recall calling Ms. Katz
21 and asking her about a PIN number?

22 A. I do not recall specifically calling her up and asking
23 her about the PIN number.

24 Q. Let's assume that you had, and she told you, no, we
25 don't have a shared PIN number. You now have that evidence

1 that he may have gotten in through a PIN number and he had
2 to have affirmatively select the accounts. With that in
3 hand, would that be enough for criminal intent?

4 A. I don't know. I would have to have had a very clear
5 and thorough understanding of exactly what screens and what
6 he had to click on and I would -- you know, in reviewing
7 this, my question was never whether he did it. He admits
8 that he did it. It was ---

9 Q. So you ---

10 A. --- trying to prove his state of mind and no one could
11 tell me what his state of mind was or give me evidence to
12 that.

13 Q. Well, how do you prove state of mind?

14 A. I don't know how.

15 Q. The bank told you he had to do it affirmatively. You
16 had Katz saying she never gave him the PIN number. You had
17 a bank employee telling you, he may have got into the PIN
18 number. You said in your deposition that day, that would
19 have been enough to go forward.

20 A. I wasn't saying it may have been enough to go forward.
21 It's stuff that I was just trying to look for, anything.

22 Q. What else would you have needed. Let's figure it out.
23 You had two things right there.

24 A. I would have needed more than the bank saying that,
25 you know, yes, he had access to the account and him saying,

1 yes, I did it but it was an accident.

2 Q. So what investigation did you undertake to learn the
3 facts that you needed to learn in order to prove criminal
4 intent?

5 A. I made several phone calls. When this case was given
6 to me, there were no facts presented to me. It was a ---

7 Q. Who did you call?

8 A. --- phone call with Ms. Boone. Excuse me. What was
9 your question?

10 Q. Who did you call?

11 A. I called several people at Bank of America. I don't
12 recall my specific person that I called. I have several
13 different notes of people that I may or may not have
14 called, may or may not have talked to. My notes aren't
15 clear on the specific person that I spoke to.

16 Q. All right. Well, I understand. But you spoke to
17 several people at the bank and all you got from them was he
18 had to select the account. They goofed up. He had
19 selected -- but he had to select it, correct?

20 A. It was that he had access to that account. That was a
21 mistake on their part.

22 Q. And you had a pretty strong witness there at the bank,
23 didn't you?

24 A. Excuse me?

25 Q. The bank. The Bank of America, you could call them as

1 a witness in your criminal case, right?

2 A. I mean, I guess I could call them, but they would
3 support the ---

4 Q. Did you ever think about that?

5 A. I thought of all scenarios. But I could call the bank
6 for them to say, yes, he had access.

7 Q. Did you talk to a fellow named Larry Todd?

8 A. I did not talk to Larry Todd. I have prelim notes
9 from Larry Todd.

10 Q. Okay. And you concur with his analysis. What did he
11 have to do with the investigation?

12 A. He is the Solicitor that does the preliminary hearings
13 for our office.

14 Q. Okay. So what did he do in the investigation?

15 A. He doesn't investigate it. The police investigate it.
16 We prosecute it based on the facts that we're given by the
17 police and the evidence in the case. He just handled the
18 preliminary hearing. He doesn't conduct an investigation.

19 Q. Well, the police found sufficient probable cause to
20 charge him with a crime, right?

21 A. They did the arrest. I did not think there was
22 sufficient ---

23 Q. And the investigation from that point was your
24 office's responsibility?

25 A. Yes, whether we chose to indict it or not was our

1 decision.

2 Q. And y'all chose not to?

3 A. We chose not to indict the case. I made that
4 decision.

5 Q. When did you make that decision?

6 A. Excuse me?

7 Q. When did you make that decision?

8 A. It was kind of my thoughts throughout the case, but as
9 I stated previously, I did the official -- I officially
10 dismissed it, I believe it was in March '08. I testified
11 to that date earlier. I'd have to look.

12 Q. Wasn't it your office's thoughts from the preliminary
13 hearing that you weren't going to prosecute it? That's
14 what you just said Larry Todd said at the preliminary
15 hearing and you concurred with it?

16 A. Yes. Larry Todd, handles the preliminary hearing and
17 sometime he'll, you know, do a note or something on the
18 file to his thoughts of the case. And he sometimes has a
19 better idea. He's met with the victim, the Defendant or
20 something, seen them there. So, yes, it was his note --
21 his notes or something that said he didn't believe, you
22 know, that it was a prosecutable case. Also Amy Harold,
23 when she gave me -- when the case was assigned to me, she
24 thought it was a case that needed to be dismissed as well.
25 So ...

1 Q. Why was it assigned to you?

2 A. Amy had some type of conflict.

3 Q. What was the conflict?

4 A. I believe, I am not certain, that Amy got a divorce as
5 well and one of the attorneys that I think may have been a
6 part of her divorce, her husband's attorney, represented
7 one of these, either Mr. Jernigan or Ms. Katz, and so she
8 felt, you know, out of an abundance of caution maybe she
9 shouldn't be the one dismissing it.

10 Q. Why didn't she do that right away?

11 A. Excuse me.

12 Q. Why didn't she do that right away?

13 A. Why didn't she do it?

14 Q. He was indicted in May?

15 A. He was never indicted.

16 Q. Oh, I'm sorry. He was arrested in May.

17 A. Yes.

18 Q. But the note here on page forty-eight from Amy Harold
19 was not until August the 22nd, 2007. That's three months.

20 A. Yeah. That's -- it usually takes three weeks minimum,
21 if not a month, for us to actually get the file up to our
22 office. We get it. A file's created. It can take a
23 little while longer for it to trickle in for us to get the
24 actual investigation from the police. And we handle
25 usually about anywhere between four or five hundred, six

1 hundred cases at any given time is what we're each assigned
2 to. So three months is not very long.

3 Q. It takes you a while to get the reports from the
4 police?

5 A. It's a process, yes. It has to go through lots of
6 different hands before it gets to us.

7 Q. Okay. Well, then what was your investigation? All of
8 your investigation after August 22nd, 2007?

9 A. I don't know. You know, whenever the file was handed
10 to me and I started looking through it, I talked to Ms.
11 Katz and, you know, my talks with Ms. Katz, based on the
12 fact that the police report didn't really say anything
13 except that it was, you know, the ex-wife wanting to pursue
14 the charges. There wasn't any sufficient evidence or any
15 -- there was no other evidence, it was really just ---

16 Q. Did you speak with Officer d'Keegan?

17 A. I probably did. I usually do.

18 MR. ABNEY: Asked and answered, Your Honor.

19 THE COURT: I'm sorry.

20 MR. ABNEY: Asked and answered. We've been here
21 several times.

22 MR. EDWARDS: I don't remember asking her if she
23 spoke with Officer d'Keegan.

24 THE COURT: I'm sorry, what?

25 MR. EDWARDS: I don't remember asking her if she

1 spoke with Officer d'Keegan.

2 THE COURT: Okay. Go ahead.

3 Q. Did you speak with him?

4 A. I don't recall a specific conversation with him. I
5 usually will speak to the officer in a case. You know, I
6 probably did, but I just don't recall a specific
7 conversation. I don't know.

8 Q. Do you know what his position is?

9 A. What do you mean, his position?

10 Q. His position in the police force?

11 A. He's a Sergeant, Sergeant d'Keegan.

12 Q. Assigned to any particular unit?

13 A. I think he mainly handles the white collar stuff.

14 Q. Anything else?

15 A. I don't know.

16 Q. You didn't know he was in charge of the computer to
17 alleged white collar crimes?

18 A. That's all under white collar crime.

19 Q. All white collar crimes in computer?

20 A. I mean, white collar crime, it just encompasses, yeah,
21 computer fraud, white collar crime, money transactions.

22 Q. But he's that specific specialty?

23 A. I don't know.

24 Q. You don't know?

25 A. I know that he handled a lot of white collar crime

1 cases. I know that he is Sergeant Donald d'Keegan and he
2 handled a lot of the white collar crime cases.

3 Q. But you don't ---

4 A. I don't know his resume and his background and all his
5 stuff. I don't know that.

6 Q. Fine. If that's what you know, that's what you know.
7 Now, you know that -- did you ask Ms. Katz to undertake an
8 investigation on her own?

9 A. I believe that I asked her if there was anything she
10 could ascertain from the bank that could give me evidence
11 that he did this criminally, maliciously, something that I
12 could use to prove the case at trial.

13 Q. And you thought that she was better suited to do that
14 than you?

15 A. She had already talked to lots of people at the bank
16 and she's the one that has the access, you know, with
17 talking to them. I thought maybe she could.

18 Q. So she had already done some work, so you might as
19 well let her keep doing it?

20 A. No. I wasn't getting -- I didn't get anything from a
21 police report. And, you know, I handle the case on what
22 evidence I have. I'm trying to get it from anybody that'll
23 give it to me. I need it, but ---

24 Q. Did you have subpoena power?

25 A. Yeah.

1 Q. Why didn't you use it?

2 A. I don't know.

3 Q. Couldn't you have subpoenaed the bank?

4 A. Excuse me?

5 Q. Couldn't you have subpoenaed the bank?

6 A. I guess I could have subpoenaed the bank for documents
7 or something.

8 Q. Couldn't you have subpoenaed Dr. Jernigan? Or Ms.

9 Katz?

10 A. I can't subpoena Dr. Jernigan.

11 Q. You could have got his computer, couldn't you?

12 A. I guess somehow the police department could have got
13 her -- I don't really deal with subpoenaing and getting the
14 evidence. That's what the police department does. The
15 police department does the investigation. They do all of
16 that. They get the investigation, they get the evidence,
17 they ---

18 Q. And they charged him with a crime, didn't they?

19 A. --- get everything with them, and then they give it to
20 me to determine whether it's sufficient evidence to
21 actually go through and indict. And what was given to me
22 for me to review the evidence was not sufficient to indict.
23 They are the investigators. I'm the one that reviews the
24 evidence that's given to me, that's provided, and make the
25 decision whether it can be prosecuted or not.

1 Q. So you think they made a mistake in charging him with
2 a crime?

3 A. You know, I don't know what information ---

4 Q. Officer d'Keegan testified that he believed a crime
5 had been committed based on the information he had?

6 A. And he may have based on the information that Ms. Katz
7 gave to him or whoever gave to him, he may have thought
8 that this was enough, enough information to do an arrest
9 warrant. But having sufficient information, evidence to
10 arrest somebody and to actually indict somebody and to
11 prove the case at trial, they were different things.

12 Q. You needed more evidence?

13 A. Yes.

14 Q. Like evidence that he had gone ---

15 A. I needed more evidence.

16 Q. Evidence that he had affirmatively selected the
17 account?

18 A. I knew that he had affirmatively selected the account.
19 I had that.

20 Q. The Sergeant of the white collar computer crimes unit
21 testified he believed a crime, he had that. You had
22 subpoena power for the bank. You could have gotten the
23 computers. But you didn't do any of those things.

24 A. I didn't do that.

25 Q. You asked Ms. Katz to go and do her own investigation

1 and she did that. She wrote ---

2 A. Ms. Katz was the one that wanted this prosecuted.

3 And, yes, I often will ask victims to get me the
4 information that supports their claim.

5 Q. Didn't she do that?

6 A. She gave me some phone numbers. She never provided me
7 with anything ---

8 Q. She gave you all the information she got from the
9 bank, didn't she?

10 A. She did not give me a letter from Mr. Navarez, where
11 he had written to her saying that he could not provide any
12 information as to the state of mind or his malicious
13 thought or whatever it said. She did not provide that
14 letter to me.

15 Q. Well, did you call any of these call center employees
16 that are referenced here on page thirty-four and thirty-
17 five that spoke with her that very night and gave her the
18 information that she needed to go to the police and file a
19 police report? Do you remember speaking with them?

20 A. All right. Where are you and what are you talking
21 about?

22 Q. Thirty-four and thirty-five. Page thirty-five
23 specifically. Derrick Lamont, Sean ---

24 A. Wait, wait.

25 Q. Page thirty-five.

1 A. Page thirty-five of the Solicitor's ...

2 Q. Yes, ma'am. It's got dates, it's got phone numbers.

3 A. Let me get there.

4 Q. It's got two names Derrick Lamont and Sean Lowery, a
5 code number, Ft. Lauderdale, Florida. Another 800 number
6 and a claim number. What did you learn in following up
7 with all of that?

8 A. I don't recall. It's a handwritten note from me, but
9 I don't recall.

10 Q. But you said because Ms. Katz didn't give you a letter
11 that had been filtered through -- that was written to Ken
12 Lewis, the CEO and filtered over to Mr. Navarez, filtered
13 further through the legal department, and then sent to her
14 by mail eight months after these people told her to go and
15 file a police report, the fact that she didn't give that
16 you, or you said she didn't give that to you, are you
17 saying she was withholding information from you. Is that
18 what you're saying?

19 A. I'm just saying I didn't get that letter from her.

20 Q. But that would have made a difference to you, that
21 letter eight months after the fact?

22 A. If I had something in writing from the bank saying
23 that they couldn't provide any evidence that he did that, I
24 probably would have dismissed this case even sooner.

25 Q. Okay. What took you so long to dismiss it then if you

1 didn't have any evidence?

2 A. I had over five hundred other cases that I was working
3 on.

4 Q. So it wasn't your investigation that was holding you
5 up?

6 A. I was trying to leave it open to see if I could -- if
7 anything came up. And, also, Ms. Katz was insistent that I
8 not dismiss this case and she wanted it prosecuted. So I
9 let it stay open for a while at her insistence that it be
10 prosecuted. And I was trying to wait and see if anything
11 happened, if anything would come up that would give me
12 evidence to go forward and nothing did.

13 Q. Anything that she could get?

14 A. Anything that anybody could give me.

15 Q. Does she have subpoena power?

16 A. No.

17 Q. Only you do?

18 A. I do. The police does.

19 Q. But you were relying on her to give you the
20 information that you needed to charge ---

21 A. I wasn't relying on her.

22 Q. --- to prosecute ---

23 A. I was not relying on just her. I asked her if she had
24 anything. It's as simple as that.

25 Q. But you didn't do any investigation of your own.

1 A. I'm not an investigator. I am a prosecutor.

2 Q. So it's the police department ---

3 A. I do some follow-up investigation, yes. But I was
4 given a file that did not have sufficient evidence to
5 support what I felt an indictment and be able to prosecute
6 at trial.

7 Q. Does the police department ever confer with the
8 solicitor's office in charging people with crimes?

9 A. Sometimes they do.

10 Q. In this case where there's been an allegation and some
11 investigation -- not a heat of the moment crime, right? A
12 little bit different in that case. The police can arrest
13 somebody if they saw a crime committed. They can just go
14 ahead and arrest them right there on the spot, can't they?
15 Can't a police officer do that?

16 A. Yes.

17 Q. So this isn't the case here, is it? It's a white
18 collar, computer crime allegation that requires some
19 investigation, doesn't it?

20 A. Yes.

21 Q. And the police department undertook that
22 investigation, didn't they?

23 A. Some form of investigation.

24 Q. And they believed a crime had been committed, didn't
25 they?

1 A. Sergeant d'Keegan apparently felt that he had enough
2 information for ---

3 Q. But he must have been wrong, is what you're saying?

4 A. You know, I don't ---

5 THE COURT: Who signed the arrest warrant? Who
6 did the affidavit on the arrest warrant, the police or Ms.
7 Katz?

8 WITNESS: If I'm looking at this correctly, I
9 think it was a David Vargo.

10 THE COURT: A police officer signed an affidavit
11 on the warrant.

12 MR. EDWARDS: What page are you looking on?

13 WITNESS: It's the last two pages under tab
14 thirty. David Fargo.

15 THE COURT: Okay. So Ms. Katz didn't sign the
16 affidavit on the warrant. Okay. Thank you. I was just
17 curious. Go ahead.

18 Q. And that's dated May 25th, '07, is that correct, the
19 date of the arrest. Is that right?

20 A. It's dated May 25th, '07.

21 Q. And do you know if that's the date he was arrested?

22 A. I don't remember what day he was arrested.

23 Q. Do you know who David Fargo is?

24 A. Excuse me?

25 Q. Do you know who David Fargo is?

1 A. I'm assuming he's a police officer. I don't know him.

2 Q. In your investigation did you mention several times
3 the fact they were a divorce couple?

4 A. I didn't hear you.

5 Q. You mentioned the divorce, the fact that were a
6 divorced couple?

7 A. Yes.

8 Q. Did you look at any matters related to the divorce in
9 your investigation?

10 A. No.

11 Q. What was the ... Nothing further.

12 **REDIRECT EXAMINATION**

13 **BY MR. ABNEY:**

14 Q. Kim, is it often the case that more than one Solicitor
15 or Assistant Solicitor will work on a matter at one time?

16 A. Yes.

17 Q. And getting to some questions from Ms. Flumian, the
18 document -- Solicitor 51. You believe that you drafted the
19 typed portion of that document, correct?

20 A. I believe that I did. I mean, I realize that my name,
21 date, nothing's on it, but I believe that I did because I
22 remember having that exact conversation with her.

23 Q. It reflects the substance of a conversation you had.

24 ---

25 A. Yes.

1 Q. --- with Ms. Katz?

2 A. Yes, that is correct.

3 Q. Would you turn with me to page thirty-four, which is
4 the message that Ms. Flumian was asking about.

5 A. Yes.

6 Q. And it's a message to either Amy Harold or Kim Steele?

7 A. Yes.

8 Q. And the substance of the message says, would you
9 please call me, 579-9898? Floyd Jernigan, my ex-husband,
10 is stealing out of my bank account. Does that reflect what
11 she generally told you about what she believed happened
12 here, her husband had stolen from her?

13 A. Yes.

14 Q. And finally, looking at the affidavit in support of a
15 warrant, that's Solicitor 104.

16 A. Okay.

17 Q. At the bottom, I'll just read that. The paragraph
18 that begins, that between 17 January 2007 and 19 January
19 2007, the above-named defendant did violate Section 16-13-
20 240 of the State Code for obtaining property by false
21 pretenses and he did knowingly and willfully removed eleven
22 hundred dollars from the Bank of America Bank, which is
23 located at 381 Calhoun Street, Charleston, South Carolina,
24 which is the account of one Suzanne Hayward Boone and did
25 use said money for his own personal use. The following

1 paragraph states, the above facts are true and believable
2 based on information from the victim who stated that she
3 was informed by her bank that the defendant removed this
4 money electronically from her account to pay his personal
5 bills and she did not authorize him to do so.

6 THE COURT: What's the date of the warrant?

7 MR. ABNEY: Date of the warrant, May 25, 2007,
8 which is the date of the arrest as well.

9 THE COURT: I thought May the 15th. May the
10 25th.

11 MR. ABNEY: It was May 25 was the day Dr.
12 Jernigan was arrested.

13 THE COURT: Well, when was the date of the
14 warrant because -- May 15th, wasn't it?

15 MR. ABNEY: I believe that's right. I believe
16 the original warrant signed by Ms. Boone was May 15th.

17 THE COURT: I thought that was the original
18 warrant you were reading.

19 MR. ABNEY: There is also a warrant signed by Ms.
20 Boone that's already in evidence, as well, that has a
21 different date.

22 THE COURT: Is there an affidavit on the warrant
23 or just ---

24 MR. ABNEY: This is an affidavit in support of
25 the warrant.

1 THE COURT: I understand. But what's in evidence
2 would have been an affidavit on the warrant or was that
3 just a straight affidavit from the police department?

4 MR. ABNEY: I believe what was already into
5 evidence is just the warrant with Ms. Boone Katz's
6 signature on the front, that there is no affidavit, is my
7 understanding.

8 THE COURT: Okay. Well, why were there two
9 warrants?

10 MR. ABNEY: I don't know.

11 Q. Do you know why there were two warrants?

12 A. I've not seen a second warrant. I'm seeing the ---

13 THE COURT: Show her what you're talking about.
14 here. You're purporting it as a warrant. I think it was
15 an affidavit or a statement she gave to the police. I
16 don't know. I may be wrong. I haven't looked at it.

17 MR. ABNEY: Do you know?

18 MS. FLUMIAN: It was Plaintiff's 5.

19 MR. ABNEY: Plaintiff's 5.

20 THE COURT: Let her look at it and tell us what
21 it is.

22 MR. ABNEY: Okay.

23 THE COURT: Because I don't understand why
24 there's two warrants, if there are.

25 MR. ABNEY: Do you know where Plaintiff's 5 is?

1 THE COURT: What number is it?

2 MR. ABNEY: It's Plaintiff's 5.

3 THE COURT: Plaintiff's 5. What's that number
4 you were just reading from?

5 MR. ABNEY: It's, I believe, 104, Solicitor 104
6 in -- it's Defendant's 30.

7 THE COURT: Okay. So there were two warrants
8 then. Was that second one signed by a Magistrate?

9 MR. ABNEY: It's sign by an issuing judge.

10 THE COURT: Okay. All right. Apparently all
11 this is is just the affidavit of that first warrant refers
12 to apparently. Give it to her and let her look. I think
13 this is the affidavit the first warrant refers to. I don't
14 know. Let her look at it.

15 A. This is ---

16 Q. 104.

17 THE COURT: My question, the question is who was
18 the affiant to the Magistrate for the purpose of obtain a
19 warrant? Was it the complainant or was it the police
20 officer? Anybody know?

21 MR. EDWARDS: They had a hearing and Judge
22 Gosnell. I don't know if there was a testifying police
23 officer.

24 THE COURT: Pardon me?

25 MR. EDWARDS: There was a hearing.

1 THE COURT: That's the preliminary hearing.

2 MR. EDWARDS: I know.

3 WITNESS: I'm seeing two, I'm seeing two arrest
4 warrants. One is signed by Susan Boone and then there's
5 another one that's signed by, it looks like a David Vargo.
6 I don't -- Susan Boone's is dated on May 15th of '07 and
7 the one by David Vargo is May 25th, '07.

8 THE COURT: May the 25th?

9 WITNESS: I'm not understanding why there's two.

10 THE COURT: Which warrant was he arrested on, of
11 David Fargo's warrant or Ms. Boone's warrant? You can have
12 this back. Did you dismiss both warrants or just one?

13 WITNESS: Let me see what my dismissal -- I'm
14 trying to find the dismissal that I signed.

15 THE COURT: That doesn't matter. I'm just
16 curious. I didn't mean to interrupt you. Go ahead. It's
17 immaterial for the purpose of why we're here. I just was
18 curious ---

19 WITNESS: Okay.

20 THE COURT: --- as to why they had two warrants.

21 MR. ABNEY: I have no idea, Your Honor, why there
22 were two different warrants.

23 WITNESS: I don't know why there are two
24 warrants. I don't know why that was.

25 THE COURT: It might have been different charges.

1 I didn't look at the charges.

2 MR. ABNEY: I think the charges were the same.

3 WITNESS: I think the charges are -- it's
4 obtaining property by false pretenses or taking goods by
5 false pretenses, same thing. I don't know why there's two
6 warrants.

7 THE COURT: Okay. That's fine.

8 Q. And my question was just on the affidavit in support
9 of the warrant that was Solicitor 104.

10 A. Uh-huh (affirmative).

11 Q. The affidavit states that it was based on statements
12 by Ms. Katz, the victim, ---

13 A. Yes.

14 Q. --- is why the warrant was issued?

15 A. Yes.

16 Q. Not statements by the banks.

17 THE COURT: Do you know which warrant was served?
18 Which one he was arrested on? What does the return show?
19 Does the return show an arrest on both warrants or just
20 one?

21 WITNESS: I don't know where the return is.

22 THE COURT: The only reason I'm asking that, if
23 they never served the warrant that Ms. Boone signed, it's
24 immaterial. If they served the one the police officer
25 signed -- I don't know why you're asking about her -- I

1 don't know which one they served. They may have served
2 both of them.

3 MR. ABNEY: No, I don't know either, Your Honor.
4 I was just trying to point out ---.

5 THE COURT: I mean, the warrant's immaterial
6 until it's served on the individual.

7 MR. ABNEY: I understand.

8 THE COURT: And I don't -- do y'all know which
9 one was served? Does anybody know?

10 MS. FLUMIAN: The only thing I would add, Your
11 Honor, is that the only one that was produced for the Rule
12 5, is the one that's signed by Mr. Fargo, not by Ms. Katz.
13 So one would assume, I suppose, that the one that was
14 signed by Mr. Fargo was actually served.

15 THE COURT: Okay. So the one that Ms. Boone
16 signed was never actually served. Was it issued? Did a
17 Magistrate sign it?

18 MS. FLUMIAN: I do not see a signature on that --
19 that Ms. Boone signed, Your Honor.

20 THE COURT: Okay. And so apparently it was never
21 even presented to the Magistrate if there's no Magistrate's
22 signature on it. So there's actually no two warrants,
23 there was just one warrant because it's not a valid warrant
24 until the Magistrate signs it.

25 WITNESS: Both of them have, where it says

1 signature of issuing Judge, they both have signatures.

2 THE COURT: Which one was served, though, on the
3 defendant?

4 WITNESS: I mean, see what I'm saying? That one
5 it says, signature of issuing Judge and it's signed. I can
6 tell you the one that I did ---

7 THE COURT: Which one had the return on it? Give
8 it to her. She knows it. She knows it better than anybody
9 else in this courtroom.

10 WITNESS: I forget. I haven't done this in three
11 years.

12 THE COURT: Which one has the return on it?

13 DEFENDANT: The return -- the one ---

14 THE COURT: One of them should had a return by
15 duress. Or both.

16 WITNESS: The one that I dismissed was the K-
17 257149, which is the one that was signed by David Fargo.
18 That is the one I did the dismissal on and that is the one
19 -- the warrant that was ultimately expunged, is what I'm
20 saying. The one that was signed by David Fargo.

21 THE COURT: So apparently the other one was never
22 actually served. Is that true or not true? You can ask
23 her about the affidavit.

24 MR. ABNEY: No. I don't know.

25 MR. EDWARDS: Your Honor, BOA 29, page 20, shows

1 the warrant number is 257149 for the bond hearing.

2 THE COURT: Apparently, that was the only one
3 that was served ---

4 WITNESS: It's looking like that was maybe the
5 one that was -- that's the one that I'm referencing on my
6 dismissal on the expungement. I don't know what went on
7 with the other warrant.

8 THE COURT: Go ahead and ask whatever you want to
9 ask. I'm just trying to figure out which one was actually
10 served. Apparently, the one the detective signed is the
11 one that was actually served.

12 MR. ABNEY: That appears to be the case.

13 Q. And all I was asking, Kim, is simply that the
14 affidavit in support of the warrant, which appears to be
15 the one that was served, states that it was based upon the
16 statement of Ms. Katz, that the warrant was being issued,
17 correct?

18 A. Correct.

19 Q. That's all I have. Thanks.

20 MS. FLUMIAN: Just a couple, Your Honor.

21 THE COURT: Yes, ma'am.

22 **RECROSS-EXAMINATION**

23 **BY MS. FLUMIAN:**

24 Q. Ms. Steele, we were speaking earlier a little bit
25 about the investigation that you undertook in speaking to

1 the bank. And I wanted to ask you, when you spoke with any
2 individual from the bank did anyone ever mention to you a
3 corporation called Check Free or Fiserv?

4 A. Not that I recall.

5 Q. Okay. Not that you recall. Did anyone at the bank
6 ever mention to you any account status of Dr. Jernigan's
7 personal account? Meaning, did they ever say anything
8 about it being restricted or no check activity or frozen
9 around the time that these bill pay payments, being January
10 of 2007?

11 A. No, not that I recall.

12 Q. Okay. That's all. Thank you.

13 THE COURT: Anybody else?

14 MR. EDWARDS: No, sir.

15 THE COURT: You may step down. Thank you very
16 much.

17 WITNESS: Thank you.

18 THE COURT: Anymore witnesses?

19 MR. ABNEY: I have one more, Your Honor.

20 THE COURT: Okay. Why don't we take a very short
21 break, okay? About ten minutes.

22 MR. ABNEY: Okay.

23 THE COURT: And how long is this witness going to
24 take?

25 MR. ABNEY: I would think maybe twenty minutes.

1 THE COURT: Pardon?

2 MR. ABNEY: Maybe twenty minutes.

3 THE COURT: Okay. All right. Do y'all want to
4 finish this afternoon or do y'all want to come back and
5 finish in the morning?

6 MR. WAGGONER: Only, if I may answer, only
7 because it would be more convenient because Dr. ---

8 THE COURT: I'm sorry. What?

9 MR. WAGGONER: The doctor has a work schedule
10 this evening, which he could actually make if we left now.

11 THE COURT: Well, he doesn't have to come back
12 tomorrow.

13 MR. WAGGONER: No, no. Tomorrow is fine with us
14 because of that. But it's up to the Court.

15 MR. ABNEY: Tomorrow is fine for us, Your Honor.

16 THE COURT: How about your witness? You said he
17 flew in from somewhere?

18 MR. ABNEY: He came in from Charlotte, but he's
19 ---

20 THE COURT: Is he leaving, going tonight or
21 what's his plane reservation? Tomorrow?

22 MR. ABNEY: He'd planned to go tomorrow because
23 we thought we would ---

24 THE COURT: Morning or afternoon?

25 MR. ABNEY: I mean, whenever we're done.

1 THE COURT: So it won't interfere with him if we
2 finish it all in the morning?

3 MR. ABNEY: That's correct, Your Honor. That
4 would be fine.

5 THE COURT: Is that okay? I mean, we'll sit here
6 and listen to it, but I'm getting sort of tired.

7 MR. ABNEY: I am too.

8 THE COURT: And it's getting hard to concentrate
9 on what we're talking about because we've really been
10 beating some dead horses here this afternoon.

11 THE CLERK: Your Honor, might I ask you all how
12 long you think in the morning because the case behind you
13 is pushing to be here. And they've got witnesses. So if
14 you could give me a time or how long you think you, you
15 know, you're going to last so I can tell them something.

16 THE COURT: Well, he said, what, twenty minutes
17 on direct and cross will probably take at least another
18 thirty. You might as well say, what an hour and a half,
19 two hours.

20 MS. FLUMIAN: Tops.

21 THE CLERK: Tops?

22 MS. FLUMIAN: Tops, yes, Your Honor.

23 THE COURT: An hour or an hour and a half, two
24 hours to get it finished?

25 MR. ABNEY: I think that's right, Your Honor.

1 THE COURT: Well, now, let me tell y'all this.
2 What I'm planning on doing might be a little bit different
3 than normal, but with this case, it's just what I'm going
4 to plan on doing. I'm going to give you my factual
5 findings and I'm going to ask for some arguments after we
6 hear the motions. I guess most of the motions -- I
7 listened to the factual arguments before. I'm planning to
8 go ahead and making a decision at least after the end of
9 the testimony. I'm not going to plan on taking it under
10 advisement. I plan on making the decision.

11 MR. ABNEY: Okay.

12 THE COURT: Okay.

13 MR. WAGGONER: Do you want closing statements or
14 anything like that?

15 THE COURT: I don't know. Let me see. I want to
16 hear from this witness tomorrow because he's the one's
17 that's going to talk about this pay on-line, and I don't
18 know if he's going to talk about it, what is it, Fiserv,
19 free checking or what's the name of it?

20 MR. ABNEY: Fiserv.

21 THE COURT: Fiserv. I don't know if he's going
22 to talk about Fiserv or not, because nobody's talked about
23 Fiserv.

24 MR. ABNEY: Well, I mean, he can talk about
25 Fiserv.

1 THE COURT: Now, I don't know. I don't know if
2 Fiserv even has a part of that. Their theory is possibly
3 Fiserv messed it up, I assume. I don't know.

4 MR. WAGGONER: He's from Bank of America, this
5 witness is:

6 THE COURT: Pardon?

7 MR. WAGGONER: I believe he's from Bank of
8 America, this witness is.

9 THE COURT: Okay. Well, whatever he's going to
10 say, we'll listen to him. Okay. All right. What time
11 y'all want to start, nine-thirty?

12 MR. ABNEY: Yes, sir.

13 THE COURT: All right. We'll see you in the
14 morning at nine-thirty. Thank y'all so very much.

15 (WHEREUPON, the court stood at recess in this case for
16 the day.)

17 September 15, 2011

18 THE COURT: I believe the bank has a witness to
19 call. Is that correct?

20 MR. ABNEY: That's correct, Your Honor.

21 THE COURT: Mr. Jeffrey Mitchell.

22 MR. ABNEY: Correct.

23 THE COURT: Okay.

24 THE CLERK: Place your left hand on the bible and
25 raise your right, please.

1 Do you swear or affirm the testimony you shall give
2 the Court in the trial of this case shall be the truth, the
3 whole truth and nothing but the truth, so help you God?

4 WITNESS: I do.

5 THE CLERK: Thank you. Please be seated. Sir,
6 for the record, if you will please state your name,
7 spelling your last name.

8 WITNESS: Jeff Mitchell, M-i-t-c-h-e-l-l.

9 JEFF MITCHELL,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. ABNEY:

13 Q. Jeff, who are you currently employed by?

14 A. Bank of America.

15 Q. And how long have you worked at the bank?

16 A. Since 1994.

17 Q. Can you tell us a little bit about your educational
18 background?

19 A. Graduated from North Carolina State in '92 with a
20 Bachelor's Degree in Business Administration.

21 Q. Are you familiar with the bank's on-line banking and
22 bill pay systems?

23 A. Yes, I am.

24 Q. And are your duties as an employee at Bank of America
25 related to bill pay?

1 A. Yes.

2 Q. What's your current position?

3 A. I'm a senior product manager within the on-line
4 banking space.

5 Q. Okay. And I understand this was a recent transition.
6 You just recently changed positions. Is that correct?

7 A. Correct, effective August 1st.

8 Q. Okay. And what was your position prior to your
9 current position?

10 A. Still a senior product manager, but responsible for
11 the bill pay function within on-line banking.

12 Q. Okay. So your prior position you were exclusive
13 working with bill pay and now you are -- you have broader
14 responsibilities within on-line banking?

15 A. Correct.

16 Q. And tell us, what were your job duties at your prior
17 position with bill pay?

18 A. The primary function was to essentially make sure the
19 system was functioning as designed. We would monitor
20 customer feedback, monitor what we call SCI, scaled
21 customer interactions. We would also design and implement
22 enhancements to the system.

23 Q. Okay. So you more or less monitored to see that the
24 system worked right?

25 A. That was our primary function, yes.

1 Q. And are you familiar with how on-line banking and bill
2 pay worked in 2007?

3 A. Yes, I am.

4 Q. All right. To make a bill payment, what does a
5 customer need to do first?

6 A. They need to log in to on-line banking and
7 authenticate themselves.

8 Q. And how do they do that?

9 A. They would go to the sign-on screen. They would
10 provide their user name, password, verify a sight key. If
11 necessary, answer some authentication questions in order to
12 gain access to the system.

13 Q. Okay. And what happens once they are logged on.
14 What's it like?

15 A. Once they're logged in, they land on the accounts
16 overview page.

17 Q. Okay. And what do you see on the accounts overview
18 page? What's displayed in front of you?

19 A. All of your accounts at Bank of America, whether it's
20 a checking, savings, credit card, mortgage, etcetera.

21 Q. So on that page, after you log in, there would be a
22 list of all the customer's accounts?

23 A. Correct.

24 MR. EDWARDS: Your Honor.

25 THE COURT: Yes, sir.

1 MR. EDWARDS: Is he testifying to what the bank
2 sees when they log-on or what the customer sees?

3 THE COURT: I don't know yet. Do you have an
4 objection?

5 MR. EDWARDS: The objection ---

6 THE COURT: Do you have a legal objection? You
7 can ask that on cross. I don't know the answer. I can't
8 answer it for you. I don't know.

9 MR. EDWARDS: I was just trying to understanding
10 what he was saying.

11 THE COURT: Okay. Please proceed.

12 Q. Mr. Mitchell, I think we were discussing the customer
13 experience, correct?

14 A. Correct.

15 Q. So it's the customer when they log on will see a list
16 of accounts, their accounts with Bank of America, correct?

17 A. Correct.

18 Q. Okay. And if the customer wants to make a bill
19 payment from any of those accounts, what does the customer
20 need to do at that point?

21 A. They would simply click on the bill pay tab, and they
22 would be navigated over to the bill pay system in order to
23 initiate a payment.

24 Q. Okay. Would you turn to Exhibit 16 in the Bank of
25 America binder?

1 A. Okay.

2 Q. Can you tell me what this document is?

3 A. This is a representation of what the bill pay overview
4 page looked like back in 2007.

5 Q. Okay. And is this a document that the bank maintains
6 in order to record the bill pay experience over time?

7 A. Yes. It maintains the previous experience and it's
8 also used to design future changes to that experience.

9 Q. And this display here shows us what bill pay looked
10 like in January of 2007?

11 A. Correct.

12 Q. And this is a generic representation, right? It
13 doesn't contain any customer's personalized information.

14 Is that correct?

15 A. Yes. This is generic.

16 Q. So when Dr. Jernigan signed on to bill pay in January
17 of 2007, is this the layout that he would have seen?

18 A. He would have seen his layout with his personal
19 account information.

20 Q. Okay. In using this document, I'd like for you to
21 take us step-by-step through the process. What were you
22 looking at in the middle of the page, under the payee?

23 A. So underneath the payee section, these are all the
24 payees that a customer would have set up themselves in
25 order to make payments.

1 Q. Okay. And how does a customer set up to pay ---

2 A. They simply go in, they add the actual merchant
3 whether that is from a pick list or they key it in
4 themselves, they provide some critical information like the
5 account at the merchant, the address, they click save and
6 that's what populates this list.

7 Q. Okay. And can a payee be deleted?

8 A. It can, but only by the customer.

9 Q. And if I'm a customer and I want to make a one-time
10 payment to American Eagle Outfitters of a hundred dollars,
11 how would I go about doing that?

12 A. You would go over to the right of the payee name.
13 Underneath the amount field, you would key in the amount
14 that you want, a hundred dollars. You would then move to
15 the right under the delivered by field and provide the date
16 at which you would like the payment to be made. You would
17 then go down just below those two boxes from the pay from
18 account and verify that account as the account that you
19 would like to use, and then click the make payments button
20 down in the lower right hand corner.

21 Q. Okay. So just to back you up, if I want to make a
22 payment to American Eagle, the amount, I actually have to
23 type in the amount box, right?

24 A. Correct.

25 Q. Key that in. And the delivered by, I can type that in

1 or I can click on that little calendar and pick a day off
2 the calendar?

3 A. Yes. You can use either one of those two.

4 Q. Okay. And how far out can a customer schedule a
5 payment to be made?

6 A. Customers can schedule payments out as far as one
7 year.

8 Q. Okay. And how does a customer pick the -- how is the
9 pay from account selected?

10 A. The pay from account defaults to the last account used
11 for that particular payee.

12 Q. Okay. So when the first payment is made to a
13 particular payee, the customer has to actually pick an
14 account for that payment?

15 A. Correct.

16 Q. And then after that, if the customer comes back a
17 second time to pay that same payee, will that pay from,
18 that same pay from account display on the screen?

19 A. Yes, it will.

20 Q. Okay. And how would the customer change the pay from
21 account?

22 A. If they would like to change it, they would simply
23 click -- go to that payee once again, and write underneath
24 the account, so say, for example, American Eagle
25 Outfitters, underneath the checking 2003, they would click

1 that change link and they'd be navigated to another page to
2 where they could select a different account.

3 Q. Okay. Let me turn to the next page in the book. Is
4 this the change pay from account that you were just
5 referring to?

6 A. Yes, it is.

7 Q.. Okay. And on this page how would a customer go about
8 changing the pay from account?

9 A. Once again, using Ford Motor Credit as an example,
10 they would move to the right and click on the drop-down
11 arrow, at which point a display would be shown listing all
12 their available accounts. They would select the account
13 that they would like to use and they'd go down to the
14 bottom and click save changes.

15 Q. Okay. So if a customer has, for example, three
16 checking accounts in their on-line banking profile, when
17 they go to this page and click on that drop-down menu, all
18 of those three checking accounts would be available in the
19 menu?

20 A. Correct.

21 Q. And any of them could be selected as the pay from
22 account?

23 A. Correct.

24 Q. All right. So turning back to the first page of the
25 exhibit, once all the payment information has been entered,

1 the payee, the amount, the date, and the pay from account,
2 what does the customer do next to make a payment?

3 A. They would go down and select the make payments
4 button, at which point they would then be presented with a
5 confirmation page.

6 Q. Okay. And the make payment button, does that actually
7 direct the bank to make a payment as specified by the
8 customer?

9 A. Yes. It schedules the payment as specified, yes.

10 Q. And you said there would be a confirmation page after
11 you hit the make payment button. Is that correct?

12 A. Correct.

13 Q. And what would, what information would display on the
14 confirmation page?

15 A. All the pertinent information. You would have the
16 payee, you would have the dollar amount, the delivery by
17 date, the funding account and a confirmation number.

18 Q. Okay. So the pay from account would actually appear
19 on the confirmation page after the payment is scheduled?

20 A. Correct.

21 Q. Is it fair to say it takes several steps to complete a
22 bill payment?

23 A. Yes.

24 Q. And a customer has several opportunities along the way
25 to review the payment information and confirm that it is

1 what he or she intended?

2 A. Yes.

3 Q. Does bill pay ever make a payment from a customer's
4 account, other than the one picked by the customer?

5 A. Absolutely not.

6 Q. Bill pay cannot choose a different account, other than
7 the one that the customer has chosen to make the payment?

8 A. Correct.

9 Q. Can a customer have bill pay set up initially where --
10 one, where the system would default to one account if
11 another account were unavailable for some reason?

12 A. No, that's not an option.

13 Q. Has that ever been an option in bill pay, to your
14 knowledge?

15 A. No.

16 Q. Now, you've reviewed the disputed transactions that
17 are initiated in this case, haven't you?

18 A. Yes, I have.

19 Q. And based on what you've reviewed in the transaction
20 and your knowledge of bill pay, how was it that the
21 payments came from the 8854 account in this case?

22 A. The only way that they would have been able to be
23 initiated from that account would have been to actually go
24 in as we described, log into on-line banking, navigate over
25 to bill pay, go to that particular payee, choose the change

1 link and go in and select that 8854 account, save it and
2 then go back and initiate the payment.

3 Q. Okay. And does the system ever disregard what the
4 customer has instructed it to do?

5 A. No.

6 Q. The system is designed to do as the customer directs,
7 correct?

8 A. Yes.

9 Q. All right. Mr. Mitchell, who Fiserv?

10 A. Fiserv is a third-party vendor that hosts the bill pay
11 application for us.

12 Q. Okay. And when you say that they host the
13 application, they actually house the computer servers in
14 which the application exists, correct?

15 A. Correct.

16 Q. And Fiserv processes the payments that are made
17 through the bill pay?

18 A. They initiate the payments, yes.

19 Q. So when a customer clicks onto the bill pay tab, they
20 are moving into the area that the fiserv hosts?

21 A. Yes.

22 Q. And the data within bill pay, is that supplied from
23 the bank to Fiserv?

24 A. Yes. There's several interactions back and forth
25 between Fiserv and the bank to set up customers and

1 exchange information.

2 Q. Okay. And who designs the functionality of bill pay?

3 A. As far as designing it, the bank does. We come up

4 with how it looks, how it needs to function, and then

5 Fiserv goes off and does -- bills it as we specify.

6 Q. So the bank designs the functionality and passes that

7 information to Fiserv?

8 A. Correct.

9 Q. To implement?

10 A. Yes.

11 Q. And does the bank monitor the bill pay system to

12 ensure it's functioning as fiserv has been directed?

13 A. On a daily, weekly, and monthly basis.

14 Q. And, in fact, that's what you did personally, your

15 job, until very recently?

16 A. Yes.

17 Q. And the bill pay system functions as directed by the

18 bank?

19 A. Correct.

20 Q. The system works the way that you tell them to?

21 A. Yes.

22 Q. Does Fiserv specialize in payment processing? Is this

23 what they do?

24 A. This is their primary function. I consider them the

25 best in class.

1 Q. In all your years in working with the bank, have you
2 ever heard of the system making a payment from an account
3 other than the one picked by the customer in bill pay?

4 A. No, I have not.

5 Q. That would be a malfunction, correct?

6 A. Correct.

7 Q. And that's not a malfunction that you have heard of
8 before?

9 A. Not that I'm aware of.

10 Q. You're aware that Jernigan has alleged that his 4502
11 account was frozen at the time these disputed payments were
12 made?

13 A. Yes.

14 Q. And what does frozen mean as you understand it?

15 A. No debit activity allowed.

16 Q. Okay. And was the 4502 account frozen on January 17th
17 through 19th?

18 A. No.

19 Q. And you were able to tell that from the bank
20 statements for Dr. Jernigan's account, correct?

21 A. Correct.

22 Q. Because there's debit activity posting during those
23 dates, correct?

24 A. Yes.

25 Q. And you wouldn't need to do any other research, other

1 than look at the statements, to determine that?

2 A. No.

3 Q. That there was no ---

4 MR. WAGGONER: I'm going to have to object to
5 what's becoming somewhat of a leading examination.

6 THE COURT: Okay. I'll sustain the objection.

7 Q. Are you aware that the account was restricted ---

8 A. Yes.

9 Q. --- in January of 2007?

10 A. Yes, I am.

11 Q. Okay. And were you produced as a witness to testify
12 regarding the restriction?

13 A. Yes.

14 Q. What was the nature of the restriction?

15 A. It was a 02, no check activity restriction code.

16 Q. And was the no check activity restriction in place on
17 January 17th, January 18th or January 19, 2007?

18 A. No, it was not.

19 Q. And how do you know that?

20 A. By looking at the statements once again, as well as
21 some internal reports from a system called BOSS.

22 Q. And do you have an understanding of when the no check
23 activity restriction was lifted?

24 A. It was lifted on, I believe, January 16th.

25 Q. If the restriction had been effective on January 17,

1 18, and 19, would it have prevented the bill pay payments
2 from coming out of the 4502 account?

3 A. No.

4 Q. And why is that?

5 A. Because the payments in question were remitted
6 electronically so no paper was exchanged, so that
7 restriction code would not come into play at all.

8 Q. Okay. And in a -- in an electronic transaction, what
9 happens? How does that -- can you describe how that
10 occurs?

11 A. So basically an electronic transaction is the debit is
12 actually sent to the bank electronically and the credit to
13 the payee or merchant is also sent out electronically.

14 Q. Okay. And what percentage of on-line payments occur
15 electronically?

16 A. Approximately eighty-three percent.

17 Q. And are there actually some types of on-line payments
18 that are made by check?

19 A. Yes, there are.

20 Q. And for what types of payees would that occur?

21 A. For the most part very small payees, payees who are
22 not set up to receive funds electronically.

23 Q. So, for example, if I'm paying my son's babysitter
24 through on-line banking, would she be the type of person to
25 get a paper check?

1 A. Yes. She would receive a paper check.

2 Q. Because she's not set up to receive electronic
3 transfers?

4 A. Correct.

5 Q. For larger merchants, Chase, for example, would you
6 expect those payments to be made electronically?

7 A. Yes, I would.

8 Q. And the disputed payments in this case, do you know
9 whether those were made electronically?

10 A. They were all made electronically.

11 Q. And how do you know that they were made
12 electronically?

13 A. I had a brief conversation with ---

14 MS. FLUMIAN: Objection, Your Honor.

15 THE COURT: I'll sustain the objection.

16 Q. Do you know that the payments were made electronically
17 from any other source than somebody you've spoken with?

18 A. You can also discern the electronic transmission by
19 looking at the statements.

20 Q. By look at Ms. Katz's statements?

21 A. Yes.

22 Q. And how would -- if the payment went by paper check,
23 how would that appear on the statement?

24 A. It would appear quite differently. It would actually
25 have a check number in the description as opposed to the

1 electronic description. They are quite different and
2 distinct.

3 Q. Okay. Would the no check activity restriction impact
4 Jernigan's ability to schedule payments?

5 A. No.

6 Q. And by scheduling, I mean the time when the customer
7 actually sits down on-line and enters the information and
8 hits the make payment button.

9 A. Yeah. That would not prevent you from scheduling a
10 payment.

11 Q. A customer can schedule a payment during -- while an
12 account is in 02 status?

13 A. Absolutely.

14 Q. Based on your experience with on-line banking and
15 documents that you've reviewed in connection with this
16 case, what impact did the no check activity restriction
17 have on Dr. Jernigan's ability to make bill pay payments
18 from his own 4502 account?

19 A. The 02 no check activity should not have had any
20 impact whatsoever.

21 Q. It wasn't in effect on the dates in question, correct?

22 A. It was not.

23 Q. And if it had been, would it have prevented him from
24 scheduling payments?

25 A. Even if it had been, he would have still been able to

1 see the account and still schedule those payments.

2 Q. And if it had been in effect on those dates, would it
3 have prevented the bank from processing the payments?

4 A. No.

5 Q. Thank you.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. FLUMIAN:

9 Q. Good morning, Mr. Mitchell.

10 A. Good morning.

11 Q. What documents have you actually reviewed prior to
12 today's testimony?

13 A. I've reviewed some internal BOSS statements, reports
14 and some statements from both parties.

15 Q. And -- let me start a little bit back. When did Bank
16 of America first start offering bill pay?

17 A. Back in 2003.

18 Q. And what is the purpose of bill pay from a Bank of
19 America point of view?

20 A. To allow customers to schedule payments to anyone from
21 their accounts.

22 Q. And how does the Bank of America benefit from offering
23 bill pay?

24 A. It's just a -- basically, it's a customer offering so
25 it's relationship deepening. There's no revenue generation

1 from it.

2 Q. But it helps build customer attrition, isn't that
3 true? It allows for customers to stay with you because
4 you're offering the newest and best on-line activity?

5 A. Well, you said attrition. So attrition is when they
6 leave, but it builds our customer base. It helps them --
7 to just basically deepen the relationship so that they'll
8 bring their business to Bank of America.

9 Q. And does Bank of America actually operate it's on-line
10 bill pay?

11 A. Fiserv hosts our on-line bill pay system.

12 Q. Okay. And please explain for the Court what check
13 free corporate or Fiserv, what they are in a company?

14 A. They're a financial institution company that
15 specializes in the processing of payments, remitting of
16 payments.

17 Q. Fair to call them a third-party vendor?

18 A. Yes.

19 Q. Okay. And why does Bank of America use a third-party
20 vendor to operate its on-line bill pay application?

21 A. Simply, as I stated earlier, best in class. They're
22 very good at what they do.

23 Q. Isn't it been the news recently that Bank of America
24 may be firing Fiserv and may be taking over their on-line
25 bill pay?

1 A. Not that I'm aware of.

2 Q. Have you ever worked for Check Free Corp?

3 A. No, I have not.

4 Q. And in what -- if you can recall, what job did you
5 have back in 2003 when on-line bill pay was first

6 established at Bank of America?

7 A. Back in 2003, I was working on another payments
8 application outside of the e-commerce space.

9 Q. So when it first started, you were not working on the
10 team, or whatever the correct term is, that implemented
11 bill pay. Is that fair to say?

12 A. Correct.

13 Q. Okay. So did you play any role in the initial
14 formatting, writing, or implementation of bill pay?

15 A. Not in the initial, no.

16 Q. Okay. At what point in the bill pay experience does a
17 customer go from Bank of America to Fiserv?

18 A. When they click on the bill pay tab.

19 Q. And that means they're in that domain, isn't that fair
20 to say? They're now in Fiserv. They're no longer in Bank
21 of America.

22 A. Correct.

23 Q. And is there any notification to the customer at all
24 that they are no longer on Bank of America?

25 A. No.

1 Q. Does the customer ever receive the terms and
2 conditions that apply to Fiserv when they use your on-line
3 bill pay application?

4 A. No. They only review and accept our -- the bank's
5 terms and conditions.

6 Q. Okay. You were explaining a little bit earlier that
7 Bank of American designed bill pay, but then they sort of
8 handed off Fiserv to operate. Is that fair to paraphrase
9 your testimony?

10 A. I think that's fair.

11 Q. Help me with this analogy because this is how I've
12 sort of been imagining this. Bank of American is sort of
13 the architect. You sort of establish a blueprint, if you
14 will, of how on-line bill pay will work. However, you hand
15 off the plumbing to a sub-contractor. Is that fair to
16 say?

17 A. That's fair.

18 Q. When you hand off the plumbing, do you tell the
19 plumber exactly how to lay the pipe or ---

20 A. Yes.

21 Q. You tell them exactly. You are the party that writes
22 the software development plan?

23 A. We give them requirements and how it needs to operate,
24 look and operate.

25 Q. Okay. So you tell the plumber, I need it to be cooper

1 but you don't tell them how to lay the pipe?

2 A. No.

3 Q. Okay. Is Bank of America the only bank that uses
4 Fiserv?

5 A. No.

6 Q. Fair to say that they are a huge company?

7 A. Fair.

8 Q. Fair to say many banks use their on-line bill pay
9 application?

10 A. I don't know how many but I know there are other FI's
11 that use them.

12 Q. Are you aware that they call their on-line bill pay
13 application Carillon One?

14 A. I've heard that in the past.

15 Q. And that's not something Bank of America created, is
16 it?

17 A. No, it's not.

18 Q. Okay. And Check Free creates the rule within their
19 on-line bill pay application. Isn't that fair to say?

20 A. Within their own, yes.

21 Q. Okay. Have you actually reviewed this operative
22 development plan for the bill pay application that would
23 have been in place in January 2007?

24 A. I have reviewed and used the subsequent plans. I was
25 not involved in the plans that were used to update the

1 system as it was in 2007.

2 Q. So fair to say that you may know that it was supposed
3 to be cooper pipe, but you have absolutely no idea how the
4 pipe was actually laid in 2007?

5 A. Correct.

6 Q. Okay. What is the matrix for how the accounts will
7 appear in a customer's bill pay drop-down menu, meaning the
8 accounts that are in that order in that drop-down box.

9 What is the order of matrix for how they will appear.

10 A. It should appear in a sequential order as far as the
11 account nickname, and then by account number order.

12 Q. Okay. So it's not the year that it was created?

13 A. No.

14 Q. It's not the -- which has the most sufficient funds?
15 Meaning truly amounts available in each account or category
16 being checking versus savings versus credit card?

17 A. No.

18 Q. Is that something you guys write or is that another
19 piece of the pipe that's laid down by Fiserv?

20 A. That's something we would have provided to them.

21 Q. But, again, you haven't actually seen any of the
22 software development plan to verify whether or not that's
23 the case?

24 A. Not from that time, no.

25 Q. Okay. And that's the time actually that's applicable

1 to this case?

2 A. Correct.

3 Q. Okay. When was it that Dr. Jernigan's on-line bill
4 pay was set up, do you know?

5 A. I do not know.

6 Q. You don't know?

7 A. I do not.

8 Q. That information has not been provided to you? Is it
9 fair to say that in -- do you know whether or not the time
10 that that on-line bill pay was set up for him by a Bank of
11 American employee, that all of the accounts that he was
12 then legally entitled to, would have been linked to his on-
13 line bill pay?

14 A. It should have been linked, but I can't confirm what
15 was there when he enrolled and it was created.

16 Q. Can you speak to whether or not they all would have
17 been there in 2007?

18 A. They should -- not definitively, no.

19 Q. You can't definitively say whether or not all of the
20 accounts that he was legally entitled to should have
21 appeared in the drop-down menu on bill pay in 2007?

22 A. What I can say is that any eligible account for bill
23 pay would have been there. What those accounts were, I
24 can't tell you.

25 Q. You can't tell which eligible accounts would have

1 appeared?

2 A. No.

3 Q. Okay. Now, Dr. Jernigan didn't need to do anything to
4 set up which accounts would be linked to his on-line bill
5 pay. Isn't that true?

6 A. That should have been automatic at the time of
7 enrollment.

8 Q. Okay. If Dr. Jernigan never clicked on the drop-down
9 box that ever changed which accounts he was paying from, is
10 it possible that he was never aware that the 8854 account
11 was linked to his bill pay?

12 A. Could you restate?

13 Q. I can try. If Dr. Jernigan never clicked on the drop-
14 down box in bill pay to change the payee account ---

15 A. Uh-huh (affirmative).

16 Q. --- is it possible that he had no idea that the 8854
17 account was still eligible for bill pay?

18 A. Only if he wasn't looking at the screen, because it
19 would have been there. Oh, the 8854. I'm sorry. Correct.
20 He would have had to have gone to that other page and
21 actually selected that account.

22 Q. So if he never ever changed which account he paid
23 from, he always paid from 4502, it's very possible he had
24 no idea the 8854 was still eligible for bill pay?

25 A. Within the bill pay application, correct. However, he

1 would have seen that on the accounts overview page upon
2 logging in to on-line banking.

3 Q. I understand. Did you see any evidence in this case
4 regarding when Dr. Jernigan set up his payees?

5 A. No.

6 Q. Do you know why that issue was investigated by Mr.
7 Navarez?

8 A. No, I do not.

9 Q. The set up of the payees had absolutely nothing to do
10 with the 8854 account, would it? Or would it just have to
11 do with Dr. Jernigan's bill pay experience in his 4502
12 account?

13 A. It would have just had to deal with his experience.

14 Q. So all that investigation as to the payees that was
15 undertaken by Mr. Navarez had nothing to do with what
16 actually occurred?

17 A. I'm not really familiar with the investigation, so I
18 don't know.

19 Q. Okay. You weren't actually given any of that
20 information, were you?

21 A. No, I was not.

22 Q. And you haven't read any deposition testimony either?

23 A. Only my own.

24 Q. You have not read any pleadings in this case?

25 A. No.

1 Q. Okay. There's no evidence that Dr. Jernigan ever used
2 the 8854 account for bill pay prior to this experience. Is
3 that fair to say?

4 A. That's my understanding.

5 Q. Who would have the documentation as to the actual
6 transactions that are at issue today?

7 A. Fiserv would have them and the bank would have them as
8 well.

9 Q. Okay. The bank would have them as well. Do you
10 recall that you didn't tell me that during your deposition?

11 A. I don't recall not telling you that. All data from
12 Fiserv is transmitted from Fiserv to the bank on a daily
13 basis.

14 Q. Okay. I'm going to ask you to please look at a
15 portion of your deposition.

16 A. Sure.

17 Q. Okay. Can you please go to page 43. Question, did
18 you say earlier that there would be a record of whether or
19 not 4502 versus the account ending in 8854 was selected?

20 A. I apologize. I didn't understand the question. No.
21 To my knowledge that is not something we record or that
22 Fiserv records. What Fiserv does record is if a customer
23 goes in there, creates a payee, edits a payee, deletes a
24 payee, if they create a payment and then they go in
25 subsequently and change the amount or something along that

1 lines, absolutely we record that. But to record the action
2 of going in there and changing an account from -- a default
3 account from A to B, I don't believe they record that, but
4 I'm not a hundred percent sure or certain.

5 Q. So at the time of your deposition you did indicate
6 that they did keep that documentation, did you not?

7 A. I think I indicated I was not sure.

8 Q. Okay. So the rest of page 44 -- excuse me, 43.

9 Question, who would have that type of record? And your
10 answer was?

11 A. Okay. Fiserv would have that.

12 Q. Okay. So now today you're saying that they don't have
13 that. But at the time of your deposition you said that
14 they would have that. They would actually have
15 documentation of which account was selected?

16 A. If that information is stored, Fiserv would have that.

17 Q. Okay.

18 A. I do not know if they keep it.

19 Q. Have you ever asked for that documentation?

20 A. No, I have not.

21 Q. Why haven't you asked for the documentation for which
22 account was actually selected in this case?

23 A. It was not asked of me to produce it.

24 Q. Fair enough. Is anyone responsible at the bank for
25 any type of on-line security, meaning is there ever sort of

1 some type of monitoring to see whether or not someone other
2 than the appropriate user was viewing their account?

3 A. There's a separate team that monitors security.

4 Q. And do you know anything about that team?

5 A. I know the team. I don't know anything specifically
6 about their functions.

7 Q. Fair to say that the bank takes on the responsibility
8 of attempting to monitor its security in that way?

9 A. Yes.

10 Q. What is an access ID?

11 A. It's semantics. It depends on who you ask. I would
12 define an access ID as a bank generated, unique identifier
13 for a customer.

14 Q. So that is not something that a customer would choose.
15 Is that fair to say?

16 A. In my definition, yes.

17 Q. Okay. And is that something the customer has to type
18 in when they are using their on-line bill pay?

19 A. In my definition, no.

20 Q. And in anyone's definition, do you know that that's
21 what it means? Is it interchangeable for a user name in
22 the bank world?

23 A. In the bank world, it is not.

24 Q. Okay. Is it possible that it is interchangeable in
25 the real world?

1 A. Possibly. I ...

2 Q. And what's the purpose of the access ID as you'd
3 define it?

4 A. It is simply an ID that we and fiserv maintain between
5 the two, to uniquely identify a profile.

6 Q. Is it fair to say that someone's access ID means which
7 accounts they are eligible or entitled to the ownership of,
8 for lack of a better term? Is your access ID linked to all
9 the accounts that you have rights to?

10 A. It's linked to your profile, which has other
11 attributes, accounts being one of those.

12 Q. Okay. So one access ID equals all of my bank
13 accounts.

14 A. Yes.

15 Q. Okay. Did Dr. Jernigan input, if you know, any
16 information into his on-line banking profiles to effectuate
17 these payments, other than his username and password?

18 A. I'm not sure.

19 Q. You're not sure ---

20 A. No.

21 Q. --- if he used anyone else's username or password?

22 A. I don't know what his actions were to get into the
23 system.

24 Q. You don't know what his actions were?

25 A. I know what he has to do, but I don't know -- I assume

1 he used his ID and password.

2 Q. Who would have that information?

3 A. That would be someone within, probably, the security
4 group within Bank of America.

5 Q. To your knowledge has the security group ever asked to
6 identify whether or not Dr. Jernigan did anything other
7 than use his username and password?

8 A. Not to my knowledge.

9 Q. Okay. But he didn't input -- in your version of the
10 events, even what you're imagining could have happened, he
11 didn't need to input an access ID to effectuate these
12 payments, did he?

13 A. No. Correct.

14 Q. And he certainly didn't input a pin number or anything
15 like that, fair to say?

16 A. Once again, it's semantics. In order to get in, you
17 have to provide your username and password to access it.

18 Q. And the bank, to your knowledge, has never actually
19 produced any documents to verify if he went into her account
20 to do this or if he actually used his own account?

21 A. Not to my knowledge.

22 Q. Okay. At least that's never been asked of anyone?

23 A. Not by me.

24 Q. To investigate? Okay. You were talking earlier about
25 how it could not be that a restricted account could not pay

1 payments, that the system doesn't work that way. And then
2 you said that's because of your years of experience, you've
3 never seen someone's account being restricted and then this
4 happen. Is that fair to say, have you ever had an
5 experience in which a customer's account was restricted at
6 the same time he effectuates payments and he happens to
7 still, by failure on the bank's part, to be a named co-
8 owner of a bank account with this ex-wife, has that
9 experience ever come to you before?

10 A. I have never heard of that experience.

11 Q. Okay. And you worked in customer escalation. Is that
12 also fair to say?

13 A. I do handle some customer escalations, yes.

14 Q. And customer escalations is which a customer calls and
15 has an issue regarding on-line banking?

16 A. Yes. Bill pay specifically.

17 Q. Bill pay specifically, okay. Is that oftentimes a fun
18 conversation?

19 A. Not typically, but it can often end up very rewarding.

20 Q. Are you trained in how to speak to individuals during
21 these phone call escalations?

22 A. I personally am not.

23 Q. Is there training available at Bank of America on how
24 to speak to customers?

25 A. I'm sure there is for the customer -- for the call

1 centers.

2 Q. But you've never been trained on how to do that?

3 A. No.

4 Q. Do you know if the call center employees are actually
5 trained in how to speak to customers?

6 A. I do not.

7 Q. Fair to say it's important to watch what you say to a
8 customer on the phone no matter what the issue is?

9 A. I think that's common sense.

10 Q: In your experience you think -- in customer
11 escalations, do customers always use the correct bank
12 language?

13 A. No, I wouldn't think so.

14 Q. Okay. So you kind of give a little bit of deference
15 to customers when they call. And they may say overdraft,
16 but they mean insufficient funds. And you sort of
17 understand that, don't you?

18 A. I can't speak to that. That's not an area that I have
19 an expertise in.

20 Q. I'm just meaning when a customer uses one term but you
21 believe, because of your knowledge of the bank language,
22 they mean another, you cut them some slack, don't you?

23 A. Once again, I don't because I don't hand those type
24 situations. I can't speak to what the call centers do or
25 don't do.

1 Q. Okay. So the customers always use perfect bank
2 language when they speak to you?

3 A. I have -- prior to this coming up earlier this year
4 and last year, I had not spoken to a customer, a physical
5 customer. I work with the internal teams primarily.

6 Q. Okay. Now, you were asked a little bit earlier about
7 when the account may or may not have been frozen. And I
8 wanted to ask you if you have ever seen what's already been
9 marked as Plaintiff's Exhibit 11. And an off-chance that
10 it may be difficult to find, I went ahead and grabbed
11 another copy of it. Right here. Have you ever seen this
12 document before?

13 A. No, I don't believe so.

14 Q. Okay. Can you tell me just by reviewing it real
15 quickly, can you gather what it is?

16 A. It looks like a communication sent to Dr. Jernigan.

17 Q. Okay. And who is it signed by?

18 A. Bank of America.

19 Q. But who's it faxed by?

20 A. Check Free.

21 Q. So is it common for Check Free to present themselves
22 as Bank of America?

23 A. For customer support, yes.

24 Q. Okay. And on the next page, can you tell me what
25 dates these payments were actually remitted on?

1 A. The 16th and 18th.

2 Q. Okay. And -- I'm sorry. The 16th and 18th. What day
3 was Dr. Jernigan's account restricted?

4 A. It was from the 11th through the 16th.

5 Q. Okay. So his account was restricted when at least
6 four of these payments were made?

7 A. Remitted, but it was not in restriction status when it
8 was made, payment made.

9 Q. What is the difference between remittance and made?

10 A. Remittance is sent. Payment made is actually when the
11 account is debited.

12 Q. And you believe that the plumber understands the
13 difference?

14 A. Absolutely.

15 Q. That's all I have. Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. EDWARDS:**

18 Q. Good morning, Mr. Mitchell.

19 A. Good morning.

20 Q. Are you -- do you have an office at Bank of America?

21 A. An office.

22 Q. Yeah?

23 A. No.

24 Q. Where do you work?

25 A. I work -- currently, I work in One BAC in uptown

1 Charlotte.

2 Q. All right. Is that your primary location?

3 A. Yes.

4 Q. When did you come to Charleston?

5 A. Monday. Yeah, Monday evening.

6 Q. You came last night and you stayed overnight?

7 A. Yes. Actually, I came on Tuesday morning, actually.

8 I apologize.

9 Q. Oh, so you've been here all day Tuesday.

10 A. Yeah.

11 Q. And overnight?

12 A. Yeah.

13 Q. And are you going back today?

14 A. Yes.

15 Q. Are you familiar -- I believe you testified earlier

16 you're familiar with the BOSS system?

17 A. I'm somewhat familiar with BOSS, yes.

18 Q. And do you know whether or not the BOSS printouts

19 would identify whether or not the account has a restricted

20 status?

21 A. Yes, it would.

22 Q. And do you know how to do that, to go onto the BOSS

23 page and look at them and see if it was in a restricted

24 status?

25 A. I do have access to the system, but I have not used

1 that system in many years.

2 Q. But you know how it can be done?

3 A. Yeah.

4 Q. You know how to do it?

5 A. Again, I don't know if I could go out there and do it

6 myself. I have looked at account statuses back in a

7 previous role, years ago. But, again, I haven't done that

8 for several years.

9 Q. It's just been a while?

10 A. Yeah.

11 Q. You'd have to refresh your memory?

12 A. Yeah.

13 Q. From your memory, was it a difficult process to do?

14 A. Not too terribly difficult.

15 Q. While you're working for the bank to pull up a BOSS

16 screen?

17 A. No.

18 Q. How long would it take?

19 A. Less than a minute.

20 Q. How long would it take you to find the account number

21 and identify the restriction?

22 A. I think that would be pretty quick as well.

23 Q. A few minutes?

24 A. Yeah.

25 Q. Ten minutes?

1 A. Easily, yes.

2 Q. How long would it have taken you on a ground level to
3 remove access from an account?

4 A. I'm sorry. Restate.

5 Q. Sure. A Bank of America employee, two customers come
6 in and say we have a joint account and we want it to not be
7 a joint account. We want it to be -- I want to have
8 ownership, they're going to be removed.

9 A. Uh-huh (affirmative).

10 Q. How long would it take a Bank of America employee to
11 do that?

12 A. Not my area of expertise. Honestly, I don't know what
13 the turn-around time is for that type of a request.

14 Q. They have to make a request?

15 A. I would assume they would have to request the joint
16 ownership to be severed.

17 Q. Request it from whom?

18 A. From the customers.

19 Q. I'm saying the customer is in there, in the office,
20 signing paperwork saying, please do it now, Mr. Bank
21 Employee.

22 A. Okay.

23 Q. Do you know then how long it would take?

24 A. I do not.

25 Q. Do you know how that process works?

1 A. I do not.

2 Q. That's all I have. Thank you, sir.

3 A. Okay.

4

REDIRECT EXAMINATION

5 **BY MR. ABNEY:**

6 Q. Jeff, Ms. Flumian was asking you about your efforts to
7 provide documents. Are you aware of all the efforts that
8 have been taken by Bank of America to collect documents in
9 connection with this litigation?

10 A. No, I am not.

11 Q. You personally did not request documents from the
12 security group, correct?

13 A. No, I did not.

14 Q. And you don't know whether or not others at Bank of
15 America have requested documents from the security group?

16 A. No.

17 Q. From other groups from various divisions and groups
18 throughout the Bank of America?

19 A. No.

20 Q. You don't know about that stuff?

21 A. I do not.

22 Q. Ms. Flumian was directing you to a portion of your
23 deposition on page 43. And she actually read beginning at
24 line 11. I'm going to back you up to line 5. Question,
25 Okay. Did you say earlier that there would be a record of

1 whether or not 4502 versus the account ending in 8854 was
2 selected? The answer, I'm not sure. Yeah, I'm not sure.
3 I'm not positive. I think there is, but I can't say a
4 hundred percent whether that's true or not. Is it true --
5 I mean, you testified that you didn't know whether those
6 documents existed, correct?

7 A. Correct.

8 Q. And that's what you testified here today?

9 A. Correct.

10 Q. That's all I have.

11 MS. FLUMIAN: Just one?

12 THE COURT: Yes, ma'am.

13 **RECROSS EXAMINATION**

14 **BY MS. FLUMIAN:**

15 Q. Mr. Mitchell, further down on that page at line 22,
16 the question was, All right. Okay. If you wanted to get a
17 record of such a selection from Fiserv, would you be able
18 to do that. And your answer was?

19 A. We're on page 43, right?

20 Q. Yes, sir. It's the last line.

21 A. I could inquire.

22 Q. And the next page, have you done that?

23 A. I have not.

24 Q. And the next question is, have you been asked to do
25 that?

1 A. No.

2 Q. So you've never been asked to actually get the
3 information for which account was selected? Whether or not
4 it exists, you haven't even been asked to see if it exist,
5 fair to say?

6 A. Correct.

7 Q. Thank you.

8

RE-REDIRECT EXAMINATION

9 **BY MR. ABNEY:**

10 Q. And, again, Mr. Mitchell, you personally did not ask
11 for that.

12 THE COURT: Whoa, whoa, whoa. We've had reply
13 and recross.

14 MR. ABNEY: Oh, I'm sorry.

15 THE COURT: Now, we have had, I believe direct,
16 cross, redirect and recross. We've got to stop somewhere.

17 MR. ABNEY: I apologize, Your Honor.

18 THE COURT: Okay. Any recross from Defendant
19 Katz?

20 MR. EDWARDS: No, sir.

21 THE COURT: Okay. Thank you very much.

22

RE-REDIRECT EXAMINATION

23 **BY MR. ABNEY:**

24 Q. Jeff, you didn't personally request ---

25 THE COURT: Sir, I mean, it's over. You've

1 already been on -- you've had direct, redirect, they've had
2 recross. That's the end of it.

3 MR. ABNEY: All right.

4 THE COURT: Not unless y'all want to agree to let
5 him have some more questions. Plaintiff want to let him --
6 agree? Defendant Katz? And I'll give you the opportunity
7 to cross on whatever he asks.

8 MR. EDWARDS: I've heard everything I need to
9 hear.

10 THE COURT: Pardon?

11 MR. EDWARDS: I've heard everything that I need
12 to hear.

13 MS. FLUMIAN: So has the plaintiff.

14 THE COURT: Okay. Thank you. Thank you. You
15 may step down. Thank you very much. Any further
16 witnesses?

17 MR. ABNEY: No, Your Honor.

18 THE COURT: All right. Have y'all made a
19 decision whether you have any reply testimony or not? Do
20 you need some time to talk about it or think about it?

21 MR. WAGGONER: I need two minutes for another
22 purpose, but I think we're okay without reply testimony.

23 THE COURT: Okay. Well, we'll take about a five
24 or ten minute break and if y'all have any reply testimony,
25 I'll be glad to hear it.

1 MR. WAGGONER: Okay.

2 THE COURT: And I -- I know I said yesterday I
3 would very much like to hear some closing arguments, okay?
4 And if y'all need some -- do you plan on having any reply?

5 MR. WAGGONER: No reply testimony.

6 THE COURT: How about Defendant Katz?

7 MR. EDWARDS: No, sir.

8 THE COURT: I'll give y'all about a ten minute
9 break. Please put together a short closing argument.

10 MR. WAGGONER: Thank you, sir.

11 THE COURT: Okay.

12 (WHEREUPON, the court stood at recess for a short
13 break.)

14 THE COURT: Please be seated. I believe we've
15 got to hear some post-trial motions from the Defendant. Is
16 that correct? Are you going to just renew them or do you
17 want to make any additional arguments?

18 MR. ABNEY: I guess I renew my motion. One
19 additional argument, Your Honor, would be that with regard
20 to the negligence as to Dr. Jernigan, I'd already
21 previously noted that if the negligence is a statement that
22 the bank made, that that's the breach, then there's no
23 cause of action for negligent slander. My understanding is
24 that ---

25 THE COURT: No cause for what, now? I'm sorry.

1 MR. ABNEY: Negligent slander, making a negligent
2 statement. They would actually have to prove malice.

3 THE COURT: Well, let me say this to you before
4 -- maybe I'm viewing this whole issue wrong, but from the
5 Court's perspective, I quite frankly think as far as the
6 doctor's concerned, the duty from the bank, from my
7 perspective, from what I've heard in the last two days, is
8 real simple. Once the bank started the criminal process,
9 okay, which they did through Ms. Katz, and then they turn
10 around and determine part of that was their error, at that
11 point in time, I think they needed to make a complete
12 evaluation, recapture all the electronic data on that
13 transaction, supply it to Ms. Katz, supply it to the police
14 before this man was arrested. I think that was their duty.
15 That's the way I'm viewing it. And as simply as I could
16 put it, as brief as I can put it, okay? And they hadn't --
17 up until today, four years later, they still have not
18 requested what account he went into, whether it was her
19 account or his account, four years later. They still have
20 not made a complete disclosure. And I think once, once
21 they determined it was their error, they had started the
22 criminal process, i.e., they told this lady that somebody
23 had accessed her account with a pin number, user number and
24 I guess a password, whatever the bank used. At that point
25 in time when they discovered, no, that's not what happened,

1 they needed to go further and do a complete investigation,
2 reveal that to Ms. Katz and reveal that to the police and
3 let them make a knowledgeable decision on whether an arrest
4 warrant should be issued or not, okay? Now, that's the
5 duty that I view to Dr. Jernigan, okay? I may be all wrong
6 and I think that's the only duty.

7 MR. ABNEY: Okay.

8 THE COURT: Because he was -- part of the problem
9 is he was -- I guess he caused a lot of this himself
10 because obviously he knew he was on the account because he
11 had been monitoring it. He should have gone to the bank
12 and said, hey, I don't belong on this account. Get me off.
13 He didn't do it. He monitored it.

14 Now, whether he intentionally, on the drop-down box
15 chose her account accidentally or intentionally or not, I
16 don't know. But if the bank had done a complete
17 investigation, we may know. Today, four years later, this
18 Court still doesn't know whether or not he went into his
19 account on the drop-down box to do the pay or went into her
20 account to do the pay. Still don't know that because the
21 bank hasn't asked. Okay?

22 Now, that's the way I'm viewing the duty on behalf of
23 Dr. Jernigan. I'm just telling you before we do closing
24 arguments. As far as your motion for -- go ahead with any
25 other motions.

1 MR. ABNEY: I mean, I guess that's ---

2 THE COURT: I'm not viewing any slander issue,
3 okay?

4 MR. ABNEY: Okay. I guess ---

5 THE COURT: I want you to understand that.

6 MR. ABNEY: Understood.

7 THE COURT: I'm just trying to be fair to you in
8 my thinking at this point in time. I'm not going to sit
9 here and tell you that I'm going to rule against you. I'm
10 not trying to insinuate that, but I'm just telling you my
11 thought process so you'll be aware of it, okay?

12 MR. ABNEY: I understand. And as for the motion
13 as to the duty, I guess our motion as to that standard
14 there, our duty would be that there is not evidence of a
15 standard of care in the record as to what steps a bank is
16 supposed to take once they're informed of customer fraud.
17 And then as to the facts ---

18 THE COURT: I don't have any problem with what
19 they did. Hey, go file a report. File a fraud report.
20 But then once they found out, hey, they were part of the
21 blame, they never told anybody. They never came clean
22 about it. They never told the police, okay? But that's
23 neither here or there. And I think that's the only duty
24 that the bank had to Mr. Jernigan the way the Court's
25 viewing it, okay?

1 MR. ABNEY: Understood.

2 THE COURT: Your motion's denied. Okay? Do you
3 want to make any other motion for the record?

4 MR. ABNEY: Just renew the arguments that we made
5 out of ---

6 THE COURT: All right. Those motions are denied.
7 Anything else?

8 MR. WAGGONER: Motion-wise?

9 THE COURT: Pardon?

10 MR. WAGGONER: By motion or ---

11 THE COURT: Yeah, by motion.

12 MR. WAGGONER: No.

13 THE COURT: Okay. Who wants to go first, very
14 briefly. And I'll also say, I'm very interested in
15 listening to your damage argument, okay?

16 MR. WAGGONER: Then let me, in that case ---

17 THE COURT: I think I tried to enunciate the duty
18 of the way I viewed it, right or wrong, as simply as I
19 could put it in short terms.

20 MR. WAGGONER: And to that extent, I will now
21 shorten my closing.

22 THE COURT: I'm sorry, what?

23 MR. WAGGONER: I say, I will now shorten my
24 closing as a result of your remarks. The only thing I
25 would point out to ---

1 THE COURT: Now, let me say this. Don't shorten
2 it if you think the bank has some other duty.

3 MR. WAGGONER: I do.

4 THE COURT: Then please tell me.

5 MR. WAGGONER: I do.

6 THE COURT: I'm just telling you the way I'm
7 viewing it at this point in time, okay?

8 MR. WAGGONER: You have obviously listened to the
9 evidence. I want to suggest that another example of the
10 bank's negligence was the failure to alert either Ms. Katz
11 or Dr. Jernigan to the unauthorized viewing. Remember,
12 that happened within a month after the alleged
13 renunciation. There's been a great deal of suggestion
14 that, gee, Dr. Jernigan must be negligent because he didn't
15 call the bank. There's been testimony they have security
16 procedures. If he wasn't supposed to be able to access her
17 account for viewing, two months after he renounced, why
18 wouldn't the bank have known that? There's a security
19 issue and why would it be his duty to call this trillion
20 dollar corporation and with all the resources and the
21 computer speak that they speak, and that all the
22 magnificent and intertwined mechanisms and say, whoa, he
23 was supposed to have been cut off as of January 5th. And
24 we see that he's entering her account. We need to do
25 something. He shouldn't have to have done that despite his

1 ---

2 THE COURT: Well, I'm just saying I think he knew
3 he didn't belong in that account but he was in it. That's
4 all I'm saying, okay?

5 MR. WAGGONER: Correct. But the bank should have
6 known that he was in it if you believe their magnificence
7 ---

8 THE COURT: Well, I think the problem is they've
9 got too many experts in general areas. They've got three
10 experts to cover one subject matter and nobody knows what
11 the other two experts are doing, you know.

12 MR. WAGGONER: Precisely. Now, as to damages,
13 and I'm assuming you've asked me to elaborate on damages.
14 Dr. Jernigan is an M.D. He is a man of science. He's, by
15 definition, not emotional. He's not in the arts. He's a
16 quiet Doc. He's had to relive -- you know, obviously, the
17 initial damage was this completely unannounced dragging
18 from his home almost -- at five in the morning, his son and
19 a lady friend were there, taken in handcuffs to wherever
20 they were and then transferred to Leeds Avenue in handcuffs
21 and shackles and kept for eighteen hours with the other
22 standard inhabitants.

23 THE COURT: Well, let me ask you this, okay?

24 MR. WAGGONER: Sure.

25 THE COURT: The problem I have with Dr. Jernigan

1 and the facts that I have heard, even if he intentionally
2 choose or didn't intentionally choose, when he went to the
3 confirmation_section of the drop-down box, he should have
4 seen which account he was taking the money out of.

5 MR. WAGGONER: Well, we don't know.

6 THE COURT: I know we don't know. And I
7 understand that and we still don't know four years later.
8 And we could have know.

9 MR. WAGGONER: And we could have. But his only
10 testimony is that he did everything the way he normally did
11 it. And had done for three years without a problem. The
12 only difference is, and I have trouble as a human being
13 believing, especially when Check Free is involved and
14 hasn't come to testify, that the fact that if the account
15 was restricted that very week and this is the time they
16 went to his ex-wife's account is unrelated. I just cannot
17 accept ---

18 THE COURT: Well, you may be right. But there's
19 no evidence to that effect. I understand that's your
20 theory, but there's just absolutely no evidence there.

21 MR. WAGGONER: There's no evidence because
22 they've been resistant throughout. We've tried, you know,
23 as the pleadings will show, Your Honor, it's consistent
24 that they've denied that his account was restricted until
25 earlier. It's kind of hard to get evidence and I think you

1 can see what we were faced with when Check Free wasn't
2 here. It was Susan Dunn who found out about Check Free.
3 The only evidence is he did things the way he normally did
4 it. We can't swear what the exact, what's it called,
5 matrix of accounts was. We suggest that because there may
6 be a relation to the restriction of this account, that she
7 didn't know about it until later. I don't know. I don't
8 know how they would have proved it given the resistance
9 we've had to some very basic facts, which include from the
10 very beginning of the complaint we used the word restricted
11 and suggested insufficient funds or frozen is the word we
12 used. You've heard testimony that, you know, frozen isn't
13 restricted. Well, come on. To a layman, I think frozen is
14 restricted. And restricted is debit only but not checks.
15 Checks and debits come from the bank, but bill pay comes
16 from Check Free. It's an impossible morass. The only
17 evidence you've heard is from his -- I was just doing
18 things normally. If he was as secretive as his wife, ex-
19 wife has suggested, would he really have gone onto a
20 computer if he was paying three to four thousand a month,
21 would he have really deliberately chosen her account? We
22 suggest there's no evidence of that. He may have
23 inadvertently done it because possibly the matrix changed,
24 possibly there was a relationship between the bill pay
25 controlled by Check Free and his restricted, frozen,

1 whatever account. I don't know. I mean, it's very
2 difficult for him and us to prove with continued resistance
3 and failure to investigate by the bank, what exactly
4 happened there. At best, it was an inadvertence. And I
5 would suggest, again, all along his access was --
6 theoretically, should have been seen within two months
7 after the renunciation and nothing was done then. And
8 there's no evidence that he knew that access reviewing
9 would mean access for bill pay. In fact, we specifically
10 deny that.

11 But I'm not sure how that relates to damages. I would
12 suggest, although he's not a histrionic -- in fact, he's a
13 polar opposite of his ex-wife -- that this is a deeply
14 painful experience, beginning with that five a.m. rousting
15 from his bed, continuing through his incarceration, all of
16 which was completely unanticipated. And thereafter, and
17 more significantly, Judge, as Ms. Katz described, you know,
18 this is a guy who worked two jobs, who put his two sons
19 through expensive education and what relationship he has
20 with his sons. Again, he may not break down on the stand
21 over it, but that's not his personality. It doesn't mean it
22 doesn't hurt. People react to pain differently. Everybody
23 has pain and everybody reacts differently to pain. It
24 doesn't mean he shouldn't be compensated just because he
25 didn't go to a doctor over the distress, or take drugs.

1 That is the essential damage, obviously, and the
2 litigation, the continued, four years later as Your Honor
3 suggests, he's dealing with this. He's dealing with his
4 ex-wife. He's dealing with the relationship with his sons.
5 It's unnecessary. Now, that's actual damages. I also
6 contend there should be punitive damages in this case, not
7 just for the original ---

8 THE COURT: Let me just say, I'm not going to
9 find any punitive damage, okay? I don't think it rises to
10 the level of punitive damage on your client's fault because
11 of his conduct, okay?

12 MR. WAGGONER: Okay. Well, then I hope you award
13 ---

14 THE COURT: I'm just trying to -- I don't want to
15 mislead you. I just don't -- I'm not going to award any
16 punitive damage.

17 MR. WAGGONER: Well, if your mind's made up, I
18 won't argue that.

19 THE COURT: Yeah, I've made my mind up on
20 punitive, okay?

21 MR. WAGGONER: All right. I would suggest then
22 and ask that fair compensation be recognized for the actual
23 damages, that a man with an unblemished record, a high-
24 achieving man, a man who has been an integral part of his
25 family and his sons' life, be compensated for all that he's

1 been through. Not just the obvious trauma of arresting by
2 police, but also for the interference with the family
3 dynamics that this has caused, as well as expressed by his
4 former wife.

5 THE COURT: Well, what do you think's a fair
6 amount for that?

7 MR. WAGGONER: You're asking for a ---

8 THE COURT: Yes, sir, I'm asking.

9 MR. WAGGONER: Two hundred and fifty thousand
10 dollars.

11 THE COURT: Okay. All right. Anything else you
12 want to add?

13 MR. WAGGONER: If you're asking me what I think
14 is fair, no.

15 THE COURT: Yeah, that's what I asked you.

16 MR. WAGGONER: And if you're not talking punitive
17 damages.

18 THE COURT: No, I'm not talking punitive. I've
19 been very blunt with you about. I'm not going to award any
20 punitive, okay? That mind's made up, all right?

21 MR. WAGGONER: All right, sir. I've said what I
22 can say then.

23 THE COURT: All right. Anything else?

24 MR. WAGGONER: Not on damages.

25 THE COURT: Okay. Anything else on anything you

1 might want to say?

2 MR. WAGGONER: No. Most of my remarks were
3 either on the duty, the duty to avoid ---

4 THE COURT: Do you see any other duty that the
5 bank may have had that the Court may confer ---

6 MR. WAGGONER: Other than what it has expressed.

7 THE COURT: Pardon?

8 MR. WAGGONER: Other than what the Court has
9 already expressed. That is duty -- once they advised
10 somebody to file a police report and simultaneously knew it
11 was part of their error, they absolutely had a duty to
12 investigate it, fully and fairly, especially given the
13 level of demands for an investigation that were pushed on
14 them, and the police involved.

15 Now, you know, Sergeant Keegan was in here. I mean,
16 you either believe he talked to the bank or didn't. And I
17 think it's unfortunate it's not in his official police
18 report, but he mentioned talking to somebody whose name
19 began with "B". Well, there's a Barbara Brisson, there's a
20 Bernadette in the record somewhere. There are -- you
21 either believe him or you don't. Obviously, if he didn't
22 talk to the bank, then that's -- I suggest he did. He
23 suggested somebody said, oh, yeah, he had access. Yeah, he
24 had to have done something. He, an experienced white-
25 collar police officer, left with the distinct impression

1 that this was no bank error and he said, I think his words
2 were, if I'd known that, if I'd known anything like that,
3 we wouldn't be here today. That means he would have --
4 this man would not have been arrested. And so, again, now
5 I'm back to the negligence, but I think that's part of it,
6 not just the original error but the failure to follow up
7 when they knew there was an error and failure to intervene
8 when they had pushed the criminal prosecution. And the
9 failure to talk to Dr. Jernigan, and the instruction to his
10 ex-wife, don't talk to him. The man was alone. He didn't
11 know. He thought this thing was over and done with until
12 five o'clock in the morning, four or five swat type are
13 dragging him out of his house in front of his son. Okay.
14 He was asleep but, you know, I mean, I think -- I don't
15 think that can be underestimated.

16 THE COURT: Okay. Thank you so very much.

17 MR. WAGGONER: Thank you.

18 THE COURT: Mr. Edwards.

19 MR. ABNEY: Thank you, Judge. I won't do a whole
20 lot of factual ---

21 THE COURT: I'm sorry. What?

22 MR. ABNEY: I'm not going to do a whole lot of
23 factual issues unless you would like to hear some.

24 THE COURT: Well, I'd like to hear what you think
25 the duty the bank had to your client. I understand not

1 removing the plaintiff from the account.

2 MR. ABNEY: Certainly, that's one.

3 THE COURT: I understand that, okay. That's one.

4 MR. ABNEY: That's one. There's several.

5 THE COURT: Pardon.

6 MR. ABNEY: There's several duties.

7 THE COURT: How do you view them?

8 MR. ABNEY: Well, first, they had a duty to

9 remove him in '04. She met with the bank and Dr. Jernigan

10 at the bank and argued with Dr. Jernigan at the bank,

11 talked with a bank employee about these issues. Made him

12 -- sought repeated assurance that everything would be taken

13 care of. She was assured. She trusted them to do it.

14 They didn't do it. Three years go, by apparently leaving

15 access -- him access to view her account. Now, we don't

16 know -- we know he did it at least on one occasion. We

17 don't know if it happened more than once, not more than

18 once or if it happened everyday. It could have. The bank

19 didn't even know about it, never told her about it. And

20 after it was discovered in 2007, still didn't tell her

21 about it. Presumably still didn't know about it. I don't

22 know how they couldn't have known about it. But there's a

23 duty, I think a duty to know that someone is still

24 accessing the account that shouldn't be here. You've got

25 all these computer people doing all these computer screens

1 and knowing access ID's and PIN numbers and on-line bill
2 pays, and all this stuff that the bank has, but they don't
3 know what -- the left hand has no idea what the right hand
4 is doing. And who's in the middle? My lady asking for
5 help, asking, tell me what happened, please. Somebody at
6 the bank please just tell me what happened.

7 THE COURT: Well, I understand what you're saying
8 and that's the way the case has been tried, but within --
9 within, I don't remember the exact time or what, twenty-
10 four, forty-eight hours after she says, hey, somebody's
11 taking my money, she had the money back.

12 MR. EDWARDS: That's correct. She did have the
13 money back. The bank didn't give her the money back, which
14 is their policy. They refused to give her her money back.
15 They said, you have to go to the police ---

16 THE COURT: But the ex-husband bank transferred
17 it out of his account into her account.

18 MR. EDWARDS: Sure they did. After she had gone
19 to the police like the bank told her to.

20 THE COURT: So at that point in time, why
21 shouldn't it have been over as far as your client's
22 concerned?

23 MR. EDWARDS: Because she's still asking how it
24 happened. They still give her no answers. They meet at
25 the bank, get Dr. Jernigan to refund some money, tell her

1 -- Ms. Brisson said, I don't know how this happened.
2 You're going to need to further investigate it, gives her
3 no guidance on how to do that, doesn't tell her who to
4 speak to or where to go or what you're looking for. But if
5 you want to know, you've got to go, you've got to go look
6 more. So she does that. She conducts her own
7 investigation. She calls the bank and asks them more
8 questions. The police are doing the same thing. They did
9 nothing from the bank other than what we've heard
10 throughout this trial, he had to have done it
11 intentionally. We could have looked at his account, we
12 didn't.

13 THE COURT: Well, assuming, as you've said, the
14 duty's not removed from the account and the result, as a
15 breach of that, eleven hundred dollars was removed from her
16 account, but that was corrected almost immediately. What
17 other duty did the bank have, other than that, to tell her
18 what actually happened?

19 MR. ABNEY: Well, I think the duty to
20 investigate, the same duty that they owed to Dr. Jernigan
21 goes to Ms. Katz, particularly when she asked for it and
22 they had made her go to the police to file the report and
23 she wanted answers. She knew what the bank had told her,
24 that he had to have done it intentionally. She just wanted
25 to see how. It should have been easy for the bank to do,

1 but they didn't do anything. So the same thing they owe
2 Jernigan, they owe to Katz. Both duties and both instances
3 flow to her from the duty in '04 to remove him. None of it
4 would have happened if he had been removed in '04. She
5 would never have had to call up and ask did he do it
6 intentionally. She would never have to hear them say he
7 did it intentionally, but we're not going to give you your
8 money, you have to go to Court, never would have had to
9 done that. Never. None of it would have happened if they
10 would have removed him in '04. But they didn't. So a new
11 duty arises whenever it's discovered, a new duty. She
12 comes in asking questions, tell me how it happened? I want
13 to know. I'm being hurt. I'm being caused distress. I'm
14 crying. She cried on the stand twice. Had many sleepless
15 nights, many, many sleepless nights. Spent thousands of
16 dollars -- incurred thousand of dollars in medical cost.
17 What she told the bank ---

18 THE COURT: What's the total medical cost?

19 MR. EDWARDS: Well, Zinzer was five thousand.
20 Pryor's got several thousand in medicals. Dr. Bilton
21 didn't have medical records for each visit, but each one of
22 those probably -- Zinzer's regular rate was a hundred and
23 fifty. He charged a hundred dollars. I'd say a reasonable
24 ---

25 THE COURT: There wasn't but two or three in

1 those records that indicated it was a result of emotional
2 distress.

3 MR. EDWARDS: Well, there's two or three.

4 THE COURT: Or depression. I guess I should say
5 depression.

6 MR. EDWARDS: That's right. Those two or three.
7 If that's all there are, and they're worth a reasonable
8 value for that service, for that medical cost. And Zinzer
9 was one fifty, Pryor was one sixty-five. Somewhere in
10 there's probably a pretty fair value for that. But that's
11 just paper, that's a medical ---

12 THE COURT: Well, let me ask you this question
13 and let me tell you my concern with your situation, your
14 client's case. Was your client upset because of the ex-
15 husband's conduct or the bank's conduct? Was this
16 emotional distress the result of her husband's conduct or
17 the bank's conduct?

18 MR. EDWARDS: That's a fair question.

19 THE COURT: And that's my difficulty, okay?

20 MR. EDWARDS: That's a fair question. Had she --
21 both, is the answer. Had the bank done -- first she told
22 the bank, you know, what the issue was, how she felt about
23 it, how she felt about it with her husband, so they knew
24 that. When it came up in '07, they still knew it. Why?
25 Because they knew it before and because she told them again

1 in '07. So it's from the bank for not doing their job
2 investigating, but it's at the same time directed at the
3 time at Jernigan because the bank is telling her, he did it
4 intentionally, but don't go talk to him about it. Don't
5 talk to him about it. He had to have done it
6 intentionally, but don't talk to him about it. So, yeah,
7 it's directed at him at that time. Who else would it be
8 directed at? It's still directed at the bank because she's
9 still asking them to do something, to conduct an
10 investigation to tell her how it happened and they keep not
11 doing it.

12 But at the same time, it's directed at him because
13 they're telling her, he did it or that he had to do it.
14 Only after we get sued and the bank gets sued, because he
15 doesn't know, they didn't tell him anything about what's
16 going on either. As far as he knows, she's out to get him,
17 because the bank never told him what they told her. Once
18 we learn, hold on, there's something going on with this
19 account, in his account, there's a restriction, there's a
20 freeze, there were some checks that got on hold. We know
21 all of that now. We never knew that before. Take a minute
22 and reflect. This is what happened. This is what I was
23 asking for, for three years or seven years. This is what I
24 was asking the bank to do. Here's what it is. They can't
25 explain to me, they can't explain in here, in this trial,

1 how it happened, but they admit that there was a
2 restriction, that some check got held. And there was
3 issues on his account. They were remitted during the time
4 that it was restricted, but they didn't get paid until
5 afterwards ---

6 THE COURT: I mean, it may have happened, it may
7 have not, but there's no way of really telling.

8 MR. EDWARDS: I understand. We'll never know.

9 THE COURT: Right.

10 MR. EDWARDS: But had this been done on day one
11 in '07, ten minutes he said to look up 4502 on the BOSS
12 screen, identify the restriction, what it meant, how it
13 affected the account. Ten minutes they could have taken of
14 their day to help her. Refused to do it. Just didn't do
15 it.

16 Why go on to the police at that point? She said she
17 didn't want to go but she had to go. Once she did it, it's
18 done. She'd already filed the police report. It gets out
19 of the bag, there's no taking it back. Okay? You either
20 stand up for what you believe and think is right at the
21 time or you don't. She's very thoughtful, very prudent,
22 doesn't jump head-first. She may wear her heart on her
23 sleeve, certainly, but jump head-first, go into a police
24 department, file charges against her husband, absolutely
25 not. Absolutely not. But they told her she had to do it

1 so she did it and then it was done. There's no undoing it.
2 If you don't follow through with what you say you're going
3 to do, who you are, who are you? She's not willy nilly
4 going to the police department filing a charge. What's she
5 supposed to do? Her reputation is at stake, her
6 credibility is at stake within her family, within the
7 community. If people think that she's out there just going
8 to the police for no good reason, which is what would
9 happen had she just done nothing. She's going to be harmed
10 in that way. So what's she supposed to do. The bank
11 couldn't take ten minutes to help her.

12 If they would have told her -- she testified if they
13 would have told her about the restriction, I still don't
14 know whether or not, I don't know what happened. I don't
15 think anyone knows what really happened. He says it was
16 inadvertent or it automatically defaulted or whatever,
17 overdraft, default, I don't know. Nobody knows. The bank
18 said, no, it couldn't have happened that way. Well, why
19 couldn't it happen that way? Because it's not supposed to
20 work that way, but not having ever looked actually at
21 whether or not it happened. So we still don't know. But
22 she acted on what the bank told her to do and she did that.
23 And it's caused all this problem, all of them. Had they
24 taken ten minutes on that night, had they taken ten minutes
25 in '04, it never would have happened. Had they taken ten

1 minutes in '07, it would have never happened.

2 THE COURT: It might have taken longer than ten
3 minutes.

4 MR. EDWARDS: Well, let's say it took an hour.

5 THE COURT: Okay. All right.

6 MR. EDWARDS: They made nine billion dollars in
7 2007.

8 THE COURT: Well, what do you think is a fair
9 compensation to your client?

10 MR. EDWARDS: If it took them an hour, if it
11 would have taken then an hour to do that and they made a
12 million -- over a million dollars in an hour profit in
13 2007. She's been dealing with this for four years. Her
14 family's been dealing with this for four years. Her sons
15 are dealing with this for four years. Who knows what it's
16 going to be like after the fact? I don't know. Are her
17 sons going to -- what are the sons going to think? What's
18 happened has happened.

19 THE COURT: Well, what's it worth, dollars and
20 cents? I'm asking for your figure.

21 MR. EDWARDS: If they could have done it in an
22 hour, I'd say she ought to get hour profit from the bank,
23 actual damages. And I think the fact that they knew what
24 they were -- and they knew how it was affecting her ---

25 THE COURT: Well, what's that dollar figure from

1 your perspective?

2 MR. EDWARDS: That's punitive damages.

3 THE COURT: Okay.

4 MR. EDWARDS: By knowing ---

5 THE COURT: Well, what about actual damages?

6 What's your figure for actual? What are you asking for?

7 MR. EDWARDS: Their one hour profit.

8 THE COURT: Pardon?

9 MR. EDWARDS: Their one hour profit.

10 THE COURT: Their one hour profit?

11 MR. EDWARDS: Yeah. In 2007.

12 THE COURT: What was that?

13 MR. EDWARDS: One million, seventy-six thousand
14 dollars four hundred eighty-four dollars and two cents.

15 THE COURT: Okay. Anything else?

16 MR. EDWARDS: Punitive damages.

17 THE COURT: Okay. All right. Thank you very
18 much.

19 MR. EDWARDS: Thank you, sir.

20 THE COURT: Mr. Abney.

21 MR. ABNEY: Thank you, Judge. Judge, I don't
22 think it's true that the bank didn't tell what they knew
23 about how this happened. Ms. Katz testified that she was
24 told that night that Dr. Jernigan had made the payments and
25 that he had been able to make them because the bank

1 inadvertently failed to remove his access to the account
2 on-line. When Jernigan -- when it was a joint account,
3 Jernigan had access to the account through on-line banking
4 and bill pay. What they told her over and over again is,
5 we screwed up. We didn't shut him out on-line. That's how
6 this happened. Today as we sit here, that is everybody at
7 the bank's understanding of how this happened. We messed
8 up in 2004 and simply forgot to take -- neglected to take
9 him off the on-line access. Ms. Katz has testified she was
10 told that that night. I mean, there's requests for
11 admission that are in evidence stating in exactly that.

12 THE COURT: What do they say exactly?

13 MR. ABNEY: Admit that the bank informed you on
14 or about January 18, 2007 that the bank made an error in
15 failing to eliminate Jernigan's ability to access the 8854
16 account after 2004. Admit. Admit that bank employee Laura
17 Brisson informed you on or about January 23, 2007 that the
18 bank made an error in failing to eliminate Jernigan's
19 ability to access the account after January of 2004. The
20 Defendant Katz admits that a bank employee informed her on
21 or about January 23rd, 2007 that the bank made an error in
22 failing to eliminate Jernigan's ability to access the 8854
23 account after January 2004. Defendant Katz does not recall
24 the name of the bank employee at this time. Your Honor,
25 there's no question, he had the access and we simply failed

1 to eliminate that access. No one told her that he stole a
2 PIN number or anything like that. That's not what she
3 testified to. What she testified was that she was told
4 that Jernigan was able to make these payments because he
5 still had access to the account on-line. The letter from
6 William Navarez in August says exactly the same thing. It
7 says -- it's the letter dated August 3rd, 2007. In the
8 third paragraph, which Mr. Navarez testified was his
9 summary, his written report to Ms. Katz of how these
10 transactions occurred, he says, as discussed during our
11 telephone conversation, our records indicate Floyd Jernigan
12 was removed from the account title on the account number
13 ending in 8854 on January 5, 2004. At that time, Mr.
14 Jernigan's name was removed from the monthly statements.
15 Unfortunately, as a result of this inadvertent error, his
16 name remained as a co-owner on the account profile and he
17 still had access via on-line banking. Mr. Jernigan was
18 able to access the account on January 17, 2007 and process
19 five on-line bill payments that were debited from checking
20 account number ending in 8854 totaling the amount of eleven
21 hundred and fifty-three dollars and seventy cents. That's
22 the same thing she was told the very first night. It's the
23 same thing that she was told all along. There's nothing
24 ---

25 THE COURT: Well, what she testified to, ex got

1 into your account. File a police report, fraud report with
2 the bank to get the money back. Ex has some access to her
3 account. Very clear it was not an accident. Then she
4 said, never got an answer how it happened. And she says, I
5 needed to know. And she went on into explanation about how
6 many times she wanted to know how it happened, what
7 happened, okay? That was her testimony about what the bank
8 told her. But go ahead.

9 MR. ABNEY: I mean, I understand that she wanted
10 to know more about it, but what she testified at the very
11 beginning of my cross-examination -- I'm sorry, I don't
12 have the transcript in front of me, but what she testified
13 was that she was told that night that Dr. Jernigan was not
14 closed out on-line and he was, therefore, still able to
15 access the account. And it required, in order for him to
16 make a payment, it would require some affirmative conduct
17 on his part. And she understood that it meant he had to
18 select the account for payment. That's what they told her.
19 That's what Mr. Navarez, I mean, Mr. Navarez was telling
20 her. That's what ---

21 THE COURT: Well, I understand. But that
22 happened in August, okay? Navarez put that in writing in
23 August, so that was the first writing I believe she had
24 from the bank. But go ahead.

25 MR. ABNEY: That was the first writing, but it's

1 substantially exactly what she says she was told on the
2 night she discovered the transactions. And that's what
3 we've maintained all along. I mean, we still think that's
4 how it happened, is that the bank simply failed to
5 eliminate his ability to access the account on-line. I
6 know Ms. Katz kept asking the bank for more information,
7 more information, more information, and eventually asked
8 Mr. Navarez to put in writing that Dr. Jernigan had to have
9 done this deliberately, which he refused to do and told her
10 it could, quote, have been an honest mistake on Dr.
11 Jernigan's part. That's in his tracking notes and in the
12 record.

13 Your Honor, there was nothing else to give her. There
14 was no more information that we knew. And as for this
15 issue of the failure to notify her of the restriction, no
16 one at the bank ever believed that that has anything to do
17 with how these transactions occurred. And the first time
18 the bank had any notice that that was the theory, that the
19 account was somehow restricted or frozen, it's not in the
20 complaint, Your Honor. It says, insufficient funds. We
21 were looking for a bill pay. The first -- I'll tell you,
22 when I got the complaint was pull out the bank statement
23 and see if he had money to pay these -- to cover these
24 bills in his account and he did. So that was clearly not
25 the case, so we denied that. It really wasn't an overdraft

1 situation.

2 Ms. Katz conveyed to Mr. Navarez that she'd heard that
3 the payments may have occurred because it was an overdraft
4 situation, and Mr. Navarez responded to her, it's in the
5 letter in August. I mean, he -- as part of his report, he
6 explained to her that that could not happen because one
7 checking account did not serve as overdraft for another.

8 Once we were notified that there was this issue of the
9 restriction or at least that that was the theory, we looked
10 and we finally found in BOSS that there was a restriction
11 on the account. It doesn't change our opinion that it
12 didn't have anything to do with this transaction, and
13 there's no reason any bank employee would go hunting in
14 BOSS for a restriction in January of 2004 when it's very
15 clear what simply happened. To this day, we think the only
16 way those transactions could have occurred is by Dr.
17 Jernigan picking the account. And I don't know if he did
18 it purposefully or inadvertently and Mr. Navarez said, it
19 could have been an honest mistake. But all we know are
20 facts. And the facts we knew were that this access to the
21 account was not eliminated in 2004. He was still able to
22 access it and he did, and made payments. And the person
23 who was in the best position to prevent that from happening
24 after January 2004 was Dr. Jernigan. As Your Honor pointed
25 out, I mean, for three years -- assuming he only accessed

1 on-line banking, went in, put in his user ID or username
2 and password once a month over a three-year period, thirty-
3 six times he logged in, looked up there, right there on the
4 screen is the 8854 account. He clicked on it. He's
5 testified that he clicked on it multiple occasions. Now, I
6 know he says he didn't think he could get any money out of
7 it, that's fine. But he's admitted that he knew when he
8 accessed that account on multiple occasions prior to
9 January of 2007 that he shouldn't be able to do that. All
10 he had to do was call up the bank at that point and say,
11 guys, I've submitted the paperwork to be shut out of this
12 account in connection with my divorce. I'm still able to
13 get into it. He didn't do that. For whatever reason, he
14 did not do that. And so the account stayed there. I mean,
15 he's the one who knew.

16 I'm not disputing the fact that the bank should have
17 shut him out, but I'm saying, the next month he clicks on,
18 the following month he clicks on, it's right there. He was
19 in the best position -- he should not be able to recover
20 against the bank when he was in a better advantage than the
21 bank to prevent all of this from happening.

22 And, Your Honor, the main reason that Dr. Jernigan
23 wound up in jail in May of 2007 was because his wife wanted
24 him there. There's no question that in April of 2007 when
25 she went back to Officer d'Keegan and asked to reopen the

1 case, she didn't need to file any police report to get her
2 money back. She had had her money back in her account for
3 three months at that point. She did that because she was
4 mad. She told the warrants officer who was trying to serve
5 the warrant that Dr. Jernigan wouldn't pick up the phone
6 and call him back. He wouldn't answer the door if the
7 warrant officer went to his house. Officer d'Keegan
8 testified that in Dr. Jernigan's situation where you've got
9 a non-violent offender, who's a doctor, then somebody's
10 going to give him a call, try to make a courtesy call.
11 Well, Ms. Katz nipped that in the bud by telling the
12 warrants officer that Dr. Jernigan wasn't going to
13 cooperate with them. He wasn't getting a courtesy call.

14 When the case went to the Solicitor, Your Honor, Kim
15 Steele told Ms. Katz repeatedly, she testified that she
16 told Ms. Katz repeatedly, this is no case. I can't prove
17 this. And what Ms. Katz told her is that you don't know
18 what kind of man he is. He's a liar. He did this on
19 purpose. He did this in retaliation against me for my
20 taking him to court to get my fair share of his retirement
21 benefits. That's what motivated Dr. Jernigan's
22 prosecution. It wasn't the fact that he wasn't shut out of
23 this account back in 2004.

24 Now, as to damages, a quarter of a million dollars for
25 Dr. Jernigan when he has no economic damages at all, he

1 testified his employment was not impacted at all, no
2 adverse impact on his employment whatsoever. He testified,
3 well, you know, gosh, it's great that I didn't have to
4 apply for a medical license, but no concrete harm to his
5 reputation. The only economic damages he has is the
6 twenty-five hundred or whatever dollars that he paid to
7 Susan Dunn to ultimately get the case expunged and I can't
8 remember the amount, whatever it cost him to make bail. He
9 was gainfully employed throughout this. The arrest has
10 been completely expunged and he testified that he was happy
11 with the employment that he had during this entire period.

12 And as for his emotional distress, Your Honor, he's
13 testified that he didn't seek any medical treatment because
14 he didn't need it. He determined he didn't need it to cope
15 with his emotional distress. He didn't need any medication
16 because he didn't need it to cope with any emotional
17 distress in this case.

18 Now, as to Ms. Katz, her damages are contract damages.
19 We made a mistake. We didn't close him out. But we told
20 her that we made a mistake. We told her the night she
21 called. And we eliminated his access the same day. It was
22 effective the next day, I believe. And she got her money
23 back. I mean -- I know she says the bank wouldn't give her
24 her money back. Well, I mean, it wasn't a third party --
25 it wasn't the case where some unknown person had come in

1 and taken her money. We found out that night who it was.
2 We told her who took the money. And so we went to him and
3 we got it the following Tuesday, which was a holiday
4 weekend. I mean, right there, the two things that needed
5 to be fixed, getting her money back, eliminating his
6 continued ability to access that account on-line, we did
7 right then and there. And, as I've said, the information
8 that she kept looking for, we gave her. I mean, we gave
9 her everything we knew. What she wanted was something that
10 she could go on to put him away. And we weren't willing to
11 give her that. All we could say is, here are the facts.
12 This is how it happened. As for what he was thinking, Mr.
13 Navarez's letter says, I cannot comment on your husband's
14 state of mind in accessing the account. That's what the
15 bank people told Kim Steele, the exact same thing when she
16 started calling the bank. We can -- he did it. The bank
17 admitted that they screwed up ---

18 THE COURT: Well, that was after the arrest.. I
19 mean, but go ahead.

20 MR. ABNEY: But it's the same thing that was ---

21 THE COURT: No, it's not the same thing. But go
22 ahead. Go ahead.

23 MR. ABNEY: Your Honor.

24 THE COURT: I'm listening. Go ahead.

25 MR. ABNEY: I guess what I'm trying to get across

1 is the message has been consistent the entire time. That
2 very night we told her.

3 THE COURT: Well, that's where you and I
4 disagree. But, go ahead. It may be consistent in bank
5 terms, but it wasn't in laymen's terms with anybody
6 involved, but go ahead. From your perspective, but I
7 disagree with that. But go ahead. I'm listening.

8 MR. ABNEY: Okay. Well, I mean, Your Honor, as I
9 read in the admission, I mean, she acknowledges that she
10 was told ---

11 THE COURT: That he had access to the account and
12 he took the money out. That's what she was told,
13 summarizing it.

14 MR. ABNEY: Right. That he had continuing -- we
15 didn't delete his ability to access the account.

16 THE COURT: Right.

17 MR. ABNEY: And so, I mean, it's not -- there was
18 never a question, is what I'm saying, as to whether or not
19 he stole an access ID or something like that. At least in
20 communications between the bank and Ms. Katz according to
21 her testimony, she was told he had access in 2004 and
22 everybody knows that. He said he set up on-line bill pay.
23 He could go in and access all of his accounts. 8854 was
24 there and -- when he had the bill pay set up. What they
25 went in to do was get him off the 8854 account. The one

1 step that didn't happen was his ability to do it on-line,
2 and that's what she was told. And that's what she's been
3 told all along.

4 As for, you know, her damages, Your Honor, Dr. Pryor's
5 testimony is that she doesn't remember Ms. Katz ever
6 mentioning this episode throughout all her treatments. I
7 mean, throughout her treatment. She came to Dr. Pryor in
8 2004 and was diagnosed with depression. At the last visit
9 in ---

10 MR. EDWARDS: Your Honor, I'm going to object to
11 that. Ms. Pryor's testimony of what she didn't recall is
12 she remembered at the time Ms. Katz's telling her about
13 this. She didn't testify she didn't.

14 THE COURT: I'll give you a chance to reply,
15 okay? Go ahead.

16 MR. ABNEY: Dr. Pryor's notes and in her
17 testimony were -- if you look at the treatment notes for
18 the two visits in February of 2007 and March of 2007, those
19 were the first two visits after the transactions occurred.
20 There's no mention in there of this event, and they both
21 say that she's doing well. She's improving. Dr. Pryor
22 testified that Ms. Katz ---

23 THE COURT: Dr. Pryor basically said from '04 up
24 until sometime in '08, she was depressed and there was a
25 series of events where the depression got worse, and this

1 was just another series of events that set her back with
2 her depression. She adjusted her medication, changed the
3 medication. That's what she said, okay? And you've got to
4 accept the eggshell client as the receiver. So she had
5 depression before from '04 until apparently sometime in
6 '08. And the doctor just said it was just another series
7 of events that's creating some depression and it was like a
8 curve with the depression. That's what she said.

9 MR. ABNEY: I agree she said ---

10 THE COURT: So quit misquoting what she said,
11 okay?

12 MR. ABNEY: I'm not ---

13 THE COURT: This episode sat her back with her
14 depression. I don't think there's any question about that,
15 okay? My only question is, how much is that worth if I
16 find for her? I mean, don't you agree that's sort of what
17 the doctor said?

18 MR. ABNEY: No, Your Honor, I don't.
19 Respectfully, I don't.

20 THE COURT: Well, then read the deposition. You
21 haven't read the deposition then. She just said it's a
22 series of events and this is just another series of events
23 that created the problems with depression.

24 MR. ABNEY: I do agree with that. I agree with
25 that part.

1 THE COURT: That's what the doctor said.

2 MR. ABNEY: I agree with that.

3 THE COURT: All right. All right.

4 MR. ABNEY: But what she also said was Ms. Katz

5 was -- she thought Ms. Katz was depressed to the point

6 where she was disabled in 2004 when she came to her.

7 THE COURT: Yeah, she said that too.

8 MR. ABNEY: In the middle of 2007 ---

9 THE COURT: But she also related it to her

10 appearance, her physical appearance, her conduct, her

11 expression. And then she went into -- never mind. You

12 want me to quote it for you. But go ahead. I'm listening.

13 Go ahead.

14 MR. ABNEY: I'm sorry. Your Honor, my point is

15 just simply that my -- you know, I can get the testimony,

16 but my recollection of Dr. Pryor's testimony is that after

17 -- a few visits after January of 2007 she was doing well

18 and ultimately her depression went into remission. By the

19 middle of 2007, she was no longer disabled. She was

20 disabled in 2004 and was no longer disabled in 2007. It

21 may be that this event was one series -- one in a series of

22 events that contributed to her depression, but she was

23 improving during this period.

24 THE COURT: She said she was stabilized in

25 February of '07, as much benefit from the

1 psychopharmacology as going to get. The cause of divorce
2 and behavior of ex-husband. And then she went in to talk
3 about genetics and biology and the bio-psychological social
4 aspect of it. And then she went on to explain that the
5 episode with the bank and would that contribute to her
6 remaining depression continued through a lot of stress,
7 physical symptoms, loss of sleep, low energy, no interest
8 in pleasure, no enjoyment, no physical energy. And then
9 she went on to explain how she did improve and she got
10 better with her physical appearance and she improved and
11 she got better in '08. That's basically what she said.

12 MR. ABNEY: I ---

13 THE COURT: And said in 2009 she's doing good.
14 She's sleeping. Her mood's better. At times she couldn't
15 work, possibly work in August of '08. And then she even
16 went into the relationship with her mother. I mean, that's
17 basically what she said.

18 MR. ABNEY: And I don't disagree with that. I
19 think that the case was that she steadily improved from
20 2004 forward.

21 THE COURT: Right. And this was just a set-back.
22 That's what basically she said.

23 MR. ABNEY: Except that she didn't recall ever
24 hearing about it until ... But, Your Honor, as to the
25 Zinzer, Dr. Zinzer visits, I think it was testified by Mr.

1 Katz that Mr. Zinzer is a conflict management consultant.

2 THE COURT: I don't know who he is. He didn't
3 testify.

4 MR. ABNEY: What's that?

5 THE COURT: He didn't testify. Zinzer didn't
6 testify.

7 MR. ABNEY: Right.

8 THE COURT: So I don't know who he is.

9 MR. ABNEY: Your Honor, I mean, I guess at the
10 bottom, I think this case is all about the linear issues
11 from this couple's divorce. The bank made a mistake in
12 failing to remove him from the account in 2004 and we would
13 never denied that. But the snowball effect that happened
14 after that point simply was not foreseeable and was not
15 caused ---

16 THE COURT: Was not what?

17 MR. ABNEY: Was not foreseeable and not caused by
18 the bank. That's our position.

19 THE COURT: Okay.

20 MR. ABNEY: Thank you, Your Honor.

21 THE COURT: Thank you so very much. Anything
22 very briefly from the plaintiff's attorney?

23 MR. WAGGONER: I recall Mr. Abney saying
24 something about, Your Honor, there's no profit in sending
25 people to jail, and that's true. There is no profit in

1 sending people to jail, but these are people and there are
2 duties to the individuals, regardless of profit. And if
3 this case was all about economic damages, I'm sure that the
4 bank would have taken notice, but it's not. There's a
5 reason that false accusation of a crime, and I know we're
6 not dealing with definition, but there's a reason that that
7 is a per se damage issue. You don't have to prove damages
8 when you're falsely accused for a crime, for a reason,
9 because the law presumes damages. You don't have to prove
10 economic damages. You don't have to prove emotional
11 distress. It's presumed.

12 Again, Dr. Jernigan's personality may not be
13 exuberant. He may not wail and cry at the drop of a hat.
14 But that's not to suggest that this wasn't and continues to
15 be a devastating experience, primarily because of his
16 family, even though it didn't affect him tremendously from
17 an economic point of view. Mr. Abney said he was in -- on
18 the comparative negligence issue, he was in the best
19 position to correct the bank's mistake. No he wasn't. He
20 wasn't in the best position when all the software
21 surveillance that the bank had. Well they knew when he put
22 in bad check in his account. They knew to restrict it, but
23 they didn't know when somebody who had no authorization was
24 viewing the account. They think that's between the bank
25 and he's in the best position. That's ludicrous, I submit.

1 She was mad because they had a bad divorce. She didn't
2 like him going through the divorce and she believed he had
3 stolen from her. That's why she was mad. It was no doubt
4 she wanted him arrested. Why, because she thought he had
5 stolen from her. But the big issue is not what she wanted,
6 it's what the police believed. What the police believed is
7 that he had to have an access code or something like that
8 or an ID. If the police had understood all this when they
9 talked to the bank and the bank had explained it obviously,
10 after any kind of a thorough investigation, which they
11 hadn't done, Sergeant d'Keegan would have never allowed
12 this prosecution to go forward. She could have been mad,
13 but he wouldn't have been arrested.

14 That's all I've got, Your Honor.

15 THE COURT: Okay. Thank you. Mr. Edwards.

16 MR. EDWARDS: I think the testimony from Ms. Katz
17 was very clear. She did not want to have him ---

18 THE COURT: I'm sorry. What?

19 MR. EDWARDS: The testimony from Ms. Katz was
20 very clear. She did not want to have him arrested but had
21 to do that to get her money back, at the bank's behest.
22 Once that was done the wheels were in motion. And as to
23 the bank, there's a lot they've got to say about Dr.
24 Jernigan should have done this, could have done that. Ms.
25 Katz knew this, knew that, could have done this, should

1 have done that. The fact of the matter is that the bank
2 made her go to the police, which she did. Then the bank,
3 knowing she had done that, said, well, we're not going to
4 help you with that process. We're not going to tell you
5 how it worked, how he did it. What we're going to tell you
6 is he did it. We're not going to tell you how. We're
7 going to ask him to give you the money back, which he does.
8 And it's shut down. They shut these people out. They call
9 in the lawyers. She starts asking questions and she gets
10 stonewalled. She writes to the CEO of Bank of America.
11 He's too good to respond. He sends her over to Mr.
12 Navarez. He's not good enough to respond. The lawyers
13 have to take it and devise it. She asked them to put in
14 writing what she was told on the phone and they won't do
15 it. They won't do it.

16 Every witness, even bank's witnesses, nobody disputes
17 that the bank told her she had to go file a police report.
18 Nobody. They shut down and it's not right. They put their
19 customers out on the street. She trusted them, asked them
20 for help and they didn't care. They knew it was hurting
21 her, still didn't care. As for the damages, there's
22 medical records and there's medical cost, but this nature
23 of a case is intangible damages and there's not a market
24 value for depression, for stress, for a headache or
25 sleepless nights. You know, you can't buy and sell that,

1 okay? That's going to go person-to-person. This lady
2 wears her heart on her sleeve. Everybody knows that. The
3 bank knew it. It affected her a lot, a lot. And the bank
4 has been here two and a half days. Flew a guy from
5 California, brought a guy down from Charlotte last night.
6 Been here all day yesterday, going home -- he'll be here
7 most of the day today. To do what? Spend all this time,
8 all this money to deny her anything, any fair compensation,
9 even though they know it and they knew it then that they
10 were causing her harm. They would rather pay people to
11 come into court saying they didn't do it, but they're not
12 explaining how this ever happened, the very thing she asked
13 upon going into the bank.

14 That's all I have, Your Honor. Thank you.

15 THE COURT: Okay. Thank you very much.

16 All right. Give me an opportunity to look at
17 these exhibits and I will give you -- what I will do is
18 I'll probably email the attorneys, making certain findings
19 of fact, and ask you to just prepare a proposed order for
20 me and it'll give me an opportunity -- I've looked at most
21 of them, but there's some of them I haven't looked at and I
22 want to review them all before I issue some findings of
23 fact. Thank y'all very much. I appreciate it.

24 MR. ABNEY: Thank you, Your Honor.

25 MR. EDWARDS: Thank you, Your Honor.

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(END OF REQUESTED TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 14th day of September, 2011

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 11, 2011



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF GENERAL SESSIONS

Floyd E. Jernigan,)

PLAINTIFF,)

v.)

Suzanne Boone Katz and)
Bank of America, N.A.,)

DEFENDANT.)
_____)

Portion of Transcript of Record
C/A #: 2009-CP-10-2433

October 24, 2011

BEFORE:

HONORABLE J.C. NICHOLSON, JR., PRESIDING JUDGE.

APPEARANCES:

Merritt G. Abney, Esquire
Geoffrey H. Waggoner, Esquire

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no exhibits marked at this hearing)

1 The Court: Jernigan versus Katz and I believe Bank of
2 America. They wanted to remove some of the items that have
3 been filed. Is that correct?

4 Mr. Abney: That's correct Your Honor.

5 The Court: Does anybody have the documents that were
6 put into evidence?

7 Mr. Abney: We did; I've got a copy of the exhibit
8 binder.

9 The Court: Do you have what the Court has?

10 Mr. Abney: I'm sorry Your Honor?

11 The Court: The file that the Clerk has?

12 Mr. Abney: I don't have the clerk, I have the same
13 binder that the Clerk has, that's correct.

14 The Court: Does anybody have that binder? Out of the
15 Clerk's office is what I'm saying, because it's not, I've
16 got the file, but I don't have the exhibit.

17 Mr. Abney: We don't have them Your Honor.

18 The Court: Well, I guess I don't have a clerk,
19 they're upstairs. Mr. Waggoner can someone go down stairs
20 in the Clerk's office and get the binder, so I'll know what
21 you want?

22 Mr. Abney: Okay.

23 The Court: Let me get to the file. The file is what,
24 2009-2433. What I need is --- just get the original and
25 then I'll take out whatever y'all agree to take out and

1 keep in whatever ya'll agree to keep in.

2 Mr. Abney: Okay.

3 Female Speaker: I've been told by the Clerk's office
4 that both individuals who are capable and have been charged
5 with removing the binder are both in court at the moment,
6 so they could not do so at this time.

7 The Court: So did they find it?

8 Female Speaker: They will not pull them out of the
9 hearing is what I was told.

10 The Court: They won't do what now?

11 Female Speaker: They will not pull the two
12 individuals, the two clerks who are capable and charged
13 with taking evidence out, they will not pull those
14 individuals from the hearings they are currently in.

15 The Court: Alright, well. Alright, here, here are the
16 ones that are out of the clerk's office.

17 Mr. Abney: Okay.

18 The Court: And we need to put on the record that
19 everybody agrees to it. Is that correct?

20 Mr. Abney: Yes sir.

21 The Court: That's Bank of America right?

22 Mr. Abney: Correct Your Honor. This is correct Your
23 Honor.

24 The Court: Alright that's everything you want pulled
25 out?

1 Mr. Abney: That's correct.

2 The Court: Alright, let's go on the record and put on
3 the record what we're doing here today.

4 Mr. Abney: Okay. Your Honor, Merritt Abney for Bank
5 of America. We had submitted an exhibit binder containing
6 all of the documents that we had stipulated were evidence
7 along with, I believe, five documents, to which there were
8 some objections. We had intended to move to introduce that
9 evidence, those exhibits during trial and have them in the
10 binder so that Your Honor could rule on them. We never
11 moved to enter those and we'd like to have them withdrawn
12 from the binder before they enter trial, so we want to
13 correct that. The exhibits that should be removed from the
14 binder that are not into evidence are Bank of America
15 exhibits number 22, 23, 24, 26 and 27.

16 The Court: And I have given you copies of those, a
17 copy that I had as well as the Court's copy. Is that
18 correct?

19 Mr. Abney: That's correct.

20 The Court: Or the clerk's copy.

21 Mr. Abney: Correct and we've all reviewed those
22 documents that you've handed us and agreed that those are
23 the ones that should be removed.

24 The Court: Mr. Waggoner for the Plaintiff, do you
25 agree?

1 Mr. Waggoner: Yes sir.

2 The Court: You agree?

3 Mr. Waggoner: Yes sir.

4 The Court: Alright, is there anything else that we
5 need to put on the record? I have marked exhibit sheet.
6 Do y'all want to do a short order or do you think this is
7 sufficient?

8 Mr. Abney: We're happy with this, Your Honor.

9 The Court: Okay. Alright. That should cover
10 everything.

11 Mr. Abney: Thank you Your Honor.

12 The Court: Alright, thank y'all very much and I'm
13 sorry. I know y'all wanted to do this, just do it, but I
14 felt like we needed the evidence in the Clerk's office, in
15 the Clerk's care.

16 Mr. Abney: I understand and I apologize for the error.

17 The Court: Pardon?

18 Mr. Abney: I said I apologize for the error.

19 The Court: Alright, thank y'all so very much.

20 Mr. Abney: Thank you Judge.

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CERTIFICATE

This is to certify that the hearing in the matter of Floyd E. Jernigan vs. Suzanne Boone Katz and Bank of America, N.A., consisting of Seven (7) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 29th day of July, 2012.

Melina R. Singletary

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
Floyd E. Jernigan,)	CASE NO. 2009-CP-10-2433
)	
PLAINTIFF,)	
)	
VS.)	Charleston, South Carolina
)	
Suzanne Boone Katz and)	
Bank of America Corporation)	
)	
DEFENDANTS.)	

TRANSCRIPT OF RECORD

(A certification sheet will be attached bearing an original signature if this transcript has been certified by the court reporter.)

COMMENCING:

February 15, 2012 at 9:50 a.m.

Before The Honorable J. C. Nicholson, Jr.

APPEARANCES:

Attorney for Plaintiff, Floyd E. Jernigan
Julia M. Flumian, Esquire

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Merritt G. Abney, Esquire

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NO SWORN TESTIMONY

EXHIBITS - None Proffered

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1

1 THE COURT: Which one is first? Jernigan v Katz I
2 guess is first on the list. Who is here for that, Bank of
3 America?

4 MR. ABNEY: Merritt Abney for the bank, Your Honor.

5 THE COURT: Okay. And ...?

6 MS. FLUMIAN: Julia Flumian for the plaintiff, Dr.
7 Floyd Jernigan.

8 THE COURT: Okay. All right. Let me look at your
9 alter or amend the judgment, okay. Just let me read it real
10 quick.

11 MR. ABNEY: Sure.

12 (Pause for review of documents.)

13 THE COURT: Which one do you want to do first, Mr.
14 Abney? Do you want to do Jernigan first, or do you want to
15 do Katz first?

16 MR. ABNEY: Why don't we take Katz first if that is
17 okay, Your Honor.

18 THE COURT: Okay. That is fine. Let me look at the
19 Katz order real quick ---

20 MR. ABNEY: Sure.

21 THE COURT: --- to primarily refresh my memory.

22 (Pause for review of documents.)

23 THE COURT: I will be glad to hear you.

24 MR. ABNEY: Thank you, Your Honor. So with regard to
25 the Katz order, Your Honor, I won't go into the facts as you

1 have just read through your order.

2 THE COURT: Okay.

3 MR. ABNEY: Unless you would like me to.

4 THE COURT: No. No, I have read the orders. It has
5 refreshed my memory about the case.

6 MR. ABNEY: Okay.

7 THE COURT: I was trying to remember. When was it --
8 when was it tried?

9 MR. ABNEY: We tried it in September, Your Honor; and
10 the orders were issued in December.

11 THE COURT: September -- well, the order doesn't
12 say ---

13 MR. ABNEY: I think it was 13 through 15, Your Honor.

14 THE COURT: Yeah, the order doesn't say when it was
15 tried. But go ahead. Okay. Go ahead.

16 MR. ABNEY: Our first argument with respect to
17 co-defendant Katz who received a \$100,000 judgment on her
18 negligence claim against the bank is that the entire damage
19 and all the damages that she was awarded were based on
20 emotional distress and mental anguish in connection with
21 these disputed online bill payments.

22 THE COURT: I think I laid out in the order what they
23 were: psychological trauma ---

24 MR. ABNEY: Right.

25 THE COURT: --- and injury, mental anguish, mental

1 distress, apprehension, anxiety, and emotional injury, which
2 is more than just what you said. But go ahead.

3 MR. ABNEY: Well, Your Honor, we have ---

4 THE COURT: I mean all of those are elements of damages
5 of negligence.

6 MR. ABNEY: Well, that is our argument, Your Honor, is
7 that there are two causes of action in South Carolina that
8 allow damages solely for those types of injuries that you
9 have just described in the absence of any pecuniary harm.

10 THE COURT: So you don't think a negligent car wreck
11 case would include those type of injuries?

12 MR. ABNEY: If she's -- if she's -- I mean if she is
13 physically harmed and there is emotional distress in
14 connection with it, sure.

15 THE COURT: I think aren't you talking about a tort of
16 outrage when you make that argument?

17 MR. ABNEY: That is exactly what I am talking about. I
18 am saying that ---

19 THE COURT: I mean that is a separate tort than
20 negligence.

21 MR. ABNEY: Absolutely.

22 THE COURT: Okay.

23 MR. ABNEY: I agree with you. What I am saying is that
24 in order to recover solely for emotional harm, mental
25 anguish, those types of damages, the defendant -- I mean the

1 plaintiff has to prove and meet the elements of either
2 intentional infliction of emotional distress, which you
3 mentioned as outrage, or negligent infliction of emotional
4 distress.

5 Neither of those causes of action were pled in this
6 case. And there is no -- in fact, there is no intentional
7 conduct alleged on behalf of the bank.

8 And with regard to negligent infliction of emotional
9 distress the cause of action only exists in a very limited
10 situation where the plaintiff actually witnesses someone
11 closely related to them killed or suffers a serious bodily
12 harm due to the negligent conduct of the defendant. That is
13 not this case.

14 All that she has alleged is emotional distress based
15 purely on negligent conduct. And she can't recover for that
16 in the absence of any pecuniary harm or bodily injury. And
17 that is the argument.

18 I mean I have cited in our order and I have a copy here
19 of a decision handed down by Judge Young a couple of years
20 ago in dismissing a claim for breach of fiduciary duty which
21 was based solely on emotional harm related to what was
22 essentially an attorney malpractice action. And he
23 specifically stated in there on remand at direction from the
24 Court of Appeals ---

25 THE COURT: So your -- your position is a plaintiff

1 could not cover things for psychological trauma,
2 apprehension and anxiety, in a straight negligent case; is
3 that your position?

4 MR. ABNEY: That is my position, Your Honor.

5 THE COURT: Okay. So you think those issues -- those
6 issues would not be damages on a simple negligent case; is
7 that ---

8 MR. ABNEY: Not on a simple negligent case ---

9 THE COURT: Do you have -- do you have a case that says
10 that? I know you have a case explaining outrage or however
11 you want to -- negligence, emotional distress or however you
12 want to word it.

13 MR. ABNEY: Sure.

14 THE COURT: I know you have got a case that defines
15 that particular tort. But do you have a case that says
16 these elements of damages that I just described to you are
17 not available in a simple negligence case; that is my
18 question to you; do you?

19 MR. ABNEY: I have it with respect to -- it was
20 actually a holding that I was just describing from Judge
21 Young from a few years ago.

22 THE COURT: Well, Judge Young's order is not binding on
23 this court, okay.

24 MR. ABNEY: And I realize that.

25 THE COURT: I will be glad to read it as persuasive

1 argument. But it is not binding.

2 MR. ABNEY: Okay. I realize ---

3 THE COURT: I will be glad to take a look at it.

4 MR. ABNEY: Sure.

5 (Document presented to the court.)

6 MR. ABNEY: And I have also handed up the Court of
7 Appeals decision. It was -- Judge Young decided that --
8 made that decision on remand from the Court of Appeals who
9 expressly provided some -- that -- possible grounds that the
10 trial judge might rely upon on remand in dismissing the
11 breach of fiduciary cause of action.

12 THE COURT: Okay.

13 MR. ABNEY: And one of those grounds was that, you
14 know, there is no claim for purely emotional distress and
15 for that cause of action in the absence of some pecuniary
16 loss.

17 And that is the same situation we have here. Her claim
18 is based solely on emotional, mental harm, mental anguish as
19 it was described in the order. She hasn't suffered a dime
20 of pecuniary injury.

21 And in order to recover in that situation she has to
22 meet the elements of negligent infliction of emotional
23 distress. And she hasn't pled it.

24 I mean there would be no reason to have that cause of
25 action if this weren't the case. It would just -- I mean

1 every -- every plaintiff could simply circumvent the very
2 heightened elements that you have to prove in a negligent
3 infliction or intentional infliction case merely by pleading
4 negligence.

5 THE COURT: Well, those cases -- those cases arose
6 where there was no harm to the plaintiff. Where -- and I
7 think the classic case was when the child was walking on the
8 gang plank to the boat and fell off and the mother observed
9 it. There was no harm to her.

10 And that was -- those cases you are describing relate
11 to the type of cases where the plaintiff there is no harm to
12 the plaintiff as far as the tort is concerned where she saw
13 the child fall and drown in front of her. And those cases
14 are the ones you are related to..

15 In this particular case the plaintiff herself was
16 injured. And there is a distinction there. Now maybe I am
17 wrong, but I think there is a distinction there. And you
18 are trying to merge the two.

19 MR. ABNEY: I am not trying -- Your Honor, in the case
20 that you described the plaintiff certainly thought there was
21 injury to her.

22 THE COURT: Right, emotional distress.

23 MR. ABNEY: Exactly. And that is what she has alleged
24 here. There is no -- she didn't lose any money. The money
25 was returned to her, as you state in the order, immediately.

1 THE COURT: Okay. All right.

2 MR. ABNEY: And that is an argument. There would be no
3 purpose for having this independent cause of action for
4 negligent infliction unless this were the case. And that is
5 exactly what Judge Young said in that opinion, and following
6 the direction, as I stated, from the Court of Appeals.

7 THE COURT: Okay. Anything else?

8 MR. ABNEY: That is it on that one.

9 THE COURT: Glad to hear you.

10 MR. EDWARDS: All of the damages in the order ---

11 THE COURT: I'm sorry; Mr. Edwards, what?

12 MR. EDWARDS: All of the damages that are articulated
13 in the order and that were presented in evidence in trial
14 are covered by a negligence theory. This is requests to
15 charge, Ralph King Anderson, requests to charge, damages,
16 elements of damages, actual damages in a negligence case.
17 There's a listing of 20 and said that is not even all of
18 them. There could be more.

19 THE COURT: See, I think those are elements for a
20 negligent case. He is talking about a separate tort.

21 MR. EDWARDS: That's right. And this doesn't arise
22 from the tort that was committed by Bank of America towards
23 Floyd Jernigan. This -- the damages arise from the tort
24 that was committed by Bank of America against Suzanne Katz.
25 They owed Suzanne Katz a duty to do -- to investigate and to

1 look into the situation. They told her to go to the police
2 department, file the police report. She did that.

3 She asked them to let her know what happened. They
4 shut down. They didn't do any investigation. They didn't
5 perform any investigation, even though they knew that
6 Jernigan's account had an issue. And they knew that because
7 they weren't getting her any information she was being
8 caused harm.

9 And that evidence was presented. She -- medical bills
10 were put into evidence. Her treating therapist testimony is
11 in evidence.

12 There was testimony from her husband about her
13 emotional distress. There was also testimony in evidence
14 about her physical manifestations of harm, headaches,
15 nausea, sleeplessness, all those things that manifested
16 themselves physically that go along with the mental
17 distress, the anguish, the grief, the fear, the fright, all
18 of that.

19 And all of those things are covered under a negligence
20 cause of action which is what was pled, which was what we
21 moved forward on and what was proved. Those are all
22 causes ---

23 THE COURT: How would you distinguish those causes of
24 action under a simple negligent case versus a tort of
25 outrage or negligence for emotional distress? I just -- let

1 me hear what -- how you distinguish those cases.

2 MR. EDWARDS: Well, I think those are narrowly limited,
3 the negligent infliction of emotional distress. And it is a
4 kind of a branch of the outrage tort where you may or may
5 not be able to prove the intentional nature that is required
6 to prove outrage. But in the case of the child being struck
7 by the vehicle clearly the driver had the duty to the child
8 that was injured.

9 The expansion is the kind of a zone of risk analysis
10 that applies in a negligent infliction of emotional distress
11 that allows a recovery by a bystander who saw and was
12 emotionally harmed by it. This is not what that is.

13 THE COURT: Well, that is the way I have always
14 distinguished, generally a tort of outrage is where there is
15 a bystander that the harm is not directly towards on them.

16 MR. EDWARDS: That's right. And in her ---

17 THE COURT: Maybe I am wrong, but that has just been my
18 interpretation ---

19 MR. EDWARDS: I think that ---

20 THE COURT: --- or my beliefs.

21 MR. EDWARDS: I think that is correct. Katz damage was
22 not as a result of her witnessing other things or witnessing
23 the tort that was being committed against Floyd Jernigan.
24 That is not what her damages are from. Her damages are from
25 her own interactions with the bank and her own dealings with

1 the bank and the banks own torts that they committed against
2 Katz.

3 That is a direct negligence claim, negligence cause of
4 action which is completely different than a negligent
5 infliction of emotional distress claim.

6 And all of those elements of damages are covered in a
7 negligence cause of action, psychological trauma, mental
8 anguish, mental distress, apprehension, anxiety, emotionally
9 injury, psychologically injury, depression, loss of
10 enjoyment of life are all recovery, are all recoverable
11 elements of damages and are all supported by the record. It
12 specifically goes on to define mental anguish and give
13 examples of what it is ---

14 THE COURT: What are you reading from?

15 MR. EDWARDS: This is the requests to charge, and in
16 it ---

17 THE COURT: Who -- I mean Judge Anderson's requests to
18 charge books?

19 MR. EDWARDS: That's right. And there is case law
20 citation.

21 THE COURT: Or Judge Irvin's book; which one are you
22 referring to?

23 MR. EDWARDS: Judge Anderson.

24 THE COURT: Okay.

25 MR. EDWARDS: And there is a litany of cases of -- I

1 can give you the sites for them. But it is a good charge on
2 the law. And it is accurate.

3 Mental anguish includes both the result in mental
4 sensation of pain and also the accompanying feelings of
5 distress, fright, and anxiety.

6 It includes the mental sensation of pain resulting from
7 such painful emotions as grief, severe disappointment,
8 wounded pride, shame, despair, and humiliation. Mental
9 anguish can be composed of fright, nervousness, grief,
10 anxiety, worry. It goes on and on.

11 All of those things were presented, and they are all
12 supportable elements of damages. And they are all an
13 intangible kind of damage, okay.

14 We put evidence in of medical records and medical
15 bills, several thousand dollars worth of that. There is
16 testimony from Ms. Katz herself. There is testimony from
17 her now current husband. At the time it was her fiance.

18 There is testimony from the bank that they knew, in
19 writing, that they knew that she was suffering emotional
20 distress from what was going on, what the bank was doing,
21 and her requests for action that were ignored and refused.
22 They acknowledged that.

23 So I mean I am not sure I understand the argument that
24 the mental damages are clearly recoverable. It is an
25 intangible damage by its very nature. There is no market

1 value for a mother's wounded pride and her grief as it
2 relates to her children and her ex-husband. I mean that
3 could be any number -- it could be any number.

4 A jury may have put a million dollars on it. Another
5 judge may have put 500,000. Another judge may have put five
6 dollars on it.

7 But it is a recoverable element of damage, and it is
8 not an excessive award. It is in line with case law
9 authority with -- on negligence claims against banks
10 resulting from their actions relating to their customers.

11 And I don't see anything -- anything in the order that
12 is incorrect or that should be modified in any way,
13 certainly not the legal basis ---

14 THE COURT: Well, while you are talking, Mr. Edwards,
15 his motion asked to set it aside completely based upon his
16 argument of tort of outrage.

17 But he also asked for the judge to agree to reduce. Do
18 you want to address reducing the judgment while you are
19 talking. And then I will hear from Mr. Abney in just a
20 second about that. Because alternatively ---

21 MR. EDWARDS: I think -- I mean I think I just did. I
22 don't -- it is not something that you can -- that is within
23 the judge -- the court's discretion or the jury's discretion
24 to award an amount of damages that is fair and reasonable
25 based on the evidence. And that includes viewing the

1 witness, actually looking at them, using common sense and
2 judgment as to what -- how this person has been harmed, if
3 they have been harmed, and how much.

4 And anybody who saw Ms. Katz up on the witness stand,
5 broke down in tears several times, it is fairly clear that
6 she has been damaged emotionally. And frankly, I think
7 \$100,000 isn't enough to cover it; but it certainly doesn't
8 warrant a reduction in that -- in that damage.

9 THE COURT: Thank you, Mr. Edwards. Mr. Abney, do you
10 want to address the alternative request on reduction?

11 MR. ABNEY: Sure. I wasn't -- I do have other grounds
12 in regard to Ms. Katz ---

13 THE COURT: Okay. I will be glad to hear all of your
14 grounds.

15 MR. ABNEY: Okay. Great. I also want to point out,
16 Judge, that the law in the case that I handed up to you, the
17 two cases, the court of appeals and trial court decision
18 don't draw that distinction between the negligent infliction
19 cases being a situation where the tort wasn't directed to
20 the plaintiff in other cases.

21 The case involved in the one that I handed up was a
22 client who was suing his attorney for negligent malpractice,
23 legal malpractice.

24 He was the one claiming he received bad advice. But he
25 just couldn't prove any -- didn't have any economic damages

1 that he could prove.

2 And what the Court of Appeals suggested to Judge Young
3 in addressing the fiduciary duty claim and what Judge Young
4 ultimately decided on remand was that because there was no
5 evidence of any economic harm the claim based solely upon
6 emotional harm could not stand. So I don't think that
7 distinguishes ---

8 THE COURT: Well, refresh me. I think the only
9 economic harm was the loss of money which the bank refunded
10 her ---

11 MR. ABNEY: Immediately.

12 THE COURT: Was refunded rather quickly and then her
13 medical bills. So medical bills that were submitted. I
14 don't remember ---

15 MR. ABNEY: There were ---

16 THE COURT: --- what they were.

17 MR. ABNEY: There were medical bills submitted.

18 THE COURT: I don't remember the amount of the medical
19 bills.

20 MR. ABNEY: Yeah, I mean the medical bills were
21 associated with the emotional harm. There wasn't any I mean
22 independent financial loss that she -- that she suffered. I
23 mean what exactly -- what we are saying is in every case
24 there is going to be a situation where, ---

25 THE COURT: Well, ---

1 MR. ABNEY: --- you know, ---
2 THE COURT: --- was there any other ---
3 MR. ABNEY: --- when someone suffers emotional harm ---
4 THE COURT: --- economic ---
5 MR. ABNEY: --- they go to a doctor.
6 THE COURT: Anything else mentioned economically other
7 than the medical bills that you recall ---
8 MR. ABNEY: No.
9 THE COURT: --- from the evidence; ---
10 MR. ABNEY: I mean ---
11 THE COURT: --- because I don't recall.
12 MR. ABNEY: That's it. There was nothing.
13 THE COURT: Okay.
14 MR. ABNEY: It wasn't pled.
15 THE COURT: Mr. Edwards, do you remember anything?
16 MR. EDWARDS: As far as economic ---
17 THE COURT: Yeah.
18 MR. EDWARDS: --- damage?
19 THE COURT: Yeah.
20 MR. EDWARDS: Well, you have the medical bills. We
21 have the loss ---
22 THE COURT: She had -- she had a temp -- a lost but it
23 was -- if I remember correctly it was given back to her
24 within ---
25 MR. EDWARDS: The amount of money, yes.

1 THE COURT: Within 30 days.

2 MR. EDWARDS: There was a period of time where she was
3 without that money.

4 THE COURT: Okay. But it was a very short period of
5 time. I don't remember the exact days but ---

6 MR. ABNEY: Seventy-two hours ---

7 MR. EDWARDS: It was a few days. It was a weekend. It
8 wasn't 30 days. But there was a period of time where she
9 was without that money.

10 And there's medical bills. And there is a separate
11 element of damages that is the mental, emotional damage.
12 You can have that independent, okay. You don't need an
13 economic damage to piggyback that on. That is a separate
14 element of damage.

15 And there is physical pain that has been introduced
16 into evidence. Her headaches, her nausea, her body aches
17 are physical damages that is compensable as a measure of
18 damages.

19 THE COURT: Okay. Thank you very much. I didn't mean
20 to interrupt you, Mr. Abney. I just couldn't remember any
21 monetary amounts that had been mentioned other than the
22 medical bills ---

23 MR. ABNEY: I think you covered it. That's all that I
24 can recall as well.

25 THE COURT: And the money that was taken out that the

1 bank actually ---

2 MR. ABNEY: And it came back ---

3 THE COURT: --- put back.

4 MR. ABNEY: Like I said, when ---

5 THE COURT: But I don't think he -- the bank didn't put
6 it back. Mr. Jernigan put it back.

7 MR. ABNEY: Well, the bank physically put it back. But
8 it was with Jernigan's ---

9 THE COURT: Mr. Jernigan's approval.

10 MR. ABNEY: --- help essentially.

11 THE COURT: Mr. Jernigan immediately approved it if I
12 remember correctly.

13 MR. ABNEY: That is correct. Exactly, correct.

14 THE COURT: Let me hear him -- any other grounds you
15 want to argue?

16 MR. ABNEY: So the next -- the next ground would be
17 that even if he could show negligent infliction of emotional
18 distress the law says you have to prove those emotion --
19 that emotional harm that it was manifested with objectively
20 verifiable physical symptoms proven by expert testimony.

21 And, Your Honor, we talked about this at length at
22 trial. But the only medical testimony in this case was the
23 deposition testimony of Lucy Preyer, a doctor who treated
24 Ms. Katz from 2004 to 2009. The only condition that she
25 ever diagnosed Ms. Katz for was depression. And she made

1 that diagnosis three years before the events in this case
2 took place.

3 THE COURT: Well, I think -- wasn't it exacerbated
4 according to her deposition?

5 MR. ABNEY: She said it was ---

6 THE COURT: She didn't testify; that was a deposition,
7 right?

8 MR. ABNEY: That's correct.

9 THE COURT: I think in her deposition it said this
10 situation with the bank exacerbated the depression, if I
11 remember correctly.

12 MR. ABNEY: I think -- that is correct; that is what
13 she said. This was one -- one event in a series of events
14 that began three years earlier.

15 THE COURT: Right.

16 MR. ABNEY: She couldn't carve out ---

17 THE COURT: I don't think there is any question she was
18 depressed ---

19 MR. ABNEY: Correct.

20 THE COURT: --- previously.

21 MR. ABNEY: Right. And Dr. Preyer said she had been
22 depressed had this event had never occurred.

23 THE COURT: But she also said this condition made it
24 worse, if I remember correctly.

25 MR. ABNEY: I think her testimony was this was one

1 event in a series of events ---

2 THE COURT: Right.

3 MR. ABNEY: --- that contributed to depression.

4 THE COURT: Okay. Well, then what is your problem?

5 MR. ABNEY: Well, my problem is that ---

6 THE COURT: I mean you take -- you take your client as
7 you find them with whatever physical and emotional, mental
8 problems they have.

9 MR. ABNEY: Your Honor, our argument is that the
10 evidence is insufficient that there is any cause -- any harm
11 caused by the bank's problem. Dr. Preyer testified she ---

12 THE COURT: Well, the doctor said there was. Ms. ---

13 MR. ABNEY: She said ---

14 THE COURT: I mean that was the testimony, if I
15 remember correctly.

16 MR. ABNEY: That -- you are right. I am not ---

17 THE COURT: I mean now you -- Mr. Abney, don't misquote
18 the testimony.

19 MR. ABNEY: I am not misquoting the testimony. You ---

20 THE COURT: The doctor ---

21 MR. ABNEY: You have accurately quoted the testimony.

22 THE COURT: Okay. Well, then how can you say that she
23 wasn't emotionally -- I mean she wasn't depressed because of
24 this?

25 MR. ABNEY: Because the harm was already there, Your

1 Honor. And what she testified was that she would have been
2 depressed regardless; she couldn't assign any contribution,
3 specific contribution, to these events; she didn't remember
4 whether the events -- or if she had ever heard about the
5 events prior to receiving a phone call from Mr. Edwards in
6 connection with this case.

7 She admitted that the events appear nowhere in her
8 treatment notes or her medical records related to her
9 treatment of Ms. Katz.

10 What the testimony and the records show is that Ms.
11 Katz's condition improved from the initial diagnoses back in
12 2004 during the same time these events occurred.

13 The last time she saw her was in 2009 she was doing --
14 doing well and her depression was in remission. I am not
15 disagreeing with you that Dr. Preyer made the statement:
16 yes, I believe this was a contribution factor, one in a
17 series of events.

18 THE COURT: Right.

19 MR. ABNEY: I am just saying that the evidence is
20 insufficient based solely on that statement given her other
21 testimony to prove causation.

22 THE COURT: Okay. Anything else?

23 MR. ABNEY: One more ground as to Ms. Katz, Your Honor.

24 THE COURT: Okay.

25 MR. ABNEY: Any duties that the bank owed to Ms. Katz

1 were contractual in nature. The bank is not a fiduciary.
2 There are agreements between the bank and Ms. Katz related
3 to her deposit account.

4 They pled the existence of a contract. They pled that
5 it was breached. And Your Honor recognized that the
6 negligence and breach of contract claims were
7 interchangeable by requiring him to elect or remedy. He
8 ultimately elected negligence.

9 The only duties we had were those contractual duties.
10 If we breached those duties by failing to remove Dr.
11 Jernigan -- Dr. Jernigan's ability to access this account on
12 line, that was a breach of contract.

13 And clearly you can't recover emotional distress
14 damages in connection with a breach of contract. So she
15 should have been limited to contract damages for which the
16 \$100,000 in emotional harm would not be recoverable.

17 THE COURT: Okay. Mr. Edwards.

18 MR. EDWARDS: The prior testimony is plenty good enough
19 to support a damages award in this case. In addition to
20 that, she testified on her own behalf about how she had been
21 damaged. Her husband testified on her behalf how she had
22 been damaged. All of that testimony is sufficient evidence
23 for support -- to support an award of mental distress
24 damages.

25 Now it exacerbated it. It has been admitted the doctor

1 said this situation made it worse. So that is what it is.
2 It is the court's job to determine the amount of damages
3 associated with that.

4 So it is not her role as a psychiatrist to say well it
5 is worth this much or it is worth that much or it hurt her
6 "x" percentage or "y" percentage. That is not her role.
7 Her role was to listen to her and help her feel better is
8 what the therapist does.

9 The evidence is put in front of the court, weighs the
10 competing evidence, makes a decision. That is what we have
11 here. That's an inference drawn by the fact finder. That
12 is not to be reconsidered. It is not to be changed. It is
13 just not compelling evidence or compelling reason to
14 reconsider that.

15 Now the other issue, the contract issue, their -- Bank
16 of America's duty arose from the context of the situation.
17 It wouldn't matter at all if she was a Bank of America
18 customer.

19 When she contacted Bank of America and said this
20 happened, Bank of America said this -- do you know Floyd
21 Jernigan. Yes, this is my ex-husband. Okay, here is what
22 you have to do: You go to the police, file a police report,
23 then talk to us.

24 She does that. And they shut her out. They completely
25 shut her out at that point. And she is begging and begging

1 and begging them, writing to the CEO multiple times saying
2 please tell me what is going on, tell me what happened; this
3 is my ex-husband; this -- these are my sons.

4 She sent them pictures of her sons and said this is our
5 family, we are being harmed because we don't know what
6 happened; and Bank of America, you do. You told me to go to
7 the police. I did. Now I want to know what happened. You
8 have made me go to the police and tell them what you have
9 told me which is my ex-husband deliberately and
10 intentionally invaded my account and took my money. And so
11 I did that. Now tell me what happened.

12 And they shut her out, completely shut her out, at the
13 same time knowing that they are causing the damage to her
14 and her family and to her ex-husband.

15 That is not a contractual duty. That is a tort duty.
16 It is a negligence duty. And it arose from that context.
17 It doesn't have anything to do with the contract, okay.

18 When that duty arises they have a duty to do something.
19 It may have been a whole number of different things. They
20 didn't do anything.

21 When they didn't do anything, they breached the duty.
22 And when that happens the damages that flow proximately from
23 it include all of the mental distress and anguish, all of
24 the exacerbation that Lucy Preyer testified about. All of
25 the physical manifestations is a proximate result from the

1 breach of that. That is not a contractual duty. That is
2 negligence duty. It is a tort duty. And the fact that she
3 was a Bank of America customer doesn't change that.

4 THE COURT: Thank you -- Thank you, Mr. Edwards.
5 Anything very briefly in reply?

6 MR. ABNEY: Sure. The comment that this couldn't -- it
7 wouldn't have mattered whether or not this arose in a
8 customer, bank situation. This could only have arisen in a
9 customer, bank situation.

10 I mean that is the context in which this case arises.
11 It arises in connection with the bank maintaining a deposit
12 account with this customer for which there is an agreement
13 that governs that relationship as they have pled.

14 So any duties that are there are contractual duties.
15 Now they may allege that they are not only contractual
16 duties. But what we are arguing is that the law says they
17 are.

18 The bank is not a fiduciary of its customers. It has
19 duties that are very specifically laid out in contractual
20 agreements with its customers. If it breaches those duties
21 it is liable for contract damages. But contract damages
22 don't include pain and suffering like they have alleged.

23 THE COURT: Okay. Thank you. I assume you have the
24 same argument as to Mr. Jernigan?

25 MR. ABNEY: Well, we have somewhat different

1 arguments.

2 THE COURT: Do you have any additional arguments with
3 Mr. Jernigan?

4 MR. ABNEY: First argument with respect to Dr.
5 Jernigan, Your Honor, is that there is no evidence that the
6 bank breached any duty to him.

7 Part of the judgment of negligence was based
8 upon statements that the bank made to Ms. Katz and
9 law-enforcement regarding how these transactions occurred.
10 That is a slander claim. Based on what they -- comments
11 that they said about -- made about Dr. Jernigan relating to
12 or implying that he committed some crime, that is a slander
13 claim. And in order to prove that claim they would have to
14 show actual malice.

15 And Your Honor found during trial that there was no
16 evidence of that and dismissed the slander claim that they
17 brought against the bank.

18 The same situation, they can't simply circumvent the
19 requirement, what you have to prove to make out a slander
20 claim, merely by pleading it as negligence.

21 If I want to sue the Post and Courier for something
22 they write about me whether they did a poor job of
23 investigating it ---

24 THE COURT: Hold on just a second.
25 (Phone disturbance.)

1 THE COURT: Okay. Go ahead.

2 MR. ABNEY: If I want to sue the Post and Courier for
3 something -- for a story that they have run about me and it
4 is based on poor investigation of facts that they did, I
5 couldn't sue them for negligence. I have got to make out a
6 case that they -- that they have slandered me somehow. And
7 in this case, as we found, they couldn't make out that case
8 against the bank.

9 So to the extent that the negligence claim was based on
10 statements negligently made by the bank, that can't stand;
11 because as you held, this particular case the slander claim
12 had to be dismissed.

13 The claim was also based upon the fact that the bank
14 failed to remove Dr. Jernigan's ability to access the
15 account.

16 Now remember this is Dr. Jernigan suing the bank for
17 his own ability, continued ability, to access the account
18 that he relinquished control of.

19 If we negligently fail to do that, any duties to do
20 that were contractually in nature; and they were owed to Ms.
21 Katz, not to Dr. Jernigan.

22 So the grounds for this negligent claim which are that
23 the bank failed to remove him as an owner of the account and
24 made statements that were inaccurate or misleading related
25 to how these transactions occur does not establish a duty of

1 care that was breached by the bank.

2 THE COURT: Okay. Thank you very much.

3 MS. FLUMIAN: First of all, I would like to correct
4 something that Mr. Abney just said: In a slander claim
5 against a private individual malice is not required to be
6 proven, especially in a defamatory per se in context.

7 Here all we had to prove was that he had been accused
8 of a crime and that that was in fact not true. That was
9 proved. But I appreciate the court has already ruled on
10 that point, so I won't reargue it.

11 But I think the essence of that is important here.
12 Because when one makes statements to police about requiring
13 access codes to accomplish this deliberate action, that is
14 negligent.

15 It was negligent by the bank to make statements to the
16 police that led a man with decades of experience in the
17 white-collar crime division to believe that a crime had in
18 fact been committed.

19 Everything that is in this memorandum by the bank
20 further established what I believe Your Honor sort of
21 enumerated in court which is simply this: The bank never
22 gets it. The bank was the only party that had access to all
23 the information. They were the only one who could have
24 investigated. They were the one who in your own words, Your
25 Honor, circled the wagon and made sure that that information

1 never came out.

2 Had it not been for the behavior of the bank, none of
3 this would have occurred. Instead, they put out drips and
4 drabs of information despite Ms. Katz, in Mr. Edward's
5 words, begging for information, despite Dr. Jernigan and his
6 own counsel begging for information, the bank just sat back
7 and did nothing.

8 There is a duty to investigate when you are the only
9 party that has the information necessary to determine the
10 facts of the situation.

11 And this idea that the bank didn't owe a duty to Dr.
12 Jernigan after he was removed from an account seems to me to
13 be, well, a doctor doesn't owe a duty to a patient for the
14 care he rendered after the termination of the patient
15 privilege. That makes no sense.

16 During the time in which you had a duty, you have that
17 duty. It doesn't end merely because a relationship did.
18 That duty that was maintained during the time of the
19 relationship still holds. And they did negligently fail to
20 remove him from the account. If they had done so, none of
21 this would have happened.

22 THE COURT: Thank you.

23 MR. ABNEY: Just a brief response, Your Honor. First,
24 let me vindicate myself on the law, first of all. What we
25 have argued here is there is a showing -- a required showing

1 of actual malice for statements made in the context of a
2 bank and customers ---

3 THE COURT: Well, and you get into whether public or
4 nonpublic. And that issue is not here before me today.

5 MR. ABNEY: I -- she made the comment ---

6 THE COURT: I ruled on that at trial. And that is
7 over, ---

8 MR. ABNEY: Very good.

9 THE COURT: --- done with. And I don't think it has
10 anything to do with what we are here for today.

11 MR. ABNEY: Okay.

12 THE COURT: And if you have got -- if it is a public
13 figure you have got to prove malice. If it is non public
14 figure, you don't. It is that ---

15 MR. ABNEY: Regardless of what it was, you found at
16 trial that we didn't -- that they didn't meet the elements
17 and dismissed the claim. As to the duty to investigate, it
18 may be the case. But ultimately ---

19 THE COURT: I mean my problem with the slander was that
20 I don't know where it was actually published by the bank. I
21 mean all he did was tell her to go file a fraud report,
22 which she did. Then they never said anything else to the
23 police officer. I just didn't hear -- that is water under
24 the bridge.

25 Right or wrong, that is the decision I made at trial;

1 and it is over with. But I don't think it has anything to
2 do with what we are here for today.

3 MR. ABNEY: Okay.

4 THE COURT: Whether it was -- whether it was malice or
5 whether it wasn't malice is immaterial. If there was malice
6 it would be punitive on the table.

7 MR. ABNEY: Right, and essentially what we are arguing
8 on it, Your Honor, is that they are circumventing the
9 requirements of a slander case.

10 THE COURT: Of what?

11 MR. ABNEY: Circumventing the requirements of a slander
12 case, what they would have to show in order to prove
13 slander. They have essentially got a negligence claim -- or
14 a slander claim repackaged as negligence because you found
15 that they couldn't prove slander. And so rather than do
16 that, they have just pled it as a negligence case.

17 Well, if it is based on statements made by the bank
18 that were allegedly untruthful or misleading or whatever,
19 they have got to prove those elements of a slander case.

20 You can't just say that well the statements were
21 negligent, because you have to show actual malice. But the
22 reason you found at trial, it wasn't there and they couldn't
23 prove it.

24 THE COURT: Okay. Yes, ma'am.

25 MS. FLUMIAN: My response to that would be that is not

1 what the negligence claim was based on solely. The other
2 portion of this is the failure to investigate.

3 You can't undertake part of the duty to begin the
4 investigation to tell Ms. Katz some things and then to shut
5 down completely, I believe was your words, Your Honor, to
6 shut down the investigation.

7 I think what you said was that you believe they had
8 gone to the legal department and therefore everybody stopped
9 talking about it. That is negligent. You can't take on a
10 duty to investigate and then fail to do so.

11 And then, yes, to make statements to police officers
12 that there needed to be an access code or a pin, facts which
13 were absolutely false, and in Sergeant Daquigan's exact
14 words, we would not have been there if he had been told
15 anything other than that or if he had been told there was
16 any issue with Dr. Jernigan's account at the time that the
17 alleged transaction occurred, as Your Honor heard so much
18 testimony. And I will not go through it again.

19 But in regard to Dr. Jernigan's account, there was
20 information that his account was restricted near or at the
21 time that these transactions occurred.

22 None of that information was ever provided to the
23 plaintiff. And it certainly wasn't provided to the police.
24 The police were in the best position to decide whether or
25 not this gentleman needed to be arrested. That is

1 negligence.

2 THE COURT: I mean I think that was addressed in the
3 order about the only person that could have found out if
4 the -- what was the name of the third party that made the
5 payments?

6 MS. FLUMIAN: Fiserv over Check-Free Corp.

7 THE COURT: What -- I'm sorry?

8 MS. FLUMIAN: They are known by two names, Check-Free
9 Corp or Fiserv.

10 THE COURT: Yeah -- never -- never see if the Fiserv
11 program meshed with their program to see if there was an
12 error.

13 MS. FLUMIAN: Yes, Your Honor, that is correct.

14 THE COURT: That was never done.

15 MS. FLUMIAN: They never asked.

16 THE COURT: And they were the only people that could do
17 that.

18 MS. FLUMIAN: Correct.

19 THE COURT: All right. Mr. Abney, anything else you
20 want to tell me? I want to read the -- I want to read this
21 case, and I want to read Judge Young's order. But is there
22 anything else you want to say before I start reading?

23 MR. ABNEY: Sure. Your Honor, one of the other
24 arguments we have made that was not addressed in the order
25 was comparative fault. The only reasonable inference is

1 that Dr. Jernigan at least substantially contributed to the
2 circumstances to these events if not was the sole cause ---

3 THE COURT: Well, I understand your position was he did
4 it intentionally. His position was that he didn't. So that
5 was a factual determination for the court to decide.

6 MR. ABNEY: And that was not the only basis for that,
7 Your Honor. As you recall, Dr. Jernigan testified that
8 after he submitted the removal paperwork ---

9 THE COURT: Said that he had been monitoring it.

10 MR. ABNEY: That is right.

11 THE COURT: I understand. I remember that.

12 MR. ABNEY: Okay. And our argument is, you know, at
13 any time while he was on line for three years ---

14 THE COURT: That he could have gone to the bank and
15 said take me off.

16 MR. ABNEY: Take me off.

17 THE COURT: I understand.

18 MR. ABNEY: That is all he had to do and we would not
19 be here today. There is no mention of any comparative
20 fault. Your Honor, negligence ---

21 THE COURT: But from the bank from my perspective
22 looking at it was they never followed up with the police.
23 They never told the police hey this man actually had access
24 because of our error. Okay. They just stonewalled the
25 police. They stonewalled everybody.

1 MR. ABNEY: Your Honor, I disagree that that's -- that
2 that's what they did.

3 THE COURT: Oh, they wrote a simple letter and said
4 well, you know, he had access, the money is back, forget
5 about it and go home.

6 MR. ABNEY: And ---

7 THE COURT: That's basically what they did.

8 MR. ABNEY: And the solicitor testified that when she
9 contacted the bank that it was based on that conversation
10 that she had, and she just ultimately dismissed the case.

11 THE COURT: Right, after he had been arrested, taken to
12 jail and hired a lawyer and gone through the criminal
13 process then the bank decided to tell the solicitor what
14 they had done. Correct? How many months after the fact did
15 that occur or how many years?

16 MR. ABNEY: How many months after ---

17 THE COURT: Yeah, after it had occurred, after they
18 told their client to go get -- to go to the police and file
19 a fraud report, how many months afterward did they finally
20 tell the solicitor what actually happened?

21 MR. ABNEY: I believe the solicitor's calls were in
22 June or July. I don't know, in -- I think it went to her
23 desk sometime in the summer of 2007.

24 THE COURT: So it was ---

25 MR. ABNEY: Later that year.

1 THE COURT: --- what; six, seven, eight months
2 later ---

3 MR. ABNEY: It was during that time ---

4 THE COURT: --- when the bank finally decided, hey, we
5 are going to tell the prosecutor; is that right or wrong?

6 MR. ABNEY: I ---

7 THE COURT: I don't remember the dates.

8 MR. ABNEY: My understanding is the solicitor got
9 the file in the summer of 2007. I don't think she knew
10 exactly ---

11 THE COURT: When did all this -- when did all of this
12 occur?

13 MS. FLUMIAN: The ---

14 THE COURT: When?

15 MR. ABNEY: The transactions occurred in January in
16 2007.

17 THE COURT: January of 2007?

18 MR. ABNEY: Right. And he was arrested in May of 2007.

19 THE COURT: Okay. Yes, ma'am, do you want to add
20 something?

21 MS. FLUMIAN: I would only like to add that the charges
22 did stay pending until March of 2008 so ---

23 THE COURT: So the charges stayed pending for over a
24 year?

25 MS. FLUMIAN: It was quite a while. And as Your Honor

1 has already specified here, all of that occurred after he
2 had already been arrested.

3 The police went to the bank, spoke to someone with
4 knowledge of the situation who had investigated. He asked
5 specific questions. He was given false statements upon
6 which he had the plaintiff arrested.

7 At that time had they said to him it was our mistakes,
8 we unintentionally had left him on as an owner and this is
9 how this occurred, we would not be here today.

10 THE COURT: I understand.

11 MR. ABNEY: I strongly disagree that that is how that
12 conversation went down. I don't think that was the
13 officer's testimony at all.

14 THE COURT: Okay.

15 MR. ABNEY: Ultimately Your Honor made a factual call.
16 What I'm trying to point out is that our argument is that
17 Dr. Jernigan contributed to what happened here.

18 Had he called up the bank in the three years that went
19 by when he still had access and knew he had access and
20 shouldn't be able to view what is happening in that account
21 at any time if he had picked up the phone and let the bank
22 know about it, none of us would be here today.

23 THE COURT: Well, that may be; but that is one reason
24 he got eighty-five rather than a hundred, okay.

25 MR. ABNEY: Okay.

1 THE COURT: All right.

2 MR. ABNEY: All right.

3 THE COURT: Because I do think it was some, I won't say
4 wrongful conduct, but some things that he could have done.

5 MR. ABNEY: Okay.

6 THE COURT: Okay. Now the John Doe versus Gedney Howe
7 is Judge Young's case; is that correct?

8 MR. ABNEY: That's ---

9 THE COURT: Which one is Judge Young's order?

10 MR. ABNEY: That is correct. It says the trial court
11 order there is ---

12 THE COURT: And then ---

13 MR. ABNEY: --- Judge Young's order. And ---

14 THE COURT: Which one is Judge Young's order?

15 MR. ABNEY: I think they are the same caption, but it
16 is Doe v Howe I believe is the case. And I have also handed
17 up, as I mentioned, the Court of Appeals decision remanding
18 that determination to Judge Young.

19 THE COURT: All right. Just give me a chance to read
20 it, please.

21 MR. ABNEY: Sure.

22 (Pause to read documents.)

23 THE COURT: All right. I have read the cases and the
24 order issue after remand from the Court of Appeals
25 concerning a legal malpractice and the fiduciary duty. The

1 case is I think that is an entirely different situation than
2 we have here.

3 And your motion to amend or alter as to both cases is
4 denied. Do you want to do a formal order, or do you want me
5 to do a short order? I will ---

6 MR. ABNEY: Form order ---

7 THE COURT: --- be happy to just do a form order.

8 MR. ABNEY: Form is fine, Your Honor.

9 MS. FLUMIAN: Form is fine, Your Honor.

10 THE COURT: Unless ya'll want to type up some formal
11 order. I will be glad to sign it. I will leave that up to
12 you.

13 MS. FLUMIAN: Well, I will be happy to assign work to
14 Mr. Edwards. But I will discuss it first.

15 THE COURT: I'm sorry, what?

16 MS. FLUMIAN: I said I would be happy to assign work to
17 Mr. Edwards but we will talk about it first.

18 THE COURT: Okay.

19 MR. ABNEY: And, Judge, if I can just get on -- we have
20 already talked about this but to some extent, but we were
21 also seeking a reduction in the amount of award ---

22 THE COURT: I understand. That is denied also.

23 MR. ABNEY: Understood.

24 THE COURT: All of your motions are denied. I can't be
25 any plainer than that, okay.

1 MR. ABNEY: Got it.

2 THE COURT: Do y'all want -- do y'all want to talk for
3 a minute and see if you want to do a proposed order, or do
4 you want me to do a short order? It doesn't matter to me.

5 MR. EDWARDS: I would be happy to submit an order.

6 THE COURT: Pardon?

7 MR. EDWARDS: I would be happy to submit a brief order
8 for you.

9 THE COURT: For both of you?

10 MS. FLUMIAN: We will collaborate, Your Honor. And we
11 will have something to you -- do you want us to sent it to
12 you or your law clerk?

13 THE COURT: Just e-mail it to me.

14 MS. FLUMIAN: Okay.

15 THE COURT: If you would. Don't bring a hard copy and
16 an e-mail. I don't care whether you bring a hard copy or
17 e-mail me an order; but don't do both, okay.

18 MS. FLUMIAN: Okay. Yes, sir.

19 THE COURT: Whichever you prefer.

20 MS. FLUMIAN: Yes, Your Honor.

21 THE COURT: Do you want to give me a short order ---

22 LAW CLERK: Yes, sir.

23 THE COURT: --- denying the motions and saying a formal
24 order it forthcoming.

25 LAW CLERK: Yes, sir.

1 THE COURT: And put in there also I retain jurisdiction
2 to sign the formal order.

3 LAW CLERK: All right.

4 THE COURT: Okay. Thank ya'll very much.

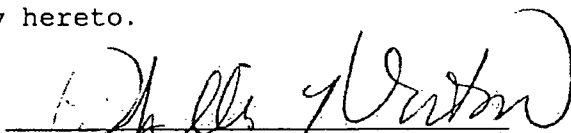
5 (Whereupon the hearing concluded 10:45 a.m.)

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CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on February 29, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: April 17, 2012

Certified Transcript Provided For: Abney
Certification Reference # 041712 cert. copy

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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 2009-CP-10-2433
 FLOYD E. JERNIGAN,)
)
 Plaintiff,)
)
 vs.)
)
 SUZANNE BOONE KATZ and)
 BANK OF AMERICA)
 CORPORATION,)
)
 Defendants.)

COPY

* * * * *

DEPOSITION OF: LUCY W. PREYER, M.D.

DATE TAKEN: August 31, 2010

TIME: 10:01 a.m.

PLACE: Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street
Charleston, SC 29401

REPORTED BY: DENISE LAUDER
Registered Professional
Reporter and Notary Public

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1 something I've asked you, I need you to direct the
2 questions to me and not to any of the other
3 attorneys at the table. Okay?

4 A. (No response)

5 Q. And I do need you to respond --

6 A. That's fine.

7 Q. -- respond verbally with yes or nos.

8 A. Yes, that's fine.

9 Q. We do have a Court Reporter here and
10 she's taking down everything that you and I say.

11 You do understand that you're under
12 oath?

13 A. I do.

14 Q. Okay. And it's the same oath that you
15 will be under if you're called to testify at trial.

16 A. Yes.

17 Q. Has anyone asked you to provide
18 testimony at the trial of this case?

19 A. No, not to my knowledge.

20 Q. So you have not been asked to serve as
21 an expert witness by anyone?

22 A. No, I have not.

23 Q. Have you had any discussions with any
24 attorneys regarding this case?

25 A. Talked with Mr. Edwards.

1 Q. Okay. And how many times have you
2 spoken with Mr. Edwards about the case?

3 A. Two, possibly three.

4 Q. Okay. And what have you-all discussed?

5 A. He updated me -- one was asking for a
6 clinical update, and he updated me on the status of
7 what the current situation for today was.

8 Q. And you said he asked you for a
9 clinical update. What do you mean by that?

10 A. The last time I had seen Mrs. Katz,
11 what I -- how I thought she was doing.

12 Q. Okay. And when was the last time you
13 had seen her?

14 A. Quite a -- clinically, quite a while.
15 My last appointment with her was 2/10/09.

16 Q. Okay. And have you seen her since
17 then?

18 A. She came by -- I've seen her twice;
19 once, she came by just to look through her chart,
20 which I routinely do. I do not have a patient walk
21 out with a copy, but -- and no charge. It is -- I
22 feel free to let them read the chart, I go over it
23 with them, sitting by them, line by line. We did
24 that for her comfort before she would sign a
25 release for me to send it to Mr. Edwards.

1 Q. Understood. And when was that
2 approximately?

3 A. It's been within -- it's been within
4 six months anyway. And then she happened to drop
5 by yesterday, and I spoke with her briefly.

6 Q. So on either of those occasions did you
7 examine Mrs. Katz at all?

8 A. (Shaking head)

9 Q. That's no?

10 A. No, I did not.

11 Q. Okay. Did you discuss anything with
12 Mrs. Katz yesterday when she dropped by.

13 A. She briefly told me how horrible this
14 whole ordeal has been for her.

15 Q. Okay.

16 A. That other than -- I mean, she's very
17 happily remarried, but that this whole behavior and
18 whole situation has been extremely stressful on her
19 and it's been horrible for her.

20 Q. Okay. That's -- she told you that
21 yesterday?

22 A. Correct.

23 Q. But you didn't have a -- sort of a
24 clinical session with her yesterday?

25 A. She never -- no, I did not. She had

1 been getting -- because of finances, I think, my
2 understanding was that she went to her primary care
3 physician.

4 Q. I see. Okay. So has anyone told you
5 what this case is about?

6 A. Mr. Edwards told me what the most
7 recent thing was, was that her ex-husband had
8 brought a suit against her for false arrest --
9 false arrest, I believe that's correct, and that
10 she had brought a counter-suit for invasion of
11 privacy.

12 Q. Okay. And did he give you any more
13 detail than that about the facts of the case?

14 A. That -- we reviewed a little bit of --
15 he gave me the time line of what happened initially
16 in '07 when the money was found out of her account.

17 Q. Okay. And prior to -- and when did Mr.
18 Edwards tell you that?

19 A. We went over it again yesterday, I had
20 a conference call with him. And he probably told
21 me that when he said I would be being deposed, to
22 -- this was my first conversation with him. He
23 said this was why and that I may be being deposed.
24 Just brought me up to speed.

25 Q. Okay. So if I understand correctly,

1 your first discussion with Mr. Edwards -- in your
2 first discussion with Mr. Edwards, he told you that
3 you were going to be deposed?

4 A. Likely, that there was a strong
5 possibility that I would be.

6 Q. Okay. Did he tell you he was naming
7 you as a witness at that point?

8 A. No.

9 Q. Okay. And when Mr. -- prior to Mr.
10 Edwards explaining to you about the funds being
11 removed from Mrs. Katz's account in 2007, did you
12 know anything about that?

13 A. I knew the -- the tremendous stress and
14 hardship she was under during that time. I saw her
15 on 2/07 and then in 4/07 and 6/07 and 8/07.

16 Q. Okay. And we'll get to that. But did
17 you know specifically about any funds being removed
18 from Mrs. Katz by Dr. Jernigan prior to Mr. Edwards
19 telling you that?

20 A. Honestly, I can't remember what details
21 she told me.

22 Q. Okay.

23 A. I know she was stressed and going
24 through a hard time, but that was three years ago.
25 I focused on other things clinically with her and I

1 didn't document those details.

2 Q. Okay. And I'm just trying to figure
3 out -- I understand it was a long time ago and I
4 don't expect you to have perfect recall. I'm
5 trying to get a handle on what you remember because
6 --

7 A. I knew -- I do know she was under huge
8 financial stress.

9 Q. Okay.

10 A. And that her life had been in upheaval
11 and she was very distressed about it.

12 Q. Okay.

13 A. And how that led to her clinically not
14 responding to medicine as well.

15 Q. Okay. Understood. But as I understand
16 your testimony, as you sit here today, you do not
17 recall whether you had ever heard about Dr.
18 Jernigan removing funds from Mrs. Katz's account
19 until Mr. Edwards told you that?

20 A. In my note I did write that she was
21 having to -- I knew there was something legal going
22 on.

23 Q. Okay. And when did you know that?

24 A. In '07.

25 Q. And are you turning to your patient

1 notes?

2 A. Uh-huh.

3 Q. Why don't we -- let me go ahead and
4 show you what's been marked as Exhibit 1 so that
5 we're all looking at the same thing.

6 A. That particular one, I just said
7 financial problems with ex. I honestly can't
8 remember exactly what she told me about it.

9 Q. Okay. So in going back to my original
10 question, am I correct that you do not recall
11 whether or not Mrs. Katz told you that her husband
12 had removed funds from her account in 2007?

13 A. I do not correctly recall, that's
14 correct.

15 Q. And as far as you know today, when Mr.
16 Edwards informed you of that, however long ago that
17 was, that was the first you became aware of that
18 fact?

19 MR. EDWARDS: Object to the form.

20 MR. ABNEY: Yeah, that's a terrific
21 objection. Let me restate, that was not clear at
22 all.

23 BY MR. ABNEY:

24 Q. Is it true that when Mr. Edwards told
25 you that Dr. Jernigan had removed funds from Mrs.

1 Katz's account, that that was the first time you
2 became aware of those facts?

3 MR. EDWARDS: Same objection.

4 MR. WAGGONER: Me too.

5 MR. ABNEY: I think that one will pass.

6 MR. EDWARDS: If we object, it's just a
7 legal thing that will be taken up later on.

8 THE WITNESS: Oh, I do have to answer
9 it?

10 MR. ABNEY: Yes, I'm sorry.

11 THE WITNESS: Okay. I had heard -- she
12 had disclosed to me as a patient so much -- or a
13 certain amount of his behavior throughout the
14 divorce and ever since I had been seeing her since
15 '04, that whatever she told me didn't surprise me
16 to the point I wrote down details about it. I
17 don't do that anyway.

18 BY MR. ABNEY:

19 Q. Okay. And that's helpful and I
20 appreciate that, but I'm trying to get some very
21 specific information from you right here. And what
22 I'm trying to find out is when you first learned
23 that Dr. Jernigan had removed funds from Mrs.
24 Katz's account.

25 A. I can't honestly say if I knew about it

1 before yesterday or my most recent conversation
2 with him or not. I can't remember what she told me
3 exactly during that time it was going on.

4 Q. Okay.

5 A. She very well may have told me at that
6 point that he removed money; I'm not sure.

7 Q. But you don't recall that?

8 A. I don't recall it, but I don't know
9 that it didn't happen.

10 Q. Perfect. That's what I needed to
11 know.

12 Are you -- are you being paid to
13 provide testimony in this case?

14 A. That has been -- not been formally --
15 the last thing -- I talked with you-all and you-all
16 sent me a check for \$30.

17 Q. Right.

18 A. And then our billing person called and
19 said that was all that you would pay me because I
20 wasn't being called as an expert. I do -- I didn't
21 quite so much say this to Mr. Edwards, but I
22 assumed that somebody would be paying me.

23 Q. Okay. And do you know what rate you
24 would charge for testimony in this case?

25 A. My fee is \$165 an hour. That's what I

1 would charge for an outpatient visit.

2 MR. EDWARDS: Merritt, if I could
3 clarify. You were asking about payment for time
4 being here or payment for testimony?

5 BY MR. ABNEY:

6 Q. Well, I'm referring to testimony here
7 at this deposition. Is that what you were
8 discussing?

9 A. Yeah.

10 MR. EDWARDS: I'm going to object to
11 that line of questioning about payment for
12 testimony.

13 BY MR. ABNEY:

14 Q. Okay. Did you have any written
15 communication with Mr. Edwards at all, any e-mails
16 or correspondence, anything like that?

17 A. No.

18 Q. And have you done anything else to
19 prepare for this deposition, other than speak with
20 Mrs. Katz and Mr. Edwards?

21 A. No. I went through to refresh my
22 memory and made some notes this morning and I've
23 reviewed it. I had looked at it when I saw Mrs.
24 Katz several months ago, so...

25 Q. And that's all you've done is make some

1 notes that you have here, review your file, your
2 treatment records, and speak with Mr. Edwards and
3 Mrs. Katz?

4 A. Uh-huh.

5 Q. Okay. Dr. Preyer, have you formulated
6 any professional opinions that you intend to offer
7 at the trial of this case?

8 A. Yes. She has suffered -- when I --
9 particularly when I first saw her in '04, she
10 definitely suffered from major depression. She was
11 on Lexapro at that point and was partially treated,
12 but definitely not to remission. She still had
13 decreased interest, decreased energy, problems with
14 concentration, easily overwhelmed, difficulty
15 sleeping without Ativan. Very consistent
16 clinically with a partially treated major
17 depression.

18 Q. How did it -- did I hear you correctly
19 that you began seeing her in 2004?

20 A. Uh-huh.

21 Q. And how did you come to begin seeing
22 Mrs. Katz? And, Dr. Preyer, so we're all looking
23 at the same thing, can I refer you to Exhibit 1 --
24 first of all, can you confirm for me that those are
25 your treatment records for Mrs. Katz?

1 A. Yeah.

2 Q. And these are documents that you
3 produced to me in response to a Subpoena that I
4 sent you?

5 A. Correct.

6 Q. Correct?

7 A. Correct.

8 Q. Okay.

9 A. Usually when I see somebody it is on
10 referral from another -- okay. Her primary care
11 doctor -- that's what I thought, her primary care
12 doctor had referred her.

13 Q. Dr. Preyer, if you're referring to the
14 records, it would help us if you would refer to
15 those documents which have Bates numbers on the
16 bottom so that we can be looking at the same thing
17 you are.

18 A. These are in reverse order. For some
19 reason my initial H and P is not in here.

20 Q. Okay.

21 A. She didn't completely copy them. I
22 wasn't trying to withhold it from you, it just
23 didn't get copied. It was in a different part of
24 the chart.

25 Q. Is that something that you have here

1 today?

2 A. Yes.

3 Q. Okay. Do you mind if I go make a copy
4 of this real fast?

5 A. Not at all.

6 Q. Do you have anything else --

7 A. I don't think so.

8 Q. How about these notes that you were
9 looking at earlier?

10 A. Oh, these are just notes from -- from
11 these.

12 Q. From?

13 A. My chart.

14 Q. Okay. So those are notes that you made
15 in connection with the case?

16 A. That I was refreshing my memory to the
17 key points this morning.

18 Q. Can I make of copy that as well?

19 A. (Indicating)

20 Q. Thank you.

21 (A recess transpired.)

22 (DFT. EXH. 1, Copy of chart, was marked
23 for identification.)

24 (DFT. EXH. 2, Copy of handwritten
25 notes, was marked for identification.)

1 (DFT. EXH. 3, Copy of Initial Clinical
2 Assessment, was marked for
3 identification.)

4 BY MR. ABNEY:

5 Q. Dr. Preyer, before we went off, we were
6 talking about how Mrs. Katz initially came to you.

7 A. Uh-huh.

8 Q. And I believe you were referring to
9 some documents that did not get produced earlier.
10 And was that Exhibit Number 3 that you were
11 referring to?

12 A. Correct.

13 Q. And what -- and what were you telling
14 me about how she initially came to you?

15 A. Her family practitioner referred her.

16 Q. Okay. And why was she referred to you?

17 A. She was not responding as well as he
18 thought she should to his medicine that he had
19 prescribed for her, so he wanted a specialty
20 consult.

21 Q. Okay. And what medication was she on
22 at that time?

23 A. She came to me on Lexapro.

24 Q. Okay. And is there -- what particular
25 dosage?

1 A. She was on two 10-milligram tablets a
2 day.

3 Q. And is Lexapro an anti-depressant?

4 A. It's a serotonin uptake inhibitor.
5 It's a very common -- commonly generally used
6 anti-depressant.

7 Q. Was she taking anything else at that
8 time?

9 A. He had prescribed a little bit of
10 Ativan.

11 Q. What is Ativan?

12 A. It is a sedative hypnotic anxiolytic.
13 It's a Benzodiazapine. It's in the family of
14 Xanax, Klonopin, Valium.

15 Q. What was the Ativan dosage?

16 A. One milligram, up to twice a day.

17 Q. Okay. And was that all she was taking
18 at the time she was referred?

19 A. She was taking some Allegra for
20 allergies.

21 Q. Okay. Anything else that you're aware
22 of?

23 A. Not that I'm aware of.

24 Q. Okay. And had she been diagnosed by
25 her primary care physician in connection with the

1 referral to you?

2 A. Yeah. I don't have his original
3 referral papers, but, yes.

4 Q. What was the diagnosis?

5 A. As far as I know, he thought she was
6 depressed, which is why he sent her to me.

7 Q. Okay. And what was your initial
8 diagnosis when she came to you?

9 A. Major depression, partially treated.

10 Q. Okay. And do you know the date on
11 which you diagnosed her?

12 A. The same day as her initial
13 appointment, which was 10/19/2004.

14 Q. Okay. And did you treat her
15 depression?

16 A. I did.

17 Q. And what did you prescribe?

18 A. I tried tapering her -- decreased the
19 Lexapro with the goal of coming off of it and began
20 another anti-depressant, Paxil CR, continuous
21 release. It's another old standby.

22 Q. Okay. And what was the reason for
23 changing her medication?

24 A. She was on the maximum dose that I
25 typically prescribed of Lexapro, and if you don't

1 get sufficient response with it, then one of
2 several options is to switch to a different
3 anti-depressant in the same class, which is what I
4 opted to do.

5 Q. And Paxil is a different
6 anti-depressant in the same class as Lexapro?

7 A. Correct.

8 Q. Did you continue her on the Ativan?

9 A. Yes.

10 Q. The same dosage?

11 A. Uh-huh.

12 Q. Okay. And how did -- how did she
13 respond to your treatment?

14 A. Well, we ended up going from Paxil to
15 Zoloft and then back to Lexapro.

16 Q. Okay.

17 A. And she was ultimately stabilized on 15
18 milligrams of Lexapro.

19 Q. Okay. And at what point do you believe
20 she was stabilized?

21 A. She -- by February of '07. How well
22 she was doing was partially -- in a great deal
23 influenced by what was going on in her environment
24 and her now ex-husband's behavior.

25 Q. Okay.

1 A. And how he was treating her and their
2 sons.

3 Q. Okay. And at what point do you believe
4 she was -- I'm using your terminology. You said
5 that at some point she was stabilized on a
6 certain --

7 A. By that I mean that you get as much
8 benefit from the psychopharmacology of it that
9 you're going to get.

10 Q. Okay. And at what point did she reach
11 that point?

12 A. I would say at least by February of
13 '07.

14 Q. Okay. So February of '07 is when she
15 -- when you put her back on Lexapro? Or was it
16 before?

17 A. She had sort of gone back on it. When
18 the Zoloft made her feel too jittery and anxious,
19 she went back on it.

20 Q. Okay. And do you know when that was?

21 A. I would have to review.

22 Q. Sure.

23 A. Yeah. Okay. In March of '06, she was
24 not sure that the Lexapro was doing what we wanted
25 it to. And we did a trial of Effexor. That is

1 one that I had not included. It was not good at
2 all.

3 Q. Okay.

4 A. And that's when she -- we -- she had
5 gone -- very wisely she had stopped it because it
6 made her very irritable and jumpy, and any
7 medication that bumps up the norepinephrine can do
8 that. And Effexor is a little different class; it
9 increases serotonin and norepinephrine, and some
10 people get irritable and revved up on it.

11 So when I saw her back in March of '06
12 she was at a bad spot, but had gone back on it.
13 And when I saw her then, I think she mentioned that
14 she wanted to down the road switch the Lexapro, and
15 that I think is -- if I remember, that's when we --
16 and I forgot we did a trial of Prozac as well. We
17 started that June of '06. So she still was
18 definitely not stabilized then so we were still
19 trying.

20 Q. Okay.

21 A. So by February of '07 the Lexapro was
22 doing pretty well.

23 Q. Okay. You believe it was February of
24 '07 when you put her back on Lexapro?

25 A. Well, she had been on it for I think

1 about six weeks at that point in time and was
2 feeling better.

3 Q. Okay. And did she remain -- I'm
4 looking at your notes from February of 2007.

5 MR. WAGGONER: What page?

6 MR. ABNEY: This is ATA 15 in Exhibit
7 Number 3 -- I'm sorry, Exhibit Number 1.

8 BY MR. ABNEY:

9 Q. Okay. Anyway, it actually -- so this
10 is dated -- physician's note is dated 2/07/07,
11 February 7, 2007. And is it -- the medication that
12 you prescribed there, would that be on the next
13 page?

14 A. It's on the top, right under her name
15 in the top left-hand corner.

16 Q. Okay. What does it say?

17 A. Lexapro, 10 milligrams, one and a half
18 tablets, and Ativan, 1 milligram, twice a day as
19 needed.

20 Q. Okay. And on the next page which is
21 ATA 16 --

22 A. Uh-huh.

23 Q. -- is that the same?

24 A. No. That -- oh, is that the same?

25 No. The Lexapro dose was lower in August of '06.

1 It was a single 10-milligram Lexapro tablet, not
2 one and a half tablets. So it was a lower dose.
3 When I saw her on the session 8/06, she came to me
4 on 10 milligrams of Lexapro.

5 Q. Uh-huh.

6 A. And by the time I saw her again in
7 February of '07, she was on one and a half.

8 Q. Okay. And the Ativan?

9 A. Was the same.

10 Q. Was the same at both the August '06
11 session and the February '07 session?

12 A. Uh-huh.

13 Q. Okay. So as of February '07 she was
14 taking 10 milligrams of Lexapro, one and a half --

15 A. Uh-huh, total of 15 milligrams.

16 Q. Total of 15 milligrams and 1 milligram
17 of Ativan?

18 A. She took a nighttime dose and then a
19 daytime -- she had it prescribed that she could
20 have a daytime dose if she needed to.

21 Q. Okay. And -- okay. Do you have an
22 opinion as to the cause of Ms. Boone's depression?

23 A. The major factor was the divorce and
24 subsequent behavior of her -- of her ex-husband.

25 Q. Okay. And what's led you to that

1 conclusion?

2 A. Information revealed to me and her --
3 about things that he had done or said either to her
4 or to the sons and -- and her reaction to them.

5 Q. Okay. And this is -- is this
6 information that was revealed to you by Mrs. Katz?

7 A. Uh-huh.

8 Q. Okay. Is it information you obtained
9 from any other source?

10 A. No.

11 Q. Okay. Is there any other basis on
12 which you determined that her ex-husband --

13 A. Well, there's always a biological
14 component to it. And the stress and environment
15 going on and her internal response to it is going
16 to be a major factor in triggering an episode of
17 depression.

18 Q. Okay.

19 A. There is -- it's a biopsychosocial
20 model, it's multifactorial. There's always
21 genetics and biology in it.

22 Q. Do you consider the issues with her
23 husband to be the primary cause of her depression?

24 A. Yes, I do.

25 Q. And do you believe that this was the

1 case from your initial consultation with her in
2 2004?

3 A. Correct.

4 Q. And over the course of your treatment
5 of Mrs. Boone, did her depression -- did her
6 condition improve or stay the same or worsen in
7 your opinion?

8 A. It was a definite pattern of her
9 getting her feet under her, feeling a little bit
10 stable, and then some other event generally
11 precipitated by her ex-husband that would send her
12 back down.

13 Q. Okay. What do you mean, send her back
14 down?

15 A. Make -- make her have more depressive
16 symptoms and not as good a response to medication.

17 Q. Okay. Do you have an opinion as to
18 whether or not the particular facts of this case,
19 the removal of funds from Mrs. Katz's account by
20 Dr. Jernigan, is a cause of her depression?

21 A. Yes, I do have an opinion. And, yes, I
22 think it was just another in a series of events.

23 Q. Okay. And are you able to say how
24 significant a cause it is of her depression, it
25 being the removal of those funds from her account?

1 A. 75 to 80 percent.

2 Q. Okay. So you think the removal of
3 funds from Mrs. Katz's account in 2007 is 75 to
4 80 percent of the reason for her depression?

5 A. It contributed to her remaining
6 depressed and continuing being under a lot of
7 stress.

8 Q. Sure. I hear you on that. But you
9 just said that -- as I understood it, you just
10 testified that the specific removal of those funds
11 from her bank account is a -- I'm sorry, 75 to
12 80 percent cause of --

13 A. In the sense of his behavior all
14 along --

15 Q. Okay.

16 A. -- had caused 75 to 80 percent of it.

17 Q. I see. So you're also referring to --

18 A. The whole accumulation of events.

19 Q. Including the initial divorce?

20 A. Everything, yeah.

21 Q. Okay. So -- so you're talking about
22 all -- the events beginning prior to your initial
23 consultation with her in 2004 and contributing
24 throughout your treatment of her --

25 A. Uh-huh.

1 Q. -- into 2009?

2 A. Yes.

3 Q. Okay. Are you able to carve out this
4 particular fact of the removal of funds from her
5 account and assign a percentage cause of that
6 particular incident --

7 A. No, I'm not, because she had been so
8 stressed all along.

9 Q. Understood.

10 A. No, I couldn't carve that out. I
11 wouldn't be able to do that.

12 Q. I think you cut me off.

13 A. I'm sorry.

14 Q. That's okay. It happens all the time.
15 Just so we have a clear record, I understand that
16 you're not able to carve out these particular
17 facts, the removal of funds from her account, and
18 assign a percentage cause of that event --
19 percentage cause of her depression for that event?

20 A. That's correct.

21 Q. Okay. Do you know how Mrs. Boone's
22 doing today?

23 A. She reports doing very well. She's
24 happily remarried. Her new husband is treating her
25 very well, their marriage is good. And as she put

1 it, this remaining situation that I'm here about
2 today is the main thorn in her side, as it were, or
3 the thing that was keeping her life from being very
4 good.

5 Q. Okay. Well, you have not examined
6 her --

7 A. No.

8 Q. -- since 2009?

9 A. No. She just spontaneously made that
10 comment when she stopped by.

11 Q. In the entire time that you were
12 treating Mrs. Katz, did she ever show -- present
13 with physical symptoms that you attribute to her
14 depression?

15 A. Certainly, the disturbance of sleep is
16 a manifestation of it, the low energy.

17 Q. Anything else?

18 A. No, but not -- not anything that I can
19 think of that amounts to her -- again, just sort of
20 FYI, depression in some people, particularly older
21 adults, can represent as highly somatic. In other
22 words, their stomach hurts, their aches -- their
23 joints ache, very highly somatic.

24 For some people it's much more
25 awareness of no interest in pleasure, no enjoyment,

1 no physical energy, and no motivation to do
2 anything. Her -- and they both are representative
3 of depression and depression is not going to look *phy*
4 the same in any two people. She's not one that had
5 upset stomach, GI complaints, muscle achiness,
6 those kinds of things from the depression. That
7 was not how hers presented.

8 Q. Okay. So other than the symptoms of
9 disturbance of sleep and low energy, her depression
10 did not present with physical manifestations?

11 A. Correct. As best I remember, yes.

12 Q. And as far as her disturbance of sleep,
13 is that something that you observed personally or
14 something that she reported to you?

15 A. That's always going to be a patient's
16 report, obviously.

17 Q. Unless you did a sleep study or
18 something like that.

19 A. Right.

20 Q. And you didn't do that in this case?

21 A. No.

22 Q. And low energy, again, is that
23 something that she reported to you or something you
24 were able to observe objectively?

25 A. That was a subjective report. Again,

1 there's -- in depression some people are so slow.
2 It's like seeing them move in slow motion in
3 extreme cases. Did I see that in her? No.

4 Q. Let me ask you, I mean, Mrs. Katz would
5 have suffered depression regardless of the removal
6 of funds from her account in 2007, correct?

7 MR. EDWARDS: Object to form.

8 MR. ABNEY: You can answer.

9 THE WITNESS: Yes.

10 BY MR. ABNEY:

11 Q. Okay. In fact, she did suffer
12 depression well before those funds were removed
13 from her account in 2007, correct?

14 A. Yes, she did.

15 Q. Okay. It appeared to me from review of
16 your records that you -- you saw Mrs. Katz on sort
17 of an as-needed basis as opposed to regular
18 scheduled sessions; is that correct?

19 A. She -- that -- it wasn't totally as
20 needed, but she did not have a standing appointment
21 with me every two weeks or anything like that.
22 When I made a medication change, it's standard of
23 care to bring that person back --

24 Q. I see.

25 A. -- in four to six weeks, or sooner, to

1 see how they're doing.

2 Q. Okay. So would you --

3 A. So hers -- so hers were scheduled
4 appointments.

5 Q. Oh, they were scheduled?

6 A. Yes. Yeah.

7 Q. Okay. And why were there no scheduled
8 appointments after --

9 A. In that gap? That was because she
10 couldn't afford it, she didn't have any money.

11 Q. And I'm referring to after February of
12 2009.

13 A. Oh, at that point she had gone back --
14 again, her primary care physician was giving her
15 medication was my understanding.

16 Q. Okay.

17 A. It wasn't because we had any
18 falling-out or anything like that.

19 Q. Sure. Okay. Did you after this
20 appointment on February 10, 2009, did you tell her
21 you wanted to see her again or --

22 A. I told her the door was always open,
23 and if she wanted to do, I would be glad to see her
24 again.

25 Q. Did you believe a follow-up visit with

1 you was medically necessary, medically required at
2 that point?

3 A. Because she was seeing her primary care
4 doctor, no.

5 Q. And in your opinion her primary care
6 doctor at that point could handle her medical
7 needs?

8 A. Absolutely, yeah.

9 Q: And do you know who her primary care
10 doctor was?

11 A. Dr. Hugh Durrence.

12 Q. And looking at ATA number 3 in Exhibit
13 Number 1 there, I'm looking at the records from
14 February of '09, February 10, '09.

15 A. Uh-huh.

16 Q. Right under the date there, can you
17 read what the notes say?

18 A. Married life going well, had a --
19 things came to a head with her mom and she -- her
20 mom actually moved and had had a huge turn-around
21 and that they were getting along. Sleep -- she was
22 sleeping well, her mood was good, lots of
23 adjustments this past year, but feels better than
24 she has in a long time.

25 Q. Okay. Would you -- is it fair to say

1 that she -- in your opinion she was doing very well
2 on the date of this appointment?

3 A. Yes.

4 Q. Okay. She was sleeping well, correct?
5 Or she reported she was sleeping well?

6 A. She indicated that, yes, uh-huh. With
7 the Ativan.

8 Q. Okay. Can you continue reading for me
9 there beyond what you just read?

10 A. Okay. I use a SOAP format. The S
11 stands for subjective. The OB is for objective;
12 those were my objective findings. She was
13 well-groomed; her affect was euthymic, upbeat;
14 speech was normal rate, tone, and volume; thoughts
15 were -- that's a measure of -- if someone is manic
16 or bipolar, their speech tends to be louder or more
17 rapid.

18 Q. Okay.

19 A. And so RTV is standard annotation for
20 normal rate, tone and volume.

21 Q. So no indication of mania?

22 A. Right. Her thoughts were goal oriented
23 without delusions or psychosis; she never was
24 psychotic ever. And at that point in time my
25 assessment was major depression in remission, doing

1 well. And the plan was to begin tapering the
2 Lexapro by a half tablet and then check again in
3 three months.

4 Q. Okay. So the last time you saw her,
5 you -- your assessment was her depression was in
6 remission, correct?

7 A. Uh-huh.

8 Q. Do you have any reason to believe that
9 today her depression is not still in remission?

10 A. Biologically the depression is doing
11 well. Does that mean that she's not stressed? No.
12 But she's not currently in an episode of major
13 depression, but it is in remission in that sense.

14 Q. So as far as you know today, her
15 depression that you diagnosed remains in remission?

16 A. (Nodding head)

17 Q. Okay. Is there any other medical
18 condition that you are aware of that Mrs. Katz
19 suffers from today?

20 A. Not that I'm aware of. And when I saw
21 her for the first time in '04, basically she was in
22 very good health.

23 Q. Okay.

24 A. She had her gallbladder out and that
25 was it.

1 Q. Okay. Look with me at ATA number 16 in
2 Exhibit 1.

3 A. Uh-huh.

4 Q. Dr. Preyer, if you need to take a
5 break, bathroom break or get of drink of water, you
6 just let me know and I'm happy to do that at any
7 time.

8 This is -- these are your notes from
9 August 31, 2006, correct?

10 A. Uh-huh.

11 Q. And can you read for me your
12 physician's notes under the date there?

13 A. Subjectively feeling good, letting go
14 of a lot of things through Al-Anon, that is
15 helping. She's having good talks with her son; he
16 grew up a lot. Her business was picking up a
17 little bit. She feels that she was getting
18 stronger with setting boundaries. She went off of
19 the Prozac, that was, quote, unquote, awful.
20 Little and -- little to no alcohol, occasional
21 Ativan.

22 I went through the diagnostic criteria
23 for ADD. She had been very hyperactive as a child,
24 a hard time organizing, easily distracted. And she
25 feels this is a longstanding and constant

1 difficulty, hard time waiting in line, et cetera.

2 I think that must be E-T-C, et cetera.

3 And then under objective; neatly
4 groomed, hair and makeup done; affect level,
5 upbeat, appropriate; again, speech normal rate,
6 tone and volume; thoughts goal oriented without
7 delusions or psychosis. Cognitively, no change.

8 Major depression, attention deficit,
9 hyperactivity disorder. Discussed options,
10 risk/benefit of a trial of a stimulant for ADD.
11 And I gave her a trial of Adderall XR, and she was
12 to come back in about four weeks.

13 Q. Okay. There's mention of her son.
14 Sounds like you-all discussed her sons in this
15 session. Did her -- her children contribute at all
16 to her depression or emotional stress during this
17 period?

18 A. Not inordinately, no more than any
19 single mom.

20 Q. Okay.

21 A. Appropriate for a mom.

22 Q. So is it your opinion that the children
23 had no impact on her depression?

24 A. Minimal.

25 Q. Okay. How about her relationship with

1 her mother?

2 A. We did talk about that a little bit.
3 Yes, that would impact her if they had a flare-up.
4 Was it a major contributor? No, not in the big
5 picture.

6 Q. Okay. Were there any other sort of
7 environmental factors that contributed to her
8 emotional distress, depression during this period?

9 A. Not that I -- mainly the financial and
10 her ex-husband's behavior.

11 Q. Okay. You can think of nothing else?

12 A. She was trying to work on her interior
13 design business to help economically.

14 Q. Okay. And, to your knowledge, was she
15 succeeding, failing in that regard?

16 A. As I remember, it was a little slow.
17 It didn't take off gangbusters or anything.

18 Q. And did that fact have any impact on
19 her depression?

20 A. A small impact, yes. I mean, I can't
21 assign percentage points, you know.

22 Q. Okay.

23 A. All those -- all of those things played
24 a small role, yeah.

25 Q. All right. Let's turn to, if you don't

1 mind, ATA number 15. These are the notes dated
2 February 7th, 2007. I'm sorry I'm making you read
3 this, I just have trouble reading your handwriting;
4 I apologize. Mine is ten times worse so I'm not
5 blaming you for it. There under the date, can you
6 read?

7 A. Overall doing very well, Lexapro doing
8 well, Ativan working well. Spent the bulk of the
9 session discussing her new relationship -- that
10 would be with her -- I believe that was with her
11 current husband --

12 Q. Okay.

13 A. -- not positive about that -- and the
14 dynamics and her feelings regarding it. Positive
15 many stressors, financial problems with ex, et
16 cetera, but is handling well, works through it.

17 Q. Okay. Can you keep going?

18 A. Her -- she was well groomed, affect was
19 level.

20 Q. And these are your objective --

21 A. Yes.

22 Q. -- observances? Okay. I'm sorry, you
23 can start again with well groomed.

24 A. Affect was level, not depressed, or
25 agitated, appropriate to situation; speech normal,

Feb 07

1 rate, tone, and volume; thoughts, goal oriented.
2 without delusions or psychosis. That's standard.
3 Cognitively no change.

4 Assessment, major depression, ADHD.
5 Plan, continue meds at current dosage and recheck
6 in four to six weeks.

7 Q. Okay. So sounds like she was doing
8 very well on this visit, correct?

9 A. On that particular visit, yes.

10 Q. You write, not depressed or agitated,
11 correct?

12 A. Uh-huh. Correct.

13 Q. But you had -- you still have her
14 diagnosed as major depression?

15 A. Uh-huh.

16 Q. So she's not in remission at this
17 point, or is she?

18 A. The -- I don't believe she had totally
19 met the criteria to be in remission. You have to
20 have been asymptomatic for at least six months --

21 Q. Okay.

22 A. -- on a current dose.

23 Q. Okay. And you don't change her
24 medication as a result of this session, do you?

25 A. No, I didn't.

1 Q. Okay. And you don't -- you don't
2 change her treatment in any fashion after this
3 session, do you?

4 A. No.

5 Q. I said that incorrectly, let me say it
6 again. You didn't change her treatment in any
7 fashion as a result of this session, did you?

8 A. No, I did not.

9 Q. Okay. Okay. Let's turn to ATA 14.
10 This is -- these are notes from your session with
11 Mrs. Katz on March 2, 2007?

12 A. The 8th. I think it's the 8th.

13 Q. Okay. March 8th.

14 A. I would have to look at the billing
15 record, I think it was the 8th.

16 Q. Can you read your notes?

17 A. Spent -- I met with patient and her
18 boyfriend. Spent session discussing communication,
19 relationship issues, discussed her growing sense of
20 identity as an individual. She was sleeping well.
21 No med issues. Well groomed -- under objective,
22 well groomed; affect, pleasant, euthymic; speech
23 normal, rate, tone, and volume; thoughts, goal
24 oriented, without delusions or psychosis.
25 Cognitively, no changes. Assessment, major

March 8, 2007

1 depression doing well, continue meds at current
2 doses.

3 Q. So it sounds like your assessment as a
4 result of this -- after this session is she is
5 doing well?

6 A. She was still doing well.

7 Q. And you didn't change her treatment in
8 any respect as a result of this session, did you?

9 A. No.

10 Q. And I don't see any discussion in the
11 notes in March of '07 or February of '07 regarding
12 the removal of funds from Mrs. Katz's bank account;
13 is that correct?

14 A. That's correct. There is no mention of
15 it, yes.

16 Q. Okay. And, to your recollection, did
17 you discuss it in these sessions?

18 A. I honestly can't say for sure.

19 Q. Okay. Tell me, as a general matter, if
20 there's a particular topic that is a significant
21 part of your discussion with a patient, is that
22 something you would put in your notes?

23 A. I might allude to it.

24 Q. Uh-huh.

25 A. As a rule I would not write details of

1 it. These are not psychotherapy -- I don't write
2 psychotherapy notes. I write medicine management
3 notes.

4 Q. Okay. And can you explain the
5 distinction there?

6 A. A medical -- a med management note
7 would be the same thing as your primary doctor
8 would say about you, that you came in with a
9 complaint of cough, sore throat, cold. Physical
10 findings were this, you were congested, your lungs
11 were congested, heard wheezing, or didn't. The
12 rest of the exam was normal.

13 Your -- you didn't have an otitis, or
14 an ear infection; your throat looked red, or
15 didn't; had a throat culture for strep, or didn't;
16 abdomen was tender -- the standard medical stuff.
17 And then under assessment, upper respiratory --
18 upper respiratory infection, probably viral. Plan
19 would be to do a rapid strep, hold off on
20 antibiotics right now, blah, blah, blah.

21 Q. Okay. I understand, but if you have a
22 patient that you've previously diagnosed as major
23 depressive, and they were to come in and tell you,
24 just by way of example, my brother died yesterday
25 and I'm feeling very stressed about that, is that,

1 for example, something that you would likely write
2 down and record in your notes?

3 A. Most likely -- not 100 percent of the
4 time, but, typically, yes.

5 Q. Okay. So --

6 A. I am select on what I write down.

7 Q. Okay.

8 A. To be real honest, I do it -- I write
9 as -- the purpose of this record is for somebody
10 else to be able to pick up care; know what I did
11 medically so that if somebody else needed to take
12 over the care, they would know exactly I've done
13 and why.

14 Q. Okay.

15 A. These are not psychotherapy notes.

16 Q. I understand. I understand.

17 A. I write them as though they're going to
18 go into a court of law, and I write them to be very
19 protective of the patient. And it depends on how
20 big an issue I think it may or may not be.
21 Typically, something like the death of a sibling or
22 parent, I probably will allude to it.

23 Q. Because it's a major issue?

24 A. It can be, yeah. It's a life issue.
25 It's a life event.

1 Q. Okay. So in being selective about what
2 goes in there in your notes, is it the more --

3 A. Personal.

4 Q. -- significant life events?

5 A. The more -- the more personal things.

6 Q. Okay. What do you mean by that, more
7 personal?

8 A. Okay. My mom died, but she left me out
9 of the will; I'm fighting with my brothers and
10 sisters because they got all the money and they
11 shouldn't have. You know, just family disputes.
12 The details of who said what would be an example.

13 Q. Well, how about, my husband took money
14 out of my bank account and that's causing me a lot
15 of stress? If someone told you that, is that
16 something you would likely record in your notes?

17 A. I probably, as I did in her case, would
18 frame it as stress with -- huge financial
19 stressors, stress with ex-husband, and probably
20 would not say a whole lot more about it. It's a
21 case -- it's a very individual thing.

22 Q. Okay. But you don't know whether or
23 not Mrs. Katz specifically referenced that fact,
24 the removal of funds from her account?

25 A. Again, I don't know for sure. I

1 couldn't say it did or didn't happen. I'm sorry,
2 I'm not trying to be --

3 Q. No. You're not -- you're not being
4 evasive.

5 Let's take a look at at least one more,
6 ATA number 13. Okay. These are the notes from
7 your session with Mrs. Katz looks like April 14th
8 -- or I'm sorry, April 17, 2007?

9 A. Uh-huh.

10 Q. Can you read the notes there for us?

11 A. Good trip; in a funk, major stuff going
12 on with ex-husband, including finances, had to file
13 charges, very stressed concerning -- regarding
14 finances.

15 Q. Okay.

16 A. And that would --

17 Q. So here she told you that she's had to
18 file charges against her ex; is that how you
19 interpret that?

20 A. Yes.

21 Q. And that made it into your notes.

22 A. That did, yeah.

23 Q. You felt that was a significant event
24 to record?

25 A. Yes.

1 Q. Okay. Can you keep reading?

2 A. Oh, hypersomnolent, feels some weight
3 gain, feels depressed, no spunk, feels her
4 relationship is going well. That was with her
5 now-husband I think.

6 Q. And all of what you just read are
7 subjective from Mrs. Katz, correct?

8 A. Uh-huh. Correct.

9 Q. Okay. Continue please.

10 A. Objectively, she was well groomed; she
11 did appear to have gained a slight amount of
12 weight; affect was stressed, worried; her speech
13 was normal, rate, tone, and volume; thoughts were
14 goal oriented without delusions or psychosis;
15 cognitively, no change. Assessment, major
16 depression. Plan, decrease the Lexapro to five and
17 do a trial of Zoloft, 50 milligrams, a half tablet,
18 for two weeks.

19 Q. Why did you change her medication?

20 A. Because she was exhibiting signs of
21 some break-through depression. She was sleeping
22 too much, some weight gain. With depression, you
23 know, it can be either weight loss or weight gain.
24 Her mood was more down, felt -- didn't have
25 motivation.

1 Q. Okay. Let's take a look at the next
2 session, which is on ATA 12. And these are the
3 notes from a session that occurred on May 24th,
4 2007, correct?

5 A. Correct.

6 Q. Read these?

7 A. Subjectively, couldn't take more than a
8 12.5 Zoloft tablet. When she tried going up to
9 25 milligrams, it caused a speeding sensation, made
10 her jittery, particularly at 4:00 in the afternoon.
11 And that -- typically, if you're going to get a
12 side effect from the medicine, you're going to get
13 it about six hours after you take it and this would
14 not be off the wall for Zoloft to do that.

15 Lots of situational stressors; feels as
16 -- trying to let go of anger toward her ex;
17 stressor, finances and ex having control of the
18 money; feels is mostly outside stressors. And then
19 quote, unquote, no pill -- I didn't finish my
20 sentence.

21 Objectively, well groomed, hair and
22 makeup done; affect level, appropriate; speech
23 normal, rate, tone and volume; thoughts, goal
24 oriented without delusions or psychosis;
25 cognitively no change. Major depression. Plan for

1 now to stop or discontinue Zoloft and continue
2 Lexapro and recheck in six weeks.

3 Q. Okay. So if I understand correctly, as
4 a result of this session, you went back to her
5 prior treatment regimen?

6 A. Correct.

7 Q. Okay. The regimen in place before you
8 experimented with the Zoloft?

9 A. Correct.

10 Q. Okay. Let's take a look at ATA 10
11 please.

12 A. Uh-huh.

13 Q. These are the notes of the session that
14 occurred June 26, 2007, correct?

15 A. Correct. Subjectively, court issue is
16 moving along and she was relieved that the alimony
17 was being paid through the family court.

18 Q. Can I stop you there? Do you know what
19 court issues she's referring to there?

20 A. Other than that it was regarding
21 alimony.

22 Q. Okay.

23 A. She was feeling better, Lexapro was
24 doing okay at that point, using Ativan at nighttime
25 -- one at HS, which is nighttime -- only very

1 rarely during the day, sleeping fine. Well groomed
2 -- objectively, well groomed; affect bright,
3 upbeat, level; speech normal, rate, tone, and
4 volume; thoughts goal oriented without delusions or
5 psychosis; cognitively no change. Assessment,
6 major depression, doing well. Plan, continue meds,
7 at current doses and recheck in eight weeks PRN.

8 Q. That as a result of this session you
9 maintained the same treatment regimen?

10 A. Correct.

11 Q. Did Mrs. Katz report to you that she
12 had a lot of anger towards her ex?

13 Let me actually strike that. Let me
14 ask that a little more broadly. Did she tell you
15 how she felt toward her ex-husband?

16 A. Yes.

17 Q. Okay.

18 A. Yes.

19 Q. And how did she describe that feeling?

20 A. Again, if I have to do a Gestalt of the
21 whole four years, the salient things, I would
22 probably say that she was hurt, devastated, and
23 angry.

24 Q. And was that the case in 2004 when she
25 initially came to you?

1 A. I think it was more hurt and devastated
2 at that point.

3 Q. Okay.

4 A. I think the anger came a little later
5 with his behavior.

6 Q. Okay. When would you say the anger
7 began?

8 A. I couldn't pinpoint an exact time.

9 Q. Okay. But you believe she became
10 increasingly angry with him?

11 A. Not out of control anger, very
12 understandable anger and frustration.

13 MR. ABNEY: Okay. Why don't we take a
14 quick break and I'll look over my notes. I don't
15 think I have too much more for you.

16 (A recess transpired.)

17 BY MR. ABNEY:

18 Q. Dr. Preyer, you told me that you intend
19 to -- you have the opinion that Mrs. Katz's issues
20 with her husband were a cause of her depression.
21 Do you have any other opinions that you intend to
22 offer at the trial of this case?

23 MR. EDWARDS: Object to form.

24 MR. ABNEY: You can answer.

25 THE WITNESS: That her -- her pattern

1 of her recovery and ups and downs were affected by
2 her ex-husband's behavior. If I read through my
3 notes, that's a clear pattern that I saw, and it --
4 and it affected the course of her recovery and how
5 well she responded to the medication. That's what
6 I would say.

7 BY MR. ABNEY:

8 Q. Can you be more specific? What exactly
9 do you mean, that the pattern of her recovery was
10 affected by his behavior?

11 A. Uh-huh.

12 Q. Can you explain what you mean by that?

13 A. Well, if you look at when she -- she
14 came in with having had a rough month or not being
15 in a good space and reporting that the medicines
16 were not working as well, I think the stress kicked
17 in the biology of her having another dip of
18 depression.

19 Q. Okay. And here you're referring to
20 issues with her ex-husband that she would report to
21 you?

22 A. Uh-huh.

23 Q. And you have no knowledge of those
24 issues other than her report to you?

25 A. No, I don't.

1 Q. Okay.

2 A. And off the record, when I'm treating
3 someone, I have to take what they say --

4 Q. Just to let you know, we're on the
5 record. So you can go ahead --

6 A. Okay. I have to -- I have to take what
7 they say at face value. I am their advocate. I'm
8 going to believe what they say unless proven
9 otherwise, unless it's just so off the wall.

10 Q. Right.

11 A. And then you get a contradictory
12 history from somebody else or a family member that
13 says, well, what I observe is blah, blah, blah.

14 Q. Okay. So as a general matter, you
15 don't attempt to determine whether or not your
16 patient is accurately reporting what they're
17 telling you regarding issues in their life,
18 environmental factors and things like that?

19 A. I'm treating based on -- I take it at
20 face value that what happened and that their
21 reaction and interpretation of it and what they
22 feel about it is accurate in their reality, yeah.

23 Q. At any time during your treatment of
24 Mrs. Katz, was she in your assessment unable to be
25 gainfully employed as a result of her depression or

1 emotional distress?

2 A. That she would have been unable to
3 be --

4 Q. I mean, were these conditions
5 debilitating to the point where she couldn't work?

6 A. At times, yes.

7 Q. And when? Because I didn't see
8 anything to that effect in your notes.

9 A. It was never brought up as an issue,
10 except her trying to start her business. When I
11 first saw her in '04, she had a partially treated
12 depression, but I would have said had I seen her in
13 the beginning, and even seeing her for the first
14 time, she would not have been employable at that
15 point.

16 Q. Okay.

17 A. But working -- you know, standard
18 disability type thing as far as employees and
19 employers, standard expectation of her being able
20 to show up at work, you know, concentrate, stay
21 focused, be effective, not have absenteeism, and
22 get there on time, blah, blah, blah.

23 Q. So she initially presented -- when she
24 initially presented to you when you first started
25 treating her, you believe that she was disabled?

1 A. I would have said she could not work.

2 Q. And was there a point at which you
3 believe she was better to the point where she was
4 able to be regularly employed?

5 A. I hadn't looked at it like that
6 because, again, employability never became an
7 issue.

8 Q. I understand. What I'm trying to
9 determine is how debilitating her condition was
10 and, you know, just as an attorney I guess sort of
11 the bright line for me is, well, can she work or
12 can she not. And that may not be that for you. I
13 guess is there another measure of disability that
14 -- that you would think would be more appropriate?

15 A. A lot of times what people don't
16 understand is once somebody has responded to a
17 medication, they say they look like they could go
18 to work. Well, a lot of times it's the removal of
19 the stress of working that has enabled them to look
20 as good as they do.

21 Q. Okay.

22 A. Just not knowing her out of context, if
23 on one of her really good visits she would have
24 come in, you know, that -- she would have looked --
25 if you didn't know the history, she would have

1 looked employable.

2 Q. Okay. Well, you've told me I think
3 that when she initially came to you in '04, you
4 considered her disabled; is that accurate?

5 A. She was only partially treated and
6 would have had a very difficult time working.

7 Q. Okay.

8 A. At that point.

9 Q. And at the end of your -- the last time
10 you saw her in 2009, you diagnosed her as in
11 remission. Presumably at that point she was no
12 longer disabled in your opinion; is that correct?

13 A. Yeah. I would have to say that's
14 correct.

15 Q. So at some point between 2004 and 2009,
16 she ceased in your opinion disabled. And what I'm
17 trying to pin-point, if possible, if you can, is
18 when that transition occurred.

19 A. Basically I think a major factor is
20 when her current husband came into her -- into the
21 picture.

22 Q. Okay. And do you know when that was?

23 A. They were married December 21st of '08,
24 and if my notes back in '07 -- she -- I think that
25 those notes refer to her current husband. There

1 were a couple of brief -- people she dated very
2 briefly, but --

3 Q. Okay.

4 A. -- I would say that most of those...

5 Q. And here we're looking at -- I believe
6 when we were discussing this earlier, her
7 relationship with her current husband, we were
8 looking at February 7, 2007, that's ATA 15 --

9 A. Uh-huh.

10 Q. -- in your notes?

11 A. As best I remember, yeah.

12 Q. Okay. So am I correct then that you
13 would pinpoint approximately early 2007 as the
14 period that she ceased to be disabled in your
15 opinion?

16 A. Well, it hadn't been consistent, that's
17 the thing. Because in '08 -- yeah. Again, August,
18 she might have been able to work by then, yeah.

19 Q. Of 2007?

20 A. Possibly, yeah.

21 Q. Okay. Okay. Let me get quickly a
22 little background info on you. Where did you
23 attend college?

24 A. University of the South, at Sewanee.

25 Q. Okay. And medical school?

1 A. What is now Wake Forest University
2 School of Medicine. It was Bowman Gray School of
3 Medicine.

4 Q. Okay. And can you tell me -- just sort
5 of summarize your employment for me.

6 A. I completed a residency there.

7 Q. Okay.

8 A. Married before I began my last year;
9 moved to Oregon, was in private practice with one
10 other practitioner for about five years; moved back
11 to Charleston in '98; worked at Palmetto Behavioral
12 Health as an attending for a year; then went into a
13 private group practice which folded after about
14 three years; and I've been with my current practice
15 ever since, Ashley Therapy Associates.

16 Q. Okay. What board certifications do you
17 hold?

18 A. American Board of Neurology and
19 Psychiatry.

20 Q. Have you published in the last ten
21 years?

22 A. No.

23 Q. Have you taught any courses in the last
24 ten years?

25 A. In an academic setting, no.

1 Q. In any other setting?

2 A. I've given some brief talks at like
3 NAMI and that kind of thing.

4 Q. I'm sorry, what is NAMI?

5 A. National Alliance of Mental Illness.

6 Q. And these are seminar-type --

7 A. Yeah.

8 Q. -- talks?

9 A. That's sort of a guest speaker type
10 thing.

11 Q. Are you a member of any medical
12 organizations or societies?

13 A. Yeah. The Charleston County Medical
14 Society; South Carolina Medical Association; South
15 Carolina Psychiatric Association; American
16 Psychiatric Association; and AMA.

17 Q. Okay. Have you -- have you testified
18 at a deposition or trial in the last five years?

19 A. The one time I've been deposed, I guess
20 it was within five years. I've never testified as
21 a -- well, I take that back, I was called as an
22 expert -- as a witness in a federal case regarding
23 PTSD and whether the military had to pay PTSD
24 benefits. And that was federal.

25 Q. Okay. Tell me about the other occasion

1 when you were deposed.

2 A. I can't -- it was not a divorce
3 settlement, and I don't -- I'm not sure if it was a
4 disability workman comp case or not. I honestly
5 don't remember any of the details.

6 Q. Do you remember whether you were
7 testifying on behalf of a patient of yours?

8 A. Yes.

9 Q. And you don't recall the substance of
10 the case?

11 A. No, I don't.

12 Q. Okay. But you did not have to appear
13 at trial?

14 A. No.

15 Q. Did the deposition occur here in
16 Charleston?

17 A. In my office, yes.

18 Q. Okay. Do you know who the attorney
19 was?

20 A. I think the opposing attorney may have
21 been Waggoner.

22 MR. WAGGONER: I just woke up.

23 THE WITNESS: It was either one of the
24 -- I just remember that name, Waggoner.

25 BY MR. ABNEY:

1 Q. Okay. Was he really mean?

2 MR. WAGGONER: That obviously wasn't
3 me.

4 BY MR. ABNEY:

5 Q. Do you remember the patient's name?

6 A. No, not off the top of my head.

7 Q. Okay. Do you anticipate doing any
8 additional work in connection with this case?

9 A. Not really. I mean, the door is open
10 and I would certainly see her back as a patient.
11 She hasn't formally requested that.

12 Q. And no one has asked you to clinically
13 examine her at this point?

14 A. No.

15 Q. Okay. Is that something you would --
16 you would want to do before testifying at trial if
17 you were called?

18 A. Whatever good it is -- you know, as her
19 advocate and treating physician, an opposing side
20 would probably see me as pretty hostile.

21 Q. You don't seem that hostile to me. Do
22 you intend to --

23 A. I mean, work for her.

24 Q. Sure. I understand. So do you intend
25 to examine her prior to?

1 A. Am I going to be called to trial?

2 Q. I don't know. I don't intend to call
3 you, but before you testified at trial, would you
4 feel that would be something necessary for you to
5 do?

6 A. Obviously -- well, yeah. I would like
7 to know how she's doing now in more detail. I
8 can't rewrite history, obviously.

9 Q. Right. You don't think that's
10 something necessary for you to do prior to --

11 A. It depends on how far back they want to
12 go and if they want to do something current.

13 Q. Okay.

14 A. If they want a clinical assessment
15 beyond February of '09, I would have to see her
16 again --

17 Q. Okay. Very good.

18 A. -- as a patient.

19 MR. ABNEY: Okay. I think that's all I
20 have right now, Dr. Preyer. I think Mr. Waggoner
21 has some questions for you.

22 CROSS-EXAMINATION

23 BY MR. WAGGONER:

24 Q. Dr. Preyer, good morning. My name is
25 Geoff Waggoner. I represent the physician, the ex

1 as you referred to him, in this litigation, Dr.
2 Jernigan.

3 A. You were not the other person when I
4 used that last name.

5 Q. I agree, I was not. But I am here as
6 Dr. Jernigan's advocate, as you described yourself
7 as his former's wife advocate, at least in the
8 medical sense. I'm here in the legal sense
9 obviously, and I've got some questions that were
10 prompted by your responses to Mr. Abney's
11 questions, and I'll just take you through that if I
12 may.

13 First of all, as I understand it, when
14 you spoke with either Mr. Edwards or with Mrs. Katz
15 and -- very recently, yesterday or the day before,
16 she described a, quote, horrible ordeal, something
17 as a horrible ordeal. And I just want to see if I
18 can get your understanding of what she meant by
19 that. What is a horrible ordeal? Is it the --

20 A. Again, we didn't have an in-depth
21 discussion, but my -- my sense was that it was this
22 whole process of having to go through what we're
23 going through now.

24 Q. Okay. But her words were, quote,
25 horrible ordeal?

1 A. Uh-huh.

2 Q. All right. I also understand that, at
3 least as far as you recollect and certainly as
4 indicated by your chart, the first time you heard
5 about this money-missing issue was also very
6 recently?

7 MR. EDWARDS: Object to the form.

8 BY MR. WAGGONER:

9 Q. Is that when you first --

10 A. I could not swear as to whether she
11 told me in '07 or not.

12 Q. Right. But you agree, don't you, it is
13 not recorded anywhere in your records?

14 A. It is not recorded.

15 Q. Now, you've described your diagnosis,
16 and your chart certainly reflects, that you
17 perceived Mrs. Katz to be suffering from a major
18 depressive disorder beginning sometime in 2004 and
19 continuing with occasional remissions up to the
20 present, correct?

21 A. Uh-huh.

22 Q. And that's a mood disorder, is it not?

23 A. Correct.

24 Q. Okay. And as distinct from a
25 personality disorder?

1 A. Correct, very much so.

2 Q. Have you ever given her any diagnosis
3 as to personality?

4 A. Absolutely not.

5 Q. Okay. What would you need in order to
6 make a diagnosis of her personality --

7 A. Okay.

8 Q. -- from the DSM?

9 A. DSM IV. A personality disorder is a
10 chronic maladaptive pattern of basically seeing
11 yourself or the world around you and how you react
12 to it.

13 Q. Okay.

14 A. And just -- there are several -- three
15 clusters.

16 Q. All right. And those three, since
17 there's only three, go ahead and name them.

18 A. The first is eccentric. This would
19 include schizotypal; the one -- the middle one is
20 -- would include borderline personality disorder;
21 and then the last one is the anxious avoidant,
22 which would include avoidant personality disorder
23 and histrionic personality disorder.

24 Q. Histrionic meaning sort of
25 overreactive?

1 A. Uh-huh.

2 Q. Yes? I'm going to insist that you --

3 A. Theatrical. Yes.

4 Q. Theatrical, overreactive; I got stung
5 by a bee, I might lose my arm?

6 A. Right.

7 Q. That kind of thing?

8 A. Yeah. You know, somebody is histrionic
9 if they come in very flamboyantly dressed. We joke
10 that the sign is, if they have a ring on every
11 finger, they are histrionic.

12 Q. What was the first one you mentioned?

13 A. Schizotypal.

14 Q. Schizotypal. And what would you --
15 what sort of data would you gather or need in order
16 to make such a diagnosis?

17 A. Generally, it would -- that is a thing
18 that would -- I would rely very heavily on outside
19 information.

20 Q. Information. Okay.

21 A. Yeah.

22 Q. So that --

23 A. Family members, friends that she --
24 that the patient would have consent to talk to.

25 Q. Just verifiable information?

1 A. Yeah.

2 Q. All right. And if for instance the
3 patient said, I saw a bee -- told you in your
4 session, without verification, I saw a bee, I was
5 afraid I would get stung and lose my arm, what
6 would that tell you about that patient's
7 personality, if anything?

8 A. That they were anxious. It would not
9 -- that would not constitute a personality disorder
10 or trait.

11 Q. Okay. Even though presumably you could
12 assume that they would never lose their arm over a
13 bee sting and that that would be an unfounded fear?

14 A. In certain medical cases, it would not
15 be unfounded.

16 Q. All right. I won't throw hypotheticals
17 at you. I guess your -- the distinction that I
18 understand is in order to make a diagnosis of a
19 personality disorder --

20 A. It's built over time, it's repetitive
21 patterns.

22 Q. And it's your assessment of the
23 patient's reaction to the outer world as perceived
24 by you and your perception of the outer world --

25 A. And it's what other people tell me they

1 see as well.

2 Q. In this case you never talked to
3 anybody else involved in this entire scenario;
4 fair?

5 A. That's correct.

6 Q. You never talked to Dr. Jernigan?

7 A. No.

8 Q. Never talked to the son who is
9 mentioned in your chart?

10 A. I'm pretty sure -- no.

11 Q. All right. Never talked to the mother
12 that's mentioned in the chart?

13 A. No.

14 Q. Never talked to any of the members of
15 Al-Anon that's mentioned in the chart?

16 A. No.

17 Q. What is Al-Anon?

18 A. Okay. Acholics Anonymous is for the
19 patient that suffers from the disease. Al-Anon is
20 a support group for spouses, significant others,
21 family members that deal with having an alcoholic
22 that is actively involved in their life.

23 Q. And she had been going to the Al-Anon
24 or had gone to at least one?

25 A. Uh-huh.

1 Q. Who did you believe, if anybody, was
2 the family member who was an alcoholic?

3 A. I'm not really sure.

4 Q. Okay. What do you know, if anything,
5 about the -- what details are you aware of the
6 money taking that you recently learned about? What
7 do you understand the facts to have been and from
8 what sources?

9 A. That she and her ex-husband together
10 signed a document agreeing to take his name off of
11 the account and relinquish access to it. And my
12 understanding is that it was found out later that
13 he was continuing to access that account via
14 computer.

15 Q. And access it and take money, is that
16 what you mean?

17 A. Just general access to it, to formal
18 transactions; remove, I mean, just general access
19 to it.

20 Q. And this is from Mrs. Katz? I mean,
21 this is what your understanding is based on what
22 she told you?

23 A. Yes.

24 Q. Okay. Did she give you -- did you have
25 an understanding of how much money she was being

1 paid every month by her husband?

2 A. No.

3 Q. All right. So you have no way to know
4 whether, for instance, if she was getting \$4,000 a
5 month and he inadvertently accessed her account and
6 1100 was taken and immediately reimbursed, you
7 don't know all that?

8 A. No, I don't. And I'm trying to think
9 back through the years as to whether I even knew
10 what her alimony payment was.

11 Q. Okay. So to the extent that you
12 describe horrendous financial stressors on this
13 particular patient, you don't know what the facts
14 are; fair?

15 A. I know what she has told me as far as
16 being able to pay bills.

17 Q. Right. Do you understand she was not
18 really employed?

19 MR. EDWARDS: Object to the form.

20 BY MR. WAGGONER:

21 Q. Was that your understanding?

22 A. Yes.

23 Q. Okay. And that he was the sole source
24 of all income; did you understand that?

25 A. Yeah, I guess I did.

1 Q. And that they had two sons in private
2 schools that went to college that he paid for?

3 A. Yes.

4 Q. So --

5 A. I know there was some difficulty in him
6 keeping up with -- I know there was issues of
7 whether they -- I remember one time she mentioned
8 that -- I've forgotten if it was Chase or the other
9 one went to register and the tuition had not been
10 paid.

11 Q. Uh-huh.

12 A. And --

13 Q. And that upset her --

14 A. Yes.

15 Q. -- I gather?

16 A. Yeah.

17 Q. You don't know when it was paid or the
18 reason or anything like that?

19 A. No.

20 Q. Do you understand from her that her
21 husband ever hurt her physically?

22 A. I'm thinking back if there was any
23 mention of that. I don't believe so.

24 Q. Okay. Certainly not --

25 A. And she -- I mean, it wasn't anything

1 that -- if anything were ever mentioned like that,
2 it wasn't where she said anything like, get out of
3 the house, kind of thing.

4 Q. And it's nothing you put in your notes?

5 A. No.

6 Q. And it would be a stressor, would it
7 not?

8 A. Yeah.

9 Q. A classic stressor on a female patient?

10 A. Yes.

11 Q. And it's not in your records?

12 A. Correct.

13 Q. And you have no recollection of it ever
14 being said?

15 A. Not right now, no.

16 Q. Same question with regard to adultery
17 or extramarital affairs or infidelity. Did she
18 ever suggest that he was guilty of any of that?

19 A. I'm trying to think back as to when I
20 first saw her. I'm trying to be very truthful and
21 I honestly don't remember.

22 Q. Well, your records say you first saw
23 her in '04?

24 A. October 19th, and I know that she --
25 she didn't want the divorce, he did. Now whether

1 there was somebody else involved, I don't remember.

2 Q. And I don't mean -- what I mean is
3 during their marriage; I don't mean after they
4 separated because she was involved with somebody
5 before he was, actually, after they were separated,
6 I think. But, no, I meant during the marriage.
7 Are you aware of any infidelity?

8 A. Not that I immediately remember.

9 Q. Or that you included in your chart as a
10 stressor?

11 A. No.

12 Q. So the primary stressor that you
13 perceived to be the case, based on Mrs. Katz's,
14 then-Mrs. Jernigan's, view was financial?

15 A. That was a huge part of it, yes.

16 Q. And specifically she was not working
17 much and he was the sole breadwinner, and that -- I
18 think you described it as control, which she didn't
19 like --

20 A. Yeah.

21 Q. -- correct?

22 A. Uh-huh.

23 Q. Do you think that those facts alone
24 would make everybody depressed, or is there --

25 A. No.

1 Q. -- a component of the individual whose
2 -- and how they react to those circumstances?

3 A. Well, that's always true.

4 Q. Okay. Sort of like if some people
5 would scream and jump up on the table if a mouse
6 walked in the room and some wouldn't be bothered at
7 all, but it's still a mouse?

8 A. Uh-huh.

9 Q. Right?

10 A. Right.

11 Q. And you don't know if this was a mouse
12 or not?

13 A. I don't -- her reactions to things
14 never seemed over the top or out of line.

15 Q. Okay.

16 A. She never came across to me as
17 histrionic or borderline.

18 Q. If I told you that in her deposition
19 she described this inadvertent \$1100 for 48 hours
20 out of her account, when he was giving her roughly
21 \$4,000 a month, as rape, is that histrionic?

22 MR. EDWARDS: Object to the form.

23 THE WITNESS: No.

24 BY MR. WAGGONER:

25 Q. You would think that's a

1 fair assessment --

2 A. In and of itself, no.

3 Q. You don't think it's rape or you
4 think it's a fair --

5 A. If she felt that her -- no. If she
6 felt that her privacy and personal integrity had
7 been violated by him doing that, then, yeah, she
8 could have felt violated or raped by it. No,
9 that's not over the top.

10 Q. Okay. Did you ever suggest marriage
11 counselling?

12 A. No.

13 Q. Did you ever suggest psychotherapy? Or
14 do you know if she went to psychotherapy?

15 A. When I saw her they were already
16 separated. I mean, I never -- I never met him.

17 Q. Okay.

18 A. So I never recommended that.

19 Q. Do you know if she ever approached her
20 issues via psychotherapy as distinguished from
21 medical management?

22 A. I'd have to look and see -- yeah. I
23 didn't -- yeah. She has off and on seen a
24 therapist and they had had couples counselling, and
25 then they and the kids went. And she saw a

1 therapist in the summer of '03. I guess that was
2 when she was going through the divorce.

3 Q. And presumably that therapist would
4 have a more detailed sort of narrative of the
5 problems --

6 A. Well, they would be --

7 Q. -- as distinguished from --

8 A. They would be psychotherapy notes,
9 yeah.

10 Q. Okay. I guess when you say you're the
11 patient's advocate, you don't feel inclined to
12 distinguish the reaction to an act from the actual
13 act; in other words, it's not your job to verify,
14 is it? To verify the basis for a subjective
15 response to a situation? In other words --

16 A. For the most part, no. There would be
17 situations where, yes, I would have to verify.

18 Q. If they said, I saw little green men
19 flying down from the moon --

20 A. Or -- obviously, I'm a mandated
21 reporter for child abuse and elder abuse and in
22 that situation, yes, I would have to.

23 Q. Right. But in this situation where
24 somebody says, I just feel like he's raping me or
25 I'm under terrible control, the finances -- I mean,

1 you don't say, are you sure? How much does he give
2 you a month? What are your expenses? You don't go
3 through all that --

4 A. No.

5 Q. -- to validate that --

6 A. A therapist might, but, no, I don't.

7 Q. Okay. Do you remember what the
8 problems with her mother were, as they were
9 referenced at some point?

10 A. The relationship was what I would call
11 sort of toxic. She felt demeaned, put down by her.

12 Q. And you don't know, again, whether in
13 fact it was, you just know she perceived it as such
14 and described it --

15 A. I know she perceived it as such. I
16 never met her mother or saw them interact.

17 Q. Do you agree that a daughter's
18 relationship with her mother if described as toxic
19 could have a significant bearing on their mood?

20 A. Could it? Yes, it always could. The
21 degree is going to depend on the individual case.

22 Q. Do you think it did, in this case, have
23 any degree -- any effect on her mood disorder?

24 A. Yes. I wouldn't put it anywhere
25 near -- you know, that whole mother/daughter

1 relationship is the template on which other
2 reactions and relationships are going to sort of
3 build.

4 Q. Sure.

5 A. So it depends on how sort of distanced
6 they are emotionally and how much they can push
7 back and look at it as to how much it traumatizes
8 them or they dwell on it and how much of it is an
9 active day-to-day thing. Was it the biggest issue
10 for her? No.

11 Q. Okay. And then the same sort of line
12 of questions regarding having an alcoholic family
13 member and, again, I remember you don't know who it
14 was, but --

15 A. Generally, that can be pretty huge, but
16 it's an individual thing.

17 Q. And you don't remember what
18 specifically prompted Mrs. Katz to go to Al-Anon?
19 Was that something she did on her own?

20 A. She went on her own and -- I'm sorry to
21 be so sketchy on the details, but I can't say it
22 was her ex; I don't know.

23 Q. And then the son, their issues on the
24 16th -- ATA 16 which was August of '06 I think.
25 You mentioned good talks with son, he grew up a

1 lot. Do you remember anything about those issues?

2 A. Well, I know a lot of what was painful
3 for them was that their father withheld a lot from
4 them, from what they said.

5 Q. What she said?

6 A. Yeah, uh-huh, financially.

7 Q. Okay. So back to Mrs. Katz telling you
8 that her ex-husband or soon to be ex-husband
9 withheld from the children?

10 A. Yeah. She would give instances of when
11 Chase would ask for a particular thing or go to be
12 with his dad for a certain reason.

13 Q. Okay. And -- but he grew up a lot is
14 what you wrote. I mean, I gathered there was some
15 issue between her and her son. You're putting it
16 onto Dr. Jernigan? Good talks with son, he grew up
17 a lot. These are your words?

18 A. Yeah.

19 Q. And you're explaining that by recalling
20 Mrs. Katz's claims that her husband, his son's
21 father, withheld money?

22 A. And affection and time.

23 Q. Who grew up a lot, the son?

24 A. Yes.

25 Q. And then I think in that same meeting

1 you alluded to Mrs. Katz's recollection of problems
2 as a child. Very -- I can't read your writing.

3 I'm on page 16. What does that say? Very --

4 A. On page 16?

5 Q. ATA 16 under your last paragraph.

6 A. Oh. Oh. Oh. The problem with
7 attention and focusing.

8 Q. Okay. Can you read what you wrote?

9 Very --

10 A. Longstanding -- okay. Went through the
11 diagnostic criteria for ADD. Very hyperactive as a
12 child, hard time organizing, easily distracted, et
13 cetera, feels is longstanding and constant
14 difficulty.

15 Q. Hard time waiting in line, et cetera?

16 A. Uh-huh.

17 Q. So just sort of hyper?

18 A. Yeah. There are two types of attention
19 deficit, one is primarily --

20 Q. Mental?

21 A. -- inattentive. The other is primarily
22 hyperactive, impulsive. The majority of cases have
23 some criteria of both.

24 Q. Which she does? Or were you describing
25 both or which one were you describing?

1 A. Probably it would be a mix. It would
2 be the both.

3 Q. Okay. On April 17th, '07, according to
4 page 13, Mrs. Katz told you she, quote, had to file
5 charges and very stressed. Do you see that?

6 A. Right.

7 Q. What do you recall today about what she
8 was referring to?

9 A. I'm not sure. I'm not sure if I'm
10 putting my present understanding or my
11 understanding at the time of what she exactly told
12 me what the charges were.

13 Q. Okay. Just to be clear, my question
14 is: Do you recall today what she was referring to
15 then? And I think your answer is, you're having
16 trouble distinguishing what you know now --

17 A. Yeah.

18 Q. -- and what you know then?

19 A. Right.

20 Q. What do you know now or what do you
21 think based on your present understanding?

22 A. She very generally may have alluded to
23 what it was to. I talk to so many people and it's
24 been so long, honestly, I can't --

25 Q. Do you know the difference between

1 criminal charges and civil charges?

2 A. Yes.

3 Q. Okay. Do you have any recollection or
4 any idea what -- whether she was referring to one
5 or the other?

6 A. No.

7 Q. Okay.

8 A. I think it may have been criminal, but
9 I'm not sure.

10 Q. Okay. Do you recall what she meant
11 when she had to file it? Did she mean that, I have
12 to do this, or somebody was encouraging her or
13 influencing her to file charges?

14 A. I don't think that she was being unduly
15 influenced by anybody.

16 Q. What do you think she meant when she
17 said she had to file charges?

18 A. It had gotten to a point that she said,
19 this is going to stop.

20 Q. This being?

21 A. Her ex-husband's behavior.

22 Q. That being what?

23 A. Again, the whole pattern of withholding
24 money, trying to control things.

25 Q. Okay. You think that warrants criminal

1 charges?

2 MR. EDWARDS: Object to the form.

3 BY MR. WAGGONER:

4 Q. Or did you then -- if you understood it
5 to be criminal charges, did you say, you go, girl?

6 A. Again, I don't know. I'm sorry, I do
7 not remember.

8 Q. Okay. You don't remember?

9 A. I'm not trying to be evasive; I just
10 honestly don't remember.

11 Q. Okay. So it's my understanding
12 generally, with an appreciation of your role as the
13 patient's advocate, you've -- you never find it
14 necessary to decide whether a person's subjective
15 reaction to life is justified, I mean, at least in
16 this context? That's not your --

17 A. Not to decide whether it's justified,
18 no.

19 Q. You just read them --

20 A. Yeah.

21 Q. -- and treat them?

22 A. Whether it's potentially dangerous to
23 them or somebody else, yes.

24 Q. I understand.

25 A. But whether it's justified, no.

1 Q. So you don't know whether she was or
2 was not in fact being raped, as Mrs. Katz put it,
3 or controlled, as you've written, you just know she
4 felt that?

5 A. It's what she told me.

6 Q. Right?

7 A. Yes.

8 MR. WAGGONER: Okay. I have no more
9 questions. Thank you.

10 MR. EDWARDS: I don't have anything.

11 REDIRECT EXAMINATION

12 BY MR. ABNEY:

13 Q. Dr. Preyer, would you take a look at
14 ATA number 5 real quickly for me? And these are
15 the notes from March 18th, 2008.

16 A. Uh-huh.

17 Q. About midway down there on the page,
18 does that read, son got arrested?

19 A. Yes.

20 Q. And do you recall the circumstances of
21 that?

22 A. No, I don't.

23 Q. If one of Mrs. Katz's sons did, in
24 fact, get arrested, is that something that would be
25 a significant stressor in her life?

1 A. It would be for any mom.

2 MR. ABNEY: Sure. Sure. That's all I
3 have.

4 RE-CROSS-EXAMINATION

5 BY MR. WAGGONER:

6 Q. And one follow-up since we're on that
7 page. Right above that I see, went to -- quote,
8 went to court in December. Ex's behavior was out
9 of control, dash, no closure. Do you recall any
10 details about that?

11 A. There should be a court record of what
12 that was for, but I'm not sure what that
13 particular --

14 Q. What do you mean, the behavior at
15 court? Do you interpret your own notes to mean
16 that --

17 A. I don't mean -- I don't interpret them
18 as meaning in court. I meant whatever was leading
19 up to it.

20 Q. All right. So you interpret that to
21 mean that Mrs. Katz went to court because of her
22 ex's behavior being out of control?

23 A. That's how I remember interpreting it,
24 yes.

25 MR. WAGGONER: Okay. That's it. Thank

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you.

MR. ABNEY: Thank you, Dr. Preyer.

(The deposition was concluded at 12:15

p.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 15th day of September, 2010 at Charleston, Charleston County, South Carolina.

Denise Lauder

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017



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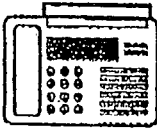
Ashley Therapy Associates

1 Carriage Lane, Building J

Charleston, SC 29407

Phone: (843) 573-5050

Fax: (843) 573-5030



To: *Merritt G. Abney, Esq.*

Fax number: *534-4410*

From: *Lucy W. Preyer, M.D.*

Date: *08/18/10*

Regarding: *Susan Boone Katz*

Total pages sent: *32*

Comments:

EXHIBIT
1 Preyer
8/31/10 DJL

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ATA_0001

Aug. 13. 2010 3:01PM

No. 7565 P. 2/32

Ashley Therapy Associates, LLC
1 Carriage Lane, Suite J.
Charleston, SC 29407
Phone (843)573-5050 Fax (843)573-5030

August 18, 2010

Nelson, Mullins, Riley & Scarborough, LLP
151 Meeting Street
Sixth Floor
Charleston, SC 29402

RE: Susan Boone Katz

To Whom It May Concern:

This is an invoice for the copy of medical records on Susan Boone Katz for the amount of \$35.00. This includes labor and administrative fees. Please remit payment to the above address.

Thank you,

Tammy L. Hale-Bang
Office Manager

ATA_0002

ROA 794

Aug. 13, 2010, 3:01PM
CLIENT NAME:

No. 7565 P. 3/32

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBST.

Suzanne Bowe

- Lexapro 10 10mg Tbs

also 10 bid hs

PHYSICIAN'S NOTES:

2-10-09

S - - married life going well -

- had big come to a head : non-

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

if she moved & had huge term around -
getting along -

- sleeping well, mood good - lots of
adjustments this past year

PHYSICIAN'S NOTES:

but feels better than has in long
time

if well adjusted affect euthymic,
upbeat - speech normal & v thoughts
goal oriented & delusions ✓

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA_0003

py dress - Co gm no 25.

A 54.

EMOD. in remission dry well

Clu. Begin Topex 2 Lelepro - 1/2 tab
in 3 mo or per or privel d/c

B

MEDICATIONS PRESCRIB

THIS VISIT:

OTHER MEDICATIONS & SUBSTA

Suzanne Borne

Lisaprod 10mg 1/2 hrs
20mg
alvan 1mg bid

PHYSICIAN'S NOTES:

3-18-08

S. went to court in Dec - her's behavior
was out of control - no closure,

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

Sm got arrested - overall doing pretty
well overall - knows is not 100%
- but functioning well -
- 20mg Lisaprod -> groggy, so sed -

PHYSICIAN'S NOTES:

Ok ativan

sleeps ok.

Of - well groomed - affect level,
emotions approximately concerned
speech re NTV thoughts goal

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA_0005

Aug. 13. 2010 3:02PM

No. 7565 P. 6/32

oriented \bar{c} delusions \bar{c} psychosis -
cogn no Δ

As s MNO - esp. in remission

Plan - Cont Lexapro - may 16 1.0 x
or 4-6 ub

A

ATA 0006

ROA 798

Suzanne

Boone

Lexapro 200
alwan 1m bid

PHYSICIAN'S NOTES:

11/13/07

5' on different generic, alwan - didn't sleep
for 3 nights - finally got w/ generic
ball.

Has made progress; Lexapro does well -

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTAI

able to appropriately assert self feeling stronger
dealing w things -

Q- well groomed - affect euthymic

PHYSICIAN'S NOTES:

appropriate - speak cal. AT ✓
thoughts good oriented & delusions
w psychosis cogn no Δ

as - mood day well

Plan - cont med @ current dose

SIGNATURE AND DATE:

1/6/06

TIME SPENT WITH PATIENT:

lf

Suzanne Boone

Levamisole 20mg

ativan 1mg bid

PHYSICIAN'S NOTES:

10/16/07

s. things going well; BF, SMS
done & - still unresolved
to H - huge financial stressors

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

When attacked verbally - makes
her feel terrible; really
- has been somewhat down - thinks is
situation; is sleeping - takes ativan -

PHYSICIAN'S NOTES:

ok - well grounded, affect swollen
but pleasant; not labile; speech
re ATV thoughts good mental's
delusions & psychosis cogn. no b

As, MD still

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

plan: discuss options re contacting her
attorney

cont meds @ court does
re: MD LA

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBST.

Suzanne Boone -

- Lexapro 20 TID
alwan 1mg bid

PHYSICIAN'S NOTES:

08.04.07

s. taking 20, Lexapro - is helping -
sit c'k has been "horribly" - nothing
straight yet - situation w/ w

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

finances really tight; had real heart to heart
sons - wants out of her house + her life
- fully better, empowered

single son -> sleeper during day but no

PHYSICIAN'S NOTES:

other real sz; still some ADP
sx - struggle; paperwork

04 - well groomed - affect pleasant, assertive

not labile + depressed, speech of
n't v thoughts good oriented to
delusions + psychosis. Cop. 0-6

As - mms, prol ADP

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

Pln - cont med @ abby down
14 / 6 wks - prol

Suzanne Brown

Dexapro 10mg Tbs
atwar 1mg bid

PHYSICIAN'S NOTES:

06-26-07

5 - court issue is moving along -
and relieved that alimony is through
family court -

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

Feeling better - Dexapro does ok. using
atwar @ Tbs - only very rarely in
day - - sleep fine -

PHYSICIAN'S NOTES:

64 well groomed affect bright, upbeat,
level. speech clear RSV thoughts goal
oriented & delusions & psychosis -
cogn n/a

As mood does well

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA_0010

Aug. 18. 2010 3:03PM

No. 7565 P. 11/32

re / 824 (2m10) - gm

20

ATA 0011

ROA 803

Suzanne Bowen

Lexapro 10mg
Zoloft 12.5
Ativan 1mg bid

PHYSICIAN'S NOTES:

05-24-07

5- Cant take more than 12.5 Zoloft
- 25% → speeding; jittery @ 4 pm
& needy ativan

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

lot of situational stresses -
feeling is trying to let go & anger toward ex

- stressor of finances & ex having ^{control} over
money - feels is mostly outside

PHYSICIAN'S NOTES:

stresses - "no pill"

ATA_0012

dy - well groomed: hair & makeup low
affect level, appropriate; speech
nd RTV - thought good accent - delusional
"psychosis" common

SIGNATURE AND DATE:

ASS AND TIME SPENT WITH PATIENT:

Blair - for now the Zoloft & Comb
15' 6" L - now it

Suzanne Boone

Leandro W

PHYSICIAN'S NOTES:

4/17/07

S- good trip, in "funk" - major stuff going on in life - include financial - had to file charges - very stressed

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

concerned re finances - hyper-somnolent
& feels some wt gain - feels depressed
- no "spark"
feels relationship is going well

PHYSICIAN'S NOTES:

W - will proceed, no general effect on affect, would spend more time on goal setting & depression of psychos. Cogn no
As now

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

Ph. & Leandro W

Trish Zolys 50% time 2w
Call in 2w 21/3w 1/3

ATA_0013

Suzanne Borne

Lexapro 150
always in but

PHYSICIAN'S NOTES:

3-8-07

5- met w/ pt + her bf - spent
session discussing communication,
relationship issues, discussed her

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

growing sense of identity as an
individual. sleeping well - no
med ss -

of - well groomed. affect pleasant,

PHYSICIAN'S NOTES:

euthymic - spent w/ pt ✓
thoughts goal oriented ± delusions
w/ psychosis cogn no 6
Q.s. now doing well
pt on cont med @ court do w/
w/ to w/ s pr

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA_0014

Suzanne Boon

Lexapro 105 1/2

atwaw 1m & bid pm (this g h s
during day pm)

PHYSICIAN'S NOTES:

2-07-07

- overall day very well - Lexapro doing well & atwaw working well - spent bulk of session discussing new

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

relationship & the dynamics & her feelings
reg it, (+) many stresses (financial, jobs
at work, etc) but is handling well & working
of well groomed -
affect level, not depressed & agitated,

PHYSICIAN'S NOTES:

appropriate to situation
speech clear. thought goal oriented
& delusions or psychosis. Cogn no G

Ass - mood, AD+D

B la - cont med @ current dose

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

if

ATA_0015

Suzanne Boone

Lexapro 10mg $\dot{\bar{q}}d$
ativan 1mg $\dot{\bar{t}}hs$

PHYSICIAN'S NOTES:

08.31.06

3. feeling good. letting go of a lot of things through alanon. helping

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

- good talks to son - he grew up a bit
business picking up - getting stronger
is setting boundaries -

- in hope "awful" - settle to no

PHYSICIAN'S NOTES:

alcohol - see ativan

went through drug screen for ADD -

- very ^{happy} active as child - had time

organizing, early distracted, &

feels is long standing & consistently

activity, had time w/ally in line, etc

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA_0016

03- really groomed hair - midday down
 affect level, up beat, appropriate. Special
 in not lengths good mental
 delusions or psychosis. Co go no s

As. UNDO, ADXV

Plan - Discussed options, risk/benefit
 to time of stimulation for atal
 Time of Adrenal x a 10g i g w
 u / 4 wks on goal

Suzanne Boone -

Prozac 10mg
Lexapro 10mg

PHYSICIAN'S NOTES:

07/24/06

s. been very depressed, in bed again -

premedically - not depressed "personally"

- "some post partum P. Colles"

is going to Al Anon - "fabulous"

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

situations - pain in arm, back, fully in limbo, "stuck"

hard dealing with single issue - p.m.'s are worst
- not liking eating dinner alone

- some relief of HR in Prozac in office - took 1 hr

PHYSICIAN'S NOTES:

app - 1st day 10/1 -

oily - mostly groomed. hair & make up done

- affect sad, lonely, frustrated - but not

labile or fearful. speech clear through

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA_0018

good oriented \bar{s} delirium - psychosis.
Cog no 0

Ross - neuro

Plan. attempt to cont Prozac 10mg &
increase SSRI hopefully will resolve
cont Lexapro 10mg for med
in 3-4 wks

W

Suzanne Brone

- Lexapro

ativan 1mg 1/2 g pm, T 45

PHYSICIAN'S NOTES:

05-05-06

S - does feel need to A meds -
had been really "nervous", shaking -
trying to cut Caffeine; - Lexapro & very sleep of

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

(takes ativan & 1-2 glasses of wine ^{night})
- is very aware of this; discussed excessive
caffeine intake; taking 1/2 ativan & pill
& help a great deal -
discuss issues & boundaries - esp: Mom

PHYSICIAN'S NOTES:

so nervous, agitated, jumpy & worried
not as good - more dependent

Oy - really dried, affect ^{worried} ~~not~~, sad
but pleasant, polite. Special at TV

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA 0020

throughs goal oriented & delusions w
psychosis. Cogn nics

Ans - niss, &

plan - paper vs Liturg - 5, 3 & 4 day bundle
Beyne Prozac
Cent aliter
re 4 wh + p w of

Suzanne Bone

Leupro 10g T qd

PHYSICIAN'S NOTES:

05-05-06

S - doing fine - day at work - knew he ^{was} responsible himself - does miss him

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

- discussed business, financial issues
discussed dynamics in now - needs to be
validated; - feel "flat" on Leupro
very depleted - discussed Leupro

PHYSICIAN'S NOTES: assertiveness & boundaries +
transference issue in now -

dy - stylistically dressed hair - making
dec - affect not range overall
perhaps not more upbeat; speak
not not thoughts good overall
E delusions or psychosis - com no

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

Ass - MPO - stable -

Plan - she prefer to wait until
meal apt to do any & meals
at this pt
u / 1 mo

76

PHYSICIAN'S NOTES:

08/17/06

S: not that great - 1 Lexapro had up to
20 mg. Fri. @ break up & BF

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

has been horrible to mom - bad event
in Atlanta - Discussed triangulation &
mom + bro's relationship - Discussed
break up & BF & his fear of commitment

PHYSICIAN'S NOTES:

ATA_0024

04
1
discussed in session - had 1 making
done - affect worried, sad
but not labile + tearful. speak re not
thought good oriented to delusions - psychosis -
cogn not

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA - rx
plc - pt wished to & Lexapro @ well
uppt. going out + town this wk. P

Suzanne Brown

Lexapro 10mg T qd

PHYSICIAN'S NOTES:

3.29.06

s - really bad spot - had pills lined up - had blown up & now - had been betrayed, disoriented by her

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

my whole life - disorient getting to at 2. not needing her approval - issue & toxic mom - Effexv awful - inevitable, jumping on people -

PHYSICIAN'S NOTES:

- not succeeded but feels fragile - like when she was going through divorce - is sleepily well & at work - no real SE - feels 20mg Lexapro may be too much

oy - very really drunk, groomed - affect level, appropriate, very few stated

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

mood speech of not thought goal
oriented & delusions, psychosis. Cogn neg

As - mms

Oran - Leupro 10g 1 1/2
N.V. & 3-4 wks - pm

B

Suzanne Boone -

- Lexapro 10mg ¹/_{hr} gel
abaxan ^{1mg}/_{hr}

PHYSICIAN'S NOTES:

3/06/06

S: doing better - trying to get business started - financially trying to get

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

stable -; felt betrayed by ex - neg attitude toward sms - got really depressed -
- betrayed by mom - never been there for her

PHYSICIAN'S NOTES:

not sure Lexapro is doing what it should - energy, motivation not where she would like to be -

dy - very neatly dressed - groomed - alert

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA_0027

very appropriate, seems. special next

thought goal needed is delusion r psycho

low no

Ass - mbd

Plan - - Discussion prob "poop out"
of detap

- on Mond. will do bnd

Effort - cross tetrals

re / 3 wks r pm

16

Suzanne Boon

- Leupro 10mg 10k + qd

- abou T h s -

PHYSICIAN'S NOTES:

11-17-05

S. slowly great - did go to gay support group; went to healing session at St Michael's - coming to know how to accept

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

situation - feels is starting new phase of life - is sleeping well & abou and day well -

ATA_0029

PHYSICIAN'S NOTES:

dy - really deal a good affect upbeat, appropriate, c/w stated mood - speaks to RTV thoughts goal oriented & delusions - psychosis
Cogn now

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

As - mood day beth
Plm cont needs & client do as
Refer to Sharon Small Matthews
" 6-8 wks

- Lexapro - 10mg 1 1/2 qd

~~Paroxetine 12.5~~

alston 1mg Tbs 800 1/2 during day

PHYSICIAN'S NOTES:

10-02-05

s: re: cut of insurance - took a while to go straight; Ended up having to go back to court - H: cut her out of her life entirely - no contact - concerned financially

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

doing fine over summer, then found out situation is older son -

had complete physical, lab work - w:ides of ^{ps: menopausal} night sweats, does sleep in alston

PHYSICIAN'S NOTES:

04 - neatly dressed & groomed affect level appropriate to situation & e/w stable mood. speech clear & V. thoughts good mental - delusions - psychos. Co. no. 6

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

~~Paroxetine 12.5~~ ne. ✓ 3-4 w/ 4

Suzanne Boone

Lexapro 10mg +

Paxil CR 12.5 1/2 tab

ativan 7mg qhs

PHYSICIAN'S NOTES:

1-25-05

S: - has more confidence & has stood up to some people -

took self back up to 10mg Lexapro + 1/2 12.5g Paxil

Paxil made very edgy, hyped

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

CLIENT NAME:

MEDICATIONS PRESCRIBED THIS VISIT:

OTHER MEDICATIONS & SUBSTANCES:

off every thing x 3 days -

is sleeping well & at work

colleg ex student very sick, fetal

posits. dehydrated -

PHYSICIAN'S NOTES:

at H messes up everything's awareness

Feels above combination is working well

overall feeling much better

of. neatly dressed, hair & makeup done

aspect calmer not labile but appropriately

SIGNATURE AND DATE:

TIME SPENT WITH PATIENT:

ATA 0031

has anger (ambivalent) i office, i husband
spend at RTV thoughts good mental 5.
delusional a psychosis con No 4

As - mbd

Blac - cont med @ court house
Rt ✓ 306 as per

LB

10-19-04 -

mutually no access to money
@ all - fell apart - fragile
& untried + SF & mess,
& conclusions - early months

sleep OK: later -

- dx → partially to depression

cross taped to 12.5 Paoli

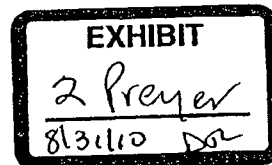
Passit → super edgy

wh had mess up
everyone involved

3-06 - betrayed by ex NY
attitude toward Sme
depressed -

5-06 - still stressed
finances

2-07 - stabilized on 15 mg
Lexapro but still
huge finan. probs. is prob



7/07 - major stuff is
- had to file charge
steal suppression
defendant: tried to go by
→ "speedy service"

6-07 some relief when
alimony payments went
through family court

8/07, - set of ex still "horrible"
noisy strategy

12-21-08 remained

last app 2/10/09

INITIAL CLINICAL ASSESSMENT

Name Suzanne Bowler Date 10-19-04 Time _____
 DOB Age 54 Sex _____

Chief Complaint _____

History of Present Illness

- Referred on Devereaux -
 - going through divorce she doesn't
 want - he wanted out - feeling w/ this
 1 yr - ^{initially} no access to money -
 fell apart -
 feeling fragile, not put together
 hx, SI (did see it as option) w/ intent,
 & enthusiasm & energy
 & concentration

Sx Checklist

SI/BI - ideation
 Sleep always
 Appetite 32 lb wt loss
 Depression
 Anxiety
 Panic Attacks _____
 AH/VH _____
 Paranoia _____
 Violent hx _____
 Alcohol/Drug Px _____
 Eating Disorder

Lexapro works @ times, not consistent

Past Psychiatric History

Inpatient- _____
 Outpatient- saw therapist summer 03 - Cash Spivey
 w/ + on therapist - couples - had went -

Substance Abuse History

Alcohol- Present 2-3 drinks most
 Past hs - drinking & depression Other Drugs- Present
 Past Past

Family Psychiatric History

Maternal maternal grandfather
 Paternal + alcoholic

Family Medical History

Maternal _____
 Paternal pat. grandmo - depressed

Medical History/Current Health Issues

de quary stroke

Physician

Allergies walrusine - itching

Medications

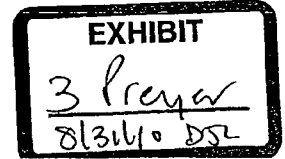
Lexapro 10mg qd alprazolam gabapentin
alavan 1mg T bid

Past Medications

Lexapro Zolof - 125 mg qd gabapentin sleep p all
Paxil 12.5 for 1 wk

Social/Cultural Information
 Mother _____

Client Name _____



Father
Siblings
Other family members

former drug addict AOD
1 BRO - 10th yrs young

Trauma History
Sexual Abuse

Marital History

- 21 yrs - divorce
prob's w/ a

Children

3M
Sophia
William
Mary

Employment

Legal Problems

Military History

Educational History Columbia College -

Mental Status

- neatly

Appearance

stylishly dressed

Speech

clear

Thought Process

Orientation

Affect

Thought Content

no delusions

Motor Activity

Mood

SI/HL

Cognition

Intelligence

Abstraction

Presidents

Other

Insight

World

Memory

Judgement

Serial 7s/3s

Recall(3 of 3)

DSM-IV Diagnosis

Axis I mood, partially th

Axis II th affect

Axis III good cu health

Axis IV subd -

Axis V (GAF- current) 55

Highest in last 12 months

Impression

severe depression, losses (loss of house, children),
status as a wife, -4

Intervention

Plan

- ↓ benzodiazepines to 5mg - Begin 125 Parital
4 x 2 wks - pm

Date

Clinician Signature

JRB

Time spent with client

(print name)



BANK OF AMERICA, N.A. (THE "BANK")

Personal Signature Card with Substitute Form W-9

Account Number 8854
Account Type INTEREST CHECKING
Account Title SUZANNE B. JERNIGAN

Temporary Signature Card (deposit accounts only)

By signing below, I/we acknowledge and agree that this account is and shall be governed by the terms and conditions set forth in the following documents...

Substitute Form W-9. (Required only for Deposit Accounts) Certification- Under penalties of perjury, I certify that: (1) The number shown on this form is the correct taxpayer identification number...

You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.

Individual Joint with Survivorship Payable on Death (POD)

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Form with columns for Tax Identification Number, Report Interest On, and ATM/Check Card Requested? with checkboxes and a signature.

* By checking the box marked "ATM/Check Card Requested?", I/we hereby request an Automatic Teller Machine Card and/or a Check Card.

I/We name the following person(s) as beneficiary(ies) of this account, superseding any prior designations:

Beneficiary information fields including Name, Social Security Number, Present Telephone Number, and Present Address.

(Please notify the Bank of any subsequent changes of beneficiary(ies)' address or telephone.)

NBC 00-14-0000M 09-2001



BOA_00003

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

H
Page 1 of 5
Statement Period
12-27-06 through 01-26-07

B 17 0 I P I 17 0134291
Account Number: 8854



29005 001 SCM999 I12 0

HEYWARD SUZANNE BOONE
CHARLESTON SC 29401-1906

Premier Banking Client

Our free Online Banking service allows you to check balances, track account activity, pay bills and more. With Online Banking you can also view up to 18 months of this statement online and even turn off delivery of your paper statement. Enroll at www.bankofamerica.com.

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www.bankofamerica.com

For additional information or service, you may call:
1-800-432-1000 Priority Telephone Banking
1-800-288-4408 TDD/TTY Users Only
1-800-688-0886 For Spanish

Or, you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Your Bank of America Advantage Summary

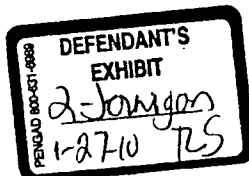
Account Name	Account Number	Qualifying Balance*	Type of Balance	Date	Total
Deposit Accounts					
Interest Checking	8854	596.68	Average	01-25	
Interest Checking	0048	927.09	Average**	01-25	
Total Deposit Account Balance					\$1,523.77

* Balances in your linked accounts that are used to avoid a monthly maintenance fee are listed here. These balances reflect the average or principal balance in your account - for your actual ending account balances, please see the "Your Account at a Glance" section on your statement for each of your accounts.
** Detailed information about this account is not included in this statement.

Interest Checking
HEYWARD SUZANNE BOONE

Your Account at a Glance

Account Number	8854	<i>Annual Percentage Yield Earned this Statement</i>
Beginning Balance on 12-27-06	\$ 754.04	<i>Period: 0.06%</i>
Deposits and Other Additions	+ 9,229.81	<i>Interest Paid Year to Date: \$0.03</i>
ATM and Debit Card Subtractions	- 285.44	
Other Subtractions	- 8,501.79	
Ending Balance on 01-26-07	\$ 1,196.62	



BOA_00262

HEYWARD SUZANNE BOONE

H
Page 2 of 5
Statement Period
12-27-06 through 01-26-07

B 17 0 1 P1 17

Account Number 8854

The monthly maintenance fee for your Interest Checking Account # 8854 will be waived when your average daily balance in combined checking and linked savings, Money Market Savings, CD or IRA accounts meets the balance level stated in the *Personal Schedule of Fees*. Your combined deposit balance for the statement cycle was \$1,523.77. As an Advantage customer, you also have other options such as using loan, line of credit and mortgage balances with us, to avoid the monthly maintenance fee. Please contact us if you would like to talk with us about your account.

As part of our ongoing commitment to security, Bank of America offers Online Banking Alerts that allow you to monitor your account activity via email or mobile device. Set up Alerts today-they're fast, free, and easy to use. Enroll or sign in to Online Banking service at bankofamerica.com, select the Alerts tab and click the Manage Alerts link.

Interest Checking Additions

Deposits and Other Additions	Date Posted	Amount(\$)
Online Banking transfer from Sav 8640 Confirmation# 7234411269	12-27	3,581.08
Counter Credit	12-29	155.00
Overdraft Protection From 4599	12-29	100.00
Online Banking transfer from Cnk 5738 Confirmation# 8550022047	01-11	40.00
Overdraft Protection From 4599	01-17	1,000.00
Overdraft Protection From 4599	01-19	200.00
Funds Transfer Credit	01-22	3,000.00
Fdes Nfl 0213235 Nbke4Qi		
Funds Transfer Credit	01-22	1,153.70
Fdes Nfl 0213235 Nbke4Qi		
Interest Earned	01-26	0.03
Total Deposits and Other Additions		\$9,229.81

Interest Checking Subtractions

ATM and Debit Card Subtractions	Date Posted	Amount(\$)
CheckCard 1226 Starbucks USA 00084343 Charleston SC 24164076360355041894027	12-27	4.12
CheckCard 1226 Brooks Brothers #6154 Charleston SC 24124796361162409006108	12-28	44.80
CheckCard 1226 Burger King #1375 Q07 Charleston SC 24792626361286207800394	12-28	2.38
CheckCard 1227 Melvin'S Southern Bbq Charleston SC 24071056362987114018548	12-29	13.63
CheckCard 1229 LA Hacienda Mexican Gri Charleston SC 24013396365007346422935	01-02	26.78
Harris Teeter 01/01 #000978772 Purchase Harris Teeter #02 Charleston SC	01-02	6.55
CheckCard 0102 Dairy Queen Q68 Charleston SC 24231687003207000000078	01-03	4.33
CheckCard 1231 Blind Tiger 29401 SC.24301377002118000100327	01-03	4.75
CheckCard 0104 Mount Pleasant Cinema L MT Pleasant SC 24610437005072019268705	01-08	8.50
CheckCard 0112 Old Towne Grill Seafood Charleston SC 24210737013207388600099	01-16	8.44

BOA_00263

ROA 831

HEYWARD SUZANNE BOONE

H
 Page 3 of 5
 Statement Period
 12-27-06 through 01-26-07

B 17 0 1 P1 17 0134293
 Account Number: 8854

Interest Checking Subtractions:

ATM and Debit Card Subtractions - Continued	Date Posted	Amount(\$)
Kangaroo Expre 01/15 #000306156 Purchase	01-16	4.35
Kangaroo Express MT Pleasant SC		
CheckCard 0115 Vickreys Bar & Grill	01-17	12.87
Charleston SC 24013397016007768764534		
CheckCard 0116 LA Hacienda Mexican Gri	01-19	15.04
Charleston SC 24013397018007794572081		
CheckCard 0117 Burger King #1609 Q07	01-22	2.38
Mount Pleasansc 24792627019206331300362		
Sou Ann Taylor 01/23 #000275672 Purchase	01-23	12.71
Sou Ann Taylor Lo Charleston SC		
Total Wine1820 01/23 #000355539 Purchase	01-23	11.70
Total Wine1820 As Charleston SC		
Target T1391 C 01/23 #000426229 Purchase	01-23	13.83
Target T1391 Char Charleston SC		
Barnesnoble 18 01/23 #000807391 Purchase	01-23	24.45
Barnesnoble 1812 Charleston SC		
CheckCard 0123 Burger King #1375 Q07	01-25	2.38
Charleston SC 24792627024286207600536		
CheckCard 0124 Normandy Farms	01-25	2.70
Charleston SC 24755427024130249365445		
CheckCard 0124 Amoco Oil 08139263	01-26	33.22
Charleston SC 24164077025799024610105		
Total Wine1820 01/26 #000459139 Purchase	01-26	25.53
Total Wine1820 As Charleston SC		
Total ATM and Debit Card Subtractions		\$285.44

Other Subtractions	Date Posted	Amount(\$)
Online Banking transfer to Chk 0048	12-27	2,359.05
Confirmation# 7256073839		
State Farm Insurance Bill Payment	12-27	95.46
Bank Of America Visa Bill Payment	12-28	500.00
Usda, National Finance Center Bill Payment	12-28	335.88
Bank Of America - Line Of Credit Bill Payment	12-28	240.72
J. Crew Bill Payment	12-28	200.00
Wd Robinson Bill Payment	12-28	150.00
Sonitrol Bill Payment	12-28	75.96
Momentum Bill Payment	12-28	60.00
Croghans Jewel Box Bill Payment	12-28	50.00
Saks Fifth Ave. Bill Payment	12-29	400.00
Chase Visa Bill Payment	01-17	480.00
Chase Card Services Bill Payment	01-17	326.00
South Carolina Electric And Gas Bill Payment	01-17	132.00
Dish Network Bill Payment	01-17	20.00
Cingular Wireless Bill Payment	01-19	195.70
Online Banking transfer to Chk 0048	01-25	200.00
Confirmation# 9759453413		
Bank Of America - Line Of Credit Bill Payment	01-25	1,200.00
Bank Of America Mortgage Bill Payment	01-25	253.42
Bank Of America Bill Payment	01-25	100.00
Bank Of America Visa Bill Payment	01-25	100.00
Travelers Insurance Bill Payment	01-26	200.00
Cingular Wireless Bill Payment	01-26	150.00

BOA_00264

HEYWARD SUZANNE BOONE

H
Page 4 of 5
Statement Period
12-27-06 through 01-26-07

B 17 0 I P I 17

Account Number: 8854

Interest Checking Subtractions

Other Subtractions - Continued	Date Posted	Amount(\$)
Sce&g - SC Electric & Gas Co. Bill Payment	01-26	150.00
Banana Republic Card Bill Payment	01-26	125.00
Hartford Insurance Bill Payment	01-26	112.00
State Farm Insurance Bill Payment	01-26	95.46
Comcast Cable Bill Payment	01-26	95.14
Best Buy Bill Payment	01-26	50.00
Commissioners Of Public Works Bill Payment	01-26	25.00
Saks Fifth Ave. Bill Payment	01-26	25.00
Total Other Subtractions		\$8,501.79

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	754.04	01-03	15.71	01-19	52.81
12-27	1,876.49	01-08	7.21	01-22	4,204.13
12-28	216.75	01-11	47.21	01-23	4,141.44
12-29	58.12	01-16	34.42	01-25	2,282.94
01-02	24.79	01-17	63.55	01-26	1,196.62

Loan Account Information
As of 01-26-07

Credit Lines

Account Owner	Account Number	Principal Balance	Next Payment Due Date	Available Credit
HEYWARD SUZANNE BOONE	8854	0.00	02-23-07	2,000.00

BOA_00265

How To Balance Your Bank of America Account

0134295

FIRST, start with your Account Register/Checkbook:

- 1. List your Account Register/Checkbook Balance here \$ _____
- 2. Subtract any service charges or other deductions not previously recorded that are listed on this statement \$ _____
- 3. Add any credits not previously recorded that are listed on this statement (for example interest) \$ _____
- 4. This is your NEW ACCOUNT REGISTER BALANCE \$ _____

NOW, with your Account Statement:

- 1. List your Statement Ending Balance here \$ _____
- 2. Add any deposits not shown on this statement \$ _____

3. List and total all outstanding checks, ATM, Check Card and other electronic withdrawals **SUBTOTAL** \$ _____

Checks, ATM, Check Card, Electronic Withdrawals		Checks, ATM, Check Card, Electronic Withdrawals		Checks, ATM, Check Card, Electronic Withdrawals	
Date/Check #	Amount	Date/Check #	Amount	Date/Check #	Amount

- 4. TOTAL OF OUTSTANDING CHECKS, ATM, Check Card and other electronic withdrawals \$ _____
- 5. Subtract total outstanding checks, ATM, Check Card and other electronic withdrawals from Subtotal
This Balance should match your new Account Register Balance \$ _____

Upon receipt of your statement, differences, if any, should be reported to the bank promptly in writing and in accordance with provisions in your deposit agreement.

Important Information

Change of Address. Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Deposit Agreement. When you opened your account, you received a deposit agreement and fee schedule and agreed that your account would be governed by the terms of these documents, as we may amend them from time to time. These documents are part of the contract for your deposit account and govern all transactions relating to your account, including all deposits and withdrawals. Copies of both the deposit agreement and fee schedule, which contain the current version of the terms and conditions of your account relationship, may be obtained at our banking centers.

Electronic transfers: In case of errors or questions about your electronic transfers
If you think your statement or receipt is wrong or if you need more information about an electronic transfer (e.g., ATM transactions, direct deposits or withdrawals, point-of-sale transactions) on the statement or receipt, telephone or write us at the address and number listed on the front of this statement as soon as you can. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.


- * Tell us your name and account number
- * Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.
- * Tell us the dollar amount of the suspected error.

For consumer accounts used primarily for personal, family or household purposes, we will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 business days if you are a new customer, for electronic transfers occurring during the first 30 days after the first deposit is made to your account) to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

For other accounts, we investigate, and if we find we have made an error, we credit your account at the conclusion of our investigation.

Reporting Other Problems. You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or unauthorized transactions within the time periods specified in the deposit agreement (which periods are no more than 60 days after we make the statement available to you and in some cases 30 days or less), we are not liable to you for, and you agree not to make a claim against us for the problems or unauthorized transactions.

Direct Deposits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you may call us at the telephone number listed on the front of this statement to find out if the deposit was made as scheduled.

Bank of America, N.A. Member FDIC and  Equal Housing Lender
Thank You for Choosing Bank of America

BOA_00266

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

H
Page 1 of 4
Statement Period
01-06-07 through 02-02-07
Number of checks enclosed: 0
B 03 E A E 03 0213297
Account Number: 4502



05005 E01 SCM999 I1 0

FLOYD E JERNIGAN

CHARLESTON SC 29412-2906

Premier Banking Client

Our free Online Banking service allows you to check balances, track account activity, pay bills and more.
With Online Banking you can also view up to 18 months of this statement
online and even turn off delivery of your paper statement.
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www.bankofamerica.com

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1-800-288-4408: TDD/TTY Users Only
1-800-688-6036: By Spanish

If you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Regular Checking

FLOYD E JERNIGAN

Your Account at a Glance

Account Number	4502
Beginning Balance on 01-06-07..... \$	16,021.71 -
Deposits and Other Additions..... +	43,461.07
Checks Posted..... -	726.00
ATM and Debit Card Subtractions.... -	290.38
Service Charges and Other Fees..... -	5.00
Other Subtractions..... -	25,741.06
Ending Balance on 02-02-07..... \$	676.92

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
01-08	17,500.00+	1,478.29	Redeposit Of Return Item Chargeback Fdes Nga 0102216 Nbknnq2
01-10	100.00+	1,578.29	Overdraft Protection Fro. :3679
01-10	17,500.00-	15,921.71 -	Return Item Chargeback
01-10	5.00-	15,926.71 -	Returned Item Chargeback Fee



BOA_00352

FLOYD E JERNIGAN

H
 Page 2 of 4
 Statement Period
 01-06-07 through 02-02-07
 Number of checks enclosed: 0
 B 03 E A E 03

Account Number: 4502

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
01-11	200.00+	15,726.71 -	Overdraft Protection From 3679
01-12	5,040.35+	10,686.36 -	VA Treas 220 ;Des= fed Salary;ID= 250861962360002 Eff Date: 070112;Indn:Floyd E Jernigan
01-12	3,720.00+	6,966.36 -	Doctors Care PA;Des= payroll ;Id= ctr92381785 Eff Date: 070112;Indn:Jernigan,Floyd E
01-12	10,000.00+	3,033.64	Online Banking advance from Loc 5799 Confirmation# 8622301926
01-17	80.00-	2,953.64	Check 708
01-17	45.00-	2,908.64	Check 704
01-18	100.00-	2,808.64	Online Banking transfer to Chk 9967 Confirmation# 9156751436
01-18	200.00-	2,608.64	Check 707
01-18	45.00-	2,563.64	Check 710
01-19	2,000.00+	4,563.64	Online Banking advance from Loc 5799 Confirmation# 9225788467
01-19	61.93-	4,501.71	Publix 01/19 #000001451 Purchase 520 Folly Rd Charleston SC
01-19	45.00-	4,456.71	Check 709
01-22	1,000.00+	5,456.71	Online Banking advance from Loc 5799 Confirmation# 9495496009
01-22	3,000.00-	2,456.71	Funds Transfer Debit Fdes Nfl 0213235 Nbke4Qi
01-22	1,153.70-	1,303.01	Funds Transfer Debit Fdes Nfl 0213235 Nbke4Qi
01-22	400.00-	903.01	Online Banking transfer to Chk 1282 Con# 9480055867; Jernigan, C
01-22	359.77-	543.24	State Farm Insurance Bill Payment
01-22	48.00-	495.24	Charleston Water System Bill Payment
01-22	14.91-	480.33	CheckCard 0119 Dry Cleaning Station Charleston SC 24765017019200000018170
01-22	6.65-	473.68	CheckCard 0119 Veterans Canteen #534 Charleston SC 24301287020070200227179
01-24	61.00-	412.68	Check 713
01-24	15.00-	397.68	Check 711
01-25	100.00-	297.68	BkofAmerica ATM 01/25 7893 Withdrwl Medical Center-C Charleston SC
01-25	90.00-	207.68	Check 715
01-25	20.00-	187.68	Check 712
01-26	3,400.11+	3,587.79	VA Treas 220 ;Des= fed Salary;ID= 250861962360002 Eff Date: 070126;Indn:Floyd E Jernigan
01-26	500.61+	4,088.40	Doctors Care PA;Des= payroll ;Id= ctr93780490 Eff Date: 070126;Indn:Jernigan,Floyd E
01-26	2,417.00-	1,671.40	Online Banking payment to Mtg 4872 Confirmation# 9847724544
01-26	100.00-	1,571.40	Online Banking payment to Crd 2607 Confirmation# 9848007109
01-26	100.00-	1,471.40	Online Banking payment to Crd 0904 Confirmation# 9847854364
01-29	46.63-	1,424.77	Publix 01/26 #000001012 Purchase 520 Folly Rd Charleston SC
01-29	5.00-	1,419.77	CheckCard 0125 Veterans Canteen #534 Charleston SC 24301287026070260434008
01-31	80.00-	1,339.77	Check 718

BOA_00353

FLOYD E JERNIGAN

H
 Page 3 of 4
 Statement Period
 01-06-07 through 02-02-07
 Number of checks enclosed: 0
 B 03 E A E 03 0213299
 Account Number: 4502

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
01-31	55.26-	1,284.51	Publix 01/30 #000001352 Purchase 520 Folly Rd Charleston SC
01-31	45.00-	1,239.51	Check 714
02-01	305.59-	933.92	Bank Of America ;Des= line Pymt ;ID= 068111000115799 Eff Date: 070201;Indn:Jernigan F 00000025366
02-02	157.00-	776.92	South Carolina Electric And Gas Bill Payment
02-02	100.00-	676.92	Dish Network Bill Payment

Checks Posted in Numerical Order

Check Number	Date Posted	Amount(\$)	Check Number	Date Posted	Amount(\$)	Check Number	Date Posted	Amount(\$)
704	01-17	45.00	710	01-18	45.00	714	01-31	45.00
707*	01-18	200.00	711	01-24	15.00	715	01-25	90.00
708	01-17	80.00	712	01-25	20.00	718*	01-31	80.00
709	01-19	45.00	713	01-24	61.00			

Total Checks Posted

\$726.00

* The asterisk shows a break in the check number order. Your check may have been in a previous statement or may still be outstanding.

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	16,021.71-	01-18	2,563.64	01-29	1,419.77
01-08	1,478.29	01-19	4,456.71	01-31	1,239.51
01-10	15,926.71-	01-22	473.68	02-01	933.92
01-11	15,726.71-	01-24	397.68	02-02	676.92
01-12	3,033.64	01-25	187.68		
01-17	2,908.64	01-26	1,471.40		

BOA_00354

How To Balance Your Bank of America Account

T, start with your Account Register/Checkbook:

- 1. List your Account Register/Checkbook Balance here \$ _____
- 2. Subtract any service charges or other deductions not previously recorded that are listed on this statement \$ _____
- 3. Add any credits not previously recorded that are listed on this statement (for example interest) \$ _____
- 4. This is your NEW ACCOUNT REGISTER BALANCE \$ _____

NOW, with your Account Statement:

- 1. List your Statement Ending Balance here \$ _____
- 2. Add any deposits not shown on this statement \$ _____

3. List and total all outstanding checks, ATM, Check Card and other electronic withdrawals **SUBTOTAL** \$ _____

Checks, ATM, Check Card, Electronic Withdrawals		Checks, ATM, Check Card, Electronic Withdrawals		Checks, ATM, Check Card, Electronic Withdrawals	
Date/Check #	Amount	Date/Check #	Amount	Date/Check #	Amount

TOTAL OF OUTSTANDING CHECKS, ATM, Check Card and other electronic withdrawals \$ _____

- 5. Subtract total outstanding checks, ATM, Check Card and other electronic withdrawals from Subtotal
This Balance should match your new Account Register Balance \$ _____

Upon receipt of your statement, differences, if any, should be reported to the bank promptly in writing and in accordance with provisions in your deposit agreement.

Important Information

Change of Address. Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Deposit Agreement. When you opened your account, you received a deposit agreement and fee schedule and agreed that your account would be governed by the terms of these documents, as we may amend them from time to time. These documents are part of the contract for your deposit account and govern all transactions relating to your account, including all deposits and withdrawals. Copies of both the deposit agreement and fee schedule, which contain the current version of the terms and conditions of your account relationship, may be obtained at our banking centers.

Electronic transfers: In case of errors or questions about your electronic transfers
If you think your statement or receipt is wrong or if you need more information about an electronic transfer (e.g., ATM transactions, direct deposits or withdrawals, point-of-sale transactions) on the statement or receipt, telephone or write us at the address and number listed on the front of this statement as soon as you can. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.


- * Tell us your name and account number
- * Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.
- * Tell us the dollar amount of the suspected error.

For consumer accounts used primarily for personal, family or household purposes, we will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 business days if you are a new customer, for electronic transfers occurring during the first 30 days after the first deposit is made to your account) to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

For other accounts, we investigate, and if we find we have made an error, we credit your account at the conclusion of our investigation.

Reporting Other Problems. You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or unauthorized transactions within the time periods specified in the deposit agreement (which periods are no more than 60 days after we make the statement available to you and in some cases are 30 days or less), we are not liable to you for, and you agree not to make a claim against us for the problems or unauthorized transactions.

Direct Deposits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you may call us at the telephone number listed on the front of this statement to find out if the deposit was made as scheduled.

Bank of America, N.A. Member FDIC and  Equal Housing Lender
Thank You for Choosing Bank of America

BOA_00355

Basic Information

Complaint #: 260931
Status: Closed
Reopened: Yes [View](#)
Complaint Owner: WILLIAM NEVAREZ
Vendor Ack. #:
Gift Returned: No
Prior Complaints: 0
Receipt Date: 07/26/2007
Account Holder? Yes
Received Via: Secured Web Site

Monetary Dispute &

Customer Information

Prefix: Ms.
First Name: Heyward Suzanne
Last Name: Boone
Sec. First Name:
Sec. Last Name:
Business Name:
Account Number: 8854
Domiciling State: SC
SSN/TIN: 4450
Address 1:

Escalated Contact Area: Workflow Coordination
Received From: Regulatory
Agency: OCC
Case #: 714307
Att. General State:
Commissioner State:
Agency Other:
Gift/Survey Language: Default
Merger Related Issue:
Mail Person: No
Extension Requested: No

Address 2:
City: Charleston
State/Province: South Carolina
Zip: 29401
Military Addr?: No
Country: United States
Home Phone: .9898
Bus Phone:
Fax:
Contacting E-mail Account:
Addr Differs: No
Report State: South Carolina
Cust Segment: Premier

Instructions:

Related to the Concern: 0
Amount Credited: 0
Amount Credited per Business as Usual (Freedom to Act): 0

Research Amount

Acknowledgement
Acknowledge Date: 08/02/2007

Acknowledged Via:
 Phone Fax Email
 Letter

Primary Call Reason

First Point of Contact: Online Banking
First Point of Contact Name:
Channel: Mail
Relationship at Risk: No
LOB Issue:
Account Status: Open

Primary Contact Reason:

Product:
Regulation:
Category: Online Access ID
Sub-Category: Security Issue
Root Cause: OTHER
Root Cause Comments: Unauthorized access to account



BOA_00373

Score Checking Account Customer

Relationship: Premier

Customer Since:

NSF w/in a year: 0

Final Score: 0

Banking Error:

Acknowledgement:

Resolve Problem:

Confirmation/Apology Letter:

Survey/Recovery Gift:

Pend Information (This Life Cycle)

This complaint has not been pended during the current cycle.

[\[View Previous Pends\]](#)

Resolution

Verified Date: 09/17/2007

Verifier Std. ID: nbk9w3b **Verifier Name:** WILLIAM NEVAREZ **Verifier Phone:** 714-792-5966

Customer Point of View - Problem Resolved? N/A

No Gift/Survey to be Sent:

Close with no Resolution:

Verified Resolved:

Possible Prob. Prevention Opportunity:

Final Decision:

Bank Error:

No Gift/Survey Reason(s): Regulatory

Notes: No new research or response conducted. I sent the OCC all response letters to the customer via TPS OCC.

Complaint Comments

Comment Date: 07/26/2007

Comment Author: EUCHARIA L THRASH (nbk8h51)

Comment: Regarding online banking non-signer having access... FWD to CA/ER

Comment Date: 07/26/2007

Comment Author: EUCHARIA L THRASH (nbk8h51)

Comment: Assigned to Wil...

Comment Date: 08/01/2007

Comment Author: SHARI Y NOTO (nbk41b4)

Comment: accepted on 8/1. email was not sent to notify Wil of case - workflow error. Please close under nbk41b4.

Comment Date: 08/01/2007

Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

Comment: Customer issue took place 1/18/07: The customer had her ex-husband removed from her account on January 5, 2004 and he accessed her online banking to make some personal payments from her checking account online on January 18, 2007 totalling \$1153.70. The customer filed a police report and fraud report as the bank advised and the ex-husband has been arrested. The customer met with Ms. Laura Heape Brisson of Premier Banking to discuss the ex-husband returning the money which he did. The customer wants to know how her ex-husband was able to access her online banking. She needs this information to provide to the authorities.

Comment Date: 08/01/2007

Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

Comment: Pulled records of cases generated on behalf of the customer in January 2007 for the online access by her ex-husband through her online banking. According to the notations on the cases, the ex-husband was not properly removed from the account when the affidavit from January 2004 was filed, so the ex-husband still had access to the account because he was still listed as a co-owner.

Comment Date: 08/01/2007

Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

Comment: According to the notations, the customer has been made whole through restitution. I left a message for the customer's Premier Client Manager, Laura Brisson. Pending reply.

BOA_00374

Comment Date: 08/01/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Left message for Sean Laur's manager Eddie Garcia requesting a call back. Mr. Laur is listed as the representative that was assisting the customer with her matter back in January. Pending reply.

Comment Date: 08/01/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Spoke with Sean Laur, he advised he is in a different position at this time and tried to recall everything that happened back in January. He advised he did speak with the customer regarding the reason the customer's ex-husband was able to still access the account. The customer was never removed in 2004, and was removed on January 18, 2007. I pulled the BOSS report and verified the relationship was removed on January 18, 2007. Uploaded BOSS report.

Comment Date: 08/02/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Spoke with Ms. Laura Brisson and she advised the ex-husband had paid the money back to the customer's account after the incident happened, and the bank did not provide the customer with restitution. She also advised this matter has also been handled by Michelle Nickey in Legal. I left a message for Ms. Nickey requesting a call back; however, she will be out of the office until Monday August 6, 2007.

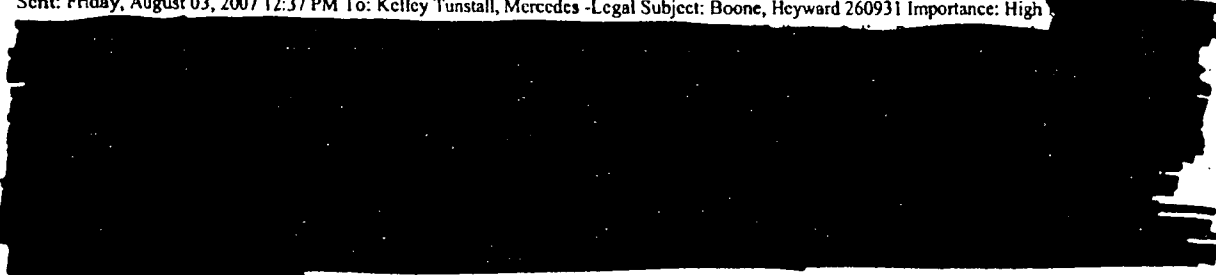
Comment Date: 08/02/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Pulled records through Document Direct for January 5, 2004 and show the customer's account title was changed to remove the ex-husband from the account but not to delete him as a co-owner. This is why the ex-husband's name no longer appeared on the statements but he was still listed on the account. Uploaded copy of the BOSS report.

Comment Date: 08/02/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment:

Comment Date: 08/02/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Spoke with the customer and she advised her ex-husband entered her account deliberately. She wanted me to put in writing her ex-husband did this deliberately and has been reviewing her account. I advised I cannot and will not put that in writing because I don't know the state of mind her ex-husband was in when he accessed the account. I advised he had access as the co-owner on the account for all of these years and this is the first incident of this happening on the account. The customer advised me I don't know the type of man her ex-husband is and he did this deliberately; which I explained that she is true, and I cannot say he did or did not access her account deliberately and I would not make that statement. We discussed the length that is involved with setting up a bill payee for online banking and she advised this also means he deliberately did this, I again advised her that it could have been an honest mistake if he believed he was accessing his account. I mentioned all I would do is send a letter stating the facts that I have, and nothing more. I advised the purpose of my call was simply to request more time to get the letter to her. I advised I would get the letter FedEx'ed to her after speaking to my colleague, Ms. Nickey. I will draft a letter and have it ready for review by Ms. Nickey.

Comment Date: 08/03/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Received voice mail from customer advising she has gone to the OCC because she feels uncomfortable about how her husband was able to access her account online. She has also stated Derek Lamonte of Online Banking advised her that we can do a keystroke analysis to find out how her ex-husband accessed her account online. I sent an email to Mr. Lamonte to get more clarification on this matter. The customer has mangled everything I have told her yesterday during our telephone conversation, so I will not be calling her back until I speak with Michelle Nickey of Legal.

Comment Date: 08/03/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Email sent to Mercedes Kelley Tunstall to proof my letter response to our customer. I just received an out of office alert from Ms. Kelley Tunstall advising she is out of the office until August 20, 2007. I will continue to wait until Monday to speak to Michelle Nickey to have her proof the letter in Ms. Kelley Tunstall's absence.
----- From: Nevarez, William J
Sent: Friday, August 03, 2007 12:37 PM To: Kelley Tunstall, Mercedes -Legal Subject: Boone, Hayward 260931 Importance: High



Comment Date: 08/03/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

BOA_00375

Complaint Resolution - New/Edit/View Complaint

Comment: In review of the ex-husband's Online Banking profile, I see where he setup the Online Banking Payees under his profile. I also learned a customer does not designate an account number to pay the payees when the bill payees are established, the account is not designated until the payment is processed. The ex-husband set up the bill payees in question prior to the January 17, 2007 date of the payments. Loaded copies of the bill payee detail showing the payees were set up prior to this incident. This information will be indicated in my letter response to the customer.

Comment Date: 08/03/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Uploaded billpayees.

Comment Date: 08/03/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Verified customer's account activity and show the customer received a credit back to her account on January 22, 2007 for the amount of the bill payments of \$1153.70. Also contacted the Line of Credit department and verified the customer did not receive any fees for the overdraft protection transfers made to her account to cover the bill payments. I left a message with Regina Heggood of Premier banking who processed the funds transfer on January 22, 2007. Pending reply.

Comment Date: 08/03/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Rough draft sent to ECR Letter Review for preliminary review before letter goes to Legal.-----

Review Subject: Boone, Heyward 260931 Neylsa, This is a rough draft. Please take a look and let me know if I should add anything else before it goes to Legal on Monday. Thanks!!! Wjl
----- From: Nevarez, William J Sent: Friday, August 03, 2007 3:49 PM To: ECR Letter

Comment Date: 08/03/2007
Comment Author: NEYLSA E FONSECA (nbkuci4)
Comment: QA editorial review

Comment Date: 08/06/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Spoke with Derrick Lamonte from Online Banking, he advised he did not advise the customer we could do a keystroke analysis, but did advise there was a bank error that allowed Mr. Jernigan to continue to view the account. We do not have the ability to show how many times Mr. Jernigan accessed the account.

Comment Date: 08/07/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Left another message for Michelle Nicky of Legal and sent her an email with the letter to the customer for review. Pending reply from Ms. Nicky.-----
----- From: Nevarez, William J Sent: Tuesday, August 07, 2007 8:37 AM To: Nicky, Michelle -Legal Cc: Fonseca, Neylsa A Subject: Boone, Heyward 260931 Importance: High

Comment Date: 08/07/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Spoke with Regina Heggood and she advised she did make a call to the customer's ex-husband asking if he was willing to make the transfer back to the customer's account for the funds that were taken out of her account for the online bill payments. The credit on January 22, 2007 in the amount of \$1153.70 did come from his account number ending in 4502.

Comment Date: 08/08/2007
Comment Author: NEYLSA E FONSECA (nbkuci4)
Comment:

Comment Date: 08/08/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Letter FedEx'ed to customer and uploaded to Tracker.

Comment Date: 08/09/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

BOA_00376

Comment: FedEx delivery confirmation-----
TrackingUpdates@fedex.com [mailto:TrackingUpdates@fedex.com] Sent: Thursday, August 09, 2007 7:57 AM To: Nevarez, William J Subject: FedEx Shipment 792393151547 Delivered-----
This tracking update has been requested by: Company Name: Bank of America Name: William Nevarez E-mail: william.j.nevarez@bankofamerica.com

Our records indicate that the following shipment has been delivered: Tracking number: 792393151547 Reference: 260931 Ship (P/U) date: Aug 8, 2007 Delivery date: Aug 9, 2007 10:53 AM Sign for by: Signature Release on file Delivered to: Residence Service type: FedEx Standard Overnight Packaging type: FedEx Envelope Number of pieces: 1 Weight: 0.50 lb. Shipper Information Recipient Information William Nevarez Heyward Suzanne Boone Bank of America -

Charleston Tampa SC FL US US 29401 33622 Special handling/Services: Deliver Weekday Residential Delivery Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:57 AM CDT on 08/09/2007. To learn more about FedEx Express, please visit our website at fedex.com. All weights are estimated. To track the latest status of your shipment, click on the tracking number above, or visit us at fedex.com. This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to fedex.com. Thank you for your business.

Comment Date: 09/10/2007
Comment Author: CHRISTOPHER J CARDINALI (nbkd272)
Comment: rcvd additional letter....fwd to Wil Nevarez

Comment Date: 09/10/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Reviewed customer's new letter and she mentions a new account that may still be opened which was a joint account with her ex-husband. The customer is requesting that the account be closed if it is not closed at this time. The customer also closes her letter with a manipulation of my comment to her over the telephone. She mentions that I asked her "to consider what I wanted in monetary restitution". I did not ever make this comment to the customer. As seen in previous notations and conversations with other associates who have dealt with this customer, she is known to manipulate things that are said to her. My response will address the results of the line of credit the customer is requesting to have closed, and advised the other matter has already been addressed and corrected and we are sorry for any inconvenience.

Comment Date: 09/10/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Our records reflect the Equity Credit line the customer is referring to is in fact blocked and has a closed date of July 11, 2005. The customer also referenced another line of credit that is jointly opened with her ex-husband, account number ending in 8854, this line of credit is still open with a zero balance. Per the customer's letter she does want this account closed. I will contact our LOC group to find out how to close a customer's account per her request.

Comment Date: 09/10/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Spoke with our LOC unit and was advised the customer must request the account to be closed in writing specifying the account number and her desire to close the account. We cannot close the account based on the information provided in the customer's current correspondence because it does not specify an actual account number. I was provided with a direct contact name of Linda Jordan and a Brea, CA address for the closure request to be sent.

Comment Date: 09/10/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Letter sent to ECR Letter Review-----
William J Sent: Monday, September 10, 2007 3:47 PM To: ECR Letter Review Subject: Boone, Heyward -2nd reply- 260931 Please review the attached document.-----
From: Nevarez,

Comment Date: 09/10/2007
Comment Author: NEYLSA E FONSECA (nbkuci4)
Comment: QA editorial review, follow up response

Comment Date: 09/11/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Letter sent to customer via FedEx.

Comment Date: 09/11/2007
Comment Author: WILLIAM J NEVAREZ (nbk9w3b)
Comment: Uploaded copy of 2nd response letter

Comment Date: 09/13/2007
Comment Author: SHARI Y NOTO (nbk41b4)
Comment: received OCC.

Comment Date: 09/13/2007
Comment Author: SHARI Y NOTO (nbk41b4)
Comment: Initial Case Coding* Category: DEPOSIT Primary: CHECKING Regulation Cite: .6 UNAUTH. TRANSFERS Secondary: REG. E, 12 CFR 205 Regulation Detail: *Initial Case Coding (ICC) is based on CAG's Initial Review of the case and may change after the bank response is reviewed. The ICC is provided solely to assist with your review and delegation to the appropriate bank assignee

Comment Date: 09/17/2007

BOA_00377

Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

Comment: In review of the customer's complaint with the OCC, it appears to be the exact same complaints that have been addressed in previous letters to the customer. No further response to go to the customer, and all correspondence will be sent to the OCC for their review that the matter has been resolved. The customer was sent a reply on September 11, 2007 and the OCC complaint came on September 13, 2007 and is dated by the customer on September 2, 2007. It appears all correspondence crossed in the mail. Per the below email confirmation from FedEx the letter was received by the customer on September 12, 2007.

From: TrackingUpdates@fedex.com [mailto:TrackingUpdates@fedex.com] Sent: Wednesday, September 12, 2007 10:12 AM To: Nevarez, William J Subject: FedEx Shipment 790333428090 Delivered

This tracking update has been requested by:
Company Name: Bank of America Name: William Nevarez E-mail: william.j.nevarez@bankofamerica.com

Our records indicate that the following shipment has been delivered: Tracking number: 790333428090 Reference: 260931 Ship (P/U) date: Sep 11, 2007 Delivery date: Sep 12, 2007 1:07 PM Sign for by: Signature Release on file Delivered to: Residence Service type: FedEx Standard Overnight Packaging type: FedEx Envelope Number of pieces: 1 Weight: 0.50 lb. Shipper Information Recipient Information William Nevarez Heyward Suzanne Boone Bank of America

Charleston Tampa SC FL US US 29401 33622 Special handling/Services: Deliver Weekday Residential Delivery Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 12:11 PM CDT on 09/12/2007. To learn more about FedEx Express, please visit our website at fedex.com. All weights are estimated. To track the latest status of your shipment, click on the tracking number above, or visit us at fedex.com. This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to fedex.com. Thank you for your business.

Comment Date: 09/17/2007

Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

Comment: Email sent to TPS OCC
From: Nevarez, William J Sent: Monday, September 17, 2007 12:23 PM To: TPS ECR OCC Subject: Boone, Heyward Suzanne - OCC Case# 714307 - \$0.00 compensation Attached are the completion letters sent to the customer addressing her concerns. Thank you for your assistance in resolving this matter. William Nevarez Assistant Vice President Executive Customer Relations Office of the Chairman 714.792.5966 "As iron sharpens iron, so one man sharpens another." Prov 27:17 This e-mail message is confidential, intended only for the recipient's named above, and may contain information that is privileged, subject to restrictions on disclosure under applicable law. If you are not the intended recipient, do not disclose or disseminate this e-mail message to anyone except the intended recipient's. If you have received this message in error, or are not a named recipient, please immediately notify the sender by return e-mail and delete all copies of this message. Thank you.

Comment Date: 09/18/2007

Comment Author: WILLIAM J NEVAREZ (nbk9w3b)

Comment: TPS OCC confirmation
From: TPS ECR OCC Sent: Monday, September 17, 2007 5:10 PM To: Nevarez, William J Subject: RE: Boone, Heyward Suzanne - OCC Case# 714307 - \$0.00 compensation Please allow this email to serve as confirmation that your response has been forwarded to the OCC. E. Pam Thrash 714-792-4946 Confidentiality Notice: This transmittal is a confidential communication. If you are not the intended recipient(s), you are hereby notified that you have received this transmittal in error and that any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply and delete this message and all its attachments, if any. Privacy Notice: Conveying confidential information via e-mail presents privacy and security concerns. Frequently, e-mail systems are not secure and e-mails may be easily intercepted during transmission. Please take precautions as necessary to preserve the privacy and security of your information.

Comment Date: 06/18/2008

Comment Author: MICHAEL V BILA (nbk4gfz)

Comment: The Attachments for this complaint have been removed and archived.

Complaint Attachments

File Name	File Description	Attached Date	Attached By
Boone, Heyward Suzanne 07.26.07 PDF	Letter to CEO	07/26/2007	EUCHARIA L THRASH
Boone, Heyward - Boss report- 260931.PDF	BOSS Report	08/01/2007	WILLIAM J NEVAREZ
Boone, Heyward - Title change documentation- 260931.PDF	Title Change Documentation	08/02/2007	WILLIAM J NEVAREZ

BOA_00378

July 23, 2007

REC'D JUL 25 2007

Mr. Kenneth D. Lewis
Chairman, CEO and President
Bank of America
100 North Tryon Street
Charlotte, NC 29255

Dear Mr. Lewis:

On January 18, 2007, I discovered that my ex-husband, Floyd E. Jernigan, had accessed my Personal Account, 8854 with Bank of America and had paid some of his personal bills totaling \$1,153.70.

Attached you will find an affidavit dated January 5, 2004, signed by Floyd E. Jernigan and notarized by Bank of America Associate Michael S. Boyle removing Floyd E. Jernigan from this account.

After contacting Derek Lamont, e-solutions Manager handling escalated issues, I was required to fill out a police report and did so on January 20, 2007. I was also required by your bank to complete a fraud report, which I did.

On January 22, 2007, I met with Laura Heape Brisson, a Vice President in Premier Banking located at 200 Meeting Street, Charleston, SC, and she called Floyd E. Jernigan and asked him if he would be willing to return the money, which he did.

City of Charleston detectives investigated this case, which led to the arrest of Floyd E. Jernigan. After a pre-trial hearing the case now rests with the Solicitor's Office.

The purpose of this letter is to determine the exact circumstances which led to Floyd E. Jernigan being able to access my personal account and to remove these funds. I am requesting a thorough investigation of this matter and a written report stating the facts.

I need this report for the Solicitor's Office not later than Monday, August 6, 2007.

Sincerely,

Heyward Suzanne Boone

Heyward Suzanne Boone

Charleston, SC 29401
-9898



BOA_00379

BANK OF AMERICA, N.A. (THE "BANK")

1-5

Customer Removed
Authorization/Disaffirmation Agreement

The Bank:

On this 5th day of January 2004, Floyd Jernigan, the undersigned,
Name of person being removed

hereby represent to Bank of America (the "Bank") that I am an owner/signer with a present right of withdrawal to the Bank
account number 8884 (the "Account") or a present right of access to Safe Deposit
Box Number _____ (the "Safe Deposit Box") established in the name(s) of:

FLOYD E JERNIGAN

SUZANNE B JERNIGAN

Further, I hereby inform the Bank that I have no continuing interest in the funds in the above described Account or the contents of the above
described Safe Deposit Box and hereby direct the Bank to remove my name from the Account or Safe Deposit Box and change the title to:

SUZANNE B JERNIGAN

Furthermore, I hereby agree, for myself and my heirs and personal representatives, to release, indemnify and hold harmless and forever discharge the
Bank for any and all actions, suits, claims, liabilities, damages, expenses, losses, costs, assessments and fees (including without limitation reasonable
attorneys' fees) which may arise, directly or indirectly, out of my interest in the Account or Safe Deposit Box I have or had arising out of the Bank's
actions in removing my name from and right of withdrawal or access to the Account or Safe Deposit Box.

In Witness Whereof, I have hereunto set my hand and seal this 5th day of January 2004.

Floyd Jernigan (Print)
Signature of person whose name is being removed

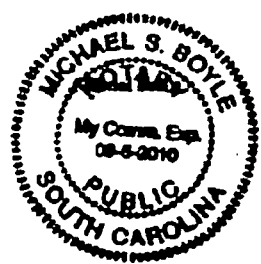
State of South Carolina

Charleston County

I, Michael Boyle, a Notary Public for said County and State, do hereby certify that
Floyd Jernigan personally appeared before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and official seal, this 5th day of January

Michael S Boyle
Notary Public
My commission expires 4-5-2010



Bank Information

Date 01/05/2004 Banking Center Name MEDICAL CENTER
Associate's Phone Number 843-753-6087 Associate's Name MICHAEL S BOYLE

Customer removed due to death

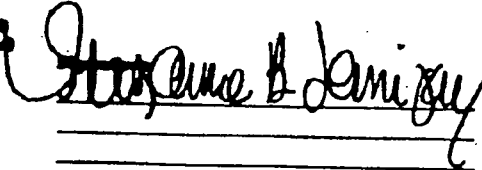
By signing below, I/We acknowledge and agree that this account is and shall be governed by the terms and conditions set forth in the following documents, as amended from time to time: (1) if this account is a deposit account, the Deposit Agreement and Disclosure, the Personal Schedule of Fees, and the Miscellaneous Fees for Personal Accounts; (2) if this account is a Line of Credit, the Line of Credit Agreement and Disclosure. Furthermore, I/We acknowledge the receipt of these documents. By signing below, I/We also acknowledge and agree that the signature(s) will serve as verification for any transaction in connection with this account, any Line of Credit checks which I/We may sign, and as the certification (set forth below) of the taxpayer identification number to which I/We want interest reported.

Substitute Form W-9. (Required only for Deposit Accounts) Certification: Under penalties of perjury, I certify that:
 (1) The number shown on this form is the correct taxpayer identification number (so I am waiting for a number to be issued to me), and (2) I am not subject to backup withholding because (A) I am exempt from backup withholding, or (B) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (C) The IRS has notified me that I am no longer subject to backup withholding, and (3) I am a U.S. person (including a U.S. resident alien).

Certification Instructions:
 You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. Also see IRS instructions for Form W-9.

Individual Joint with Survivorship Payable on Death ("POD")

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Your Identification Number 1. _____ 2. _____ 3. _____ 4. _____ 5. _____	Report Interest On <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	 _____ _____ _____ _____	ATM/Check Card Requested? * (Deposit Accounts Only) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
--	--	--	--

* By checking the box marked "ATM/Check Card Requested?", I/We hereby request an Automatic Teller Machine Card and/or a Check Card.

I/We name the following person(s) as beneficiary(ies) of this account, superseding any prior designations:

Beneficiary's Name _____

Beneficiary's Social Security Number _____ Beneficiary's Present Telephone Number _____

Beneficiary's Present Address _____

(Please notify the Bank of any subsequent changes of beneficiary(ies)' address or telephone.)

NBC
 08-14-2000 08-2001

BOA_00381

SCO 100100

Charleston Police Department

ARR

Incident Type		Completed	Forced Entry	Premise Type	Units Entered	Type Victim
1. Fraud (INTERNET)		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Bank	0	<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Religious Org. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Officer
2.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
3.		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Incident Location (Subdivision, Apartment and Number, Street and Number)						
Charleston, SC				Zip Code		Weapon Type
Incident Date		24 Hr. Clock		Date		24 Hr. Clock
1-17-07		0800		1-19-07		2300
Complainant's Name (Last, First, Middle)		Relationship To Subject		Resident	Race	Sex
Same As Victim						
Address		City		State	Zip Code	Location No.
Victim's Name (Last, First, Middle)		Relationship To Subject		Resident	Race	Sex
Boone, Heyward, Suzanne				J	W	F
Height	Weight	Hair	Eyes	Facial, Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.		
503	104	brn	brn			
Address		City		State	Zip Code	Location No.
		Charleston		SC	29401	
Visible Injury (Vict. 1): <input type="checkbox"/> Yes <input type="checkbox"/> No Explain:						
Victim (No. 1) Using Alcohol: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unk.						
Complaint of Any Non-Injuries: <input type="checkbox"/> Yes <input type="checkbox"/> No						
<input type="checkbox"/> Two-Man Vehicle <input type="checkbox"/> One-Man Veh. <input type="checkbox"/> Detective/Spl. Asst. <input type="checkbox"/> Other <input type="checkbox"/> Alone <input type="checkbox"/> Armed <input type="checkbox"/> I-This Jurisdiction <input type="checkbox"/> S-State <input type="checkbox"/> O-Out of State <input type="checkbox"/> U-Unknown						
<input checked="" type="checkbox"/> Suspect <input type="checkbox"/> Runaway <input type="checkbox"/> Wanted <input type="checkbox"/> Warrant <input type="checkbox"/> Arrest <input type="checkbox"/> Jail <input type="checkbox"/> Summons						
Name: Jernigan, Floyd Race: W Sex: M Age: 54 Eth: N Date of Birth: 5-31-50 Height: 510 Weight: 170 Hair: brn Eyes: brn Facial, Hair, Scars, Tattoos, Glasses, Clothing, Physical Peculiarities, Etc. Address: _____ City: Charleston State: SC Zip Code: 29412 Location No.: _____ Subject (No. 1) Using Alcohol: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unk. Type Drug: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unk. Type Arrested Near Offense Scene: <input type="checkbox"/> Yes <input type="checkbox"/> No Date/Time of Offense: _____ Date/Time of Arrest: _____ Total # Arrested: _____						
<p>On 1-20-07 at approx 1700hrs, R/o was flagged down at _____ in reference to a fraud that occurred online. R/o spoke to the comp/victim (Boone, Heyward, Suzanne, w/m, DOB: 5-31-50) who informed R/o that between 1-17-07 at 0800hrs and 1-19-07 2300hrs, the subject (Jernigan, Floyd, w/m, DOB: 2-22-52, Phone# 843-2910), her ex-husband, removed approx. \$1,100 in U.S. currency from her online bank account through Bank of America (281 Calboun street, Charleston, SC, 29401). The victim advised R/o that the subject does not have permission to access her bank account and does not know how he was allowed access to it by the bank.</p>						
Jurisdiction of the Law Enforcement Agency				Jurisdiction of Recovery Law Enforcement Agency		
Type (Group)	U.S. Currency					Total Value
Stolen	-1100-					-1100-
Damaged						
Recovered						
Seized						
Subject Identified: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subject Located: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Active <input type="checkbox"/> Adm. Closed <input type="checkbox"/> Arrested Under 18 <input type="checkbox"/> Ex-Clear Under 18 <input type="checkbox"/> Unfounded <input type="checkbox"/> Arrested 18 and Over <input type="checkbox"/> Ex-Clear 18 and Over						
Reason For Exceptional Clearance: 1. <input type="checkbox"/> Offender Death 2. <input type="checkbox"/> No Prosecution 3. <input type="checkbox"/> Extradition Denied 4. <input type="checkbox"/> Victim Declines Cooperation 5. <input type="checkbox"/> Inmate-No Custody						
Reporting Officer(s)		Date	Unit Number	Approving Officer		Date
G. Powers		1-20-07	1462	[Signature]		20 JAN 27
Follow-up Investigation: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> SLEED <input type="checkbox"/> MISC						

BOA_00382



August 3, 2007

Heyward Suzanne Boone

Charleston, SC 29401

Dear Ms. Boone:

Your letter addressed to Mr. Kenneth D. Lewis, Chairman and Chief Executive Officer of Bank of America has been forwarded to my office for further consideration and review. On behalf of Bank of America, I welcome the opportunity to respond to your concerns.

Ms. Boone, thank you for taking the opportunity to speak with me on August 2, 2007 concerning your account number ending in 8854. Bank of America regrets any undue frustrations and inconveniences you have experienced. Bank of America understands the importance of accuracy in fulfilling our customers' account maintenance requests, and regrets in this case, we have fallen short of our objectives.

As discussed during our telephone conversation, our records indicate Mr. Floyd E. Jernigan was removed from the account title on the account number ending in 8854, on January 5, 2004. At that time, Mr. Jernigan's name was removed from the monthly statements; unfortunately as a result of this inadvertent error, his name remained as the co-owner on the account profile and he still had access via Online Banking. Mr. Jernigan was able to access the account on January 17, 2007 and process five Online Banking Bill Payments that were debited from checking account number ending in 8854, totaling the amount of \$1,153.70. Per the enclosed account statement, shortly after the incident as you confirmed during our conversation Mr. Jernigan had repaid the amount debited from the account in full, on January 22, 2007.

Once this matter had been brought to our attention, we properly removed Mr. Jernigan from the account profile as co-owner, eliminating any access to the above-mentioned account. While I understand the extent of distress this matter has caused you, I cannot determine or comment on the state of mind or intent of Mr. Jernigan accessing the account in question through our Online Banking service. As we discussed with regards to the possibility of the account being linked as Overdraft Protection for Mr. Jernigan's checking account, we cannot link one checking account to serve as Overdraft Protection on another checking account. Overdraft Protection must be provided by a credit card, line of credit, or savings account.

I have thoroughly reviewed the Online Payees which were paid out of your account number ending in 8854, on January 17, 2007. These Online Payees were established under Mr. Jernigan's Online Banking Profile, and were created prior to the scheduled payment date of January 17, 2007.



BOA_00402



Ms. Boone, we do appreciate your continued relationship with Bank of America and for the privilege of serving your banking needs. I realize an apology cannot undo what has occurred; however we do hope we may regain your confidence in our ability to service your financial needs. If you have any additional questions concerning this matter, please contact me at 714.792.5966.

Sincerely,

William Nevarez
Assistant Vice President
Executive Customer Relations
T-260931

BOA_00403

September 2, 2007

Mr. Kenneth D. Lewis
Chairman, CEO, and President
Bank of America
100 North Tryon Street
Charlotte, NC 28255

SEP 07 2007

Dear Mr. Lewis:

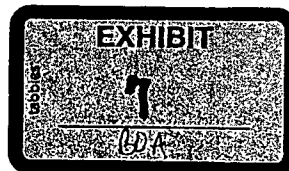
This letter is in response to the phone call, and letter dated August 3, 2007, from Mr. William Navarez, Assistant Vice President in Executive Customer Relations with Bank of America. His letter is attached.

Mr. Lewis, I have been a long time Premiere customer of Bank of America. I feel the answers I received are inadequate and that an apology does not even begin to cover the horrible breach of my privacy and security that occurred over the last three years.

I have attached a picture of my two sons, Carter and Case Jernigan and me. Carter is an outstanding young man, a senior at MIT. Case is a fine young man as well, a graduate of Woodberry Forest and a senior at the College of William and Mary. I was a stay at home mom for twenty-two years. Our family went through a terrible time during the divorce. I have provided the home and security to my boys as their father lived in a rented room for two years and he had no place for them. Although he is a physician, he held a tight rein on money, even to the point of not paying tuition or giving the boys money for medications, glasses, shoes or spending money. I cannot stress enough the agony we went through with attorneys and the Family Court. This is why I so carefully monitored my financial affairs.

Bank America allowed my ex husband, Floyd E Jernigan, access to my accounts. He had the ability to stalk me online, seeing every penny I spent, as well as all deposits made, totally invading my privacy and security. He had this ability since January 2004, all through my settlement negotiations. Mr. Lewis, my opponent "saw my hand" for THREE entire years and was able to play his game accordingly.

I would like for you to briefly imagine coming home on a January night, with friends present and ready to enjoy a quiet meal, only to quickly check your online banking and find that there had been a breach. I spent four hours that night trying to understand what had happened, talking to multiple representatives of the bank, only to be finally told that my ex husband had accessed my account. Many more months passed as he told lie after lie to our sons before I finally signed the warrant for his arrest at the repeated urging of friends, counselors, family and my priest. My youngest son, Case, was present in his father's house when the arrest was made: my ex husband had refused to answer numerous calls, and cards left on his door, by the police.



BOA_00404

Mr. Lewis, I want you to look at our picture, and look into our eyes. We are real people, and this was a terrible, terrible thing that did not have to happen to us.

In addition to the matter stated above, the bank also failed to close another account, an equity credit line account # 2599 and my ex husband accessed this as well during the divorce, taking \$27,096. This account was supposed to be closed August 22, 2002 when we refinanced our mortgage. I am sending all supporting documents with this as well.

There is still an open credit line of \$2,000 as well, in both our names. I want it closed immediately. I just do not understand how the bank can make so many serious errors and violate my confidence and trust.

I am asking for the bank to take strong action to right this wrongdoing. I need a statement from the bank that my ex husband was NOT a joint owner of account # 3854 in January 2007. I want a full explanation of why the bank did not close the equity credit line # 2599 allowing my ex husband to remove funds from this closed account.

This has been a costly experience for my boys and me both monetarily and emotionally. When Mr. Navarez concluded our discussion he asked me "to consider what I wanted in monetary restitution." Because of the graveness of this matter and wanting to conclude this as quickly as possible I am requesting that your bank make an equitable offer. As a woman I have felt extremely vulnerable and violated by your bank's actions. Although I have discussed this situation with an attorney, I feel it would be more prudent for us to conclude this without my bringing in outside counsel, as I am sure your legal department would agree.

Sincerely,

Hayward Suzanne Boone

Hayward Suzanne Boone

Charleston, SC 29401

-9898

BOA_00405



August 3, 2007

Heyward Suzanne Boone

Charleston, SC 29401

Dear Ms. Boone:

Your letter addressed to Mr. Kenneth D. Lewis, Chairman and Chief Executive Officer of Bank of America has been forwarded to my office for further consideration and review. On behalf of Bank of America, I welcome the opportunity to respond to your concerns.

Ms. Boone, thank you for taking the opportunity to speak with me on August 2, 2007 concerning your account number ending in 8854. Bank of America regrets any undue frustrations and inconveniences you have experienced. Bank of America understands the importance of accuracy in fulfilling our customers' account maintenance requests, and regrets in this case, we have fallen short of our objectives.

As discussed during our telephone conversation, our records indicate Mr. Floyd E. Jernigan was removed from the account title on the account number ending in 8854, on January 5, 2004. At that time, Mr. Jernigan's name was removed from the monthly statements; unfortunately as a result of this inadvertent error, his name remained as the co-owner on the account profile and he still had access via Online Banking. Mr. Jernigan was able to access the account on January 17, 2007 and process five Online Banking Bill Payments that were debited from checking account number ending in 8854, totaling the amount of \$1,153.70. Per the enclosed account statement, shortly after the incident as you confirmed during our conversation Mr. Jernigan had repaid the amount debited from the account in full, on January 22, 2007.

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I have thoroughly reviewed the Online Payees which were paid out of your account number ending in 8854, on January 17, 2007. These Online Payees were established under Mr. Jernigan's Online Banking Profile, and were created prior to the scheduled payment date of January 17, 2007.

BOA_00406



Ms. Boone, we do appreciate your continued relationship with Bank of America and for the privilege of serving your banking needs. I realize an apology cannot undo what has occurred; however we do hope we may regain your confidence in our ability to service your financial needs. If you have any additional questions concerning this matter, please contact me at 714.792.5966.

Sincerely,

William Nevarez
Assistant Vice President
Executive Customer Relations
T-260931

BOA_00407

July 23, 2007

Mr. Kenneth D. Lewis
Chairman, CEO and President
Bank of America
100 North Tryon Street
Charlotte, NC 28255 28255

Dear Mr. Lewis:

On January 18, 2007, I discovered that my ex-husband, Floyd E. Jernigan, had accessed my Personal Account, 8854 with Bank of America and had paid some of his personal bills totaling \$1,153.70.

Attached you will find a signed affidavit dated January 5, 2004, signed by Floyd E. Jernigan and notarized by Bank of American Associate Michael S. Boyle removing Floyd E. Jernigan from this account.

After contacting Derek Lamont, e-solutions Manager handling escalated issues, I was required to fill out a police report and did so on January 20, 2007. I was also required by your bank to complete a fraud report, which I did.

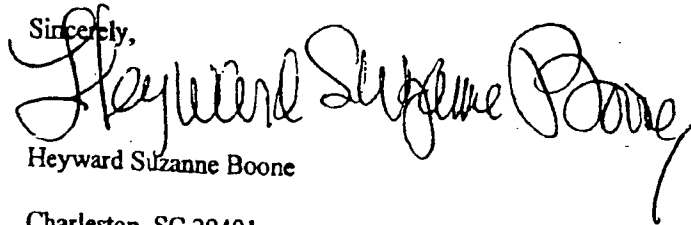
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City of Charleston detectives investigated this case, which led to the arrest of Floyd E. Jernigan. After a pre-trial hearing the case now rests with the Solicitor's Office.

The purpose of this letter is to determine the exact circumstances which led to Floyd E. Jernigan being able to access my personal account and to remove these funds. I am requesting a thorough investigation of this matter and a written report stating the facts.

I need this report for the Solicitor's Office not later than Monday, August 6, 2007.

Sincerely,



Heyward Suzanne Boone

Charleston, SC 29401
-9898

BOA_00408

SOTTILE, HOPKINS & DANIEL, L.L.P.C.
Attorneys at Law
1037 Chuck Dawley Blvd., Building G
Mt. Pleasant, South Carolina 29464
Telephone (843) 884-1464 Telecopy (843) 884-5868

NICHOLAS C. SOTTILE
C. D. HOPKINS, III
MICHAEL R. DANIEL
M. ANTHONY STITH, JR.
VINCENT C. NORTHCUTT

nsottile@shd-law.com
chopkins@shd-law.com
mdaniel@shd-law.com
Astith@shd-law.com
vnorthcutt@shd-law.com

TELECOPY COVER SHEET


TO: Bank of America Mortgage DATE: 12/30/03
TELECOPY NO.: 720-2275 TELEPHONE NO.: 720-2247
FROM: Nick Sottile OUR FILE NO.: 02-517ncs
RE: Equity Creditline Account No :2599, Floyd E. Jernigan and Suzanne B. Jernigan

TOTAL NUMBER OF PAGES, INCLUDING COVER: 4

Comments:

Enclosed please find a copy of the Mortgage Lien Satisfaction. You never cancelled this mortgage of record. I am now recording this satisfaction.

Also enclosed is the Termination Notice which was delivered along with the payoff to you.

Nick/pgm 

IF YOU HAVE ANY PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL (843) 884-1464
This transmission contains attorney-privileged and confidential information intended solely for the above-named recipient. If you are not the above-named recipient, you are hereby notified that any examination, dissemination, distribution, copying or other use of this transmission is strictly prohibited. If you received this transmission in error, please promptly notify us by telephone and return the transmittal to the above address via U.S. Mail. We will reimburse you for the cost. Thank you.

BOA_00409

BK J 480PG300

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

MORTGAGE LIEN SATISFACTION
AFFIDAVIT PURSUANT TO SECTION
29-3-330 OF S. C. CODE OF LAWS
(BOOK V333, PAGE 27)

PERSONALLY appeared before me the undersigned Affiant, who being first duly sworn,
deposes and states as follows:

1. That Affiant is an attorney licensed to practice law in the State of South Carolina.
2. That with respect to the mortgage given by Floyd E. Jernigan and Suzanne B. Jernigan to Bank of America, N.A. dated August 19, 1999, and recorded at the Charleston County R.M.C. Office in Book V333, at Page 27.

a. Affiant was given written payoff information and made such payoff and is in possession of a cancelled check to the mortgagee, holder of record, or representative servicer for such payoff.

b. Affiant was given written payoff information and made such payoff by wire transfer or other electronic means to the mortgagee, holder of record, or representative servicer and has confirmation from Affiant's bank of the transfer of the payoff funds to the account provided by the mortgagee, holder of record, or representative servicer.

Under penalties of perjury, Affiant declares that Affiant has examined this affidavit this th day of December, 2003, and, to the best of Affiant's knowledge and belief, it is true, correct and complete.

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Website created and maintained by Small Business Web Solutions, Inc.

BOA_00410

We take our love for design and style to provide interior redesign and home staging services to the greater Minneapolis Minnesota area.

BN J 480PG301

WITNESS:

Patricia D. McCurdy

Alexis Bopp

AFFIANT:

N. C. Sottile

Nicholas C. Sottile, S.C. Bar No. 5193
1037 Chuck Dawley Blvd., Bldg G
Mt. Pleasant, S.C. 29464
(843) 884-1464

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED
before me by Affiant this 20th day of December, 2003

Patricia D. McCurdy (SEAL)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 10/10/04

File Name: Jernigan
File No.: _____ ncs

BOA_00411

MORTGAGE EQUITY LINE ACCOUNT

TERMINATION NOTICE

We hereby direct that Bank of America equity line account 2599 be terminated as of August 27, 2002, and that the mortgage given in connection therewith be cancelled. We have no outstanding draws against this account subsequent to the payoff statement dated August 22, 2002, provided to Nicholas C. Sottile, attorney at law, by this lender.

Suzanne B. Jernigan individually and as

Floyd E. Jernigan

Attorney in fact for Floyd E. Jernigan

Suzanne B. Jernigan

SWORN to and Subscribed before me
this 27th day of August, 2002.

N. C. Sottile (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: *2/11/02*

BOA_00412



BANK OF AMERICA, N.A. (THE "BANK")

Loan/Credit Line
Transaction History

FLOYD E JERNIGAN
SUZANNE B JERNIGAN

EQUITY CREDIT LINE

2599

Last Posting Date 03/02/04
Last Statement Date 02/23/04

Current Balance **\$27,096.03**

**JT
ACCE**

Date	Amount	Transaction	Balance
2/27/04	\$2,358.00	CUSTOMER ADVANCE	\$27,096.03
2/24/04	\$15,583.00	CUSTOMER ADVANCE	\$24,738.03
2/23/04	\$2,155.03	CUSTOMER ADVANCE	\$9,155.03
2/23/04	\$7,000.00	CUSTOMER ADVANCE	\$7,000.00
9/24/02	\$.13		
9/24/02	\$.13		
9/06/02	\$49,672.06	REGULAR PAYMENT	
8/18/02	\$197.78	REGULAR PAYMENT	\$49,402.31
7/29/02	\$375.00	EXTERNAL BALANCE ADVANCE	\$49,402.31
7/29/02	\$375.00	DECREASE HOLD AMOUNT	\$49,027.31
7/26/02	\$375.00	INCREASE HOLD AMOUNT	\$49,027.31
7/22/02	\$191.41	REGULAR PAYMENT	\$49,027.31
6/10/02	\$197.79	REGULAR PAYMENT	\$49,027.31
5/23/02	\$191.41	REGULAR PAYMENT	\$49,027.31
4/18/02	\$197.79	REGULAR PAYMENT	\$49,027.31
3/19/02	\$178.64	REGULAR PAYMENT	\$49,027.31
2/21/02	\$197.79	REGULAR PAYMENT	\$49,027.31
1/14/02	\$208.20	REGULAR PAYMENT	\$49,027.31
12/14/01	\$221.63	REGULAR PAYMENT	\$49,027.31
11/13/01	\$249.84	REGULAR PAYMENT	\$49,027.31
10/18/01	\$261.92	REGULAR PAYMENT	\$49,027.31
9/17/01	\$269.70	REGULAR PAYMENT	\$49,027.31
8/21/01	\$228.76	REGULAR PAYMENT	\$49,027.31
8/13/01	\$1,000.00	EXTERNAL BALANCE ADVANCE	\$49,027.31
7/31/01	\$5,270.24	EXTERNAL BALANCE ADVANCE	\$48,027.31
7/30/01	\$4,280.00	EXTERNAL BALANCE ADVANCE	\$42,757.07
7/18/01	\$221.37	REGULAR PAYMENT	\$38,477.07
6/21/01	\$245.10	REGULAR PAYMENT	\$38,477.07
5/14/01	\$253.00	REGULAR PAYMENT	\$38,477.07
4/09/01	\$277.77	REGULAR PAYMENT	\$38,477.07
3/19/01	\$262.23	REGULAR PAYMENT	\$38,477.07
2/23/01	\$495.00	EXTERNAL BALANCE ADVANCE	\$38,477.07
2/14/01	\$306.30	REGULAR PAYMENT	\$37,982.07
1/18/01	\$305.62	REGULAR PAYMENT	\$37,982.07
12/14/00	\$295.76	REGULAR PAYMENT	\$37,982.07
11/14/00	\$290.47	REGULAR PAYMENT	\$37,982.07
10/12/00	\$3,434.00	EXTERNAL BALANCE ADVANCE	\$37,982.07
10/06/00	\$255.68	REGULAR PAYMENT	\$34,548.07
9/20/00	\$812.50	EXTERNAL BALANCE ADVANCE	\$34,548.07
9/19/00	\$250.00	EXTERNAL BALANCE ADVANCE	\$33,735.57
9/18/00	\$257.77	REGULAR PAYMENT	\$33,485.57
9/13/00	\$950.00	EXTERNAL BALANCE ADVANCE	\$33,485.57
9/11/00	\$500.00	EXTERNAL BALANCE ADVANCE	\$32,535.57
8/21/00	\$257.77	REGULAR PAYMENT	\$32,035.57
7/10/00	\$249.46	REGULAR PAYMENT	\$32,035.57

For additional information or service, please contact the Customer Service Center at 800-333-6262

NSC
00-08-9103M 8-1999

BOA_00413

Page 1



BOA_00414

ROA 861



September 10, 2007

Heyward Suzanne Boone

Charleston, SC 29401

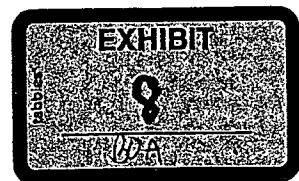
Dear Ms. Boone:

We are in receipt of your September 2, 2007 correspondence addressed to Mr. Kenneth D. Lewis, Chairman and Chief Executive Officer of Bank of America. I would like to, again, sincerely apologize for any undue frustrations and inconveniences you have experienced throughout this whole process.

As indicated in my August 3, 2007 response, we had made all necessary account corrections to remove Mr. Jernigan's access to any of your accounts through his Online Banking service. Regrettably, I cannot provide you with any documentation that states Mr. Jernigan was not listed as a co-owner on your checking account number ending in 8854 in January 2007, as previously advised Mr. Jernigan's name had been removed from the monthly statements and remained as a co-owner on the account profile.

With regards to your line of credit account number ending in 2599, our records indicate this account has been closed and no longer active for use, effective July 11, 2005. We are able to confirm a joint line of credit account number 8854, in the names of Ms. Heyward Suzanne Boone and Mr. Floyd E. Jernigan still remains open at this time with a zero balance. In order to close this account, we require a written request signed by you as the co-owner. This request must include your desire to close the account and the account number mentioned above. To expedite your request please address the closure request to Ms. Linda Jordan at the following:

Bank of America
Attn: Linda Jordan CA7-701-03-49
275 Valencia Avenue
Brea, CA 92823
or
Fax: 415.249.5145



BOA_00415

Ms. Boone, while I regret any misunderstanding that you may have received during our telephone conversation on August 2, 2007, Bank of America is unable to compensate you for any emotional distress which may have been incurred during your experience. Our records indicate the funds that were utilized by Mr. Jernigan on January 17, 2007 to process his Online Banking Bill Payments, in the amount of \$1,153.70 from your account number ending in 8854 had been repaid in full by Mr. Jernigan on January 22, 2007. Being that the amount was repaid in full, we are unable to determine any monetary loss incurred by this incident.



Again, I extend my apology for the events that transpired and hope we may regain your confidence in our ability to service your financial needs. If you have any additional questions concerning this matter, please contact me at 714.792.5966.

Sincerely,

William Nevarez
Assistant Vice President
Executive Customer Relations
T-260931

BOA_00416

01/19/07
22:53:01

*** BOSS DATA ENTRY AUDIT TRAIL REPORT ***

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PRODUCT - PER

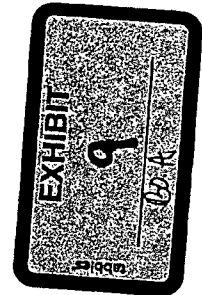
ENTITY 0005 NSC

ACCOUNT

[REDACTED ACCOUNT INFORMATION]

8854

PREV MAINT	CURR MAINT	OPERATOR ID	DATA
08/21/98 12:25:56	01/19/07 17:33:08	NBKR24P ACCT MAINT	SVC FEE TYPE=SAV
08/21/98 12:25:56	01/19/07 17:33:08	NBKR24P ACCT MAINT	REL PRICE=P
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P STMT MAINT	SRCE CHG=C PULL CDE=B PULL DAY=04 .SUPL CDE=0 NXT PULL CDE= NXT PULL DAY= 0 NXT SUPL CDE=
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P STMT MAINT	SRCE CHG=D PULL CDE=B PULL DAY=04 SUPL CDE=0 NXT PULL CDE= NXT PULL DAY= 0 NXT SUPL CDE=
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P ACCT MAINT	FRMT STMT CHG=D
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P STMT MAINT	SRCE CHG=S PULL CDE=B PULL DAY=04 SUPL CDE=0 NXT PULL CDE= NXT PULL DAY= 0 NXT SUPL CDE=
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P ACCT MAINT	NEW THIS CYCLE=2
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P ACCT MAINT	COMB STMT FLG=P
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P ACCT MAINT	SC DAY= 00
01/19/07 17:33:08	01/19/07 17:33:09	NBKR24P ACCT MAINT	SC CYCLE= 0
01/27/06 16:07:08	01/19/07 16:16:49	NBK61GA ACCT MAINT	SVC TYPE=00A
01/27/06 16:07:08	01/19/07 16:16:49	NBK61GA ACCT MAINT	SVC FEE TYPE=CHK
01/19/07 11:14:33	01/19/07 11:14:33	NBK1487 BPAY DELETE	FLOYD E JERNIGAN RELATIONSHIP - COO



BOA 00383

ROA 864

6001

22:31:57

ROSS DATA ENTRY AUDIT TRAIL REPORT ***

PAGE 192

ENTITY 0005 NSC

BOA_00384

ACCOUNT

PRODUCT - PER

PREV MAINT	CURR MAINT	OPERATOR ID	DATA
11/24/03 15:52:04	01/04/04 19:24:23	NBRQ71B ACCT MAINT	SVC FEE TYPE=SAV
05/27/03 13:44:44	01/04/04 21:44:37	NBR4NF6 ACCT MAINT	FUNDING ACT IND=P
10/06/03 06:34:38	01/05/04 04:53:13	IBASLRM ACCT MAINT	SERV WVE CODE=W
10/06/03 06:34:38	01/05/04 04:53:13	IBASLRM ACCT MAINT	SERV WVE RSN CODE=BC
10/06/03 06:34:38	01/05/04 04:53:13	IBASLRM ACCT MAINT	SERV WVE END DATE=02/04/04
10/06/03 06:34:38	01/05/04 04:53:13	IBASLRM ACCT MAINT	ANC WVE FEE IND=Y
10/06/03 06:34:38	01/05/04 04:53:13	IBASLRM ACCT MAINT	ANC WVE RSN CODE=BC
10/06/03 06:34:38	01/05/04 04:53:13	IBASLRM ACCT MAINT	ANC WVE END DATE=02/04/04
07/14/03 11:05:33	01/05/04 19:12:07	NBRKWL4 ACCT MAINT	ACCT STATUS=00 DATE CLOSED= 00/00/00 CLOSE REASON=
07/14/03 11:05:33	01/05/04 19:12:07	NBRKWL4 ACCT MAINT	CLOSE REASON=
07/14/03 11:05:33	01/05/04 19:12:07	NBRKWL4 ACCT MAINT	OD LIMIT OPT=S
06/22/99 14:41:17	01/05/04 12:23:57	NBK7LP2 TITLE CHG	BPAY SUZANNE R JERNIGAN CHARLESTON
01/05/04 12:23:57	01/05/04 12:23:57	NBK7LP2 CHG	BPAY SUZANNE B JERNIGAN OLD RELATION - COO NEW RELATION - OWN

8854

8854

ROA 865

0002

BO03 CUPR
09/09/09 9.48.05
CONVERSATION 1
ENTITY: NBC
FLOYD E JERNIGAN
1962

*** BOSS-CUSTOMER PROFILE ***

7246
CHARLESTON SC 29412-2906
LOB:

TIE: 0000 SSN/TIN:

PI:

NUMBER:

CIP REQ: D EMP: NO

CITZN: US ASSOC

CENTER:

COST

PERS PHONE: 2910 OPENED:

8/22/94 SERVICE

LEVEL: +

INTL PHONE:

SERVICE

GUIDE: 9999

BUS PHONE: -2910 EXT:

AFFIL SHR

BLK: NO

FAX PHONE:

CUSTOMER PREF: MET000

LAST

CONTACT: 10/27/08

TIN APPLIC DATE:

TIN APPIC TYPE:

LAST MAINT:

2/14/09

IMG PLACED BY PLACED

EXPIRES REMARKS

BOSS MAINT:

2/14/09

ADDR CHG:

7/24/06

MW NBKLV7N 01/18/07 01/01/99 XFER TO ES2 IF CUSTOMER

ARGUES MW NBKLV7N 01/18/07 01/01/99 DO NOT GIVE ACCESS TO -

8854.

SE NBK6HSK 04/04/07 01/01/99 CUST VER LGT TRVLNG 2 ITALY

** ADDITIONAL REMARKS **

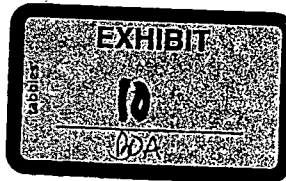
*** PRESS PF3 TO RETURN TO THE GCLO SCREEN ***

PF9=CU MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=PAGE2

PF12=PAGE3

PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION

□



BOA_00438

BO03 CUPR
09/09/09 9.47.57
CONVERSATION 1
ENTITY: NBC
FLOYD E JERNIGAN
1962

*** BOSS-CUSTOMER PROFILE ***

7246
CHARLESTON SC 29412-2906
LOB:

TIE: 0000 SSN/TIN:

PI:

CIP REQ: D EMP: NO

CITZN: US ASSOC

NUMBER:

COST

CENTER:

PERS PHONE: 2910 OPENED: 8/22/94 SERVICE

LEVEL: +

INTL PHONE: SERVICE

GUIDE: 9999

BUS PHONE: -2910 EXT: AFFIL SHR

BLK: NO

FAX PHONE: CUSTOMER PREF: MET000 LAST

CONTACT: 10/27/08

TIN APPLIC DATE: 2/14/09 TIN APPIC TYPE: LAST MAINT:

IMG PLACED BY PLACED EXPIRES REMARKS BOSS MAINT:
2/14/09

ADDR CHG:

7/24/06

MW NBKPIMF 03/29/07 01/01/99 AND OTHER EUROPEAN
COUNTRIES FROM

MW NBKLV7N 01/18/07 01/01/99 CUSTOMER REMOVED FROM ACCT

1/5/04

SE NBK6HSK 04/04/07 01/01/99 T BRITAIN NORWAY POSSIBLI
FINLND

** ADDITIONAL REMARKS **

*** PRESS PF3 TO RETURN TO THE GCLO SCREEN ***

PF9=CU MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=PAGE2

PF12=PAGE3

PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION

□

BOA_00439

01/
22:43:47

PRODUCT - PER

ENTITY 0005 NSC

ACCOUNT	PREV MAINT	CURR MAINT	OPERATOR ID	DATA
[REDACTED]	02/01/06 19:37:59	01/11/07 12:13:48	NBK3E40 ACCT MAINT	ANC WVE RSN CODE=CL
[REDACTED]	02/01/06 19:37:59	01/11/07 12:13:48	NBK3E40 ACCT MAINT	ANC WVE END DATE=02/15/07
[REDACTED]	02/01/06 19:37:59	01/11/07 12:13:48	NBK3E40 ACCT MAINT	CLOSE REASON=59
[REDACTED]	02/01/06 19:37:59	01/11/07 12:13:48	NBK3E40 ACCT MAINT	CLOSE OVRD=N
[REDACTED]	02/01/06 19:37:59	01/11/07 12:13:48	NBK3E40 ACCT MAINT	OD LIMIT OPT=N
[REDACTED]	02/01/06 19:37:59	01/11/07 12:13:48	NBK3E40 ACCT MAINT	OD LIMIT AMT= 0.00
[REDACTED]	07/01/06 12:31:55	01/11/07 12:10:12	NBKXE9N TITLE CHG	BPAY [REDACTED] [REDACTED] DANVERS MA 275137348 US
[REDACTED]	01/11/07 12:10:42	01/11/07 12:10:12	NBKXE9N CHG	BPAY [REDACTED] 0002 OLD RELATION - OWN NEW RELATION - COO
[REDACTED]	01/11/07 12:10:12	01/11/07 12:10:12	NBKXE9N ADD	BPAY [REDACTED] 0002 RELATIONSHIP - COO
[REDACTED]	06/03/05 19:18:16	01/11/07 04:51:42	NBKRR1T ADDRESS CHG	BPAY [REDACTED] [REDACTED] BROOKLYN NY 112314650 US 1
4502	06/09/06 09:29:04	01/11/07 12:02:42	IBASLRM ACCT MAINT	DEP HLD IND=A
4502	01/11/07 12:02:42	01/11/07 12:02:42	IBASLRM ACCT MAINT	ACCT STATUS=02 DATE CLOSED= 00/00/00 CLOSE REASON=
4502	01/11/07 12:02:42	01/11/07 12:02:42	IBASLRM ACCT MAINT	OD LIMIT OPT=0

ROA 868

BOA_00598



01/ 7

22:43:47

*** BOSS DATA ENTRY AUDIT T REPORT ***

PAGE 437

PRODUCT - PER

ENTITY 0005 NSC

ACCOUNT	PREV MAINT	CURR MAINT	OPERATOR ID	DATA
4502	01/11/07 12:02:42	01/11/07 12:02:42	IBASLRM ACCT MAINT	OD LIMIT AMT= 0.00
4502	01/11/07 12:02:42	01/11/07 12:02:42	IBASLRM ACCT MAINT	OD PROT NXT REV DTE=01/11/08
[REDACTED]	10/12/05 16:05:35	01/11/07 07:41:05	IBASLRM ACCT MAINT	SERV WVE CODE=W
[REDACTED]	10/12/05 16:05:35	01/11/07 07:41:05	IBASLRM ACCT MAINT	SERV WVE RSN CODE=BC
[REDACTED]	10/12/05 16:05:35	01/11/07 07:41:05	IBASLRM ACCT MAINT	SERV WVE END DATE=03/22/07
[REDACTED]	10/12/05 16:05:35	01/11/07 07:41:05	IBASLRM ACCT MAINT	ANC WVE FEE IND=Y
[REDACTED]	10/12/05 16:05:35	01/11/07 07:41:05	IBASLRM ACCT MAINT	ANC WVE RSN CODE=BC
[REDACTED]	10/12/05 16:05:35	01/11/07 07:41:05	IBASLRM ACCT MAINT	ANC WVE END DATE=03/22/07
[REDACTED]	10/27/06 18:03:59	01/11/07 08:50:43	NBKYE2M ACCT MAINT	ACTION CODE=A ITM CYS ID=IMP XFER ACCOUNT= 2753 CCA AVAIL BAL= 0.00
[REDACTED]	04/20/06 12:15:02	01/10/07 21:30:39	OTMA MAILCODE CHG	MAIL CODE=ES
[REDACTED]	12/17/06 14:43:07	01/11/07 05:22:56	NBKUP2J BPAY ADDRESS CHG	FRANKLIN TN 370674419 US 1
[REDACTED]	12/02/06 00:53:39	01/11/07 03:32:21	NBK4JOT BPAY ADDRESS CHG	CENTRAL SC 296304095 US 1

ROA 869

BOA_00599

01/ /
23:09:12

*** BOSS DATA ENTRY AUDIT TI REPORT ***

PAGE 720
ENTITY 0005 NSC

PRODUCT - PER

ACCOUNT	PREV MAINT	CURR MAINT	OPERATOR ID	DATA
[REDACTED]	01/16/07 13:09:21	01/16/07 13:09:21	DLVAPI ACCT MAINT	ELEC BK TRLR CHG: CHANNELS=C100000
[REDACTED]	00/00/00 00:00:00	01/16/07 13:13:54	DLVAPI ACCT MAINT	ELEC BK TRLR CHG: CHANNELS=C110000
[REDACTED]	01/12/07 06:59:08	01/16/07 05:08:55	IBASLRM ACCT MAINT	SERV WVE END DATE=03/27/07
[REDACTED]	01/12/07 06:59:08	01/16/07 03:08:55	IBASLRM ACCT MAINT	ANC WVE END DATE=03/27/07
[REDACTED]	06/06/06 15:10:18	01/12/07 21:53:57	NBKPOZR ADDRESS CHG	BPAY [REDACTED] HILTON HEAD ISLAND SC 29928 US 1
[REDACTED]	01/11/07 12:10:12	01/13/07 03:27:41	NBKXESN TITLE CHG	BPAY [REDACTED] DANVERS MA 276137348 US
[REDACTED]	01/12/07 06:59:06	01/16/07 05:08:54	IBASLFM ACCT MAINT	SERV WVE END DATE=03/27/07
[REDACTED]	01/12/07 06:59:06	01/16/07 05:08:54	IBASLFM ACCT MAINT	ANC WVE END DATE=03/27/07
4502	01/11/07 12:02:42	01/16/07 03:10:00	IBASLFM ACCT MAINT	DEP HLD IND=M
4502	01/11/07 12:02:42	01/16/07 03:10:00	IBASLFM ACCT MAINT	OD LIMIT OPT=S
4502	01/11/07 12:02:42	01/16/07 03:10:00	IBASLFM ACCT MAINT	OD PROT NXT REV DTE=00/00/00
4502	01/16/07 03:10:00	01/16/07 03:10:00	IBASLFM ACCT MAINT	ACCT STATUS=00 DATE CLOSED= 00/00/00 CLOSE REASON=
[REDACTED]	00/00/00 00:00:00	01/16/07 15:01:49	NBK91ZR MISC FEES	USER CODE=3041 TRAN CODE=80 ANC SCURCE=070

ROA 870

BOA_00600

Online Banking and Transfers Outside Bank of America Service Agreement and Electronic Disclosure

Effective Date: January 6, 2007

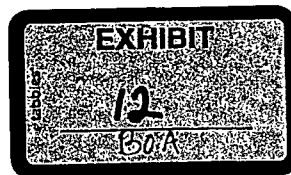
Notice

Effective January 6, 2007, new services will be available for customers using the Transfers Outside Bank of America Service. These customers now have the ability to schedule one-time future dated or recurring transfers from an account they own at another financial institution to their Bank of America account, in addition to the current abilities to make immediate transfers between their Bank of America accounts and accounts they own at other financial institutions. See Section VIII, Transfers Outside Bank of America, for specific details.

Effective October 23, 2006, the ShopSafe® service will be available for credit card customers. This new service will offer credit card customers the ability to create a unique, temporary credit card number for online purchases. See Section II.F.

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 - A. What This Agreement Covers
 - B. Accepting the Agreement
 - C. Relation to Other Agreements
- II. Online Banking Services
 - A. Online Banking for Consumers and Businesses
 - B. Bill Payment Services
 - C. Additional Services Intended for Businesses
 - D. Online Banking Alerts (not yet available for accounts in California)
 - E. Financial Management Services (not yet available for accounts located in all states and for all customers, we will notify you when available for your Online Banking service)
 - F. ShopSafe®
- III. Description of Online Banking Services (does not apply to Transfers Outside Bank of America)
 - A. Transfers
 - B. Online Banking Bill Payment Processing
 - C. Limitations and Dollar Amounts for Transfers and Payments
 - D. Sufficient Available Funds
 - E. Canceling Transfers and Payments
 - F. Our Liability for Failure to Cancel or Stop the Transfer or Payment
 - G. E-Bills
 - H. Accounts Linked to Your Online Banking Services
 - I. Activity Levels for Linked Accounts
- IV. Other Terms and Conditions
 - A. Monthly Service Charge
 - B. Other Charges
 - C. Service Hours
 - D. Business Days
 - E. Participation By Payees
 - F. Canceling Your Online Banking
 - G. Joint Accounts
 - H. Changes to Agreement
 - I. Cancellation
 - J. Use of External E-mail Address
 - K. Transfers From Money Market Deposit Accounts
 - L. Contact by Bank of America or Affiliated Parties
 - M. Reporting Unauthorized Transactions
 - N. Initiating Payment Inquiries



BOA_00473

- O. [Disclosure of Account Information](#)
- P. [Account Statements](#)
- V. [Additional Provisions Applicable Only to Consumer and Sole Proprietor Accounts](#)
 - A. [In Case of Errors or Questions About Your Electronic Transactions](#)
 - B. [Limitation of Liability](#)
 - C. [Our Liability for Failure to Complete Transactions](#)
- VI. [Additional Provisions Applicable Only to Business Accounts \(other than Sole Proprietors\)](#)
 - A. [Protecting Your Passcode](#)
 - B. [Acknowledgment of Commercially Reasonable Security Procedures](#)
 - C. [Limitation of Bank's Liability](#)
- VII. [Additional Services Intended for Businesses](#)
 - A. [Creating and Managing Users](#)
 - B. [Linking Accounts of Additional Businesses](#)
 - C. [Contacting Bank of America](#)
- VIII. [Transfers Outside Bank of America \(applies only if you have signed up for this service - for personal accounts only\)](#)
- IX. [Additional Services](#)

I. General Description of Online Banking and Transfers Outside Bank of America Service Agreement

A. What This Agreement Covers

This Agreement between you and Bank of America, N.A (Bank of America) governs the use of Online Banking services and the Transfers Outside Bank of America service. These services permit Bank of America customers (consumers, sole proprietors and other business customers) to perform a number of banking functions on accounts linked to the service through the use of a personal computer, including some credit card accounts and investment accounts with our affiliates, FIA Card Services, N.A., and Banc of America Investment Services, Inc. ("BAI"), respectively. Unless indicated otherwise by the context, "linked Bank of America accounts" or "linked accounts" refers to all of your accounts with Bank of America or its affiliates that you have linked to Online Banking or Transfers Outside Bank of America.

[▲Back to Top](#)

B. Accepting the Agreement

When you use any of the Online Banking services described in this Agreement or Transfers Outside Bank of America, or authorize others to use them, you agree to the terms and conditions of the entire Agreement.

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C. Relation to Other Agreements

Your use of Online Banking services or Transfers Outside Bank of America may also be affected by the agreements between us for your linked Bank of America accounts. When you link an account to Online Banking services or Transfers Outside Bank of America, you do not change the agreements you already have with us for that account. For example, if you link a BAI investment account to Online Banking, the terms and conditions of your BAI customer agreement(s) and/or user agreement(s) do not change. Similarly, when you use Online Banking services to access a credit account, you do so under the terms and conditions we gave you in the agreement and disclosure for the credit account. You should review those agreements for any applicable fees, for limitations on the number of transactions you can make, and for other restrictions that might impact your use of an account with Online Banking services or Transfers Outside Bank of America.

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II. Online Banking Services

A. Online Banking for Consumers and Businesses

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You may use Online Banking to:

- Transfer funds between your linked Bank of America accounts on either a one-time or recurring basis, including as a payment to a linked installment loan or mortgage
- Transfer funds from your linked Bank of America personal or sole proprietor accounts to most Bank of America personal or sole proprietor deposit accounts of other individuals
- View current balance information for your linked Bank of America accounts
- Review available transactions for your linked accounts
- Perform self-service account maintenance such as re-ordering checks, ordering copies of paid checks, requesting copies of monthly checking or saving statements, stopping payment on checks, changing address and phone, and changing your Online ID and Online passcode
- Send us secure online mail messages and questions regarding your Online Banking service

Some of the above services may not be available for certain accounts or customers.

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B. Bill Payment Services

In addition to the Online Banking features listed above, Bank of America customers with a deposit account may also:

- Make one-time or recurring payments online from your linked checking account(s), and money market deposit account(s) to companies or individuals (Payees) you select.
- Use the e-Bills feature to:
 - Receive bills from participating Payees
 - View Payee bill summary and bill detail information

Bank of America credit card only customers may also:

- Make one time or automatic payments online from a deposit or money market deposit account maintained at another financial institution to your Bank of America credit card(s).
- Receive credit card e-Bills from Bank of America and view bill summary and detail information.

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C. Additional Services Intended for Businesses

We offer businesses the ability to create multiple Online IDs each with the access level you designate. In some circumstances, we also permit you to link the accounts of other businesses you own or control. See Section VII below for special registration procedures and applicable terms.

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D. Online Banking Alerts (not yet available for accounts in California)

We provide Automatic Alerts and voluntary Account Alerts.

1. Automatic Alerts are sent to you following certain changes made online to your Online Banking account, such as a change in your email or home address, telephone number, Online ID or passcode. You do not need to activate these alerts. Although you may have the option to suppress some of these Automatic Alerts, we strongly recommend that you do not do so since they are security-related.

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2. Voluntary Account Alerts must be activated by you.

- Account Alerts allow you to choose alert messages for your accounts. We may add new alerts from time to time, or cancel old alerts. If you have opted to receive an alert that is being canceled, we will notify you at least 30 days in advance.
- Each alert has different options available, and you will be asked to select from among these options upon activation of your alerts service.

3. Both Automatic Alerts and voluntary Account Alerts are subject to the following.

- Electronic alerts will be sent to the email address you have provided as your primary email address for Online Banking. If your email address or your mobile device's email address changes, you are responsible for informing us of the change. You can also choose to have alerts sent to a secondary email address, including a mobile device that accepts text messages. Changes to your primary and secondary email addresses will apply to all of your Alerts.
- You understand and agree that your alerts may be delayed or prevented by a variety of factors. We do our best to provide alerts in a timely manner with accurate information. We neither guarantee the delivery nor the accuracy of the contents of any alert. You also agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance of an alert.
- Because alerts are not encrypted, we will never include your passcode or full account number. However, alerts may include your name and some information about your accounts. Depending upon which alerts you select, information such as your account balance or the due date for your credit card payment may be included. Anyone with access to your email will be able to view the contents of these alerts.

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E. Financial Management Services (not yet available for accounts located in all states and for all customers, we will notify you when available for your Online Banking service)

We offer a variety of tools and services within Online Banking to help you better manage your finances. This includes obtaining balance information, manually entering scheduled transactions to estimate future balances, and tools to help you balance your statements. These tools and services are explained within Online Banking.

You agree:

- We may change these tools and services or add new ones without advance notice.
- You are responsible for the accuracy of all information you input.
- You will comply with any instructions or conditions for use of the services and tools as set forth within Online Banking.
- The tools and services are meant as aids to assist you with managing your accounts. They are not intended to provide legal, tax or financial advice.

F. ShopSafe®

We provide the ShopSafe® service to allow you to create a unique, temporary credit card account number for online purchases at a specified merchant. The number links to the real credit card number, but keeps that number private and protected. The 16-digit ShopSafe number is used just like any other credit card account number.

ShopSafe allows you to set a dollar limit for purchases at a specified merchant. When we consider it appropriate, we may permit charges in addition to your preset dollar limit to allow for shipping, handling, and taxes, which may not have been taken into consideration at the time of the purchase.

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III. Description of Online Banking Services (does not apply to Transfers Outside Bank of America)

A. Transfers (does not apply to Transfers Outside Bank of America)

- Processing of Transfer Requests
 - Transfers can be made in 2 ways, on a 1-time or recurring basis. One-time transfers may be immediate or scheduled for a future date. The recurring transfer feature may be used when a set amount is transferred at regular intervals. For example, a \$100 transfer from a checking to a savings account which occurs every 2 weeks.
 - One-time immediate transfers can be made from a linked Bank of America checking, savings, money market, line of credit, credit card or brokerage account to most linked Bank of America accounts.
 - Scheduled and recurring transfers can be made from a linked Bank of America checking, savings, money market, or credit card account to a linked checking or savings account.
 - Transfers can be made from a linked Bank of America personal or sole proprietor checking, savings, money market or line of credit account to most personal or sole proprietor checking, savings, or money market accounts of other Bank of America customers. Washington, Idaho, Military Bank and some other customer accounts cannot be set up to receive funds.
 - Transfers from a deposit account (excluding BAI investment accounts) are immediately reflected in the account's available balance. Transfers from a credit card or a line of credit account are immediately reflected in the account's available credit amount.
- Scheduled and Recurring Transfers
 - Transfers scheduled for a weekend or a non-bank business day will be processed on the prior bank business day. All other scheduled and recurring transfers will be processed from the funding account at the beginning of the business day requested.
- Transfers to Credit Accounts
 - Funds transferred as a payment to a credit card, line of credit, installment loan or mortgage account before 11:59 p.m. ET will be credited with the date the payment is submitted. Transfer payments submitted after 11:59 p.m. ET will be credited with the next day's date. Updates to account balances, funds availability, and transaction posting may take up to 2 bank business days.
- Transfers to Deposit Accounts
 - For accounts located in any state except California, funds transferred to a deposit account (excluding transfers from a credit card or BAI investment account) prior to 10:45 p.m. ET on a bank business day will appear with the same day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account overnight (such as, checks and direct debits). Transfers submitted after 10:45 p.m. ET on a non bank business day will appear with the following business day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account on the following business day.
 - For accounts located in California, funds transferred to a deposit account (excluding transfers from a credit card or BAI investment account) prior to 10:45 p.m. ET on a bank business day will appear with the same day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account overnight (such as, checks and direct debits). Transfers submitted after 10:45 p.m. ET on a non bank business day will appear with the following business day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account

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- on the following business day.
- For cash advance transfers from a credit card the cut-off time is 7:00 p.m. ET on a bank business day.
- All transfers submitted to a deposit account (such as, checking, savings, money market), except for transfers from a BAI investment account, are immediately reflected in the account's available balance.
- Transfers to a deposit account from a BAI investment account, submitted before 1:30 p.m. ET, are reflected in the deposit account's available balance at the beginning of the next bank business day. Transfers submitted after 1:30 p.m. ET or on a non bank business day are reflected in the deposit account's available balance at the beginning of the second bank business day following the day the transfer was submitted.
- Transfers to or from BAI Investment Accounts
 - Transfers submitted to or from a BAI account before the cut-off time of 1:30 p.m. ET on a bank business day are posted to your BAI account at the beginning of the next bank business day. All transfers submitted after the cut-off time or on a non bank business day are posted to your BAI account at the beginning of the second bank business day following the day the transfer was submitted.

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B. Online Banking Bill Payment Processing

Bank of America customers with a deposit account may use the Bill Payment product in the following manner:

- Payments can be scheduled from linked checking and money market savings accounts.
- Payments can be entered as a 1-time transaction up to a year in advance, recurring transactions or as payments that are automatically scheduled upon the receipt of an electronic bill (e-Bill).
- Payments entered on our system before 5:00 p.m. ET on a bank business day will be scheduled and begin processing on the same bank business day. Payments made using a checking or money market account as the funding account that are entered after this cut-off time or on a day that is a non-bank business day will be scheduled and processed the next bank business day.
- Scheduled recurring payments that fall on a weekend or a non-bank business day will be processed on the prior bank business day.
- You authorize us to make payments in the manner we select from the following methods:
 - Electronic transmission. Most payments are made by electronic transmission.
 - Corporate check- This is a check drawn on our account or the account of our vendor. If a Payee on a corporate check fails to negotiate the check within 90 days, we will stop payment on the check and recredit your account for the amount of the payment.
 - Personal check - This is a check drawn on your account based on your authorization under this Agreement.
- Scheduling Bill Payments
 - The scheduled delivery date is the date you enter for the payment to be delivered to the Payee. For payments made by electronic transmission or corporate check, the payment amount will be debited from, or charged to the account that you designate on the scheduled delivery date. If the scheduled delivery date is a weekend or non-bank business day, then the delivery date will be the prior bank business day. For payments made by personal check, the account you designate will be debited when the check is presented to us for payment. In most cases, this will be on or after the scheduled delivery date.
 - For payments to a Bank of America credit card, loan, line of credit, or mortgage, Bank of America will process and credit the payment to the appropriate account

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effective the same business day, provided the payment is scheduled prior to the 5:00 p.m. ET cut-off.

- o When you attempt to schedule a payment, we will inform you of the earliest available delivery date. To assure timely payment and obtain the full benefit of the Online Banking Guarantee, you must schedule payments and your account must be in good standing at least four (4) bank business days before the payment due date. If you do not, or if for any reason your account is not in good standing, you will be fully responsible for all late fees, finance charges or other action taken by the Payee. If we are unable to complete the payment because of insufficient funds in your account or some other reason, we will send you an alert to the email address you have provided with this Agreement. We will also notify you if your account is no longer in good standing and eligible to be used for bill payments.

Bank of America credit card only customers may use the Bill Payment product in the following manner:

- Payments to your Bank of America credit card account can be scheduled from deposit or money market deposit accounts maintained at another financial institution.
- Payments can be entered as a 1-time transaction up to a year in advance, or as payments that are automatically scheduled upon the receipt of an electronic bill (e-Bill).
- Payments entered on our system before 3:30 p.m. ET on a bank business day will be applied to your credit card account on the same bank business day. Payments entered after this cut-off or on a day that is a non-bank business day will be scheduled and processed on the next bank business day. For all entries, the time is recorded on our computer controls.
- The payment date will default to the current bank business day prior to the 3:30 p.m. ET cutoff time.
- If the financial institution upon which your payment is drawn rejects, refuses, or returns the payment, the payment to your Bank of America credit card will be reversed and you may incur late payment or other fees. The institution holding your deposit account may impose a returned item or other fee. See your credit card and deposit account agreements for details.

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C. Limitations and Dollar Amounts for Transfers and Payments (does not apply to Transfers Outside Bank of America)

Transfers and Payments made using Online Banking are subject to the following limitations:

- Bill payments can be for any amount between .01 and \$99,999.99.
- One-time immediate transfers between linked Bank of America accounts can be for any amount between .01 and \$999,999.99, except that a transfer from a BAI account may not exceed \$249,999.99.
- Transfers submitted to the accounts of other Bank of America customers may not total more than \$1,000 during any 24-hour period or \$2,500 during any 7-day period. In addition, we may limit the total amount of money that any Bank of America customer can receive through these transfers.
- Scheduled and recurring transfers between linked Bank of America accounts can be for any amount between \$0.01 and \$99,999.99.
- All transfer limits are subject to temporary reductions to protect the security of customer accounts and/or the transfer system.
- At our discretion we may refuse to process any transaction that exceeds any of the above limits. In this case, you are responsible for making alternate arrangements or rescheduling the payment or transfer within Online Banking.

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D. Sufficient Available Funds

- You authorize Bank of America to withdraw, debit or charge the necessary funds from your designated Bank of America account on the delivery or transfer date you designate.
- You agree that you will instruct us to make a withdrawal only when a sufficient balance is or will be available in your accounts at the time of the withdrawal.
- The completion of a transfer or payment is subject to the availability of sufficient funds (including any overdraft protection plans) at the time the transaction is posted. If enough funds to complete the transfer or payment are not available, we may either (i) complete the transaction and overdraw the account or (ii) refuse to complete the transaction. In either case, we may charge a non-sufficient funds (NSF), returned item, overdraft, or similar fee. Please refer to the applicable account agreement and fee schedule for details.
- At our option, we may make a further attempt to issue the payment or process the transfer request.
- Bank of America is under no obligation to inform you if it does not complete a payment or transfer because there are non-sufficient funds or credit in your account to process the transaction. In this case, you are responsible for making alternate arrangements or rescheduling the payment or transfer within Online Banking.

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E. Canceling Transfers and Payments (does not apply to Transfers Outside Bank of America)

- **Bill Payments**
 - In order to cancel a payment, you must sign into Online Banking and follow the directions provided on the Bill Pay screens. The cancel feature is found in the Payment History or Recurring Payments sections of Online Banking.
 - Future-dated payments can be cancelled prior to 5 p.m. ET on the third bank business day prior to the scheduled delivery date.
- **Transfers**
 - You cannot cancel a 1-time immediate transfer after it has been submitted in Online Banking and the information has been transmitted to us.
 - Future-dated and recurring transfers can be canceled prior to midnight ET on the bank business day prior to the date the transfer is scheduled to be made. If the transfer's status is In Process or Processed, you can no longer cancel it. After you cancel a future-dated transfer, the status changes to Canceled. Canceled transfers remain under Review Transfers.

Alternative Method

Note: The easiest and most convenient way to cancel a payment or transfer is through the method described above. However, you may request to cancel a scheduled or recurring payment or a future-dated transfer by calling us at:

- For accounts located in any state except California: **1.800.792.0808**
- For accounts located in California: **1.800.792.0808**
- If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

We must receive your request three (3) bank business days or more before the payment or transfer is scheduled for processing. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. If you call or write to cancel a payment or transfer that is Pending, you will be charged for a stop payment in

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accordance with the agreement for the appropriate linked account.

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F. Our Liability for Failure to Cancel or Stop the Transfer or Payment

If you attempt to cancel a payment or transfer in accordance with the above instructions and we do not do so, we will be liable for your losses or damages.

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G. E-Bills

E-Bills is a feature of the Bill Pay service that enables you to receive bills electronically from participating Payees.

- **Approval of e-Bills**
Participating Payees establish their own criteria for reviewing requests to receive e-Bills and have sole discretion to accept or decline your request. We do not participate in this decision. Participating Payees generally take up to five (5) bank business days to approve an e-Bill set-up request.
- **Accessing e-Bills from a Third Party**
In some cases we obtain the e-Bill from the web site of the Payee. To do so, we will ask you for information needed for this purpose, such as any required password. When you provide this information, you authorize us to access the third party web site to retrieve the account information on your behalf, and you appoint us your agent for this limited purpose.
- **Timely Delivery of e-Bills**
We take no responsibility if a Payee does not provide the necessary data to forward an e-Bill in a timely manner. If you do not receive a bill, it is your responsibility to contact the Payee directly. We are not responsible for any late charges or other adverse consequences. Any questions regarding your bill details should be directed to your Payee.
- **Stop e-Bills**
All parties have the right to cancel the service at any time. We will notify you if Bank of America or a Payee discontinues/stops e-Bills. If you request that an e-Bill be discontinued, we require seven (7) bank business days for the Payee to receive and process the request.
- **Privacy**
When you establish e-Bills with a participating Payee you will provide certain information, that will be forwarded onto the Payee to complete your enrollment. If you have concerns about the future use of this information you should contact your Payee directly.

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H. Accounts Linked to Your Online Banking Services (does not apply to Transfers Outside Bank of America)

When you first set up your Online ID, we will link all of your eligible accounts. If you open an additional eligible account at a later date, we will link your new account to Online Banking, unless you instruct us not to do so. If you want to limit the accounts linked or the activity level assigned to an account, please call us at 1.800.933.6262 (1.800.792.0808 for accounts located in California) and a representative will discuss the available options with you.

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I. Activity Levels for Linked Accounts

Currently there are 3 activity levels that can be assigned to your linked accounts:

- **View** - This level allows you to obtain current account balance and transaction

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information. This level does not allow transfer of funds between linked accounts. However, for linked BAI investment accounts, you may be able to perform investment activities (including trading) by linking directly to the BAI site.

- Inquiry - This level allows you to obtain current account balance and transaction information. This level does not allow transfers of funds from this account to any linked accounts.
- Financial - This level allows you to obtain account information and transfer funds between linked accounts, as well as to add Bill Pay services, and certain other banking services.

When you first use Online Banking, all of your linked accounts are assigned the activity level of "financial." If any additional accounts are linked to Online Banking, it will automatically be assigned to the activity level of "financial." If you want to change the activity level assigned to your linked accounts, please call us.

- For accounts located in any state except California: **1.800.792.0808**
- For accounts located in California: **1.800.792.0808**
- If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

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IV. Other Terms and Conditions

A. Monthly Service Charge

- There is no monthly service charge for accessing your linked accounts, or for paying and receiving bills, with the Online Banking service.

Note: For Personal Financial Management programs (such as Quicken®) used to access Online Banking with Bill Pay service -- There is a \$9.95 monthly service charge for Consumer customers and a \$14.95 charge for Business customers. We waive this charge if you have a Master Relationship Account (MRA), Preferred, Money Manager, Advantage, Versatel, or Prima account linked to your service, you are a Private Bank or Premier Banking client, or you are enrolled in the Online Banking Business Suite (OLBS).

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B. Other Charges

You should note that depending on how you access Online Banking or Transfers Outside Bank of America, you might incur charges for:

- Normal account fees and service charges.
- Any Internet service provider fees.
- Purchase of computer programs such as Personal Financial Management (PFM) software.
- Payments or transfers made through Online Banking services from a savings or money market account may result in an excess transaction fee. See your savings or money market account for details.
- Additionally, fees may be assessed for added self-service features available through Online Banking customer service, such as stop payment requests, check copy orders and account statement copy orders. Please consult your deposit account agreements to see if your accounts are subject to these fees.
- An NSF-fee, returned item, overdraft or similar fee may also apply if you schedule payments or transfers and your available balance is not sufficient to process the transaction on the date scheduled.
- We may charge you a research fee of \$20 per hour for an inquiry about a transaction that occurred more than 180 days before the date you make the inquiry. This fee will be waived if we determine that an error occurred.

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C. Service Hours

Online Banking services and Transfers Outside Bank of America are available 365 days a year and 24 hours a day, except during system maintenance and upgrades. When this occurs, a message will be displayed on-line when you sign on to Online Banking. Our Call Centers are available from 7:00 a.m. to 10:00 p.m. ET (for California accounts, from 7:00 a.m. to 10:00 p.m. PT), seven (7) days a week excluding bank holidays. You may also write us at:

For Accounts located in any state except California	For accounts located in California:
Bank of America Electronic Banking Services TX1-854-06-12 P.O. Box 655961 Dallas, TX 75265-9964.	Bank of America Electronic Banking Services CA4-701-02-75 P.O. Box 37000 San Francisco, CA 94137

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D. Business Days

For Online Banking services and Transfers Outside Bank of America; our business days are Monday through Friday, excluding bank holidays. For BAI investment accounts only, all stock exchange closures and holidays will be observed (such as Good Friday) as well as the bank holidays.

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E. Participation By Payees

Occasionally a Payee may choose not to participate in Bill Pay, or may require additional information before accepting payments. We will work with these Payees to encourage them to accept an electronic or check payment from the Bank. If we are unsuccessful, or if we determine that the Payee cannot process payments in a timely manner, we may decline future payments to this Payee. In the unlikely event that this occurs, we will promptly send you a notice. Any obligations that you wish to pay through Online Banking with Bill Pay must be payable in U.S. dollars to a Payee located in the United States. We reserve the right to restrict categories of Payees to whom payments may be made using the service. You should not use the service to make:

- Tax payments
- Court-ordered payments
- Payments to settle securities transactions

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F. Canceling Your Online Banking

If you choose to cancel your Online Banking services, any unprocessed payments will be canceled. We recommend that you cancel any scheduled payments prior to notifying us that you are discontinuing the service. Bank of America will cancel any scheduled payments within two (2) bank business days from the date we receive your request to discontinue the service. If you close your primary checking account, or if it's no longer linked to your service, your Online Banking service will end, and any unprocessed payments will be canceled. If you cancel your Online Banking services, Transfers Outside Bank of America will also be canceled.

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G. Joint Accounts

When your Online Banking service is linked to one or more joint accounts, we may act on the

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verbal, written or electronic instructions of any authorized signer. Joint accounts using the same Online ID will be identified as one service.

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H. Changes to Agreement

We may change this agreement at any time. For example, we may add, delete or amend terms or services. We will notify you of such changes by mail or electronic message. If you initiate any transfer of funds or bill payment through your Online Banking services or make any Transfers Outside Bank of America after the effective date of a change, you indicate your agreement to the change.

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I. Cancellation

Your Online Banking services and Transfers Outside Bank of America remain in effect until they are terminated by you or Bank of America. You may cancel your service at any time by notifying us of your intent to cancel in writing, through Online Banking secure mail, or by calling Online Banking customer service at 1.800.933.6262 (all states except California) and 1.800.792.0808 (for California). This cancellation applies to your Online Banking services and Transfers Outside Bank of America, and does not terminate your Bank of America accounts. We recommend that you cancel any scheduled payments prior to notifying us that you are discontinuing the service.

We may terminate your participation in Online Banking services for any reason, including inactivity, at any time. We will try to notify you in advance, but we are not obliged to do so.

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J. Use of External Email Address

With Online Banking services and Transfers Outside Bank of America, we may send messages to your external email address and notify you that responses to your payment inquiries or customer service inquiries are available, or as otherwise described within the Online Banking or Transfers Outside Bank of America services. If you subscribe to e-Bills service, we may also use external e-mail to notify you that you have new bills. We cannot act on instructions sent by you from an external email address. You should use Online Banking secure mail to send instructions to Bank of America. If, for any reason your external email address changes or becomes disabled, please contact Bank of America immediately so that we can continue to provide you with automated messages. You may notify us of any changes to your external email address through the Customer Service tab within your Online Banking service.

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K. Transfers From Money Market Deposit Accounts

Federal regulations limit the number of preauthorized electronic fund transfers and telephone transfers - including Online Banking transactions - from money market deposit and savings accounts. You are limited to six (6) preauthorized electronic fund transfers, telephone transfers, checks and point-of-sale transactions per statement cycle. Of these six (6) transactions, you are limited to only three (3) transactions by check or point-of-sale. (For information on these accounts, see the applicable account agreement.) Each transfer or payment through the Online Banking services from your money market account is counted as one of the six (6) limited transfers you're permitted each statement period. We charge a fee for each transaction in excess of this limit. Payments to your Bank of America loans are counted toward this limit for money market accounts. We recommend that you not use a money market account as your bill payment account because of these restrictions.

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L. Contact by Bank of America or Affiliated Parties

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No Bank of America or Payee employee, nor any company affiliated with Bank of America Online Banking or Transfers Outside Bank of America, will contact you via email or phone requesting your Online ID or online passcode. If you are contacted by anyone requesting this information, please contact us immediately.

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M. Reporting Unauthorized Transactions

For accounts located in any state except California: **1.800.933.6262**

For accounts located in California: **1.800.792.0808**

If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

For Accounts located in any state except California	For accounts located in California:
Bank of America Electronic Banking Services TX1-854-06-12 P.O. Box 655961 Dallas, TX 75265-9964	Bank of America Electronic Banking Services CAA-701-02-75 P.O. Box 37000 San Francisco, CA 94137

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N. Initiating Payment Inquiries

To initiate a payment inquiry, you may use Online Banking services to send the request via secure online mail. Or you may contact Online Banking Customer Service by calling 1.800.933.6262 (for accounts located in California call 1.800.792.0808) and following the voice prompts to speak to a customer service representative. If you are calling from outside of the continental U.S., call us collect at 1.925.681.7600.

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O. Disclosure of Account Information

We may disclose information to third parties about you or your account or your transactions in the following instances:

- When it's necessary for completing transfers or bill payments, or to investigate or resolve a problem related to a transfer or payment
- To verify the existence and condition of your account for a third party, such as a credit bureau or merchant
- To comply with a government agency or court orders, or in connection with fraud prevention or an investigation
- If you give us your permission
- With our affiliates as permitted under Federal and applicable state laws
- On a closed account, if we reasonably believe you have mishandled it

For more information about our privacy and security practices and a link to our Privacy Policy for Consumers go to our Web site at <https://www.bankofamerica.com/privacy>.

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P. Account Statements

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We report your Online Banking and Transfers Outside Bank of America transactions on the monthly statements for your linked accounts. A description of each transaction, including whom you paid, and the date and amount of the transaction will appear on your statement.

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V. Additional Provisions Applicable Only to Consumer and Sole Proprietor Accounts

A. In Case of Errors or Questions About Your Electronic Transactions

Send us a secure online mail message or call us.

For accounts located in any state except California: **1.800.933.6262**

For accounts located in California: **1.800.792.0808**

If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

You may also write us at:

For Accounts located in any state except California	For accounts located in California:
Bank of America Electronic Banking Services TX1-854-06-12 P.O. Box 655961 Dallas, TX 75265-9964	Bank of America Electronic Banking Services CA4-701-02-75 P.O. Box 37000 San Francisco, CA 94137

Contact us immediately if you think:

- Your statement or transaction record is wrong
- You need more information about a transaction listed on your statement
- An unauthorized person has discovered your Online Banking passcode
- Someone has transferred or may transfer money from your account without your permission
- Bill payment transactions have been made without your authorization

We must hear from you no later than 60 days after we have sent the FIRST statement on which the problem or error appeared.

If you tell us verbally, we may require you to send us your complaint or question in writing or via email within ten (10) bank business days (Online Banking customers may use secure online mail). When you contact us, please provide the following information:

- Your name and account number
- The date and dollar amount of the transaction in question
- The name of the Payee if the transaction in question is a payment
- The transaction number assigned by Online Banking, if available
- A description of the transaction about which you are unsure

Please explain as clearly as you can why you believe there is an error or why you need more information.

We will tell you the results of our investigation within 10 bank business days after we hear from you, and we will promptly correct any error we have made. If we need more time, however, we may take up to 45 days to investigate your complaint or question. In this case, we will provisionally credit your account within 10 bank business days for the amount you think is in

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error, so that you have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing, and we do not receive your letter in 10 bank business days, we reserve the right not to provisionally credit your account.

If we conclude there was no error, we will send you a written explanation within three (3) bank business days after we complete our investigation. You may request copies of the documents that we used in our investigation.

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B. Limitation of Liability

Tell us at once if you believe your Online Banking passcode has been compromised or if someone has transferred or may transfer money from your account without your permission. The best way to minimize your loss is to call us immediately. The unauthorized use of your Online Banking services could cause you to lose all of your money in your accounts, plus any amount available under your overdraft protection.

You will have no liability for unauthorized transactions if you notify us within 60 days after the statement showing the transaction has been mailed to you. If you do not, you may not get back any of the money you lost from any unauthorized transaction that occurs after the close of the 60-day period, if we can show that we could have stopped the transaction if you had notified us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we may extend the time periods.

When you give someone your Online Banking ID and passcode, you are authorizing that person to use your service, and you are responsible for all transactions that person performs while using your service. All transactions that person performs, even those transactions you did not intend or want performed, are authorized transactions. If you notify us that the person is no longer authorized, then only transactions that person performs after the time you notify us are considered unauthorized.

Transactions that you or someone acting with you initiates with fraudulent intent are also authorized transactions.

For your protection, sign off after every Online Banking session and close your browser to ensure confidentiality.

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C. Our Liability for Failure to Complete Transactions

If we do not complete a transaction to or from your account on time, or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. For instance, we will not be liable:

- If, through no fault of ours, you don't have enough available funds in your account (or available credit under your overdraft protection plan), or credit to cover the transaction or transfer
- If Online Banking services weren't working properly, and you knew about the malfunction when you started the transaction or transfer
- If circumstances beyond our control (such as fire or flood) prevented the transaction or transfer, despite reasonable precautions we've taken
- If there are postal delays or processing delays by the Payee
- There may be other exceptions not specifically mentioned

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VI. Additional Provisions Applicable Only to Business Accounts (other than Sole Proprietors)

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A. Protecting Your Passcode

You agree that we may send notices and other communications, including passcode confirmations, to the current address shown in our records, whether or not that address includes a designation for delivery to the attention of any particular individual. You further agree that Bank of America will not be responsible or liable to you in any way if information is intercepted by an unauthorized person, either in transit or at your place of business. You agree to: 1) keep your passcode secure and strictly confidential, providing it only to authorized signers on your account(s); 2) instruct each person to whom you give your passcode that he or she is not to disclose it to any unauthorized person; and 3) immediately notify us and select a new passcode if you believe your passcode may have become known to an unauthorized person. **Bank of America will have no liability to you for any unauthorized payment or transfer made using your passcode that occurs before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice.** We may suspend or cancel your passcode even without receiving such notice from you, if we suspect your passcode is being used in an unauthorized or fraudulent manner.

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B. Acknowledgment of Commercially Reasonable Security Procedures

By using Online Banking, you acknowledge and agree that this Agreement sets forth security procedures for electronic banking transactions that are commercially reasonable. You agree to be bound by instructions, whether authorized or unauthorized, which we implement in compliance with these procedures, unless you have given us prior notice of possible unauthorized use as described above (and we had a reasonable opportunity to act on such notice).

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C. Limitation of Bank's Liability

If we fail or delay in making a payment or transfer pursuant to your instructions, or if we make a payment or transfer in an erroneous amount that is less than the amount per your instructions, unless otherwise required by law, our liability shall be limited to interest on the amount that we failed to timely pay or transfer, calculated from the date on which the payment or transfer was to be made until the date it was actually made or you canceled the instructions. We may pay such interest either to you or the intended recipient of the payment or transfer, but in no event will we be liable to both parties, and our payment to either party will fully discharge any obligation to the other. If we make a payment or transfer in an erroneous amount that exceeds the amount per your instructions, or if we permit an unauthorized payment or transfer after we have had a reasonable time to act on a notice from you of possible unauthorized use as described above, unless otherwise required by law, our liability will be limited to a refund of the amount erroneously paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed 60 days' interest. If we become liable to you for interest compensation under this Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the district where Bank of America is headquartered for each day interest is due, computed on the basis of a 360-day year. **Unless otherwise required by law, in no event will Bank of America be liable to you for special, indirect or consequential damages including, without limitation, lost profits or attorney's fees, even if we are advised in advance of the possibility of such damages.**

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VII. Additional Services Intended for Businesses

A. Creating and Managing Users

You may add additional users to your Online ID and provide each with a separate passcode. For each user, you may designate the activity level - Inquiry or Financial - for each linked account, with the exception of investment accounts, which can only be linked to your original Online ID.

You may also designate another user as an Administrator, which means that this user will also be

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able to designate additional users. You agree that, by granting Financial access, you will be allowing a user to transfer funds, perform account maintenance and view account transactions for the linked account. Inquiry access allows a user to view account transactions. If you select to enable Bill Pay for a user, that user will automatically have Financial-level access to all the accounts that you have set up for Bill Pay, and they will be able to pay bills using the Bill Pay feature. If you no longer are a person authorized on the signature card for each linked account to designate signers for each such account, the business has the obligation to inform Business Online Banking of the new individual or individuals with such authority. Such notice must be given separately from any other notices given to other Bank of America departments or banking centers, by calling us at 1.800.933.6262. You may also write us at:

Bank of America
Electronic Banking Services
TX1-854-06-12
P.O. Box 655961
Dallas, TX 75265-9964

Bank of America will have no liability to you for unauthorized payments and transfers made using the passcodes you assign that occur before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice.

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B. Linking Accounts of Additional Businesses

If you also are authorized to enter into an Agreement for the Business Online Banking service for another business, and if you want to link the accounts of the other business to the accounts covered by this Agreement, you will need to agree separately to this Agreement for each other business. Upon doing so, you may link the accounts of the businesses so that you may elect, at your risk and that of the businesses, but not of the Bank, to use a common Online ID and passcode for Business Online Banking for all linked accounts. You should do this only if you are authorized to link the accounts of the different business and to use all the functions of Business Online Banking for each business. You further agree to inform Bank of America if your authority over any linked account decreases. Bank of America is not liable if your authority over any account decreases until it is informed of the change in authority using the "Notice" requirements of this Agreement.

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C. Contacting Bank of America

For general questions, to request cancellation of payments and transfers, or to report unauthorized transactions please call us at 1.800.933.6262. Business Online Banking Customer Service is available from 7:00 a.m. to 10:00 p.m., seven (7) days a week, excluding bank holidays. You may also write us at:

Bank of America
Electronic Banking Services
TX1-854-06-12
P.O. Box 655961
Dallas, TX 75265-9964

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VIII. Transfers Outside Bank of America (applies only if you have signed up for this service - for personal accounts only)

- You must have Online Banking to use Transfers Outside Bank of America.
- Within Online Banking you may separately sign up for the option of transferring funds between your linked personal deposit accounts at Bank of America and certain deposit or investment accounts at other financial institutions. An Inbound transfer moves funds into

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an account at Bank of America from an account outside Bank of America. An Outbound transfer moves funds from an account at Bank of America to an account outside Bank of America. You will need to register each of your non-Bank of America accounts that you wish to use for these transfers. You agree that you will only attempt to register accounts for which you have the authority to transfer funds. Transfers may be 3-Business-Day or Next-Day Transfers.

- o Three-Business-Day Transfers: Funds will be debited the business day after you initiate the transfer, and will be credited on the third business day after you initiate the transfer.
- o Next-Day Transfers (limitations apply, see below for details): Funds will be debited and credited on the business day after you initiate the transfer.
- Cut-off Time: The cut-off time for 3-Business-Day Transfers is 12:00 midnight ET (9:00 p.m. PT). The cut-off for Next-Day Transfers is 7:00 p.m. ET (4:00 p.m. PT). Any 3-business-day transfer made after the cut-off time will be initiated the next business day.
- Transfers Outside Bank of America can be initiated on either a 1-time or a recurring basis. One-time transfers may be immediate or scheduled for a future date. The recurring transfer feature may be used when a set amount is transferred at regular intervals. For example, a \$100 transfer from an account you own at another financial institution to your Bank of America checking account that occurs every 2 weeks.
- Immediate, 1-time future dated and recurring transfers will be available on Inbound transfers.
- Immediate transfers will be available on Outbound transfers. One-time future dated and recurring transfers are not available for Outbound transfers at the present time.
- One-time future-dated or recurring transfers scheduled for a weekend or a non-bank business day will be processed on the prior bank business day. All other one-time future-dated and recurring transfers will be processed from the account you own at another financial institution at the end of the business day requested.
- Future-dated and recurring transfers can be canceled prior to midnight ET on the bank business day prior to the date the transfer is scheduled to be made. However, if the transfer's status is In Process or Processed, you can no longer cancel it. After you cancel a future-dated transfer, the status changes to Canceled. Canceled transfers remain under Review Transfers. NOTE: Immediate transfers cannot be canceled once the transfer has been submitted.

- o Alternative Method

Note: The easiest and most convenient way to cancel a payment or transfer is through the method described above. However, you may request to cancel a scheduled or recurring payment or a future-dated transfer by calling us at:

- o For accounts located in any state except California: **1.800.933.6262**
- o For accounts located in California: **1.800.792.0808**.
- o If you're calling from outside of the continental U.S., call us collect at: **1.925.681.7600**.

We must receive your request three (3) bank business days or more before the payment or transfer is scheduled for processing. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. If you call or write to cancel a payment or transfer that is pending, you will be charged for a stop payment in accordance with the agreement for the appropriate linked account.

If you attempt to cancel a payment or transfer in accordance with the above instructions and we do not do so, we will be liable for your losses or damages.

- Transfer fees may or may not apply, based on the Delivery Type of the transaction, to transfers with accounts you own at other financial institutions.
- Inbound Transfers:

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- o There is no fee for transferring funds into the bank, regardless of the Delivery Type you choose.
- Outbound Transfers:
 - o If you transfer money to accounts you own at other financial institutions, the following transfer fees will apply:
 - 3-business day processing - \$3
 - Next-day processing - \$10
- Transfers Outside Bank of America are subject to the following dollar limits:

Type Of Limit	3-Business-Day Transfer	Next-Day Transfer
Inbound		
Business Day	\$3,000	\$2,000
In Process	\$6,000	\$2,000
Monthly (rolling 30-day period)	\$6,000	\$5,000
Outbound		
Business Day	\$3,000	\$2,000
In Process	\$3,000	\$2,000
Monthly (rolling 30-day period)	\$6,000	\$5,000

- There is an additional limit of \$30,000 monthly (rolling 30-day period) for the combination of all types of transfers.
- The above limits apply to the total of all transfers of a specific type for all accounts. Any transfer initiated on a day that is not a business day counts toward the applicable limit for the next business day. A transfer remains "In Process" until fully processed and it will appear as "In Process" on your **Transfer Funds, Outside the Bank, Review Transfers** tab within Online Banking. Three-Business-Day Transfers typically remain In Process until the close of the third business day after the transfer is initiated, and, for Next-Day Transfers, until the close of the next business day after the transfer is initiated.
- Three-Business-Day Transfers are available to all customers, but you agree we may cancel, without prior notice, upon the occurrence of a "Disqualifying Event," as defined below. Next-Day Transfers are permitted only at our discretion, but you must have completed at least one 3-Business-Day Transfer involving the same non-Bank of America account no less than 60 days prior to the attempted Next Day Transfer. You may determine whether you have been approved for Next-Day Transfers by going to the **Transfer Funds** tab in Online Banking. Once approved, you will remain eligible for Next-Day transfers, unless we provide you with notice, as required by law.
- We may change your dollar limits at any time. Any decrease will be subject to notice, as required by law, but you agree that we may reduce your limits to the amounts stated above without prior notice upon occurrence of a Disqualifying Event.
- Each of the following is a "Disqualifying Event":
 - o Any of your accounts with Bank of America are not current or are not in good standing.
 - o You have had an overdraft, an over-limit item, or an item returned for insufficient funds with respect to any Bank of America account during the current or 3 prior calendar months.
 - o You have had any prior Transfer Outside Bank of America between accounts at other financial institutions canceled, revoked, or uncompleted due to insufficient funds, revoked authorization, stopped payments, frozen accounts, or any similar

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reason.

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IX. Additional Services

The following addendum will apply if you register for any of these additional services.

[My Portfolio™ Service Addendum](#)
[Online Business Suite Addendum](#)

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BOA_00492

Bank of America.

BANK OF AMERICA, N.A. (THE "BANK")

Personal Signature Card
with Substitute Form W-9

Account Number 4502 Temporary Signature Card (deposit accounts only)

Account Type REGULAR CHECKING

Account Title FLOYD E JERMIAN

By signing below, I/we acknowledge and agree that this account is and shall be governed by the terms and conditions set forth in the following documents, as amended from time to time: (1) if this account is a deposit account, the Deposit Agreement and Disclosure, the Personal Schedule of Fees, and the Miscellaneous Fees for Personal Accounts, (2) if this account is a Line of Credit, the Line of Credit Agreement and Disclosure. Furthermore, I/we acknowledge the receipt of these documents. By signing below, I/we also acknowledge and agree that the signature(s) will serve as verification for any transaction in connection with this account, any Line of Credit checks which I/we may sign, and as the certification (set forth below) of the taxpayer identification number to which I/we want interest reported.

Substitute Form W-9. (Required only for Deposit Accounts) Certification. Under penalties of perjury, I certify that:

(1) The number shown on this form is the correct taxpayer identification number (or I am waiting for a number to be issued to me), and (2) I am not subject to backup withholding because: (A) I am exempt from backup withholding, or (B) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (C) The IRS has notified me that I am no longer subject to backup withholding, and (3) I am a U.S. person (including a U.S. resident alien).

Certification Instructions

You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. (See also IRS instructions for Form W-9).

Individual Joint with Survivorship Payable on Death ("POD")

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Tax Identification Number	Report Interest On	Signature	ATM/Check Card Requested? * (Deposit Accounts Only)
<u>1982</u>	<input checked="" type="checkbox"/>	<u>Floyd Jermian</u>	<input type="checkbox"/>
2. _____	<input type="checkbox"/>	_____	<input type="checkbox"/>
3. _____	<input type="checkbox"/>	_____	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	_____	<input type="checkbox"/>
5. _____	<input type="checkbox"/>	_____	<input type="checkbox"/>

* By checking the box marked "ATM/Check Card Requested?", I/we hereby request an Automatic Teller Machine Card and/or a Check Card.

I/We name the following person(s) as beneficiary(ies) of this account, superseding any prior designations:

Beneficiary's Name _____

Beneficiary's Social Security Number _____ Beneficiary's Present Telephone Number _____

Beneficiary's Present Address _____

(Please notify the Bank of any subsequent changes of beneficiary(ies)' address or telephone.)

N80
48-14-90094 08-2001

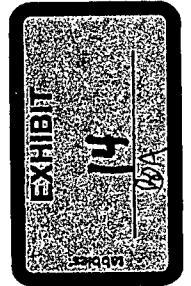


BOA_00609

Deposit Agreement and Disclosures

Effective July 1, 2006

BOA_00610



ROA 892



bankofamerica.com

Bank of America, N.A. Member FDIC.
Applies to accounts opened in AR, AZ, CT, DE, FL,
GA, IA, IL, KS, MA, MD, ME, MO, NC, NH, NJ,
NM, NV, NY, OK, OR, PA, RI, SC, TN, TX, VA,
and Washington D.C.

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♻️ Printed on recycled paper.

91-11-2000B (07/06)



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General Terms

Welcome to Bank of America, and thank you for opening and maintaining an account. Please read this entire agreement carefully so you understand your rights and obligations for your deposit account relationship with us. Please retain this agreement (and all changes to this agreement) for future reference.

We have banking centers in many states. This agreement describes our deposit accounts and some related services that are available at our banking centers in the state or states listed in the *Schedule of Fees* for your account. Some accounts and services described in this publication may not be available at all of our banking centers. We may discontinue any account or service at any time without notice.

Throughout this agreement, the words "you," "your" and "yours" refer to each account owner. "Bank of America," "we," "us" and "our" refer to Bank of America, N.A. "Banking center" refers to a branch of Bank of America.

Other agreements may apply to other services you obtain from us.

Binding Contract

This *Deposit Agreement and Disclosures*, the applicable *Schedule of Fees* and the signature card or other account opening documents for your account are part of the binding contract between you and us (the "Agreement") for your deposit relationship with us. When you open or keep open a deposit account with us, you agree to the terms and conditions described in this Agreement. Our deposit relationship with you is that of debtor and creditor. This Agreement and the deposit relationship do not create a fiduciary, quasi-fiduciary or special relationship between us.

We provide a copy of this Agreement to you when you open your account. You may obtain the current version of this Agreement at our banking centers or by calling the number for Customer Service on your statement.

Changes to Agreement

We may change this Agreement at any time. We may add new terms and conditions and we may delete or amend existing terms and conditions. We generally send you advance notice of an adverse change. (See *Notices in the Statements and Notices* section.) If a change is not adverse to you, however, we may make the change at any time without advance notice. If you do not agree with the change, you may close your account. However, if you continue to use your account

or keep it open, you accept and agree to the change. The current version of this Agreement supersedes all prior versions and contains the terms governing your account.

Charging an Account

We may deduct fees, overdrafts and other amounts you owe us under this Agreement from your accounts with us or our affiliates, except that this provision does not apply to any consumer credit covered by the Federal Truth in Lending law. We may make these deductions at any time without prior notice to you or request from you. If there are not enough funds in your account to cover the amounts you owe us, we may overdraw your account. You agree to pay immediately all amounts you owe us. We may use deposits you or others make to your account (including deposits of payroll and government benefits) to pay fees, overdrafts and other amounts you owe us. Some government payments (such as Social Security, Supplemental Security Income, Veterans and other federal or state benefits) may be protected from attachment, levy or other legal process under federal or state law. If such protections would otherwise apply to deductions we make for amounts you owe us, to the extent that you may do so by contract, you waive these protections and agree that we may use these funds to pay amounts you owe us.

Closing an Account

You or we may close your checking or savings account at any time without advance notice, except that we may require you to give us seven days advance notice when you intend to close your savings or interest-bearing checking account by withdrawing your funds. (See *Notice of Withdrawal* in the *Additional Terms and Services* section.) You or we may close your time deposit account at maturity without advance notice. If your account reaches a zero balance, we may consider your account closed. This Agreement continues to govern matters related to your account even after your account closes.

If we decide to close your account, we may "freeze" it. If we "freeze" your account, we may return deposits, checks and other items that we receive after it is "frozen". After we close your account, we may mail a check to you at the address we currently show for your statement. If you or we close your account, we may either return deposits, checks and other items that we receive after your account is closed or we may reopen the account and accept the deposit or debit for you, even if doing so overdraws your account, without being liable to you. You agree to pay immediately all amounts you owe us.

Fees

A schedule of some fees associated with our personal deposit accounts is provided in the *Personal Schedule of Fees*. A schedule of some fees associated with some of our business deposit accounts for small business customers is provided in the *Business Schedule of Fees*. The schedule that applies to your account is part of the binding contract between you and us. You agree to pay for our services in accordance with the fees that we tell you apply to your account.

The fees for many of our products and services may vary from state to state or between regions within a state. The fees for your account are based on the state or region where we open or, if we transfer your account to another location, where we currently maintain your account. Fees are not determined by your state of residence.

Your account fees and terms may differ from those of other customers with the same type of account, based on our assessment of your overall relationship with us. We send you a notice if your account fees or terms vary from the information described in this Agreement.

From time to time we may list fees for some non-account services (such as wire transfers, cashiers checks, travelers checks, bond redemption and so on) in the *Schedule of Fees*. These fees may vary from state to state. The fees you pay for non-account services will be those charged by us in the state where you purchase the service. We may change these non-account fees at any time without notice. You can get current information about non-account services and the fees that apply to them at any banking center or by calling the number for Customer Service on your statement.

FDIC Assessments

For some business accounts we may charge a Federal Deposit Insurance Corporation ("FDIC") assessment based on the rate the FDIC charges us. The FDIC assessment may include deposit insurance charges, financing corporation (FICO) bond interest and other charges provided by law. This charge is variable. We may change it at any time without notice. Please see the *Schedule of Fees* for your account.

Governing Law

Your and our rights and obligations under this Agreement are governed by and interpreted according to federal law and the laws of the state where we open your account or, if we transfer your account to another location, where we currently maintain your account. If state and federal law are inconsistent, or if state law is preempted by federal law, federal law governs.

Information About Customers

For our current privacy practices, please see the information on our website at www.bankofamerica.com.

Information You Give Us

When you open a deposit account with us, you give us information about yourself and confirm that it is correct. We enter the information into our records. We may rely on that information until you notify us of a change and we have had a reasonable time to act on the new information.

All financial institutions are required by law, including the USA PATRIOT Act, to obtain, verify and record information that identifies each customer who opens an account with that financial institution.

Bank of America's Privacy Policy for Consumers

Our privacy policy for consumers is described in our publication, *Privacy Policy for Consumers*. We provide our privacy policy to consumers who open a personal account with us. The privacy policy describes our general policy on handling customer information and describes the situations when we may disclose information, including some examples.

Disclosing Information

This section applies to both business and personal accounts. We may disclose information about your accounts to credit reporting agencies and to other persons or agencies who, in our judgment, have a legitimate purpose for obtaining information.

From time to time, subject to any applicable financial privacy laws or other laws or regulations, we may provide information on you and your accounts:

- where it is necessary for completing transactions;
- to account information services, such as ChexSystems, Inc.;
- to anyone who we reasonably believe is conducting a legitimate credit inquiry, including inquiries to verify the existence or condition of an account for a third party such as a lender, merchant or credit bureau;
- in response to any subpoena, summons, court or administrative order, or other legal process which we believe requires our compliance;
- in connection with collection of indebtedness or to report losses incurred by us;
- in compliance with any agreement between us and a professional, regulatory or disciplinary body;
- in connection with potential sales of businesses;

- to carefully selected service providers who help us meet your needs by assisting us in providing or offering our products or services; and
- as may be required under applicable laws or regulations.

Account Information Services. If we close your account because of your unsatisfactory handling, we generally report to account information services such as ChexSystems, Inc. your name, address, Taxpayer Identification Number (TIN), driver's license number and the date and reason the account was closed. The account information service may supply this information to others. This may adversely impact your ability to establish an account at any financial institution for up to five years from the date of the report.

Credit Reports and Other Inquiries

We may make any inquiries that we consider appropriate to help us determine if we should open, maintain or close your account. This may include verification of employment and credit reports or other reports from account information services and credit reporting agencies.

If you ask, we will tell you whether we requested a credit report and, if we did request a report, we will tell you the name, address and telephone number of the reporting agency.

Recording and Monitoring Telephone Calls

We may record or monitor telephone calls between you and us. We need not remind you of our recording or monitoring before each call unless required to do so by law.

Release of Information

We offer you several convenient, time-saving methods by which you can obtain information on your accounts. We have adopted reasonable security measures for each method, but we cannot ensure against unauthorized inquiries. You agree that we are not responsible for the release of information to anyone who has gained possession of your ATM card, Check Card or other code or access device or who has learned your identifying characteristics such as personal identification number (PIN), account number or social security number, even if you have not authorized them to obtain the information.

Sharing Information with Affiliates

Accounts Held by Consumers. You agree that we may share information that we have about you and your accounts among the Bank of America family of companies. Please refer to our publication, "Bank of America's Privacy Policy

for Consumers," for information about the categories of information we may share among the Bank of America family of companies and how you may tell us not to share certain types of information among our family of companies.

Accounts Held by Businesses. We may share information about our experiences with you with Bank of America Corporation and its subsidiaries and affiliated companies ("Bank of America Affiliates") and selected third parties. We may also share information that you have provided to us on applications or that we receive from outside sources among the Bank of America Affiliates. However, individuals may tell us not to share information about them from applications or outside sources compiled for purposes of determining eligibility for credit, insurance or other services by either calling us at 1.888.341.5000 between the hours of 7:00 a.m. and 10:00 p.m. your local time or by notifying us at www.bankofamerica.com/privacy. Please provide your full name, street address, social security number and telephone number. Please allow 6 to 8 weeks for this election to become fully effective.

Ownership of Accounts

We may determine ownership of accounts from the information in our records. We may rely on information you give us. Changes you ask us to make to your account are not effective until we have had a reasonable time to act on the new information.

Joint Accounts

If more than one person's name appears in the title of an account (without a fiduciary, beneficiary or other designation), the account is a joint account. All persons whose names appear on a joint account are co-owners of the account, regardless of whose money is deposited or who makes the deposits. Each co-owner acts as the agent of each other co-owner. Each co-owner authorizes each other co-owner to operate the account without the consent of any other co-owner. This includes authority to: add additional persons as co-owners; deposit funds and withdraw or transfer funds from the account; endorse for deposit to the joint account on behalf of any other co-owner an item payable to another co-owner; instruct us to stop payment on any item drawn on the account by any co-owner; obtain an ATM Card or a Check Card; draw upon any overdraft or other line of credit connected to the account; obtain information about the account, including transactions conducted by other co-owners; pledge the account as security for any debts; and close the account. We may rely on the instructions of any co-owner without liability to any other co-owner.

Each co-owner is jointly and severally liable to us for: all fees and charges assessed against the account; all amounts owed to us on the account, such as overdrafts; and all costs, losses or liabilities related to this Agreement or the account.

All joint accounts are presumed to be joint accounts with the right of survivorship unless the applicable state law does not permit this presumption or we have otherwise agreed with you in writing that the account is owned in another capacity. If the signature card you signed when you opened your account indicates the capacity in which your account is held, we may rely on that designation. **Right of survivorship means that when a co-owner dies, the balance in the account belongs to the surviving co-owner(s), subject to our right to charge the account for any amount the deceased co-owner or a surviving co-owner owes us.** The applicable state law may impose obligations on the surviving co-owner, such as an obligation to pay claims against or expenses of the deceased co-owner's estate. When we are notified of the death of a co-owner, some state laws may require us to notify the applicable tax agency or to hold funds or both.

A joint account is governed by the applicable provisions of the law in the state where we open your account or, if we transfer your account to another location, where we currently maintain your account. You are solely responsible for meeting the requirements for establishing your account as a joint account with right of survivorship.

"Payable on Death" Accounts

You may designate an account to be payable on your death to a designated payable on death ("POD") or in-trust-for ("ITF") payee or payees. Regardless of how it is designated, an account which is payable on your death (or the death of the last surviving co-owner) to one or more named payees is a POD or ITF account. A POD or ITF account may be alternatively described in the account documentation as "payable on death," "POD," "in trust for," "ITF," "as trustee for," "ATF," "transfer on death," "TOD," a "Totten Trust," or otherwise.

During your lifetime a POD or ITF account belongs to you. You may close the account, remove or add a payee, change the account type or account ownership, and withdraw all or part of the account balance. Upon the death of the owner or, if there are co-owners, upon the death of the last surviving co-owner, any sums remaining on deposit belong to the then-surviving (if any) payee(s), subject to our right to charge the account for any amount the deceased owner, co-owner or payee owes us. The applicable state law may also

impose obligations on the surviving payee, such as an obligation to pay claims against or expenses of the deceased owner's or co-owner's estate. A payee will acquire an interest in the account only after the death of all account owners and then only if the payee is alive.

A POD or ITF account is governed by the applicable provisions of the law in the state where we open your account. Some state laws may require you to include certain words in the account title to create a POD or ITF account. You are solely responsible for meeting the requirements for establishing your account as a POD or ITF account. If the applicable requirements are not met, we may treat your account as though the payee or payees have no interest in the account.

Business and Other Nonpersonal Accounts

If the account owner is a corporation, unincorporated association, limited liability company, limited liability partnership, fiduciary, partnership, sole proprietorship or other entity holding an account in any capacity other than an individual capacity, each person signing the signature card or other account documents represents and agrees that they: are fully authorized to execute all documents in their stated capacity; have furnished all documents necessary to demonstrate that authority; and will furnish any other documents in such form as we may request from time to time. We may refuse to recognize any resolution affecting the account that is not on our form or that appears to us to be incomplete or improperly executed.

Transferring Ownership

Your account is for your use only. Ownership of your account is transferable only on our records. You may not transfer or assign ownership of your account to another party without our written consent. Even if we consent, we may require that you close the account and that the new account holder open a new account in their name. We may refuse to acknowledge or accept attempted pledges or assignments of an account or purported security interests in an account.

Checking and Savings Accounts

Checking and Savings Accounts

We offer a variety of personal and business checking and savings accounts. Personal accounts are described in the *Personal Schedule of Fees*. Business accounts for small business customers are described in the *Business Schedule of Fees*. The *Business Schedule of Fees* does not apply to customers with Commercial accounts.

Eligibility for Interest Checking

Unless a checking account is described in the *Schedule of Fees* as an interest-bearing checking account, it does not earn interest. Under federal regulations, eligibility for interest checking accounts is generally restricted to individuals (including sole proprietors), certain nonprofit organizations, state or local governmental entities, and legal entities where one or more individuals hold the entire beneficial interest in the funds. We may either close or convert an interest-bearing account to a non-interest-bearing account if we believe that the account holder is not eligible to hold an interest-bearing checking account.

Account Conversions

We may either close or convert your account to another type of account when we consider it appropriate or necessary to do so. For example, we may close, revoke privileges, or convert your account to another type of account if we think another type of account would better suit the way you use your account, if you make frequent transactions on a savings account, if your account frequently has debits against uncollected funds, if your account has excessive deposit activity or if you use a personal account for business purposes. If we convert your account, we send you information about your new account.

Transaction Limits for Savings Accounts

This Agreement and federal regulation limit you to six transactions each monthly statement cycle (or each month if you have a quarterly statement cycle) from among the following:

- Preauthorized transfers from your savings account (including transfers for overdraft protection).
- Telephone transfers from your savings account. Telephone transfers include instructions to transfer funds sent to us by facsimile or data transmission.

- Online banking or bill payment service transfers from your savings account.
- Of the six, if checks or debit cards are allowed on your savings account, no more than three checks or point of sale transactions.

Our practice is to monitor the number of limited transactions. If you are counting the number of transactions you make each statement cycle, please note that we count on item on the date we post it to your savings account. This date may be different than the date you authorize, transfer or write the item, which means the item may not be counted until a later statement cycle.

If you exceed the transaction limits on more than an occasional basis, we may revoke your privileges on that account or we may convert your account to another type of account. Your funds may no longer earn interest after we convert your account.

These transaction limits do not apply to withdrawals from your savings account and transfers to your other Bank of America deposit accounts made at one of our banking centers, by mail or at an ATM.

A fee may apply to some withdrawals or transfers.

Time Deposit Account

A time deposit account is neither transferable nor negotiable.

This account allows you to earn interest on funds you leave on deposit for a specific period of time, called a term. We offer terms that range from seven days up to ten years, depending on the amount you deposit. For most time deposits you may not make an additional deposit to your account except during its grace period. For most time deposits the interest rate is fixed for the term at the time you make your deposit and is based on the rate we offer for the amount and term of your deposit. See the *Schedule of Fees* for your account. You may not make a deposit to your account by wire or automated clearing house (ACH) transfer.

Accounts That Automatically Renew

Unless your account information states that your time deposit does not automatically renew, we automatically renew your account by reinvesting your funds. We reinvest both principal and interest, unless you elected to have your interest disbursed. (See *Disbursing Interest* in this chapter.) The term for this reinvested deposit is the same length as the previous term of your account. For time deposits with a fixed interest rate, the

interest rate on the reinvested deposit is based on the rate we offer on the first day of the new term for the amount and term of the reinvested deposit.

If at any maturity date we no longer offer time deposit accounts of the same term and type, we may reinvest your funds in a new time deposit which we believe offers similar features.

Accounts That Do Not Automatically Renew

Some time deposit accounts do not automatically renew. If your account information states that your time deposit does not automatically renew, then your account does not earn interest after its maturity date.

Redemption

We may redeem an automatically renewable account at the end of the term by sending a notice to you of our intent to redeem prior to the date of such redemption. You may redeem your account during its grace period.

Grace Period Transactions

You may make a deposit, withdrawal or change in the length of the term once during the grace period. The grace period begins on the first day after maturity date. For terms of seven through 27 days, the grace period is one calendar day. For terms of 28 days or more, the grace period is seven calendar days.

The grace period ends on the earlier of the day described above or the day you make a withdrawal or a deposit. If the grace period ends on a weekend or bank holiday, you may make a deposit or withdrawal through the last business day before the grace period ends. We may pay interest during the grace period based on the rate we offer on the first day of the new term for the amount and term of the deposit.

Disbursing Interest

You may choose to reinvest your interest in your account. With this option we reinvest the interest in your account at maturity. Or, you may have us regularly disburse the interest from your account by having us credit the interest to a Bank of America checking or savings account or by having us mail a check for the interest.

Depending on the term of your account, disbursement options include monthly, quarterly, semi-annually, annually on the anniversary date, and at maturity.

Early Withdrawals

You have contracted to keep your funds on deposit for the stated term. At our discretion, we may allow you to withdraw all or part of your funds at times other than the grace period. We

withdraw interest before principal. Each time we permit you to make an early withdrawal of principal, we may charge you an early withdrawal penalty. If your account has not earned enough interest to cover an early withdrawal penalty, we deduct any interest first and take the remainder of the penalty from your principal.

We calculate the penalty based on the term and interest rate in effect on the account on the withdrawal date. The term is the specified period of time you agreed to leave your funds on deposit — not the time remaining on your deposit.

The early withdrawal penalty for terms of less than 90 days is all interest earned on the amount withdrawn, except that if any amount is withdrawn within the first six days after the date of deposit or within six days after a partial withdrawal, the penalty is seven days interest on the amount withdrawn; for terms of 90 days up to 18 months, the penalty is 90 days interest, and for terms of 18 months or longer, the penalty is 180 days interest.

We add to the early withdrawal penalty the amount of any cash bonuses we paid you when you opened or reinvested the account.

We calculate all early withdrawal penalties on the principal amount withdrawn at the current interest rate being paid on the deposit.

Interest on Your Funds

You may obtain current rates by calling us at the number for Customer Service on your statement or by asking a banking center representative.

Interest-Bearing Checking and Savings Accounts

If you have an interest-bearing checking or savings account, your funds earn a variable rate. Your interest rate and annual percentage yield may change. At our discretion, we may change your interest rate and annual percentage yield at any time. We compound and credit interest monthly.

We use the daily-balance method to calculate the interest on your account. The daily rate is 1/365 — or in a leap year we may use 1/366 — of the interest rate. For personal accounts and business savings accounts, this method applies a daily rate to the collected balance in the account each day. For most business checking accounts, this method applies a daily rate to the collected balance in the account each day (less an amount that we determine applies for reserves applicable generally to transaction accounts under the rules of the Federal Reserve). For Public Service Trust Accounts, this method applies a daily rate to the collected balance in the account each day (less an amount that we determine is required to offset service charges).

The rate we pay on some accounts depends on the tier into which the end-of-day balance in your account falls. A tier is a range of account balances. We may change the tiers that apply to an account at any time without notice. Different tiers may apply to different types of accounts. Different rates may apply to different tiers.

When you make a deposit, interest begins to accrue no later than the business day on which we receive credit for non-cash items, such as checks.

Time Deposits

Your funds earn interest during the term of the account. Interest rates vary. Different rates may apply to different amounts or terms. Rates for new deposits may change daily. For terms of 28 days or more, we compound interest monthly.

All time deposits except for Opt-Up™ CDs and Variable Rate IRAs earn interest at a fixed rate. Fixed rate means that the interest rate in effect on the day that we open your time deposit remains fixed throughout the term of your time deposit. For an Opt-Up CD the interest rate in effect on the day that we open your Opt-Up CD remains fixed throughout the term of your Opt-Up CD unless you exercise your one-time option to reset the interest rate. Please see the *Schedule of Fees* for information about this reset option. For the Variable Rate IRA, your funds earn a variable rate. Your interest rate and annual percentage yield may change. At our discretion we may change your interest rate and annual percentage yield at any time.

We use the daily-balance method to calculate the interest on your account. This method applies a daily rate to the ledger balance in the account each day. The daily rate is 1/365 — or in a leap year we may use 1/366 — of the interest rate.

We credit interest to your account at maturity or disburse it to you according to the interest disbursement option you select. For terms of 27 days or less, we credit interest at maturity. For terms of 28 days or more, we credit interest monthly.

If you deposit a non-cash item such as a check, interest begins to accrue on the business day the deposit is received. Deposits you give us on a weekend or bank holiday begin to earn interest the next business day.

The annual percentage yield that applies to your time deposit account assumes that interest will remain on deposit until maturity. Withdrawals will reduce earnings.

Balance Information

Balance Waivers

With some accounts you can avoid a monthly maintenance fee for each statement cycle during which you maintain the balance or one of the balances listed for your account in the applicable *Schedule of Fees*. Balance requirements generally vary for different types of accounts and may include the following:

- *Ledger balance* is the beginning balance in the account each day.
- *Collected balance* is the ledger balance minus that portion of deposited funds that is not available for withdrawal under the availability schedule we apply to the account. The applicable availability schedule specifies the period of time during which checks and other items in a deposit are not available for withdrawal.
- *Minimum daily balance* is the lowest end-of-day balance in the account during a statement cycle. The end-of-day balance is the amount of funds on deposit in the account after we finish processing that day's transactions.
- *Average daily balance* is the average ledger balance in the account during a statement cycle. We calculate it by adding the end-of-day ledger balances for each day in the statement cycle and dividing by the number of days in the statement cycle.
- *Minimum combined balance* for an account is the lowest beginning-of-day total balance of the minimum daily balances in all linked accounts during a statement cycle.
- *Average combined balance* for an account is calculated by adding the beginning-of-day ledger balance for each linked account for each day in the statement cycle and dividing by the number of days in the statement cycle.

Combined Balances

With some personal and business checking accounts you can designate the checking account as your primary checking account and link other Bank of America accounts to your primary checking account. (Please see the *Schedule of Fees* for your account.) We use the balance in your primary checking account plus certain balances in your linked accounts to calculate a combined balance for each statement cycle for your primary checking account. We waive the monthly maintenance fee on the primary checking account for each statement cycle in which the combined balance meets or exceeds the required

combined balance for the primary checking account. Our *Personal Schedule of Fees* and *Business Schedule of Fees* list the required combined balance for each account to which the service applies.

We may include a balance summary of accounts that are linked for combined balance service on the statement for your primary checking account. You can elect to have account information for your linked personal accounts reported on the statement for your primary personal checking account or you can continue to receive individual statements on each linked account.

Certain restrictions apply regarding account ownership and the number, location and types of accounts that may be linked for combined balance service. These restrictions include the following: For individual accounts, the owner on the primary checking account must be an owner on the linked accounts. For accounts with more than one owner, at least one of the owners on the primary checking account must be an owner on the linked account. Personal accounts and business accounts may not be linked to each other. Analyzed accounts and some fiduciary accounts may not be linked for this service. An account may only be linked to one primary checking account at a time. The time period or day we use for linked accounts to calculate the combined balance may be different than the statement cycle for the primary checking account. Accounts held at banking centers in different states generally may not be linked to each other for combined balances.

Statements and Notices

Our statements and notices are in English. If you have difficulty reading English, please call us at the number for Customer Service on your statement.

Statements

We provide you with a statement when there is activity on your checking or savings account. When there is no activity on your account, we may choose not to provide a statement. You must promptly review all statements we provide to you and any accompanying items and notify us immediately of any dispute, error or other problem.

We mail your statement to you at the address we have in our records for your account unless we have agreed to provide statements to you electronically. You agree to notify us if you change your address. If your statement is received at a banking center, we may mail it to you or destroy it and any accompanying checks and other items. If one or more statements we mail to you are returned to us, we may stop sending statements until a new address is provided to us.

We may destroy statements that are sent to you and returned to us as being undeliverable, along with any accompanying checks and other items. We are not responsible for checks or statements lost while not in our possession. Statements that are received at a banking center are deemed to be delivered to you at the time that they are received at the banking center.

We provide a single statement. You may generally obtain an additional copy of your statement for a fee.

For all checking accounts and for Money Market Savings and business savings accounts, we provide you with a monthly statement. Statement cycles generally vary from 28 to 33 days and may end on different days during the month. If you want to know the date your statement cycle ends, call us at the number for Customer Service on your statement.

For analyzed checking accounts, you can elect to receive an additional monthly account analysis statement. This statement includes balance and float information, quantity of services used during the period, fees and charges for these services and the earnings allowance, if any. We give you a brochure that describes this statement and the method for computing your charges and fees.

For Regular Savings and Custom Savings accounts, we provide you with a quarterly statement. However, if you have an electronic fund transfer (such as a direct deposit or an ATM withdrawal) to or from your account during any month, we provide a statement for that month.

Combined Statement. With some checking accounts, you may elect to receive a combined statement — a statement that reports activity for the accounts you have linked to your primary checking account. If you choose a combined statement, you receive one statement reflecting activity in your linked deposit accounts, rather than individual statements. This means that each owner of any linked account can review information about all other linked accounts. As examples, if your primary checking account is a joint account and you link an individual account, then each owner of the joint account can review information about the individual account and the owner of the individual account can review information about the joint account. If an owner of one of the linked accounts is an Online Banking customer, that owner can review information about all linked accounts through Online Banking.

You may receive your canceled checks for your primary checking account. All other linked accounts must use our check safekeeping service. Combined statements may not be available in some states. In some states accounts held at banking centers in different states may not be linked for combined statement. Certain other restrictions may apply.

To determine whether accounts can be linked or to link accounts for this service, call us at the number for Customer Service on your statement.

Notices

We inform you of changes affecting your rights and obligations by providing a notice to you. In some cases we may post a notice of a change in our banking offices or on our website. Otherwise, we either mail the notice to you at the address we currently show for your statement or, if we have agreed on this method, we provide it to you electronically. We may include a notice with or on your statement.

If we receive notices at a banking center for you, we may mail them to you or destroy them. If notices we mail to you are returned to us, we may destroy them. If a notice of a change to this Agreement is received at a banking center or returned to us (including a notice sent on or with a statement), you agree that the change contained in the notice is still effective and binding on you. If one or more notices we mail to you are returned to us, we may stop sending notices until a new address is provided in us and you agree that changes covered in these notices are still effective and binding on you.

For accounts with more than one owner, we may send notices to any one co-owner. A notice sent to any one owner is effective for all.

When Funds Are Available For Withdrawal

Your Ability to Withdraw Funds

Our policy is to make funds from electronic direct deposits made through the automated clearing house (ACH) and incoming wire transfers available to you on the day we receive the deposit. Our general policy is to make funds from your cash and check deposits available to you no later than the first business day after the day we receive your deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays.

If you make a deposit at a banking center before 2:00 p.m. local time, or such later time as may be posted at that banking center, on a business day that we are open, we consider that day to be the day of your deposit. However, if you make a deposit in a banking center after such time, or on a day when we are not open, we consider that the deposit was made on the next business day we are open.

If you make an ATM deposit in the state where we opened your account before 12 noon, local time, or such later time as may be either posted on the ATM or displayed on the ATM screen on a business day that we are open, we consider that day to be the day of your deposit. If you make an ATM deposit in a state other than the state where we opened your account before 12:00 noon (local time in the state where your account was opened) and before the time either posted on the ATM or displayed on the ATM screen, on a business day that we are open, we consider that day to be the day of your deposit. In either case, if you make an ATM deposit after such times, or on a day when we are not open, we consider that the deposit was made on the next business day we are open.

Government, Official, and Other Special Types of Checks

Our policy is to make funds from U.S. Treasury checks that are payable to you available no later than the first business day after the day of the deposit.

If you make the deposit in person to one of our employees, and meet the other conditions noted below, our policy is to make funds from the following types of deposits available no later than the first business day after the day of your deposit:

- State and local government checks that are payable to you and are deposited in an account in the same jurisdiction that issued the check.
- Cashier's, certified and teller's checks that are payable to you.
- Federal Reserve Bank checks, Federal Home Loan Bank checks and postal money orders that are payable to you.

If you do not make your deposit of these checks in person to one of our employees (for example, if you mail the deposit), our policy is to make funds from these deposits available no later than the second business day after the day of your deposit.

Wire Transfers from Business Accounts

Generally, our policy is to make deposits to business customers' accounts available for withdrawal by wire transfer by the second business day after the day of deposit for local checks and by the fifth business day after the day of deposit for non-local checks. A "local check" is one that is payable by or through a financial institution that is located in the same Federal Reserve check processing region as the physical location of our banking center or ATM where you deposit the check. For assistance in distinguishing local from non-local checks, business customers should contact their relationship manager or customer service.

Longer Delays May Apply

In some other cases we will not make all of the funds that you deposit by check available to you by the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the sixth business day after the day of your deposit. The first \$100 of your deposits, however, will be available no later than the first business day.

If we are not going to make all of the funds from your deposit available by the first business day after the day of your deposit, we generally notify you at the time you make your deposit. We also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we mail you the notice by the next business day after we receive your deposit. We do not mail this notice for deposits referred to in the sections entitled *Government, Official and Other Special Types of Checks* and *Wire Transfers from Business Accounts* above.

If you need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, we may delay the availability of funds you deposit by check for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the eleventh business day after the day of your deposit.

Cash-Withdrawal Limitation

We place certain limitations on withdrawals in cash or by similar means. In general, \$100 of a deposit is available for withdrawal in cash or by similar means no later than the first business day after the day of deposit. In addition, a total of \$400 of other funds becoming available on a given day is available for withdrawal in cash or by similar means at or after 5:00 p.m. on that day. Any remaining funds will be available for withdrawal in cash or by similar means on the following business day. Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as a debit card transaction.

Special Rules for New Accounts

If you are a new customer, the following special rules may apply during the first 30 days after the account is open.

Funds from electronic direct deposits to your account are available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified teller's, traveler's, and federal, state and local government checks are available no later than the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you and deposited in person to one of our employees. The excess over \$5,000 is available by the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of deposit. Funds from all other check deposits are generally available by the ninth business day after the day of your deposit. However, we may place longer holds on certain items for other reasons, such as large deposits (see *Longer Delays May Apply* above).

Holds on Other Funds

If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. If we accept for deposit a check that is drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your ability to withdraw a corresponding amount of funds that you have on deposit in another account with us. In either case, we make these funds available in accordance with our policy described above for the type of check that was cashed or deposited.

Other Provisions of This Agreement

The fact that we make funds available to you does not waive any of our rights under the law or this Agreement. For example, although we made funds from a deposited check available to you and you withdraw the funds, you are still responsible for problems with the deposit. If the check is returned to us unpaid for any reason, we may charge your account for the amount of the check.

Substitute Checks and Your Rights

The following provisions help explain some of your rights under a new federal law commonly referred to as Check 21. This disclosure applies only to accounts held by consumers.

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns

interest) not later than 45 calendar days after we received your claim. We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at the phone number listed on your bank statement, or write to us at:

Bank of America
Attn: Research and Adjustments
P.O. Box 31590
Tampa, FL 33631-3590

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include—

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: the check number, the name of the person to whom you wrote the check, the amount of the check and the date of the check.

Insufficient Funds – Overdrafts

Overdraft and Returned Item Fees

We recommend that you enroll in one of the optional overdraft protection plans described below. This can help you avoid overdraft and returned items on your account. If you enroll, then when you do not have enough available funds in your account to cover a check or other item but have enough available coverage under the overdraft protection plan, we can automatically transfer funds to your account to cover the check or other item. Please note that funds in your account are not available to cover a check or other item if we determine that they are subject to a hold, dispute or legal process that prevents their withdrawal.

When you do not have enough available funds in your account to cover a check or other item, then we consider the check or other item an insufficient funds item. If you have enrolled in one of our overdraft protection plans and have enough available coverage under the plan, we transfer funds to cover the check or other item. Otherwise, we may either pay it and overdraw your account or we may decline or return an insufficient funds item unpaid and, in either case, we may charge you a fee for each insufficient funds item. Please see the *Schedule of Fees* for your account.

Insufficient funds items include all orders and instructions for the payment, transfer, or withdrawal of funds from your account. As examples, an insufficient funds item includes a check, draft, demand draft, image, substitute check, image replacement document, electronic item (such as an ACH, ATM or point-of-sale instruction to withdraw funds), preauthorized payment, automatic transfer, telephone-initiated transfer, Online Banking transfer or bill payment instruction, withdrawal slip and in-person payment, transfer or withdrawal instruction.

Whether we return or pay an insufficient funds item depends on a number of factors, including the amount of the item and the past activity in your account. We may, without notice to you and in our sole discretion, either pay it and overdraw your account or we may decline or return an insufficient funds item unpaid. If we overdraw your account, you agree to repay us immediately. We may use deposits you or others make to your account to pay any overdraft you owe us. If we pay insufficient funds items by overdrawing your account on one or more occasions, we are not obligated to continue paying any future insufficient funds items, and we may stop paying your insufficient funds items and return them unpaid without notice to you.

We may establish different processing orders for checks and other items. When you do not have enough available funds to pay all checks and other items on a given day, we may pay one or more checks or other items, and return other checks or other items, in any order we deem appropriate. We may change our processing orders at any time without notice to you, even though some processing orders may result in more insufficient funds items and more fees than others. For more information about our processing orders, please see *Check and Item Processing Orders* in the *Processing Transactions - Withdrawals* section.

The fee for each insufficient funds item may vary based on the number of occurrences during the current monthly statement cycle and preceding 12 monthly statement cycles and whether the check or other item is paid or returned. An "occurrence" is a day during which your account has at least one insufficient funds item. Please see the *Schedule of Fees* for your account. If your account is transferred to another banking center or converted to a different type of account, your record of insufficient funds items still applies.

For some business accounts, if your account is overdrawn, we may also charge you interest on the overdraft amount up to the highest rate permitted by law.

Overdraft Protection Plans

In most states and for most accounts, we offer one or more of the following overdraft protection plans to help protect your account from overdrafts and returned items. We recommend that you enroll in one of these optional plans. You may only link one overdraft protection plan to each account. We generally make transfers under the overdraft protection plan in a minimum amount or increments of the minimum amount. This means that a transfer may not be made if you do not have at least the minimum amount available under the plan.

Overdraft Protection from your Credit Card. This service is available if you have an eligible Bank of America credit card. The service links a Bank of America credit card account to a checking account for overdraft protection. You may not link more than one checking account to a credit card account. At least one of the owners of the checking account must also be an owner of the credit card account. Certain other restrictions apply.

When you do not have enough available funds in your checking account to cover a check or other item, we may automatically advance and then transfer funds from your credit card account to your checking account in the amount and under the terms and conditions described in the credit card agreement. We do so as long as you have sufficient credit

available and as long as you are not in default under your credit card agreement. The funds transferred may be subject to fees and finance charges under your credit card agreement. For some business accounts, we may charge an overdraft protection transfer fee to your checking account for each transfer.

Overdraft Protection from your Savings Account.

This service is available if you have a Bank of America savings account. In most states the savings account must be located at a banking center in the same state as the banking center where we maintain your checking account. At least one of the owner(s) of the checking account must also be an owner of the savings account. Certain other restrictions apply.

When you do not have enough available funds in your checking account to cover a check or other item, we may automatically transfer funds from the available balance in your savings account to your checking account. Each transfer counts as one of the six limited transactions you are allowed each month from your savings account. Funds you deposit into your savings account may not be available immediately for overdraft protection. We may cancel this overdraft protection plan if you close your savings or checking account. Under this plan we may charge an overdraft protection transfer fee to your checking account for each transfer.

Overdraft Protection from your Line of Credit.

This service is available if you have an eligible Bank of America line of credit. This service links your line of credit to your checking account. At least one of the owner(s) of the checking account must also be an owner of the line of credit. Certain other restrictions apply.

When you do not have enough available funds in your checking account to cover a check or other item, we may automatically advance and then transfer funds from your line of credit to your checking account in the amount and under the terms and conditions described in the line of credit agreement. We do so as long as you are not in default under your line of credit agreement. The funds transferred normally may not exceed the amount of available credit on your line of credit and may be subject to fees and finance charges under your line of credit agreement. Under this plan we may charge an overdraft protection transfer fee to your checking account for each transfer.

Electronic Banking Services

General Information

If we give you an ATM Card, Check Card or other device or code to access your account, you agree to use the card or code only in the manner and for the purposes described in the applicable agreement. If you attempt to use the card or code in any other manner or for any other purpose, we may reject the transaction, or at our discretion we may complete it without incurring any obligation to honor the same type of transaction on future occasions. We may decide not to issue a card or code to any customer, and we may also terminate a card or code at any time without cause or notice.

For information about our ATM Cards and Check Cards, please see the applicable card agreement and disclosure.

Access ID

An Access ID is a numeric code which, when used with a separate PIN number or passcode (plus, in some circumstances, another piece of identifying information called a "verbal verification code"), enables consumer and small business customers to do the following via our automated telephone system or in person at a banking center: obtain information about deposit and credit accounts that are linked to the Access ID; transfer funds and make payments between linked accounts; and obtain other services such as stop payments, check reorders, and copies of checks and statements. You may request an Access ID and related security codes through Telephone Customer Service or at any banking center. Please note that Access IDs may not be available to customers in all states. In some states, individual account numbers, combined with additional security codes, may be required to obtain account information and transact other business.

Two activity levels are available for most accounts linked to your Access ID:

- (1) Inquiry: Allows you to obtain current account balances and recent transaction information.
- (2) Financial: Allows you to obtain account information, transfer funds among accounts linked to the Access ID, and obtain certain other banking services.

When you first choose your Access ID, and when you subsequently open any new accounts, we will link all your Bank of America accounts that are eligible, and assign the financial activity level to all accounts for which that activity level is available, unless you tell us otherwise. We may establish certain limits on the accounts that can be linked to your Access ID and that can have the financial activity level.

If you permit another person to use your Access ID or account number(s) and related code(s), you are responsible for all transactions conducted by that person (even if he or she exceeds your authorization), until you notify us that the person is no longer authorized so that we may block the codes and issue new ones.

You must review your periodic statements and promptly report to us any unauthorized funds transfers initiated through the use of your security codes or otherwise. You must also promptly notify us of any suspected loss or theft of your security codes. Failure to take these actions may affect the extent of your liability for any unauthorized transfers under federal banking regulations or other applicable laws.

Small Business Access IDs If you are a small business customer, to uniquely identify each person who initiates a request for banking services, you should establish a separate Access ID and related security codes for each person who you determine needs access to your accounts. Your authorization (whether express or implied) for any individual to establish an Access ID shall constitute your authorization for the bank to provide account information to such individual and (unless inquiry only access is selected) to transfer funds and conduct other banking transactions upon that person's request. Such authorization supersedes any resolution, signature card or other document filed with the bank that purports to limit authority over any of your accounts, whether currently on file or submitted or modified in the future, unless the Access ID authorization is expressly modified or revoked.

Online Banking and Bill Payment Services

You may use your computer to obtain account information and make certain transfers and to pay bills. When you subscribe to these services, we provide you with an agreement and disclosures for the service and link your eligible accounts.

Electronic Banking Disclosures

The following provisions apply only to accounts established primarily for personal, family, or household purposes. They generally apply to fund transfers, deposits, cash withdrawals and purchases made with any ATM Card, Check Card, Access ID, or other device or code which accesses a consumer account, and to direct deposits and some types of preauthorized and telephone-initiated transfers involving consumer accounts (including a transaction you may initiate by check but which a merchant converts to an electronic transfer.) They do not apply to debits which the bank is authorized to make from your account for service charges and other fees, to preauthorized automatic transfers you have instructed the bank

to make to another of your (or a family member's) Bank of America accounts or toward payment of a Bank of America loan, and to certain other types of consumer transactions which are excluded from Regulation E of the U.S. Federal Reserve Board.

Types of Transfers.

Account Access The types of transfers that you may make with your ATM Card or Check Card or using our Online Banking service are described in our agreements for those services. You may authorize someone to make direct deposits to your account.

Electronic Check Conversion You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to pay for purchases or to pay bills.

Consumer's Liability for Unauthorized Transfers. Tell us AT ONCE if you believe your Bank of America ATM card, Check Card or similar card or your Access ID, Personal Identification Number (PIN) or similar code has been lost, stolen or learned by an unauthorized person, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. If you tell us within two business days after you learn of the loss or theft, you can lose no more than \$50 for an unauthorized electronic funds transfer or a series of related unauthorized transfers should someone use your card or code without your permission.

If you do NOT tell us within two business days after you learn of the loss or theft of your card or code and we can prove we could have stopped someone from using your card or code without your permission if you had told us, you could lose as much as \$500.

Your losses could include all of the money in your account plus, if you have an overdraft protection plan linked to your account, any transfers from another account or any advances on a credit line.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us in writing within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Remember, do not write your PIN on your card or carry the PIN with you. This reduces the possibility of someone using your card without your permission if it is lost or stolen.

Note: These liability rules are established by Regulation E. Our liability policy regarding unauthorized transactions on personal accounts that involve a personal Bank of America Check Card or ATM Card may give you more protection, provided you report the transactions promptly. Please see the agreement and disclosure you receive with your ATM or Check Card. Also, the state law applicable to your account may give you more time to report an unauthorized transaction or may give you more protection. For example, in Massachusetts, the 2 and 60 day time limits for reporting unauthorized transactions do not apply and the \$500 limit does not apply.

Telephone Number and Address to be Notified in Event of Unauthorized Transfer and Lost or Stolen Bank of America ATM Cards and Check Cards or Access Codes. If you believe your card is lost or stolen, your access code has been learned by an unauthorized person, or that someone has transferred or may transfer money from your account without your permission, you must notify us immediately by calling the number listed below. If unauthorized activity occurs, you agree to cooperate during the investigation and to complete a Lost/Stolen Card and Fraud Claims Report or similar affidavit.

<i>Telephone:</i>	<i>Write to:</i>
1.800.432.1000	Bank of America
	P.O. Box 53137
	#7405
	Phoenix, AZ 85072-3137

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

Business Days. For purposes of these electronic banking disclosures, our business days are Monday through Friday. Holidays are not included.

Documentation of Transfers.

ATM Transfers. You can get a receipt at the time you make any transfer to or from your account using an ATM. However, this receipt is not final since each transaction is subject to verification by us. If the receipt and our records conflict, our records will control.

Preauthorized Credits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at 1.800.432.1000 to find out whether or not the deposit has been made.

Periodic Statements. We send you a monthly account statement (unless there are no transfers in a particular month). In any case, we send you a statement at least quarterly.

Preauthorized Payments.

Right to Stop Payment and Procedure for Doing So. If you have told us in advance to make regular payments out of your account or you have authorized someone to debit your account through the ACH system, you can stop any of these payments. Here's how: Call us at 1.800.432.1000 or write to us at Bank of America Customer Service, P.O. Box 25118, Tampa, FL 33622. You must notify us in time for us to receive your request three business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after your call. You must tell us the exact amount of the payment you have stopped, as well as other identifying information which we will request. We may charge you a fee for each stop payment order you give. See *Stop Payment Orders and Pending Orders* in the *Additional Terms and Services* section for more information about ACH Stop Payment Orders. If we require written confirmation and do not receive it, we may remove the stop payment order after 14 days.

Notice of Varying Amounts. If these regular payments may vary in amount, the person you are going to pay will tell you 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

Liability for Failure to Stop Payment. If you order us to stop a preauthorized payment three business days or more before the transfer is scheduled, and you have given us the information we requested, including the exact amount of the payment, we will be liable if we fail to stop the payment for your damages directly caused by our failure to stop the payment.

Liability for Failure to Make Transfers. If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the ATM where you are making the transfer does not have enough cash.
- If the ATM, terminal or system was not working properly and you knew about the breakdown when you started the transfer.

- If circumstances beyond our control (such as power outages, equipment failures, fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- If the funds are subject to legal process or other encumbrance restricting the transfer.
- If an account becomes dormant, in which case we may terminate card or code access to that account.
- If your card or code has been revoked due to inactivity or at our discretion.

There may be other exceptions stated in our agreement with you or permitted by law.

Confidentiality - Account Information Disclosure. We will disclose information to third parties about your account or transfers you make as stated in the Information about Customers section near the front of this Agreement.

ATM Fees. When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

Error Resolution Procedure. In case of errors or questions about your electronic transfers, call us at 1.800.432.1000 or write us at Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-3137.

Call or write as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we have sent you the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number.
 - (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
 - (3) Tell us the dollar amount of the suspected error.
- If you tell us orally, we may require that you send your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If the alleged error involves a transfer resulting from a point-of-sale transaction, or a transaction initiated outside a state, territory or possession of the United States, we may take up to 90 days (instead of 45) to investigate. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents that we used in our investigation.

If you are a new customer and the error or question concerns an electronic transaction that occurred within 30 days after the first deposit to the account was made, we will tell you the results of our investigation within 20 business days after we hear from you. If we need more time, we may take up to 90 days to investigate. In this case, we will credit your account within 20 business days for the amount you think is in error, so that you have the use of the money during the time it takes us to complete our investigation.

NOTICE: As part of the security system to help protect your card and PIN, we may use hidden cameras and other security devices to determine who is using a card at an ATM.

UNLESS OTHERWISE PROVIDED IN OUR ELECTRONIC BANKING AGREEMENT, YOU MAY NOT STOP PAYMENT OF ELECTRONIC FUND TRANSFERS. THEREFORE, YOU SHOULD NOT EMPLOY ELECTRONIC ACCESS FOR PURCHASES OR SERVICES UNLESS YOU ARE SATISFIED THAT YOU WILL NOT NEED TO STOP PAYMENT.

Additional Information for Massachusetts customers:

- The time limits referenced in the *Error Resolution Procedure* section above are measured in calendar days – not business days, and the longer time periods to investigate claims for point-of-sale transactions and new customers do not apply.
- Any documentation provided to you which indicates that an electronic fund transfer was made shall be admissible as evidence of the transfer and shall constitute prima facie proof that the transfer was made.
- The initiation by you of certain electronic fund transfers from your account will effectively eliminate your ability to stop payment of the transfer.

ATM Safety Tips

The suggestions that follow offer some helpful hints on exercising care when using an ATM. Please review them.

Your ATM Card and Personal Identification Number (PIN)

- Always protect your card by keeping it in a safe place. If your card is lost or stolen, contact us immediately.
- Always protect your PIN. Never give your number to anyone and you should never write your number anywhere, especially on your card. If you choose your own PIN, avoid using obvious numbers such as telephone numbers, addresses, or birth dates.
- Never give information about your card or PIN over the telephone. If someone is asking for this information, refuse and immediately notify your bank.

Using an ATM

- Bank of America ATMs may be monitored by surveillance cameras, which record activity in the area of the ATM.
- When you enter or exit an ATM in an enclosed area, be sure you close the entry door completely. Do not open locked ATM vestibule doors for others or allow any unknown persons to enter the ATM area when you are making your transaction. Authorized customers should have their own access.
- After completing your transaction, secure your card and cash immediately, before exiting the ATM area. Count it later in the safety of your locked car or home.
- Shield the keypad with your hand or body while entering your PIN. Do not leave your transaction record at the ATM. Keep your transaction record in a safe place, so you can compare it to your statement.
- If you use a drive-up ATM, be sure passenger windows are rolled up and your doors are locked.
- Be aware of your surroundings, especially after dark. If you must use an ATM at night, consider taking someone with you.
- If you notice anything suspicious or that you deem unsafe, such as the lighting around the ATM is not working, use another ATM or return later.
- Report all crimes immediately to law enforcement officials and your local banking centers.
- If you need emergency assistance, call 911 from the nearest telephone. If you have a complaint about the security of a Bank of America ATM, call our Corporate Security Department at 1.800.222.7511.

Funds Transfer Services

The following provisions apply to funds transfers you send or receive through us, but do not apply to electronic fund transfers governed by Regulation E of the U.S. Federal Reserve Board. If you have a specific agreement with us for these services, these provisions supplement that agreement to the extent these provisions are not inconsistent with the specific agreement.

The Uniform Commercial Code includes provisions relating to funds transfers. These provisions define the following terms: funds transfer, payment order and beneficiary. These terms are used here as they are defined in Article 4A of the Uniform Commercial Code - Funds Transfers as adopted by the state whose law applies to the account for which the funds transfer service is provided. In general: A funds transfer is the process of carrying out payment orders that lead to paying a beneficiary. The payment order is the set of instructions given to us to transfer funds. The beneficiary is the person or business who receives the payment.

We may charge fees for sending or receiving a funds transfer. We may deduct our fees from your account or from the amount of the transfer. For current fees, call us at the number for Customer Service on your statement or ask a banking center representative.

Fedwire

Fedwire is the electronic funds transfer system of the U.S. Federal Reserve Banks. When you send a payment order or receive a funds transfer, we or other banks involved in the funds transfer may use Fedwire. If any part of a funds transfer is carried out by Fedwire, your rights and obligations are governed by Regulation J of the U.S. Federal Reserve Board.

Sending Funds Transfers

You may subscribe to certain services we offer or you may give us other instructions to pay money or have another bank pay money to a beneficiary. This *Sending Funds Transfers* section applies to wire transfers and transfers we make between Bank of America accounts. It does not apply to automated clearing house (ACH) system funds transfer services. You may give us payment orders for ACH system funds transfers only if you have a separate agreement with us for those services.

Cutoff Times for Payment Orders. We have cutoff times for processing payment orders. Cutoff times vary depending on the particular office of our bank and the type of

payment order. We may treat payment orders we receive after a cutoff time as if received the next business day. We tell you our cutoff times upon request.

Amending or Canceling Payment Orders. You may not amend or cancel a payment order after we receive it. If you ask us to do this, we may make a reasonable effort to act on your request. But we are not liable to you if, for any reason, a payment order is not amended or canceled. You agree to reimburse us for any costs, losses or damages that we incur in connection with your request to amend or cancel a payment order.

Inconsistency of Name or Number. The beneficiary's bank may make payment to the beneficiary based solely on the account or other identifying number, even if the name on the payment order differs from the name on the account. We or an intermediary bank may send a payment order to an intermediary bank or beneficiary's bank based solely on the bank identifying number, even if the payment order indicates a different bank name.

Sending Payment Orders. We may select any intermediary bank, funds transfer system or means of transmittal to send your payment orders. Our selection may differ from that indicated in your instructions.

Notice of Rejection. We may reject payment orders. We notify you of any rejection orally, electronically or in writing. If we send written notices by mail, we do so by the end of the next business day.

We are not liable to you for the rejection or obligated to pay you interest for the period before you receive timely notice of rejection.

Errors or Questions About Your Payment Orders. We notify you about funds transfers by listing them on your account statement. In some cases, we also may notify you electronically, in writing or by a report produced through one of our information reporting services.

You must notify us at once if you think a funds transfer shown on your statement or notice is incorrect. You must send us written notice, including a statement of relevant facts, no later than 14 days after the date you receive the first notice or statement on which the problem or error appears.

If you fail to notify us within this 14-day period, we are not liable for any loss of interest because of an unauthorized or erroneous debit or because your statement or notice is incorrect. We are not required to compensate you, and we are not required to credit or adjust your account for any loss of interest or interest equivalent.

Calculations. If we are obligated to pay for loss of interest that results from our error or delay regarding your payment order, we calculate compensation as follows. With an ana-

lyzed checking account, we credit the account to reflect the applicable value date or otherwise adjust the account under our account analysis procedure, to recalculate earnings credits for the period involved. With a non-analyzed, non-interest-bearing account, we use a rate equal to the average of the Federal Funds rates set by the Federal Reserve Bank of New York, less a reserve factor. With a non-analyzed, interest-bearing account, we use the rate applicable to the account. If we have a separate agreement with you specifying a different calculation method, we use that method instead.

Receiving Funds Transfers

We may receive instructions to pay funds to your account. We may receive funds transfers directly from the sender, through a funds transfer system or through some other communications system. This includes wire transfers, ACH transfers that may be sent through an ACH system or processed directly to an account with us, and transfers between Bank of America accounts.

ACH Provisional Payment Rule. Under ACH rules, funds transfers sent through an ACH are provisional and may be revoked prior to final settlement. You agree to these rules.

If the funds transfer is revoked before final settlement, we may charge your account for the amount credited. The person who sent the payment order is considered not to have paid you. If this happens, we do not send a separate notice; we report the information on your account statement.

Notice of Funds Transfer. We notify you that we have received funds transfers by listing them on your account statement. We send statements by mail. If you use one of our information reporting services, you may receive notice through that service.

We are not obligated to send you a separate notice of each incoming funds transfer. While we generally do not provide such separate notices, we may do so on occasion, in which case we send the notice within two business days after we credit your account.

We are not obligated to pay you interest for the period before you receive notice.

If you are expecting a funds transfer and want to find out if it has been credited to your account, call us at the number for Customer Service on your statement.

Pasting Your Customers' Payments. We credit to your account electronic payments (such as bill payments) that we receive from your customers. If you do not apply a payment to an account of your customer, you must promptly return the payment to us.

ACH Debits and Credits

From time to time, originators that you authorize may send automated clearing house (ACH) credits or debits for your account. For each ACH transaction, you agree that the transaction is subject to the National Automated Clearing House Association (NACHA) Operating Rules and any local ACH operating rules then in effect. You agree that we may rely on the representations and warranties contained in these operating rules and either credit or debit your account, as instructed by the originator of the ACH transaction.

You should be careful about giving someone your account number to help prevent unauthorized transactions on your account. You must notify us immediately of unauthorized activity.

For information about stopping payment of an ACH transaction, see *Stop Payment Orders and Postdating Orders* in the *Additional Terms and Services* section.

Protecting Your Account

Your role is extremely important in the prevention of wrongful use of your account. If you find that your records and ours disagree or if you suspect any problem or unauthorized activity on your account (such as a missing deposit or a forged or altered check or other withdrawal order), call us immediately at the number for Customer Service on your statement. If you fail to notify us in a timely manner, your rights may be limited. We may require written confirmation of your claim, including an affidavit signed by you on a form acceptable to us.

Cellular or Cordless Telephones

To help safeguard against potential unauthorized use of your account, you should not use cellular or cordless telephones to conduct your transactions with us. Confidential account information can be intercepted over the airwaves without your knowledge or authorization.

Change of Address

You must notify us if you change your address. If we receive notice from the United States Post Office or one of its agents that your address has changed, we may change your address on our records to the address specified by the Post Office and we may send statements and notices regarding your account to that new address.

Fingerprint

If a person to whom you gave your check asks us to cash the check, we may require them to place their fingerprint on the check. If they refuse to provide their fingerprint, we may refuse to cash the check. We have no liability to you for refusing to cash the check.

Examining Statements and Reporting Problems

This section applies to any problem or unauthorized transaction on your account, except electronic transactions that are subject to Regulation E.

You agree to promptly and carefully review your account statement and any accompanying items. You must report problems or unauthorized transactions to us immediately, by calling the number for Customer Service on your statement. We may require written confirmation of your claim, including an affidavit signed by you on a form acceptable to us.

Problems or unauthorized transactions include: suspected fraud; missing deposits; unauthorized electronic transfers; missing, stolen, or unauthorized checks or other withdrawal orders; checks or other withdrawal orders bearing an unauthorized signature, endorsement or alteration; illegible images; encoding errors made by you or us; and counterfeit checks.

You agree that 60 days after we send a statement and items (or otherwise make them available) is the maximum reasonable amount of time for you to review your statement or items and report any problem or unauthorized transaction related to a matter shown on the statement or items. In addition, if you do not notify us in writing of suspected problems or unauthorized transactions within 60 days after we send your statement or items, or otherwise make them available, you agree that you cannot make a claim against us relating to the unreported problems or unauthorized transactions, regardless of the care or lack of care we may have exercised in handling your account. (For substitute checks, you must notify us within 40 days to qualify for an expedited credit. See section titled *Substitute Checks and Your Rights*.) In addition, if you fail to report an unauthorized transaction on your account within 30 days (or such lesser period as is specified in the state law applicable to your account) following the closing date of the statement containing information about the first unauthorized transaction, we are not liable to you for subsequent unauthorized transactions on your account by the same person. You may not bring any legal proceeding or action against us to recover any amount alleged to have been improperly paid out of your account unless you have given us the notice described above.

If there are any unauthorized transactions on your account (such as missing, stolen, or unauthorized checks), we

recommend that you close your current account and open a new one. If you do not do so, we are not liable to you for subsequent losses or damages on the account due to forgery, fraud or other unauthorized use. When you open a new account, you are responsible for notifying any third parties that need to know your new account number.

If you report to us that a forgery, alteration or other unauthorized transaction has occurred on your account, you agree to cooperate with us in the investigation and prosecution of your claim and any attempt to recover funds. You agree to provide us with an affidavit containing the information we require concerning the transaction. We may deny your claim if you fail to provide us with any affidavit we require. You also agree to assist us in identifying and prosecuting the suspected wrongdoers.

You agree that we have a reasonable period of time to investigate the facts and circumstances surrounding any claimed loss and that we have no obligation to provisionally credit your account. Our maximum liability is the lesser of your actual damages proved or the amount of the missing deposit or the forgery, alteration or other unauthorized withdrawal, reduced in all cases by the amount of the loss that could have been avoided by your use of ordinary care. We are not liable to you for special or consequential losses or damages of any kind, including loss of profits and opportunity or for attorneys' fees incurred by you.

If your claim relates to a business account, you agree to pursue all rights you may have under any insurance coverage you maintain before making a claim against us in connection with any transaction involving your accounts, and to provide us with all reasonable information about your coverage, including the name of your insurance carrier, policy number, policy limits and applicable deductibles. Our liability is reduced by the amount of all insurance proceeds you receive or are entitled to receive. At our request, you agree to assign to us your rights under your insurance policy.

Helping to Prevent Fraud

To help you protect your account, you should consider using some or all of the following preventive measures: reconciling your statements as you receive them, watching for out-of-sequence checks and checks made payable to cash, and reviewing your transaction activity for unexpected fluctuations. Business customers should assign to different individuals responsibilities for: opening mail, reconciling bank statements, endorsing incoming checks, making deposits, reconciling accounts payable checks with vendor invoices, reconciling incoming checks against outstanding receivables and issuing checks. When you write checks, you agree to use a dark col-

ored permanent ink, make sure the written and numeric amounts match and are readable, and make sure there are no blanks or open spaces in the places where words or numbers are to be inserted.

You should be cautious about giving someone your account number. If you give your account number to a third person and authorize that third person to initiate one or more transactions on your account, you may be liable for all transactions initiated by the third person even if you did not intend to authorize a particular transaction.

You should never leave unused checks out in the open or in an easily accessible location. Checks can be stolen and misused, so it is important for you to keep your check stock secure and in a safe place and to audit your check stock frequently. When discarding checks, ensure they are properly destroyed by shredding or other means so that they cannot be copied or used. If unused checks disappear, either individually or a pad at a time, call us immediately at the number for Customer Service on your statement. These same precautions apply to endorsement and signature stamps. We may deny a claim due to forged, altered or unauthorized checks if you do not take reasonable measures to guard against improper access to your checks or endorsement or signature stamps.

These are suggestions of some measures you may take to help prevent fraud on your account. The suggestions are by no means a complete list of preventive measures you may take; other or additional actions may be appropriate for your particular circumstances, including closing your account and opening a new account that has not been compromised.

Processing Transactions - Deposits and Cashed Items

Transactions that you perform are not effective until we process them at the processing center for the banking center where we opened your account.

Cashing Items or Accepting Items for Deposit

We may accept a check or other item for deposit to your account from anyone. We do not have to question the authority of the person making the deposit. If your account is overdrawn, we may use the deposit to pay the overdraft and any fees you owe us.

We may refuse, accept for collection only, or return all or part of any deposit. We may refuse to accept for deposit to your account items payable to another person. In receiving checks or other items for deposit or collection, we act only as your collecting agent and assume no responsibility beyond the

exercise of due care, including care in selecting collecting banks. We are not responsible for errors and delays made by others in the collection process. If we have given you credit for an item and it is not paid for any reason, we may revoke the credit and charge the amount of the item back to your account, even if this causes your account to be overdrawn. When you send us deposits by mail, or place deposits in our lobby deposit box or other depositories, we may treat them as received at the time we receive actual delivery of deposits sent by mail or when we remove the deposits from our depositories.

If we accept a cash deposit in unusual denominations, such as a large number of loose coins, we may assess a charge for processing the deposit.

If you use a blank deposit slip from one of our banking centers, rather than your personalized deposit slip, you agree that we will not be liable for errors that may result from your or our hand encoding the account information.

You agree that you will not knowingly deposit items into your account that do not have either a true original signature of the person on whose account it is drawn or an authorized mechanical reproduction of that person's signature.

Cashier's Checks If we cash, or accept for deposit, a money order, cashier's check or similar item and we later learn that the item is fraudulent, counterfeit or invalid for some other reason, we may charge your account for the amount of the item. This may occur even if we previously made the funds available to you.

Foreign Items. You should be cautious about accepting international or foreign items. These are items that were originally issued, or are drawn on banks located outside of the United States. If we accept such items for deposit to your account or cash them, you are responsible for these items if there is a subsequent problem with them. Such items may be returned unpaid at a much later date because processing of foreign items is not subject to U.S. laws or regulations. If an item is returned to us unpaid for any reason, we may charge your account for the amount of the item, even if we previously made the funds available to you. If the item is payable in currency other than U.S. dollars, you may incur a currency exchange loss. See *Foreign Instruments and Currency Exchange Rates*.

Collection Items

We may accept certain items — such as certain securities and checks payable in foreign currencies or at foreign locations — on a collection basis only. We route and process collection items separately. We normally credit your account for collection items only after we receive payment for them. But if we do credit your account and then do not receive payment, we may debit your account for the amount of the item. We charge fees for processing collection items. These fees apply even if the collection item is returned unpaid. For current fees, call us at the number for Customer Service on your state, or ask a banking center representative.

The financial institution on which the collection item is drawn may also charge you fees. If the other financial institution requires payment of a fee before that institution will process the collection item, we may pay the fee and charge your account. Otherwise, the other financial institution may subtract its fee from the amount of the payment we receive. These fees may apply even if the collection item is returned unpaid.

Client-Encoded Deposits

If you are a business client, you may want to encode the MICR line of an item you deposit with us. We permit this under certain circumstances, and we provide you with instructions (which you agree to follow) for preparing and encoding your deposits.

You must provide us with a replacement or a copy of each original check if the deposit is lost or destroyed. We are not liable to you if you are unable to do so.

If our equipment is unable to read what we consider to be a significant number of your encoded items, we may charge you additional fees. If we do charge you more, we send you a notice. If you make an encoding mistake that results in costs or losses to us, you agree to reimburse us (and we may charge your account) for our claims, costs, losses and damages, including attorneys' fees. We are not liable for any claims, costs, losses, or damages you may incur when you encode your own items.

Demand Drafts and Remotely Created Checks

If you deposit a demand draft or remotely created check (an unsigned draft or a preauthorized draft) into your account, you warrant and guarantee that the draft or remotely created check is authorized according to the terms on its face by the person identified as drawer.

Deposit Delivery and Preparation

You may deliver deposits to us through various methods including our banking centers, ATMs, night depositories and Automated Banking Centers (ABCs). We use the method and time of delivery to determine when you receive credit for the deposit and for some accounts any applicable deposit fees. If we credit your account for the amount shown on the deposit slip, the credit is subject to subsequent verification by us and our determination of the amount of your deposit is final and binding as long as we follow our customary practices.

You agree to prepare your deposit in accordance with our instructions which may include the use of an approved deposit bag or envelope and deposit ticket, if required. You authorize us to open the deposit bag or envelope in your absence and credit the contents to your account. We may treat the contents of the deposit bag or envelope as not accepted by us for deposit until we have verified the contents. If your deposit includes items that we do not accept for deposit, we may hold those items until claimed by you. If you make your deposit through a mechanical or automated depository such as an ATM or night depository, you agree to exercise due care in opening, closing and properly securing the depository.

Deposit Error Correction

When we receive your deposits, we may provisionally credit your account for the amount declared on the deposit slip, subject to later verification by us. You must ensure that the amount declared on the deposit slip is correct even if you did not prepare the deposit slip. If later we determine that the amounts declared on the deposit slip are incorrect, we may adjust (debit or credit) your account. We report adjustments on your account statement. However, if the error in completing the deposit slip was inadvertent and is less than our standard adjustment amount, we will not adjust the deposit unless you notify us of the error within one year of the date of your periodic statement that shows the deposit. After this notice period has passed without your bringing an error to our attention, the deposit amount indicated on the statement will be considered finally settled. That is, if the actual amount deposited was less than the amount declared on the deposit slip, the difference will become your property and if the actual amount deposited was more than the amount declared on the deposit slip, the difference will become our property. We may change our standard adjustment amount from time to time without notice to you.

Endorsing Checks

We may accept for deposit checks payable to any signer on your account when endorsed by any other signer. We may endorse checks for you that we receive for deposit.

We restrict both how you endorse checks that you ask us to cash or deposit and what you may place or have preprinted on the back of checks. If you place or imprint information on the back of the check, it may overlap into the area reserved for the banks' endorsements. If it becomes necessary for us to return one of your checks, the material placed on the back of the check may interfere with the bank endorsements and cause delays in returning the item. You agree to reimburse us for all claims, costs, losses and damages that result from late return of a check due to material entered on the back of the check that obscured or interfered with our or another bank's endorsement.

You must endorse checks in the area that extends 1/2 inches from the trailing edge of the back of the check. The trailing edge is the left side of the check when you look at it from the front. If your endorsement obscures our bank's endorsement, you are liable for checks that are returned late and unpaid.

Foreign Instruments

The processing and collection of foreign instruments are not subject to United States laws or regulations. We may refuse to accept for deposit or collection a check, draft or other item that is payable in a currency other than U.S. dollars or that is drawn on a bank or a branch of a bank located outside of the United States (a "foreign instrument"). If we accept a foreign instrument for deposit or collection, you bear all the risks associated with the collection process and foreign currency fluctuation (exchange rate risk). A foreign instrument may be returned unpaid much later (sometimes several months after we process the foreign instrument) than instruments that are drawn on banks located in the United States. You bear all the risks of a late return. We may decide not to credit a foreign instrument to your account until we receive the proceeds in cleared funds from the paying bank. If we do provide credit, such credit is provisional and we may reverse the credit at any time if the foreign instrument is returned unpaid or is initially paid but then subsequently returned for fraud. You agree that we may use the then current exchange rate and we may charge your account for the full value of the foreign instrument, including any applicable fees, which may result in a loss to you.

If you deposit an item which is later determined to be a foreign instrument, it may or may not need to be sent for collection. If we determine the instrument needs to be sent for

collection, we may reverse any provisional credit given for the item at our then current exchange rate and mail the foreign instrument to you at the address we have for your account statement. You may then ask us to send the instrument for collection.

You understand that foreign instruments sent for collection are sent solely for you and at your risk and that we are not liable for any event in the collection process which is beyond our control including a default by any banks or agents involved in the collection process or for loss of the foreign instrument in transit. We may send the foreign instruments directly or through a correspondent to any bank, including the payor. We may deduct both our fees and the charges assessed by the payor bank and any agents involved in the collection process from the amount collected or from your account. If the collection is returned unpaid, we may mail the foreign instrument to you at the address we have for your account statement. We may also charge your account for the item at our then current exchange rate and for a collection fee together with other charges assessed by the payor bank. You should note that a foreign instrument which has been sent for collection and paid may be returned later (sometimes months later) for fraud, and that we may debit your account at our then current exchange rate including fees assessed by the foreign bank for any instrument returned for fraud.

If you request, we will try to determine the status of a collection. You agree to pay charges incurred for such a request. We may refuse your request if less than 30 business days have passed since we first processed the collection.

Identifying the Account

You must correctly identify the account to which you want funds deposited. You are responsible for any claim, cost, loss or damage caused by your failure to properly identify the account to which a deposit is made or intended to be made. We may credit an account based solely on the account number listed on the deposit slip or other instruction to credit an account, even if the name on the deposit slip or other instruction differs from the name on the account.

Lost Checks

When we cash a check for you or accept a check for deposit to your account, we are acting as your agent in collecting the check. We are not responsible if the check is lost or delayed in the collection process. If a check is lost during the collection process, we may charge your account for the amount of the check. If the financial institution on which the check is drawn gives us a photocopy of the check or a debit

slip representing the check, we may charge your account for the amount of the check.

A lost check may not be returned to us for some time. Despite any delay, we may charge your account when we receive either the returned check, a copy of the check, or a notice of return.

Overpayments and Reversals

If funds to which you are not entitled are deposited to your account by mistake or otherwise, we may deduct these funds from your account. If there are not enough funds in your account, we may overdraw your account and charge an overdraft fee. If the funds were transferred from your account, we may reverse the transfer. We can do this without giving you any prior notice or demand.

Returned Items

This section applies to items that you deposit or that we cash for you and includes items drawn on us as well as items drawn on other financial institutions. If a cashed or deposited item is returned to us at any time for any reason, including for any breach of warranty claim, or according to any law, regulation or rule (including a clearinghouse rule), by the bank on which it is drawn or any collecting bank, we may accept that return and charge the item back against your account without regard to whether the other bank finally paid the item or returned the item in accordance with any applicable midnight deadline or clearinghouse rule. We may debit your account for any interest you may have provisionally earned on the item. We may charge you a fee for each returned item. Different fees may apply to domestic and foreign items. We may debit your account for a returned item, including an indemnified copy of the original item, or an image replacement document ("IRD"), at any time on or after the day it is returned to us by electronic, automated clearinghouse ("ACH") or other means or on the day we receive notice that the item is being returned to us - whichever is earlier. We are not liable for any action or inaction to recover payment of a returned item. If one of your cashed or deposited items has been paid by the financial institution on which it is drawn and is later returned to us with a claim that there is a breach of warranty (for example, it bears a forged or missing endorsement or is altered in any way), that the item is counterfeit, bears an unauthorized signature, contains an encoding error or should not have been paid for any other reason, we may debit your account for the amount of the item (plus any associated fees) and pay the amount to the claiming party.

We are not obligated to question the truth of the facts that are asserted, to assess the timeliness of the claim or to assert any defense. We do not need to notify you in advance of our actions related to the claim. If you do not have sufficient available funds to cover a returned item, we may overdraw your account and charge an overdraft fee. We are not liable to you if there are insufficient funds to pay your items because we withdraw funds from your account or in any way restrict your access to funds due to a hold or debit to your account in connection with a returned item. You agree to immediately repay an overdraft caused by a return of a cashed or deposited item.

In some cases the financial institution on which the returned check or other item is drawn may send us an electronic notice of return, an indemnified copy of the original, or an image replacement document ("IRD"), instead of returning the item. We may act on, and you agree to be bound by, the electronic notice of return, or indemnified copy or IRD just as if the original item had been returned.

If we receive advance notice from another financial institution that it is returning to us unpaid a check of \$2,500 or more, we generally send you a notice. We do not send a notice about returned checks of less than \$2,500.

Substitute Checks

You agree that you will not deposit "substitute checks" as defined by federal law or Image Replacement Documents ("IRD") that purport to be substitute checks and have not been previously endorsed by a bank. If you deposit such an item, you give us the same warranties and indemnities that we, as a reconvertor bank would give under applicable law or regulation and you agree to reimburse us for claims, losses, costs and damages we may incur. If you provide us with an electronic representation of a substitute check for deposit into your account instead of an original check, you agree to reimburse us for all claims, losses, costs and damages we incur because the substitute check resulting from the electronic representation does not meet applicable substitute check standards or causes duplicate payments.

Third-Party Endorsements

We may require that checks and other items you want to deposit or cash be endorsed by all parties to whom the items are payable. We may require verification of any endorsement either through an endorsement guarantee or personal identification.

Processing Transactions - Withdrawals

Transactions that you perform are not effective until we process them at the processing center for the banking center where we opened your account.

Check Cashing

If a person wants to cash your check in one of our banking centers, we may require identification satisfactory to us and we may charge them a fee for cashing the check. We may also impose additional requirements, such as requiring their fingerprint or limiting the locations where we will pay the check in cash. If the person with your check fails or refuses to satisfy our requirements, we may refuse to cash the check. We are not liable to you for refusing to cash the check or for charging a check cashing fee.

Some of our banking centers do not have tellers. Checks can not be cashed at these banking centers.

We may cash checks payable to any signer on your account when endorsed by any other signer.

We are usually happy to cash checks for you. However, there may be times when we refuse to cash a check written to you because cashing checks drawn on accounts at our other banking centers or at other banks can present problems similar to using uncollected funds from deposited checks. If we do cash such a check and it is returned to us unpaid for any reason, at any time, we may deduct the amount of the check from your account and we may charge you a fee.

If you ask us to cash a check or other items for you, we may apply the proceeds of the check or other item to fees, overdrafts and other amounts you owe us.

Check Legends

Some customers order checks printed with legends, or notations, such as "not valid after 60 days" or "not valid over \$1,000." We may also receive checks on which conditions or other notations are written. We may disregard these instructions and pay the item even if the condition or other notation has not been met. We are not liable to you for any claims, costs, losses or damages that result from the placement of these restrictions or other notations on your checks, or from our disregarding them.

Check and Item Processing Orders

We may accept, pay, certify, or charge to the appropriate account checks and other items in any order we choose. An

"item" includes a check, substitute check, purported substitute check, electronic item or transaction, draft, demand draft, remotely created item, image replacement document, indemnified copy, ATM withdrawal or transfer, point-of-sale transaction, preauthorized payment, automatic transfer, telephone-initiated transfer, ACH transaction, Online Banking transfer or bill payment instruction, withdrawal slip, in-person transfer or withdrawal, cash ticket, deposit adjustment, any other instruction or order for the payment, transfer or withdrawal of funds, and an image or photocopy of any of the foregoing.

We may establish different processing orders for checks and other items. We may establish categories for checks and other items. A category may include more than one type of item. We may establish a processing priority for each category. For example, we may treat ATM withdrawals and loan payments as one category and checks as another category and then process ATM withdrawals and loan payments before checks. Within each category, we may process checks and other items in any order we choose. We may in our sole discretion change our priorities, categories, or orders at any time without notice to you. Even if we provisionally post checks or other items to your account during the day, we may treat them as if we received all of them at the end of the day and process them in any order we choose. We do not process transactions in the order in which they occurred.

When you do not have enough available funds in your account to cover all of the checks and other items presented that day, some processing orders may result in more insufficient funds items and more fees than others. We may choose our processing orders in our sole discretion and without notice to you, regardless of whether additional fees may result.

We currently process checks and other items according to certain categories and priorities. Within each, we process checks and other items in most states from the highest to lowest dollar amount. If there are not enough available funds to cover all of the checks and other items processed on any given day, these categories, priorities and high-to-low processing orders may result in more insufficient funds items and more fees than may have resulted if we had used another processing order.

Collection Items

When another financial institution submits to us for collection an item drawn on your account, we may charge the other financial institution a fee. When you do not have enough funds in your account for us to process a collection item drawn on your account, we may charge you an overdraft or returned item fee.

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Check Stock and Ink

Checks you write may be converted into electronic images (truncated) during the check collection and return process. If you elect to have your checks printed by a vendor that has not been approved by us, or you use check stock or features (such as security features) that cause critical data to disappear or be obscured upon truncation, or you make your check out in a way (such as, using a lightly colored ink) that causes critical data to disappear or be obscured upon truncation, you agree to bear the risk of loss. You also agree to bear the risk of loss if you use check stock that contains defects, such as printing inaccuracies, faulty magnetic ink, faulty encoding, or duplicate serial numbers.

You should not preprint your driver's license number or social security number on your checks.

Converting Checks to Electronic Debits

Some businesses convert checks that you give them into electronic debits (sometimes referred to as an electronic check). An electronic debit for the transaction amount is then sent to us. When we receive the electronic debit, we charge it to your account. We may receive the electronic debit to your account immediately after the business enters the transaction, so you may have a reduced right to stop payment and you may incur an overdraft if you do not have sufficient funds in your account to cover the amount of the check at the time you write the check or authorize the transaction. Since the check is not sent to us for processing, we do not have a copy of your check. These electronic debits are listed on your account statement. If the business uses a blank check to initiate an electronic debit at the point of sale, the business should give you notice of the conversion and return the voided check to you. You should treat the voided check with care because someone else who obtains possession of it could use the information to initiate additional debits against your account. A business that receives your check by mail and converts it to an electronic debit should give you notice of the conversion and destroy the original check.

Examining Checks

We receive checks in great volume. This and compliance with expedited funds availability laws require us to use automated check processing procedures. Like most other banks, we select some checks for review on the basis of certain criteria that change from time to time. This means that most checks are processed on the basis of the MICR (Magnetic Ink Character Recognition) line printed along the bottom edge of

the check, and are not individually examined for dates, maker signatures, legends or endorsements. You agree that we will have exercised ordinary care if we examine only those items that we have identified according to certain minimum criteria which we may establish for inspection. Since we do not individually examine most checks, it is critical for you to take care of your checks, promptly review your account statement, and immediately report any suspicious or unauthorized activity to us. You agree that automated processing of your checks is reasonable and that you accept responsibility for preventing and reporting forgeries, alterations, and other unauthorized uses of your checks or accounts. You agree that the exercise of ordinary care will not require us to detect forgeries or alterations that could not be detected by a person observing reasonable commercial standards.

Since some types of check fraud have become more difficult to detect, we may elect in some cases to make further inquiries about certain checks or other paper items which are presented for payment against your account. If we are unable to contact you, or take other steps, to determine with reasonable certainty that these payments are authorized by you, we may return the checks or other paper items unpaid without any liability by us to you.

Facsimile Signature

A facsimile signature can be a convenient method for signing or endorsing documents and other items. If you use a facsimile signature, you are responsible for any withdrawal from your account that bears or appears to us to bear a facsimile signature that resembles or purports to be the signature of a person authorized to withdraw funds. We will not be liable to you if use of the facsimile device (or similar device utilized to affix your signature) was unauthorized. You are responsible even if the size, or color of the facsimile signature is different from that of any signature previously presented to us. We may pay the withdrawal and may charge your account for it. You agree to reimburse us (and we may charge your account) for all claims, costs, losses and damages, including attorneys' fees, that result from our payment of a withdrawal bearing either a facsimile that resembles or purports to bear your signature or a facsimile that we believe you authorized.

Foreign Currency

You may not write checks or other withdrawal orders on your account, which order payment in a foreign currency.

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"Freezing" Your Account

As a part of our loss prevention program, when we suspect that irregular, unauthorized, or unlawful activities may be involved with your account, we may "freeze" (or place a hold on) the balance in your account and in other accounts you maintain with us, without any liability to you, pending an investigation of such suspected activities. If we freeze your account, we give any notice required by the laws governing your account.

Items Resulting from Voluntary Disclosure

If you voluntarily disclose your account number to another person orally, electronically, in writing or by other means, you are deemed to authorize each item, including electronic debits, that results from your disclosure. We may pay these items and change your account.

Large Cash Withdrawals

We may require reasonable advance notice for large cash withdrawals. We may also refuse to honor a request to withdraw funds in cash from your account or to cash a check (including a cashier's check or other official item) at a banking center if we believe that the amount is unreasonably large or that honoring the request would cause us an undue hardship or security risk. We may require that such withdrawals be made at one of our cash vaults by an armored courier, acceptable to us and at your sole risk and expense. We are not responsible for providing for your security in such transactions.

Multiple Signatures

We may transfer funds between your accounts, transfer your account to another banking center, and take other action on the oral or written instructions of any signer. We may require written authorization for some actions. We do not offer accounts on which two or more signatures are required for a withdrawal. If you indicate on your checks or signature card or other account documents that more than one signature is required for withdrawal, this indication is for your own internal procedures. It is not binding on us. We may pay out funds from your account if the check, item, or other withdrawal instruction is signed or approved by any one of the persons authorized to sign on the account. We are not liable to you if we do this.

Paying Checks and Other Items

We may debit your account for a check or other item drawn on your account either on the day it is presented to us for payment, by electronic or other means, or on the day we receive notice that the item has been deposited for collection at another financial institution — whichever is earlier. If you do not have sufficient available funds to cover the item, we decide whether to return it or to pay it and overdraw your account.

We may determine your balance and make our decision on an insufficient funds item at any time between our receipt of the item or notice and the time we must return the item. We are required to determine your account balance only once during this time period.

When you deposit checks or other items that are drawn on another account with us, we may treat such items as presented to us for payment on the business day that they are received by our office that processes checks drawn on the other account.

Returned Items

If we decide not to pay a check or other item drawn on your account, we may return the original or a copy of the item or we may send an electronic notice of return and keep either the original or a copy of the item in our records. If we send an electronic notice of return, you agree that any person who receives that electronic notice may use it to make a claim against you to the same extent and with the same effect as if we had returned the original item.

Sample Signature

To determine the authenticity of your signature, we may refer to the signature card or to a check or other document upon which your signature appears. We may use an automated process to reproduce and retain your signature from a check upon which your signature appears. If you create your own checks, or obtain them from someone else, and we cannot accurately verify your signature on a check by comparing it with a check that posted to your account, you are responsible for any losses that may result from our inability to use that check to verify your signature.

Stale-Dated and Postdated Checks

If a stale-dated check — that is, a check dated more than six months in the past — is presented for payment against your account, we may pay the check and charge it to your account. If a postdated check — a check dated in the future

— is presented for payment, we may pay the check and charge it to your account even if it is presented for payment before the date stated on the check. If you do not want us to pay a stale-dated or postdated check, you must place a stop payment order on it. See the *Stop Payment Orders and Postdating Orders* section.

Substitute Checks, Indemnified Copies, Images and Image Replacement Copies

In some cases, we may be sent an indemnified copy of your original check, an image replacement document (IRD), a substitute check or an image of your check, instead of the original item. We may act upon presentation of an IRD, indemnified copy, substitute check, or image of your check and pay these items against your account, just as if the original item had been presented.

Unpaid Items

If we decide not to pay a check or other item drawn on your account, we may return the original or a copy of the item or we may send an electronic notice of return and keep either the original or a copy of the item in our records. If we send an electronic notice of return, you agree that any person who receives that electronic notice may use it to make a claim against you to the same extent and with the same effect as if we had returned the original item.

Additional Terms and Services

This chapter contains additional terms that apply to your deposit account and describes some other services we offer for use with your account.

Automatic Transfer Service

With this service, you may have funds transferred automatically from must Bank of America checking or savings accounts to another Bank of America checking or savings account or to pay a Bank of America loan or credit card account or safe deposit rental fee.

Federal regulation places limits on the number of automatic transfers you may make from savings accounts. We may also limit the frequency and number of automatic transfers that can be made from an account each month. Certain other restrictions apply.

In most cases, we make transfers periodically on the days and for the amounts that you specify. For Bank of America loan payments, however, transfers must be made on the due date each month. A scheduled transfer that falls on a weekend or bank holiday is made the next business day. If we are unable to complete a transfer because you do not have enough available funds in your account, we may cancel this service.

Business Days

Our business days are Monday through Friday, excluding bank holidays. We may switch from one business day to the next business day before the end of the calendar day. Hours of the business day for any given banking center are available at the banking center.

Check and Deposit Slip Forms

We offer checks, withdrawal forms and deposit slips in a number of styles and at various prices. We recommend that you use checks and other forms that we provide.

Unless we have approved them in advance, we may refuse to accept checks or other forms that you create or someone else provides. If you use checks or other forms that do not meet our specifications at any time, you are liable for all claims, costs, losses and damages that may result — for example, if our equipment is unable to read or process the non-standard checks. You may obtain a copy of our check printing specifications by calling the telephone number on your statement or asking your account representative. The specifications include the magnetically encoded numbers, the

size of the check and the weight, color and type of paper. If you create or obtain checks or other forms from someone else and we cannot process some or all of them through our automated check processing systems, we may refuse to accept them and we may charge you a fee for each check or other item.

You must also confine information that you place or have preprinted on the back of your checks to the area that extends 1 1/2 inches from the trailing edge of the back of the check. The trailing edge is the left side of the check when you look at it from the front. If you issue checks on your account that have a carbon band, or if you imprint information on the back of the check, it may overlap into the area reserved for the banks' endorsements and may cause delays in returning the item. You are liable for and agree to reimburse us for all claims, costs, losses and damages that result from late return of a check due to material entered on the back of the check that obscured or interfered with the depository or another bank's endorsement.

You are responsible for verifying the accuracy of all information on your checks and other forms. Our liability, if any, for any printing errors on checks or other forms obtained through us is limited to the cost of replacing the forms. We are not liable for any claims, costs, losses or damages you may incur when you use checks or other forms not obtained through us.

Check Copies

We generally keep a copy of each check we post to your account for seven years from the date the check posts to your account. The copies are available to you and are typically kept on microfilm or as a digital image. In the rare instance where a copy is unavailable or of poor quality, we are not liable to you for any claim, cost, loss or damage of any kind. After seven years, we may destroy the copies.

Requesting Copies. You may request a copy of a canceled check by calling us at the number for Customer Service on your statement. Generally, we mail or make a copy available within seven business days. If we need more time, we will tell you. In some states, we may charge you a fee for check copies. For some accounts you receive a monthly allowance. Please see the *Schedule of Fees* for your account.

To produce a copy, we need: account number, check number, exact amount of the check, and date the check was paid. This information is on your statement. Some checks that you write may be converted to electronic debits. In this case the check is not sent to us for processing so we do not have a copy. These electronic debits are listed on your account statement.

Check Enclosure Service

With this service, we return with your statement your canceled checks that we receive and post to your account during the statement cycle. We may also provide you with images of your cancelled checks. Some checks that you write may be converted into images or electronic debits during the check collection and return process. If this happens, your check is not sent to us and, as a result, we cannot return the check to you. In some cases we may receive a substitute check (also called an image replacement document) instead of your check. We do not return substitute checks with your statement.

Check Image Service

With this service, we provide with your statement an image of the front of each of your canceled checks that we post to your account during the statement cycle. We print images of your checks up to 10 images on a page. We do not return your canceled checks. We store copies of your canceled checks (usually on microfilm or as a digital image) and then destroy the checks. Copies of checks are generally available for seven years from the date the checks are paid. See *Check Copies* above. In some states and for some business accounts we provide an image of the front and back of your canceled checks. When you use this service, checks are deemed made available to you at the same time your statement is made available.

Check Safekeeping Service

With this service, you do not receive your canceled checks with your account statement. Instead, we report on your statement information about your canceled checks (check number, amount and date posted) that posted to your account during the statement cycle. We store copies of your canceled checks (usually on microfilm or digital image) and destroy the checks. Copies of the checks are generally available for seven years from the date the checks are paid. See *Check Copies* above. When you use this service checks are deemed to be made available to you at the same time your statement is made available.

If you have a combined statement, you may usually have your checks returned on your primary checking account. All accounts linked to your primary account and included on the combined statement automatically receive check safekeeping service.

If your statements are returned to us, you automatically receive check safekeeping service. If you usually receive your checks with your statement but we are unable to return them because of circumstances beyond our reasonable control, we may convert your account to check safekeeping service for the period that the circumstances persist.

Unavailable Copies. If you use our check safekeeping service and we cannot provide a copy of a check that posted to your account and you lose money as a result, we may cover the loss up to the amount of the check. We are not liable to you for any special, incidental or consequential loss or damage of any kind.

Conflicting Claims About Your Account

If another person or entity makes a claim against funds in your account, or if we believe that a conflict exists between signers on the account or that there is a dispute over matters such as the ownership of the account or the authority to withdraw funds, we may take one or more of these actions without our being liable to you: continue to rely on current signature cards and other account documents; honor the competing claim upon receipt of evidence we deem satisfactory to justify such claim; freeze all or part of the funds until the dispute is resolved to our satisfaction; close the account and send a check for the balance in the account, payable to you or to you and each claimant; or pay the funds into an appropriate court for resolution. You are liable for all expenses and fees we incur, including attorneys' fees, and we may charge them to your account.

Currency Exchange Rates

If we receive a transaction denominated in a foreign currency for credit to your account (such as a wire denominated in a foreign currency), we may determine in our discretion and then assign a currency exchange rate to your transaction without notice to you. You agree to this procedure and accept our determination of the currency exchange rate. We may consider many factors in setting our currency exchange rates, including without limitation exchange rates charged by other parties, desired rates of return, market risk and credit risk. You acknowledge that exchange rates for retail and commercial transactions, and for transactions effected after regular business hours and on weekends, are different from the exchange rates for large inter-bank transactions effected during the business day, as reported in *The Wall Street Journal* or elsewhere. Exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from our rates. We are not liable to you if our rates are different from rates offered or reported by third parties, or offered by us at a different time, at a different location, for a different transaction amount, or involving a different payment media (such as banknotes, checks and wire transfers). You also acknowledge that currency exchange rates can be highly volatile. You assume all risks relating to or arising from fluctuations in the exchange rates between currencies involved in each of these transactions.

Cutoff Time for Receipt of Orders

Our cutoff time for receipt at a banking center of a stop payment order or postdating order, restraining order, writ of attachment or execution, levy, garnishment or similar order relating to your account is 10:00 a.m. local time or, if later, one hour after the banking center opens each business day. The cutoff time relates to our obligation to pay or return checks and other items. If we receive an order before this cutoff time, we may review items presented for payment against your account on the previous business day to determine whether we need to return any of them to comply with the order. If we receive the order after the cutoff time, we may not review items presented on the previous business day.

For example, if you give us a stop payment order after our cutoff time and the item you want to stop was previously presented for payment or otherwise before we have the opportunity to act on your order, your order comes too late to stop payment on the item. Or, if we receive a levy before the cutoff time and you do not have enough funds in your account to cover both the levy and all items presented against your account the previous business day, we may return one or more items and apply the funds to the levy.

Death or Incompetence

You agree to notify us promptly if any owner or authorized signer on your account dies or is declared incompetent by a court. We may place a hold on your account and refuse to accept deposits or permit withdrawals when an owner dies or is declared incompetent. We may hold any funds in your account until we know the identity of the successor.

If a deposit — including salary, pension, Social Security and Supplemental Security Income (SSI) — payable to the deceased owner is credited to the account after the date the deceased owner died, we may debit the account for the deposit and return it to the payor.

Indemnification and Limitation of Liability

You agree to reimburse us for all claims, costs, losses and damages (including fees paid for collection) we may incur with respect to overdrafts or returned deposits in connection with your account.

We are not liable to you for any claim, cost, loss or damage caused by an event that is beyond our reasonable control. In particular, we are not liable to you if circumstances beyond our reasonable control prevent us from, or delay us in, performing our obligations for a service, including acting on a payment order, crediting a funds transfer to your account, processing a transaction or crediting your account.

Circumstances beyond our reasonable control include: a natural disaster, such as a tornado, hurricane, earthquake or flood; emergency conditions, such as a war, terrorist attack, riot, fire, theft or labor dispute; a legal constraint or governmental action or inaction; the breakdown or failure of our equipment for any reason, including a loss of electric power; the breakdown of any private or common carrier communication or transmission facilities, any time-sharing supplier or any mail or courier service; the potential violation of any guideline, rule or regulation of any government authority; suspension of payments by another bank; or your act, omission, negligence or fault.

We are not liable for special, incidental, exemplary, punitive or consequential losses or damages of any kind.

Legal Process

We may accept and act on any legal process that we believe to be valid without any liability by us to you, whether served in person, by mail, by facsimile transmission, or by other means, at locations other than the banking center or office at which the account, property or records are held or if served in a state other than the state where the account, property or records are held. "Legal process" includes a subpoena, restraining order, injunction, writ of attachment or execution, levy, garnishment, tax withholding order, search warrant, forfeiture or other similar order relating to your account. You direct us not to contest the legal process.

We will hold and turn over funds or other property to the court or creditor as directed by the legal process. We do not pay interest on the funds during the period we hold them. If we use funds from a time deposit account, we may impose an early withdrawal penalty.

We may charge your account a legal process fee for each order. You agree to pay our fees and expenses for research and copying of documents and all other expenses, including administrative expenses, that we incur in responding to any legal process related to your account. These may include attorneys' fees. We may deduct these fees and expenses from any of your accounts without prior notice to you. Any garnishment, attachment or other levy against your account is subject to our right of setoff and any security interest we have in the account.

We are not liable to you for not paying items because we have held or withdrawn funds from your account or in any way restricted your access to funds because of a legal process.

If we receive a subpoena or other legal process for information about your account, which we believe requires our compliance, we may release the information. If the legal

process directs us to release information about an account that is reported on a combined statement, we may release the entire combined statement, even if other accounts on the combined statement are not covered by the legal process. If the legal process requests information about one account owner or signer, we may release information about other co-owners or signers on the account, even if the other co-owners or signers are not covered by the legal process.

Notice of Withdrawal

Federal regulations require us to retain the right to require all savings and interest-bearing checking account depositors to give seven days' written notice before making a withdrawal. It is unlikely, however, that we would require this notice.

Power of Attorney

If you want to grant someone power of attorney over your account, we ask that you complete our power of attorney form, which is available at many of our banking centers. If your state has a statutory form power of attorney, we also generally accept that form. However, we may accept any form that we believe was executed by you and act on instructions we receive under that form without any liability to you. You agree to reimburse us for all claims, costs, losses and damages that we incur in accepting and acting on any power of attorney form that we believe you executed. In some cases we may require that the attorney-in-fact confirm in an affidavit that the power has not been revoked or terminated or that you register the power with the appropriate recording authorities. We may restrict the types or sizes of transactions we permit an attorney-in-fact to conduct.

We may require a separate form for each attorney-in-fact and for each account for which you want to grant power of attorney. If your attorney-in-fact does not present the original form, we may refuse to honor any power of attorney you grant with or without cause and with no liability to you. When we accept a power, we may continue to recognize the authority of your attorney-in-fact until we receive written notice of revocation from you and have had a reasonable time to act upon it.

Right of Setoff

We may generally take funds in your accounts with us that you or others deposit and apply those funds to amounts you owe us. This is commonly referred to as a "setoff." Our setoff rights are different than, and in addition to, other rights we have under this Agreement to deduct from your account, or charge your account for, amounts you owe us. As examples

of deductions or charges that are not setoffs, the Agreement allows us to deduct fees from your account and to deduct overdrafts from deposits to your account and, if a check that we accepted for deposit to your account is returned to us unpaid, the Agreement allows us to charge your account for the amount of the check.

The law imposes some conditions or limits on our ability to take or setoff funds from your accounts with us or our affiliates and from accounts you may own with others. To the extent that you may do so by contract, you waive those conditions and limits and authorize us to apply funds in your accounts (and accounts you own with others) with us or with our affiliates to amounts you owe us. The following paragraphs are examples of situations where we may take or setoff funds from those accounts.

We may recover amounts you owe us from any account you maintain with us or with our affiliates without notice to you, except that this provision does not apply to any consumer credit covered by the federal Truth in Lending law. If you are a sole proprietor, we may charge any of your personal or business accounts. If your business is a partnership, we may also charge the personal accounts of any general partner.

We may use funds held in joint accounts to repay the debts on which any one of you is liable, whether jointly with another or individually. We may charge any such debt against your account at any time, without regard to the origin of deposits to the account or beneficial ownership of the funds.

Funds held in individual accounts may be used to repay your debts, whether such debts are owed jointly with another or individually. Your debts include: those owed by you arising out of another joint account of which you are a joint owner, even if they are not directly incurred by you; those on which you are secondarily liable; or any amounts for which we become liable to any governmental agency or department or any company as a result of recurring payments credited to any of your accounts after the death, legal incapacity or other termination of entitlement of the intended recipient of such funds.

If we use funds from a time deposit account, the funds withdrawn are subject to the early withdrawal penalty.

We are not liable to you for dishonoring items where withdrawals described in this section result in insufficient funds in your account.

Some government payments (such as Social Security, Supplemental Security Income, Veterans, and other federal or state benefits) may be protected from attachment, levy or other legal process under federal or state law. If such protections would otherwise apply to funds we take or setoff from

your accounts, to the extent that you may do so by contract, you waive these protections and agree that we may take or setoff funds, including federal and state benefit payments, from your accounts to pay amounts you owe us.

Stop Payment Orders and Postdating Orders

Stop Payment Orders. You may ask us to stop payment on a check or other item if it has not already been paid, but we may not honor your request if you write a check and use as identification your Bank of America ATM Card or Check Card. You may not stop payment on a Check Card, ATM or point-of-sale transaction.

Postdating Orders. If you write and postdate a check (that is — you put a future date on the check), we may pay it and charge it to your account even if it is presented for payment before its date. You may ask us not to pay a postdated check before its date if the check has not already been paid. To do so, you must give us a stop payment order.

Placing Stop Payment Orders. You may request a stop payment order by mail or by calling us at the number for Customer Service on your statement. We may require you to complete a form authorizing the order. You must give us sufficient notice so that we have a reasonable period of time to act on your request. A stop payment order takes effect only after we have a reasonable opportunity to verify that the item is unpaid. We may charge you a fee for each stop payment order and each renewal of the order.

To place a stop payment order, we need the following information: account number, exact amount of the item and item number. We may also require the date of the item, the name of the person who signed or authorized the item, and the name of the party to whom the item was made payable. We may use only a portion of the required information to identify an item.

We use a computer system to identify items. Therefore, to act on your order, we need the item number and the exact amount of the item — dollars and cents. If you give us the wrong amount (even one penny off) or the wrong item number, we may pay the item.

In some cases, we may pay an item even if an order is in effect. For example, if one of our banking centers, without notice of your request, cashes a check that you have asked us to stop, we may still pay the check.

A stop payment order generally expires after six months. However, there are circumstances in which we may, in our sole discretion, elect to honor a stop payment order for a longer period of time without notice to you. If you do not want the order to expire after six months, you must renew it. Each renewal is treated as a new order. If you want the order to

expire in less than six months, you must cancel the order on or after the date you want it to expire. You may cancel the order by mail or by calling us at the number for Customer Service on your statement. Your request to cancel the order is not effective until we have a reasonable opportunity to act on it. We cancel the order automatically when the account on which the item is drawn is closed.

If the item is presented for payment after the order expires, we may pay the item.

If a postdated check that is subject to a stop payment order is presented to us for payment while the order is in effect, we may return the check with the designation "payment stopped" or "refer to maker."

Our liability for paying an item subject to a proper and timely stop payment order is limited to the actual loss suffered, up to the amount of item. You must prove the loss to our satisfaction. We are not liable to you for any special, incidental or consequential loss or damage of any kind.

Additional Information about Automated Clearing House (ACH) Stop Payment Orders. From time to time, we may receive ACH debits to your account from senders you previously authorized to debit your account. You may ask us to stop payment on a future ACH debit to your account if the item has not already been paid. You are responsible for notifying your sender that you have revoked your previous authorization for ACH debits.

For an ACH stop payment order, we generally need the information listed above under *Placing Stop Payment Orders*. We also need your name and telephone number and the type of account (checking or savings). We may also need the date the prior ACH debit from this sender posted to your account so that we can obtain the company name and company identification number used by your sender and printed on your statement. Otherwise, you must provide us with the company name and company identification number.

If you do not know the amount of the ACH debit, we may still be able to place the stop payment based on the company name and company identification number of the sender, but this may stop all ACH items from this sender. If you give us the wrong company identification number or if the sender changes the company identification number, we may pay the item.

The ACH stop payment takes effect within three business days. If you give us oral instructions, we may require you to confirm them in writing. If you do not, we may remove the stop payment after 14 days. Otherwise, your order will be effective for six months.

For more information on stopping a preauthorized payment on a personal account, see *Preauthorized Payments* in the section titled *Electronic Banking Services*.

Sub-Accounts

For regulatory accounting purposes we may classify checking accounts as two sub-accounts: a checking sub-account and a savings sub-account. For interest-bearing checking accounts, we calculate and pay interest at the same rate and in the same way on both sub-accounts. For non-interest-bearing checking accounts, we do not pay interest on either sub-account. We may transfer funds between these sub-accounts. We record the sub-accounts and any transfers between them on our internal accounting records only. Otherwise, the sub-accounts are subject to the same terms as the checking and savings accounts described in this Agreement.

Treasury Management Services

We offer Treasury Management Services to help business customers manage their cash flow, gather information on their accounts and perform automated transactions. If you are interested in information on Treasury Management Services, please contact a Treasury Management representative.

Unclaimed Property

Unclaimed property laws require us to turn over abandoned accounts to the applicable state. The applicable state is generally the state listed in the address for your account statement. Your account is usually considered abandoned if you have not performed at least one of the following activities for the period of time specified in the applicable state's unclaimed property law: made a deposit or withdrawal, written to us about the account, or otherwise shown an interest in the account, such as asking us to keep the account active. Please note that you need to perform the activity, which means that automatic deposits and withdrawals may not be considered under your state's unclaimed property laws.

Before we turn over an abandoned account, we may send a notice to the address we currently show for the account statement. If mail we previously sent to this address was returned, we may not send this notice.

If you have not made a deposit to or withdrawal from your account for a period of time that we consider substantial, then (unless prohibited by federal law or the law of the state where we maintain your account) we may charge dormant account fees on the account in addition to regular monthly maintenance and other fees and, if the account received interest, we may stop paying interest on the account. We may also refuse to pay items drawn on or payable out of the account. If you re-establish contact with us, we do not have to reimburse you for these fees and we are not liable to you for any interest that would otherwise have accrued on your account.

Verification of Transactions and Right to Reverse Transactions

All transactions, including those for which we provide a receipt, are subject to our final verification. Verification of a deposit does not occur at the teller window. Consequently, the receipt that you receive at the time of your deposit is not evidence that your deposit has been verified. We may reverse or otherwise adjust any transaction (both credit and debit) that we believe we erroneously made to your account at any time without prior notice to you.

Waiver and Severability

We may delay enforcing our rights under this Agreement without listing them. No delay in enforcing our rights will affect your obligation to pay us fees and other amounts you owe us under this Agreement. If we waive a provision of this Agreement, the waiver applies only in the specific instance in which we decide to waive the provision and not to future situations or other provisions.

If any part of this Agreement is inconsistent with any applicable law, then to the extent the law can be amended by contract, you and we agree that this Agreement governs and that the law is amended by this Agreement. A determination that any part of this Agreement is invalid or unenforceable will not affect the remainder of this Agreement.

Tax Information

In most instances we are required to report annually to you and to the Internal Revenue Service (IRS) interest payments that total \$10 or more during the year on your deposit account with us. We may also report this information to the appropriate state revenue authority.

When you open an account, we are required to obtain — and each U.S. citizen or resident alien must give us — a certified U.S. Taxpayer Identification Number (TIN) and information regarding your backup withholding status. When you apply for an account, you certify that you have provided the correct TIN for the account holder and the correct backup withholding status.

For personal accounts, the TIN is your Social Security Number (SSN). For personal accounts with more than one owner, we report taxpayer information for the person listed first in our records. Resident aliens who do not qualify for Social Security should provide their Individual Taxpayer Identification Number (ITIN). For other accounts, the TIN is the owner's Employer Identification Number (EIN). For more information on providing the correct name and TIN, see the chart below.

If you do not give us a certified name and TIN, if the IRS notifies us that the name and TIN you gave us is incorrect, or if the IRS notifies us that you failed to report all your interest and dividends on your tax return, we are required to backup withhold at the current rate on interest earned on your account and pay it to the IRS. Backup withholding is not an additional tax. You should claim amounts withheld and paid to the IRS as a credit on your federal income tax return.

For more information or to determine how this information applies to you, consult your U.S. tax advisor.

Availability and Reporting of Interest

For interest-bearing checking and savings accounts, interest is reported to the IRS as it is earned. For time deposits, interest is reported to the IRS when it is paid.

What name and number to give the requester	
For this type of account:	Give name and Social Security number of
1) Individual	The individual
2) Two or more individuals (joint account)	The actual owner of account or, if combined funds, the first individual on account ¹
3) Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4) a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ⁴
5) Sole proprietorship or single-owner LLC	The owner ¹
For this type of account:	Give name and Employer ID number of
6) Sole proprietorship or single-owner LLC	The owner ¹
7) A valid trust, estate, or pension trust	Legal entity ⁴
8) Corporate or LLC electing corporate status on Form 8832	The corporation
9) Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10) Partnership or multi-member LLC	The partnership
11) Broker or registered nominee	The broker or nominee
12) Account with Dept. of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first the name of the person whose number you furnished. If only one person on a joint account has an SSN, that person's number must be furnished.

² List the minor's name and furnish the minor's SSN.

³ You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).

⁴ List first the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: If there is more than one name, the number will be considered to be that of the first name listed.

Resolving Disputes

PLEASE READ THIS DISPUTE RESOLUTION PROVISION CAREFULLY.

Subject to the provisions of the *Limitation* section below, you have the right to compel us at your option, and we have the right to compel you at our option, to determine any individual Claim with a value of less than \$1 Million by arbitration. All other Claims will be resolved in court by a judge without a jury; except those brought in California state court, in which case such Claims will be determined by general reference to a referee under California Code of Civil Procedure (C.C.P.) Section 638. The arbitration, judicial reference or trial by a judge will take place on an individual basis without resort to any form of class or representative action.

SUBJECT TO THE PROVISIONS OF THE LIMITATION SECTION BELOW, WHETHER THE CLAIM IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, YOU AND WE AGREE AND UNDERSTAND: (I) THAT YOU AND WE ARE BOTH GIVING UP THE RIGHT TO TRIAL BY JURY, AND (II) THAT THIS SECTION PRECLUDES YOU AND US FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION OR JOINING OR CONSOLIDATING THE CLAIMS OF OTHER PERSONS (HEREINAFTER REFERRED TO AS THE "CLASS ACTION WAIVER").

"Claim" means any claim, dispute or controversy between you and us that in any way arises from or relates to this Agreement and your deposit relationship with us (including any renewals, extensions or modifications), except provisional or ancillary remedies from a court of competent jurisdiction, the exercise of which will not waive the right to arbitration or reference. Claim does not include any action that is brought in a small claims court or an equivalent court, provided that Claim does include any such action that is transferred, removed or appealed to a different court.

Arbitration and Judicial Reference

Arbitration is a method of resolving disputes in front of one or more neutral individuals, instead of having a trial in court in front of a judge and/or jury. A case sent to judicial reference is also heard by a neutral individual (a "judicial referee"), but remains in the court system subject to the same rules of procedure, discovery and evidence and appeal as any court case. The arbitrator or judicial referee, sitting alone

without a jury, will decide all questions of law and fact. The arbitrator or judicial referee will be an active or retired judge or attorney with more than 10 years of experience, chosen by mutual agreement of you and us. If you and we are unable to agree, then you must choose one of the following Administrators within 10 days of the our written notice that an agreement cannot be reached, in which case the arbitrator or referee will be selected in accordance with the Administrators' rules:

- American Arbitration Association ("AAA"), 335 Madison Avenue, New York, NY 10017, www.adr.org, (800) 778-7879.
- National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, MN 55405, www.arb-forum.com, (800) 474-2371.

If you do not choose the Administrator on a timely basis, we will select the Administrator.

Limitation

Regardless of anything else in this *Resolving Disputes* section, the validity and effect of the Class Action Waiver may be determined only by a court or judicial referee and not by an arbitrator. You and we both acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or found unenforceable, then this agreement to arbitrate (except for this sentence) will be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. You and we acknowledge and agree that under no circumstances will a class action be arbitrated.

Governing Law for Arbitration

Subject to the provisions of the *Limitation* section above, the arbitration of any matter involves interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the "FAA"). Subject to the provisions of the *Limitation* section above, the arbitrator will follow applicable substantive law to the extent consistent with the FAA. The arbitrator will give effect to the applicable statutes of limitation and may dismiss barred claims. Arbitrations will be governed by the rules of the Administrator, except that either party may submit a written request to the arbitrator to expand the scope of discovery normally allowable. Subject to the provisions of the *Limitation* section above, the arbitrator will award all remedies available in an individual lawsuit under applicable substantive law, provided that (and except as limited by applicable law)

under no circumstances will we be liable for any incidental, consequential, special, exemplary or punitive damages. At the timely request of either you or us, the arbitrator must provide a brief written explanation of the basis for the award. Judgment upon the award given by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision is final and binding, except for any right of appeal provided by the FAA.

Governing Law for Judicial Reference

Judicial reference shall be governed by C.C.P. Section 638 et seq and the judicial referee will determine all issues in accordance with existing California law and the California rules of evidence. The referee will be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication, provided that (and except as limited by applicable law) under no circumstances will we be liable for any incidental, consequential, special, exemplary or punitive damages. The award that results from the decision of the referee will be entered as a judgment in the court that appointed the referee, in accordance with the provisions of California Code of Civil Procedure Sections 644(a) and 645. You and we both reserve the right to seek appellate review of any judgment or order to the same extent permitted in a court of law.

Trial by a Judge Without a Jury

A Claim that is not submitted to arbitration or judicial reference will be decided by a judge without a jury as permitted by law.

Rules of Interpretation

Except as provided in the *Limitation* section above, if any portion of this *Resolving Disputes* section is determined to be invalid or unenforceable, it will not invalidate the remaining portions of this section. In the event of a conflict or inconsistency between this *Resolving Disputes* section and other terms of the Agreement or the applicable rules of the Administrator, this *Resolving Disputes* section will govern. If there is any conflict between this *Resolving Disputes* section and any other dispute provision (whether it be for arbitration, reference or any other form of dispute resolution), this *Resolving Disputes* section will prevail for Claims arising out of this Agreement or the transaction(s) contemplated by this Agreement.

Jurisdiction and Venue

Any action regarding your account must be brought in the state whose law governs or controls your account. You submit to the personal jurisdiction of that state, unless a Claim is submitted to arbitration and that location is not reasonably convenient for you, in which case you and we will attempt to agree on a location, and if unable to do so, then the location will be determined by the Administrator or arbitrator.

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ROA 912

Deposit Agreement and Disclosures

Effective September 1, 2003



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ROA 913

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General Terms

Welcome to Bank of America, and thank you for opening an account. Please read this agreement carefully and keep it for your records.

This publication and the applicable Schedule of Fees are part of the contract between you and us (the "Agreement") for your deposit relationship with us. When you open a deposit account with us, you agree to the terms and conditions described in this Agreement. Our deposit relationship with you is that of debtor and creditor. This Agreement and the deposit relationship do not create a fiduciary, quasi-fiduciary or special relationship between us.

We have banking centers in many states. This Agreement describes our deposit accounts and some related services that are available at our banking centers in the state or states listed in the Schedule of Fees for your account. Some accounts and services described in this publication may be available in other states as well, but not necessarily in every state.

Your and our rights and obligations under this Agreement are governed by and interpreted according to the laws of the state where we open your account and federal law. If state and federal law are inconsistent, federal law governs.

Throughout this Agreement, the words "you," "your" and "yours" refer to each account owner. "Bank of America," "we," "us" and "our" refer to Bank of America, N.A. "Banking center" refers to a branch of Bank of America.

We provide a copy of this Agreement to you when you open your account. You may obtain additional copies at our banking centers or by calling the number for Customer Service on your statement.

Changes to Agreement

We may change this Agreement at any time. For example: we may add new terms and conditions and we may delete or amend existing terms and conditions. We generally send you advance notice of the change. If a proposed change is favorable to you, however, we may make

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the change at any time without advance notice. If you do not agree with the proposed change, you may close your account. However, you indicate your agreement to the change if you continue to use your account or keep it open.

Charging an Account

We may deduct fees and other amounts you owe us under this Agreement from your accounts with us or our affiliates, except that this provision does not apply to any consumer credit covered by the Federal Truth in Lending law. We may make these deductions at any time without prior notice. If there are not enough funds in your account to cover the fees and other amounts you owe us, we may overdraw your account. You agree to pay immediately all amounts you owe us.

Closing an Account

You or we may close your checking or savings account at any time without advance notice, except that we may require you to give us seven days advance notice when you intend to close your savings or interest-bearing checking account by withdrawing your funds. (See *Notice of Withdrawal* in the Additional Terms and Services section.) You or we may close your time deposit account at maturity without advance notice. If your account reaches a zero balance, we may consider your account closed. This Agreement continues to govern matters related to your account even after your account closes.

If we close your account, we may mail a check to you at the address we currently show for your statement. We may either return deposits, checks and other items that we receive after your account is closed or in the case of deposits reopen the account and accept the deposit, without our being liable to you.

Fees

A schedule of some fees associated with our personal deposit accounts is provided in the Personal Schedule of Fees. A schedule of some fees associated with our business deposit accounts is provided in the Business Schedule of Fees. The schedule that applies to your account is part of the contract between you and us. You agree to pay for our services in accordance with the fees that we tell you apply to your account.

The fees for many of our products and services may vary from state to state or between regions within a state. The fees for your account are based on the state or region where we open your account. Fees are not determined by your state of residence.

Your account fees and terms may differ from those of other customers with the same type of account, based on our assessment of your overall relationship with us. We send you a notice if your account fees or terms vary from the information described in this Agreement.

For some business accounts we may charge a Federal Deposit Insurance Corporation ("FDIC") assessment based on the rate the FDIC charges us. The FDIC assessment may include deposit insurance charges, financing corporation (FICO) bond interest and other charges provided by law. This charge is variable. We may change it without advance notice. Please see the Schedule of Fees for your account.

From time to time we may list fees for some non-account services (such as wire transfers, cashiers checks, travelers checks, bond redemption and so on) in the Schedule of Fees. These fees may vary from state to state. The fees you pay for non-account services will be those charged by us in the state where you purchase the service. We may change these non-account fees at any time without notice. You can get current information about non-account services and the fees that apply to them at any banking center or by calling the number for Customer Service on your statement.

Information You Give Us

When you open a deposit account with us, you give us information about yourself and confirm that it is correct. We enter the information into our records. We may rely on that information until you notify us of a change and we have had a reasonable time to act on the new information.

All financial institutions are required by law, including the USA PATRIOT Act, to obtain, verify and record information that identifies each customer who opens an account with that financial institution.

Information About Customers

For our current privacy practices, please see the information on our website at www.bankofamerica.com.

Bank of America's Privacy Policy for Consumers

Our privacy policy for consumers is described in our publication, "Privacy Policy for Consumers." We provide our privacy policy to consumers who open a personal account with us. The privacy policy describes our general policy on handling customer information and contains some examples of when we disclose information. Other examples relating to your personal accounts are described in "Disclosing Information" below.

Disclosing Information

This section applies to both business and personal accounts. We may disclose information about your accounts to credit reporting agencies and to other persons or agencies who, in our judgment, have a legitimate purpose for obtaining information.

From time to time, subject to any applicable financial privacy laws or other laws or regulations, we may provide information on you and your accounts:

- to ChexSystems, Inc. or other account information services;
- to anyone who we reasonably believe is conducting a legitimate credit inquiry, including inquiries to verify the existence or condition of an account for a third party such as a lender, merchant or credit bureau;
- in response to any subpoena, summons, court or administrative order, or other legal process which we believe requires our compliance;
- in connection with collection of indebtedness or to report losses incurred by us;
- in compliance with any agreement between us and a professional, regulatory or disciplinary body;
- in connection with potential sales of businesses; and

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- to carefully selected service providers who help us meet your needs by assisting us in providing or offering our products or services.

ChexSystems. If we close your account because of your unsatisfactory handling, we generally report to account information services such as ChexSystems, Inc. your name, address, Taxpayer Identification Number (TIN), driver's license number and the date and reason the account was closed. The account information service may supply this information to others. This may adversely impact your ability to establish an account at any financial institution for up to five years from the date of the report.

Credit Reports and Other Inquiries

We may make any inquiries that we consider appropriate to help us determine if we should open, maintain or close your account. This may include verification of employment and credit reports or other reports from account information services and credit reporting agencies.

Recording and Monitoring Telephone Calls

We may record or monitor telephone calls between you and us. We need not remind you of our recording or monitoring before each call unless required to do so by law.

Release of Information

We offer you several convenient, time-saving methods by which you can obtain information on your accounts. We have adopted reasonable security measures for each method, but we cannot ensure against "unauthorized" inquiries. You agree that we are not responsible for the release of information to anyone who has gained possession of your ATM card, Check Card or other code or access device or who has learned your identifying characteristics such as personal identification number (PIN), account number or social security number, even if you have not authorized them to obtain the information.

Sharing Information with Affiliates

Accounts held by Consumers. You agree that we may share information that we have about you and your accounts

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among the Bank of America family of companies. Please refer to our publication, "Bank of America's Privacy Policy for Consumers," for information about the categories of information we may share among the Bank of America family of companies and how you may tell us not to share certain types of information among our family of companies.

Accounts held by Businesses. We may share information about our experiences with you with Bank of America Corporation and its subsidiaries and affiliated companies ("Bank of America Affiliates"). We may also share information that you have provided to us on applications or that we receive from outside sources among the Bank of America Affiliates. However, individuals may tell us not to share information about them from applications or outside sources compiled for purposes of determining eligibility for credit, insurance or other services by either writing us at Bank of America, Attn: Customer Information Operations, P.O. Box 27025, Richmond, VA 23261-7025 or calling 1.888.341.5000. Please provide your full name, street address, social security number and telephone number. Please allow 6 to 8 weeks for this election to become fully effective.

Ownership of Accounts

We may determine ownership of accounts from the information in our records.

Joint Accounts

If more than one person's name appears in the title of an account (without a fiduciary, beneficiary or other designation), the account is a joint account. All persons whose names appear on a joint account are co-owners of the account, regardless of whose money is deposited or who makes the deposits. Each co-owner acts as the agent of each other co-owner. Each co-owner authorizes each other co-owner to operate the account without the consent of any other co-owner. This includes authority to: add additional persons as co-owners; deposit funds and withdraw or transfer funds from the account; endorse for deposit to the joint account on behalf of any other co-owner an item payable to another co-owner; instruct us to stop payment on any item drawn on the account by any co-owner; obtain an ATM card or a Check Card; draw upon any overdraft or

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other line of credit connected to the account; obtain information about the account, including transactions conducted by other co-owners; pledge the account as security for any debts; and close the account.

Each co-owner is jointly and severally liable to us for: all fees and charges assessed against the account; all amounts owed to us on the account, such as overdrafts; and all costs, losses or liabilities related to this Agreement or the account.

All joint accounts are presumed to be joint accounts with the right of survivorship unless the applicable state law does not permit this presumption or we have otherwise agreed with you in writing that the account is owned in another capacity. If the signature card you signed when you opened your account indicates the capacity in which your account is held, we may rely on that designation. Right of survivorship means that when a co-owner dies, the balance in the account belongs to the surviving co-owner(s), subject to our right to charge the account for any amount the deceased co-owner or a surviving co-owner owes us. The applicable state law may impose obligations on the surviving co-owner, such as an obligation to pay claims against or expenses of the deceased co-owner's estate. When we are notified of the death of a co-owner, some state laws may require us to notify the applicable tax agency or to hold funds or both.

A joint account is governed by the applicable provisions of the law in the state where we open your account. You are solely responsible for meeting the requirements for establishing your account as a joint account with right of survivorship.

"Payable on Death" Accounts

You may designate an account to be payable on your death to a designated payable on death ("POD") or in-trust-for ("ITF") payee or payees. Regardless of how it is designated, an account which is payable on your death (or the death of the last surviving co-owner) to one or more named payees is a POD or ITF account. A POD or ITF account may be alternatively described in the account documentation as "payable on death," "POD," "in trust for," "ITF," "as trustee for," "ATF," "transfer on death," "TOD," a "Totten Trust," or otherwise.

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During your lifetime a POD or ITF account belongs to you. You may close the account, remove or add a payee, change the account type or account ownership, and withdraw all or part of the account balance. Upon the death of the owner or, if there are co-owners, upon the death of the last surviving co-owner, any sums remaining on deposit belong to the then-surviving (if any) payee(s), subject to our right to charge the account for any amount the deceased owner, co-owner or payee owes us. The applicable state law may also impose obligations on the surviving payee, such as an obligation to pay claims against or expenses of the deceased owner's or co-owner's estate. A payee will acquire an interest in the account only after the death of all account owners and then only if the payee is alive.

A POD or ITF account is governed by the applicable provisions of the law in the state where we open your account. Some state laws may require you to include certain words in the account title to create a POD or ITF account. You are solely responsible for meeting the requirements for establishing your account as a POD or ITF account. If the applicable requirements are not met, we may treat your account as though the payee or payees have no interest in the account.

Business and Other Nonpersonal Accounts

If the account owner is a corporation, unincorporated association, limited liability company, limited liability partnership, fiduciary, partnership, sole proprietorship or other entity holding an account in any capacity other than an individual capacity, each person signing the signature card or other account documents represents and agrees that they: are fully authorized to execute all documents in their stated capacity; have furnished all documents necessary to demonstrate that authority; and will furnish any other documents in such form as we may request from time to time. We may refuse to recognize any resolution affecting the account that is not on our form or that appears to us to be incomplete or improperly executed.

Transferring Ownership

Your account is for your use only. Ownership of your account is transferable only on our records. You may not transfer or assign ownership of your account to another party without our written consent. Even if we consent, we may require that you close the account and that the new account holder open a new account in their name. We may refuse to acknowledge or accept attempted pledges or assignments of an account or purported security interests in an account.

Checking and Savings Accounts

Checking and Savings Accounts

We offer a variety of personal and business checking and savings accounts. Personal accounts are described in the Personal Schedule of Fees. Business accounts are described in the Business Schedule of Fees.

With some checking accounts, you may link several of your other Bank of America accounts and use those balances to help you meet the balance required to avoid the monthly maintenance fee on your checking account.

Eligibility for Interest Checking

Unless a checking account is described in the Schedule of Fees as an interest-bearing checking account, it does not earn interest. Under federal regulations, eligibility for interest checking accounts is generally restricted to individuals (including sole proprietors), certain nonprofit organizations, state or local governmental entities, and legal entities where one or more individuals hold the entire beneficial interest in the funds. We may either close or convert an interest-bearing account to a non-interest-bearing account if we believe that the account holder is not eligible to hold an interest-bearing checking account.

Account Conversions

We may either close or convert your account to another type of account when we consider it appropriate or necessary to do so. For example, we may close, revoke privileges, or convert your account to another account type if you make frequent transactions on a savings account, if your account frequently has debits against uncollected funds, if your account has excessive deposit activity or if you use a personal account for business purposes. If we convert your account, we send you information about your new account.

Transaction Limits for Savings Accounts

With all personal and business savings accounts you may make an unlimited number of withdrawals from your account and transfers to your other Bank of America deposit accounts at one of our banking centers, by mail or at an ATM. A fee may apply to some withdrawals.

However, federal regulation limits you to six transactions each monthly statement cycle (or each month if you have a quarterly statement cycle) from among the following:

- Preauthorized transfers from your account (including transfers for overdraft protection).
- Telephone transfers from your account. Telephone transfers include instructions to transfer funds sent to us by facsimile or data transmission.
- Online banking or bill payment service transfers from your account.
- Of the six, if checks or debit cards are allowed on your account, no more than three checks or point of sale transactions.

Our practice is to monitor the number of limited transactions. If you are counting the number of transactions you make each statement period, please note that we count an item on the date we post it to your account. This date may be different than the date you authorize, transfer or write the item, which means the item may not be counted until a later statement period.

If you frequently exceed the transaction limits, we may revoke your privileges on that account or we may convert your account to another type of account. We send you notice before we convert your account with information about your new account. Your funds may no longer earn interest after we convert your account.

For some accounts we may charge you a fee for each transaction that exceeds the limits described above.

Time Deposit Account

A time deposit account is neither transferable nor negotiable.

This account allows you to earn interest on funds you leave on deposit for a specific period of time, called a term. We offer terms that range from seven days up to ten years, depending on the amount you deposit. Except for the Variable Rate IRA, the interest rate is fixed for the term at the time you make your deposit and is based on the rate we offer for the amount and term of your deposit. Except for the Variable Rate IRA, you may not make an additional deposit to your account except during its grace period. You may not make a deposit by wire or automated clearing house (ACH) transfer.

Accounts That Automatically Renew. Unless your account information states that your time deposit does not automatically renew, we automatically renew your account by reinvesting your funds. We reinvest both principal and interest, unless you elected to have your interest disbursed. (See *Disbursing Interest* in this chapter.) The term for this reinvested deposit is the same length as the previous term of your account. Except for the Variable Rate IRA, the interest rate on the reinvested deposit is based on the rate we offer on the first day of the new term for the amount and term of the reinvested deposit.

If at any maturity date we no longer offer time deposit accounts of the same term and type, we may reinvest your funds in a new time deposit which we believe offers similar features.

Accounts That Do Not Automatically Renew. Some time deposit accounts do not automatically renew. If your account information states that your time deposit does not automatically renew, then your account does not earn interest after its maturity date.

Redemption. We may redeem an automatically renewable account at the end of the term by sending a notice to you of our intent to redeem prior to the date of such redemption. You may redeem your account during its grace period.

Grace Period Transactions. You may make a deposit, withdrawal or change in the length of the term once during the grace period. The grace period begins on the first day after maturity date. For terms of seven through 27 days, the grace period is one calendar day. For terms of 28 days or more, the grace period is seven calendar days.

The grace period ends on the earlier of the day described above or the day you make a withdrawal or a deposit. If the grace period ends on a weekend or bank holiday, you may make a deposit or withdrawal through the last business day before the grace period ends. We may pay interest during the grace period based on the rate we offer on the first day of the new term for the amount and term of the deposit.

Disbursing Interest. You may elect to leave your interest in your account and have us automatically reinvest it at maturity. Or you may have us disburse the interest to a checking or savings account or directly to you by check.

Depending on the term of your account, disbursement options include monthly, quarterly, semi-annually, annually on the anniversary date, and at maturity.

Early Withdrawals. You have contracted to keep your funds on deposit for the stated term. At our discretion, we may allow you to withdraw all or part of your funds at times other than the grace period. We withdraw interest before principal. Each time we permit you to make an early withdrawal of principal, we charge you an early withdrawal penalty. If your account has not earned enough interest to cover an early withdrawal penalty, we deduct any interest first and take the remainder of the penalty from your principal.

We calculate the penalty based on the term and interest rate in effect on the account on the withdrawal date. The term is the specified period of time you agreed to leave your funds on deposit – not the time remaining on your deposit.

The early withdrawal penalty for terms of less than 90 days is all interest earned on the amount withdrawn, except that if any amount is withdrawn within the first six days after the date of deposit or within six days after a partial withdrawal, the penalty is seven days interest on the amount withdrawn; for terms of 90 days up to 18 months, the penalty is 90 days interest; and for terms of 18 months or longer, the penalty is 180 days interest.

We add to the early withdrawal penalty the amount of any cash bonuses we paid you when you opened or reinvested the account.

We calculate all early withdrawal penalties on the principal amount withdrawn at the current interest rate being paid on the deposit.

Availability and Reporting of Interest. On most time deposits, interest is available to you and is reported to the IRS as it is earned, whether or not it is withdrawn prior to or at maturity.

Interest on Your Funds

You may obtain current rates by calling us at the number for Customer Service on your statement or by asking a banking center representative.

Interest-Bearing Checking and Savings Accounts

If you have an interest-bearing checking or savings account, your funds earn a variable rate. Your interest rate and annual percentage yield may change. At our discretion, we may change your interest rate and annual percentage yield at any time. We compound and credit interest monthly.

We use the daily-balance method to calculate the interest on your account. The daily rate is 1/365 — or in a leap year we may use 1/366 — of the interest rate. For personal accounts and business savings accounts, this method applies a daily rate to the collected balance in the account each day. For most business checking accounts, this method applies a daily rate to the collected balance in the account each day (less an amount that we determine applies for reserves applicable generally to transaction accounts under the rules of the Federal Reserve). For Public Service Trust Accounts, this method applies a daily rate to the collected balance in the account each day (less an amount that we determine is required to offset service charges).

The rate we pay on some accounts depends on the tier into which the end-of-day balance in your account falls. A tier is a range of account balances. We may change the tiers that apply to an account at any time without notice. Different tiers may apply to different types of accounts. Different rates may apply to different tiers.

When you make a deposit, interest begins to accrue no later than the business day on which we receive credit for non-cash items, such as checks.

Time Deposits

Your funds earn interest during the term of the account. Interest rates vary. Different rates may apply to different amounts or terms. Rates for new deposits may change daily. For terms of 28 days or more, we compound interest monthly.

For fixed rate time deposits, the rate in effect on the day you make your deposit remains fixed throughout the term. For the Variable Rate IRA, your funds earn a variable rate. Your interest rate and annual percentage yield may change. At our discretion we may change your interest rate and annual percentage yield at any time.

We use the daily-balance method to calculate the interest on your account. This method applies a daily rate to the ledger balance in the account each day. The daily rate is 1/365 — or in a leap year we may use 1/366 — of the interest rate.

We credit interest to your account at maturity or pay it to you according to the interest disbursement option you select. For terms of 27 days or less, we credit interest at maturity. For terms of 28 days or more, we credit interest monthly.

If you deposit a non-cash item such as a check, interest begins to accrue on the business day the deposit is received. Deposits you give us on a weekend or bank holiday begin to earn interest the next business day.

The annual percentage yield that applies to your account assumes that interest will remain on deposit until maturity. Withdrawals will reduce earnings.

Balance Information

Balance Waivers

With some accounts you can avoid a monthly maintenance fee for any statement period during which you maintain the balance or one of the balances listed for your account in the applicable Schedule of Fees. Balance requirements generally vary for different types of accounts and may include the following:

- *Book or ledger balance* is the beginning balance in the account each day.
- *Current balance* is the beginning balance in the account plus current day credits, minus current day debits.
- *Collected balance* is the book or ledger balance minus that portion of deposited funds that is not available for withdrawal under the availability schedule we apply to the account. The applicable availability schedule specifies the period of time during which checks and other items in a deposit are not available for withdrawal.
- *Minimum daily balance* is the lowest end-of-day ledger balance in the account during a statement cycle. The end-of-day balance is the amount of funds on deposit in the account after we finish processing that day's transactions.
- *Average daily balance* is the average ledger balance in the account during a statement cycle. We calculate it by adding the end-of-day ledger balances for each day in the statement cycle and dividing by the number of days in the statement cycle.
- *Minimum combined balance* for an account is the lowest beginning-of-day total balance of the minimum daily balances in all linked accounts during a statement cycle.
- *Average combined balance* for an account is calculated by adding the beginning-of-day ledger balance for each linked account for each day in the statement cycle and dividing by the number of days in the statement cycle.

Combined Balances

With some personal and business checking accounts you can designate the checking account as your primary checking account and link other Bank of America checking, savings, and time deposit accounts to your primary checking account. We use the balance in your primary checking account plus the balances in all of your linked deposit accounts to calculate a combined balance for each statement period for your primary checking account. We waive the monthly maintenance fee on the primary checking account for each statement period in which the combined balance meets or exceeds the required combined balance for the primary checking account. Our Personal Schedule of Fees and Business Schedule of Fees list the required combined balance for each account to which the service applies.

We may include a balance summary of all accounts that are linked for combined balance service on the statement for your primary checking account. You can elect to have account information for your linked personal accounts reported on the statement for your primary personal checking account or you can continue to receive individual statements on each linked account. Combined statements are not available for business accounts.

Certain restrictions apply regarding account ownership and the number, location and types of accounts that may be linked for combined balance service. These restrictions include the following: For individual accounts, the owner on the primary checking account must be an owner on the linked accounts. For accounts with more than one owner, at least one of the owners on the primary checking account must be an owner on the linked account. Personal accounts and business accounts may not be linked to each other. Analyzed accounts and some fiduciary accounts may not be linked for this service. A deposit account may only be linked to one primary checking account at a time. The period we use for linked accounts to calculate the combined balance may be different than the statement period for the primary checking account. Accounts held at banking centers in different states generally may not be linked to each other.

Statements and Notices

Our statements and notices are in English. If you have difficulty reading English, please call us at the number for Customer Service on your statement.

Statements

We provide you with a statement when there is activity on your checking or savings account. When there is no activity on your account, we may choose not to provide a statement. You must promptly review your statement and any accompanying items and notify us immediately of any dispute, error or other problem.

We mail your statement to you at the address we have in our records for your account unless we have agreed to provide statements electronically. You agree to notify us if you change your address. If your statement is received at a banking center, we may mail it to you or destroy it and any accompanying items. If one or more statements we mail to you are returned to us, we may stop sending statements until a new address is provided to us.

We may destroy statements that are sent to you and returned to us as being undeliverable, along with any accompanying items. We are not responsible for checks or statements lost while not in our possession. Statements that are received at a banking center are deemed to be delivered to you at the time that they are received at the banking center.

We provide a single statement. You may generally obtain an additional copy of your statement for a fee.

For all checking accounts and for Money Market Savings and business savings accounts, we provide you with a monthly statement. Statement periods generally vary from 28 to 33 days and may end on different days during the month. If you want to know the date your statement period ends, call us at the number for Telephone Banking on your statement.

For analyzed checking accounts, we provide an additional monthly account analysis statement. This statement includes balance and float information, quantity of services

used during the period, fees and charges for these services and the earnings allowance, if any. We give you a brochure that describes this statement and the method for computing your charges and fees.

For Regular Savings and Custom Savings accounts, we provide you with a quarterly statement. However, if you perform any of the following transactions during any month, we provide a statement for that month: preauthorized or telephone transfers to or from your account; deposits or withdrawals at an ATM; or transfers to other deposit accounts through our service for your home or office computer.

Combined Statement. With most personal checking accounts, you may elect to receive a combined statement — a statement that reports activity for the accounts you have linked to your primary checking account. If you choose a combined statement, you receive one statement reflecting activity in your linked deposit accounts, rather than individual statements. This means that each owner of the primary checking account can review information about each linked account. You may receive your canceled checks for your primary checking account. All other linked accounts must use our check safekeeping service. Combined statements are not available in some states. Combined statements are not available with business accounts. Certain other restrictions may apply.

To link accounts for this service, call us at the number for Customer Service on your statement.

Notices

We inform you of changes affecting your rights and obligations by providing a notice to you. In some cases we may post a notice of a change in our banking offices or on our website. Otherwise, we either mail the notice to you at the address we currently show for your statement or, if we have agreed on this method, we provide it to you electronically. We may include a notice with or on your statement.

If we receive notices at a banking center for you, we may mail them to you or destroy them. If notices we mail to you are returned to us, we may destroy them. If a notice of a change to this Agreement is received at a banking

center or returned to us (including a notice sent on or with a statement), the change contained in the notice is still effective.

For accounts with more than one owner, we may send notices to any one co-owner. A notice sent to any one owner is effective for all.

When Funds Are Available For Withdrawal

Your Ability To Withdraw Funds. Our policy is to make funds from electronic direct deposits and incoming wire transfers available to you on the day we receive the deposit. Our general policy is to make funds from other types of deposits available to you no later than the first business day after the day we receive your deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays.

If you make a deposit at a banking center before 2:00 p.m. local time, or such later time as may be posted at that banking center, on a business day that we are open, we consider that day to be the day of your deposit. However, if you make a deposit in a banking center after such time, or on a day when we are not open, we consider that the deposit was made on the next business day we are open.

If you make an ATM deposit in the state where we opened your account before 12 noon, local time, or such later time as may be posted on the ATM on a business day that we are open, we consider that day to be the day of your deposit. If you make an ATM deposit in a state other than the state where we opened your account before 12:00 noon (local time in the state where your account was opened) and before the time posted on the ATM, on a business day that we are open, we consider that day to be the day of your deposit. In either case, if you make an ATM deposit after such times, or on a day when we are not open, we consider that the deposit was made on the next business day we are open.

Government, Official, And Other Special Types Of Checks. Our policy is to make funds from U.S. Treasury checks that are payable to you available no later than the first business day after the day of the deposit.

If you make the deposit in person to one of our employees, and meet the other conditions noted below, our policy is to make funds from the following types of deposits available no later than the first business day after the day of your deposit:

- State and local government checks that are payable to you and are deposited in an account in the same jurisdiction that issued the check.
- Cashier's, certified and teller's checks that are payable to you.
- Federal Reserve Bank checks, Federal Home Loan Bank checks and postal money orders that are payable to you.

If you do not make your deposit of these checks in person to one of our employees (for example, if you mail the deposit), our policy is to make funds from these deposits available no later than the second business day after the day of your deposit.

Wire Transfers From Business Accounts. Generally, our policy is to make deposits to business customers' accounts available for withdrawal by wire transfer by the second business day after the day of deposit for local checks and by the fifth business day after the day of deposit for non-local checks. A "local check" is one that is payable by or through a financial institution that is located in the same Federal Reserve check processing region as the physical location of our banking center or ATM where you deposit the check. For assistance in distinguishing local from non-local checks, business customers should contact their relationship manager or customer service.

Other Delays May Apply. There are other cases when we may not make all of the funds that you deposit by check available to you by the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit.

If we are not going to make all of the funds from your deposit available by the first business day after the day of your

deposit, we generally notify you at the time you make your deposit. We also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we mail you the notice by the next business day after we receive your deposit. We do not mail this notice for deposits referred to in the sections entitled "Government, Official and Other Special Types of Checks" and "Wire Transfers from Business Accounts" above.

If you need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, we may delay the availability of funds you deposit by check for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the eleventh business day after the day of your deposit.

Special Rules For New Accounts. If you are a new customer, the following special rules may apply during the first 30 days after the account is open.

Funds from electronic direct deposits to your account are available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks are available no later than the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you and deposited in person to one of our employees. The excess over \$5,000 is available by the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be

available until the second business day after the day of deposit. Funds from all other check deposits are generally available by the ninth business day after the day of your deposit. However, we may place longer holds on certain items for other reasons, such as large deposits (see "Other Delays May Apply," above).

Holds On Other Funds. If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. If we accept for deposit a check that is drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your ability to withdraw a corresponding amount of funds that you have on deposit in another account with us. In either case, we make these funds available in accordance with our policy described above for the type of check that was cashed or deposited.

Insufficient Funds— Overdrafts

Overdraft Fee

When you do not have enough available funds in your account to cover a check or other debit, we consider the check or debit an insufficient funds item. If you have enough coverage under one of our overdraft protection plans, we transfer funds to your account to cover the item. If you do not have an overdraft protection plan or enough coverage in your overdraft protection plan, we either return the item unpaid or pay it and overdraw your account. In either case, we charge you an insufficient funds fee. The insufficient funds fee that applies to your account is described in the Schedule of Fees for your account and is listed in the Schedule and on your statement as an overdraft fee.

Funds in your account are not available if we determine that they are subject to a hold, dispute or legal process that prevents their withdrawal.

Whether we return or pay an insufficient funds item depends on a number of factors, including the amount of the item and the past activity in your account. We may

without notice to you either return any insufficient funds item unpaid or pay it and overdraw your account. If we overdraw your account to pay an item, you agree to immediately repay us. If we pay items by overdrawing your account on one or more occasions, we are not obligated to continue paying any future insufficient funds items and we may stop paying your insufficient funds items without notifying you.

When you do not have enough available funds to pay all items on a given day, we may pay one or more items, and return other items, in any order we deem appropriate. We may change our processing order at any time without notice to you, even though some processing orders may result in more insufficient funds fees than others.

For some business accounts, if your account is overdrawn, we may also charge you interest on the overdraft amount up to the highest rate permitted by law.

In some states the fee varies based on the number of occurrences within a 12-month period and whether the item presented is paid or returned. An "occurrence" is each day that one or more items are presented against an account with a negative balance (overdrawn) or an account with insufficient or uncollected funds. If your account is transferred to another banking center or converted to a different account, your record of insufficient funds items still applies.

Overdraft Protection Plans

In most states and for most accounts, we offer one or more of the following overdraft protection plans to help protect your checking account from overdrafts. We generally make transfers in a minimum amount or increments of the minimum amount.

Overdraft Protection from your Credit Card. This service is available to Bank of America credit card holders. The service links a Bank of America credit card account to a checking account for overdraft protection. You may not link more than one checking account. At least one of the owners of the checking account must also be an owner of the credit card account. Certain other restrictions apply.

When your checking account balance falls below zero, we automatically transfer funds from your credit card account to your checking account. We transfer funds in the amount and under the terms and conditions described in the credit card agreement. We do so as long as you have sufficient credit available and as long as you are not in default under your credit card agreement. The funds transferred may be subject to fees and finance charges under your credit card agreement.

Overdraft Protection from your Savings Account.

This service is available if you have a Bank of America savings account. The savings account must be located at a banking center in the same state as the banking center at which you have your checking account. At least one of the owner(s) of the checking account must also be an owner of the savings account. Certain other restrictions apply.

When your checking account balance falls below zero, we automatically transfer funds from the available balance in your savings account to your checking account. Each transfer counts as one of the six limited transactions you are allowed each month from your savings account. Funds you deposit into your savings account may not be available immediately for overdraft protection. We cancel this overdraft protection plan if you close your savings or checking account. Under this plan we may charge an overdraft protection transfer fee to your checking account for each transfer.

Overdraft Protection from your Line of Credit. This service is available if you have an eligible line of credit. This service links your line of credit to your checking account. At least one of the owner(s) of the checking account must also be an owner of the line of credit. Certain other restrictions apply.

When your checking account balance falls below zero, we automatically transfer funds from your line of credit to your checking account in the amount and under the terms and conditions described in the line of credit agreement. We do so as long as you are not in default under your line of credit agreement. The transfer normally may not exceed the amount of available credit on your line of credit. The funds transferred are charged to your line of credit and may be subject to fees and finance charges under your line of credit agreement. Under this plan we may charge an overdraft protection transfer fee to your checking account for each transfer.

Electronic Banking Services

General Information

If we give you an ATM Card, Check Card or other device or code to access your account, you agree to use the card or code only in the manner and for the purposes described in the applicable agreement. If you attempt to use the card or code in any other manner or for any other purpose, we may reject the transaction, or at our discretion we may complete it without incurring any obligation to honor the same type of transaction on future occasions. We may decide not to issue a card or code to any customer, and we may also terminate a card or code without cause or notice.

Cards for Personal Accounts

We offer ATM Cards or Check Cards to most customers who have a personal checking or savings account with us. Your card, along with your personal identification number or "PIN," enables you to use our ATM services. If your card is linked to a checking account, you may also use your card as a debit card to make point-of-sale purchases.

For information about these services, please see the agreement and disclosure you receive with your card.

Cards for Business Accounts

We offer a Business Check Card or Business ATM Card to most business customers with a business checking or savings account. Your card, along with your personal identification number or "PIN," enables you to use our ATM services. If your card is linked to a checking account, you may also use your card as a debit card to make point-of-sale purchases.

We also offer a Business Employee Check Card for authorized employees of the business. This card is linked to a business checking account and gives employees the ability to make ATM deposits, ATM cash withdrawals and to make point-of-sale purchases. This card restricts access to account balance information and prohibits funds transfers and cash back at point-of-sale locations.

We also offer a Business Deposit Card to most business customers with a business checking or savings account. You can use your card to make deposits and balance inquiries to your business accounts at Bank of America ATMs.

For information about these services, please see the agreement and disclosure you receive with your card.

Access ID/Online ID

An Access ID (usually referred to in Online Banking as the "Online ID") is a numeric code which, when used with a separate PIN number or passcode (plus, in some circumstances, another piece of identifying information called a "verbal verification code"), enables consumer and small business customers to do the following via Online Banking, our automated telephone system or in person at a banking center: obtain information about deposit and credit accounts that are linked to the Access ID; transfer funds and make payments between linked accounts; and obtain other services such as stop payments, check reorders, and copies of checks and statements. You may request an Access ID and related security codes through Telephone Customer Service, Online Banking, or at any banking center. Please note that Access IDs may not be available to customers in all states. In some states, individual account numbers, combined with additional security codes, may be required to obtain account information and transact other business.

Two activity levels are available for most accounts linked to your Access ID:

- (1) Inquiry: Allows you to obtain current account balances and recent transaction information.
- (2) Financial: Allows you to obtain account information, transfer funds among accounts linked to the Access ID, and obtain certain other banking services.

When you first choose your Access ID, and when you subsequently open any new accounts, we will link all your Bank of America accounts that are eligible, and assign the financial activity level to all accounts for which that activity level is available, unless you tell us otherwise. We may establish certain limits on the accounts that can be linked to

your Access ID and that can have the financial activity level.

If you permit another person to use your Access ID or account number(s) and related code(s), you are responsible for all transactions conducted by that person (even if he or she exceeds your authorization), until you notify us that the person is no longer authorized so that we may block the codes and issue new ones.

You must review your periodic statements and promptly report to us any unauthorized funds transfers initiated through the use of your security codes or otherwise. You must also promptly notify us of any suspected loss or theft of your security codes. Failure to take these actions may affect the extent of your liability for any unauthorized transfers under federal banking regulations or other applicable laws.

Small business Access IDs. If you are a small business customer, to uniquely identify each person who initiates a request for banking services, you should establish a separate Access ID and related security codes for each person who you determine needs access to your accounts. Your authorization (whether express or implied) for any individual to establish an Access ID shall constitute your authorization for the bank to provide account information to such individual and (unless inquiry only access is selected) to transfer funds and conduct other banking transactions upon that person's request. Such authorization supersedes any resolution, signature card or other document filed with the bank that purports to limit authority over any of your accounts, whether currently on file or submitted or modified in the future, unless the Access ID authorization is expressly modified or revoked.

Online Banking and Bill Payment Services

You may use your computer or our automated telephone system to obtain account information and make certain transfers and to pay bills (bill payment by phone is only available in certain states). When you subscribe to these services, we may provide you with a separate agreement and disclosures for the service. We may establish cutoff hours by which transfer or payment orders must be received in order to post to your account on a particular

day, and we may change those hours from time to time. Cutoff hours may be listed in the agreement governing the specific service, if applicable, or are available upon request.

Online Banking. This service allows you to access your Bank of America accounts and perform certain banking transactions using a computer and a modem. You can transfer money between accounts you have linked to the service, check your account balance, and download account activity information.

Bill payment option. This service allows you to pay and receive certain bills online, using a computer and a modem.

Pay by Phone. This service is available in some states to individuals and sole proprietors, and allows you to pay bills using a touchtone telephone.

Electronic Banking Disclosures

The following provisions apply only to accounts established primarily for personal, family, or household purposes. They generally apply to fund transfers, deposits, cash withdrawals and purchases made with any ATM card, debit card, Access ID, or other device or code which accesses a consumer account, and to direct deposits and some types of preauthorized and telephone-initiated transfers involving consumer accounts (including a transaction you may initiate by check but which a merchant converts to an electronic transfer at the point of sale). They do *not* apply to debits which the bank is authorized to make from your account for service charges and other fees, to preauthorized automatic transfers you have instructed the bank to make to another of your (or a family member's) Bank of America accounts or toward payment of a Bank of America loan, and to certain other types of consumer transactions which are excluded from Regulation E of the U.S. Federal Reserve Board.

Consumer's Liability for Unauthorized Transfers. Tell us AT ONCE if you believe your Bank of America ATM card, Check Card or similar card or your Access ID, Personal Identification Number (PIN) or similar code has been lost, stolen or learned by an unauthorized person. Telephoning is the best way of keeping your possible losses down. If you tell us within two business days after you learn of the loss or theft,

you can lose no more than \$50 for an unauthorized electronic funds transfer or a series of related unauthorized transfers should someone use your card or code without your permission.

If you do NOT tell us within two business days after you learn of the loss or theft of your card or code and we can prove we could have stopped someone from using your card or code without your permission if you had told us, you could lose as much as \$500.

Losses could include the money in your account plus any advances on a credit line or overdraft protection linked to your account.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us in writing within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Remember, do not write your PIN on your card or carry the PIN with you. This reduces the possibility of someone using your card without your permission if it is lost or stolen.

Note: These liability rules are established by Regulation E. Our liability policy regarding unauthorized transactions on personal accounts that involve a personal Bank of America Check Card or ATM card may give you more protection, provided you report the transactions promptly. Please see the agreement and disclosure you receive with your ATM or Check Card. Also, the state law applicable to your account may give you more time to report an unauthorized transaction or may give you more protection.

Telephone Number and Address to be Notified in event of Unauthorized Transfer and Lost or Stolen Bank of America ATM cards and Check Cards or Access Codes. If you believe your card is lost or stolen, your access code has been learned by an unauthorized person, or that someone has transferred or may transfer money from your account without your permission, you must notify us immediately by calling the number listed below. If unauthorized activity occurs, you agree to cooperate during the investigation and to complete a Lost/Stolen Card and Fraud Claims Report or similar affidavit.

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<i>Telephone:</i>	<i>Write to:</i>
AR, AZ, IA, IL, KS,	Bank of America
MO, NM, NV, OK:	P.O. Box 53137
1.800.944.0404	#7405
FL, GA, MD, NC,	Phoenix, AZ 85072-3137
SC, TN, TX, VA, DC:	
1.800.299.2265	

Business Days. For purposes of these electronic banking disclosures, our business days are Monday through Friday, except legal holidays.

Documentation of Transfers.

ATM transfers. You can get a receipt at the time you make any transfer to or from your account using an ATM. However, this receipt is not final since each transaction is subject to verification by us. If the receipt and our records conflict, our records will control.

Preauthorized credits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at 1.800.299.2265 to find out whether or not the deposit has been made.

Periodic statements. We send you a monthly account statement (unless there are no transfers in a particular month). In any case, we send you a statement at least quarterly.

Preauthorized Payments. *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account or you have authorized someone to debit your account through the ACH system, you can stop any of these payments. Here's how: Call us at 1.800.299.2265 or write to us at Bank of America Customer Service, P.O. Box 25118, Tampa, FL 33622. You must notify us in time for us to receive your request three business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after your call. You must tell us the exact amount of the payment you have stopped, as well as other identifying information which we will request. See *Stop Payment Orders and Postdating Orders in the Additional Terms and Services* section for more information about ACH Stop Payment Orders. If we require written confirmation and do not receive it, we may remove the stop payment order after 14 days.

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Notice of varying amounts. If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

Liability for failure to stop payment. If you order us to stop a preauthorized payment three business days or more before the transfer is scheduled, and you have given us the information we requested, including the exact amount of the payment, we will be liable if we fail to stop the payment for your damages directly caused by our failure to stop the payment.

Liability for Failure to Make Transfers. If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the ATM where you are making the transfer does not have enough cash.
- If the ATM was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as power outages, equipment failures, fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- If the funds are subject to legal process or other encumbrance restricting the transfer.
- If an account becomes dormant, in which case we may terminate card or code access to that account.
- If your card or code has been revoked due to inactivity or at our discretion.

There may be other exceptions stated in our agreement with you or permitted by law.

Account Information Disclosure. We will disclose information to third parties about your account or transfers you make as stated in the Information about Customers section near the front of this Agreement.

Error Resolution Procedure. In case of errors or questions about your electronic transfers, call us at 1.800.299.2265 or write us at Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-3137.

Call or write as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we have sent you the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number.
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error. If you tell us orally, we may require that you send your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If the alleged error involves a transfer resulting from a point-of-sale debit card, or a transaction initiated outside a state, territory or possession of the United States, we may take up to 90 days (instead of 45) to investigate. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents that we used in our investigation.

If you are a new customer and the error or question concerns an electronic transaction that occurred within 30 days after the first deposit to the account was made, we will tell you the results of our investigation within 20 business days

after we hear from you. If we need more time, we may take up to 90 days to investigate. In this case, we will credit your account within 20 business days for the amount you think is in error, so that you have the use of the money during the time it takes us to complete our investigation.

NOTICE: As part of the security system to help protect your card and PIN, we may use hidden cameras and other security devices to determine who is using a card at an ATM.

ATM Safety Tips

ATMs can make banking easier and more convenient for you. Because most ATMs are available night and day, the suggestions that follow offer some helpful hints on exercising care when using an ATM. Please review them.

Your ATM Card and Personal Identification Number (PIN)

- Always protect your card by keeping it in a safe place. If your card is lost or stolen, you should notify us immediately.
- Always protect your PIN. Never give your number to anyone and you should never write your number anywhere, especially on your card. If you choose your own PIN, avoid using obvious numbers such as telephone numbers, addresses, or birth dates.
- Never give information about your card or PIN over the telephone. If someone is asking for this information, refuse and immediately notify your bank.

Using an ATM

- Prepare your transaction before going to an ATM with cash or checks sealed in the deposit/payment envelopes.
- Park in well lit areas close to ATMs.
- Shield the keypad with your hand or body while entering your PIN. Do not leave your transaction record at the ATM. Keep your transaction record in a safe place so you can compare it against your statement.
- Do not open locked ATM vestibule doors for others. Authorized customers should have their own card for access.

- If you use a drive-up ATM, be sure passenger windows are rolled up and your doors are locked.
- Be aware of your surroundings, especially after dark. If you must use an ATM at night, consider taking someone with you.
- If you notice anything suspicious or if the lighting is not working, use another ATM or return later.
- Put cash away promptly and count it later in the safety of your car or home.
- Report all crimes immediately to law enforcement officials and your local banking center.

Funds Transfer Services

The following provisions apply to funds transfers you send or receive through us, but do not apply to electronic fund transfers governed by Regulation E of the U.S. Federal Reserve Board. If you have a specific agreement with us for these services, these provisions supplement that agreement to the extent these provisions are not inconsistent with the specific agreement.

The Uniform Commercial Code includes provisions relating to funds transfers. These provisions define the following terms: funds transfer, payment order and beneficiary. These terms are used here as they are defined in Article 4A of the Uniform Commercial Code – Funds Transfers as adopted by the state whose law applies to the account for which the funds transfer service is provided. In general: A funds transfer is the process of carrying out payment orders that lead to paying a beneficiary. The payment order is the instruction you give or we receive regarding a funds transfer. The beneficiary is the person or business who receives the payment.

We may charge fees for sending or receiving a funds transfer. We may deduct our fees from your account or from the amount of the transfer. For current fees, call us at the number for Customer Service on your statement or ask a banking center representative.

Fedwire

Fedwire is the funds transfer system of the U.S. Federal Reserve Banks. When you send a payment order or receive a funds transfer, we, or other banks involved in the funds transfer, may use Fedwire. If any part of a funds transfer is carried out by Fedwire, your rights and obligations are governed by Regulation J of the U.S. Federal Reserve Board.

Sending Funds Transfers

You may subscribe to certain services we offer, or you may give us other instructions to pay money or have another bank pay money to a beneficiary. This "Sending Funds Transfers" section applies to wire transfers and transfers we make between Bank of America accounts. It does not apply to automated clearing house (ACH) system funds transfer services. You may give us payment orders for ACH system funds transfers only if you have a separate agreement with us for these services.

Cutoff Times for Payment Orders. We have cutoff times for processing payment orders. Cutoff times vary depending on the particular office of our bank and the type of payment order. We may treat payment orders we receive after a cutoff time as if received the next business day. We will tell you these cutoff times upon request.

Amending or Canceling Payment Orders. You have no right to amend or cancel a payment order after we receive it. If you ask us to do this, we may make a reasonable effort to act on your request. But we are not liable to you if, for any reason, a payment order is not amended or canceled. You agree to reimburse us for any costs, losses or damages that we incur in connection with your request to amend or cancel a payment order.

Inconsistency of Name or Number. A beneficiary's bank may make payment to a beneficiary based solely on the account or other identifying number, even if the name in the payment order differs from the name on the account. We or an intermediary bank may send a payment order to an intermediary bank or beneficiary's bank based solely on the bank identifying number, even if the payment order indicates a different bank name.

Sending Payment Orders. We may select any intermediary bank, funds transfer system or means of transmittal to send your payment orders. Our selection may differ from that indicated in your instructions.

Notice of Rejection. We may reject payment orders. We notify you of any rejection orally, electronically or in writing. We typically send written notices by mail by the end of the next business day.

We are not liable to you for the rejection or obligated to pay you interest for the period before you receive the notice of rejection.

Errors or Questions About Your Payment Orders. We notify you about funds transfers by listing them on your account statement. In some cases, we also may notify you electronically, in writing or by a report produced through one of our information reporting services.

You must notify us at once if you think a funds transfer shown on your statement or notice is incorrect. You must send us written notice, including a statement of relevant facts, no later than 14 days after the date you receive the first notice or statement on which the problem or error appears.

If you fail to notify us within this 14-day period, we are not liable for any loss of interest because of an unauthorized or erroneous debit or because your statement or notice is incorrect. We are not required to compensate you, and we are not required to credit or adjust your account for any loss of interest or interest equivalent.

Calculations. If we are obligated to pay for loss of interest that results from our error or delay regarding your payment order, we calculate compensation as follows. With an analyzed checking account, we credit the account to reflect the applicable value date or otherwise adjust the account under our account analysis procedure, to recalculate earnings credits for the period involved. With a non-analyzed, non-interest-bearing account, we use a rate equal to the average of the Federal Funds rates set by the Federal Reserve Bank of New York, less a reserve factor. With a non-analyzed, interest-bearing account, we use the rate applicable to the account. If we have a separate agreement with you specifying a different calculation method, we use that method instead.

Receiving Funds Transfers

We may receive instructions to pay funds to your account. We may receive funds transfers directly from the sender, through a funds transfer system or through some other communications system. This includes wire transfers, ACH transfers that may be sent through an ACH system or processed directly to an account with us, and transfers between Bank of America accounts.

ACH Provisional Payment Rule. Under ACH rules, funds transfers sent through an ACH are provisional and may be revoked prior to final settlement. You agree to these rules.

If the funds transfer is revoked before final settlement, we may charge your account for the amount credited. The person who sent the payment order is considered not to have paid you. If this happens, we do not send a separate notice; we report the information on your account statement.

Notice of Funds Transfer. We notify you that we have received funds transfers by listing them on your account statement. If you use one of our information reporting services, you may receive notice through that service.

We are not obligated to send you a separate notice of each incoming funds transfer. While we generally do not provide such separate notices, we may do so on occasion, in which case we send the notice within two business days after we credit your account.

We are not obligated to pay you interest for the period before you receive notice.

If you are expecting a funds transfer and want to find out if it has been credited to your account, call us at the number for Telephone Banking on your statement.

Posting Your Customers' Payments. We credit to your account electronic payments (such as bill payments) that we receive from your customers. If you do not apply a payment to an account of your customer, you must promptly return the payment to us.

ACH Debits and Credits

From time to time, originators that you authorize may send automated clearing-house (ACH) credits or debits for your account. For each ACH transaction, you agree that

the transaction is subject to the National Automated Clearing House Association (NACHA) Operating Rules and any local ACH operating rules then in effect. You agree that we may rely on the representations and warranties contained in these operating rules and either credit or debit your account, as instructed by the originator of the ACH transaction.

You should be careful about giving someone your account number to help prevent unauthorized transactions on your account. You must notify us immediately of unauthorized activity.

For information about stopping payment of an ACH transaction, see *Stop Payment Orders and Postdating Orders* in the Additional Terms and Services section.

Protecting Your Account

Your role is extremely important in the prevention of wrongful use of your account. If you find that your records and ours disagree or if you suspect any problem or unauthorized activity on your account (such as a missing deposit or a forged or altered check or other withdrawal order), call us immediately at the number for Customer Service on your statement. If you fail to notify us in a timely manner, your rights may be limited.

Cellular or Cordless Telephones

To help safeguard against potential unauthorized use of your account, you should not use cellular or cordless telephones to conduct your transactions with us. Confidential account information can be intercepted over the airwaves without your knowledge or authorization.

Change of Address

You must notify us if you change your address. If we receive notice from the United States Post Office or one of its agents that your address has changed, we may change your address on our records to the address specified by the Post Office and we may send statements and notices regarding your account to that new address.

Fingerprinting

If a person to whom you gave your check asks us to cash the check, we may require them to place their fingerprint on the check. If they refuse to provide their fingerprint, we may refuse to cash the check. We have no liability to you for refusing to cash the check.

Examining Statements and Reporting Problems

This section applies to any problem or unauthorized transaction on your account, except electronic transactions that are subject to Regulation E.

You agree to promptly and carefully review your statement and any accompanying items. You must report problems or unauthorized transactions to us immediately, by calling the number for Customer Service on your statement. Problems or unauthorized transactions include: suspected fraud; missing deposits; unauthorized electronic transfers; missing, stolen, or unauthorized checks or other withdrawal orders; checks or other withdrawal orders bearing an unauthorized signature, endorsement or alteration; and counterfeit checks. You agree that 60 days after we send a statement (or otherwise make it available) is the maximum reasonable amount of time for you to review your statement and report any problem or unauthorized transaction related to a matter shown on the statement. In addition, if you do not notify us in writing of suspected problems or unauthorized transactions within 60 days after we send your statement, or otherwise make it available, you agree that you cannot make a claim against us relating to the unreported problems or unauthorized transactions. In addition, if you fail to report an unauthorized transaction on your account within 30 days (or such lesser period as is specified in the state law applicable to your account) following the closing date of the statement containing information about the first unauthorized transaction, we are not liable to you for subsequent unauthorized transactions on your account by the same person.

When you report missing, stolen, or unauthorized checks, we may recommend that you close your current account and open a new one. If we recommend you close your account and you do not do so, we are not liable to you for subsequent losses or damages on the account due to

forgery, fraud or other unauthorized use. When you open a new account, you must notify any third parties that need to know your new account number.

If you report to us that a forgery, alteration or other unauthorized transaction has occurred on your account, you agree to cooperate with us in the investigation and prosecution of your claim and any attempt to recover funds. You agree to provide us with an affidavit containing the information we require concerning the transaction. You also agree to assist us in identifying and prosecuting the suspected wrongdoer(s).

You agree that we have a reasonable period of time to investigate the facts and circumstances surrounding any claimed loss and that we have no obligation to provisionally credit your account. Our maximum liability is the lesser of your actual damages proved or the amount of the missing deposit or the forgery, alteration or other unauthorized withdrawal, reduced in all cases by the amount of the loss that could have been avoided by your use of ordinary care. We are not liable to you for special or consequential losses or damages of any kind, including loss of profits and opportunity or for attorneys' fees incurred by you. We are not liable to you for any items that are forged or altered in such a way that we cannot reasonably detect the forgery or alteration.

You may not bring any legal proceeding or action against us to recover any amount alleged to have been improperly paid out of your account unless you have given us the notice described above, and the action is commenced within one year after the date the statement containing the unauthorized transaction was sent or otherwise made available to you.

If your claim relates to a business account, you agree to pursue all rights you may have under any insurance coverage you maintain before making a claim against us in connection with any transaction involving your accounts or your checks or other withdrawal orders, and to provide us with all reasonable information about your coverage, including the name of your insurance carrier, policy number, policy limits and applicable deductibles. Our liability is reduced by the amount of all insurance proceeds you receive or are entitled to receive. At our request, you agree to assign to us your rights under your insurance policy.

Helping to Prevent Fraud

To help you protect your account, you should consider using some or all of the following preventive measures: reconciling your statements as you receive them, watching for out-of-sequence checks and checks made payable to cash, and reviewing your transaction activity for unexpected fluctuations. Business customers should consider assigning responsibilities for opening mail, reconciling bank statements and issuing checks to different individuals.

You should be cautious about giving someone your account number. If you give your account number to a third person and authorize that third person to initiate one or more transactions on your account, you may be liable for all transactions initiated by the third person even if you did not intend to authorize a particular transaction.

You should never leave unused checks out in the open or in an easily accessible location. Checks can be stolen and misused, so it is important for you to keep them locked in a safe place. When discarding checks, ensure they are properly destroyed by shredding or other means so that they cannot be copied or used. If unused checks disappear, either individually or a pad at a time, call us immediately at the number for Customer Service on your statement. We may deny a claim due to forged, altered or unauthorized checks if you do not take reasonable measures to guard against improper access to your checks.

These are suggestions of some measures you may take to help prevent fraud on your account. The suggestions are by no means a complete list of preventive measures you may take; other or additional actions may be appropriate for your particular circumstances.

Processing Transactions

Transactions that you perform are not effective until we process them at the processing center for the banking center where we opened your account.

Cutoff Time for Receipt of Orders

Our cutoff time for receipt at a banking center of a stop payment or postdating order, restraining order, writ of attachment or execution, levy, garnishment or similar order relating to your account is 10:00 a.m. local time or, if later, one hour after the banking center opens each business day. The cutoff time relates to our obligation to pay or return checks and other items. If we receive an order before this cutoff time, we may review items presented for payment against your account on the previous business day to determine whether we need to return any of them to comply with the order. If we receive the order after the cutoff time, we may not review items presented on the previous business day.

For example, if you give us a stop payment order after our cutoff time and the item you want to stop was presented for payment the previous business day, your order comes too late to stop payment on the item. Or, if we receive a levy before the cutoff time and you do not have enough funds in your account to cover both the levy and all items presented against your account the previous business day, we may return one or more items and apply the funds to the levy.

Paying Checks and Other Items

We may debit your account for a check or other item drawn on your account either on the day it is presented to us for payment, by electronic or other means, or on the day we receive notice that the item has been deposited for collection at another financial institution — whichever is earlier. If you have insufficient funds to cover the item, we decide whether to return it or to pay it and overdraw your account.

We may determine your balance and make our decision on an insufficient funds item at any time between our receipt of the item or notice and the time we must return the item. We are required to determine your account balance only once during this time period.

When you deposit checks or other items that are drawn on another account with us, we may treat such items as presented to us for payment on the business day that they are received by our office that processes checks drawn on the other account.

Returned Items

If a check or other item you deposit or we cash is returned to us for any reason, at any time, we may debit your account for the amount of the item. We may also debit your account for any interest you may have provisionally earned on the item. We also charge you a fee for each returned item. Different fees may apply to domestic and foreign items. We may debit your account for a returned item at any time on or after the day it is returned to us by electronic or other means, or the day we receive notice that the item is being returned to us — whichever is earlier. Furthermore, if an item deposited in your account has been paid by the financial institution on which it is drawn and that institution later returns the item to us claiming that it was altered, forged or unauthorized or should not have been paid for any other reason, we may debit your account for the amount of the item. If you have insufficient funds to cover a returned item, we may overdraw your account. You agree to repay us immediately.

In some cases the financial institution on which the returned check or other item is drawn may send us an electronic notice of return instead of returning the item. We may act on, and you agree to be bound by, the electronic notice of return just as if the original item had been returned.

If we receive advance notice from another financial institution that it is returning to us unpaid a check of \$2,500 or more, we generally send you a notice. We do not send a notice about returned checks of less than \$2,500.

For each returned item drawn in a foreign currency, we charge your account the U.S. dollar equivalent of the

item. We may calculate the U.S. dollar equivalent by using our applicable exchange rate that is in effect when we process the returned item.

Deposits

Accepting Items for Deposit. We may accept a check or other item for deposit to your account from anyone. We do not have to question the authority of the person making the deposit.

We may refuse, accept for collection only, or return all or part of any deposit. We may also refuse to accept for deposit to your account items payable to another person. In receiving checks or other items for deposit or collection, we act only as your collecting agent and assume no responsibility beyond the exercise of due care, including care in selecting collecting banks. We are not responsible for errors and delays made by others in the collection process. We will, however, make reasonable efforts to resolve problems. If we have given you provisional credit for an item and it is not paid for any reason, we may revoke the provisional credit and charge the amount of the item back to your account. When you send us deposits by mail, or place deposits in our lobby deposit box or other depositories, we may treat them as received at the time we receive actual delivery of deposits sent by mail or when we remove the deposits from our depositories.

If we accept a cash deposit in unusual denominations, such as a large number of loose coins, we may assess a charge for processing the deposit.

If you use a blank deposit slip from one of our banking centers, rather than your personalized deposit slip, you agree that we will not be liable for errors that may result from our hand encoding the account information.

You agree that, without prior written approval, you will not knowingly deposit items into your account that do not have either a true original signature of the person on whose account it is drawn or an authorized mechanical reproduction of that person's signature.

Collection Items. We may accept certain items — such as certain securities and checks payable in foreign currencies or at foreign locations — on a collection basis only. We route and process collection items separately.

We normally credit your account for collection items only after we receive payment for them. But if we do credit your account and then do not receive payment, we may debit your account for the amount of the item. We charge fees for processing collection items. These fees apply even if the collection item is returned unpaid. For current fees, call us at the number for Customer Service on your statement, or ask a banking center representative.

The financial institution on which the collection item is drawn may also charge you fees. If the other financial institution requires payment of a fee before that institution will process the collection item, we may pay the fee and charge your account. Otherwise, the other financial institution may subtract its fee from the amount of the payment we receive. These fees may apply even if the collection item is returned unpaid.

Client-Encoded Deposits. If you are a business client, you may want to encode the dollar amount of a check on the MICR line of an item you deposit with us. We permit this under certain circumstances, and we provide you with instructions for preparing and encoding your deposits.

You must provide us with a replacement or a copy of each original check if the deposit is lost or destroyed. We are not liable to you if you are unable to do so.

If our equipment is unable to read what we consider to be a significant number of your encoded items, we may charge you additional fees. If we do charge you more, we send you a notice. If you make an encoding mistake that results in costs or losses to us, you agree to reimburse us (and we may charge your account) for our claims, costs, losses and damages, including attorneys' fees.

Demand Drafts. If you deposit a demand draft (an unsigned draft or a preauthorized draft) into your account, you warrant and guarantee that the draft is authorized.

Deposit Error Correction. When we receive your deposits, we may provisionally credit your account for the amount declared on the deposit slip, subject to later verification by us. You must ensure that the amount declared on the deposit slip is correct even if you did not prepare the deposit slip. If later we determine that the amounts declared on the deposit slip are incorrect, we may adjust

(debit or credit) your account. However, if the error in completing the deposit slip was inadvertent and is less than our standard adjustment amount, we will not adjust the deposit unless you notify us of the error within one year of the date of your periodic statement that shows the deposit. After this notice period has passed without your bringing an error to our attention, the deposit amount indicated on the statement will be considered finally settled. That is, if the actual amount deposited was less than the amount declared on the deposit slip, the difference will become your property and if the actual amount deposited was more than the amount declared on the deposit slip, the difference will become our property. We may change our standard adjustment amount from time to time without notice to you.

Endorsing Checks. We may accept for deposit checks payable to any signer on your account when endorsed by any other signer. We may endorse checks for you that we receive for deposit.

We restrict both how you endorse checks that you ask us to cash or deposit and what you may place or have preprinted on the back of checks. If you place or imprint information on the back of the check, it may overlap into the area reserved for the banks' endorsements. If it becomes necessary for us to return one of your checks, the material placed on the back of the check may interfere with the bank endorsements and cause delays in returning the item. You agree to reimburse us for all claims, costs, losses and damages that result from late return of a check due to material entered on the back of the check that obscured or interfered with our or another bank's endorsement.

You must endorse checks in the area that extends 1 inches from the trailing edge of the back of the check. The trailing edge is the left side of the check when you look at it from the front. If your endorsement obscures our bank's endorsement, you are liable for checks that are returned late and unpaid.

Foreign Instruments. The processing and collection of foreign instruments are not subject to United States laws or regulations. We may refuse to accept for deposit or collection a check, draft or other item that is payable in a

currency other than U.S. dollars or that is drawn on a bank or a branch of a bank located outside of the United States (a "foreign instrument"). If we accept a foreign instrument for deposit or collection, you bear all the risks associated with the collection process and foreign currency fluctuation (exchange rate risk). A foreign instrument may be returned unpaid much later (sometimes several months after we process the foreign instrument) than instruments that are drawn on banks located in the United States. You bear all the risks of a late return. We may decide not to credit a foreign instrument to your account until we receive the proceeds in cleared funds from the paying bank. If we do provide credit, such credit is provisional and we may reverse the credit at any time if the foreign instrument is returned unpaid or is initially paid but then subsequently returned for fraud. You agree that we may use the current exchange rate and we may charge your account for the full value of the foreign instrument, including any applicable fees, which may result in a loss to you.

If you deposit an item which is later determined to be a foreign instrument, it may or may not need to be sent for collection. If we determine the instrument needs to be sent for collection, we may reverse any provisional credit given for the item at our current exchange rate and mail the foreign instrument to you at the address we have for your account statement. You may then ask us to send the instrument for collection.

You understand that foreign instruments sent for collection are sent solely for you and at your risk and that we are not liable for any event in the collection process which is beyond our control including a default by any banks or agents involved in the collection process or for loss of the foreign instrument in transit. We may send the foreign instruments directly or through a correspondent to any bank, including the payor. We may deduct our fees and charges assessed by the payor bank and any agents involved in the collection process from the amount collected or from your account. If the collection is returned unpaid, we may mail the foreign instrument to you at the address we have for your account statement. We may also charge your account for the item at our current exchange rate and for a collection fee together with other charges

assessed by the payor bank. You should note that a foreign instrument which has been sent for collection and paid may be returned later (sometimes months later) for fraud, and that we may debit your account at our current exchange rate including fees assessed by the foreign bank for any instrument returned for fraud.

Collection of these items is subject to the Uniform Rules for Collection of Commercial Paper, International Chamber of Commerce.

If you request, we will try to determine the status of a collection. You agree to pay charges incurred for such a request. We may refuse your request if less than 30 business days have passed since we first processed the collection.

Identifying the Account. You must correctly identify the account to which you want funds deposited. You are responsible for any claim, cost, loss or damage caused by your failure to properly identify the account to which a deposit is made or intended to be made. We may credit an account based solely on the account number listed on the deposit slip or other instruction to credit an account, even if the name on the deposit slip or other instruction differs from the name on the account.

Lost Checks. When we cash a check for you or accept a check for deposit to your account, we are acting as your agent in collecting the check. We are not responsible if the check is lost or delayed in the collection process. If a check is lost during the collection process, we may charge your account for the amount of the check. If the financial institution on which the check is drawn gives us a photocopy of the check or a debit slip representing the check, we may charge your account for the amount of the check.

A lost check may not be returned to us for some time. Despite any delay, we may charge your account when we receive either the returned check, a copy of the check, or a notice of return.

Third-Party Endorsement. We may require that checks and other items you want to deposit or cash be endorsed by all parties to whom the items are payable. We may require verification of any endorsement either through an endorsement guarantee or personal identification.

Withdrawals

Check Cashing. If a person wants to cash your check in one of our banking centers, we may require identification satisfactory to us and we may charge them a fee for cashing the check. We may also impose additional requirements, such as requiring their fingerprint or limiting the locations where we will pay the check in cash. If the person with your check fails or refuses to satisfy our requirements, we may refuse to cash the check. We are not liable to you for refusing to cash the check or for charging a check cashing fee.

Some of our banking centers do not have tellers. Checks can not be cashed at these banking centers.

We may cash checks payable to any signer on your account when endorsed by any other signer.

We are usually happy to cash checks for you. However, there may be times when we refuse to cash a check written to you because cashing checks drawn on accounts at our other banking centers or at other banks can present problems similar to using uncollected funds from deposited checks. If we do cash such a check and it is returned to us unpaid for any reason, at any time, we may deduct the amount of the check from your account and we may charge you a fee.

If a check is made payable to an entity such as a partnership or corporation, we may require that you show us evidence of your authority to cash checks on behalf of the entity shown on the check.

Check Legends. Some customers order checks printed with legends, or notations, such as "not valid after 60 days" or "not valid over \$1,000." We may also receive checks on which conditional or restrictive endorsements or other notations are written. We may disregard these instructions and pay the item even if the restriction or other condition has not been met. We are not liable to you for any claims, costs, losses or damages that result from the placement of these restrictions or other notations on your checks, or from our disregarding them.

Check Processing Order. We may accept, pay, certify, or charge to the appropriate account your checks and other items in any order we choose. We may establish different processing priorities or categories for checks and

other items. For example, we may process ATM withdrawals and automatic payments before checks. Within each priority or category, we may process checks and other items in any order we choose. We may change the priorities or order at any time without notice to you. When you do not have enough available funds in your account to cover all of the items presented that day, some processing methods may result in more insufficient funds fees than other methods. We may choose our processing method at our sole discretion, regardless of whether additional fees may result.

We currently process checks and other items according to certain priorities. Within each priority, we process checks and other items in most states from the highest to lowest dollar amount. If there are insufficient funds to cover all of the items processed on any given day, this method may result in additional overdraft fees.

Collection Items. When another financial institution submits to us for collection an item drawn on your account, we may charge the other financial institution a fee. When you do not have enough funds in your account for us to process a collection item drawn on your account, we may charge you an insufficient funds fee.

Converting Checks to Electronic Debits. Some businesses use a procedure to convert checks that are drawn on your account with us into electronic debits. To use this procedure, you sign an authorization slip (similar to a credit or debit card slip) that permits the business to convert the check to an electronic debit. The business passes your check through a machine that captures the account routing number, check amount, and other relevant information and then returns your check to you. An electronic debit for the transaction amount is then sent to us. When we receive the electronic debit, we charge it to your account. We may receive the electronic debit to your account immediately after the business enters the transaction, so to avoid an overdraft you must have sufficient funds in your account to cover the amount of the check at the time you authorize the transaction. Since the check is not sent to us for processing, we do not have a copy of your check. You should retain the check for your records. These electronic debits are listed on your account statement.

Examining Checks. We receive checks in great volume. This and compliance with expedited funds availability laws require us to use automated check processing procedures. Like most other banks, we select some checks for review on the basis of certain criteria that change from time to time. This means that most checks are processed on the basis of the MICR (Magnetic Ink Character Recognition) line printed along the bottom edge of the check, and are not individually examined for dates, maker signatures, legends or endorsements. You agree that we will have exercised ordinary care if we examine only those items that we have identified according to certain minimum criteria which we may establish for inspection. Since we do not individually examine most checks, it is critical for you to take care of your checks, promptly review your statement, and immediately report any suspicious or unauthorized activity to us. You agree that automated processing of your checks is reasonable and that you accept responsibility for preventing and reporting forgeries, alterations, and other unauthorized uses of your checks or accounts.

Since some types of check fraud have become more difficult to detect, we may elect in some cases to make further inquiries about certain checks which are presented for payment against your account and, if we are unable to contact you, or take other steps, to determine with reasonable certainty that these payments are authorized by you, we may return the checks unpaid without any liability by us to you.

Facsimile Signature. A facsimile signature can be a convenient method for signing or endorsing documents and other items. If you use a facsimile signature, you are responsible for any withdrawal from your account that bears or appears to us to bear a facsimile signature that resembles or purports to be the signature of a person authorized to withdraw funds. You are responsible even if the size, color or style of the check or the size or color of the facsimile signature is different from that of any signature previously presented to us. We may pay the withdrawal and may charge your account for it. You agree to reimburse us (and we may charge your account) for all claims, costs, losses and damages, including attorneys' fees, that result from our payment of a withdrawal bearing either a

facsimile that resembles or purports to bear your signature or a facsimile that we believe you authorized.

Foreign Currency. You may not write checks or other withdrawal orders on your account, which order payment in a foreign currency.

Large Cash Withdrawals. We may require reasonable advance notice for large cash withdrawals. We may also refuse to honor a request to withdraw funds in cash from your account or to cash a check (including a cashier's check or other official item) at a banking center if we believe that the amount is unreasonably large or that honoring the request would cause us an undue hardship or security risk. We may require that such withdrawals be made at one of our cash vaults by an armored courier, acceptable to us and at your sole risk and expense. We are not responsible for providing for your security in such transactions.

Multiple Signatures. We do not offer accounts on which two or more signatures are required for a withdrawal. If you indicate on your checks or signature card or other account documents that more than one signature is required for withdrawal, this indication is for your own internal procedures. It is not binding on us. We may pay out funds from your account if the check, item, or other withdrawal instruction is signed or approved by any one of the persons authorized to sign on the account. We are not liable to you if we do this.

Returned Items. If we decide not to pay a check or other item drawn on your account, we may return the original or a copy of the item or we may send an electronic notice of return and keep either the original or a copy of the item in our records. If we send an electronic notice of return, you agree that any person who receives that electronic notice may use it to make a claim against you to the same extent and with the same effect as if we had returned the original item.

Sample Signature. To determine the authenticity of your signature, we may refer to the signature card or to a check or other document upon which your signature appears. We may use an automated process to reproduce and retain your signature from a check based on the format and other attributes of checks we offer to customers.

If you create your own checks, or obtain them from someone else, and we cannot accurately verify your signature on a check by comparing it with a check that posted to your account, you are responsible for any losses that may result from our inability to use that check to verify your signature.

Stale-Dated and Postdated Checks. If a stale-dated check — that is, a check dated more than six months in the past — is presented for payment against your account, we may pay the check and charge it to your account. If a postdated check — a check dated in the future — is presented for payment, we may pay the check and charge it to your account even if it is presented for payment before its date. If you do not want us to pay a stale-dated or postdated check, you must place a stop payment order on it.

Additional Terms and Services

This chapter contains additional terms that apply to your deposit account and describes other services we offer for use with your account.

Automatic Transfer Service

With this service, you may have funds transferred automatically from most Bank of America checking or savings accounts to another Bank of America checking or savings account or to pay a Bank of America loan or credit card account or safe deposit rental fee.

Federal regulation places limits on the number of automated transfers you may make from savings accounts. Certain other restrictions apply.

In most cases, we make transfers periodically on the days and for the amounts that you specify. For Bank of America loan payments, however, transfers must be made on the due date each month. A scheduled transfer that falls on a weekend or bank holiday is made the next business day. If we are unable to complete a transfer because you do not have enough available funds in your account, we may cancel this service.

Business Days

Our business days are Monday through Friday, excluding bank holidays. We may switch from one business day to the next business day before the end of the calendar day. Hours of the business day for any given banking center are available at the banking center.

Check and Deposit Slip Forms

We offer checks, withdrawal forms and deposit slips in a number of styles and at various prices. We recommend that you use checks and other forms that we provide.

Unless we have approved them in advance, we may refuse to accept checks or other forms that you create or someone else provides. If you use checks or other forms that do not meet our specifications at any time, you are liable for all claims, costs, losses and damages that may result — for example, if our equipment is unable to read or process the non-standard checks. You may obtain a copy of our check printing specifications by calling the telephone number on your statement or asking your account representative. The specifications include the magnetically encoded numbers, the size of the check and the weight, color and type of paper. If you create or obtain checks or other forms from someone else and we cannot process some or all of them through our automated check processing systems, we may charge you per-item fees on those checks or other items.

You must also confine information that you place or have preprinted on the back of your checks to the area that extends 1½ inches from the trailing edge of the back of the check. The trailing edge is the left side of the check when you look at it from the front. If you issue checks on your account that have a carbon band, or if you imprint information on the back of the check, it may overlap into the area reserved for the banks' endorsements and may cause delays in returning the item. You are liable for and agree to reimburse us for all claims, costs, losses and damages that result from late return of a check due to material entered on the back of the check that obscured or interfered with the depository or another bank's endorsement.

You are responsible for verifying the accuracy of all information on your checks and other forms. Our liability, if any, for any printing errors on checks or other forms obtained through us is limited to the cost of replacing the forms. We are not liable for any claims, costs, losses or damages you may incur when you use checks or other forms not obtained through us.

Check Copies

We keep a copy of each check you write on your account for seven years from the date the check posts to your account. The copies are available to you and are typically kept on microfilm or as a digital image. In the rare instance where a copy is unavailable or of poor quality (e.g., checks purchased from an unapproved printer) we are not liable to you for any loss or damage of any kind. After seven years, we may destroy the copies.

Requesting Copies. You may request a copy of a canceled check by calling us at the number for Customer Service on your statement. Generally, we mail or make a copy available within seven business days. If we need more time, we will tell you. We may charge you a fee for check copies. For some accounts you receive a monthly allowance. Please see the Schedule of Fees for your account.

To produce a copy, we need: account number, check number, exact amount of the check, and date the check was paid. This information is on your statement.

Check Safekeeping Service

With this service, you do not receive your canceled checks with your statement. Instead, we store copies of canceled checks (usually on microfilm or digital image) and destroy the checks. Copies of the checks are generally available for seven years from the date the checks are paid.

If you have a combined statement, you may usually have your checks returned on your primary checking account. All accounts linked to your primary account and included on the combined statement automatically receive check safekeeping service.

If your statements are returned to us, you automatically receive check safekeeping service. If you usually

receive your checks with your statement but we are unable to return them because of circumstances beyond our reasonable control, we may convert your account to check safekeeping service for the period that the circumstances persist.

Unavailable Copies. If you use our check safekeeping service and we cannot provide a check copy and you lose money as a result, we may cover the loss up to the amount of the check. We are not liable to you for any special or consequential loss or damage of any kind.

Circumstances Beyond Our Control

We are not liable to you if circumstances beyond our reasonable control prevent us from, or delay us in, performing our obligations for a service, including acting on a payment order, crediting a funds transfer to your account, processing a transaction or crediting your account.

Circumstances beyond our reasonable control include: a natural disaster, such as an earthquake or a flood; emergency conditions, such as a war, riot, fire, theft or labor dispute; a legal constraint or governmental action or inaction; the breakdown or failure of our equipment for any reason, including a loss of electric power; the breakdown of any private or common carrier communication or transmission facilities, any time-sharing supplier or any mail or courier service; the potential violation of any guideline, rule or regulation of any government authority; suspension of payments by another bank; or your act, omission, negligence or fault.

Conflicting Claims About Your Account

If another person or entity makes a claim against funds in your account, or if we believe that a conflict exists between signers on the account or that there is a dispute over matters such as the ownership of the account or the authority to withdraw funds, we may take one or more of these actions without our being liable to you: continue to rely on current signature cards and other account documents; honor the competing claim upon receipt of evidence we deem satisfactory to justify such claim; freeze all or part of the funds until the dispute is resolved to our satisfaction; close the account and send a check for the balance

in the account, payable to you or to you and each claimant; or pay the funds into an appropriate court for resolution. We may charge your account for expenses and fees, including attorneys' fees, we incur.

Death or Incompetence

You agree to notify us promptly if any owner or authorized signer on your account dies or is declared incompetent by a court. We may place a hold on your account and refuse to accept deposits or permit withdrawals when an owner dies or is declared incompetent. We may hold any funds in your account until we know the identity of the successor.

If a deposit — including salary, pension, Social Security and Supplemental Security Income (SSI) — payable to the deceased owner is credited to the account after the date the deceased owner died, we may debit the account for the deposit and return it to the payer.

Indemnification

You agree to reimburse us for all claims, costs, losses and damages (including collection agencies' fees) we may incur with respect to overdrafts or otherwise in connection with your account. We are not liable to you for any claim, cost, loss or damage caused by an event that is beyond our reasonable control.

Legal Process

We may accept and act on any legal process that we believe to be valid without any liability by us to you, whether served in person, by mail, by facsimile transmission, at locations other than the banking center or office at which the account, property or records are held or if served in a state other than the state where the property or records are held. "Legal process" includes a subpoena, restraining order, injunction, writ of attachment or execution, levy, garnishment, tax withholding order, search warrant, forfeiture or other similar order relating to your account.

If the order directs us to turn over funds or other property, then, depending on the type of order, we either immediately deliver the funds or property or hold them for a

legally permitted period — usually no longer than 21 days but in some cases longer. We do not pay interest on the funds during the period we hold them. If we use funds from a time deposit account, we may impose an early withdrawal penalty.

We may charge your account a legal process fee for each order. You agree to pay our fees and expenses for research and copying of documents and all other expenses, including administrative expenses, that we incur in responding to any legal process related to your account. These may include attorneys' fees. We may deduct these fees and expenses from any of your accounts without prior notice to you. Any garnishment, attachment or other levy against your account is subject to our right of setoff and any security interest we have in the account.

We are not liable to you for not paying items because we have withdrawn funds from your account or in any way restricted your access to funds because of a legal process.

Notice of Withdrawal

Federal regulations require us to retain the right to require all savings and interest-bearing checking account depositors to give seven days' written notice before making a withdrawal. It is unlikely, however, that we would require this notice.

Power of Attorney

If you want to grant someone power of attorney over your account, we ask that you complete our power of attorney form, which is available at many of our banking centers. If your state has a statutory form power of attorney, we also generally accept that form. However, we may accept any form that we believe was executed by you and act on instructions we receive under that form without any liability to you. You agree to reimburse us for all costs, losses and damages that we incur in accepting and acting on any power of attorney form that we believe you executed. In some cases we may require that the attorney-in-fact confirm in an affidavit that the power has not been revoked or terminated or that you register the power with the appropriate recording authorities. We may restrict the

types or sizes of transactions we permit an attorney-in-fact to conduct.

We may require a separate form for each account for which you want to grant power of attorney. If your attorney-in-fact does not present the original form, we may refuse to honor any power of attorney you grant with or without cause and with no liability to you. When we accept a power, we may continue to recognize the authority of your attorney-in-fact until we receive written notice of revocation from you and have had a reasonable time to act upon it.

Right of Setoff

We may recover amounts you owe us from any account you maintain with us or with our affiliates without notice to you, except that this provision does not apply to any consumer credit covered by the federal Truth in Lending law. If you are a sole proprietor, we may charge any of your personal or business accounts. If your business is a partnership, we may also charge the personal accounts of any general partner.

We may use funds held in joint accounts to repay the debts on which any one of you is liable, whether jointly with another or individually. We may charge any such debt against your account at any time, without regard to the origin of deposits to the account or beneficial ownership of the funds.

Funds held in individual accounts may be used to repay your debts, whether such debts are owed jointly with another or individually. Your debts include: those owed by you arising out of another joint account of which you are a joint owner, even if they are not directly incurred by you; those on which you are secondarily liable; or any amounts for which we become liable to any governmental agency or department or any company as a result of recurring payments credited to any of your accounts after the death, legal incapacity or other termination of entitlement of the intended recipient of such funds.

If we use funds from a time deposit account, the funds withdrawn are subject to the early withdrawal penalty. We are not liable to you for dishonoring items where withdrawals described in this section result in insufficient funds in your account.

Stop Payment Orders and Postdating Orders

Stop Payment Orders. You may ask us to stop payment on a check or other item if it has not already been paid, but we may not honor your request if you write a check and use as identification your Bank of America ATM Card or Check Card. You may not stop payment on a Check Card, ATM or point-of-sale transaction. In addition, you may not stop payment on a transaction that you initiate by check, which a merchant converts to an electronic transfer at the point of sale.

Postdating Orders. If you write and postdate a check (that is — you put a future date on the check), we may pay it and charge it to your account even if it is presented for payment before its date. You may ask us not to pay a postdated check before its date if the check has not already been paid. To do so, you must give us a postdating order.

Placing Stop Payment and Postdating Orders. You may request a stop payment or postdating order by mail or by calling us at the number for Customer Service on your statement. We may require you to complete a form authorizing the order. You must give us sufficient notice so that we have a reasonable period of time to act on your request. A stop payment or postdating order takes effect only after we have a reasonable opportunity to verify that the item is unpaid. We may charge you a fee for each stop payment order, each postdating order and each renewal.

To place a stop payment or a postdating order, we need the following information: account number, exact amount of the item and item number. We may also require the date of the item, the name of the person who signed or authorized the item, and the name of the party to whom the item was made payable.

We use a computer system to identify items. Therefore, to act on your order, we need the item number and the exact amount of the item — dollars and cents. If you give us the wrong amount (even one penny off) or the wrong item number, we may pay the item.

In some cases, we may pay an item even if an order is in effect. For example, if one of our banking centers, without notice of your request, cashes a check that you have asked us to stop, we may still pay the check.

A stop payment or postdating order generally expires after six months. However, there are circumstances in

which we may, in our sole discretion, elect to honor a stop payment order for a longer period of time without notice to you. If you do not want the order to expire after six months, you must renew it. Each renewal is treated as a new order. If you want the order to expire in less than six months, you must cancel the order on or after the date you want it to expire. You may cancel the order by mail or by calling us at the number for Customer Service on your statement. Your request to cancel the order is not effective until we have a reasonable opportunity to act on it. We cancel the order automatically when the account on which the item is drawn is closed.

If the item is presented for payment after the order expires, we may pay the item.

If a check that is subject to a postdating order is presented to us for payment while the postdating order is in effect, we may return the check with the designation "payment stopped" or "refer to maker."

Our liability for paying an item subject to a proper and timely stop payment or postdating order is limited to the actual loss suffered, up to the amount of item. You must prove the loss to our satisfaction. We are not liable to you for any special or consequential loss or damage of any kind.

Additional Information about Automated Clearing House (ACH) Stop Payment Orders. From time to time, we may receive ACH debits to your account from senders you previously authorized to debit your account. You may ask us to stop payment on a future ACH debit to your account if the item has not already been paid. You are responsible for notifying your sender that you have revoked your previous authorization for ACH debits.

For an ACH stop payment order, we generally need the information listed above under "Placing Stop Payment and Postdating Orders." We also need your name and telephone number and the type of account (checking or savings). We may also need the date the prior ACH debit from this sender posted to your account so that we can obtain the company name and company identification number used by your sender and printed on your statement. Otherwise, you must provide us with the company name and company identification number.

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If you do not know the amount of the ACH debit, we may still be able to place the stop payment based on the company name and company identification number of the sender, but this may stop all ACH items from this sender. If you give us the wrong company identification number or if the sender changes the company identification number, we may pay the item.

The ACH stop payment takes effect within three business days. If you give us oral instructions, we may require you to confirm them in writing. If you do not, we may remove the stop payment after 14 days. Otherwise, your order will be effective for six months.

For more information on stopping a preauthorized payment on a personal account, see *Preauthorized Payments* in the section titled *Electronic Banking Services*.

Sub-Accounts

For regulatory accounting purposes we may classify checking accounts as two sub-accounts: a checking sub-account and a savings sub-account. For interest-bearing checking accounts, we calculate and pay interest at the same rate and in the same way on both sub-accounts. For non-interest-bearing checking accounts, we do not pay interest on either sub-account. We may transfer funds between these sub-accounts. We record the sub-accounts and any transfers between them on our internal accounting records only. Otherwise, the sub-accounts are subject to the same terms as the checking and savings accounts described in this Agreement.

Treasury Management Services

We offer Treasury Management Services to help business customers manage their cash flow, gather information on their accounts and perform automated transactions. If you are interested in information on Treasury Management Services, please contact a Treasury Management representative.

Unclaimed Property

Unclaimed property laws require us to turn over abandoned accounts to the applicable state. The applicable state is generally the state listed in the address for your account statement. Your account is usually considered

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BOA_00665

abandoned if you have not performed at least one of the following activities for the period of time specified in the applicable state's unclaimed property law: made a deposit or withdrawal, written to us about the account, or otherwise shown an interest in the account, such as asking us to keep the account active.

Before we turn over an abandoned account, we may send a notice to the address we currently show for the account statement. If mail we previously sent to this address was returned, we may not send this notice.

If you have not made a deposit to or withdrawal from your account for a period of time that we consider substantial, then (unless prohibited by federal law or the law of the state where we maintain your account) we may charge dormant account fees on the account in addition to regular monthly maintenance and other fees and, if the account received interest, we may stop paying interest on the account. We may also refuse to pay items drawn on or payable out of the account. If you re-establish contact with us, we do not have to reimburse you for these fees and we are not liable to you for any interest that would otherwise have accrued on your account.

Waiver and Severability

We may delay enforcing our rights under this Agreement without losing them. No delay in enforcing our rights will affect your obligation to pay us fees and other amounts you owe us under this Agreement. If we waive a provision of this Agreement, the waiver applies only in the specific instance in which we decide to waive the provision and not to future situations or other provisions.

If any part of this Agreement is inconsistent with any applicable law, then to the extent the law can be amended by contract, you and we agree that this Agreement governs and that the law is amended by this Agreement. A determination that any part of this Agreement is invalid or unenforceable will not affect the remainder of this Agreement.

Tax Information

We are required to report annually to you and to the Internal Revenue Service (IRS) interest payments that total \$10 or more during the year on your deposit account with us. We may also report this information to the appropriate state revenue authority.

When you open an account, we are required to obtain — and each U.S. citizen or resident alien must give us — a certified U.S. Taxpayer Identification Number (TIN) and information regarding your backup withholding status. (See below.) When you sign the signature card for an account, you certify — that is, sign under penalties of perjury — that you have provided the correct TIN for the accountholder named on the signature card ("name and TIN") and the correct backup withholding status.

For personal accounts, the TIN is your Social Security Number (SSN). For personal accounts with more than one owner, we report taxpayer information for the person listed first on the signature card. Resident aliens who do not qualify for Social Security should provide their Individual Taxpayer Identification Number (ITIN). For other accounts, the TIN is the owner's Employer Identification Number (EIN). (For more information on providing the correct name and TIN, see the chart at the end of this chapter.)

If you do not give us a certified name and TIN, if the IRS notifies us that the name and TIN you gave us is incorrect, or if the IRS notifies us that you failed to report all your interest and dividends on your tax return, we are required to backup withhold at the current rate on interest earned on your account and pay it to the IRS. Backup withholding is not an additional tax. You should claim amounts withheld and paid to the IRS as a credit on your federal income tax return.

Exempt Foreign Person

Accounts held by a foreign person that are properly certified are exempt from backup withholding and information reporting, with the following exceptions:

- If we are required to backup withholding by the IRS, we report interest and withholding to you and the IRS on IRS Form 1099-INT.

- If you provide us with a Canadian permanent foreign address when opening an account or recertifying your exempt foreign person status, we report interest of \$10 or more paid on your account to you and the IRS on IRS Form 1042-S.
- If you certify on a Form W-8ECI that your deposit account is effectively connected with the conduct of a trade or business within the United States, we report interest of \$10 or more paid on your account to you and the IRS on IRS Form 1042-S.

For accounts with more than one owner, all owners must qualify and certify their status as foreign persons exempt from Form 1099-INT reporting. For U.S. tax purposes, you generally may qualify as a foreign person exempt from Form 1099-INT reporting if you are the beneficial owner of the account and you meet all of the following conditions:

- You are not a citizen or resident of the United States;
- You do not have a U.S. Immigration Card; and
- You are not present in the United States for at least 31 days during the current year, or if you are present for this period of time, the total number of days you were present in the United States during the current and two preceding years does not equal or exceed 183 days, when calculated as follows:
For days in the current year, multiply by 1; for days in the first preceding year, multiply by $\frac{1}{3}$; and for days in the second preceding year, multiply by $\frac{1}{6}$.
Then add the numbers together and compare them to 183. If the number exceeds 183, you are considered a resident alien.

The definition of foreign person exempt from Form 1099-INT reporting also generally includes foreign diplomats; foreign teachers; foreign students; foreign partnerships, foreign estates, and foreign trusts. Some limited exemptions exist. If you are married to a U.S. citizen or resident and have made an election under section 6013(g) or (h) of the Internal Revenue Code, you may not claim to be a foreign person exempt from Form 1099-INT reporting.

As a foreign person exempt from Form 1099-INT reporting, you must give us the address of your permanent foreign residence. You must also renew your status as an

exempt foreign person prior to the end of the third calendar year following the year in which you last certified your status. During that year, we send you the necessary forms. If you fail to renew your status by the last day of that calendar year, your interest payments are subject to backup withholding at the then current rate.

If you become a U.S. citizen or resident after opening your account, you must notify us within 30 days and provide us with your certified name and TIN (Form W-9).

For more information or to determine whether this information applies to you, consult your U.S. tax advisor.

Availability and Reporting of Interest

For interest bearing checking and savings accounts, interest is reported to the IRS as it is earned. On time deposits, interest is available to you and is reported to the IRS as it is earned, whether or not it is withdrawn prior to maturity.

Penalties

If you fail to furnish a correct name and TIN, you may be subject to a \$50 IRS penalty. If you make a false statement that has no reasonable basis and that results in no backup withholding, you may be subject to a \$500 IRS penalty. If you deliberately give false information, you may be subject to criminal penalties.

What name and number to give the requester

<i>For this type of account:</i>	<i>Give name and Social Security number of:</i>
1) Individual	The individual
2) Two or more individuals (joint account)	The actual owner of account or, if combined funds, the first individual on account ¹
3) Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4) a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5) Sole proprietorship	The owner ³
<i>For this type of account:</i>	<i>Give name and Employer ID number of:</i>
6) Sole proprietorship	The owner ³
7) A valid trust, estate, or pension trust	Legal entity ⁴
8) Corporate	The corporation
9) Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10) Partnership	The partnership
11) Broker or registered nominee	The broker or nominee
12) Account with Dept. of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first the name of the person whose number you furnished. If only one person on a joint account has an SSN, that person's number must be furnished.

² List the minor's name and furnish the minor's SSN.

³ You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).

⁴ List first the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: If there is more than one name, the number will be considered to be that of the first name listed.

Resolving Disputes

If you or we request, any controversy or claim ("controversy") concerning your deposit account relationship with us, including any claim based on or arising from an alleged tort, will be determined by arbitration, reference, or trial by a judge as provided below. A controversy that involves an amount in dispute of less than \$1 Million will be determined by arbitration as described below. Any other controversy will be determined by judicial reference of the controversy to a referee appointed by the court or, if the court where the controversy is venued lacks the power to appoint a referee, by trial by a judge without a jury, as described below. The arbitration, judicial reference or trial by a judge will take place on an individual basis without resort to any form of class action.

WHETHER THE CONTROVERSY IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, YOU AGREE AND UNDERSTAND: (I) THAT YOU AND WE ARE GIVING UP THE RIGHT TO TRIAL BY JURY, AND THERE WILL BE NO JURY AND (II) THAT THIS SECTION PRECLUDES YOU AND US FROM HAVING THE RIGHT TO PARTICIPATE OR BE REPRESENTED IN ANY FORM OF CLASS ACTION OR ANY OTHER LITIGATION FILED IN COURT BY OTHERS.

Arbitration. Since this Agreement touches and concerns interstate commerce, an arbitration under this Agreement will be conducted in accordance with the United States Arbitration Act (Title 9, United States Code), notwithstanding any choice of law provision in this Agreement. Arbitration, including selection of an arbitrator, will be conducted in accordance with the then-current rules for arbitration of financial services disputes of J.A.M.S. ("JAMS"). You may call JAMS at 1.800.352.5267 to obtain rules and forms to initiate

arbitration or visit their Web site at www.jamsadr.com for more information. If JAMS is unable or unwilling to serve as the provider of arbitration, we may substitute another national arbitration organization with similar procedures. The arbitrator(s) will follow the law and will give effect to statutes of limitation in determining any claim. Any controversy concerning whether an issue is arbitrable will be determined by the arbitrator(s). The award of the arbitrator(s) will be in writing and include a statement of reasons for the award. The award will be final. Judgment upon the award may be entered in any court having jurisdiction, and no challenge to entry of judgment upon the award will be entertained except as provided by Section 10 of the United States Arbitration Act or upon a finding of manifest injustice.

Judicial Reference or Trial by a Judge. If you or we request, any controversy concerning your deposit account relationship with us that is not submitted to arbitration as provided above will be determined by reference to a referee appointed by the court who, sitting alone and without a jury, will decide all questions of law and fact. The referee will be an active attorney or retired judge. If the court where the controversy is venued lacks the power to appoint a referee, the controversy instead will be decided by trial by a judge without a jury.

Self-Help and Provisional Remedies. Either you or we may exercise self-help remedies such as set-off or obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration or reference. Neither the obtaining nor the exercise of any such remedy will waive the right of either party to demand that the related or any other controversy be determined by arbitration or reference as provided above.

Jurisdiction and Venue. Any arbitration, lawsuit or other proceeding regarding your account must be brought in the state where we opened, or if different, currently maintain your account and you submit to the personal jurisdiction of that state.

Bank of America



bankofamerica.com

Bank of America, N.A. Member FDIC.
Applies to accounts opened in AR, AZ, FL, GA, IA, IL,
KS, MD, MO, NC, NM, NV, OK, SC, TN, TX, VA,
Washington D.C.

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ROA 952

Outgoing Payments Module – BAC 6.4b

Bill Pay Overview page:

BOA_00671

Bill Pay Overview
[Customize this Page](#)

e-Bills **Reminders** (0)

You have requested e-Bills but don't have any unpaid e-Bills at this time.

[Request e-Bills](#)
[View and manage your e-Bills](#)
[Text drive an e-Bill](#)

Make Payments [Customize your payee list](#)

To make a payment, enter an Amount and Deliver By date for the payees you want to pay, then click the Make Payments button. Deliver By is the date by which your payee receives the payment.

Payee Name ↑
Sort by: Nickname

Amount	Deliver By mm/dd/yy	Last Payment
<hr/>		
American Eagle Outfitters		
Download Text -2321		11/20/06
Next-Day Delivery		\$15.00
Receiving e-Bills		
<hr/>		
Add memo		
Pay From: Checking-2003		
Change		
<hr/>		
Ameritech		
Trial Period Test -4321		11/20/06
Next-Day Delivery		\$10.00
<input checked="" type="checkbox"/> Request e-Bills		
<hr/>		
Add memo		
Pay From: Money Market-1977		
Change		
<hr/>		
Bank of America Credit Card		
Option #2 Biller -3640		11/20/06
Same-Day Delivery		\$20.00
<input checked="" type="checkbox"/> Request e-Bills		
<hr/>		
Add memo		
Pay From: Checking-2003		
Change		
<hr/>		
Bank of America Credit Card		
text -6543		11/20/06
Same-Day Delivery		\$10.00
e-bill request pending		
<hr/>		
Add memo		
Pay From: Checking-2003		
Change		
<hr/>		
Boston Edison		
Trial Period -7895		10/30/06
4-Day Delivery		\$2.00
Receiving e-Bills		
<hr/>		
Add memo		
Pay From: Money Market-1977		
Change		
<hr/>		
Cox Cable		
Dual Delivery -1234		11/20/06
Same-Day Delivery		\$15.00
<hr/>		
Add memo		
Pay From: Checking-2003		
Change		
<hr/>		
Display Payment Total		
Make Payments		

Outgoing Payments

Payee	Amount	Deliver By
Delivered Today		
American Eagle	\$15.00	11/20
Bill Download		View
Ameritech	\$10.00	11/20
Trial Period Test		View
Bank of America	\$20.00	11/20
Option #2 Biller		View
Bank of America	\$10.00	11/20
text		View
Scheduled Payments		
Boston Edison	\$2.00	11/30
Trial Period		View
Cox Cable	\$15.00	12/01
Dual Delivery		View
Delivered:	\$55.00	
Scheduled:	\$17.00	
Total:	\$72.00	

[Set up automatic payments](#)
[View more payments](#)

ROA 953

12/3/2006

Here is the wireframe for the page that was displayed when the "Change" link was selected:
 "Change" appears on the previous slide under PAY FROM.

Bank of America Logo
Online Banking

Mail Help Sign Off

Accounts Bill Pay & e-Bills Transfer Funds Customer Service Products

Overview Payments Payees e-Statements

Change Pay From Account

Use this page to change the default Pay From account for your payees. You can choose to change the highlighted payee only, or you can change the Pay From accounts for all your payees.

To change the Pay From account for a payee, select an account from the pull-down menu and click Save Changes.

Payee	Pay From Account	Change
Ford Motor Credit truck prot-9420	Bank of America VISA - 8756: Avail. Funds \$ 825.05	▼
BellSouth phone bill-3 691	Bank of America VISA - 8756: Avail. Funds \$ 825.05	▼
Chibank VISA Corporate card- 3091	Bank of America VISA - 8756: Avail. Funds \$ 825.05	▼
JCPenney Corporate Card- 3091	Bank of America VISA - 8756: Avail. Funds \$ 825.05	▼
Taf's House of Style bill 181-3091	Bank of America VISA - 8756: Avail. Funds \$ 825.05	▼

Save Changes
Don't Save Changes

BOA_00672

ROA 954

Single payment page:

BOA_00673

Bank of America Logo Online Banking

Make a Payment: Enter Information

Darnetta Cooney | Atlanta, Georgia | Make a Single Payment

Quick Help

Copy for:

State 2, Payee known

OK

State 2, Payee known, non-JavaScript version

Pay From:

Payee	Amount	Deliver By
AT&T Wireless Cell Phone - 6213 Next-City Delivery	\$	<input type="button" value="Add Memo"/>

Unpaid e-Bills from <Payee Name> |

Due Date	Amount
10/01/2003	Minimum: \$17.00 Amount: \$215.00 Due date: 10/01/2003

ROA 955

Automatic payment page:

BOA_00674

Bank of America Logo
Online Banking

Mail Help Sign Off

Accounts Bill Pay & e-Bills Transfer Funds Customer Service

Overview Payments Payees Utilities

Set Up a Recurring Payment

[Payments Overview](#) | [Automatic Payments](#) | [Make a One-Time Payment](#)

Quick Help

You are setting up a recurring payment. Use this page to enter the amount, frequency, and duration of the payments.

What can I do?

- Set up a recurring payment [\(How?\)](#)

What do I need to know?

- You have two options for setting the payment amount. You can make all payments the same amount, OR you can make all regular payments the same amount and enter a different amount for the last payment. When specifying a frequency and duration, you need to choose three decisions: (1) when do you want to start the first payment, (2) how often do you want to make the payments, and (3) when do you want to stop making the payments.
- When recurring payments are made, they appear in your Outgoing Payments list on the Bill Pay Overview page as well as on the Payments Overview.
- You cannot setup a recurring payment for today's date using your Visa credit or Check Card accounts.
- If necessary, you can edit or cancel a payment that has a status of Scheduled.
- A recurring payment plan automatically makes payments to a payee at regular intervals for an amount you choose. After you set up a recurring payment plan, the payments to the payee are made automatically - for the duration you choose or until you cancel the recurring payment plan.

What else can I do? [Click on links](#)

- Edit a recurring payment [\(How?\)](#)
- Cancel a recurring payment [\(How?\)](#)
- Make a payment [\(How?\)](#)

If you have questions, browse our list of frequently asked questions.

Payee Information

Payee: **AT&T Wireless** [Add a different payee](#)
 Cell Phone - 6213
 Next-Day Delivery

To set up a recurring payment, provide the following information and click Set Up Payment.

Payment Account

Pay From: Checking - 1234 Acct Funds \$2000.00

TBO: Amount & Memo

Payment Amount: \$

All payments are the same amount.

The amount of the last payment should be \$

IND. AUT. RECURRING PAYMENT DETAIL

Frequency and Duration

Deliver Next Payment On: 12/31/2002

Send Payments: Monthly

Until I change or cancel the payment
Number of Payments

Until remaining payments have been delivered

Until, but not after 12/31/2002

Save Changes
Don't Save Changes

ROA 956

IMPACS STATUS CODES

- 00 Normal (Default)
- 01 Frozen; no DDA Activity
- 02 No check activity
- 03 Closing; only debits allowed
- 04 Closed (zero balance DDA)
- 05 Purged
- 06 Dormant
- 07 Inactive
- 08 Terminated
- 09 Credits only allowed
- 10 Abandoned



00 - Active (Normal, Open) status; account open and active

Debits and credits update date of last activity and date of last customer contact based on options set in transaction option table. File maintenance requested by a customer will also update the date of last customer activity. An account in another status could be file maintained to "Active" status, if required. Interest is paid only to Open accounts.

01 - Frozen; no Debit activity

This status will disallow any monetary debit activity from posting. Any monetary debit activity attempting to post in batch will be rejected and will appear on the daily Posting Reject Journal with the following exception: DDA credits, deposits, and debits with the transaction table option PST NO AC (Post to No Activity Status) set to 'Y', will post in batch. System generated transactions will post to accounts in this status. Transactions that post to an account in a Frozen status will not reopen the account. File maintenance is required to establish or remove this status. A zero balance account with this status will not go into "Closed" (04) status automatically. A manual status change must be processed to take it out of "Frozen" status. This status is also used to force accrued interest to post to an account with a Close Reason of 66, 67, and 70, and will stop future interest accrual for the charge off process. If the Close Reason is changed from 66, 67, and 70, the interest will resume and will post at cycle.

12/12/03 Implemented Forced Post Credits to frozen accounts (Phase 1)

Transaction Services has determined that it would be in their best interest to force-post any credits that attempt to post to a Frozen (01 Status) account. This would recover any and all Bank funds that are used to close accounts by the Bank for whatever reason. The Account Status will not change from Frozen, but, will remain Frozen 01. Credits and not Deposits to be included with this install. Deposits to be addressed next year.

Today's Date: 11/23/2010

Last Updated: 02-24-04

Reason: Modifications for Reg DD Capture Project and to update documentation as needed.

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BOA_00675

Force post DDA credit transaction codes (2-DDA CR) to Frozen Status 01 accounts.

Transaction Code	Description
4001	BANK CREDIT TRANSACTION
4004	AUTOMATED LOAN ADVANCE
4005	BANK ADJUSTMENT
4007	CASH DEPOSIT CORRECTION
4008	CONTROLLED DISBURSEMENT CR
4009	CREDIT MEMO
4010	INTEREST TRANSFER
4011	INTEREST PAID
4012	NON-CASH DEPOSIT CORRECTION
4013	SECURITIES CREDIT
4014	SWEEP TRANSFER
4016	ZBA TRANSFER
4018	LETTER OF CREDIT
4019	TFR CREDIT
4020	CREDIT TO CLOSE
4021	BOND TRUST CREDIT
4023	FOREIGN EXCHANGE
4024	BANKERS ACCEPTANCE
4027	AUTOBORROW ADVANCE
4080	OVERDRAFT PROTECTION
4081	AIRLINE CHECKCARD FEE REFUND
4082	RESERVED FOR FUTURE USE
4083	RESERVED FOR FUTURE USE
4084	RESERVED FOR FUTURE USE
4085	RESERVED FOR FUTURE USE
4105	BANK ADJUSTMENT
4107	CASH DEPOSIT CORRECTION
4109	CREDIT MEMO
4112	NON-CASH DEPOSIT CORRECTION
4166	BILL PAYMENT
6001	RETURNED CHECK
6002	RETURNED IREM
6003	RETURNED ITEM
8001	CHARGE OFF
8002	REVERSE ACH DEBIT
8003	24 HOUR DEBIT REVERSAL
8006	LOCKBOX CREDIT ADJUSTMENT
8008	REVERSE CONTRALLED DISBURSEMENT DEBIT
8010	24-HOUR TRANSACTION FEE REVERSAL
8012	OVERDRAFT INTEREST ADJUSTMENT
8015	REVERSE CHECK PRINTING CHARGE
8016	CHECKCARD FOREIGN CURRENCY CREDIT
8018	REVERSE LOAN PAYMENT
8020	INTEREST ADJUSTMENT
8028	REVERSE FEDERAL WITHHOLDING
8032	REVERSE NSF CHARGE
8035	REVERSE OD CHARGE
8036	REVERSE EXTENDED OVERDRAWN BALANCE CHARGE (EOBC)
8051	REVERSE WIRE TRANSFER DEBIT
8063	REVERSE BROKERAGE DEBIT
8098	REVERSE POSTED AMOUNT
8099	REVERSE SERVICE FEE
8106	LOCKBOX CREDIT ADJUSTMENT
8110	EXCHANGE RATE ADJUSTMENT
8124	DEPOSIT CORRECTION

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Reason: Modifications for Reg DD Capture Project and to update documentation as needed.

BOA_00676

6/25/2004 In Phase 1 (4/1/2003), a variety of internal credit transaction codes were changed to force post to accounts in a Frozen (01) status.

This phase of the project will encompass the Deposit transaction codes that might come in from outside sources, thus allowing additional opportunities to recover any losses the Bank might incur in the process of closing the accounts. Automatically force-post to the account any Deposits attempting to post to an account with a Frozen (01) status by IMPACS.

Automatically force-post all DDA Deposit transaction codes to all accounts in a Frozen (01) status.

Do not change the status of account but retain the Frozen status.

Transaction Code	Description
2002	BROKERAGE CREDIT
2004	DIRECT DEPOSIT BY MAIL
2006	MAIL DEPOSIT
2007	FOREIGN 24-HOUR CREDIT
2008	24-HOUR CREDIT
2009	MERCHANT BANK CARD DEPOSIT
2010	ACH DEPOSIT
2011	WIRE TRANSFER CREDIT
2012	AUTHORIZED CREDIT
2013	BANK PAYROLL
2015	LOCKBOX DEPOSIT
2101	CUSTOMER DEPOSIT
2103	PREENCODED DEPOSIT
2105	DTC DEPOSIT
2106	COUNTER CREDIT
2111	MERCHANT CARD
4064	AUTOMATIC TRANSFER

02 - No Check Activity

This status will cause any checks attempting to post in batch to reject and appear on the daily Posting Rejects Journal. All other debits and all credits will still post to the account. File maintenance is required to establish or remove this status. A zero balance account with this status will not go into "Closed" (04) status automatically. A manual status change must be processed to take it out of "No Check Activity" status.

03 - Closing; debits only allowed

This status is set by the "Closing" function on BOSS. The account will remain in this status until the current balance reaches zero provided that all the closing procedures are followed. When the balance reaches zero the status will automatically change to 04 "Closed" the same night that it goes to a zero balance. This status will allow debits to post to the account and also allow certain credits to post for 2 business days (counting the day it was placed in Closing as business day 1) while in closing status. This status will allow debits to post but all credits after the 2 business days will reject to the Posting Reject Journal. Service charges will be waived and interest will no longer accrue on accounts in this status. File maintenance can be performed to change the account back to an "Active" status. Accrued interest is paid when the status changes to Closing.

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BOA_00677

04 - Closed

This status is set automatically when an account has been at a zero balance for the number of days established at the product level. For example, if the "zero balance grace days" is set to 45, the status will not change to "Closed" until the current balance has been zero for 45 days. If the "Close Override" flag is set to a "1", the account status will not change to "Closed" regardless of the number of days the balance has been at zero.

9/1/04 Implemented extended automatic closing from 45 days to 85 days for all consumer accounts only.

Extend the length a zero-balance Regular & Custom Savings accounts, and all Consumer Checking Accounts stay open, from 45 business days to 85 business days (approximately 120 Calendar Days) in Model.

Non-interest bearing accounts will change from a "Closed" status to "Purged" after reaching the number of days to purge set at the product level. Interest bearing accounts will change to a "Terminated" status. File maintenance can be performed to change the account back to an "Active" status.

Accounts in an 04 (Closed) status, if a deposit is made to the account and the Close Reason code is 66, 67, or 70 (Closed Unsatisfactory), the account will be reactivated to an 01 Frozen status, where debits reject and credits are posted to the account. The rejected debit items will appear on the Unposted Exceptions Report (IM41N1NB), or ACH Unposted Report (IM41AUNB) for account review.

The transactions listed below will reopen an account from a 04 to a 00 status with the exception of accounts with the close reasons listed above.

Tranccodes	Transaction Description
2006	Mail Deposits
2008	24 Hour Credits
2010	ACH Deposits
2011	Wire Transfer Credits
2015	Lockbox Deposits
2020	System Generated Accrued Interest
2101	Customer Deposits
2106	Counter Credits
4001	Bank Credit Transactions
5001 Bank Debit	Bank Debit Transaction
9097	Force Post Transaction
9098	Force Post Transaction
9099	Force Post Transaction

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BOA_00678

(Note: If an account is Closed 04, but carries accrued interest [not supposed to happen, but does], and the account cycles, upon paying the interest [GT 2020], the account will reopen.

4/1/2003 Implemented Money Market Saving Product 305 grace days.

The purpose of this initiative is to encourage existing or new customers to open a new Money Market Savings account (PT 305) and to allow the customer the luxury of making the first deposit up to 180 days from the date of the account opening. On the 180th day after the account opening, if the customer has not made a deposit to the account, it will automatically be changed from a normal status (WMS-STATUS = 00) to a closed status (WMS-STATUS =04). For all existing Money Market Savings accounts, the zero balance grace days will remain at 45 days.

05 - Purged

A closed account automatically rolls to a "Purged" status based on the "Purge Days" set at the product level if the account has no year-end reportable information. An account in "Purged" status will be dropped from the account master file in the next batch processing run unless file maintenance is entered to change the status. Monetary transactions attempting to post in batch will be rejected and will appear on the daily Posting Rejects Journal. Accounts in a purged status should not be reopened.

06 - Dormant

This status is changed automatically from "Inactive" to "Dormant" when an account has been without activity for the period of time specified for dormancy at the product level. Both the date of last customer activity and date of last contact are used to determine dormancy. Monetary activity will post to the account but will not reactivate the account. The transactions will appear on Activity to Dormant Account Report for review by the Dormant Control Unit. After review, the DCU can file maintain the status back to "Active" if appropriate. An annual fee will be charged on "Dormant" accounts. If the account does not have sufficient funds to cover the fee amount, the system will automatically credit the accrued interest, debit the account for the balance (bringing it to \$0.00) and change the status to change the status to "Closed".

07 - Inactive

This status is changed automatically from "Active" to "Inactive" when an account has been without activity for the period of time specified for inactivity at the product level. Both the date of last customer activity and date of last contact are reviewed with the more recent of the two being used to determine inactivity. Monetary activity will post to the account, update the last customer activity date (if customer initiated), and will reactivate the

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account (change to "Active" status). File maintenance can update the date of last customer contact, if customer initiated.

08 - Terminated

A closed account automatically rolls to a "Terminated" status based on the "Purge Days" set at the product level if the account has year-end reportable information. After year-end reporting has been completed, the status will be changed to "Purged". Monetary activity attempting to post during batch processing will be rejected and will appear on the daily Posting Rejects Journal. File maintenance is required to change the status. Accounts in a terminated status should not be reopened.

09 - Credits only allowed

This status will allow credits to post to the account but all debits will be rejected and will appear on the daily Posting Rejects Journal. File maintenance is required to establish and change this status. A zero balance account with this status will not go into "Closed" (04) status automatically. A manual status change must be processed to take it out of "Credits Only" status.

Still posts exception fees – 3032, 3034, 3035 (3036)

10 - Abandoned

In account automatically rolls from "Dormant" to "Abandoned" after an account has been without activity/customer contact for the period of time specified by type of account (DDA/Savings). Monetary activity will post to the account but will not reactivate the account. The transactions will appear on Activity to Dormant Account Report for review by the Dormant Control Unit. After review, the DCU can file maintain the status back to "Active" if appropriate.

Accounts in "Abandoned" status are reviewed at a specified time (state specific) to determine requirement to escheat funds to the state. When accounts are escheated, funds will be withdrawn and the account will be manually closed by the Dormant Control Unit.

Status Flows:

Customer Initiated Close

Non-Interest Bearing Accounts:

[Account begins]
Open [00] (with balance)



[Customer requests the account be closed; Associate using BOSS sets the account to ...]

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BOA_00680

Closing [03]

[Customer's final debit posts, bringing the account to a zero balance. During the same posting cycle, IMPACS changes the status to ...]

Closed [04]

[After 45 calendar days at zero balance, IMPACS automatically changes the status to ...]

Purged [05]

[The following processing day, the account is deleted from the Account Master File. BOSS retains the account record for 5 years, for research purposes]

Interest Bearing Accounts:

Open [00] (with balance) [Account begins]

[Customer requests the account be closed; Associate using BOSS sets the account to ...]

Closing [03]

[Customer's final debit posts, bringing the account to a zero balance. During the same posting cycle, IMPACS changes the status to ...]

Closed [04]

[After 45 calendar days at zero balance, IMPACS automatically changes the status to ...]

Terminated [08]

[Account remains in Terminated until EOY, when TX takes a tax reporting file to generate 1099s. The following processing day, IMPACS changes the status to ...]

Purged [05]

[The following processing day, the account is deleted from the Account Master File. BOSS retains the account record for 5 years, for research purposes]

System Initiated Close

Non-Interest Bearing Accounts:

Open [00] (with balance) [Account begins]

[Transactions take account to a zero balance. The Balance remains at zero for 45 Processing days. IMPACS sets the account to ...]

Closed [04]

[After 45 calendar days in a closed status with a zero balance, IMPACS automatically changes the status to ...]

Today's Date: 11/23/2010

Last Updated: 02-24-04

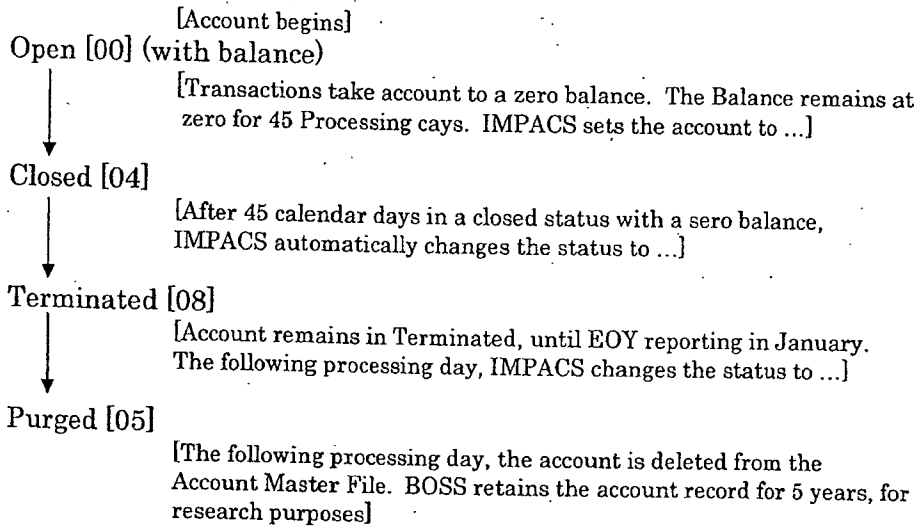
Reason: Modifications for Reg DD Capture Project and to update documentation as needed.

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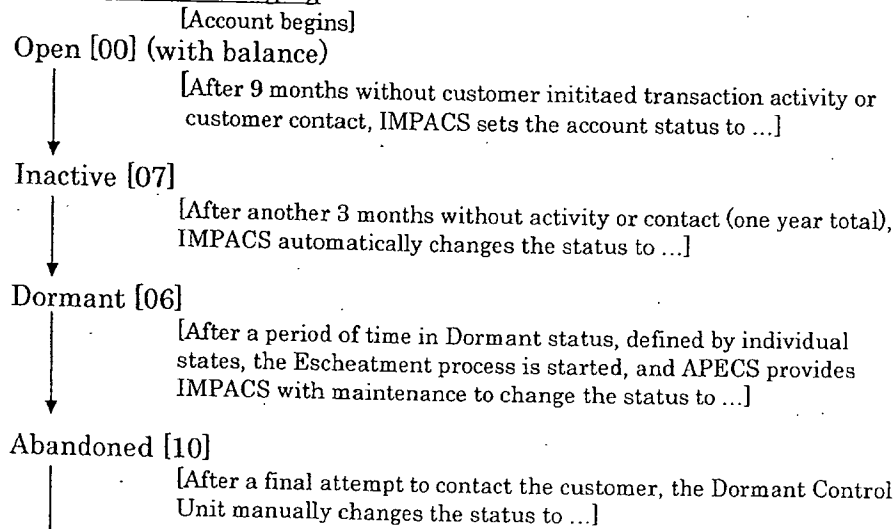
Purged [05]

[The following processing day, the account is deleted from the Account Master File. BOSS retains the account record for 5 years, for research purposes]

Interest Bearing Accounts:



System Initiated Status Aging



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Reason: Modifications for Reg DD Capture Project and to update documentation as needed.

Closing [03]



[The DCU generates a closing debit using FDES, to transfer the funds to the state. The transaction posts, bring the account to a zero balance. During the same processing cycle, IMPACS automatically changes the status to ...]

Closed [04]

[The account follows the standard system initiated status change process for zero balance accounts, defined by whether or not the account is interest bearing. (see above)]

IMPACS to BOSS Status Codes:

IMPACS	BOSS Top 88 Status Code	Short (CUAC) Pneumonic	Status Description (display on CSXX)
00	99	OP	Normal - Open
01	10	FA	Frozen All
02	99	NC	No Check Activity
03	99	PC	Closing
04	07	CL	Closed
05	08	PU	Purged
06	05	DO	Dormant
07	99	IN	Inactive
08	07	TE	Terminated
09	99	CO	Credits Only
10	06	AB	Abandoned

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