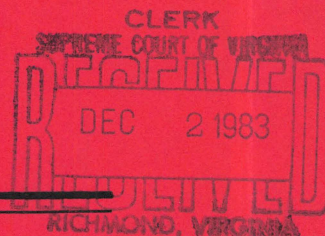


231 Va 299



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IN THE

# Supreme Court of Virginia

AT RICHMOND

---

RECORD NO. 830421

---

DONNA M. FLEMING, GUARDIAN  
FOR ALMA S. ELLIOTT

Appellant,

v.

THE BANK OF VIRGINIA

Appellee.

---

JOINT APPENDIX

---

C. Grice McMullan, Jr.  
Christopher M. Malone  
THOMPSON & McMULLAN  
13 East Franklin Street  
Richmond, VA 23219

Counsel for Appellant

Joseph C. Kearfott  
John Jay Range  
HUNTON & WILLIAMS  
P. O. Box 1535  
Richmond, VA 23212

Counsel for Appellee



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AMENDED MOTION FOR JUDGMENT

Donna M. Fleming, Guardian of Alma S. Elliott, by counsel, respectfully states for her amended motion for judgment as follows:

1. The Bank of Virginia (the "Bank"), is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business located in the City of Richmond, Virginia.

2. At some time in 1978, Alma S. Elliott ("Alma Elliott"), a lady presently eighty-four years old, moved from Maryland to the County of Hanover, Virginia to live with her granddaughter, Donna M. Fleming ("Donna Fleming"), and her grandson-in-law, Clarence E. Fleming ("Clarence Fleming"), because of her poor health.

3. Shortly after moving to Hanover County and from then until some date in 1979, Alma Elliott, with the assistance of Donna Fleming and Clarence Fleming, and with the advice of legal counsel, placed money owned by her in various checking, savings and certificates of deposit accounts with the Bank, which accounts were for her protection and convenience and which accounts were sometimes in her name and Donna Fleming's name, in her name and Clarence Fleming's name and in her name, Donna Fleming's name and Clarence Fleming's name.

4. During the time that the aforesaid accounts were established by Alma Elliott, the Bank had actual knowledge of Alma Elliott's approximate age, her general infirmity, her relationship to Donna Fleming and Clarence Fleming, and knowledge of the fact that the sums of money being deposited were solely the monies of Alma Elliott.

5. One of the accounts that was opened by Alma Elliott

was a savings account numbered either 59-57-99445-1 or 57-99445-1, which initially listed her name and Clarence Fleming's name on the account, and which reported all interest generated from the account to the U. S. Internal Revenue Service as income to Alma Elliott.

6. Another account established by Alma Elliott was so established in October, 1979 when Alma Elliott sold her home in Edgewater, Maryland, and transferred her money to the Bank, as evidenced by a Certificate of Deposit in the amount of \$31,000.00, which Certificate was in her name and Clarence Fleming's name.

7. Thereafter when the Certificate of Deposit described in paragraph 6 herein was redeemed, a new Certificate of Deposit was purchased from the Bank by Alma Elliott or Clarence Fleming for Alma Elliott in an amount reflecting what money remained for Alma Elliott after the payment of medical and other expenses for her.

8. On December 22, 1980, Clarence Fleming, as had previously occurred, purchased for Alma Elliott a Certificate of Deposit for \$21,116.21 (the "\$21,116.21 CD"), which Certificate reflected what money remained for Alma Elliott from the \$31,000.00 sum originally deposited with the Bank in October, 1979, and which Certificate provided for all interest earned by it to be deposited into the savings account of Alma Elliott described in paragraph 5 herein, just as all other Certificates of Deposit purchased for Alma Elliott provided.

9. On June 23, 1981, the Bank obtained the \$21,116.21 CD from Clarence Fleming when he attempted to redeem it and refused to return it to him after promising to do so, but instead kept \$13,286.00 of the sum it was obligated to pay



either to Alma Elliott or to Clarence Fleming for the benefit of Alma Elliott, because it claimed it was owed \$13,286.00 by Clarence Fleming as a result of a \$10,000.00 guaranty he alone had signed with regard to a transaction in which Alma Elliott was not involved.

10. When the Bank took possession of the matured \$21,116.21 CD on June 23, 1981, personnel at the Bank promised to return it to Clarence Fleming along with interest to accrue on each additional day the Bank held the \$21,116.21 CD beyond June 23, 1981 at an annual rate of 15.673% per year, which was the stated rate on the \$21,116.21 CD and which promise by the Bank was for the benefit of Alma Elliott.

11. At no time prior to or at the time of the taking of \$13,286.00 by the Bank did the Bank notify Alma Elliott of the fact that it was taking money which it knew or should have known was money solely owned by her which was being handled by Clarence Fleming on her behalf.

12. Alma Elliott has since made demand on the Bank for the return of the \$13,286.00 that the Bank took from the \$21,116.21 CD, but the Bank has refused to honor this demand.

WHEREFORE, Donna Fleming, as guardian for Alma Elliott, prays that judgment be entered against the Bank on behalf of Alma Elliott for \$13,286.00, plus interest at 15.673% per year on that sum from June 23, 1981, as well as the costs of this action and such other and further relief as the Court considers just and proper.

Trial by jury is demanded.

DONNA M. FLEMING, Guardian  
for Alma S. Elliott

By C. Grice McMullan, Jr.  
Counsel

C. Grice McMullan, Jr., p.q.  
Christopher M. Malone, p.q.  
Thompson & McMullan  
13 East Franklin Street  
Richmond, Virginia 23219

O R D E R

This day came the plaintiff, by counsel, and after legal and proper notice to the defendant moved the Court to grant leave to the plaintiff to file an Amended Motion for Judgment in this action, which leave is granted, and it is

ADJUDGED and ORDERED that the plaintiff's Amended Motion for Judgment, previously tendered, is now filed, and the defendant will file responsive pleadings thereto within 10 days.

Enter: 11 124182

Judge RG Stypel

I ask for this:

C. Grice McMullan, Jr., Esq.  
C. Grice McMullan, Jr., Esq.  
Christopher M. Malone, Esq.  
Thompson & McMullan  
13 East Franklin Street  
Richmond, Virginia 23219

Seen:

John Jay Range, Esq.  
Joseph C. Kearfott, Esq.  
John Jay Range, Esq.  
Huntton & Williams  
P. O. Box 1535  
Richmond, Virginia 23212



REQUEST FOR ADMISSIONS BY BANK OF VIRGINIA

Defendant, Bank of Virginia (the Bank), by counsel, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, hereby requests the plaintiff, Donna M. Fleming, guardian for Alma S. Elliott, to admit the truth of each of the matters set forth below. Each such matter shall be considered admitted pursuant to the provisions of Rule 4:11 unless the plaintiff serves answers or objections on John Jay Range, Hunton & Williams, P.O. Box 1535, Richmond, Virginia 23212, counsel for the Bank, within 21 days after service of these requests. The matters to be admitted are:

1. That the document attached hereto as Exhibit 1 is a true copy of a signature card signed by Alma S. Elliott.
2. That the document attached hereto as Exhibit 2 is a true copy of a signature card signed by Alma S. Elliott.
3. That the document attached hereto as Exhibit 3 is a true copy of a signature card signed by Alma S. Elliott.
4. That the document attached hereto as Exhibit 4 is a true copy of a signature card signed by Alma S. Elliott.
5. That Exhibits 1 through 4 were signed by Alma S. Elliott for the purpose of opening an account with the Bank.
6. That Exhibit 2 indicates the account created thereby was a joint account.
7. That Exhibit 3 indicates the account created thereby was a joint account.
8. That Exhibit 4 indicates the account created thereby was a joint account.
9. That all accounts opened or maintained at the Bank of Virginia for or on behalf of Alma S. Elliott were created as joint accounts with the right of survivorship.

10. That a joint account is an account that permits every party named on the account to withdraw some or all of the funds in the account.

11. That all joint accounts maintained at the Bank in the names of Alma S. Elliott or Clarence E. Fleming permitted either Alma S. Elliott or Clarence E. Fleming to withdraw some or all of the funds from such accounts.

12. That the document attached hereto as Exhibit 5 is a true copy of certificate of deposit number 129392, issued October 11, 1979 in the original amount of \$31,000.

13. That Exhibit 5 was redeemed on April 10, 1980 and that the funds were used to purchase certificate of deposit number 129697.

14. That the document attached hereto as Exhibit 6 is a true copy of a certificate of deposit number 1219697, issued April 10, 1980, in the original amount of \$31,000.

15. That Exhibit 6 was redeemed on October 22, 1980 and that the funds were used to purchase certificate of deposit number 0012019220.

16. That the document attached hereto as Exhibit 7 is a true copy of certificate of deposit number 0012019220, issued October 22, 1980 in the original amount of \$31,000.

17. That Exhibit 7 was redeemed on December 22, 1980 and that \$20,116.21 of the proceeds were used to purchase certificate of deposit number 0012019592.

18. That the remainder of the proceeds of Exhibit 7 were deposited in checking account number 5527650369.

19. That the document attached hereto as Exhibit 8 is a true copy of a certificate of deposit number 0012019592, issued December 22, 1980 in the original amount of \$20,116.21.

20. That the document attached hereto as Exhibit 9 is

a true copy of the Bank's rules, regulations and agreements governing savings certificates of deposit accounts.

21. That the rules and regulations set forth in Exhibit 9 are applicable to and govern certificates of deposit at the Bank, including the certificates attached hereto as Exhibits 5, 6, 7 and 8.

22. That Exhibits 5, 6, 7 and 8 were opened in the names of "Alma S. Elliott or Clarence E. Fleming."

23. That Exhibits 5, 6, 7 and 8 were joint accounts.

24. That either Alma S. Elliott or Clarence E. Fleming could redeem the certificates of deposit attached hereto as Exhibits 5, 6, 7 and 8.

25. That either Alma S. Elliott or Clarence E. Fleming could redeem the certificates of deposit attached hereto as Exhibits 5, 6, 7 and 8 without obtaining the signature of the other party.

26. If your response to any of the proceeding Request for Admissions is anything other than an unequivocal admission, please identify the following:

(a) All facts or applications of law to fact upon which you intend to rely in support of such failure to admit;

(b) All persons with knowledge of any fact identified in your response to subparagraph (a) hereof;

(c) All documents that support or relate to any fact identified in response to subparagraph (a) hereof; and

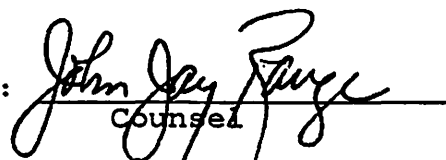
(d) All steps that you have taken in order to make reasonable inquiry concerning the truth of the allegations, as required by Rule 4:11(a).

Joseph C. Kearfott  
John Jay Range  
HUNTON & WILLIAMS  
P.O. Box 1535  
Richmond, Virginia 23212

Of Counsel

BANK OF VIRGINIA

CCB By:

  
Counsel



CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of October 1982 a true copy of the foregoing REQUEST FOR ADMISSIONS BY BANK OF VIRGINIA was hand-delivered to C. Grice McMullian, Jr., Esquire, Thompson & McMullian, 13 East Franklin Street, Richmond, Virginia 23219, counsel for plaintiff.

  
\_\_\_\_\_  
John Jay Range

<b>1</b>	NAME	Alma S. Elliott	SOC SEC. NO.	213-48-7385
	ADDRESS	2100 Avondale Dr. Mechanicsville, VA 23111	HOME PHONE	746-1714
	BUSINESS	retired	BUSINESS PHONE	
	REFERENCE OR FORMER BANK ACCOUNT Eastern Liberty Fed. Sav. & Loan, Washington D.C.			
<b>2</b>	NAME	Clarence E. Fleming	SOC SEC NO	
	ADDRESS	same	HOME PHONE	
	BUSINESS		BUSINESS PHONE	
	REFERENCE OR FORMER BANK ACCOUNT			

## SAVINGS CERTIFICATE INFORMATION

CERTIFICATE NUMBER	FACE AMOUNT	DEPOSIT DATE	CLOSING DATE
106893	\$17,700, Maturity 8-30-90	10/21/78	Closed 4-2-79

NAME (Type or print)

1 Elliott, Alma S.

SIGNATURES:

1 *Alma S. Elliott*

2 Fleming, Clarence

2 *Clarence E. Fleming*

CHECKING ACCOUNT NO.

SAVINGS PLUS ACCT. NO.

SAVINGS ACCOUNT NO.

MASTER CHARGE NO.

## AVAILABLE SERVICES

SERVICE	IND	JOINT	BOTH SIGN	DATE OPENED	OPENED BY	INITIAL DEPOSIT	DATE CLOSED
MASTER CHECKING							
CHECKING							
SAVINGS							
SAVINGS PLUS							
GREEN CARD							
MASTER CHARGE							
SYSTEMATIC SAVINGS							
SAVINGS CERTIFICATE							
SAFE DEPOSIT BOX							



Bank of Virginia


OFFICE

57

All accounts requested above shall be subject to, and the above signed will be bound by, the applicable RULES AND REGULATIONS governing such accounts, in effect on this date and as modified from time to time by the issuing bank. Receipt of RULES AND REGULATIONS applicable to accounts requested above is hereby acknowledged.

WHITE: BOC-FFF, IN CUSTOMER SERVICE

Exhibit 2

 Bank of Virginia		BRANCH NAME Mechanicsville		BRANCH NUMBER 257	
1 NAME (MR, MRS, MS) Aimee S. Elliott		SOCIAL SECURITY NUMBER 213-48-7385			
SIGNATURE Aimee S. Elliott					
2 NAME (MR, MRS, MS) Donna Fleming / Clarence Fleming		SOCIAL SECURITY NUMBER			
SIGNATURE Donna Fleming / Clarence Fleming					
CHECKING ACCOUNT NO.		SAVINGS ACCOUNT NO. 59-57-9945-1		SAVINGS PLUS ACCT. NO.	
ADDRESS 2100 Avondale Drive		ADDRESS Same			
CITY, STATE, ZIP Mechanicsville, Va. 23111		CITY, STATE, ZIP			
HOME PHONE 746-1714		HOME PHONE			
1 BUSINESS Retired		2 BUSINESS			
BUSINESS PHONE		BUSINESS PHONE			
REFERENCE OR FORMER BANK ACCOUNT Name added 11-10-80		REFERENCE OR FORMER BANK ACCOUNT			

SAVINGS CERTIFICATE INFORMATION

CERTIFICATE NUMBER	FACE AMOUNT	DEPOSIT DATE	CLOSING DATE

AVAILABLE SERVICES

SERVICE	DATE	INITIALS	DATE	INITIALS	DATE	INITIALS
MASTER CHECKING						
CHECKING						
X SAVINGS	11-10-80	Name Added				
SAVINGS PLUS						
INTEREST CHECKING						
GREEN CARD						
MASTER CARD						
INTEREST SAVINGS						





## Exhibit 3

NAME <b>Alma S. Elliott</b>		SOC. SEC. NO. <b>213-48-7395</b>
ADDRESS <b>2100 Avondale Dr. Mechanicsville, VA 23111</b>		HOME PHONE <b>746-1714</b>
OCCUPATION <b>retired</b>		BUSINESS PHONE
REFERENCE OR FORMER BANK ACCOUNT <b>Eastern Liberty Fed. Sav. &amp; Loan, Washington D.C.</b>		
NAME <b>Clarence H. Fleming</b>		SOC. SEC. NO.
ADDRESS <b>same</b>		HOME PHONE
BUSINESS		BUSINESS PHONE
REFERENCE OR FORMER BANK ACCOUNT		

## SAVINGS CERTIFICATE INFORMATION

CERTIFICATE NUMBER	FACE AMOUNT	DEPOSIT DATE	CLOSING DATE
<b>121787</b>	<b>15.700</b>	<b>4/13/79</b>	

FOLD HERE		SIGNATURES	
NAMES (Type or print) <b>1 Elliott, Alma S.</b>			
<b>2 Fleming, Clarence</b>			
CHECKING ACCOUNT NO.		SAVINGS PLUS ACCT. NO.	
SAVINGS ACCOUNT NO. <b>57-794615-1</b>		MASTER CHARGE NO.	

## AVAILABLE SERVICES

SERVICE	IND	POINT	BANK	DATE OPENED	OPENED BY	INITIAL DEPOSIT	DATE CLOSED
MASTER CHECKING							
CHECKING							
SAVINGS						<b>51.22</b>	
SAVINGS PLUS							
SAVINGS PLUS ACCT.							
SYSTEMATIC SAVINGS							
TO SAVINGS PLUS ACCT.							
TO SAVINGS PLUS ACCT.							

CHANGE OF NAME, TYPE OF ACCOUNT,  
ACCOUNT NUMBER OR BRANCH

Bank of Virginia

Date Nov. 10, 1980

You are hereby authorized to change (the name or number on) my

☐ Personal Checking Account☐ Commercial Account☒ Savings Account

From: <u>Alma S. Elliott</u>	Old No. <u>59-57-99445-1</u>
<u>Clarence Fleming</u>	Branch No. <u>257</u>
To: <u>Alma S. Elliott/Clarence Fleming</u>	New No. <u>Same</u>
<u>Donna Fleming</u>	Branch No. _____

You are further authorized to pay against the account in the new name(s) any checks presented which bear the old signature(s) if such checks were outstanding prior to the above date.

Records Changed

Checking Dept. \_\_\_\_\_

Savings Dept. X

*Alma S. Elliott*  
Authorized Signature Before Change

Original to Customers Service Dept. with New Accounts  
Part 2 - To be retained by Branch

2-953499-505-006



Bank of Virginia

JOINT ACCOUNT  
RIGHT OF SURVIVORSHIP DESIGNATIONTYPE OF ACCOUNT Statement Savings

Alma S. Elliott  
CUSTOMER NAME  
Clarence Fleming  
Donna Fleming  
CUSTOMER NAME  
ACCOUNT NUMBER 595799445-1  
BRANCH OF ACCOUNT 257

INDICATE WHETHER OR NOT YOU WANT THE RIGHT OF SURVIVORSHIP  
ON YOUR ACCOUNT BY SIGNING THE APPROPRIATE SECTION BELOW.

JOINT ACCOUNT WITH SURVIVORSHIP

WHEN ONE PERSON ON THIS ACCOUNT DIES,  
HIS SHARE OF THE ACCOUNT BALANCE BE-  
LONGS EQUALLY TO THE OTHER LIVING  
PEOPLE ON THE ACCOUNT.

*Alma S. Elliott* 10/18  
SIGNATURE DATE  
*Donna Fleming* 10/18  
SIGNATURE DATE  
1-000000-000-10

JOINT ACCOUNT - NO SURVIVORSHIP

WHEN ONE PERSON ON THIS ACCOUNT  
DIES, HIS SHARE OF THE ACCOUNT BAL-  
ANCE BELONGS TO HIS ESTATE.

SIGNATURE DATE  
SIGNATURE DATE

No. 129392

Single Maturity  
CERTIFICATE OF DEPOSIT  
Non-Negotiable

\$ 31,000.00

ORIGINAL AMOUNT

213 48 7385

SOCIAL SECURITY OR  
TAX I.D. NUMBER

Bank of Virginia-

Oct 11 1979

DATE OF ISSUE

Issuing Office Mechanicsville Pike 257

The issuing bank certifies that

there has been deposited with it Thirty one thousand and 00/100 Dollarswhich it will pay to Alma S. Elliott or Clarence E. FlemingAddress 2100 Arundale Drive, Mechanicsville, Virginia 23101

upon presentation and surrender of this certificate, properly endorsed, to the issuing office on April 10, 1980. An interest rate of 10.662% per annum is guaranteed through the maturity date and will be paid mtly. to 57 994451 to the holder. This certificate is subject to the rules and regulations of governmental regulatory authorities and of the issuing bank. The Bank is prohibited by Federal Law from paying interest after the date of maturity.

Certificate of Deposit received:

CUSTOMER(S) SIGNATURE

BANK AUTHORIZED SIGNATURE

DATE 4-10-80 BR. # 257  
 AMT. 31,000.00 INITIALS LJR  
 DISBURSEMENT CD # 129697

No. 129697

Single Maturity  
CERTIFICATE OF DEPOSIT  
Non-Negotiable

213-48-7385

SOCIAL SECURITY OR  
TAX I.D. NUMBER

Bank of Virginia - Central

Issuing Office Mechanicsville

\$ 31,000.00

ORIGINAL AMOUNT

April 10, 1980

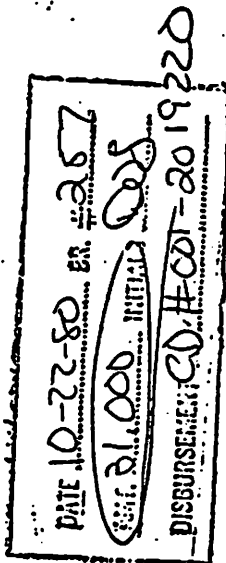
DATE OF ISSUE

The issuing bank certifies that  
there has been deposited with it Thirty-One Thousand and 00/100 Dollarswhich it will pay to Alma S. Elliott or Clarence E. FlemingAddress 2100 Avondale Drive, Mechanicsville, Virginia 23111upon presentation and surrender of this certificate, properly endorsed, to the issuing office on October 9, 1980. An in-  
terest rate of 14.226% per annum is guaranteed through the maturity date and will be paid Monthly to 57-99445-1 to  
the holder. This certificate is subject to the rules and regulations of governmental regulatory authorities and of the issuing bank.  
The Bank is prohibited by Federal Law from paying interest after the date of maturity.

Certificate of Deposit received:

Clarence E. Fleming  
CUSTOMER(S) SIGNATURE[Signature]  
BANK AUTHORIZED SIGNATURE

MEMBER: Federal Deposit Insurance Corp.



800776048

3100000 a\*22285

001 201922 0

**CERTIFICATE OF DEPOSIT**  
**FIXED RATE • SINGLE MATURITY**  
**NON-NEGOTIABLE**

\$ 31,000.00 ✓

Amount  
 October 22, 1980

Number  
 NONTRANSFERABLE

Name(s) Alma S. Elliott or Clarence E. Fleming  
 Address 2100 Avondale Drive  
Mechanicsville, Virginia 23111

Date of Issue  
Mechanicsville  
 Issuing Office

This certificate represents the deposit of Thirty one  
Thousand and no/100 dollars with  
 Bank of Virginia.

We promise to repay your deposit at maturity on April 22,  
1981

We also promise to pay you interest to maturity computed

at a rate of 11.531 % per year. Your interest will be paid  
monthly to 59-57-994-51

This certificate is subject to the applicable rules of Bank of Virginia  
 and to State and Federal laws and regulations. There is a substantial  
 interest penalty for redeeming your certificate before maturity.



**Bank of Virginia**

MEMBER FDIC

*W. Jefferson Akers*  
 For Bank of Virginia

*Clarence E. Fleming*

Customer Signature(s)

213-48-7385

Social Security Number

DATE 12-22-80 BR. # 257

AMT. 30,116.21 INITIALS CL

DISBURSEMENT CD# 001-2019592  
252-9656369

*Premature Redemption*

0.00	51,090.00	11.531%	3,574.61	4.00	893.66	893.66	893.79	31,090.00	30,116.21
------	-----------	---------	----------	------	--------	--------	--------	-----------	-----------

001 201959 2

**CERTIFICATE OF DEPOSIT**

FIXED RATE • SINGLE MATURITY  
NON-NEGOTIABLE

\$ 20,116.21

Amount  
December 22, 1980

Name(s) Alma S. Elliott or Clarence E. Fleming  
Address 2100 Avondale Drive  
Mechanicsville, Va. 23111

Date of Issue  
Mechanicsville

Issuing Office

This certificate represents the deposit of Twenty Thousand at a rate of 15.00% per year. Our interest will be paid  
One Hundred Sixteen and 21/100 dollars with monthly payments of \$69.57.

Bank of Virginia.

We promise to repay your deposit at maturity on 6/22/81. This certificate is subject to the applicable rules of Bank of Virginia and to State and Federal laws and regulations. There is a substantial interest penalty for redeeming your certificate before maturity.

We also promise to pay you interest to maturity computed



**Bank of Virginia**

MEMBER FDIC

006770072

*[Signature]*

2011621 a \* 51467  
Customer Signature(s)  
213-48-7385

For Bank of Virginia

Social Security Number

**REDEEMED**

**REDEEMED**

*[Signature]*  
Proceeds  
CCH 1005573 - \$13,286.00  
Jeffrey A. Oppleman, Atty  
for Bank  
CCH 1005575 - \$6995.21 to  
payees listed on reverse

DISBURSEMENT
DATE 7-14-81
BR # 253
AMT. 20,116.21
INITIALS upd

*C.D. in Demand*

not 6/22/81 - 7/14/81  
at 13.606 = \$165.00  
approved - w/ D. Liberty  
w/ H. H. H.

and that, if the Bank gives its consent at that time, a penalty will be assessed on the amount withdrawn. In the event of withdrawal of all or any portion of a time deposit before the maturity thereof, the depositor may not receive interest from the date of deposit on the amount withdrawn at a rate in excess of the maximum rate which may be paid on savings deposits by the Bank on the date of withdrawal, and the depositor shall forfeit all interest, calculated at such savings deposit rate, whether accrued and unpaid, or paid to or for the depositor's account, on the amount withdrawn or a period of three months or for the period since the date of deposit, whichever is less. Where necessary to comply with this requirement, interest already paid to or for the account of the depositor shall be deducted from the amount already requested by the depositor to be withdrawn.

10. The account shall be subject to such applicable regulation of the Federal Deposit Insurance Corporation and the Federal Reserve System as may now or hereafter be in effect, and to the Rules, Regulations and Agreements of the Bank as they now exist or may hereafter be added to, altered or amended, with or without notice by the Bank and all of the above Rules, Regulations and Agreements shall automatically, without notice conform to any regulations promulgated by competent legal authority.

11. Miscellaneous. (a) The use herein of the singular and masculine shall be deemed to refer to the plural and feminine or neuter, wherever the context so requires.

b) Each provision hereof, if in conflict with applicable mandatory law or regulation, shall be automatically superseded thereby; but the invalidity of any provision shall not impair any other provision hereof.

(c) Insofar as not otherwise validly provided for herein or otherwise agreed upon between the Bank and the depositor, the laws of Virginia shall govern the right of the Bank and the depositor to the extent that federal law shall not be governing.

12. Amendments. These Rules, Regulations and agreements may be altered, amended or superseded, in whole or in part, by the Bank, and, as so altered, amended or superseded, shall be binding upon each depositor; provided, however, that no alteration or amendment hereof shall be effective until copies of such alteration or amendment shall have been made accessible to the public in the banking lobbies of the main office of the Bank and its branches. The Bank may, but shall not be required to, make such other publication or such other notice as it desires, and may, but shall not be required to, mail similar notice to depositors and customers.

# Rules Regulations and Agreements Governing Savings Certificates of Deposit Accounts



Bank of Virginia  
Central

## Rules, Regulations and Agreements Governing Savings Certificates of Deposit Accounts

These Rules, Regulations and Agreements shall apply to and govern Savings Certificates of Deposit Accounts (including single and multiple maturity instruments as well as those in negotiable and non-negotiable form) maintained by each depositor and customer with Bank of Virginia-Central (the "Bank"). The signing of the Bank's signature card or the making of a deposit by the depositor or his agent shall constitute assent hereto and to any changes or amendments hereof or new Rules, Regulations and Agreements made as hereinafter provided. These Rules, Regulations and Agreements shall not be interpreted as limiting or impairing any protection or immunity afforded the Bank under applicable law.

1. Collections. In receiving items for deposit, the Bank acts only as the depositor's collecting agent and assumes no responsibility beyond the exercise of due care. Any items not drawn on the Bank shall be forwarded by the Bank at the depositor's risk and the Bank shall not be responsible for failure, default or negligence of correspondents, nor for losses in transit. All items are credited subject to actual and final payment in cash or solvent credits, and the Bank shall have the right to cancel the certificate if actual payment is not received on items deposited including items drawn on the Bank not good at the close of business on the day deposited.

2. Deposits. (a) When an account is opened by a depositor in his name followed by words indicating that the deposit is made for the benefit of another or made in a fiduciary or representative capacity with or without a further disclosure as to the nature of the representation, trust or agency, this shall be deemed a representation by the depositor to the Bank that the depositor has a right to draw upon the account (upon the presentation of the certificate properly endorsed) and the Bank may, unless advised in writing to the contrary, honor the orders of the depositor for withdrawals without duty to inquire into the authority for or application of withdrawals.

(b) The Bank reserves the right to request the withdrawal of any account balance at any time. Notice of such request may be given personally or by regular mail to the depositor's last known address. In the event the depositor, so notified, fails to withdraw the funds deposited, all interest, if any, on such funds shall cease from the last day of the month within which the request for withdrawal was made.

(c) The balance shown by the Bank's records shall be prima facie evidence of the amount due the depositor.

(d) The depositor agrees to advise the Bank

promptly of any change in his address. In the absence of such notice, mail addressed to the depositor at the address shown on the records of the Bank shall be deemed to be properly addressed and effective.

(e) The Bank may, at any time, at its discretion and with or without notice to the depositor, or any of them, assert a lien on the balance in the account of the depositor, and apply any part or all of such balance to any indebtedness, matured or unmatured, that then may be owing to the Bank by the depositor and offset the amount so applied against a corresponding amount of such indebtedness.

(f) Certificates issued in the names of two or more persons, payable to either, or payable to either of the survivors, may be paid to either of such persons, whether the other or others be living or not (upon presentation of the certificate properly endorsed) and the receipt or acquittance of the person so paid shall be a valid, sufficient and complete release and discharge to the Bank for any payment so made.

(g) Each depositor and customer agrees to pay such service and maintenance charges on accounts whether active or dormant (an account shall be considered dormant one year after maturity), and for miscellaneous service charges as have heretofore been adopted by the Bank and now in effect, and charges as may hereafter be adopted by the Bank. New service and maintenance charges and changes in existing charges shall become effective upon placement of amendments to these Rules, Regulations and Agreements in the banking lobbies of the main office of the Bank and its branches. Such charges may be deducted from the depositor's account.

(h) The depositor agrees that the account may be charged \$200 per month for the cost of handling the account if the balance in the account remains \$199.99 or less for a period of one year after maturity and 6% per annum on inactive accounts with balances of \$200.00 or more.

3. Saturday or Holiday Openings. The Bank shall have the right to honor any request for withdrawal or other order after maturity of the depositor on any Saturday or legal holiday on which the Bank may be open for the transaction of business, to the same extent and with the same effect as if not a Saturday or legal holiday.

4. Liens. Following the receipt by the Bank of any notice of lien or process in attachment, garnishment or other proceeding relating to the account of a depositor the Bank is authorized to withhold payment of the balance held to the credit of the depositor, or of so much thereof as might be the subject of such notice or process, and to return all items for which final credit has not been given by the Bank, pending final determination that such

notice or process, and to return all items for which final credit has not been given by the Bank, pending final determination that such notice or process is invalid or that payment should be made pursuant thereto, without responsibility to the depositor for such withholding or the refusal to honor orders for the payment of funds drawn or made by him. A notice of lien or process in attachment, garnishment or other proceeding relating to the account of a depositor shall apply to joint accounts as well as individual accounts, and each signatory to a joint account hereby authorizes the Bank to honor a notice of lien or process in attachment, garnishment or other proceeding relating to a joint account whether both depositors or only one depositor is the lien debtor.

5. The amount of the certificate shall be at least \$100.00 or \$1,000 if for four (4) years or more when required by appropriate regulation. Initial deposits may be made by mail or in person at any branch office of the Bank. Maturities may be selected by depositor up to ten years.

6. Certificates issued after 2:00 in any office of the Bank on any regular business day or on any Saturday or holiday on which the Bank shall be open, will be deemed to have been issued on the next following regular business day of the Bank.

7. Interest shall accrue on the principal amount until maturity. The rate is guaranteed for the term of the original maturity and each subsequent maturity when applicable agreed upon at the opening of the account. Payment of interest shall be effected at least annually unless the depositor shall instruct otherwise in writing. Interest shall cease to accrue after maturity of the account.

8. The certificate must be presented at maturity. The amount shown on the certificate shall not be determinative of the balance to the credit of the account unless expressly verified by the Bank after comparison with its books and records. Immediate notice of the loss, theft or destruction of the certificate shall be given to the Bank which may issue a replacement certificate on such terms of indemnity or otherwise as the Bank may deem proper. Upon issuance of the replacement certificate, the original certificate shall be void and if found must be surrendered to the Bank for cancellation.

9. Federal regulations require that the depositor may not withdraw all or any part of his deposit prior to maturity except with the consent of the Bank (the bank reserves the right to require thirty days notice in writing of the intention of the depositor to withdraw his deposit or any part thereof before maturity and the right to refuse any specific request for premature redemption) which may be given only at the time such request for withdrawal is made,



RESPONSE TO REQUEST FOR ADMISSIONS

Plaintiff, Donna M. Fleming, as guardian for Alma S. Elliott, by counsel, for and as her response to Request for Admissions by Bank of Virginia, states as follows:

1. The statements contained in paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 22, 24 and 25 are admitted as being correct.

2. The statements contained in paragraphs numbered 9, 14, 20, 21 and 23 are denied.

3. In response to paragraph number 26, the plaintiff states as follows:

(a) With regard to paragraph 9 of the Request for Admissions, the plaintiff states that all accounts opened at the Bank of Virginia for or on behalf of Alma S. Elliott were not necessarily created as joint accounts. It is the plaintiff's understanding that originally certain accounts were created only in the name of Alma S. Elliott.

(b) With regard to paragraph 14 of the Request for Admissions, the document attached as Exhibit 6 is a true copy of a Certificate of Deposit numbered 129697, (not 1219697), issued April 10, 1980 in the original amount of \$31,000.00. The plaintiff believes that there is a typographical error in paragraph 14 as to the Certificate of Deposit number;

(c) With regard to paragraphs 20 and 21 of the Request for Admissions, the plaintiff has no reason to think that the document attached as Exhibit 9 is other than a true copy of the Bank's rules, regulations and agreements governing savings certificates of deposit accounts, and indeed the plaintiff has been provided in discovery by the Bank of Virginia a copy of the same rules, regulations and agreements. The plaintiff, however, has no knowledge as to whether or

not Exhibit 9 governs savings certificates of deposit accounts during the time of the dispute that has arisen between Alma S. Elliott and the Bank of Virginia, since the rules, regulations and agreements received are not dated. Furthermore, just because the rules, regulations and agreements state that they govern savings certificates of deposit accounts does not mean that they do so govern unless proof is provided that the depositor in question knew of the rules, regulations and agreements and agreed to be governed by them. There is, as herein stated, no evidence that Alma S. Elliott ever received a copy of the aforesaid rules, regulations and agreements or agreed to be bound by them with regard to Exhibits 5, 6, 7 and 8 of the Request for Admissions. Since the Bank of Virginia has produced no signature card pertaining to Exhibits 5, 6, 7 and 8, Exhibit 9 must necessarily rely on the making of a deposit by Alma S. Elliott or her agent as constituting "assent" to be governed by the rules, regulations and agreements. It will be maintained that making a deposit, in spite of what Exhibit 9 says, is not necessarily a consent to be governed by the contents of Exhibit 9; and

(d) With regard to paragraph 23 of the Request for Admissions, the plaintiff maintains that Exhibits 5, 6, 7 and 8 were not separately four joint accounts. The plaintiff does admit, however, that collectively Exhibits 5, 6, 7 and 8 comprised a single joint account, which was created when \$31,000.00 was originally deposited by Alma S. Elliott with the Bank of Virginia.

DONNA M. FLEMING,  
Guardian for Alma S. Elliott

By *C. Anne McMillan*  
Counsel

C. Grice McMullan, Jr., p.q.  
Christopher M. Malone, p.q.  
Thompson & McMullan  
13 East Franklin Street  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that a true copy of the foregoing  
Response to Request for Admissions was hand-delivered this  
9th day of November, 1982 to John Jay Range, Esquire,  
Hunton & Williams, 707 East Main Street, Richmond, Virginia  
23219, counsel for the defendant.

C. Grice McMullan, Jr.

C. Grice McMullan, Jr.

AMENDED ANSWER AND GROUNDS  
OF DEFENSE BY BANK OF VIRGINIA

Bank of Virginia (the Bank), by counsel, states the following the as its Amended Answer and Grounds of Defense to the Amended Motion for Judgment:

First Defense

The Amended Motion for Judgment fails to state a claim upon which relief can be granted against the Bank.

Second Defense

(1) The Bank admits the truth of the allegations contained in Paragraph 1 of the Amended Motion for Judgment.

(2) The Bank is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Amended Motion for Judgment.

(3) The Bank admits that beginning in 1978, certain joint accounts were opened at the Bank in the names of Donna Fleming or Alma S. Elliott, Clarence E. Fleming or Alma S. Elliott, and Alma S. Elliott or Donna Fleming or Clarence E. Fleming; and further answering, the Bank is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 3 of the Amended Motion for Judgment.

(4) The Bank denies the truth of the allegations contained in Paragraph 4 of the Amended Motion for Judgment.

(5) The Bank admits that a joint savings account, No. 59-57-99445-1, was opened in the names of Alma S. Elliott or Clarence E. Fleming and that interest from this joint savings account was reported to the Internal Revenue Service as income to Alma S. Elliott; and further answering, the Bank denies the truth of the remaining allegations contained in Paragraph 5 of the Amended Motion for Judgment.

(6) The Bank admits that in October 1979 a joint certificate of deposit, No. 129392, was purchased in the amount of \$31,000 which was payable to either Alma S. Elliott or Clarence E. Fleming; and further answering, the Bank is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 6 of the Amended Motion for Judgment.

(7) The Bank denies the truth of the allegations contained in Paragraph 7 of the Amended Motion for Judgment.

(8) The Bank admits that on December 22, 1980 Clarence E. Fleming purchased certificate of deposit No. 0012019592 and that interest earned on this certificate was deposited into the joint savings account of Clarence E. Fleming and Alma S. Elliott; and further answering, the Bank denies the truth of the remaining allegations contained in Paragraph 8 of the Amended Motion for Judgment.

(9) The Bank denies the truth of the allegations contained in Paragraphs 9 and 10 of the Amended Motion for Judgment.

(10) The Bank admits that it did not notify Alma S. Elliott that it was applying \$13,286 of the proceeds of certificate of deposit No. 0012019592 to a debt that was due and payable to the Bank by Clarence E. Fleming; and further answering, the Bank states that it was not required to provide any such notice to Alma S. Elliott or any other person; and further answering, the Bank denies the truth of the remaining allegations contained in Paragraph 11 of the Amended Motion for Judgment.

(11) The Bank admits that representatives of Alma S. Elliott have requested the Bank to return the \$13,286 that the Bank debited from certificate of deposit No. 0012019592; and

further answering, the Bank admits that it has not returned this sum to Alma S. Elliott but denies that it has any obligation to do so; and further answering, the Bank denies the truth of the remaining allegations contained in Paragraph 12 of the Amended Motion for Judgment.

#### Third Defense

The Bank denies that plaintiff has been damaged in the manner or to the extent alleged in the Amended Motion for Judgment.

#### Fourth Defense

The Bank states that the sole, proximate cause of whatever damages plaintiff may have sustained as alleged in the Amended Motion for Judgment were the result of the intervening misrepresentation or fraud of a person or persons over whom the Bank exercised no authority or control and that such intervening misrepresentation or fraud bars any recovery against the Bank.

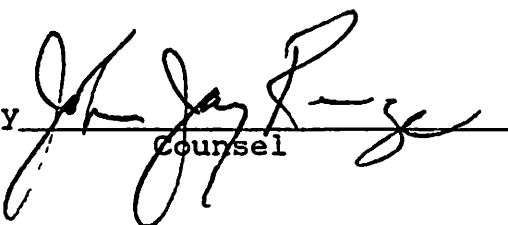
#### Fifth Defense

The Bank states that the plaintiff is estopped to assert any claim against the Bank because she had actual or constructive knowledge that the savings account and the certificates of deposit referred to in the Amended Motion for Judgment were jointly held in the names of Alma S. Elliott or Clarence E. Fleming; that Clarence and Donna Fleming were engaged in financial transactions involving the use of funds held jointly in the names of Alma S. Elliott or Clarence E. Fleming; that Clarence and Donna Fleming used plaintiff's money as if it were their own; and that notwithstanding such knowledge, plaintiff never protested or otherwise notified the Bank that she objected to the actions taken by Clarence and Donna Fleming.

Sixth Defense

The Bank affirmatively states that it was authorized to apply the proceeds of certificates of deposit or otherwise to exercise the right of offset to redeem certificates of deposit to reimburse itself for overdue notes made by Clarence E. Fleming in accordance with the applicable Bank rules and regulations governing plaintiff's certificate of deposit accounts.

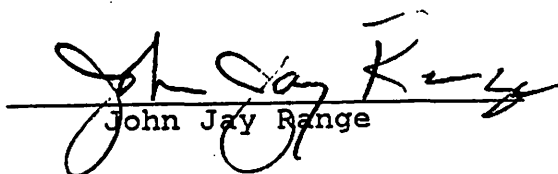
BANK OF VIRGINIA

By   
Counsel

Joseph C. Kearfott  
John Jay Range  
HUNTON & WILLIAMS  
P. O. Box 1535  
Richmond, Virginia 23212  
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November 1982 I caused a true copy of the foregoing AMENDED ANSWER AND GROUNDS OF DEFENSE BY BANK OF VIRGINIA to be hand delivered to the offices of C. Grice McMullan, Jr., Esq., Thompson & McMullan, 13 East Franklin Street, Richmond, Virginia 23219, counsel for plaintiff.

  
John Jay Range

O R D E R

This day came the parties by counsel, and came also a jury, to wit: Alberta Michaux, Ida M. Moss, James H. Owens, Barbara Parker, Jerome Payne, Lucille V. M. Rainey and Lucy M. Rice, who were sworn to well and truly try the issue joined and a true verdict give according to the evidence and the law.

The evidence of the plaintiff was presented, and at the conclusion thereof counsel for the defendant moved to strike the evidence of the plaintiff, which motion was granted, and to which action of the court counsel for the defendant objected.

Whereupon, the court, having determined there was no issue of fact to submit to a jury but that the plaintiff as a matter of law was not entitled to recovery from the defendant, did discharge the jury from further consideration of the case.

It is, therefore, adjudged and ordered that the plaintiff take nothing and that judgment be entered in favor of the defendant; to which action of the court counsel for the plaintiff objected.

---

A COPY,  
Teste:

BY Marguerite H. Hicks  
Deputy Clerk



NOTICE OF APPEAL

Comes now the plaintiff, Donna M. Fleming, Guardian for Alma S. Elliott, by counsel, and respectfully gives Notice of her intention to appeal the final order entered in this matter by the Honorable Willard I. Walker, Judge of the Circuit Court of the City of Richmond, Division I, on December 13, 1982. A transcript of the trial proceedings will be filed in accordance with Rule 5:9 of the Rules of the Supreme Court of Virginia.

DONNA M. FLEMING, Guardian for

Alma S. Elliott

By Counsel

C. Grice McMullan, Jr.  
C. Grice McMullan, Jr.  
Christopher M. Malone  
THOMPSON & McMULLAN  
13 East Franklin Street  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that I mailed, postage prepaid, a true copy of the foregoing Notice of Appeal to Joseph C. Kearfott and John Jay Range at Hunton & Williams, P. O. Box 1535, Richmond, Virginia 23212 on this the 31<sup>st</sup> day of January, 1983.

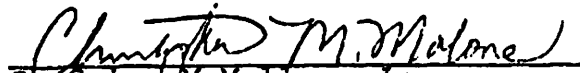
C. Grice McMullan, Jr.

NOTICE OF FILING OF TRANSCRIPT

PLEASE TAKE NOTICE that partial transcripts of the evidence taken and argument delivered in the above-captioned matter when heard before the Honorable Willard I. Walker, Judge of the Circuit Court of the City of Richmond, Division I, on December 13, 1982, have been filed in the Clerk's Office of the Circuit Court in accordance with Rule 5:9(b) of the Rules of the Supreme Court of Virginia.

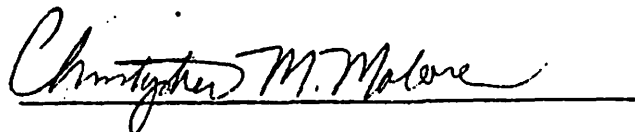
DONNA M. FLEMING, Guardian for  
Alma S. Elliott

By Counsel

  
C. Grice McMullan, Jr.  
Christopher M. Malone  
THOMPSON & McMULLAN  
13 East Franklin Street  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Notice of Filing of Transcript was mailed, postage prepaid, to John Jay Range, Esquire and Joseph C. Kearfott, Esquire at Hunton & Williams, P. O. Box 1535, Richmond, Virginia 23212 on this the 4th day of February, 1983.



### ASSIGNMENT OF ERROR

The court erred in ruling as a matter of law, on the basis of the evidence before it, that the Bank of Virginia had an enforceable right of setoff against the balance due to Alma S. Elliott and Clarence E. Fleming on a joint certificate of deposit account for sums allegedly due from Clarence E. Fleming alone.

DENNIS C. JOHNSON & ASSOCIATES

COURT REPORTERS  
MUTUAL BUILDING  
RICHMOND, VIRGINIA 23219

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
3 DIVISION I

4 -----  
5 DONNA M. FLEMING, Guardian for ALMA S. ELLIOTT,

6 Plaintiff

7 v.

8 BANK OF VIRGINIA,

9 Defendant

10 -----  
11 Law No. LF-87

12 -----  
13 Before: The Honorable Willard I. Walker

14 Date: December 13, 1982  
15 -----

16  
17 PARTIAL TRANSCRIPT  
18  
19 -----  
20  
21  
22  
23  
24

**DENNIS C. JOHNSON & ASSOCIATES**

COURT REPORTERS  
MUTUAL BUILDING  
RICHMOND, VIRGINIA 23219

i

I N D E XWITNESSES

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Clarence E. Fleming, Jr.	3	--	--	--
Ronald A. Martin	36	40	--	--
Jeffrey Alan Oppleman	43	48	56	--
Clarence E. Fleming, Jr. (Continued)	62	76	92	--
Jerry W. Bailey	94	100	105	107
Donna M. Fleming	108	123	128	--

1 (The following is held in open court with  
2 the jury present.)

3 THE COURT: First witness.

4 Come on up, Mr. Fleming, right up here,  
5 please.

6 MR. McMULLAN: Do you care whether I sit  
7 and ask the questions from the counsel table?

8 THE COURT: No, sir, that will be all  
9 right.

10 Will everybody please stand up and raise  
11 your right hand. All of you who are going to testify in  
12 this case, face me; each of you raise your right hand.

13 (All prospective witnesses are duly sworn  
14 by the Court at this time.)

15 THE COURT: You can have a seat, Mr. Fleming.

16  
17 CLARENCE E. FLEMING, JUNIOR, having been  
18 previously sworn, testifies and says as follows:

19 DIRECT EXAMINATION BY MR. McMULLAN:

20 Q Sir, would you state your name for the  
21 record?

22 A Clarence Elbert Fleming, Junior.

23 Q They call you "Butch"?

24 A That's correct.

1 Q Can you tell me what your educational  
2 background is?

3 A Eleventh grade of high school.

4 Q Where do you work, Mr. Fleming?

5 A I'm self-employed.

6 Q What do you do with your self-employment?

7 A We sell wood stoves.

8 Q Does your wife work with you?

9 A Yes, sir, she does.

10 Q What does she do mainly with the business?

11 A She's bookkeeper.

12 Q Are you aware of facts surrounding this  
13 trial?

14 A Yes, I am.

15 Q At the time of the events surrounding the  
16 trial, where did you bank, Mr. Fleming?

17 A Bank of Virginia.

18 Q Which branch, sir?

19 A Mechanicsville branch.

20 Q For how long did you bank with the Bank  
21 of Virginia prior to the time of the events surrounding  
22 this litigation?

23 A Approximately ten years or more.

24 Q Did you borrow money from the Bank of

1 Virginia?

2 A Constantly.

3 Q Do you know Alma Elliott?

4 A Yes, I do.

5 Q Is she kin to you or anyone in your family?

6 A She's kin to me by marriage, but she's  
7 my wife's grandma.

8 Q What is her age, Mr. Fleming?

9 A In her eighties.

10 Q Does she live with you, sir?

11 A Yes, she does.

12 Q Since approximately when?

13 A 1978.

14 Q Where did she used to live, Mr. Fleming?

15 A In Annapolis, Maryland.

16 Q Why did she move to your house?

17 A She had had a stroke and became sick and  
18 ill, and none of her own children would take care of her;  
19 so she contacted my wife and asked us if she could move  
20 with us.

21 Q What is her present health like?

22 A She's very ill.

23 Q Is that the reason she's not here today  
24 for the trial?



1 A That's the reason she's not here.

2 Q After she moved in with you, what was her  
3 health like? Was it better or worse than now?

4 A It kept getting worse. She was constantly  
5 at the hospital, constantly at a doctor's office.

6 Q Well, could she understand when she moved  
7 with you what was going on concerning her personal affairs?

8 A Yes, she could.

9 Q How did that understanding progress, sir,  
10 as time went by?

11 A Well, we would have transactions; or if  
12 I needed to use any of hers, I would always go to her  
13 and explain what was going to be done. If I got her okay,  
14 we did it. If I didn't, we didn't.

15 Q Since she lived with you, has she been  
16 able to get around?

17 A Only when we take her. Around the house  
18 in a walker. She can't go out in public by herself.

19 Q Who takes care of her?

20 A My wife.

21 Q Part-time or full-time?

22 A All the time.

23 Q When Ms. Elliott came down from Maryland,  
24 did she own any money?

1 A Yes, she did.

2 Q Where was that money located, sir?

3 A It was in Washington, D.C., in a loan  
4 office, loan company, savings and loan.

5 Q Approximately how much money was it? Do  
6 you recall?

7 A Between 17 to 18,000. I'm not exactly sure  
8 what it was.

9 Q After Ms. Elliott moved in with you, what  
10 was done with her money, Mr. Fleming?

11 A I approached a banker who was a banker  
12 of mine, and we discussed the loan. My wife and I  
13 discussed about putting it in a savings and loan down  
14 here because she needed money down here to pay for any  
15 hospital bills. So I didn't know what to do with it.

16 I approached my attorney, and he told me  
17 to approach my banker and get his suggestion as to what  
18 to do with the money.

19 Q You went to the Bank of Virginia?

20 A Yes, I did.

21 Q Why did you go there?

22 A Because that is where I banked.

23 Q Who did you talk with at the Bank of  
24 Virginia?

1 A Mr. Bailey.

2 Q What was he then?

3 A He was manager of the bank at the time.

4 Q Mr. Fleming, on the accounts that were set  
5 up, were you on those accounts?

6 A I was.

7 Q Why were you on those accounts?

8 A On the advice of my attorney and the advice  
9 of my banker, so that if anything was to happen to Gram,  
10 we would take the money to pay her hospital bills and  
11 doctor bills. That's why our account was set up like it  
12 was.

13 Q Who advised you as to this?

14 A Mr. Bailey.

15 Q Did you tell Mr. Bailey that the money  
16 was Ms. Elliott's?

17 A Oh, definitely.

18 Q What else did you discuss with Mr. Bailey?

19 A How to get her money out of her savings  
20 and loan in D.C. and into the savings account at Bank of  
21 Virginia.

22 Q Did Mr. Bailey have any reason to know  
23 whether or not Ms. Elliott was old or sick?

24 A Yes, he did. I explained the situation to

1 him completely.

2 Q During this time, was Donna Fleming's  
3 name ever put on any of these accounts?

4 A On the C.D. accounts?

5 Q No, sir, on the savings accounts.

6 A Yes, sir.

7 Q Was that for the same reason?

8 A Same reason. Half the time I wasn't  
9 in town, so we had to have her name put on the savings  
10 account.

11 Q Did the accounts have you on them as  
12 survivor, something known as a survivor?

13 A They were supposed to.

14 MR. RANGE: Objection. The accounts  
15 speak for themselves.

16 THE COURT: Objection sustained because,  
17 unless the word appears there, that calls for a conclusion  
18 of law. The accounts speak for themselves.

19 MR. McMULLAN: I understand. Thank you,  
20 Your Honor. I will not ask that line of questioning.

21 THE COURT: The Court will be able to tell  
22 from looking at the account whether it is a survivor  
23 account or not.

24 MR. McMULLAN: My point only was there was

1 conversation concerning the survivor all through this  
2 trial, and I want to know --

3 THE COURT: If it's relevant, he had  
4 answered it. I am not going to strike the answer, but  
5 he believed it to be a survivorship account.

6 MR. McMULLAN: I don't think it's a big  
7 dispute. I want to know -- ask him his perception of that  
8 word meant since he talked to the bank about setting up  
9 these accounts.

10 THE COURT: Go ahead and ask that question,  
11 if he understands the meaning, of what he understands  
12 about it. I don't know how relevant that is because the  
13 law governs the transactions of parties, not what they  
14 believe the law is.

15 MR. McMULLAN: I understand that.

16 THE COURT: What is it relevant to?

17 MR. McMULLAN: It goes to what he was  
18 told. If he relies on the bank's advice, Your Honor, he's  
19 told something, he has a right to --

20 THE COURT: Let's find out what he was  
21 told.

22 BY MR. McMULLAN:

23 Q Were you told anything about the concept  
24 of being a survivor on one of these accounts, sir?

1           A           Yes, sir, we were. Mrs. Elliott's will  
2 had been made up in our house --

3                   MR. RANGE: Objection.

4                   THE COURT: Your answer is not responsive.  
5 The question was what were you told, and I presume that  
6 means by Mr. Bailey or someone from the bank.

7                   Is that right?

8                   MR. McMULLAN: Yes.

9                   THE COURT: Answer that question.

10                  THE WITNESS: I was told to go on the C.D.  
11 as a survivor in case anything happened to Mrs. Elliott,  
12 that the money could be drawn out rather than having to  
13 go through the Court on a legal basis.

14 BY MR. McMULLAN:

15                  Q           Did you consider Mr. Bailey a friend of  
16 yours as well as your banker?

17                  A           Oh, yes, definitely.

18                  Q           Did Mr. Bailey advise you that the  
19 accounts were being set up with the best kind of account  
20 for Mrs. Elliott?

21                  A           Yes, he did.

22                  Q           Did the certificate of deposit accounts  
23 pay interest?

24                  A           Yes, they did.

1 Q Was that interest higher than the savings  
2 accounts?

3 A Yes, it was.

4 Q Can you explain to the jury how this account  
5 system worked while you were putting money in three  
6 accounts?

7 A Yes. We put it in a savings deposit, which  
8 is a C.D., that would draw a rate of interest. In order  
9 for my wife to pay the bills, you couldn't touch these  
10 C.D. bonds for six months; so it was suggested we open a  
11 separate savings account for her, which my wife opened a  
12 separate savings account. The bank would take the interest  
13 from the C.D., put it into her savings account; and if  
14 my wife needed to pay her doctor bills and expenses, she  
15 would draw it out of her savings account and put it in a  
16 checking account and pay the bills.

17 Q About what was the date that these accounts  
18 were set up, the savings account, \$17,000 to the account?

19 A '78.

20 Q 1978?

21 A Uh-huh.

22 Q Were they set up in approximately the same  
23 range of time?

24 A Within a couple of weeks or month or so.

1 Q Did you ever put any of your own money  
2 into any of Ms. Elliott's accounts?

3 A No, none of that money in there is mine.

4 Q Did Mr. Bailey ever meet Ms. Elliott?

5 A Yes, he did.

6 Q Can you tell me when approximately?

7 A Well, he came over to the house and had  
8 some work done on the C.B. radio; and about that time,  
9 he met her while she was there.

10 Q When you opened up a certificate of  
11 deposit account, did you sign a signature card during  
12 the same time period?

13 A Yes.

14 Q What were you told the signature card  
15 was for, sir?

16 A Identification of my signature.

17 Q Whose name was first on that signature  
18 card, sir?

19 A Alma Elliott.

20 Q Whose social security number was on that?

21 A Mrs. Elliott's.

22 Q Was her social security number the only  
23 one on the card?

24 A Yes, it was.



1 Q Did you and Ms. Elliott sign the signature  
2 cards that were used?

3 A Yes, we did.

4 Q There was more than one signature card?

5 A Yes, there was.

6 Q Well, did you sign them in blank?

7 A Yes, I did.

8 Q Can you tell me what you mean by signing  
9 them in blank, sir?

10 A Well, the bank, whenever I go in there  
11 to get loans, sometimes they would give me blank papers;  
12 and I trusted them.

13 MR. RANGE: Objection, Your Honor. That  
14 answer is not responsive to the question. He asked about  
15 the signature card. Now he is testifying about loan and  
16 loan documents.

17 BY MR. McMULLAN:

18 Q I'm sorry. Talk just about your signature  
19 card.

20 Did you sign a signature card in blank?

21 A Yes, I did.

22 Q Then what happened with that signature  
23 card? What would happen to it, sir?

24 A I would carry it back to the bank, and

1 the bank would take it from there. What they do from there,  
2 I don't know.

3 Q Did you do this with Mr. Bailey's consent,  
4 sir?

5 A Yes, I did.

6 Q Did he tell you to do this in order to get  
7 Ms. Elliott's signature?

8 MR. RANGE: Objection, Your Honor.

9 MR. McMULLAN: Sustained.

10 THE COURT: On the basis of leading?

11 MR. RANGE: Yes.

12 THE COURT: You have been leading for some  
13 little time now. Let's not do that, please.

14 MR. McMULLAN: I don't want to lead him.

15 BY MR. McMULLAN:

16 Q Did you tell Mr. Bailey why Ms. Elliott  
17 couldn't come to the bank to sign a signature card?

18 A Yes, I did.

19 Q What did you tell Mr. Bailey?

20 A I told Mr. Bailey that she was in ill  
21 health and had no way of moving around.

22 Q Were you ever uncomfortable signing a  
23 blank signature card? Would that bother you, sir?

24 A No, it never did.

1 Q Why not?

2 A I've banked with these guys for years.  
3 I had complete trust in them.

4 Q Did you sign other documents in blank for  
5 them?

6 A Sure did.

7 Q Later on, did you have Ms. Elliott sign  
8 other documents in blank?

9 A Yes, I sure did.

10 Q Is it for the same reason?

11 A Yes.

12 Q Did Ms. Elliott know what these documents  
13 were for when she was signing them in blank?

14 A Yes, she did.

15 Q Now, what did one of the signature cards  
16 that you signed pertain to? What account were they for?  
17 What did you tell Ms. Elliott?

18 A That was for a savings certificate that  
19 Mr. Bailey had -- in the amount of \$17,000 or \$18,000,  
20 that Mr. Bailey had from her account in Washington, D.C.

21 Q Do you recall if that signature card  
22 referred to rules and regulations?

23 A I don't know. No. I don't know nothing  
24 about rules and regulations.

1 Q Do you know now that they did?

2 A Now I do, yes.

3 Q Sir, did you ever receive any copy of  
4 rules and regulations?

5 A No, I didn't.

6 Q Were you ever told about any rules and  
7 regulations by a member of the Bank of Virginia?

8 A No.

9 Q Well, did you read the signature card  
10 carefully when you signed it?

11 A No. He told me it was a signature card.  
12 He said, "Here, you've got to sign there."

13 I didn't have time to -- I'm no banker.  
14 I trusted him.

15 Q Did you read it at all?

16 A I just skimmed through the top. He put an  
17 "x" on it and said "sign here."

18 Q After the original accounts were set  
19 up, did Ms. Elliott obtain some more money?

20 A Yes, she did.

21 Q Where did that come from?

22 A Sale of her house in Maryland.

23 Q What did she get approximately for the  
24 sale of that house?

1           A           Between 31, \$32,000.

2           Q           What was done with that money, sir?

3           A           It was given to Mr. Bailey and put into  
4 a C.D. account.

5           Q           Was this a different account from the  
6 other accounts that had been set up?

7           A           C.D.

8           Q           About how long after the original accounts  
9 were set up was it that this happened?

10          A           Approximately a year or so.

11                   MR. McMULLAN: I want to introduce, Your  
12 Honor -- we are stipulating on exhibits, so as to save  
13 the Court's time, I have -- let's see.

14                   These are all copies. This will be  
15 stipulated Exhibit 1. I will give you copies of these as  
16 we go along.

17                   Will that be acceptable?

18                   THE COURT: All right, sir.

19                   MR. McMULLAN: May I approach?

20                   THE COURT: Which ones will you mark in  
21 evidence? These that I am getting now?

22                   MR. McMULLAN: Yes. These are all copies  
23 except for one exhibit which is an original, and it  
24 doesn't really matter which one is marked.

1 BY MR. McMULLAN:

2 Q I will show you this.

3 THE COURT: I will start marking. I will  
4 mark them with Plaintiff's Exhibit markers, so it will be  
5 No. 1.

6 MR. KEARFOTT: I am sorry. I am not sure  
7 we have them in the same order.

8 THE COURT: \$31,000 original amount  
9 Certificate of Deposit No. 129392. The customer signature  
10 on it is Clarence Fleming, and the bank signature is that  
11 of Mr. Bailey. And it's stated -- so the jury will  
12 understand what it's all about -- does the issuing bank  
13 certify that there has been deposited with it \$31,000,  
14 which it will pay to Alma S. Elliott or Clarence E. Fleming,  
15 address given as a street in Mechanicsville, on presentation  
16 of this certificate properly endorsed on April 10, 1980,  
17 which would be some six months later. Apparently, this  
18 is a six-month C.D. issued in October of '79 on an interest  
19 rate of 10.66 percent per annum, guaranteed through the  
20 maturity date; and the interest will be paid monthly to  
21 579944551, which I believe the evidence is going to  
22 indicate was the savings account in the bank; to the holder,  
23 subject to the rules and regulations, subject to  
24 government authorities and of the issuing bank. The bank

1 is prohibited by federal law of paying interest after a  
2 date of maturity. That is what appears on Exhibit 1.

3 MR. McMULLAN: Your Honor, there will be  
4 four of these Certificates of Deposit. What I would like  
5 to do, with permission of Mr. Range, is simply introduce  
6 all of them in a group, if that's convenient.

7 THE COURT: This was the original? Let  
8 the others come on in the group.

9 MR. McMULLAN: Roll through on dates until  
10 we get to one which is a \$20,000 Certificate of Deposit.  
11 This is the \$20,000 one. This is the \$31,000 one.

12 THE COURT: I don't know that we ought to  
13 put this in as one exhibit. I will do them individually.  
14 The next one I will mark Plaintiff's Exhibit No. 2, is  
15 the same \$31,000, and has been reissued on April 10, the  
16 maturity date of the other Certificate of Deposit.

17 The third, the interest rate now is 14.226  
18 percent and has the same language I just finished reading  
19 to the jury; and the interest is to be paid into the same  
20 savings account as was on the other Certificate of Deposit.  
21 No. 3, that one is mature in October.

22 On October 22, another \$31,000 C.D. The  
23 form of this one is somewhat different from the others,  
24 the writing. It is the 31,000, Mechanicsville, names

1 Alma S. Elliott or Clarence E. Fleming. The rate of  
2 interest is 11.531. It still goes into the account, the  
3 same savings account, as has been before. Signed by  
4 Mr. O'Flaherty for the bank, and again Mr. Clarence Fleming.  
5 It states that the certificate is subject to the applicable  
6 rules of the Bank of Virginia, the state and federal  
7 laws and regulations. That will be No. 3.

8 It's all I've been handed so far. That is  
9 a reissuance of the \$31,000 on October 22, 1980. That would  
10 mature on April 22, 1981.

11 The next one, which will be marked  
12 Plaintiff's Exhibit 4, is a Certificate of Deposit in the  
13 amount of \$20,116.21, and that is in December of 1980,  
14 about two months after the other one, No. 3, was issued.  
15 And it's got the same type of language in it as before.  
16 The interest rate I can't read because of the word "redeemed"  
17 written over it, but maybe you all have something that  
18 tells what it is.

19 Does anybody know what's supposed to be  
20 under the word "redeemed"?

21 MR. RANGE: Is this on the --

22 THE COURT: That's the date. This one was  
23 written in December and to mature in June, and the interest  
24 rate was -- looks like 15.673. And I'm assuming the



1 evidence will be that this is a replacement of the October  
2 C.D. 31,000 was changed to a 20,000 because 11,000 or  
3 so was taken down.

4 MR. RANGE: Your Honor, we --

5 THE COURT: Whatever terms you want. This  
6 20,000 is a portion of the 31,000, I presume.

7 MR. RANGE: That's correct.

8 THE COURT: And because some of the money  
9 has been taken out, there has been a new C.D. issued.  
10 That one, No. 3, that was issued on October 22, to be  
11 redeemed in April, was redeemed earlier than that and  
12 converted to a 20,000 C.D. issued in September.

13 MR. RANGE: In fact, they're all new C.D.s.

14 THE COURT: I understand, but the 31,000  
15 C.D. issued October 22, '80, to be redeemed April 22,  
16 '81, that never happened because it got redeemed earlier.

17 MR. McMULLAN: Yes, sir.

18 THE COURT: All right. That brings us  
19 on through to where we got a \$20,000 C.D. with the same  
20 language and an interest rate shown to be redeemed in  
21 April, 1981, or June of '81. Which is it? June.

22 MR. McMULLAN: It's June, Your Honor.

23 THE COURT: Okay. That's No. 4.  
24

1 BY MR. McMULLAN:

2 Q Mr. Fleming, you have those four exhibits  
3 or copies of those exhibits?

4 A Yes, sir.

5 Q I want you to look at them a minute.

6 Can you tell me where that four Certificates  
7 of Deposit -- why there are four of them?

8 A All right. Started off with the first one  
9 that was the original one, I would imagine. It came due  
10 in six months time. I would go down to the bank and  
11 sign for the bank officials, and they would issue another  
12 six month deposit or six month money market; and that  
13 would run until it matured. And when it matured, I would  
14 go to the bank, sign the deposit or sign the certificate  
15 of -- and they would roll it over again to another new  
16 certificate.

17 THE COURT: Gentlemen, I am sure you  
18 stipulate to this, but to make sure the jury understands  
19 this, I think this is a matter that should be put to them as  
20 a stipulation. The reason that savings and loan and  
21 banks pay a high interest on C.D.s or Certificates of  
22 Deposit is that you must leave the money with them for  
23 six months at a time. You draw the money out early, then  
24 you have a big penalty and interest because the reason

1 they will pay you a higher interest is because they will  
2 keep the money for a longer time period; and therefore,  
3 invest it themselves and make more money. If you want,  
4 obviously, every six months when it matures, you have to  
5 go back and decide what you are going to do with it. Are  
6 you going to put it into another C.D. or do something else?  
7 You could put it in a passbook or buy stock with it. In  
8 this case, they are putting it into another C.D. One  
9 matures in April '80, and then in April it was renewed  
10 back into another C.D. that matures in October of '80; and  
11 then in October of '80, we find that it's the same 31,000  
12 is now put into another C.D.; and that is going to mature  
13 supposedly in April of '80. And then we have a change  
14 where we have another C.D. of a lesser amount of money.  
15 The reason you don't see any interest on this is because  
16 each of these C.D.s has provided that the interest being  
17 earned doesn't stay in the Certificate of Deposit, but  
18 goes into a separate account, which was a savings account  
19 that I believe was in the name of Mrs. Fleming, that she  
20 used to pay for things.

21 Is that true?

22 MR. McMULLAN: The only correction is that  
23 the savings account was in the name of Ms. Elliott, not  
24 Mrs. Fleming.

1 MR. RANGE: Initially, the savings account  
2 was in the name of Ms. Elliott or Mr. Fleming.

3 Subsequently, it was changed to the name of Ms. Elliott  
4 or Mr. Fleming or Mrs. Fleming.

5 THE COURT: And he explained that because  
6 he was out of town a lot.

7 MR. McMULLAN: Yes, sir. Thank you.

8 THE COURT: Why don't we come to what  
9 happens if it's important. I don't know that it is. It's  
10 important why we get to 20.

11 MR. McMULLAN: I am going to take  
12 Mr. Fleming through that with questions, I believe. I'm  
13 sure it wouldn't take very long.

14 BY MR. McMULLAN:

15 Q Once again, in setting up this new account,  
16 did you get any advice on how to set it up?

17 A Yes.

18 Q From whom?

19 A Mr. Bailey and Mr. Martin.

20 Q The new account is the \$31,000 that came  
21 from the sale of the home?

22 THE COURT: Fine. October of '79.

23 MR. RANGE: Your Honor, I object to counsel's  
24 characterization of this as a new account.

1 THE COURT: Objection sustained. We are  
2 setting up this account is the question.

3 MR. McMULLAN: I think by law, Your Honor,  
4 you will find that every Certificate of Deposit is an  
5 account. Every single one is a separate account.

6 THE COURT: We won't characterize it. We  
7 will just call it an account, a different account.

8 BY MR. McMULLAN:

9 Q Once again, does Mr. Bailey know whose  
10 money this was that he was advising you about?

11 A Yes.

12 Q How did he know this?

13 A He had to fund me with some cards in order  
14 to draft this money, the first bond down from the savings  
15 and loan. The second bond for \$31,000 was in the form  
16 of a check payable to Alma S. Elliott that I turned over  
17 to Mr. Bailey.

18 Q Well --

19 THE COURT: I doubt very seriously if that  
20 evidence has any impact on the trier of the fact. When  
21 you start talking about the second bond is a check payable,  
22 if that means anything to the jury, they are way ahead  
23 of me. You want to try it again?

24 MR. McMULLAN: I will try. I cannot ask

1 leading questions.

2 THE COURT: When you talk about the second  
3 bond -- and let's use the word "C.D." so we don't get  
4 confused. Get that word "bond" out of your mind, because  
5 this isn't any bond. C.D.

6 The second time this C.D. was taken out  
7 with \$31,000, which was April 10, 1980, and you look at  
8 that marked Plaintiff's Exhibit 2, that would be the  
9 second time that you took out a C.D. with \$31,000; right?

10 THE WITNESS: Uh-huh.

11 THE COURT: How did the \$31,000 get from  
12 the first C.D. to the second C.D.?

13 THE WITNESS: I went to the bank and signed.

14 THE COURT: Just an internal transaction  
15 at a bank?

16 THE WITNESS: Yes, sir. The bank took  
17 care of it all.

18 THE COURT: No money changed hands?

19 THE WITNESS: No.

20 THE COURT: When you went, then, of  
21 course, that matured sometime in October. According to  
22 that Exhibit, it should have matured October the 9th,  
23 but the next C.D. was not until October the 22nd. You  
24 see that No. 3?

1 THE WITNESS: Uh-huh.

2 THE COURT: That took place the same way?

3 THE WITNESS: That took place the same way.

4 THE COURT: What are you talking about  
5 that a check was given to you that was given to the bank?

6 THE WITNESS: Mrs. Elliott was paid for  
7 her house that she sold in Maryland to initially start  
8 these bonds for \$31,000.

9 THE COURT: That money got turned over to  
10 the bank?

11 THE WITNESS: She endorsed the check on  
12 the back and asked me if I would carry it to my bank and  
13 get advice on how to deposit it for her.

14 THE COURT: We are moving up now toward  
15 this last C.D.?

16 MR. McMULLAN: Yes, sir.

17 THE COURT: Good.

18 BY MR. McMULLAN:

19 Q One question before we get to that part  
20 of the testimony: Did you ever sign another signature card  
21 with regard to any of these \$31,000 C.D.s or the \$20,000  
22 C.D.s?

23 A No, I didn't.

24 THE COURT: Isn't it agreed by all of you --

1 I thought it was -- that only one signature card was signed  
2 by Mr. Fleming?

3 MR. RANGE: Right.

4 MR. McMULLAN: That's correct.

5 BY MR. McMULLAN:

6 Q Can you explain why one of the C.D.s  
7 we are talking about was redeemed or cashed in earlier,  
8 Mr. Fleming?

9 A Yes, I can. You have one which is  
10 Exhibit No. 4.

11 THE COURT: It's Exhibit No. 3 which was  
12 cashed in earlier. It was the one that was taken on  
13 October 22, was due to be redeemed April 22, but got  
14 redeemed earlier.

15 THE WITNESS: That was dropped down to  
16 \$20,000 because at the time I had a heart attack, and  
17 Mrs. Elliott was laid up in the hospital; and we had no  
18 money coming in whatsoever. So my wife confronted  
19 Mrs. Elliott, told her what the situation was, and  
20 Mrs. Elliott told her -- said go get whatever you need  
21 to help us over until he gets back to where he can work.  
22 So we asked her if we could borrow \$10,000 of which she  
23 okayed. We went to the bank, redeemed the bonds, put  
24 \$10,000 into another account to help us over.



1 BY MR. McMULLAN:

2 Q Was the new Certificate of Deposit that  
3 you invested it in, did you invest in that Certificate of  
4 Deposit immediately?

5 A Yes, I did.

6 Q Is that Plaintiff's Exhibit No. 4 or  
7 stipulated Exhibit No. 4?

8 THE COURT: It is.

9 THE WITNESS: Yes, it is.

10 BY MR. McMULLAN:

11 Q Again, when you immediately invested in  
12 that other Certificate of Deposit, did you sign any  
13 signature card then?

14 A No.

15 THE COURT: We already stipulated that. I  
16 don't want to keep repeating evidence. He signed one  
17 signature card. That has been agreed.

18 BY MR. McMULLAN:

19 Q Did you sign any document that said on it  
20 "joint account with survivorship"?

21 A Joint account with survivorship?

22 Q Or "joint account, no survivorship"?

23 A (No audible response.)

24 Q Did you consider the \$10,000 received as a

1 loan, Mr. Fleming?

2 A Oh, yes.

3 Q Have you been paying back Alma Elliott  
4 with regard to that loan?

5 A Yes, I have.

6 Q Did all of the Exhibits that you have  
7 before you have a social security number on them?

8 THE COURT: The Exhibits speak for themselves.

9 THE WITNESS: Yes, they do.

10 BY MR. McMULLAN:

11 Q Whose are they? Whose social security  
12 number is on there?

13 A Mrs. Elliott's.

14 Q Is that the only social security number?

15 A It's the only one.

16 Q At this time, when you opened up this  
17 account, were any rules and regulations discussed with you,  
18 sir?

19 A No.

20 Q Were they discussed with Alma Elliott?

21 A No. I never even knew anything existed.

22 Q I note that these Certificates of Deposit,  
23 sir, state that they are subject to applicable rules and  
24 regulations and state and federal laws; is that not correct,

1 sir? Do you see it on there?

2 A Yes.

3 THE COURT: The certificate speaks for  
4 itself.

5 BY MR. McMULLAN:

6 Q Did you read that when you signed the  
7 Certificate of Deposit?

8 A No, I didn't. They just made the Certificates  
9 of Deposit, handed me, here, and said I have to sign here.  
10 I signed it, and that was it. I didn't know anything  
11 about it.

12 Q Were you ever warned or told that the  
13 bank could take Ms. Elliott's money because of your debts?

14 A Yes, at one time. I had made a loan,  
15 and she had pledged another certificate. When I co-signed  
16 it, if I didn't make the payment --

17 Q What happened when you were told that that  
18 could occur again? I want to get the answer. What was  
19 the procedure that was used in your opinion as to when the  
20 bank could take the money of Alma Elliott for your debts,  
21 sir?

22 THE COURT: Hold on.

23 MR. RANGE: I object.

24 THE COURT: It is not a question of what

1 his opinion is. It is a question of what he was told or  
2 what he did sign. His opinion is worthless.

3 THE WITNESS: Rephrase your question.

4 BY MR. McMULLAN:

5 Q Was a pledge always used in your  
6 understanding --

7 THE COURT: No.

8 MR. RANGE: Objection.

9 BY MR. McMULLAN:

10 Q Were you told ever, Mr. Fleming, that the  
11 bank could take Mrs. Elliott's money without a pledge?

12 A No.

13 THE COURT: Hold off just a minute. Just  
14 take these over in the order they are in and let the  
15 jurors look at these four Exhibits so they can follow  
16 along with the evidence. Start with Ms. Moss, and let  
17 them run down the line.

18 I don't want you to study these a half an  
19 hour, but look at these things so you have an idea what we  
20 are talking about. Once you have seen one, the others  
21 will become fairly easy. After you look at the first one,  
22 you will pass that one along. I want the jury to do this  
23 and not be interrupted; and, indeed, you have other  
24 Exhibits stipulated that they can see, like the

1 signature card. Let's get it in.

2 MR. RANGE: I would like to introduce the  
3 original signature cards. This is the original, and this  
4 is the copy of the original.

5 THE COURT: The exhibits can come in by  
6 stipulation. Is this something that opens up?

7 MR. RANGE: No. It was originally a  
8 long sheet that folds up.

9 THE COURT: That will be marked -- I will  
10 mark it No. 5. I will mark it Plaintiff's Exhibit 5.

11 MR. RANGE: There are some additional  
12 signature cards that are not pertaining directly to the  
13 C.D.s.

14 THE COURT: I will mark it --

15 MR. McMULLAN: Your Honor, would you like  
16 me to submit now these stipulated exhibits?

17 THE COURT: I really would. I think it  
18 might help the jury follow along.

19 What is the purpose of the will?

20 MR. McMULLAN: To show the intent of where  
21 the money was to go.

22 (A discussion is had at the bench  
23 outside the hearing of the court reporter.)

24 THE COURT: I will mark this for

1 identification as 6, but I don't think I'll let it in. I  
2 will show it to the jury at this point, unless this will  
3 can be shown to have been demonstrated to the bank for  
4 some purpose --

5 MR. McMULLAN: I won't introduce it. I  
6 can introduce it through testimony.

7 THE COURT: I will hold it up here, and we  
8 will see.

9 MR. RANGE: I have the additional signature  
10 cards.

11 (A discussion is had at the bench outside  
12 the hearing of the court reporter.)

13 THE COURT: The thing to do right now is  
14 to go have some lunch. I really believe that some orderly  
15 fashion of these exhibits are to be gotten in so they can  
16 be passed to the jury. Maybe we will go get a bite.

17 MR. McMULLAN: The only thing I would ask  
18 is I am concerned about Martin for his schedule.

19 THE COURT: We can always break and put  
20 him on.

21 MR. McMULLAN: I am certainly  
22 willing to do that.

23 MR. RANGE: I have no objection to doing  
24 that.

1 MR. McMULLAN: It kind of mixes up the  
2 testimony.

3 THE COURT: We will break for him. When  
4 is he due?

5 MR. McMULLAN: He's here now.

6 THE COURT: How long is going to be on?

7 MR. McMULLAN: Five minutes, maybe ten  
8 minutes at the maximum, unless -- I don't know what  
9 cross-examination is.

10 Do you have cross-examination?

11 MR. RANGE: Very short.

12 THE COURT: Mr. Fleming, step down for a  
13 moment.

14 Come on, Mr. Martin.

15 You have been sworn in?

16 MR. MARTIN: Yes, I have.

17 MR. McMULLAN: May I proceed, Your Honor?

18  
19  
20 RONALD A. MARTIN, having been previously  
21 sworn, testifies and says, as follows:

22 DIRECT EXAMINATION BY MR. McMULLAN:

23 Q State your name for the record, sir.

24 A My name is Ronald A. Martin.

1 Q Are you an attorney?

2 A Yes, I am.

3 Q Do you know Clarence E. Fleming?

4 A Yes, I do.

5 Q Do you know Alma Elliott?

6 A Yes, I do.

7 Q Have you been representing Mr. Fleming or  
8 had you been representing prior to meeting Mrs. Elliott?

9 A Prior to meeting Mrs. Elliott, yes.

10 Q How did you happen to meet Mrs. Elliott,  
11 sir?

12 A First contact I actually had with her was  
13 in discussion of preparation for her will.

14 MR. RANGE: I object to this line of  
15 questioning. I don't see the relevance of wills and when  
16 he met Mrs. Elliott.

17 THE COURT: I am not sure I do either.

18 MR. McMULLAN: May I proceed? I don't  
19 think it's terribly important. I was --

20 THE COURT: Ladies and gentlemen, let me  
21 tell you all this, and maybe it will help counsel get over  
22 these things.

23 One of the instructions I am going to give  
24 you is that your decision in this case is to be based



1 strictly on the evidence, and not in any way upon  
2 sympathy, bias, guess work or speculation. We are not  
3 here to decide how sick Mrs. Elliott was or how much her  
4 grandchildren liked her or anything like that, or how  
5 many wills she drew or anything like that. We are here  
6 to decide a banking transaction took place, and whether  
7 or not the bank had a right to take the money out to pay  
8 the debt owed to him by Mr. Fleming. And all this other  
9 stuff about people being ill and so forth has nothing to  
10 do with this case. If it's a ploy for your sympathy, you  
11 are to ignore it.

12 MR. McMULLAN: Let me emphasize that --

13 THE COURT: No need to emphasize anything.  
14 I emphasized it thoroughly.

15 MR. McMULLAN: This case law talks about  
16 whether or not a person is infirmed and aged; and  
17 therefore, it is imperative for me to establish whether  
18 this woman was in good health or not. I think I have  
19 done that.

20 BY MR. McMULLAN:

21 Q Were you consulted in any way by Donna  
22 Fleming and Clarence Fleming as to how to handle Alma  
23 Elliott's money?

24 A Yes, I was.

1           Q           Did you think it was a good idea, or did  
2           you advise that Alma Elliott have somebody else on her  
3           accounts?

4           A           Yes, I did.

5           MR. RANGE: I object to this line of  
6           questioning.

7           THE COURT: Let me get the objection.

8           MR. RANGE: Mr. McMullan continues to  
9           lead the witness, and I don't want to interrupt the  
10          proceedings in this --

11          THE COURT: I don't think he could lead  
12          Mr. Martin particularly.

13          MR. McMULLAN: That's certainly not the  
14          case. If we have an objection every time I try to --

15          THE COURT: Go on.

16          BY MR. McMULLAN:

17                Q           Why did you give this advice?

18                A           The discussion was pertaining to  
19           Mrs. Elliott's health. It was poor. It was a question  
20           raised as to how best to allow her to handle her affairs,  
21           payment of doctor bills, et cetera. She's not always  
22           able to make it to the hospital due to her infirmities.  
23           We discussed setting up an account under which there would  
24           be no ownership interest. However, Mr. Fleming would be

1 an authorized signature on the account. I personally don't  
2 do a great deal of business with the Bank of Virginia,  
3 so I am not familiar with all the various accounts they  
4 have. My advice to Mr. Fleming was very simply to go to  
5 the bank, set up the account which he would be an authorized  
6 signature, but yet with no ownership interest in the  
7 account, and to discuss this decision with the banker;  
8 and whichever account he advised, finally set up. That  
9 would be the account he should go with.

10 Q Thank you. I have no other questions.

11  
12 CROSS-EXAMINATION BY MR. RANGE:

13 Q Mr. Martin, when you advised Mr. Fleming  
14 to go and set up this account with the right of signature,  
15 you also advised him, did you not, not to get a right of  
16 survivorship on the account?

17 A I talked to him generally no ownership  
18 interest. I don't recall quite frankly whether the word  
19 "survivorship" was used. I know when I discussed this  
20 nature -- this type of account with the client, generally  
21 I will give them certain key words such as "survivorship"  
22 or "joint account" that they should be aware of.

23 But at each bank, particularly with  
24 recent banks -- each bank uses their own language. I hate

1 to say look for this word alone, because the bank may  
2 use something of a different nature and mean the same  
3 thing.

4 THE COURT: Would the right of survivorship  
5 be an ownership interest?

6 THE WITNESS: Yes, it would.

7 THE COURT: And you told him you do not  
8 want him to have an ownership interest?

9 THE WITNESS: That's right.

10 BY MR. RANGE:

11 Q Did you and I have a conversation regarding  
12 your advice?

13 THE COURT: You and who?

14 MR. RANGE: I asked Mr. Martin whether he  
15 told me his advice.

16 MR. McMULLAN: I object to that.

17 THE COURT: It's most certainly sustained  
18 because that puts you on the stand as a witness if he  
19 doesn't answer the question the way you want him to.

20 MR. FANGE: No further questions.

21 THE COURT: Anything further?

22 MR. McMULLAN: No.

23 THE WITNESS: Am I excused?

24 THE COURT: I don't suppose counsel needs

1 you to be on call. If you do, you can make arrangements  
2 with him.

3 Ladies and gentlemen, we are going to go  
4 for lunch. You may have your own places down here you  
5 know about and that you want to go to, but in case you  
6 don't know this area, that the three closest places to you  
7 are a snack bar in the basement of the City Hall. This  
8 is diagonally across Marshall Street. You know where  
9 City Hall is. It has somewhat limited variety; essentially  
10 sandwiches and a snack bar.

11 There is a cafeteria across Eighth Street  
12 in the basement of the Federal Building that has hot food,  
13 soup, sandwiches, et cetera.

14 There is also a cafeteria that is in  
15 the basement of the Safety and Health Building in the  
16 basement across Ninth Street where the police station is.  
17 That also has soup, sandwiches and hot dishes, as well.

18 I would suggest that you might go to those  
19 because I think that we ought to try to get back here in  
20 40 minutes, so I will ask you all to be back here at 25  
21 minutes before two. That will give us 40 minutes to  
22 lunch, which ought to be adequate. So come back, please,  
23 at 25 minutes to two.

24 (Luncheon recess is taken.)

1 THE COURT: Mr. Fleming, come on back here.

2 MR. RANGE: May we approach the bench?

3 We have a problem on witnesses.

4 THE COURT: Certainly.

5 (A discussion is had at the bench  
6 outside the hearing of the court reporter.)

7 THE COURT: Mr. Oppleman, come on up,  
8 please.

9 Ladies and gentlemen, this witness is  
10 part of the defendant's case, but he has a court  
11 proceeding in Henrico County, which he has to be at this  
12 afternoon. So we will take him out of order at this  
13 time.

14 (Mr. Oppleman is sworn.)

15 THE COURT: Have a seat, sir.

16  
17 JEFFREY ALAN OPPLEMAN, having been first  
18 duly sworn, testifies and says, as follows:

19 DIRECT EXAMINATION BY MR. RANGE:

20 Q Mr. Oppleman, would you state your full  
21 name for the record?

22 A Jeffrey Alan Oppleman.

23 Q Are you an attorney, sir?

24 A Yes, I am, sir.

1 Q Will you please tell the ladies and  
2 gentlemen of the jury how you are connected with the bank?

3 A Since approximately 1975, my partner  
4 and I have been handling for the Bank of Virginia many  
5 of its collection and bankruptcy matters. These come  
6 from the central office downtown or from individual  
7 branch people, as well. We handle the suit and suits of  
8 these types of accounts.

9 Q Did you receive a call in regard to a  
10 note for Stove Works of Virginia?

11 A Yes, I did, from Jack O'Flaherty.

12 Q Can you tell me what Mr. O'Flaherty told  
13 you?

14 A He indicated to me that he had a particular  
15 note that had become a problem, and that he was seeking  
16 our services to attempt to collect the monies that were  
17 due and owing.

18 Q Did he mention to you a Certificate of  
19 Deposit?

20 A At that very point, no.

21 Q Subsequently, when you were talking  
22 with Mr. O'Flaherty, did he mention the Certificate of  
23 Deposit?

24 A Yes, he did.

1 Q Can you tell me what he told you then?

2 A We had at that point instituted a --

3 MR. McMULLAN: I object as to what he  
4 told you. That's hearsay.

5 THE COURT: Yes, it is.

6 BY MR. RANGE:

7 Q Mr. Oppleman, did you subsequently receive  
8 the Certificate of Deposit?

9 A Yes, I saw it.

10 Q Did you examine that document?

11 A Yes, I did.

12 THE COURT: Everything is on the rail  
13 over there.

14 BY MR. RANGE:

15 Q Mr. Oppleman, I am going to hand you what  
16 the Court has marked Plaintiff's Exhibit No. 4 and ask  
17 you, is that the Certificate of Deposit?

18 A It appears to be, yes.

19 Q In addition to that Certificate of Deposit --  
20 well, first, what was the purpose for you of obtaining  
21 that Certificate of Deposit?

22 A After I received information that there  
23 were monies on hand at the Bank of Virginia in which  
24 Clarence Fleming might have an interest, I was given this



1 certificate.

2 Q Did you examine the bank's rules and  
3 regulations?

4 A Yes, I did.

5 Q Regarding that certificate.

6 Let me hand you what the Court has marked  
7 Defendant's Exhibit 6. Would you please examine that?

8 A This appears to be rules and regulations  
9 that I received from Mr. O'Flaherty that I picked up at  
10 his office.

11 Q Did you examine those rules and  
12 regulations in conjunction with our exercising the right  
13 of offset in that certificate?

14 A Yes, I did.

15 Q Did you do anything else to determine  
16 whether it be proper to exercise the right of offset?

17 A I have received, of course, the  
18 Certificate of Deposit, the rules and regulations. That  
19 was the information at hand at the time.

20 THE COURT: What do you mean by "right of  
21 offset"? What does that phrase mean?

22 THE WITNESS: To me the phrase would mean  
23 that if an impending situation would be ensued or not  
24 ensued, that monies are owed that are delinquent by a party

1 to the bank, and that party has an interest in monies  
2 in the bank, the bank can take those monies to apply  
3 against the note or obligation that is in delinquency.

4 BY MR. RANGE:

5 Q In this case, the note to Stove Works,  
6 was that delinquent?

7 A Yes. We had instituted suit already.

8 Q Had you made a demand for payment to  
9 Mr. Fleming?

10 A Yes.

11 Q In obtaining that Certificate of Deposit  
12 there, did you examine that to see that it was in the  
13 names of Alma S. Elliott or Clarence E. Fleming?

14 A Yes, I did.

15 Q Looking at that in the rules and  
16 regulations, did you make a recommendation to the bank  
17 as to what course of action to take?

18 A Yes, I did. I advised the bank that  
19 they could seize the money.

20 Q You told, then, Mr. O'Flaherty that he  
21 could seize the money?

22 A I did.

23 Q He knew that?

24 A He did that. I'm not sure exactly what date,

1 but he did do it, yes.

2 Q Did you also advise him that he should  
3 return the excess over the amount due and owing to the  
4 bank?

5 A I had advised that when I went on vacation.  
6 I believe that was completed by my partner.

7 MR. RANGE: I have no further questions.

8  
9 CROSS-EXAMINATION BY MR. McMULLAN:

10 Q Can you tell me again what your definition  
11 of "setoff" is?

12 A In general, the ability of a bank to  
13 seize funds in which a person has an interest or in the  
14 bank to apply against past due payments or delinquent  
15 note or obligation, to set it off against funds they may  
16 have currently in the bank.

17 Q You are familiar with the rules and  
18 regulations, are you not?

19 A I was familiar with the rules and  
20 regulations given to me at that time, yes.

21 Q Do those rules and regulations state that?

22 A Specifically in No. E of the rules and  
23 regulations, as I recall, was the cornerstone, the basis  
24 upon my recommendation.

1           Q           That's the cornerstone? Let me read  
2 something to you. It doesn't talk about past delinquent.  
3 It talks about something else, does it not?

4           A           In which provision?

5           Q           We are talking about now 1-E. They talk  
6 about what there? I'm sorry, 2-E.

7           A           All right, 2-E.

8           Q           That's just not delinquent debt, is it?

9           A           I think that would be a more general  
10 statement.

11          Q           They can take more than a delinquent debt?

12          A           I believe it gives the bank the ability  
13 to take money due and owing at its discretion.

14          Q           At any time they want to, they can take  
15 the money based on that rule and regulation?

16                   MR. RANGE: I object. I think the rule  
17 does speak for itself.

18                   MR. McMULLAN: You raised the rules and  
19 regulations.

20                   THE COURT: Objection is overruled, as  
21 long as we are going to let Mr. Oppleman be an expert  
22 on these rules.

23 BY MR. McMULLAN:

24          Q           What I want to know is, is it true they can

1 take the money anytime they want to?

2 A If you read it literally, I would say yes.  
3 In actuality, I would say no.

4 Q Tell me about literally and actuality.

5 A If we take the language "mature" or  
6 "unmatured," it would indicate that if a debt is not  
7 currently due and owing, it could be seized without getting  
8 into the history --

9 THE COURT: Just a minute. He has to  
10 finish an answer.

11 THE WITNESS: If there came a time when  
12 the bank feels they wouldn't be able to receive the funds,  
13 a person was leaving, hiding his assets, that would  
14 be examples when the debt was not matured.

15 Generally, it's when the account is  
16 delinquent, a payment that is not paid, a bank can take  
17 action.

18 BY MR. McMULLAN:

19 Q Let me give you an example. If someone  
20 borrows \$10,000, and it's due five years from then,  
21 and there's a date, and you receive the rules and  
22 regulations from the bank, and they say, "Mr. Oppleman,  
23 we want to take the money now; can we?" Do those rules  
24 and regulations allow you to do that on a joint certificate

1 of account?

2 A On your generalized statement perhaps,  
3 but I think there would be other circumstances before I  
4 would give that advice.

5 Q Reading those rules and regulations, could  
6 a bank before the \$10,000 came due, could the bank take  
7 that money, in your opinion, based on those rules and  
8 regulations?

9 A Reading No. E, yes.

10 Q Now, you read the -- you read all the  
11 documents, I presume, that you received from the bank,  
12 did you not? You read that, the Certificate of Deposit?  
13 You read the rules and regulations very carefully?

14 A That's what I had, yes. That was given  
15 to me.

16 Q Let me ask you about a letter which is  
17 also a stipulated exhibit. This is the letter --

18 THE COURT: It's on the rail there  
19 somewhere.

20 MR. McMULLAN: It's Plaintiff's Exhibit  
21 No. 10.

22 BY MR. McMULLAN:

23 Q Take a look at that a minute.

24 A Let's see.

1 Q Tell me once you have looked at it.

2 A That's the letter that I sent.

3 Q It says -- tell me if I am incorrect about  
4 this -- "I am sending this letter by regular and certified  
5 mail. In the certified mail letter will be enclosed a  
6 cashier's check in the amount of \$6,995.21 representing  
7 the difference between the sued amount of \$12,500.00 plus  
8 \$36.00 court costs and \$750.00 interest, and the total  
9 amount of the certificate in the name of Alma S. Elliott  
10 and Clarence E. Fleming."

11 Do those numbers add up? Do they add up  
12 to \$20,116.21?

13 A Without putting the pen to it, apparently  
14 not. I'm not sure.

15 Q All right. Let me ask you another  
16 question.

17 This states on here -- and I read again  
18 from your letter -- "This certificate, which I have shown  
19 to your attorney, has your name as the customer on the  
20 front along with your social security number, as well as  
21 the signature on the back."

22 How did you know that was Mr. Fleming's  
23 social security number?

24 A Because his name appears above it.

1 Q I see.

2 A I don't know if I had independent knowledge  
3 of that or not.

4 Q I want you to take a look at these rules  
5 and regulations again. I want you to look at No. 10 a  
6 minute, Paragraph No. 10 on the back. I'm going to read  
7 it to you, and tell me whether I read it wrong.

8 "The account shall be subject to such  
9 applicable regulations of the federal government insurance  
10 corporation and federal reserve system as may now or  
11 hereafter be in effect; and to the rules and regulations  
12 of the bank as they now exist or may hereafter be added  
13 to or amended with or without notice by the bank. And  
14 all of the above rules and regulations and agreements  
15 shall automatically, without notice, conform to any  
16 regulation promulgated by a competent legal authority."

17 What are the "competent legal authorities"?

18 A I am certain some administrative agencies  
19 of the government.

20 Q Can you name them for me?

21 A I would think the federal reserve system  
22 would have the primary obligation and responsibility;  
23 perhaps some committee of Congress as well. I don't know.

24 Q Did you have any question about any



1 amendments possibly coming forward?

2 A No, because I had received from the bank  
3 what was current at the time.

4 Q What did you receive from the bank? Just  
5 that little form of rules and regulations?

6 A Yes, I did.

7 Q Did you receive anything about amendments?

8 A No.

9 MR. RANGE: There has been no establishment  
10 by counsel that there was any amendment. It is pure  
11 conjecture on his part to insert that into the case.

12 MR. McMULLAN: I am not through cross-  
13 examining him on this point, and I think it will become  
14 relevant.

15 MR. RANGE: I don't think there is any  
16 basis. There is nothing in the record about any amendments,  
17 no indication in the evidence so far.

18 MR. McMULLAN: There's been testimony  
19 about a change.

20 THE COURT: Objection will be sustained.  
21 Go ahead, Mr. McMullan.

22 BY MR. McMULLAN:

23 Q I want you to read the first paragraph of  
24 the first page of the rules and regulations.

1 MR. McMULLAN: Let me stop and say this:  
2 This witness is out of order and is a problem with  
3 cross-examination.

4 THE COURT: It may be out of order.

5 BY MR. McMULLAN:

6 Q Would you read the first sentence of the  
7 rules and regulations, first page?

8 A Are you referring to --

9 Q Yes, sir, that's correct.

10 A "These rules, regulations and agreements  
11 shall apply to and govern the same Certificate of Deposits  
12 accounts, including single and multiple maturity  
13 instruments, as well as those in negotiable and  
14 non-negotiable form, maintained by each depositor and  
15 customer with the Bank of Virginia Central, the bank.  
16 The signing of the bank's signature card for the making  
17 of a deposit by the depositor or his agent shall constitute  
18 assent hereto and to any changes or amendments hereof,  
19 or new rules, regulations and agreements made as  
20 hereinafter provided. These rules, regulations and  
21 agreements shall not be interpreted as limiting or  
22 impairing any protection or immunity afforded the bank  
23 under applicable law."

24 Q Mr. Oppleman, did you receive a signature

1 card when you reviewed all of this on advice of the bank?

2 Yes or no.

3 A Not at the time. I don't believe so.

4 Q Thank you, Mr. Oppleman.

5 MR. McMULLAN: I have no other questions.

6 THE COURT: Any redirect?

7 MR. RANGE: Yes, Your Honor.

8  
9 REDIRECT EXAMINATION BY MR. RANGE:

10 Q Mr. Oppleman, Mr. McMullan made reference  
11 to debts matured and unmatured.

12 Was the debt in this case a matured or  
13 unmatured debt?

14 A It was mature and delinquent.

15 Q It was a delinquent debt and --

16 A That's when I became advised to institute  
17 legal action to obtain the funds.

18 Q When you reviewed Rule 2-E there,  
19 Mr. McMullan pointed out in that letter after reviewing  
20 the Certificate of Deposit, it was your conclusion that  
21 Rule 2-E permitted the bank to offset in this situation?

22 A That's correct.

23 Q Now, with regard to an unmatured debt,  
24 would you have to go to the underlying instrument to

1 determine whether or not the bank had the right to offset  
2 under these rules?

3 A That could be involved, yes.

4 Q Are you familiar with the Stove Works loan?

5 A To the point that I was brought current  
6 about it when I --

7 MR. McMULLAN: Objection. That has never  
8 been brought up on direct, I believe, Your Honor.

9 Did you talk about the Stove Works loan?

10 MR. RANGE: I asked him if he was aware  
11 of the Stove Works loan.

12 MR. McMULLAN: Fine. I withdraw my  
13 objection.

14 BY MR. RANGE:

15 Q Mr. Oppleman, I will hand you what has  
16 been marked Plaintiff's Exhibit No. 9 and ask you to take  
17 a look at that. Can you turn to the reverse side of that  
18 page and read the last sentence down there. I believe  
19 it starts with "upon default," down at the bottom, this  
20 right here. Would you please read that sentence to the  
21 jury?

22 A "Upon default hereunder, the holder shall  
23 have the right to offset the amount owed by a party  
24 hereinunder" --

1 MR. McMULLAN: I would object unless I.  
2 am allowed to recross on this document.

3 THE COURT: You will be allowed to. It's  
4 your exhibit. It's by the stipulation.

5 THE WITNESS: "Upon default hereunder,  
6 the holder shall have the right to offset the amount owed  
7 by such party hereunder or any other obligation to the  
8 holder against any account, checking, savings or otherwise,  
9 which a party may have with the holder or against any  
10 amounts owed by the holder in any capacity to any party,  
11 whether or not due; and the holder shall be deemed to have  
12 exercised such right of offset and to have made a charge  
13 against any account or amounts immediately upon the  
14 occurrence of a default hereunder, even though such charges  
15 made or entered on the books of the holder subsequent  
16 thereto."

17 BY MR. RANGE:

18 Q The holder in that case is the banker?

19 A Correct.

20 Q That language provides the bank under the  
21 terms of that note can offset?

22 A Yes.

23 Q Would it have made any difference to you  
24 to examine the signature card here since you had the

1 Certificate of Deposit to look at and could see the  
2 ownership designation?

3 A No, because I also had the note, too.

4 Q And you could see the joint account was  
5 held jointly between Mrs. Alma Elliott and Mr. Fleming?

6 A Yes.

7 Q And it was your opinion that offset was  
8 proper based on the rule --

9 A And the note, yes.

10  
11 RECROSS-EXAMINATION BY MR. McMULLAN:

12 Q Mr. Oppleman, do you have the note in  
13 front of you?

14 Where is the signature of Mr. Fleming?  
15 Would you tell the jury that?

16 A At the bottom of the back.

17 Q I want you to turn to the front of the note,  
18 if you will, where it states "collateral."

19 Would you tell the jury what collateral  
20 is?

21 A Collateral can include many things, but it  
22 basically includes what a person tells a bank what it  
23 can take.

24 Q Let me ask you another question.

1                   Isn't it true that collateral is what the  
2 bank thinks it can take and what it secures its loan with?

3           A           It's what it secures its loan with.

4           Q           I want you to read what is listed as collateral  
5 on this note.

6           A           Handwritten part?

7           Q           Yes, sir.

8           A           It says, "general assignment of all accounts  
9 receivable" --

10          Q           Let me stop you there.

11                   What is an account receivable?

12          A           Money that would be owing; in this instance,  
13 Stove Works. Accounts receivable, inventory, assets, work  
14 order contracts, now owned or hereafter acquired.

15          Q           What is inventory?

16          A           Product it would have on hand.

17          Q           Would that be the stoves in this case?

18          A           Could be, yes.

19          Q           Fixed assets and work order contracts,  
20 that sort of thing.

21                   Who are the parties on the notes?

22          A           Of this note?

23          Q           Yes.

24          A           It was Stove Works of Richmond, Inc., as a

1 corporate party, signed by two of its officers.

2 Q Who are the officers?

3 A Lawrence M. Chipiwalt and Richard L. Ward.  
4 They also signed individually along with Mr. Fleming on  
5 the back of the note as endorsers.

6 MR. McMULLAN: No further questions.

7 MR. RANGE: No further questions.

8 THE COURT: Thank you. You are free to go.

9 THE WITNESS: Shall I leave the exhibits  
10 here?

11 THE COURT: Just give them to the bayliff.

12 All right, Mr. Fleming. Come on up,  
13 unless there is someone else out of order.

14 All right, Mr. McMullan, just for  
15 continuity, we left off Mr. Fleming's examination in  
16 establishing the C.D.s themselves; and then we got into  
17 marking exhibits, so that's the last place we were, I think,  
18 when he was talking about the reason for the reduction  
19 of the \$31,000 down to the \$20,000 and that C.D. issued  
20 in December of --

21 MR. McMULLAN: Can we have the reporter  
22 read the last question back? I had --

23 THE COURT: If she has it marked.

24 (The record is read by the reporter.)



1 MR. McMULLAN: Thank you.

2  
3 CLARENCE E. FLEMING, JUNIOR, having  
4 been previously sworn, testifies and says, as follows:

5 DIRECT EXAMINATION BY MR. McMULLAN: (Continuing)

6 Q Mr. Fleming, did you ever use any of  
7 Ms. Elliott's money to secure loans by the Bank of  
8 Virginia?

9 A Her certificates.

10 Q And the loans were to whom, sir?

11 A Loans were to Porky's Electronics or  
12 Clarence E. Fleming.

13 Q How often did you do that?

14 A Couple of times. I don't remember  
15 exactly.

16 Q What were the loans for?

17 A Be for maybe purchasing a vehicle or some  
18 business transaction.

19 Q Did Alma Elliott always know what was  
20 going on as to the use of her certificates?

21 A Yes, she did.

22 Q How do you know that she knew?

23 A Because --

24 MR. RANGE: I object again to this leading

1 line of questioning.

2 MR. McMULLAN: That's absolutely routine.  
3 I am just asking the man what he knows in his own mind.

4 THE COURT: That particular question is  
5 not leading.

6 BY MR. McMULLAN:

7 Q Do you want me to ask the question again?

8 A Yes.

9 THE COURT: He wants to know -- do you want  
10 to tell the jury on what basis you knew that she knew  
11 what was going on?

12 THE WITNESS: Because every time I got  
13 ready to secure a loan, the bank officers would tell me  
14 that I would have to have her name on a secured paper to  
15 take back before they would put her certificate on it.  
16 So I would carry it home to her. Nine-tenths of the  
17 time it was blank.

18 "Mrs. Elliott, I need your signature on  
19 here so I can get the loan. They want to use part of  
20 your certificate. If I borrow 3,000, they will use  
21 \$3,000 of your certificate until I pay the money back  
22 to the bank."

23 And I discussed every transaction with  
24 Mrs. Elliott, and if she said no, I didn't. If she said

1 okay, I did.

2 BY MR. McMULLAN:

3 Q Mr. Fleming, what bankers did you deal  
4 with at the Bank of Virginia on these pledged Certificates  
5 of Deposit?

6 A Jerry Bailey and Jack O'Flaherty.

7 Q When a pledge occurred, what was pledged,  
8 Mr. Fleming?

9 A Certificate in the amount of 17,000-some  
10 odd dollars. I don't know exactly what it was.

11 Q Did Ms. Elliott ever pledge the \$31,000  
12 Certificate of Deposit?

13 A No.

14 Q Did she ever sign that particular account?

15 A No. She told me if I wanted anything, I  
16 could -- have it taken off that one certificate. She  
17 didn't want the other one touched.

18 Q Did you ever later on use any money of  
19 Alma Elliott's due to the pledge of any of her money?

20 A Yes, I did.

21 Q Did you pay back the money that you lost?

22 A No, I haven't. On the money that I  
23 lost --

24 Q Any money that was pledged, did you pay

1 that back?

2 A Oh, yes, yes.

3 Q Why did you do that? Why did you pay it  
4 back?

5 A Well, it wasn't my money for losing. It  
6 wasn't right for Alma to lose it. It was her money. I  
7 felt bad when the bank gobbled it up. I had to pay the  
8 money back.

9 Q Did you ever sign a note for Stove Works,  
10 Incorporated?

11 A Yes.

12 Q Who owned and ran that company?

13 A Lawrence Chipiwalt and Dick Ward.

14 Q Why did you sign the guarantee?

15 A I needed some stoves built, so they  
16 approached me about getting some money to build some stoves;  
17 and they made a suggestion. They said, "Who would be a  
18 good bank to go to?" And I told them where I banked,  
19 which I could go there and see them. That was how that  
20 came about.

21 Q Did your attorney advise you as to the  
22 guarantee?

23 A My attorney advise me as to the guarantee,  
24 yes.

1 To the guarantee to the Stove Works?

2 Q Yes, sir.

3 A No.

4 Q Why not? Was he involved in any way with  
5 the transaction?

6 A No.

7 Q Why didn't you use an attorney for that  
8 transaction?

9 A Well, I was dealing with the bankers, and  
10 I trusted them.

11 MR. RANGE: Your Honor, I don't see the  
12 relevance to this line of questioning.

13 THE COURT: I think it is to get him to  
14 say that he trusted the bank, and I think we established  
15 that as a matter of absolute fact.

16 THE WITNESS: Well, I did.

17 THE COURT: Let's not keep going over the  
18 same ground.

19 MR. McMULLAN: Fine.

20 BY MR. McMULLAN:

21 Q At this time, during this transaction,  
22 which banker did you deal with?

23 A Bank of Virginia.

24 Q What banker?

1           A           I'm sorry. When this started, this  
2 transaction, with Jeff O'Flaherty.

3           Q           Where was Mr. Bailey by that time?

4           A           He was either moved to another bank or  
5 another job or quit and gone to -- I don't exactly  
6 know. He wasn't present.

7           Q           Did anyone at the bank ask you to back  
8 up your guarantee in any way with any pledge or assignment  
9 of Certificates of Deposit or any account or anything?

10          A           No.

11          Q           Bank rules and regulations that were  
12 mentioned at this time when you signed the guarantee?

13          A           That was never mentioned to me, never  
14 brought up to me.

15          Q           Were you ever warned of any danger to  
16 the Certificates of Deposit of Alma Elliott at the time  
17 you signed this guarantee?

18          A           Mrs. Elliott's certificates were never  
19 brought into this loan.

20          Q           Do you recall what the bank relied on  
21 as to their security?

22          A           Yes.

23          Q           What was that?

24          A           Collateral that Stove Works had put up.

1 There was inventory and stoves and stuff they had on hand.

2 Q When you dealt with Mr. O'Flaherty,  
3 did he know whose money was in the \$31,000 Certificate  
4 of Deposit account?

5 A Did Mr. O'Flaherty? I can't hear you.

6 Q Did Mr. O'Flaherty know whose money it  
7 was in the \$31,000 Certificate of Deposit account?

8 MR. RANGE: I object.

9 THE COURT: Strike that, please. Objection  
10 is sustained. He can say what Mr. O'Flaherty told him,  
11 but he can't penetrate Mr. O'Flaherty's mind.

12 MR. McMULLAN: I would then ask him, did  
13 he ever talk to Mr. O'Flaherty about those Certificates of  
14 Deposit, that \$31,000 Certificate of Deposit account?

15 BY MR. McMULLAN:

16 Q Did you ever answer yes?

17 A Yes. Oh, yes.

18 Q Did you ever have a conversation with  
19 Mr. O'Flaherty about that?

20 A I told him.

21 Q Did you say Mrs. Elliott's bond?

22 A He knew they were.

23 Q Mr. Fleming, in late 1980, did Stove Works  
24 default in its loan to the Bank of Virginia?

1 A Yes, they did.

2 Q Were you asked to pay that debt?

3 A Yes, I was.

4 Q Did you pay the debt?

5 A No, I did not, because I had probable  
6 cause to believe that I don't owe that debt.

7 Q Has the Bank of Virginia sued you on that  
8 debt?

9 A Yes, they have.

10 Q By whom? What attorney?

11 A I don't know.

12 Q Is that suit currently in litigation?

13 A Yes.

14 Q Are they asking you for interest on the  
15 default?

16 A Yes, sir.

17 Q How much?

18 A Fifteen percent I think it is. I know  
19 it's fifteen. I don't know if there's a percentage or not  
20 on it.

21 Q After this lawsuit was instituted against  
22 you, did you ever promise to pay the money you might  
23 have owed by a Certificate of Deposit of Ms. Elliott's?

24 A No. This was not my money.



1 Q In June, 1981, did the \$20,116.00  
2 Certificate of Deposit come due?

3 A Yes. Wait. I am having trouble hearing.  
4 I can't hear you too good.

5 THE COURT: That's a fact. It shows it  
6 comes due in June of '81.

7 BY MR. McMULLAN:

8 Q Did you try to cash the existing Certificate  
9 of Deposit with the money left in that account?

10 A Yes, I did.

11 Q You did that when, approximately, sir?

12 A Just before the thing came due.

13 Q Do you remember?

14 A It came due on a date that -- it was due  
15 is when I tried to cash it.

16 Q Do you remember when that was approximately?

17 A June something.

18 Q Which year?

19 A Of '81.

20 Q What happened when you took the Certificate  
21 of Deposit in, when you tried to have it cashed?

22 A Well, I kept the Certificate of Deposit  
23 in a bank deposit box of mine that I had at the bank. And  
24 when this thing came about with the Bank of Virginia and

1 Stove Works and I -- Ms. Elliott wanted that money out of  
2 that bank and deposited in another savings institution.  
3 Fine.

4 So I went to the bank, and Ms. Poindexter  
5 was there. She took me in. I got the stuff out of my  
6 safety deposit box, and I brought it back out. And I said,  
7 "I would like to cash this in."

8 She said, "Fine. You have to sign it."  
9 So I signed it.

10 She got up, and she said, "I got to take  
11 it back and show it to another bank official."

12 She left and took it back and showed it  
13 to another bank official.

14 Q Who was that bank official?

15 A Mr. Hudson.

16 Q Where was Mr. O'Flaherty? Do you know?

17 A He had been transferred to another job,  
18 I believe.

19 Q What was Mr. Hudson's job at the time  
20 at the bank? Do you know anything about that?

21 A That's the first meeting I had with  
22 Mr. Hudson, but I believe -- I can't say. As far as I  
23 know, he was the branch manager.

24 Q Did you have a conversation with Mr. Hudson

1 when you went back to talk to Mr. Hudson?

2 A Yes, I did. He came out in the place  
3 where I was sitting in the center of the bank and said  
4 to me, "Mr. Fleming, I'm not paying you that money." And  
5 I said, "Why not?"

6 He said, "Because we're in the process of  
7 suing you for \$10,000.00 you owe this bank."

8 And I said, "Whoa, I don't want to carry  
9 this conversation on here in front of these people any  
10 further." And we retired back to his office.

11 Q When you went back to his office, what  
12 was said then?

13 A We discussed about the litigation that  
14 was going on over the suit, and he told me, "I won't give  
15 you the bond." And he was going to keep it, the C.D.

16 I said, "You keep the bond, Mr. Hudson,  
17 but I want a guarantee, a receipt, from you from that bond  
18 that Mrs. Elliott will get her percentage as long as you  
19 people hold this bond."

20 And he said, "Fine," and he gave it to me.

21 Q Did he say anything else to you that you  
22 recall?

23 A He told me, "Mr. Fleming, I personally  
24 guarantee you that I will put this in my desk drawer, and

1 the C.D. certificate will not leave my desk until I  
2 notify you as to what I am going to do with it."

3 Q Did he tell you anything about federal  
4 regulations that prevented --

5 A He told me nothing.

6 Q Was that the reason you left the  
7 Certificate of Deposit there?

8 A Only reason I left it there was because  
9 I knew it was in turmoil of what was going to happen over  
10 it. So I figured he gave me security, so I felt the  
11 bond was as safe there as anybody else. I had no idea  
12 they were going to take that money.

13 MR. McMULLAN: We can introduce the  
14 receipt now.

15 BY MR. McMULLAN:

16 Q I show that to you. Is that the receipt  
17 you received, Mr. Fleming, from Mr. Hudson?

18 A Yes, that's it.

19 Q Why do you think you were going to get  
20 the interest that apparently was promised by Mr. Hudson?

21 A Because he promised me he would do it.  
22 He gave me his word that he would --

23 Q Is there anything on that receipt that  
24 would make you think otherwise?

1           A           Not that I would think otherwise. He  
2 states right here 15. -- I guess that's 673 percent.

3           Q           Later on, did you ever go back to the  
4 Bank of Virginia and ask for the money from the Certificate  
5 of Deposit accounts?

6           A           Yes, sure did.

7           Q           What happened then?

8           A           Well, Mr. Hudson invited me that he had  
9 already turned the bond over to Mr. Oppleman to be --

10          Q           How long was this?

11          A           Couple of days or a week. I don't remember  
12 exactly how long.

13          Q           At that time, did you demand return of  
14 the Certificate of Deposit?

15          A           I sure did. I asked him why he -- He  
16 said he returned it. I said, "You gave me your word."  
17 He said, "That's interoffice affairs."

18          Q           Did you subsequently receive a letter  
19 from anyone concerning a Certificate of Deposit?

20          A           Yes.

21          Q           From whom?

22          A           Jeffrey Oppleman.

23          Q           That's the letter that you received, sir?

24          A           Yes, that's it.

1 Q What is he saying he is taking out of that  
2 Certificate of Deposit account, Mr. Fleming?

3 A He was taking \$12,500.00 plus \$36.00 for  
4 court costs plus \$750.00 interest.

5 Q Does the letter refer to rules and  
6 regulations, Mr. Fleming?

7 A Yes.

8 Q When was the first time you ever heard  
9 of rules and regulations?

10 A I never heard of them. I never knew anything  
11 existed.

12 Q Did you ever hear of them before receiving  
13 that letter?

14 A No. As a matter of fact, I didn't even  
15 know what rules and regulations meant when I got to it.

16 Q Mr. Oppleman refers to a social security  
17 number in that letter. Is that so?

18 A Social security number, okay.

19 Q What is the social security number listed  
20 on that letter? Read it, if you will, just the numbers.

21 A I don't see the numbers.

22 Q They don't have the numbers on there?

23 A I don't see any numbers on there.

24 Q I stand corrected on that.

1 Did you have your social security number  
2 on the Certificate of Deposit?

3 A No.

4 MR. McMULLAN: I have no other questions.

5 Your witness, Your Honor.

6  
7 CROSS-EXAMINATION BY MR. RANGE: (Continuing)

8 Q Mr. Fleming, I am going to hand you what  
9 the Court has marked Defendant's Exhibit No. 1 and ask  
10 you to take a look at that.

11 Is your signature on the other side of  
12 that card?

13 A Yes, it is.

14 Q Is that Ms. Elliott's signature there?

15 A Uh-huh.

16 Q Is this the signature card that you took  
17 home for Mrs. Elliott to sign?

18 A It would seem so.

19 Q It would seem so? Is this the card  
20 you took home?

21 A Yes. That has our signature, yes.

22 Q Thank you.

23 Now, you testified earlier that you told  
24 Ms. Elliott what you do when you set up these accounts;

1 right?

2 A Uh-huh.

3 Q Then you took the signature card back to  
4 the bank, and they issued you a Certificate of Deposit;  
5 is that correct?

6 A Yes.

7 Q A Certificate of Deposit was made out in  
8 the names of Alma S. Elliott or Clarence E. Fleming?

9 A No, I can't say that. You are stipulating  
10 the word "or." I can't say that.

11 (A discussion is had at the bench  
12 outside the hearing of the court reporter.)

13 BY MR. RANGE:

14 Q Mr. Fleming, you testified that you could  
15 not recall whether the Certificate of Deposit that you  
16 purchased from the bank was in the name of Alma S.  
17 Elliott or Clarence E. Fleming or rather whether it was  
18 Elliott and Clarence E. Fleming. I would like you to  
19 look at what the Court has marked Defendant's Exhibit No. 10  
20 and examine that, please.

21 Is that a Certificate of Deposit that you  
22 purchased from the Bank of Virginia for yourself and  
23 Ms. Elliott?

24 A I would say copy of a certificate that I



1 purchased from the bank for Ms. Elliott.

2 Q Does that say on there that it will pay  
3 to Alma S. Elliott or Clarence E. Fleming?

4 A Yes, it does.

5 Q Mr. Fleming, I would like to hand you what  
6 the Court has marked as Defendant's Exhibits 11, 12 and 13;  
7 and I would ask you to examine each of these.

8 A All right.

9 Q Is each one of those a photocopy of a  
10 Certificate of Deposit that you purchased from the Bank  
11 of Virginia?

12 A It is a copy of the Certificate of Deposit  
13 that I purchased from the Bank of Virginia.

14 Q Isn't it not a fact that each and every  
15 one of those is made payable to Alma S. Elliott or  
16 Clarence E. Fleming?

17 A Yes.

18 Q You testified previously -- I will take  
19 those back -- that you had consulted your attorney,  
20 Mr. Martin, regarding setting up these accounts; is that  
21 correct?

22 A Uh-huh, yes.

23 Q And is it your testimony that he told you  
24 to set up these accounts so that you would have a right

1 of survivorship on these accounts?

2 A Told me what?

3 Q To set these accounts up so that you  
4 would be a survivor; that you would have the right of  
5 survivorship under those accounts?

6 A Yes.

7 Q You went into the bank, did you not, and  
8 you told the bank officer that you wanted to purchase  
9 these Certificates of Deposit, and you wanted to be placed  
10 on there with the right of survivorship; is that correct?

11 A I told the -- no, it's not.

12 THE COURT: What did you tell them?

13 THE WITNESS: I explained the situation to  
14 the bank officer at the time, and I told him what my  
15 attorney had advised me. And I asked him for his idea  
16 of how it should be set up, the account set up, and he  
17 briefly told me practically the same thing my attorney  
18 told me.

19 BY MR. RANGE:

20 Q Did you tell him that you wanted to be put  
21 on these accounts as a survivor?

22 A Yes.

23 Q That's because your attorney advised you  
24 that you were supposed to be on here as a survivor?

1 A Yes.

2 Q Now, Mr. Fleming, you knew that you could  
3 sign these signature cards or rather the Certificates of  
4 Deposit by yourself to cash them in; isn't that correct?

5 A No, that's not correct. I --

6 Q Mr. Fleming, isn't it a fact that each  
7 and every time you went into the bank, you signed these  
8 signature cards by yourself?

9 A Yes.

10 Q Mrs. Elliott never signed a single one of  
11 these certificates?

12 A No.

13 Q When you went into the bank to take money  
14 out of these Certificates of Deposit to place them in  
15 other accounts, you signed them by yourself?

16 A That's correct.

17 Q You knew that you could go to the bank  
18 and withdraw by signing it all the money from those  
19 accounts?

20 A Not without Ms. Elliott's okay.

21 Q She didn't have to sign on any of these,  
22 did she?

23 A When it was first set up, I didn't know  
24 that.

1 Q Is it your testimony that when you first  
2 set up the first Certificate of Deposit, that Ms. Elliott  
3 had to sign that Certificate of Deposit?

4 A Yes.

5 Q I hand you a copy of the Certificate of  
6 Deposit, the one you saw previously, Defendant's Exhibit  
7 No. 10, and ask you to take a look at that. That's dated  
8 October 2, 1974, isn't it?

9 A Uh-huh.

10 Q Is that the first Certificate of Deposit  
11 you purchased for Ms. Elliott?

12 A Could be.

13 Q I would like you to take a look at the  
14 back side of that sheet of paper.

15 Is that your signature there?

16 A Sure.

17 Q You endorsed that to redeem that Certificate  
18 of Deposit and purchase another one solely by yourself;  
19 is that correct?

20 A Yes.

21 Q And Ms. Elliott did not have to sign that?

22 A We went through all this in depositions.

23 THE COURT: The jury wasn't there.

24 THE WITNESS: I made a mistake. We went

1 off the record and got it squared away.

2 BY MR. RANGE:

3 Q Now, Mr. Fleming, you never told the  
4 Bank of Virginia to change the ownership designation on  
5 any of these certificates so they said anything besides  
6 Elliott or Fleming?

7 A Mr. Range, I didn't even know how those  
8 certificates read other than the fact that our names were  
9 on them. I don't know "or" from "and" or "uncle."

10 Q Is it your testimony here today that you  
11 took out eight Certificates of Deposit and never once  
12 saw it was in the name of Elliott or Fleming?

13 A I didn't see that. I didn't know, until  
14 these big subjects come up over "or" or "and." It don't  
15 mean nothing to me.

16 Q You never advised the bank that there was  
17 any irregularity or error on any one of these Certificates  
18 of Deposit?

19 A No, I did not.

20 Q You never told them there was anything  
21 wrong?

22 A No. There was a mistake --

23 Q You showed some of the Certificates of  
24 Deposit to Ms. Elliott, did you not?

1           A           Uh-huh. Wait a minute. Ask that again.

2           Q           You showed some of these Certificates of  
3 Deposit to Ms. Elliott? Is it your testimony Ms. Elliott  
4 never saw any of these Certificates of Deposit?

5           A           She may have seen the first one. I believe  
6 she kept it in her safety deposit box. The rest of them  
7 were kept at a safety deposit box at the bank.

8           Q           She saw at least one of these certificates?

9           A           Possibly the first one.

10          Q           Mr. Fleming, I am going to hand you again  
11 a copy of the last Certificate of Deposit.

12          A           I got one.

13          Q           May I have all of those.

14                      Mr. Fleming, I am going to hand you -- still  
15 don't have it.

16                      MR. RANGE: Excuse me for just a second,  
17 Your Honor. I can't find the Court's exhibit with the  
18 last certificate.

19 BY MR. RANGE:

20          Q           Mr. Fleming, I am going to hand you what  
21 the Court has marked here Plaintiff's Exhibit No. 4 and  
22 ask you to take a look at that one.

23          A           Okay.

24          Q           Now, that Certificate of Deposit also was

1 made out in the name of Elliott or Fleming, is it not?

2 A Yes.

3 Q That Certificate of Deposit states on it,  
4 on the face of the instrument, that it's subject to the  
5 rules and regulations of the government and authorities,  
6 including the rules of the Bank of Virginia; is that  
7 correct?

8 A Is that what this is over here in the  
9 right-hand corner?

10 THE COURT: Don't ask questions.

11 THE WITNESS: I'm sorry. Yeah.

12 BY MR. RANGE:

13 Q Thank you.

14 Now, during 1979 and 1980, you operated  
15 your business called Porky's; isn't that correct?

16 A Porky's Electronics.

17 Q You and your wife on occasion withdrew  
18 money from Ms. Elliott's accounts and deposited them in  
19 your account with Porky's; isn't that correct?

20 A That's correct.

21 Q There's been a great deal of mention made  
22 here of the social security number of Ms. Elliott. The  
23 interest from these Certificates of Deposit was deposited  
24 in Ms. Elliott's savings account; is that correct?

1 A Yes.

2 Q And your wife would withdraw the interest  
3 from her savings account for use for the family; is that  
4 correct?

5 A She will have to testify to that,  
6 Mr. Range.

7 Q You prematurely redeemed a certificate on  
8 December 22, 1980; isn't that correct?

9 THE COURT: You want to try getting that  
10 into everyday English?

11 MR. RANGE: Excuse me.

12 BY MR. RANGE:

13 Q Mr. Fleming, you went into the bank in  
14 December, 1980, and you asked the bank to cash any one  
15 of Ms. Elliott's Certificates of Deposit before it had  
16 matured; isn't that correct?

17 A Yes.

18 Q You suffered a substantial interest  
19 penalty because of that?

20 A Mr. Range, I didn't suffer anything.  
21 Ms. Elliott did.

22 Q But the bank took interest out of that?

23 A That's correct.

24 Q That was because the federal rules required



1 them to take that interest out?

2 A I don't know.

3 THE COURT: --He really wouldn't know; but  
4 the federal rules are what they are, and we can't change  
5 them, unfortunately.

6 BY MR. RANGE:

7 Q Mr. Fleming, you also testified that you  
8 had money that you borrowed -- or rather, excuse me --  
9 money you had in these Certificates of Deposit were pledged  
10 for business loans you made; is that correct?

11 A Would you rephrase that question.

12 Q You took some of these Certificates of  
13 Deposit and pledged them for business loans to your  
14 company, Porky's; isn't that correct?

15 A One of the Certificates of Deposit.

16 Q You pledged it -- isn't it a fact you  
17 pledged one of these Certificates of Deposit to purchase  
18 a truck for Porky's?

19 A A truck, car. I don't know what else.

20 Q Didn't you take -- on another occasion  
21 you pledged these Certificates of Deposit for a loan to  
22 obtain some money for legal expenses; isn't that correct?

23 A No.

24 Q You never obtained a loan from the Bank of

1 Virginia to pledge money -- or rather you never obtained  
2 a loan for legal expenses?

3 A Yes, I did.

4 Q Did you not pledge one of these Certificates  
5 of Deposit?

6 A No, I did not. I didn't know that I did.

7 MR. McMULLAN: Mr. Range, you want to show  
8 me what you got there?

9 May we approach the bench?

10 THE COURT: Yes.

11 (A discussion is had at the bench  
12 outside the hearing of the court reporter.)

13 BY MR. RANGE:

14 Q I am going to hand you a credit  
15 summary prepared by the -- rather, I'm going to hand you  
16 a credit summary and a pink copy marked "consumer loan  
17 note," and I would like you to take a look at those  
18 documents, particularly the credit summary and the  
19 handwriting on there.

20 That document indicates that money was  
21 loaned for litigation; is that correct?

22 A Yes.

23 Q It also indicates that there was a pledge  
24 of the Certificates of Deposit; is that correct?

1 A Yes.

2 Q Does that refresh your recollection with  
3 regard to pledging Certificates of Deposit for litigation  
4 expenses?

5 A Yes.

6 Q In fact, you did pledge the Certificates  
7 of Deposit for litigation expenses?

8 A On this, on this particular one, yes. You  
9 asked a question; I was thinking someone else.

10 Q Mr. Fleming, have you ever told or indicated  
11 to any Bank of Virginia officer that the money in these  
12 Certificates of Deposit was yours?

13 A No.

14 Q Have you ever told any Bank of Virginia  
15 officer that you would take the Certificate of Deposit  
16 in question here and pay off one of your outstanding  
17 loans with that Certificate of Deposit?

18 A Yes, I did. Yes, sir.

19 Q Why did you do that?

20 A Because I had -- a note had come due.  
21 When I took the loan out, I was advised it would run from  
22 90 days. At the end of 90 days, I didn't have the money  
23 to pay it. I could set it up on a monthly payment, so  
24 much per month, which I had another one already running

1 like that. Well, at the end of 90 days, when I went back  
2 to set it up on a payment schedule, I was advised that  
3 I couldn't do it. So I left there, and I had to make  
4 arrangements to pay the loan officer. I went home and  
5 told Mrs. Elliott where I was and asked her, "Could I take  
6 the money from the bonds and pay my loan, and I will pay  
7 you back?" And she said, "Fine, as long as you pay me  
8 back."

9 Q Did you have a conversation with Mr. Hudson,  
10 Mr. William Hudson, the bank manager at the Mechanicsville  
11 office, the current one? Did you have a discussion with  
12 him about paying off a loan with the \$20,000 certificate  
13 that's involved in this litigation?

14 A Yes. Wait a minute. Run that by me  
15 again.

16 Q Excuse me. It was difficult to understand.  
17 Did you have a conversation with  
18 Mr. Hudson about paying off a loan with the Certificate of  
19 Deposit that is involved in this litigation?

20 A Paying off the loan for legal fees,  
21 \$4500.00.

22 Q You told him that you would use that  
23 Certificate of Deposit to pay off the loan?

24 A The reason I had done this, Mr. Range, was

1 because there was another bond sitting in there for  
2 \$12,700.00, and they had been instructing me came due,  
3 that we were going to pay the loan with that bond. That  
4 certificate was handled and turned over by the bank itself.  
5 Therefore, when it came due, they had already rolled the  
6 bond over, the certificate over. If I had a question --

7 So I told him, "There's another bond back  
8 there in the safety deposit box. When it matures, we will  
9 take and pay the loan off with that," is what I told him.

10 Q In fact, you haven't paid Mrs. Elliott  
11 back for the money that was setoff by the Bank of Virginia  
12 in this litigation?

13 A What did you say?

14 Q You haven't taken and paid Mrs. Elliott  
15 back for the money you lost as a result of the setoff,  
16 have you?

17 A Oh, yes. Wait a minute. Which one?

18 THE COURT: We are talking about right now.

19 BY MR. RANGE:

20 Q For the Certificate of Deposit involved in  
21 this case right here, you haven't paid Mrs. Elliott back  
22 for that, have you?

23 A The \$10,000.00 that the bank took?

24 THE COURT: \$13,000.00.

1 BY MR. RANGE:

2 Q The bank took off \$13,000.00 --

3 A No.

4 Q You haven't paid her back for that, have  
5 you?

6 A No.

7 Q Thank you.

8 MR. RANGE: No further questions, Your  
9 Honor.

10 MR. McMULLAN: I have got two more on  
11 redirect.

12 THE COURT: While you are getting to those  
13 two questions, let me ask counsel if somebody has a  
14 problem, evidentiary problem, about something. Both  
15 Mr. Oppleman and this witness have been asked, I think  
16 by Mr. McMullan, to read the figures off of a note of -- a  
17 letter of Mr. Oppleman. No one has ever bothered to total  
18 them for the benefit of the jury.

19 Do you all agree that the total \$13,200 --

20 MR. RANGE: It's the bank's position that  
21 that figure is absolutely correct.

22 THE COURT: It is. I just thought it would  
23 be nice if somebody would let the jury know what they  
24 total to. The total, \$12,536.00 and \$750.00 total \$13,286.00.

1 That mathematically is correct.

2 MR. McMULLAN: Yes. My point is, if you  
3 subtract those numbers, if you subtract it, there is still --

4 THE COURT: We will talk. I thought there  
5 was some question.

6 MR. McMULLAN: It's not important. It's  
7 not important.

8 THE WITNESS: Can I have a cup of water?

9 THE COURT: The bayliff will get it for you.

10  
11 REDIRECT EXAMINATION BY MR. McMULLAN:

12 Q Mr. Fleming, I just want to show you an  
13 exhibit which is Defendant's Exhibit No. 10, and this  
14 exhibit is one of the -- one of the Certificates of  
15 Deposit which is in the -- the Certificates of Deposit that  
16 went over, \$17,700 Certificate of Deposit account. This  
17 is one of them. Just look at them.

18 I believe Mr. Range asked you about rules  
19 and regulations and so forth, that you said that.

20 Can you read that again to me, please,  
21 that sentence about regulations. I just want the whole  
22 sentence there on that Certificate of Deposit.

23 A "This certificate is subject to rules and  
24 regulations of government regulatory authorities and of the

1 issuing bank."

2 Q Does that mean anything to you at all?

3 Did it when you had the Certificate of Deposit?

4 A I have never seen this stuff. It doesn't  
5 mean any more to me than -- I don't know what it is.

6 Q Do you know what a governmental regulation  
7 is?

8 A I guess regulations the government puts up.

9 Q Where would you go to find that one?

10 A I don't know. I don't have the slightest  
11 idea.

12 Q You think there are a lot of them out  
13 there?

14 A I never thought about it.

15 Q I want to make this clear.

16 Did Mr. Martin tell you to consult with  
17 your bank as to what kind of account to set up?

18 A Yes.

19 Q Is Mr. Martin your attorney?

20 A Yes.

21 MR. McMULLAN: Thank you.

22 THE COURT: Mr. Fleming, you can step down  
23 there.

24 Next witness.



JERRY W. BAILEY, having been previously  
sworn, testifies and says, as follows:

DIRECT EXAMINATION BY MR. McMULLAN:

Q I am going to come on up here. It's probably  
hard for you to hear.

Would you state for the record your name,  
sir?

A Jerry W. Bailey.

Q Where do you live today, Mr. Bailey?

A I live in Keysville, Virginia.

Q What is your line of work there?

A I'm self-employed.

Q Did you ever work full-time at the Bank of  
Virginia?

A Yes, I did.

Q Starting in what year, sir?

A 1972.

Q Were you ever branch manager of the  
Mechanicsville branch of the Bank of Virginia?

A Yes, I was.

Q What time period did that start? Just  
give me a general.

A Probably late '77, early 1978, until  
January 1980.

1 Q Until January, 1980?

2 A Right.

3 Q Did you handle many transactions during

4 that period of time?

5 A You mean loans?

6 Q Well, all kinds of things.

7 A Yes. Yes.

8 Q With many people?

9 A Yes.

10 Q What is your educational background? Can

11 you tell me that?

12 A I have five years of college.

13 Q Where did you go?

14 A Ferrum College, degree in business.

15 Q Where did you go after that?

16 A University of Richmond.

17 Q Did you get a degree there?

18 A Yes, I did.

19 Q What was that in?

20 A Pardon me?

21 Q What was that degree?

22 A Degree in banking.

23 Q Did you take any graduate work?

24 A Yes, I did.

1 Q Did you know Mr. Fleming when you were  
2 at the branch as branch manager?

3 A Yes, I did.

4 Q How about Donna Fleming?

5 A I believe I met Donna maybe on one or  
6 two occasions.

7 Q Did you do much banking business with  
8 Butch Fleming?

9 A Yes.

10 Q Did he from time to time borrow money from  
11 you?

12 A Yes.

13 Q I know this is some time ago. Do you ever  
14 remember going to Butch Fleming's house and seeing Alma  
15 Elliott?

16 A I have been to the home of Mr. Fleming.

17 Q Did you ever see anybody there besides  
18 him?

19 A And I seen another elderly lady at his  
20 home, yes.

21 Q Well, were you a friend of Butch Fleming's?

22 A Yes.

23 Q When you saw this old lady, do you remember  
24 anything about what was going on at the time you were at

1 the house? Do you remember why you were there, or is it  
2 just to long ago to remember?

3 A I'm not sure whether I was there to purchase  
4 a C.B. radio or to have one repaired. It was one of the  
5 two.

6 Q Do you ever remember talking to Butch  
7 Fleming or Donna Fleming with regard to the fact that  
8 Grandmother had money? Do you remember anything about that?  
9 Can you tell me?

10 A Butch and I had several conversations in  
11 the late summer, early fall of 1978 concerning his wife's  
12 grandmother who lived, as well as I can recollect, in  
13 the Northern Virginia-Maryland-D.C. area. I'm not sure  
14 of the exact location. He did indicate to me at that time  
15 that his wife's grandmother was selling her home up there,  
16 would be moving in and living with them, and would have  
17 some sums of money to invest in certificates.

18 Q Did you talk about certificates with  
19 Butch Fleming? Do you remember anything about that?

20 A We did discuss various savings accounts  
21 that the bank had at that particular time, interest rates  
22 that were paid on those accounts.

23 Q Do you remember anything about the amount  
24 of money that was invested? Do you remember anything about

1 that?

2 A I don't recall anything about the  
3 conversation that would specify the certain sum of money,  
4 no.

5 Q Do you remember advising Butch Fleming to  
6 put himself on the accounts with Alma Elliott or put  
7 Donna Fleming on the accounts with Alma Elliott?

8 A I do not recall advising him to have a  
9 joint account. Like I stated before, we did discuss  
10 various accounts were available and interest rates, but I  
11 do not specifically remember telling him to be on the  
12 account with her.

13 Q Well, in your banking experience and as  
14 a routine matter, when you have an older person on an  
15 account, do you advise a younger person to be on that  
16 account?

17 A If I had an elderly person who wanted to  
18 open an account with the bank and they asked my advice  
19 whether or not somebody should be on the account, I  
20 probably would tell them yes, someone should be on the  
21 account.

22 Q Why would you advise such a thing?

23 A In case the elderly person became  
24 incapacitated, unable to transact business for themselves.

1           Q           While you were at the branch when you were  
2 the branch manager, were signature cards used when C.D.  
3 accounts were set up?

4           A           In each case are you asking that?

5           Q           Usually, yes, sir.

6           A           We have what was called a universal  
7 signature card; and when a customer opened an account with  
8 the bank, if they were a new customer of the bank, we  
9 would have them sign a signature card; but that same  
10 signature card could be used for checking accounts,  
11 saving accounts or certificates. Subsequent accounts did  
12 not necessarily require a new signature card if, in fact,  
13 those accounts were set up the same as the previous  
14 account.

15           Q           Did you sometimes give blank documents,  
16 for example, a pledge --

17           A           Yes.

18           Q           -- to your customers?

19           A           Yes.

20           Q           Do you ever remember giving Butch Fleming  
21 pledges in blank form that would be filled out in blank.

22           A           Yes.

23           Q           What were those pledges for? To cover  
24 loans?

1 A Yes.

2 Q Of Mr. Fleming?

3 A Yes.

4 Q Well, what would happen to those pledges  
5 after they were signed in blank? Can you tell me what  
6 happened after that?

7 A Assuming the loan was completed, the  
8 documents would be filled in when they were returned to  
9 the bank, if disbursements were made on the loan.

10 Q When you had two people on an account,  
11 did you get both of them to sign the pledge? It was a  
12 pledge?

13 A Yes.

14 Q That was your practice always?

15 A Yes.

16 Q Thank you.

17 MR. McMULLAN: I have no further questions.  
18 Your witness.

19  
20 CROSS-EXAMINATION BY MR. RANGE:

21 Q Mr. Bailey, were there other kinds of  
22 accounts available at the Bank of Virginia that would have  
23 permitted Mr. Fleming to sign documents for Mrs. Elliott,  
24 but which would have left the money solely in Mrs. Elliott's

1 name?

2 A Yes.

3 Q What kind of an account would that have  
4 been?

5 A Such as a power of attorney account.

6 Q Did Mr. Fleming ever ask for a power of  
7 attorney account?

8 A I do not recall that he asked for a power  
9 of attorney account.

10 Q Now, the way these accounts were set up  
11 in the name of Elliott or Fleming, that gave Mr. Fleming  
12 a right of survivorship, did it not?

13 A Yes.

14 Q It also gave him power to sign that  
15 Certificate of Deposit and withdraw all the money out of  
16 the bank, did it not?

17 A Yes.

18 Q Now, if Mr. Fleming had gotten one of  
19 these other accounts you described, power of attorney  
20 accounts, he could not -- excuse me -- if he had gotten  
21 a power of attorney account, could have the bank, if he  
22 had an outstanding loan, offset against that loan and  
23 take the money?

24 A I'll be honest with you. I'm not sure.



1 It's been three years since I worked at the bank.

2 Q You described the universal signature  
3 card.

4 A Yes.

5 Q Is it necessary when a customer comes in  
6 and signs the universal signature card for him to sign an  
7 additional signature card each time he purchases a new  
8 Certificate of Deposit?

9 A No.

10 Q Now, suppose the customer comes in, and  
11 he signs a universal signature card; and he buys a  
12 certificate, and he subsequently comes in; and even  
13 though he has that first certificate, he buys another  
14 certificate; do you have to sign any signature card?

15 A If the second certificate is set up under  
16 the same name as the previous certificate, such as  
17 Mr. and Mrs. John Doe, Mr. and Mrs. -- Mrs. John Doe or  
18 Mr. John Doe, then no. If the account is set up the  
19 same as the first account, it does not necessitate a new  
20 signature card.

21 Q So Mr. Elliott comes in or Mr. Fleming  
22 comes into the bank, he has signed a signature card, and  
23 now he wants to purchase a new C.D., a \$31,000 C.D. in  
24 the name of Elliott or Fleming. He didn't have to get

1 a new signature card, did he?

2 A No.

3 Q Are the bank's rules and regulations  
4 available in the bank lobby?

5 A Yes, they are.

6 Q Now, Mr. Bailey, you stated two people  
7 always sign a pledge agreement. Is that true if it's a  
8 multiple-party account?

9 A All parties listed on the Certificate of  
10 Deposit would sign a pledge, an agreement, if that certificate  
11 was to be used as collateral on a loan.

12 Q If Mr. Fleming came to the bank and he  
13 wanted to use the certificate as collateral, he had to have  
14 both names on the pledge?

15 A Yes.

16 Q Suppose Mr. Fleming had come to the bank  
17 and he had said to you, "Mr. Bailey, all the money in this  
18 Certificate of Deposit is mine."

19 Would you still have to have had Ms. Elliott  
20 sign the pledge agreement?

21 A It was bank policy to have both parties  
22 sign to pledge an agreement.

23 Q Thank you.

24 MR. RANGE: I have no further questions.

1 MR. McMULLAN: One final question.

2 MR. KEARFOTT: Just a minute, Mr. McMullan.

3 MR. McMULLAN: Sure.

4  
5 BY MR. RANGE:

6 Q Excuse me for cutting it short.

7 Mr. Fleming has testified that he came in  
8 and wanted to set up an account with the right of  
9 survivorship.

10 Do you recall him telling you that?

11 A No.

12 Q If a customer came in to you and said  
13 that he wanted to set up a C.D. with the right of  
14 survivorship, is a joint account, one that says Elliott or  
15 Fleming, the right one to set up?

16 A Yes.

17 Q So if he came in to you, or rather if a  
18 customer came in to you and said, "I want to set up a  
19 joint --

20 MR. McMULLAN: Your Honor, I think we  
21 probably understand that he can speak from his experience.  
22 I question whether he is going to put words in his mouth  
23 as to what is going on. If you can rephrase the question  
24 on cross-examination.

1 BY MR. RANGE:

2 Q Mr. Bailey, based on your general banking  
3 practice at the time this account was opened, the  
4 customer requested a right of survivorship, would you  
5 have opened a Certificate of Deposit in the joint "or"  
6 capacity?

7 A Yes.

8 Q Thank you.

9 MR. McMULLAN: Would you read the last  
10 question back? I just didn't hear it. I'm sorry.

11 THE COURT: The question was if a customer  
12 came in and requested a survivorship account, would it  
13 be opened on an "or" basis. He said yes.  
14

15 REDIRECT EXAMINATION BY MR. McMULLAN:

16 Q You never heard anything about a  
17 survivorship account; wasn't that your testimony?

18 A Yes.

19 Q I have one other question on redirect,  
20 if I may.

21 I want to show you just one of these  
22 signature cards. Any one of them will do. I don't see  
23 one around for some reason.

24 Do you have a signature card?

1 A No.

2 Q Well, read what that says.

3 THE COURT: They should be out here,  
4 gentlemen. Let's find them, if they're not on the rail  
5 here. They should be available.

6 BY MR. McMULLAN:

7 Q Just hold that for a moment before you  
8 answer.

9 MR. McMULLAN: I'm mistaken. I don't see  
10 a signature card up here.

11 I stand corrected. I have it right here.  
12 I'm sorry.

13 BY MR. McMULLAN:

14 Q Would you read the first sentence of the  
15 bottom of that signature card?

16 A "All accounts requested above shall be  
17 subject to and the above signed will be bound by the  
18 applicable rules and regulations governing such accounts  
19 in effect on this date and as modified from time to time  
20 by the issuing bank."

21 Q Is there an account listed on that card?

22 A Yes.

23 Q Does it say anything about a \$31,000  
24 Certificate of Deposit account?

1 A No.

2 Q But it does say all accounts requested  
3 above shall be subject to, et cetera?

4 A Yes.

5 MR. McMULLAN: I have no other questions.  
6

7 RECROSS-EXAMINATION BY MR. RANGE:

8 Q Mr. Bailey, was it your testimony that  
9 you couldn't recall whether Mr. Fleming asked for a  
10 right of survivorship or that he didn't mention a right of  
11 survivorship?

12 A I do not remember whether he did or did  
13 not mention that he wanted a right of survivorship  
14 account.

15 Q So he didn't tell you that he did not  
16 want one? You just can't recall?

17 A That's right.

18 THE COURT: Do you know why you set up  
19 this account? You were the person who set it up on an  
20 "or" basis between Mr. Fleming and Ms. Elliott.

21 THE WITNESS: It's customary, or it was  
22 customary at that particular time, if an individual  
23 opened a joint account, it was set up as an "or" account  
24 unless the customer specified otherwise.

1 THE COURT: Anything else?

2 MR. RANGE: I have no further questions.

3 THE COURT: All right, sir. You may  
4 step down, Mr. Bailey.

5 Is it necessary for Mr. Bailey to remain  
6 for purposes of putting him back on?

7 MR. RANGE: We don't need Mr. Bailey.

8 THE COURT: Mr. McMullan, do you need  
9 Mr. Bailey to remain?

10 MR. McMULLAN: No, sir.

11 THE COURT: Mr. Bailey, you are free to go  
12 if you like. You can stay if you want.

13 Who is the next witness, please?

14 MR. McMULLAN: My next witness, Your Honor,  
15 and my last witness will be Mrs. Fleming.

16 THE COURT: Mrs. Fleming.

17  
18 DONNA M. FLEMING, after being previously  
19 sworn, testifies and says, as follows:

20 DIRECT EXAMINATION BY MR. McMULLAN:

21 Q Would you state for the record your name,  
22 please?

23 A Donna M. Fleming.

24 Q You are Butch Fleming's wife?

1 A Yes.

2 Q Do you have any children?

3 A Five.

4 Q Do you know Alma Elliott?

5 A Yes.

6 Q You are related to her?

7 A She's my grandmother.

8 Q How many children does Mrs. Elliott have?

9 A Six.

10 Q Was one of them your mother?

11 A Yes.

12 Q What's your educational background?

13 A High school graduate.

14 Q Did you ever work outside your home?

15 A Yes.

16 Q Where did you work outside your home last?

17 A Richfood.

18 Q At what salary?

19 A Close to \$11,000.

20 Q How long did you work at Richfood?

21 A Five years.

22 Q Did you quit work?

23 A Yes.

24 Q Why did you quit?



1           A           So Grandmother wouldn't have to go in a  
2 nursing home.

3           Q           Is this when she came to live with you? ..

4           A           It was about a year after.

5           Q           Well, do you take care of your grandmother?

6           A           Yes.

7           Q           Full-time?

8           A           Full-time.

9           Q           You heard testimony today, of course,  
10 because you have been here the whole time concerning the  
11 facts about these various accounts, and I am not going  
12 to bore the jury by going through all that again.

13                   But was Ms. Elliott on her accounts by  
14 herself when she lived in Washington or Maryland?

15           A           No. My aunt was on there with her.

16           Q           What was your aunt's name?

17           A           Hilda Elliott.

18           Q           Did you put your name on any of Alma  
19 Elliott's accounts?

20           A           Yes, I did.

21           Q           Why did you do that?

22           A           Because I was taking care of all her  
23 medical expenses and bills.

24                   THE COURT: That was on the so-called

1 savings account, wasn't it, that you --

2 THE WITNESS: Yes, and checking account.

3 BY MR. McMULLAN:

4 Q Was any other money other than Alma Elliott's  
5 money put into those accounts?

6 A No.

7 Q Did you ever sign something known as a  
8 signature card as to these accounts?

9 A Yes, I did.

10 Q What did you think a signature card was to  
11 be used for?

12 A To verify my signature.

13 Q Do you recall whose social security number  
14 was on all of these cards?

15 A Grandma's.

16 Q How about on the accounts themselves?

17 A Grandma's.

18 Q What did they use the social security  
19 number for? Do you have any idea?

20 A For tax purposes, I suppose.

21 Q Can you explain that?

22 A So when you get interest at the end of the  
23 year, the government will know who to -- who pay taxes,  
24 who pay taxes on the interest.

1 THE COURT: To shorten it down, my  
2 recollection of the pleadings is that it was alleged and  
3 admitted that the interest on the accounts were shown on  
4 the records of the government as being that of Alma S. Elliott.

5 MR. McMULLAN: You got it correct, Your  
6 Honor. The only reason I go through this is the jury  
7 cannot look at the pleadings.

8 THE COURT: That is why I am saying this,  
9 because I hear no objection. The interest was treated as  
10 being the interest of Ms. Elliott for tax purposes.

11 MR. McMULLAN: Yes, sir. I am sort of  
12 rolling along. If I jump around too much --

13 THE COURT: That's all right. I thought we  
14 would get that behind us.

15 BY MR. McMULLAN:

16 Q Did you read the signature card that you  
17 signed or the signatures that you signed?

18 A I skimmed over them.

19 Q Do you recall receiving anything called  
20 rules and regulations of the bank?

21 A No.

22 Q Were you ever told anything about any  
23 rules and regulations when you opened the accounts?

24 A Never.

1           Q           Did you ever tell anybody at the bank that  
2 the money was your grandmother's money?

3           A           Yes.

4           Q           Can you tell me who you told, or do you  
5 remember?

6           A           Mrs. Poindexter.

7           Q           Can you tell me when you told her?

8           A           When I went to the bank to ask if I could  
9 have my name put on the checking account. I asked her what  
10 I had to do, and she said take this card home to Grandma  
11 and have her sign it; and you sign it and bring it back.

12                   And I said, "That's all I have to do?"  
13 And she said yes.

14                   That's what I did, took it home to Grandma  
15 and had her sign it.

16           Q           Is Mrs. Poindexter here today?

17           A           Yes, she is.

18           Q           Can you point her out?

19           A           She is sitting in the back row with the  
20 gray suit.

21           Q           Mrs. Poindexter is who?

22           A           Official at the bank.

23           Q           Did you talk to anybody else there? Do  
24 you recall?

1           A           One time I talked to a teller.

2           Q           Tell me about that.

3           A           Grandma gave me a check to cash for her.  
4           She needed some money, and she was at the adult center.  
5           And I took the check, and they asked me if she was in the  
6           bank. And I said no, and they asked me if she was in  
7           the car, and I said no. And she said, "I can't give you  
8           the money without" -- so I gave her the number where she  
9           could be reached, and they got her on the phone and found  
10          out if it was okay to cash the check.

11          Q           When you dealt with these accounts, how  
12          did you call these accounts?

13          A           Grandma's, Grandma's money.

14          Q           When you loaned these accounts, who wrote  
15          the checks? I am talking about the money, the numbers  
16          on the checks. Who wrote them?

17          A           Oh, I wrote out the checks.

18          Q           And who signed it?

19          A           Grandma signed.

20          Q           Did it always happen that way?

21          A           Up until Grandma had -- let's see --  
22          pneumonia, I think it was, and then she wasn't able to  
23          write anything for a long while. That's when I went and  
24          had my name put on them.

1 Q How was the money used on these checks?

2 A For her.

3 Q I think we went through this.

4 A For her medical expenses.

5 Q Did you ever help defray any of your own  
6 family expenses with this money?

7 A Yes, I did.

8 Q Can you tell me why?

9 A Well, when the bank took Grandma's money,  
10 there wasn't any interest coming in; and she didn't have  
11 enough income to pay her bills, so Butch and I paid all  
12 her bills for her.

13 Q When you quit work at Richfood, did you  
14 ever use any of her money then?

15 A Yes, I did. I had to.

16 Q Can you explain that to the jury?

17 A Well, we needed my income. That is why  
18 I was working. And when I quit, there was close to  
19 \$11,000 that we didn't have coming in anymore. So  
20 therefore, I asked Grandma when she was in the hospital --  
21 the doctor wanted her to go into a nursing home, and she  
22 didn't want to. She told me that I should take care of  
23 her, and I told her I couldn't afford to. And she told me  
24 to go ahead and take her money, what I needed to live off of,

1 the interest, and that's what we agreed upon. It wasn't  
2 as much as I was making, but I told her by staying home  
3 I could stretch it.

4 Q How much did you take out each month,  
5 approximately?

6 A About 500.

7 Q That was used for what?

8 A To pay all our living expenses and medical.

9 Q Along with Alma Elliott's?

10 A Both of ours.

11 Q Did Mrs. Elliott's children know this  
12 arrangement was set up?

13 A Yes.

14 Q Do you handle all Mrs. Elliott's business  
15 affairs now?

16 A Yes.

17 Q You are her guardian?

18 A Yes.

19 Q Can you account for all of the money  
20 that you have handled for Alma Elliott since you started  
21 handling her money?

22 A You mean since I became guardian?

23 Q Before that, from the time she moved in  
24 to live with you.

1           A           Just about all of it. That's why I had a  
2           checking account and everything, so I could keep records;  
3           but there were times when Grandma would ask for cash,  
4           and I don't know what she did with her money, for pocket  
5           money.

6           Q           Was that very much or just a little bit?

7           A           She would ask for about \$50, \$100 a month.

8           Q           The rest you kept?

9           A           Right.

10          Q           Later on after your grandmother moved in,  
11          did she come into more money?

12          A           Yes. She sold her house.

13          Q           You heard all the testimony. You basically  
14          agree with that testimony?

15          A           Yes.

16          Q           During that time, did you hear any mention  
17          of rules and regulations when a \$31,000 C.D. account was  
18          set up?

19          A           No.

20          Q           Did anybody ever tell you?

21          A           No.

22          Q           Do you recall the pledge testimony here  
23          today? Do you remember all this talk about pledges?

24          A           Yes.



1 Q Do you recall your grandmother being told  
2 about pledges?

3 A Yes.

4 Q Did she agree to the pledge --

5 A Yes.

6 Q -- situation?

7 Do you recall the \$31,000 Certificate of  
8 Deposit account that was being pledged?

9 A Never.

10 Q Do you recall Grandma always having to  
11 sign a pledge or not?

12 A Yes.

13 Q Did you ever consider your grandmother's  
14 money as your own money?

15 A No.

16 Q Why not?

17 A Well, this was the money that she had  
18 received when she first came down. That was her savings,  
19 and then she got money from the house that was hers. And  
20 then when she dies, it all goes to her children, my aunts  
21 and uncles.

22 Q How do you know that?

23 A About --

24 Q Where the money goes?

1           A           Because it's in her will.

2           Q           Did you ever witness her will?

3                   MR. RANGE: Your Honor, I object. We went  
4 into this earlier.

5                   MR. McMULLAN: Fine. I think it goes to  
6 the intent of these people, and I think it will under the  
7 law; but I will waive all that. I have asked the question  
8 I need, and it's been answered.

9 BY MR. McMULLAN:

10          Q           Did Ms. Elliott ever tell you that she  
11 would give some money to you?

12          A           Yes.

13          Q           When was that?

14          A           When Butch was in the hospital with his  
15 heart attack, she -- I went up there. I was panicking  
16 because he was in the hospital in bad shape, and the  
17 doctor told me that he would have to be out of work for  
18 quite some time; and he could have another heart attack  
19 at any time. And I was just about to go crazy, so I went  
20 and asked her if I could borrow some money. And she told  
21 me to take all the money that I needed.

22          Q           Did you consider that a gift or a loan?

23          A           No, un-huh. I told her if I could borrow  
24 \$10,000, and I would pay her back.

1 Q You have been doing that?

2 A Yes.

3 Q Did your mother know that on occasion  
4 pledges were made?

5 A Yes.

6 Q Did she know about the \$10,000 --

7 A Yes.

8 THE COURT: Are you speaking of her mother  
9 or do you mean the grandmother?

10 MR. McMULLAN: I'm sorry. Her mother.

11 BY MR. McMULLAN:

12 Q The generation between you and your  
13 grandmother, do they know what's going on when you borrowed  
14 \$10,000?

15 A Yes.

16 Q Or when there was a pledge?

17 MR. RANGE: Mr. McMullan is testifying right  
18 now to the witness, and I think it is absolutely leading  
19 the witness.

20 MR. McMULLAN: I don't agree.

21 THE COURT: I don't either.

22 Paper change.

23 (Interruption in proceedings.)  
24

1 BY MR. McMULLAN:

2 Q Has Alma Elliott always used her money to  
3 live on, Mrs. Fleming? ..

4 A Yes.

5 Q Has taking this money by the Bank of  
6 Virginia hurt her ability to pay for expenses?

7 A Yes.

8 Q Have you and Butch Fleming used other money  
9 to help?

10 A Yes.

11 Q What money?

12 A Our money.

13 Q What would have happened to this money  
14 had it not been taken by the bank?

15 MR. RANGE: Your Honor, I object on the  
16 grounds of relevancy.

17 MR. McMULLAN: I think it's very relevant  
18 because it goes to the question of interest. There's a  
19 promise and an issue whether or not --

20 THE COURT: What difference does it make  
21 what they would have done with that?

22 MR. McMULLAN: They are trying to get  
23 income for Ms. Elliott.

24 THE COURT: I consider it not relevant.

1 Objection sustained.

2 BY MR. McMULLAN:

3 Q Is Ms. Elliott aware of the litigation  
4 going on today?

5 A Yes.

6 MR. McMULLAN: I have no other questions.

7 THE COURT: Are you appointed as guardian  
8 because she is considered incompetent by the Court?

9 THE WITNESS: Right.

10 THE COURT: Was that back in July of '82  
11 of this year?

12 THE WITNESS: Right, yes.

13 THE COURT: Thank you.

14 Incidentally, one of these wills that we  
15 have been talking about -- and I have not allowed in  
16 evidence and probably will not -- but one of them, I surely  
17 will not, is dated in August of '82, at a point in time  
18 when the lady was incompetent. That was marked  
19 Plaintiff's Exhibit 6.

20 MR. McMULLAN: Your Honor, do you realize  
21 when Mrs. Fleming was appointed guardian, it was in this  
22 year?

23 THE COURT: It was in July. I just asked  
24 her, and she testified to it. And the will was August of

1 this year; means it was subsequent to someone being  
2 incompetent, in which case this will is invalid, in case  
3 somebody is counting on relying on it.

4 MR. McMULLAN: It wasn't prepared by me,  
5 Your Honor.

6 THE COURT: That's Plaintiff's Exhibit  
7 No. 6.

8  
9 CROSS-EXAMINATION BY MR. RANGE:

10 Q Ms. Fleming, Ms. Elliott has Medicare  
11 insurance to pay for her medical costs, doesn't she?

12 A Right.

13 Q You knew that these accounts that Butch  
14 had opened at the bank, the certificates, that he could  
15 sign on those accounts?

16 A Right.

17 Q In fact, he was the one who always signed  
18 on those accounts, wasn't he?

19 A On which accounts?

20 Q On the Certificates of Deposit.

21 A Right.

22 Q When he got a new certificate, he was the  
23 one that always signed?

24 A Yes, because he started it.

1 Q When he went down to the bank to take this  
2 money out, he was the only one that signed?

3 A Right.

4 THE COURT: You were never worried about  
5 his signature on the C.D.s? You never had signature power  
6 on the C.D.s?

7 THE WITNESS: Right.

8 THE COURT: You had it on the checking and  
9 savings, but not on the C.D.s?

10 THE WITNESS: Right.

11 BY MR. RANGE:

12 Q You testified that you took \$500 a month  
13 from interest out of the savings account?

14 A From interest off the -- well, yes, from  
15 the savings account, because it did go from the C.D.s  
16 into the savings.

17 Q You threw that into a pot with your other  
18 expenses to pay bills?

19 A Right.

20 Q Didn't Mrs. Elliott also get an annuity  
21 from the government?

22 A Yes.

23 Q You got that money as well, didn't you?

24 A She did.

1 Q Well, wasn't that put into her savings  
2 account?

3 A Yes.

4 Q Didn't you draw down on that money as well?

5 A No. I think I only drew the 500, and  
6 that's what I was getting from the C.D.s at the time.

7 THE COURT: You had the C.D.s, which is a  
8 way of saving at a high interest rate, Certificates of  
9 Deposit?

10 THE WITNESS: Right.

11 THE COURT: The interest from that, from  
12 the C.D.s, both of them, the first one which was \$17,000  
13 and some odd dollars and the 31,000 C.D., the interest  
14 from those was put into the savings account, wasn't it?

15 THE WITNESS: Right.

16 THE COURT: Also into that savings account  
17 was put the annuity money that your grandmother got?

18 THE WITNESS: Yes.

19 THE COURT: Same savings account?

20 THE WITNESS: Most of it. Grandma asked  
21 for a portion of it for pocket expenses.

22 THE COURT: But whatever amount was  
23 available from that went into that account?

24 THE WITNESS: Yes.



1 THE COURT: To build up that savings  
2 account?

3 THE WITNESS: Right.

4 THE COURT: It was from that savings  
5 account when you stopped working that you started drawing  
6 the \$500 roughly a month?

7 THE WITNESS: Yes.

8 BY MR. RANGE:

9 Q Didn't you draw down on the annuities  
10 that you put in that account?

11 THE COURT: Excuse me. I thought I cleared  
12 that up. If they were co-mingled in the account, was it  
13 all part of the same account?

14 THE WITNESS: Right.

15 THE COURT: The annuity money and the other  
16 money that went into it.

17 MR. RANGE: I thought the witness's  
18 testimony was she got \$500 --

19 THE COURT: That's why I went through that  
20 series of questions. Maybe she can tell us whether she  
21 could separate one from the other, but the interest from  
22 the C.D.s went in there, and some of the annuity money  
23 went in there.

24 You took out \$500. You don't know whether

1 it came from the C.D. or the annuity?

2 THE WITNESS: I have averaged \$500 per  
3 a month.

4 THE COURT: You got \$500 interest off the  
5 two C.D.s combined?

6 THE WITNESS: Right.

7 THE COURT: Those two each month would  
8 generate about \$500 in interest?

9 THE WITNESS: That's right.

10 THE COURT: That's what she is saying,  
11 but the money is co-mingled in one account is what she  
12 is saying. She is saying the amount she took out in her  
13 mind was about the equivalent of what the C.D.s were  
14 earning in interest each month.

15 MR. RANGE: In addition to that, Ms. Elliott  
16 got annuities from the government, a substantial amount  
17 of money.

18 THE COURT: That money went into the  
19 savings account. We haven't established how much money  
20 it was.

21 How much money went into the annuity each  
22 month?

23 THE WITNESS: It was \$174 a month, which  
24 wasn't --

1 BY MR. RANGE:

2 Q Do you recall how much it was in 1980?

3 A A little over 200, I think. ..

4 THE COURT: Did most of them go in the  
5 account or --

6 THE WITNESS: Grandma always asked me for  
7 the change, I think, and it was like whatever over \$100.  
8 If it was \$174, she asked for \$74.

9 BY MR. RANGE:

10 Q When Mr. Fleming went into the bank and  
11 took the \$10,000 out of the \$31,000 C.D. after his  
12 heart attack, he deposited that into the Porky's account,  
13 didn't he?

14 A Right.

15 MR. RANGE: I don't have any further  
16 questions.

17 MR. McMULLAN: I have one or two.

18  
19 REDIRECT EXAMINATION BY MR. McMULLAN:

20 Q Why did that money go into the Porky's  
21 account? That's your business account, isn't it?

22 A Right; because I always handled the money.  
23 Butch never had a checking account.

24 Q So it had to go somewhere?

1           A           I was the only one. I was in the hospital  
2 with Grandma, so --

3           THE COURT: If you all take turns, the  
4 reporter will appreciate it greatly.

5           MR. McMULLAN: I'm sorry.

6           THE COURT: Ask your questions, and then  
7 get an answer, and that way we will get it reported.

8           Now start over again.

9 BY MR. McMULLAN:

10           Q           I stand corrected.

11                        You were in the hospital?

12           A           With Grandma. I was in the hospital with  
13 Grandma. She went in. I went and took her down to the  
14 doctor's office. She was real bad off at the doctor. I  
15 went down there, and I stayed down with her practically  
16 all day. I was with her most of the day.

17           Q           So how did the money -- why did the money  
18 get into the Porky's account?

19           A           Because Butch didn't have a checking  
20 account of his own.

21           MR. McMULLAN: Thank you.

22           MR. RANGE: I have no further questions.

23           THE COURT: You can step down, ma'am.

24           MR. McMULLAN: We have no additional

1 witnesses, Your Honor. The Plaintiff's case rests.

2 THE COURT: The Plaintiff rests.

3 MR. RANGE: Your Honor, I have a motion at  
4 this time to take up with the Court. Perhaps it would  
5 be wise to excuse the jury.

6 THE COURT: I will give you all a break.  
7 I will give you a mid-afternoon break. You may want to  
8 have some coffee. Try to get alert for the proceedings  
9 later on.

10 We will take a few minutes, counsel,  
11 and I will see you all in five.

12 (A brief recess is taken.)

13 (Whereupon no further evidence was taken.)  
14

15  
16 THIS CONCLUDES THE EVIDENTIARY PORTION  
17 OF THIS TRIAL.  
18  
19  
20  
21  
22  
23  
24

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

3  
4 -----  
5 DONNA M. FLEMING, Guardian for ALMA S. ELLIOTT,

6 Plaintiff

7 v.

8  
9 BANK OF VIRGINIA,

10 Defendant

11 -----  
12 Law No. LF-87  
13 -----

14 The ruling of THE HONORABLE WILLARD I. WALKER, taken  
15 before Shilo Colohan, Notary Public for the State of  
16 Virginia at Large, on the 13th day of December, 1982,  
17 Circuit Court of the City of Richmond, Division I,  
18 Court Room 311, John Marshall Courts Building,  
19 8th and Marshall Streets, Richmond, Virginia 23219.  
20 -----

21  
22  
23 DENNIS C. JOHNSON & ASSOCIATES  
24 Court Reporters  
25 710 Mutual Building  
Richmond, Virginia 23219

1 THE COURT: I'm going to sustain  
2 the Motion to Strike. I think that the evidence  
3 clearly shows, whether I like the law or not -- and  
4 I don't, to be honest with you -- the creation of an  
5 account in which the bank had a right to seize on a  
6 set-off either depositor, and can treat Mr. Fleming  
7 as a depositor.

8 He had a legitimate debt owed. That's  
9 unfortunate for Mrs. Elliott; but nonetheless, it was  
10 an account set up at his direction. I think that the  
11 way that the case has proceeded, that that is the  
12 proper course; and I do sustain the Motion to Strike.

13 Bring the jury in. The objection for  
14 the plaintiff is noted. Bring the jury in.

15 (The jury re-enters the Courtroom.)

16 THE COURT: Ladies and gentlemen,  
17 we have kept you here for a very long time today, and  
18 the good news is we are not going to keep you any  
19 longer today. As a matter of fact, we are not going  
20 to keep you any longer at all.

21 I have listened to counsel at length  
22 in what was a fairly involved and somewhat -- a fairly  
23 close question on law as to whether or not on this  
24 evidence as it has now come in thus far through the  
25

1 plaintiff's case, whether or not under the laws that  
2 are applicable to banking transactions between people  
3 and banks, the plaintiff has put on any case at all  
4 to say that the bank had no right to take this money  
5 and off-set it against the indebtedness of Mr. Fleming.

6 My understanding of the law applicable  
7 to this case and the manner in which the case was  
8 tried, the evidence is simply not here. There is no  
9 factual issue for you to resolve on that point.

10 We have the signature card. We have  
11 the CDs. We have the regulations. We have the type  
12 of account that is involved. We have the known debt  
13 that owed by Mr. Fleming to the bank on the guaranty,  
14 the agreement that he had. Under the regulations,  
15 the bank has a right to set that money off against  
16 that debt.

17 Whether it was something we like or  
18 don't like is immaterial. I don't like it, but it's  
19 there. That's the way the thing is set up, set up  
20 that way by Mr. Fleming; and since that is the case,  
21 there is no legitimate fact issue to submit to you,  
22 the jury, because as a matter of law, the bank has  
23 done no wrong in taking this money. Since there is  
24 no fact issue, I granted the defense Motion to Strike



1       this case and decide the case as a matter of law.

2                       Therefore, there is nothing left for  
3       you to decide. I appreciate your services here  
4       nonetheless, and I am sorry.

5                       Having disposed of the case, you do not  
6       have to come back; and please do not come back until  
7       and/or unless you are notified by Mr. Phillips or  
8       someone in his office. You all can leave your badges  
9       with Mr. Simpkins, and have a very happy holiday  
10      season.

11                      Let's all rise while the jury depart.

12                      (The jury leaves the Courtroom.)

13                      THE COURT: The Court stands adjourned.

No. 129392

Original Maturity  
CERTIFICATE OF DEPOSIT  
Non-Negotiable

\$ 31,000.00

ORIGINAL AMOUNT

213 48 7385

SOCIAL SECURITY OR  
TAX I.D. NUMBER

Bank of Virginia

Oct 11 1979  
DATE OF ISSUE

Issuing Office Mechanicsville Pike 257

The issuing bank certifies that there has been deposited with it Thirty one thousand and 00/100 Dollars

which it will pay to Alma S. Elliott or Clarence E. Fleming

Address 2100 Acropolis Drive, Mechanicsville, Virginia 23121  
upon presentation and surrender of this certificate, properly endorsed, to the issuing office on April 10, 1980. An interest rate of 10.662% per annum is guaranteed through the maturity date and will be paid mtly. to 57 994451 to the holder. This certificate is subject to the rules and regulations of governmental regulatory authorities and of the issuing bank. The Bank is prohibited by Federal Law from paying interest after the date of maturity.

Certificate of Deposit received:

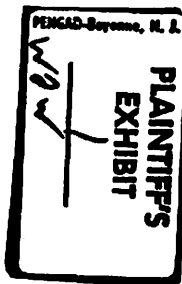
[Signature]  
CUSTOMER(S) SIGNATURE

[Signature]  
BANK AUTHORIZED SIGNATURE

DATE 4-10-80 BR. # 257  
AMT. 31,000.00 INITIALS AEJF  
DISBURSEMENT CD # 129197

[Handwritten signature]

MEMBER: Federal Deposit Insurance Corp.



No. 129697

Single Maturity  
CERTIFICATE OF DEPOSIT  
Non-Negotiable

213-48-7385  
SOCIAL SECURITY OR  
TAX I.D. NUMBER



Bank of Virginia - Central

Issuing Office Mechanicsville

\$ 31,000.00

ORIGINAL AMOUNT

April 10, 1980

DATE OF ISSUE

The issuing bank certifies that  
there has been deposited with it Thirty-One Thousand and 00/100 Dollars

which it will pay to Alma S. Elliott or Clarence E. Fleming

Address 2100 Avondale Drive, Mechanicsville, Virginia 23111

upon presentation and surrender of this certificate, properly endorsed, to the issuing office on October 9, 1980. An in-  
terest rate of 14.226% per annum is guaranteed through the maturity date and will be paid Monthly to 57-99445-1 to  
the holder. This certificate is subject to the rules and regulations of governmental regulatory authorities and of the issuing bank.  
The Bank is prohibited by Federal Law from paying interest after the date of maturity.

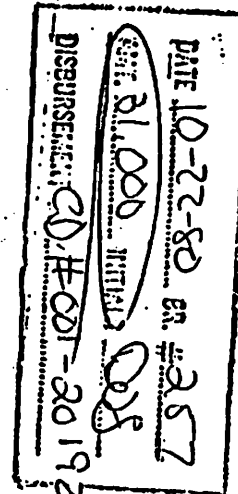
Certificate of Deposit received:

Clarence E. Fleming  
CUSTOMER(S) SIGNATURE

[Signature]  
BANK AUTHORIZED SIGNATURE

MEMBER: Federal Deposit Insurance Corp.

800776048 3100000 a\*22252



Alma S. Elliott



**Number**  
**NONTRANSFERABLE**

**CERTIFICATE OF DEPOSIT**  
**FIXED RATE • SINGLE MATURITY**  
**NON-NEGOTIABLE**

**\$ 31,000.00**

Amount  
October 22, 1980

Name(s) Alma S. Elliott or Clarence E. Fleming

Address 2100 Avondale Drive -----  
Mechanicsville, Virginia 23111

**Date of Issue**

## Mechanicsville

**Issuing Office**

This certificate represents the deposit of Thirty one  
Thousand and no/100 dollars with

**Bank of Virginia.**

We promise to repay your deposit at maturity on April 22,  
1981

**We also promise to pay you interest to maturity computed**



# Bank of Virginia

MEMBER FDIC

**For Bank of Virginia**

at a rate of 11.531 % per year. Your interest will be paid  
monthly to 59-57-994-51

**This certificate is subject to the applicable rules of Bank of Virginia and to State and Federal laws and regulations. There is a substantial interest penalty for redeeming your certificate before maturity.**

**Customer Signature(s)**

**213-48-7385**

**Social Security Number**

DATE 12-22-10 BR # 251  
AMT. 30.16 ZI INITIALS glt  
DISBURSEMENT CD# 001-2014

Plumetier Sedempton

PENGAD-Bayana, H. J.

PLAINTIFFS  
EXHIBIT  
3  
w/vw

167

001 201959 2

# CERTIFICATE OF DEPOSIT

FIXED RATE • SINGLE MATURITY

NON-NEGOTIABLE

\$ 20,116.21

Number

Amount  
December 22, 1980

Name(s) Alma S. Elliott or Clarence E. Fleming

Address 2100 Avondale Drive

Mechanicsville, Va. 23111

Date of Issue  
Mechanicsville

Issuing Office

This certificate represents the deposit of Twenty Thousand  
One Hundred Sixteen and 21/100 dollars with

at a rate of 15 1/2 percent per year. Interest will be paid  
monthly

Bank of Virginia.

We promise to repay your deposit at maturity

This certificate is subject to the applicable rules of Bank of Virginia  
and to State and Federal laws and regulations. There is a substantial  
interest penalty for redeeming your certificate before maturity.

We also promise to pay you interest to maturity computed



Bank of Virginia

MEMBER FDIC

66770072

2011621

a \* 8145

Customer Signature(s)

213-48-7385

C.D. in Demand

DATE	<u>7-14-81</u>	BR. #	<u>253</u>
AMT.	<u>20,116.21</u>	INITIALS	<u>upd</u>
DISBURSEMENT			

not 6/22/81 - 7/14/81  
at 13.606 = \$165.00  
Approved - w/Student

Proceeds  
Cert 1005573 - \$13,286.00  
Jeffrey A. Opperman, Atty.  
for BVA  
cert 1005575 - \$6995.21 to  
payee listed on order

*Clarence E. Fleming*

PLAINTIFF'S  
EXHIBIT  
vow

## GUARANTY

The undersigned (if more than one, each of them, jointly and severally) hereby guarantees payment of all indebtedness of Stoveworks of Richmond, Inc. to Bank of Virginia (the Bank) whether such indebtedness is liquidated or unliquidated, fixed or contingent, now owing or hereafter arising. This is a guaranty of payment and not of collection. The Bank may collect such indebtedness, or any part thereof, from the undersigned (or any one or more of them) without first exercising its rights against the principal debtor or any collateral, the undersigned waiving any right to require the Bank to pursue the principal debtor or collateral before enforcing the obligations of the undersigned hereunder. Until all indebtedness covered hereby has been paid in full, the undersigned shall not be subrogated to any right of the Bank against the principal debtor or any collateral, and any funds or other property at any time received by the undersigned from the principal debtor shall be held in trust for and shall be paid or transferred to the Bank, upon demand therefor. The undersigned (and each of them) waives notice of acceptance of this guaranty; waives presentment, demand, notice of dishonor, protest and notice of protest; agrees that all indebtedness guaranteed hereby may be renewed or extended or that any collateral or other security held therefor may be released without notice to the undersigned and without thereby releasing the undersigned from any obligations under this guaranty; and waives notice of the financial condition or other status of the principal debtor and any other party obligated for the indebtedness covered hereby. The Bank shall have the right to waive its rights against and to release any guarantor without thereby affecting the enforceability of this guaranty against any of the undersigned not expressly released.

This guaranty may be withdrawn as to future indebtedness by notice from the undersigned mailed by registered or certified mail to the Bank, addressed to the attention of an appropriate officer. This guaranty shall not apply to any indebtedness arising after receipt of such notice and the elapse of a reasonable period of time to act thereon, but it shall remain in full force and effect with respect to all other indebtedness covered hereby. The total aggregate liability of the undersigned hereunder (excluding any direct liability of the undersigned other than as a guarantor) shall be limited to the sum of \$ 10,000.00, but the obligation of the undersigned to pay up to such limit shall continue without regard to the amount of advances to the principal debtor (which may exceed such limit) or to amounts repaid by or for the account of the principal debtor.

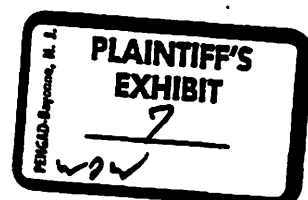
Made this 15th day of October 19 80.

Witness:

W. Jefferson Alberty  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature(s) of Guarantor(s) and Home Address if Individual:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



PLAINTIFF'S  
EXHIBIT  
8  
WOW

NEGOTIABLE COLLATERAL RECEIPT

June 23, 1987  
DATE

Received of

Clarence E. Fleming

The Following Described Collateral:

Number of Shares or Amount	DESCRIPTION	Identifying Number	Coupons
20,116.21	Certificate of Deposit # 001 2019592 Dated 12-22-80 15,67390	001 2019592	

DEPOSITION  
EXHIBIT  
C. Fleming 15  
7/29/82 DCT



BANK OF VIRGINIA

Authorizing Signature

90  
Acct. No. 257-S-012724-13  
Note No. \_\_\_\_\_  
FOR VALUE RECEIVED, the undersigned (the Maker, whether one or more) jointly and severally promise to pay to the order of  
BANK OF VIRGINIA (the Holder) at any of the offices of the Holder the sum of ten thousand + 24/100 Dollars  
including or plus interest as shown in the following Schedule of Payments and Interest:

SCHEDULE OF PAYMENTS AND INTEREST

- ☐ On demand (principal and interest);  
☒ One payment in full due 90 days after the date shown above (Due January 13, 19 81);  
☐ In consecutive monthly/quarterly instalments of \$ \_\_\_\_\_ each on the \_\_\_\_\_ day of each month/quarter beginning \_\_\_\_\_, 19\_\_\_\_, and, if applicable, one final payment of \$ \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_;  
☐ As follows: \_\_\_\_\_

Interest will be ☒ accrued, ☐ discounted, ☐ added on at a per annum rate of BVA prime + 3% or will be computed as follows:

If accrued, interest will be payable ☐ monthly, ☐ quarterly, ☒ as follows at maturity on the \_\_\_\_\_ day of each \_\_\_\_\_. A fee of \_\_\_\_\_ will be payable as follows: \_\_\_\_\_

Collateral. If this Note is marked above as "Unsecured", the references herein to "Collateral" and "security" do not apply, but all other provisions hereof are applicable. If this Note is marked above as "Secured", the Maker has either (i) executed a security agreement giving to the Holder a security interest in the property described below, or (ii) deposited with, and does hereby assign and pledge to the Holder hereof as collateral the property described below. In either event such property and the proceeds thereof constitute collateral for the payment of this and any other liability, contingent or otherwise (including overdrafts and future advances), of the Maker to the Holder, now due or to become due or which may hereafter be contracted. The property constituting the collateral security for this Note (the Collateral) is described as follows: General assignment of all accounts receivable, inventory, fixed assets, and work order contracts now owned or hereafter acquired

Change of Rate. The Maker agrees that, with respect to any loan on which interest is accrued (other than loans where rate fluctuates according to the Holder's best interest rate), the Holder at its option may change the interest rate shown above at any time. Upon making any such change, the Holder will send notice thereof to the Maker at the address shown on the Holder's records.

Default Charges. The Maker agrees to pay a late charge of 5% of the amount of any payment which is 10 days or more past due. After maturity or in event of default, the Maker agrees to pay interest on all outstanding amounts at the interest rate then being charged on this Note and all collection costs and expenses, including attorney's fees.

REFERENCE IS MADE SPECIFICALLY TO THE PROVISIONS APPEARING ON THE REVERSE SIDE HEREOF, ALL OF WHICH ARE EXPRESSLY MADE PARTS, TERMS AND CONDITIONS OF THIS NOTE.

Witness the following signatures and seals as of the date first above written.

Stoverworks of Richmond Inc (SEAL)  
Lawrence M. [unclear] (SEAL)  
Richard L. [unclear] (SEAL)  
171



## ADDITIONAL PROVISIONS

If the Collateral described on the face of this Note is in the nature of securities, it includes all stock dividends, dividends representing distribution of capital assets and rights to subscribe to additional capital stock to which the owner of the securities herein deposited as Collateral is now or may hereafter become entitled or possessed by virtue of owning such securities, with authority to collect, sell, transfer and rehypothecate such Collateral, it being understood that on payment or tender of the amount so due the holder of this Note may return to the Maker the securities deposited or an equal quantity of the same. In the event the securities pledged as Collateral should at any time and for any reason become inadequate as collateral security in the sole judgment of the holder hereof, the Maker agrees to deposit with the holder such additional securities as the holder may require to render the collateral adequate.

In case of failure to make any payment of principal or interest of the Note when due or failure to deposit additional collateral security upon request, or upon assignment for the benefit of creditors by any Maker, guarantor, surety, endorser or other party hereto (collectively called a Party) or upon the failure of a Party to observe or perform any obligation, or warranty to or agreement with the holder hereof or furnished in connection herewith, or upon application for the appointment of a receiver for a Party or for property of a Party, or upon the filing of a petition in bankruptcy by or against a Party, or upon the issuance of an attachment or the entry of a judgement against a Party, or upon the making or sending of a notice of an intended bulk sale by a Party, or upon a default by a Party with respect to any other indebtedness due to the holder hereof, or upon the death, dissolution or insolvency of any Party, or upon the good faith determination by the holder that it deems itself insecure or that a material adverse change in the financial condition of a Party has occurred since the date hereof or that the holder's prospect of payment hereunder has been impaired, the entire unpaid amount hereof shall become due and payable forthwith at the election of the holder of this Note and without notice. Upon the occurrence of any of the foregoing events, or in the event of non-payment of this Note in full at maturity, whether by acceleration or otherwise, the holder is hereby authorized to collect or compromise or to sell at any exchange or at public or private sale, at the option of the holder, at any time or times thereafter, without demand, advertisement or notice, the Collateral or any part thereof, or any substitute therefor or any additions thereto or any other collateral that may in any way come into the possession and custody of the holder either as a deposit with the holder hereof or as collateral security for this or any other liability of a Party to the holder hereof, due or to become due, or that may be hereafter contracted. It is also agreed that upon any sales of any of the Collateral or any other collateral, the holder may become the purchaser thereof absolutely free from any claim of a Party hereto.

Upon default and at any time thereafter the holder shall have, where applicable and in addition to the foregoing, all the rights and remedies of a secured party under the Uniform Commercial Code and all rights provided herein or in any applicable security or loan agreement, all of which rights and remedies shall, to the full extent permitted by law, be cumulative. After deducting from the proceeds all legal (including reasonable attorney's fees) and other costs and expenses of collection, compromise, sale and delivery of the Collateral, the holder is authorized to apply the residue of the proceeds to the payment of any of the liabilities to the holder of a Party hereto as the holder may deem proper, returning the remainder, if any to the appropriate Party, as determined by the holder, and the Maker and each other Party agree to be and remain liable to the holder hereof for any deficiency.

Each Party to this Note hereby waives presentment, demand, protest and notice of dishonor and protest, and also waives the benefit of the Homestead Exemption and all other exemptions, and agrees that extension or extensions of the time of payment of this Note or any instalment or part thereof may be made before, at or after maturity by agreement by the holder with any one or more of the Parties hereto without notice to and without releasing the liability of any other Party. Each Party consents that payment of any of the securities held as Collateral for this Note may be extended by the holder in whole or in part at any time without notice to any Party hereto, and that any or all of the Collateral may be exchanged, surrendered, released, compromised or its terms extended or compromised by the holder at any time without notice to any Party hereto. Upon default hereunder the holder shall have the right to offset the amount owed by a Party hereunder or under any other obligation to the holder against any account, checking, savings or otherwise, which a Party may have with the holder, or against any amounts owed by the holder in any capacity to any Party, whether or not due, and the holder shall be deemed to have exercised such right of offset and to have made a charge against any such account or amounts immediately upon the occurrence of a default hereunder even though such charge is made or entered on the books of the holder subsequent thereto.

Any failure by the holder to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any time. No agreement with respect to this Note or any Collateral shall be binding upon the holder unless in writing and signed by it.

This Note shall apply to and bind the successors of the Maker and all Parties hereto and shall inure to the benefit of the Bank, its successors and assigns.

### (FOR BANK USE ONLY)

#### RENEWAL

1. Charge DDA # _____	Interest \$ _____
Principal \$ _____	Late Charge \$ _____
2. Check Attached \$ _____	Interest \$ _____
Principal \$ _____	Late Charge \$ _____

Interest Rate _____ %	Disc. _____	A/O _____
Life Insurance \$ _____	Age _____	Fee \$ _____
3. Collateral Code _____		
4. Loan Purpose Code _____		

The undersigned endorser(s) hereby expressly acknowledge and agree to all terms, provisions and stipulations set forth in this Note.

*Lawrence M. Chapin*

*Richard L. Ward*

*[Signature]*

CERTIFIED MAIL

July 16, 1981

Mr. Clarence E. Fleming  
2100 Avondale Drive  
Mechanicsville, Virginia 23111

RE: Bank of Virginia  
VS: Stoveworks of Richmond, Inc., et al

Dear Mr. Fleming:

I am sending this letter by regular and certified mail. In the certified mail letter will be enclosed a cashiers check in the amount of \$6,995.21 representing the difference between the suit amount of \$12,500.00 plus \$36.00 court costs and \$750.00 interest, and the total amount of the certificate in the name of Alma S. Elliott or Clarence E. Fleming. This certificate, which I have shown to your attorney, has your name as the customer on the front along with your social security number as well as the signature on the back. By the rules and regulations of the Bank of Virginia which govern the certificate, specifically 2(b) and (e), said regulations being in effect at the time of the certificate. The Bank had used its legal rights to offset the balance due and owing on your note account. These figures are as of July 13, 1981.

Yours very truly,

Jeffrey A. Oppleman

JAO/smb

Enclosure

CC: W. Jefferson O'Flaherty  
R. Craig Evans, Esquire

1	NAME	Alma S. Elliott	SOC. SEC. NO.	213-48-7385
	ADDRESS	2100 Avondale Dr. Mechanicsville, VA 23111	HOME PHONE	746-1714
	BUSINESS	retired	BUSINESS PHONE	
	REFERENCE OR FORMER BANK ACCOUNT Eastern Liberty Fed. Sav. & Loan, Washington D.C.			
2	NAME	Clarence E. Fleming	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>DEFENDANT'S EXHIBIT</b>  1  WOW </div>	
	ADDRESS	same		
	BUSINESS			
	REFERENCE OR FORMER BANK ACCOUNT			


#### SAVINGS CERTIFICATE INFORMATION

CERTIFICATE NUMBER	FACE AMOUNT	DEPOSIT DATE	CLOSING DATE
100092	\$17,700, MMH 8-27-72	10/2/78	Closed 4-2-79

FOLD HERE		FOLD HERE	
NAMES (Type or print)	SIGNATURES:		
1 Elliott, Alma S.	<i>Alma S. Elliott</i>		
2 Fleming, Clarence	<i>Clarence E. Fleming</i>		
CHECKING ACCOUNT NO. _____	SAVINGS PLUS ACCT. NO. _____		
SAVINGS ACCOUNT NO. _____	MASTER CHARGE NO. _____		

#### AVAILABLE SERVICES

SERVICE	IND.	JOINT	BOTH SIGN	DATE OPENED	OPENED BY	INITIAL DEPOSIT	DATE CLOSED
MASTER CHECKING							
CHECKING							
SAVINGS							
SAVINGS PLUS							
GREEN CARD	INITIAL:		NO. OF CARDS	WITH SAV.		WITH M/C	
MASTER CHARGE	INITIAL:		CREDIT LIFE: YES _____ NO _____		(INITIAL ONE)		
SYSTEMATIC SAVINGS	\$ _____ ON THE _____ DAY OF EACH MONTH FROM CHECKING TO SAVINGS BEGINNING IN THE MONTH OF _____, 19 _____						
SAVINGS CERTIFICATE	(LIST ON REVERSE SIDE)						
SAFE DEPOSIT BOX							


**Bank of Virginia** - \_\_\_\_\_ OFFICE: 57

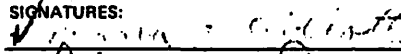
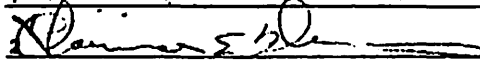
All accounts requested above shall be subject to, and the above signed will be bound by, the applicable RULES AND REGULATIONS governing such accounts, in effect on this date and as modified from time to time by the issuing bank. Receipt of RULES AND REGULATIONS applicable to accounts requested above is hereby acknowledged.

BUFF: BRANCH COPY      WHITE: BOOKKEEPING/CUSTOMER SERVICE      GREEN: FILE COPY      2-999999-999-085/2

1	NAME	Alma S. Elliott	SOC. SEC. NO.	213-48-7385
	ADDRESS	2100 Avondale Dr. Mechanicsville, VA 23111	HOME PHONE	746-1714
	BUSINESS	retired	BUSINESS PHONE	
	REFERENCE OR FORMER BANK ACCOUNT Eastern Liberty Fed. Sav. & Loan, Washington D.C.			
2	NAME	Clarence E. Fleming	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>DEFENDANT'S EXHIBIT</b>  <u>2</u>  Wor </div>	
	ADDRESS	same		
	BUSINESS			
	REFERENCE OR FORMER BANK ACCOUNT			

#### SAVINGS CERTIFICATE INFORMATION

CERTIFICATE NUMBER	FACE AMOUNT	DEPOSIT DATE	CLOSING DATE
121787	17,700	4/13/79	

FOLD HERE		FOLD HERE	
NAMES (Type or print) 1 Elliott, Alma S. 2 Fleming, Clarence		SIGNATURES:  	
CHECKING ACCOUNT NO. _____		SAVINGS PLUS ACCT. NO. _____	
SAVINGS ACCOUNT NO. 57-99445-1		MASTER CHARGE NO. _____	

#### AVAILABLE SERVICES

SERVICE	IND.	JOINT	BOTH SIGN	DATE OPENED	OPENED BY	INITIAL DEPOSIT	DATE CLOSED
MASTER CHECKING							
CHECKING							
SAVINGS						51.22	
SAVINGS PLUS							
GREEN CARD	INITIAL: _____			NO. OF CARDS _____	WITH SAV. _____	WITH M/C _____	
MASTER CHARGE	INITIAL: _____			CREDIT LIFE: YES _____ NO _____ (INITIAL ONE)			
SYSTEMATIC SAVINGS	\$ _____ ON THE _____ DAY OF EACH MONTH FROM CHECKING TO SAVINGS BEGINNING IN THE MONTH OF _____, 19 _____						
SAVINGS CERTIFICATE	(LIST ON REVERSE SIDE)						
SAFE DEPOSIT BOX							



Bank of Virginia -

OFFICE: 57

All accounts requested above shall be subject to, and the above signed will be bound by, the applicable RULES AND REGULATIONS governing such accounts, in effect on this date and as modified from time to time by the issuing bank. Receipt of RULES AND REGULATIONS applicable to accounts requested above is hereby acknowledged.

BLUE: BRANCH COPY

WHITE: BOOKKEEPING/CUSTOMER SERVICE

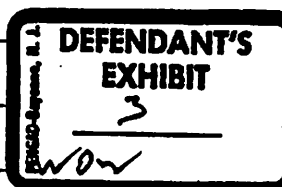
GREEN: FILE COPY 2-999999-999-085/2



Bank of Virginia

BRANCH NAME  
MechanicsvilleBRANCH NUMBER  
257

1	NAME (MR., MRS., MS.) <i>Alma S. Elliott</i>	SOCIAL SECURITY NUMBER 213-48-7385
	SIGNATURE <i>Alma S. Elliott</i>	
2	NAME (MR., MRS., MS.) <i>DONNA FLEMING / Clarence Fleming</i>	SOCIAL SECURITY NUMBER
	SIGNATURE <i>Donna Fleming / Clarence Fleming</i>	CIS NUMBER
	CHECKING ACCOUNT NO.	SAVINGS ACCOUNT NO. 59-57-99445-1
		SAVINGS PLUS ACCT. NO.
		MASTER CHARGE NO.
1	ADDRESS 2100 Avondale Drive CITY, STATE, ZIP Mechanicsville, Va. 23111 HOME PHONE 746-1714 BUSINESS Retired BUSINESS PHONE REFERENCE OR FORMER BANK ACCOUNT Name added 11-10-80	2
		ADDRESS Same CITY, STATE, ZIP HOME PHONE BUSINESS BUSINESS PHONE REFERENCE OR FORMER BANK ACCOUNT (3)



## SAVINGS CERTIFICATE INFORMATION

CERTIFICATE NUMBER	FACE AMOUNT	DEPOSIT DATE	CLOSING DATE

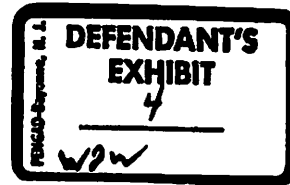
## AVAILABLE SERVICES

SERVICE	IND	JOINT	BOTH SIGN	DATE OPENED	OPENED BY	INITIAL DEPOSIT	DATE CLOSED
MASTER CHECKING							
CHECKING							
X SAVINGS		X		11-10-80	Name Added		
SAVINGS PLUS							
INTEREST/CHECKING							
GREEN CARD	INITIAL		NO CARDS		WITH SAV.	WITH M/C	
MASTER CARD	INITIAL		CREDIT LIFE		<input type="checkbox"/> YES <input type="checkbox"/> NO	(CHECK ONE)	
SYSTEMATIC SAVINGS	\$		ON THE		DAY OF EACH MONTH BEGINNING		
SAVINGS CERTIFICATE							
SAFE DEPOSIT BOX							

ALL ACCOUNTS REQUESTED ABOVE SHALL BE SUBJECT TO, AND THE ABOVE SIGNED WILL BE BOUND BY, THE APPLICABLE RULES AND REGULATIONS GOVERNING SUCH ACCOUNTS, IN EFFECT ON THIS DATE AND AS MODIFIED FROM TIME TO TIME BY THE ISSUING BANK. RECEIPT OF RULES AND REGULATIONS APPLICABLE TO ACCOUNTS REQUESTED ABOVE IS HEREBY ACKNOWLEDGED.

2-999999-999-065/6

BOOKKEEPING/CUSTOMER SERVICE



Bank of Virginia

JOINT ACCOUNT  
RIGHT OF SURVIVORSHIP DESIGNATION

TYPE OF ACCOUNT Statement Savings

Alma S. Elliott

CUSTOMER NAME

Clarence Fleming

Donna Fleming

CUSTOMER NAME

ACCOUNT NUMBER 595799445-1

BRANCH OF ACCOUNT 257

INDICATE WHETHER OR NOT YOU WANT THE RIGHT OF SURVIVORSHIP  
ON YOUR ACCOUNT BY SIGNING THE APPROPRIATE SECTION BELOW.

JOINT ACCOUNT WITH SURVIVORSHIP

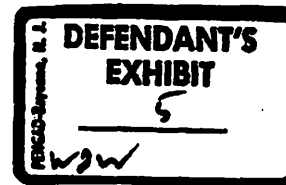
WHEN ONE PERSON ON THIS ACCOUNT DIES,  
HIS SHARE OF THE ACCOUNT BALANCE BE-  
LONGS EQUALLY TO THE OTHER LIVING  
PEOPLE ON THE ACCOUNT.

Alma S. Elliott 10/18  
SIGNATURE DATE  
Donna Fleming 10/18  
SIGNATURE DATE  
Donna Fleming  
2-999999-999-18

JOINT ACCOUNT - NO SURVIVORSHIP

WHEN ONE PERSON ON THIS ACCOUNT  
DIES, HIS SHARE OF THE ACCOUNT BAL-  
ANCE BELONGS TO HIS ESTATE.

SIGNATURE DATE  
SIGNATURE DATE



CHANGE OF NAME, TYPE OF ACCOUNT,  
ACCOUNT NUMBER OR BRANCH

Date Nov. 10, 1980



Bank of Virginia

You are hereby authorized to change (the name or number on) my

☐ Personal Checking Account

☐ Commercial Account

☒ Savings Account

From: Alma S. Elliott  
Clarence Fleming

Old No. 59-57-99445-1

Branch No. 257

To: Alma S. Elliott/Clarence Fleming  
Donna Fleming

New No. Same

Branch No. \_\_\_\_\_

You are further authorized to pay against the account in the new name(s) any checks presented which bear the old signature(s) if such checks were outstanding prior to the above date.

Records Changed

Checking Dept. \_\_\_\_\_

Savings Dept. X

*Alma S. Elliott*

Authorized Signature Before Change

2-999999-508-006

Original to Customers Service Dept. with New Accounts  
Part 2 - To be retained by Branch

and that, if the Bank gives its consent at that time, a penalty will be assessed on the amount withdrawn. In the event of withdrawal of all or any portion of a time deposit before the maturity thereof, the depositor may not receive interest from the date of deposit on the amount withdrawn at a rate in excess of the maximum rate which may be paid on savings deposits by the Bank on the date of withdrawal, and the depositor shall forfeit all interest, calculated at such savings deposit rate, whether accrued and unpaid, or paid to or for the depositor's account, on the amount withdrawn or a period of three months or for the period since the date of deposit, whichever is less. Where necessary to comply with this requirement, interest already paid to or for the account of the depositor shall be deducted from the amount already requested by the depositor to be withdrawn.

10. The account shall be subject to such applicable regulation of the Federal Deposit Insurance Corporation and the Federal Reserve System as may now or hereafter be in effect, and to the Rules, Regulations and Agreements of the Bank as they now exist or may hereafter be added to, altered or amended, with or without notice by the Bank and all of the above Rules, Regulations and Agreements shall automatically, without notice conform to any regulations promulgated by competent legal authority.

11. Miscellaneous. (a) The use herein of the singular and masculine shall be deemed to refer to the plural and feminine or neuter, wherever the context so requires.

b) Each provision hereof, if in conflict with applicable mandatory law or regulation, shall be automatically superseded thereby; but the invalidity of any provision shall not impair any other provision hereof.

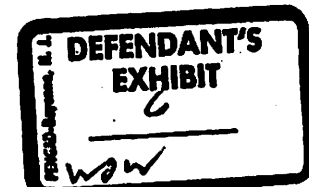
(c) Insofar as not otherwise validly provided for herein or otherwise agreed upon between the Bank and the depositor, the laws of Virginia shall govern the right of the Bank and the depositor to the extent that federal law shall not be governing.

12. Amendments. These Rules, Regulations and agreements may be altered, amended or superseded, in whole or in part, by the Bank, and, as so altered, amended or superseded, shall be binding upon each depositor; provided, however, that no alteration or amendment hereof shall be effective until copies of such alteration or amendment shall have been made accessible to the public in the banking lobbies of the main office of the Bank and its branches. The Bank may, but shall not be required to, make such other publication or such other notice as it desires, and may, but shall not be required to, mail similar notice to depositors and customers.

# Rules Regulations and Agreements Governing Savings Certificates of Deposit Accounts



**Bank of Virginia**  
Central





## Rules, Regulations and Agreements Governing Savings Certificates of Deposit Accounts

These Rules, Regulations and Agreements shall apply to and govern Savings Certificates of Deposit Accounts (including single and multiple maturity instruments as well as those in negotiable and non-negotiable form) maintained by each depositor and customer with Bank of Virginia-Central (the "Bank"). The signing of the Bank's signature card or the making of a deposit by the depositor or his agent shall constitute assent hereto and to any changes or amendments hereof or new Rules, Regulations and Agreements made as hereinafter provided. These Rules, Regulations and Agreements shall not be interpreted as limiting or impairing any protection or immunity afforded the Bank under applicable law.

1. Collections. In receiving items for deposit, the Bank acts only as the depositor's collecting agent and assumes no responsibility beyond the exercise of due care. Any items not drawn on the Bank shall be forwarded by the Bank at the depositor's risk and the Bank shall not be responsible for failure, default or negligence of correspondents, nor for losses in transit. All items are credited subject to actual and final payment in cash or solvent credits, and the Bank shall have the right to cancel the certificate if actual payment is not received on items deposited including items drawn on the Bank not good at the close of business on the day deposited.

2. Deposits. (a) When an account is opened by a depositor in his name followed by words indicating that the deposit is made for the benefit of another or made in a fiduciary or representative capacity with or without a further disclosure as to the nature of the representation, trust or agency, this shall be deemed a representation by the depositor to the Bank that the depositor has a right to draw upon the account (upon the presentation of the certificate properly endorsed) and the Bank may, unless advised in writing to the contrary, honor the orders of the depositor for withdrawals without duty to inquire into the authority for or application of withdrawals.

(b) The Bank reserves the right to request the withdrawal of any account balance at any time. Notice of such request may be given personally or by regular mail to the depositor's last known address. In the event the depositor, so notified, fails to withdraw the funds deposited, all interest, if any, on such funds shall cease from the last day of the month within which the request for withdrawal was made.

(c) The balance shown by the Bank's records shall be prima facie evidence of the amount due the depositor.

(d) The depositor agrees to advise the Bank

promptly of any change in his address. In the absence of such notice, mail addressed to the depositor at the address shown on the records of the Bank shall be deemed to be properly addressed and effective.

(e) The Bank may, at any time, at its discretion and with or without notice to the depositor, or any of them, assert a lien on the balance in the account of the depositor, and apply any part or all of such balance to any indebtedness, matured or unmatured, that then may be owing to the Bank by the depositor and offset the amount so applied against a corresponding amount of such indebtedness.

(f) Certificates issued in the names of two or more persons, payable to either, or payable to either of the survivors, may be paid to either of such persons, whether the other or others be living or not (upon presentation of the certificate properly endorsed) and the receipt or acquittance of the person so paid shall be a valid, sufficient and complete release and discharge to the Bank for any payment so made.

(g) Each depositor and customer agrees to pay such service and maintenance charges on accounts whether active or dormant (an account shall be considered dormant one year after maturity), and for miscellaneous service charges as have heretofore been adopted by the Bank and now in effect, and charges as may hereafter be adopted by the Bank. New service and maintenance charges and changes in existing charges shall become effective upon placement of amendments to these Rules, Regulations and Agreements in the banking lobbies of the main office of the Bank and its branches. Such charges may be deducted from the depositor's account.

(h) The depositor agrees that the account may be charged \$200 per month for the cost of handling the account if the balance in the account remains \$199.99 or less for a period of one year after maturity and 6% per annum on inactive accounts with balances of \$200.00 or more.

3. Saturday or Holiday Openings. The Bank shall have the right to honor any request for withdrawal or other order after maturity of the depositor on any Saturday or legal holiday on which the Bank may be open for the transaction of business, to the same extent and with the same effect as if not a Saturday or legal holiday.

4. Liens. Following the receipt by the Bank of any notice of lien or process in attachment, garnishment or other proceeding relating to the account of a depositor the Bank is authorized to withhold payment of the balance held to the credit of the depositor, or of so much thereof as might be the subject of such notice or process, and to return all items for which final credit has not been given by the Bank, pending final determination that such

notice or process, and to return all items for which final credit has not been given by the Bank, pending final determination that such notice or process is invalid or that payment should be made pursuant thereto, without responsibility to the depositor for such withholding or the refusal to honor orders for the payment of funds drawn or made by him. A notice of lien or process in attachment, garnishment or other proceeding relating to the account of a depositor shall apply to joint accounts as well as individual accounts, and each signatory to a joint account hereby authorizes the Bank to honor a notice of lien or process in attachment, garnishment or other proceeding relating to a joint account whether both depositors or only one depositor is the lien debtor.

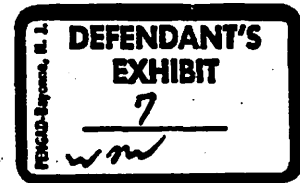
5. The amount of the certificate shall be at least \$100.00 or \$1,000 if for four (4) years or more when required by appropriate regulation. Initial deposits may be made by mail or in person at any branch office of the Bank. Maturities may be selected by depositor up to ten years.

6. Certificates issued after 2:00 in any office of the Bank on any regular business day or on any Saturday or holiday on which the Bank shall be open, will be deemed to have been issued on the next following regular business day of the Bank.

7. Interest shall accrue on the principal amount until maturity. The rate is guaranteed for the term of the original maturity and each subsequent maturity when applicable agreed upon at the opening of the account. Payment of interest shall be effected at least annually unless the depositor shall instruct otherwise in writing. Interest shall cease to accrue after maturity of the account.

8. The certificate must be presented at maturity. The amount shown on the certificate shall not be determinative of the the balance to the credit of the account unless expressly verified by the Bank after comparison with its books and records. Immediate notice of the loss, theft or destruction of the certificate shall be given to the Bank which may issue a replacement certificate on such terms of indemnity or otherwise as the Bank may deem proper. Upon issuance of the replacement certificate, the original certificate shall be void and if found must be surrendered to the Bank for cancellation.

9. Federal regulations require that the depositor may not withdraw all or any part of his deposit prior to maturity except with the consent of the Bank (the bank reserves the right to require thirty days notice in writing of the intention of the depositor to withdraw his deposit or any part thereof before maturity and the right to refuse any specific request for premature redemption) which may be given only at the time such request for withdrawal is made,



January 30, 1981

Stove Works of  
Richmond, Inc.  
15 S. 17th Street  
Richmond, Virginia 23219

Attention: Mr. Laurence M. Chipiwalt  
Mr. Richard L. Ward  
Mr. Clarence E. Fleming

Re: Demand for Payment

Gentlemen:

Under our Consumer Note Agreement dated October 15, 1980, your corporation (herein called Borrower) agreed to repay Bank of Virginia (herein called Lender) \$10,000 plus accrued interest on January 13, 1981. As this indebtedness remains past due and outstanding, Bank of Virginia hereby demands payment in full.

Failure to comply with full repayment by February 6, 1981, will leave us no alternative but to exercise our rights under the provisions and terms of the commercial loan note.

Sincerely,

  
W. Jefferson O'Flaherty  
Assistant Vice President

WJO:tfm F8

Registered Mail  
Return Receipt Requested



Bank of Virginia

## CREDIT SUMMARY

DATE 10-15-80

Borrower Stoveworks of Richmond, Inc.

ACCOUNT NUMBER 257-S-012724-13

DPA NUMBER 552-7723224

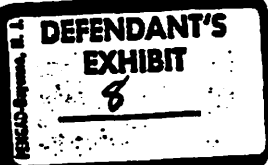
ADDRESS 15 South 17th Street

REGION / AFFILIATE Capital

CITY, STATE, ZIP Richmond, Virginia 23219

ORIGINATING DEPARTMENT/BRANCH/DIVISION Mechanicsville (257)

TYPE OF BUSINESS Manufacturing Wood Stoves



THIS LOAN:	NOTE NUMBER	NOTE DATE	LOAN PROCEEDS	RATE	APR	MATURITY	PAGE AMOUNT / BALANCE
		10-15-80	10,000.00	P+3		1-13-81	\$ 10,000.00

LOAN/LINE COMMITMENT	LOAN/LINE TYPE	PRESENT	EXPIRATION DATE	OUTSTANDINGS	PROPOSED EXP. DATE	PROPOSED
	COMMERCIAL - REGULAR	\$		\$		\$
	REVOLVING/TERM					
	COMMERCIAL FINANCE					
	ACCEPTANCES/LETTERS					
	SALES FINANCE:					
	WHOLESALE					
	RETAIL					
	OTHER (SPECIFY):					
	LOAN COMMITMENTS:					
	TOTAL COMMITMENTS	\$		\$		\$

## OTHER PRESENT LIABILITY (DETAIL ON REVERSE)

MORTGAGES	\$
OTHER DIRECT	
OTHER INDIRECT	
RELATED LIABILITY (EXCLUDE FROM TOTAL)	\$

TOTAL OTHER PRESENT &amp; PROPOSED LIABILITY \$ 10,000.00

## DESCRIPTION OF THIS LOAN APPROVAL OR LOAN/LINE REQUEST: (INCLUDING PURPOSE, REPAYMENT TERMS AND SOURCES, COLLATERAL, ENDORSERS/GUARANTORS, AND LINE PRICING)

Net \$10,000 for seasonal working capital purposes, to be paid in full at maturity from cash flow, no renewals.

Security agreement and financing statements covering general assignment of accounts receivable inventory, fixed assets, and work order contracts now owned or hereafter acquired. F/S filed with State Corporation Commission and City of Richmond. Work in progress under contract is \$60,000.

Endorsed by Laurence M. Chipiwalt, President, Richard L. Ward, Vice President, and Clarence E. Fleming

(ATTACH COPY OF SPREAD SHEET AND CAUTION TO BRACKET ANY DEFICIT FIGURES WHEN COPYING)

DEPOSIT BALANCES (OMIT CENTS)	TWELVE MONTHS ENDED		3 MONTHS YTD 80	
	BORROWER	REL. ACCTS.	BORROWER	REL. ACCTS.
AVERAGE LEDGER	\$	\$	\$ 2225	\$
AVERAGE NET COLLECTED			2165	
ANALYSIS PROFIT (LOSS)			(1.01)	

REVIEWED	LOAN ADMINISTRATION	RATING	ACCOUNT OFFICER (OTHER OFFICER(S))	
	REGIONAL COMMITTEE		W. J. O'Flaherty	
	SENIOR CREDIT COMMITTEE			
	EXECUTIVE COMMITTEE			
APPROVED			REGIONAL COMMITTEE	
			SENIOR CREDIT COMMITTEE	
			EXECUTIVE COMMITTEE	

Subject introduced to bank this summer by Clarence Fleming, bank customer who maintains \$30,000 in CD's at Mechanicsville Pike and is financial strength behind this transaction. Company has impressive produce, maintains satisfactory product liability limits, and product has been UL approved by Froehling and Robertson, Inc.  
Loan Proceeds - \$10,000 to DDA/#552-7723224  
Corporate Resolution to follow in file . Personal guaranty of Fleming to Stoveworks of Rich., Inc

[illegible]

DATE \_\_\_\_\_

DEFENDANT'S  
EXHIBIT

9

May 29, 1981

Bank of Virginia

Mechanicsville Pike

Clarence E. Fleming

Loan No. 257S-12630-15

TO: File

On May 28, 1981, Clarence Fleming and this writer met to discuss the above loan that was made on May 8, 1980, with a maturity date of April 16, 1981. Since the bank presently has legal action against Mr. Fleming regarding a loan to Stove-works Inc., I advised him we would not renew this note. However, I will give him 30 days in which to pay it off or we will contemplate liquidating a \$12.7 thousand BOVA savings certificate to pay it off in full. Mr. Fleming indicated he has another BOVA savings certificate that matures on June 22, 1981, at which time he will pay this loan off in full. I agreed to this proposal and will keep Jeff O'Flaherty informed since he is handling the legal action against Stove-works Inc. and Mr. Fleming.

W L H  
William L. Hudson  
Branch Officer

cc: Mr. Graham  
Mr. O'Flaherty

4818/ce