Case No. 067-305661-19

James McGuire, on behalf of himself and all others similarly situated in the State of Texas PLAINTIFF, V. 322.003(b)(2) DEFENDANT,	§ § § § § § §	IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS 67th JUDICIAL DISTRICT

REQUEST FOR LEAVE TO FILE AMICUS CURIAE

Amici, Alvie Lynn Campbell, respectfully request leave be granted to file this Amicus Curiae providing a different perspective of an obvious governing law seemingly obscure from state and federal courts.

Certificate of Interest

As Amici can not quality as an intervening party in the case at bar, Texas taxpayers are nonetheless affected by this outcome. Amici is also a portion of the inherent political power, founded on our authority, and for our benefit, as noted in Article 1, section 2, Texas Bill of Rights. Amici is not funded or in any way supported by parties involved at the case at bar. Amici Certifies the following;

1. The full names of every Amicus party presented by Amici are: Alvie Campbell and all other occupants of 309 Herrin St, Coupland, Texas, 78615
2. There are no real parties in interest associated with the Amicus parties listed.
3. There are no parent corporations or any publicly held companies funding or representing any of Amicus party listed above.

_____

Alvie Lynn Campbell
c/o 309 Herrin St, Coupland, Texas 78615
(512) 796-6397
Alvie@ourlemon.com

Interest of Amici

Amici contends his utmost respect to the Court, but also holds Texas dear, as being a descendant of Hamilton Crockett Campbell who established his residency in early Texas in 1835. Amici is the future generation of Hamilton Crockett Campbell, and the search for that which was lost is why it is important to Amici to stress to the Court that no matter what the outcome of this case may be, it is not just the Amici who will be deprived, it will be many fellow Texans, whom have lost property, and political subdivisions whom have lost revenue, due to the blatant misuse of the laws of Texas, and the misunderstanding of such laws as Texas UETA. Amici states his position and gives warning that the continued abuse of law only continues to burden the taxpayers of Texas unfairly, and also burdens the political subdivisions of revenue lost from the crimes seemingly committed by members of a state administrative agency of the State of Texas.

"When violations of law slip uncorrected through the cracks of judicial review (as when a case is dismissed as moot), it may seem that the beneficiaries of such violations receive a free pass... "The pass is not free. It comes at the expense of the Rule of Law. Here, the Legislature's notice mandate is unsubtle and unequivocal, as was the trial court's failure to follow it."[1]

Introduction

There is an old saying "Don't judge a book by its cover". Its meaning is simple. A person's appearance, either their physical attributes or dress, or qualifications are no indication of their inner being. Be it known "for the LORD seeth not as man seeth; for man looketh on the outward appearance, but the LORD looketh on the heart."[2].

Did you know actions taken by state governmental officials, even if contrary to state law, were nevertheless actions taken "under color of law."? Or, that injured individuals have a federal remedy under 42 U.S.C. § 1983 even if the "officials" actions

1 SUPREME COURT OF TEXAS NO. 15-0139 IN RE STATE OF TEXAS, RELATOR
2 1 Samuel 16:7

also violated state law?[3]

Amici presents this Amicus Curiae to inform the Court of the relevance of nonparties, and to develop legal arguments that many cannot, as they are not aware of the impending devastation to the peoples guaranteed rights noted in both the Texas, and the U.S. Constitutions. As such, it would appear that even the government of Texas would be deprived of rights guaranteed in the those constitutions.

It is stated quite clearly from Texas Court of Appeals, 2014, "This court must give effect to the substance, rather than the form or title, of the motion"[4]. Amici prays to the Almighty God this be the case with this Amicus Curiae to the Court.

It is stated in the preamble of the Texas Constitution, "Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution". God blessed Texas, and Texas has persevered from the age of wagon trains, to the age of electronics. And by the grace of our Almighty God, Texas will continue. Yes, God has blessed Texas. For this, we must show our respect and gratitude to the Almighty God whom the words of men have so stated "So help me God" when they affirmed their oath.

Summary of the Argument

Texas Uniform Electronic Transactions Act, herein "Act" is one of procedure that contradicts itself. The Act seemingly allows for the creation of Article 3 Notes, Article 7 Documents of Title, and Article 9, Chattel Paper while the Act also **EXCLUDES** those Articles in its Scope in §322.003(b)(2). This contradiction is evidenced in many parts of the Act. The Act does not purport to change substantive law of contracts. A transaction subject to the Act is also subject to other applicable law. The drafter's themselves stated that the Act is not a general contracting statute[5]. Whether the statute of frauds, the law of agency, or other substantive law is, or is not, applicable to a transaction is not affected by

3 Monroe v. Pape, 365 US 167 - Supreme Court 1961
4 In re Estate of Gibbons
5 NCCUSL UETA 1999, Prefatory Note, Pg 1, paragraph 3 - http://euro.ecom.cmu.edu/program/law/08-732/Transactions/ueta.pdf

the Act. This would mean other applicable law will apply to the transaction in certain circumstances. However, the Act seemingly allows an actor to bypass applicable laws using the Act as electronic legal documents that are seemingly enforced in Texas the court system. Amici believes the State of Texas, or its courts never intended for something like this to happen to the people of Texas who are affected by such deception. The Act clearly states the governing laws in the Uniform Commercial Code are **excluded**, **other than** Sections 1.107 and 1.206 and Chapters 2 and 2A are the only procedural avenues in which the transaction can be satisfied through the Act. And the court should know Chapter 2 deals with "goods", movable pieces of personal property that exist when the sale in the contract occurs.

Have you ever heard of the phrase "Pig in a Poke"? It dates back to the middle ages. Maybe it will help you better understand what certain banks, or its counsels in the name of banks have accomplished and are continuing to do. This "pig in a poke" scheme utilized a "pig" and a "bag" which purportedly contained the pig. However, clever buyers failed to look in the bag to see if it really was a live pig. Instead, the clever buyer found out after the purchase that there was no pig, only a cat.

Judicial Notice

Amici Notices the court that from the introduction, page one, unto the end of Amici's Exhibit, page 27, the court take judicial notice of its contents. And Texas courts can, of course, take judicial notice of the laws of this State[6]. The constitution of Texas is the fundamental law of this state. All officials must pause to remember their own high duty to the Constitution and to the rights it secures[7].

Bound to the Constitution

The U.S. Supreme Court did ponder the oath[8] "Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution

6 Johnson v. State, 423 SW 3d 385 - Tex: Court of Criminal Appeals 2014
7 Davey v. Locke, 299 F. 3d 748 - Court of Appeals, 9th Circuit 2002
8 Marbury v. Madison, 5 US 137 - Supreme Court 1803

forms no rule for his government? if it is closed upon him, and cannot be inspected by him?". The Supreme court also stated, "The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "*I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.*"

Form 2204[9], held with the Texas Secretary of State reflects; "IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS, I, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, 'so help me God'". The court should be well aware of this form.

The Texas Court of Appeals stated[10];

> "The constitution of Texas is the fundamental law of the state; 'the supreme law of the law.'" *Byers v. Patterson*, 219 S.W.3d 514, 521 (Tex. App.—Tyler 2007, no pet.) (quoting *Oakley v. State*, 830 S.W.2d 107, 109 (Tex. Crim. App. 1992)). We must presume the constitutionality of an act of the Legislature. *Texas Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924, 927 (Tex. 1985); *Salomon v. Lesay*, 369 S.W.3d 540, 556–57 (Tex. App.—Houston [1st Dist.] 2012, no pet.). However, when the proposed application of a state statute would abridge the Texas Constitution, the statute must yield. See *Weiner v. Wasson*, 900 S.W.2d 316, 318–19 (Tex.1995); *Salomon*, 369 S.W.3d at 556–57
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> "In enacting a statute, it is presumed that compliance with the constitutions of this state and the United States is intended." TEX.GOV'T CODE § 311.021(1) (West 2013). The Code Construction Act also requires that we consider the public interest over any private interest. See TEX. GOV'T CODE § 311.021(5) ("In enacting a statute, it is presumed that . . . public interest is favored over any private interest.").

Texas Civil Practice and Remedies Code[11], reflects in` **Sec. 5.001. RULE OF**

9 https://www.sos.state.tx.us/statdoc/forms/2204.pdf
10 IN RE EXPUNCTION ; In The Court of Appeals For The First District of Texas
11 https://statutes.capitol.texas.gov/Docs/CP/htm/CP.5.htm

DECISION, The rule of decision in this state consists of those portions of the common law of England that are not inconsistent with the constitution or the laws of this state, the constitution of this state, and the laws of this state.

Contracts

Though personal property has its dilemma's with UETA[12], Amici provides explanation in support of real property also.

Our Texas Supreme court has stated, "we adhere to the rule that "[i]t is the duty of the Court to construe the contract as an entire instrument, and to consider each part with every other part so that the effect and meaning of one part on any other part may be determined." *Steeger v. Beard Drilling, Inc.*, 371 S.W.2d 684, 688 (Tex.1963). [13]

In a 1993 case, *Whittington v. Whittington*[14], in Beaumont, the court had this to say;

> "The purpose of the promissory Note was to secure the real estate mortgage loan borrowers equity in the property. Where there is a debt secured by a note, in turn secured by a lien, the note and the lien constitute separate obligations so that suit may be had on the note to obtain a personal judgment, and later suit may be had on the lien if the personal judgment is not satisfied"[15]

Amici gives notice to the court that according to UETA an electronic promissory note[16] is not an Article 3 note as if it were in writing, though there was an attempt in 2000 to incorporate electronic promissory notes into Article's 3, 4 & 4A, but the recommendation was never approved by the UCC commission. This can be evidenced in a letter to the National Conference of Commissioners on Uniform State Laws (NCCUSL)[17]. Amici feels certain the State of Texas would have known if "electronic promissory notes" were added into Chapter 3, Texas Business and Commerce code. If

12 Texas Uniform Electronics Transactions Act; UETA; Texas UETA
13 Smart v. Tower Land and Inv. Co., 597 SW 2d 333 - Tex: Supreme Court 1980
14 Whittington v. Whittington, 853 SW 2d 193 - Tex: Court of Appeals, 9th Dist. 1993
15 Whittington v. Whittington is cited as late as 2010; *Stephens v. LPP Mortgage*, Ltd., 316 SW 3d 742 - Tex: Court of Appeals, 3rd Dist. 2010, which cited Kempner v. Comer, 73 Tex. 196, 11 S.W. 194, 196 (1889).
16 §322.016 – Transferable record
17 See Amicus Exhibit #1

needed, the court may subpoena the CUNA[18] organization for the document Amici presents as an evidence exhibit #1 incorporated within this Amicus Curiae. Is as puzzling as it appears, the courts have not questioned the validity of an electronic promissory note, or its legality requirements in Article 3 much less reading into a deed of trust seemingly used for a crime. For reference, Amici provides link from consumerfinance.gov[19] to demonstrate two covenants, (1) covenant **16, Governing Law; Severability; Rules of Construction**; (2) Covenant **20**, **Sale of Note; Change of Loan Servicer; Notice of Grievance**, both of which have caused serious problems with contract law.

The wording within covenant 20 (Texas form 3044w, or similar) reflects;

> "The Note or a partial interest in the Note **(together with this Security Instrument)** may be sold one or more times without prior Notice to Borrower."

Amici feels certain the court has plenty of deed of trusts in their records for review. While differentiating the tangible from the intangible, Amicus believes this wording was added as an illusion for the actors undertakings in the secondary intangible marketplace where "partial interest" are sold to investors. The court should take notice that "Note" may refer to either the alleged promissory note, or it may refer to the electronic promissory note. Why else would the electronic registry be the beneficiary? Why are eNote's created in the electronic registry? And how is a deed of trust split into interests? Account debtors may use their collateral, the underlying transactions, to split up interests, and that may be either according to law, or not according to law. And the old adage is you are not cheating unless you get caught.

According to the Ohio Supreme Court[20] in regards to partial transfers it stated

> "Nevertheless, R.C. 1303.23(D) must be read in conjunction with R.C. 1303.23(C) (UCC 3-202[3]) which dictates that where an indorsement conveys less than either (1) the entire instrument or (2) any unpaid residue, it is a partial assignment and, thus, ineffective for negotiation".

18 Credit Union National Association, aka CUNA.
19 Sample Deed of Trust
20 All American Finance Co. v. Pugh Shows, Inc., 30 Ohio St. 3d 130 - Ohio: Supreme Court 1987

Of course, the State of Texas can find many of these questionable deed of trust in public records. According to §3.203(d), If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee as noted in the Texas Business and Commerce code, in Chapter 3. But then again, UETA excludes Chapter 3. The Fannie Mae Deed of Trust is form 3044w for Texas which has similar covenants about "partial interests". Surely this court would look into the underlying purpose of including, yet excluding, Article's 3, 7 & 9 in UETA prior to the Texas Business and Commerce being modified to include electronic promissory notes in Chapter 3? Nonetheless, §9.105 was allowed within "Secured Transactions" apparently without notice that Chapter 9 was excluded from electronic transactions as noted in UETA, section §322.003(b)(2).[21] In essence, and according to the contract, the alleged offerer of the contract, in a contract, provides that the potential signer to unknowingly agree that the alleged offerer, or its alleged successors, can commit a crime by taking back the alleged security which also allows for any alleged "successor" to take what is not his via the alleged contract. And the courts can't see that?

Presumption

They say the word presumption is; an act of presuming; an assumption of something as true; a belief on reasonable grounds or probable evidence. It is said in Law, that presumption is an inference required or permitted by law as to the existence of one fact from proof of the existence of other facts. Yet, a fact is something that has actual existence. The only way to know a fact is to witness the actual existence of the evidence for the fact to be a fact. If we make a presumption, we are presuming something, but what are we presuming? If we are presuming, we are taking for granted, or we assume, or we suppose something to be true, even if it isn't. As for the word crafting, presumption breaks into two types of presumption, which only compounds the word crafting. Why

21 §322.003(b)(2) - the Uniform Commercial Code, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.

would presumption matter if the truth is unknown? Why is the evidence not provided instead of the going through all the motions of an argument that there is no need to prove, here is a copy? Nonetheless, these two types of presumption are; rebuttable presumption and conclusive presumption. A rebuttable presumption is an assumption made by a court that is taken to be true unless someone comes forward to contest it and prove otherwise. For example, a defendant in a criminal case is presumed innocent until proved guilty, even though it seemingly appears the opposite, these days. A conclusive presumption is a presumption of law that cannot be rebutted by evidence and must be taken to be the case whatever the evidence to the contrary. No matter what the type of presumption, it is a bold move for the speaker voicing his presumption. Constitutional concerns about the roles of judge and jury do not allow either to make such evidence up. The reason for this being a bold move is that the Law which matters tells us not to bare false witness. And men and women of the courts of Texas so stated "So help me God". There are many men and women who are trusted in Texas simply because of the "Oath" which the man or woman affirmed. Such an oath is not to be taken lightly because though other men may have not heard the oath taken, the Almighty God was there to witness the oath taker. It is of importance to notice this court that moral turpitude is not to be taken lightly when the court relies upon those who are members according to Texas government Code, Chapter 81, State Bar Act, as an administrative agency of the judicial department of government. "*We have held that the question of whether a particular crime involves moral turpitude is a question of law and "is to be determined by a consideration of the nature of the offense as it bears on the attorney's moral fitness to continue in the practice of law.*"[22]

Connect the dots

As Amici stated, Amici has respect for the courts of Texas, and Amici realizes mistakes, or errors can happen. However, Amici believes these mistakes are caused by those whom deceived the courts, or the state agents, through the process of learning

22 Matter of Humphreys, 880 SW 2d 402 - Tex: Supreme Court 1994; cited as recent as 2015

something new, which was E-Sign, and Texas UETA, the Act. Amici also understands that when the Act was in its early stage, State agents were pressed into converting paper to electronic. Many needed to learn about the “new” law. And the old adage is “Your learning is only as good as your teacher, and if your teacher was wrong, you will be wrong”.

If the courts were to look back it would find the paper trail to where this debacle was initiated as far back as the latter 1990's. Most can be evidenced in the Texas Supreme Courts public records which are self-authenticating. And through this group of bar members, and through admissions from these actors, documents are made up, laws are changed to fit the practice, and judges turn a blind eye. This is evidenced in the Texas Supreme Court records. The most recognizable admissions would be within the transcript of the MEETING OF THE TASK FORCE ON JUDICIAL FORECLOSURE RULES, November 7, 2007, where attorney's make documents up, and judges turn a blind eye. Read it for yourself. The court could easily locate that task force meeting, and it would have the ability to subpoena the court reporter D'Lois L. Jones, CSR, it has seemingly movable affects causing difficulties for easy public access. There are also transcripts in court records, which reflect that a judge noted his curiosity that “735, 736 rules were not challenged”. But Amici believes how this all fits in equity home loans the court will figure out. Nonetheless, most other evidence can also be found in public records of the political subdivisions of Texas, some of which pre-date the Act, and even prior to the changes in the Texas Property code, chapter 51, enacted as of January, 2004. A prosecutor may find that crimes have taken place in Texas that have affected its people and political subdivisions. It seems very difficult for the average man in this state to recognize a partiality created by allowing bank related attorney's, or creditor's right law firms, to write laws that are mandated to be equal for justice, and the protection of the people of the State of Texas. In fact, this is the opposite. This fact can be evidenced in political subdivisions through court records, and clerks of the counties who've attempted to

recover from the fraudulent filings, such as Williamson county, Dallas County, and Nueces county to name a few. The Nueces interlocutory order[23], reflects a recognized crime when it cited *In Re Agard, 444 B.R. 231 (E.D.N.Y. 2011),* ("*This Court does not accept the argument that because MERS may be involved with 50% of all residential mortgages in the country, that is reason enough for this Court to turn a blind eye to the fact that this process does not comply with the law.*"). All were deprived due to this deception created by evil men and electronic records in both State and Federal courts. Moral turpitude is revealing itself in an awkward manner, yet Texas seems to have turned a blind eye to the blatant crimes being committed in this State. These crimes seemingly violate the federal crime laws, not just our Texas Penal code.

In a scholar article by Derek White called "Avoiding the un-real estate deal: has the uniform electronic transactions act gone too far?", the author discussed the concerns of the drafters about the possibility of crimes, "Draft for discussion only of UETA § 105(a)(4) (Aug. 15, 1997), (excluding the Act's applicability to any rules of law relating to the conveyance of real property) (as of Feb. 20, 2002). The question of whether to include or exclude real estate transactions[in the proposed Uniform Electronic Transactions Act] has significant legal and practical consequences. The elimination of a writing requirement strikes to the very heart of the traditional Statute of Frauds ...Like the special formalities associated with the execution of wills, the execution formalities for real estate transactions are intended to promote deliberation and prevent fraud."[24]

It is written in 42 USC 1983[25]; "*Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in*

23 Nueces County v. MERSCORP HOLDINGS, INC., Dist. Court, SD Texas 2013
24 Avoiding the Un-Real Estate Deal: Has the Uniform Electronic Transactions Act Gone Too Far?, 35 J. Marshall L. Rev. 311 (2002)
25 42 U.S.C. § 1983 - Government Publishing Office

equity, or other proper proceeding for redress.". Amici believes the State of Texas will right the wrongs that were gradually and firmly established upon its people by those whom have deprived them over time.

Tangible v. Intangible

INTANGIBLE - unable to be touched or grasped; not having physical presence.

So, why the confusion? I mean when it comes to the intangibles of tangible practically everything is dual, as for instance in the tangible you have an "obligor", and an "obligee", and as for the intangible you have an obligor and an obligee. You have a debtor and a lender, and you have a debtor and a creditor. And both are considered "borrower" and lender". Yet, there is a twist which seems to confuse many and that would be another entity called an "account debtor" playing the role of obligee from a tangible transaction, creating an intangible transaction conversion, from the tangible transaction. But I suppose the foremost confusion arises from the word "secured transaction" because both the tangible transaction and the intangible transaction can be such a beast. And if clarity is not addressed, one could easily assume it is the tangible transaction in conversation, when in fact it could be the intangible transaction being alluded to. Thus, an assumption, or presumption could be confusing. It could be fatal.

So here may be where the confusion begins? The average individual has the capability of knowing and explaining the difference between tangible, and intangible. They have witnessed tangible and intangible even if they knew it not. I know this because I taught my 8 year old grandson and later asked him to explain it to those who were around at the time. He made a very big impression. He educated quite a few people. And they too were amazed when they knew. So, understanding intangible is not as complicated as one may think. Then it may become clearer as to which "obligor", and which "obligee" is which, tangible, or intangible. I do find it curious that the UCC[26] is a subject of choice for a BAR exam, and called bar-tested, and it seemingly appears to have

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been looked over in that profession by quite a few. Take for instance

In Texas, and according to a Texas A&M white paper[27], UCC 2 & 2A is rarely tested. And since MERS[28] seemingly came into the real property world, this should have been an important topic to cover, but it wasn't. And there is not a need to go to MERS. However Amici provides an article link to Moody's Investor Service on why MERS was placed into a deed of trust[29]. And there is no need to go to the deed of trust because the UCC 9 does not govern such real property contracts[30], only the sales of goods or services because it is commerce.

So from what I understand and because I am not a lawyer, UCC 2 & 2A are "crossover topics". Which means they are part of the subjects tested, like property, or family law, but not by themselves tested. And it is also noted that UCC 3 & 4, and 9 are tested. So now the intangible can be narrowed down by reflecting on the tested subjects. There is one section to look at for the "intangible" and that is Article 9. Now this is not the only place but we are focused on the UCC because that is where the "intangible" is defined. Article 3 does not apply to intangibles except in a narrow exception. And Article 4 covers bank deposits and collections.

And from what I also understand is that Texas Real Property Real Estate Transactions, Water Law, Real Estate Practicum, Land Use, Real Estate Financing are "supplemental" courses so it makes sense how some attorney's have difficulty with this. It's called compartmental organization. Need an example? Civil law, and criminal law. Usually an attorney knows one or the other, but not both. However there are exceptions in that statement. I believe this could also be a portion of the problem because if the civil lawyer could prove criminal in civil court, now criminal court becomes involved. But, I won't go into that illusion we already have. The point is, when someone brings a false

27 What's on the Bar exam - https://law.tamu.edu/docs/default-source/current-students/asp-texas-bar-exam-orientation-handout.pdf?sfvrsn=2

28 Mortgage Electronic Registration System

29 https://www.moodys.com/sites/products/AboutMoodysRatingsAttachments/2001700000415918.pdf

30 Thomas v. EMC MORTGAGE CORPORATION, Dist. Court, ND Texas 2011 citing Vogel v. The Travelers Indem. Co., 966 S.W.2d 748, 753 (Tex. App.-San Antonio 1998

document into the court, is it overlooked? Or is it challenged? Or is it reported to law enforcement? This would apply even if it were to be a simply scenario like one man giving a counterfeit federal reserve note to an unsuspecting victim. It was a civil scenario that turned criminal.

CHASING INTANGIBLES

The intangible usually cannot be created unless there is substance for it. This is usually in the form of tangibles. But for grins and giggles let' look at the UCC? The UCC committee made it even easier for one to understand what intangibles are because they placed them all in one definition; "General Intangible". You can find it in 9.102(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

You can also find the definitions of the other terms used from the UCC[31]. And as stated before, the promissory note Guy 2 is holding is an instrument which is personal property which is a general intangible. So, the general intangible derives from the tangible. In this case, a promissory note.

TANGIBLE

For the sake of clarity, everything is alleged. There are no admissions.

Until the past decade, transactions took place on a tangible basis. Meaning Guy 1 gives Guy 2 a physical promissory note to Guy 2 for a money loan from Guy 2. We'll leave out the "security" portion for the purpose of understanding how the promissory note becomes personal property of Guy 2. And how the personal property is "movable" because you cannot move real property unless the boundaries change, but the dirt doesn't. In other words, you cannot move land. So the "movable" is the focus of the intangible

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confusion.

Now Guy 2 loaned money to Guy 1. Guy 1 now returns money in increments as agreed to conclude Guy 1's debt because he is considered a debtor paying off a debt. This was a tangible transaction with substance being provided for substance in a sense. Yet the whole deal was caused upon by an agreement between the two. Whether it was an oral, or a written agreement, it was a contract.

So Guy 2 gives Guy 1 the money he has in return for example, federal note(s) given back from Guy 1 in agreed increments. This was, and is a tangible transaction. Though it is not substance for substance, it is still a transaction if the parties agree. This same scenario is still the topic today but it somehow became complicated in "words" of the craft. For lawyers, it is a lack of understanding possibly because they are only partially focused on equity law? It is not to be taken as offensive, it should be taken for understanding.

Let's use the Guy 1 and Guy 2 scenario and go a bit further. We know Guy 1 gave Guy 2 federal notes for Guy 2's tangible money loan. So both Guys have tangibles, a federal note for Guy 2, and a tangible lump sum for Guy 1. Both tangibles can be felt or grasped, and has a physical appearance. Hence "tangible".

CONVERTING TANGIBLE INTO INTANGIBLE

This is for simplicity if you will because it is an easy way to show conversion. Guy 2 takes his tangible note payments from Guy 1 to the ATM machine to make a deposit into his bank account. Guy 2 slides each federal note into the slot of the ATM, and upon completion of the transaction the ATM in return provides, or returns Guy 2 a deposit slip reflecting his deposit. So now Guy two now has a different tangible. Guy 2 now has a record of the tangible federal notes he inserted into the ATM. And that record reflects what is now an "intangible" value because Guy 2 can no longer touch or feel the federal note(s) he held prior to inserting them into the ATM, and there is no physical appearance other than the deposit slip returned to Guy 2 for his deposit, or the current

view of the ATM display. Thus a tangible reflection. Unlike tangible federal notes, Guy 2 can travel anywhere he chooses and do transactions in commerce in any land he wants without the concern of carrying that many federal notes around with him which may be stolen, or possibly cause of harm by carrying such monetary influence.

Let's not confuse the scenario with Article 4 because this tangible federal note gains its affect from the Federal Reserve Act. However negotiable notes are governed by Article 3 of the UCC when used in transactions also. The only thing that could prevent Guy 2 from any further transactions with his "intangible" representations of his physical federal notes would be if the electricity went out because the intangible is something that is not felt or grasped, and has no physical appearance except through the magic of a digital display, or a tangible receipt.

TANGIBLE NOTE

Promissory notes are tangibles. You can use the Guy 1 and Guy 2 scenario, except replace the federal note as the tool of value with a promissory note of value. And you can keep the thing in place for Guy 2, the debt instrument. Then you can replace the ATM machine with a different entity called a "prospective buyer" because Guy 2 now knows he can sell his "asset" which is the promissory note from Guy 1. Or you could call the promissory note from Guy 1, and now belonging to Guy 2 "personal property" and because Guy 2 is the holder in due course of the note. With the promissory note from Guy 1 which is personal property, Guy 2 only holds the debt, which is a promise to pay. Hence, debtor, and lender. Or borrower and lender.

SUBSTANCE FOR SUBSTANCE

In substance for substance items are exchanged. For instance, a person gives a $20.00 bill for purchase of something costing $15.00, and in return he is returned what change is due him. Substance for substance.

SUBSTANCE FOR INTEREST

In substance for interest, a "seller", Guy 2, can gear his debt transaction with Guy 1 for a profit from the "promise to pay" from Guy 1, though he may have included "interest" during the pay back transaction from Guy 1 to complete his promise to pay, and clear his debt.

Now Guy 2 has a promissory note from Guy 1 with a value of $100,000 dollars. Guy one also includes the agreed interest as he forwards his allotted monies for clearing the debt which may possibly be twice the size of the actual debt itself, or even more. Nonetheless that was the agreement.

GREAT DIVIDE

Guy 2 decides he will sell his asset, or even pledge his debt instrument, or will seek further monies using the debt instrument, an asset, Guy 2 holds in hand which Guy 1 gave him, the promissory note that has value. If Guy 2 sells the promissory note from Guy 1, the true sale would reflect a new entity which would now be holding the promissory note from Guy 1. All this transaction would be according to Article 2, and Article 3 because Guy 2 sold the promissory note to Guy 3 in a true sale of the promissory note. Hence "buyer" and "seller". Guy 3 is the buyer and Guy 2 is the seller. So, now Guy 3 collects from Guy 1 instead of Guy 2 collecting. Guy 2 would provide Guy 1 with the lawful evidence to reflect there was a true sale of the promissory note. So Guy 1 now pay his debt to Guy 3. No problems. But, what happens when Guy 2 wants to use the promissory note from Guy 1 so Guy 2 can get a loan for himself?

INTANGIBLE ASSETS/ PERSONAL PROPERTY

Here is the scenario; Guy 2 has a promissory note from Guy 1 with the value of $100,000 dollars, plus interest. Guy 2 wants to find a backer for his financial venture and he finds one. The hedging risk. The financial backer wants something for security from guy 2 just in case something goes wrong and guy 2 does not fulfill his obligation, otherwise it would be a lousy investment for the backer.

ACCOUNT DEBTOR

For the support of the transaction and for the evidence used to support transaction "investor" turns to Article 9 regarding secured transactions for legal and lawful enforcement, as Guy 2 is not only a "debtor", Guy 2 is also a potential "account debtor". Guy 2 holds the promissory note related to Guy 1. That is evidence of a tangible transaction. On the books of Guy 2, the promissory note from Guy 1 is an intangible asset for Guy 2 to utilize as a pledge of security to the investor. Guy 2 to provides his "general intangible" to the investor so that the investor may know Guy 2 has "receivables" that would help Guy 2 to in obtaining his loan from the UCC 9 creditor.

So at the beginning, there was Guy 1 who would be called an "obligor", and also a "debtor" and Guy 2 who would be called an "obligee", and a lender. Guy 1 is considered a "debtor", and Guy 2, a "lender".

Then when Guy 2 pledged the promissory note to Guy 3, Guy 2 is now called a debtor, and Guy 3 is called a creditor. But that is not where it ends. Guy 2 is also called an account debt because Guy 2 is using Guy 1's "general intangible"[32] as Guy 2's pledge to the creditor. Now you also have Guy 2 as an obligor and Guy 3 an obligee. Confused? They made it that way on purpose. But it does not need to be confusing.

It is simple. Tangible is what Guy 1 and Guy 2 did in their transaction. But it is intangible as to what Guy 2 and Guy 3 accomplished through their transaction.

Also notice that when the creditor cannot locate the account debtor, it is the debtor of the tangible which the intangible creditor pursues whether the intangible holds the original promissory note from Guy 1, or not. If Guy 1 does not deny such involvement, the intangible creditor may use recognition of debt for its defense even with a copy because the promissory note was the collateral used by the account debtor.

This did not go into the lawful aspects of not following the required law governing secured transactions, nor did it discuss the implications of 15 USC 7003 in the E-SIGN

32 Guy 1's promise to pay, or, promissory note.

Act, or Texas UETA. The purpose was to assist in understanding the difference between the tangible and the intangible. Thus a “secured transaction” of the “tangible” is not a “secured transaction” of the “intangible”. Secured transactions of a real estate transaction are not governed by the UCC[33] and secured transactions of general intangibles are not except for areas of the UCC that is excluded. That simple.

Moral Turpitude

In California Court of Appeal, 1st Appellate Dist., 3rd Div. 2016[34] , the court stated in II. Principles of Constitutional Interpretation, "[I]t is well established that it is a judicial function to interpret the law, including the Constitution, and when appropriately presented in a case or controversy, to declare when an act of the Legislature or the executive is beyond the constitutional authority vested in those branches." (*Schabarum*, supra, 60 Cal.App.4th at p. 1213.) We must "`"enforce the provisions of our Constitution and `may not lightly disregard or blink at . . . a clear constitutional mandate.'"'" (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 284-285.) "`It is within the legitimate power of the judiciary, to declare the action of the Legislature unconstitutional, where that action exceeds the limits of the supreme law; but the Courts have no means, and no power, to avoid the effects of non-action.'" (*California State Employees' Assn. v. State of California* (1973) 32 Cal.App.3d 103, 109.)

STATE BAR OF TEXAS; Our Mission

"The mission of the State Bar of Texas is to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable its members to better serve their clients and the public, educate the public about the rule of law, and promote diversity in the administration of justice and the practice of law."[35]

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33 Thomas v. EMC MORTGAGE CORPORATION, Dist. Court, ND Texas 2011, citing Vogel v. The Travelers Indem. Co., 966 S.W.2d 748, 753 (Tex. App.-San Antonio 1998, no pet.)
34 CAMPAIGN FOR QUALITY EDUCATION v. State, Cal
35 STATE BAR OF TEXAS, Our Mission

It may be awkward for Amici to give opinion in regards to the state bar act, but Amici finds through common sense that there could be a severe constitutional issue with the State Bar Act on monopolies. Nonetheless, Amici points to the matter at hand. It is well known that corporate attorney's are either in-house, or they are contracted to perform duties for a corporation. In any sense they are seemingly an agent of the STATE OF TEXAS in one form or fashion. As this court is well aware, legal documents are drawn up by attorneys who should know the laws in which affect such legal documents. This is no mystery. And according to Texas, he who practices law, must be a member of the State of Bar. However, before there were lawyers, or laws only for lawyers, man himself represented himself in a court of common law whether it was civil or criminal. And such man would be bound not to falsify his information for the sake of justice, or punishment. There is no justice in fraud. Likewise, this should be the same application for members of the STATE BAR OF TEXAS. Moral Turpitude is a crime. “Woe to the rebellious children," declares the LORD, "Who execute a plan, but not Mine, And make an alliance, but not of My Spirit, In order to add sin to sin; Who proceed down to Egypt Without consulting Me, To take refuge in the safety of Pharaoh And to seek shelter in the shadow of Egypt!”[36]. Jesus, reiterated what Enoch has stated long before him, "Woe to you lawyers! For you have taken away the key of knowledge; you yourselves did not enter, and you hindered those who were entering."[37] “Woe to the wicked! It will go badly with him, For what he deserves will be done to him.”[38] “Woe to those who enact evil statutes And to those who constantly record unjust decisions”[39]. Amici has provided those words from the prophets to this court. It is the Almighty God whom is the Authority, and this court, and the men who judge, were given authority by Him, and our Constitution.

36 Isaiah 30:12
37 Luke 11:52
38 Isaiah 3:11
39 Isaiah 10:1

Discipline

As recently as 2018, Chief Justice Carolyn Wright, Texas Appellate court[40] has stated; Lawyers "should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials." TEX. DISCIPLINARY R. PROF'L CONDUCT preamble 4, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (West 2013). "While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process." Id. ; Rule 8.02(a) of the Disciplinary Rules provides:

> A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory official or public legal officer, or of a candidate for election or appointment to judicial or legal office.

A Texas Appellate court[41] stated, “When we speak of the term "fair trial", to be accurate we should mean a trial conducted within the framework of procedural and substantive rules prescribed by law for the circumstances and parties of a given case. Anything more or less than this is "a travesty upon justice and, if upheld, a disgrace to the law."

Treason

Amici notices the court that whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason so stated by the Judicial system.[42] Not only are judges guilty of engaged acts of treason, any lawyer, or judge MUST report it else they too are guilty. See 18 USC 2382. Any judge or attorney who does not report the above judges for treason as required by law may themselves be guilty of misprison of treason.[43]

The U.S. Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the

40 AVPM CORP. v. Childers, 101st Judicial District Court Dallas County
41 McGregor v. Clawson, 506 SW 2d 922 - Tex: Court of Civil Appeals, 10th Dist. 1974
42 United States v. Will, 449 US 200 - Supreme Court 1980; Cohens v. Virginia, 19 US 264 - Supreme Court 1821
43 18 U.S.C. Section 2382

Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct."

"No judge in the United States enjoys the luxury of applying his or her own interpretation of the U.S. Constitution with respect to an issue which the United States Supreme Court has previously decided. No judge in the United States can overrule [a Supreme Court decision]; only the Supreme Court can do so.").[44] -

"A government official performing discretionary functions is entitled to qualified immunity unless his conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known."[45]

In 2002, an article came out called "*Sarbanes-Oxley Act Certifications of Asset-Backed Securities Issuers*"[46], describing penalties for false statements. However, the State of Texas and the federal government have laws pertaining to Mortgage Fraud, Bank Fraud, Securities Fraud, Tax Fraud, Insurance Fraud and fraud and deceit upon the court. Surely Texas knows how to use them for actors committing criminal acts by using false statements.

To prove there has been a sham to perpetrate a fraud, tort claimants and contract creditors must show only constructive fraud. We distinguished constructive from actual fraud in *Archer v. Griffith*:

> Actual fraud usually involves dishonesty of purpose or intent to deceive, whereas constructive fraud is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests.

390 S.W.2d 735, 740 (Tex.1964).[47]

As the end of pages for this Amicus Curiae come to the number 27, let me remind the court that 27 times man will find the words "mercy seat", and "the candlestick"

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44 SWEPI, LP v. MORA COUNTY, Dist. Court New Mexico 2015.
45 Bush v. Strain, 513 F. 3d 492 - Court of Appeals, 5th Circuit 2008
46 https://www.dorsey.com/newsresources/publications/2002/09/sarbanesoxley-update-sec-adopts-section-302-cert__
47 *Castleberry v. Branscum*, 721 SW 2d 270 - Tex: Supreme Court 1986

within the Old Testament of a bible the right hand rests upon. Add the two numbers together and the number 9 also represents the fruits of God's Holy Spirit, which are Faithfulness, Gentleness, Goodness, Joy, Kindness, Long suffering, Love, Peace and Self-control. And Amici realizes that upon the Texas court system sits the mercy seat of justice for the State of Texas and its people. God bless Texas.

Conclusion

For the foregoing reasons, along with the incorporated exhibit #1, Amici urges this court to understand the severity of constitutional issues at hand in the State of Texas which makes this a matter of public interest. Amici also notices the court that this whole criminal explanation could not be placed within these limited pages, yet it can be explained to where a child can understand it.

Alvie Lynn Campbell
c/o 309 Herrin St, Coupland, Texas 78615
(512) 796-6397
Alvie@ourlemon.com

Certificate of Service

I hereby certify that the above and foregoing Motion for Leave to File Amicus was served on the following; Plaintiff, James A. McGuire, on April 1, 2019; any other parties are unknown at this time. USPS #7007 0220 0000 1159 9184

Alvie Lynn Campbell
c/o 309 Herrin St, Coupland, Texas 78615
(512) 796-6397
Alvie@ourlemon.com

Incorporated Exhibit #1 of Amici

CUNA COMMENT LETTER
Project to Revise Articles 3 & 4 of the Uniform Commercial Code.
October 24, 2000
Edwin E. Smith
Bingham Dana LLP
150 Federal Street
Boston, MA 02110
Ronald J. Mann

University of Michigan Law School
625 S. State Street
Ann Arbor, MI 48109-1215
Fred H. Miller
University of Oklahoma Law Center
300 Timberdell Road
Norman, OK 73019-5081
Re: Scope of Revisions to Articles 3, 4 and 4A
Dear Gentlemen:
The undersigned financial institution organizations are writing to you to urge that electronic negotiable instruments be included within the scope of the National Conference of Commissioners on Uniform State Laws (NCCUSL) current effort to revise UCC Articles3 and 4. We believe this UCC Article3 and 4 revision project represents a unique and critical opportunity for NCCUSL to provide leadership to the states and the financial institution community on the timely and important issue of electronic negotiable instruments.
We were quite surprised by the announcement this spring that it had been preliminarily decided not to include electronic negotiable instruments within the scope of the UCC Articles3 and 4 revision project. It had been our understanding that one of the primary motivations for NCCUSL to undertake this project was to address electronic negotiable instruments under UCC Articles3 and 4. Indeed, the exclusion of UCC Articles 3 and 4 from the Uniform Electronic Transactions Act ("UETA--) and the recently enacted federal E-Sign Act were supported based on indications from NCCUSL that electronic negotiable instruments would be addressed in the upcoming revision to UCC Articles3 and 4. As argued by representatives of the Federal Reserve and others, we thought it was agreed that the issues raised by electronic negotiable instruments should be addressed by check law experts in the context of UCC Articles 3 and 4, rather than in the more general UETA and E-Sign Act.
It is essential to address electronic negotiable instruments in this UCC Articles 3 and 4 revision project so that the developers and users of emerging electronic payment products can, if they so choose, utilize check law to support their products. Checks are the payment product of choice for consumers and businesses. According to Federal Reserve statistics, in 1999, check volume was almost five times the volume of automated clearing house payments, credit card payments, and debit card payments combined. The popularity of the check results in part from its ease of use, the ability to transfer the check to any third party without a prior agreement and without accessing a central network, and the well-established and well- understood legal structure supporting check payments.
Absent coverage of electronic negotiable instruments under UCC Articles 3 and 4, developers and users of the emerging electronic payment products will not be able to utilize check law for these products. Given the open nature of check systems – which as described above is one of the check system's great strengths relative to other payment systems – a check law-based legal foundation cannot be replicated by private agreements, because it is impossible to identify all of the parties potentially interested in each transaction. It is only the UCC (or another federal or state law) that can provide a comprehensive uniform legal framework applicable to all persons potentially interested in the electronic negotiable instrument, including the drawer, payor bank, indorsers, other third party transferees and collecting banks. One concern that we understand has been raised about including electronic negotiable instruments within the scope of the revision project is that it may be premature to do so given the degree of experience with electronic negotiable instruments. We disagree. There has been a significant amount of experimentation with electronic negotiable instruments. Attached to this letter are two recent American Banker
Regulatory Advocacy http://www.cuna.org/reg_advocacy/comment_letters/cl_102700.html

articles that detail certain of these programs. In the context of these programs, the UETA, the E-Sign legislation and otherwise, there has been a significant amount of consideration given to the check law rules that should apply to electronic negotiable instruments. More importantly, given the time frame for another UCC Article 3 and 4 revision initiative and the time it takes for the states to enact NCCUSL-proposed UCC amendments, as well as the pace of development of the emerging electronic payment products, it will simply be too late if electronic negotiable instruments were to be tabled until the next UCC Article 3 and 4 revision.
We also have heard concern that inclusion of electronic negotiable instruments in the UCC Article 3 and 4 revision project may complicate and slow the project. However, we believe that it will be possible to provide for electronic negotiable instruments under UCC Articles 3 and 4 without extensive revisions to these Articles, and that their inclusion will not delay the revision project.
Congress and the state legislatures, through the E-Sign Act and the UETA, respectively, have established a legal framework for check law to apply to images and other electronic representations of paper checks. It is now time for NCCUSL to complete this work by extending this legal framework to electronically-initiated checks. The failure to address electronic negotiable instruments in the UCC at this time will have the effect of precluding the use of check law for these emerging electronic payment products. We believe the choice of the legal framework for these payment products should be made by the market – the providers and users of these products – rather than by artificial legal

constraints. It would be particularly tragic if these artificial legal constraints preclude the use in the virtual world of our country's most popular legal framework for payments in the physical world.
For the foregoing reasons, the undersigned organizations urge the inclusion of electronic negotiable instruments within the scope of the current UCC Articles3 and 4 revision project. If you have any questions regarding this letter, please contact David Walker, Executive Director, the Electronic Check Clearing House Organization, at (972) 371-1444.
Supporting Organizations
Bank of America
Bank of Hawaii
Bank of New York
Bank One, National Association
Branch Banking &Trust Company
BITS
California Bankers Clearing House Association
The Chase Manhattan Bank
Citibank, N. A.
Clearing House Association of the Southwest
Comerica Bank
Credit Union National Association
Electronic Check Clearing House Organization
Financial Services Roundtable
Fleet Bank, National Association
The Frost National Bank
HSBC Bank USA
KeyBank National Association
Old Kent Bank
Mellon Bank, N.A.
Mid-America Payments Exchange
National Clearing House Association
New York Clearing House Association L.L.C.
Payments Resource One
Small Value Payments Company L.L.C.
Southwest Automated Clearing House Association
Summit Bank
Union Bank of California, N.A.
Wachovia Bank, National Association

Technology

Regulatory Advocacy http://www.cuna.org/reg_advocacy/comment_letters/cl_102700.html
2 of 5 3/17/2009 5:14 PM

Online Shops Breathe Life Into E-Checks

Thursday, July 20, 2000
By Steven Marjanovic
Five years after their debut, electronic checks are finally gaining a toehold.
Support for the technology, which enables consumers to use information from paper checks to buy merchandise online, is far from widespread, but it is starting to come from influential places. Wells Fargo & Co. and eBay Inc. created a big stir when they said last month they would work to make e-checks available on eBay's popular online auction site. Morgan Stanley Dean Witter, Wachovia Corp., and FleetBoston Financial Group also have recently thrown their weight behind the concept.
Electronic checks may have been ahead of their time five years ago when the Financial Services Technology Consortium first demonstrated them. Now, as Internet payments take off, they are filling a need as companies look for new ways to execute electronic payments.
Wells Fargo's plans are indicative of where Internet payments are headed and how e-checks fit in. "Wells Fargo wants to offer a menu of services, so you, the merchant, can offer credit cards and e-checks," said Debra Rossi, a Wells executive vice president. "We also hope to be able to offer stored value, or gift certificates, or even micro cash."
E-checks will help Wells replicate online the physical-world choices of credit cards, checks, or cash, Ms. Rossi said. And she said there is good reason to pursue substitutes for credit cards, which are used in 81% of online purchases.
Internet transactions are the most expensive kind of card payment for merchants, because of the extra risk involved in not dealing with cardholders face-to-face. Merchant fees, which usually run about 2% of the value

of a transaction for regular credit card purchases, can double or triple when purchases are made online or by telephone.
Those costs are magnified by chargebacks incurred when Internet payments are returned because of fraud or nondelivery of goods. Industry sources say that 6% to 7% of online purchases are charged back.
"There are people who do not have credit cards or prefer not to use a credit card on the Internet," Ms. Rossi said. "You have to wonder why checks are still the largest payments system in the physical world when in the 1970s there was talk of a paperless society."
Wells is testing e-checks with a few eBay customers, and ultimately will market them to the 10,000 Wells Fargo merchant customers who do business on the Web. It will be an option for all sellers on eBay by the end of the summer.
Ms. Rossi said she believes Internet checks will coexist with credit cards. "So far, even in the physical world, credit cards have had tremendous growth. After all of those years of talk about checks going away, checks have not gone away."
Morgan Stanley Dean Witter Online is turning to e-checks as a way for consumers to add funds to their brokerage accounts. Rather than using the mail, overnight delivery services, or wire transfers to move money into accounts, customers could write an electronic check while logged on to Morgan Stanley's Web site.
The brokerage is using eCheck Secure software from Troy Group Inc. to offer the service, which will be available at the end of this month. The existence of the account is verified in advance by Equifax Inc. of Atlanta, one of three major credit bureaus.
Wachovia is seeking to make e-checks a standard form of payment for its merchant customers who operate Web sites. So far, 35 of Wachovia's merchants have opted to accept Internet checks.
Wachovia encrypts check payment information entered by customers and transmits it to Telecheck, a Houston-based check acceptance unit of First Data Corp., which matches the information against its checking account databases.
Wachovia is reselling the Telecheck service to its merchant customers "to provide more payment

alternatives," said Kevin Gallagher, a director of E-Business Strategies at Wachovia Merchant Services.
As a participant in the original e-check initiative of the Financial Services Technology Consortium, FleetBoston Financial Group has a longstanding interest in the checks. Along with Bank of America, Fleet is a sponsor of an FSTC test of Internet checks with the U.S. Treasury that began in 1998.
Based on the FSTC pilot, Fleet determined that e-checks were an opportunity to be explored. In March, it spun off a company, Clareon, to develop e-checks as a commercial product. Fleet holds a 17% stake in the company, which also has secured $15 million of funding from Mayfield Fund, Berkshire Partners LLC, and BancBoston Ventures.
Portland, Maine-based Clareon now has 60 employees, including vice president Frank Jaffe, formerly a technologist at Fleet and point person on the FSTC project. FSTC was successful in proving the merits of the technology, Mr. Jaffe said, but also showed that the technology had "some serious adoption problems," which Clareon will seek to rectify.
E-checks also face issues of regulatory oversight. "The full force of the law" has not yet determined whether Internet checks fall under Regulation E guidelines, said David Kurrasch, president of Global Payments Advisors of Alameda, Calif. Regulation E offers stronger consumer protections than the Uniform Commercial Code laws that govern checks.
"As long as there is a doubt, the informed individual will say, 'I think I will use my credit card so I know that I am protected by Reg E,' " Mr. Kurrasch said. "As long as that happens, it is always going to be difficult for the check events to be popular over the Internet."
Steve Fabes, director of financial services at Commerce One, a leading provider of business-to-business electronic commerce software, said his company is exploring a wide range of payment alternatives for buyers and suppliers on marketplaces supported by Commerce One.
Mr. Fabes, a 16-year veteran of Bank of America, said he is in discussions with Clareon and particularly liked the "remarkable simplicity" of e-checks.
"Merchants need alternatives," Mr. Fabes said. "They need all existing payment schemes, and they are absolutely ripe to look at new ones. There is a sense of a frontier land out here."

Online Banking

Morgan Stanley to Use Fleet Spinoff's E-Checks

Wednesday, September 13, 2000
By Andrew Roth
Morgan Stanley Dean Witter has become the first customer of Clareon Corp., a technology firm born out of a decade-long experiment with electronic checks.

The New York brokerage firm announced Monday that it had agreed to use a payment network being formed by Clareon, of Portland, Maine, based on technology developed by the Financial Services Technology Consortium, a bank-sponsored research group.
FleetBoston Financial Corp., which sponsored the consortium's test of electronic checks with the Treasury Department and the Federal Reserve, spun off Clareon six months ago to develop the payment vehicle as a commercial product.
The Morgan Stanley agreement, which includes a $10 million investment from Morgan's MSDW Strategic Ventures Inc., establishes Clareon as a new force in business-to-business Internet payments, said Avivah Litan, research director of payment services for GartnerGroup.
"Now Clareon is not a fly-by-night start-up," Ms. Litan said. "I think we'll see a lot more companies sign up with them."
The agreement also sharpens Morgan Stanley's focus on using electronic checks to help its clients execute safe, low-cost Internet payments that include remittance information, she said.

Tom Clarke, a managing director in MSDW's E-Commerce Group, has been appointed to Clareon's board.
"We are looking to marry old and new technologies to provide better service to our customers," he said.
Clareon will set up a network for member businesses to conduct Internet payments. Financial institutions will not need to be members of the network, but businesses and individuals making and receiving the payments will.
"We are not a gateway solution," said Paul Walsh, chairman and chief executive officer of Clareon. "We don't hand off to another party for the actual processing. We provide transparency from beginning to end -- the ability to provide remittance information to reconcile against payables and receivables."
Morgan Stanley plans to use Clareon's system to support payments in its credit card, retail, and institutional business lines, Mr. Clarke said. "It still remains to be seen just how the application is going to be used," he said. "It may allow our institutional clients to make payments on-line without the use of checks, or credit cards users to make payments without checks."
Clareon has raised $45 million in two rounds of venture funding (including the $10 million from MSDW). It plans to use the money for technology development, marketing, and exploration of markets outside the United States.
Morgan Stanley has been using software from Troy Group Inc. on a limited basis to let retail customers use electronic checks to add funds to their brokerage accounts, Mr. Clarke said. The firm's interest in electronic checks is part of a slowly growing groundswell of support for the technology. Wells Fargo & Co. recently said it would support electronic checks for payments on the auction Web site EBay.
Electronic checks are being marketed as an alternative to credit cards for Internet purchases. Because of the added risks associated with Internet or telephone purchases, merchants often pay double or triple the normal fees for these credit card transactions. Mr. Clarke said MSDW chose Clareon after an extensive due diligence process in which it considered several possible online payment providers.

File Stamp

Case No. 067-305661-19

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TARRANT COUNTY, TEXAS

James McGuire, on behalf of himself and all others similarly situated in the State of Texas PLAINTIFF,	§	IN THE DISTRICT COURT OF
V. 322.003(b)(2) DEFENDANT,	§	67th JUDICIAL DISTRICT

REQUEST FOR LEAVE TO FILE AMICUS CURIAE

Amici, Alvie Lynn Campbell, respectfully request leave be granted to file this Amicus Curiae providing a different perspective of an obvious governing law seemingly obscure from state and federal courts.

Certificate of Interest

As Amici can not quality as an intervening party in the case at bar, Texas taxpayers are nonetheless affected by this outcome. Amici is also a portion of the inherent political power, founded on our authority, and for our benefit, as noted in Article 1, section 2, Texas Bill of Rights. Amici is not funded or in any way supported by parties involved at the case at bar. Amici Certifies the following;

1. The full names of every Amicus party presented by Amici are: Alvie Campbell and all other occupants of 309 Herrin St, Coupland, Texas, 78615
2. There are no real parties in interest associated with the Amicus parties listed.
3. There are no parent corporations or any publicly held companies funding or representing any of Amicus party listed above.

Alvie Lynn Campbell
c/o 309 Herrin St, Coupland, Texas 78615
(512) 796-6397
Alvie@ourlemon.com