

Suzanne McCormick  
Concert Pianist  
231 Clinton Avenue  
Dobbs Ferry, New York 10522

COPY

Via Certified Mail

Personal and Confidential

November 4, 2009

Alan W. Friedberg, Chief Counsel  
First Judicial Department  
Departmental Disciplinary Committee  
61 Broadway, 2<sup>nd</sup> Floor  
New York, N.Y. 10006

Hon. Andrew Cuomo  
New York State Attorney General  
120 Broadway  
New York, N.Y. 10271-0332

RE: Peter D. Raymond - Registration No. 1686377

Dear Mr. Alan W. Friedberg and Hon. Andrew Coumo:

As you know, I have filed previous complaints with this Departmental Disciplinary Committee (DDC). Further, you are aware of the fact that I have filed a suit in the Federal District Court that was related along with others to the whistle blower suit that Christine Anderson, a former employee of the DDC has filed in that Court. I also want to note that Mr. Alan W. Friedberg, was present on September 24, 2009 when I testified before Senator John Sampson and the Judiciary Committee so that he has first hand personal knowledge of same. Due to the foregoing and other material facts the ugly/gruesome heads of numerous conflicts are raised. Therefore, due to the extenuating circumstances I demand that Attorney General Cuomo appoint a special prosecutor for this exclusive matter based on the pervasive inherent conflicts. If Mr. Coumo refuses to engage a special prosecutor then I demand that this matter be referred to an independent third party that is totally conflict free.

Peter D. Raymond formerly a partner of the law firm of Hall Dickler Kent Friedman & Wood LLP (Hall Dickler) located at 909 Third Avenue, New York, N.Y. allegedly represented me. Upon information and belief Hall Dickler entered bankruptcy and is now defunct. Enclosed are copies of documented evidence involving Peter D. Raymond of the law firm of Hall Dickler and his involvement with me. (Exhibit # 1- As listed)

On February 8, 2009 (Exhibit # 2 - With Exhibits A to R) I wrote Peter D. Raymond (now of the law firm of Reed Smith LLP) regarding material facts that are critical to the legal basis of my husband's Estate that I and my assistant discovered involving the **Permanent Letters Testamentary** issued by the Westchester Surrogate in the Estate of my husband Edmund J. McCormick. In this letter that was received on February 13, 2009 (Exhibit # 3), I detailed the documented circumstances surrounding the **Permanent Letters Testamentary** dated January

Via Certified Mail  
Mr. Alan W. Friedberg and Hon. Andrew Cuomo  
November 4, 2009

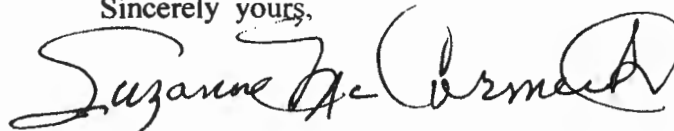
Page Two

25, 1989 and other relevant salient facts. I never received any response whatsoever. I believe that the basic duty of any attorney in the representation of a client, is to preform due diligence with regard to the salient facts at the foundation of the case. It is obvious to me that the basic due diligence was not preformed since if it had been the fact that Bankers Trust Company of New York, a non-existent entity (*that became a legal entity over ten years later on September 7, 1999*) is named on the *Permanent Letters Testamentary* would have been discovered. Further, the fraud perpetrated by Bankers Trust Company and their attorneys for over 20 years would have been exposed. Bankers Trust Company although not named on the *Permanent Letters Testamentary* has fraudulently acted as a legal professional Executor of my husband's Estate engaging in all manner of litigation practice through their attorneys White & Case and Pillsbury Winthrop. Their actions have oppressed and terrorized me causing me emotional harm and distress along with the loss of 20 years of my life which cannot be replaced. I also note for the record that Bankers Trust Company became a convicted federal felon on July 26, 1999. And as I stated during my verbal testimony on September 24, before Senator Sampson a *Felon cannot be a Fiduciary*. All the detailed salient facts and evidence are contained in the enclosed Exhibits.

I am not an attorney and as such do not have the superior knowledge and information that you purport to have in these matters. However, I do have common sense and I know when things are wrong. Although this specific complaint is targeted at Peter D. Raymond as an Attorney at Law, I believe that I have detailed other situations that are of a fraudulent and criminal nature. Since my experiences with the legal system has left me with no trust and faith in same, I again demand an independent prosecutor to investigate and look into this complete matter. I am confident that at the conclusion of a through investigation and review my documentation and facts will be fully substantiated. I then demand that Peter D. Raymond be heavily sanctioned and disbarred to the full extend possibly.

Please respond in writing and provide me with a docket number. Thank-you.

Sincerely yours,

A handwritten signature in cursive script that reads "Suzanne McCormick". The signature is written in dark ink and is positioned above the typed name.

Ms. Suzanne McCormick  
Legal Executrix of the Estate of Edmund J. McCormick, Sr.

SM/ms

Via Certified Mail  
Mr. Alan W. Friedberg and Hon. Andrew Cuomo  
November 4, 2009

Page Three

Exhibits:

1. - A - Letter from Peter D. Raymond, Hall Dickler, dated 11/26/97 addressed to me - 1 pp  
B - Letter from me dated 12/2/97 to Peter D. Raymond, Hall Dickler, - 1 pp.  
C - Consent to Change Attorney, Notarized on 12/2/97 - 2 pp.  
D - Fax from Peter D. Raymond with letter from Winthrop Rutherford, Jr., White & Case, dated 11/26/97 to Peter D. Raymond - 3 pp.  
E - Letter from Peter D. Raymond, Hall Dickler, dated 12/5/97 to me - 1 pp.  
F - Letter from David P. Geis, Ponzini, Spencer & Geis, LLP, dated 12/1/97 to Peter D. Raymond, Hall Dickler -1 pp.
2. - Copy of letter dated February 9, 2009 from S. McCormick to Peter D. Raymond, Esq., with Exhibits A to R as listed in letter.
3. - Copy of signed delivery receipt for Certified Mail addressed to Peter D. Raymond - 1 pp.

Mr. Alan W. Friedberg, Certified Mail #7006 0810 0006 0659 7678

Hon. Andrew Cuomo, Certified Mail #7006 0810 0006 0659 7692

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HALL DICKLER KENT FRIEDMAN & WOOD LLP

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909 THIRD AVENUE  
NEW YORK, NY 10022-4731

TELEPHONE 212 339-5400  
TELEFAX 212 935-3121

PETER D. RAYMOND  
212-339-5524

November 26, 1997

Mrs. Suzanne McCormick  
231 Clinton Avenue  
Dobbs Ferry, New York 10522

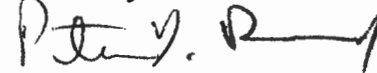
Re: Petition of Banker's Trust Company

Dear Suzanne:

I am enclosing the Consent to Change Attorney. Please sign the form in the presence of a notary and return it to us, keeping a copy for your records.

If you have any questions, do not hesitate to call.

Sincerely,



Peter D. Raymond

PDR:cmg  
Enclosures

***Exhibit 1***

Suzanne McCormick  
231 Clinton Avenue  
Dobbs Ferry, New York 10522

Via Hand

December 2, 1997

Peter D. Raymond  
Hall Dickler Kent Friedman & Wood LLP  
Attorneys At Law  
909 Third Avenue - 27th Floor  
New York, New York 10022


Dear Peter,

Per your request, enclosed please find my executed "revised" Consent to Change Attorney Document dated 12-2-97.

One of the ultimate stated goals of the "McCormick Family" is to be fully reimbursed for the total legal expenses of the estate. In that light, would you think it both appropriate and advisable to have a stipulation with the outgoing attorneys Reid & Priest, allowing the court to review all of their billing? And if so, should this be part of the "Consent to Change Attorneys Document?" The family, after having discussed this matter, believes that it would be prudent and would appreciate your input.

If you have any questions, please contact me.

Sincerely yours,



Suzanne McCormick

SM/fv

Enclosure

cc: Dennis McCormick, David McCormick, Ann McCormick,  
Laurie McCormick, Helen Leaver & David Velderman.

STATE OF NEW YORK  
SURROGATE'S COURT: WESTCHESTER COUNTY

Proceeding by ALFRED S. HOWES for  
Settlement of Account as Co-Executor of  
the Last Will and Testament of

EDMUND J. McCORMICK,

Deceased.

File No. 3522/1988

STATE OF NEW YORK  
SURROGATE'S COURT: WESTCHESTER COUNTY

Petition of BANKERS TRUST COMPANY and  
HERMAN MARKOWITZ for Settlement of their  
Account as Co-Executors of the  
Last Will and Testament of

EDMUND J. McCORMICK

Deceased,

**CONSENT TO  
CHANGE ATTORNEY**

File No. 3522/1988

and for a direction pursuant to SCPA §2215 for  
repayment of excess distributions to an interested  
party, and for recovery of estate assets due from  
Edmund J. McCormick, Jr. and Bank Street  
Investment, Inc. d/b/a/ McCormick Organization.

IT IS HEREBY CONSENTED THAT

HALL DICKLER KENT FRIEDMAN & WOOD LLP, 909 Third Avenue, New  
York, New York 10022 be substituted as attorney(s) of record for the undersigned  
party in the above-entitled action in place and stead of the undersigned attorney(s)  
as of the date hereof.

Dated: New York, New York  
December , 1997

Incoming Attorneys  
HALL DICKLER KENT FRIEDMAN  
& WOOD LLP

  
SUZANNE McCORMICK

Outgoing Attorneys  
REID & PRIEST LLP

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss.:

On the 2 day of December 1997, before me personally came SUZANNE McCORMICK, to me known, and known to me to be the same person described in and who executed the foregoing consent and acknowledged that she executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC

LUANN RUSSELL  
Notary Public, State of New York  
No. 01RU5057375  
Qualified in Putnam County, 1998  
Commission Expires March 25, 1998

LAW OFFICES  
**HALL DICKLER KENT FRIEDMAN & WOOD LLP**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
909 THIRD AVENUE  
NEW YORK, NY 10022-9998  
TELEPHONE: (212) 339-5400  
TELEFAX: (212) 935-3121

**TELEFAX MESSAGE**

DATE: December 5, 1997

**PLEASE HAND DELIVER THE FOLLOWING TELEFAX TO:**

NAME: Mrs. Suzanne McCormick

COMPANY:

TELEFAX #: (914) 693-6687 TELEPHONE: (914) 693-6998

FROM: Peter D. Raymond, Esq.

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 5

IF YOU DO NOT RECEIVE THE TOTAL NUMBER OF PAGES, PLEASE CALL 212-339-5432

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909 THIRD AVENUE  
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WHITE PLAINS, NY 10606-1940  
TELEPHONE: (914) 428-3232  
TELEFAX: (914) 428-1660

2029 CENTURY PARK EAST  
LOS ANGELES, CA 90067  
TELEPHONE: (310) 203-8410  
TELEFAX: (310) 203-8559

HALL, DICKLER (ROMANIA), SRL  
WORLD TRADE CENTER; SUITE 2:  
78334 BUCHAREST, ROMANIA  
TELEPHONE: (011) 40 1 222-8988  
TELEFAX: (011) 40 1 223-4444



**WHITE & CASE****UNITED STATES**

LOS ANGELES  
MIAMI  
NEW YORK  
WASHINGTON, D.C.

**EUROPE**

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HELSINKI  
ISTANBUL  
LONDON  
MOSCOW  
PARIS  
PRAGUE  
STOCKHOLM  
WARSAW

**AFRICA**

JOHANNESBURG

1155 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036-2787

TELEPHONE: (1-212) 819-8200  
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DIRECT DIAL: (212) 819-8700

**ASIA**

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JAKARTA  
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TOKYO

**MIDDLE EAST**

JEDDAH  
RIYADH

**LATIN AMERICA**

MEXICO CITY

November 26, 1997

Peter Raymond, Esq.  
Hall, Dickier, Kent, Friedman & Wood, LLP  
909 Third Avenue  
New York, New York 10022

Re: In re Judicial Settlement of Account of Bankers Trust  
Company and Herman Markowitz as Co-Executors of the  
Estate of Edmund J. McCormick, Deceased.  
Westchester Surrogate's Court File No 3522/1988

Dear Mr. Raymond:

White & Case anticipates that upon completion of discovery in this proceeding, your client, Suzanne McCormick, will file formal objections to the account filed by Bankers Trust Company ("Bankers Trust") and Herman Markowitz and adopted by Alfred Howes. As you may know, White & Case has represented all of the co-executors of the Estate of Edmund J. McCormick (the "Estate") since the time of Mr. McCormick's death, although individual co-executors have on occasion sought the advice of independent counsel.

We believe that our continued representation of Bankers Trust Company and Herman Markowitz after the filing of objections by your client would be inappropriate in the absence of your client's consent. Although this matter was raised previously, it was not resolved prior to Reid & Priest's withdrawal as counsel to your client.

Please let us know at your earliest convenience if Suzanne is amenable to our continued representation of Bankers Trust and Herman Markowitz in this matter. If she consents to our continued representation of Bankers Trust Company and Herman Markowitz in this matter, we

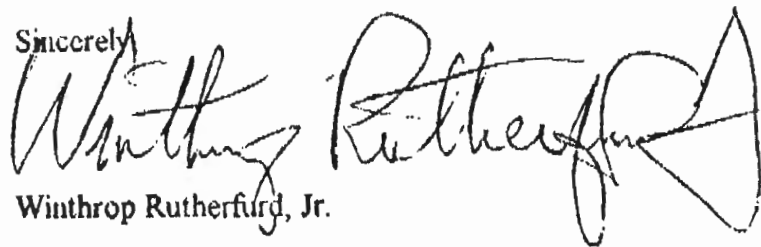
**WHITE & CASE**

Peter Raymond, Esq.

Page 2

would appreciate her so noting on the enclosed copy of this letter in the space provided therefor and returning it to me.

Sincerely,



Winthrop Rutherford, Jr.

WR:ljp

- cc: William J. Wilkie
- Herman Markowitz
- Jack H. Weiner, Esq.
- Philip H. Schaeffer, Esq.

**AFTER CONSULTATION WITH MY ATTORNEY,  
I CONSENT TO THE CONTINUED REPRESENTATION  
BY WHITE & CASE OF BANKERS TRUST COMPANY  
AND HERMAN MARKOWITZ IN THE MATTERS ARISING  
OUT OF THE WILL AND ESTATE OF EDMUND J. McCORMICK**

---

**SUZANNE McCORMICK**

LAW OFFICES

**HALL DICKLER KENT FRIEDMAN & WOOD LLP**909 THIRD AVENUE  
NEW YORK, NY 10022-4731TELEPHONE 212 339-5400  
TELEFAX 212 935-3121PETER D. RAYMOND  
212-339-5524

December 5, 1997

**VIA FACSIMILE**Mrs. Suzanne McCormick  
231 Clinton Avenue  
Dobbs Ferry, New York 10522Re: Estate of Edmund J. McCormick

Dear Suzanne:


I enclose two letters I received from Lori Perlman and David Geis, respectively. Let's discuss these at your convenience.

We have advised Lori Perlman that we will need a little more time to formalize our retention with our various clients (we have not yet received all of the signed retainers and stipulations of substitution), and that I will speak with her next week about setting a schedule to review the documents and then take depositions.

We have asked Reid & Priest to deliver their entire file to us for review. However, they have told us that they won't deliver the file until we have provided them with signed substitutions from all of the family members.

I will keep you advised on our progress.

Sincerely,



Peter D. Raymond

PDR:cmg  
Enclosure

**PONZINI, SPENCER & GEIS, L.L.P.**

ATTORNEYS & COUNSELORS AT LAW

14 NORTH BROADWAY

TARRYTOWN, NEW YORK 10591

TELEPHONE: (914) 631-1176 FAX: (914) 631-2384

CONNECTICUT OFFICE

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STAMFORD, CT 06901  
(203) 358-0808

COUNSEL

MARK L. DAVIES  
PAUL F. FERRETER, P.C.  
JOHN C. POLERA  
MICHAEL K. STANTON, JR.

\*ALSO ADMITTED IN CT  
\*ALSO ADMITTED IN NJ

ROBERT J. PONZINI  
ROBERT W. SPENCER  
DAVID PARKER GEIS  
BRIAN D. MURPHY  
MARIANNE STECICH  
  
EDWARD G. LAMMERS  
PETER H. NARDONE  
KENNETH E. POWELL  
CHRISTIAN G. ZEBICOFF

December 1, 1997

Via Facsimile to: 212-935-3121  
& Regular Mail

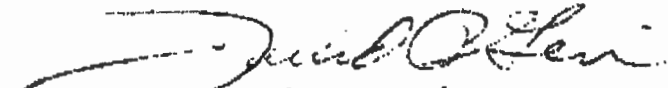
Peter D. Raymond, Esq.  
Hall, Dickler, Kent, Friedman & Wood, L.L.P.  
909 Third Avenue  
New York, New York 10022

Re: Estate of Edmund J. McCormick

Dear Peter:

As we discussed yesterday afternoon, it is my understanding that you will discuss and attempt to resolve any potential conflicts of interest issues concerning your retention by Suzanne V. McCormick and the other individual beneficiaries in this proceeding. You indicated that you already specifically disclosed my prior status as a member of Hall, Dickler, Kent, Friedman & Wood, and would disclose that Hall Dickler is attorney for a trust for which I am a trustee, and that I have acted of counsel to Hall Dickler. My concern is that if conflict arose in the course of discovery, that counsel would then again need to be substituted and the case would be further delayed.

Very truly yours,

  
David P. Geis

DPG:vc

Suzanne McCormick  
Concert Pianist  
231 Clinton Avenue  
Dobbs Ferry, New York 10522

*Personal and Confidential*

Via Certified Mail  
#7006 2760 0005 0600 1336

February 8, 2009

Peter D. Raymond, Esq.  
Reed Smith LLP  
Attorneys at Law  
599 Lexington Avenue  
New York, New York 10022-6030

**RE: Estate of Edmund J. McCormick Sr.**  
Index #3522/1988 Westchester County Surrogate's Court

Dear Mr. Raymond:

I retained you as an attorney at law and your Law Firm to represent me regarding the Estate of my husband Edmund J. McCormick, Sr., when you were a member of the Law Firm of Hall Dickler Kent Goldstein and Wood LLP. At the time I did not understand/comprehend events that occurred, since no professionals imparted the knowledge to me (nor took the time to explain these things to me) despite the fact that I was paying for this legal service. My story unfolds as follows.

In early 1996 a friend of my husband, a Westchester newspaper publisher, spoke to the then Westchester Surrogate, Judge Albert J. Emanuelli, whom he knew. At the time Judge Emanuelli reviewed the sparse record and said there were two (2) very serious, basic salient core issues that he found merely by reviewing the Estate file. In a seminal moment Judge Emanuelli revealed the first issue that he had discovered, but repeatedly refused to reveal the second issue, notwithstanding considerable pressures from the publisher.

As you know, my husband's *Last Will and Testament*, admitted for probate, was prepared by the Law Firm of White & Case (See Exhibit A - Copy of Selected Relevant Pages of the *Last Will and Testament*).

***Exhibit 2***

**The First Issue**, followed the issuance of the *Permanent "Letters Testamentary"* on January 25, 1989, was that the Law Firm of White & Case filed a *Petition For Payment of Executor's Individual Claims Pursuant To SCPA 1805*, dated February 7, 1989, on behalf of their client, **Bankers Trust Company**, for repayment of a certain loan (See Exhibit B - Copy of *Petition Papers*). Surrogate Judge Evans V. Brewster signed an *Order for Payment of Executor's Individual Claim*, dated March 6, 1989. (See Exhibit C - Copy of *Order for Payment*). The Law Firm of White & Case and one of its attorneys, Winthrop Rutherford, Jr., had been allegedly designated as the Estate Attorney in early December 1988. As I understand it, Judge Emanuelli said that White & Case abandoned my husband's Estate when they filed the *Petition For Payment of Executor's Individual Claims Pursuant To SCPA 1805* (Exhibit B), on behalf of their "enduring client,"<sup>1</sup> **Bankers Trust Company**.

I have been informed by various independent legal counsel that Judge Emanuelli was correct. Once the *Petition For Payment of Executor's Individual Claims Pursuant To SCPA 1805* (Exhibit B) was filed then the Law Firm of White & Case and its attorneys declared their allegiance and represented **Bankers Trust Company** solely and exclusively. It is abundantly clear that my husband's Estate had no legal representation. Despite and contrary to this material fact, the Law Firm of White & Case and attorneys of that firm have continued to state to the Courts and all others, thereby perpetrating the fraud that they represent the Estate of Edmund J. McCormick, Sr. The record is replete with the evidence and documentation of White & Case's fraudulent assertions that they are and have been the attorneys for my husband's Estate.

On March 11, 1999, **Bankers Trust Company** pled guilty in the Southern District of New York Federal Court (99cr250 - USA v. Bankers Trust Co.) to three (3) counts of felony information involving the amount of **\$19.1 million**. (See Exhibit D - Face Page of *Criminal Information* - 1 pp.) Additionally, enclosed is a copy of the "*Letter Agreement*" dated March 11, 1999, between the U.S. Department of Justice, U. S. Attorney, Southern District of New York, **Bankers Trust Company** and their attorneys that memorialized the amount of unclaimed funds unlawfully recorded by

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<sup>1</sup> From White & Case Website, History of the Law Firm White & Case - White & Case was centrally involved in the formation of Bankers Trust in 1903. Bankers Trust epitomized the prominent early clients of White & Case. The relationship between Bankers Trust and White & Case is one of the great enduring client relationships in the history of the legal profession. White & Case represented Bankers Trust for 96 years until its acquisition in 1999 by another White & Case client, Deutsche Bank, which is still a client of the firm today.

**Bankers Trust Company at \$19.1 million.** (Exhibit E - Copy of "Letter Agreement" dated March 11, 1999 - 5 pp.)

Deutsche Bank purchased **Bankers Trust Company** on June 4, 1999 and then it became a convicted Federal Felon (3 Felony Counts). It was sentenced on July 26, 1999 in the Southern District of New York (99cr250 - USA v. Bankers Trust Co.). (See Exhibit F - Copy of Face Page of the *Transcript of Sentencing* dated July 26, 1999). I have been informed by independent counsel that at the point of the Federal Felony convictions there should have been a sign on the door of **Bankers Trust Company** saying - **Closed - Out of Business Due to Criminal Convictions, No Longer in the Fiduciary Business!** But instead **Bankers Trust Company** chose to do what felons do - they disingenuously did not reveal this damaging information to anyone since they knew it was toxic and would be their death knell. Documents/Records from the New York State Parole Board listed the issues and options facing **Bankers Trust Company** in its dilemma with regard to the Federal Felony convictions and their inability to continue as Trustees and Executors. One document prepared by the Parole Board lists the issues based on the record. (See Exhibit G - Undated document listing the issues ". . . just based on app's submission" - 1 pp.) In another document also prepared by the Parole Board titled "*Options For Bank.*" lays out seven (7) options for **Bankers Trust Company**, the first one is "Advise each effected client on their upcoming inability to perform." (See Exhibit H - Undated document listing the "*Options For Bank*" - 1 pp.)

**Bankers Trust Company** and their attorneys repeatedly attempted to obtain a *Certificate of Relief From Disabilities* from the New York State Parole Board to be issued *simultaneously* with the sentencing/conviction in Federal Court on July 26, 1999. Unfortunately, these efforts were denied due to the fact that a *Certificate of Relief From Disabilities* cannot be applied for or issued prior to the *sentencing/conviction*.

Documents obtained from the independent investigation by the State of New York Division of Parole prior to issuance of any *Certificate of Relief From Disabilities* uncovered very disturbing and revealing facts. A "*Memorandum*" dated October 12, 1999 that was part of this investigation states in part - "*Total amount 'inappropriately' taken was \$55.1 million. The plea deal covered \$19.1 million.*" (See Exhibit I- Copy of "*Memorandum*" dated October 12, 1999 - 1 pp.) Ultimately an alleged so-called "Corrected" *Certificate of Relief From Disabilities*, dated December 2, 1999, was issued by the New York State Parole Board *more than four (4) months following the sentencing/convictions of July 26, 1999*. It is important to note that it *was not retroactive to the sentencing/conviction date of July 26, 1999*. (See Exhibit J - Copy of alleged so-called "Corrected" *Copy of Certificate of Relief*

*From Disabilities*) The principal is really a very simple paradigm - you cannot receive an exemption *prior to or simultaneously* with the actual sentencing/conviction of a felony. Additionally, it is my understanding that if a felon changes it's name, as did **Bankers Trust Company** in April 2002, to Deutsche Bank Trust Company Americas, the felony carries through to the new name. To my knowledge Deutsche Bank Trust Company Americas has not been issued any *Certificate of Relief From Disabilities*. As you know, anyone who is a *Felon* or a *Dishonest Person* is barred from being either a *Fiduciary* or a *Trustee*.

Following the Federal Felony convictions in July 1999, **Bankers Trust Company** and their attorneys' White & Case were very concerned that they had no *Certificate of Relief From Disabilities* (Exhibit J) that would enable them to retain the Trust and Estates business. At that point one of their attorneys indicated to an Assistant US Attorney that they *were not going to get one*. To mitigate this matter they decided on another means to hold on to the Estates and Trusts that the Federal Felon **Bankers Trust Company** controlled (due to their status as an Executor or Trustee).

The scheme that was hatched involved the substitution of the Federal Felon, **Bankers Trust Company**, for another non-felon entity, in this case **Bankers Trust Company of New York**, which was all done pursuant to the New York State Banking Law. (See Exhibit K - Copy of Face Page of *Verified Petition*) The culmination of these Substitution actions took place in the New York State Supreme Court in New York County on December 17, 1999, (Index #99/121823) when the Estates and Trust were transferred to the new non-felon entity **Bankers Trust Company of New York**.

In early 2003 I challenged the substitution of fiduciary scheme and demanded to know if the Estate of my husband Edmund J. McCormick was among any of the Estates & Trusts that had been substituted by the action (Index #99/121823) filed by the Law Firm of White & Case. The Federal Felons' **Bankers Trust Company** and their attorneys had the pertinent documents impounded so no one would see them. In a *Decision and Order* dated August 12, 2003 on this matter Judge Carla Moskowitz after reviewing the record, ruled that the Estate of my husband Edmund J. McCormick, Sr., *had not been transferred* from the Federal Felon **Bankers Trust Company** to the substitute non-felon fiduciary **Bankers Trust Company of New York**. This decision was filed on August 18, 2003. (See Exhibit L - *Copy of Decision & Order of Judge Carl Moskowitz* ).

Judge Moskowitz also denied **Bankers Trust Company** and their attorneys any sanctions against me, which they maliciously and oppressively sought. The other significant development was that both the Federal Felon, **Bankers Trust Company/Deutsche Bank Trust Company Americas**, and the substituted fiduciary



pursuant to a court order, **Bankers Trust Company of New York/Deutsche Bank Trust New York** unilaterally renounced (See Exhibit M - *Copy of Renunciation from Bankers Trust Company and Bankers Trust Company of New York*) any Trusteeship involving any Trust called for in my husband's *Last Will & Testament*. (See Exhibit A - *Last Will and Testament*)

**The Second Issue**, the one that Judge Emanuelli had steadfastly refused to reveal, was unearthed by accident many years later. We discovered that, although **Bankers Trust Company** was nominated in my husband's *Last Will and Testament* (Exhibit A - *Last Will and Testament*), the *Permanent "Letters Testamentary"* dated January 25, 1989, (Exhibit N - *Copy of Letters Testamentary Serial #214216* given to me as a lawful Executrix) issued by the Westchester County Surrogate's Court, **did not name - Bankers Trust Company**. Instead, the *Permanent "Letters Testamentary"* named - **Bankers Trust Company of New York** (Also see Exhibit O - *Copy of Exemplified Copy of the Permanent "Letters Testamentary"* signed by Surrogate Judge Evans V. Brewster, dated April 10, 1989).

I have been informed by independent attorneys that if your name is not on the *"Letters Testamentary"* (See Exhibits N & O) you are not an Executor, you have absolutely no power to act as one, and doing so is fraudulent. I do not understand why the attorneys I hired to represent me failed to discover and disclose these material facts to me. No professional ever revealed this material fact. I was forced to detect this pertinent material salient fact through my own efforts.

Further, when **Bankers Trust Company of New York** was researched as to its origins, it was further revealed by the New York State Banking Department that **Bankers Trust Company of New York** did not become a legal banking entity until September 7, 1999 (as the result of a name change) **more than ten (10) years after the date (January 25, 1989)** of the *Permanent "Letters Testamentary"* (See Exhibit P - *Copy of New York State Banking Department History Web Pages 37 & 38*). Attached also is copy of the *Organization Certificate* of **Bankers Trust Company/Deutsche Bank Trust Company Americas** from the New York State Banking Department (See Exhibit Q - *Organization Certificate - 5 pp.*)

As you can see, for the record, from the enclosed documentation **Bankers Trust Company** at no time was ever known as **Bankers Trust Company of New York** nor was **Bankers Trust Company of New York** ever known as **Bankers Trust Company**. (See Exhibit Q - *New York State Banking Department Organization Certificate for Bankers Trust Company/Deutsche Bank Trust Company Americas*) These odious material facts that I learned from the New York State Banking Department are revealing and truly troubling.

Personal and Confidential

Peter D. Raymond, Esq.

February 8, 2009

Page Six of Eight Pages

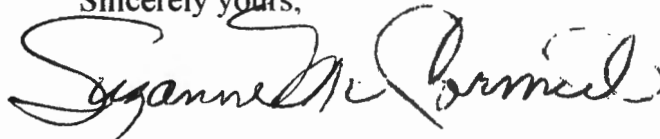
To summarize, the Federal Felon, **Bankers Trust Company**, and their attorneys have arrogantly engaged in all manner of nefarious and oppressive legal machinations, since their filing of the alleged so-called "Final Accounting" as a fraudulent Executor of which you are aware. At this point and time I believe that **Bankers Trust Company / Deutsche Bank** and their legal counsel have engaged in an ongoing fraud, conversion, cover-up and obstruction beyond the dreams of Nixonian proportions. Additionally, the Federal Felon, **Bankers Trust Company**, and White & Case have engaged in egregious bad faith and unclean hands for far too long.

Despite all the work that I was billed for I don't understand how the two (2) basic significant salient facts enumerated above were not discovered early on by you, since these facts would be the foundation of my husband's Estate. To this date I do not understand why you and your firm, didn't discover immediately these very serious, and basic elementary material facts? Incredulously and unfortunately these are the unsavory untoward material facts and terrible truths. This was no mistake! If it had been, it would have been professionally corrected! If my friends and I, without any legal training, could assemble and figure this out why couldn't you, as a legal professional? Do you think my expectations in this whole matter were or are unrealistic? I believe my actions as a legal Executrix have been prudent and continue to be not only prudent but ethical and truthful. Enclosed is an article from The Palm Beach Post on February 6, 2005 which tells only part of the story of the Estate (See Exhibit R - The Palm Beach Post).

At this time I feel like the people that reported and complained to the Securities and Exchange Commission, other authorities and oversight agencies about Bernard Madoff years ago and - ***nothing was done!*** The corruption, that is the underbelly of the Trust & Estate and Legal Business, has been traumatic to me and has eroded any trust that we may have had at the beginning of this journey. Fortunately, the undeniable truths, the unalterable facts, are such that time is on the side of the truth in this matter.

Please respond in writing in regard to these matters within five (5) working days upon receipt. Thank-you.

Sincerely yours,

A handwritten signature in cursive script that reads "Suzanne McCormick". The signature is written in black ink and is positioned above the typed name.

Ms. Suzanne McCormick

Legal Executrix of the Estate of Edmund J. McCormick, Sr.

SM/ms

**EXHIBITS**

A. - Copy of Selected Pages from *Last Will and Testament* of Edmund J. McCormick dated November 20, 1985 drafted by White & Case, showing the names of the nominated Executors and Trustees - 4 pp.

B. - Copy of "*Petition For Payment of Executor's Individual Claims Pursuant to SCPA 1805*" dated February 7, 1989, submitted by the Law Firm of White & Case on behalf of their client **Bankers Trust Company** and filed on March 7, 1989, under File No. 3511/1988 Edmund J. McCormick, Sr. - 14 pp.

C. - Copy of "*Order For Payment Of Executor's Individual Claim*" dated March 6, 1989, signed by Surrogate Judge Evans V. Brewster and filed March 7, 1989, under File No. 3522/1988 Edmund J. McCormick, Sr. - 5 pp.

D. - Copy of Face Page of *Criminal Information* filed on March 11, 1999 in Federal Court of the Southern District of New York, USA v. **Bankers Trust Company** - 99CRIM0250 - 1 pp.

E. - Copy of *Letter Agreement* dated March 11, 1999 from the U.S. Department of Justice, U.S. Attorney, Southern District of New York regarding the plea deal involving US v. **Bankers Trust Company** - 5 pp.

F. - Copy of Face Page of *Transcript of Sentencing Hearing*, dated July 26, 1999, - United States of America v. **Bankers Trust Company** (99Cr250) held in United States District Court Southern District of New York before Hon. John F. Koeltl - 1 pp.

G. - Copy of Undated Document listing the issues "... just based on app's submission" from the New York State Parole Board - 1 pp.

H. - Copy of Undated Document listing the seven (7) "*Options For Bank*" from the New York State Parole Board - "Trust unit involved" - 1 pp.

I. - Copy of a "*Memorandum*" dated October 12, 1999 from James V. Murray, Director of Executive Clemency Bureau to Martin Cirincione, Executive Director, Division of Parole that shows the *true figure was \$55.1 million, not \$19.1 million* as **Bankers Trust Company** and their attorneys have stated. - 1pp.

J. - So-called, alleged "Corrected Copy" of *Certificate of Relief From Disabilities* dated December 2, 1999 issued by New York State Board of Parole to **Bankers Trust Company** for the federal felony convictions and specifically to "*Relieve the holder of the forfeitures, disabilities or bars hereinafter enumerated S.C.P.A Section 707 (1) d*" - 2 pp.

Personal and Confidential

Peter D. Raymond, Esq.

February 8, 2009

Page Eight of Eight Pages

**K.** - Copy of Face Page of Verified Petition Index No. 99/121823 dated September 29, 1999 and filed on October 29, 1999, wherein the Federal Felon, **Bankers Trust Company**, sought transfer of the Estates and Trusts that it held to the new non-felon banking entity **Bankers Trust Company of New York** this transfer was done pursuant to Court Order dated December 17, 1999 - 1 pp.

**L.** - Copy of Judge Moskowitz *Decision and Order* dated August 12, 2003 and filed on August 18, 2003 regarding, among other things, the fact that the Estate of Edmund J. McCormick, Index #3522/1988 was not transferred on December 17, 1999 to the new non-felon banking entity, **Bankers Trust Company of New York**. - 9 pp.

**M.** - A copy of *Renunciation of Appointment by Nominated Co-Trustee from Bankers Trust Company n/k/a Deutsche Bank Trust Company Americas and Bankers Trust Company of New York n/k/a Deutsche Bank Trust Company New York* (the substituted fiduciary pursuant to Court Order) dated April 18, 2003 - 4 pp.

**N.** - Copy of *Permanent "Letters Testamentary"* (Serial #214216 issued to Suzanne V. McCormick) of *The Last Will and Testament* of Edmund J. McCormick, dated January 25, 1989, issued by The Westchester County Surrogate's Court to Executrix Suzanne McCormick that clearly shows the listed Executors, including the non-legal entity **Bankers Trust Company of New York** - 1 pp.

**O.** - Exemplified Copy of the *Permanent "Letters Testamentary"* for the Estate of Edmund J. McCormick dated January 25, 1989, signed by Surrogate Judge Evans V. Brewster on April 10, 1989 that clearly shows the listed Executors including the non-legal entity **Bankers Trust Company of New York** - 2 pp.

**P.** - Copy of *New York State Banking Department History Website* (pages 37 & 38) that show the historical listing and origins for both the separate and distinct banking entities **Bankers Trust Company** (page 37) and **Bankers Trust Company of New York** (page 38) - 2 pp.

**Q.** - Copy of *New York State Banking Department Organization Certificate* of **Bankers Trust Company** now known as Deutsche Bank Trust Company Americas, due to a name change on April 15, 2002. - 5 pp.

**R.** - Copy of The Palm Beach Post article dated February 6, 2005 titled "*Widow sustains battle against bank*" - 3 pp.

Via Certified Mail

#7006 2760 0005 0600 1336

Return Receipt Requested

**LAST WILL AND TESTAMENT**

**OF**

**EDMUND J. McCORMICK**

**Dated: November 20, 1985**

**WHITE & CASE**  
**1155 AVENUE OF THE AMERICAS**  
**NEW YORK, N.Y. 10036**

**Exhibit A**

My Executors and my Trustees shall also not be liable for any decision made pursuant to the powers granted herein, and any such decision shall be solely at the risk of such business or my estate or such trust.

I wish to advise my Executors that Mr. Alfred S. Howes is an equal stockholder with me in SVM, Inc., a corporation which is a party to a "Buy-Sell" agreement with me, pursuant to which said corporation has the right to buy my shares of such stock in accordance with the terms of the "Buy-Sell" agreement. I direct my Executors to honor said agreement.

FOURTEENTH: A. I appoint ALFRED S. HOWES, HERMAN MARKOWITZ, my wife, SUZANNE V. McCORMICK, my son, EDMUND J. McCORMICK, JR., and BANKERS TRUST COMPANY, or the survivor or survivors, as Executors of this my Will.

B. I appoint ALFRED S. HOWES, HERMAN MARKOWITZ, my wife, SUZANNE V. McCORMICK, my son, EDMUND J. McCORMICK, JR., and BANKERS TRUST COMPANY, or the survivor or survivors, as Trustees under this my Will.



signed, sealed, published and declared by EDMUND J. McCORMICK, the Testator therein named, as and for his Last Will and Testament, in the presence of us, the undersigned, who, at his request and in his presence and in the presence of each other, have hereunto set our names as witnesses.

/s/ Winthrop Rutherford, Jr.

Residing at 1115 Fifth Ave.

New York, N.Y.

/s/ Lauriston Castleman, Jr.

Residing at 10 Chappaque Mt. Rd.

Chappaque, N.Y.

Residing at



Fee  
~~\_\_\_\_\_~~  
JLH

STATE OF NEW YORK  
SURROGATE'S COURT: COUNTY OF WESTCHESTER

----- X

In the Matter of the Application of :  
BANKERS TRUST COMPANY, :  
co-Executor of the Last Will and :  
Testament of :

PETITION FOR PAYMENT  
OF EXECUTOR'S  
INDIVIDUAL CLAIMS  
PURSUANT TO SCPA 1805

EDMUND J. McCORMICK,

Deceased,

for an Order Authorizing Payment :  
to said Bankers Trust Company of :  
Debts Alleged to be Owing to It :  
by said Decedent. :

File No.: 3522/1988

----- X

TO THE SURROGATE'S COURT OF THE COUNTY OF WESTCHESTER:

The petition of BANKERS TRUST COMPANY respectfully  
shows:

1. The petitioner, Bankers Trust Company, is a  
corporation organized under the laws of the State of New  
York and has its principal office at 280 Park Avenue, New  
York, New York.

2. Edmund J. McCormick (the "Decedent") died on  
November 27, 1988, a resident of the County of Westchester,  
State of New York. Decedent's Last Will and Testament dated  
November 20, 1985 (the "Will") names petitioner and the  
following persons as co-Executors: Suzanne V. McCormick,

Edmund J. McCormick, Jr., Alfred S. Howes and Herman Markowitz.

3. This Court issued Letters Testamentary to petitioner and its co-Executors on January 25, 1989, which Letters Testamentary are still in effect.

4. The names and addresses of the beneficiaries of the decedent's residuary estate under the Will are as follows:

<u>Beneficiary</u>	<u>Nature of Interest</u>
Suzanne V. McCormick 231 Clinton Avenue Dobbs Ferry, New York 10522	Executrix and Nominated Trustee; Distributee; Devisee; Bequest of tangibles; cash bequest; Bequest of stock; Life beneficiary of trust of one-half of residuary estate.
Edmund J. McCormick, Jr. 714 West Shore Trail Sparta, New Jersey 07871	Executor and Nominated Trustee; Distributee; Cash bequest; One-fifth interest in one-half residuary estate; Remainderman of trust of one-half residuary estate.
David McCormick P.O. Box 242 Wyckoff, New Jersey 07481	Distributee; Cash bequest; One-fifth interest in one-half residuary estate; Remainderman of trust of one-half residuary estate.
Ann Ritter 234 Lake Shore Drive Marstons Mills, MA 02648	Distributee; Cash bequest; One-fifth interest in one-half residuary estate; Remainderman of trust

Dennis B. McCormick  
84 Crest Road  
Wellesley, MA 02181

Laurie McKeever  
19418 Winged Foot Circle  
Northridge, CA 91326

David Cook McCormick  
c/o Dennis B. McCormick  
84 Crest Road  
Wellesley, MA 02181

Jason McCormick  
c/o Dennis B. McCormick  
84 Crest Road  
Wellesley, MA 02181

Eric Ritter  
c/o Ann Ritter  
234 Lake Shore Drive  
Marstons Mills, MA 02648

Devin Ritter  
c/o Ann Ritter  
234 Lake Shore Drive  
Marstons Mills, MA 02648

of one-half residuary  
estate.

Distributee; Cash  
bequest; One-fifth  
interest in one-half  
residuary estate;  
Remainderman of trust  
of one-half residuary  
estate.

Distributee; Cash  
bequest; One-fifth  
interest in one-half  
residuary estate;  
Remainderman of trust  
of one-half residuary  
estate.

Cash bequest; Con-  
tingent remainderman  
of trust of one-half  
residuary estate.

Cash bequest; Con-  
tingent remainderman  
of trust of one-half  
residuary estate.

Contingent remainderman  
of trust of one-half  
residuary estate.

Contingent remainderman  
of trust of one-half  
residuary estate.

5. At the time of his death, the decedent was personally indebted to the petitioner in the sum of Two Hundred Fifty-Seven Thousand Dollars (\$257,000), principal amount, bearing interest at a rate of one-half percent (1/2%) per annum over the petitioner's Prime Lending Rate in

effect from time to time, as evidenced by a promissory note dated May 14, 1987, a copy of which is annexed to and made a part of this petition.

6. Petitioner's Prime Lending Rate in effect since the date of the last payment of interest is ten and one-half percent (10 1/2%).

7. Accrued interest on such note from the date of the last payment of interest through January 31, 1989 is Seven Thousand One Hundred Twenty-Eight Dollars and Eighteen Cents (\$7,128.18).

8. Per diem interest on the decedent's personal loan at the current rate is \$78.52.

9. No part of said debt has been paid and the full amount thereof is now due and owing to the petitioner.

10. At the time of his death, the decedent's wholly-owned corporation, McCormick Management Consultants, Inc. (the "Company") was indebted to the petitioner in the sum of Three Hundred Thirteen Thousand Dollars (\$313,000), principal amount, having paid Seven Thousand Dollars (\$7,000) of an original principal amount of Three Hundred Twenty Thousand Dollars (\$320,000) prior to the decedent's death. The remaining principal amount of Three Hundred Thirteen Thousand Dollars (\$313,000) bears interest at a rate of one percent (1%) per annum over the petitioner's

Prime Lending Rate in effect from time to time, as evidenced by a corporate promissory note dated August 22, 1986, a copy of which is annexed to and made a part of this petition.

11. Also annexed to and made a part of this petition is a copy of the decedent's unlimited personal guarantee of the Company's promissory note dated May 6, 1986, which guarantee, by its terms, is fully enforceable against the estate of the decedent.

12. The Company has substantially no assets and has defaulted on its obligations under the terms of the note. Therefore, the petitioner seeks payment of its debt by the estate of the decedent pursuant to the decedent's unlimited personal guarantee.

13. Petitioner's Prime Lending Rate in effect since the date of the last payment of interest is ten and one-half percent (10 1/2%).

14. Accrued interest on such note from the date of the last payment of interest through January 31, 1989 is Nine Thousand One Hundred Five Dollars and Seventy-eight Cents (\$9,105.78).

15. Per diem interest on the Company's loan at the current rate is \$99.98.

16. No part of said debt has been paid other than Seven Thousand Dollars (\$7,000) principal amount, referred

to in paragraph 10, and the full amount of the remaining principal and accrued interest is now due and owing to the petitioner.

17. Petitioner knows of no offsets to either debt.

18. There are sufficient assets in the estate of the decedent to pay all just claims having priority over the petitioner's debts.

19. Petitioner's co-Executors have agreed to payment of the debts due and owing to the petitioner as evidenced by their written consent, which is annexed to and made a part of this petition.

20. There are no persons other than those mentioned hereinbefore who have an interest in this application or proceeding.

21. The foregoing payments are subject to the right of any interested person to file objections to said payments upon the settlement of petitioner's account as co-Executor.

22. Petitioner has made no previous application for the relief herein requested to this or any other court.


WHEREFORE, petitioner prays for an order authorizing payment by the Executors of the Estate of Edmund J. McCormick, to itself of each debt described above,

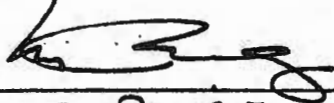
comprising principal, accrued interest as calculated from the date of the last payment of interest through January 31, 1989 at the rate set forth herein and per diem interest from February 1, 1989 through such date as such debt is paid in full at the rate set forth herein, and for such other and further relief as the Court may deem just and proper.

DATED: 2/7/89

BANKERS TRUST COMPANY

ATTEST:

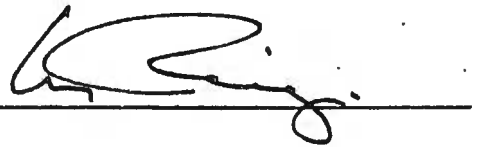
  
Title: Vice President

By   
Title: Vice President

WHITE & CASE  
Attorneys for Petitioner  
1155 Avenue of the Americas  
New York, New York 10036  
(212) 819-8200

STATE OF NEW YORK )  
COUNTY OF Westchester ) SS.:

Michael G. Philip, being duly sworn states that he resides at 11 Westview Ave, White Plains, NY; that he is the Vice President of Bankers Trust Company, the petitioner in this proceeding and that the foregoing petition is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.



Sworn to before me this  
8<sup>th</sup> day of February, 1989.

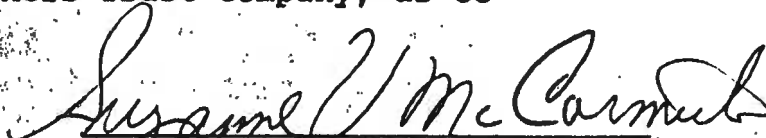
Valerie Juster Berman  
Notary Public

VALERIE JUSTER BERMAN  
Notary Public, State of New York  
No. 31-4860589  
Qualified in Westchester County  
Commission Expires May 3, 1990

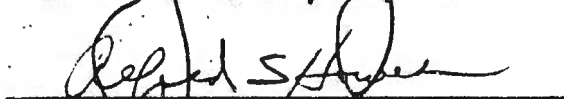


CONSENT TO PAYMENT OF  
EXECUTOR'S INDIVIDUAL CLAIMS

We, the undersigned, as Executors of the Estate of Edmund J. McCormick, deceased, do hereby consent to the payment from the Estate of such of the decedent's debts as may be found by the Surrogate's Court of Westchester County to be due and owing to Bankers Trust Company, as co-Executor.

  
Suzanne V. McCormick

  
Edmund J. McCormick, Jr.

  
Alfred S. Howes

  
Herman Markowitz

(Interest Bearing - Variable)

\$ 257,000.00

New York, N.Y., May 14, 1987

On Demand after date, for value received, the undersigned promises to pay to the order of **BANKERS TRUST COMPANY** (herein called the "Bank")

---Two Hundred, Fifty Seven Thousand And 00/100--- Dollars

at the office of the Bank at 1 North Lexington Avenue, White Plains, N.Y., and to pay interest on the unpaid principal amount hereof until paid at a rate per annum which shall be equal to 1/2 % per annum above the Bank's Prime Lending Rate, which is the rate as announced by the Bank, from time to time, at its principal office as its Prime Lending Rate for domestic commercial loans, and which rate shall change when and as said Prime Lending Rate shall change, such interest to be payable at the end of each calendar  month  quarter. The Prime Lending Rate in effect at the Bank upon the date of this Note is 8.0 % per annum.

All Collateral shall be held by the Bank subject to a lien and a security interest in favor of the Bank, as security for any and all Liabilities. The term "Liabilities" shall include the liability evidenced by this note and all other liabilities, direct or contingent, joint, several or independent, of the undersigned now or hereafter existing, due or to become due to, or held or to be held by the Bank for its own account or as agent for another or others, whether created directly or acquired by assignment or otherwise. The term "Collateral" shall include all property of every description, now or hereafter in the possession or custody of or in transit to the Bank for any purpose, including safekeeping, collection or pledge, for account of the undersigned, or as to which the undersigned may have any right or power. The balance of every account of the undersigned with, and each claim of the undersigned against, the Bank existing from time to time, shall be subject to a lien and a security interest in favor of the Bank as security for any and all Liabilities and shall be subject to be set off against any and all Liabilities and the Bank may at any time or from time to time at its option and without notice appropriate and apply toward the payment of any of such Liabilities the balance of each such account with, and each such claim against, the Bank. The Bank may at any time and from time to time, without notice, transfer into its own name or that of its nominee any of the Collateral. Upon non-payment when due of this note or of any of the other Liabilities, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or omits any material fact, or if an adverse change shall occur in the financial condition of the undersigned, or if the undersigned or any endorser or guarantor of this note shall die or (being a partnership or corporation) shall be dissolved, or shall become insolvent (however evidenced), or upon the suspension of business of the undersigned, or upon the issuance of any warrant, process, or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, Article 32 of the New York Civil Practice Law and Rules by any judgment creditor against the undersigned or with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of this note of an assignment for the benefit of creditors, or upon a trustee or receiver being appointed for the undersigned or any endorser or guarantor of this note or for any of the property thereof, or upon any proceedings being commenced by or against the undersigned or any such endorser or guarantor under any bankruptcy, reorganization, arrangement of debts, insolvency, readjustment of debts, receivership, liquidation or dissolution law or statute, then and in any such event, this note and all other Liabilities shall become at once due and payable, without notice, presentment or demand of payment, which are hereby expressly waived. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. In the event this note is made payable on demand, neither the provisions of this paragraph nor anything else contained in this note, shall, in any way, be deemed to limit or prevent the Bank from demanding payment at any time. If this note is not paid when due, the undersigned and each endorser each agrees to pay all costs and expenses of collection including attorney's fees of 15% of the unpaid balance of the loan evidenced hereby. The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them.

*Edmund J. McCormick*

Edmund J. McCormick

No. \_\_\_\_\_ Due \_\_\_\_\_

(Please insert your Bankers Trust Company checking A/C No.)

--	--	--	--	--	--	--	--

Interest on this note shall be computed on the basis of a 360 day year and the actual number of days elapsed. *X*

*RM* *APM*  
A-1 PLC

\$ 320,000.00

New York, N.Y., August 22, 1986

On demand

after date, for value received, the undersigned promises to

pay to the order of BANKERS TRUST COMPANY (herein called the "Bank")

three hundred twenty thousand and 00/100

Dollars

at the office of the Bank at 44 South Broadway, White Plains

N.Y.,

and to pay interest on the unpaid principal amount hereof until paid at a rate per annum (computed on the basis of a 360-day year and the actual number of days elapsed) which shall be equal to 1.0% per annum above the Bank's Prime Lending Rate, which is the rate as announced by the Bank, from time to time, at its principal office as its Prime Lending Rate for domestic commercial loans, and which rate shall change when and as said Prime Lending Rate shall change, such interest to be payable at the end of each calendar month. The Prime Lending Rate in effect at the Bank upon the date of this Note is 8.0% per annum.

All Collateral shall be held by the Bank subject to a lien and a security interest in favor of the Bank, as security for any and all Liabilities. The term "Liabilities" shall include the liability evidenced by this note and all other Liabilities, direct or contingent, joint, several or independent, of the undersigned now or hereafter arising, due or to become due or, or held or to be held by, the Bank for its own account or as agent for another or others, whether created directly or indirectly by assignment or otherwise. The term "Collateral" shall include all property of every description, now or hereafter in the possession or custody of or in transit to the Bank for any purpose, including subrogation, collection or pledge, for account of the undersigned, or as to which the undersigned may have any right or power. The balance of every account of the undersigned with, and each claim of the undersigned against, the Bank existing from time to time, shall be subject to a lien and a security interest in favor of the Bank as security for any and all Liabilities and shall be subject to be set off against any and all Liabilities and the Bank may at any time or from time to time at its option and without notice appropriate and apply toward the payment of any of such Liabilities the balance of each such account with, and each such claim against, the Bank. The Bank may at any time and from time to time, without notice, transfer into its own name or that of its nominee any of the Collateral. Upon non-payment when due of this note or of any of the other Liabilities, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or omits any material fact, or if an adverse change shall occur in the financial condition of the undersigned, or if any endorser or guarantor of this note shall die or (being a partnership or corporation) shall be dissolved, or shall become insolvent (however evidenced), or upon the suspension of business, dissolution or insolvency (however evidenced) of the undersigned, or upon the issuance of any warrant, process, or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, Article 32 of the New York Civil Practice Law and Rules by any judgment creditor against the undersigned or with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of this note of an assignment for the benefit of creditors, or upon a trustee or receiver being appointed for the undersigned or any endorser or guarantor of this note or for any of the property thereof, or upon any proceedings being commenced by or against the undersigned or any such endorser or guarantor under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, — then and in any such event, this note and all other Liabilities shall become or once due and payable, without notice, presentment or demand of payment, which are hereby expressly waived. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. In the event this note is made payable on demand, neither the provisions of this paragraph nor anything else contained in this note, shall, in any way, be deemed to limit or prevent the Bank from demanding payment at any time. If this note is not paid when due, the undersigned and each endorser each agrees to pay all costs and expenses of collection including attorney's fees of 15% of the unpaid balance of the loan evidenced hereby. The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them.

McGormick Management Consultants, Inc.

By Edmund McGormick (Name of Borrower) Chairman President

No. \_\_\_\_\_ Due \_\_\_\_\_ By \_\_\_\_\_ Title \_\_\_\_\_

(Please insert your Bankers Trust Company checking A/C No.)

Three empty boxes for account number.

Box with fields for 'Bk. Ver.' and 'Corp. Rec. ch'd.' with handwritten initials.

In consideration of financial accommodations given or to be given or continued to **McCormick Management Consultants, Inc.** herein called "Borrower", by **BANKERS TRUST COMPANY**, New York, N. Y., having branch offices outside the United States, herein called "Bank", the undersigned irrevocably and unconditionally guarantee to the Bank, payment when due, whether by acceleration or otherwise, of any and all liabilities of the Borrower to the Bank, together with all interest thereon and all attorneys' fees, costs and expenses of collection incurred by the Bank in enforcing any of such liabilities.

The term "liabilities of the Borrower" shall include all liabilities, direct or contingent, joint, several or independent of the Borrower now or hereafter existing, due or to become due to, or held or to be held by, the Bank for its own account or as agent for another or others, whether created directly or acquired by assignment or otherwise. In the event that the Borrower is a partnership, the term "liabilities of the Borrower" as used herein shall include all liabilities of any successor partnership or partnerships to the Bank, direct or contingent, joint, several or independent, now or hereafter existing, due or to become due to, or held or to be held by, the Bank, whether created directly or acquired by assignment or otherwise.

The undersigned waive notice of acceptance of this guaranty and notice of any liability to which it may apply, and waive presentment, demand of payment, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking other action by the Bank against, and any other notice in, any party liable thereon (including the undersigned).

The Bank may at any time and from time to time (whether or not after revocation or termination of this guaranty) without the consent of, or notice (except as shall be required by applicable statute and cannot be waived) to, the undersigned, without incurring responsibility to the undersigned, without impairing or releasing the obligations of the undersigned hereunder, upon or without any terms or conditions and in whole or in part:

- (1) change the manner, place or terms of payment, and/or change or extend the time of payment of, renew or alter, any liability of the Borrower, any security therefor, or any liability incurred directly or indirectly in respect thereof, and the guaranty herein made shall apply to the liabilities of the Borrower as so changed, extended, renewed or altered;
- (2) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the liabilities hereby guaranteed or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset thereagainst;
- (3) exercise or refrain from exercising any rights against the Borrower or others (including the undersigned) or otherwise act or refrain from acting;
- (4) settle or compromise any liability hereby guaranteed, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrower to creditors of the Borrower other than the Bank and the undersigned; and
- (5) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrower to the Bank regardless of what liability or liabilities of the Borrower remain unpaid.

No invalidity, irregularity or unenforceability of all or any part of the liabilities hereby guaranteed or of any security therefor shall affect, impair or be a defense to this guaranty, and this guaranty is a primary obligation of the undersigned.

This guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. As to each of the undersigned, this guaranty shall continue until written notice of revocation signed by such undersigned, or until written notice of the death of such undersigned shall in each case have been actually received by the Bank, notwithstanding a revocation by, or the death of, or complete or partial release for any cause of, any one or more of the remainder of the undersigned, or of the Borrower or of anyone liable in any manner for the

liabilities hereby guaranteed or for the liabilities (including those hereunder) incurred directly or indirectly in respect thereof or hereof, and notwithstanding the dissolution, termination or merger, decrease or change in personnel of any one or more of the undesignated which may be partnerships. Notwithstanding termination or termination of this guaranty shall affect in any manner rights arising under this guaranty with respect to (a) liabilities which shall have been created, contracted, assumed or incurred prior to receipt by the Bank of written notice of such revocation or termination or (b) liabilities which shall have been created, contracted, assumed or incurred after receipt of such written notice pursuant to any contract entered into by the Bank prior to receipt of such notice; and the sole effect of revocation or termination hereof shall be to exclude from this guaranty liabilities thereafter arising which are unconnected with liabilities heretofore arising in transactions heretofore entered into.

All notices provided to be given to the Bank herein shall be sent by registered or certified mail, return receipt requested.

Any and all rights and claims of the undersigned against the Borrower or any of its property, arising by reason of any payment by the undersigned to the Bank pursuant to the provisions of this guaranty, shall be subordinate and subject in right of payment to the prior payment in full of all liabilities of the Borrower to the Bank.

The Bank at all times and from time to time shall have the right to require the undersigned to deliver to the Bank as security for the liabilities of the undersigned hereunder, collateral security, original or additional, satisfactory to the Bank.

All property of the undersigned shall be held by the Bank subject to a lien and a security interest in favor of the Bank, as security for any and all liabilities of the undersigned to the Bank. The term "property of the undersigned" shall include all property of every description, now or hereafter in the possession or custody of or in transit to the Bank for any purpose, including safekeeping, collection or pledge, for account of the undersigned, or as in which the undersigned may have any right or power. The balance of every account of the undersigned with, and each claim of the undersigned against, the Bank existing from time to time, shall be subject to a lien and subject to be set off against any and all liabilities of the undersigned to the Bank, and the Bank may at any time or from time to time at its option and without notice appropriate and apply toward the payment of any of such liabilities the balance of each such account of the undersigned with, and each such claim of the undersigned against, the Bank. The Bank may at any time and from time to time, without notice, transfer into its own name or that of its nominee any of the property of the undersigned.

Upon the happening of any of the following events: the death or insolvency (however evidenced) of the Borrower or any person (including the undersigned) who is liable directly or indirectly in respect of any of the liabilities of the Borrower, or an adverse change in the financial condition of the Borrower or any aforesaid person, or suspension of business of the Borrower or any aforesaid person, or the issuance of any warrant, process or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the Borrower or any aforesaid person, or the making by the Borrower or any aforesaid person of an assignment for the benefit of creditors, or a trustee or receiver being appointed for the Borrower or any aforesaid person or for any property of any of them, or any proceeding being commenced by or against the Borrower or any aforesaid person under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, or it appears that any representation in any financial or other statement of the Borrower or any

fore said person, delivered to the Bank by or in behalf of the Borrower or such person, is untrue or incomplete, or if the Bank deems itself insecure--then and in any such event, and at any time thereafter, the Bank may, without notice to the Borrower or any aforesaid person, make the liabilities of the Borrower to the Bank, whether or not then due, immediately due and payable hereunder as to the undersigned, and the Bank shall be entitled to enforce the obligations of the undersigned hereunder.

Upon nonpayment when due of any of the liabilities of the Borrower or the undersigned to the Bank, the Bank shall have the right from time to time, without advertisement or demand upon or notice to the Borrower or the undersigned or right of redemption except as shall be required by applicable statute and cannot be waived, to sell, re-sell, assign, transfer and deliver all or part of said property of the undersigned, at any broker's board or exchange or at public or private sale, for cash or on credit or for future delivery, and in connection therewith may grant options and may impose reasonable conditions such as requiring any purchaser of any stock so sold to represent that such stock is purchased for investment purposes only. Upon each such sale the Bank, unless prohibited by provision of any applicable statute which cannot be waived, may purchase all or any part of said property being sold, free from and discharged of all trusts, claims, right of redemption and equities of the undersigned.

In the case of each such sale, or of any proceedings to collect any liabilities of the undersigned to the Bank, the undersigned shall pay all costs and expenses of every kind for collection, sale or delivery, including reasonable attorneys' fees, and after deducting such costs and expenses from the proceeds of sale or collection, the Bank may apply any residue to pay any of such liabilities of the undersigned, who shall continue liable for any deficiency, with interest.

If claim is ever made upon the Bank for repayment or recovery of any amount or amounts received by the Bank in payment or on account of any of the liabilities of the Borrower and the Bank repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over the Bank or any of its property, or (b) any settlement or compromise of any such claim effected by the Bank with any such claimant (including the Borrower), then and in such event the undersigned agree that any such judgment, decree, order, settlement or compromise shall be binding upon the undersigned, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any liability of the Borrower, and the undersigned shall be and remain liable to the Bank hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Bank.

Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by the Borrower or others (including the undersigned), with respect to any of the liabilities of the Borrower shall, if the statute of limitations in favor of the undersigned against the Bank shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

The Bank shall have no responsibility for ascertaining, nor for informing the undersigned with respect to, nor be required to take any action concerning, any maturities, calls, conversions, exchanges, offers, tenders or similar matters relating to any of the property of the undersigned (whether or not the Bank has, or is deemed to have, knowledge of any of the aforesaid), provided that the Bank shall endeavor to take such action as may be requested or authorized by the undersigned if the

Bank determines, in its sole discretion, that such action will not adversely affect the value as collateral of the property of the undersigned in question and the relative request or authorization is made in writing and is received by the Bank in due time.

The Bank shall not be bound to take any steps necessary to preserve any rights in any of the property of the undersigned against prior parties who may be liable in connection therewith, and the undersigned hereby agrees to take such steps. The Bank may nevertheless at any time (a) take any action it may deem appropriate for the care or preservation of such property or of any rights of the undersigned or the Bank therein, (b) demand, sue for, collect or receive any money or property at any time due, payable or receivable in account of or in exchange for any property of the undersigned, (c) compromise and settle with any person liable on such property, or (d) extend the time of payment or otherwise change the terms thereof as to any party liable thereon, all without notice to, without incurring responsibility to, and without affecting any of the liabilities hereunder of, the undersigned. The undersigned shall pay to the Bank all costs and expenses, including filing fees and attorneys' fees, incurred by the Bank in connection with the custody, care, preservation or collection of any of the property of the undersigned or in seeking to enforce any of the liabilities or obligations of the undersigned hereunder.

The Bank shall have the right, at any time and from time to time, without notice, to (i) transfer into its own name or that of its nominee any of the property of the undersigned; (ii) notify any obligor on any of such property to make payment to the Bank of any amounts due thereon; and or (iii) take control of any proceeds of any of such property.

No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this guaranty, shall be deemed to be made by the Bank unless the same shall be in writing, duly signed on behalf of the Bank, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of the Bank or the obligations of the undersigned to the Bank in any other respect at any other time.

The undersigned waive the right of trial by jury in the event of any litigation between the parties hereto in respect of any matter arising under this guaranty and agree that, should the Bank bring any judicial proceedings in relation to any such matter, the undersigned will not interpose any counterclaim or setoff of any nature.

This guaranty and the rights and obligations of the Bank and of the undersigned hereunder shall be governed and construed in accordance with the law of the State of New York; and this guaranty is binding upon the undersigned, his, their or its executors, administrators, successors or assigns, and shall inure to the benefit of the Bank, its successors or assigns. In the event that the Bank brings any action or suit in any court of record of New York State or the Federal Government to enforce any or all liabilities of the undersigned hereunder, service of process may be made upon the undersigned by mailing a copy of the summons to the undersigned at the address below set forth.

The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them. Anyone signing this guaranty shall be bound hereby, whether or not anyone else signs this guaranty at any time. The term "Bank" includes any agent of the Bank acting for it.

Dated: May 6, 1966.

x *Edmund McCornick*  
Edmund McCornick

303 South Broadway, Tarrytown, NY

(Address)

(Address)

(Address)

Slg. Ver. *EM*

Corp. Rm. ch'd.

SIR:

PLEASE TAKE NOTICE that a.....

.....  
of which the within is a true copy, has  
been made herein and was duly entered  
and filed in the office of the Clerk of the  
.....  
.....  
.....

on the..... day of.....

19.....

**WHITE & CASE**

Attorneys for.....

1155 Avenue of the Americas,  
Borough of Manhattan,  
New York City.

To.....

Attorney for.....

INDEX NO.

STATE OF NEW YORK  
SURROGATE'S COURT  
COUNTY OF WESTCHESTER

In the Matter of the Applica-  
tion of BANKERS TRUST COMPANY  
co-Executor of the Last Will  
and Testament of

EDMUND J. McCORMICK,

Deceased,

for an Order Authorizing Pay-  
ment to said Bankers Trust  
Company of Debts Alleged to  
be Owing to It by said  
Decedent.

ORIGINAL PETITION FOR PAYMENT  
OF EXECUTOR'S INDIVIDUAL  
CLAIMS PURSUANT TO SCPA 1805

**WHITE & CASE**  
ATTORNEYS FOR Petitioner.....

1155 Avenue of the Americas  
Borough of Manhattan  
New York City  
819-8200

FILED  
SURROGATE'S COURT

MAR 7 1989

WESTCHESTER COUNTY

Roll 5~~7~~ No. 633

At a Surrogate's Court held in and for the County of Westchester at the County Courthouse in said County on the 6<sup>th</sup> day of March, 1989.

P R E S E N T:

HONORABLE

Evans V. Brewster, Surrogate.

-----x

In the Matter of the Application of BANKERS TRUST COMPANY, co-Executor of the Last Will and Testament of

EDMUND J. McCORMICK,  
Deceased,

for an Order Authorizing Payment to said Bankers Trust Company of a Debt Alleged to be Owing to It by said Decedent.

-----x

ORDER FOR  
PAYMENT OF  
EXECUTOR'S  
INDIVIDUAL CLAIM

File No. 3522/1988

BANKERS TRUST COMPANY, a co-Executor of the Last Will and Testament of EDMUND J. McCORMICK, deceased (the "Decedent"), having presented its petition dated the 7th day of February, 1989, praying for permission to pay itself the debts owed to it by the decedent at the time of his death and by McCormick Management Company, the decedent's wholly-owned corporation, for which debt the decedent was

personally liable under the terms of an unlimited guarantee, and no notice to any person whose rights or interests would be affected by said payments being required, and it appearing to the satisfaction of this Court that sufficient reasons exist for granting said petition, it is hereby

On motion of White & Case, Esqs., attorneys for the petitioner,

ORDERED, that this application be and the same hereby is entertained; and it is further

ORDERED, that the Executors of the Last Will and Testament of the above-named decedent, pay to petitioner that certain debt in the sum of Two Hundred Fifty Seven Thousand Dollars (\$257,000), principal amount, evidenced by a promissory note dated the 14th day of May, 1987, a copy of which is annexed to the petition herein, with interest accrued through January 31, 1989 of Seven Thousand One Hundred Twenty-eight Dollars and Eighteen cents (\$7,128.18) and with further interest accrued from the 1st day of February, 1989 through such date as the debt is paid in full at the rate of eleven percent (11%) per annum; and it is further

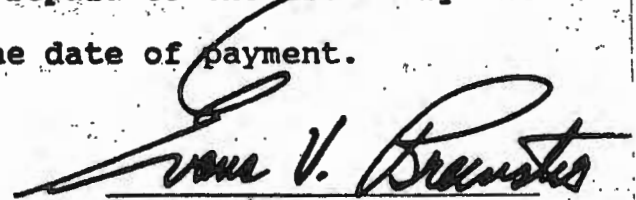

ORDERED, that the Executors of the Last Will and Testament of the above-named decedent, pay to petitioner



that certain debt in the sum of Three Hundred Thirteen Thousand Dollars (\$313,000), principal amount, evidenced by a promissory note dated the 22nd day of August, 1986, and unlimited guarantee dated the 6th day of May, 1986, copies of which are annexed to the petition herein, with interest accrued through January 31, 1989 of Nine Thousand One Hundred Five Dollars and Seventy-eight Cents (\$9,105.78) and with further interest accrued from the 1st day of February, 1989 through such date as the debt is paid in full at the rate of eleven and one-half percent per annum; and it is further

ORDERED, that the Executors of the Last Will and Testament of decedent, be and they hereby are authorized and directed to make the aforesaid payments from the decedent's estate; and it is further

ORDERED, that if said debt is disallowed, in whole or in part, on the settlement of the petitioner's account, the sums directed to be paid herein, or any part thereof which is so disallowed, shall be repaid to the Estate by the petitioner, with interest from the date of payment.

  
Surrogate  


Check Applicable Box

**Certification**

Attorney's  
Verification  
by  
Affirmation

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for  
I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information  
and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon  
knowledge, is based upon the following.

The reason I make this affirmation instead of \_\_\_\_\_ is \_\_\_\_\_

I affirm that the foregoing statements are true under penalties of perjury.

Dated: \_\_\_\_\_ (Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_

ss:  
being sworn says: I am

Individual  
Certification

in the action herein; I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on  
information and belief, and as to those matters I believe them to be true.

Corporate  
Verification

the \_\_\_\_\_ of \_\_\_\_\_  
a corporation, one of the parties to the action; I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on  
information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ (Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_

ss:  
being sworn says: I am not a party to the action, am over 18 years of

age and reside at

On \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_

I served a true copy of the annexed  
in the following manner:

Service  
by Mail

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within  
the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Personal  
Service

by delivering the same personally to the persons and at the addresses indicated below:

Service by  
Electronic  
Means

by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the  
attorney for that purpose. In doing so I received a signal from the equipment of the attorney indicating that the transmission was received,  
and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the  
U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Overnight  
Delivery  
Service

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time  
designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

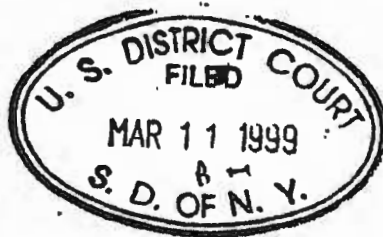
Sworn to before me on \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ (Print signer's name below signature)

**FILED**  
**SURROGATE'S COURT**

**MAR 7 1929**

**WESTCHESTER COUNTY**

8/4/00  
R-1



#2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE KOELTL

UNITED STATES OF AMERICA

- v. -

BANKERS TRUST COMPANY,

INFORMATION  
9:9 CRIM. 0250

Defendant.

COUNTS ONE THROUGH THREE

(False Entries in Bank Books and Records)

The Grand Jury charges:

Introduction

1. At all times relevant to this Information, the defendant BANKERS TRUST COMPANY ("BANKERS TRUST") was a bank chartered under the laws of the State of New York. BANKERS TRUST was headquartered in New York, New York, and provided a full range of financial and fiduciary services to institutional and individual customers through offices located throughout the United States. As a state member bank, BANKERS TRUST was subject to periodic examinations by the Federal Reserve Board ("Federal Reserve") and required to file periodic reports of its banking activities and financial condition with the Federal Reserve. BANKERS TRUST was a wholly-owned subsidiary of Bankers Trust New York Corporation ("Bankers Trust Corp."), a publicly-held bank holding company incorporated in New York, New York.

2. At all times relevant to this Information, Client

MAR 17 1999 9:00 AM

Exhibit D



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Place  
New York, New York 10007

March 11, 1999

BY HAND

Samuel W. Seymour, Esq.  
Sullivan & Cromwell  
125 Broad Street  
New York, New York 10004

Carey R. Dunne, Esq.  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, New York 10017

Re: United States v. Bankers Trust Company  
99 Cr. \_\_\_\_

Dear Messrs. Seymour and Dunne:

1. On the understandings specified below, the Office of the United States Attorney for the Southern District of New York (the "Office") will accept a guilty plea from BANKERS TRUST COMPANY ("BANKERS TRUST") to Counts One through Three of the above-referenced Information. Counts One through Three each charge BANKERS TRUST with making false entries in bank books and records, in violation of Title 18, United States Code, Section 1005.

2. It is understood and agreed that BANKERS TRUST's allocation at the time of the plea shall include, *in haec verba*, the statement included as Exhibit A hereto, the accuracy of which BANKERS TRUST hereby affirms. BANKERS TRUST agrees that the total amount of unclaimed funds unlawfully recorded as BANKERS TRUST's income or reserves, including an unlawful transfer of \$1.3 million in outstanding customer checks in 1989, is \$19.1 million. Any additional statements by BANKERS TRUST shall be consistent in all material respects with the statements contained in Exhibit A.

3. This Agreement is contingent upon the sentencing judge accepting this Agreement. Should the Court reject the terms of this Agreement, this Agreement shall be void, and neither this Office nor BANKERS TRUST shall be bound by its terms. It is further understood and agreed that the parties will request that the Court accept the terms of this

Exhibit E

Samuel W. Seymour, Esq.  
Carey R. Dunne, Esq.

2

March 11, 1999

Agreement pursuant to Fed. R. Crim. P. 11(e)(1)(C), 11(e)(2), 11(e)(3), and Sentencing Guidelines § 6B1.2(c).

4. The parties have reached a stipulation concerning the appropriate amount of the criminal fine in this case pursuant to United States Sentencing Guidelines §§ 8C2.3, 8C2.4, 8C2.5, 8C2.6 and 8C2.8. This Office and BANKERS TRUST therefore stipulate pursuant to Sentencing Guidelines § 6B1.4 that Sixty Million dollars (\$60,000,000) is the appropriate sentence and fine in this case.

5. It is understood and agreed that the Court: (i) will impose a total criminal fine of Sixty Million dollars (\$60,000,000) pursuant to Fed. R. Crim. P. 11(e)(1)(C); and (ii) will retain jurisdiction to enforce the terms and conditions of this Agreement. The parties understand that this Agreement reflects the particular facts of this case and is not intended as precedent for other cases.

6. It is understood and agreed that BANKERS TRUST shall pay the sum of Sixty Million dollars (\$60,000,000) to the Federal Reserve Bank of New York as escrow agent within 48 hours of the entry of its guilty plea, which shall then be wire transferred to the United States, as directed by this Office, on the date of imposition of sentence. All of this amount shall constitute a criminal penalty payable to the United States. It is further understood and agreed that, thereafter, under no circumstances shall BANKERS TRUST be entitled to a refund of any monies paid pursuant to this Agreement. BANKERS TRUST shall also pay a special assessment of \$200 per count at sentencing.

7. The parties agree to sentencing without preparation of a Presentence Report. It is further understood and agreed that the parties will seek a finding from the Court pursuant to Fed. R. Crim. P. 32(b)(1) and the policy statement set forth in Sentencing Guidelines § 6A1.1 that the information in the record, including the allocution of BANKERS TRUST attached hereto as Exhibit A, is sufficient to enable the Court to exercise its sentencing authority meaningfully under Title 18, United States Code, Section 3553, and that the preparation of a Presentence Report pursuant to Fed. R. Crim. P. 32 is not necessary. BANKERS TRUST has requested, and the Office agrees to, a two-month adjournment of sentencing in order to permit other regulatory agencies to evaluate BANKERS TRUST's request for regulatory approval to continue to engage in certain businesses. The parties also agree that sentencing will proceed on or before May 12, 1999, unless the Government consents to a further extension.

8. It is understood that BANKERS TRUST will continue to cooperate in connection with the Government's investigation of this and related matters. This cooperation requires that BANKERS TRUST (a) shall truthfully and completely disclose, to the extent permitted by law, all information with respect to the activities of BANKERS TRUST and its officers and employees concerning all matters about which this Office inquires of BANKERS

Samuel W. Seymour, Esq.  
Carey R. Dunne, Esq.

3

March 11, 1999

TRUST, which information can be used for any purpose; (b) shall cooperate fully with this Office, the Federal Bureau of Investigation, the Federal Reserve Bank of New York ("Federal Reserve") and any other government agency designated by this Office; (c) shall develop a plan within 30 days from the date of this plea, which shall be subject to the approval of the Federal Reserve, to make full restitution of all moneys derived from the conduct described in paragraph 9 below; (d) shall submit to the Federal Reserve for its review and approval, within 30 days of the date of this plea, the written internal compliance procedures which the bank already has implemented for the strengthening and maintenance of its records, systems, and internal audit and controls, in order to ensure that such misconduct will not recur in the future; (e) shall attend all meetings at which this Office requests BANKERS TRUST officers' and employees' presence; (f) shall provide to this Office, upon request, any document, record, or other tangible evidence relating to matters about which this Office or any designated law enforcement agency inquires of BANKERS TRUST, to the extent permitted by law; (g) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which this Office may request BANKERS TRUST officers' and employees' testimony; (h) shall bring to this Office's attention all crimes which BANKERS TRUST has committed, all criminal proceedings, investigations, or prosecutions in which BANKERS TRUST has been or is a subject, target or party, and all administrative proceedings in which BANKERS TRUST is likely to be charged for misconduct; and (i) shall commit no further crimes whatsoever. Moreover, any assistance BANKERS TRUST may provide under this Agreement to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and designated investigators.

9. It is understood that this Office cannot, and does not, agree not to prosecute BANKERS TRUST for criminal tax violations. However, if BANKERS TRUST fully complies with the understandings specified in this Agreement, no testimony or other information given by BANKERS TRUST (or any other information directly or indirectly derived therefrom) will be used against BANKERS TRUST in any criminal tax prosecution. Moreover, if BANKERS TRUST fully complies with the understandings specified in this Agreement, neither BANKERS TRUST nor any of its corporate affiliates will be further prosecuted criminally by this Office for any crimes, except for criminal tax violations, concerning (A) the activities, from 1986 to 1996, of BANKERS TRUST officers and employees in the Client Processing Services division relating to: (i) the wrongful conversion of unclaimed customer funds and/or funds that were escheatable in due course to various states as abandoned property; or (ii) the false and misleading recording of such unclaimed funds in BANKERS TRUST's books and records as income or reserves; or (B) any statements that were made or any conduct that occurred in the course of this Office's and the Federal Reserve's investigation in 1996, to the extent that BANKERS TRUST has disclosed the specified activities in paragraph 9(A) and 9(B) to this Office as of the date of this Agreement. This Agreement does not provide any protection against prosecution for any crimes except as set forth above and does not provide any protection for any natural persons against prosecution for any crimes, including those specified in this paragraph.

Samuel W. Seymour, Esq.  
Carey R. Dunne, Esq.

4

March 11, 1999

10. It is understood and agreed that the Office shall be free to prosecute BANKERS TRUST or any of its corporate affiliates for the conduct set forth in paragraph 9 above: (i) should the Court reject this Agreement, including the stipulated fine of Sixty Million dollars (\$60,000,000); (ii) should the allocation of BANKERS TRUST fail to incorporate, *in haec verba*, Exhibit A; (iii) should the Court not accept the plea of guilty of BANKERS TRUST; (iv) should any motion to withdraw the plea of guilty, or to attack collaterally a conviction based upon such a plea, be granted and become final; (v) should BANKERS TRUST fail to pay the criminal fine in accordance with this Agreement; or (vi) should BANKERS TRUST violate any other provision of this Agreement. BANKERS TRUST agrees to waive any and all defenses based upon the passage of time that might exist with respect to the matters enumerated in paragraph 9, including, but not limited to, the statute of limitations with respect to any such prosecutions that are not time-barred on the date this Agreement is signed by BANKERS TRUST.

11. It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of BANKERS TRUST to the attention of other prosecuting offices, if requested by BANKERS TRUST.

12. It is understood that, should BANKERS TRUST commit any further crimes or should it be determined that BANKERS TRUST has given false, incomplete, or misleading testimony or information, or should BANKERS TRUST otherwise violate any provision of this Agreement, BANKERS TRUST shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against BANKERS TRUST, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

13. It is understood that in the event that it is determined that BANKERS TRUST has committed any further crimes, given false, incomplete, or misleading testimony or information, or otherwise violated any provision of this Agreement, (a) all statements made by BANKERS TRUST and its officers and employees to this Office or other designated law enforcement agents, and any testimony given by BANKERS TRUST and its officers and employees before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against BANKERS TRUST; and (b) BANKERS TRUST shall assert no claim under the United States Constitution, any statute, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is





97qbank

Det # 11 1/1

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

99 Cr. 250 (JGK)

BANKERS TRUST COMPANY,

Defendant.

Sentence

July 26, 1999  
4:15 p.m.

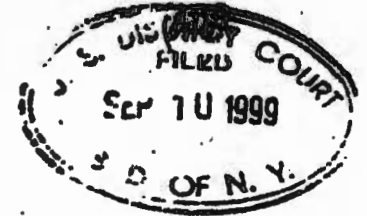
Before:

HON. JOHN G. KOELTL,

District Judge

APPEARANCES

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
ALEX YOUNG K. OH  
Assistant United States Attorney



SULLIVAN & CROWELL  
Attorneys for Defendant  
SAMUEL W. SEYMOUR

- and -

DAVIS POLK & WARDELL  
Attorneys for Defendant  
CAREY R. DUNNE

- and -

TROLAND S. LINK,  
General Counsel

ALSO PRESENT:  
DAVID D. BROWN

Exhibit F

Sullivan/Crowwell:

No involvement of trust/fiduciary functions

low level officers and a senior manager

no personal gain

BT went forward when they found out

"potential harm to estates"

Allocation

admits theft of 19.1 million dollars  
violates Fed law, NY State law, escheatment laws of other states

Pre-Plea

Waive pre-sentence report  
Criminal tax viol. still intact  
Doesn't bind other states or local prosecutors

CONTRA (just based on app's submission)  
No input from US Atty's office, etc.  
yet [FBI, bank regulators, other defs  
now or targeted]

Indict yes trust unit involved (p. 27)  
Agreed allocation yes trust unit involved  
Letter from NY State Regulator yes trust  
unit involved

Indict Partner who reported to Pres. (p. 2)

Indict personal gain - used as expense  
account and slush fund to supplement  
their income (p. 10)

Indict actively sought accounts for  
this purpose (p. 8)

Pre-plea "acted contrary to the expressed  
legal advice of the Bank's outside  
counsel" INDICT 0-6

prudent man: BT advises clients now

BT is absolutely liable for any harm

Options For Bank ?

- 1) Advise each effected client on their upcoming inability to perform
- 2) "Sell" or otherwise divest themselves of the unit
  - to other bank or appropriate institution
  - place account with others, and keep a "fee" for placement services
- 3) Petition Surrogate Court to appoint another party (individual, bank, consortium).
- 4) Try Article 78 to compel Board to act
- 5) Seek adjournment of sentencing
- 6) Reject plea from US Attorney and go to trail
- 7) Fight the Surrogate Court Act - doesn't apply to corps, to federal court actions, etc.



BRION D. TRAVIS  
CHAIRMAN

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
**DIVISION OF PAROLE**  
87 CENTRAL AVENUE  
ALBANY, NEW YORK 12206

MARTIN CIRINCIONE  
EXECUTIVE DIRECTOR

MEMORANDUM

TO: Martin Cirincione, Executive Director  
Division of Parole

FROM: James V. Murray, Director  
Executive Clemency Bureau

RE: Status: Bankers Trust

DATE: October 12, 1999

Sullivan and Cromwell is sending me data on the remaining \$36 million. Upon reception, a final report can be done.

Total amount "inappropriately" taken was \$55.1 million. The plea deal covered \$19.1 million.

From the opening stance of minimizing and avoidance, they have moved to full cooperation.

(Really the same as other cases: burglar does 20 jobs but pleas to one event.)

The facts should be cleaner, the issue clearer, and the decision simpler and in line with more common Board decisions. (What did you do, what do you need Certificate for, what safeguards are in place.)

JVM:crc



STATE OF NEW YORK CORRECTED COPY  
 CERTIFICATE OF RELIEF FROM DISABILITIES

FOR COURT OR BOARD OF PAROLE  
 Docket, Case, or other identifying no.  
 99CR250  
 CR-99-164

This certificate is issued to the holder to grant relief from all or certain enumerated disabilities, forfeitures, or bars to his employment automatically imposed by law by reason of his conviction of the crime or of the offense specified herein.

This certificate shall NOT be deemed nor construed to be a pardon.

SEE REVERSE SIDE FOR EXPLANATION OF THE LAW GOVERNING THIS CERTIFICATE

The Original Certificate is to be presented to the person to whom awarded. One copy is to be retained by the issuing agency, and one copy is to be filed with the N.Y.S. Div. of Criminal Justice Services, Executive Park, Stonyvasant Plaza, Albany, N.Y. 12203

1. For use by DCJS	HOLDER OF CERTIFICATE			3. NYSID Number (If not known, supply fingerprints to DCJS. If fingerprints are unobtainable, complete items 15-18 below.)
	2. Last Name	First Name	Middle Initial	
Bankers Trust Company				
4. Crime or offense for which convicted		5. Date of arrest	6. Date of sentence	
Making False Entries in Bank Books and Records (3 counts)		N/A	7/26/99	
7. Court of disposition (Court, Part, Term, Venue)		8. Certificate issued by:		
United States District Court Southern District of New York		<input type="checkbox"/> COURT INDICATED IN NO. 7 <input checked="" type="checkbox"/> STATE BOARD OF PAROLE		
9. Date this certificate issued		10. If this Certificate replaces Certificate of Relief From Disabilities previously issued, give date of previous Certificate.		
December 2, 1999		Date: <input checked="" type="checkbox"/> Not Applicable		

11. CHECK ONE BOX ONLY  
 This certificate shall:

a. Relieve the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to remain or to be eligible for public office, by virtue of the fact that this certificate is issued at the time of sentence. The Date of Sentence in this case must agree with the Date Certificate Issued.

b. Relieve the holder of all disabilities and bars to employment, excluding the right to be eligible for public office.

c. Relieve the holder of the forfeitures, disabilities or bars hereinafter enumerated S.C.P.A. Section 702(1)(g)

12.  This certificate shall be considered permanent.

This certificate shall be considered temporary until \_\_\_\_\_ After this date, unless revoked earlier by the issuing court or parole board, this certificate shall be considered permanent. A person who knowingly uses or attempts to use a revoked certificate in order to obtain or exercise any right or privilege that he would not be entitled to obtain or to exercise without valid certificate shall be guilty of a misdemeanor.

13. Signature of issuing official(s)	Print or type name(s)	14. Title(s)
<i>Joseph J. Gawloski</i> <i>Daizzee D. Bouey</i> <i>R. Guy Vizzie</i>	Joseph J. Gawloski Daizzee D. Bouey R. Guy Vizzie	COMMISSIONER COMMISSIONER COMMISSIONER

Complete the following for DCJS, only if fingerprints are not obtainable

15. Sex	16. Color	17. Height	18. Date of Birth (Month, Day, Year)
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		ft. in.	

I HEREBY CERTIFY, PURSUANT TO SECTION 2105 OF THE C.P.L.R., THAT I AM AN ATTORNEY ADMITTED TO PRACTICE BEFORE THE COURTS OF THE STATE OF NEW YORK, THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF, AND THAT IT IS A TRUE AND COMPLETE COPY OF THAT ORIGINAL.

*[Signature]* Exhibit J

**LAWS GOVERNING THE ISSUANCE OF CERTIFICATES OF RELIEF FROM DISABILITIES**

(The laws governing the issuance of certificates of relief from disabilities are set forth in Article 23 of the New York State Correction Law. The excerpts below summarize certain portions of those laws and are set forth merely for convenience. They are not intended as administrative interpretations and they do not relieve any party of full knowledge of and compliance with the applicable provisions of law.)

This certificate is issued to relieve the holder, an "eligible offender" as defined in § 700 of the Correction Law, of all or of enumerated forfeitures, disabilities, or bars to employment automatically imposed by law by reason of his conviction of the crime or offense specified on the face of this certificate.

This certificate shall be considered a "temporary certificate" where (1) issued by a court to a holder who is under a "revocable sentence" as defined in § 700 of the Correction Law and the court's authority to revoke such sentence has not expired, or (2) issued by the State Board of Parole and the holder is still under the supervision of the Board. Where the holder is under a revocable sentence, this certificate may be revoked by the court for violation of the conditions of such sentence and shall be revoked by the court if it revokes the sentence and commits the holder to an institution under the jurisdiction of the State Department of Correctional Services. Where the holder is subject to the supervision of the State Board of Parole, this certificate may be revoked by the Board for violation of the conditions of parole or release. Any such revocation shall be upon notice and after an opportunity to be heard. If this certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the court's authority to revoke the sentence or upon termination of the jurisdiction of the Board of Parole over the holder.

**RIGHTS OF RELIEF FROM DISABILITIES**

- A. Where the certificate is issued by a court at the time sentence is pronounced, it covers forfeitures as well as disabilities. In any other case the certificate applies only to disabilities.
- B. A conviction of the crime or the offense specified on the face of this certificate shall NOT cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.
- C. A conviction of the crime or the offense specified on the face of this certificate shall NOT prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified on the reverse side of this certificate as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit or other authority or privilege.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

IN THE MATTER OF THE APPLICATION OF  
BANKERS TRUST COMPANY OF NEW YORK :  
(f.k.a. DEUTSCHE BANK TRUST COMPANY) and :  
BANKERS TRUST COMPANY, :

Petitioners, :

For substitution of fiduciary relationships pursuant to :  
New York Banking Law §154. :  
----- x

Index No. 99 | 121 823

VERIFIED PETITION

NYS SUPREME COURT  
RECEIVED

OCT 29 1999

I. A. S. MOTION  
SUPPORT OFFICE

Bankers Trust Company of New York and Bankers Trust Company, by their attorneys, White & Case LLP, for their Verified Petition (the "Petition"), allege as follows upon information and belief:

1. Petitioner Bankers Trust Company of New York ("Trust Co.") (f.k.a. Deutsche Bank Trust Company) is a trust company organized under the laws of the State of New York with its principal place of business at 31 West 52<sup>nd</sup> Street, New York, New York 10019. Trust Co. is authorized to carry on trust activities pursuant to Section 100 of the New York Banking Law ("NYBL"). A copy of the authorization certificate issued to Deutsche Bank Trust Company (as Trust Co. was then known) by the New York State Banking Department is attached hereto as Exhibit A.

2. Trust Co. is, and since its inception has been, an indirect wholly owned subsidiary of Deutsche Bank AG ("Deutsche Bank"), a banking corporation organized under the laws of Germany with its principal place of business at Taunusanlange 12, D-60325 Frankfurt am Main, Germany. Deutsche Bank, with consolidated assets of approximately \$755 billion (as of



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: LAS PART 3**

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**In the Matter of the Application of BANKERS  
TRUST COMPANY OF NEW YORK  
(fka DEUTSCHE BANK TRUST COMPANY)  
and BANKERS TRUST COMPANY,**

Index No. 121823/1999

**DECISION and ORDER**

**Petitioners,**

**-against-**

**For substitution of fiduciary relationships  
pursuant to NY Banking Law §154.**

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**FILED**

**AUG 18 2003**

**COUNTY CLERK'S OFFICE  
NEW YORK**

**KARLA MOSKOWITZ, J.:**

**Bankers Trust Company ("BTCo"; now known as Deutsche Bank Trust Company Americas) and Bankers Trust Company of New York ("Trust Co"; now known as Deutsche Bank Trust Company New York) (collectively, the "Bank"), pursuant to Section 154 of the Banking Law (the "§154 proceeding"), commenced this proceeding in 1999 seeking to substitute Trust Co for BTCo as fiduciary with respect to certain designated trusts and estates then under administration by BTCo and also with respect to all future fiduciary relationships. As discussed infra, the court granted that application in 1999.**

**Suzanne McCormick, the executor and principal beneficiary under the will of her late husband, Edmund J. McCormick (the "Estate"), in which BTCo is also named as an executor, moves for an order, pursuant to CPLR 5015(a):(a) vacating the prior orders of this court substituting Trust Co for BTCo, to the extent that these orders affect the Estate; (b) unsealing certain records in this proceeding that this court ordered impounded and sealed; and (c) clarifying whether the prior orders substituting Trust Co for BTCo affect the Estate.**

Exhibit L

In response, the Bank cross-moves for an order, pursuant to 22 NYCRR §130-1, imposing sanctions upon McCormick and her attorneys.

McCormick has withdrawn her application in all respects. However, the Bank has refused to withdraw its request for sanctions. Upon due consideration, the court denies the Bank's cross motion.

### **BACKGROUND**

#### **The §154 Proceeding**

In commencing this §154 proceeding, the Bank candidly acknowledged that its request was triggered by BTCo's guilty plea in the United States District Court, Southern District of New York, in March 1999, to a three-count criminal felony information charging it with making false entries on the books and records of a federally regulated bank. The Bank sought the substitution because it would likely otherwise face challenges, pursuant to Surrogate's Court Procedure Act §707, to BTCo's qualifications to act as fiduciary, including claims that it is ineligible for appointment and/or continued service as a trustee or executor.<sup>1</sup>

In its petition, the Bank sought substitution for two identified classes of fiduciary relationships: (a) BTCo's fiduciary relationships existing on the date of the petition as listed in the petition; and (b) every fiduciary relationship taking effect after the date of the hearing of the petition. All persons identified in the Bank's petition in the §154 proceeding received notice and the court appointed a Guardian ad litem.

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<sup>1</sup> SCPA § 707, entitled "eligibility to receive letters," provides in pertinent part that "[l]etters may issue to a natural person or to a person authorized by law to be a fiduciary except as follows: 1. Persons ineligible . . . (d) a felon, (e) one who does not possess the qualifications required of a fiduciary by reason of . . . dishonesty, improvidence . . . or who is otherwise unfit for the execution of the office."

A number of orders ensued. The primary order, dated December 17, 1999 (Hon. Barry A. Cozier; the "December 17 1999 Order"), granted the Bank's application to substitute Trust Co for BTCo for every fiduciary relationship listed in the petition as well as every fiduciary relationship taking effect after the date of the order, except: (a) those relationship for which objections to substitution had been filed; and (b) the relationships specifically identified in the petition as excepted from the requested substitution. In this regard, the December 17 1999 Order states:

Pursuant to NYBL 154, Trust Co. is hereby substituted for BTCo in every existing fiduciary capacity designated in the verified petition and in every fiduciary capacity relating to estates, guardianships, executorships, conservatorships, committeeships, testamentary trusts, inter vivos trusts, IRA rollover trusts, supplemental needs trust and or fiduciary agencies which may take effect hereafter.

The December 17 1999 Order further directed the impounding of the list of designees, without disclosure to, inspection by or copying of to any persons other than: (a) individuals associated with or employed by the court; or (b) individuals with a court order granting permission to inspect the exhibit.

#### The McCormick Will and Estate

Edmund J. McCormick died in November 1988. His will appointed various executors, including BTCo and his widow, the movant here. It is not disputed that Edmund J. McCormick's will provides for a trust that has not been funded. The parties disagree over the rather esoteric issue of whether that trust currently exists, will never exist or whether it is a fiduciary relationship that will come into existence at some time in the future.

McCormick's relationship with the Bank, since her husband's death more than 14 years

ago, has been hostile and acrimonious. She accuses the Bank of grossly mismanaging the Estate and wasting or dissipating millions of dollars. There are at least two proceedings pertaining to the Estate now pending in the Surrogates Court, Westchester County (File No. 3522/88, Surrogate James D. Pagnos). There is an accounting proceeding that BTCo and other executors of the Estate commenced in 1996 that McCormick has contested. In her Objections, dated September 10, 1998, McCormick asserted that BTCo committed numerous breaches of its fiduciary duties. The Surrogate disposed of some of those objections on motion; he held that others present factual issues not capable of resolution by motion. Also pending before the Surrogate is a motion McCormick made in 2002 seeking to remove BTCo as an executor of the Estate. Finally, McCormick commenced an Article 78 proceeding in this court, entitled McCormick v Bankers Trust Company (Supreme Court, New York County, Index No. 104600/03, Hon. Harold Bealer) against the Bank, the New York State Banking Department, and the New York State Board of Parole, seeking a judgment annulling: (1) a Certificate of Relief from Disabilities issued to BTCo by the Parole Board on December 2, 1999 pursuant to Article 23 of the Correction Law; (2) the Department of Banking's approval of certain name changes made by the Bank (i.e., BTCo's change of name to Deutsche Bank Trust Company Americas and Trust Co's change of name to Deutsche Bank Trust Company New York) effective April 15, 2002; and (3) the Bank's authorization to do business in the State of New York.<sup>2</sup>

### This Application

Proceeding under the assumption that the Estate was affected by the court's orders of

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<sup>2</sup> In May 2003, the Article 78 petitioner discontinued the proceeding without prejudice, pursuant to stipulation.

substitution in the §154 proceeding, McCormick asked the court to vacate its orders as they pertain to the Estate and to permit her to file objections because she was never served with notice of this §154 proceeding.<sup>3</sup>

In the papers submitted in connection with this application, McCormick detailed the Bank's alleged wrongdoings in its handling of matters pertaining to the Estate. Additionally, McCormick repeatedly referred to the Bank as a felon (noting, among other things, its criminal conviction and its alleged involvement in the Enron investigation) and comments on Deutsche Bank's reputed involvement in various World War II atrocities, including events concerning "Nazi Gold."

McCormick claimed that the trust provided for in her late husband's will is a trust that will take effect in the future and, therefore, appears to be affected by the language of the December 17 1999 Order. The Bank, on the other hand, claimed that the trust will never come into existence because the Estate is insolvent. The Bank also maintained that the Estate cannot, in any event, be affected by the orders in the §154 proceeding because the Estate was not identified on any of the lists.

After receiving McCormick's application, counsel for the Bank represented in writing to McCormick's counsel that: (a) McCormick was never served with notice of the §154 proceeding; (b) no substitution of fiduciary occurred with respect to the Estate; and (c) the rights of the Estate remain entirely unaffected by the outcome of the §154 proceeding. Based on these representations, the Bank demanded that McCormick withdraw her application. Although

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<sup>3</sup> Although denominated a motion to vacate a default, in many respects, this application is more similar to a motion for leave to intervene.

counsel nearly resolved this application, ultimately they were unable to reach an agreement.

Two days before oral argument, the Bank delivered a document to McCormick's counsel, entitled "Renunciation of Appointment of Nominated Co-Trustee" (the "Renunciation"). Both Deutsche Bank Trust Company Americas (formerly BTCo) and Deutsche Bank Trust company New York (formerly Trust Co) executed the Renunciation on April 18, 2003. As a result of the Renunciation, there is no longer any possibility that either the original corporate fiduciary - BTCo - or its substitute fiduciary - Trust Co - will ever serve as trustee of any trust arising under the Estate. Thus, as a result of the Renunciation, the Estate is unaffected by the §154 proceeding.

At oral argument, the court requisitioned the sealed files in the §154 proceeding in order to determine if the Estate was formally named in any of the lists. The court reviewed the files and found the Estate was not listed and the court, on the record, so advised the parties. At that time, McCormick's counsel advised the court that his client was withdrawing her application in all respects. The Bank, however, refused to withdraw its demand for sanctions, claiming that McCormick's bringing of the application and her insistence on thereafter continuing to press it, was frivolous.

#### **DISCUSSION**

22 NYCRR Part 130-1.1 defines conduct as frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

... In determining whether the conduct undertaken was frivolous, the court

shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

The Bank argues that McCormick (and her counsel) gave violated each of these obligations, because the proof establishes that: (a) they chose to proceed with the application even though the Bank and the Guardian ad litem in the §154 proceeding informed McCormick and her counsel that the Estate was not affected by the order issued in the proceeding; (b) chose to prosecute the application without any legitimate reason for disclosure of the sealed records; and (c), in their submissions in support of the application, McCormick and her attorneys made numerous inflammatory and false statements about the Bank irrelevant to the relief sought.

Additionally, the Bank claims that petitioner's application is part of a larger campaign to discredit and harass the Bank in several courts and other arenas. The bank asserts that many allegations in this application are the same as those she asserted in her removal application and in her objections to BTC's accounting, including repeated allegations of the Bank's financial dishonesty, criminal behavior and other wrongdoing. The Bank contends that her accusations are not relevant to this case and are alleged for the sole purpose of inflaming the court and harassing the Bank.

McCormick counters that her allegations are not frivolous in any respect. She submits that the Bank can hardly complain about her allegations of the Bank's criminal conviction, since those allegations are true and were the basis for which the Bank commenced this §154 proceeding in the first place. Her allegations concerning Deutsche Bank's World War II activities, McCormick submits, are similarly well publicized. McCormick submits that these

Arguments are not extraneous or irrelevant, but, rather, go to the very heart of the issue of the Bank's fitness to serve as a fiduciary.

McCormick submits that, given the broad language of the prior court orders in this proceeding, together with her inability to review the file contents to determine if the Estate was mentioned in any of the filings or the service lists, she was compelled to apply to the court for permission to review the impounded portions of the file to determine whether the Estate was affected. In the eleventh hour, the Bank delivered the Renunciation to McCormick's counsel, mooted any need for McCormick to review the sealed files, because the Bank will never act as fiduciary under the trust in question.

The Bank's application for sanctions pursuant to 22 NYCRR § 130-1.1 is denied. The Bank has failed to convince the court that McCormick's application lacked merit as a matter of law. In this regard, while the Renunciation now negates any possibility that the Bank, or any of its affiliates, will act as a fiduciary of the trust, it is not abundantly clear, as the Bank suggests, that the Estate, in the absence of the Renunciation, would not have been affected by the orders in the §154 proceeding. Even if McCormick's application would have been denied, that does not mean it was necessarily frivolous (see, e.g., Northern Adirondack Cent. School Dist. v L.H. La Plante Co., 229 AD2d 764, 766; Cruz v Amsterdam Housing Authority, 174 Misc2d 189 [Sup Ct Albany County 1997]). The court is similarly unable to find that McCormick's motive, in bringing this application, was to harass or injure the Bank. Also, while certain statements in McCormick's papers may be inaccurate and hyperbole, these, without more, do not support the conclusion that the application was frivolous. The court concludes that the Bank did not sufficiently prove that McCormick engaged in the sort of conduct that calls for the imposition of



ctions (see e.g., Bell v New York, 96 NY2d 811; Broadwhite Assoc. v Truong, 294 AD2d 140).

**CONCLUSION**

It is ORDERED that the petition by Suzanne McCormick is withdrawn; and it is further ORDERED that the cross motion by Bankers Trust Company (now known as Deutsche Bank Trust Company Americas) and Bankers Trust Company of New York (now known as Deutsche Bank Trust Company New York) for an award of sanctions is denied.

Dated: August 12, 2003

ENTER:

  
\_\_\_\_\_  
J.S.C.

**FILED**  
**AUG 18 2003**  
**COUNTY CLERK'S OFFICE**  
**NEW YORK**

STATE OF NEW YORK

SURROGATE'S COURT: COUNTY OF WESTCHESTER

In the Matter of the Estate of

EDMUND J. McCORMICK,

Deceased.

**RENUNCIATION OF  
APPOINTMENT BY  
NOMINATED CO-TRUSTEE**

The undersigned, DEUTSCHE BANK TRUST COMPANY AMERICAS (formerly known as Bankers Trust Company), as nominated co-trustee under Article FOURTEENTH of the Will of Edmund J. McCormick, deceased, with its principal office at 130 Liberty Street, New York, New York, 10006, currently operating out of an alternate location at 31 West 52<sup>nd</sup> Street, New York, New York, 10019, and DEUTSCHE BANK TRUST COMPANY NEW YORK (formerly known as Bankers Trust Company of New York), as substitute fiduciary to Bankers Trust Company with respect to all future fiduciary relationships under an order of the Supreme Court of the State of New York, New York County, dated December 17, 1999, with its principal office at 280 Park Avenue, New York, New York, 10017,

do hereby renounce appointment and relinquish all right to letters of trusteeship under the Will of  
Edmund J. McCormick, admitted to probate by the Surrogate's Court of Westchester County,  
New York on January 25, 1989.

Dated: New York, New York  
April 18, 2003.

DEUTSCHE BANK TRUST COMPANY  
AMERICAS

By: *Phyllis May Fineman*

DEUTSCHE BANK TRUST COMPANY  
NEW YORK

By: *Vittorio*





**The People of the State of New York, No. 214216**

**TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:**

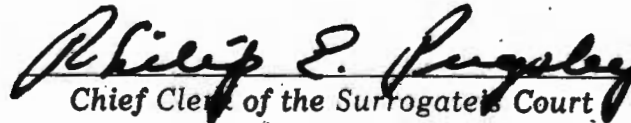
**This is to certify that on the 25th day of JANUARY, 1989  
LETTERS TESTAMENTARY OF THE Last Will and Testament OF**

**EDMUND J. MC CORMICK**

**late of the VILLAGE of DOBBS FERRY  
were duly granted and issued by the Surrogate of the County of Westchester to  
ALFRED S. HOWES, HERMAN MARKOWITZ, SUZANNE V. MC CORMICK, EDMUND J. MC CORMICK, JR., BANKERS  
and that the same are still valid and in full force. TRUST COMPANY OF NEW YORK**

**Dated, Attested and Sealed JANUARY 31, 1989**

**HON. EVANS V. BREWSTER, Surrogate of Westchester County.**

  
Chief Clerk of the Surrogate's Court

File No. ....3522-1988.

COPY

LETTERS TESTAMENTARY

The People of the State of New York

Inasmuch as by these presents that at the City of White Plains, County of Westchester, on the 25TH day of JANUARY, 1989, before HON. EVANS V. BREWSTER, Surrogate of our said County, the Last Will and Testament of

EDMUND J. MC CORMICK late of the VILLAGE of DOBBS FERRY in said County, deceased, was proved and

ALFRED S. HOWES, HERMAN MARKOWITZ, SUZANNE V. MC CORMICK, EDMUND J. MC CORMICK, JR., BANKERS TRUST COMPANY OF NEW YORK

the executors named therein, having duly qualified according to law, ARE hereby authorized to administer the estate of said decedent pursuant to the provisions of the will, subject to the jurisdiction and supervision of this Court.

IN TESTIMONY WHEREOF, we have caused the seal of office of the Surrogate's Court of the County of Westchester to be hereunto affixed.

Witness: Honorable Evans V. Brewster, Surrogate of our said County, at the City of White Plains, the 25TH day of JANUARY, in the year of our Lord one thousand nine hundred and EIGHTY-NINE

[Signature]
Clerk of Court

Notes

Attention is called to the provisions of EPTL 11-16 and MPA 119 which make it a misdemeanor and cause the removal in an Executor, Administrator, Trustee, or Guardian to deposit in several Estate funds in his individual account in name. All Estate funds must be deposited in the name of the Estate Administration Trust.

Nº 13052

All which we have caused by these presents to be exemplified, and the Seal of our said Surrogate's Court to be hereunto affixed.

Witness, HONORABLE EVANS V BREWSTER, Surrogate of the County of Westchester, the  
10TH day of APRIL 19 89

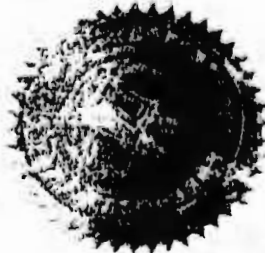


Chief Clerk of the Surrogate's Court

I, EVANS V. BREWSTER, Surrogate of said County, do hereby certify that  
PHILIP E. PUGSLEY

whose name is

subscribed to the preceding exemplification, is the Chief Clerk of the said Surrogate's Court of the County of Westchester, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Surrogate's Court, and that the attestation thereof is in due form and according to the form of attestation used in this State.



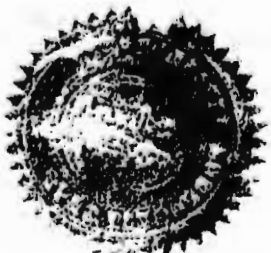
WITNESS, my hand and the Seal of said Surrogate's  
Court this 10TH day of APRIL 19 89

*Evans V. Brewster*  
Surrogate.

State of New York }  
County of Westchester } ss.

I, PHILIP E. PUGSLEY Chief Clerk of the Surrogate's Court of the County of Westchester, do hereby certify that HONORABLE EVANS V. BREWSTER whose name is subscribed to the preceding Certificate, is the Surrogate of the County of Westchester, duly elected, sworn and qualified, and that the signature of said Surrogate to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereto set my  
hand and affixed the Seal of the said Court, this  
10TH day  
of APRIL 19 89



Chief Clerk of the Surrogate's Court



## Bank Sepah Iran - Fgn Rep Off

04/01/1996 Licensed Bank Sepah Iran  
03/24/2003 Closed

## Bankamerica National Trust Company

06/16/1993 Acquire By Merger Bankamerica Trust Company of New York

## Bankamerica Securities Services Company of NY

07/27/1979 NYS Chartered Bankamerica Securities Services Company of NY  
11/15/1982 Name Change To Bankamerica Trust Company of New York  
06/16/1993 Merge To Federal Bankamerica National Trust Company

## Bankamerica Trust Company of New York

07/27/1979 NYS Chartered Bankamerica Securities Services Company of NY  
11/15/1982 Name Change To Bankamerica Trust Company of New York  
06/16/1993 Merge To Federal Bankamerica National Trust Company

## Bankers Company of New York - Fgn Agency

1928 Licensed Bankers Company of New York  
1931 Closed

## Bankers Federal Savings &amp; Loan Association

03/26/1890 NYS Chartered Bank Clerks' Co-Op Building & Loan Assoc of NYC  
02/01/1937 Convert Federal Bankers Federal Savings & Loan Association

## Bankers Trust Company

03/24/1903 NYS Chartered Bankers Trust Company  
08/10/1911 Acquire By Merger Mercantile Trust Company (1873-1911)  
03/19/1912 Acquire By Merger Manhattan Trust Company  
04/20/1917 Acquire By Merger Astor Trust Company  
08/05/1950 Acquire By Merger Title Guarantee and Trust Company, New York  
09/15/1950 Acquire By Merger Lawyers Trust Company  
12/16/1950 Acquire By Merger Flushing National Bank in New York  
05/25/1951 Acquire By Merger Commercial National Bank and Trust Company  
01/30/1953 Acquire By Merger Bayside National Bank of New York  
01/29/1954 Acquire By Merger Bankers Safe Deposit Company  
04/08/1955 Acquire By Merger Public National Bank & Trust Company of New York  
09/01/1960 Acquire By Merger South Shore Bank of Staten Island, The  
09/09/1963 Acquire By Merger First National Bank of Farmingdale  
11/29/1968 Acquire By Merger Northern Westchester National Bank  
10/29/1976 Acquire By Merger Bankers Trust of Suffolk National Organization  
04/15/2002 Name Change To Deutsche Bank Trust Company Americas

## Bankers Trust Company New York Limited

03/27/1991 NYS Chartered Bankers Trust Company New York Limited  
10/15/1997 Liquidated

## Bankers Trust Company of Albany, N.A.

1926 Established First Trust Company of Albany  
05/01/1961 Acquire By Merger Johnstown Bank, The  
03/01/1962 Acquire By Merger Broadalbin Bank, The  
07/01/1967 Acquire By Merger North Creek National Bank  
10/01/1969 Convert Federal First Trust Company of Albany, N.A.  
01/01/1971 Name Change To Bankers Trust Company of Albany, N.A.  
02/28/1973 Acquire By Merger Montgomery County Trust Company  
11/01/1974 Acquire By Merger First National Bank of Cooperstown  
04/30/1979 Acquire By Merger Bankers Trust Company of Central New York  
01/30/1981 Acquire By Merger Bankers Trust of Binghamton  
10/01/1984 Merge To State First American Bank of New York  
08/26/1993 Assets Sold To Key Bank of New York  
12/05/1994 Liquidated

## Bankers Trust Company of Central New York

Exhibit P

06/01/1971 NYS Chartered Mohawk Valley State Bank  
 08/01/1974 Name Change To Bankers Trust Company of Central New York  
 08/13/1974 Bank To Trust Co.  
 04/30/1979 Merge To Federal Bankers Trust Company of Albany, N.A.  
 10/01/1984 Merge To State First American Bank of New York  
 08/26/1993 Assets Sold To Key Bank of New York  
 12/05/1994 Liquidated

Bankers Trust Company of Hudson Valley, N.A.

1852 Established Fallkill Bank  
 1865 Convert Federal Fallkill National Bank & Trust Co of Poughkeepsie  
 04/01/1966 Convert State Fallkill Bank & Trust Company  
 12/01/1967 Convert Federal Fallkill National Bank and Trust Company  
 02/01/1968 Name Change To State of New York National Bank  
 01/01/1971 Name Change To Bankers Trust Company of Hudson Valley, N.A.  
 04/30/1975 Acquire By Merger Bankers Trust of Rockland County  
 11/01/1982 Merge To State Barclays Bank of New York  
 11/01/1982 Convert Federal Barclays Bank of New York, N.A.

Bankers Trust Company of New York

05/05/1995 NYS Chartered Deutsche Bank Trust Company  
 09/07/1999 Name Change To Bankers Trust Company of New York  
 04/15/2002 Name Change To Deutsche Bank Trust Company New York  
 01/17/2006 Convert Federal Deutsche Bank Trust Company New York

Bankers Trust Company of Rochester

04/13/1970 NYS Chartered Bankers Trust Company of Rochester  
 05/10/1974 Acquire By Merger Briggs Bank of Clyde (1880-5/74)  
 10/29/1976 Merge To State Bankers Trust Company of Western New York  
 04/01/1983 Name Change To Key Bank  
 12/16/1983 Merge To Federal Key Bank of Western New York, N.A.  
 06/01/1991 Merge To Federal Key Bank of Eastern New York, N.A.  
 06/01/1991 Name Change To Key Bank of New York, N.A.  
 06/16/1992 Convert State Key Bank of New York (6/92-8/93)  
 08/26/1993 Merge To State NSA Bank  
 08/26/1993 Name Change To Key Bank of New York  
 01/13/1997 Convert Federal Key Bank, National Association

Bankers Trust Company of Western New York

1903 Established Bank of Jamestown  
 07/01/1931 Acquire By Merger American National Bank of Jamestown  
 07/01/1931 Acquire By Merger Farmers and Mechanics Bank (Jamestown)  
 01/01/1963 Acquire By Merger Clymer State Bank  
 01/01/1971 Name Change To Bankers Trust of Jamestown  
 01/01/1973 Name Change To Bankers Trust Company of Western New York  
 10/29/1976 Acquire By Merger Bankers Trust Company of Rochester  
 04/01/1983 Name Change To Key Bank  
 12/16/1983 Merge To Federal Key Bank of Western New York, N.A.  
 06/01/1991 Merge To Federal Key Bank of Eastern New York, N.A.  
 06/01/1991 Name Change To Key Bank of New York, N.A.  
 06/16/1992 Convert State Key Bank of New York (6/92-8/93)  
 08/26/1993 Merge To State NSA Bank  
 08/26/1993 Name Change To Key Bank of New York  
 01/13/1997 Convert Federal Key Bank, National Association

Bankers Trust of Binghamton

1921 Established Morris Plan Company of Binghamton  
 1934 Name Change To Morris Plan Industrial Bank of Binghamton  
 02/01/1944 Name Change To Industrial Bank of Binghamton, The  
 03/01/1971 Name Change To Bankers Trust of Binghamton  
 06/30/1971 Bank To Trust Co.  
 01/30/1981 Merge To Federal Bankers Trust Company of Albany, N.A.  
 10/01/1984 Merge To State First American Bank of New York  
 08/26/1993 Assets Sold To Key Bank of New York

# State of New York Banking Department

I, **THOMAS ABBALLE**, Deputy Superintendent of Banks of the State of New York,  
**DO HEREBY CERTIFY:**

**THAT**, the records in the Office of the Superintendent of Banks indicate that **DEUTSCHE BANK TRUST COMPANY AMERICAS** is a corporation duly organized and existing under the laws of the State of New York as a trust company, pursuant to Article III of the Banking Law; and

**THAT**, the Organization Certificate of **DEUTSCHE BANK TRUST COMPANY AMERICAS** was filed in the Office of the Superintendent of Banks on March 5, 1903 under the title of **BANKERS TRUST COMPANY**, and such corporation was authorized to commence business on March 24, 1903; and

**THAT**, the following amendments to its Organization Certificate have been filed in the Office of the Superintendent of Banks as of the dates specified:

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on January 14, 1905

Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on August 4, 1909

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on February 1, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on June 17, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on August 8, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on August 8, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on March 21, 1912

Exhibit Q

*State of New York*  
*Banking Department*

*Certificate of Amendment of Certificate of Incorporation providing for a decrease in number of directors - filed on January 15, 1915*

*Certificate of Amendment of Certificate of Incorporation providing for a decrease in number of directors - filed on December 18, 1916*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on April 20, 1917*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on April 20, 1917*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on December 28, 1918*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on December 4, 1919*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed January 15, 1926*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on June 12, 1928*

*Certificate of Amendment of Certificate of Incorporation providing for a change in shares - filed April 4, 1929*

*Certificate of Amendment of Certificate of Incorporation providing for a minimum and maximum number of directors - filed on January 11, 1934*

*Certificate of Extension to perpetual - filed on January 13, 1941*

*Certificate of Amendment of Certificate of Incorporation providing for a minimum and maximum number of directors - filed on January 13, 1941*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on December 11, 1944*

*State of New York*  
*Banking Department*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed January 30, 1953*

*Restated Certificate of Incorporation - filed November 6, 1953*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on April 8, 1955*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on February 1, 1960*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on July 14, 1960*

*Certificate of Amendment of Certificate of Incorporation providing for a change in shares - filed on September 30, 1960*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on January 26, 1962*

*Certificate of Amendment of Certificate of Incorporation providing for a change in shares - filed on September 9, 1963*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on February 7, 1964*

*Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on February 24, 1965*

*Certificate of Amendment of the Organization Certificate providing for a decrease in capital stock - filed January 24, 1967*

*Restated Organization Certificate - filed June 1, 1971*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed October 29, 1976*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 22, 1977*

*State of New York*  
*Banking Department*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed August 5, 1980*

*Restated Organization Certificate - filed July 1, 1982*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 27, 1984*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed September 18, 1986*

*Certificate of Amendment of the Organization Certificate providing for a minimum and maximum number of directors - filed January 22, 1990*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed June 28, 1990*

*Restated Organization Certificate - filed August 20, 1990*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed June 26, 1992*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed March 28, 1994*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed June 23, 1995*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 27, 1995*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed March 21, 1996*

*Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 27, 1996*

*Certificate of Amendment to the Organization Certificate providing for an increase in capital stock - filed June 27, 1997*

*State of New York*  
*Banking Department*

*Certificate of Amendment to the Organization Certificate providing for an increase in capital stock – filed September 26, 1997*

*Certificate of Amendment to the Organization Certificate providing for an increase in capital stock – filed December 29, 1997*

*Certificate of Amendment to the Organization Certificate providing for an increase in capital stock – filed March 26, 1998*

*Certificate of Amendment to the Organization Certificate providing for an increase in capital stock – filed June 23, 1998*

*Restated Organization Certificate - filed August 31, 1998*

*Certificate of Amendment to the Organization Certificate providing for an increase in capital stock – filed September 25, 1998*

*Certificate of Amendment to the Organization Certificate providing for an increase in capital stock – filed December 18, 1998*

*Certificate of Amendment to the Organization Certificate providing for a change in the number of directors – filed September 3, 1999*

*Certificate of Amendment of the Organization Certificate providing for a change of name to **DEUTSCHE BANK TRUST COMPANY AMERICAS** – filed March 14, 2002; and*

*THAT, no amendments to its Restated Organization Certificate have been filed in the office of the Superintendent of Banks except those set forth above; and*

*I DO FURTHER CERTIFY THAT, **DEUTSCHE BANK TRUST COMPANY AMERICAS** is validly existing as a banking organization with its principal office and place of business located at 60 Wall Street, New York, New York.*

*WITNESS, my hand and official seal of the Banking Department at the City of New York, this 11<sup>th</sup> day of March in the Year two thousand and four.*

  
Deputy Superintendent of Banks

# Widow sustains battle against bank

*Bankers Trust misused her wealthy husband's estate, she says.*

By MARY McLACHLIN  
Palm Beach Post Staff Writer

PALM BEACH — Suzanne McCormick is clearly a woman of style, whether stepping along a sidewalk in pearls, pink picture hat and over-the-shoulder picket signs or seated at a Steinway playing a Chopin sonata.

Her crusade against one of the world's financial giants has kept her from the concert stage and the practice hall in recent years.

Her public appearances now consist mainly of marching for her cause, in front of the New York City offices of Deutsche Bank or beneath the royal palms swaying high above the Palm Beach branch.

The name was Bankers Trust, before Deutsche Bank Group bought it for \$10 billion in 1999. For the past decade, McCormick has been telling the world to beware of the institution by any name.

She alleges the bank mis-



LANNIS WATERS/Staff Photographer

Suzanne McCormick, 69, has been picketing Bankers Trust, now under Deutsche Bank, in Palm Beach (above) and New York for nine years.

handled the estate of her late husband, millionaire management consultant, real estate investor and art collector Edmund J. McCormick.

"Don't trust Bankers Trust," say the fliers she hands out. "The McCormick family did and that was a big mistake."

To the bank's consternation, the family sometimes employs the graphic aid of a 12-foot-tall inflatable rat when

picketing the New York offices. Even on the seen-everything sidewalks of Wall Street or 52nd Street, that gets attention.

Deutsche Bank said in a statement that McCormick's allegations are "without merit" and that it would "continue to vigorously defend ourself against any remaining claims."

The bank also emphasized that the McCormick account

See McCORMICK, 5C ▶



# Husband instructed bank to manage, invest money

► **McCORMICK** *from 1C*

originated in New York, not in Palm Beach.

Edmund McCormick died of kidney failure in November 1988. Four months earlier, a statement of his property, stocks, bonds, cash and valuables put their gross value at \$37 million and net at \$24 million.

To his wife, he left \$500,000 and stock in his management company, plus the couple's house in Dobbs Ferry, N.Y., their house in Manalapan and a collection of 19th-century British paintings they had accumulated during nearly 20 years of marriage: all told, about \$4.5 million in cash, real estate and art.

He left \$100,000 to each of his five children from a previous marriage and made a handful of other bequests. Then his will directed the bank, as the institutional executor, to put the rest of the estate in trust, invest and manage the money and use half of the proceeds to give his wife a lifetime income. She also could draw up to \$50,000 a year from the principal.

After she died, everything was to be divided among his children and grandchildren.

## **Estate left with no money**

Suzanne McCormick and her stepchildren have accused Bankers Trust of repeatedly failing its fiduciary duty to protect them and the estate's assets.



BILL INGRAM/Staff Photographer

Suzanne McCormick says the battle over her husband's estate has sapped her music career: 'The talent is there, but not the spirit.' In 2001, Edmund McCormick's children settled with the bank.

The allegations began when the family found out that White & Case, the internationally known Wall Street law firm appointed to represent the estate, was also on retainer to the bank. The firm was paid \$250,000 out of the McCormick money.

Deutsche Bank says White & Case didn't have any conflict of interest because the firm drafted Edmund McCormick's will, and "it is customary to have the firm that drafts the will serve as counsel for the estate." The bank also says all five executors, including Suzanne McCormick, appointed the law firm, but McCormick says the executors never voted.

The family alleged the bank closed a \$1.5 million account four days before Edmund McCormick died, while he was in a coma, with no explanation of who authorized the closure or where the money went. They said the bank liquidated a \$7 million stock portfolio, then used the money to make loans to one of McCormick's sons for unsound real estate deals and did nothing when an employee of the son embezzled \$132,000 from the money.

"Within two years, the estate was insolvent," McCormick said. "They never formed the trust. They just ignored the will. I never received any income."

Deutsche Bank says it's "standard practice to dispose of assets, such as stocks, which are subject to dramatic short-term fluctuation."

The bank said the stock portfolio had to be liquidated to pay taxes and other expenses, and the trust wasn't set up because not enough money was left after everything was paid.

Protests by the McCormicks and other unhappy heirs were relatively minor problems for Bankers Trust during the 1990s.

The bank was fighting far more serious allegations of fraud, cooking its books and helping Enron hide billions of dollars in offshore tax shelters for huge fees.

As the merger with Deutsche Bank was nearing completion in 1999, Bankers Trust pleaded guilty to diverting \$19 million of unclaimed funds into its own coffers and falsifying records to hide it. The bank paid a \$60 million fine to the federal government and \$3.5 million to New York State.

A felon can't be a fiduciary under New York state law, but the bank got around it by creating a new entity to handle its trust business, then getting special dispensation from the state board of parole and the state banking department to stay in business.

The bank was supposed to notify the beneficiaries of all the estates and trusts it held, so they could object if they wanted to, but it didn't notify Suzanne McCormick, according to court documents.

In 2001, Edmund McCormick's children agreed to a confidential settlement with Deutsche Bank and were dropped from the litigation.

"The children were tired," Suzanne McCormick said. "They wanted to settle, and they settled for peanuts."

She acknowledges she is far from an impoverished widow. She says she has paid more than \$600,000 in legal fees and expenses, and knows the costs will go higher. But she vows not to give up her "educational picketing."

"The public ought to be informed about this," she said. "A lot of widows don't know what to do when their husbands die, and they probably try to live on whatever they get. That's why a lot of this is hidden."

Patrick Hanley, a New Yorker who works as investigator and spokesman for McCormick, says the battle over her husband's estate ended her music career.

"She's lost at least 10 years, if not more," Hanley said. "Basically, they want to bleed her, drain her emotionally, physically and materially, and try to destroy her."

McCormick says playing the piano now makes her sad.

"The talent is there, but not the spirit," she said as she and a friend picketed and handed out leaflets in Palm Beach. "I want to succeed at whatever I do, and this is what I do now. I can't stand being walked over."

*Staff researcher Sammy Alzofon contributed to this story.*



Date: 02/13/2009

Suzanne McCormick:

The following is in response to your 02/10/2009 request for delivery information on your Certified Mail(TM) item number 7006 2760 0005 0600 1336. The delivery record shows that this item was delivered on 02/13/2009 at 10:07 AM in NEW YORK, NY 10022. The scanned image of the recipient information is provided below.

Signature of Recipient:

no	Epou Reed
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y	599 62 1 Smith
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

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**Exhibit 3**

tdi Scri

**Departmental Disciplinary Committee  
Supreme Court, Appellate Division  
First Judicial Department  
61 Broadway  
New York, New York 10006**



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**Suzanne Mc Cormick  
231 Clinton Avenue  
Dobbs Ferry, NY 10522**

tal Scri

**Dear Complainant:**

**This acknowledges receipt by the Departmental Disciplinary Committee of a complaint that you have made about an attorney.**

**Due to the large volume of complaints filed in this office, it normally takes us between 30 and 45 days from the postmark date on this card to forward further information to you about the status of your complaint.**

**Thank you for your patience.**

**Very truly yours,**

**Office of the Chief Counsel**

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JOSEPH J. HESTER  
ROBERTA N. KOLAR  
JUN HWA LEE  
VITALY LIPKANSKY  
STEPHEN P. MCGOLDRICK  
KEVIN E.F. O'SULLIVAN  
ELISABETH A. PALLADINO  
KIM PETERSEN  
ORLANDO REYES  
ANN E. SCHERZER  
EILEEN J. SHIELDS  
SCOTT D. SMITH  
STAFF COUNSEL

March 25, 2010

PERSONAL AND CONFIDENTIAL

Suzanne McCormick  
231 Clinton Avenue  
Dobbs Ferry, NY 10522

Re: Matter of Peter D. Raymond, Esq.  
Docket No. 2009.2870

Dear Ms. McCormick:

The Departmental Disciplinary Committee has completed its investigation of your complaint against the above-referenced attorney. As explained below, the Committee has decided to take no further action.

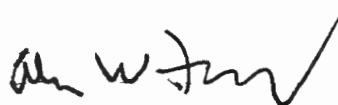
Specifically, we have reviewed your complaint against the above-referenced attorney and have concluded there is an insufficient basis upon which to pursue further investigation. In particular, the above-attorney no longer represented you after February 2001. The attorney's alleged failure to respond to your letter of February 8, 2009 does not rise to the level of professional misconduct. We note that the attorney's prior law firm commenced legal action against you in 2002 seeking payment of legal fees and summary judgment was granted in the firm's favor in 2005. Lastly, our records do not reflect any prior disciplinary complaints from you to the Committee.

The Committee arrived at this determination after the case was submitted to a member of the Committee, an independent board of lawyers and non-lawyers appointed by the Appellate Division, First Judicial Department. The Committee member concluded that no further investigation or action was warranted.

Matter of Peter D. Raymond, Esq.  
Docket No. 2009.2870

You may seek review of this decision by submitting a written request for reconsideration to this office at the above address within thirty (30) days of the date on this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alan W. Friedberg", with a large checkmark-like flourish at the end.

Alan W. Friedberg

AWF:SKC:eh

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SUPREME COURT, APPELLATE DIVISION  
FIRST DEPARTMENT  
DEPARTMENTAL DISCIPLINARY COMMITTEE  
61 BROADWAY  
New York, New York 10006

PERSONAL & CONFIDENTIAL

FIRST CLASS



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STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO  
Attorney General

PUBLIC INTEGRITY BUREAU

December 10, 2009

Ms. Suzanne McCormick  
231 Clinton Avenue  
Dobbs Ferry, New York 10522

RE: Complaint # 09-2451

Dear Ms. McCormick:

On behalf of Attorney General Andrew M. Cuomo, I thank you for the information you provided to the Public Integrity Bureau in your complaint dated November 4, 2009.

The Public Integrity Bureau seeks to vindicate the public's interest in honest government. When government actors, or private individuals acting in concert with them, engage in corrupt, fraudulent, or other illegal behavior in the course of their public duties, the Public Integrity Bureau may investigate or take enforcement action. The Public Integrity Bureau receives thousands of complaints each year. Due to the high volume of complaints, the limits of our resources, and the constraints of our jurisdiction, the Bureau cannot act on or otherwise investigate every complaint.

We will review your correspondence closely to evaluate whether sufficient basis exists for action by the Attorney General. If we need any additional information, we will contact you. In the meantime, if you obtain any additional relevant information, please do not hesitate to send it to us at the address below referencing the complaint number listed above.

Please be advised that this Office does not provide legal opinions nor represent individuals. If you believe that you may have an individual claim, you may wish to consult a private attorney. Your local bar association provides attorney referrals. ***Please note: The complaint you have filed with this Office has no effect on any statute of limitations filing deadlines that might apply to your claim.*** By filing a complaint with this Office, you have not initiated a lawsuit or a proceeding, nor has this Office initiated a lawsuit or a proceeding on your behalf.

Thank you again for bringing this matter to our attention.

Very truly yours,

Rachel S. Pauley  
Confidential Assistant for Legal Matters  
Public Integrity Bureau


RSP/gb



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 BROADWAY  
NEW YORK, NY 10271-0332

FIRST CLASS



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Ms. Suzanne McCormick  
231 Clinton Avenue  
Dobbs Ferry, New York 10522

RE: Complaint # 09-245

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