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The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U. S. House of Representatives
2322 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Dingell:

Your concern for illegal tying practices and your letter of October 20, 2003 to Chairman Greenspan and Comptroller Hawke concerning Bank Tying are relevant to our situation on a real estate bank loan made in October 2000 with Summit Bank, now Fleet Bank since 2001, and soon to be Bank of America.

Our real estate construction loan imposed tying arrangements to derivative and T-Rate locks despite our objections. In August through October 2000, we were of the opinion that these products did not make good business sense. Our limited business experiences at that time and news forecasts were indicating that interest rates which had already risen would not go much higher before going lower. We had started building construction in May 2000 with our own funds with the Bank's knowledge and their verbal commitment to fund the project at $10.0 million. We also had other business relations with Summit. They were financing commercial banking with a related engineering company, and were committed to funding an internal buyout for the engineering firm. In October 2000, with $350,000 recently funded out of pocket, and substantial additional monies due to contractors, we could no longer continue to object to the terms mandated by Summit. Also, it was no longer realistic to start negotiations with other banks.

In 2000, the derivative products and the T-Rate Locks mandated by Summit were available through McDonald Investments and Key Bank. We have since learned there was a joint venture agreement among the three parties. The situation was further complicated when Fleet Bank purchased Summit in early 2001. The agreement among Summit, McDonald Investments and Key Bank was terminated. Fleet brought the derivative and T-Bill Lock transactions in-house.

In late 2001 it became evident to us that the derivative product was flawed. The Notional Amounts do not coincide with the Construction Loan advances. With $7.0 million of the $10.0 million construction loan advanced, Fleet Bank was withdrawing payments for $9.7 million on the derivative product despite our objections.

The T-Bill Lock was for 6.65% on 10 year Treasury Bills in October 2003. This turns out to be 2.25% above market rate. Although mandated to protect the Bank, this product is financially flawed. Summit indicated in 2000 that this product would enable them to make a mini-perm loan in the event that there was no real estate lending market in October 2003, as was the case in the mid 1990's. The Bank would be able to loan us monies based on the T-Bill Lock.

The T-Bill Lock turns out not to be a rate lock, but a one time payment of significant monies, $1.0 to 1.5 million. For the Bank to loan us these additional monies with affordable payments, they would have to charge us a very low rate which they are now not willing to do.

It has also come to our attention through discussions with Fleet Bank, that when they foresaw the problem this loan was getting into, the Bank may have purchased "bottom hedges" or "offsets" to protect their position. They neglected to inform us, their customer, of this growing problem or the partial solution. They now claim any such "offset" or "bottom hedge" on their part has nothing to do with our loan or the monies they claim are now due. Thus, this mandated tying arrangement puts them in a position to benefit from a declining interest rate at the expense of their customer.

Prior to this unfortunate incident, which we believe to be a violation of Section 106 of the Bank Holding Company Act, we treated our bank with trust. Their input and decisions on our bank borrowing were taken to be in our best interest, which in turn would be in the bank's best interest.

Since dealing with Fleet Bank's Managed Asset Division we have come to learn this is no longer the case. They contend they have no responsibility for this situation, although they or their predecessor were the author. If they protected the Bank's position with "offsets" or "bottom hedges", that does not impact their financial demands on us. Now this matter is in litigation.

As your staff is aware, I have come to meet Mr. R. S. Tare who had a similar tying arrangement with Summit mandating a minimum stock portfolio be maintained with a related entity. With the major decline in the Stock Market, this led to his personal financial ruin.

In thinking about this situation over the last year, a past Court decision in the Proctor and Gamble Case on derivatives seems appropriate. If Banks do mandate financial products on their customers, they should be financially liable for the outcome. Thus, the product must be beneficial to their Client and, in turn them, the Client's Bank. There is a real need to be able to conduct banking business in a spirit of trust not "buyers beware" or in this case "borrowers beware".

Imposing a financial liability on the bank for their mandated investments would compel them to monitor the financial markets both for their client and themselves, and incline or force them to change their mandate when economic conditions warrant.

I commend your inquiries into these matters. Your concern for maintaining fair competition can be reinforced with concern for the borrower, who can become the victim of banking excesses based on maximizing fees and not good business sense.

We are available to discuss this matter in more detail with you and your staff.

Very truly yours,

Bernard Langan

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