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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CERTIFICATION FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

TRAVELERS CASUALTY AND SURETY COMPANY, National Association,

Plaintiff,

v.

WASHINGTON TRUST BANK,

Defendant.

AMENDED
DEFENDANT WASHINGTON TRUST BANK'S
RESPONSE BRIEF ON CERTIFIED QUESTIONS

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 ORIGINAL

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I. INTRODUCTION

This case is about an insurance company's attempt to recoup money it paid to its insured, Skils'Kin, in connection with an embezzlement scheme perpetuated by its employee for more than 4.5 years. The U.C.C. contemplates sophisticated commercial businesses like Skils'Kin will obtain insurance for the type of fraud that occurred here, but after it paid Skils'Kin's claim, the insurer, Travelers Casualty and Surety Company ("Travelers"), brought this action attempting to shift its loss to Washington Trust Bank ("WTB").

Skils'Kin serves thousands of clients. Skils'Kin's employee, Shannon Patterson, was able to cover up her embezzlement scheme for years as a consequence of the Skils'Kin's inadequate internal controls and lack of financial oversight. Skils'Kin knew about these problems and was warned about them by its auditor. Skils'Kin cloaked Patterson with full financial authority and then failed to properly review its banking statements, which would have allowed it to catch the ongoing fraud. The facts surrounding the embezzlement are certainly tragic; Ms. Patterson's drug addiction, her ultimate suicide, and the embezzlement of money from her employer who is entrusted to protect some of the most vulnerable people in our society are awful things to consider. However, Travelers provided insurance in this matter – exactly as its policy required and exactly as envisioned by the public policy underlying the U.C.C. While the facts are tragic, this matter is now about insurance proceeds – not Skils'Kin or its clients. The Washington U.C.C. places the risk on Travelers, not on the Bank, in these circumstances.

II. STANDARD OF REVIEW

Certified questions are matters of law reviewed de novo and in light of

the record certified by the federal court. *Saucedo v. John Hancock Life & Health Ins. Co.*, __ P.3d __, 2016 WL 852459, at *2 (Wash. 2016) (citing *Carlsen v. Global Client Solutions, LLC*, 171 Wn.2d 486, 493, 256 P.3d 321 (2011)). RCW § 2.60.020 (2015) authorizes this court to accept certified questions from federal courts. *Carlsen*, 171 Wn.2d at 493.

III. STATEMENT OF THE CASE¹

A. Skills’Kin is an agent for and authorized to receive, manage, and spend Social Security benefits for and on behalf of its clients deemed incapable to manage their own funds.

Skills’Kin is a Washington corporation that is paid by the Social Security Administration to act as a Corporate “Representative Payee” and manage the Social Security benefits of persons deemed incapable of managing their own funds.² The Representative Payee Program (“Program”) is a Social Security Insurance (“SSI”) benefit distribution and management service created and regulated by the federal Social Security Administration (“Administration”).³ A SSI beneficiary who is deemed unable to manage his or her own finances by the Administration is required to use a Representative Payee as a condition of receiving SSI benefits.⁴ By accepting SSI funding through the Program, beneficiaries make the representative their agent with power to receive, manage, and spend SSI benefits.⁵

¹ WTB’s citations are to the pleading filing numbers, identified as “ECF No. X at Z) where X is the pleading number and Z is the page number of the pleading. The pleadings were consecutively paginated in accord with the Local Rules for the Eastern District of Washington so the page number reference in the citations in this brief always refers to the consecutive pagination at the bottom of the document. If a reference is made to a paragraph (instead of a page) the reference is detailed with a ¶ symbol.

² ECF No. 69 at ¶¶ 4; 5; 6.

³ 20 C.F.R. Ch. III, Pt. 416, Subpt. F; *see* ECF Nos. 107; 123 at ¶ 3 showing this is undisputed.

⁴ 20 C.F.R. § 416 *et seq.*; *see* ECF Nos. 107; 123 at ¶ 4 showing this is undisputed.

⁵ 20 C.F.R. § 416.640; ECF Nos. 69 at 2; 91 at ¶ 3; 91-1 at 10-12; 107 at 1-2.

Under the terms of the Program, Skils'Kin agrees to act as agent for its clients.⁶ Skils'Kin is further authorized to act by the beneficiaries themselves who sign an agreement specifically acknowledging and appointing Skils'Kin, and its employees, to serve as their agent and Representative Payee.⁷ Skils'Kin manages monthly income and living expenses of at least 1,000 clients for whom Skils'Kin acts as Representative Payee.⁸

B. Skils'Kin maintained a Pooled Account at Washington Trust Bank for Skils'Kin's clients.

Corporate Representative Payees like Skils'Kin are authorized under the Program to open a pooled account under the Corporate Representative Payee's name and direct all the Social Security funds for all of its clients into a pooled account; Skils'Kin opened a pooled account at WTB to manage the funds as allowed by the Program.⁹ During the relevant time period (2010 – 2013) the account number for that single account had three different account numbers (“the Pooled Account.”)¹⁰

C. Skils'Kin entrusted Shannon Patterson, its employee and agent, to manage its clients' financials and its Pooled Account.

Shannon Patterson (“Patterson”) began working for Skils'Kin in 2001 in the Payee Services Department, and then in January 2004 was promoted to Payee Services Coordinator and was a signatory on the Pooled Account.¹¹ She was promoted again to Payee Services Supervisor and, in this role, had full

⁶ ECF Nos. 91 at ¶ 3; 91-1 at 10-16.

⁷ See ECF No. 69 at ¶ 7. (“I authorize *SKILS' KIN Staff* to act as agent/payee on my behalf . . .”) ECF Nos. 91 at ¶ 3; 91-1 at 10-16).

⁸ ECF No. 91-5; see, e.g., ECF No. 91-1 at 10-16.

⁹ ECF Nos. 90 at ¶¶ 4-5; 90-1.

¹⁰ ECF Nos. 69 at ¶ 8; ECF No. 90 at ¶¶ 4-5; ECF No. 90-1.

¹¹ ECF Nos. 91 at ¶¶ 7-9; 91-5 at 32; 91-6 at 36-37; 91-7 at 45-46.

access rights in Skils'Kin's accounting software used to maintain its client records, and was responsible for supervising employees in the Spokane office.¹² Patterson was promoted to Director of Payee Services in March 2010.¹³

In addition to supervisory responsibilities, Patterson was responsible for a group of clients for whom she would monitor finances, input transactions into the accounting software, and print and sign checks to pay their bills.¹⁴ Skils'Kin also provided Patterson with full access rights to its QuickBooks software (until October 2012), as well as the ability to create and print checks, in addition to the ability to edit, post, and delete transactions.¹⁵ Throughout her employment with Skils'Kin as Supervisor and Manager, Patterson at all times remained a signatory on the Pooled Account at WTB and signed checks using a signature stamp.¹⁶

D. Skils'Kin agreed its Pooled Account would be governed by a contract under which Skils'Kin promised to report forgeries, unauthorized signatures, and other errors to WTB.

When it opened its Pooled Account with WTB, Skils'Kin agreed that it would be governed by the account Terms & Conditions and by the Deposit Account Agreement for Business Customers.¹⁷ Patterson signed all of these contracts with WTB on behalf of Skils'Kin.¹⁸ These contracts required

¹² ECF Nos. 91 at ¶¶ 7-9; 91-5 at 31-32; 91-6 at 36-37; 91-7 at 43-45.

¹³ ECF Nos. 91 at ¶¶ 7-9; 91-5 at 32; 91-6 at 36; 91-7 at 45.

¹⁴ ECF Nos. 91 at ¶ 9; 91-7 at 45; 107 at #19; 20 C.F.R. § 416.640.

¹⁵ ECF Nos. 91 at ¶ 7; 91-5 at 32-33.

¹⁶ ECF Nos. 69 at ¶ 8; 91 at ¶¶ 7, 9; 91-5 at 32; 91-7 at 47-49.

¹⁷ ECF Nos. 90 at ¶¶ 5-6; 90-1; 90-2.

¹⁸ *See id.*

Skils'Kin to promptly examine and report to WTB all its monthly statements for unauthorized withdrawals.¹⁹

E. Skils'Kin expressly cloaked Patterson with actual and apparent authority to make agreements on its behalf, indorse checks for the payment of money, and to make withdrawals.

On October 1, 2009, Skils'Kin executed and presented to WTB a corporate Board resolution by Skils'Kin providing broad powers to Shannon Patterson,²⁰ which stated, in part:

(4) Any of the persons named below, so long as they act in a representative capacity as agents of this corporation, **are authorized to make any and all other contracts, agreements, stipulations and orders which they may deems advisable for the effective exercise of the powers indicated below**, from time to time with this Financial Institution, concerning funds deposited in this Financial Institution subject to any restrictions stated below.²¹

The “powers indicated below” in the Resolution expressly authorized Patterson, via her regular signature and her stamped signature, to “open any deposit or checking account(s) in the name of [Skils'Kin]” and “endorse checks and orders for the payment of money and withdraw funds on deposit” with WTB.²² The Resolution gave these powers equally to Patterson, and to the CEO and Executive Director of Skils'Kin.²³

Under the Resolution, Patterson could have withdrawn all of the funds directly from the Pooled Account if she had wanted. The Terms and

¹⁹ ECF No. 90-1 at 24, 29, 31.

²⁰ ECF No. 90 at ¶ 9; No. 90-3 at 47.

²¹ ECF No. 90 at ¶ 9; 90-3 at 47 (emphasis added).

²² ECF No. 90-3 at 47.

²³ *Id.*

Conditions contract governing the Pooled Account also gave this authority to Patterson. Specifically, it says:

Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs in the space designated for signatures on the signature card **may withdraw or transfer all of any part of the account balance at any time**. Each of you (until we receive written notice to the contrary) **authorizes each other person signing the signature card to indorse any item payable to you or your order for deposit to this account or any other transaction with us.**²⁴

There is no dispute that Patterson was one of the signers on the Pooled Account signature cards.²⁵ Skils'Kin never provided any notice to WTB that it was revoking Patterson's authority it granted her under the Resolution or the terms of the contracts governing Skils'Kin's accounts at WTB until after Patterson's death.²⁶

1. **Patterson exercised the actual authority that Skils'Kin granted her to withdraw funds for its clients and indorse checks on their behalf as Representative Payee.**

Patterson drew checks to payees against the Pooled Account; there is no dispute that she was authorized to draw and sign these checks on behalf of the drawer, Skils'Kin.²⁷ Beginning in 2010 or earlier, Patterson began presenting (to one WTB branch) checks written to Skils'Kin's clients for whom Skils'Kin was acting as Representative Payee; though she was not the named payee on these checks, she received cash over-the-counter and signed the back of the checks in her name.²⁸ Patterson embezzled some or all of the

²⁴ ECF No. 90-1 at 24, 29, 31; *see also* ECF No. 90 at ¶ 5 (emphasis added).

²⁵ ECF Nos. 90-1; 90-2; *see also* ECF No. 90 at ¶¶ 5-6.

²⁶ *See* ECF Nos. 90 at ¶ 9; 90-3.

²⁷ ECF No. 69 ¶ 9.

²⁸ ECF No. 69 ¶ 8-14.

cash received in the transactions, but it is unknown what amounts Patterson gave the named payees because Skils'Kin never interviewed any client to learn if Patterson had delivered the cash to them.²⁹

At Skils'Kin's request, WTB employees cashed the checks believing that Patterson was authorized to cash checks for Skils'Kin's incapacitated clients who were purportedly unable to come into the WTB themselves for various reasons.³⁰ There was a general understanding among tellers at the WTB branch that Patterson had authority to engage in the check-cashing transactions at issue on behalf of Skils'Kin, the Representative Payee for each client; the tellers understood this agreement had been reached between Patterson and WTB Branch Manager Debbie Carlson.³¹ Patterson continued cashing checks under this arrangement from 2008 until shortly before her death in February 2013.³² At no time during that period did Skils'Kin ever tell WTB that there was any problem.³³

Some of these checks are at issue in this lawsuit (the "Checks").³⁴ All of the Checks were drawn from the Pooled Account and signed by Patterson on the front as an authorized signer of Skils'Kin, the maker/drawer of the Checks.³⁵ Some of the Checks cashed by Patterson were made payable by her to payees who were clients of Skils'Kin.³⁶ Other Checks cashed by Patterson

²⁹ ECF No. 91-10 at 74-75.

³⁰ ECF Nos. 69 at ¶¶ 13, 14; 91 at ¶¶ 15-18; 91-13 at 114-118; 91-14 at 127-131; 91-15 at 140-142; 91-16 at 149-150; 91-18 at 166.

³¹ *Id.*

³² ECF Nos. 91 at ¶ 18; 91-6 at 37-38; 91-7 at 43.

³³ ECF No. 90 at ¶¶ 16-18.

³⁴ ECF No. 69 at ¶ 9-12.

³⁵ ECF No. 69 at ¶ 9.

³⁶ *See, e.g.*, ECF No. 42 at ¶ 8.

were made payable by her to payees who were not clients of Skils'Kin, but WTB was not aware of that fact.³⁷ Patterson also cashed checks that she made payable to "cash."³⁸ Travelers has never claimed that WTB did anything wrong in paying checks to Patterson made payable to "cash."³⁹ In every instance, however, each check Patterson presented and cashed was issued by Skils'Kin and signed by Patterson as authorized signer for the issuer, Skils'Kin.⁴⁰ WTB permitted Patterson to present and cash the Checks provided she indorse the back.⁴¹

2. Patterson never dealt with WTB in any capacity other than as Skils'Kin's agent.

WTB always understood Patterson was dealing with it on behalf of Skils'Kin.⁴² Patterson had no personal account at WTB and never transacted any personal business with WTB.⁴³ WTB dealt with Shannon Patterson only in her capacity as a Skils'Kin employee and authorized representative and agent of Skils'Kin.⁴⁴

F. Skils'Kin received paper statements with images of the checks clearing the Pooled Account each month, and Skils'Kin also had 24-hour online access to its statements and images of both the fronts and backs of each check.

Each month, WTB furnished Skils'Kin with a paper statement for the

³⁷ ECF Nos. 91 at ¶ 9; 91-7 at 47-49.

³⁸ ECF Nos. 91 at ¶ 9; 91-7 at 47. Travelers did not assert its properly payable claim for these checks. *See* ECF, No. 42.

³⁹ *See* ECF, No. 42

⁴⁰ ECF No. 69 at #9.

⁴¹ ECF No. 69 at #12.

⁴² ECF Nos. 90 at ¶ 10; 91 at 15-17; 91-13 at 117-119; 91-14 at 130-131; 91-15 at 140-141.

⁴³ ECF No. 90 at ¶ 10.

⁴⁴ *See id.*

Pooled Account.⁴⁵ Each statement contained a legend stating that:

The bank is released from liability or claim of loss except when the depositor has reported a discrepancy or irregularity in connection with the account within 30 days from the date of statement in which the discrepancy occurred....⁴⁶

Each monthly statement WTB sent Skils'Kin contained a legend in the top right corner of the first page, which read: "For assistance, call: PRIORITY SERVICE 1-800-788-4578."⁴⁷ Any customer could call that number and request copies of cancelled checks drawn on their account.⁴⁸

Skils'Kin's monthly statements identified checks drawn upon and cleared through the Pooled Account in the month preceding that statement, in a list reciting the number of the check, the date it cleared, and the amount of the check.⁴⁹ Each statement contained images displaying the front side of each check identified and listed in the statement; the image for each check showed the date, amount, name of payee, Shannon Patterson's signature as authorized signer for Skils'Kin as the maker of every check, and a memo line on which Patterson entered information about the purpose of the check.⁵⁰ Skils'Kin admitted that it never, examined the backs of the checks to look for improper or unauthorized indorsements as part of its reconciliation process.⁵¹ Although Skils'Kin could have told from the entries on the memo lines on the front of the checks that something was amiss, if it had looked.⁵²

⁴⁵ See, e.g., ECF Nos. 90 ¶¶ 11, 13; 90-1 at 73; 91-11 at 86.

⁴⁶ ECF Nos. 190 at ¶¶ 11-13; 90-1.

⁴⁷ ECF No. 90 at ¶ 13.

⁴⁸ ECF No. 90 at ¶ 13; see also ECF No. 123 at 29.

⁴⁹ See ECF No. 90 at ¶¶ 11-13.

⁵⁰ See ECF Nos. 90 at ¶ 12; 91 at 92.

⁵¹ ECF No. 91 at ¶ 13; 91-11 at 93.

⁵² ECF Nos. 91 ¶¶ 13, 19; 91-11 at 94-96; 91-17 at 154-155, 158, 161; 90 at ¶ 18; 90-6.

In addition to the monthly paper statements, beginning in January 2001, Skils'Kin requested and WTB provided 24-hour online access to Skils'Kin's Pooled Account.⁵³ Through this online access, Skils'Kin had access to virtual statements as well as images of both the front and back of every check that cleared the Pooled Account.⁵⁴ Patterson was one of two employees at Skils'Kin who had the ability to see copies of the checks and virtual statements online, and run reports showing information about the account daily activities.⁵⁵

Skils'Kin affirmatively subscribed to WTB's online service by activating 24-hour online access through two separate WTB programs: Positive Pay and e-Business Express.⁵⁶ Skils'Kin expressly subscribed to these programs pursuant to the Master Commercial Services Agreement ("Master Agreement") and the Commercial Services and Accounts Addendum ("Addendum") dated January 21, 2011, executed by Patterson, on behalf of Skils'Kin.⁵⁷ The Positive Pay system is a service provided by WTB to Skils'Kin providing 24-hour online access to images of complete copies of the front and back of each check that cleared Skils'Kin's pooled account.⁵⁸ eBusiness Express is a service facilitating access to electronic copies of monthly account statements.⁵⁹ Skils'Kin continued to receive paper copies of

⁵³ ECF Nos. 90 at ¶¶ 6-8; 90-2; 91-8 at 56-57, 61, and generally pages 57-62; 91-10 at 6; 110-3 at ¶ 8.

⁵⁴ *Id.*

⁵⁵ ECF No. 91-8 at 59, 61.

⁵⁶ ECF Nos. 90 at ¶¶ 6-8; 90-2; 91-8 at 56-57, 61, and generally pages 57-62.

⁵⁷ ECF Nos. 90 at ¶ 6; 90-1.

⁵⁸ ECF No. 90 at ¶¶ 6-7.

⁵⁹ ECF No. 90 at ¶ 8.

the monthly account statements (and imaged front copies of items) in addition to the online access.

G. Skils’Kin lacked adequate financial oversight, and failed to rectify the inadequacies in its internal controls and business practices, despite repeated warnings from its auditor.

In January 2012, Skils’Kin’s auditor, Moss Adams, sent Skils’Kin a warning about its Social Security Payee Accounts; specifically, Moss Adams “found there were limited controls over the Social Security Payee accounts during [its] review of controls” and expressed concern about the fact that “one person [Shannon Patterson] has the ability to write checks with minimal oversight.”⁶⁰ Moss Adams recommended Skils’Kin “implement controls that will create segregation of duties in this area” and, importantly, suggested that Skils’Kin ask its clients “who receive checks made out to them [to] sign for the checks when they pick them up.”⁶¹

Despite Moss Adams’ audit warning in 2012, Skils’Kin did nothing, and consequently it received another warning letter the following year in January 2013, noting a “significant deficiency” in Skils’Kin’s internal controls, which it defined as “a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.”⁶² Moss Adams reiterated the same recommendations as the previous year, noting that although it warned

⁶⁰ ECF Nos. 91 at ¶ 5; 91-3 at 24. It is undisputed that Moss Adams referred to Patterson because she is the only person to whom it could have been referring. ECF Nos. 91 at ¶ 14; 91-12 at 104.

⁶¹ ECF Nos. 91 at ¶ 5; 91-3 at 24.

⁶² ECF No. 91 at ¶ 6; 91-4.

Skils'Kin of its inadequate control and oversight the prior year, "management had not made changes."⁶³

Skils'Kin finally learned of Patterson's embezzlement scheme only after Patterson committed suicide on February 12, 2013, because she left a message telling Skils'Kin where to look.⁶⁴ Patterson's text message also disclosed she had a prescription pill habit.⁶⁵ Skils'Kin officials met with WTB officials the day after Patterson's death, at which time Skils'Kin "discovered several recent checks that were self-endorsed by Shannon and cashed at the Indiana Branch."⁶⁶ Skils'Kin later discovered 280 checks totaling \$510,000 that were self-endorsed and cashed at the Indian branch of WTB from August 2010 through February 8, 2013.⁶⁷

H. Skils'Kin waited more than 60 days to disclose to WTB the existence of unauthorized payments.

By letter dated March 1, 2013, Skils'Kin first put WTB on notice of its assertion that WTB had improperly paid for lack of proper indorsement by the named payee the checks that Patterson cashed.⁶⁸ The letter only referenced two checks that cleared on February 8, 2013 and October 3, 2012.⁶⁹ WTB did not receive any other notice from Skils'Kin (before the lawsuit was filed in December 2013) that identified checks it believed were improperly paid from the Pooled Account.⁷⁰ After this lawsuit was filed, WTB received a

⁶³ *Id.*

⁶⁴ ECF Nos. 69 at ¶ 15; 91 at ¶¶ 7, 14; 91-5 at 34; 91-12 at 105-107.

⁶⁵ ECF No. 91 at ¶ 19; 91-17 at 154

⁶⁶ ECF No. 91 at ¶ 7; 91-5 at 34.

⁶⁷ *Id.*

⁶⁸ ECF Nos. 90 at ¶ 16; 90-5 at 51-53.

⁶⁹ *Id.*

⁷⁰ ECF No. 90 at ¶ 17.

spreadsheet in the discovery process on February 18, 2014, which Travelers claimed identified all of the “checks at issue.”⁷¹ All of these Checks (except one of the two included with the letter of March 1, 2013) were on account statements given to Skills’Kin more than 60 days before WTB was told the checks were allegedly improperly paid.⁷²

IV. CERTIFIED QUESTIONS

The Eastern District of Washington certified the following questions for the Washington Supreme Court:

1. When a check (i) is presented for payment, (ii) bears no signature in the name of the payee on the back, and (iii) the drawee/payor bank pays the check over the counter, in cash, to an individual who is not the payee but who is an authorized signer on the account and who signs the back of the check in her own name, is the signature on the back of the check an “unauthorized signature,” “alteration,” or “unauthorized indorsement” as a matter of law imposing on the customer the notice requirements of RCW 62A.4-406(f)?
2. If the Answer to Question #1 is “Yes”, does providing a bank customer with a listing of the front of the checks and electronic access to images of the front and back of the checks via online banking make the “statement of account” and “items” reasonably available as required by 4-406(a)?
3. Does a bank fail to exercise ordinary care as a matter of law if it pays a check to a person other than the payee when the check contains no indorsement in the name of the payee?

V. SUMMARY OF THE ARGUMENT

The District Court for the Eastern District of Washington (“EDWA”) issued an order recognizing there are disputed issues of fact surrounding the proper payment of the checks at issue in this lawsuit – including the actual and apparent authority of Patterson as agent for both Skills’Kin and Skills’Kin’s

⁷¹ ECF Nos. 90 at ¶ 18; 90-6.

⁷² ECF Nos. 90 ¶¶ 16-18; 90-5; 90-6.

clients. Ignoring the EDWA, Travelers spends a significant portion of its brief arguing the checks at issue were not properly payable under RCW 62A.4-401, yet that issue is not before this Court on certification. Rather, the EDWA seeks guidance on sections of the Washington version of the U.C.C. that would potentially dispose of this case short of a trial.

RCW 62A.4-406(f) acts as a prerequisite to filing a lawsuit by a customer against its bank when the bank complies with the safe-harbor account statement requirements of RCW 62A.4-406(a). The EDWA asks this Court to assume (for the sake of the certification) that the checks at issue were not properly payable. This is a sensible approach under the circumstances because if the items were properly payable under RCW 62A.4-401, there would be no need to address the 4-406(f) affirmative defenses at issue. It is undisputed that Travelers, through its insured, failed to provide the required notice to WTB under 4-406(f). Therefore, the second certification question asks whether WTB complied with the requirements of 4-406(a) (the “statement rule”), which provides a “safe-harbor” to a bank when it provides an account statement to its customer. A bank is entitled to the safe harbor when it provides its customer with a statement describing each item paid by “item number, amount, and date of payment.” RCW 62A.4-406(a). This triggers the customer’s duties under 4-406(f) to review and report errors in a timely manner. There can be no dispute that WTB provided statements (both in paper form and electronically) that met the safe harbor requirements. WTB was not required to return copies of the items paid, but it did that too.

Travelers knows its failure to comply with 4-406(f) is fatal to its claim. It amended its original complaint to remove its factual admission that Patterson

indorsed the back of the checks, but Travelers' new and crafty pleading does not make it immune to the affirmative defense available under the statute. It asks this Court to make a tortured analysis of the law and facts and ignore the signature on the checks. Ultimately, the answer to the first certified question is that Patterson's signature is an unauthorized indorsement and/or an unauthorized signature (either for the purposes of presentment or as a receipt for the cash), imposing on Travelers the notice requirements of 4-406(f). Despite Travelers' creative theory, it cannot prove the items were improperly paid unless Patterson's signature was unauthorized, which necessarily imposes the notice requirements of 4-406(f).

Finally, the EDWA asks this Court to provide guidance regarding "ordinary care" and whether a bank fails to exercise ordinary care as a matter of law when it pays an item indorsed in a name other than the name of the payee. This analysis only applies after the application of 4-406(f), which applies "without regard to care or lack of care." Here, Patterson's signature was an unauthorized indorsement and/or unauthorized signature, and under the plain reading of the statute the § 4-406(f) statutory bar is not affected by any duty of ordinary care. The duty of ordinary care question applies only to payment of items identified within the 4-406(f) notice period, and only then with respect to unauthorized signatures and alterations.

As to those items, RCW 62A.4-406(c) – (e) enact a comparative fault regime based on the concept of ordinary care by both the customer and the bank. U.C.C. Articles 3 and 4 provide a myriad of instances when an item is properly payable without an indorsement in the name of the payee, including agents of the payee, accommodation indorsements, presentment indorsements,

and anomalous indorsements. The fact an item is paid with an indorsement in the name other than the payee cannot be decided as a matter of law without eviscerating multiple sections of Articles 3 and 4. Where there are issues of agency with Patterson as an employee and representative payee, a decision as a matter of law would be inappropriate.

VI. ARGUMENT

A. **WTB complied with the safe harbor account statement requirements of RCW 62A.4-406(a) by providing Skills'Kin with monthly statements and copies of checks drawn on its account.**

1. **Washington's statement rule is a safe harbor for banks.**

Washington's statement rule, RCW 62A.4-406(a), provides a safe harbor when banks comply with the requirements of the statute, which says:

A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section. (emphasis added).

The statement rule provides alternate means of compliance. A bank does not have to return copies of any of the checks paid. A bank satisfies the rule if the statement identifies the checks by item number, amount and date of payment, and provides a phone number where a customer can request copies of the checks. *Id.* Alternatively, a bank can comply with the statement rule by providing copies of the checks drawn on the account. WTB did both.

2. **WTB complied with the statement rule by providing**

statements with a phone number Skils'Kin could call.

There is no dispute that WTB mailed Skils'Kin monthly statements. (ECF Nos. 90 ¶¶ 11, 13; 90-1 at 73; 91-11 at 86). Each printed statement listed all checks that had cleared the previous month by check number, date, and dollar amount. (*See supra*, n.49). This is sufficient to satisfy WTB's requirements under the statute because the statements also included a telephone number that the customer could call to request copies of cancelled checks. ECF No. 90 at ¶13; ECF No. 123 at 29. WTB was not required to return the checks to Skils'Kin. *See* § 4-406(a) and U.C.C. § 4-406 cmt.1 ("The customer's duties [to review and report errors in a timely manner] are triggered if the bank sends a statement of account complying with the safe harbor rule without returning the paid items."). The safe harbor serves to permit a bank, based on the state of existing technology, to trigger the customer's duties to review its statements without the bank having to return the paid items. U.C.C. § 4-406 cmt. 1.

3. WTB satisfied the statement rule by mailing Skils'Kin monthly statements with copies of the front of all cleared checks.

WTB separately complied with RCW 62A.4-406(a) by providing Skils'Kin with "copies of the items paid" in that WTB sent Skils'Kin printed statements with images of the face of all checks paid on the Pooled Account. *See supra*, n.50). *See, e.g., Redland Co., Inc. v. Bank of Am. Corp.*, 568 F.3d 1232 (11th Cir. 2009) (statements and copies of only check fronts were "more than enough" triggering the customer's duty to report); *Ownbey Enters., Inc. v. Wachovia Bank, N.A.* 457 F. Supp. 2d 1341 (D. Ga. 2006) (applying § 4-

406(f) bar, even though bank provided reduced images of only the front of the checks, where a customer could obtain copies of both front and back).

4. Skils’Kin voluntarily elected to use WTB’s 24-hour online banking portal to view its statements, and both the fronts and backs of its cleared checks, which independently satisfied the statement rule.

In addition to receiving printed statements, WTB provided Skils’Kin with online access to its Pooled Account. (*See supra*, n.53). Using this online banking portal, Skils’Kin had 24-hour access to its electronic statements, as well as images of both the front and back of every check transmitted through its accounts. (*See supra*, n.54). This, too, independently satisfies the requirement of RCW 62A.4-406(a) to “make available to the customer . . . copies of the items paid.” U.C.C. § 4-406 cmt. 1 (adopted as RCW 62A.4-406(a)).

Skils’Kin affirmatively subscribed to online access through two separate WTB programs: Positive Pay and e-Business Express. (*See supra*, n. 56-59). Skils’Kin expressly subscribed to these programs pursuant to the Master Commercial Services Agreement (“Master Agreement”) and the Commercial Services and Accounts Addendum (“Addendum”) dated January 21, 2011, executed by Patterson for Skils’Kin. *Id.* The Positive Pay system is a service providing 24-hour online access to images of complete copies of the front and back of each cleared check. *Id.* eBusiness Express also facilitates access to electronic copies of monthly account statements. *Id.*

The Master Agreement says Skils’Kin “acknowledges and *agrees* to the provisions of this Agreement, including the Commercial Services Terms and Conditions and any related Information Addenda, Services and Accounts

Addenda or other Services-related documentation and Service Agreements incorporated therein.”⁷³ The Master Agreement and Addendum unequivocally confirm Skils’Kin’s decision to use the Positive Pay and eBusiness Express programs to effectuate online access. *Id.* at 40-45 (stating that “[t]he eStatements option will automatically be enabled for WTB checking and savings accounts added to any eBusiness Express service”). Through these agreements, Skils’Kin appointed Patterson and one other employee as “authorized representatives” with access to Skils’Kin’s monthly online statements and checks.⁷⁴

A customer’s duty to discover and report an unauthorized payment to its bank is triggered by delivery of statements and checks to a customer’s agent, including an unfaithful agent. *See Wetherill v. Putnam Inv.*, 122 F.3d 554, 558 (8th Cir. 1997) (“[M]isplaced confidence in an employee will not excuse a depositor from the duty of notifying the bank”); *198-210 16th St., LLC v. M&Y Sixteen, LLC*, 971 N.Y.S.2d 73, at *8 (N.Y. Sup. Ct. 2013) (“Case law treats notice received by an agent entrusted to manage an account as received by the principal, even if the agent was actively mismanaging the account.”). Travelers’ argument that Skils’Kin “never agreed to accept statements and canceled items through online banking with WTB” is

⁷³ *Id.* (emphasis added). Travelers characterized the Terms and Conditions as adhesion conditions. (*See* Opening Brief at 39). However, even if Travelers were correct, the Terms and Conditions would not be per se procedurally unconscionable, and only the substantively unconscionable portions would be found to be void. *Zuver v. Airtouch Commc’ns, Inc.*, 153 Wn. 2d 293 (2004).

⁷⁴ Travelers’ argument that Skils’Kin “did not even have access to online banking at WTB until almost one year after” Patterson hatched her embezzlement scheme is a determination to be made by the trier of fact and not relevant to the second certified legal question. However, of the 353 checks at issue, it appears that only 46 checks occurred prior Skils’Kin’s decision to use WTB’s online banking services. Prior to Skils’Kin’s online access, it is undisputed that Skils’Kin received statements and check copies by mail, which separately satisfies the statute.

completely belied by the record. (See ECF Nos. 90 at ¶¶ 6-8; 90-2). Travelers cites a New York case holding online access to a statement did not trigger U.C.C. § 4-406. *Elden v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 08 Civ. 8738 (RJS), 2011 WL 1236141, at *1 (S.D.N.Y. 2011), but, *Elden* is critically distinguishable on multiple grounds.

The New York version of the U.C.C. § 4-406 it applied is different from Washington's version: instead of "sends or makes available a statement," the New York statute states "sends . . . or otherwise in a reasonable manner makes the statement and items available...." *Elden*, 2011 WL 1236141 at *6. The *Elden* court held that a mere "offer of online banking" did not "make the checks available in a reasonable manner" for purposes of § 4-406, where the bank contended that it informed its customers through the publication of a newsletter about the availability of online banking service. *See id.* The bank in *Elden* did not send actual copies of the items to its customer, unlike *WTB*. *Id.*

Unlike *Elden*, Skils'Kin knew about and expressly subscribed to *WTB*'s online banking service in a written agreement between *WTB* and Skils'Kin. Also, unlike *Elden*, *WTB* provided Skils'Kin with printed statements and the front copies of checks. (ECF Nos. 69 at ¶9 ; 90 at ¶12; 91 at 92). *WTB*'s statutory obligation is to "make" the statements and cancelled checks "available," not to ensure that Skils'Kin reviewed its statements. *See* § 4-406(a).

5. WTB fully satisfied the "make available" requirement under RCW 62A.4-406(a) through its online banking portal.

WTB's practice of making Skils'Kin's account statements and check available electronically, independently satisfies RCW 62A.4-406. *Clemente*

Bros. Contr. Corp. v. Hafner-Milazzo, N.A., 23 N.Y.3d 277, 286, 2014 WL 1806924 (N.Y. May 8, 2014) (stating the “practice of sending or posting simple account statements should be sufficient to satisfy the requirements of section 4-406[(a)]”) (citation omitted); U.C.C. § 4-406 cmt. 1. Federal courts are in accord recognizing images of items made available electronically satisfy the requirements of section § 4-406(a). *See, e.g., Kaplan v. JPMorgan Chase Bank, N.A.*, 2015 WL 2358240 (N.D. Ill. 2015) (reasoning that because a customer could have accessed her account statements online, “the account statements were made available to her for purposes of section 4-406”); *ADC Rig Servs., Inc. v. JPMorgan Chase Bank, N.A.*, 641 F. Supp. 2d 617, 621-22 (S.D. Tex. 2009) (finding a bank that provided monthly account statements and images of paid checks electronically provided enough information to its customer to allow it to detect unauthorized transactions in satisfaction of U.C.C. 4-406); White, Summers, & Hillman, U.C.C., § 1938 (6th ed. 2014) (“We see no reason why a listing of these checks and the debits to the account together with digital images of checks would not fully satisfy the “statement of account” requirement in 4-406(a).”). In fact, some courts apply the U.C.C. § 4-406(a) “make available” requirement even more liberally reasoning that a bank makes a statement of account available by providing its customer with the ability to request items or account statements. *See, e.g., Tatis v. U.S. Bancorp*, 473 F.3d 672, 675-76 (6th Cir. 2007) (bank satisfied “made available” requirement even though statements were not provided to the customer, but were kept at the bank); *Grubaugh v. Cent. Prog. Bank*, 2014 WL 794141, 82 U.C.C. Rep. Serv. 2d 829 (E.D. La. 2014) (bank made statements available because its customer could access statements by physically entering the bank);

Assoc. Home and RV Sales, Inc. v. Bank of Belen, 294 P.3d 1276, 1283-84 (N.M. Ct. App. 2012) (statement delivery merely requires the bank make statements available “such as allowing them to be picked up by an employee of the customer.”).

Travelers argues consumers and non-profits will be harmed if banks are allowed to convert to an entirely online system. (Opening Brief at 41). This argument is ill-founded for three reasons. First, Skils’Kin requested online access. (*See supra* n.56.) WTB did not force this on Skils’Kin; it chose to take advantage of WTB’s online service. *Id.* Even a cursory review of the electronic images it agreed to receive and review (and was required to review under the statute) would have exposed Patterson’s fraud and ended her embezzlement years earlier.

Second, sophisticated commercial entities like Skils’Kin are not vulnerable consumers needing protection. Skils’Kin took in millions of dollars of revenue during the embezzlement. And it ignored its own auditor’s warnings about the deficiencies in its accounting systems. The U.C.C. instructs that employers bear the burden in these circumstances, even when the result feels harsh. The U.C.C. must be applied to promote its underlying purposes and policies to clarify the law of commercial transactions and permit the expansion of commercial practices. RCW 62A.1-103.

Finally, federal banking regulations provide an entire system of adequate protections for consumers regarding whether a bank can provide paper or electronic copies. *See, e.g.*, Reg. E (12 C.F.R. § 205) and Reg. DD (12 C.F.R. § 230). Reg. E implements the Electronic Funds Transfer Act, requiring a bank to provide a periodic account statement when the consumer’s account

allows electronic transfer (which includes nearly every account in the modern banking world). Reg. E requires banks to provide these statements in paper form, unless the consumer affirmatively agrees in writing to receive the periodic statements in electronic form and the bank complies with the E-Sign Act. (Reg. E section 1005.9). In addition, Reg. DD (12 C.F.R. § 230), requires banks to send a period statement in paper form unless the consumer affirmatively consents to electronic format and the Bank complies with the E-Sign Act (12 C.F.R. § 230.6).

Travelers' policy argument lacks any value as a basis for a public policy decision regarding the delivery or availability of items to a commercial customer which had access to the internet, had an accounting staff, and specifically requested it receive statements and items electronically. In today's world of electronic access, it is counterintuitive to suggest a bank could not satisfy the statute's "make available" requirement by electronic means. *See* U.C.C. § 4-406 cmt. 1 (explaining that the court determines reasonableness in light of "the state of existing technology" and that ultimately the key to "mak[ing] available to a customer a statement of account" is to provide the bank customer with enough information to allow the bank customer "reasonably to identify the items paid"). Because Skils'Kin had access to complete copies of its checks through both old and new technology, in satisfaction of WTB's requirement to comply with RCW 62A.4-406(a), the Court should answer "yes" to the second certified question.

B. As a matter of substantive law, Skils'Kin's failure to comply with the notice obligations under RCW 62A.4-406(f) bars Travelers' claim that WTB made unauthorized payments.

1. RCW 62A.4-406(f) creates a statutory prerequisite of notice

that must be met before a customer can sue a bank for unauthorized payments.

Bank customers have a duty to examine bank statements and cancelled checks for unauthorized signatures, unauthorized indorsements, and alterations, and timely report to the bank any unauthorized payments. RCW 62A.4-406(f); U.C.C. § 4-406 cmt. 1 (customer has a duty to exercise reasonable promptness in examining the statement or the returned item). Section 4-406(f) is a statutory prerequisite that bars a customer from suing a bank for improper payment if the customer fails to timely discover and report an unauthorized payment without regard to care or lack of care of either the customer or the bank.

The one-year limitations period is a rule of substantive law that creates a statutory notice prerequisite. *Euro Motors, Inc. v. Sw. Fin. Bank and Trust Co.*, 297 Ill. App.3d 246, 253, 38 U.C.C. Rep.Serv.2d 167 (Ill. App. Ct. 1998). Section 4-406 establishes a statute of repose under which the time for bringing suit expires one year following the availability of relevant account statements. *Wetherill*, 122 F.3d at 556-57 (holding the time limit in 4-406(f) is “not a statute of limitations which might not start to run until the plaintiff knew or should have known of their employee’s treachery; rather, it fixes the time within which the plaintiff must give notice to the defendant.”); *see, e.g., Brown v. Cash Mgmt. Trust of Am.*, 963 F.Supp. 504 (D. Md. 1997) (holding the one-year notice provision is an unalterable condition precedent to suit because it is a rule of substantive law, not a statute of limitation, which creates a statutory prerequisite of notice). Other jurisdictions have reached the same conclusion. *See, e.g., Concrete Materials Corp. v. Bank of Danville & Trust Co.*, 938 S.W.2d 254 (Ky. 1997) (holding failure of corporation to examine its bank

statements and report unauthorized withdrawals by employee precluded corporation from recovering losses against bank); *Gerber v. City Nat'l Bank of Florida*, 619 So.2d 328 (Fla. Dist. Ct. App. 1993) (holding statute imposing duty on customer to discover and report unauthorized signature on check was notice requirement, not statute of limitations); *Weiner v. Sprint Mortg. Bankers Corp.*, 235 A.D.2d 472, 652 N.Y.S.2d 629 (N.Y. App. Div. 1997) (U.C.C. § 4-406 is not a statute of limitations but a rule of substantive law which creates a statutory prerequisite of notice); *Roy Supply, Inc. v. Wells Fargo Bank, N.A.*, 39 Ca.App. 4th 1051, 46 Cal.Rptr.2d 309 (Cal. Dist. Ct. App. 1995) (the time limitation is an issue preclusion statute rather than a statute of limitations).

The U.C.C. recognizes the strong practical and public policy concerns behind the § 4-406 bar to claims like this case, where the fraud is perpetrated by an employee. Employers generally have a comparative advantage over financial institutions to prevent diversion of company funds by their own employees. *Euro Motors*, 297 Ill. App.3d at 252; *see* U.C.C. § 4-406 cmt. 1 (recognizing one of the most serious consequences of the failure of the customer to comply with the requirement to examine its statements is the opportunity presented to the wrongdoer to repeat the misdeeds and conversely, one of the best ways to keep down losses in this type of situation is for the customer to promptly examine the statement and notify the bank of an unauthorized payment); U.C.C. § 3-405 cmt. 1 (recognizing the “employer rather than the bank is in a far better position to avoid the loss by care in choosing employees, in supervising them, and in adopting other measures” to prevent fraud). There is no public policy served in shifting the responsibility for careful bookkeeping away from those in the best position to monitor

accounts and employees – the employer – to the bank, which is not equipped to do so. *Haddad's of Illinois, Inc. v. Credit Union 1 Credit Union*, 286 Ill.App.3d 1069, 678 N.E.2d 322 (Ill. Ct. App. 1997).

The policies underlying the U.C.C. require liability on negotiable instruments not be open-ended. “Unlike tort law, the U.C.C. has the objective of promoting certainty and predictability in commercial transactions. By prospectively establishing rules of liability that are generally based not on actual fault but on allocating responsibility to the party best able to prevent the loss by the exercise of care, the U.C.C. not only guides commercial behavior but also increases certainty in the marketplace and efficiency in dispute resolution.” *Euro Motors*, 297 Ill.App.3d at 252-253 (citation omitted). Specifically, the “policy decision is that accommodating customers who do not keep adequate records is not as desirable as accommodating customers who keep more careful records. This policy results in less cost to the check collection system and thus to all customers of the system.” U.C.C. § 4-406 cmt. 1.

The one-year time period in RCW 62A.4-406(f) requires the customer to notify the bank of an unauthorized payment within a year in order to preserve the right to bring suit. Since WTB provided statements to Skils’Kin, WTB is entitled to the safe harbor of § 4-406(a) and Travelers is barred from asserting its claims unless it complied with the notice requirements of § 4-406(f). It is undisputed that Travelers failed to give timely notice of the checks at issue (with the exception of only a few checks) for which Travelers claims WTB made unauthorized payments.

2. The 4-406(f) defense does not contain a good faith

requirement.

Whether a bank pays an item in “good faith” has no bearing as to whether a customer’s claim may be substantively barred under § 4-406(f) for its failure to timely discover and report unauthorized indorsements. The Washington Legislature omitted the good faith standard in 1993, which previously required that a bank send “to its customer a statement of account accompanied by items paid in good faith.” *Cf.* 1967 Wash. Sess. Laws 524-525 (A-16–A-18) (stating a customer’s duty to discover and report applies when a bank sends items paid in good faith), *with* 1993 Wash. Sess. Laws 778-779 (A-19–A-23) (striking the good faith language and stating the duty is triggered regardless of whether a bank paid an item in good faith) and RCW 62A.4-406(a) (2016). The language in 4-406(f) stating the bar applies “without regard to care or lack of care of either the customer or the bank” has remained intact since 1967. *Envtl. Equip. & Serv. Co. v. Wachovia Bank, N.A.*, 741 F.Supp.2d 705, 718-719 (E.D. Pa. 2010) (recognizing the 1992 amendments to the U.C.C. eliminated “good faith” from § 4-406(a) and was not added to § 4-406(f) (citing cases); *see also, Falk v. N. Trust Co.*, 327 Ill.App.3d 101, 763 N.E.2d 380 (Ill. Ct. App. 2001) (conceding that if the drafters of the U.C.C. had intended to retain a good faith requirement in the 4-406(f) bar they would have done so explicitly in the language of the statute, but they did not).

3. RCW 62A.4-406(f) creates a statutory bar for Travelers’ claims that Patterson’s signature was an unauthorized signature or unauthorized indorsement.

a. Whether the checks were properly payable is not before this Court.

Recognizing its failure to comply with the notice requirements of § 4-

406(f), Travelers tries to avoid its obligation to discover and report by trying to shoe-horn its claim under § 4-401(a), as a properly payable claim, instead of a question of whether Patterson's signatures are an unauthorized alteration, indorsement, or signature. The EDWA specifically rejected Travelers' request to certify the properly payable question, and instead asked this Court to assume for the sake of the certification questions, that the checks were not properly payable and to answer questions about WTB's defenses that apply if the checks are not properly payable. (ECF Nos. 191 at 2; 192; 193 at 9). Whether the checks were properly payable (they were) is not before the Court because it was not certified and this court lacks jurisdiction to decide it. *Kitsap Cnty. v. Allstate Ins. Co.*, 136 Wn.2d 567, 577, 964 P.2d 1173 (1998) (citation omitted).

If Patterson was authorized to cash the checks for the payees, as she represented to WTB that she was (both by her statements and as a matter of law, see RCW 62A.3-417(a)(1); § 3-402(a)) then the checks were properly payable. Travelers' claim against WTB, therefore, must turn on whether Patterson's signature was authorized on the payees' behalf. *See* RCW 62A.3-401(a); § 3-402(a). That is why the EDWA's first certified question asks whether Patterson's signature on the back of the check is an "unauthorized signature," "alteration," or "unauthorized indorsement" as a matter of law. Moreover, the law precludes Travelers from avoiding 4-406 by creative pleading. *See Anderson, supra* at 37 (stating "[t]he time limits imposed by U.C.C. § 4-406 are applicable without regard to the theory on which the customer brings his or her action"). The answer to the first question is "yes" because a signature fitting that description is an indorsement, and/or it is an

unauthorized signature if Travelers wants to claim the checks were not properly payable. Travelers is precluded – whether it plans to or not – from asserting against WTB that Patterson’s indorsement and signature were unauthorized. *See* § 4-406(f).

- b. Even if this Court were to consider the properly payable question that is outside the scope of certification, the checks were “properly payable” because Patterson was Skils’Kin’s agent with actual and apparent authority to cash the checks.**

The checks made and cashed by Patterson on behalf of Skils’Kin and its clients were properly payable within the plain meaning of RCW 62A.4-401(a). “When the words in a statute are clear and unequivocal, this [C]ourt is required to assume the Legislature meant exactly what it said and apply the statute as written.” *In re Recall of Pearsall-Stipek*, 141 Wash.2d 756, 767, 10 P.3d 1034, 1041 (2000) (citation omitted). “An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.” RCW 62A.4-401(a).

The first part of § 4-401(a) requires that payment of the item is “authorized by the customer.” Pursuant to the 2009 Resolution, Skils’Kin expressly authorized Patterson “to [e]ndorse checks and orders for the payment of money and withdraw funds on deposit with [WTB].” (ECF Nos. 90 at ¶ 9; 90-3 at 47). And the Terms and Conditions authorized Patterson as a signer on the account to indorse items and withdraw or transfer money from the Pooled Account. (ECF No. 90-1 at 24). All the Checks at issue were signed by Patterson on the front as an authorized signer of Skils’Kin, the maker/drawer of the checks. (ECF No. 69 at ¶ 9).

There was no way WTB to know the person Skils'Kin entrusted to handle its financial affairs did so fraudulently undetected for nearly a half decade, particularly where WTB's only dealings with Patterson were in her capacity as Skils'Kin's agent; she did no personal business with WTB. The checks written by Patterson, signed by Patterson, and presented for payment by Patterson were authorized by Skils'Kin. (ECF No. 69 at ¶ 9).

The second portion of the properly payable statute, § 4-401(a), requires the payment is made in “in accordance with any agreement between the customer and bank.” An “agreement” is as “the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade.” RCW 62A.1-201(b)(3). Agreements “may be varied by agreement” and a variation must not be “manifestly unreasonable.”⁷⁵ This allows banks to adapt to the unique needs of their customers. U.C.C. § 4-103 cmt. 1.

Acts of the agent are deemed to be acts of the principal if done within the authority granted to the agent. *See King v. Riveland*, 125 Wn.2d 500, 507 (1994). An agent's authority to bind the principal may be of two types: actual or apparent. *Id.* Actual authority may be express or implied. *Id.* “Implied authority is actual authority, circumstantially proved, which the principal is deemed to have actually intended the agent to possess.” *Deers, Inc. v. DeRuyter*, 9 Wn. App. 240, 242 (1973) (citation omitted). The scope of the authority granted to the agent is determined by the manifestations and practices of the parties. *King*, 125 Wn.2d at 507. “Authority to perform particular

⁷⁵ The EDWA found, as a matter of law, and based upon the record, that the agreement between WTB and Skils'Kin, to allow Patterson to cash checks for Skils'Kin's disabled clients was not manifestly unreasonable. (ECF No. 140 at 9).

services for a principal carries with it the implied authority to perform the usual and necessary acts essential to carry out the authorized services”. *Walker v. Pac. Mobile Homes, Inc.*, 68 Wn.2d 347, 351 (1966).

Skils’Kin serves as a Representative Payee for its clients. By accepting SSI benefits from the Administration, and acknowledging Skils’Kin’s agency in writing, Skils’Kin’s clients provide actual authority to Skils’Kin. (*See supra*, n.7). There is no genuine dispute that drafting and indorsing checks are within the authority granted to Skils’Kin and its staff. *Id.*

On Skils’Kin’s behalf, Patterson signed all of the contracts between Skils’Kin and WTB for the Pooled Account; she was at all times a signatory on the Pooled Account; Patterson had the ability to print and sign checks for Skils’Kin; Patterson had full access rights in Skils’Kin’s accounting software, which allowed her to edit, post, and delete transactions; and WTB was informed of the authority granted to Patterson by Skils’Kin because it provided WTB with a corporate resolution expressly authorizing Patterson to make any agreements with WTB that Patterson deemed advisable in order to “endorse checks and orders for the payment of money and withdraw funds on deposit” with WTB. (*See supra*, n.11-12, 14-16). As a result of the powers Skils’Kin expressly granted, Patterson was permitted to make an agreement with WTB to allow her to cash checks as a courtesy for Skils’Kin and its clients.

Travelers argues Skils’Kin did not authorize Patterson to steal its clients’ funds by cashing their checks, (*See Opening Brief at 10*), however, an agency relationship does not vanish simply because an agent acts to further her own ends. Whether, at the time of the act, Patterson had the authority to do what she did controls the analysis, not whether that authority is invalidated by

her misconduct. *See In re Bartoni-Corsi Produce, Inc.*, 130 F.3d 857, 862-63 (9th Cir. 1997) (holding a corporation can be found to have authorized conduct by its agents which is detrimental to the corporation).

Travelers relies on *Tonelli v. Chase Manhattan Bank, N.A.*, 41 N.Y.2d 667, 363 N.E.2d 564 (1977), claiming it is “a case very similar to the present facts” (Opening Brief at 17), but *Tonelli* is significantly distinguishable. First, the “employee” (a term used by Travelers) was not an employee, but instead a “messenger.” *Id.* at 670. The *Tonelli* Court found a bank liable for breaching a duty owed to its customer when it paid money to a messenger (not an employee) who was *not* an agent of the payee or the customer, unlike here. *Id.* The *Tonelli* Court specifically noted “[t]his is not a case where the drawer has authorized the wrongdoer to draw and issue checks . . . nor does it involve a situation in which the drawer by its own negligence contributed to the alteration of a check or the making of an unauthorized signature.” *Id.* In contrast, Skills’Kin expressly cloaked Patterson with authority to indorse its checks, withdraw its funds, and make agreements with WTB. (*See* ECF No. s. 90 at ¶ 9; 90-3 at 47). Checks were paid by WTB pursuant to that express authority.

c. Section 4-406 bars any action against WTB based upon authorized withdrawals irrespective of how Travelers’ characterizes the claim.

Travelers vehemently argues that its claim does not require it to assert that there exists a “customer’s unauthorized signature,” an “alteration,” or an “unauthorized indorsement.” Regardless of how Travelers tries to spin this case to circumvent its duty to review its account statements and checks, § 4-406(f) bars any action premised upon unauthorized withdrawals regardless of

how the claim is characterized, if a customer fails to report unauthorized indorsements or signatures. *See Wetherill*, 122 F.3d at 558 (holding claims are barred under § 4-406 regardless of how plaintiffs characterized their claim); 6C David Frisch, *Anderson on the Commercial Code* § 4-406:24 (3d. ed.) (stating “The time limits imposed by U.C.C. § 4-406 are applicable without regard to the theory on which the customer brings his or her action”).

In attempt to avoid § 4-406, Travelers relies on *Travelers Indem. Co. v. Scalea*, No. 85 Civ. 0400(WK), 1987 WL 27737 (S.D.N.Y. 1987) where the court refused to apply § 4-406(f) because the case concerned a bank’s improper issuance of a money order upon “oral request alone.” *Travelers Indem.*, 1987 WL 27737 at *1 This distinction is critical because the money orders were issued in blank form and pursuant to *oral* requests; the money orders did not bear *any* signatures. *Id.* (emphasis added). It is understandable why § 4-406(f) would not apply in that scenario when there is no dispute over a signature or indorsement because no signature existed. *Id.*

Travelers also contends a facially suspect check absolves a bank for a customer’s failure to discover and report WTB’s misconduct. (Opening Brief at 22) (citing *Ford Motor Credit Co. v. United Sers. Auto. Ass’n*, 11 U.C.C. Rep. Serv. 361, 364, 1972 WL 20865 (N.Y. City Civil Ct. 1972)). Travelers trumpets the *Ford Motor* case. In that case two indorsements were required but the check was cashed without both indorsements. *Id.* The court found there was no notice the customer could have given to the bank that would have been superior to the bank’s notice had the bank bothered to look at the back of the check it to see that there was a missing indorsement. *Id.* at 364.

The facts in *Ford Motor* could not be more factually distinct than the facts here. *Id.* at 362-63. This was not an isolated incident where WTB accidentally failed to notice Patterson signed the back of the checks. This was also not a situation where two payee. Nor is this a case where WTB had the upper hand and could have been the first to stop the illegal scheme. Rather, Skils'Kin was in the best and only position to determine its agent (that it held out to WTB as authorized to handle Skils'Kin's financial affairs, manage the Pooled Account, make agreements with WTB, and act on behalf of its clients) was in fact conducting a savvy QuickBooks reconciliation check-cashing scheme.⁷⁶

Here, § 406(f) applies because there *is* a dispute about Patterson's signatures on the back of the checks and because Travelers' claim is premised upon unauthorized withdrawals. *See Wetherill*, 122 F.3d at 558. In addition, because Skils'Kin did not restrict Patterson's broad authority, Travelers is precluded from making a claim inconsistent with the authority actually given. *Von Gohren v. Pac. Nat'l Bank of Wash.*, 8 Wn. App. at 245, 257, 505 P.2d 467, 475 (Div. 2 1973) (citing RCW 62A.3-406) (finding employer should have discovered embezzlement by employee who was permitted to sign employer's checks and reconcile bank statements, and finding that because the bank honored the checks for more than 14 months that was, in effect, a communication of the employee's actual authority to the bank).

⁷⁶ Travelers cites five additional cases concerning missing indorsements reasoning that the cases are in accord with *Ford Credit*. (Opening Brief at 24-25). Each of those cases must fail for the same reason that *Ford Credit* is inapplicable, *to wit*, this is not a case about a missing indorsement or a lack of a required secondary indorsement.

4. Patterson’s signature is presumed an indorsement under RCW 62A.3-402 as the agent and authorized representative for each payee, and as a matter of law imposed the notice requirements of § 4-406(f) on Skils’Kin.

Washington law presumes a signature on the back of a check is an indorsement. RCW 62A.3-204(a); U.C.C. § 3-204(a) and cmt. 1. A “signature is an indorsement if the signature is not qualified in any way and appears in the place normally used for indorsements.” U.C.C. § 3-204(a) cmt. 1. It is presumed that “a signature is an indorsement if the instrument does not indicate an unambiguous intent of the signer not to sign as an indorser.” *Id.* In addition, a signature “may be an indorsement even though [a] signer intended the signature to be a receipt.” *Id.* A “signature includes an indorsement” and an indorsement made by a person who is not a holder⁷⁷ is characterized as an “anomalous indorsement.” U.C.C. § 3-401 cmt. 1; RCW 62A.3-205(d).

Signatures by representatives are also permitted under the Washington U.C.C., and may be signed in either the name of the represented person or the representative. 7 Wash. Prac., U.C.C. Forms § 3-402, Author’s cmt. (2015) (The signature of the maker, drawer or *indorser* of an instrument *may be made by an agent* or other representative, and his authority to make it may be established as in other cases of representation. (§§ 3-401, 3-402).”) (emphasis added). A bank may accept an indorsement on a negotiable instrument by a payee or an authorized representative of a payee; an instrument need not contain both. See RCW 62A.3-401; RCW 62A.3-402(a); *Domestic Const., LLC v. Bank of Am.*, 2009 WL 2710244, at *6-7 (W.D. Wash. 2009). Rather,

⁷⁷ WTB agrees with Travelers that Patterson is not a “holder.” RCW 62A.1-201(b)(21). However, non-holders with the rights of a holder are permitted to enforce checks under RCW 62A.3-301(ii). Patterson is a non-holder with the rights of a holder. See ECF No. 90 at ¶ 9 and ECF No. 90-3 at 47; RCW 62A.3-301.

a payee's authorized agent is permitted to sign on a payee's behalf, and is treated as the signature of the payee, which is binding on the payee. *See id.*

Travelers argues that for the signatures to be called an indorsement, Patterson had to have *intended* to effectuate one of the three purposes listed in the indorsement statute, RCW 62A.3-204(a). (Opening Brief at 28-34).

Travelers disregards the language in the statute that states "regardless of the intent of the signer, a signature and its accompanying words is an indorsement." § 3-204(a). Travelers' argument that "obviously"⁷⁸ Patterson did not sign for the purpose of negotiation is unsupported.⁷⁹ (Opening Brief at 29). Patterson's true "intent" will never be realized. Nevertheless, her intent does not matter because, regardless, RCW 62A.3-204(a) explicitly states that a signature that appears on the back of a check is an indorsement.

Travelers argues Patterson signed each check as a receipt, rather than an indorsement, yet cites no law in support. (Opening Brief at 4-5). Travelers says that the "circumstances of the check-cashing transaction unambiguously indicate that Patterson signed the back of the Checks as a receipt for the cash" (*Id.* at 5), but there are no circumstances that unambiguously indicate Patterson's signature is anything but an indorsement. WTB understood Patterson signed each check so she could obtain money on behalf of the client

⁷⁸ Similarly, Travelers' argument that the Bank's Branch Manager testified that the Bank had Patterson sign the backs of the Checks for proof of who cashed the check to unambiguously prove that Patterson's signature was not an indorsement is not supported by the citation provided by Travelers (which may have been an inadvertent oversight). (*Compare* Opening Brief at 33-34, *with* ECF No. 86-1 at A480-A481).

⁷⁹ Travelers argues a bank has no reason to take a check by negotiation because it has "no reason to enforce a check against itself." (Opening Brief at 29). WTB is left guessing as to what that means and can find no support for Travelers' argument. Regardless, even if one of the "purposes" in § 3-204(a) were required (and it is not), Patterson's intent in making the indorsement determines the purpose, not WTB's alleged intent in accepting a check.

payees (and Patterson was authorized to do that based on her authority from Skils'Kin). In fact, Skils'Kin previously indorsed checks made payable to its clients; it did so on their behalf.⁸⁰ Any other evidence of Patterson's intent will never be discovered in light of the circumstances.

Even if Patterson meant for her signature to serve as a receipt under Washington's "presentment" statute, RCW 62A.3-501, a party to whom a presentment is made may "return the instrument for lack of a necessary indorsement." This shows even in cases of presentment, indorsements may be required by a bank. RCW 62A.3-501(b)(2). Even if Patterson intended to sign as a receipt, her signature on the back of each check may still be an indorsement. RCW 62A.3-204(a) (stating that a signature may still be "an indorsement even though [a] signer intended the signature to be a receipt"). Because Travelers claims the checks were not properly payable it is because Patterson's signature is an unauthorized indorsement as a matter of law, triggering Traveler's statutory notice requirements in 4-406(f).

5. Patterson's signature is also an unauthorized signature, which includes an unauthorized indorsement, and as a matter of law imposed the notice requirements of § 4-406(f) on Skils'Kin.

An unauthorized signature is a "signature made without actual, implied, or apparent authority." § 1-201(b)(41); *see also* U.C.C. § 1-201(b)(41). The former version of U.C.C. § 1-201(b)(41) did not make it clear whether "unauthorized signatures" applied to "indorsements," so the U.C.C. drafters deleted the words "or indorsement" in the prior version "so that references to 'unauthorized signature' in § 3-406 and elsewhere will unambiguously refer to

⁸⁰ ECF No. 110-3 at Bank 26 and Bank 27e - Bank 27h.

any signature.” U.C.C. § 1-201(b)(41) cmt. 43 (adopted as RCW 62A.1-201(b)(41)) (emphasis added).

Patterson’s signatures on the back of the checks are presumed indorsements. *See supra*, Argument section B.4. If, however, it is determined Patterson’s signature indorsements were “made without actual, implied, or apparent authority” the indorsement is statutorily characterized as an “unauthorized signature,” which also applies to indorsements. U.C.C. § 1-201(b)(41) cmt. 43.

Travelers’ application of *Deljack, Inc. v. U.S. Bank Nat’l Ass’n*, 2012 WL 4482049 (D. Idaho 2012), as support that allegedly WTB was in a better position “to guard against discrepancies” between the client payees’ names on the front of the checks and Patterson’s name signed on the reverse, is mistaken. (Opening Brief at 36-37). *Deljack* analyzes and applies the Idaho version of § 4-406, which does not apply to unauthorized indorsements – unlike the Washington version of § 4-406. *Deljack*, 2012 WL 4482049. *Compare* Idaho Code Ann. § 28-4-406(6), *with* RCW 62A.4-406(f). The *Deljack* case is also factually distinguishable because it concerns an employee who stole her employee’s money by taking her employer’s corporate checks to a bank made payable to “cash” and containing a restrictive “for deposit only” indorsement. *Deljack*, 2012 WL 4482049, *1. Rather than honoring the employer’s restrictive indorsement, the bank paid the employee in cash. *Id.* The *Deljack* Court refused to apply I.C. § 28-4-406(6) because of the bank’s failure to comply with the restrictive indorsement. *Id.* at *5. Given the Idaho version of U.C.C. § 4-406 does not apply to indorsements (unlike Washington’s version), the court’s reasoning makes sense. *See id.* The rationale lifted from *Deljack*

about a bank being in the best position to discover a fraud had nothing to do with unauthorized indorsements; rather, the court's discussion focused on "disregard[ing] a for-deposit-only indorsement." *Id.* at *4.

Here, ironically, Travelers never argues Patterson's use of Skils'Kin's rubber stamp indorsement that it used on the back of some of its payee-issued checks constitute an "unauthorized indorsement," despite that it was not in its client's name. (*See supra*, n.79). Yet Travelers continues to argue WTB never should have paid the payee-issued checks bearing Skils'Kin's indorsement via Patterson. Travelers cannot have it both ways; WTB followed the parties' prior course of performance and dealing. *See* RCW 62A.1-303(a)-(b).

C. WTB exercised ordinary care when its cashed checks to Skils'Kin via its agent, Patterson, given the nature of the relationship with and the agreements between WTB and Skils'Kin.

Ordinary care is only applicable to the analysis in this case after the application of the affirmative defense in § 4-406(f) (which applies "without regard to care or lack of care"). The § 4-406(f) statutory bar duty is not affected by any duty of ordinary care. The duty of ordinary care question applies only to payment of items identified within the 4-406(f) notice period, and then it operates as a second defense for unauthorized signatures and alterations. RCW 62A.4-406(d) and (e).

As a matter of law, the Court should answer the third certified question by holding a bank does not fail to exercise ordinary care if it pays a check to a person other than the payee even when the check contains no indorsement in the name of the payee because Washington law does not require an indorsement be made by (or in the name of) a payee. *See* RCW 62A.3-401;

RCW 62A.3-402(a); *Domestic Const.*, 2009 WL 2710244 at *6-7. Rather, a payee's authorized agent may sign on his or her behalf and may do so by signing only the agent's name. *Id.* The agent's signature is treated as the signature of the payee and is binding on the payee. *See id.*

It was commercially reasonable for WTB to allow Patterson to cash checks in her capacity as an agent for Skils'Kin's clients because Skils'Kin – directly and through Patterson – instructed WTB as to Patterson's authority to manage Skils'Kin's account, withdraw money from it, and to cash checks for its clients. The combination of Skils'Kin's atypical and unique position to manage and spend its clients' money; its deficient internal controls and inadequate oversight; its broad authority granted to Patterson; the 2009 Resolution provided to WTB; and its failure to ever examine its statements and checks, created the perfect recipe for Patterson to perpetuate a nearly one-million-dollar fraud loss against Skils'Kin for years.⁸¹

1. WTB's duty to exercise ordinary care is limited.

A bank has a duty to exercise ordinary care in dealing with its customers. RCW 62A.3-103(a)(7). Ordinary care is “the observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged.” *Id.* Notwithstanding, a bank's duties to its customers are limited; the relationship is akin to “debtor and creditor founded on contract.” *Bank of Marin v. England*, 385 U.S. 99, 101-02 (1966). A bank and its customers “may determine by agreement the standards by which the bank's responsibility is to

⁸¹ Patterson stole over \$700,000 from Skils'Kin's accounts over a little more than four years, but Travelers only seeks to recoup \$577,919.74 of that amount in this action. (ECF Nos. 42 at 5; 110-4 at 93-96).

be measured if those standards are not manifestly unreasonable.”⁸² RCW 62A.1-302(b); *see also* RCW 62A.4-103(a). In turn, a bank is contractually obligated to “honor checks of its depositor properly drawn and presented . . . absent a revocation that gives the bank notice prior to the time the checks are accepted or paid by the bank.” *Bank of Marin*, 385 U.S. at 101. Importantly, a bank is, therefore, obligated to pay checks only at the customer’s direction. *See Simi Mgmt. Corp. v. Bank of Am., N.A.*, 930 F.Supp.2d 1082, 1101 (N.D. Cal. 2013) (stating that a bank might not be liable for breach of a contractual duty owed to its customer if a signature was in fact authorized by a customer).

2. WTB exercised ordinary care when it paid checks bearing Patterson’s indorsement on the back.

a. Patterson’s signature on the back of the checks at issue is presumed an indorsement.

A bank may accept an indorsement on a negotiable instrument by a payee or an authorized representative of a payee; an instrument need not contain both. *See* RCW 62A.3-401; RCW 62A.3-402(a); *supra* Argument, Section B.4. As a “non-holder with the rights of the payee holders,” Patterson was “entitled to enforce” each check on behalf of Skils’Kin’s clients as Skils’Kin’s agent. *See* RCW 62A.3-301. Moreover, WTB was required to pay the checks upon Patterson’s demand because it was made by or on behalf of Skils’Kin – an entity entitled to enforce the check. *See* RCW 62A.3-501(a).

b. The checks do not have missing signatures.

Hoping that this Court will turn a blind eye to the facts, Travelers admits that whether a bank exercises ordinary care “sometimes presents a

⁸² Here WTB and Skils’Kin contractually agreed that Skils’Kin would examine its statements and report any unauthorized signatures or any other errors within 60 days of the date the statement was made available. ECF No. 89 ¶¶ 25-26 and ECF No. 88 at 3.

question of fact” but argues it does not “when the transaction is suspect on its face.” (Opening Brief at 42). The cases relied on by Travelers involved situations where two signatures were required and, for example, one signature was obviously forged because it was typewritten rather than signed, or where there were no signatures on the back of a check at all.⁸³ As this Court has recognized, cases involving check misappropriation “depend on its own facts, and [] many are found close to the border line which are difficult of determination.” *Defiance Lumber Co. v. Bank of California, N.A.*, 180 Wash. 533, 545, 41 P.2d 135, 139 (Wash. 1935).

This case has nothing to do with missing signatures and here the facts cannot be ignored. None of the cases cited by Travelers involve payees who granted an organization the ability to spend money on their behalf, or an organization with inadequate internal controls and lack of financial oversight, or an organization that granted broad authority to the employee in charge of its account that was authorized to make and indorse the checks at issue, and withdraw funds from the account at issue. The nature of Skils’Kin’s and Patterson’s authority over both the Pooled Account and Skils’Kin’s clients, the representations made to WTB, and Washington law on representative indorsement signatures demonstrate WTB exercised ordinary care. *See* RCW 62A.3-402; § 4-401(a). Skils’Kin’s clients’ signatures were not “missing” because their signatures were not required in the first place. *See* RCW 62A.3-205(d); § 3-401; § 3-402(a); *Domestic Const.* 2009 WL 2710244 at *6-7. It was commercially reasonable for WTB to accept Patterson’s signature using

⁸³ *See, e.g.,* *Bank of the W. v. Wes-Con Dev. Co., Inc.*, 15 Wn. App. 238, 241, 548 P.2d 563, 566 (Div. 1, 1976); *Govoni & Sons Constr. Co., Inc. v. Mechs. Bank*, 51 Mass. App. Ct. 35, 742 N.E.2d 1094 (Mass. App. Ct. 2001).

her own name on behalf of each client payee because the law provides a remedy for payees who are unable to sign, and does not require the payee's name. *See* RCW 62A.3-402 (providing that a represented person is bound by a representative's signature who "acting, or purporting to act, as a representative" signs a negotiable "instrument by signing either the name of the represented person or the name of the signer") (emphasis added). WTB acted commercially reasonable in allowing Patterson to sign her name for Skils'Kin's clients given the agency relationship between Skils'Kin (and Patterson, its agent) and its clients and the authority Skils'Kin told WTB Patterson had over the Pooled Account.⁸⁴

To support its "missing signature" argument, Travelers only cites cases that are inapplicable. In *Govoni & Sons Const. Co. v. Mechanics Bank*, 51 Mass. App. Ct. 35, 742 N.E.2d 1094 (Mass. App. Ct. 2001), a Massachusetts court found that a bank acted commercially unreasonable for its failure to notice that checks were deposited in a non-payee's bank account without any indorsement on the back of the check. (Opening Brief at 43). The *Govoni* Court reasoned the bank also acted commercially unreasonable for its failure "to conduct even the most basic of inquiries into whether the checks were in fact presented by [it's customers] agent." *Govoni*, 742 N.E.2d at 1107. In another inapposite example, Travelers cites *Citizens Bank, Dallas v. Thornton & Co., Inc.*, 172 Ga. App. 490, 323 S.E.2d 688 (Ga. Ct. App. 1984), where a court found the bank failed to act in a commercially reasonable manner when it deposited two checks in a corporate non-payee's account. *Id.* at 490. The

⁸⁴ In fact, the client payees could not manage their own finances because the Administration required them to utilize Skils'Kin, as Representative Payee, as a condition of receiving SSI benefits. (ECF No. 89 at ¶ 4).

checks were made payable to a corporate payee; one included an indorsement with the corporate payee's name printed on the back, and the other included only the words "for deposit only." *Id.* Both checks were deposited into a non-payee corporation's account.

Travelers cites *Trustees of Eighth District Elect. Pension and Benefit Funds v. JP Morgan Chase Bank*, 2014 WL 4277256 (D. Idaho 2014) in attempt to reshape this case as a case about the failure "to inquire about a missing or incorrect indorsement." (Opening Brief at 43). There the court found the bank liable for failing to recognize that the face of a check listed two payee names rather than a single payee, when it accepted an indorsement by only one of the payees. *Trustees*, 2014 WL 4277256 at *5.

The cases cited by Travelers all concern different circumstances that involve the failure of a bank to either (1) notice that an indorsement is completely lacking on the back of a check; (2) inquire about the agency relationship between an indorser and a payee; (3) pay an instrument pursuant to a restrictive indorsement; or (4) obtain the correct number of required indorsements. But those are not the circumstances here. None of those situations come close to the facts in this case. WTB did not inadvertently cash a check without any indorsement on the back or overlook the proper number of indorsements, or fail to inquire about the agency relationship between Skils'Kin and Patterson, or Patterson and Skils'Kin's client payees.⁸⁵ Moreover, contrary to Travelers' argument that "a check is only 'properly payable' to a holder of the 'check,'" the Washington version of the U.C.C. permits a non-holder representative to sign and enforce a check on behalf of a

⁸⁵ See, e.g., ECF No. 91-13 at 18 (9:19).

payee, and Skils'Kin authorized the issuance and presentment of the checks for payment when it cloaked Patterson with the authority to do so, told WTB about Patterson's authority over the Pooled Account, and allowed Patterson to do so without complaint for many years. *See* RCW 62A.3-401; § 3-402(a); § 3-301(ii); and § 4-401(a); *see also* § 3-501(a) (explaining that WTB was required to pay the checks upon Patterson's demand on behalf of the payees).

3. WTB acted commercially reasonable when it agreed to Skils'Kin's request to allow Patterson to cash checks for and on behalf of its clients.

The agreement Skils'Kin asked WTB to make to accommodate Skils'Kin by permitting it to cash checks for its disabled clients was proper because Washington permits a bank and its customers to vary the "standards by which the performance of [the bank's] obligations is to be measured if those standards are not manifestly unreasonable."⁸⁶ RCW 62A.1-302(b); *see also* § 4-103(a). In addition, a party's obligation to pay an "instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person to enforce the agreement." RCW 62A.3-117. A "corporation may be bound by the contracts or agreements of its agent if within the apparent scope of the agent's authority, although the contract may be beyond the scope of his actual authority." *Lamb v. Gen. Assocs., Inc.*, 60 Wash.2d 623, 627 (1962) (citations omitted).

As an authorized signer on Skils'Kin's Pooled Account, the 2009 Resolution gave Patterson the ability to make agreements with WTB regarding Skils'Kin's banking services. (ECF No. 90-3 at 47). WTB and its tellers knew

⁸⁶ The EDWA found, as a matter of law and based upon the record, that the agreement between WTB and Skils'Kin, to allow Patterson to cash checks for Skils'Kin's disabled clients, was not manifestly unreasonable. (ECF No. 140 at 9).

about the agreement, as there was a general understanding among tellers that Patterson had the authority to engage in the check-cashing transactions at issue on behalf of Skils'Kin, the Representative Payee for each client; the tellers understood this agreement had been reached between Patterson and WTB Branch Manager Debbie Carlson. (*See supra*, n.5.) Under the Resolution and the Terms and Conditions governing the Pooled Account (that Patterson signed on Skils'Kin's behalf, at Skils'Kin's request), Patterson also had the power to indorse checks and withdraw funds; she could have withdrawn all the funds from the Pooled Account or written checks to cash or to herself. (ECF Nos. 90-3 at 47; 90-1 at 24). In fact, Patterson did cash checks that she made payable to "cash."⁸⁷ Skils'Kin's express grant of authority to Patterson, the Terms and Conditions governing the Pooled Account, and the Washington U.C.C. allowing agreements to be made between a bank and its customer, show that it was reasonable for WTB to accommodate Skils'Kin's unique needs related to its disabled clients who are unable to manage their own finances. *See id.*; U.C.C. § 4-103 cmt. 1 (the purpose of allowing parties to vary agreements is to allow banks to adapt to the unique needs of their customers).

In addition, the course of performance and dealing between WTB and Skils'Kin for more than four years demonstrates that Skils'Kin accepted or approved the check-cashing transactions and established a common basis of understanding for interpreting the parties' expressions and conduct. *See* RCW 62A.1-303(a) and RCW 62A.1-303(b). Skils'Kin's failure to object to the embezzlement of more than a half million dollars perpetuated by its agent and

⁸⁷ ECF Nos. 91 at ¶ 9; 91-7 at 47. Travelers did not assert its properly payable claim for these checks. *See* ECF. No. 42. Travelers has never claimed that WTB did anything wrong in paying checks to Patterson made payable to "cash."

to never examine the backs of its checks to look for improper indorsements for more than four years, shows that Skils'Kin accepted or acquiesced in the course of performance between WTB and Patterson, and establishes the parties' understanding of the agreement between them. (ECF No. 91 at ¶ 13; 91-11 at 93). *See also Von Gohren*, 8 Wn. App. 245.

a. WTB's teller manual only serves as a guideline for its tellers and does not override Washington law or make new law.

Naturally, Skils'Kin had policies to help its employees understand how to manage risks regarding check depositing and cashing. Those policies could never replace or substitute the law, however. And it is generally recognized that bank management always has the authority to override its own procedures in certain instances. (*See, e.g.*, ECF No. 110-2 at 9). Here, it is difficult to determine so many years ago who at WTB first agreed to Skils'Kin's request to allow Patterson to cash checks for its payees, but it appears it was branch manager Debbie Carlson. (*Id.* at 9-10). Various tellers testified WTB accommodated Skils'Kin because its clients were either homebound, disruptive, or incompetent to manage their own funds. (ECF No. 91 at ¶¶ 15, 17; 91-13 at 115-116; 91-15 at 141-142; 110-3 at 15-16).

Travelers' argues that this violated WTB's policy TEL-203 (Opening Brief at 44), but WTB's actions were compliant with TEL-203 because the presenter (Patterson / Skils'Kin) indorsed the check. *See* ECF No. 86-8 at WTB 0176. Moreover, even if WTB's agreement with Skils'Kin fell outside the general guidelines, WTB had the authority to modify its own procedures. Manager Approval Policy, TEL-206, says a manager may approve cashing checks. (ECF No. 86-9 at A422). Travelers' own expert agrees. *Id.* He opined

that “[c]ertain banking procedures may be overridden with manager approval” which is “consistent with reasonable industry standards.” (ECF No. 86-8 at A393). As a result, WTB’s teller policy was not violated when WTB tellers started accommodating Patterson’s request. (*See* ECF No. 110-2 at 9-10).

Travelers relies on *Swiss Baco Skyline Logging, Inc. v. Haliewicz*, 18 Wn. App. 21, 30-31, 567 P.2d 1141, 1147-48 (Div. 2, 1977) to argue WTB failed to exercise ordinary care as a matter of law (Opening Brief at 44), but that case does not support Travelers’ argument. There the bank violated a bank policy provision that required it not to cash checks payable to corporations unless there is “specific authority on file” or to obtain “an officer’s approval” to confirm the authority for the indorsement. *See Swiss Baco*, 18 Wn. App 21 at 31. In that case, the teller (unlike the tellers at WTB) did not have any authority from past conduct, nor management approval. In this case, WTB had both: it had specific authority on file from Skils’Kin specifically granting Patterson authority to make agreements on Skils’Kin’s behalf pertaining to the Pooled Account (the Corporate Resolution and the Terms and Conditions governing the Account), and it had management’s approval of the agreement made between Skils’Kin (through Patterson) and WTB to allow Patterson to cash checks for Skils’Kin’s clients.

- b. It was reasonable for WTB to assume Skils’Kin had adequate internal routines and controls, and would have been improper for WTB to challenge or question Skils’Kin’s controls.**

WTB was entitled to assume Skils’Kin, a sophisticated commercial entity appointed as Representative Payee by the federal government to manage government-issued money, would have a system of control competent to detect

fraud and control irregularities. (ECF No. 110-2 at 12-13). Patterson not only signed Skils'Kins' checks, including checks on behalf of its clients to pay their bills, but she also had full access rights in Skils'Kin's QuickBooks software, as well as the ability to edit, post, and delete, transactions. (*See supra*, n.15). The power conferred to Patterson by Skils'Kin made it particularly vulnerable to Patterson's illegal scheme. *See Defiance Lumber*, 180 Wash. at 545. (finding that an employer's "careless and negligent conduct of its own business, permitted its own employee to perpetuate upon it a gross fraud" that it cannot pass on to its bank); *Von Gohren*, 8 Wn. App. at 247 (noting that because an employee signed her employer's checks and reconciled the employer's monthly bank statements, those facts made the employer "particularly vulnerable" to the employee's embezzlement scheme). And unknown to WTB, Skils'Kin's auditor specifically warned Skils'Kin of this vulnerability and concern more than one time. (ECF Nos. 91 at ¶¶ 5-6; 91-3; 91-4).

Unfortunately, WTB was not privy to Skils'Kin's woefully inadequate internal controls. And Skils'Kin never put any limitation on Patterson's broad authority. WTB had no way of knowing the then-state of Skils'Kin's lack of internal controls. (ECF No. 110-2 at 14). Moreover, the passage of more than four years where the check-cashing transactions were undetected by Skils'Kin made it increasingly reasonable for WTB to assume that its managerial TEL-206 exception to its standard teller policy that Skils'Kin requested was fully approved by Skils'Kin. (*Id.* at 12); *see also Von Gohren*, 8 Wn. App. at 257 (citing RCW 62A.3-406) (finding that because a bank honored unauthorized checks for more than 14 months undetected, that was, in effect, a communication of the employee's actual authority to the bank).

VII. CONCLUSION

To the first certified question, this Court should answer yes, as a matter of law, Patterson's signature on the back of the Checks at issue are unauthorized indorsements or unauthorized signatures imposing on Skils'Kin the notice requirements of RCW 62A.4-406(f). To the second certified question, this Court should answer yes, WTB made Skils'Kin's statement of account and items reasonably available as required by RCW 62A.4-406 when WTB provided Skils'Kin with a paper statement of account with images of the front of the checks and/or where it made both statements and images of both the front and back of the checks available electronically to Skils'Kin. To the third certified question, this Court should answer no, WTB did not fail to exercise ordinary care as a matter of law when it allowed Patterson to cash checks made payable to Skils'Kin's clients in Patterson's role as agent for Skils'Kin and Representative Payee for Skils'Kin's clients.

Respectfully submitted this 14th day of April, 2016.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of April, 2016, I caused to be filed via email at Supreme@courts.wa.gov with the Washington State Supreme Court, and I served a true and correct copy of the foregoing document as follows:

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APPENDIX

Relevant Statutes.....	A1-15
1967 Wash. Sess. Laws, RCW 62A.4-406	A16-17
1993 Wash. Sess. Laws, RCW 62A.4-406	A18-24
Corporate Authorization Resolution, ECF No. 90-3 at 47.....	A12
Pooled Account signature sheets, ECF No. 90-1 at 22-24.....	A25-26
Pooled Account Terms and Conditions, ECF 90-1 at 24.....	A27
Master Commercial Services Agreement, ECF No. 902 at 38-39	A28-29
Commercial Services and Accounts Addendum, ECF No. 90-2 at 40-45	A30-35

STATUTES INVOLVED

The certified questions involve the following sections of the Washington version of the Uniform Commercial Code, as codified in RCW 62A:

RCW 62A.1-201(b)(41). General definitions.

...

(b) Subject to definitions contained in other articles of this title that apply to particular articles or parts thereof:

...

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

...

Official U.C.C. cmt. no. 43 to U.C.C. 1-201(43)

43. "Unauthorized". Under the former version of § 1-201(43), it was not clear whether a reference to an "unauthorized signature" in Articles 3 and 4 applied to indorsements. The words "or indorsement" are deleted so that references to "unauthorized signature" in § 3-406 and elsewhere will unambiguously refer to any signature.

RCW 62A.1-302. Variation by agreement.

...

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this title may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this title requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

...

RCW 62A.1-303 Court of performance, course of dealing, and usage of trade.

...

(a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

- (1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- (2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

...

RCW 62A.3-103 Definitions.

...

(7) “Ordinary care” in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

...

RCW 62A.3-117. Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

RCWA 62A.3-204 Indorsement.

- (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.
- (b) "Indorser" means a person who makes an indorsement.
- (c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.
- (d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

Official U.C.C. cmt. to U.C.C. 3-204

- ...
- 1. Subsection (a) is a definition of "indorsement," a term which was not defined in former Article 3. Indorsement is defined in terms of the purpose of the signature. . . . In some cases an indorsement may serve more than one purpose. For example, if the holder of a check deposits it to the holder's account in a depository bank for collection and indorses the check by signing the

holder's name with the accompanying words "for deposit only" the purpose of the indorsement is both to negotiate the check to the depository bank and to restrict payment of the check.

The "but" clause of the first sentence of subsection (a) elaborates on former Section 3-402. In some cases it may not be clear whether a signature was meant to be that of an indorser, a party to the instrument in some other capacity such as drawer, maker or acceptor, or a person who was not signing as a party. The general rule is that a signature is an indorsement if the instrument does not indicate an unambiguous intent of the signer not to sign as an indorser. Intent may be determined by words accompanying the signature, the place of signature, or other circumstances. For example, suppose a depository bank gives cash for a check properly indorsed by the payee. The bank requires the payee's employee to sign the back of the check as evidence that the employee received the cash. If the signature consists only of the initials of the employee it is not reasonable to assume that it was meant to be an indorsement. If there was a full signature but accompanying words indicated that it was meant as a receipt for the cash given for the check, it is not an indorsement. If the signature is not qualified in any way and appears in the place normally used for indorsements, it may be an indorsement even though the signer intended the signature to be a receipt. To take another example, suppose the drawee of a draft signs the draft on the back in the space usually used for indorsements. No words accompany the signature. Since the drawee has no reason to sign a draft unless the intent is to accept the draft, the signature is effective as an acceptance. Custom and usage may be used to determine intent. For example, by long-established custom and usage, a signature in the lower right hand corner of an instrument indicates an intent to sign as the maker of a note or the drawer of a draft. Any similar clear indication of an intent to sign in some other capacity or for some other purpose may establish that a signature is not an indorsement . . .

...

RCW 62A.3-301 Person entitled to enforce instrument.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

RCW 62A.3-401 Signature.

- (a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under RCW 62A.3-402.

- (b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

RCW 62A.3-402. Signature by representative.

- (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the “authorized signature of the represented person” and the represented person is liable on the instrument, whether or not identified in the instrument.
- (b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:
 - (1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.
 - (2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

...

RCW 62A.3-501 Presentment.

- (a) “Presentment” means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearinghouse rules and the like:

- (1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.
- (2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.
- (3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

...

RCW 62A.4-103 Variation by agreement; measure of damages; action constituting ordinary care.

- (a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

...

RCW 62A.4-401 When bank may charge customer's account.

- a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

...

RCW 62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with *RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

West's RCWA 62A.4-406

62A.4-406. Customer's duty to discover and report unauthorized signature or alteration
Currentness

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with *RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to

which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

Credits

[1997 c 53 § 1; 1995 c 107 § 1; 1993 c 229 § 111; 1991 sp.s. c 19 § 1; 1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Editors' Notes

WASHINGTON COMMENTS [1965 ENACTMENT]

This section is a more detailed coverage of problems now affected by § 30.16.020. It must be read with sec. 3-406. While negligence in reconciliation of returned bank vouchers with stubs will throw resultant loss on the depositor, it is quite apparent that other imprudent conduct by the depositor will have the same result. Types of conduct having this effect have only been adumbrated. *Defiance Lumber Co. v Bank of Cal.*, 180 Wash. 533, 41 P.2d 135 (1935); noted 10 Wash.L.Rev. 209 (1935); *Denbigh v First Nat'l Bank*, 102 Wash. 546, 174 P. 475 (1918); Cf. *National Bank of Commerce v Tacoma Mill Co.*, 182 F. 1 (9th Cir 1910).

The time limit on notification of a drawee of payment of a forged or altered check (sixty days after its return) is consistent with the prior statute, § 30.16.020. That such a time limit is constitutional, see *Overlake Homes, Inc. v Seattle-First Nat'l Bank*, 57 Wash.2d 881, 360 P.2d 570 (1961).

The three-year limitation on reporting forged indorsements is new.

UNIFORM COMMERCIAL CODE COMMENTS

1. Under subsection (a), if a bank that has paid a check or other item for the account of a customer makes available to the customer a statement of account showing payment of the item, the bank must either return the item to the customer or provide a description of the item sufficient to allow the customer to identify it. Under subsection (c), the customer has a duty to

exercise reasonable promptness in examining the statement or the returned item to discover any unauthorized signature of the customer or any alteration and to promptly notify the bank if the customer should reasonably have discovered the unauthorized signature or alteration.

The duty stated in subsection (c) becomes operative only if the “bank sends or makes available a statement of account or items pursuant to subsection (a).” A bank is not under a duty to send a statement of account or the paid items to the customer; but, if it does not do so, the customer does not have any duties under subsection (c).

Under subsection (a), a statement of account must provide information “sufficient to allow the customer reasonably to identify the items paid.” If the bank supplies its customer with an image of the paid item, it complies with this standard. But a safe harbor rule is provided. The bank complies with the standard of providing “sufficient information” if “the item is described by item number, amount, and date of payment.” This means that the customer's duties under subsection (c) are triggered if the bank sends a statement of account complying with the safe harbor rule without returning the paid items. A bank does not have to return the paid items unless it has agreed with the customer to do so. Whether there is such an agreement depends upon the particular circumstances. See Section 1-201(3). If the bank elects to provide the minimum information that is “sufficient” under subsection (a) and, as a consequence, the customer could not “reasonably have discovered the unauthorized payment,” there is no preclusion under subsection (d). If the customer made a record of the issued checks on the check stub or carbonized copies furnished by the bank in the checkbook, the customer should usually be able to verify the paid items shown on the statement of account and discover any unauthorized or altered checks. But there could be exceptional circumstances. For example, if a check is altered by changing the name of the payee, the customer could not normally detect the fraud unless the customer is given the paid check or the statement of account discloses the name of the payee of the altered check. If the customer could not “reasonably have discovered the unauthorized payment” under subsection (c) there would not be a preclusion under subsection (d).

The “safe harbor” provided by subsection (a) serves to permit a bank, based on the state of existing technology, to trigger the customer's duties under subsection (c) by providing a “statement of account showing payment of items” without having to return the paid items, in any case in which the bank has not agreed with the customer to return the paid items. The “safe harbor” does not, however, preclude a customer under subsection (d) from asserting its unauthorized signature or an alteration against a bank in those circumstances in which under subsection (c) the customer should not “reasonably have discovered the unauthorized payment.” Whether the customer has failed to comply with its duties under subsection (c) is determined on a case-by-case basis.

The provision in subsection (a) that a statement of account contains “sufficient information if the item is described by item number, amount, and date of payment” is based upon the existing state of technology. This information was chosen because it can be obtained by the bank's computer

from the check's MICR line without examination of the items involved. The other two items of information that the customer would normally want to know--the name of the payee and the date of the item--cannot currently be obtained from the MICR line. The safe harbor rule is important in determining the feasibility of payor or collecting bank check retention plans. A customer who keeps a record of checks written, e.g., on the check stubs or carbonized copies of the checks supplied by the bank in the checkbook, will usually have sufficient information to identify the items on the basis of item number, amount, and date of payment. But customers who do not utilize these record-keeping methods may not. The policy decision is that accommodating customers who do not keep adequate records is not as desirable as accommodating customers who keep more careful records. This policy results in less cost to the check collection system and thus to all customers of the system. It is expected that technological advances such as image processing may make it possible for banks to give customers more information in the future in a manner that is fully compatible with automation or truncation systems. At that time the Permanent Editorial Board may wish to make recommendations for an amendment revising the safe harbor requirements in the light of those advances.

2. Subsection (d) states the consequences of a failure by the customer to perform its duty under subsection (c) to report an alteration or the customer's unauthorized signature. Subsection (d)(1) applies to the unauthorized payment of the item to which the duty to report under subsection (c) applies. If the bank proves that the customer "should reasonably have discovered the unauthorized payment" (See Comment 1) and did not notify the bank, the customer is precluded from asserting against the bank the alteration or the customer's unauthorized signature if the bank proves that it suffered a loss as a result of the failure of the customer to perform its subsection (c) duty. Subsection (d)(2) applies to cases in which the customer fails to report an unauthorized signature or alteration with respect to an item in breach of the subsection (c) duty (See Comment 1) and the bank subsequently pays other items of the customer with respect to which there is an alteration or unauthorized signature of the customer and the same wrongdoer is involved. If the payment of the subsequent items occurred after the customer has had a reasonable time (not exceeding 30 days) to report with respect to the first item and before the bank received notice of the unauthorized signature or alteration of the first item, the customer is precluded from asserting the alteration or unauthorized signature with respect to the subsequent items.

If the customer is precluded in a single or multiple item unauthorized payment situation under subsection (d), but the customer proves that the bank failed to exercise ordinary care in paying the item or items and that the failure substantially contributed to the loss, subsection (e) provides a comparative negligence test for allocating loss between the customer and the bank. Subsection (e) also states that, if the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

Subsection (d)(2) changes former subsection (2)(b) by adopting a 30-day period in place of a 14-day period. Although the 14-day period may have been sufficient when the original version of Article 4 was drafted in the 1950s, given the much greater volume of checks at the time of the

revision, a longer period was viewed as more appropriate. The rule of subsection (d)(2) follows pre-Code case law that payment of an additional item or items bearing an unauthorized signature or alteration by the same wrongdoer is a loss suffered by the bank traceable to the customer's failure to exercise reasonable care (See Comment 1) in examining the statement and notifying the bank of objections to it. One of the most serious consequences of failure of the customer to comply with the requirements of subsection (c) is the opportunity presented to the wrongdoer to repeat the misdeeds. Conversely, one of the best ways to keep down losses in this type of situation is for the customer to promptly examine the statement and notify the bank of an unauthorized signature or alteration so that the bank will be alerted to stop paying further items. Hence, the rule of subsection (d)(2) is prescribed, and to avoid dispute a specific time limit, 30 days, is designated for cases to which the subsection applies. These considerations are not present if there are no losses resulting from the payment of additional items. In these circumstances, a reasonable period for the customer to comply with its duties under subsection (c) would depend on the circumstances (Section 1-204(2)) and the subsection (d)(2) time limit should not be imported by analogy into subsection (c).

3. Subsection (b) applies if the items are not returned to the customer. Check retention plans may include a simple payor bank check retention plan or the kind of check retention plan that would be authorized by a truncation agreement in which a collecting bank or the payee may retain the items. Even after agreeing to a check retention plan, a customer may need to see one or more checks for litigation or other purposes. The customer's request for the check may always be made to the payor bank. Under subsection (b) retaining banks may destroy items but must maintain the capacity to furnish legible copies for seven years. A legible copy may include an image of an item. This Act does not define the length of the reasonable period of time for a bank to provide the check or copy of the check. What is reasonable depends on the capacity of the bank and the needs of the customer. This Act does not specify sanctions for failure to retain or furnish the items or legible copies; this is left to other laws regulating banks. See Comment 3 to Section 4-101. Moreover, this Act does not regulate fees that banks charge their customers for furnishing items or copies or other services covered by the Act, but under principles of law such as unconscionability or good faith and fair dealing, courts have reviewed fees and the bank's exercise of a discretion to set fees. *Perdue v. Crocker National Bank*, 38 Cal.3d 913 (1985) (unconscionability); *Best v. United Bank of Oregon*, 739 P.2d 554, 562-566 (1987) (good faith and fair dealing). In addition, Section 1-203 provides that every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

4. Subsection (e) replaces former subsection (3) and poses a modified comparative negligence test for determining liability. See the discussion on this point in the Comments to Sections 3-404, 3-405, and 3-406. The term "good faith" is defined in Section 3-103(a)(4) as including "observance of reasonable commercial standards of fair dealing." The connotation of this standard is fairness and not absence of negligence.

The term “ordinary care” used in subsection (e) is defined in Section 3-103(a)(7), made applicable to Article 4 by Section 4-104(c), to provide that sight examination by a payor bank is not required if its procedure is reasonable and is commonly followed by other comparable banks in the area. The case law is divided on this issue. The definition of “ordinary care” in Section 3-103 rejects those authorities that hold, in effect, that failure to use sight examination is negligence as a matter of law. The effect of the definition of “ordinary care” on Section 4-406 is only to provide that in the small percentage of cases in which a customer's failure to examine its statement or returned items has led to loss under subsection (d) a bank should not have to share that loss solely because it has adopted an automated collection or payment procedure in order to deal with the great volume of items at a lower cost to all customers.

5. Several changes are made in former Section 4-406(5). First, former subsection (5) is deleted and its substance is made applicable only to the one-year notice preclusion in former subsection (4) (subsection (f)). Thus if a drawer has not notified the payor bank of an unauthorized check or material alteration within the one-year period, the payor bank may not choose to recredit the drawer's account and pass the loss to the collecting banks on the theory of breach of warranty. Second, the reference in former subsection (4) to unauthorized indorsements is deleted. Section 4-406 imposes no duties on the drawer to look for unauthorized indorsements. Section 4-111 sets out a statute of limitations allowing a customer a three-year period to seek a credit to an account improperly charged by payment of an item bearing an unauthorized indorsement. Third, subsection (c) is added to Section 4-208 to assure that if a depository bank is sued for breach of a presentment warranty, it can defend by showing that the drawer is precluded by Section 3-406 or Section 4-406(c) and (d). *Revisions approved by the Permanent Editorial Board for the Uniform Commercial Code March 16, 1991.*

Wash. Rev. Code Ann. § 62A.4-406 (West)

Current with all laws from the 2015 Regular and Special Sessions and Laws 2016, chs. 1 and 2

1967
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION, FORTIETH LEGISLATURE
Convened January 9, 1967. Adjourned March 9, 1967.

VOLUME NO. 1
ALL LAWS OF THE 1967 REGULAR SESSION



Compiled in Chapters by
A. LUDLOW KRAMER
Secretary of State

MARGINAL NOTES AND INDEX

By
RICHARD O. WHITE
Code Reviser

Published by Authority



CHAPTER 114.

[Substitute Senate Bill No. 42.]

UNIFORM COMMERCIAL CODE.

AN ACT relating to commercial transactions; amending sections 2-403, 4-406, 6-102, 6-109, 9-302, 9-403, 9-404, 9-405, 9-406 and 9-407, chapter 157, Laws of 1965 extraordinary session and RCW 62A.2-403, 62A.4-406, 62A.6-102, 62A.6-109, 62A.9-302, 62A.9-403, 62A.9-404, 62A.9-405, 62A.9-406, and 62A.9-407; adding new sections to chapter 157, Laws of 1965 extraordinary session and to Article 62A.9 RCW; adding new sections to chapter 11, Laws of 1961 and to chapter 15.48 RCW; and providing an effective date and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

RCW 62A.4-406 amended.

Section 1. Section 4-406, chapter 157, Laws of 1965 extraordinary session and RCW 62A.4-406 are each amended to read as follows:

Uniform Commercial Code. Bank deposits and collections.

Customer's duty to discover and report unauthorized signature or alteration. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within sixty days from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

Sec. 2. Section 6-102, chapter 157, Laws of 1965 extraordinary session and RCW 62A.6-102 are each amended to read as follows:

"Bulk Transfer"; Transfers of Equipment; Enterprises subject to this Article; Bulk Transfers subject to this Article. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials,

RCW 62A.6-102
amended.

Uniform
Commercial
Code—
Bulk transfers.

1993
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-THIRD LEGISLATURE
Convened January 11, 1993. Adjourned April 25, 1993.

1st SPECIAL SESSION
FIFTY-THIRD LEGISLATURE
Convened April 26, 1993. Adjourned May 6, 1993.



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Chapter 6, Laws of 1969.

DENNIS W. COOPHR
Code Reviser

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- (4) RCW 68.50.360 and 1982 c 9 s 1, 1979 c 37 s 1, & 1969 c 80 s 4;
 (5) RCW 68.50.370 and 1987 c 331 s 67, 1975 c 54 s 2, & 1969 c 80 s 5;
 (6) RCW 68.50.380 and 1969 c 80 s 6;
 (7) RCW 68.50.390 and 1969 c 80 s 7;
 (8) RCW 68.50.400 and 1987 c 331 s 68 & 1969 c 80 s 8;
 (9) RCW 68.50.410 and 1987 c 331 s 69 & 1969 c 80 s 9; and
 (10) RCW 68.50.420 and 1987 c 331 s 70 & 1969 c 80 s 11.

Passed the House April 19, 1993.
 Passed the Senate April 13, 1993.
 Approved by the Governor May 7, 1993.
 Filed in Office of Secretary of State May 7, 1993.

CHAPTER 229

[Substitute House Bill 1014]

UNIFORM COMMERCIAL CODE—DEPOSITS AND COLLECTIONS AND
NEGOTIABLE INSTRUMENTS

Effective Date: 7/1/94

AN ACT relating to the uniform commercial code; amending RCW 62A.1-201, 62A.1-207, 62A.3-101, 62A.3-102, 62A.3-103, 62A.3-104, 62A.3-105, 62A.3-106, 62A.3-107, 62A.3-108, 62A.3-109, 62A.3-110, 62A.3-111, 62A.3-112, 62A.3-113, 62A.3-114, 62A.3-115, 62A.3-116, 62A.3-117, 62A.3-118, 62A.3-119, 62A.3-201, 62A.3-202, 62A.3-203, 62A.3-204, 62A.3-205, 62A.3-206, 62A.3-207, 62A.3-301, 62A.3-302, 62A.3-303, 62A.3-304, 62A.3-305, 62A.3-306, 62A.3-307, 62A.3-401, 62A.3-402, 62A.3-403, 62A.3-404, 62A.3-405, 62A.3-406, 62A.3-407, 62A.3-408, 62A.3-409, 62A.3-410, 62A.3-411, 62A.3-412, 62A.3-413, 62A.3-414, 62A.3-415, 62A.3-416, 62A.3-417, 62A.3-418, 62A.3-419, 62A.3-501, 62A.3-502, 62A.3-503, 62A.3-504, 62A.3-505, 62A.3-512, 62A.3-513, 62A.3-520, 62A.3-522, 62A.3-525, 62A.3-601, 62A.3-602, 62A.3-603, 62A.3-604, 62A.3-605, 62A.4-101, 62A.4-102, 62A.4-103, 62A.4-104, 62A.4-105, 62A.4-106, 62A.4-107, 62A.4-108, 62A.4-109, 62A.4-201, 62A.4-202, 62A.4-203, 62A.4-204, 62A.4-205, 62A.4-206, 62A.4-207, 62A.4-208, 62A.4-209, 62A.4-210, 62A.4-211, 62A.4-212, 62A.4-213, 62A.4-214, 62A.4-301, 62A.4-302, 62A.4-303, 62A.4-401, 62A.4-402, 62A.4-403, 62A.4-405, 62A.4-406, 62A.4-407, 62A.4-501, 62A.4-502, 62A.4-503, and 62A.4-504; adding a new section to chapter 30.22 RCW; adding new sections to Title 62A RCW; creating new sections; repealing RCW 62A.3-120, 62A.3-121, 62A.3-122, 62A.3-208, 62A.3-506, 62A.3-507, 62A.3-508, 62A.3-509, 62A.3-510, 62A.3-511, 62A.3-606, 62A.3-701, 62A.3-801, 62A.3-802, 62A.3-803, 62A.3-804, and 62A.3-805; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

ARTICLE I

GENERAL PROVISIONS

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec. 1. RCW 62A.1-201 and 1992 c 134 s 14 are each amended to read as follows:

Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

((43)) (e) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop-payment order or order to close the account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under RCW 62A.4-402.

Sec. 110. RCW 62A.4-405 and 1965 ex.s. c 157 s 4-405 are each amended to read as follows:

DEATH OR INCOMPETENCE OF CUSTOMER. ((44)) (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes ((such)) the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

((45)) (b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or ((prior-to)) before that date unless ordered to stop payment by a person claiming an interest in the account.

Sec. 111. RCW 62A.4-406 and 1991 sp.s. c 19 s 1 are each amended to read as follows:

((46)) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his or her unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

((47)) (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. Until January 1, 1998, the statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the

agency to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least five items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with section 118 of this net. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank ((establishes)) proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection ((4)-of-this-section) (c) the customer is precluded from asserting against the bank:

((a)-His-or-her) (1) The customer's unauthorized signature or any alteration on the item, if the bank also ((establishes)) proves that it suffered a loss by reason of ((such)) the failure; and

((b)-An) (2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank ((after-the first-item-and-statement-was-available-to-the-customer-for-a-reasonable-period and-before-the-bank-receives-notification-from-the-customer-of-any-such unauthorized-signature-or-alteration)) if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

((3)-The-preclusion-under-subsection-(2)-of-this-section-does-not-apply-if the-customer-establishes-lack-of-ordinary-care-on-the-part-of-the-bank-in-paying the-item(s):

(4)) (e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

~~(f)~~ Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (~~((1)) of this section~~) ~~(a)~~ discover and report ~~((his or her))~~ the customer's unauthorized signature or any alteration on the face or back of the item or does not within ~~((three years))~~ one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration (~~(r~~

~~(s)~~ ~~If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim).~~ If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-203 with respect to the unauthorized signature or alteration to which the preclusion applies.

Sec. 112, RCW 62A.4-407 and 1965 ex.s. c 157 s 4-407 are each amended to read as follows:

PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER PAYMENT. If a payor bank has paid an item over the ~~((stop-payment))~~ order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank ~~((shall be))~~ is subrogated to the rights:

~~((a))~~ (1) Of any holder in due course on the item against the drawer or maker; ~~((and))~~

~~((b))~~ (2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

~~((c))~~ (3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

PART 5 COLLECTION OF DOCUMENTARY DRAFTS

Sec. 113, RCW 62A.4-501 and 1965 ex.s. c 157 s 4-501 are each amended to read as follows:

HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR. A bank ~~((which))~~ that takes a documentary draft for collection ~~((must))~~ shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course ~~((must)),~~ shall seasonably notify its customer of ~~((such))~~ the fact even though it may have

CORPORATE AUTHORIZATION RESOLUTION

Washington Trust Bank
PO Box 2127
Spokane, WA 99210
Branch 0000013

By: Skills Kin
(Corporation)
4004 E Boons Ave
(Address)
Spokane WA 99202-4509
(City, State and Zip Code)

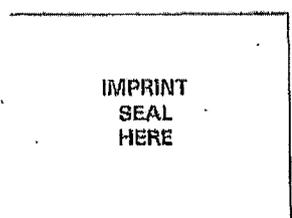
A. I, Gerri Moore, certify that I am Secretary (clerk) of the above named corporation organized under the laws of WA, Federal Employer I.D. Number 91-0856829, engaged in business under the trade name of Skills Kin, and that the following is a correct copy of resolutions adopted at a meeting of the Board of Directors of this corporation duly and properly called and held on 10/01/2009. These resolutions appear in the minutes of this meeting and have not been rescinded or modified.

- B. Be it resolved that,
(1) The Financial Institution named above is designated as a depository for the funds of this corporation,
(2) This resolution shall continue to have effect until express written notice of its rescission or modification has been received and recorded by this Financial Institution,
(3) All transactions, if any, with respect to any deposits, withdrawals, redemptions and borrowings by or on behalf of this corporation with this Financial Institution prior to the adoption of this resolution are hereby ratified, approved and confirmed,
(4) Any of the persons named below, so long as they act in a representative capacity as agents of this corporation, are authorized to make any and all other contracts, agreements, stipulations and orders which they may deem advisable for the effective exercise of the powers indicated below, from time to time with this Financial Institution, concerning funds deposited in this Financial Institution, moneys borrowed from this Financial Institution or any other business transacted by and between this corporation and this Financial Institution subject to any restrictions stated below,
(5) Any and all prior resolutions adopted by the Board of Directors of this corporation and certified to this Financial Institution as governing the operation of this corporation's account(s), are in full force and effect, unless supplemented or modified by this authorization,
(6) This corporation agrees to the terms and conditions of any account agreement, properly opened by any authorized representative(s) of this corporation, and authorizes the Financial Institution named above, at any time, to charge this corporation for all checks, drafts, or other orders, for the payment of money, that are drawn on this Financial Institution, regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimens in section C, (or the facsimile signature specimens that this corporation files with this Financial Institution from time to time) and contain the required number of signatures for this purpose,
C. If indicated, any person listed below (subject to any expressed restrictions) is authorized to:
Name and Title

(A) Glen Grussnats Executive Director
(B) Loret Shanda Chief Operating Officer
(C) Shannon Patterson Payee Service Manager
(D)
Signature Facsimile Signature
Glen Grussnats
Loret Shanda
Shannon Patterson
Shannon Patterson

- Indicate A, B, C and/or D
N/A (1) Exercise all of the powers listed in (2) through (6).
All signers (2) Open any deposit or checking account(s) in the name of this corporation.
All signers (3) Endorse checks and orders for the payment of money and withdraw funds on deposit with this Financial Institution.
Number of authorized signatures required for this purpose 1
N/A (4) Borrow money on behalf and in the name of this corporation, sign, execute and deliver promissory notes or other evidences of indebtedness.
Number of authorized signatures required for this purpose
N/A (5) Endorse, assign, transfer, mortgage or pledge bills receivable, warehouse receipts, bills of lading, stocks, bonds, real estate or other property now owned or hereafter owned or acquired by this corporation as security for sums borrowed, and to discount the same, unconditionally guarantee payment of all bills received, negotiated or discounted and to waive demand, presentment, protest, notice of protest and notice of non-payment.
Number of authorized signatures required for this purpose
N/A (6) Enter into written lease for the purpose of renting and maintaining a Safe Deposit Box in this Financial Institution.
Number of authorized persons required to gain access and to terminate the lease

D. I further certify that the Board of Directors of this corporation has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing resolutions and to confer the powers granted to the persons named who have full power and lawful authority to exercise the same.



In Witness Whereof, I have hereunto subscribed my name and affixed the seal of this corporation on
10/01/2009
Glen Grussnats
Attest by One Other Officer
Gerri K. Moore
Secretary

Washington Trust Bank
 PO Box 2127
 Spokane, WA 99210
 BRANCH 0000013
 09/01/2010

OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE

SINGLE ACCOUNT JOINT - WITH SURVIVORSHIP (and not as tenants in common or community property)
 JOINT - NO SURVIVORSHIP (as tenants in common)
 COMMUNITY PROPERTY ACCOUNT
 TRUST - SEPARATE AGREEMENT:
 REVOCABLE TRUST OR PAY-ON-DEATH DESIGNATION AS DEFINED IN THIS AGREEMENT
 Name and Address of Beneficiaries:

OWNERSHIP OF ACCOUNT - BUSINESS PURPOSE

SOLE PROPRIETORSHIP
 CORPORATION: FOR PROFIT NOT FOR PROFIT
 PARTNERSHIP

BUSINESS: Community Service
 COUNTY & STATE OF ORGANIZATION: Spokane WA
 AUTHORIZATION DATED: 08/26/2010

DATE OPENED: 08/26/2010 by Ryan Forsythie

INITIAL DEPOSIT \$
 CASH CHECK

HOME TELEPHONE # 509-327-9134
 BUSINESS PHONE # 509-326-6760
 DRIVER'S LICENSE # _____
 E-MAIL _____
 EMPLOYER _____
 MOTHER'S MAIDEN NAME _____
 Name and address of someone who will always know your location: N/A
Comments: Docs on file at Indiana. Adding Account Subtitled
"SS Representative Payee Account"

BACKUP WITHHOLDING CERTIFICATIONS

TIN: 91-0856829

TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.

SIGNATURE: I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).
X Shannon Patterson 9-8-10
 (DOT)

ACCOUNT NUMBER Redacted 5990 *pg 1 of 2*

ACCOUNT OWNER(S) NAME & ADDRESS
Skills Kin
SS Representative Payee Account

4004 E Boone Ave
Spokane WA 99202-4509

TYPE OF ACCOUNT NEW EXISTING
 CHECKING SAVINGS
 MONEY MARKET CERTIFICATE OF DEPOSIT
 NOW

This is your (check one):
 Permanent Temporary account agreement.

Number of signatures required for withdrawal 1
 FACSIMILE SIGNATURE(S) ALLOWED? YES NO

[X]

SIGNATURE(S) - The undersigned agree to the terms stated on every page of this form and acknowledge receipt of a completed copy. The undersigned further authorize the financial institution to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned also acknowledge the receipt of a copy and agree to the terms of the following disclosures:

Deposit Account Funds Availability
 Electronic Funds Transfer Truth in Savings Privacy

(1) [X] Shannon Patterson Director
Shannon Patterson

I.D. # _____ D.O.B. _____

(2) [X] See master list A.

I.D. # _____ D.O.B. _____

(3) [X]

I.D. # _____ D.O.B. _____

(4) [X]

I.D. # _____ D.O.B. _____

Agent (Single Accounts Only) (Name)
 [X]

I.D. # _____ D.O.B. _____

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Redacted **5990**
pg 2 of 2

**MASTER SIGNATURE LIST FOR
 Facsimile Signature Acceptable**

Skills'Kin

Account Number(s)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
	1880	7646	0293	0290	3158	3504
	7820	3454	7697	3496	2573	3177
	5260	5797	5016	4292	4294	3158
	0940	8166	0957	0973	4958	4247
	4890	5848	7218	1868	7705	7713
	7782	5796	2540	2797	9569	3470
	0092	0093	0207	0208	0209	4058
	4059	4060	4073	4074	4091	4095
	6342	9695	9696	9700	1109	1126
	1127	3721	3754	3761	3770	3772
	4966	4962	4964	4970	4974	4975
	3076	3080	3078	3079	3356	0838
	0218	4114	0200	3082	3088	0673
	3090	3093	3095	3099	3004	3790

The following individuals are authorized to sign on the above stated accounts held at Washington Trust Bank in the name of Skills'Kin. The undersigned agree to the terms stated on every page of the signature card and acknowledge receipt of a completed copy. The undersigned also acknowledge the receipt of a copy and agree to the terms of the following: Deposit Account Disclosure, Funds Availability Disclosure, and Electronic Funds Transfer Disclosure.

Signature *Glen Grossante*

Signature _____

Printed Name Glen Grossante Title President

Printed Name _____ Title _____

Signature *Shannon Patterson*

Signature _____

Printed Name Shannon Patterson Title Payee Svs. Director

Printed Name _____ Title _____

Signature *Shannon Patterson*

Signature _____

Printed Name Shannon Patterson Title Payee Svs. Director

Printed Name _____ Title _____

Single Business/Multiple Accounts

5/11/2010

Decl. of Van Slyke - 23

TERMS AND CONDITIONS OF YOUR ACCOUNT

AGREEMENT - This document, along with any other documents we give you pertaining to your accounts, is a contract that establishes rules which control your accounts with us.

This agreement is subject to applicable federal laws and the laws of the state of Washington insofar as they apply to this agreement and does not vary such laws of law). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this agreement is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to novel transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosure of some of our policies to which you may be entitled or to which you may be subjected.

If any provision of this document is found to be unenforceable according to its terms, or remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. This language in this document is for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words that phrases used in this document should be construed as the singular includes the plural and the plural includes the singular.

LIABILITY - You agree, for yourself (and the person or entity you represent if you sign as a representative) and for anyone else who is liable for the liability of charges. You authorize us to collect these charges directly from the account balance as received. You will pay any additional reasonable charges for services rendered which are not covered by this agreement.

Each of you also agrees to be jointly and severally individually liable for any account shortages resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft. This includes liability for our costs to collect the deficit including, to the extent permitted by law, our reasonable attorney's fees.

DEPOSITS - We will give you only provisional credit until collection is final for any item, other than cash, we accept for deposit including loans drawn "on us". Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and account all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next following business day that we are open.

WITHDRAWALS - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs in the space designated for signatures on the signature card may withdraw or transfer all or any part of the account balance at any time. Each of you must receive written notice to the contrary authorizes each other person signing the signature card to authorize any item payable to you or your order for deposit to this account or any other transaction with us. We may charge your account for a check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. We may refuse any withdrawal or transfer request which you attempt to act. We may refuse any withdrawal or transfer request which you attempt to act, which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations, even if we honor a nonconforming request, you may treat continued abuse of the stated limitations if any as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts for which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when these funds will be available for withdrawal.

We may require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit. Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for only withdrawal.

ACH AND WIRE TRANSFERS - This agreement is subject to Article 4A of the Uniform Commercial Code in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(b) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we involve a profit to an account you have with us by wire or ACH, we are not required to give you any notice of the payment other or credit.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION - These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. Single Account - Is owned by one person. Joint Account - With Survivorship (And Not As Tenants In Common) - Is an account in the name of two or more persons. Each of you intend that when you die the balance in the account (subject to any previous pledge to which we have

agreed) will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Joint Account - No Survivorship (As Tenants In Common) - Is owned by two or more persons, but none of you intend (merely by opening this account) to obtain any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, affect the "number of signatures" necessary for withdrawal. Community Property Account - Such an account is issued to a husband and wife who intend that all of the property in the account, including earnings, be held as community property. Revocable Trust or Pay-On-Death Account - If two or more of you create this type of account, you own the account jointly with survivorship. Beneficiary cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, beneficiaries will own the account in equal shares, without right of survivorship. The person(s) creating either of these account types may: (1) change beneficiaries, (2) change account type, and (3) withdraw all or part of the account funds at any time.

BUSINESS ACCOUNTS - Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the legal entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the legal entity.

STOP PAYMENTS - You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before the stop-payment cutoff time. To be effective, your stop-payment order must clearly identify the number, date and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you are the issuer or not, if you have a legal right to withdraw funds from this account than the person who signed the item. A request of the stop-payment request may be made only by the person who initiated the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we must stop the item in cash or you certified the item).

ACCOUNTS AND TERMINATION - We may change any term of this agreement, rules governing changes in interest rates are provided separately. For other changes, we will give you reasonable notice in writing of by any other method permitted by law. We may also close the account at any time upon reasonable notice to you and issuer of the account balance personally or by mail. Notice from us to any one of you is notice to all of you.

STATEMENTS - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself depending on whether we used ordinary care and, if not, whether we substantially contributed to the loss. The loss could be, but not only be, respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, or any other errors in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us, the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

ACCOUNT TRANSFER - This account may not be transferred or assigned without our prior written consent.

DIRECT DEPOSITS - If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

TEMPORARY ACCOUNT AGREEMENT - If this option is selected, we may restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

SETOFF - We may without prior notice (and when permitted by law) set off the funds in this account against any due and payable debt you owe us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance due due date for which we properly accelerate under the note.

This right of setoff does not apply to this account if it is an IRA or other tax-qualified retirement account, or if the debt is created by a consumer credit transaction under a credit card plan that does not affect our rights under any consumer credit interest, or if the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

AGENT (Single Accounts only) - A single individual is the owner. The agent is merely designated to conduct transactions on the owner's behalf. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf.

FACSIMILE SIGNATURES - You authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us, and contain the required number of signatures for this purpose.

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Washington Trust Bank 
Master Commercial Services Agreement

Customer Name: Skills Kin Date: 1/21/2011
 Mailing Address: 4004 E Boone Ave Tax ID: 91-0856829
Spokane WA 99202
 Street Address: Same Telephone: (509) 327-9134 226

The terms of this Master Commercial Services Agreement (the "Agreement") include and incorporate by reference the Commercial Services Terms and Conditions, Services and Accounts Addenda (as defined in said Terms and Conditions), Information Addenda (as defined in such Terms and Conditions) and all other Services-related documentation and Service Agreements associated with each new Commercial Service checked below (each a "Service" and collectively, the "Services") and all previously agreed upon Commercial Services.

- | New | Modify | Commercial Service |
|-------------------------------------|--------------------------|----------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | eBusiness Express |
| <input type="checkbox"/> | <input type="checkbox"/> | Plan Type - Smart |
| <input type="checkbox"/> | <input type="checkbox"/> | Plan Type - Standard |
| <input type="checkbox"/> | <input type="checkbox"/> | Plan Type - Premium |
| <input type="checkbox"/> | <input type="checkbox"/> | ACH Funds Transfer |
| <input type="checkbox"/> | <input type="checkbox"/> | ACH Payment or Collection |
| <input type="checkbox"/> | <input type="checkbox"/> | ACH File Upload |
| <input type="checkbox"/> | <input type="checkbox"/> | Bill Payment |
| <input type="checkbox"/> | <input type="checkbox"/> | File Download |
| <input type="checkbox"/> | <input type="checkbox"/> | Boat/RV Pay |
| <input type="checkbox"/> | <input type="checkbox"/> | Token Security |
| <input type="checkbox"/> | <input type="checkbox"/> | Wire Transfer |
| <input type="checkbox"/> | <input type="checkbox"/> | ACH Debit Block & Debit Filter |
| <input type="checkbox"/> | <input type="checkbox"/> | Express Cash Concentration |
| <input type="checkbox"/> | <input type="checkbox"/> | Automated |
| <input type="checkbox"/> | <input type="checkbox"/> | Express Electronic Deposit |
| <input type="checkbox"/> | <input type="checkbox"/> | Retail Lockbox |
| <input type="checkbox"/> | <input type="checkbox"/> | Target Balance Borrowing Account |
| <input type="checkbox"/> | <input type="checkbox"/> | Wholesale Lockbox |
| <input type="checkbox"/> | <input type="checkbox"/> | Zero Balance Transfer Account |

This Agreement amends and supplements the deposit contract(s) for the Account(s) chosen by Customer in connection with one or more of the Services and listed in an Information Addendum, Services and Accounts Addendum or other Services-related documentation and Service Agreements. It is acknowledged and agreed that the intent of the parties to this Agreement is for the terms and conditions of such deposit contract(s) and the terms of this Agreement to be complementary and supplementary to each other. Therefore, to the extent possible, the terms of such deposit contract(s) and this Agreement are to be construed to give effect to all of their respective provisions; provided, however, in the event of a conflict or inconsistency between or among the terms and conditions set forth in the Account deposit contract(s) and this Agreement, including the Commercial Services Terms and Conditions, Information Addenda, Services and Account Addenda and/or other Services-related documentation and Service Agreements that are incorporated by reference above, the provisions of the relevant Account deposit contract shall control, but only to the extent necessary to resolve the conflict.

The Commercial Services Terms and Conditions are available online at [watrust.com: https://www.watrust.com/CommercialBanking/CommercialSvcsTermsConditions.pdf](https://www.watrust.com/CommercialBanking/CommercialSvcsTermsConditions.pdf). To request a printed copy contact Washington Trust Bank at 1-866-765-2915.

By signing below, Customer acknowledges and agrees to the provisions of this Agreement, including the Commercial Services Terms and Conditions and any related Information Addenda, Services and Accounts Addenda or other Services-related documentation and Service Agreements incorporated therein, and as amended from time to time by Bank during the term of this Agreement. The undersigned represents and warrants that the execution, delivery and performance of this Agreement by the undersigned has been duly authorized by all necessary action of Customer and that the performance of the Agreement will not violate any provision of any existing resolution, declaration, or agreement of Customer.

Company Name: Skills Kin
Signature: *Shannon Patterson*
Title: Director
Date: 1-26-11



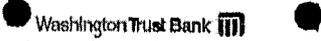
Bank Use:

Relationship Manager: Branch Manager
CSG RM: PYoung
Prepared By: *PYoung*
Authenticated By: *[Signature]*
Version: 1008-01

CASH MANAGEMENT/
INTERNATIONAL BANKING

FEB 02 2011

RECEIVED



Washington Trust Bank

Commercial Services and Accounts Addendum

COMPANY INFORMATION:

Customer Name: Skills Kin Date: January 21, 2011

 Tax ID: 91-0856829

New Mailing Address: 4004 E Boone Ave **New** Telephone: (509) 327-9134 Ext 226

Spokane WA 99202

 Street Address: Same Fax: (509) 323-8987

COMMERCIAL SERVICES OVERVIEW:

	Now/Add	Modify	Delete	Description
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smart Plan & Reporting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Premium Plan & Reporting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ACH Payment or Collection
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Bill Payment
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	File Download
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Loan Payment or Advance
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Token Security
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ACH Debit Block & Debit Filter
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Deposit Reconciliation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Express Cash Concentration
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Automated
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Retail Lockbox
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wholesale Lockbox

CASH MANAGEMENT
 INSURANCE

1 of 6

FEB 02 2011
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Decl. of Van Slyke - 40

Washington Trust Bank
Commercial Services and Accounts Addendum

eBUSINESS EXPRESS: _____ Company ID (for modifications): _____
The eStatements option will automatically be enabled for WTB checking and savings accounts added to any eBusiness Express service.

Plan Type: Smart Profile Number: SBX1A Pos Pay Standard Profile Number: _____ Premium Profile Number: _____

Authorized Representatives:

Primary Administrator:

Name	Email	Phone	Fax
Add Shamon Patterson	spatterson@skils-kin.org	(509) 327-9134 Ext 226	(509) 323-8987

Backup Administrator (optional):

Name	Email	Phone	Fax
Add Amy Grinwis	agrinwis@skils-kin.org	(509) 327-9134 Ext 240	(509) 323-8987

Accounts & Services (Stop Payment and eStatements options automatically included, as applicable)

Add / Remove	Account Number	Deposit Reporting		Express Transfer (Internal WTB only)		Loan Reporting			Positive Pay
		Standard Reporting	Premium Reporting	FROM Account	TO Account	Receipts	Payments	Advances	
Add	5260	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Add	5990	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Add	1294	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

CASH MANAGEMENT
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Washington Trust Bank
Commercial Services and Accounts Addendum

CHARGE METHODS & ACCOUNTS (refer to Page 1 for fees)

	Charge to Account	Begin Date (month/year)	Charge to Account Analysis or Direct	Notes
<input type="checkbox"/> Monthly Service - ofbusiness Express/Positivo Pay	\$200	Feb/2011	Account Analysis	
<input type="checkbox"/> Monthly Service - SecureToken Sign On				
<input type="checkbox"/> Per Token Fee - Now				
<input type="checkbox"/> Setup - ACH Origination (ACH File Upload/ Funds Transfer)				
<input type="checkbox"/> Setup - File Download - EDI				
<input type="checkbox"/> Setup - Positivo Pay			Account Analysis	
<input type="checkbox"/> Setup - File Download - Respond Mail Items				
<input type="checkbox"/> Monthly Service			Account Analysis	
<input type="checkbox"/> Select CD Rom Plan				
<input type="checkbox"/> Select CD Rom Additional Options				
<input type="checkbox"/> Monthly Service				
<input type="checkbox"/> Pay Deposit and Deposit Return Item				
<input type="checkbox"/> Monthly Service				
<input type="checkbox"/> Set-up - Implementation Fee		One-time	Account Analysis	
<input type="checkbox"/> Select Cash Concentration Plan			Account Analysis	
<input type="checkbox"/> Select Automated Cash Concentration Plan			Account Analysis	
<input type="checkbox"/> Setup - Implementation Fee		One-time	Account Analysis	
<input type="checkbox"/> Select EFD Plan			Account Analysis	
<input type="checkbox"/> EFD/ECR Additional Implementation			Account Analysis	
<input type="checkbox"/> Setup - Implementation Fee/Special Instructions		One-time	Account Analysis	
<input type="checkbox"/> Monthly Service				
<input type="checkbox"/> TIP will provide additional monthly charges				
<input type="checkbox"/> Setup - Implementation Fee		One-time		
<input type="checkbox"/> Monthly Service			Account Analysis	
<input type="checkbox"/> Monthly Service				
<input type="checkbox"/> TIP will provide additional monthly charges				
<input type="checkbox"/> Setup - Implementation Fee		One-time		INTERNATIONAL BANKING

Washington Trust Bank 
Commercial Services and Accounts Addendum

Bank Use:

eBX: CIS # 400955

eBX with ACH: No ACH Tol or Web Verified By (initials to be entered here only by RM that is certifying): N/A

eBX with new ACH or Wires, Risk Assessment by: N/A

EED Risk Assessment by: N/A

Relationship Manager: Branch Managed

CSG RM: PYoung

Prepared By: PYoung 

Authenticated By:

Version: 1101-01

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4 of 6

Decl. of Van Slyke - 43



Commercial Services and Accounts Addendum
OPTIONAL ADDENDUM 2 - EXPRESS ELECTRONIC DEPOSIT
 New Set-up CSG Checklist - Bank Use Only

✓	Steps to Complete	Date Completed	Completed By
DOCUMENTATION			
	CSG Business & Risk Assessment		
	• CSG Business & Risk Assessment Review (by CMRM)		
	• Originals in file		
	Exception Pricing Authorization received from RM		
	• Copy in file		
	• Copy scanned to CSG Central		
	Agreement		
	• Bank use only section complete		
	Statement of Charges		
	• Original in file		
EQUIPMENT			
	Scanner Ordered		
	Signed Authorization from CSG Manager or Product Officer received and placed in file		
	Invoice copy in file		
SETUP			
	Customer Info added to Databases		
	• License & Scanner Inventory		
	• Web DDL Licensing		
	• Product List		
	Web DDL Admin Portal		
	• Security Administration		
	• Acceptance Administration		
TRAINING			
	Customer Contacted/Training Scheduled		
	Installation/Training Completed		
BILLING			
	Invoice mailed to Customer		
	Customer Account Debited		
	GL Copies in File		
	Account Analysis Notified		
	Charges confirmed on XAA Stmt		

CASH MANAGEMENT/
INTERNATIONAL BANKING

FEB 02 2011

OFFICE RECEPTIONIST, CLERK

To: Shelly Gleason
Cc: Mark Wilson; Bruce Medeiros; sabrahamson@dbm-law.net; Geana Van Dessel; Sarah Elsden
Subject: RE: EXPEDITED FILING: Case No. 92483-0; Travelers v Washington Trust Bank

Received 4/15/16

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Sent: Thursday, April 14, 2016 8:15 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Mark Wilson <mark.wilson@FisherBroyles.com>; Bruce Medeiros <bmedeiros@dbm-law.net>; sabrahamson@dbm-law.net; Geana Van Dessel <GeanaV@leehayes.com>; Sarah Elsden <SarahE@leehayes.com>
Subject: EXPEDITED FILING: Case No. 92483-0; Travelers v Washington Trust Bank

Dear Clerk and Counsel,

Please find attached for filing Washington Trust Bank's Expedited Motion for Leave to File Amended Response Brief on Certified Questions, and the attachment to that Motion – Washington Trust Bank's Amended Response Brief on Certified Questions.

Shelly Gleason | Lee & Hayes
Litigation Paralegal
ShellyG@leehayes.com

P 509.944.4651 | F 509.323.8979
601 West Riverside Avenue, Suite 1400 | Spokane, Washington 99201

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Sent: Thursday, April 14, 2016 5:00 PM
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Cc: Mark Wilson <mark.wilson@FisherBroyles.com>; Bruce Medeiros <bmedeiros@dbm-law.net>; sabrahamson@dbm-law.net; Geana Van Dessel <GeanaV@leehayes.com>; Sarah Elsden <SarahE@leehayes.com>
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Subject: FILING: Case No. 92483-0; Travelers v Washington Trust Bank

Supreme Court No. 92483-0

USDC – Eastern District of WA No. 13-CV-0409-JLQ

For filing, please find attached Washington Trust Bank's Response Brief on Certified Questions.

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