

EXHIBIT 1

Cause No.:
DataTreasruy Corporation
v.
Wells Fargo & Company, et al.

Transcript of the Testimony of
Gerard Milano

March 20, 2007

By: Michelle Munroe, CSR

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09:41 1 Q. To whom do you report at The Clearing House in
09:41 2 your capacity as the senior vice president for physical
09:41 3 check services?

09:41 4 A. I report to Jeffrey Newberg, the chief
09:41 5 executive officer.

09:41 6 Q. How many employees of The Clearing House
09:41 7 report to you in your capacity as senior VP for check
09:41 8 services?

09:41 9 A. At present count, I believe it's approximately
09:42 10 19 people.

09:42 11 Q. Previous to January 1 of 2004, what was your
09:42 12 job title?

09:42 13 A. I was the president and chief executive
09:42 14 officer of the Western Payments Alliance, usually
09:42 15 referred to as WestPay, a regional payments company
09:42 16 located in San Francisco, California.

09:42 17 Q. Did you become senior VP of check services at
09:42 18 The Clearing House upon the merger of WestPay with the
09:42 19 Clearing House?

09:42 20 A. WestPay did not merge with The Clearing House,
09:42 21 sir. But at the time that WestPay transferred its check
09:43 22 clearing services to The Clearing House, I became an
09:43 23 officer of The Clearing House.

09:43 24 Q. Does WestPay still operate as an independent
09:43 25 entity today?

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10:04 1 A. No, it does not.

10:04 2 Q. Has The Chicago Clearing House association
10:04 3 been subsumed within the family of entities that operate
10:04 4 under The Clearing House Association -- excuse me -- the
10:04 5 Clearing House Payments Company, LLC?

10:04 6 A. The Chicago Clearing House was merged into the
10:04 7 New York Clearing House in the fall of 2003 and was
10:04 8 later reorganized into the current LLC arrangements for
10:05 9 the Payments Company, LLC.

10:05 10 Q. When did that take place, to the best of your
10:05 11 recollection?

10:05 12 A. Well, I'm advised that the merger took place
10:05 13 in approximately September 2003, prior to my employment
10:05 14 at The Clearing House. The reorganization of the parts
10:05 15 of The Chicago Clearing House into the Clearing House,
10:05 16 LLC took place approximately July 2004.

10:05 17 Q. What about the merger of Small Values -- Small
10:05 18 Value Payments Company into The Clearing House, what
10:05 19 time frame did that take place?

10:05 20 A. That took place also in July of 2004.

10:05 21 Q. Before you were the president and CEO of The
10:06 22 Chicago Clearing House Association, what job title and
10:06 23 with what company did you hold such job title?

10:06 24 A. Excuse me, sir. I was the president and chief
10:06 25 operating officer of The Chicago Clearing House, not the

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10:06 1 chief executive officer.

10:06 2 Q. Thank you.

10:06 3 A. To answer the substance of your question,
10:06 4 the -- prior to The Chicago Clearing House, I was the
10:06 5 director of the payment systems policy board at the
10:06 6 American Bankers Association, and I held a joint title
10:06 7 as director of the office of productivity and technology
10:06 8 for the same association.

10:07 9 Q. That's a mouthful.

10:07 10 A. Yes.

10:07 11 Q. What did your job duties entail as director of
10:07 12 the office of productivity and technology?

10:07 13 A. As director of the office of productivity and
10:07 14 technology, I was responsible for researching the
10:07 15 productivity of American banks and their operations with
10:07 16 respect to their various operating efficiencies and the
10:07 17 development of measurement standards for operating
10:07 18 efficiencies within the association.

10:07 19 Q. And what about the job title as director of
10:08 20 the policy board, what type of job duties did that title
10:08 21 entail?

10:08 22 A. There were two principal responsibilities in
10:08 23 the payment system policy board. One was to work with a
10:08 24 group of bankers who were representative of banks across
10:08 25 the country in size and geographic distribution with

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10:08 1 respect to policy issues related to U.S. payments law
10:08 2 and emerging technologies.

10:08 3 And the second was to conduct research on
10:08 4 behalf of the association with respect to emerging
10:08 5 payments technologies in the United States. The
10:08 6 principal concentration of research at that time was the
10:09 7 concentration of research in the area of check
10:09 8 truncation or the electronification of the check
10:09 9 collection process.

10:09 10 It was thought that banks would become more
10:09 11 efficient and that the collection system would become
10:09 12 more efficient if, in fact, paper payments could be
10:09 13 turned into electronic payments, and the physical
10:09 14 movements of paper payments could be reduced or
10:09 15 eliminated somehow in the process.

10:09 16 Q. And you said "at that time" this was the
10:09 17 thinking. During what time frame are you referring to?

10:09 18 A. Well, I was employed in those lines of work by
10:09 19 the American Bankers Association from approximately
10:10 20 April '1977 until April of '82. And when I was
10:10 21 originally employed, it was as an officer in charge of
10:10 22 the payments research into more electronic means of
10:10 23 collecting payments. And throughout my career, that
10:10 24 responsibility became larger within the association, and
10:10 25 my responsibilities grew within the association related

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10:10 1 to that research.

10:10 2 Q. Do you recollect at what time you were
10:10 3 promoted from an officer in charge of payments research
10:10 4 into the job title of director -- of either of the
10:10 5 directorships that you referenced earlier?

10:11 6 A. It seems to me I was promoted a couple of
10:11 7 times in the course of a five-year career. I don't
10:11 8 recall exactly when they made me a director. As I
10:11 9 recall, they made me director of payments policy board
10:11 10 prior to making me director of the office of productive
10:11 11 and technology.

10:11 12 The term "productivity" became a buzz word in
10:11 13 American industry about that time. And it was important
10:11 14 for the Washington association to have an office that
10:11 15 was associated with that term. As a practical matter,
10:11 16 the issues that we studied were not materially different
10:11 17 than the issues we had been studying in moving payments
10:11 18 more efficiently since much of the work of banks is in
10:11 19 the work of collecting payments for American consumers
10:12 20 and businesses.

10:12 21 Q. Where did you physically office from during
10:12 22 this time period of your employ with the ABA?

10:12 23 A. The office was in Washington on Connecticut
10:12 24 Avenue, as I recall, Connecticut and L.

10:12 25 Q. And did you work in the financial industry

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10:12 1 before April of 1977?

10:12 2 A. Yes, I did.

10:12 3 Q. Where were you at just previous to your employ
10:12 4 at the ABA, which began in April of 1977?

10:12 5 A. I was at the First National Bank of Chicago.

10:12 6 Q. And what job title with First National Bank of
10:12 7 Chicago did you hold at departure in the time frame of
10:12 8 April 1977?

10:12 9 A. I was an assistant vice president at that
10:13 10 time.

10:13 11 Q. Was that within any particular department or
10:13 12 division of the bank?

10:13 13 A. Yes. I was in the retail banking department,
10:13 14 sometimes known as consumer banking.

10:13 15 Q. And how long were you employed at First
10:13 16 National Bank of Chicago?

10:13 17 A. Eleven years.

10:13 18 Q. If my math is right, that takes us to about
10:13 19 1966. Does that sound right?

10:13 20 A. Early '67, as I recall. I remember 11 years
10:13 21 because they credited me with 11 in their pension fund,
10:13 22 so it's a number that sticks in my mind.

10:13 23 Q. Fair enough. Was your employ at the First
10:14 24 National Bank of Chicago your first employ in the
10:14 25 financial industry?

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10:14 1 A. No.

10:14 2 Q. What about preceding your employment at First
10:14 3 National Bank of Chicago, what type of positions did you
10:14 4 hold in the financial industry?

10:14 5 A. Prior to First Chicago, I was -- I had a
10:14 6 part-time job while I was in high school and college in
10:14 7 a neighborhood savings and loan association in the
10:14 8 Chicago area. I held a number of positions as a
10:14 9 part-time employee from -- employee cafeteria attendant
10:14 10 to parking lot attendant to burster of computer
10:14 11 printouts to mail room employee to file clerk and teller
10:15 12 over that period of time.

10:15 13 Q. That's a long way from senior VP of physical
10:15 14 check services, isn't it?

10:15 15 A. Long time.

10:15 16 Q. All right. Let's go back into some of the
10:15 17 more current time frame with respect to your work at The
10:15 18 Clearing House.

10:15 19 How has The Clearing House's physical check
10:15 20 services division changed during the three-plus years
10:15 21 that you have been the senior vice president there, in
10:15 22 broad strokes?

10:15 23 A. Well, I'm not sure I know where you're going
10:16 24 with that question, so...

10:16 25 Q. Let me rephrase it.

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10:16 1 A. Thank you.

10:16 2 Q. What type of changes to the physical services
10:16 3 division have you overseen during the course of your
10:16 4 tenure as senior vice president?

10:16 5 A. Thank you. Several. The first set of changes
10:16 6 that we oversaw had to do with the -- using the same
10:16 7 platform to support the daily settlement of the checks
10:16 8 that are cleared in the various regions.

10:16 9 When I became the manager of the service area,
10:17 10 there were three different computer systems, each used
10:17 11 in the same way in each of the regional clearing
10:17 12 arrangements to perform the same task, which was to
10:17 13 effect the daily settlement of checks and balances
10:17 14 between the institutions.

10:17 15 Operating three systems was inefficient and
10:17 16 not in the interest of the members. So our first
10:17 17 priority was to consolidate onto a single platform of
10:17 18 operations. It was important that we do that early on
10:17 19 because there are regulatory requirements in the
10:17 20 settlement of balances between banks for the
10:18 21 stabilization of those things in the event of
10:18 22 disruptions to the payments mechanism. And federal
10:18 23 regulators require that there be services in place that
10:18 24 can do that.

10:18 25 So the most efficient way to deal with that

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12:11 1 Q. Now, I could not locate a location or a
12:11 2 designated exchange location in the Eastern region other
12:11 3 than Carlstadt, New Jersey at which the physical items
12:11 4 associated with ECP processing were handled. Is that
12:11 5 the only location, to your knowledge?

12:12 6 A. To my knowledge, yes.

12:12 7 Q. Okay. Could you tell the jury what CHECCS is,
12:12 8 C-H-E-C-C-S?

12:12 9 A. I believe CHECCS is an old name for one of the
12:12 10 systems that the New York Clearing House used to use for
12:12 11 some of its check services prior to the time of my
12:12 12 arrival.

12:12 13 Q. Could you tell the jury what CheckView is?

12:12 14 A. CheckView is an obsolete name for one of our
12:12 15 websites that we used to use. We have since revised the
12:12 16 name of that website to SVPCOView, and CheckView is no
12:13 17 longer in general use.

12:13 18 Q. Let me ask you to clarify one aspect of that
12:13 19 answer. You indicated that CheckView is an obsolete
12:13 20 name for one of the websites that The Clearing House
12:13 21 used to use.

12:13 22 Wasn't it the case that CheckView was operated
12:13 23 by The Clearing House as an information-sharing tool
12:13 24 before it was implemented into a web-based system?

12:13 25 A. I have no idea.

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15:55 1 Q. Did there come a time some five to six, maybe
15:55 2 seven years ago when the NCHA essentially moved out of
15:55 3 operation by Huntington?

15:55 4 A. As I understand it, yes.

15:55 5 Q. Now, the description that you give in
15:55 6 paragraph 17 of your understanding of how the NCHA
15:55 7 system works, is it your understanding that that has
15:55 8 been the system from 1992 until the present or was the
15:55 9 system between 1992 and the time when Huntington moved
15:55 10 away from National Clearing House or as a third option,
15:56 11 is the way it works post Huntington?

15:56 12 A. You have a complicated question about events
15:56 13 from long ago, but let me see if I can simplify a
15:56 14 response for you to a complicated question.

15:56 15 In my -- in my job at the American Bankers
15:56 16 Association doing payments research in the '70s and into
15:56 17 the '80s, I guess, I met many bankers from across the
15:56 18 country, including several folks from Huntington Bank
15:56 19 who were involved in their check processing operations.

15:56 20 Many banks in check processing were interested
15:56 21 in the research we were doing on check truncation, use
15:57 22 of digital images in the future and things of that
15:57 23 nature, and Huntington was one of them.

15:57 24 In the course of that, I became friendly with
15:57 25 several of the executives. When I moved on to the

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15:57 1 Chicago Clearing House and later to Bankers Clearing
15:57 2 House in California, some of the folks from Huntington
15:57 3 Bank called me and said, Jerry, we're thinking about
15:57 4 using our check processing system in the evening to
15:57 5 collect checks. We finish processing all of our checks
15:57 6 about midnight, and we have a lot of time after midnight
15:57 7 and before 6:00 o'clock in the morning where we could
15:57 8 run our check processing equipment if we had more
15:57 9 checks.

15:57 10 There's a courier in town who has airplanes
15:58 11 that's bringing checks in. We could make money at our
15:58 12 bank if we did this. We're thinking about forming a
15:58 13 clearinghouse that would allow us to do this, because we
15:58 14 don't want to take the value of the checks into our
15:58 15 correspondent banking department as deposits. We would
15:58 16 like to leave the value of the checks outside the bank
15:58 17 if we possibly can.

15:58 18 I discussed those kinds of options with them
15:58 19 in the terms we had discussed very similar arrangements
15:58 20 at the American Bankers Association several years
15:58 21 before. And the ways one would use a clearinghouse
15:58 22 association structure to do certain things with respect
15:58 23 to laws pertaining to collecting checks, processes
15:58 24 related to collecting checks and the financial events
15:58 25 associated with collecting checks related to how they

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15:59 1 needed to be posted on a bank's accounts versus whether
15:59 2 they could be kept off the books of the banks and not
15:59 3 considered a deposit.

15:59 4 We -- I had several conversations on those
15:59 5 subjects over a period of time while Huntington was
15:59 6 thinking about that process. Some months, years later,
15:59 7 I saw an announcement about the National Clearinghouse.
15:59 8 I read the information that was available in the
15:59 9 literature of the industry. Different representatives
15:59 10 of the National Clearinghouse came to see me in
15:59 11 California and said they thought there was an
15:59 12 interesting thing for banks in California to get
15:59 13 involved in.

15:59 14 I looked at it. I gave them my candid opinion
15:59 15 that I thought it would be interesting to East Coast
15:59 16 banks. But I thought the way they had set it up would
16:00 17 be less interesting to West Coast banks because of the
16:00 18 way it functioned. Okay. You know, they showed it to
16:00 19 me and said, what do you think, and I told them what I
16:00 20 thought. Okay.

16:00 21 Some years after that, I understood that the
16:00 22 settlement contract between the processing company
16:00 23 subsidiary of Huntington Bank and the association that
16:00 24 is NCHA or the National Clearing House, was up for rebid
16:00 25 and that it was possible the process would change. I

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16:00 1 asked if I could submit a bid on behalf of the Bankers
16:00 2 Clearing House to offer those services. And the
16:00 3 National Clearing House bankers indicated to me they
16:00 4 didn't want one from California. I said, fine.

16:01 5 I also heard that when the bids finished, that
16:01 6 the processing company that processed the checks and
16:01 7 operated the services from Huntington Bank was for sale.
16:01 8 There was a private sale being orchestrated by a
16:01 9 consulting company around the country. I asked if I
16:01 10 could bid on it as president of the California Clearing
16:01 11 House to take over the operation of the subsidiary
16:01 12 company.

16:01 13 We discussed it, and they withdrew the offer.
16:01 14 The next thing I heard was that the processing contract
16:01 15 had been given to Clearinghouse of the Southwest in
16:01 16 Texas, and that there was some sort of intellectual
16:01 17 property suit between Huntington Bank and the then
16:01 18 operator of NCHA in Texas.

16:02 19 I understand that that was settled after some
16:02 20 period of time, and that that dispute is no longer in
16:02 21 existence. That's about what I understand about that
16:02 22 process. I don't believe I currently know many of the
16:02 23 folks at Huntington Bank. It has been a long time since
16:02 24 I visited with Huntington Bank.

16:02 25 Q. Was Bill Randall one of the people that you

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17:24 1 correctly, Wachovia submitting substituted checks, which
17:24 2 are now received by Washington Mutual and Wells Fargo;
17:24 3 is that right?

17:24 4 A. Yes, sir.

17:24 5 Q. Now, when you have a settlement of checks, or
17:24 6 substitute checks rather, that are submitted for
17:24 7 clearance and settlement under that National Check
17:24 8 Exchange process, when is the settlement time to occur?

17:24 9 A. Well, I don't recall the exact settlement
17:24 10 time. But the -- in the rules for the National Check
17:24 11 Exchange, there's a stated settlement time. It's the
17:24 12 same settlement time for all banks that participate in
17:24 13 that particular exchange, and it's -- it's a moment in
17:24 14 time that's scheduled in our rules.

17:25 15 Q. Is that settlement time scheduled in any way
17:25 16 in relationship to the timing of any other settlement?

17:25 17 A. No.

17:25 18 Q. Is it timed in relation to any other
17:25 19 settlement by any organization operating within The
17:25 20 Clearing House system?

17:25 21 A. No.

17:25 22 Q. Is it timed in relation to any settlement
17:25 23 operated by anyone outside The Clearing House?

17:25 24 A. No.

17:25 25 Q. Again, with respect to the substitute checks

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17:25 1 that are processed under the heading of your National
17:25 2 Check Exchange system, when Wachovia reports through
17:25 3 your SVPCOView system that it is going to present some
17:25 4 checks, are you able to determine from that report
17:25 5 through SVPCo system -- SVPCOView system when Wachovia
17:26 6 has, in fact, physically sent those substitute checks
17:26 7 anyplace?

17:26 8 MR. RUPP: Objection; form.

17:26 9 Q. How, if at all, can you determine from the
17:26 10 information Wachovia provides through the SVPCo
17:26 11 system -- SVPCOView system when Wachovia has physically
17:26 12 transported any substitute checks?

17:26 13 A. Counselor, I'm not sure I understand your
17:26 14 question, but let me take a shot at it.

17:26 15 I would have no occasion to draw that report
17:26 16 on any day for any purpose and any reason. I can't
17:26 17 deduce anything from that report, nor could anyone else.
17:26 18 Wachovia can't determine anything from that report other
17:26 19 than its clerk entered that amount for a package they
17:26 20 intended to ship, to transmit, reprint, ship and
17:27 21 exchange to one of the other parties or both of the
17:27 22 other parties, depending on their rate, mix and volume
17:27 23 of those transactions that particular evening.

17:27 24 Neither of the intended receiving banks could
17:27 25 deduce anything from that report other than that

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17:27 1 Wachovia had intended to ship such packages to them, and
17:27 2 that they might look for such packages when such
17:27 3 packages are scheduled to arrive. That's the only
17:27 4 useful information they might derive.

17:27 5 When the actual packages arrived from the
17:27 6 exchange location, further purpose at the receiving
17:27 7 banks would be had in reconciling, did we actually
17:27 8 receive the checks that Wachovia sent to us. And both
17:28 9 of the -- then all the banks would derive value from our
17:28 10 settlement report that said, yes, you got the money, or,
17:28 11 yes, you paid for the checks that were delivered to you.
17:28 12 Those are the things that could be derived.

17:28 13 But with respect to someone drawing the report
17:28 14 down at sometime prior to settlement, the only
17:28 15 information that can be derived are things that were
17:28 16 intended, things that should have occurred and things
17:28 17 that might occur sometime in the future. And no actual
17:28 18 knowledge is derived until the physical checks are
17:28 19 received at the paying institution.

17:28 20 Q. Is there anything in --

17:28 21 MR. RUPP: One moment. Move to strike as
17:28 22 nonresponsive that portion of the response that follows
17:28 23 the answer, I can't deduce anything from that report,
17:29 24 nor could anyone else.

17:29 25 Q. Okay. You can disregard that -- you can

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17:29 1 disregard that, Mr. Milano, because he's just telling
17:29 2 you of some motion he spends to make.

17:29 3 A. Thank you.

17:29 4 Q. Let me ask you this: Is there anything in the
17:29 5 rules for your National Check Exchange that requires
17:29 6 Wachovia or anyone else to advise anyone at the moment
17:29 7 when they transmit these substitute checks?

17:29 8 A. No.

17:29 9 Q. As a matter of practice, do you know whether
17:29 10 Wachovia or anyone else does advise anyone at the moment
17:29 11 they transmit substitute checks through your NCE system?

17:29 12 A. I have no knowledge of that.

17:29 13 Q. Where are the substitute checks that are
17:29 14 presently being processed through your National Check
17:29 15 Exchange physically delivered to the banks that receive
17:29 16 them?

17:29 17 A. They're delivered at our designated exchange
17:29 18 location in Los Angeles.

17:30 19 Q. Do you provide the banks that are involved in
17:30 20 that exchange with any record, electronic or otherwise,
17:30 21 of the exchange when they are physically exchanged?

17:30 22 A. There is no report of the exchange at the
17:30 23 request of the participants in the exchange.

17:30 24 Q. I'm sorry. Let me make sure I understand you.
17:30 25 When you say "there is no report at the

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17:36 1 answered over the last several minutes?

17:36 2 A. Yes.

17:36 3 MR. RUPP: Nor further questions. I'll
17:36 4 pass the witness.

17:36 5 FURTHER EXAMINATION

17:36 6 BY MR. CARTER:

17:36 7 Q. With regard to the question you were just
17:36 8 asked, Mr. Milano, about the timing of settlements by
17:36 9 local clearinghouses around the country, without regard
17:36 10 to when those might occur, is there anything in the
17:36 11 rules of your organization that times your settlement
17:36 12 one way or another with respect to any of those times,
17:36 13 whatever they might be?

17:37 14 A. No.

17:37 15 MR. CARTER: No further questions.

17:37 16 MR. RUPP: Thank you, Mr. Milano. That's
17:37 17 all I have.

17:37 18 MR. CARTER: Does any other counsel have
17:37 19 any questions?

17:37 20 DEFENSE COUNSEL: No questions.

17:37 21 MR. CARTER: Then we're concluded.

17:37 22 THE VIDEOGRAPHER: This concludes the
17:37 23 videotaped deposition of Gerard Milano. Going off the
17:37 24 record. The time is 5:37.

25 (Deposition concluded at 5:37 p.m.)