EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADVANCEME, INC.,)
)
VS.) Case No.:
) 6:05CV-424-LED-JDL
RAPIDPAY, LLC, BUSINESS) Tyler, Texas
CAPITAL CORPORATION, FIRST)
FUNDS, LLC, MERCHANT MONEY)
TREE, INC., REACH)
FINANCIAL, LLC AND FAST)
TRANSIT, INC. d/b/a SIMPLE) July 18, 2007
CASH) 9:02 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: MR. RONALD S. LEMIEUX
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APPEARANCES CONTINUED ON NEXT PAGE

COURT REPORTER: MS. THERESE J. CASTERLINE, CSR, RMR, CRR
Deputy Official Court Reporter

(Proceedings recorded by mechanical stenography, transcript produced on CAT system.)

THE WITNESS: No, I have not.

LAURENT BOUCHARD,

having been first duly sworn, testified as follows:

THE CLERK: Thank you.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. BUSS:

Q. Mr. Bouchard, would you please state your name for the record.

A. Yes. My legal name is Laurent, L-A-U-R-E-N-T, Bouchard, B-O-U-C-H-A-R-D.

MR. BUSS: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q. Mr. Bouchard, I'm handing you what's been marked as Plaintiff's Exhibit 50, which is your CV?

A. Yes.

Q. Mr. Bouchard, when did you first become involved in the credit card processing industry?

A. In approximately 1971.

Q. Who did you work for at that time?

A. I worked for a regional bank in northern Massachusetts called Essex Bank. That's E-S-S-E-X.

Q. How long did you work there?

A. Approximately seven years.

Q. And what were your responsibilities there?

A. My responsibility there was to manage the credit card issuing and merchant business that Essex Bank had. It was a private credit card prior to the evolution of MasterCard and Visa.

Q. Okay. What did you do after that?

A. After I left Essex Bank, I went to work for a bank called Security National Bank, also in northern Massachusetts, where I had the same functions.

Q. Okay. And then at some point, you joined Litle & Company, correct?

A. Yes. In 1989, I went to work for Citizens Fidelity Company, which was the -- one of the largest processors in the United States at the time in Louisville, Kentucky. I was vice president of northeast sales for them.

They were acquired in, I believe, 1991 by a bank in Sunrise, Florida. And I had the opportunity at that time to work for a company in New Hampshire called Litle & Company. And I went to work for Litle & Company early in 1992.

Q. At the time you joined Litle & Company, what was the business of Litle & Company?

A. Litle & Company was in the business of processing credit card transactions for the -- what's

generally known as the card-not-present industry, primarily catalogs, Internet merchants.

Q. And you said card-not-present. Can you explain what card-not-present is?

A. Card-not-present, it's an industry term used to identify merchants who accept credit cards for payment, but the consumer and the physical card is not present at the merchant location.

Q. So it's like if I'm ordering something over the telephone, then --

A. Right.

Q. -- and I give my credit card to that person?

A. If you're ordering over the telephone, you're giving your credit card information. If you're ordering it over the Internet, you are keying in your credit card information. Or if you are filling out a catalog order form, you may be writing your credit card information on that catalog order form and mailing it in.

Q. So your business was primarily credit-card-not-present transactions. Were some of the merchants that you processed for, did they also do card-present transactions and where there is a -- what we've termed as a POS device, point-of-sale device?

A. Yes, definitely there are many merchants in

the card-not-present business who have retail locations, and we processed merchants such as Brookstones, which had a major catalog but also had many retail locations. A lot of catalog merchants have outlets where they sell product that hasn't sold from the catalog.

So, yes, we did process transactions that were originated in a card-swipe environment through standard industry credit card processing terminals.

Q. Okay. Did Litle & Company enter into agreements with the merchants that it processed their transactions for?

A. Yes, there was member agreements signed by all merchants.

Q. I'm handing you what's been marked Plaintiff's Exhibit 51. If you would take a look at that.

Is that a copy of the member agreement that you just spoke of?

A. Yes, it is. It's a standard member agreement, process agreement, that Litle & Company entered into between itself and the customer or the merchant.

Q. Okay. Now, Mr. Bouchard, I would like for you to describe how a merchant's credit/debit and charge cards were processed according to this member agreement.

MR. BUSS: And, Your Honor, may the witness step down? I think he would like to draw a diagram on this board here.

THE COURT: Yes, that would be fine.

A. I don't profess to be an artist, so please bear with me. I want to make sure -- if I stand here, is that all right?

MR. BUSS: Is that all right?

A. It's obvious, I guess, that the business starts here with the merchant. The merchant accepts credit cards, as I said, either over the phone, over the Internet, or if it's a retail facility, by a customer walking in and presenting a credit card for payment.

At that point, the merchant delivers that credit card information to -- I'm going to try and make this very simple -- what I like to call the processing cloud. And the reason I would say that it's a processing cloud is because within this processing environment, there are multiple functions that occur, and I think -- at least my two days here in Tyler, I heard in the courtroom some of those, such as authorization, I think draft gap were used, settlement -- all of those processing functions, in my opinion, occur within this cloud. It can be complex;

it can be not complex. But within the cloud and within these functions, there can be multiple entities. Each entity can do one function; some entities can do multiple functions.

The net result of all of this processing that goes -- that takes place is at the end of the day, there is a calculation that is the result of this called net proceeds. And in the simplest terms, these net proceeds is the amount of funds due and, in fact, owned by the merchant.

And I believe in the member agreement -- this member agreement from Litle -- there is a definition of net proceeds.

MR. BUSS: Let me call that up, Your Honor.

MR. LEMIEUX: Your Honor, I would like to object and have this testimony struck. This witness is testifying in his opinion. He's not designated as an expert in this case. He's not rendered an opinion in this case. He's provided no report, so I don't believe he's entitled to render any kind of opinion evidence here.

MR. BUSS: I don't believe he's testifying as to his opinion, Your Honor. This is the way the Litle system operated, according to the member

agreement.

THE COURT: What question specifically are you objecting to?

MR. LEMIEUX: Well, I'm just looking at his testimony here, Your Honor. And it specifically states here in the transcript -- it says, in my opinion, this is how it all works, and that's how he's prefaced the testimony that he's provided here.

THE COURT: All right. Then if you've not been designated as a witness, you cannot express any opinion, just testify as to facts that you know.

THE WITNESS: I'm sorry. It was my use of the word.

Q. Is that how --

A. This is the way they operated at Litle & Company. The end result is that all of the processing of the transaction resulted in a calculation called net proceeds, which was the amount of funds due and owned by the merchant.

MR. BUSS: Can we call up page 2 of Plaintiff's Exhibit 51 of the net proceeds.

THE WITNESS: May I refer to the document?

Q. Sure. Can you explain to me how you would arrive at the net proceeds in -- when Litle & Company would process its transactions for merchants?

A. Yes. The net proceeds, as the definition states, start with the gross proceeds. The gross proceeds are the total amount of the sales, less any refund sales. And there is a definition for gross proceeds in this document. It's slightly higher up on the page.

So the gross proceeds are the total sales the merchant did, less the total refunds that the merchant issued to any consumers. That's the gross proceeds. From the gross proceeds within the processing, the fees -- what's called in this agreement the Litle fees are subtracted from those. The Litle fees are the fees that the merchant has agreed to pay Litle for the processing of these transactions.

Q. Can I just stop you one second there. The agrees that -- the fees that they agree to pay Litle, were other folks also charging fees in this processing environment?

A. Yes. In this environment at Litle, there were other entities that Litle was dependent on for certain services that were charging Litle fees for those services. Yes.

Q. And one of those was First National Bank of Louisville, correct?

A. Correct, one was First National Bank of

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Louisville.

Q. And one was --

A. One was --

THE COURT: Y'all need to slow down and not talk over each other.

THE WITNESS: I'm sorry.

Q. And they -- and they've charged a fee; is that correct?

A. That is correct.

THE COURT: Restate the names of those two banks so the court reporter can get it down, if you would, please.

Q. Go ahead.

A. First National Bank of Louisville and National Processing Company.

THE COURT: All right.

Q. Okay. Continue on. Net proceeds?

A. The other -- the other potential amount that would have been subtracted from the gross proceeds to calculate out the net proceeds was -- is release chargebacks, and the chargebacks is a mechanism within the credit card environment where a consumer can dispute a sale that appears on his personal credit card statement. The issuing bank, a bank where the consumer has his credit card, reverses that transaction off of

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the consumer's account. It goes back to the processing system, back to the processor, and the processor, in accordance -- or Litle & Company, in accordance with this definition, debits the merchant for that charged-back item.

The next amount that would be -- could have been deducted would be less any other amounts due from member, which was the merchant, to Litle.

And lastly, any prepayments.

Q. Okay.

A. So the result of that calculation results in the defined term net proceeds.

Q. Does the member agreement specify what Litle & Company can do with those net proceeds?

A. Yes, it does.

Q. What can Litle & Company do with those net proceeds pursuant to member agreement?

A. Pursuant to the member agreement, which is in compliance of MasterCard and Visa relations -- as I said, these net proceeds are now funds due and owing by the merchant -- Litle & Company is obligated to distribute those net proceeds in a manner so instructed by the merchant. And I believe there was language in this agreement -- it is on the next page.

Q. Okay. Are there instances in the Litle &

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Company -- 1990s when Litle & Company was operating -- where the merchant directed you to send funds somewhere other than to the merchant?

A. Yes.

Q. Can you describe those instances.

A. Yes. Again, we are obligated to move the net proceeds to the merchant as directed by the merchant. From time to time --

THE COURT: What -- where is that language you were referring to on --

THE WITNESS: I'm sorry, Your Honor. It's on the next page. I don't know if I can read it.

MR. BUSS: We'll call it the 3c1 on page 3, Exhibit 51. There, yeah.

THE WITNESS: It's 3d1.

THE COURT: So it's -- the agreement is to transfer an amount equal to net proceeds to the member's bank account as designated from time to time by the member in writing?

THE WITNESS: Correct, right.

THE COURT: Okay.

Q. Can you describe, again, when -- in those instances where Litle forwarded funds to somewhere other than the merchant?

A. Yes. There were -- the system, as it was

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designed and developed, had the capability of creating multiple transfers of net proceeds based on algorithms that would be input into the system at the time the merchant initiated doing business or anytime after the initial initiation of business as designated by the merchant when he chose to have his funds directed elsewhere.

There were instances that I am familiar with where merchants directed us to move funds, either as a whole or a percentage or a fixed amount, to what I would classify as third parties.

One of those arrangements was a standard practice that we provided called postage financing.

THE COURT: I'm sorry, called what?

THE WITNESS: Postage financing.

A. The others that I am familiar with I would classify as third-party creditors or third-party service providers. One that I am aware of is a company called Hanover Finance that did financing -- or provided financing to merchants in this business.

Another one was a company called -- I apologize. I'm not sure I remember the exact name of the company. It was managed by a gentleman by the name of Peter Bieler -- I think it was Bieler Martin & Company, but I'm not sure that was the exact name of

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his company.

MR. LEMIEUX: Objection, Your Honor. The witness just referred to testimony that the pretrial hearing specifically excluded in this case.

THE COURT: Is that correct?

MR. BUSS: My understanding was that Mr. Bieler himself would not testify, nor his documents be introduced, but that other witnesses could speak to their knowledge of who they dealt with at the third parties. If that's not correct, we can strike that testimony out.

THE COURT: Objection, sustained. The testimony is stricken.

A. There were two that I was aware of, one is postage financing; one was Hanover Financing, during the four years I was at Litle & Company.

Q. Can you draw those on the diagram there where they would be.

A. Sure. Again, the system had the capability of doing multiple transfers, as directed by the merchant. These transfers and the algorithms applied to the net proceeds could be based on a percentage or a fixed dollar amount, meaning a merchant could say, I want 10 percent of my net proceeds every day to go to Hanover Finance or I want $100 every day to go to

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Hanover Finance, and I want the remainder to come to my bank account or a bank account that I've designated.

So if those algorithms -- or if those instructions are in place when the net proceeds were calculated, a set of ACH instructions would have taken place that would have said, send, based on the merchant's instructions, X dollars to this bank account, as directed by the merchant, which might be owned by Hanover Finance, and send the other calculation to this bank account, which is owned by the merchant.

Q. And in that instance, the bank account where Hanover Finance is located, that's not inside this cloud, then?

A. No, this -- these entities are simply bank accounts that have no correlation in reality to the processing mechanism going on in this activity to process the actual transactions.

Q. Okay. Can you draw on the other side here, for instance, where -- describe the postage advance situation where that would happen there.

A. The postage -- do you want me to describe what a postage advance was or just the funding of it?

Q. Just the funding of it. We'll get into what it was in a second.

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A. In the postage funding scenario, there was ACH instructions that sent -- just like any of our normal ACH instructions -- that sent the money to an account owned by Litle, because Litle was the advancer of the funds, to a bank account at Bank of Boston -- was the bank -- where the receivables were established and where the funds were sent to offset the receivable.

Q. And so the Bank of Boston was not in this processing cloud, then, either?

A. No. The Bank of Boston was outside of the cloud. It was a complete separation between the processing that we were performing and this postage financing arrangement.

Q. Okay. If you would, I think, take your seat, and maybe we'll go through some of the documents that describe the first postage advance program.

I hand you what's been marked as Plaintiff's Exhibit 16 through -- yes, 16 through 19. They're Defendants' exhibits, sorry.

Can you describe for me what those are?

A. They are various promissory notes and agreements representing the agreement between Litle and -- excuse me -- a merchant who has obtained a postage finance or postage advance.

MR. BUSS: Can I get Exhibit 16 on the

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screen, please.

Q. You see there at the top it says, Schedule E-1?

A. Correct.

THE COURT: Excuse me. Can you explain to me what you're referring to when you're talking about this postage advance or postage finance? What is that?

THE WITNESS: Well, in the normal course of business, Your Honor, for a catalog, one of the catalog's largest expense is the actual mailing of the catalog, the postage involved in mailing the catalog.

The cataloger doesn't realize any revenue or sales from the catalog, obviously, until the catalog is out in the consumer's hands and the consumer can purchase from the catalog.

So the cash flow for a cataloger typically is extremely high, beginning somewheres around two weeks after the catalog is mailed. And then over the next two to three months, it drops off because people don't keep catalogs around. Once they order, they typically don't order again until there's another catalog.

So I believe in -- I believe there was a cataloger that initiated this by coming to Mr. Litle and suggesting that one of the issues that he had as a cataloger, because of the nature of the fluctuation in sales, was when he got to the end of the sales cycle of a catalog, he had little cash left to fund the mailing of a new catalog.

So postage financing was a means of providing the merchant with funds to mail out the next catalog and, therefore, initiate new sales.

THE COURT: So you were sort of like payroll deduction, putting it in a savings account for the catalog?

THE WITNESS: In reality, Your Honor, we sent -- the financing on postage financing was paid directly to the US Postmaster, because that provided us the guarantee that it wasn't money that the merchant was going to take and misuse; it was money given to the post office to assure us that the catalogs would, in fact, be mailed because the repayment for the postage finance arrangements was based on the future sales resulting from the catalog.

THE COURT: So who had control of the -- of the postage account, the catalog company or Litle?

THE WITNESS: I'm not sure, Your Honor, what you mean by the postage account. The funds were sent from Litle to the specific postmaster where the

catalog was going to be drop-shipped from, or shipped from.

THE COURT: Okay. And this was at the request of the catalog company?

THE WITNESS: Yes. Yes.

THE COURT: And so they were, in essence, prepaying postage to the US Postmaster for their next catalog mailing?

THE WITNESS: Correct.

THE COURT: All right.

Q. And that postage advance resulted in this agreement, which was an agreement between Litle & Company and the merchant, on behalf of which you advanced those funds, correct?

A. Correct.

Q. How much was typically at the time for payment to the postmaster that you would advance these funds for the merchants?

A. Typically, it was somewheres in the vicinity between 100,000 and probably 200,000, 250,000, depending on the size of the merchant and how many catalogs they were mailing.

Q. Okay. And in this instance, you can tell it's -- it was about 170,000; is that correct?

A. That's correct.

Q. If you would look at the first full paragraph there of that agreement. And it says -- toward the middle there, it says, member agrees -- the third line towards the right -- member agrees that, (i), the principal amount of the advance plus accrued interest at 10 percent less prior payments shall be paid in full on or before September 10th, 1990, and the daily repayments shall be deducted from daily net proceeds.

A. That's correct.

Q. What's that referring to?

A. That's referring to the repayment of the postage. There was a daily repayment amount. However, there was a final payment due -- or I should say, if there wasn't a final payment due, it would be required by the merchant to pay it no later than September 10th, and the (ii), the daily repayment shall be deducted from daily net proceeds, goes back to what I was describing up there, that these funds did not -- were not deducted in the calculation of net proceeds in the cloud; they were transferred -- again, at the request of the merchant by signing this document -- from the net proceeds.

THE COURT: Let me ask a question. I'm not sure I'm understanding.

Are you talking about this money that gets

paid to the postmaster in Atlanta, Georgia, is that a splitting of sales, or is this money advanced by Litle to the postmaster to be repaid by a splitting of -- of the -- of the sales proceeds?

THE WITNESS: It is an amount of money, Your Honor, advanced on behalf of the merchant to the postmaster to be repaid from the splitting of future sales.

THE COURT: It would be repaid to whom?

THE WITNESS: Repaid to Litle.

THE COURT: Okay. So, in other words, Litle would send $10,000 to the postmaster for -- for -- to pay the postage on the catalog, but then you would be repaid out of the proceeds of the credit card sales?

THE WITNESS: Correct.

THE COURT: I understood you before to say that it was an accumulation or a savings account where the catalog company was prepaying postage, but actually what you're saying is Litle was prepaying the postage, and then the credit card company -- I mean, the merchant was -- the catalog company was paying Litle back.

THE WITNESS: That's correct. I'm sorry for the confusion, Your Honor.

Q. Can you run through how Litle would have been repaid back.
A. Litle would have been repaid back -- or Litle was repaid back by the collection from the net proceeds on a daily basis based on either one of two mechanisms: a fixed payment amount or a predetermined fixed payment schedule.
Q. So if we look back at this diagram, the funds would come in to this net proceeds, right?
A. Right.
Q. And then from the net proceeds this -- what's referred to as a daily repayment would be repaid to Litle from the Boston account?
A. Right.
Q. And then the remainder would be sent back to the merchant's bank account, right?
A. Correct, to the merchant's bank account.
THE COURT: And would that money -- which category of net proceeds would that deduction be based on? Would that be considered Litle fees or repayments or other charges or what?
THE WITNESS: That -- the deduction for the re-collection of the postage finance would have occurred or did occur after the net proceeds calculation.

THE COURT: So it would be an additional step that would -- would -- would come out of the net proceeds --
THE WITNESS: Correct.
THE COURT: -- as you defined it? All right.
Q. So what would Litle do with the money once it received its daily payment from the net proceeds?
A. It would offset the obligation of the merchant by the amount of that daily payment.
MR. BUSS: Can we just go to the daily payment amount here on this document. It's the fourth line -- fifth line at the top.
Q. It says the daily repayment amount is $4,311.47, correct?
A. Correct.
Q. Would you take a look at Exhibit 18 and tell me what that is.
A. It's a demand promissory note for postage advances.
Q. And would Litle have been repaid exactly according to what you previously described?
A. Yes.
Q. So, again --
A. The same process.

Q. -- Litle would advance funds to the postmaster General on behalf of the merchant and get repaid out of net proceeds by taking a daily repayment amount?
A. That's correct. In this advance, we advanced 168,000, and the repayment was a daily amount of $4,412.50.
Q. And then after Litle was forwarded the daily repayment, the remainder would have gone back to the merchant, just like before?
A. Correct.
MR. BUSS: Okay. I would like to introduce the next set of exhibits, which is Defendants' Exhibits 21 through 23.
Q. Can you tell me what that collection of exhibits is.
A. These are, again, promissory notes and agreements for postage finance.
Q. Okay. The first set of agreements was with the merchant Exposures, correct?
A. That is correct.
Q. And the second set of agreements is with the merchant Museum Publications of America?
A. That is correct.
Q. And if you look at the member agreement that you have, is Museum Publications of America, that's

their member agreement as well?
A. Yes, it is.
Q. So would Litle have been repaid exactly as you described before, according to these postage advance agreements as well?
A. Yes.
Q. Were any of the aspects of the postage advance program confidential?
A. The only aspects of the program -- I'm sorry, can you ask the question again?
Q. Were any of the aspects of the program that we've been talking about here confidential?
A. No.
Q. So the fact that Litle was giving postage advances to merchants wasn't confidential?
A. No.
Q. The fact that there was this entity processing the payments on behalf of the merchant wasn't confidential?
A. Absolutely not.
Q. And the fact that Litle was being sent a portion of the payments wasn't confidential, out of net proceeds?
A. Correct, it was not confidential.
Q. And the fact that the rest of it was going

back to the merchant wouldn't have been confidential?
A. No.
Q. Did you -- did Litle require that the merchants that it signed contracts with enter into confidentiality agreements?
A. I believe there's a confidentiality section in the member agreement that pertains primarily to -- as required by MasterCard and Visa confidential -- what you would consider confidential credit card information or personal information on the consumer.
Q. The net confidentiality provision wouldn't have covered any of the high-level details of the postage advance program, though, would it?
A. No, it would not.
MR. BUSS: I would like to introduce the next exhibit, which is Plaintiff's Exhibit 13.
Can I get page 3 of this.
Q. Well, can you tell me what this is, first.
A. Well, this is the -- appears to be a reprint of a magazine article from June of 1992, Forbes Magazine.
MR. BUSS: You've got the wrong exhibit on the screen there. Defendants' Exhibit 13.
Q. And, I'm sorry, you said this was what?
A. It appears to be a reprint of a magazine

article from the June 8th, 1992 edition of Forbes.
MR. BUSS: Okay. Can we go to the third page of this document, call up the first full paragraph.
Q. It says, finding capital remained a problem, but Bourne was innovative. Postage was his largest expense, and in 1989, when he needed money, he turned to his credit card processor, a New Hampshire-based company called Litle & Company. Litle agreed to finance his postage by discounting his credit card receivables. It was such a good idea, other catalogers have followed suit.
Who's Randy Bourne that's referred to there?
A. Randy Bourne was -- I believe he was the founder and president of this -- of a merchant -- of this merchant Exposures.
Q. And Exposures is one of the first agreements that we looked at --
A. Correct.
Q. -- the postage advance agreements?
A. Correct.
Q. So does this describe the postage advance program?
A. It -- it describes the concept of the postage

advance program, yes.
Q. When this was published, did you ever contact Randy Bourne and tell him that he had disclosed any confidential information of Litle & Company?
A. No.
Q. Now, I would like to discuss the other arrangement where you talked about the Hanover Finance arrangement, and I would like to introduce Plaintiff's Exhibit 53.
Can you tell me what this is.
A. Yes, this is a letter from Boston Publishing, from Robert George of Boston Publishing, the president, to Michael Duffy, who was vice president of Litle & Company at the time, describing an arrangement or a financing arrangement that he had reached with Hanover Finance Corporation in providing us with instructions on how he wanted his net proceeds to be managed.
Q. Okay. And that's the second instance where you talked about it here on the board, correct?
A. Correct.
Q. Can we take a look at page 2, paragraph 2, of that agreement.
It says, Hanover Finance acknowledges that its security interest in the rights of the borrower to payment pursuant to this agreement is subject to your

rights to offset certain amounts or fees and other amounts due to you under the agreement to the extent provided therein and is further subject to the rights of Litle & Company to payment under a demand promissory note dated January 21st, 1994, the principal amount of which is $179,220.28. And then it refers to a second promissory note.
Are those the two promissory notes that are in Defendants' Exhibits 22 and 23?
A. Yes, they are. That refers to the two promissory notes for the postage finance advances.
Q. So those are two previous postage advance agreements that Litle had with this same merchant?
A. Correct.
Q. How would Hanover Finance have been repaid according to the terms of this agreement as well as the terms of the member agreement?
A. In this scenario, again, we would have calculated the net proceeds, and there would have been three sets of instructions. One would have been the repayment of the first promissory note. Whatever the daily repayment schedule was would have created an ACH to the Bank of Boston for that amount.
The second set of instructions would have been to ACH the daily repayment off of the second

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promissory note to the Bank of Boston, again, to -- to reduce the obligation of Museum Publications for the two postage finances.
And the third transfer would have been, according to the terms of the agreement between Hanover Finance and Boston Publishing, the transfer of funds to Hanover Finance's account.
Q. Okay. So according to that, then, out of the net proceeds, first, the -- there would have been a daily amount gone to Litle & Company for the first postage advance that we talked about?
A. Correct.
Q. Then there would have been a second amount taken out and sent to Litle & Company for the second postage advance?
A. Correct.
Q. And then there would have been a third amount taken out, and that would have been the remainder going to Hanover Finance?
A. Hanover Finance, correct.
Q. And in this instance, was there anything sent back to the merchant?
A. I don't -- looking at these documents, I don't believe so.
Q. Would it have been easy for you to send

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something back to the merchant if the merchant had requested it?
A. Yes. It would have just been another instruction. This is another transfer instruction.
THE COURT: And excuse me. I may have missed this. But why were you sending money to Hanover Finance? What was their role in this?
THE WITNESS: Hanover Finance was a third-party finance company that was entering into an arrangement with this merchant to provide working capital for the merchant, and therefore the merchant instructed us to send credit card proceeds to Hanover Finance.
THE COURT: So for this customer, in addition to the -- to the postage, you were also paying his note that the -- for working capital?
THE WITNESS: Yes.
Q. Was Litle & Company's capability of forwarding payments to third-party creditors like Hanover Finance considered to be confidential by Litle?
A. No.
Q. Now I would like to go through this diagram just a little bit more, and maybe you can describe some of the equipment that used -- that was used at the merchant in these processing entities. I'll run

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through that with you real quickly.
A. Sure.
Q. To start the process, a merchant would accept a card from a customer, correct?
A. That's correct.
Q. What type of equipment would be used to accept the card?
A. If it was at the merchant's retail location, it would have been one of the myriad of point-of-sale terminals available in the marketplace that would take card swipes.
If it was an Internet merchant or a catalog merchant, they would have either used software that they developed themselves to key and capture the credit card information, or they would have purchased software from some of the many software agencies or software companies that provide software that do that.
Q. Okay. And then once the card was -- number was entered, what would happen to the information?
A. The information would be -- would have been transmitted to the cloud, to us at Litle & Company.
Q. And would it have been transmitted electronically?
A. Yes.
Q. Using modems?

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A. In some cases using modems in the point-of-sale environment. Retail -- I guess it's a safe assumption that the terminal itself has a modem built into it.
In -- in larger merchants that had direct connections to us at Litle, they wouldn't have specifically used a modem. They would have used a device called a router. And that's because when you have a point-to-point connection, you don't need to dial. It's similar to having a string between two cans. It goes to the other can; you don't need to dial up.
Q. Okay. And then what equipment would have been used to receive the information on the other end in the processing cloud?
A. Again, Litle would have -- would have had a comparable router, if it was that type of scenario, or comparable modem to receive the information. It would have been imported into Litle's data-processing hardware, which in those days was Stratus computers.
Q. And what would happen next after Litle received the information?
A. In the typical environment or the standard environment, the transactions are formatted in a standard industry format. They would have been sent

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out initially to obtain an authorization. That's the scenario that validates whether the credit card is good and whether the credit card -- or the consumer has sufficient funds available on the credit card to make the purchase.

That information would be routed back to the merchant, the results of the authorization, and then the merchant would typically at some point later in the day send a batch file of all the transactions that he wanted to be paid for.

And those would come typically over the same connectivity in the same system. They would be, again, put in standard industry file formats. They would be forwarded to MasterCard and Visa to obtain -- so that the transaction can flow through to the cardholder and Litle & Company can be paid from MasterCard and Visa, or the processing card can be paid from MasterCard and Visa. And in conjunction with that, the processing that created the net proceeds would have taken place.

Q. What type of equipment was used in this authorization and batching-out or settlement process?

A. In both processes -- again, internally at Litle, we used Stratus computers, but like everybody else in the industry, the connectivity between the

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processor and MasterCard and Visa is standard industry hardware and software that is provided by MasterCard and Visa.

I apologize. I don't know the technical brand names they use. MasterCard employs a -- a MIP, which is a MasterCard interface port, and it's -- I believe it's some sort of server or PC device. Again, it's standard within the industry.

And Visa deploys a VAP, which is a Visa access point, which, again, is a piece of proprietary hardware -- I'm not sure how it's proprietary, but the software is proprietary. It's delivered by Visa. It's brought to the site. They install it. And the Litle & Company computers will have been connected to it.

Q. You said all this equipment was well known in the industry as standard equipment, right?

A. Yes. Yes.

Q. What about the forwarding of payments to the various creditors and merchants? What type of equipment was used to do that?

A. I think it was -- well, again, it was -- it was driven off of the Stratus computer. We created a standard industry NACH file, which is a National Automated Clearinghouse, the ACH file. It's a standard industry format; it's not proprietary.

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It includes, obviously, the bank transit routing number, which identifies which bank the merchant has its account in; it includes the merchant's bank account; and it typically includes a -- a label, if you will, that's -- that identifies what the payment's for, who the payment's from or who the ACH is from.

And it has other data in it, such as transaction codes to identify whether it's a debit or a credit ACH. But, again, it's a standard, nonmodifiable industry format.

Q. So was all of this processing -- processing that we're talking about, was all that done automatically?

A. Yes.

Q. Using computers and other electronic equipment?

A. Yes.

Q. And all the payments were made electronically?

A. Correct.

Q. Payments to the merchants?

A. Correct.

Q. Payments to the third parties were made electronically?

A. Correct.

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Q. Just a few more questions, and then we'll conclude.

Going back to when Litle was bought by Paymentech in 1995, is that -- well, let me -- I guess we didn't establish that before.

Litle was sold at some point, correct?

A. That's correct.

Q. And who were they sold to?

A. First USA, slash, became Paymentech.

Q. Paymentech. When did that occur?

A. I believe it occurred in the fall of 1995.

Q. And what was one of the first things that happened after Paymentech purchased Litle & Company?

A. One of the first -- I guess one of the first events that impacted me, as I stayed on with First USA/Paymentech, I was contacted by a gentleman by the name of Phil Taken, who was one of the legal counsels from Dallas Paymentech, and he wanted to get together with me to discuss all of the products and services that Litle had so that Paymentech could make a determination as to whether any of the products and services that they had acquired in the acquisition might warrant the investigation of obtaining a patent on -- for the obvious reason, I assume, of providing greater value for the purchase as well as providing

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some leverage over the -- over the competition.
Q. What were the results of that?
A. The results of the investigation and discussions on the products and services was that Taken and, I believe, other folks as Paymentech in Dallas, made the determination that none of the products and services that Litle & Company offered as it relates to the credit card process were sufficiently unique in the industry to warrant any patent investigation.
MR. LEMIEUX: Objection, Your Honor. I move to strike the witness' testimony as pure hearsay.
THE COURT: Sustained.
Q. Mr. Bouchard, if a member -- or, excuse me, a merchant were to come to you today and ask you to send a portion of its receipts to a capital provider, how would you go about doing that today?
A. In the -- in my current employment, I would do it in the same exact manner that we did it at Litle & Company in 1992.
Q. Okay. And that would have -- would it have been any different with respect to how you did that with respect to the postage advance program?
A. None.
Q. Would there be any difference between that and how you did it with respect to the Hanover repayment?

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A. None.
Q. So I just want to recap, then, before 1996, there were instances where, at the merchant's instructions, Litle & Company would forward out of the daily net proceeds a certain fixed amount or a percentage to a postage advance account, correct?
A. Correct.
Q. And then the remainder to the merchant, correct?
A. Correct.
Q. And then Litle used those funds to offset the postage advance that it forwarded to the merchant, correct?
A. That's correct.
Q. And then there's -- in the other scenario, the Hanover Finance situation we're talking about, Litle would pay first -- first take off its fee, then pay a portion to postage advance, correct?
A. That's correct. It would pay -- we would, again, take the proceeds, ACH the repayments for the postage advances, and the remainder of the net proceeds we would ACH to Hanover Finance for repayment to Hanover Finance on behalf of the merchant.
Q. Okay. And were all these arrangements common and nothing was confidential about them?

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A. Correct. Nothing was confidential.
Q. Can you explain what a reserve account is?
A. Yes. In the normal course of business, during the credit underwriting as to whether a processor or an acquirer will accept a merchant and allow a merchant to enter into an agreement, there are times when basically a merchant's type of business, based on the product, based on the financial well-being of the merchant, a processor may opt to require the merchant to put up a financial reserve or collect a financial reserve over a period of time as some mitigation against a risk of processing the merchant.
It's pretty standard in the industry. One of the -- as maybe a better example as to why you would do that, when I was at NPC, NPC was -- at one point before 9/11, we were the largest processor of airline transactions.
Because airline transactions -- because of the nature of the business that you buy a ticket today but you don't use that ticket, potentially, until next week, next month or next year, we, as the processor, had a huge risk of these prepaid tickets.
We had paid US Air; we had paid American Airlines for the ticket, but the consumer hadn't used the ticket. If anything occurred, such as the airline

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went bankrupt, we would be liable for all these tickets, because if the consumer can't fly, he can then initiate a chargeback.
Again, that's a credit to the consumer. It comes back to us as the merchant processor. And if the merchant isn't there or the merchant doesn't have the financial capability to cover those return items, I -- I, as the processor, have -- have to absorb that liability and I have the loss.
So to protect myself against that loss, I typically would collect, in that type of arrangement, a reserve on a daily basis and hold that aside as protection against that potential loss.
The reserve typically is handled in -- there's three ways a reserve can typically be handled. One is a fixed amount. You determine what your risk is going to be, and you would tell the merchant, if you want to do business with me, I need you to have X number of dollars in your reserve so you can give me that money, and then we'll enter the agreement. That's not necessarily -- that's one way. That's not the typical way.
The typical way is that you enter into an agreement with a merchant where you want to have X number of dollars on reserve, and you collect that out

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of the net proceeds -- or actually it's done -- again, this is done in the cloud, but it's done before the net proceeds -- that you agree with that merchant that you would take, say, 10 percent of the sales every day and apply it to this reserve.

So when you're doing your calculation, the last calculation you get to before you say, this the net proceeds; this is what we owe the merchant, is you take that 10 percent and you move that via another ACH transfer to a separate account.

And it is the merchant's funds. The merchant doesn't have access to it by contract until we would release it to them, but it is the merchant's funds.

Q. So then it would be another split of proceeds; is that correct?

A. Correctly, it would -- correct, it's another split.

Q. And one part would go to the reserve account and the remainder would go to the credit account?

A. Yes.

Q. Were these well known by the 1990s?

A. Yes. In the industry, yes.

Q. By the 1980s?

A. Yes.

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Q. Were these same types of reserves implemented by Litle in the 1990s, in the early 1990s?

A. Yes, because of the nature of the card-not-present business, other than those merchants that provide prepaid products like the airlines, Litle was probably the -- they were probably the largest acquirer of reserve funds because of the nature of card-not-present business and because of the propensity of fraud in that business because the cardholder isn't present, and especially in the early days there was very -- there was very limited ability to identify -- that the merchant could identify that you were who you said you were when you were calling up and placing the order. So there were more chargebacks in the retail world, and, therefore, there was more -- a greater requirement to have reserves on the merchants.

Q. If you would look at the member agreement, Schedule D, does that set forth the reserve amount with a particular merchant?

A. Schedule D, yes, it does. And as it states in the case of Museum Publications, the minimum net chargeback reserve was $75,000.

Q. And how did Litle do the reserve account in this instance?

A. In this instance? In this instance, we -- we

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would have collected a percentage of the sales on a daily basis, and in the case of Litle and in the case of merchants like this, we did what was called -- what we would call a rolling reserve, where we collected a percentage of the sales every month or every day.

And then on a six-month interval -- I don't want to make this too complicated -- but for the sales in January, we would have collected 10 percent of all the sales in January.

In July, we would have done a calculation that said, I collected 10 percent of the sales in January, which equals X. Did I get the chargebacks in for January? Did I get the chargebacks in resulting from those January sales? I would reduce the reserve by the amount of those chargebacks; and what was left in that January bucket, I would then release back to Museum Publications.

Q. That was the merchant?

A. The merchant, right.

So basically, I held the funds for six months, because that in -- in the card-not-present world, that is the extended period of time that Visa or MasterCard allow you, as the cardholder, to dispute a charge.

MR. BUSS: Okay. No further questions

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Your Honor.

THE COURT: All right. I believe we'll take our noon break, and we'll be in recess until 1 o'clock.

THE BAILIFF: All rise.

(Recess 12:08 p.m.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter, to the best of my ability.

______________________________ __________

THERESE J. CASTERLINE, CSR, RMR, CRR Date
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