

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

2011 APR 29 AM 10:18

IN THE MATTER OF THE LIQUIDATION) Case No. 10 CH 47490
OF CONSTITUTIONAL CASUALTY)
COMPANY) The Honorable Richard J. Billik, Jr.
)

**NORTHSIDE COMMUNITY BANK'S OPPOSITION TO
LIQUIDATOR'S MOTION FOR THE TURNOVER OF FUNDS**

The Liquidator's Motion for the Turnover of Funds (the "Turnover Motion") should be denied because this Court lacks jurisdiction to decide this issue. The Liquidator is seeking a summary order from the Court requiring NorthSide Community Bank ("NorthSide" or the "Bank") to turnover funds that, prior to October 6, 2010, were held in eight of Constitutional Casualty Company's ("CCC") deposit accounts at the Bank (the "Funds"). Because NorthSide has a substantial claim of right to the Funds, this Court lacks jurisdiction to consider the Turnover Motion. NorthSide is entitled to a plenary proceeding, such as the action already pending before Judge Flynn in the case captioned *Constitutional Casualty Company v. NorthSide Community Bank*, No. 10 CH 46263 (the "Judge Flynn Case"). The Judge Flynn Case is in the middle of trial on this same issue, and it is the proper forum to decide the Liquidator's arguments in the Turnover Motion.

As NorthSide is in the process of demonstrating in the Judge Flynn Case, NorthSide has a substantial claim of ownership over the Funds based on its contractual and common law right of setoff that it exercised in early October, 2010. Prior to the Bank exercising its right of setoff, Copco, Inc. ("Copco"), CCC, and Herbert F. Stride, Sr. ("Stride") (collectively, the "CCC Parties") owed the Bank approximately \$7.3 million pursuant to the Business Loan Agreement

(the “Loan Agreement”). NorthSide had the right to setoff the Funds against the debt that the CCC Parties owed to the Bank pursuant to the plain language in the Loan Agreement. NorthSide also had a setoff right, under either the Loan Agreement or the common law right of setoff, based on the alter ego doctrine. NorthSide is currently presenting evidence in the Judge Flynn Case proving both its contractual rights and that the alter ego doctrine applies to the CCC Parties.

The Liquidator argues that, because NorthSide did not seek prior judicial approval for its setoff, the Bank should be required to turnover the Funds now, and then seek to enforce its right of setoff in the liquidation claims process. This argument is wrong for at least three reasons. First, setoff is a self-help remedy that does not require prior judicial approval. Second, the Funds are not subject to the Liquidation Order because NorthSide exercised its right of setoff before the Liquidation Order was ever entered (and before even the petition for a Conservation Order was filed). Third, the Seventh Circuit previously rejected this as the *reductio ad absurdum* of one of the Liquidator’s previous arguments against setoff. The Liquidator fails to cite any support for this argument now. Thus, because NorthSide has a substantial claim of ownership over the Funds, the Liquidator’s Turnover Motion should be dismissed for lack of jurisdiction, and in no event should the Bank be required to turnover the funds prior to a determination of its right to setoff.

BACKGROUND

This action arises from a Loan Agreement dated November 26, 2007, in which NorthSide agreed to loan \$7.05 million to the CCC Parties. (A copy of the Loan Agreement is attached as Exhibit 1.)¹ The Loan Agreement identified the “Borrower” as Copco and “all co-signers and

¹ The Loan was extended three times, pursuant to three Change In Terms Agreements, dated November 26, 2008, November 26, 2009, and January 26, 2010. (Copies of the Change In Terms Agreements are attached as Exhibit 2.)

co-makers signing the [Loan Agreement] and all their successors and assigns.” (*Id.* at p. 6) The Loan Agreement also contained a “Subsidiaries and Affiliates” clause, which provided:

To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word “Borrower” as used in this Agreement ***shall include all of Borrower’s subsidiaries and affiliates.***

(*Id.* at p. 5 (emphasis supplied).) CCC is a wholly owned subsidiary of Copco. (Turnover Mot. ¶ 3.) The Loan Agreement also named Stride as guarantor. (Turnover Mot. ¶ 7.) At the time of the loan, Stride was the principle of Copco and CCC.

Prior to the Loan Agreement, Stride had a long-standing relationship with NorthSide and its management. (Ex. 3, Affidavit of Patricia Clausen (“P. Clausen Affd.”), ¶ 4.) Stride had been one of the five organizers of NorthSide when the Bank was founded in 1997, and he served on NorthSide’s Board of Directors from its founding until June, 2009. (*Id.*) Stride’s relationship with some of NorthSide’s personnel went back over eighteen years, prior to NorthSide. (*Id.*) Based on the Bank’s understanding of the relationship between and among Stride, CCC and Copco, the parties drafted the Loan Agreement so that it would be secured by the assets of the CCC Parties, collectively. (*Id.* at ¶ 7.) The Loan Agreement required the CCC Parties to provide NorthSide with financial information regarding CCC to ensure that they would be able to repay the loan. It also required the CCC Parties to provide annual audited financial statements from Copco and CCC. (*Id.*; Ex. 1, Loan Agr., at p. 2.) The Loan Agreement subjected CCC’s yellow book to an “annual satisfactory review” and provided that, on a semi-annual basis, NorthSide would review CCC’s A.M. Best Rating. (*Id.*) It also required CCC to maintain (i) a minimum net worth of \$7 million, which NorthSide would check on an annual basis throughout the life of the loan and (ii) a minimum of \$5 million deposited with NorthSide throughout the life of the loan. (*Id.* at p. 4.)

In addition, the Loan Agreement included a “Right to Setoff” (the “Setoff Provision”), which states:

To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower’s accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future....Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts and, at Lender’s option, to administratively freeze all such accounts to allow Lender to protect Lender’s charge and setoff rights provided in this paragraph.

(Ex. 1, Loan Agr., at p. 4.) The proceeds from the Loan Agreement ultimately were deposited into CCC’s deposit accounts at the Bank, where they remained up to the date of the setoff. (Ex. 3, P. Clausen Affd., ¶¶ 8, 11.)

In 2009, the CCC Parties began to default on the loan. (*Id.*, at ¶ 9.) On or about June 25, 2010, NorthSide filed a confession of judgment action against Stride and Copco seeking approximately \$7.3 million as the amount owed under the Loan Agreement plus interest, late charges and attorney’s fees. (A copy of the Complaint for Confession of Judgment (without exhibits) is attached as Exhibit 4.)

On October 6, 2010, NorthSide exercised its right of setoff over approximately \$5.3 million held in eight CCC deposit accounts at NorthSide (*i.e.* the Funds). (Ex. 3, P. Clausen Affd., ¶ 10.) NorthSide applied the Funds against the \$7.3 million it was owed under the Loan Agreement. (*Id.*) At the time NorthSide exercised its setoff right, the Funds in CCC’s deposit accounts were the traceable proceeds of the Loan Agreement. (*Id.* at ¶ 11.) In exercising its right to setoff, NorthSide relied on the Setoff Provision in the Loan Agreement. (*Id.* at ¶ 12.)

On October 22, 2010, CCC filed suit against NorthSide in the Judge Flynn Case claiming that NorthSide improperly seized the Funds from its deposit accounts. On November 3, 2010,

the Director of Insurance of the State of Illinois (the “Director”), filed this action for conservation of assets on behalf of CCC and Copco. In December 2010, the Director, acting as Conservator, authorized CCC to proceed with its claim against NorthSide in the Judge Flynn Case. The parties expended great effort and resources litigating the case before Judge Flynn on an expedited basis. (Ex. 3, P. Clausen Affd., ¶ 14.) On December 13 and 14, 2010, the parties presented two days of trial testimony in the Judge Flynn Case. At the time trial began in the Judge Flynn Case, none of the parties or the court believed that the trial would finish within two days. (See Ex. 5, 12/13/10 Trs. 24:2-24, 30:1-31:21.) After two days of testimony, Judge Flynn postponed the remainder of the trial until April 12, 2011.

On January 7, 2011, the Director filed a verified complaint for liquidation of CCC in this Court. The Court entered the Agreed Order of Liquidation on January 21, 2011, appointing the Director to serve as the Liquidator of CCC. Three months after obtaining the Agreed Order of Liquidation, the Liquidator filed the Turnover Motion. In the Turnover Motion, the Liquidator argues that it is entitled to a summary turnover of the Funds because NorthSide’s setoff is based on the alter ego doctrine. The Liquidator did not inform the Court that NorthSide also had exercised a contractual right to setoff the Funds, even though Patricia Clausen (NorthSide’s President) testified in the Judge Flynn Case that NorthSide believed that the setoff language in the Loan Agreement authorized the Bank to setoff monies against CCC’s accounts. (Ex. 6 12/14/10 Trs. 373:6-12.)

ARGUMENT

The Liquidator’s Turnover Motion should be denied because the Court lacks jurisdiction to decide this issue. The Illinois Supreme Court has previously held that a plenary proceeding is required for a liquidator to obtain assets when the liquidation court does not have actual or constructive possession of the assets involved and the assets are held adversely under a

substantial claim. *Gerber v. Central Cas. Co.*, 37 Ill. 2d 392, 397, 226 N.E.2d 862, 865-66 (1967). Here, the Liquidator does not have actual or constructive possession of the Funds and, as the discussion below makes plain, NorthSide holds the Funds adversely under a substantial claim of right. Thus, this issue must be heard in a plenary proceeding, such as the Judge Flynn Case, and may not be decided in a summary proceeding before this Court.

A. The Liquidation Court Lacks Jurisdiction Because NorthSide Has A Substantial Claim To The Funds

A liquidation court lacks jurisdiction to decide substantial claims of setoff in a summary proceeding. *Id.* at 398-99; *see also Stamp v. Ins. Co. of N. Am.*, 908 F.2d 1375, 1379 (7th Cir. 1990) (noting that the liquidator had to move outside the liquidation court to collect money allegedly owed from a reinsurance company because the liquidation court lacks ancillary jurisdiction and does not offer a forum in which all questions concerning the subject insurance company may be settled). The Illinois Supreme Court decided nearly this identical issue in *Central Cas. Co.*

In *Central Cas. Co.*, the Director, in his capacity as liquidator of Central Casualty Company (“Central”), filed a petition in the liquidation proceeding against the Exchange National Bank of Chicago (“Exchange”) seeking the turnover of certain funds held by Exchange. *Central Cas. Co.*, 37 Ill. 2d at 393. The turnover motion stemmed from a \$200,000 loan made by Exchange to Central’s president, Charles Bray, and his wife (collectively, the “Brays”), in order for the Brays to purchase stock in Central. *Id.* As a condition of the loan, Exchange required two \$100,000 surety bonds as collateral, one of which was executed by Central. *Id.* The proceeds of the loan were credited to Central’s account at Exchange. *Id.* At some point, the Brays stopped making payments on the loan and Exchange demanded the unpaid balance of the loan (\$37,691.60). *Id.* At the time of the demand, Central had approximately \$29,000 on deposit

with Exchange. *Id.* Before Exchange was repaid, however, Central was put into liquidation. *Id.* at 393-94.

After the court entered Central's liquidation order, Exchange applied the nearly \$29,000 from Central's bank account to the unpaid balance on the Brays' loan. *Id.* at 394. Approximately three months later, the Director filed a petition in Central's liquidation proceeding seeking a judgment of almost \$29,000 against the bank. *Id.* Exchange filed a motion to dismiss for lack of jurisdiction, claiming that its liability could not be determined in Central's liquidation proceeding, that no statute authorized such a summary proceeding, and that it was entitled to a jury trial on the question of its liability. *Id.* The Illinois Supreme Court held that a court of equity could not summarily adjudicate a receiver's claims against persons who hold property under a reasonable and adverse claim. *Id.* at 397. The court held that only colorable, insubstantial claims can be summarily resolved, and that Exchange's setoff claim was neither merely colorable nor insubstantial. *Id.* at 398-99.

Here, like in *Central Cas. Co.*, the Liquidators' Turnover Motion cannot be summarily resolved because NorthSide has a substantial claim to the Funds. NorthSide asserted ownership of the Funds pursuant its right of setoff. Illinois' insurance law recognizes the right of setoff in liquidation proceedings outside of the proof of claims process. 215 ILCS 5/206 ("In all cases of mutual debts or mutual credits between the company and another person, such credits and debts *shall* be set off or counterclaimed and *the balance only shall* be allowed or paid" (emphasis supplied)). NorthSide exercised its contractual right of setoff over the Funds in CCC's deposit accounts pursuant to the terms of the Loan Agreement. NorthSide's setoff also was proper under either the Loan Agreement or its common law setoff right, based on the alter ego doctrine.

1. **NorthSide Had A Contractual Right Of Setoff Over CCC's Accounts**

Under the plain language of the Loan Agreement, NorthSide had a setoff right for all of CCC's accounts with NorthSide, which NorthSide applied to reduce the balance due under the Loan Agreement. The Loan Agreement provided that NorthSide was allowed to charge or setoff all sums owed under the Loan Agreement against any and all of the Borrower's accounts at NorthSide. (Ex. 1, Loan Agreement., at p. 5.) The Loan Agreement defined the term "Borrower" to mean Copco and "all co-signers and co-makers signing the Note and all their successors and assigns." (*Id.* at 6.) The Loan Agreement further provided that, "[t]o the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word 'Borrower,' as used in this Agreement shall include ***all of Borrower's subsidiaries and affiliates.***" (*Id.* at 5 (emphasis added).) Because CCC is a wholly-owned subsidiary of Copco, CCC is included within the definition of "Borrower" under the plain language of the Loan Agreement.² Thus, NorthSide had a contractual right of setoff over CCC's accounts, which it exercised.

Moreover, based on the context of the Loan Agreement, as a whole, it is entirely appropriate to include CCC within the definition of "Borrower," subject to the setoff provision. To interpret the Loan Agreement, the Court must look to the intention of the parties. *See Fleet Bus. Credit, LLC v. Enterasys Networks, Inc.*, 352 Ill. App. 3d 456, 469, 816 N.E.2d 619, 629 (Ill. App. 1 Dist., 2004) ("The principal objective in construing a contract is to determine and give effect to the intention of the parties at the time they entered into the contract."). Here,

² The Liquidator's argument that "The Loan Agreement names 'Copco, Inc.' as the borrower," and "no other person or entity is named in the Loan Agreement as a borrower," is demonstratively false. (*See Mot.* at ¶ 5.) The Subsidiaries and Affiliates Provision plainly states that "the word 'Borrower' . . . shall include all of Borrower's subsidiaries and affiliates." (Ex. 1, Loan Agr., at p. 5.) Thus, as a wholly-owned subsidiary of Copco, CCC is clearly included as a Borrower under the Loan Agreement.

numerous provisions of the Loan Agreement confirm that the parties intended to include CCC as a “Borrower” subject to NorthSide’s right of setoff.

For example, the Loan Agreement required the CCC Parties to provide the Bank with CCC’s annual financial statement. (Ex. 1, Loan Agr., at p. 2.) The Loan Agreement also made the loan contingent on CCC’s continued financial health. CCC was required to maintain a minimum net worth of \$7 million, which the Bank was entitled to review on an annual basis throughout the life of the loan. (*Id.*) CCC’s yellow book was subject to an annual satisfactory review. (*Id.*) Further, the Loan Agreement required CCC to maintain a minimum of \$5 million on deposit with NorthSide throughout the life of the loan. (*Id.* at 4.) The Loan Agreement made no solvency or depositary requirements on Copco; Copco was not even required to maintain an account at NorthSide. Accordingly, the Loan Agreement’s requirements of solvency, minimum deposits, and inclusion of CCC as a Borrower were important to the underwriting of the loan and critical to give teeth to NorthSide’s setoff right. These provisions would be made meaningless, as would the setoff provision itself, if NorthSide was not permitted to exercise its setoff right over CCC’s deposit accounts. *See Bd. of Regents v. Wilson*, 27 Ill. App. 3d 26, 31, 326 N.E.2d 216, 219 (2d Dist. 1975) (holding that the court should presume that all provisions of a written contract are inserted for a purpose, as parties do not ordinarily insert meaningless terms into their contracts).

The Liquidator may argue, as CCC has in the Judge Flynn Case, that CCC did not sign the Loan Agreement and, thus, is not bound. Based on the parties’ relationship, however, NorthSide was justified in concluding that Stride and Copco had the authority to bind CCC under the Subsidiaries and Affiliates Provision. *See Fleet Bus. Credit*, 352 Ill. App. 3d at 469 (“A contract does not exist in a vacuum; its terms must be understood in light of the commercial

context within which it was drawn.”). As Patricia Clausen testified at trial, Stride had banked at NorthSide for over thirteen years, and had known people at NorthSide even longer; in some cases over eighteen years. (Ex. 6, 12/14/10 Trs., 305:16-306:8, 312:10-24.) Stride served on NorthSide’s board of directors from its inception until June, 2009. (*Id.* at 306:9-17.) NorthSide knew that Stride controlled Copco and CCC. (Ex. 3, P. Clausen Affd., ¶ 4.) NorthSide also knew that CCC was the wholly owned subsidiary of Copco. (*Id.*) Thus, all the parties understood that Stride had the ability to bind CCC under the Subsidiaries and Affiliates Provision when they entered the Loan Agreement. (*Id.*)

2. NorthSide Had A Setoff Right Because CCC Was The Alter-Ego Of Stride and Copco

In addition to its right of setoff under the plain language of the Loan Agreement, NorthSide had a contractual and common law right of setoff against CCC’s deposit accounts based on the alter ego doctrine. *See, e.g., First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 633, 103 S. Ct. 2591, 2603 (1983) (holding that the petitioner bank could apply a right of setoff to respondent bank’s assets based on a finding that the respondent bank was the alter ego of the Cuban government); *McCall Stock Farms, Inc. v. U.S.*, 14 F.3d 1562, 1566-67 (Fed. Cir. 1993) (upholding application of setoff right based on alter ego doctrine). To determine whether to apply the alter ego doctrine, courts do not rest on a single factor but will look to a number of variables such as inadequate capitalization, failure to observe corporate formalities, the commingling of funds, and the absence of corporate records. *McCracken v. Olson Co., Inc.*, 149 Ill. App. 3d 104, 109, 500 N.E.2d 487, 491 (1st Dist. 1986).

Here, NorthSide was in the middle of presenting evidence in the Judge Flynn Action that the alter ego doctrine should apply because the CCC Parties was operating as a single entity. Stride’s son, Herbert Lee Stride (“Chip”), testified that Stride routinely intermingled money

between himself, Copco and CCC. Chip admitted that Copco received approximately \$1 million in commissions from CCC in both 2008 and 2009, even though Copco did not have any employees and CCC performed all of the work that Copco was supposed to perform. (Ex. 5, 12/13/10 Trs., 171:16-173:15; Ex. 6, 12/14/10 Trs., 185:20-187:11.) Chip testified that Copco was solely a conduit for the policies issued by CCC. (Ex. 5, 12/13/10 Trs., 174:20-175:17.)

Jeff Jackson, a representative from the Department of Insurance testified that, in late 2009, the Department of Insurance instructed CCC to terminate its agency agreement with Copco. (Ex. 6, 12/14/10 Trs., 270:13-271:1.) Chip admitted that terminating the agency agreement effectively eliminated Copco's revenue stream. (*Id.* at 189:19-190:1.) Chip testified that, after terminating the agency agreement, CCC immediately increased Stride's salary by \$500,000/year in order to make up the payments that Stride had previously received from Copco. (*Id.* at 192:11-19.) Chip testified that CCC also continued to make loans to Stride. (*Id.* at 193:8-15.) CCC made the payments for approximately fifteen cars owned by Copco. (*Id.* at 194:17-23, 208:24-209:12.) At least three of these cars were used by Chip's family, including his wife and children who were not employees of CCC. (*Id.* at 210:16-211:7.) Chip stated that CCC paid for the gas, maintenance and other expenses for all of Copco's cars. (*Id.* at 194:13-16.) Chip also testified that CCC paid Stride's American Express bills and made payments on behalf of Copco to pay down the NorthSide loan. (*Id.* at 193:20-194:12.)

Chip confirmed that, in 2009, CCC loaned Copco \$1.4 million in 2009, even though Copco had no means of repaying this money. (*Id.* at 188:8-189:16.) Chip stated that Copco used this money, in part, to make payments to Stride and Chip, and to make bonus payments to other CCC employees. (*Id.* at 198:4-21.) For example, during 2009, Copco paid Stride approximately \$10,000 per week using money loaned from CCC. (*Id.* at 199:18-200:5.) On Stride's direction,

Copco also paid Chip approximately \$5,500 per month while Chip was president of CCC. (*Id.* at 200:14-201:11.) According to Chip, this was the way that Stride traditionally structured the payments. (*Id.* at 199:4-15.)

NorthSide will continue to adduce additional evidence in the Judge Flynn Case demonstrating that the CCC Parties was operating as a single entity and the alter ego doctrine should apply. The evidence already presented, however, is sufficient to show that NorthSide has a substantial claim to the Funds based on its setoff right under the alter ego doctrine.

B. NorthSide Is Not Required To Immediately Turnover The Funds And File A Proof Of Claim In The Liquidation Proceeding

Even if the Court concludes that it has jurisdiction over this dispute (and it does not), turnover is improper at this time. The Liquidator argues that, because NorthSide did not obtain a judgment against CCC prior to these proceedings, NorthSide should be required to immediately turnover possession and control of CCC's assets pursuant to the Liquidation Order. (Mot. at ¶¶ 16-23.) This argument is wrong for at least three reasons.

First, NorthSide was not required to obtain a judgment against CCC, or a judicial decision that CCC was the alter ego of Copco, before exercising its setoff right against CCC. As the Seventh Circuit has held, "A setoff is not something that a court orders in response to a counterclaim; it is a self-help remedy. It is something you *do*, not something you ask a judge to compel someone else to do." *Beloit Corp. v. C3 Datatec, Inc.*, 1996 U.S. App. LEXIS 4945, at *3 (7th Cir. March 1, 1996) (emphasis in the original).³ The Liquidator cites no cases supporting its novel argument that NorthSide's setoff was invalid because NorthSide did not seek prior judicial approval.

³ A copy of *Beloit Corp. v. C3 Datatec, Inc.*, 1996 U.S. App. LEXIS 4945 (7th Cir. March 1, 1996), is attached as Exhibit 7.

Second, NorthSide does not have any of CCC's assets that are subject to the Liquidation Order. NorthSide exercised its setoff right on October 6, 2010 – over three months before the Court entered the Liquidation Order. As soon as NorthSide exercised its setoff right, the Funds went to pay down the balance due under the Loan Agreement and were no longer the assets of CCC. *Cf. Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 18-19, 116 S. Ct. 286, 289 (1995) (“Here it is undisputed that, prior to the bankruptcy filing, petitioner had the right under Maryland law to set off the defaulted loan against the balance in the checking account.”). Under the plain language of the Liquidation Order, the Funds are not part of the liquidation estate. (*See* Liquidation Order, ¶ F(i)(c) (limiting the scope of the Liquidation Order to “any and all property, contracts and rights of action of CCC”).) If the Liquidator wishes to assert a claim over the Funds, it must file a separate action outside of the liquidation court. *See Ins. Co. of N. Am.*, 908 F.2d at 1379 (noting that the liquidation court could not entertain the liquidator's attempt to collect from a reinsurance pool for money paid by the insolvent insurer and that the liquidator had to move outside the liquidation court to collect from the reinsurer).

Third, regardless of whether the setoff ultimately is valid – which it is – NorthSide is not required to turnover the Funds to the Liquidator *before* the Court determines whether it has the right of setoff. Requiring NorthSide to turnover funds and **then** make a claim for them would lead to the absurdity of a party with a setoff right being required to pay its counter-party in-full but itself only being allowed repayment of a fraction of the balance due. This result would eviscerate the setoff provision in Illinois' insurance code, which provides that “[i]n all cases of mutual debts or mutual credits between the company and another person, such credits and debts *shall* be set off or counterclaimed and *the balance only shall* be allowed or paid” 215 ILCS 5/206.

Indeed, the Seventh Circuit has recognized the argument that the liquidator promotes here as a claim that leads to an absurd result, and denied a similar attempt in *Stamp v. Ins. Co. of N. Am.* In that case, the liquidator of an insolvent insurer brought an action to recover money it was allegedly owed from a reinsurance pool. *Ins. Co. of N. Am.*, 908 F.2d at 1377-78. The reinsurance pool sought to apply the setoff provision in the Illinois Insurance Liquidation Act to setoff the amount that the insurer owed the pool.⁴ *Id.* The Seventh Circuit held that the reinsurer had the right of setoff in response to the insurer's claim. In so holding, the Seventh Circuit recognized that the Liquidator's argument in this case – requiring NorthSide to fully repay and then seek partial reimbursement in the claims process – would be absurd. *Id.* at 1380.

Here, the Liquidator is pressing his position precisely to the *reductio ad absurdum* rejected by the Seventh Circuit. Not surprisingly, the Liquidator cites no law in support of his extreme position.

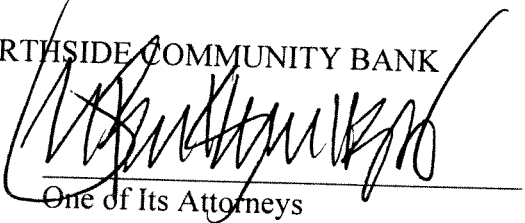
CONCLUSION

WHEREFORE, for the reasons stated above, NorthSide respectfully request that the Court deny the Liquidator's Motion for the Turnover of Funds.

Dated: April 29, 2011

NORTHSIDE COMMUNITY BANK

BY:


One of Its Attorneys

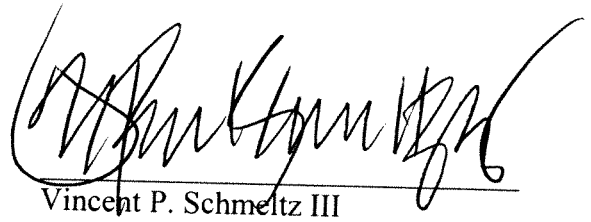
Vincent P. Schmeltz III
Bryan M. Westhoff
DEWEY & LEBOEUF LLP
Two Prudential Plaza
180 North Stetson Ave., Suite 3700
Chicago, IL 60601-6710

⁴ The reinsurance pool relied on Ill. Rev. Stat. ch. 73 ¶ 818, which is identical to the current 215 ILCS 5/206.

CERTIFICATE OF SERVICE

I, Vincent P. Schmeltz III, an attorney for NorthSide Community Bank, certify that on April 29, 2011, I caused a copy of NorthSide Community Bank's Opposition to Liquidator's Motion for the Turnover of Funds, to be served on the following parties by e-mail and U.S. Mail:

Michael McRaith (michael.mcraith@illinois.gov)
Daniel Guberman (DGuberman@osdchi.com)
Office of the Special Deputy Receiver
222 Merchandise Mart Plaza
Suite 1450
Chicago, IL 60654



Vincent P. Schmeltz III

EXHIBIT 1

BUSINESS LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$7,050,000.00	11-26-2007	11-26-2008		510 / 3130/1057	201291	JSR	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: Copco, Inc.
111 West Washington Street, Suite 820
Chicago, IL 60602

Lender: NorthSide Community Bank
Gurnee Location
5103 Washington Street
Gurnee, IL 60031

THIS BUSINESS LOAN AGREEMENT dated November 26, 2007, is made and executed between Copco, Inc. ("Borrower") and NorthSide Community Bank ("Lender") on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement ("Loan"). Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

TERM. This Agreement shall be effective as of November 26, 2007, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until November 26, 2008.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements and all other documents perfecting Lender's Security Interests; (4) evidence of insurance as required below; (5) guarantees; (6) subordinations; (7) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any indebtedness exists:

Organization. Borrower is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Illinois. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains its principal office at 111 West Washington Street, Suite 820, Chicago, IL 60602. Unless Borrower has designated otherwise in writing, this is the principal office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of incorporation or organization, or bylaws, or (b) any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage,

**BUSINESS LOAN AGREEMENT
(Continued)**

treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

Additional Requirements.

(1) Borrower shall provide annual financial statements from Copco, Inc and Constitutional Casualty Company. The yellow book of Constitutional Casualty Company is subject to an annual satisfactory review.

(2) On a semi annual basis Lender shall review A.M. Best Rating of Constitutional Casualty currently rated a B.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Financial Covenants and Ratios. Comply with the following covenants and ratios:

Tangible Net Worth Requirements. Other Net Worth requirements are as follows: Constitutional Casualty Company shall maintain a minimum tangible net worth of \$7,000,000.00 which shall be checked on an annual basis throughout the life of this loan.

Except as provided above, all computations made to determine compliance with the requirements contained in this paragraph shall be made in accordance with generally accepted accounting principles, applied on a consistent basis, and certified by Borrower as being true and correct.

Insurance. Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guaranties. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantor named below, on Lender's forms, and in the amount and under the conditions set forth in those guaranties.

<u>Name of Guarantor</u>	<u>Amount</u>
Herbert F. Stride Sr.	Unlimited

Subordination. Prior to disbursement of any Loan proceeds, deliver to Lender a subordination agreement on Lender's forms, executed by Borrower's creditor named below, subordinating all of Borrower's indebtedness to such creditor, in such lesser amount as may be agreed to by

**BUSINESS LOAN AGREEMENT
(Continued)**

<u>Name of Creditor</u> Herbert F. Stride Sr.	<u>Total Amount of Debt</u> \$7,050,000.00
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Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Compliance Certificates. Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentally concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

NEGATIVE COVENANTS. Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

Indebtedness and Liens. (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

Continuity of Operations. (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) pay any dividends on Borrower's stock (other than dividends payable in its stock), provided, however that notwithstanding the foregoing, but only so long as no Event of Default has occurred and is continuing or would result from the payment of dividends, if Borrower is a "Subchapter S Corporation" (as defined in the Internal Revenue Code of 1986, as amended), Borrower may pay cash dividends on its stock to its shareholders from time to time in amounts necessary to enable the shareholders to pay income taxes and make estimated income tax payments to satisfy their liabilities under federal and state law which arise solely from their status as Shareholders of a Subchapter S Corporation because of their ownership of shares of Borrower's stock, or purchase or retire any of Borrower's outstanding shares or

BUSINESS LOAN AGREEMENT (Continued)

alter or amend Borrower's capital structure.

Loans, Acquisitions and Guaranties. (1) Loan, invest in or advance money or assets to any other person, enterprise or entity, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business

Agreements. Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and; at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

Insecurity. Lender in good faith believes itself insecure

Right to Cure. If any default, other than a default on indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical

EFFECT OF AN EVENT OF DEFAULT. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

REQUIRED DEPOSIT RELATIONSHIP.

Constitutional Casualty Company shall maintain a minimum of \$5,000,000 on deposit with Lender throughout the life of this loan.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement

Amendments. This Agreement together with any Related Documents constitutes the entire understanding and agreement of the parties as to the

BUSINESS LOAN AGREEMENT (Continued)

matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Illinois.

Choice of Venue. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Lake County, State of Illinois.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Subsidiaries and Affiliates of Borrower. To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries or affiliates.

Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

**BUSINESS LOAN AGREEMENT
(Continued)**

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Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Borrower. The word "Borrower" means Copco, Inc. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means NorthSide Community Bank, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the Note executed by Copco, Inc. in the principal amount of \$7,050,000.00 dated November 26, 2007, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Permitted Liens. The words "Permitted Liens" mean (1) liens and security interests securing indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED NOVEMBER 26, 2007.

BORROWER:

COPCO, INC.

By: 

Herbert F. Stride Sr., President of Copco, Inc.

**BUSINESS LOAN AGREEMENT
(Continued)**

Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Borrower. The word "Borrower" means Copco, Inc. and includes all co-signers and co-makers signing the Note and all their successors and assigns

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

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Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other Indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents

Lender. The word "Lender" means NorthSide Community Bank, its successors and assigns

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the Note executed by Copco, Inc in the principal amount of \$7,050,000.00 dated November 26, 2007, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement

Permitted Liens. The words "Permitted Liens" mean (1) liens and security interests securing Indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure Indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED NOVEMBER 26, 2007.

BORROWER:

COPCO, INC.

By: 

Herbert F. Stride Sr., President of Copco, Inc.

**BUSINESS LOAN AGREEMENT
(Continued)**

LENDER:

NORTHSIDE COMMUNITY BANK

By: Authorized Signer:

[Handwritten signature]
[Handwritten signature]
In Witness Whereof

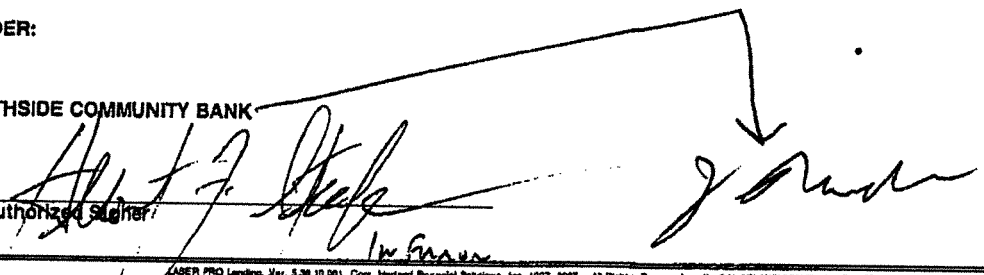


EXHIBIT 2

CHANGE IN TERMS AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call/Call	Account	Officer	Initials
\$6,950,000.00	11-26-2008	11-26-2009	26805	510-31300057	201291	JSR	[Signature]

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.

Borrower: Copco, Inc.
111 West Washington Street, Suite 820
Chicago, IL 60602

Lender: NorthSide Community Bank
Gurnee Location
5103 Washington Street
Gurnee, IL 60031

Principal Amount: \$6,950,000.00

Date of Agreement: November 26, 2008

DESCRIPTION OF EXISTING INDEBTEDNESS.

A promissory note to Lender dated November 26, 2007 in the amount of Seven Million Fifty Thousand Dollars (\$7,050,000.00).

DESCRIPTION OF COLLATERAL.

(1) A Commercial Security Agreement to Lender dated November 26, 2007 with regard to All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

(2) A Commercial Pledge Agreement to Lender dated November 26, 2007 with regard to 17143 Shares of ALIKAT Stock, Cusip No(s). 85 & 253 and 1000 Shares of Copco/Deerpath Inn Corporation Stock, Cusip No 1 (this stock maybe on a future date replaced with 1000 shares of Copco, Inc Cusip No. 2).

DESCRIPTION OF CHANGE IN TERMS.

(1) Extending the maturity date from November 26, 2008 to November 26, 2009

(2) Increasing the interest rate from The Wall Street Journal Prime Rate plus a margin of 50% to The Wall Street Journal Prime Rate plus a margin of 75% as described below in the paragraph entitled "VARIABLE INTEREST RATE".

(3) Adding a floor rate as described below in the paragraph entitled "VARIABLE INTEREST RATE"

PROMISE TO PAY. Copco, Inc. ("Borrower") promises to pay to NorthSide Community Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Six Million Nine Hundred Fifty Thousand & 00/100 Dollars (\$6,950,000.00), together with interest on the unpaid principal balance from November 26, 2008, until paid in full.

PAYMENT. Subject to any payment changes resulting from changes in the Index, Borrower will pay this loan in 3 principal payments of \$25,000.00 each and one final principal and interest payment of \$6,958,454.86. Borrower's first principal payment is due February 26, 2009, and all subsequent principal payments are due on the same day of each quarter after that. In addition, Borrower will pay regular quarterly payments of all accrued unpaid interest due as of each payment date, beginning February 26, 2009, with all subsequent interest payments to be due on the same day of each quarter after that. Borrower's final payment due November 26, 2009, will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest; and then to principal. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this loan is subject to change from time to time based on changes in an independent Index which is the The Wall Street Journal Prime Rate (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 4.000% per annum. The interest rate to be applied to the unpaid principal balance of this loan will be calculated as described in the "INTEREST CALCULATION METHOD" paragraph using a rate of 0.750 percentage points over the Index, rounded up to the nearest 0.125 percent, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 4.750%. **NOTICE:** Under no circumstances will the interest rate on this loan be less than 4.250% per annum or more than the maximum rate allowed by applicable law.

INTEREST CALCULATION METHOD. Interest on this loan is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this loan is computed using this method.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Agreement, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: NorthSide Community Bank, 5103 Washington Street Gurnee, IL 60031.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or \$10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this loan shall be increased by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would

**HANGE IN TERMS AGREEMENT
(Continued)**

Loan No: 26805

Page 2

have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the indebtedness

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower

Default in Favor of Third Parties. Any guarantor or Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of any guarantor's or Borrower's property or ability to perform their respective obligations under this Agreement or any of the Related Documents

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the indebtedness. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness evidenced by this Note.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Agreement and all accrued unpaid interest immediately due, and then Borrower will pay that amount

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Agreement if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Illinois.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Lake County, State of Illinois.

CONFESSION OF JUDGMENT. Borrower hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess judgment against Borrower for the unpaid amount of this Agreement as evidenced by an affidavit signed by an officer of Lender setting forth the amount then due, attorneys' fees plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of this Agreement, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on this Agreement have been paid in full. Borrower hereby waives and releases any and all claims or causes of action which Borrower might have against any attorney acting under the terms of authority which Borrower has granted herein arising out of or connected with the confession of judgment hereunder

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$20.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Agreement is secured by

(1) A Commercial Security Agreement to Lender dated November 28, 2007 with regard to All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not

**CHANGE IN TERMS AGREEMENT
(Continued)**

Loan No: 26805

Page 3

limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

(2) A Commercial Pledge Agreement to Lender dated November 26, 2007 with regard to 17143 Shares of ALIKAT Stock, Cusip No(s). 85 & 253 and 1000 Shares of Copco/Deerpath Inn Corporation Stock, Cusip No 1 (this stock maybe on a future date replaced with 1000 shares of Copco, Inc Cusip No. 2).

CONTINUING VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorsers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

DEMAND OF PAYMENT.

Pursuant to federal law, and notwithstanding any other provision of this Note, this extension of credit will become due and payable at the option of Lender at any time Borrower becomes indebted to any and all other banks in an aggregate amount greater than the amount the borrower would be permitted to borrow under the provisions in the federal statutes governing loans to insiders.

SUCCESSORS AND ASSIGNS. Subject to any limitations stated in this Agreement on transfer of Borrower's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Borrower, Lender, without notice to Borrower, may deal with Borrower's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Borrower from the obligations of this Agreement or liability under the indebtedness.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: NorthSide Community Bank 5103 Washington Street Gurnee, IL 60031

MISCELLANEOUS PROVISIONS. If any part of this Agreement cannot be enforced, this fact will not affect the rest of the Agreement. Lender may delay or forgo enforcing any of its rights or remedies under this Agreement without losing them. Borrower and any other person who signs, guarantees or endorses this Agreement, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Agreement, and unless otherwise expressly stated in writing, no party who signs this Agreement, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Agreement are joint and several.

PRIOR TO SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE AGREEMENT

CHANGE IN TERMS SIGNERS:

COPCO, INC.

By: _____

Herbert F. Strick Sr, President of Copco, Inc.

CHANGE IN TERMS AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$6,875,000.00	11-26-2009	01-26-2010	26805	310 / 3130/1067	201291	PAC	<i>[Signature]</i>
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Borrower: Copco, Inc.
5569 North Elston Ave
Chicago, IL 60630

Lender: NorthSide Community Bank
Gurnee Location
5103 Washington Street
Gurnee, IL 60031

Principal Amount: \$6,875,000.00

Date of Agreement: November 26, 2009

DESCRIPTION OF EXISTING INDEBTEDNESS.

A promissory note to Lender dated November 26, 2007 in the amount of Seven Million Fifty Thousand Dollars (\$7,050,000.00).

DESCRIPTION OF COLLATERAL.

(1) A Commercial Security Agreement to Lender dated November 26, 2007 with regard to All Inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

(2) A Commercial Pledge Agreement to Lender dated November 26, 2007 with regard to 17143 Shares of ALIKAT Stock, Cusip No(s). 85 & 253 and 1000 Shares of Copco/Deerpath Inn Corporation Stock, Cusip No. 1 (this stock maybe on a future date replaced with 1000 shares of Copco, Inc Cusip No. 2).

DESCRIPTION OF CHANGE IN TERMS.

Extending the maturity date from November 26, 2009 to January 26, 2010.

This renewal is subject to the following loan defaults:

- a. Violation of minimum net worth covenant of Constitutional Casualty of \$7 million
- b. Violation of AM Best rating of B or better for Constitutional Casualty
- c. Violation of personal net worth change under personal guarantee dated 11-26-2007
- d. Violation of COPCO financial statement last file date is 12-31-2007.

PROMISE TO PAY. Copco, Inc. ("Borrower") promises to pay to NorthSide Community Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Six Million Eight Hundred Seventy-five Thousand & 00/100 Dollars (\$6,875,000.00), together with interest on the unpaid principal balance from November 26, 2009, until paid in full.

PAYMENT. Borrower will pay this loan in one principal payment of \$6,875,000.00 plus interest on January 26, 2010. This payment due on January 26, 2010; will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest; and then to principal. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this loan is subject to change from time to time based on changes in an independent index which is the The Wall Street Journal Prime Rate (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The index currently is 3.250% per annum. Interest on the unpaid principal balance of this loan will be calculated as described in the "INTEREST CALCULATION METHOD" paragraph using a rate of 0.750 percentage points over the Index, rounded up to the nearest 0.125 percent, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 4.250%. NOTICE: Under no circumstances will the interest rate on this loan be less than 4.250% per annum or more than the maximum rate allowed by applicable law.

INTEREST CALCULATION METHOD. Interest on this loan is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this loan is computed using this method.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Agreement, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: NorthSide Community Bank, 5103 Washington Street Gurnee, IL 60031.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or \$10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this loan shall be increased by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However in no event will the interest rate exceed the maximum interest rate limitations under

applicable law.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Any guarantor or Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of any guarantor's or Borrower's property or ability to perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness evidenced by this Note.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Agreement and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Agreement if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals; if not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Illinois.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Lake County, State of Illinois.

CONFESSION OF JUDGMENT. Borrower hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess judgment against Borrower for the unpaid amount of this Agreement as evidenced by an affidavit signed by an officer of Lender setting forth the amount then due, attorneys' fees plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of this Agreement, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on this Agreement have been paid in full. Borrower hereby waives and releases any and all claims or causes of action which Borrower might have against any attorney acting under the terms of authority which Borrower has granted herein arising out of or connected with the confession of judgment hereunder.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$20.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Agreement is secured by

**CHANGE IN TERMS AGREEMENT
(Continued)**

Loan No: 26805

Page 3

(1) A Commercial Security Agreement to Lender dated November 26, 2007 with regard to All Inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

(2) A Commercial Pledge Agreement to Lender dated November 26, 2007 with regard to 17143 Shares of ALIKAT Stock, Cusip No(s) 85 & 253 and 1000 Shares of Copco/Deerpath Inn Corporation Stock, Cusip No. 1 (this stock maybe on a future date replaced with 1000 shares of Copco, Inc Cusip No. 2).

CONTINUING VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorsers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

DEMAND OF PAYMENT.

Pursuant to federal law, and notwithstanding any other provision of this Note, this extension of credit will become due and payable at the option of Lender at any time Borrower becomes indebted to any and all other banks in an aggregate amount greater than the amount the borrower would be permitted to borrow under the provisions in the federal statutes governing loans to insiders.

SUCCESSORS AND ASSIGNS. Subject to any limitations stated in this Agreement on transfer of Borrower's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Borrower, Lender, without notice to Borrower, may deal with Borrower's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Borrower from the obligations of this Agreement or liability under the indebtedness.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: NorthSide Community Bank 5103 Washington Street Gurnee, IL 60031.

MISCELLANEOUS PROVISIONS. If any part of this Agreement cannot be enforced, this fact will not affect the rest of the Agreement. Lender may delay or forgo enforcing any of its rights or remedies under this Agreement without losing them. Borrower and any other person who signs, guarantees or endorses this Agreement, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Agreement, and unless otherwise expressly stated in writing, no party who signs this Agreement, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Agreement are joint and several.

PRIOR TO SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE AGREEMENT.

CHANGE IN TERMS SIGNERS:

COPCO, INC.

By: _____

Herbert F. Strick Sr., President of Copco, Inc.

CHANGE IN TERMS AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$6,850,000.00	01-26-2010	03-31-2010	25805	510 / 31301067	201291	PAC	<i>JM</i>

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.

Borrower: Copco, Inc.
5559 North Elston Ave
Chicago, IL 60630

Lender: NorthSide Community Bank
Gurnee Location
5103 Washington Street
Gurnee, IL 60031

Principal Amount: \$6,850,000.00

Date of Agreement: January 26, 2010

DESCRIPTION OF EXISTING INDEBTEDNESS.

A promissory note to Lender dated November 26, 2007 in the amount of Seven Million Fifty Thousand Dollars (\$7,050,000.00)

DESCRIPTION OF COLLATERAL.

(1) A Commercial Security Agreement to Lender dated November 26, 2007 with regard to All inventory, equipment, accounts (including but not limited to all health-care insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

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DESCRIPTION OF CHANGE IN TERMS.

Extending the maturity date from January 26, 2010 to March 31, 2010.

This renewal is subject to the following loan defaults:

- a. Violation of minimum net worth covenant of Constitutional Casualty of \$7 million
- b. Violation of AM Best rating of B or better for Constitutional Casualty.
- c. Violation of personal net worth change under personal guarantee dated 11-26-2007
- d. Violation of COPCO financial statement last file date is 12-31-2007.

PROMISE TO PAY. Copco, Inc. ("Borrower") promises to pay to NorthSide Community Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Six Million Eight Hundred Fifty Thousand & 00/100 Dollars (\$6,850,000.00), together with interest on the unpaid principal balance from January 26, 2010, until paid in full.

PAYMENT: Borrower will pay this loan in one principal payment of \$6,850,000.00 plus interest on March 31, 2010. This payment due on March 31, 2010, will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest; and then to principal. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this loan is subject to change from time to time based on changes in an independent index which is the The Wall Street Journal Prime Rate (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The index currently is 3.250% per annum. Interest on the unpaid principal balance of this loan will be calculated as described in the "INTEREST CALCULATION METHOD" paragraph using a rate of 0.750 percentage points over the Index, rounded up to the nearest 0.125 percent, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 4.250%. **NOTICE:** Under no circumstances will the interest rate on this loan be less than 4.250% per annum or more than the maximum rate allowed by applicable law.

INTEREST CALCULATION METHOD. Interest on this loan is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this loan is computed using this method.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Agreement, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: NorthSide Community Bank, 5103 Washington Street Gurnee, IL 60031.

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DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the indebtedness

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Any guarantor or Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of any guarantor's or Borrower's property or ability to perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

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Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness evidenced by this Note.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

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JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Illinois.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Lake County, State of Illinois.

CONFESSION OF JUDGMENT. Borrower hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess judgment against Borrower for the unpaid amount of this Agreement as evidenced by an affidavit signed by an officer of Lender setting forth the amount then due, attorneys' fees plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of this Agreement, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on this Agreement have been paid in full. Borrower hereby waives and releases any and all claims or causes of action which Borrower might have against any attorney acting under the terms of authority which Borrower has granted herein arising out of or connected with the confession of judgment hereunder.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$20.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Agreement is secured by

(1) A Commercial Security Agreement to Lender dated November 26, 2007 with regard to All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on

**CHANGE IN TERMS AGREEMENT
(Continued)**

Loan No: 26805

Page 3

electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property

(2) A Commercial Pledge Agreement to Lender dated November 26, 2007 with regard to 17143 Shares of ALIKAT Stock, Cusip No(s). 85 & 253 and 1000 Shares of Copco/Deerpath Inn Corporation Stock, Cusip No. 1 (this stock maybe on a future date replaced with 1000 shares of Copco, Inc Cusip No. 2).

CONTINUING VALIDITY. Except as expressly changed by this Agreement, the terms of the original obligation or obligations, including all agreements evidenced or securing the obligation(s), remain unchanged and in full force and effect. Consent by Lender to this Agreement does not waive Lender's right to strict performance of the obligation(s) as changed, nor obligate Lender to make any future change in terms. Nothing in this Agreement will constitute a satisfaction of the obligation(s). It is the intention of Lender to retain as liable parties all makers and endorsers of the original obligation(s), including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, will not be released by virtue of this Agreement. If any person who signed the original obligation does not sign this Agreement below, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

DEMAND OF PAYMENT.

Pursuant to federal law, and notwithstanding any other provision of this Note, this extension of credit will become due and payable at the option of Lender at any time Borrower becomes indebted to any and all other banks in an aggregate amount greater than the amount the borrower would be permitted to borrow under the provisions in the federal statutes governing loans to insiders.

SUCCESSORS AND ASSIGNS. Subject to any limitations stated in this Agreement on transfer of Borrower's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Borrower, Lender, without notice to Borrower, may deal with Borrower's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Borrower from the obligations of this Agreement or liability under the indebtedness.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: NorthSide Community Bank 5103 Washington Street Gurnee, IL 60031.

MISCELLANEOUS PROVISIONS. If any part of this Agreement cannot be enforced, this fact will not affect the rest of the Agreement. Lender may delay or forgo enforcing any of its rights or remedies under this Agreement without losing them. Borrower and any other person who signs, guarantees or endorses this Agreement, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Agreement, and unless otherwise expressly stated in writing, no party who signs this Agreement, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Agreement are joint and several.

PRIOR TO SIGNING THIS AGREEMENT, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE AGREEMENT

CHANGE IN TERMS SIGNERS:

COPCO, INC.

By:


Herbert F. Stude Sr., President of Copco, Inc.

EXHIBIT 3

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

IN THE MATTER OF THE LIQUIDATION) Case No. 10 CH 47490
OF CONSTITUTIONAL CASUALTY)
COMPANY) The Honorable Richard J. Billik, Jr.
)

AFFIDAVIT OF PATRICIA CLAUSEN

I, Patricia Clausen, under oath state:

1. I am over the age of 18, am under no legal disability and if called to testify in this matter, would testify based on my personal knowledge and in agreement with this Affidavit.
2. I am employed by NorthSide Community Bank ("NorthSide" or the "Bank"). I am currently the President and CEO of NorthSide. I am also a member of the Bank's Board of Directors. I have been a Board member and held the position of President and CEO at all times relevant to this action.
3. On November 26, 2007, NorthSide entered a Business Loan Agreement for \$7.05 million (the "Loan Agreement"), signed by Herbert F. Stride, Sr. ("Stride").
4. At the time the Bank entered the Loan Agreement, Stride had a long-standing relationship with NorthSide and its management. Stride had been one of the five organizers of NorthSide when the Bank was founded in 1997. Stride served on NorthSide's Board of Directors from the time the Bank was founded until June, 2009. Stride's relationship with some of NorthSide's personnel went back over eighteen years, prior to NorthSide.
5. Stride entered the Loan Agreement on behalf of Copco, Inc. ("Copco") and Constitutional Casualty Company ("CCC").

6. NorthSide knew that Stride controlled Copco and CCC. NorthSide also knew that CCC was the wholly owned subsidiary of Copco. All of the parties knew that Stride had the ability to bind Copco and CCC under the Loan Agreement.

7. NorthSide relied on the financial health of CCC and Stride for repayment of the Loan Agreement. The parties drafted the Loan Agreement to be secured by the assets of CCC, Copco and Stride (the "CCC Parties"), collectively. The Loan Agreement required the CCC Parties to provide annual financial statements from Copco and CCC. The Loan Agreement also stated that CCC's yellow book was subject to an "annual satisfactory review" and that, on a semi-annual basis, NorthSide would review CCC's A.M. Best Rating, which at the time was a B. CCC was required to maintain a minimum net worth of \$7 million, which NorthSide would check on an annual basis throughout the life of the loan. CCC also was required to maintain a minimum of \$5 million deposited with NorthSide throughout the life of the loan. The Loan Agreement also named Stride as guarantor. The Bank obtained a security interest in Copco's assets, pursuant to the Uniform Commercial Code. NorthSide included these provisions to ensure that there were sufficient assets available to repay the loan.

8. The proceeds from the Loan Agreement ultimately were deposited into CCC's deposit accounts at the Bank.

9. In 2009, the CCC Parties defaulted on the loan. On or about June 25, 2010, NorthSide filed a confession of judgment action against Stride and Copco seeking approximately \$7.3 million as the amount owed under the Loan Agreement plus interest, late charges and attorney's fees.

10. On October 6, 2010, NorthSide exercised its right of setoff over approximately \$5.3 million held in eight CCC deposit accounts at NorthSide. NorthSide applied the Funds against the \$7.3 million it was owed under the Loan Agreement.

11. At the time NorthSide exercised its setoff right, the Funds in CCC's deposit accounts were the traceable proceeds of the Loan Agreement.

12. NorthSide exercised its right of setoff pursuant to a "Right of Setoff" provision in the Loan Agreement.

13. On October 22, 2010, CCC filed suit against NorthSide claiming that the Bank improperly seized the Funds from its deposit accounts. On December 13 and 14, 2010, the parties presented two days of trial testimony before Judge Flynn. After two days of trial testimony, Judge Flynn suspended the trial until April 12, 2011. I was in the middle of providing testimony at the time Judge Flynn suspended the trial.

14. NorthSide expended great effort and resources litigating the case before Judge Flynn on an expedited basis.

THIS CONCLUDES MY AFFIDAVIT


Patricia Clausen

Signed and Sworn before
me this 27th day of
April, 2011.


Notary Public

My Commission Expires:

05-29-2011



EXHIBIT 4

0007

Complaint and Confession of Judgment - Other than Lease

(Rev. 4/3/03) CCG 0010 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

NorthSide Community Bank

Plaintiff

v.

Copco, Inc., an Illinois Corporation, and Herbert F. Stride Sr.,

Defendant

2010L951016
EQUEDOR/ROOM 1
FILE CO:00
CONFESION

No.

Amount claimed \$ 7,342,723.29

COMPLAINT

1. Plaintiff, NorthSide Community Bank, owns each of the following instruments, executed and delivered, for value received, by defendant, Terms Agreement from Copco, Inc. dated 11/26/07; 2) Change In 3) Change In Terms Agreement from Copco, Inc. dated 11/26/09; 4) Change In Terms Agreement from Copco, Inc. dated 1/26/10 and 5) Commercial Guaranty from Herbert F. Stride Sr. dated 11/26/07;
- | Date | Amount |
|------|--------|
|------|--------|

Each instrument is attached as an exhibit.

- *2. ~~(a) Each instrument was executed in this county;~~
~~(b) One or more of the defendants reside in this county;~~
 (c) One or more of the defendants own property, real or personal, located in this county.
- *3. Plaintiff is the actual bona-fide owner of the attached instrument by assignment from _____ Dated _____

4. There is due from defendant:

Principal \$ <u>6,850,000.00</u>	Less rebate <u>Zero Dollars</u>	Balance \$ <u>6,850,000.00</u>
		Late Charges and Interest \$ <u>491,824.29</u>
		Attorney's fee \$ <u>899.00</u>
		Total \$ <u>7,342,723.29</u>

Amounts due are supported by the Affidavit of James S. Randall attached as Exhibit F to this Complaint.

Plaintiff asks judgment against defendant for the amount due.

Attorney for plaintiff

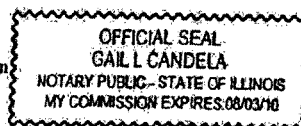
Justin Newman

on oath states that the allegation in this complaint are true.

Signed and sworn to before me June 21, 2010

Gail L. Candela Notary public

*Strike (a) (b) or (c) not applicable. At least one of said subdivisions must remain.
**Strike if not applicable.



DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Clausen
12-8-10 KS
KB

Ex. I

EXHIBIT 5

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

CONSTITUTIONAL CASUALTY COMPANY,)
Plaintiff,)
vs.) No. 10 CH 46263
NORTHSIDE COMMUNITY BANK,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS had in the
above-entitled cause at Room 2408, Daley Center,
Chicago, Illinois on the 13th of December, A.D.
2010 at 11:33 a.m.

BEFORE: HONORABLE PETER FLYNN.

REPORTED BY:

KRISTIN C. BRAJKOVICH, CSR No. 84-3810; and
VICTORIA C. CHRISTIANSEN, CSR No. 84-3192.



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1 whenever your Honor seeks to actually hear it.

2 THE COURT: Well, as I understand it, from
3 what I have heard so far, the notion is that we
4 should start a trial which nobody thinks that we
5 are going to finish by the end of the day tomorrow.
6 Is that fair?

7 And we are going to have to then build
8 in some more time down the road, which will have to
9 encompass the time necessary to take such
10 depositions as the parties have not yet taken
11 and/or get pieces of paper or whatever.

12 Since we are proceeding by throwing the
13 rule book away, I will observe that we have also
14 thrown away my standing order that has to do with
15 trial materials. I have no idea what exhibits are
16 these 13 boxes. I have no idea what witnesses
17 anybody intends to call.

18 There is a reason why my standing order
19 requires a set of exhibits and a witness list to be
20 provided before trial. I suppose it is not too
21 surprising since until I took the bench again
22 about, what, an hour and a half or an hour ago, I
23 had no idea that NorthSide Community Bank had filed
24 a counterclaim. So be it.



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1 THE COURT: I am somewhat conflicted about
2 that. On the one hand, my standing order has a
3 purpose and the questions I have raised have a
4 purpose. The purpose is to do things once fairly
5 as opposed to unfairly or multiple times because
6 the appellate court said we didn't do it right the
7 first time. I am not trying to be picky; I am
8 simply trying to get the job done once fairly.

9 On the other hand, there are a great
10 many people in the room, not all of whom are
11 lawyers and not all of whom I think are being paid
12 to sit here and wonder about all of this. I am
13 very reluctant to subject witnesses who are here to
14 the burden of wasting their time because everybody
15 else didn't get their ducks in a row, in effect.

16 What I had thought I heard earlier was
17 the idea that we would move forward for two days as
18 best we can and then get the job done sometime
19 after the first of the year, since I'm out the
20 weeks of the 20th and the 27th, which should give
21 everybody an opportunity without unduly endangering
22 their safety to take whatever depositions you think
23 need taking, and to the extent that you can't work
24 out discovery issues, it would also give people an



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1 opportunity to present those discovery issues to
2 the Court. I will do that if you are all of the
3 view that it makes sense to do that.

4 I am still in something of a quandary
5 about the possible sale of Constitutional Casualty
6 and how this litigation, whether it gets decided
7 tomorrow or a month from tomorrow or whatever, ties
8 into that. I don't want to do anything that will
9 foul up a potential solution to all of these
10 problems. To the contrary, I will do anything I
11 can do expedite a solution to all of these
12 problems.

13 All of those things taken together make
14 me think that since, as I understand it, your
15 concerns about discovery do not necessarily relate
16 to testimony that is expected
17 to be elicited today or tomorrow, we should
18 probably get underway with all of that and then
19 deal with your discovery concerns so that we can
20 get those addressed over the break, so to speak.

21 If I'm wrong about that, tell me.

22 MR. SCHMELTZ: Your Honor, the plaintiffs seek
23 to call Jeanne Filipp, who is the current CFO of
24 Constitutional. Much of the discovery that we're



1 Q. Constitutional's August order -- or
2 excuse me.

3 The Illinois Department of Insurance's
4 August order that you discussed earlier, that
5 impacted your ability as a company to write
6 business, didn't it?

7 A. Yes.

8 Q. In fact, limited your company's ability
9 to write business, correct?

10 A. That is correct.

11 Q. And that was in August of 2010, correct?

12 A. I believe so, yes.

13 Q. Before the setoff at issue in this case,
14 correct?

15 A. Yes.

16 Q. From 2008 to the end of 2009 --

17 A. Yes.

18 Q. -- Copco had a general agency agreement
19 with Constitutional, right?

20 A. Yes.

21 Q. Of course, that agency agreement existed
22 before 2008, but I want to focus on the time while
23 you were at Constitutional.

24 A. Okay.



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1 Q. Tell me everything that Copco did for
2 those two years to earn the money it made in that
3 general agency agreement, please?

4 A. It generated policies through
5 independent agents that were placed with
6 Constitutional Casualty Company.

7 Q. How did it do that?

8 A. It accepted applications from agents
9 with which it had contractual relationships and
10 Constitutional placed the policies.

11 Q. Who at Copco accepted those orders?

12 A. They were submitted pursuant to the
13 agreement directly to Constitutional's underwriting
14 department.

15 Q. Who at Copco processed the payments from
16 the agents?

17 A. Nobody at Copco. There were no
18 employees at Copco.

19 Q. Who at Copco marketed and built those
20 agency relationships, to the best of your
21 knowledge?

22 A. I believe that Larry Von Drasek was
23 primarily responsible for the agency relationships.

24 Q. Larry Von Drasek is employed by



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1 Constitutional, correct, sir?

2 A. That is correct.

3 Q. Tell me everything you know in your
4 capacity as president of Constitutional about what
5 your general agent did to develop agency
6 relationships during the time you were at
7 Constitutional?

8 A. The efforts --

9 THE COURT: This covers how many years?

10 MR. SCHMELTZ: Two years, 2008 and 2009.

11 BY THE WITNESS:

12 A. The efforts that were put forth by Larry
13 Von Drasek and later his son, Brian, were what
14 produced the policies that Constitutional
15 ultimately generated.

16 BY MR. SCHMELTZ:

17 Q. How much money did Copco pay Larry
18 Von Drasek and his son Brian --

19 A. I don't know --

20 Q. -- for that work?

21 A. I don't know that they paid them
22 anything.

23 Q. And yet Copco received a portion of
24 every commission payment, didn't it?



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1 A. Yes.

2 Q. About what was that portion that Copco
3 received, sir?

4 A. I don't know what you mean.

5 Q. Constitutional gets a 25 percent
6 commission on all written premiums; isn't that
7 correct?

8 A. Yes.

9 Q. Copco takes 8 percent of that
10 25 percent, correct?

11 A. Copco took whatever the difference was
12 between the rate that was paid to the particular
13 agent and the 25 percent level.

14 Q. And you know, in your capacity as the
15 president of Constitutional overseeing the general
16 agency agreement, that that is between 7.5 and
17 8 percent on average, right, sir?

18 A. It could be.

19 Q. In 2009 -- let's back up.

20 Effectively, Copco received the money it
21 got for no other reason that it was the conduit by
22 which the policies were issued, right?

23 A. It was the general agent.

24 Q. It was the conduit by which the policies



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1 were issued; isn't that correct?

2 A. It was the general agent.

3 Q. Sir, do you remember on December 9,
4 2010, giving a deposition in my office?

5 A. I do.

6 Q. You recall that you were under oath at
7 that deposition, correct?

8 A. I do.

9 Q. And during that deposition, I asked you
10 this question and you gave this answer:

11 "So what did Copco do for the money it
12 was making? What did it to do?

13 "Answer: It was the conduit by which
14 the policies were issued."

15 That was my question and that was your
16 answer; isn't that correct, sir?

17 A. Sure.

18 Q. In 2009 Copco received over \$1.5 million
19 in money over and above the 8 percent commission it
20 was taking from Constitutional; isn't that correct?

21 A. I can't tell you that that is the exact
22 number, no.

23 Q. Okay. I'm going to hand you a new
24 binder, and I'll remove the one that is in front of



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EXHIBIT 6

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

CONSTITUTIONAL CASUALTY COMPANY,)
Plaintiff,) Case No.
-vs-) 10 CH 46263
NORTHSIDE COMMUNITY BANK,)
Defendant.)

December 14, 2010

10:39 a.m.

The Court met pursuant to adjournment
at Room 2408, Daley Center, Chicago, Illinois.

BEFORE: HONORABLE PETER FLYNN.

REPORTED BY:

ROSANNE M. NUZZO, CSR No. 84-1388; and
VICTORIA C. CHRISTIANSEN, CSR No. 84-3192.



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1 HERBERT LEE STRIDE,
2 called as a witness herein, having been previously
3 duly sworn and having testified, was examined and
4 testified further as follows:

5 CROSS-EXAMINATION (Resumed)

6 BY MR. SCHMELTZ:

7 Q. Mr. Stride, yesterday when we left off,
8 we had just talked about money that Copco
9 received, about 7-1/2 to 8 percent of the net
10 premiums for being a conduit for payments.

11 Do you remember that conversation?

12 A. Yes, I do.

13 Q. In 2008, net written premiums for
14 Constitutional were \$12.9 million, is that --

15 A. That sounds about right.

16 Q. So 8 percent of 12.9 million is right
17 around a million dollars.

18 You would agree with me?

19 A. I would agree that's about right, yeah.

20 Q. And so in 2008, Copco received a
21 million dollars in commissions for being a payment
22 conduit, right?

23 A. That sounds about right.

24 Q. In 2008 -- if you look at D 108, it's



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1 the 2008 yellow book --

2 A. Yes.

3 Q. -- that we talked about yesterday, and
4 if you look at page 2, which is NorthSide 5492 --

5 A. Okay.

6 Q. -- at line 21, you'll see receivables
7 from parent, subsidiaries and affiliates, and
8 that's \$177,000 in round numbers.

9 Do you see that?

10 A. I'm sorry. What line number, sir?

11 Q. Line 21.

12 A. Okay.

13 Q. Do you see that?

14 A. Yeah, okay.

15 Q. And that's round numbers \$177,000,
16 correct?

17 A. Yeah, it looks that way.

18 Q. And that line 21 accounts for money
19 over and above commissions that Copco received
20 from Constitutional, right?

21 A. I -- I believe that's what it is, yes.

22 Q. And so in 2008, Copco received
23 \$1,177,000 from Constitutional, right?

24 A. It would appear that way, yeah.



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1 Q. In 2009 for Constitutional, net written
2 premiums collected were also about \$12.9 million.

3 Does that sound right to you?

4 A. That sounds correct.

5 Q. And 8 percent of that is 1,038,573;
6 round numbers, a million dollars, fair?

7 A. Okay.

8 Q. And in 2009 -- so that's premiums Copco
9 received for being a conduit for payments from
10 Constitutional, correct?

11 A. Yes.

12 Q. And in 2009, Constitutional was under
13 an RBC plan with the Department of Insurance,
14 correct?

15 A. Yes.

16 Q. So in 2009 -- let's look at the yellow
17 book for 2009 --

18 A. Okay.

19 Q. -- which is D 109, and at page 5,
20 CCC 77 --

21 A. Okay.

22 Q. I'm sorry. Hang on. Wrong page.
23 Let's flip back to page 2, which is CCC 74. Again
24 at line 21 --



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1 A. Hang on a second.

2 Q. -- that same --

3 A. Would you hang on a second?

4 Q. You bet.

5 A. Okay. Line 21?

6 Q. Yes.

7 A. Okay.

8 Q. The same what I'll call the "Due From
9 Affiliates" line, which is the receivables from
10 parent, subsidiaries and affiliates -- do you see
11 that?

12 A. Yes.

13 Q. Now, that's gone up. It was 176,000,
14 177 in 2008, right?

15 A. Yeah.

16 Q. And it's gone up to a million 5 in
17 2009, correct?

18 A. Yes, yes.

19 Q. And so in 2009, in addition to the \$1
20 million in premium collected for being a payment
21 conduit, Copco got another \$1.4 million from
22 Constitutional, right?

23 A. It would appear that way, yes.

24 Q. During the time in which Constitutional



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1 was attempting to increase its surplus to get out
2 of potential regulatory action level and into a
3 company action level, correct?

4 THE COURT: Just so I understand, this 1.4
5 million is on a "Due From" line, correct?

6 MR. SCHMELTZ: Correct.

7 THE COURT: And in a "Due From," the "From"
8 party would be Copco?

9 MR. SCHMELTZ: Correct.

10 THE COURT: So due to Constitutional
11 Casualty?

12 MR. SCHMELTZ: To repay; in other words,
13 to --

14 THE COURT: All right.

15 MR. SCHMELTZ: Exactly. You got it exactly
16 right.

17 THE COURT: Go ahead.

18 BY MR. SCHMELTZ:

19 Q. At the end of 2009, Constitutional
20 concluded that it would no longer have a general
21 agency agreement with Copco, correct?

22 A. Yes, that's correct.

23 Q. Which meant that Copco would no longer
24 have a revenue stream, correct?



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1 A. Yes.

2 Q. And in 2009, rather than pay down the
3 receivable with cash between Copco and
4 Constitutional, the family put \$1.4 million
5 directly into the surplus of Constitutional,
6 correct?

7 A. Yes.

8 Q. Now, you testified earlier about your
9 father's stroke in early 2008.

10 You are remember that testimony?

11 A. I do.

12 Q. And when you and I were talking, we
13 were talking about his ability to comprehend
14 things in a board meeting.

15 Do you remember that?

16 A. I do.

17 Q. And it didn't sound -- and I don't want
18 to put words in your mouth, but it didn't sound
19 like he had a lot of capacity to make business
20 decisions.

21 Is that fair?

22 A. I'd say that he did not have the
23 ability on his own to conduct his business
24 affairs, that's correct.



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1 Q. And in September of 2009, the board of
2 Constitutional renewed Herbert F. Stride's sole
3 authority over Constitutional's investment
4 accounts, didn't it?

5 A. No. We --

6 Q. Look at Exhibit 68, please.

7 A. Yes.

8 Q. PX 68, so it's in the binder to your
9 left, sir.

10 A. I'm sorry.

11 Q. I put it right there to the left.

12 A. I'm sorry. What number?

13 Q. PX 68, 6-8.

14 A. Yes.

15 Q. If you would look at page 3311 --

16 A. Yes, I'm looking at it.

17 Q. -- that's a September 29, 2009 board
18 meeting, correct?

19 A. Uh-huh, that's correct.

20 Q. And it has at the bottom of the page:
21 "The Chairman of the Board, Herbert F. Stride,
22 shall have the authority to purchase and sell
23 investment securities as needed, and all
24 transactions shall require the authorization of



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1 the Chairman of the Board," right?

2 A. Correct.

3 Q. So that's the Chairman shall have
4 authority and all transactions shall be authorized
5 by the Chairman, right?

6 A. Correct.

7 Q. And this was in 2009 at the time you've
8 testified that your father had limited capacity to
9 make business decisions, correct?

10 A. That is correct.

11 Q. In January of 2010 at a time when your
12 father had limited capacity to make business
13 decisions, you raised his salary at Constitutional
14 by half a million dollars, isn't that right, sir?

15 A. That is correct.

16 Q. And that's shortly after cutting off
17 the revenue stream to Copco by terminating the
18 general agency agreement, right?

19 A. That's correct.

20 Q. Earlier you testified that your father
21 is essentially living off of his wife's pension.

22 Is that a fair statement of your
23 earlier testimony?

24 A. Yeah, that's my understanding.



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1 Q. Is that over and above or in addition
2 to money that he receives from Constitutional?

3 A. He's no longer being paid by
4 Constitutional.

5 Q. He receives money from Constitutional,
6 right?

7 A. No, he does not.

8 Q. Constitutional has set up a separate
9 account, the 161 account, for essentially due from
10 Herbert F. Stride amounts.

11 A. Correct, yes.

12 Q. And that's because in 2010, Herbert
13 Stride has continued to receive money from
14 Constitutional for a variety of things, right?

15 A. That is correct.

16 Q. What ability does Herbert F. Stride
17 have to repay Constitutional the money he owes it?

18 A. To my knowledge, he doesn't have the
19 ability to repay it.

20 Q. You have been providing Herbert F.
21 Stride through Constitutional in 2010 money to pay
22 his American Express bills, right?

23 A. Correct.

24 Q. You've been paying your father money



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1 that he can use to pay down the NorthSide loan,
2 haven't you?

3 A. He -- if you can let me answer what has
4 been done for him this year, I'm happy to do that.

5 Q. I'm asking the specific question: You
6 paid him money --

7 A. Yes.

8 Q. -- \$25,000 in January 2010 for him to
9 use to make a payment on the NorthSide note at
10 issue in this case, didn't you?

11 A. I believe he used the money for that,
12 yes.

13 Q. And you provide out of Constitutional
14 the gas, maintenance, et cetera, on his
15 automobiles, right?

16 A. That's correct.

17 Q. And those are automobiles owned by
18 Copco, correct?

19 A. That is correct.

20 Q. And Constitutional has paid the loan or
21 lease payments on those cars when Copco hasn't had
22 the money to do that, right?

23 A. Yes, they have.

24 Q. What's the current, if you know, "Due



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1 for a variety of purposes, weren't they?

2 A. I'm sorry. Could you repeat the
3 question?

4 Q. The money that Copco received from
5 Constitutional over and above commissions --

6 A. Okay.

7 Q. -- were used -- those funds were used
8 for a variety of different purposes by Copco,
9 weren't they?

10 A. I believe so, yes.

11 Q. And those include bonuses that were
12 paid out to Constitutional employees, right?

13 A. Yes.

14 Q. So Constitutional would loan money to
15 Copco so that Copco could make bonus payments to
16 Constitutional employees, is that right?

17 A. That's my understanding, yes.

18 Q. And Constitutional would loan money to
19 Copco, as we've already discussed, to make
20 payments out to your father, right?

21 A. Correct.

22 Q. And Constitutional would loan money to
23 Copco so that Copco could make loans to
24 Constitutional employees other than your father,



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1 right?

2 A. I'm not exactly sure what you're
3 talking about.

4 THE COURT: Am I -- I want to be sure that I
5 understand what's going on.

6 I can understand that Constitutional
7 provides Copco with funds which Copco then uses
8 for Copco purposes. I am puzzled by why
9 Constitutional would give funds to Copco so that
10 Copco could pay bonuses to Constitutional
11 employees.

12 Can you explain why such a thing would
13 be done?

14 THE WITNESS: That was the way my father had
15 traditionally done it.

16 THE COURT: All right.

17 BY MR. SCHMELTZ:

18 Q. The money that Constitutional loaned to
19 Copco also -- that's where we talked about this
20 earlier, I think. That's where your father got
21 those \$10,000 weekly payments from, right?

22 A. I believe he had classified those as
23 repayments to him, yes.

24 Q. And he did that in 2008? He received



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1 those payments in 2008, right?

2 A. Yes.

3 Q. He received those \$10,000 weekly
4 payments in 2009, right?

5 A. Yes.

6 Q. And those payments stopped in 2010 with
7 the termination of the general agency agreement,
8 right?

9 A. Yeah.

10 Q. And that's why you increased the salary
11 originally to buy another 500,000 in
12 Constitutional, right?

13 A. That's correct.

14 Q. One of the uses of the money from
15 Constitutional to Copco was to pay you \$5500 a
16 month while you were the president of
17 Constitutional, right?

18 A. That's correct.

19 Q. So, in other words, you weren't an
20 employee of Copco, right?

21 A. No, I was not.

22 Q. And you didn't have any duties for
23 Copco, right?

24 A. I did not.



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1 Q. And, yet, Constitutional loaned money
2 to Copco for Copco to pay you \$5500 a month in
3 additional salary, right?

4 A. That is correct, for a period of time
5 in 2009.

6 Q. And into 2010, until it was stopped,
7 right?

8 A. Correct.

9 Q. And that was what your father wanted to
10 do, right?

11 A. That's correct.

12 Q. We've talked about in 2009 the money
13 transferred over and above commissions from
14 Constitutional to Copco, that \$1.4 million. You
15 remember that?

16 A. Sure.

17 Q. During that time frame, you had nearly
18 sole authority over electronic transfers from
19 Constitutional's bank accounts, right?

20 A. Yes.

21 Q. So it's fair to say that those
22 transfers that were used for giving money to your
23 father or providing money to your father, bonuses,
24 et cetera, were transfers that you approved,



1 says: "In case you have lost track, let me
2 reiterate a few of the things I have to manage
3 that might at any given moment take precedence
4 over a request from claims."

5 Did I read that correctly, sir?

6 A. Yes.

7 Q. And it goes on to state: "Overseeing
8 our investment in NorthSide Community Bank and
9 assisting that entity's continued involvement with
10 this company as well as maintaining all of our
11 obligations to them."

12 Did I read that correctly, sir?

13 A. Yes, you did.

14 Q. And that's what you said internally at
15 Constitutional in July of 2008, correct?

16 A. Yes.

17 THE COURT: Before you got to this exhibit,
18 he had already told you that. Now, we have it
19 twice.

20 MR. SCHMELTZ: He said earlier, he said the
21 word "Sure," and I wasn't sure what that meant.
22 I apologize.

23 BY MR. SCHMELTZ:

24 Q. We went over this with respect to your



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1 father, but Constitutional provides 14 or 15
2 automobiles to its employees, doesn't it?

3 A. Yes, it does.

4 Q. And the automobiles are actually held,
5 the titles, at Copco, right?

6 A. That's correct.

7 Q. Now, Copco has no employees, right?

8 A. That is correct.

9 Q. So Copco has no business purpose for
10 14 or 15 automobiles, correct?

11 A. I guess that would be a determination
12 you'd have to make.

13 Q. You were helping your father make
14 determinations about his businesses, right?

15 A. I was trying, to the extent that
16 I could, yes.

17 Q. And in 2009 and 2010, did you make any
18 analysis as to whether or not it made sense for
19 Copco to continue to provide cars to
20 Constitutional employees?

21 A. Sure. We talked about that.

22 Q. And you and your father decided that it
23 made sense for Copco, that had no employees, to
24 continue to provide 14 or 15 cars to



1 Constitutional employees, is that correct?

2 A. Yes.

3 Q. And those cars include a 2003 Escalade,
4 right?

5 A. Correct.

6 Q. A 2006 Acura, right?

7 A. Correct.

8 Q. It included a Range Rover Sport,
9 correct?

10 A. Correct.

11 THE COURT: Counsel, there's no jury here.
12 If you want to put a list in the record, let's
13 just do it.

14 MR. SCHMELTZ: I'm done.

15 BY MR. SCHMELTZ:

16 Q. Those are just the three cars that you
17 have personally from Copco, right?

18 A. Those are the cars that I use that
19 Copco owns, yes, that's correct.

20 Q. And those are the cars that you drive,
21 your wife drives, and your children drive, right?

22 A. That is correct. I've already told you
23 that.

24 Q. And your wife and children -- you



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1 didn't tell me here. Right?

2 Your wife and children aren't
3 Constitutional employees, right?

4 A. No, they are not.

5 Q. And they're not Copco employees, are
6 they?

7 A. No, they are not.

8 MR. SCHMELTZ: At this time, I have no
9 further questions.

10 THE COURT: Thank you. Redirect?

11 REDIRECT EXAMINATION.

12 BY MR. GREEN:

13 Q. Mr. Stride, Mr. Schmeltz asked you a
14 series of questions about loans and other
15 financial transactions between Copco and
16 Constitutional.

17 Do you recall those questions?

18 A. I do.

19 Q. Okay. And you gave a series of
20 answers.

21 A. Yes.

22 Q. With respect to any of those answers,
23 were you answering with respect to anything that
24 occurred prior to the time when you started with



1 A. No.

2 Q. And you've never seen a Form D filing
3 that allowed Copco -- or that gave notice of
4 Constitutional's intent to loan money to Copco to
5 pay Herbert L. "Chip" Stride a \$5500 monthly
6 salary, have you?

7 A. No.

8 Q. And you've never seen a Form D filing
9 in which Constitutional announced its intent to
10 loan money to Copco to allow Copco to make loans
11 to Constitutional employees, have you?

12 A. No.

13 Q. I want to talk about the contract for a
14 general agency agreement.

15 You understood that Copco made money by
16 getting a split of commissions, if you will, for
17 services it purported to render to Constitutional,
18 right?

19 A. Yes.

20 Q. And that agreement was terminated at
21 the end of 2009, right?

22 A. Yes.

23 Q. And I think you testified earlier that
24 it ended at the Department's suggestion, right?



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1 A. Correct.

2 Q. Has the Department ever done an
3 analysis of whether or not the funds paid by
4 Constitutional to Copco under the general agency
5 agreement were fair and reasonable?

6 A. No. The -- some of those transactions
7 were looked at, but there's not been that kind of
8 analysis.

9 Q. You heard Chip Stride testify earlier
10 that Copco has no employees, right?

11 A. Yes.

12 Q. And that the marketing-type services a
13 general agent might perform were actually
14 performed by Constitutional employees, right?

15 A. Yes.

16 Q. And that Constitutional didn't pay --
17 excuse me -- Copco didn't pay any money to
18 Constitutional for the time, energy and effort of
19 those employees, right?

20 A. Yes.

21 Q. And you heard him say that the banking
22 and accounting-type functions that a general agent
23 might perform were also performed by
24 Constitutional employees, right?



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1 A. I --

2 MR. SCHMELTZ: Objection, lack of relevance.

3 BY THE WITNESS:

4 A. I don't know.

5 THE COURT: Well, that's the answer to the
6 question.

7 BY MR. PELZ:

8 Q. I was just trying to -- you're
9 certainly a well-educated woman, aren't you?

10 A. I think so.

11 Q. And you've had -- you have significant
12 business acumen -- you would need significant
13 business acumen in order to become president and
14 CEO of a banking institution, correct?

15 A. I would think so, yes.

16 Q. Now, NorthSide Community Bank has had
17 substantial knowledge about the assets of
18 Herbert F. Stride since at least 1997, correct?

19 A. That's correct.

20 Q. He has regularly, over the period of
21 that 13 years, had to submit detailed personal
22 financial statements, is that correct?

23 A. That's correct.

24 Q. And he, over that period of 13 years,



1 has taken out on his behalf and on behalf of some
2 of the companies in which he has an interest a
3 large number of loans?

4 A. That's correct.

5 Q. Each of those loans require him to
6 submit detailed information with respect to his
7 personal financial situation, correct?

8 A. That's correct.

9 Q. Now, Mr. Herbert F. Stride was also a
10 member of the board of directors of NorthSide
11 Community Bank, right, ma'am?

12 A. That's correct.

13 Q. And he was a member of the board of
14 directors for the NorthSide Community Bank from
15 its inception in 1997 until June of 2009, is that
16 correct?

17 A. That's correct.

18 Q. Why did his directorship end?

19 A. The level of loans against the capital
20 had started to hit a level that was unacceptable,
21 so he would either have to pay down the loans or
22 resign.

23 Q. Did he make the decision to resign?

24 A. Yes, he did.



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1 accuracy of Mr. Stride's personal financial
2 statements? Not you personally but the bank.

3 A. I don't know.

4 Q. Over the 13 years that he was
5 submitting personal financial statements, did the
6 bank ever do anything to verify the accuracy of
7 his personal financial statements?

8 A. I was not the lending officer. I don't
9 know.

10 Q. Well, but as president of the bank and
11 as -- and certainly in light of the situation
12 that's developed here, have you ever looked to see
13 whether the bank ever in 13 years did anything at
14 all to verify the accuracy of the personal
15 financial statements of Mr. Stride?

16 A. I believe we did have certain
17 conversations with Mr. Stride about certain
18 valuations that he put down.

19 We've known Mr. Stride for 18 years.
20 The financial statements have consistently been in
21 excess of 49 million to 60 million year over year.
22 There's a comparison that's completed for line
23 items year over year when there was a loan
24 presentation completed.



1 piece, there may have been a disbursement request
2 piece, there may have been a resolution --
3 corporate resolution, a guarantee form.

4 That's probably the extent of the
5 documents without looking at it.

6 Q. Now, of those documents you've listed,
7 which of those documents have any language that
8 you believe authorizes the bank to set off monies
9 against -- set off Constitutional's accounts?

10 A. Within the loan agreement -- the
11 business loan agreement, there is the setoff
12 language.

13 Q. My question was: Of the documents you
14 listed, the only one that contains the relevant
15 language with respect to this is the business loan
16 agreement, is that correct?

17 A. To the best of my knowledge.

18 Q. When the transfer was done on October
19 6, was there any other document you were relying
20 on?

21 A. No.

22 Q. The business loan agreement is
23 essentially a bank form, correct?

24 A. Yes.



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EXHIBIT 7



LEXSEE 1996 US APP LEXIS 4945

BELOIT CORPORATION, Plaintiff-Appellant, v. C3 DATATEC, INC., Defendant-Appellee.

No. 95-3309

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1996 U.S. App. LEXIS 4945

**February 22, 1996, Argued
March 1, 1996, Decided**

NOTICE: [*1] RULES OF THE SEVENTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

SUBSEQUENT HISTORY: Reported in Table Case Format at: *78 F.3d 586, 1996 U.S. App. LEXIS 10671.*

PRIOR HISTORY: Appeal from the United States District Court for the Eastern District of Wisconsin. No. 93-C-447. Aaron E. Goodstein, Magistrate Judge.

DISPOSITION: AFFIRMED

COUNSEL: For BELOIT CORPORATION, a Delaware corporation, Plaintiff - Appellant: Andrew O. Riteris, Scott James Campbell, MICHAEL, BEST & FRIEDRICH, Milwaukee, WI.

For C3 DATATEC INCORPORATED, a Wisconsin corporation, Defendant - Appellee: John P. Fredrickson, Milwaukee, WI. Curtis A. Borsheim, ENGLER, FLANAGAN, REFF, BAIVIER & BERMINGHAM, Oshkosh, WI.

JUDGES: Before Hon. WALTER J. CUMMINGS, Circuit Judge, Hon. FRANK H. EASTERBROOK, Circuit Judge, Hon. DIANE P. WOOD, Circuit Judge

OPINION

Order

Only one issue remains of this commercial litigation under the diversity jurisdiction, which was tried by a magistrate judge with the parties' consent. *28 U.S.C. § 636(c)*. It is whether Beloit Corporation preserved for decision its contention that it need not pay C3 Datatec, Inc., the sum of \$ 54,900 to which C3 is entitled for work on a project the parties call the Champion [*2] contract. The Champion contract contains a setoff clause allowing Beloit to deduct any amount C3 owes it "by reason of any counterclaim arising out of this or any other transaction". Beloit advanced C3 \$ 53,300 against work the parties call the Dryer School contract. Later Beloit cancelled the project, as it was entitled to do under a clause allowing termination for the buyer's convenience. The termination clause says that, if Beloit exercises this right, C3 "shall be paid a reasonable termination charge consisting of only actual direct costs resulting from the work already performed."

Beloit believes that C3 did not perform a lick of work on the Dryer School project and therefore must return the advance, an outcome the setoff accomplished. C3 believes that the reference to language limiting the "termination charge" to "costs resulting from the work already performed" does not apply to advances. As C3 sees things, it is entitled to keep the entire advance whether or not it set to work on the Dryer School project. It offers other reasons in support of this position, but the magistrate judge did not address any of them. Instead he held that the entire subject is not a part of this [*3] litigation. After resolving the parties' disputes about the Champion contract, the judge stated: "Beloit has made no counterclaim for set off and therefore ... the issue of set off is not before the court." The judgment directs Beloit to pay C3 the full sum the judge found due on the

Champion contract. If the statute of limitations has not expired, Beloit could commence a separate action seeking return of the advance on the Dryer School contract. (Any counterclaim would be permissive rather than compulsory because the two contracts do not represent the same transaction or occurrence.) Beloit prefers the speed and security of setoff, however, and filed this appeal.

The magistrate judge's explanation is misleading. A setoff is not something the court orders in response to a counterclaim; it is a self-help remedy. A setoff is something you *do*, and not something you ask a judge to compel someone else to do. See generally *Citizens Bank of Maryland v. Strumpf*, 133 L. Ed. 2d 258, 116 S. Ct. 286 (1995). Litigants therefore need not file counterclaims seeking setoff. Still, even in a system of notice pleading a party must take some step to make setoff an issue. Beloit is entitled [*4] to keep the money only if C3 indeed owes it a corresponding debt, and the claim that there is such a debt can be (and was) contested. A denial of liability because of setoff is in this sense like a claim of payment: the party resisting the demand in litigation says that the judge should withhold relief, because the debt has already been satisfied. Usually payment occurs by check or cash, but payment may occur by cancellation of offsetting accounts.

Under *Fed. R. Civ. P. 8(c)*, payment is an affirmative defense that must be specifically pleaded. The rule applies equally to "any other matter constituting an avoidance or affirmative defense." If setoff can be distinguished from payment, it remains an "other matter constituting an avoidance". Beloit therefore had to alert C3 to its position. See *Hassan v. U.S. Postal Service*, 842 F.2d 260 (11th Cir. 1988), and *Chicago Great Western Ry. v. Peeler*, 140 F.2d 865 (8th Cir. 1944), both of which hold that setoff is an affirmative defense that must be pleaded under *Rule 8(c)*. It is therefore not enough to say, as Beloit does on appeal, that the possibility of as-

serting setoff is implied by a general denial of liability under the contract.

[*5] Beloit argues that *Carroll v. Acme-Cleveland Corp.*, 955 F.2d 1107 (7th Cir. 1992), supports its position, but *Carroll* offers more support to C3 than to Beloit. Purchasers of stock agreed to pay in three installments. They withheld the third installment, arguing that the seller's nondisclosure of some corporate liability relieved them of the necessity to pay the full price. In response to the seller's demand for full payment, the buyers pleaded only a general denial of liability on the contract. They did not plead that the seller violated its warranty of full disclosure. We held that this was insufficient to present for decision the claim that principles of indemnity or setoff allowed the buyers to reduce their payments by the unrevealed liability. Nothing in *Carroll* suggests disagreement with *Hassan* or *Peeler*.

An omission from the answer under *Rule 8(c)* is not necessarily fatal. Beloit could have asked for leave to amend its answer to add this theory of avoidance. Or it could have raised the question at the pretrial conference and asked the judge to include the subject in the pretrial order, a document that supersedes the pleadings. See *Gorlikowski v. Tolbert*, [*6] 52 F.3d 1439, 1443-44 (7th Cir. 1995). But there was no pretrial order in this case. At oral argument, counsel for Beloit asserted that one was unnecessary because "everyone knew" what issues would be tried. Of course, what Beloit's lawyer "knew" would be tried turned out to be very different from what C3's lawyer, or for that matter the judge, thought was at issue. The fallibility of human recollection is one of the principal reasons *Fed. R. Civ. P. 16(e)* provides for a written pretrial order. Beloit, as the party asserting a "matter constituting an avoidance", bears the onus on this question. Having omitted setoff from its answer, and having disdained the method prescribed by *Rule 16(e)*, Beloit suffers the consequences.

AFFIRMED