

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:)
)
ADVANCE AMERICA, CASH ADVANCE)
CENTERS OF NORTH CAROLINA, INC.)
_____)

**OPPOSITION TO JOINT MOTION FOR A
PROTECTIVE ORDER AND ORDER LIMITING DISCOVERY**

Advance America, Cash Advance Centers of North Carolina, Inc. ("Advance America-NC"), respectfully submits this Opposition to the Joint Motion for a Protective Order and Order Limiting Discovery filed by the Office of the Commissioner of Banks ("OCOB") and the Office of the Attorney General ("OAG") (together, the "government") on April 8, 2005.

INTRODUCTION

Advance America-NC served Requests for Production of Documents and Interrogatories on the North Carolina Banking Commission, the North Carolina Commissioner of Banks and the North Carolina Office of the Attorney General on March 31, 2005. Having to date made inadequate efforts to comply with these requests in good faith, and without a single case law citation or affidavit in support, the government seeks a blanket protective order and an order practically eviscerating the discovery requests of Advance America-NC. If granted, these orders in tandem would severely hinder Advance America-NC's ability to discover relevant evidence, present its defense to the allegations set forth in the Notice of Hearing, and otherwise compile a complete record for the Commissioner's consideration – which North Carolina

procedural and substantive law permit it to do in this contested case proceeding.¹ The government's refusal to respond to requests calculated to lead to the discovery of relevant evidence should not be permitted, and the Motion for Protective Order and Order Limiting Discovery should be denied.

After its Motion for Protective Order and Order Limiting Discovery, filed on April 8, 2005, offered objections to nearly every request and no responses to interrogatories, the government provided its Responses to Respondent's First Request for Production of Documents and Interrogatories nearly two hours after the close of business on April 15, 2005.² These responses still provided objections to the overwhelming majority of Requests for Production of Documents. Many of the responses, on their face, seem ill-founded. (*E.g.*, Response No. 9, citing attorney-client, work product, and "common interest" privilege for documents sent from the government to private civil plaintiffs' law firms and public interest groups). In other cases,

¹ At our April 4, 2005 telephonic status hearing, the Commissioner required the government to file on April 8, 2005 a "summary" listing evidence they were prepared to produce. This was not done. Exhibit 1 to the Joint Motion, filed on that date, contains no substance whatsoever, stating only that "[t]his exhibit is intended to specifically note the objections raised in the accompanying motion and is not intended as the complete or formal response to the Respondent's Request For Production of Documents and Interrogatories which will be forthcoming on or about April 15, 2005." Attached to Exhibit 1 are objections to nearly every discovery request propounded by Advance America-NC, but no listing of documents that the government does plan to produce. By not providing an early indication of documents that would be produced, in contrast to the Commissioner's oral directive, the government cut short by a full week Advance America-NC's ability to prepare this opposition. Indeed, given the government's tardy document production, Advance America-NC *still* has not had time to review the government's documents, yet is filing this opposition in order to comply with the Commissioner's directive that its opposition be filed by noon today.

² The government representatives were circumspect in communications on April 15 regarding whether Advance America-NC would be provided with copies of responsive documents assembled by Petitioners; given the government's tardy production, Advance America-NC has not had an opportunity to review the documents to be produced.

particularly in connection with privilege and work product claims which cover twenty-one of our requests, the responses seem overbroad. In this regard, the government has failed to provide a privilege log, however, as required by the requests, or provide the documents for *in camera* review, as required by the case law. In several other instances, the government has contended that responding to the requests would be "unduly burdensome." No affidavits or declarations are offered to support these claims, which were made after our offers to work amicably with the government to narrow any requests that caused such concern, were ignored without comment.³

Importantly, also, the government's responses support what Advance America-NC has contended through this proceeding, in opposition to the Attorney General's intervention, and in the instant opposition; namely, members of the Office of the Attorney General and the Office of the Commissioner of Banks, including those deputized and permitted to intervene here as advocates against Advance America-NC, as well as Attorney General Cooper and Commissioner of Banks Smith, have met on numerous occasions with Advance America-NC and representatives from various other payday lending companies "to discuss [] proposed legislation" and to discuss "bank model payday lending by various companies." Response at 24-25. This admission supports our contention that such conversations and meetings have relevance to the events that preceded and followed the sunset of N.C. GEN. STAT. § 53-281 (1997), and that Advance America-NC's current business in the State and the instant investigation did not occur in a vacuum. The government's contention that "no legislation was enacted so any such meetings, discussions or proposals have no relevance to this proceeding" misses Advance America-NC's

³ See Email from Chris Jones to Angela Maynard, dated April 5, 2005 (attached as Exhibit A); Email from Donald Lampe to McNeil Chestnut, dated April 5, 2005 (attached as Exhibit B).

point: these meetings and discussions about the state of the law *did* occur, legislation was *not* passed specifically addressing the payday lending industry, and no action was taken to provide notice to Advance America-NC that it was operating in violation of existing law. To the contrary, Advance America-NC was given every reason to believe that its conduct was consistent with the law. In order to present its defense, Advance America-NC should be entitled to discover information regarding these meetings, discussions and statements.

In the Notice of Hearing, the Office of the Commissioner of Banks alleges that Advance America-NC has violated § 53-166(a) of the North Carolina Consumer Finance Act ("CFA") by engaging in the business of lending. *See* Notice at 10. The Notice further alleges that § 53-166(a) applies to any person who seeks to avoid it by any device, subterfuge or pretense. *See id.* at 11. Additionally, the Notice seeks relief for alleged violations of a provision of the North Carolina Check Casher Act, § 53-276. *See id.* The evidence presented will determine whether the Commissioner will pursue an order requiring Advance America-NC to cease and desist its business operations in this State and/or impose monetary penalties. *See id.* at 11-12.

Contrary to the government's assertion, Advance America-NC's discovery requests are neither extraordinary in scope nor irrelevant. They are limited to inquiries germane to the issues raised in the Notice, and they are justified by Advance America-NC's statutory and constitutional due process right to defend itself against the allegations the Notice raises and protect itself against an unwarranted taking of its property rights in this State. The discovery requests are carefully limited in time to the period during which Advance America-NC has operated in North Carolina, and are limited in scope to the government's interactions with Advance America-NC and other businesses within the payday lending industry who had

interaction with the government during that time period. Moreover, the government's protestations are ill-founded considering that the Public Records Act, N.C.G.S. § 132-1 *et seq.*, allows any citizen open access to documents created by government agencies after three years have elapsed. Under this Act, relevance need not be shown, and claims of confidentiality or privilege for documents created prior to April 2002, as such, are completely misplaced.

The Commissioner has signaled to the parties that he expects cooperation and compromise in this proceeding. Advance America-NC has taken that message to heart; it appears that the government has not. Prejudicing our ability to respond by the Commissioner's noon deadline today, the government delayed producing its summary of evidence it would be inclined to produce, and did not produce its documents by close of business on April 15 as directed, which prevented us from reviewing them over the weekend in advance of today's filing deadline. For the reasons that follow, Advance America-NC asks that the Motion for a Protective Order and Order Limiting Discovery be denied.

ARGUMENT

A. Advance America-NC's Discovery Requests Are Relevant and Likely to Lead to the Discovery of Admissible Evidence.

Without any legal or factual support whatsoever and by nothing other than their own fiat, the government attempts to avoid the discovery of any documents relating to the regulation of the payday lending industry – what this case is about – on "relevance" grounds. *See* Joint Mot. at 4. The essence of the requests at issue concerns investigations of companies believed to be illegally engaged in "payday lending," materials prepared for and sent to (or received from) the General Assembly, consumer groups, state agencies, and other organizations regarding payday lending. These various requests (the government objects on relevance grounds

to nineteen requests) seek discovery about matters including the reach of the statutes at issue here.⁴ Blanket relevance objections are improper in this context, and offend the discovery standard under North Carolina Rule of Civil Procedure 26(b), which requires the production of documents that are "reasonably calculated to lead to the discovery of admissible evidence." Rule 26 further provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence nor is it grounds for objection that the examining party has knowledge of the information as to which discovery is sought.

N.C. R. Civ. P. 26(1).

North Carolina courts interpret the phrase "relevant to the subject matter involved in the pending action" liberally, consistent with the expansive purpose of discovery. *See, e.g., Howell*, "North Carolina Civil Practice and Procedure," 5th Ed., §26-3, 1999; *Shellhorn v. Brad Ragan, Inc.*, 38 N.C. App. 310, 248 S.E.2d 103 (1978); *Adams v. Lovette*, 105 N.C. App. 23, 411 S.E.2d 620, *aff'd per curiam*, 332 N.C. 659, 422 S.E.2d 575 (1992). Thus, contrary to the position adopted by the government in its Joint Response, "[t]he relevancy test for discovery is not the same as the relevancy test for admissibility into evidence. Put simply, the longstanding rule of discovery relevance in North Carolina is [that] . . . [t]o be relevant for purposes of discovery, the information need only be 'reasonably calculated' to lead to the discovery of admissible evidence." *Shellhorn*, 38 N.C. App. 310, 248 S.E.2d 103.

⁴ On April 4 and April 5, we offered to discuss our requests with the government to address relevance concerns, and perhaps more narrowly tailor our requests to resolve amicably any objections. These overtures were ignored.

Advance America-NC's requests for information regarding regulation of the payday lending industry are properly calculated to lead to the discovery of relevant evidence. The government seeks to limit discovery to "Respondent's business activities in North Carolina and whether those activities violate North Carolina lending laws and other regulatory laws." Joint Motion at 2. The government's position that it is not required to produce documents more broadly regarding payday lending in North Carolina, including those pertaining to the reach of the statutes in issue, investigations of or communications with other companies in the *same* industry, communications with other government entities and third parties regarding the industry, or internal memoranda and communications regarding the industry, *see* Joint Motion at 4, is indefensible under the applicable legal standards.

1. Requests Seeking Statements of Messrs. Cooper, Stein, Lehman, Chestnut, Deaton, and Ms. Weaver, Are Calculated to Lead To The Discovery Of Relevant Evidence.

Statements of regulators on the subject of payday lending are of particular concern to Advance America-NC and of relevance to this proceeding. The government has now conceded that Attorney General Cooper, Joshua Stein, Philip Lehman and McNeil Chestnut made public statements and met with representatives from Advance America-NC and other payday cash advance companies and industry groups at or just subsequent to the time of the sunset of North Carolina's payday lending law, N.C. GEN. STAT. § 53-281 (1997), to discuss proposed legislation and, in particular, "the general manner in which the payday lending companies conducted their business in North Carolina." Joint Response at 25. Further, we understand that the individuals named above have made statements regarding the scope and interpretation of State law as it pertained to payday cash advance companies doing business in North Carolina as marketing, servicing, and processing agents for federally regulated banks.

Advance America-NC had the right to rely on such statements, following the sunset, in structuring and carrying out its business in this State. The statements of these individuals are relevant; accordingly, Advance America-NC has appended deposition notices to this opposition, as it has a right to do in this contested case proceeding pursuant to N.C.G.S. § 150B-39 and N.C. R. Civ. P. 30.⁵

The government has not once disputed that relevant statements were made to Advance America-NC representatives and others in the industry. In addition to the government's concessions that the statements were made, as proffered to Commissioner during our status conference on April 4, Advance America-NC has already obtained some evidence of such statements.

For instance, in a summary of proposed legislation entitled "Regulation of the Business of Check Cashing: Summary and Major Points of Proposed Legislation (SB 312)," Assistant Attorneys General Lehman and Chestnut admitted that, without a specific payday lending law, deferred deposit transactions were essentially unregulated and therefore the law was necessary in order to "level the playing field" relative to other consumer financial service products then offered in North Carolina:

Virtually all other forms of retail credit and small consumer loans are strictly regulated by law. This [payday lending] bill would *create a level playing field* by controlling delayed deposit transactions.

Exhibit C (emphasis added). Regulators believed prior to passage of N.C. GEN. STAT. § 53-281 (1997) that laws in place at that time, including the Consumer Finance Act, did not regulate the

⁵ All of the Notices of Deposition bear a control date of May 11, 2005. Advance America-NC will cooperate with the government to identify dates or times that are convenient for each of the deponents.

payday lending industry. Additional documents reflecting the regulators' view after the sunset lend further support to this position. A letter written by Assistant Attorneys General Lehman and Chestnut, sent to a number of payday lending companies, reflected uncertainty regarding the state of regulation of companies acting as agents for out-of-state banks:

It would be helpful to the Department of Justice to receive complete and accurate information about the deferred deposit transactions which are now being offered by and through your company *so that we may determine their legal status* under applicable law.

Letter from Philip A. Lehman and L. McNeil Chestnut to Darrin Andersen, dated October 12, 2001, attached at Exhibit D (emphasis added). Advance America-NC cooperated with this inquiry.

Nearly three years then passed without Advance America-NC being advised that, based on the information the companies provided, it was being investigated for possible violations of law. During that time, Advance America-NC had reason to believe its conduct was lawful. In fact, a letter from the Attorney General himself in 2003 advised members of the General Assembly that a new law was needed because there was then no mechanism in place to regulate third-party agents acting on behalf of out-of-state banks who offered consumers deferred deposit cash advances. In commenting on proposed House Bill 1213, Attorney General Cooper wrote:

Nor does [the proposed legislation] adequately *close the out-of-state bank loophole*. It is our hope that the strongest possible language *eliminating this loophole* and other devices to *evade state regulation* be included.

Letter from Roy Cooper to Members of the Senate Commerce Committee, dated June 6, 2003, attached at Exhibit E (emphasis added).⁶ And as recently as late last year, after the investigation had commenced in this proceeding, an examiner from the Office of the Commissioner of Banks agreed with Attorney General Cooper in a letter responding to a payday lending consumer complaint:

After reviewing your complaint, we have come to the conclusion that *we have no jurisdiction in this matter.*

Letter from Examiner Charlie J. Fields, Jr. to Mr. and Mrs. Marsh, dated December 8, 2004, attached at Exhibit F (emphasis added). Each of these documents are relevant to the state of regulation in North Carolina following the sunset of G.S. § 53-281, and discovery of any other such materials are at least reasonably calculated to lead to the discovery of relevant evidence.⁷

2. The Requests Are Calculated To Lead To The Discovery Of Relevant Evidence Concerning An Estoppel Defense.

Advance America-NC's discovery requests are also relevant to, and likely to lead to the discovery of admissible evidence concerning an estoppel defense, as the Commissioner queried and we explained during the status conference on April 4, 2005. The "scope of

⁶ Notably, Mr. Cooper did not indicate that the "loophole" represented an *unlawful* evasion or subterfuge to escape liability under the Consumer Finance Act; indeed, if the government believed this was the case, the "loophole" would not have been effective.

⁷ We are mindful that the statements of regulators do not have the force of formal legislative history. However, the case law in this State is clear they are relevant to the scope and interpretation of the statutes at issue in this proceeding. *See, e.g., State ex rel. Utilities Comm'n v. Public Staff-N.C. Utilities Comm'n*, 309 N.C. 195, 211-212, 306 S.E.2d 435, 444-445 (1983) ("the interpretation of the agency responsible for [the statutes'] administration may be helpful and entitled to great consideration"). This is especially the case where, as here, the Commissioner has acknowledged that the issue presented in this case – whether the CFA applies to a third party agent of an out-of-state state-chartered bank – is one of first impression.

discovery is not limited to matters relevant to claims for relief, but also includes matters relevant to defenses." *Shellhorn v. Brad Ragan, Inc.*, 38 N.C. App. 310, 248 S.E. 2d 103 (1978). The conduct of Advance America-NC's business follows a direct line from positions taken (and not taken) by North Carolina regulators, including the OCOB and Office of the Attorney General. Accordingly, Advance America-NC may rely on the doctrine of estoppel, which provides "a means of preventing a party from asserting a legal claim or defense which is contrary to or inconsistent with his prior actions or conduct." *Godley v. Pitt County*, 306 N.C. 357, 293 S.E.2d 167 (1982). This defense is well-established in this State's jurisprudence.

First, the principle of quasi-estoppel prevents the government from now asserting that Advance America-NC's business violates North Carolina law. Quasi-estoppel "does not require detrimental reliance *per se* by anyone, but is directly grounded instead upon a party's *acquiescence* or acceptance of payment or benefits, by virtue of which that party is thereafter prevented from maintaining a position inconsistent with [that] act." *Godley*, 306 N.C. at 361, 293 S.E.2d at 170 (emphasis added). This principle was applied against the government in *Holland Group, Inc. v. North Carolina Department of Administration*, 130 N.C. App. 721, 726, 504 S.E.2d 300, 304 (1998).

In *Holland*, a state agency attempted to grant itself an extension of time to issue a "final agency decision" under the Administrative Procedures Act in order to enter additional material into the administrative record. *Id.* at 723, 504 S.E.2d at 302. The agency had previously entered a notice closing the record and triggering requirements that the decision be entered by a date certain, but the agency then failed to issue a timely decision on petition for judicial review. *Id.* at 724, 504 S.E.2d at 303. The agency sought to "disavow" its earlier notice closing the record in both the trial and appellate courts. *Id.* at 727, 504 S.E.2d at 304. The Court

of Appeals found that the agency was estopped from denying it received the record on the earlier notice date, noting that the petitioner "had accepted the Department's official assurance" that the record was closed as of the earlier notice date. *Id.* at 727, 504 S.E.2d at 304-05.

Here, the statements we seek to discover, as exemplified by exhibits C, D, E and F, and as conceded by the government in its joint response to our discovery requests, are calculated to lead to admissible evidence showing that, in the instant proceeding, the government similarly seeks to "disavow" its earlier positions to the effect that acting as a third-party agent for an out-of-state bank presents a "loophole" that leaves the government "without jurisdiction" as an enforcement matter. As shown above, such statements would be relevant as evidence for the Commissioner, entitled to "great consideration," regarding the scope and interpretation of the statutes at issue here. *See* note 7 above (citing *State ex rel. Utilities Comm'n v. Public Staff-N.C. Utilities Comm'n*, 309 N.C. at 211-212, 306 S.E.2d at 444-445). Apart from a boilerplate "relevance" objection, the government offers the Commissioner *nothing* in support of its view that Advance America-NC is *not* entitled to seek such discovery.

Further, Advance America-NC may, as discussed during the April 4 status conference, seek to apply an equitable estoppel argument in this case. *See Washington v. McLawhorn*, 237 N.C. 449, 454, 75 S.E.2d 402, 406 (1953). While governmental agencies may not be subject to estoppel to the same extent as a private individual or private corporation, the law in this State is clear that a governmental entity may be estopped (i) if necessary to prevent loss to another, and (ii) only if the estoppel will not impair the exercise of governmental powers. If *Washington's* two-pronged test is satisfied, it is clear that the Commissioner and the Office of the Attorney General would be precluded "from asserting rights which might perhaps have otherwise existed ... as against another person who in good faith relied upon such conduct, and

has been led thereby to change his position for the worse" *Washington*, 237 N.C. at 454, 75 S.E.2d at 405. North Carolina courts have on numerous occasions found grounds for equitable estoppel of government agencies or entities. *See, e.g., Holland Group*, 130 N.C. App. at 728, 504 S.E.2d 304 (1998); *Mulberry-Fairplains Water Ass'n, Inc. v. Town of North Wilkesboro*, 105 N.C. App. 258, 412 S.E.2d 910, *disc. rev. denied*, 332 N.C. 148, 419 S.E.2d 573 (1992); *Land-of-Sky Regional Council v. Henderson County*, 78 N.C. App. 85, 336 S.E.2d 653, *disc. rev. denied*, 316 N.C. 553, 344 S.E.2d 7 (1985). Again, the defense alleged here is quite valid and supports the discovery sought.

3. The Requested Information Is Reasonably Calculated To Lead To The Discovery of Relevant Evidence Regarding Intent.

Requests seeking communications and other information regarding the state of the payday lending industry in North Carolina, including discussions with regulators and enforcement personnel, are also relevant to whether, as contended in the Notice of Hearing, Advance America-NC's business effects a deceit. Specifically, the Notice of Hearing accuses Advance America-NC of "seek[ing] to avoid [the provisions of G.S. § 53-166(a)] by any device [or] subterfuge."⁸ Consequently, requests seeking information regarding the state of the government's knowledge and learning regarding third party agents operating on behalf of out-of-state banks in North Carolina, and specific discussions with the government regarding "bank model payday lending by various companies who were formerly licensed as check cashers to do deferred deposit lending in North Carolina . . ." (Joint Response at 25) are *at least* reasonably

⁸ The government contends that this language is not an allegation, but that it merely cites the statutory language. Joint Response at 19. We do not know what this means. The point of the Notice of Hearing is to notify Advance America-NC of the charges, which are made through use of statutory language.

calculated to lead to the discovery of relevant evidence – if such information is not itself independently relevant and admissible to show a lack of culpable conduct and intent, as we believe.

Although there does not appear to be precedent on the precise issue of "subterfuge," "pretense," or "evasion" presented in this case, the terms "subterfuge" and "pretense" have a long history in North Carolina law, and it is clear that they import the element of intent. *See, e.g., State v. Bailey*, 168 N.C. 168, 170, 83 S.E. 711, 712 (1914) (noting that jury could find sale of liquor outside of North Carolina was a "mere pretense or subterfuge ... *intended as a cloak*" for the illegal transaction) (emphasis added); *Williams v. Avery*, 131 N.C. 188, 188, 42 S.E. 582, 583 (1902) (noting that land bid could have been "mere pretense or subterfuge ... *for the purpose of* defrauding the defendant out of his rights") (emphasis added). In addition, cases decided under the North Carolina usury statute, N.C.G.S. Ch. 24, hold that a transaction may be usurious if the lender engages in "subterfuge" to disguise a transaction's true nature. *See, e.g., Carolina Industrial Bank v. Merrimon*, 260 N.C. 335, 338 (1963) ("... if the form of the transaction is a subterfuge to conceal an exaction of more than the legal rate of interest on what is in fact a loan and not a sale, the transaction will be regarded according to its true character and will be held usurious"). In other words, whether Advance America-NC "seeks to avoid [the application of the CFA] by any device, subterfuge or pretense" requires a fact-specific showing of intent to deceive or, at the very least, to conceal some aspect of its business.

Indeed, such language is commonly understood in both federal and state law to create an intent requirement. *See, e.g., Abel v. United States*, 362 U.S. 217 (1960) (suggesting that a finding that an Immigration and Naturalization Service warrant was a "subterfuge" would be equivalent to a finding that it was a "pretense and a sham, *was not what it purported to be*")

(emphasis added); *E.E.O.C. v. Aramark Corp., Inc.*, 208 F.3d 266, 271 (D.C. Cir. 2000) (under the Americans with Disabilities Act, "the plain meaning of the phrase 'subterfuge to evade' remains . . . 'a scheme, plan, stratagem, or artifice of evasion' [and] . . . requires intent") (citations omitted); *Collins v. State*, 166 Ariz. 409, 416, 803 P.2d 130, 137 (Ariz. Ct. App. 1990) ("If the legislature had intended the forfeiture provisions . . . to be limited to those who avoided the licensing requirement *intentionally, i.e., 'by any device, subterfuge or pretense,'* it could have done so specifically...") (emphasis added).

The fact is that, contemporaneous with and following the sunset, Advance America-NC planned and carried out its agency relationship with an out-of-state bank in a fashion transparent to North Carolina regulators – thereby belying the notion that it has engaged in pretense or subterfuge. Other companies in the State did so as well. This conduct included what the government now concedes: meetings with industry representatives to "discuss bank model payday lending" Joint Response at 25. This information is discoverable.

B. Advance America-NC Is Entitled to A Good Faith Privilege Review, As Well As Documents Over Which The Government Ostensibly Claims Privilege.

As noted, the government in its Joint Response absolutely, and without *any* legal support, asserts that many of Advance America-NC's discovery requests seek privileged information and thereby refuses to produce anything in response. Joint Motion at 5. However, in making this blanket claim the government makes no proffer that it has even *reviewed* responsive documents for privilege. Nor does it claim that particular documents are privileged. This unmitigated response is a clear-cut violation of Advance America-NC's discovery rights.

Pursuant to settled North Carolina law, parties are not permitted to make unilateral determinations of privilege; whether a discovery privilege applies is one that should be

made by the court or fact finder. *See, e.g., Midgett v. Crystal Dawn Corp.*, 58 N.C. App. 734, 294 S.E.2d 386 (1982); *Gregorino v. Charlotte-Mecklenburg Hosp. Sys., Inc.*, 121 N.C. App. 593, 468 S.E.2d 432 (1996); *Cook v. Wake Cty. Hosp. Sys.*, 125 N.C. App. 618, 482 S.E.2d, 546 (1997). "The matter cannot rest upon the *ipse dixit*" of the party asserting the privilege. *Industrotech Constructors, Inc. v. Duke Univ.*, 67 N.C. App. 741, 743, 314 S.E.2d 272, 275 (1984). The Commissioner has an obligation here to independently review documents withheld by the government, and to make his own determination whether they should be produced. This is especially so here, where the government's blanket claim of privilege itself belies any view that it has been made in good faith.

In making such an independent review, courts in this State routinely review privilege logs and conduct *in camera* reviews of documents in cases presenting issues of privilege. *See, e.g., In re Miller*, 385 N.C. 364, 595 S.E. 2d 120 (2004); *Hulse v. Arrow Trucking*, 161 N.C. App. 306, 587 S.E. 2d 898 (2003); *In re Miller*, 357 N.C. 316, 584 S.E. 2d 772 (2003); *Multimedia Publishing v. Henderson County*, 145 N.C. App. 365, 550 S.E. 2d 846 (2001); *State v. Johnson*, 145 N.C. App. 51, 549 S.E. 2d 574 (2001); *Sigma Construction v. Guilford Cty. Bd. Ed.*, 144 N.C. App. 376, 547 S.E. 2d 178 (2001); *Evans v. United Services Auto. Assoc.*, 142 N.C. App. 18, 541 S.E. 2d 782 (2001); *Multimedia Publishing v. Henderson County*, 136 N.C. App. 567, 525 S.E. 2d 786 (2000); *Rowe v. Rowe*, 74 N.C. App. 54, 327 S.E. 2d 624 (1985). The discovery requests at issue required production of a privilege log, *see* Definition and Instruction 7, but one was not provided. In the course of a privilege review, the party asserting the privilege – here the government – must bear the burden of establishing that a privilege exists. *See, e.g., Hulse v. Arrow Trucking Co.*, 161 N.C. App. 306, 587 S.E.2d 898 (2003). The government has come nowhere near to meeting such a burden in this matter.

Indeed, the case for privilege is particularly difficult for the government here, where the case law has questioned whether a privilege even exists for documents created by a government agency. *See, e.g., McCormick v. Hanson Aggregates Southeast, Inc.*, 164 N.C. App. 459, 596 S.E.2d 431 (2004); *see also City of Burlington v. Boney Publishers, Inc.*, 600 S.E.2d 872, 876 (N.C. Ct. App. 2004) (Public Records Act "clearly gives the public the right to access records compiled by government agencies").⁹ The government's claims of privilege must be substantiated, at a minimum, with a list of those documents to which such claims apply, including the nature, date and author of those documents, in order to allow the Commissioner to rule upon those claims or otherwise order an *in camera* inspection. *See, e.g., Hall v. Cumberland Cty. Hosp. Sys., Inc.*, 121 N.C. App. 425, 427, 466 S.E.2d 317, 318 (1996); *see also Howell*, "North Carolina Civil Practice and Procedure," 5th Ed. § 26-7 (1999). Instead, ignoring this settled doctrine, with which experienced lawyers from the Office of the Attorney General should be very familiar, the government has done nothing in the hope that the Commissioner will enable its violation of its discovery obligations.

1. The Government Cannot Claim A Privilege Over Documents Older Than Three Years.

Even if the government could arguably withhold documents under the attorney-client privilege, which they cannot, any document older than three years does not qualify for the privilege as a matter of law. North Carolina's Public Records Act (G.S. § 132-1, *et seq.*) operates to make publicly available most documents created by State agencies in North Carolina.

⁹ Prior to the government's filing of its Joint Motion for a Protective Order and Motion Limiting Discovery, we sent the government a citation to *McCormick*, indicating its interpretation of the Public Records Act. We received no response, and the case is not cited in any of the government's pleadings.

In the interest of the government conducting itself openly and fairly for its citizens, North Carolina has broadly defined the “public records” that are generally available as follows:

"Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

G.S. § 132-1(a). Additionally, G.S. § 132-1(b) states that North Carolina’s public policy relative to such records is premised as follows:

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the *property of the people*. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

G.S. § 132-1(b) (emphasis added). Thus, the vast majority of government records and documents are intended to be available, unless “otherwise specifically provided by law.” *Id.*

Even G.S. § 132-1.1, which makes confidential any records that include written communications between an attorney-at-law that is serving a "public board, council, commission, or other governmental body of the State, . . . or other political subdivision" and the body being served. G.S. § 132-1.1(a) (entitled “Confidential communications by legal counsel to public board or agency . . .”), is inapplicable here. G.S. § 132-1.1(a) contemplates only a three-year period of confidentiality (from the date that the communication "was received" by the governmental body). Accordingly, no written communications that were received by the Attorney General, Banking Commission or Commissioner on or before April 2002 are protected by application of G.S. § 132-1.1. After the three-year confidentiality period, such documents are publicly available records and therefore, should be produced.

2. The Government Cannot Claim A Privilege Over Documents That Are The Subject of Public Statements.

The government has averred it will produce to Advance America-NC public statements and press releases concerning the issues in this matter. *See* Responses 28 and 29. The government cannot claim a privilege over documents that have become the subject of public statements. It is well-settled law in North Carolina that disclosure of otherwise protected materials waives the attorney-client privilege. *See, e.g., Industrotech Constructors, Inc.*, 67 N.C. App. 741, 314 S.E.2d 272 (denying privilege protection to transcript that party asserting privilege had disclosed); *State v. Murvin*, 304 N.C. 523, 284 S.E.2d 289 (1981) (concluding that attorney-client privilege waived as to affidavit where two others were present during execution); *State v. Tate*, 294 N.C. 189, 239 S.E.2d 821, 829 (1978) (finding that attorney's testimony as to what letter did not contain waived privilege as to contents of letter); *Jones v. Marble Co.*, 137 N.C. 237, 49 S.E. 94 (1904) (refusing to apply privilege where attorney provided opinion testimony as to contents of letter). Such disclosure not only waives the privilege as to the specific information disclosed, but *also waives the privilege as to the broad subject matter of the disclosure*. *See, e.g., Hawkins v. Stables*, 148 F.3d 379, 384 n. 4 (4th Cir. 1998); *Sheet Metal Workers Int'l Ass'n v. Sweeney*, 29 F.3d 120, 125 (4th Cir. 1994) (noting that any voluntary disclosure to third party waives the privilege). The government's Responses do not take into account this basic principle of the attorney-client privilege doctrine.

The government already has disclosed to numerous non-parties documents, statements, and other materials over which they now apparently assert the attorney-client privilege. Upon information and belief, Attorney General Cooper and Mr. Stein, as well as others from the Office of the Attorney General, may have testified or provided opinions to

members of the General Assembly regarding whether third party agents operating with out-of-state banks were subject to regulation under then-existing law. Such statements would operate to waive the attorney-client privilege as to any documents that support that position. Similarly, it is apparent on the face of Messrs. Chestnut and Lehman's memorandum to the General Assembly, quoted above, that the OCOB and Office of the Attorney General held the view that payday lending was beyond North Carolina's regulatory purview, thus creating a gap (a "playing field" that was not "level" vis a vis other consumer finance products) in its regulation. *See* Exh. A. The distribution of that memorandum served to waive the privilege for any document concerning the subject matter of that position, and the same principle should apply to trigger the waiver of privilege over any other documents supporting the subject matter of positions taken by government representatives publicly or in the presence of third parties. Again, the government offers the Commissioner *absolutely no authority or even argument to the contrary.*

C. The Government's Argument That Discovery Is Overly Burdensome Is Without Basis.

The government asserts, again with neither legal nor factual support, that Advance America-NC's document requests are overly burdensome and excessive in scope. *See* Joint Motion at 5. As pointed out above, our good faith overtures to ease that perceived burden through narrowing our requests or offering technical support were rejected out of hand – thereby showing the agenda of obstruction held by the government here. The government's protestations of undue burden are supported by no allegations of fact. No affidavit or declaration is offered to demonstrate just *how* our requests would present such a burden.

To begin with, our understanding is that the pertinent discovery is located in a discrete location. Further, each discovery request seeks information that is relevant, as

appropriately defined above, to an allegation, defense or item of relief being sought. Rule 26 provides that "[t]he frequency or extent of use of . . . discovery methods . . . shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative . . . (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." N.C. R. Civ. P. 26(b)(1). Advance America-NC has not had "ample opportunity by discovery in the action to obtain the information sought." And, as Advance America-NC's business in this State is at stake in this proceeding, the "amount in controversy" and "importance of the issues at stake" counsel strongly in favor of full and fair discovery. *See id.*

The government asserts similarly that the discovery Advance America-NC seeks is available from its own sources. Joint Motion at 8. Where courts deny discovery on the basis that it is "obtainable from some other source that is more convenient, less burdensome, or less expensive," it is for "good cause shown," and follows good faith compliance. *See, e.g., Nicholas v. Wyndham Int'l, Inc.*, 373 F.3d 537, 543 (4th Cir. 2004). There is no indication in the government's Joint Motion that it has even made an effort to ascertain what the burden of complying with Advance America-NC's discovery requests in fact would be. This is not "good cause shown," and it is not "good faith compliance."

In addition, as noted, the government representatives refused good faith overtures by Advance America-NC to explain any requests to ensure the most limited definition of any request. *See* Exhibits A and B. Yet, they complain that Advance America-NC does "not identify particular documents or events, but generically refer[s] to documents that 'relate to' or 'concern

payday lending issues." Joint Motion at 6. Such "generic" requests are perfectly appropriate in the initial stages of discovery, and Advance America-NC is clearly not in a position to identify specific documents until the government undertakes to ascertain what documents it possesses. To that end, on information and belief, Advance America-NC understands that the bulk of potentially responsive documents are maintained on one floor of the old education building in Raleigh. As such, they should not be difficult to gather, review and produce.

The government also complains in particular that electronic discovery, a routine aspect of litigation these days, is burdensome. Joint Motion at 7. Again, no facts are cited in support of this claim. Advance America-NC has twice offered good faith assistance in electronic discovery, first in person following the April 4, 2005, conference, where counsel for Advance America-NC explained that Skadden Arps would be happy to supply technical expertise. This offer was then reiterated by e-mail. *See id.* However, the government has refused any assistance, much as it refused compromise in the interpretation of the requests, plainly frustrating the Commissioner's express expectation that the parties cooperate.

Finally, the government appears to assert that it need not comply with its discovery obligations because "the time frames in this proceeding are relatively short." Joint Motion at 3. We do not know where this statement comes from. There is no indication in the Notice of Hearing or any of the orders that this proceeding has been designated formally as expedited. We are unaware of any authority that could be cited designated this proceeding as such. The position that a request is burdensome simply because it cannot be responded to with as little effort and as much speed as the government representatives would like is unsustainable under the Rules of Civil Procedure. It provides further indication that the handling of this

contested case proceeding may be hostile to Advance America-NC's due process and statutory rights.

WHEREFORE, the Joint Motion for a Protective Order and Order Limiting Discovery should be denied and the requested discovery should be ordered.

Dated: April 18, 2005

Respectfully submitted,



Donald C. Lampe
WOMBLE, CARLYLE, SANDRIDGE & RICE PLLC
One Wachovia Center
301 South College Street, Suite 3500
Charlotte, NC 28202
(704) 331-4900

Johnny M. Loper
Christopher W. Jones
WOMBLE, CARLYLE, SANDRIDGE & RICE PLLC
150 Fayetteville Street Mall, Suite 2100
Raleigh, NC 27601
(919) 755-2100

Saul M. Pilchen
Benjamin B. Klubes
Lesley B. Whitcomb
Valerie L. Hletko
**SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP**
1440 New York Avenue NW
Washington, DC 20005
(202) 371-7000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **OPPOSITION TO JOINT MOTION FOR A PROTECTIVE ORDER AND ORDER LIMITING DISCOVERY** on all parties to this action by sending a copy by electronic mail and by United States mail, postage prepaid, addressed as follows:

L. McNeil Chestnut, Esq.
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

Philip A. Lehman, Esq.
Assistant Attorney General
Consumer Protection Division
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

This the 18th day of April, 2005.


Donald C. Lampe

EXHIBIT A

Jones, Christopher

From: Jones, Christopher
Sent: Tuesday, April 05, 2005 3:19 PM
To: 'Angela Maynard'
Subject: Advance America Discovery



Disc.doc

ngela,

Per your request, I am attaching an electronic copy of our discovery requests in Word format.

As you, McNeil and Phil work through these requests, please do not hesitate to call me or Don Lampe to discuss the scope of any specific request(s) that any one of you feel is subject being interpreted such that we appear to be seeking documents that - for whatever reason - are not subject to discovery. We are confident that we can work through many of those issues with you informally.

Regards,

Chris

Christopher W. Jones
Womble Carlyle Sandridge & Rice, PLLC
150 Fayetteville Street Mall, Suite 2100
Raleigh, North Carolina 27602
P - 919-755-8173
F - 919-755-6771
E - cjones@wcsr.com

EXHIBIT B

Ross, Gina

From: Lampe, Donald
Sent: Tuesday, April 05, 2005 5:08 PM
To: Chestnut, McNeil; Philip Lehman; Maynard, Angela
Cc: Lampe, Donald; Jones, Christopher
Subject: Discovery matters

Thank you for calling me back this morning. Let me reiterate that if there are particular requests that are capable of a broad (and obviously burdensome) interpretation or a narrower and perhaps more pragmatic approach, please call me so we can discuss these matters of interpretation. I think this will help reduce the scope of any objections. (A good example is our discussion about what the Banking Commission members themselves have discussed about "payday lending" - it seems to me that copies of minutes and perhaps any notes or correspondence that were prepared by Banking Commission staff that are in file at OCOB would be a pragmatic approach to such a request).

I also want to reiterate the offer by Skadden Arps to assist in "electronic discovery." The retrieval of emails, as you can imagine, has become a common part of the discovery process for civil litigants and I believe we could assist with that process.

Thanks and regards.

-Don

Donald C. Lampe
Womble Carlyle Sandridge & Rice, PLLC

<i>Charlotte Office:</i>	<i>Greensboro Office:</i>
Suite 3500	Suite 1900
One Wachovia Center	Wachovia Tower
301 South College Street	300 North Greene Street
Charlotte, NC 28202	Greensboro, NC 27401
ph 704-350-6398	ph 336-574-8057
facs 704-343-4862	facs 336-574-4530

Cellphone 336-324-2255/336-FBI-CALL
email dlampe@wcsr.com
on the web at www.wcsr.com

EXHIBIT C

Regulation of the Business of Check Cashing

Summary and Major Points of Proposed Legislation (SB 312)

SB 312 imposes reasonable regulatory requirements on companies in the business of cashing checks. The bill's main provisions require licensing by the Commissioner of Banks, place limits on fees that can be charged, and provide safeguards on the use of postdated or delayed deposit checks. Only those in the business of cashing checks are regulated. Retail stores who may cash checks as a convenience for nominal fees are exempt.

1. Legislation to regulate the business of check cashing was recommended by a study committee in 1994. A check cashing bill passed the Senate in 1995 with bipartisan support but was not voted on in the House.
2. This bill is recommended by the Attorney General and the Commissioner of Banks. The proposed committee substitute is a compromise measure which is the result of careful negotiations between representatives of the Attorney General's Office and the check cashing industry. In its current proposed committee substitute form, the bill is acceptable to industry while retaining its important consumer protection provisions.
3. The bill would allow limited authority for cashing postdated or delayed deposit personal checks. The maximum fee for such checks would be capped at 15% and "rolling over" these checks for additional fees would be prohibited. There is a four year sunset on this provision which will allow time for the Commissioner of Banks to audit industry practices and report back to the General Assembly on his findings. The intent is that the sunset will be removed if there is no evidence of excessive complaints or unfair or deceptive practices.
4. Virtually all other forms of retail credit and small consumer loans are strictly regulated by law. This bill would create a level playing field by controlling delayed deposit transactions. Representatives of trade associations representing retail merchants, consumer finance lenders, and pawnbrokers have indicated they support licensing and regulation of check cashing businesses..
5. Congress has called upon the states to regulate the business of check cashing for money laundering control purposes. The licensing and examination provisions in this bill will satisfy the Congressional intent in the Anti-Money Laundering Act of 1994 and will serve to deter the use of check cashing operations as outlets for money laundering.
6. The licensing and examination fees specified in the bill are consistent with fees assessed by the Commissioner of Banks for other regulated consumer industries including refund anticipation lenders, money transmitters and mortgage brokers.

Philip A. Lehman
Assistant Attorney General

L. McNeil Chestnut
Assistant Attorney General

EXHIBIT D



State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

CONSUMER PROTECTION
(919) 716-6000
Fax: (919) 716-6050

October 12, 2001

Darrin Anderson, Chief Financial Officer
Financial Services of North Carolina, Inc.
d/b/a Nationwide Budget Finance
1718 Central Avenue
Kansas City, KS 66102

Dear Mr. Anderson:

As you know, North Carolina's law which authorized deferred deposit check cashing expired on August 31, 2001. As of the date of this letter, the North Carolina General Assembly has not yet extended the law. Our office is in favor of extending the law on terms that are more fair to the consumer while still allowing for the availability of this product. We would encourage you to work with the Legislature toward that end. However, if the Legislature does not soon extend the law, then this office along with the Commissioner of Banks must make an analysis as to the status of deferred deposit check cashing and as to whether the operations of your company violate North Carolina law.

We understand that your company continues to offer deferred deposit check cashing or payday cash advances through an affiliation with an out-of-state bank. It would be helpful to the Department of Justice to receive complete and accurate information about the deferred deposit transactions which are now being offered by and through your company so that we may determine their legal status under applicable law.

Toward that end, we ask that you cooperate by providing us with the following information:

1. The name and address of the bank your company affiliates with to make deferred deposit loans.
2. The date on which you began offering loans in conjunction with the bank.
3. A description on how the loan works from the consumer's

perspective: including application process, credit reporting, loan approval, disbursement of loan proceeds, and repayment of amount due. Please attach any documentation used in the loan transaction such as application, disclosure statement, promissory note, debit authorization, etc. Please also attach any brochures or information sheets which are used to describe the loan program to consumers.

4. A schedule or other information showing loan fees and rates, maximum loan amounts, repayment periods and other relevant loan terms.
5. Policies and procedures on renewing or extending the loan, including any limitation on the number of transactions.
6. A description of your business relationship with the bank, including information about responsibilities for loan applications, credit standards, loan approval, payment of loan proceeds, renewal or extension of loans, ownership or assignment of loans, regular collection of loans, delinquency collections, and participation in income or loss from loans.

If you would prefer to meet with us in Raleigh to provide this information and explain your lending program, please advise us and we will try to arrange such a meeting. Feel free to contact us if you have any questions about this inquiry. We look forward to your cooperation and prompt response.

Very truly yours,



Philip A. Lehman
Assistant Attorney General
Consumer Protection Division



L. McNeil Chestnut
Assistant Attorney General
Counsel to Commissioner of Banks

EXHIBIT E



State of North Carolina
Roy Cooper
Attorney General

June 6, 2003

Dear Members of the Senate Commerce Committee:

I write you concerning House Bill 1213 – an act to regulate deferred deposit transactions, or payday lending. My position throughout the debate on payday lending over the past two years has been that consumers should have access to small, short-term emergency loans, but only if there are safeguards to protect them against abusive rates and frequent turnover.

Unfortunately, the proposal before you in House Bill 1213 fails to provide sufficient safeguards. Most importantly, the bill fails to address the problem of repeated, consecutive transactions that draws borrowers into a cycle of debt they are unable to escape. The minimum term of 14 days is too short for consumers to get their financial houses in order. Nor does it adequately close the out-of-state bank loophole. It is our hope that the strongest possible language eliminating this loophole and other devices to evade state regulation be included.

North Carolina should have a law setting standards for payday lending that protects consumers and gives the Commissioner of Banks the authority and enforcement tools to regulate the industry. Now payday lenders have affiliated with out of state banks to avoid state laws. Others are disguising their lending practices by characterizing them as cash "rebates" on services while charging consumers too much. We are taking some of those lenders to court, but without a stronger, new law, problem practices like rollovers and excessive fees will continue.

I stand ready to work with you on legislation that provides short-term consumer loans with sufficient consumer safeguards. Thank you for your consideration and for the work you do on behalf of the people of North Carolina.

Very truly yours,

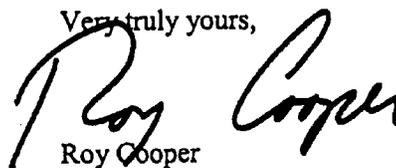

Roy Cooper

EXHIBIT F



State of North Carolina
OFFICE OF THE COMMISSIONER OF BANKS

MICHAEL F. EASLEY
GOVERNOR

December 8, 2004

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

Mr. and Mrs Dale Marsh
532 Park St.
Kannapolis, NC 28083

Dear Mr. & Mrs. Marsh:

The Office of the Commissioner of Banks has received a response to our letter dated November 9, 2004, sent on your behalf We have enclosed this response for you to review.

After reviewing your complaint, we have come to the conclusion that we have no jurisdiction in this matter. Therefore, I have forwarded your complaint to the correct agency and have listed their address below

South Dakota Division of Banking
Complaint Department
217 1/2 West Missouri
Pierre, SD 57501-4590
Phone: (605) 773-3421
Fax: (605) 773-5367
E-Mail Address: drb.bankinfo@state.sd.us

If we can be of further assistance, please do not hesitate to contact this office.

Sincerely

Charlie J. Fields, Jr
Examiner

cc: South Dakota Division of Banking (w/enclosures)

APPENDIX 1

DEPOSITION NOTICES

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:

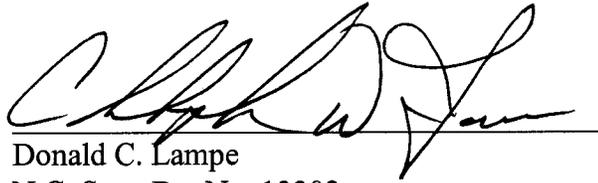
ADVANCE AMERICA, CASH ADVANCE
CENTERS OF NORTH CAROLINA, INC.

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NOTICE OF DEPOSITION

YOU ARE HEREBY NOTIFIED that on Wednesday, May 11, 2005, beginning at 10:00 a.m. at the law offices of Womble Carlyle Sandridge and Rice, 150 Fayetteville Street Mall, Suite 2100, Raleigh, North Carolina, we will take the deposition of **The Honorable Roy A. Cooper, III**, in his capacity as Attorney General of North Carolina, pursuant to N.C. Gen. Stat. §150B-39 and Rules 26 and 30 of the North Carolina Rules of Civil Procedure, in the presence of a court reporter. The deposition will continue from day to day until concluded. You are invited to attend and examine the witness.

This the 18th day of April, 2005.



Donald C. Lampe

N.C. State Bar No. 13302

Christopher W. Jones

N.C. State Bar No. 27265

Attorney for Advance America, Cash Advance
Centers of North Carolina, Inc.

One Wachovia Center, Ste. 3500

301 South College Street

Charlotte, NC 28202

(704) 350-6398

Of Counsel:

Saul M. Pilchen, D.C. Bar No. 376107

Benjamin B. Klubes, D.C. Bar No. 428852

Lesley B. Whitcomb, D.C. Bar No. 478176

Valerie L. Hletko, D.C. Bar No. 485610

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 New York Avenue, NW

Washington, D.C. 20005

CERTIFICATE OF SERVICE

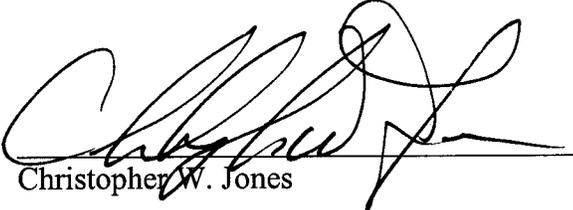
This is to certify that the undersigned has this date served the foregoing **NOTICE OF DEPOSITION (The Honorable Roy A. Cooper, III)** in the above-captioned action upon all other parties to this cause via electronic mail and by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

ADDRESSES:

L. McNeil Chestnut, Esquire
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27602

Philip A. Lehman, Esquire
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 29500
Raleigh, NC 27626

This the 18th day of April, 2005.


Christopher W. Jones

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:

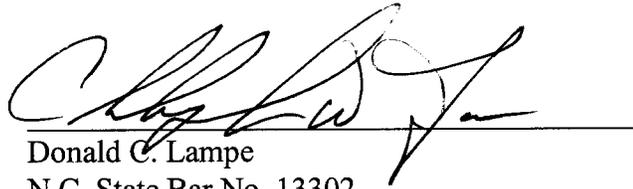
ADVANCE AMERICA, CASH ADVANCE
CENTERS OF NORTH CAROLINA, INC.

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NOTICE OF DEPOSITION

YOU ARE HEREBY NOTIFIED that on Wednesday, May 11, 2005, beginning at 10:00 a.m. at the law offices of Womble Carlyle Sandridge and Rice, 150 Fayetteville Street Mall, Suite 2100, Raleigh, North Carolina, we will take the deposition of **Joshua N. Stein** pursuant to N.C. Gen. Stat. §150B-39 Rules 26 and 30 of the North Carolina Rules of Civil Procedure, in the presence of a court reporter. The deposition will continue from day to day until concluded. You are invited to attend and examine the witness.

This the 18th day of April, 2005.

A handwritten signature in black ink, appearing to read 'Donald C. Lampe', is written over a horizontal line.

Donald C. Lampe

N.C. State Bar No. 13302

Christopher W. Jones

N.C. State Bar No. 27265

Attorney for Advance America, Cash Advance
Centers of North Carolina, Inc.

One Wachovia Center, Ste. 3500

301 South College Street

Charlotte, NC 28202

(704) 350-6398

Of Counsel:

Saul M. Pilchen, D.C. Bar No. 376107

Benjamin B. Klubes, D.C. Bar No. 428852

Lesley B. Whitcomb, D.C. Bar No. 478176

Valerie L. Hletko, D.C. Bar No. 485610

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 New York Avenue, NW

Washington, D.C. 20005

CERTIFICATE OF SERVICE

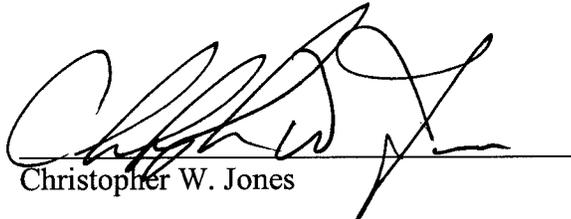
This is to certify that the undersigned has this date served the foregoing **NOTICE OF DEPOSITION (Joshua N. Stein)** in the above-captioned action upon all other parties to this cause via electronic mail and by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

ADDRESSES:

L. McNeil Chestnut, Esquire
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27602

Philip A. Lehman, Esquire
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 29500
Raleigh, NC 27626

This the 18th day of April, 2005.


Christopher W. Jones

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:

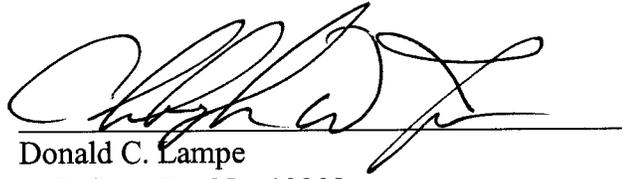
ADVANCE AMERICA, CASH ADVANCE
CENTERS OF NORTH CAROLINA, INC.

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NOTICE OF DEPOSITION

YOU ARE HEREBY NOTIFIED that on Wednesday, May 11, 2005, beginning at 10:00 a.m. at the law offices of Womble Carlyle Sandridge and Rice, 150 Fayetteville Street Mall, Suite 2100, Raleigh, North Carolina, we will take the deposition of **L. McNeil Chestnut** pursuant to N.C. Gen. Stat. §150B-39 and Rules 26 and 30 of the North Carolina Rules of Civil Procedure, in the presence of a court reporter. The deposition will continue from day to day until concluded. You are invited to attend and examine the witness.

This the 18th day of April, 2005.



Donald C. Lampe

N.C. State Bar No. 13302

Christopher W. Jones

N.C. State Bar No. 27265

Attorney for Advance America, Cash Advance
Centers of North Carolina, Inc.

One Wachovia Center, Ste. 3500

301 South College Street

Charlotte, NC 28202

(704) 350-6398

Of Counsel:

Saul M. Pilchen, D.C. Bar No. 376107

Benjamin B. Klubes, D.C. Bar No. 428852

Lesley B. Whitcomb, D.C. Bar No. 478176

Valerie L. Hletko, D.C. Bar No. 485610

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 New York Avenue, NW

Washington, D.C. 20005

CERTIFICATE OF SERVICE

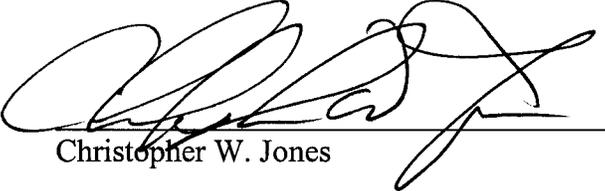
This is to certify that the undersigned has this date served the foregoing **NOTICE OF DEPOSITION (L. McNeil Chestnut)** in the above-captioned action upon all other parties to this cause via electronic mail and by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

ADDRESSES:

L. McNeil Chestnut, Esquire
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27602

Philip A. Lehman, Esquire
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 29500
Raleigh, NC 27626

This the 18th day of April, 2005.


Christopher W. Jones

STATE OF NORTH CAROLINA
WAKE COUNTY

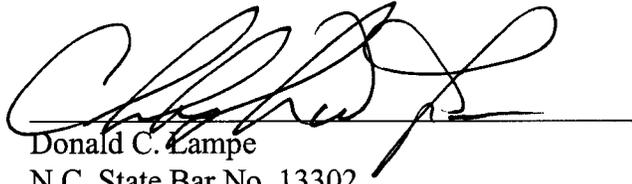
IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:)
)
ADVANCE AMERICA, CASH ADVANCE)
CENTERS OF NORTH CAROLINA, INC.)
_____)

NOTICE OF DEPOSITION

YOU ARE HEREBY NOTIFIED that on Wednesday, May 11, 2005, beginning at 10:00 a.m. at the law offices of Womble Carlyle Sandridge and Rice, 150 Fayetteville Street Mall, Suite 2100, Raleigh, North Carolina, we will take the deposition of **Philip A. Lehman** pursuant to N.C. Gen. Stat. §150B-39 and Rules 26 and 30 of the North Carolina Rules of Civil Procedure, in the presence of a court reporter. The deposition will continue from day to day until concluded. You are invited to attend and examine the witness.

This the 18th day of April, 2005.



Donald C. Lampe

N.C. State Bar No. 13302

Christopher W. Jones

N.C. State Bar No. 27265

Attorney for Advance America, Cash Advance
Centers of North Carolina, Inc.

One Wachovia Center, Ste. 3500

301 South College Street

Charlotte, NC 28202

(704) 350-6398

Of Counsel:

Saul M. Pilchen, D.C. Bar No. 376107

Benjamin B. Klubes, D.C. Bar No. 428852

Lesley B. Whitcomb, D.C. Bar No. 478176

Valerie L. Hletko, D.C. Bar No. 485610

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 New York Avenue, NW

Washington, D.C. 20005

CERTIFICATE OF SERVICE

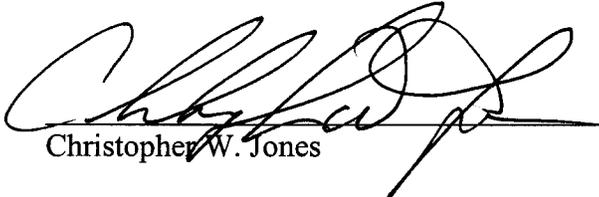
This is to certify that the undersigned has this date served the foregoing **NOTICE OF DEPOSITION (Philip A. Lehman)** in the above-captioned action upon all other parties to this cause via electronic mail and by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

ADDRESSES:

L. McNeil Chestnut, Esquire
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27602

Philip A. Lehman, Esquire
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 29500
Raleigh, NC 27626

This the 18th day of April, 2005.


Christopher W. Jones

STATE OF NORTH CAROLINA
WAKE COUNTY

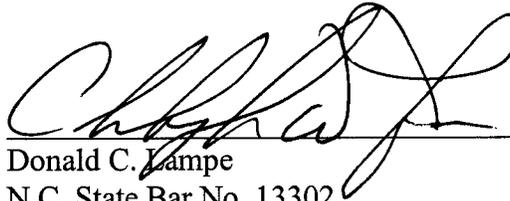
IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:)
)
ADVANCE AMERICA, CASH ADVANCE)
CENTERS OF NORTH CAROLINA, INC.)
_____)

NOTICE OF DEPOSITION

YOU ARE HEREBY NOTIFIED that on Wednesday, May 11, 2005, beginning at 10:00 a.m. at the law offices of Womble Carlyle Sandridge and Rice, 150 Fayetteville Street Mall, Suite 2100, Raleigh, North Carolina, we will take the deposition of **M. Lynne Weaver** pursuant to N.C. Gen. Stat. §150B-39 and Rules 26 and 30 of the North Carolina Rules of Civil Procedure, in the presence of a court reporter. The deposition will continue from day to day until concluded. You are invited to attend and examine the witness.

This the 18th day of April, 2005.



Donald C. Kampe

N.C. State Bar No. 13302

Christopher W. Jones

N.C. State Bar No. 27265

Attorney for Advance America, Cash Advance
Centers of North Carolina, Inc.

One Wachovia Center, Ste. 3500

301 South College Street

Charlotte, NC 28202

(704) 350-6398

Of Counsel:

Saul M. Pilchen, D.C. Bar No. 376107

Benjamin B. Klubes, D.C. Bar No. 428852

Lesley B. Whitcomb, D.C. Bar No. 478176

Valerie L. Hletko, D.C. Bar No. 485610

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 New York Avenue, NW

Washington, D.C. 20005

CERTIFICATE OF SERVICE

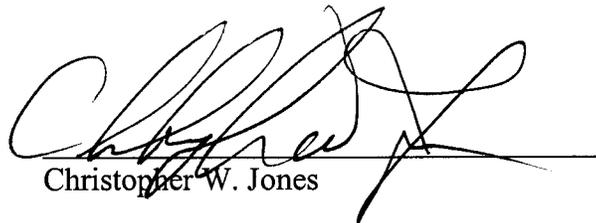
This is to certify that the undersigned has this date served the foregoing **NOTICE OF DEPOSITION (M. Lynne Weaver)** in the above-captioned action upon all other parties to this cause via electronic mail and by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

ADDRESSES:

L. McNeil Chestnut, Esquire
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27602

Philip A. Lehman, Esquire
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 29500
Raleigh, NC 27626

This the 18th day of April, 2005.


Christopher W. Jones

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:

ADVANCE AMERICA, CASH ADVANCE
CENTERS OF NORTH CAROLINA, INC.

)
)
)
)
)

NOTICE OF DEPOSITION

YOU ARE HEREBY NOTIFIED that on Wednesday, May 11, 2005, beginning at 10:00 a.m. at the law offices of Womble Carlyle Sandridge and Rice, 150 Fayetteville Street Mall, Suite 2100, Raleigh, North Carolina, we will take the deposition of **Reitzel Deaton** pursuant to N.C. Gen. Stat. §150B-39 and Rules 26 and 30 of the North Carolina Rules of Civil Procedure, in the presence of a court reporter. The deposition will continue from day to day until concluded. You are invited to attend and examine the witness.

This the 18th day of April, 2005.

A handwritten signature in black ink, appearing to read 'Donald E. Lampe', is written over a horizontal line.

Donald E. Lampe

N.C. State Bar No. 13302

Christopher W. Jones

N.C. State Bar No. 27265

Attorney for Advance America, Cash Advance
Centers of North Carolina, Inc.

One Wachovia Center, Ste. 3500

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 New York Avenue, NW

Washington, D.C. 20005

CERTIFICATE OF SERVICE

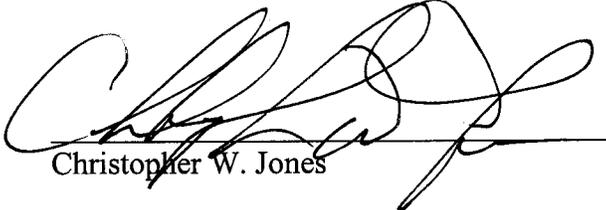
This is to certify that the undersigned has this date served the foregoing **NOTICE OF DEPOSITION (Reitzel Deaton)** in the above-captioned action upon all other parties to this cause via electronic mail and by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

ADDRESSES:

L. McNeil Chestnut, Esquire
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27602

Philip A. Lehman, Esquire
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 29500
Raleigh, NC 27626

This the 18th day of April, 2005.


Christopher W. Jones