

06-885-CD  
First Comm Bank vs Kenneth C. Caliari

First Commonwealth vs Kenneth Caliari  
2006-885-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK,

CIVIL DIVISION

Plaintiff,

No. 2006-885-C0

VS.

KENNETH C CALIARI,

Defendant.

COMPLAINT IN  
CONFESION OF JUDGMENT

Filed on Behalf of:  
FIRST COMMONWEALTH BANK,  
Plaintiff

Counsel for Plaintiff:

Timothy A. Krieger, Esquire  
Pa I.D. #65250  
Michael J. Stauber, Esquire  
Pa. I.D. #201022  
TUCKER ARENSBERG, P.C.  
Firm #287  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 566-1212

FILED *km*

JUN 01 2006

*6/2/2006*

William A. Shaw  
Prothonotary/Clerk of Courts

CFNT w/ NOTICE TO DEF.

*+*

*Attn*

**ACT 105 OF 2000 NOTICE**

A JUDGMENT HAS BEEN ENTERED AGAINST YOU BY CONFESSION OF JUDGMENT.

PURSUANT TO 42 PA. C.S.A. §2737.1, IF YOU WERE INCORRECTLY IDENTIFIED AS A DEFENDANT IN THE COMPLAINT IN CONFESSION OF JUDGMENT, YOU MAY BE ENTITLED TO COSTS AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

YOU MAY TAKE ACTION TO STRIKE THE JUDGMENT BY FOLLOWING THE PROCEDURE IN RULE 2959 WHICH IS AS FOLLOWS:

**I. Pennsylvania Rule of Civil Procedure 2959 – Striking Off Judgment.**

(a) (1) Relief From a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of *prima facie* evidence of a defense; and

(ii) as provided by Pennsylvania Rule of Civil Procedure 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states *prima facie* grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440 (see text of Rule 440 reprinted below).

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment is pending.

Rule 440. Service of Legal Papers other than Original Process

(a) (1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

Note: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address. For electronic service by means other than facsimile transmission, see Rule 205.4(g).

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2) (i) If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, or by transmitting a copy by facsimile as provided by subdivision (d).

(ii) If such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

Note: This rule applies to the service upon a party of all legal papers other than original process and includes, but is not limited to, all other pleadings as well as motions, petitions, answers thereto, rules, notices, interrogatories and answers thereto. Original process is served under Rule 400 et seq.

(b) Service by mail of legal papers other than original process is complete upon mailing.

(c) If service of legal papers other than original process is to be made by the sheriff, he shall notify by ordinary mail the party requesting service to be made that service has or has not been made upon a named party or person.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
KENNETH C CALIARI, )  
Defendant. )

**COMPLAINT IN CONFESSION OF JUDGMENT**

Plaintiff, First Commonwealth Bank, by and through its counsel, Tucker Arensberg, P.C., avers as follows:

1. Plaintiff, First Commonwealth Bank (the "Bank"), is a banking association with business offices at 654 Philadelphia Street, P.O. Box 400, Indiana, Pennsylvania 15701-0400.
2. Defendant, Kenneth C. Caliari ("Borrower"), is an adult individual whose last known address is 573 Parrish Road, DuBois, Pennsylvania 15801.
3. On or about May 27, 2005, Borrower executed and delivered to the Plaintiff a Promissory Note in the original principal amount of \$198,296.82 (the "Note"). A true and correct copy of the Note is attached hereto, incorporated herein, and labeled as Exhibit "A".
4. The Note contains a warrant of attorney authorizing the confession of judgment against the Defendant, at any time, for the entire principal balance of the Note, all accrued interest, together with costs of suit and an attorney's commission of 10% of the unpaid principal balance and accrued interest for collection.

5. Borrower is in default under the Note for failure to make payment when due.

6. The Note allows for an interest rate higher than the contract rate upon default, a rate of 8.000 percentage points over the Index as defined in the Note (the "Default Rate").

7. Due to the default by the Borrower, on May 17, 2006, Plaintiff sent Borrower a demand letter ("Demand Letter") advising the Borrower of the total balance due under the Note, and demanding immediate payment in full of that amount. True and correct copy of the Demand Letter is attached hereto, incorporated herein and labeled as Exhibit "B".

8. Judgment has not been entered on the Note in any jurisdiction.

9. The Note has not been assigned.

**10. JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.**

11. As of May 1, 2006, the amount due from Borrower to Plaintiff pursuant to the Note is Two Fifteen Thousand Nine Hundred Twelve and 63/100 Dollars (\$215,912.63), plus costs of suit and interest, computed as follows:

Principal Debt.....	\$ 190,029.88
Accrued Interest Through May 1, 2006.....	5,029.84
(accruing daily in the amount of \$36.422380)	
Late Charges Through May 1, 2006: .....	1,346.94
Attorney's fees of 10% .....	19,505.97
Total: .....	\$215,912.63*

\*Plus interest accruing after May 1, 2006 at the Default Rate and costs and expenses of suit.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against Defendant, Kenneth C. Cialiari, on the Note in the amount of Two Fifteen Thousand Nine Hundred Twelve and 63/100 Dollars (\$215,912.63), plus interest thereon at the Default Rate

after May 1, 2006, plus costs and expenses of suit and such other relief as this court deems appropriate.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Timothy A. Krieger, Esquire

Pa I.D. #65250

Michael J. Stauber, Esquire

Pa. I.D. #201022

1500 One PPG Place

Pittsburgh, Pennsylvania 15222

(412) 566-1212

Counsel for First Commonwealth Bank,

Plaintiff

BANK\_FIN:274564-1 011555-128388

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
KENNETH C CALIARI, )  
Defendant. )

**CONFESSiON OF JUDGMENT**

Pursuant to the authority contained in the Warrants of Attorney within the Note, a copy of which is attached to the Complaint as Exhibit "A", I hereby appear for the Defendant and confess judgment in favor of the Plaintiff and against Defendant as follows:

Principal Debt.....	\$ 190,029.88
Accrued Interest Through May 1, 2006.....	5,029.84
(accruing daily in the amount of \$36.422380)	
Late Charges:.....	1,346.94
Attorney's fees of 10% .....	<u>19,505.97</u>
Total:.....	\$215,912.63*

\*Plus interest accruing after May 1, 2006 at the Default Rate and costs and expenses of suit.

  
\_\_\_\_\_  
Attorney for Defendant  
pro hac vice

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
KENNETH C CALIARI, )  
Defendant. )

**CERTIFICATE OF RESIDENCE**

I hereby certify that the precise address of Plaintiff is:

First Commonwealth Bank  
654 Philadelphia Street  
P.O. Box 400  
Indiana, Pennsylvania 15701-0400

and the last known address of the Defendants is:

Kenneth C Caliari  
573 Parrish Road  
DuBois, Pennsylvania 15801

TUCKER ARENSBERG, P.C.

By:

  
\_\_\_\_\_  
Timothy A. Krieger, Esquire  
Pa I.D. #65250  
Michael J. Stauber, Esquire  
Pa. I.D. #201022  
Attorney for First Commonwealth Bank,  
Plaintiff

**VERIFICATION**

I, Gary R. Carpenter, Special Assets Officer of First Commonwealth Bank, hereby certify that the averments of fact contained in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief; that I am authorized to make this declaration on behalf of the Plaintiff, and that it is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.



Gary R. Carpenter  
Special Assets Officer  
First Commonwealth Bank

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) No. \_\_\_\_\_  
KENNETH C CALIARI, )  
Defendant. )

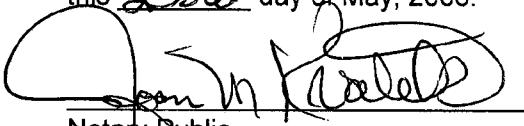
**AFFIDAVIT**

I hereby certify that the facts set forth in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief; that the Exhibits attached to the Complaint in Confession of Judgment are true and correct copies of the originals; that the Defendant is in default under the Note; that the underlying transaction giving rise to this action is commercial in nature and is not a consumer credit transaction against a natural person; and that I am authorized to make this Affidavit.

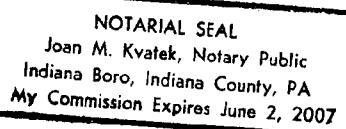


Gary R. Carpenter  
Special Assets Officer  
First Commonwealth Bank

Sworn to and subscribed before me  
this 23rd day of May, 2006.

  
Notary Public

My commission expires:



**EXHIBIT "A"**

## PROMISSORY NOTE

Principal \$198,296.82	Loan Date 05-27-2005	Maturity 05-27-2012	Loan No 89003	Cell / Coll	Account 9193482209	Officer ***	Initials LCK
References in the shaded area 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:** Kenneth C Callari (SSN: 193-48-2209)  
573 Parrish Road  
DuBois, PA 15801

**Lender:** FIRST COMMONWEALTH BANK  
Downtown Dubois Office  
2 East Long Avenue  
P.O. Box 607A  
Dubois, PA 15801  
(800) 711-2265

**Principal Amount:** \$198,296.82

**Initial Rate:** 6.900%

**Date of Note:** May 27, 2005

**PROMISE TO PAY.** Kenneth C Callari ("Borrower") promises to pay to FIRST COMMONWEALTH BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Hundred Ninety-eight Thousand Two Hundred Ninety-six & 82/100 Dollars (\$198,296.82), together with interest on the unpaid principal balance from May 27, 2005, until paid in full.

**PAYMENT.** Subject to any payment changes resulting from changes in the index, Borrower will pay this loan in 84 payments of \$2,993.25 each payment. Borrower's first payment is due June 27, 2005, and all subsequent payments are due on the same day of each month after that. Borrower's final payment will be due on May 27, 2012, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; and then to any unpaid collection costs. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual 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. 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 Note is subject to change from time to time based on changes in an independent index which is the 3 Year FHLB rate as quoted by the Pittsburgh Federal Home Loan Bank on the last business day of the week preceding the "rate change event" week (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 notice to Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each 3 years (the "rate change event"). Borrower understands that Lender may make loans based on other rates as well. The initial rate is based on the Index as of May 27, 2005 which was 4.180% per annum. Initially, the interest rate to be applied to the unpaid principal balance of the Note is 6.900%. After the first rate change event, the interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 3.000 percentage points over the Index. Notwithstanding the foregoing, the variable interest rate or rates provided for in this Note will be subject to the following minimum and maximum rates. **NOTICE:** Under no circumstances will the interest rate on this Note be less than 6.900% per annum or more than the maximum rate allowed by applicable law. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) Increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

**PREPAYMENT PENALTY.** 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. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: In the event of the payment in full of this Promissory Note prior to twelve (12) months to the Maturity Date with funds obtained from another financial institution, the Borrower promises to pay a penalty equal to one percent (1%) of the principal amount outstanding at the time of Prepayment. Except for the foregoing, Borrower may pay 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 Note, 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: FIRST COMMONWEALTH BANK, Downtown Dubois Office, 2 East Long Avenue, P.O. Box 607A, Dubois, PA 15801.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 8.000 percentage points over the Index. The interest rate will not exceed the maximum rate permitted by applicable law. If judgment is entered in connection with this Note, interest will continue to accrue on this Note after judgment at the interest rate applicable to this Note at the time judgment is entered.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note 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.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note 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.

**Death or Insolvency.** The death of Borrower or 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 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, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. 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.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note 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 Note 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, after giving such notices as required by applicable law, declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**EXPENSES.** If Lender institutes any suit or action to enforce any of the terms of this Note, Lender shall be entitled to recover such sum as the court may adjudge reasonable. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the loan payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals, to the extent permitted 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.

**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 Note is secured by All Equipment; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds) AND Security interest in a 1999 Appalachian Trailer (VIN 1SPF91929X1000651) AND Security interest in a 2000 Ford F-650 Dump Truck (VIN 3FDONX6566YMA09873) AND Security interest in a 2001 Ford F-150 Truck (VIN 2FTRX08L51CB04298).

**LIMITATION OF ACTION.** If the Borrower has any cause of action against the Lender, now or in the future, arising out of the Related Documents and the transactions contemplated by the Related Documents, whether in contract or tort or otherwise, the Borrower must assert the claim within one year of the occurrence of the event which gives rise to a cause of action. If the Borrower does not assert the claim within one year of the occurrence of a cause of action, the Borrower will be barred from asserting the claim. Borrower and Lender agree that the one year time period is reasonable and sufficient for the Borrower to investigate and act upon the claim and that the provision shall survive any termination of the Agreement.

**LATE CHARGE.** A late charge will be assessed in the amount of 5% of the regular payment or portion thereof that remains unpaid for more than ten (10) days beyond the due date. The minimum late charge amount is \$25.00. This charge will be immediately due and payable.

**SUCCESSION INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, 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 Note are joint and several. If any portion of this Note is for any reason determined to be unenforceable, it will not affect the enforceability of any other provisions of this Note.

**CONFESSION OF JUDGMENT.** Borrower hereby irrevocably authorizes and empowers any attorney or the Prothonotary or Clerk of any Court in the Commonwealth of Pennsylvania, or elsewhere, to appear at any time for Borrower and, with or without complaint filed, as of any term, confess or enter judgment against Borrower for the entire principal balance of this Note and all accrued interest, together with costs of suit, and an attorney's commission of ten percent (10%) of the unpaid principal balance and accrued interest for collection, but in any event not less than Five Hundred Dollars (\$500), and for so doing, this Note or a copy of this Note verified by affidavit shall be sufficient warrant. The authority granted in this Note to confess judgment against Borrower shall not be exhausted by any exercise of that authority, but shall continue from time to time and at all times until payment in full of all amounts due under this Note.

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

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.**

**BORROWER:**

  
X  (Seal)  
Kenneth C Callari

**EXHIBIT "B"**

May 17, 2006

**By Certified Mail/Return Receipt Requested  
and First Class Mail**

Kenneth C. Caliari  
573 Parrish Road  
DuBois, Pennsylvania 15801  
ATTN: Kenneth C. Caliari

Re: Notice of Default and Demand For Payment

Dear Mr. Caliari:

Reference is made to that certain Promissory Note dated as of May 27, 2005 in the original principal amount of \$198,296.82 ("Note") executed by Kenneth C. Caliari ("Borrower") in favor of First Commonwealth Bank ("Bank").

You have defaulted under the Note by, *inter alia*, failing to make payments when due. Upon default, the Bank may, *inter alia*, demand immediate payment of all amounts owing under the Note. The Bank hereby accelerates the payment of the indebtedness owed under the Note and makes demand for immediate payment in full of all amounts owed under the Note. In accordance with the Note, the Bank shall also commence assessing interest on the Note at the default rate as set forth in the Note ("Default Rate").

As of May 1, 2006, the amount due and owing under the Note was as follows:

Note	Principal	\$190,029.88
	Interest through 5/1/06	5,029.84
	Late charges through 5/1/06	1,346.94
		<u>\$196,406.66</u>

plus interest accruing at the Default Rate as defined in Note-1, plus attorney's fees, costs and expenses.

The total amount due under Note is \$196,406.66 and shall be referred to as the "Bank Debt".

The Bank Debt must be paid to the Bank by cashier's check or by wire transfer payable to "First Commonwealth Bank", and directed to Mr. Gary Carpenter at First

TUCKER ARENSBERG  
Attorneys

Kenneth C. Caliari  
May 17, 2006  
Page 2 of 2

Commonwealth Bank 654 Philadelphia Street, P.O. Box 400, Indiana, Pennsylvania 15701-0400. For each day after May 1, 2006, the payment must include accruing interest, plus any additional fees and expenses incurred by the Bank.

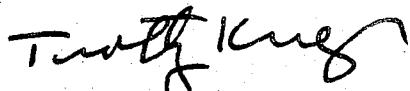
The Bank reserves its rights to exercise such remedies under the Note and the Bank's loan documents, as the Bank determines, in its sole discretion, to be necessary or appropriate, including, without limitation, an exercise of all rights against any collateral, and/or entry of judgment against any obligor.

No statements, actions or inaction of the Bank shall be deemed a waiver of the defaults or a waiver of any of the Bank's rights and remedies. The Bank reserves all rights and remedies that it has or may have under the Note and any other loan documents, and/or at law or in equity, including its rights.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

TUCKER ARENSBERG, P.C.



Timothy A. Krieger

cc: Mr. Gary Carpenter

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Kenneth C. Caliari  
 573 Parrish Road  
 DuBois, Pennsylvania 15801  
 ATTN: Kenneth C. Caliari

**COMPLETE THIS SECTION ON DELIVERY****A. Signature****X**

Agent  
 Addressee

**B. Received by (Printed Name)**

*Kenneth C. Caliari* 5-22-06

**C. Date of Delivery**

**D. Is delivery address different from item 1?**  Yes  
 If YES, enter delivery address below:  No

**3. Service Type**

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

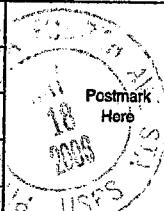
**4. Restricted Delivery? (Extra Fee)** Yes**2. Article Number***(Transfer from service label)*

7005 1820 0000 3893 6064

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

<b>U.S. Postal Service™ TAK 11555-128388</b>			
<b>CERTIFIED MAIL™ RECEIPT dem.let.</b>			
<i>(Domestic Mail Only) No Insurance Coverage Provided</i>			
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>			
<b>OFFICIAL USE</b>			
<b>7005</b> <b>1820</b> <b>0000</b> <b>3893</b> <b>6064</b>	<b>Postage</b>	\$	
	<input type="checkbox"/>		
<b>Return Receipt Fee (Endorsement Required)</b>			
<b>Restricted Delivery Fee (Endorsement Required)</b>			
<b>Total Postage &amp; Fees</b>			
 <b>\$ 464</b>			
<b>Sent To</b> <b>Kenneth C. Caliari</b> <b>Street, Apt. No.,</b> <b>or PO Box No. 573 Parrish Road</b> <b>City, State, ZIP+4 DuBois, Pennsylvania 15801</b> <b>ATTN: Kenneth C. Caliari</b>			
<small>PS Form 3800, June 2002</small> <small>See Reverse for Instructions</small>			

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, ) No. 2006-885-CV  
vs. )  
KENNETH C CALIARI, )  
Defendant. )

**NOTICE OF ENTRY OF JUDGMENT**

To: Kenneth C Caliari  
573 Parrish Road  
DuBois, Pennsylvania 15801

You are hereby notified that a judgment was entered against you by confession in the  
above captioned proceeding on June 1, 2006.

The amount of the judgment is **\$215,912.63**, plus interest accruing at the Default Rate  
and costs and expenses of suit.

A copy of the complaint is enclosed.



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Prothonotary, Clearfield County

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK,

CIVIL DIVISION

Plaintiff,

NO. 2006-885-CD

vs.

**AFFIDAVIT OF SERVICE OF 2958.1  
NOTICE ON DEFENDANT**

KENNETH C CALIARI,

Filed on behalf of Plaintiff:

Defendant.

First Commonwealth Bank

Counsel of Record for This Party:

Timothy A. Krieger, Esquire  
Pa. I.D. #65250

Tucker Arensberg, P.C.  
Firm #287  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 566-1212

BANK\_FIN:277013-1 011555-128388

FILED  
m 10:33 AM  
JUN 15 2006  
cc Atty Krieger

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, ) No. 2006-885-CD  
vs. )  
KENNETH C CALIARI, )  
Defendant. )

## **AFFIDAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF ALLEGHENY ) SS:

Before me, the undersigned, a Notary Public in and for said County and Commonwealth, personally appeared Timothy A. Krieger, who being duly sworn according to law, deposes and says that he caused to be served a true and correct copy of the **Notice Under Pennsylvania Rule of Civil Procedure 2958.1 of Judgment and Execution Thereon** on Kenneth C. Caliari, Defendant in this action, by certified U.S. mail, postage prepaid. Attached hereto are copies of the 2958.1 Notice and of the return receipt, evidencing receipt of the Notice on June 7, 2006.

Timothy A. Krieger

Sworn to and subscribed before me  
this 13th day of June, 2006

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA

**Notarial Seal**

Notarial Seal  
Debra J. Paranay, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires May 9, 2000

Member, Pennsylvania Association of Notaries

Member, Pennsylvania Association of Notaries

BANK\_FIN:277013-1 011555-128388

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FIRST COMMONWEALTH BANK, ) CIVIL DIVISION  
Plaintiff, ) No. 2006-885-CD  
vs. )  
KENNETH C CALIARI, )  
Defendant. )

NOTICE UNDER PA.R.C.P. 2958.1 OF JUDGMENT AND EXECUTION THEREON

NOTICE OF DEFENDANT'S RIGHTS

Date: June 5, 2006

To: Kenneth Caliari,  
573 Parrish Road  
DuBois, Pennsylvania 15801

A judgment in the amount of \$215,912.63 has been entered against you and in favor of the plaintiff without any prior notice or hearing based on a confession of judgment contained in a written agreement or other paper allegedly signed by you. The sheriff may take your money or other property to pay the judgment at any time after thirty (30) days after the date on which this notice is served on you.

You may have legal rights to defeat the judgment or to prevent your money or property from being taken. YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT AND PRESENT IT TO A JUDGE WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT  
HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET  
FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Pennsylvania Lawyer Referral Service  
P. O. Box 186  
Harrisburg, Pennsylvania 17108  
(800) 692-7375

*Timothy Krieger*

Timothy A. Krieger, Esquire  
Pa I.D. #65250  
Michael J. Stauber, Esquire  
Pa. I.D. #201022  
Attorney for First Commonwealth Bank,  
Plaintiff

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Kenneth Caliari  
573 Parrish Road  
DuBois, Pennsylvania 15801

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

Agent  
 Addressee

**B. Received by (Printed Name)****C. Date of Delivery**

**D. Is delivery address different from item 1?**  Yes  
If YES, enter delivery address below:  No

**3. Service Type**

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

**4. Restricted Delivery? (Extra Fee)**  Yes**2. Article Number**

(Transfer from service label)

7005 1820 0000 3893 6132

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service™ TAK-11555-128388  
CERTIFIED MAIL RECEIPT 2/29/08 11  
(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

7005 1820 0000 3893 6132

Sent To Kenneth Caliari  
Street, Apt. No.;  
or PO Box No. 573 Parrish Road  
City, State, ZIP+4 DuBois, Pennsylvania 15801

PS Form 3800, June 2002 See Reverse for Instructions

Postmark: CHENSWBURGH PA 15822-0000 Date: 02/29/08

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify, that on the 13<sup>th</sup> day of June, 2006, I served a copy of the within Affidavit of Service of 2958.1 Notice upon the parties listed below address via first class, U.S. mail, postage prepaid.

Kenneth Caliari,  
573 Parrish Road  
DuBois, Pennsylvania 15801

Timothy A. Krieger  
Timothy A. Krieger

June 13, 2006

Prothonotary of Clearfield County  
Clearfield County Courthouse  
P. O. Box 549  
Clearfield, PA 16830

Re: First Commonwealth Bank vs. Kenneth C. Caliari

Dear Prothonotary:

Enclosed please find an Affidavit of Service to be filed in the above-captioned matter. I have also enclosed a copy of the Affidavit. Please return the filing receipt and a time-stamped copy to me in the postage prepaid self-addressed envelope.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

TUCKER ARENSBERG, P.C.



Timothy A. Krieger

TAK:tse  
Enclosures

BANK\_FIN:277022-1 011555-128388