

07-2137-CD

Rockstone Capital vs James Ott al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Rockstone Capital, LLC  
(Plaintiff)

5510 Edson Lane  
(Street Address)

Rockville, MD 20852  
(City, State ZIP)

CIVIL ACTION

No. 07-2137-CD

Type of Case: Breach of Contract

Type of Pleading: Complaint

VS.

James A. Ott, dd/b/a  
Century Manufacturing  
(Defendant)

473 Treasure Lk.  
(Street Address)

DuBois, PA 15801  
(City, State ZIP)

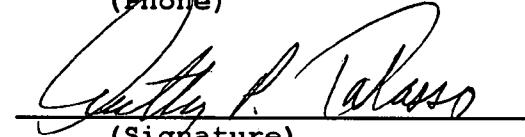
Filed on Behalf of:

Plaintiff  
(Plaintiff/Defendant)

Anthony P. Tabasso  
(Filed by)  
260 South Broad Street  
Philadelphia, PA 19102

(Address)

215-568-6060  
(Phone)

  
(Signature)

**FILED**  
3CC Atty Tabasso  
DEC 31 2007 Atty pd. 85.00  
2007-4870

William A. Shaw  
Prothonotary/Clerk of Courts

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP**

Anthony P. Tabasso / Matthew P. Rosenberg  
Attorney I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

Attorneys for Plaintiff

ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank  
5510 Edson Lane  
Rockville, MD 20852

COURT OF COMMON PLEAS

CLEARFIELD COUNTY

CIVIL ACTION NO.:

Plaintiff,

v.

JAMES A. OTT d/b/a CENTURY  
MANUFACTURING  
473 Treasure Lk  
DuBois, PA 15801

Defendant.

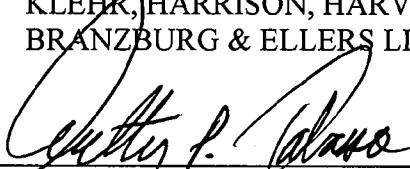
**ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Kindly enter the appearances of Anthony P. Tabasso and Matthew P. Rosenberg on behalf of the plaintiff in the above-captioned matter.

Dated: December 27, 2007

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

By: 

Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, Pennsylvania 19102  
Attorneys for Plaintiff

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP**

Anthony P. Tabasso / Matthew P. Rosenberg  
Attorney I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

Attorneys for Plaintiff

ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank  
5510 Edson Lane  
Rockville, MD 20852

COURT OF COMMON PLEAS

CLEARFIELD COUNTY

CIVIL ACTION NO.:

Plaintiff,

v.

JAMES A. OTT d/b/a CENTURY  
MANUFACTURING  
473 Treasure Lk  
DuBois, PA 15801

Defendant.

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 50-51

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 50-51

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP**

Anthony P. Tabasso / Matthew P. Rosenberg  
Attorney I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

Attorneys for Plaintiff

ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank  
5510 Edson Lane  
Rockville, MD 20852

Plaintiff,

v.

JAMES A. OTT d/b/a CENTURY  
MANUFACTURING  
473 Treasure Lk  
DuBois, PA 15801

Defendant.

COURT OF COMMON PLEAS

CLEARFIELD COUNTY

CIVIL ACTION NO.:

**COMPLAINT**

ROCKSTONE Capital, LLC, as successor to Bank of America, N.A., successor to Fleet National Bank (“ROCKSTONE”), by and through its counsel, Klehr, Harrison, Harvey, Branzburg & Ellers LLP, by way of complaint against James A. Ott d/b/a Century Manufacturing (“Ott”), avers and represents as follows:

**THE PARTIES**

1. ROCKSTONE, successor to Bank of America, N.A., successor in interest to Fleet National Bank, is a Maryland limited liability company, with an address of 5510 Edson Lane, Rockville, Maryland 20852.
2. Defendant James A. Ott is, upon information and belief, an adult individual and resident of the Commonwealth of Pennsylvania, with a last-known address of 473 Treasure Lk, DuBois, Pennsylvania 15801, who does business as Century Manufacturing.

## JURISDICTION AND VENUE

3. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

4. This Court has jurisdiction over the defendant pursuant to Pennsylvania law because the defendant resides in Pennsylvania and the acts and/or omissions giving rise to ROCKSTONE's cause of action occurred in Pennsylvania.

5. Venue is proper in the Court pursuant to Rule 1006 of the Pennsylvania Rules of Civil Procedure because the defendant is subject to the personal jurisdiction of this Court and because the acts and/or omissions giving rise to ROCKSTONE's cause of action occurred in Clearfield County.

## BACKGROUND

6. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

7. On or about January 24, 2005, Fleet National Bank ("Fleet") made a loan (the "Loan") to Century Manufacturing ("Century") in the original principal amount of \$29,500.00, pursuant to the terms of a certain Promissory Note (the "Note") dated January 24, 2005. Upon information and belief, the Loan was originally made under account # 40915900022267, which was later changed to account # 6827104698399.

8. In consideration of the Loan, and pursuant to a provision of the Note, Ott executed a personal guaranty dated January 24, 2005, guarantying the full repayment of Century's obligations to Fleet.

9. Fleet subsequently merged into Bank of America. Fleet and Bank of America are hereinafter referred to together as the "Bank."

10. Bank of America assigned all right, title, and interest in and to the Note and Loan to ROCKSTONE on March 28, 2006 (the "Assignment"). Prior to the Assignment, the Bank misplaced the Note (with its guaranty provisions), and thus assigned the Note and Loan pursuant to the terms of a certain Affidavit of Lost Note. A true and correct copy of the Affidavit of Lost Note evidencing the assignment is attached hereto, incorporated herein, and marked as **Exhibit "A."**

11. The Note was inadvertently lost, destroyed, or stolen without the fault or neglect of the Bank. See Exhibit "A."

COUNT I  
ROCKSTONE v. OTT  
Breach of Contract

12. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

13. By virtue of the aforementioned Loan and Note, a valid and binding contract was created between Century and Ott on the one hand and the Bank on the other.

14. ROCKSTONE is the successor by assignment to the Bank.

15. Century has breached its obligations to ROCKSTONE under the Note and Loan by virtue of, inter alia, its failure to make payments as and when due.

16. Moreover, Ott has breached his obligations to ROCKSTONE under the Note and Guaranty by virtue of, inter alia, his failure to cure the defaults of Century.

17. On or about June 14, 2006, August 14, 2006, February 12, 2007, and November 21, 2007 ROCKSTONE wrote to Ott and notified him of his defaults under the Note and Guaranty (the "Default Letters"). True and correct copies of the Default Letters are attached hereto, incorporated herein, and marked as **Exhibit "B."**

18. As a result of the aforesaid defaults, as of December 21, 2007, ROCKSTONE is entitled to a judgment in its favor and against Ott in the amount of \$45,368.12, comprised as follows:

Principal:	\$30,421.62
<u>Interest (as of 12/21/07):</u>	<u>\$14,946.50</u>
<b>TOTAL:</b>	<b><u>\$45,368.12</u></b>

Interest continues to accrue from and after December 21, 2007 in accordance with the terms of the Note, at the rate of \$16.90090 per diem. The Note also provides for ROCKSTONE's reasonable attorneys' fees, and demand is made therefor.

19. All conditions precedent to ROCKSTONE's right to recover the above amount from Ott have been performed or have occurred.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests the entry of judgment in its favor and against James A. Ott in the amount of \$45,368.12, plus interest from and after December 21, 2007, and attorneys' fees in accordance with the terms of the Note.

**COUNT II**  
**ROCKSTONE v. OTT**  
**Unjust Enrichment (Pled in the Alternative)**

20. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

21. By providing Century with the Loan, the Bank conferred a benefit upon Century and Ott, to which Century and Ott were not entitled.

22. ROCKSTONE is the successor by assignment to the Bank.

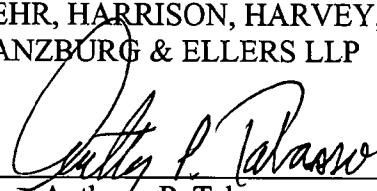
23. Despite demand, Ott has refused to return the monies loaned and/or to repay the Loan.

24. By accepting the Loan, retaining it, and not repaying ROCKSTONE, as successor to the Bank, Century and Ott have been unjustly enriched at ROCKSTONE's expense, in an amount in excess of \$45,368.12, thereby damaging ROCKSTONE.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests the entry of judgment in its favor and against James A. Ott, in the amount of \$45,368.12, plus interest from and after December 21, 2007, in accordance with the terms of the Note.

Respectfully submitted,

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

By: 

Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, Pennsylvania 19102  
*Attorneys for Plaintiff*

Dated: December 27, 2007

**VERIFICATION**

I, William B. Buland, state that I am the Director of Asset Management of Union Financial Corporation, a member of Union Financial Recovery LLC, the manager of ROCKSTONE Capital, LLC, the plaintiff in this action, that I am authorized to make this verification on its behalf, and, further, that the statements contained within the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that these statements are subject to the penalties set forth in 18 P.S. § 4904 for unsworn falsifications made to authorities.



William B. Buland



ROCKSTONE Capital, LLC  
c/o Union Financial Corporation  
5510 Edson Lane  
Rockville, MD 20852

**AFFIDAVIT OF LOST NOTE**  
(Missing Original and Copy)

That I, William B. Buland, on behalf of Bank of America, N.A., successor to Fleet National Bank, A Bank of America Company ("Bank"), having been duly sworn, depose and say:

1. I am over eighteen (18) years of age and am fully competent to make this affidavit; and I am authorized to make this affidavit on behalf of Bank, and have personal knowledge of the matter averred to herein.
2. On or about January 24, 2005, James Ott on behalf of Century Manufacturing executed a Promissory Note in the original principal amount of \$29,500.00 payable to Fleet National Bank (the "Note").
3. Neither the original nor a reproduction of the Note was in the files or records of the Bank at the time of the loan sale referenced below in ¶ 8.
4. Bank is the current holder and sole owner of the Note, and the Note has not been sold, assigned, endorsed, transferred, deposited under any agreement, hypothecated, pawned, pledged, or disposed of by the Bank or, to the best of my knowledge, by any representative of the Bank.
5. The Note was, without the fault or neglect of the Bank, lost, inadvertently destroyed or stolen.
6. The Bank has made a due and diligent search and inquiry for said lost, destroyed or stolen Note, without result.
7. If the Bank should find or recover the Note, the Bank shall cause the same to be delivered to the Buyer as defined in the Loan Sale Agreement referenced in ¶ 8 (or the Buyer's representative or agent if so instructed in writing by the Buyer) without requiring any consideration for such delivery.
8. The Note, together with all extensions and modifications, if any, is transferred as is, where is, with all faults and without recourse and without any representations or warranties of any kind, whether expressed or implied, oral or written, except as provided in Article VII of that certain Loan Sale Agreement offering #DP060328 dated March 28, 2006.

Effective as of the 28th day of March 2006.

**ASSIGNOR:**

Bank of America, N.A., successor to Fleet National Bank,

By: ROCKSTONE Capital, LLC under Limited Power of Attorney attached hereto

By: Union Financial Recovery LLC, its Manager

By: Union Financial Corporation, a member

By:   
William B. Buland, Director of Asset Management

**STATE OF MARYLAND**  
**COUNTY OF MONTGOMERY**

This instrument was acknowledged before me on this 19<sup>th</sup> day of April, 2006, by William B. Buland, Director of Asset Management, of a member of the Manager of ROCKSTONE Capital, LLC as the duly appointed power of attorney on behalf of Bank of America, successor to Fleet National Bank. A copy of the power of attorney is attached hereto.



Notary Public in and for the STATE OF MARYLAND

Century Manufacturing - Affidavit of Lost Note - Missing Orig & Copy - 060419

STANLEY FINKELSHTEYN  
Notary Public-Maryland  
Montgomery County  
My Commission Expires  
February 03, 2010



# ***ROCKSTONE Capital, LLC***

June 14, 2006

Via First Class Mail

Personal and Confidential

James Ott  
473 Treasure Lake  
DuBois, PA 15801

Subject: Note dated on or about January 24, 2005 in the original amount of \$29,500 was executed by James Ott on behalf of Century Manufacturing ("CM") in favor of Fleet National Bank ("FNB") (the "Note"); Guaranty executed by James Ott, (the "Guarantor") wherein Guarantor individually guaranteed the repayment of all CM obligations to FNB (the "Guaranty"); which has been sold to ROCKSTONE Capital, LLC ("ROCKSTONE") by Bank of America, successor to FNB ("BOA")

Dear Mr. Ott:

Notwithstanding previous letters that have been sent to you notifying you that the referenced obligation has been sold to ROCKSTONE and that all future payments and communications needed to be directed to ROCKSTONE, ROCKSTONE has not received ANY payments from you. Even more disturbing is the fact that ROCKSTONE has not received ANY communication from you whatsoever addressing this matter, explaining why the payments are not being made or advising ROCKSTONE when the payments *might* be expected.

As we are sure you can appreciate, the foregoing is unacceptable and will not be tolerated. You MUST either remit the payments that are due, the funds needed to fully satisfy the obligation or contact me at the number listed below to make other arrangements.

If you are a debtor in bankruptcy, please be advised that this letter should not be viewed as a demand for payment nor as a notice of liability of any recipient hereof who might have received a discharge of such debt or who might be subject to the automatic stay provided for in section 362 of the United States Bankruptcy Code.

# ***ROCKSTONE Capital, LLC***

August 14, 2006

Via Certified and First Class Mail

Personal and Confidential

James Ott  
473 Treasure Lake  
DuBois, PA 15801

Subject: Note dated on or about January 24, 2005 in the original amount of \$29,500 was executed by James Ott on behalf of Century Manufacturing ("CM") in favor of Fleet National Bank ("FNB") (the "Note"); Guaranty executed by James Ott, (the "Guarantor") wherein Guarantor individually guaranteed the repayment of all CM obligations to FNB (the "Guaranty"); which has been sold to ROCKSTONE Capital, LLC ("ROCKSTONE") by Bank of America, successor to FNB ("BOA")

Dear Mr. Ott:

As you are aware, the obligation remains unpaid and seriously delinquent.

Accordingly, **FORMAL AND DEMAND** is hereby made upon you for the immediate payment of all amounts due under the obligation, including all additional interest (accrued and hereafter accruing) and other related costs of collection.

Be advised that unless all amounts due under the obligation are paid in full forthwith, ROCKSTONE shall take such further action as may be necessary to collect same.

If you are a debtor in bankruptcy, please be advised that this letter should not be viewed as a demand for payment nor as a notice of liability of any recipient hereof who might have received a discharge of such debt or who might be subject to the automatic stay provided for in section 362 of the United States Bankruptcy Code.

Nothing contained herein should be construed as a waiver of any rights or remedies that might be available to ROCKSTONE, all of which are expressly reserved. All modifications to any agreement or arrangements must be in writing executed by an authorized representative of ROCKSTONE. Under no circumstances shall any oral statement, agreement or modification be binding on ROCKSTONE.

Very truly yours,

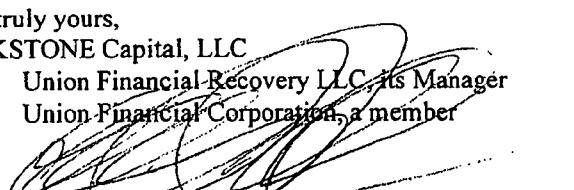
ROCKSTONE Capital, LLC

by: Union Financial Recovery LLC, its Manager

by: Union Financial Corporation, a member

by:

William B. Buland, Director of Asset Management



Century Manufacturing

June 14, 2006

Page 2

Nothing contained herein should be construed as a waiver of any rights or remedies that might be available to ROCKSTONE, all of which are expressly reserved. All modifications to any agreement or arrangements must be in writing executed by an authorized representative of ROCKSTONE. Under no circumstances shall any oral statement, agreement or modification be binding on ROCKSTONE.

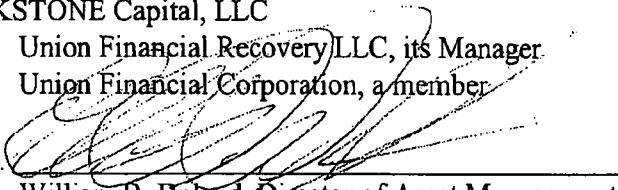
Very truly yours,

ROCKSTONE Capital, LLC

by: Union Financial Recovery LLC, its Manager

by: Union Financial Corporation, a member

by:

  
William B. Buland, Director of Asset Management

# ***ROCKSTONE Capital, LLC***

February 12, 2007

Via Certified and First Class Mail

Personal and Confidential

James Ott  
473 Treasure Lake  
DuBois, PA 15801

**Subject:** Note dated on or about January 24, 2005 in the original amount of \$29,500 was executed by James Ott on behalf of Century Manufacturing ("CM") in favor of Fleet National Bank ("FNB") (the "Note"); Guaranty executed by James Ott, (the "Guarantor") wherein Guarantor individually guaranteed the repayment of all CM obligations to FNB (the "Guaranty"); which has been sold to ROCKSTONE Capital, LLC ("ROCKSTONE") by Bank of America, successor to FNB ("BOA")

Dear Mr. Ott:

In anticipation of litigation, please be advised the above referenced matter will be transferred to our legal division on March 12, 2007.

As you are aware, ever since this obligation was purchased, ROCKSTONE has made numerous attempts to work with you, trying to amicably liquidate this delinquent obligation. Unfortunately, those efforts have not produced the desired results as the obligation remains unpaid and seriously delinquent.

Considering the foregoing, ROCKSTONE has no choice but to initiate litigation against you. In order to avoid the litigation, this obligation must be either fully satisfied or in the alternative, under an agreement satisfactory to ROCKSTONE in its sole and unfettered discretion prior to that date.

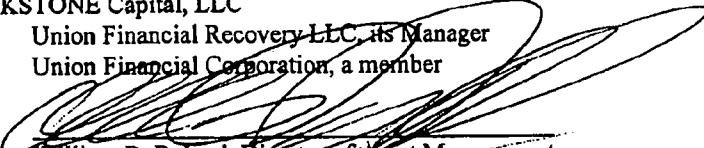
If you are a debtor in bankruptcy, please be advised that this letter should not be viewed as a demand for payment nor as a notice of liability of any recipient hereof who might have received a discharge of such debt or who might be subject to the automatic stay provided for in section 362 of the United States Bankruptcy Code.

Nothing contained herein should be construed as a waiver of any rights or remedies that might be available to ROCKSTONE, all of which are expressly reserved. All modifications to any agreement or arrangements must be in writing executed by an authorized representative of ROCKSTONE. Under no circumstances shall any oral statement, agreement or modification be binding on ROCKSTONE.

Very truly yours,

ROCKSTONE Capital, LLC

by: Union Financial Recovery LLC, its Manager  
by: Union Financial Corporation, a member

by:   
William B. Buland, Director of Asset Management

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP**  
ATTORNEYS AT LAW

**ANTHONY P. TABASSO**  
Direct Dial: (215) 569-4397  
ATABASSO@klehr.com

260 S. BROAD STREET  
PHILADELPHIA, PA 19102  
(215) 568-6060  
FAX: (215) 568-6603

[www.klehr.com](http://www.klehr.com)

November 21, 2007

**New Jersey Office**  
457 Haddonfield Road  
Suite 510  
Cherry Hill, New Jersey 08002-2220  
(856) 486-7900

**Delaware Office**  
919 Market Street  
Suite 1000  
Wilmington, Delaware 19801-3062  
(302) 426-1189

**PROOF OF MAILING**

James A. Ott  
473 Treasure Lk  
DuBois, PA 15801-9010

**RE: Obligations to ROCKSTONE Capital, LLC, as successor to Bank of America, successor to Fleet National Bank**

---

Dear Mr. Ott:

This firm represents ROCKSTONE Capital, LLC ("ROCKSTONE"), as successor to Bank of America, successor to Fleet National Bank ("Fleet"), in the above-referenced matter. As you know, on or about January 24, 2005, Century Manufacturing ("CM") entered into a loan transaction with Fleet, whereby Fleet agreed to lend CM the principal amount of \$29,500.00. The loan is evidenced by a Promissory Note and is secured by the personal guaranty of James A. Ott ("Guarantor")

As you are now aware, CM is in default of its obligations under the aforementioned loan documents by virtue of, among other things, its failure to make payments as and when due. Guarantor is in default of his obligations under the terms of the Promissory Note for his failure to cure the default of CM. As a result, the following sums are immediately due and owing to ROCKSTONE:

Principal: \$30,421.62

Interest (as of 11/21/07): \$14,456.37

**Total: \$44,877.99**

Interest continues to accrue from and after November 21, 2007 at the *per diem* rate of \$16.90090. The loan documents also provide for reasonable attorneys' fees.

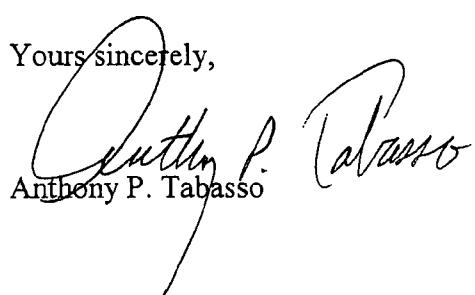
**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP**

James A. Ott  
November 21, 2007  
Page 2

If satisfactory payment arrangements have not been made by **Friday, November 30, 2007**, ROCKSTONE has authorized us to commence legal action against the Guarantor to protect ROCKSTONE's interests.

Guide yourself accordingly.

Yours sincerely,

  
Anthony P. Tabasso

APT/mpr

U.S. POSTAL SERVICE

CERTIFICATE OF MAILING

MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT  
PROVIDE FOR INSURANCE-POSTMASTER

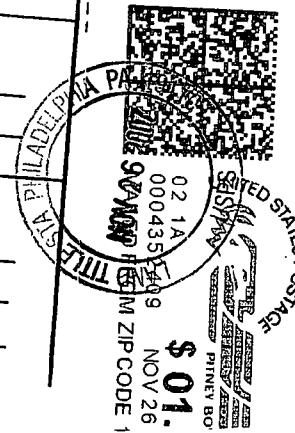
Received From:

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP  
260 S. BROAD STREET  
PHILADELPHIA, PA 19102

*Rosenberg*

One ple

James A. Ott  
473 Treasure Lk  
DuBois, PA 15801-9010



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

ROCKSTONE CAPITAL, LLC,

: No. 07-2137-CD

Plaintiff :

Type of Pleading:

Vs.

JAMES A. OTT, d/b/a CENTURY  
MANUFACTURING,

Defendant :

**PRELIMINARY OBJECTIONS**

Filed on Behalf of:  
DEFENDANT

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire  
Supreme Court No. 62074  
210 McCracken Run Road  
DuBois, PA 15801  
(814) 375-5598

FILED  
FEB 14 2008  
3CC  
Atty DuBois  
B60  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

ROCKSTONE CAPITAL, LLC, : No. 07-2137-CD  
Plaintiff :  
: Vs. :  
: :  
JAMES A. OTT, d/b/a CENTURY :  
MANUFACTURING, :  
Defendant :  
:

**PRELIMINARY OBJECTIONS**

AND NOW, comes the Defendant, JAMES A. OTT, d/b/a/ CENTURY MANUFACTURING, by and through his attorney, Jeffrey S. DuBois, Esquire, who files these Preliminary Objections, and in support thereof avers the following:

1. A Complaint was filed in the above captioned action on December 31, 2007.
2. Said Complaint was served upon James Ott on or about January 25, 2008.

**FAILURE OF PLEADING TO CONFORM TO LAW PURSUANT TO Pa.R.C.P. 1028 (a)(2)**

3. The Defendant Century Manufacturing is a valid corporation organized and existing under the Corporation Laws of the Commonwealth of Pennsylvania.
4. In its Complaint, Plaintiff lists Defendant James Ott, d/b/a Century Manufacturing.
5. In light of the fact Century Manufacturing, Inc. is a valid and existing corporation, and as such said organization is a separate legal entity, it is improper to incorporate James Ott as d/b/a Century Manufacturing.

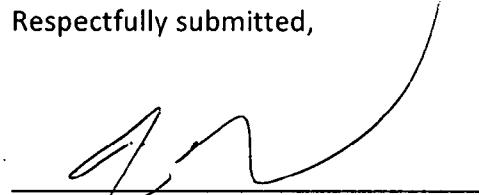
6. As a consequence, the parties must be separated and not listed together as set forth in Plaintiff's Complaint. Further, a cause of action must be set forth against both.
7. Plaintiffs Complaint, therefore, does not conform to the law and must be amended or dismissed.

**LEGALLY INSUFFICIENT PLEADING UNDER Pa.R.C.P 1028(a)(4)**

8. Additionally, Plaintiffs named James A. Ott as a Defendant in their Complaint and assert that James Ott has executed a personal guarantee.
9. Yet, Plaintiff failed to attach not only a blank copy of said personal guarantee, but also a copy of a signed personal guarantee.
10. Defendant James Ott asserts that he at no time executed a personal guarantee for the aforementioned contract.
11. In light of the fact the contract with Plaintiff was with Century Manufacturing, Inc., and no documents are supplied by Plaintiff involving James Ott, Plaintiff has no cause of action against James Ott.

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Plaintiffs Complaint.

Respectfully submitted,



\_\_\_\_\_  
Jeffrey S. DuBois, Esquire  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

ROCKSTONE CAPITAL, LLC, : No. 07-2137-CD  
Plaintiff :  
: Vs.  
: :  
: JAMES A. OTT, d/b/a CENTURY  
MANUFACTURING, :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 14<sup>th</sup> day of February, 2008, I served a true and correct copy of the within Preliminary Objections by first class mail, postage prepaid, on the following:

Anthony P. Tabasso, Esquire  
260 South Broad Street  
Philadelphia, PA 19102

Jeffrey S. DuBois

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP**  
Anthony P. Tabasso / Matthew P. Rosenberg  
Attorney I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

Attorneys for Plaintiff

ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank  
5510 Edson Lane  
Rockville, MD 20852

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC.  
473 Treasure Lk  
DuBois, PA 15801

and

JAMES A. OTT  
473 Treasure Lk.  
DuBois, PA 15801

Defendants.

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

CIVIL ACTION NO.: 07-2137-CD

**FILED** *3cc*  
*07/10/08* *Att'y Tabasso*  
*MAR 06 2008*  
*CR*

William A. Shaw  
Prothonotary/Clerk of Courts

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641 Ext. 50-51

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Court Administrator  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641 Ext. 50-51

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP**

Anthony P. Tabasso / Matthew P. Rosenberg  
Attorney I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

Attorneys for Plaintiff

ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank  
5510 Edson Lane  
Rockville, MD 20852

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

Plaintiff,

v.

CIVIL ACTION NO.: 07-2137-CD

CENTURY MANUFACTURING SERVICES,  
INC.  
473 Treasure Lk  
DuBois, PA 15801

and

JAMES A. OTT  
473 Treasure Lk.  
DuBois, PA 15801

Defendants.

**AMENDED COMPLAINT**

ROCKSTONE Capital, LLC, as successor to Bank of America, N.A., successor to Fleet National Bank ("ROCKSTONE"), by and through its counsel, Klehr, Harrison, Harvey, Branzburg & Ellers LLP, by way of amended complaint against Century Manufacturing Services, Inc. ("Century") and James A. Ott ("Ott"), avers and represents as follows:

**THE PARTIES**

1. ROCKSTONE, successor to Bank of America, N.A., successor in interest to Fleet National Bank, is a Maryland limited liability company, with an address of 5510 Edson Lane, Rockville, Maryland 20852.

2. Defendant Century is, upon information and belief, a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business at 473 Treasure Lk., DuBois, Pennsylvania 15801.

3. Defendant James A. Ott is, upon information and belief, an adult individual and resident of the Commonwealth of Pennsylvania, with a last-known address of 473 Treasure Lk, DuBois, Pennsylvania 15801, who does business as Century Manufacturing.

#### **JURISDICTION AND VENUE**

4. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

5. This Court has jurisdiction over the defendant pursuant to Pennsylvania law because the defendants reside in Pennsylvania and the acts and/or omissions giving rise to ROCKSTONE's cause of action occurred in Pennsylvania.

6. Venue is proper in the Court pursuant to Rule 1006 of the Pennsylvania Rules of Civil Procedure because the defendants are subject to the personal jurisdiction of this Court and because the acts and/or omissions giving rise to ROCKSTONE's cause of action occurred in Clearfield County.

#### **BACKGROUND**

7. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

8. On or about January 24, 2005, Fleet National Bank ("Fleet") made a loan (the "Loan") to Century in the original principal amount of \$29,500.00, pursuant to the terms of a certain Promissory Note (the "Note") dated January 24, 2005. Upon information and belief, the

Loan was originally made under account #40915900022267, which was later changed to account #6827104698399.

9. In consideration of the Loan, and pursuant to a provision of the Note, Ott executed a personal guaranty dated January 24, 2005, guarantying the full repayment of Century's obligations to Fleet (the "Guaranty")

10. Fleet subsequently merged into Bank of America. Fleet and Bank of America are hereinafter referred to together as the "Bank."

11. Bank of America assigned all right, title, and interest in and to the Note, Loan, and Guaranty to ROCKSTONE on March 28, 2006 (the "Assignment"). Prior to the Assignment, the Bank misplaced the Note (with its guaranty provisions), and thus assigned the Note, Loan, and Guaranty pursuant to the terms of a certain Affidavit of Lost Note. A true and correct copy of the Affidavit of Lost Note evidencing the assignment is attached hereto, incorporated herein, and marked as **Exhibit "A."**

12. The Note and Guaranty were inadvertently lost, destroyed, or stolen without the fault or neglect of the Bank. See Exhibit "A."

**COUNT I**  
**ROCKSTONE v. CENTURY**  
**Breach of Contract**

13. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

14. By virtue of the aforementioned Loan and Note, a valid and binding contract was created between Century on the one hand and the Bank on the other.

15. ROCKSTONE is the successor by assignment to the Bank.

16. Century has breached its obligations to ROCKSTONE under the Note and Loan by virtue of, inter alia, its failure to make payments as and when due.

17. As a result of the aforesaid defaults, as of March 5, 2008, ROCKSTONE is entitled to a judgment in its favor and against Century in the amount of \$46,669.49, comprised as follows:

Principal:	\$30,421.62
<u>Interest (as of 03/05/08):</u>	<u>\$16,247.87</u>
<b>TOTAL:</b>	<b><u>\$46,669.49</u></b>

Interest continues to accrue from and after March 5, 2008 in accordance with the terms of the Note, at the rate of \$16.90090 per diem. The Note also provides for ROCKSTONE's reasonable attorneys' fees, and demand is made therefor.

18. All conditions precedent to ROCKSTONE's right to recover the above amount from Century have been performed or have occurred.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests the entry of judgment in its favor and against Century Manufacturing Services, Inc. in the amount of \$46,669.49, plus interest from and after March 5, 2008, and attorneys' fees in accordance with the terms of the Note.

**COUNT II**  
**ROCKSTONE v. OTT**  
**Breach of Contract**

19. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

20. By virtue of the aforementioned Loan and Note, a valid and binding contract was created between Century on the one hand and the Bank on the other.

21. ROCKSTONE is the successor by assignment to the Bank.
22. Century has breached its obligations to ROCKSTONE under the Note and Loan by virtue of, inter alia, its failure to make payments as and when due.
23. Moreover, Ott has breached his obligations to ROCKSTONE under the Note and Guaranty by virtue of, inter alia, his failure to cure the defaults of Century.
24. On or about June 14, 2006, August 14, 2006, February 12, 2007, and November 21, 2007 ROCKSTONE wrote to Ott and notified him of his defaults under the Note and Guaranty (the "Default Letters"). True and correct copies of the Default Letters are attached hereto, incorporated herein, and marked as **Exhibit "B."**
25. As a result of the aforesaid defaults, as of March 5, 2008, ROCKSTONE is entitled to a judgment in its favor and against Ott in the amount of \$46,669.49, comprised as follows:

Principal: \$30,421.62

Interest (as of 03/05/08): \$16,247.87

**TOTAL: \$46,669.49**

Interest continues to accrue from and after March 5, 2008 in accordance with the terms of the Note, at the rate of \$16.90090 per diem. The Note also provides for ROCKSTONE's reasonable attorneys' fees, and demand is made therefor.

26. All conditions precedent to ROCKSTONE's right to recover the above amount from Ott have been performed or have occurred.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests the entry of judgment in its favor and against James A. Ott in the amount of \$46,669.49, plus interest from and after March 5, 2008, and attorneys' fees in accordance with the terms of the Note and Guaranty.

**COUNT III**  
**ROCKSTONE v. CENTURY and OTT**  
**Unjust Enrichment (Pled in the Alternative)**

27. ROCKSTONE incorporates the foregoing paragraphs by reference, as if fully set forth herein.

28. By providing Century with the Loan, the Bank conferred a benefit upon Century and Ott, to which Century and Ott were not entitled.

29. ROCKSTONE is the successor by assignment to the Bank.

30. Despite demand, Century and Ott have refused to return the monies loaned and/or to repay the Loan.

31. By accepting the Loan, retaining it, and not repaying ROCKSTONE, as successor to the Bank, Century and Ott have been unjustly enriched at ROCKSTONE's expense, in an amount in excess of \$46,669.49, thereby damaging ROCKSTONE.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests the entry of judgment in its favor and against Century Manufacturing Services, Inc. and James A. Ott, jointly and severally, in the amount of \$46,669.49, plus interest from and after March 5, 2008, in accordance with the terms of the Note.

Respectfully submitted,

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

Dated: March 5, 2008

By:



Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, Pennsylvania 19102  
*Attorneys for Plaintiff*



ROCKSTONE Capital, LLC  
c/o Union Financial Corporation  
5510 Edson Lane  
Rockville, MD 20852

**AFFIDAVIT OF LOST NOTE**  
(Missing Original and Copy)

That I, William B. Buland, on behalf of Bank of America, N.A., successor to Fleet National Bank, A Bank of America Company ("Bank"), having been duly sworn, depose and say:

1. I am over eighteen (18) years of age and am fully competent to make this affidavit; and I am authorized to make this affidavit on behalf of Bank, and have personal knowledge of the matter averred to herein.
2. On or about January 24, 2005, James Ott on behalf of Century Manufacturing executed a Promissory Note in the original principal amount of \$29,500.00 payable to Fleet National Bank (the "Note").
3. Neither the original nor a reproduction of the Note was in the files or records of the Bank at the time of the loan sale referenced below in ¶ 8.
4. Bank is the current holder and sole owner of the Note, and the Note has not been sold, assigned, endorsed, transferred, deposited under any agreement, hypothecated, pawned, pledged, or disposed of by the Bank or, to the best of my knowledge, by any representative of the Bank.
5. The Note was, without the fault or neglect of the Bank, lost, inadvertently destroyed or stolen.
6. The Bank has made a due and diligent search and inquiry for said lost, destroyed or stolen Note, without result.
7. If the Bank should find or recover the Note, the Bank shall cause the same to be delivered to the Buyer as defined in the Loan Sale Agreement referenced in ¶ 8 (or the Buyer's representative or agent if so instructed in writing by the Buyer) without requiring any consideration for such delivery.
8. The Note, together with all extensions and modifications, if any, is transferred as is, where is, with all faults and without recourse and without any representations or warranties of any kind, whether expressed or implied, oral or written, except as provided in Article VII of that certain Loan Sale Agreement offering #DP060328 dated March 28, 2006.

Effective as of the 28th day of March 2006.

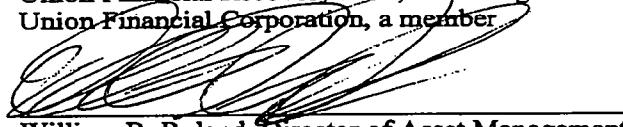
**ASSIGNOR:**

Bank of America, N.A., successor to Fleet National Bank,

By: ROCKSTONE Capital, LLC under Limited Power of Attorney attached hereto

By: Union Financial Recovery LLC, its Manager

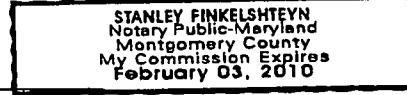
By: Union Financial Corporation, a member

By:   
William B. Buland, Director of Asset Management

**STATE OF MARYLAND**  
**COUNTY OF MONTGOMERY**

This instrument was acknowledged before me on this 19<sup>th</sup> day of April, 2006, by William B. Buland, Director of Asset Management, of a member of the Manager of ROCKSTONE Capital, LLC as the duly appointed power of attorney on behalf of Bank of America, successor to Fleet National Bank. A copy of the power of attorney is attached hereto.





Notary Public-in and for the STATE OF MARYLAND  
Century Manufacturing - Affidavit of Lost Note - Missing Orig & Copy - 060419



# ***ROCKSTONE Capital, LLC***

June 14, 2006

Via First Class Mail

Personal and Confidential

James Ott  
473 Treasure Lake  
DuBois, PA 15801

Subject: Note dated on or about January 24, 2005 in the original amount of \$29,500 was executed by James Ott on behalf of Century Manufacturing ("CM") in favor of Fleet National Bank ("FNB") (the "Note"); Guaranty executed by James Ott, (the "Guarantor") wherein Guarantor individually guaranteed the repayment of all CM obligations to FNB (the "Guaranty"); which has been sold to ROCKSTONE Capital, LLC ("ROCKSTONE") by Bank of America, successor to FNB ("BOA")

Dear Mr. Ott:

Notwithstanding previous letters that have been sent to you notifying you that the referenced obligation has been sold to ROCKSTONE and that all future payments and communications needed to be directed to ROCKSTONE, ROCKSTONE has not received ANY payments from you. Even more disturbing is the fact that ROCKSTONE has not received ANY communication from you whatsoever addressing this matter, explaining why the payments are not being made or advising ROCKSTONE when the payments *might* be expected.

As we are sure you can appreciate, the foregoing is unacceptable and will not be tolerated. You MUST either remit the payments that are due, the funds needed to fully satisfy the obligation or contact me at the number listed below to make other arrangements.

If you are a debtor in bankruptcy, please be advised that this letter should not be viewed as a demand for payment nor as a notice of liability of any recipient hereof who might have received a discharge of such debt or who might be subject to the automatic stay provided for in section 362 of the United States Bankruptcy Code.

# *ROCKSTONE Capital, LLC*

August 14, 2006

Via Certified and First Class Mail

Personal and Confidential

James Ott  
473 Treasure Lake  
DuBois, PA 15801

**Subject:** Note dated on or about January 24, 2005 in the original amount of \$29,500 was executed by James Ott on behalf of Century Manufacturing ("CM") in favor of Fleet National Bank ("FNB") (the "Note"); Guaranty executed by James Ott, (the "Guarantor") wherein Guarantor individually guaranteed the repayment of all CM obligations to FNB (the "Guaranty"); which has been sold to ROCKSTONE Capital, LLC ("ROCKSTONE") by Bank of America, successor to FNB ("BOA")

Dear Mr. Ott:

As you are aware, the obligation remains unpaid and seriously delinquent.

Accordingly, **FORMAL AND DEMAND** is hereby made upon you for the immediate payment of all amounts due under the obligation, including all additional interest (accrued and hereafter accruing) and other related costs of collection.

Be advised that unless all amounts due under the obligation are paid in full forthwith, ROCKSTONE shall take such further action as may be necessary to collect same.

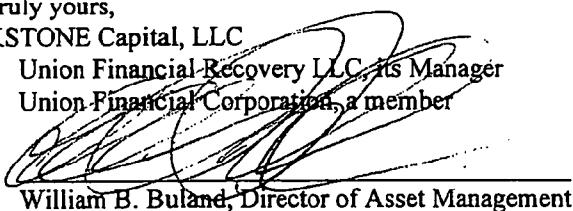
If you are a debtor in bankruptcy, please be advised that this letter should not be viewed as a demand for payment nor as a notice of liability of any recipient hereof who might have received a discharge of such debt or who might be subject to the automatic stay provided for in section 362 of the United States Bankruptcy Code.

Nothing contained herein should be construed as a waiver of any rights or remedies that might be available to ROCKSTONE, all of which are expressly reserved. All modifications to any agreement or arrangements must be in writing executed by an authorized representative of ROCKSTONE. Under no circumstances shall any oral statement, agreement or modification be binding on ROCKSTONE.

Very truly yours,

ROCKSTONE Capital, LLC

by: Union Financial Recovery LLC, its Manager  
by: Union Financial Corporation, a member

by:   
William B. Buland, Director of Asset Management

Century Manufacturing

June 14, 2006

Page 2

Nothing contained herein should be construed as a waiver of any rights or remedies that might be available to ROCKSTONE, all of which are expressly reserved. All modifications to any agreement or arrangements must be in writing executed by an authorized representative of ROCKSTONE. Under no circumstances shall any oral statement, agreement or modification be binding on ROCKSTONE.

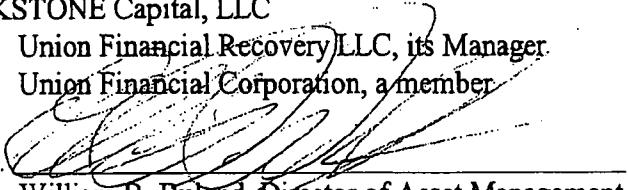
Very truly yours,

ROCKSTONE Capital, LLC

by: Union Financial Recovery LLC, its Manager

by: Union Financial Corporation, a member

by:

  
William B. Buland, Director of Asset Management

# ***ROCKSTONE Capital, LLC***

February 12, 2007

Via Certified and First Class Mail

Personal and Confidential

James Ott  
473 Treasure Lake  
DuBois, PA 15801

Subject: Note dated on or about January 24, 2005 in the original amount of \$29,500 was executed by James Ott on behalf of Century Manufacturing ("CM") in favor of Fleet National Bank ("FNB") (the "Note"); Guaranty executed by James Ott, (the "Guarantor") wherein Guarantor individually guaranteed the repayment of all CM obligations to FNB (the "Guaranty"); which has been sold to ROCKSTONE Capital, LLC ("ROCKSTONE") by Bank of America, successor to FNB ("BOA")

Dear Mr. Ott:

In anticipation of litigation, please be advised the above referenced matter will be transferred to our legal division on March 12, 2007.

As you are aware, ever since this obligation was purchased, ROCKSTONE has made numerous attempts to work with you, trying to amicably liquidate this delinquent obligation. Unfortunately, those efforts have not produced the desired results as the obligation remains unpaid and seriously delinquent.

Considering the foregoing, ROCKSTONE has no choice but to initiate litigation against you. In order to avoid the litigation, this obligation must be either fully satisfied or in the alternative, under an agreement satisfactory to ROCKSTONE in its sole and unfettered discretion prior to that date.

If you are a debtor in bankruptcy, please be advised that this letter should not be viewed as a demand for payment nor as a notice of liability of any recipient hereof who might have received a discharge of such debt or who might be subject to the automatic stay provided for in section 362 of the United States Bankruptcy Code.

Nothing contained herein should be construed as a waiver of any rights or remedies that might be available to ROCKSTONE, all of which are expressly reserved. All modifications to any agreement or arrangements must be in writing executed by an authorized representative of ROCKSTONE. Under no circumstances shall any oral statement, agreement or modification be binding on ROCKSTONE.

Very truly yours,

ROCKSTONE Capital, LLC

by: Union Financial Recovery LLC, its Manager  
by: Union Financial Corporation, a member

by: William B. Buland, Director of Asset Management

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP**  
ATTORNEYS AT LAW

**ANTHONY P. TABASSO**  
Direct Dial: (215) 569-4397  
ATABASSO@klehr.com

260 S. BROAD STREET  
PHILADELPHIA, PA 19102  
(215) 568-6060  
FAX: (215) 568-6603  
[www.klehr.com](http://www.klehr.com)

November 21, 2007

**New Jersey Office**  
457 Haddonfield Road  
Suite 510  
Cherry Hill, New Jersey 08002-2220  
(856) 486-7900

**Delaware Office**  
919 Market Street  
Suite 1000  
Wilmington, Delaware 19801-3062  
(302) 426-1189

**PROOF OF MAILING**

James A. Ott  
473 Treasure Lk  
DuBois, PA 15801-9010

**RE: Obligations to ROCKSTONE Capital, LLC, as successor to Bank of America, successor to Fleet National Bank**

Dear Mr. Ott:

This firm represents ROCKSTONE Capital, LLC ("ROCKSTONE"), as successor to Bank of America, successor to Fleet National Bank ("Fleet"), in the above-referenced matter. As you know, on or about January 24, 2005, Century Manufacturing ("CM") entered into a loan transaction with Fleet, whereby Fleet agreed to lend CM the principal amount of \$29,500.00. The loan is evidenced by a Promissory Note and is secured by the personal guaranty of James A. Ott ("Guarantor")

As you are now aware, CM is in default of its obligations under the aforementioned loan documents by virtue of, among other things, its failure to make payments as and when due. Guarantor is in default of his obligations under the terms of the Promissory Note for his failure to cure the default of CM. As a result, the following sums are immediately due and owing to ROCKSTONE:

Principal:	\$30,421.62
<u>Interest (as of 11/21/07):</u>	<u>\$14,456.37</u>
<b>Total:</b>	<b>\$44,877.99</b>

Interest continues to accrue from and after November 21, 2007 at the *per diem* rate of \$16.90090. The loan documents also provide for reasonable attorneys' fees.

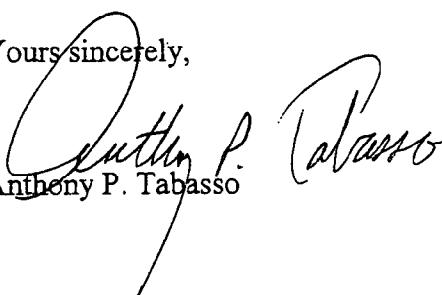
KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP

James A. Ott  
November 21, 2007  
Page 2

If satisfactory payment arrangements have not been made by **Friday, November 30, 2007**, ROCKSTONE has authorized us to commence legal action against the Guarantor to protect ROCKSTONE's interests.

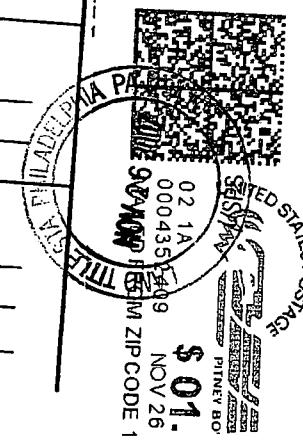
Guide yourself accordingly.

Yours sincerely,

  
Anthony P. Tabasso

APT/mpr

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER			
Received From: <b>KLEHR, HARRISON, HARVEY, BRANZBURG &amp; ELLERS LLP 260 S. BROAD STREET PHILADELPHIA, PA 19102</b>			
<i>Rosenberg</i>			
One piece James A. Ott 473 Treasure Lk DuBois, PA 15801-9010			



**VERIFICATION**

I, William B. Buland, state that I am the Director of Asset Management of Union Financial Corporation, a member of Union Financial Recovery LLC, the manager of ROCKSTONE Capital, LLC, the plaintiff in this action, that I am authorized to make this verification on its behalf, and, further, that the statements contained within the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that these statements are subject to the penalties set forth in 18 P.S. § 4904 for unsworn falsifications made to authorities.

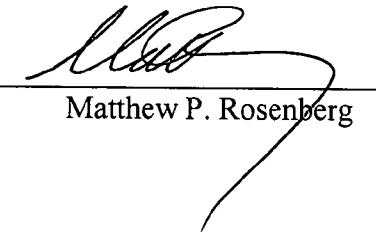


William B. Buland

**CERTIFICATE OF SERVICE**

This is to certify that on March 5, 2008, complete copies of all papers contained in the foregoing Amended Complaint have been served upon the following via United States first-class mail, postage prepaid:

Jeffrey S. DuBois  
210 McCracken Run Road  
DuBois, PA 15801

  
Matthew P. Rosenberg

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

ROCKSTONE CAPITAL, LLC, : No. 07-2137-CD  
As successor to Bank of America, N.A., :  
Successor to Fleet National Bank : Type of Pleading:  
5510 Edson Lane :  
Rockville, MD 20852, :  
Plaintiff : **DEFENDANTS ANSWER AND  
NEW MATTER TO PLAINTIFF'S  
AMENDED COMPLAINT**  
Vs. : Filed on Behalf of:  
: DEFENDANTS  
CENTURY MANUFACTURING SERVICES, : Counsel of Record for This Party:  
INC. : Jeffrey S. DuBois, Esquire  
473 Treasure Lake : Supreme Court No. 62074  
DuBois, PA 15801 : 210 McCracken Run Road  
And : DuBois, PA 15801  
JAMES A. OTT : (814) 375-5598  
473 Treasure Lake :  
DuBois, PA 15801, :  
Defendants :

FILED  
04/22/2008  
APR 22 2008  
Atty DuBois  
3cc  
William A. Shaw  
Prothonotary/Clerk of Courts  
GK

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

ROCKSTONE CAPITAL, LLC, : No. 07-2137-CD  
As successor to Bank of America, N.A., :  
Successor to Fleet National Bank :  
5510 Edson Lane :  
Rockville, MD 20852, :  
Plaintiff :  
:  
Vs. :  
: :  
CENTURY MANUFACTURING SERVICES, :  
INC. :  
473 Treasure Lake :  
DuBois, PA 15801 :  
:  
And :  
:  
JAMES A. OTT :  
473 Treasure Lake :  
DuBois, PA 15801, :  
Defendants :  
:

**DEFENDANTS ANSWER AND NEW MATTER TO PLAINTIFF'S AMENDED COMPLAINT**

AND NOW, comes the Defendant, JAMES A. OTT, and CENTURY MANUFACTURING SERVICES, INC., by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Amended Complaint, and in support thereof avers the following:

1. Admitted.
2. Admitted.
3. Admitted.

### JURISDICTION AND VENUE

4. No responsive pleading is required.
5. Admitted so far as the Court having jurisdiction over Defendant, Century Manufacturing, Inc, but denied that the court has jurisdiction over Defendant, James Ott.
6. See answer to paragraph number five (5) herein.

### BACKGROUND

7. No responsive pleading is required.
8. Admitted to the factual averments concerning the loan with Defendant, Century Manufacturing, Inc. With respect to the remainder of the paragraph concerning the loan account numbers, said information would be under the sole purview of Plaintiff and not Defendants, and therefore strict proof thereof is demanded at Trial.
9. Denied. It is denied that Defendant Ott ever executed a personal guarantee on said loan.
10. The information set forth in Plaintiff's paragraph ten (10) are within the sole knowledge and purview of Plaintiff, and therefore Defendants cannot respond to the truth or falsity of the averment and therefore the same is denied and strict proof thereof is demanded at Trial.
11. The information set forth in Plaintiff's paragraph eleven (11) are within the sole knowledge and purview of Plaintiff, and therefore Defendants cannot respond to the truth or falsity of the averment and therefore the same is denied and strict proof

thereof is demanded at Trial. Further, Defendant Ott denies ever executing a guarantee.

12. The information set forth in Plaintiff's paragraph twelve (12) are within the sole knowledge and purview of Plaintiff, and therefore Defendants cannot respond to the truth or falsity of the averment and therefore the same is denied and strict proof thereof is demanded at Trial. Further, Defendant Ott denies ever executing a guarantee.

**COUNT I**  
**ROCKSTONE VS. CENTURY**  
**BREACH OF CONTRACT**

13. No responsive pleading is required.

14. Admitted.

15. The information set forth in Plaintiff's paragraph fifteen (15) are within the sole knowledge and purview of Plaintiff, and therefore Defendant cannot respond to the truth or falsity of the averment and therefore the same is denied and strict proof thereof is demanded at Trial.

16. Admitted. By way of further answer, Century has been unable to make payments because the operation of the business has ceased.

17. It is admitted that Defendant Century owes principal in the amount set forth in paragraph seventeen (17), but the amount of interest set forth in paragraph seventeen (17) appears to be extremely high, and is usurious, and therefore Defendant denies the same and strict proof thereof is demanded at Trial.

18. All the averments set forth in Plaintiff's paragraph eighteen (18) are under the sole purview of Plaintiff, and not Defendant, and therefore the same is denied and strict proof thereof demanded at Trial.

WHEREFORE, Defendant Century respectfully requests this Honorable Court to enter Judgment in its favor and against Plaintiff.

**COUNT II**  
**ROCKSTONE VS. OTT**  
**BREACH OF CONTRACT**

19. No responsive pleading is required.

20. Admitted.

21. The averments in Plaintiff's paragraph twenty-one (21) are within the sole purview of Plaintiff and not Defendant, and therefore Defendant is unaware of the truth or falsity of said averments, and therefore the same are denied, and strict proof thereof is demanded at Trial.

22. Admitted as to the principal amount of the loan.

23. Denied. It is denied that Defendant Ott owes any obligations to Plaintiff under the Note and therefore he could not have breached any of said obligations.

24. It is admitted that Plaintiff wrote Defendant Ott on said dates, but said letters pertain to an obligation of Defendant Century, and not Defendant Ott, and therefore Defendant Ott had no obligation to respond to the same.

25. Denied. For the reasons set forth herein, Defendant Ott owes no monies to Plaintiff and therefore Plaintiff is not entitled to recover any monies against Defendant Ott.

26. Denied. It is denied there are any conditions precedent or any right to recover of Plaintiff against Defendant Ott.

WHEREFORE, Defendant Ott respectfully requests this Honorable Court to dismiss Plaintiff's Complaint against him.

**COUNT III**  
**ROCKSTONE VS. CENTURY AND OTT**  
**UNJUST ENRICHMENT (PLED IN THE ALTERNATIVE)**

27. No responsive pleading is required.

28. It is admitted that Plaintiff conferred a benefit upon Defendant Century, but it is denied that any benefit was conferred upon Defendant Ott.

29. The averments in Plaintiff's paragraph twenty-nine (29) are within the sole purview of Plaintiff and not Defendants, and therefore Defendants are unaware of the truth or falsity of said averments, and therefore the same are denied, and strict proof thereof is demanded at Trial.

30. It is denied the Defendant Century has refused to return any monies loaned or make any payments, for as set forth herein, because of the fact Defendant Century has ceased operations, it has been unable to repay. With respect to Defendant Ott, as set forth herein, Defendant Ott has no responsibility or obligation to pay Plaintiff and therefore no monies are due from Defendant Ott to Plaintiff.

31. Denied. See answer to paragraph thirty (30) herein.

WHEREFORE, Defendant Century Manufacturing, Inc., and Defendant James Ott respectfully request this Honorable Court to enter Judgment in their favor and against Plaintiff.

NEW MATTER

32. Defendants hereby incorporate paragraphs one (1) through thirty-one (31) of their Answer as if set forth in full herein.

33. Defendant Ott never executed a personal guarantee for the loan referenced above.

34. As a consequence, there is neither an agreement nor contract between Plaintiff and Defendant Ott.

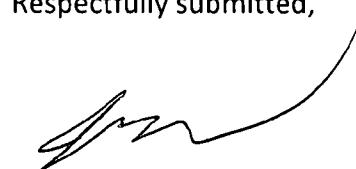
35. Therefore, Plaintiff has no claim against Defendant Ott.

36. Plaintiffs failed to attach a copy of any supposed personal guarantee by Defendant Ott with Defendant Ott's signature.

37. Because Plaintiff's have no personal guarantee from Defendant Ott, nor did they attach a copy of any signed guarantee, Plaintiffs are estopped from filing any claim against Defendant Ott.

WHEREFORE, Defendant Ott respectfully requests this Honorable Court to dismiss Plaintiffs Complaint against him.

Respectfully submitted,



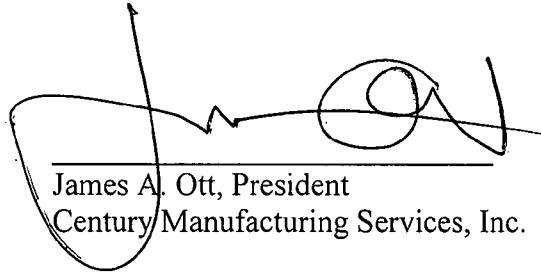
---

Jeffrey S. DuBois, Esquire  
Attorney for Defendants

**VERIFICATION**

I, JAMES A. OTT, as President of Century Manufacturing Services, Inc., verify that the statements in the foregoing Pleading are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

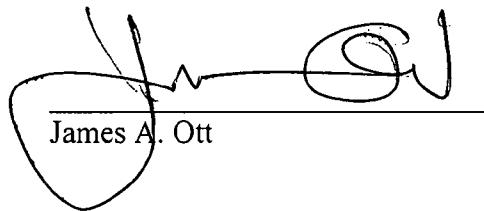


James A. Ott, President  
Century Manufacturing Services, Inc.

**VERIFICATION**

I, JAMES A. OTT, verify that the statements in the foregoing Pleading are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



James A. Ott

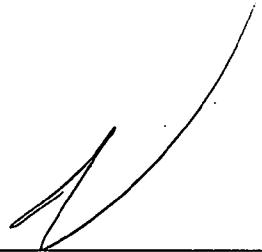
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

ROCKSTONE CAPITAL, LLC, : No. 07-2137-CD  
Plaintiff :  
: Vs.  
: :  
JAMES A. OTT, d/b/a CENTURY :  
MANUFACTURING, :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 22<sup>nd</sup> day of April, 2008, I served a true and correct copy of the within Defendants Answer and New Matter to Plaintiffs Amended Complaint by first class mail, postage prepaid, on the following:

Anthony P. Tabasso, Esquire  
260 South Broad Street  
Philadelphia, PA 19102



---

Jeffrey S. DuBois

KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP  
By: Anthony P. Tabasso / Matthew P. Rosenberg  
I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

ATTORNEYS FOR PLAINTIFFS

ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES, INC.

and

JAMES A. OTT,

Defendants.

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

CIVIL ACTION NO.: 07-2137-CD

FILED <sup>NO CC</sup>  
MAY 05 2008 *GP*

William A. Shaw  
Prothonotary/Clerk of Courts

**ANSWER TO NEW MATTER OF DEFENDANTS CENTURY MANUFACTURING  
SERVICES, INC. AND JAMES A. OTT**

The plaintiff, ROCKSTONE Capital, LLC (“ROCKSTONE”), by and through its counsel, Klehr, Harrison, Harvey, Branzburg & Ellers LLP, hereby files this Answer to the New Matter (“New Matter”) of defendants Century Manufacturing Services, Inc. (“Century”) and James A. Ott (“Ott”):

1-31. ROCKSTONE incorporates herein by this reference the allegations contained within its amended complaint, as if though those allegations are set forth fully and at length herein.

**NEW MATTER**

32. ROCKSTONE incorporates herein by this reference paragraphs 1-31 of its complaint.

33. Denied. To the contrary, upon information and belief, in consideration of the Loan made to Century, and pursuant to a provision of the Note, Ott executed a personal guaranty dated

January 24, 2005, guarantying the full repayment of Century's obligations to ROCKSTONE's predecessor, Fleet National Bank ("Fleet").

34. Denied. To the contrary, there is a contract between Fleet, predecessor in interest to ROCKSTONE, and Ott, whereby Ott guarantied the full repayment of Century's obligations to Fleet.

35. Denied. To the contrary, ROCKSTONE, as successor in interest to Fleet, has a claim against Ott, as guarantor, for the repayment of Century's obligations to ROCKSTONE.

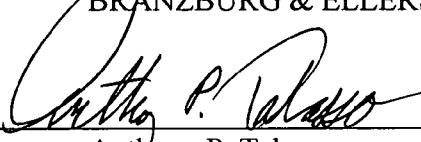
36. Admitted in part, denied in part. It is admitted only that the exhibits attached to the Amended Complaint do not contain Ott's signature. ROCKSTONE did, however, attach an Affidavit of Lost Note as Exhibit A to the Amended Complaint as proof of the existence of the Note (including Ott's guaranty). To the extend that Defendants contend the Affidavit of Lost Note is insufficient, such allegation constitutes a conclusion of law to which no response is required and is, therefore, deemed denied.

37. Denied. The allegations in paragraph 37 constitute conclusions of law to which no response is required and are, therefore, deemed denied.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests the relief demanded in its amended complaint.

Respectfully submitted,

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

By: 

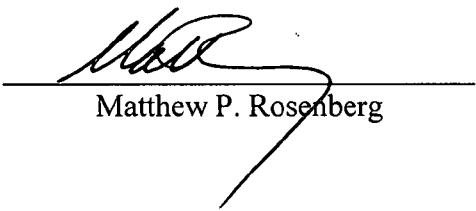
Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, PA 19102

Attorneys for Plaintiff  
ROCKSTONE Capital, LLC

**CERTIFICATE OF SERVICE**

I, Matthew P. Rosenberg, hereby state that on this 30<sup>th</sup> day of April, 2008, I caused a true and correct copy of Plaintiff's Answer to New Matter of Defendants Century Manufacturing Services, Inc. and James A. Ott, to be served upon the following counsel of record via United States first-class Mail, postage prepaid addressed as follows:

Jeffrey S. DuBois, Esquire  
210 McCracken Run Road  
DuBois, PA 15801

  
Matthew P. Rosenberg

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP**

By: Anthony P. Tabasso / Matthew P. Rosenberg  
I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

5  
**FILED**  
M 10:43 AM FEB 02 2009 Atty  
Tabasso  
BSC William A. Shaw  
Prothonotary/Clerk of Courts

**ATTORNEYS FOR PLAINTIFFS**

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

**COURT OF COMMON PLEAS  
CLEARFIELD COUNTY**

**CIVIL ACTION NO.: 07-2137-CD**

**MOTION TO COMPEL DISCOVERY RESPONSES**

The plaintiff, ROCKSTONE Capital, LLC (“ROCKSTONE”) hereby moves this Court for an Order directing defendant James A. Ott to respond to ROCKSTONE’s requests for the production of documents and things. In support of its Motion, ROCKSTONE respectfully avers as follows:

1. On August 1, 2008, ROCKSTONE served a Notice of Deposition on the defendant pursuant to Rule 4001.1 of the Pennsylvania Rules of Civil Procedure.
2. Pursuant to Rules 4007.1(d) and 4009 of the Pennsylvania Rules of Civil Procedure, ROCKSTONE requested that the defendant produce certain document within his possession as described in Schedule “A” (the “Document Request”) attached to the Notice of Deposition. A true and correct copy of the Notice of Deposition and accompanying Document Request is attached hereto as Exhibit “A” and incorporated herein.
3. Subsequently, on September 12, 2008, the defendant appeared for deposition and, according to the Document Request, produced some, but not all, documents requested.

4. During the deposition, the defendant testified that he had some documents that he signed to close the loan that is the basis of this lawsuit. When asked if he had copies of the documents, the defendant testified as follows:

Q: Do you have copies of the document?

A: I searched for those and I believe I do have them but they are in storage – if I do have them they are in storage behind a lot of personal things. And I couldn't dig everything out. Most everything I had then, I kept. There was a good deal that I threw away because the business is no more. I don't have the space to store things like I did.

Q: But you think you do have, that particular documentation that you might have saved?

A: I know I had a Fleet file.

Q: Okay. All right.

A: If I have the Fleet file, I have the Fleet document.

Q: As you sit here today, do you remember what else would have been in that Fleet file?

A: Well, I sent you a letter of introduction. I mean, most anything with the Fleet letterhead on it I put in there, and statements, et cetera.

(Discussion held off the record.)

Q: I've spoken to [the defendant's attorney] about the, what we're calling the Fleet file for the purposes of today. And he's assured me that his client will search through his storage, attempt to locate it if he still has it. And if he does have it, he will produce it.

See Deposition of J. Ott, pp. 21-22, attached hereto as Exhibit "B."

5. Despite numerous requests made to the defendant's counsel, the "Fleet file" has not been produced as requested.

6. The defendant has been given ample time and warning by ROCKSTONE to provide the "Fleet file," but has failed to do so in the almost five months that have passed since

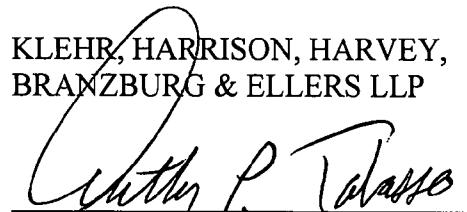
the deposition was taken.

7. The defendant has neither sought nor obtained a protective order.
8. The defendant has no valid basis for refusing to provide the "Fleet file."
9. The defendant's dilatory tactics have delayed ROCKSTONE's efforts to move this case to a trial ready condition. It is apparent that the defendant has no defenses to ROCKSTONE's claims and responsive discovery would result in ROCKSTONE obtaining summary judgment.
10. ROCKSTONE is entitled to discovery to obtain information it requires in order to proceed to trial.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests that this Court enter the attached Order compelling defendant James A. Ott to respond to the Document Request within fifteen (15) days of entry of the Court's Order, and provide such other relief and sanctions as deemed just.

Respectfully submitted,

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

By: 

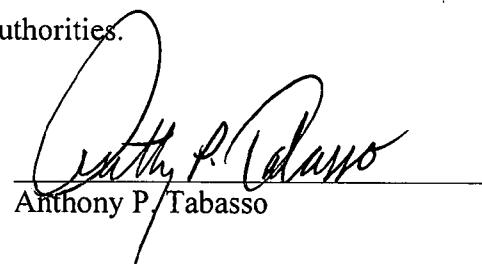
Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, PA 19102  
215-568-6060

*Attorneys for Plaintiff  
ROCKSTONE Capital, LLC*

Dated: January 30, 2009

**VERIFICATION**

I, Anthony P. Tabasso, hereby certify that I am the attorney for the plaintiff and that I am authorized to make this Verification on its behalf. I verify that the statements contained herein are true and correct to the best of my knowledge, information and belief. I acknowledge and understand that the statements contained herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.



Anthony P. Tabasso



FILE

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP**

Anthony P. Tabasso / Matthew P. Rosenberg  
Attorney I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

Attorneys for Plaintiff

ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

Plaintiff,

CIVIL ACTION NO.: 07-2137CD

v.

CENTURY MANUFACTURING SERVICES,  
INC.

and

JAMES A. OTT

Defendants.

**NOTICE OF DEPOSITION**

To: JAMES A. OTT  
c/o Jeffrey S. DuBois  
210 McCracken Run Road  
DuBois, PA 15801

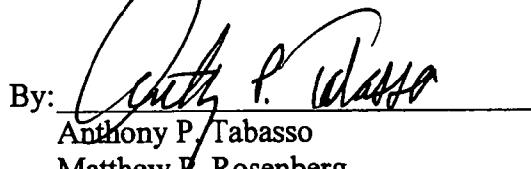
PLEASE TAKE NOTICE THAT, pursuant to Pennsylvania Rule of Civil Procedure 4007.1, ROCKSTONE Capital, LLC, by and through its attorneys Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, will take a deposition upon oral examination of JAMES A. OTT for the purpose of discovery into the issues surrounding the above-captioned litigation.

The deposition will take place at the offices of Klehr Harrison or such other location as may be agreed upon, commencing at **10:00 a.m. on Tuesday, September 2, 2008**, and to continue from day to day until completed. Pursuant to Pennsylvania Rule of Civil Procedure

4007.1(d) and 4009, the deponent shall produce all documents within her possession, custody or control as described in Schedule "A" attached hereto and incorporated herein by reference.

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

Date: August 1, 2008

By: 

Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

*Attorneys for Plaintiff,  
ROCKSTONE Capital, LLC*

## SCHEDULE "A"

### **I. DEFINITIONS**

As used in this Schedule "A," the following terms shall have the meaning set forth below:

1. "Defendants" shall mean the defendants, Century Manufacturing Services, Inc. and James A. Ott.
2. "You" or "your" means the defendants, Century Manufacturing Services, Inc. and James A. Ott.
3. "Person" means both the plural and the singular of any natural individual or any corporation, firm, partnership, proprietorship, association, joint venture, governmental entity or any business organization or any other entity.
4. "Document" or "documents" shall mean any written, recorded, filmed or graphic matter, whether performed or reproduced on paper, cards, tapes, film, electric facsimile, computer storage devices, or any other media, including but not limited to papers, books, letters, photographs, objects, tangible things, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, records, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of meetings, affidavits, statements, charts, graphs, specifications, drawings, blueprints, summaries, opinions, proposals, reports, studies, analyses, audits, evaluations, contracts, agreements, journals, statistical records, ledgers, books of account, electronic mail, world wide web pages, bookkeeping entries, financial statements, tax returns, vouchers, checks, check stubs, invoices, receipts, desk calendars, appointments books, diaries, lists, tabulations, summaries, sound output, microfilms, all records kept by electronic, photographic or mechanical means, and all things similar to any of the foregoing documents is referred to, the reference shall include, but not be

limited to, the original and each and every copy and draft thereof differing in any way from the original, if an original exists, or each and every copy and draft if no original exists.

5. "All documents" means any and all documents as defined above that are known to you or they can be located or discovered by your reasonably diligent efforts.

6. "Payment" or "payments" means the transfer of any monies, whether in cash or by check, bank draft, wire transfer, or otherwise.

7. Unless otherwise stated or required by the response, the relevant time period covering each request is from January 24, 2005 to the present (sometimes referred to as the "Relevant Period").

## **II. DOCUMENTS AND THINGS TO BE PRODUCED**

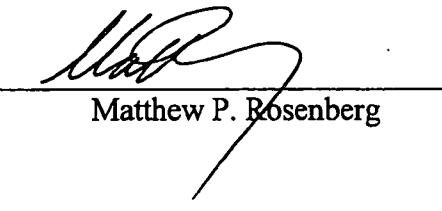
1. Any and all documents evidencing, supporting or related to the allegations set forth in the Complaint.
2. Any and all documents evidencing or concerning the allegations set forth in your Answer.
3. Any and all documents evidencing or concerning the denials set forth in your Answer.
4. Any and all documents evidencing or concerning the Loan, or Century Manufacturing Services, Inc.'s application therefor.
5. Any and all documents evidencing or concerning your allegations that Ott did not personally guaranty the Loan.
6. Any and all documents evidencing or concerning Defendants' Loan payments.
7. Any and all expert reports you have obtained relating to this case.
8. Any and all documents you intend to mark or introduce at the trial/hearing in this case.
9. Any and all documents you sent to Plaintiff or its predecessors (including Fleet and/or Bank of America) during the Relevant Period.
10. Any and all documents Plaintiff or its predecessors (including Fleet and/or Bank of America) sent to you during the Relevant Period.
11. Any and all documents you sent to any third party regarding the Loan or the transaction or occurrences underlying the Complaint during the relevant period.
12. Any and all documents any third party sent to you regarding the Loan or the transaction or occurrences underlying the Complaint during the Relevant Period.

**CERTIFICATE OF SERVICE**

I, Matthew P. Rosenberg, hereby certify that I served a true and correct copy of the Notice of Deposition in Aid of Execution upon the following via Proof of Mailing:

JAMES A. OTT  
c/o Jeffrey S. DuBois  
210 McCracken Run Road  
DuBois, PA 15801

Date: August 1, 2008

  
Matthew P. Rosenberg



1 IN THE COURT OF COMMON PLEAS OF  
 2 CLEARFIELD COUNTY, PENNSYLVANIA  
 3  
 4 ROCKSTONE CAPITAL, LLC, :  
 5 as successor to Bank of :  
 6 America, N.A., successor to :  
 7 Fleet National Bank :  
 8 5510 Edson Lane :  
 9 Rockville, MD 20852, :  
 10 PLAINTIFF :  
 11  
 12 VS. : NO: 07-2137-CD  
 13  
 14 CENTURY MANUFACTURING :  
 15 SERVICES, INC., :  
 16 473 Treasure Lake :  
 17 DuBois, PA 15801, :  
 18 AND :  
 19 JAMES A. OTT :  
 20 473 Treasure Lake :  
 21 DuBois, PA 15801 :  
 22 DEFENDANTS :  
 23  
 24 DEPOSITION OF: JAMES A. OTT  
 25 TAKEN BY: PLAINTIFF  
 26 BEFORE: HEATHER GOSS BORING  
 27 NOTARY PUBLIC  
 28 DATE: SEPTEMBER 12, 2008  
 29 10:08 A.M.  
 30 PLACE: LEE, GREEN & REITER  
 31 115 EAST HIGH STREET  
 32 STATE COLLEGE, PA 16801  
 33  
 34 APPEARANCES:  
 35 KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP  
 36 ANTHONY P. TABASSO, ESQUIRE  
 37 260 South Broad Street  
 38 Philadelphia, PA 19102  
 39 APPEARING ON BEHALF OF THE PLAINTIFF  
 40  
 41 LAW OFFICE OF JEFFREY DUBOIS  
 42 JEFFREY A. DUBOIS, ESQUIRE  
 43 210 McCracken Run Road  
 44 DuBois, PA 15801  
 45 APPEARING ON BEHALF OF THE DEFENDANT  
 46  
 47 BORING COURT REPORTING (814) 364-1793

**COPY**

**INDEX**

**TESTIMONY OF EXAMINATION**  
 JAMES A. OTT

By Mr. Tabasso: 3  
 By Mr. DuBois: --

**EXHIBITS**

**PRODUCED DEPOSITION EXHIBITS AND MARKED**  
 1 - Settlement and Release Agreement 33  
 (Retained By Attorney Tabasso.)

**STIPULATION**

1  
 2  
 3 IT IS HEREBY STIPULATED BY AND BETWEEN  
 4 COUNSEL FOR THE RESPECTIVE PARTIES THAT READING,  
 5 SIGNING, SEALING, CERTIFICATION, AND FILING ARE  
 6 WAIVED, AND THAT ALL OBJECTIONS EXCEPT AS TO THE FORM  
 7 OF THE QUESTION ARE RESERVED TO THE TIME OF TRIAL.  
 8

9 JAMES A. OTT, CALLED AS A WITNESS, BEING  
 10 SWORN, TESTIFIED AS FOLLOWS:  
 11

**EXAMINATION**

14 BY MR. TABASSO:

15 Q Mr. Ott, good morning.  
 16 A Good morning.  
 17 Q We met briefly when you first came in this  
 18 morning. My name is Anthony Tabasso. I'm an  
 19 attorney representing Rockstone Capital today in an  
 20 action that is pending in Clearfield County against  
 21 Century Manufacturing Services and you individually.  
 22 We're here today to take your deposition in  
 23 connection with that action.

24 Before we get started, let me ask you, have  
 25 you ever had your deposition taken before?

BORING COURT REPORTING (814) 364-1793

4

1 A No.

2 Q Okay. As you see, we have a court reporter  
 3 here with us today and what she's going to be doing  
 4 is taking down everything that everybody in the room  
 5 says. Taking down every question I ask, every answer  
 6 you give, every objection that your lawyer makes.

7 Because she is transcribing this, it is  
 8 very important that no one talks over anyone else.  
 9 So let me finish my question even if you know what  
 10 it's going to be and you know what the answer is  
 11 before you start your answer. Likewise, I will try  
 12 not to cut you off when I know what your answer is  
 13 going to be. It makes it easier on the court  
 14 reporter.

15 It's also important that you don't nod your  
 16 head yes to a question or shake your head "no" to us.  
 17 Because even though I can see you and I know what you  
 18 mean, sooner or later a judge will be reading this  
 19 somewhere and they can't transcribe a nod of the head  
 20 "yes" or a shake of the head "no". They need to have  
 21 a verbal response. If you don't understand a  
 22 question, let me know. I'll try and rephrase it for  
 23 you. If you answer the question, I will assume that  
 24 you've understood it. Do you have any questions for  
 25 me before we get started?

It was over -- everything probably cost 20. I mean for some -- to go out of pocket it was...

I had a press I had to buy. I had to buy a lot of tooling and so forth. This was -- it was custom made. I was presented a product. They said, can you make this? I said, well, I could but I would need to design and build a system whereby we could run production. And so I needed a press, something with a flywheel. But everything else was an add-on. It was something of my own design and, you know, I couldn't finance something like that.

Q Sure.

A It needed to be designed, built custom and it had to be financed just, you know, with dollars. And so I went out of pocket for that.

Q Okay. When you first opened the doors at Century Manufacturing you go, you form this corporation, you go and you rent the space?

A Uh-huh.

Q Do you put any fixed sum of money into the company on day one?

A Yes, I did.

Q How much?

A \$35,000.

Q What did that get used for?

BORING COURT REPORTING, INC. (814) 364-1793

A I had to make enhancements to the building, the electrical right away. I had to buy an air compressor. I had to buy, you know, initially I had to purchase, you know, materials and so forth. And I had to buy tooling to run the press. I had to buy what I call accessories for those type of operations, lubricants, you know, oils, solvents, supplies, just general business supplies. And then also supplies and accessories and things that are, you know, purchased for the specific operation for what I was doing specifically.

Q All right. Did there come a time when Century approached Fleet Bank about a loan?

A No. Fleet approached me.

Q Fair enough. How did that happen?

A Many, many phone calls.

Q Just out of the blue?

A Out of -- well, out of the blue or I must have been -- I don't know how they got my name. But there were a lot of phone calls soliciting me to take out a loan.

Q Were they if you can recall, did the calls from somebody national or was there a local Fleet branch or Sally at the Fleet branch was calling you?

A I'm not aware of that.

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1 Q It was nobody you knew?  
2 A Nobody that I knew personally from other  
3 dealings.

4 Q I want to make sure I understand that. Are  
5 you saying nobody you knew personally from other  
6 dealings or nobody you knew personally but you knew  
7 them from other dealings?

8 A I knew no one from the Fleet organization.

9 Q Okay. So they make these solicitation  
10 phone calls to you and say hey, we got, presumably  
11 they say we got some loan product. Come and borrow  
12 money from us. At some point you make the decision  
13 the business could use some working capital?

14 A Uh-huh.

15 Q Use some money?

16 A (Witness nods head.)

17 Q That is a nod of the head. You're not  
18 allowed to give her --

19 MR. DUBOIS: Yes or no.

20 A Yes, yes. Sorry.

21 BY MR. TABASSO:

22 Q You put a call in to whoever had been  
23 speaking to you about this to get the details about  
24 how to set it up?

25 A Fleet would have customer service

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1 representatives calling my business, and often. It  
2 was probably during one of those numerous phone  
3 conversations that I probably said, well, sure, I can  
4 could use -- as long as it's a corporate debt, I'm  
5 okay with it. I don't want to extend myself  
6 personally. That is the message that I made clear to  
7 them in those days. I could have used some working  
8 capital or some backup, but I wasn't actively  
9 soliciting it. They were calling me and I thought  
10 well, if this is the way -- if this is what they are  
11 presenting to me, I am interested, but only if it's  
12 in the name of Century.

13 Q All right. Now, in your mind was this loan  
14 going to be a line of credit that you could draw down  
15 on as you needed it, or were they going to give you a  
16 check for a fixed sum on the first day?

17 A I don't recall what I was thinking about at  
18 that given time. To answer that question, I don't  
19 know.

20 Q That is fair. Did there come a time when  
21 you closed on the loan or you sat down and signed the  
22 loan documents somewhere?

23 A Those documents or that document was  
24 basically just a fax copy, and I faxed them back.

25 Q So there was no specific closing where you  
BORING COURT REPORTING, INC. (814) 364-1793

went to a bank branch somewhere and sat down?

**A** Correct.

**Q** They sent you a document, you signed it and sent it back?

**A** Correct.

**Q** Do you have copies of the document?

**A** I searched for those and I believe I do have them but they are in storage -- if I do have them they are in storage behind a lot of personal things. And I couldn't dig everything out. Most everything I had then, I kept. There was a good deal that I threw away because the business is no more. I don't have the space to store things like I did.

**Q** But you think you do have, that particular documentation you might have saved?

**A** I know I had a Fleet file.

**Q** Okay. All right.

**A** If I have the Fleet file, I have the Fleet document.

**Q** As you sit here today, do you remember what else would have been in that Fleet file?

**A** Well, I sent you a letter of introduction. I mean, most anything with the Fleet letterhead on it I put in there, and statements, et cetera.

MR. TABASSO: Let's go off the record for a

**BORING COURT REPORTING, INC.** (814) 364-1793

second.

(Discussion held off record.)

MR. TABASSO: I've spoken to Mr. DuBois about the, what we're calling the Fleet file for the purposes of today. And he's assured me that his client will search through his storage, attempt to locate it if he still has it. And if he does have it, he will produce it.

BY MR. TABASSO:

**Q** So you signed the documents that they faxed to you, and you faxed them back?

**A** Yes.

**Q** Now --

**A** I didn't -- I put Century was the -- the loan.

MR. DUBOIS: Just use whatever words you like.

**A** Century signed it by.

BY MR. TABASSO:

**Q** I understand that that is your position in the litigation. But the question I'm asking you is, when the document was signed the pen was in your physical hand, nobody else signed it?

**A** That is true. I was signing it as President of Century Manufacturing.

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**1** **Q** I understand that. But nobody else, nobody else put their name or their ink on the piece of paper?

**4** **A** True.

**5** **Q** And this part you are going to have to explain to me because I frankly have no idea. Once that happens and you signed that document, how does the process work for you having access to the loan and making use of it?

**10** **A** I do believe unless it was -- I do believe that they actually gave you checks, too.

**12** **Q** Sometimes these loans work where they give you checks, other times they give you a credit card, other times you get a check from them in the mail and you just put it in the corporate account. I'm not sure, I didn't know which situation this --

**17** **A** Well, it wasn't a corporate check. It wasn't a corporate check such at that, such as you described.

**20** **Q** So you think you got, you got checks to draw on a line of credit?

**22** **A** Yes, I did. I'm almost, I can say with like 80 percent certainty. I know that there was one, if it wasn't -- I did have a couple of accounts similar to this and they were paid off. Some of them

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**1** had those checks. And they weren't shy about sending you those checks either.

**3** **Q** No.

**4** **A** If I could say something in addition to what you have been asking. Around the time that I did sign, get involved with Fleet, these companies were very active and very aggressive in soliciting me for loans. I would be in the shop and the phone would ring. I had to get it. It could have been a customer. It could have been something that was important to my business. But around that period more often than not it was a financial institution trying get, trying to solicit loans. And they came all the time.

**15** **Q** But at that point in your career, you understood what a loan was?

**17** **A** Of course.

**18** **Q** Nobody from Fleet came knocking on the door with a big burly guy saying you got to sign this or 20 bad things are going to happen?

**21** **A** No.

**22** **Q** You mentioned about two minutes ago in passing, you said I had other accounts like this that were all paid off.

**25** **A** Uh-huh.

**BORING COURT REPORTING, INC.** (814) 364-1793

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP**

By: Anthony P. Tabasso / Matthew P. Rosenberg  
I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

**ATTORNEYS FOR PLAINTIFFS**

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

**COURT OF COMMON PLEAS  
CLEARFIELD COUNTY**

**CIVIL ACTION NO.: 07-2137-CD**

**CERTIFICATE OF SERVICE**

I, Matthew P. Rosenberg, hereby certify that true and correct copies of the Motion to  
Compel Discovery Responses and proposed order have been served upon the following parties  
via First Class U.S. Mail on January 30<sup>th</sup>, 2009:

Jeffrey S. DuBois, Esq.  
210 McCracken Run Road  
DuBois, PA 15801

**KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP**

By: 

Matthew P. Rosenberg  
Attorneys for Plaintiff  
ROCKSTONE Capital, LLC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103626  
NO: 07-2137-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: ROCKSTONE CAPITAL, LLC  
vs.  
DEFENDANT: JAMES A. OTT d/b/a CENTURY MANUFACTURING

**SHERIFF RETURN**

NOW, January 24, 2008 AT 2:50 PM SERVED THE WITHIN COMPLAINT ON JAMES A. OTT d/b/a CENTURY MANUFACTURING DEFENDANT AT RESIDENCE SECTION 1 LOT 20, TREASURE LAKE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO TAMMY OTT, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

**FILED**  
01/15/08  
MAY 07 2008  
10  
William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	KLEHR	45626	10.00
SHERIFF HAWKINS	KLEHR	45626	37.19

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2008

So Answers,

*Chester A. Hawkins  
by Marilyn Hahn*  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103875  
NO. 07-2137-CD  
SERVICE # 1 OF 1  
AMENDED COMPLAINT

PLAINTIFF: ROCKSTONE CAPITAL, LLC

vs.

DEFENDANT: CENTURY MANUFACTURING SERVICES, INC. and JAMES A. OTT

**SHERIFF RETURN**

NOW, April 02, 2008 AT 10:20 AM SERVED THE WITHIN AMENDED COMPLAINT ON CENTURY MANUFACTURING SERVICES INC DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JAMES OTT, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL AMENDED COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HAWKINS /

**FILED**

03:00 LM  
JUL 02 2008

William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	KLEHR	46089	10.00
SHERIFF HAWKINS	KLEHR	46089	57.79

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2008

So Answers,

*Chester A. Hawkins  
by Marilyn H. Hagan*  
Chester A. Hawkins  
Sheriff

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP**  
By: Anthony P. Tabasso / Matthew P. Rosenberg  
I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

**FILED** *sec*  
*M 10:43 AM* *Atty*  
**FEB 02 2009**  
*Tabasso*  
*REC'D*  
William A. Shaw  
Prothonotary/Clerk of Courts

ATTORNEYS FOR PLAINTIFFS

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

CIVIL ACTION NO.: 07-2137-CD

**MOTION TO COMPEL DISCOVERY RESPONSES**

The plaintiff, ROCKSTONE Capital, LLC ("ROCKSTONE") hereby moves this Court for an Order directing defendant James A. Ott to respond to ROCKSTONE's requests for the production of documents and things. In support of its Motion, ROCKSTONE respectfully avers as follows:

1. On August 1, 2008, ROCKSTONE served a Notice of Deposition on the defendant pursuant to Rule 4001.1 of the Pennsylvania Rules of Civil Procedure.
2. Pursuant to Rules 4007.1(d) and 4009 of the Pennsylvania Rules of Civil Procedure, ROCKSTONE requested that the defendant produce certain document within his possession as described in Schedule "A" (the "Document Request") attached to the Notice of Deposition. A true and correct copy of the Notice of Deposition and accompanying Document Request is attached hereto as Exhibit "A" and incorporated herein.
3. Subsequently, on September 12, 2008, the defendant appeared for deposition and, according to the Document Request, produced some, but not all, documents requested.

*replace original*

4. During the deposition, the defendant testified that he had some documents that he signed to close the loan that is the basis of this lawsuit. When asked if he had copies of the documents, the defendant testified as follows:

Q: Do you have copies of the document?

A: I searched for those and I believe I do have them but they are in storage – if I do have them they are in storage behind a lot of personal things. And I couldn't dig everything out. Most everything I had then, I kept. There was a good deal that I threw away because the business is no more. I don't have the space to store things like I did.

Q: But you think you do have, that particular documentation that you might have saved?

A: I know I had a Fleet file.

Q: Okay. All right.

A: If I have the Fleet file, I have the Fleet document.

Q: As you sit here today, do you remember what else would have been in that Fleet file?

A: Well, I sent you a letter of introduction. I mean, most anything with the Fleet letterhead on it I put in there, and statements, et cetera.

(Discussion held off the record.)

Q: I've spoken to [the defendant's attorney] about the, what we're calling the Fleet file for the purposes of today. And he's assured me that his client will search through his storage, attempt to locate it if he still has it. And if he does have it, he will produce it.

See Deposition of J. Ott, pp. 21-22, attached hereto as Exhibit "B."

5. Despite numerous requests made to the defendant's counsel, the "Fleet file" has not been produced as requested.

6. The defendant has been given ample time and warning by ROCKSTONE to provide the "Fleet file," but has failed to do so in the almost five months that have passed since

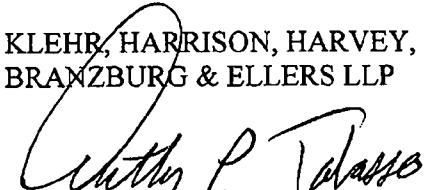
the deposition was taken.

7. The defendant has neither sought nor obtained a protective order.
8. The defendant has no valid basis for refusing to provide the "Fleet file."
9. The defendant's dilatory tactics have delayed ROCKSTONE's efforts to move this case to a trial ready condition. It is apparent that the defendant has no defenses to ROCKSTONE's claims and responsive discovery would result in ROCKSTONE obtaining summary judgment.
10. ROCKSTONE is entitled to discovery to obtain information it requires in order to proceed to trial.

WHEREFORE, ROCKSTONE Capital, LLC respectfully requests that this Court enter the attached Order compelling defendant James A. Ott to respond to the Document Request within fifteen (15) days of entry of the Court's Order, and provide such other relief and sanctions as deemed just.

Respectfully submitted,

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

By: 

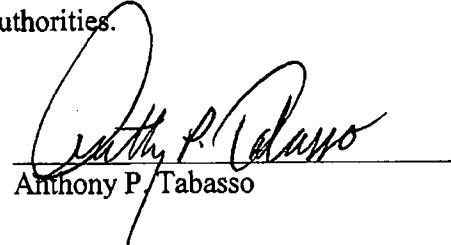
Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, PA 19102  
215-568-6060

*Attorneys for Plaintiff  
ROCKSTONE Capital, LLC*

Dated: January 30, 2009

**VERIFICATION**

I, Anthony P. Tabasso, hereby certify that I am the attorney for the plaintiff and that I am authorized to make this Verification on its behalf. I verify that the statements contained herein are true and correct to the best of my knowledge, information and belief. I acknowledge and understand that the statements contained herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.



\_\_\_\_\_  
Anthony P. Tabasso

FILE

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP**

Anthony P. Tabasso / Matthew P. Rosenberg  
Attorney I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

Attorneys for Plaintiff

**ROCKSTONE CAPITAL, LLC,  
as successor to Bank of America, N.A.,  
successor to Fleet National Bank**

**COURT OF COMMON PLEAS  
CLEARFIELD COUNTY**

Plaintiff,

CIVIL ACTION NO.: 07-2137CD

v.

**CENTURY MANUFACTURING SERVICES,  
INC.**

and

**JAMES A. OTT**

Defendants.

**NOTICE OF DEPOSITION**

To: **JAMES A. OTT**  
c/o Jeffrey S. DuBois  
210 McCracken Run Road  
DuBois, PA 15801

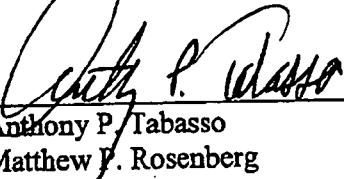
PLEASE TAKE NOTICE THAT, pursuant to Pennsylvania Rule of Civil Procedure 4007.1, **ROCKSTONE Capital, LLC**, by and through its attorneys Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, will take a deposition upon oral examination of **JAMES A. OTT** for the purpose of discovery into the issues surrounding the above-captioned litigation.

The deposition will take place at the offices of Klehr Harrison or such other location as may be agreed upon, commencing at **10:00 a.m. on Tuesday, September 2, 2008**, and to continue from day to day until completed. Pursuant to Pennsylvania Rule of Civil Procedure

4007.1(d) and 4009, the deponent shall produce all documents within her possession, custody or control as described in Schedule "A" attached hereto and incorporated herein by reference.

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

Date: August 1, 2008

By:   
Anthony P. Tabasso  
Matthew P. Rosenberg  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

*Attorneys for Plaintiff,  
ROCKSTONE Capital, LLC*

## SCHEDULE "A"

### I. DEFINITIONS

As used in this Schedule "A," the following terms shall have the meaning set forth below:

1. "Defendants" shall mean the defendants, Century Manufacturing Services, Inc. and James A. Ott.
2. "You" or "your" means the defendants, Century Manufacturing Services, Inc. and James A. Ott.
3. "Person" means both the plural and the singular of any natural individual or any corporation, firm, partnership, proprietorship, association, joint venture, governmental entity or any business organization or any other entity.
4. "Document" or "documents" shall mean any written, recorded, filmed or graphic matter, whether performed or reproduced on paper, cards, tapes, film, electric facsimile, computer storage devices, or any other media, including but not limited to papers, books, letters, photographs, objects, tangible things, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, records, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of meetings, affidavits, statements, charts, graphs, specifications, drawings, blueprints, summaries, opinions, proposals, reports, studies, analyses, audits, evaluations, contracts, agreements, journals, statistical records, ledgers, books of account, electronic mail, world wide web pages, bookkeeping entries, financial statements, tax returns, vouchers, checks, check stubs, invoices, receipts, desk calendars, appointments books, diaries, lists, tabulations, summaries, sound output, microfilms, all records kept by electronic, photographic or mechanical means, and all things similar to any of the foregoing documents is referred to, the reference shall include, but not be

limited to, the original and each and every copy and draft thereof differing in any way from the original, if an original exists, or each and every copy and draft if no original exists.

5. "All documents" means any and all documents as defined above that are known to you or they can be located or discovered by your reasonably diligent efforts.

6. "Payment" or "payments" means the transfer of any monies, whether in cash or by check, bank draft, wire transfer, or otherwise.

7. Unless otherwise stated or required by the response, the relevant time period covering each request is from January 24, 2005 to the present (sometimes referred to as the "Relevant Period").

## II. DOCUMENTS AND THINGS TO BE PRODUCED

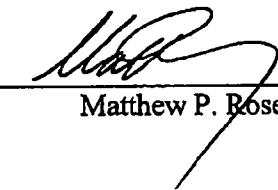
1. Any and all documents evidencing, supporting or related to the allegations set forth in the Complaint.
2. Any and all documents evidencing or concerning the allegations set forth in your Answer.
3. Any and all documents evidencing or concerning the denials set forth in your Answer.
4. Any and all documents evidencing or concerning the Loan, or Century Manufacturing Services, Inc.'s application therefor.
5. Any and all documents evidencing or concerning your allegations that Ott did not personally guaranty the Loan.
6. Any and all documents evidencing or concerning Defendants' Loan payments.
7. Any and all expert reports you have obtained relating to this case.
8. Any and all documents you intend to mark or introduce at the trial/hearing in this case.
9. Any and all documents you sent to Plaintiff or its predecessors (including Fleet and/or Bank of America) during the Relevant Period.
10. Any and all documents Plaintiff or its predecessors (including Fleet and/or Bank of America) sent to you during the Relevant Period.
11. Any and all documents you sent to any third party regarding the Loan or the transaction or occurrences underlying the Complaint during the relevant period.
12. Any and all documents any third party sent to you regarding the Loan or the transaction or occurrences underlying the Complaint during the Relevant Period.

**CERTIFICATE OF SERVICE**

I, Matthew P. Rosenberg, hereby certify that I served a true and correct copy of the Notice of Deposition in Aid of Execution upon the following via Proof of Mailing:

JAMES A. OTT  
c/o Jeffrey S. DuBois  
210 McCracken Run Road  
DuBois, PA 15801

Date: August 1, 2008

  
Matthew P. Rosenberg

1 IN THE COURT OF COMMON PLEAS OF  
 2 CLEARFIELD COUNTY, PENNSYLVANIA  
 3 ROCKSTONE CAPITAL, LLC.,  
 4 as successor to Bank of  
 America, N.A., successor to  
 5 Fleet National Bank  
 5510 Edson Lane  
 Rockville, MD 20852,  
 PLAINTIFF  
 6  
 7 VS. NO: 07-2137-CD  
 8  
 9 CENTURY MANUFACTURING  
 10 SERVICES, INC.  
 11 473 Treasure Lake  
 12 DUBOIS, PA 15801,  
 AND  
 13 JAMES A. OTT  
 14 473 Treasure Lake  
 15 DUBOIS, PA 15801  
 DEFENDANT  
 16  
 17 DEPOSITION OF: JAMES A. OTT  
 18 TAKEN BY: PLAINTIFF  
 19 BEFORE: HEATHER GOSS BORING  
 20 NOTARY PUBLIC  
 21 DATE: SEPTEMBER 12, 2008  
 22 10:08 A.M.  
 23 PLACE: LEE, GREEN & REITER  
 24 115 EAST HIGH STREET  
 25 STATE COLLEGE, PA 16801  
 APPEARANCES:  
 26 KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS, LLP  
 27 ANTHONY P. TABASSO, ESQUIRE  
 28 260 South Broad Street  
 29 Philadelphia, PA 19102  
 APPEARING ON BEHALF OF THE PLAINTIFF  
 30  
 31 LAW OFFICE OF JEFFREY DUBOIS  
 32 JEFFREY A. DUBOIS, ESQUIRE  
 33 210 McCracken Run Road  
 34 DUBOIS, PA 15801  
 APPEARING ON BEHALF OF THE DEFENDANT  
 BORING COURT REPORTING (814) 364-1793

**COPY**

1 STIPULATION  
 2  
 3 It is hereby stipulated by and between  
 4 counsel for the respective parties that reading,  
 5 signing, sealing, certification, and filing are  
 6 waived, and that all objections except as to the form  
 7 of the question are reserved to the time of trial.  
 8

9 JAMES A. OTT, called as a witness, being  
 10 sworn, testified as follows:

11 EXAMINATION

12 BY MR. TABASSO:

13 Q Mr. Ott, good morning.  
 14 A Good morning.  
 15 Q We met briefly when you first came in this  
 16 morning. My name is Anthony Tabasso. I'm an  
 17 attorney representing Rockstone Capital today in an  
 18 action that is pending in Clearfield County against  
 19 Century Manufacturing Services and you individually.  
 20 We're here today to take your deposition in  
 21 connection with that action.  
 22 Before we get started, let me ask you, have  
 23 you ever had your deposition taken before?  
 24  
 25 BORING COURT REPORTING (814) 364-1793

BORING COURT REPORTING (814) 364-1793

INDEX

TESTIMONY OF EXAMINATION  
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 By Mr. Tabasso: 3  
 By Mr. DuBois: --

EXHIBITS  
PRODUCED  
DEPOSITION EXHIBITS AND MARKED  
 1 - Settlement and Release Agreement 33  
 (Retained By Attorney Tabasso.)

1 A No.  
 2 Q Okay. As you see, we have a court reporter  
 3 here with us today and what she's going to be doing  
 4 is taking down everything that everybody in the room  
 5 says. Taking down every question I ask, every answer  
 6 you give, every objection that your lawyer makes.  
 7 Because she is transcribing this, it is  
 8 very important that no one talks over anyone else.  
 9 So let me finish my question even if you know what  
 10 it's going to be and you know what the answer is  
 11 before you start your answer. Likewise, I will try  
 12 not to cut you off when I know what your answer is  
 13 going to be. It makes it easier on the court  
 14 reporter.  
 15 It's also important that you don't nod your  
 16 head, yes to a question or shake your head "no" to us.  
 17 Because even though I can see you and I know what you  
 18 mean, sooner or later a judge will be reading this  
 19 somewhere and they can't transcribe a nod of the head  
 20 "yes" or a shake of the head "no". They need to have  
 21 a verbal response. If you don't understand a  
 22 question, let me know. I'll try and rephrase it for  
 23 you. If you answer the question, I will assume that  
 24 you've understood it. Do you have any questions for  
 25 me before we get started?

4

BORING COURT REPORTING, INC. (814) 364-1793

BORING COURT REPORTING (814) 364-1793

It was over -- everything probably cost 20. I mean for some -- to go out of pocket it was...

I had a press I had to buy. I had to buy a lot of tooling and so forth. This was -- it was custom made. I was presented a product. They said, can you make this? I said, well, I could but I would need to design and build a system whereby we could run production. And so I needed a press, something with a flywheel. But everything else was an add-on. It was something of my own design and, you know, I couldn't finance something like that.

Q Sure.

A It needed to be designed, built custom and it had to be financed just, you know, with dollars. And so I went out of pocket for that.

Q Okay. When you first opened the doors at Century Manufacturing you go, you form this corporation, you go and you rent the space?

A Uh-huh.

Q Do you put any fixed sum of money into the company on day one?

A Yes, I did.

Q How much?

A \$35,000.

Q What did that get used for?

BORING COURT REPORTING, INC. (814) 364-1793

A I had to make enhancements to the building, the electrical right away. I had to buy an air compressor. I had to buy, you know, initially I had to purchase, you know, materials and so forth. And I had to buy tooling to run the press. I had to buy what I call accessories for those type of operations, lubricants, you know, oils, solvents, supplies, just general business supplies. And then also supplies and accessories and things that are, you know, purchased for the specific operation for what I was doing specifically.

Q All right. Did there come a time when Century approached Fleet Bank about a loan?

A No. Fleet approached me.

Q Fair enough. How did that happen?

A Many, many phone calls.

Q Just out of the blue?

A Out of -- well, out of the blue or I must have been -- I don't know how they got my name. But there were a lot of phone calls soliciting me to take out a loan.

Q Were they if you can recall, did the calls from somebody national or was there a local Fleet branch or Sally at the Fleet branch was calling you?

A I'm not aware of that.

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1 Q It was nobody you knew?  
2 A Nobody that I knew personally from other  
3 dealings.

4 Q I want to make sure I understand that. Are  
5 you saying nobody you knew personally from other  
6 dealings or nobody you knew personally but you knew  
7 them from other dealings?

8 A I knew no one from the Fleet organization.

9 Q Okay. So they make these solicitation  
10 phone calls to you and say hey, we got, presumably  
11 they say we got some loan product. Come and borrow  
12 money from us. At some point you make the decision  
13 the business could use some working capital?

14 A Uh-huh.

15 Q Use some money?

16 A (Witness nods head.)

17 Q That is a nod of the head. You're not  
18 allowed to give her --

19 MR. DUBoIS: Yes or no.

20 A Yes, yes. Sorry.

21 BY MR. TABASSO:

22 Q You put a call in to whoever had been  
23 speaking to you about this to get the details about  
24 how to set it up?

25 A Fleet would have customer service

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1 representatives calling my business, and often. It  
2 was probably during one of those numerous phone  
3 conversations that I probably said, well, sure, I can  
4 could use -- as long as it's a corporate debt, I'm  
5 okay with it. I don't want to extend myself  
6 personally. That is the message that I made clear to  
7 them in those days. I could have used some working  
8 capital or some backup, but I wasn't actively  
9 soliciting it. They were calling me and I thought  
10 well, if this is the way -- if this is what they are  
11 presenting to me, I am interested, but only if it's  
12 in the name of Century.

13 Q All right. Now, in your mind was this loan  
14 going to be a line of credit that you could draw down  
15 on as you needed it, or were they going to give you a  
16 check for a fixed sum on the first day?

17 A I don't recall what I was thinking about at  
18 that given time. To answer that question, I don't  
19 know.

20 Q That is fair. Did there come a time when  
21 you closed on the loan or you sat down and signed the  
22 loan documents somewhere?

23 A Those documents or that document was  
24 basically just a fax copy, and I faxed them back.

25 Q So there was no specific closing where you

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went to a bank branch somewhere and sat down?

A Correct.

Q They sent you a document, you signed it and sent it back?

A Correct.

Q Do you have copies of the document?

A I searched for those and I believe I do have them but they are in storage -- if I do have them they are in storage behind a lot of personal things. And I couldn't dig everything out. Most everything I had then, I kept. There was a good deal that I threw away because the business is no more. I don't have the space to store things like I did.

Q But you think you do have, that particular documentation you might have saved?

A I know I had a Fleet file.

Q Okay. All right.

A If I have the Fleet file, I have the Fleet document.

Q As you sit here today, do you remember what else would have been in that Fleet file?

A Well, I sent you a letter of introduction. I mean, most anything with the Fleet letterhead on it I put in there, and statements, et cetera.

MR. TABASSO: Let's go off the record for a

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second.

(Discussion held off record.)

MR. TABASSO: I've spoken to Mr. DuBols about the, what we're calling the Fleet file for the purposes of today. And he's assured me that his client will search through his storage, attempt to locate it if he still has it. And if he does have it, he will produce it.

BY MR. TABASSO:

Q So you signed the documents that they faxed to you, and you faxed them back?

A Yes.

Q Now --

A I didn't -- I put Century was the -- the loan.

MR. DuBOIS: Just use whatever words you like.

A Century signed it by.

BY MR. TABASSO:

Q I understand that that is your position in the litigation. But the question I'm asking you is, when the document was signed the pen was in your physical hand, nobody else signed it?

A That is true. I was signing it as President of Century Manufacturing.

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1 Q I understand that. But nobody else, nobody else put their name or their ink on the piece of paper?

4 A True.

5 Q And this part you are going to have to 6 explain to me because I frankly have no idea. Once 7 that happens and you signed that document, how does 8 the process work for you having access to the loan 9 and making use of it?

10 A I do believe unless it was -- I do believe 11 that they actually gave you checks, too.

12 Q Sometimes these loans work where they give 13 you checks, other times they give you a credit card, 14 other times you get a check from them in the mail and 15 you just put it in the corporate account. I'm not 16 sure, I didn't know which situation this --

17 A Well, it wasn't a corporate check. It 18 wasn't a corporate check such at that, such as you 19 described.

20 Q So you think you got, you got checks to 21 draw on a line of credit?

22 A Yes, I did. I'm almost, I can say with 23 like 80 percent certainty. I know that there was 24 one, if it wasn't -- I did have a couple of accounts 25 similar to this and they were paid off. Some of them

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1 had those checks. And they weren't shy about sending 2 you those checks either.

3 Q No.

4 A If I could say something in addition to 5 what you have been asking. Around the time that I 6 did sign, get involved with Fleet, these companies 7 were very active and very aggressive in soliciting me 8 for loans. I would be in the shop and the phone 9 would ring. I had to get it. It could have been a 10 customer. It could have been something that was 11 important to my business. But around that period 12 more often than not it was a financial institution 13 trying get, trying to solicit loans. And they came 14 all the time.

15 Q But at that point in your career, you 16 understood what a loan was?

17 A Of course.

18 Q Nobody from Fleet came knocking on the door 19 with a big burly guy saying you got to sign this or 20 bad things are going to happen?

21 A No.

22 Q You mentioned about two minutes ago in 23 passing, you said I had other accounts like this that 24 were all paid off.

25 A Uh-huh.

BORING COURT REPORTING, INC. (814) 364-1793

**KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP**

By: Anthony P. Tabasso / Matthew P. Rosenberg  
I.D. Nos.: 80851 / 201485  
260 South Broad Street  
Philadelphia, PA 19102  
(215) 568-6060

ATTORNEYS FOR PLAINTIFFS

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

CIVIL ACTION NO.: 07-2137-CD

Defendants.

**CERTIFICATE OF SERVICE**

I, Matthew P. Rosenberg, hereby certify that true and correct copies of the Motion to  
Compel Discovery Responses and proposed order have been served upon the following parties  
via First Class U.S. Mail on January 30<sup>th</sup>, 2009:

Jeffrey S. DuBois, Esq.  
210 McCracken Run Road  
DuBois, PA 15801

KLEHR, HARRISON, HARVEY,  
BRANZBURG & ELLERS LLP

By: 

Matthew P. Rosenberg  
Attorneys for Plaintiff  
ROCKSTONE Capital, LLC

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

CIVIL ACTION NO.: 07-2137-CD

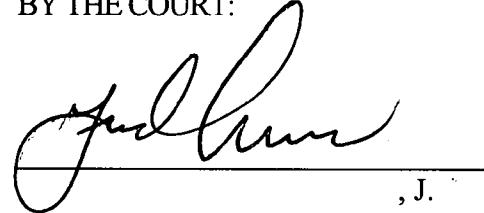
ORDER

AND NOW, this 2nd day of Feb, 2009, upon Motion of the plaintiff ROCKSTONE Capital, LLC ("ROCKSTONE") to compel defendant James A. Ott to respond to Plaintiff's requests for the production of documents and things, the defendant, James A. Ott, is hereby ORDERED to respond to Plaintiff's requests for the production of ~~fifteen (15)~~ <sup>twenty (20)</sup> documents and things at the office of Plaintiff's counsel within ~~fifteen (15)~~ days from the date of this Order.

It is further ORDERED that Defendant is required to reimburse Plaintiff for the fees and expenses incurred in bringing its motion to compel and obtaining this Order.

Failure to comply may subject Defendant to further sanctions.

BY THE COURT:

  
\_\_\_\_\_, J.

FILED 2ce  
01/09/2009  
FEB 02 2009 Amy Tabasso

S William A. Shaw  
Prothonotary/Clerk of Courts (610)

**FILED**

**FEB 02 2009**

**William A. Shaw**  
**Prothonotary/Clerk of Courts**

**DATE: 2/2/09**

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

ROCKSTONE CAPITAL, LLC, : No. 07-2137-CD  
As successor to Bank of America, N.A., :  
Successor to Fleet National Bank :  
5510 Edson Lane :  
Rockville, MD 20852, :  
Plaintiff :  
Vs. :  
CENTURY MANUFACTURING SERVICES, : Filed on Behalf of:  
INC. : DEFENDANTS  
473 Treasure Lake :  
DuBois, PA 15801 : Counsel of Record for This Party:  
And : Jeffrey S. DuBois, Esquire  
JAMES A. OTT : Supreme Court No. 62074  
473 Treasure Lake : 210 McCracken Run Road  
DuBois, PA 15801, : DuBois, PA 15801  
Defendants : (814) 375-5598

S FILED ICC Atty  
010.47cm DuBois  
FEB 17 2009  
William A. Shaw  
Prothonotary/Clerk of Courts

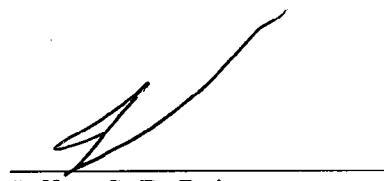
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

ROCKSTONE CAPITAL, LLC, : No. 07-2137-CD  
As successor to Bank of America, N.A., :  
Successor to Fleet National Bank :  
5510 Edson Lane :  
Rockville, MD 20852, :  
Plaintiff :  
Vs. :  
CENTURY MANUFACTURING SERVICES, :  
INC. :  
473 Treasure Lake :  
DuBois, PA 15801 :  
And :  
JAMES A. OTT :  
473 Treasure Lake :  
DuBois, PA 15801, :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 17<sup>A</sup> day of February, 2009, I served a true and correct copy of the within Defendants Response to Defendant's Request for Production of Documents by first class mail, postage prepaid, on the following:

Matthew Rosenberg, Esquire  
260 South Broad Street  
Philadelphia, PA 19102

  
\_\_\_\_\_  
Jeffrey S. DuBois

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

Rockstone Capital, LLC  
(Plaintiff)

CIVIL ACTION

5510 Edson Lane  
(Street Address)  
Rockville, MD 20852  
(City, State ZIP)

No. 07-2137-CD

Type of Case: Civil

Type of Pleading: Civil Trial/Certificate of Readiness

VS.

Century Manufacturing Services and James A. Ott  
(Defendant)

473 Treasure Lake  
(Street Address)  
DuBois, PA 15801  
(City, State ZIP)

Filed on Behalf of:

Plaintiff  
(Plaintiff/Defendant)

FILED ACC A/H  
MAY 10:51 AM Tabasso  
MAY 27 2010  
S (60)

William A. Shaw  
Prothonotary/Clerk of Courts

Anthony P. Tabasso

(Filed by)  
Klehr Harrison Harvey Branzburg LLP  
1835 Market Street, 14th Floor  
Philadelphia, PA 19103

(Address)

(215) 569-2700

(Phone)

Anthony P. Tabasso  
(Signature)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Civil Trial Listing/Certificate of Readiness

Plaintiff(s): Rockstone Capital, LLC \_\_\_\_\_ Case Number: 07-2137-CD  
\_\_\_\_\_  
\_\_\_\_\_

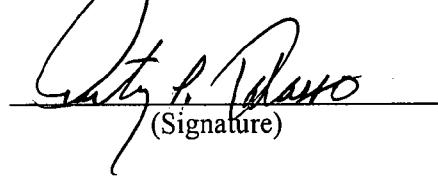
Defendant(s): Century Manufacturing Services  
and James A. Ott  
\_\_\_\_\_

To the Prothonotary:

Arbitration Limit: \_\_\_\_\_  
Type Trial Requested:  Jury  Non-Jury  Arbitration  
Estimated Trial Time: \_\_\_\_\_

Jury Demand Filed By: \_\_\_\_\_  
Date Jury Demand Filed: \_\_\_\_\_

Please place the above-captioned case on the trial list. I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

  
(Signature)

May 25, 2010

(Date)

For the Plaintiff: Anthony P. Tabasso 215-569-2700 Telephone Number

For the Defendant: \_\_\_\_\_ Telephone Number

For Additional Defendant: \_\_\_\_\_ Telephone Number

Certification of Current Address for all parties or counsel of record:

Name: <u>Jeffrey S. DuBois</u>	Address: <u>210 McCraken Run Rd.</u>	City/State/Zip: <u>DuBois, PA 15801</u>
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

ROCKSTONE CAPITAL, LLC

vs.

No. 2007-2137-CD

CENTURY MANUFACTURING SERVICES  
and JAMES A. OTT

**ORDER**

AND NOW, this 28<sup>th</sup> day of May, 2010, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for Thursday, June 24, 2010 at 11:00 A.M. in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

FILED  
0140087  
JUN 01 2010

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atty's:  
Tabasso  
Rosenberg  
DeBois

(60)

FILED

JUN 01 2010

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 6/1/10

       You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

       Plaintiff(s)  Plaintiff(s) Attorney        Other

       Defendant(s)  Defendant(s) Attorney

       Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

ROCKSTONE CAPITAL, LLC,  
Plaintiff

vs.

NO. 07-2137-CD

CENTURY MANUFACTURING SERVICES  
and JAMES A. OTT,  
Defendants

FILED

5 JUN 25 2010

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William A. Shaw

Prothonotary/Clerk of Courts

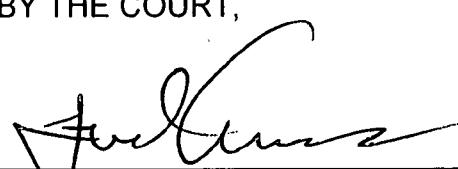
ENT to TABASSO Rosenthal  
& Dubois

ORDER

NOW, this 24<sup>th</sup> day of June, 2010, following Pre-Trial Conference with counsel for the parties and the Court, it is the ORDER of this Court that a Non-Jury Trial is scheduled for one-half (1/2) day, on the **7th day of September, 2010** commencing at 1:30 p.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

Copies of any exhibits to be used during trial shall be provided to opposing counsel no later than 30 days prior to the trial date.

BY THE COURT,

  
FREDERIC J. AMMERMAN  
President Judge

CA

**FILED**

JUN 25 2009

William A. Sorenson  
Prothonotary/Clerk of Courts

DATE: 6-25-10

You are responsible for serving all appropriate parties.  
The Prothonotary's Office has provided service to the following parties:

- Plaintiff(s)
- Plaintiff(s) Attorney
- Defendant(s)
- Defendant(s) Attorney
- Other
- Special Instructions:

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

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M 10:46 Shectman  
APR 21 2011

William A. Shaw  
Prothonotary/Clerk of Courts

CIVIL ACTION NO.: 07-2137-CD

**CERTIFICATE OF SERVICE**

I, Scott P. Shectman, hereby certify that a true and correct copy of Plaintiff's Motion to Enforce Settlement Agreement has been served upon the following parties via First Class U.S. Mail on April 20, 2011:

Jeffrey S. DuBois, Esq.  
210 McCracken Run Road  
DuBois, PA 15801  
Attorney for Defendants



\_\_\_\_\_  
Scott P. Shectman

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

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Tabasso  
M 10:51 am  
APR 21 2011  
(6K)

William A. Shaw  
Prothonotary/Clerk of Courts

CIVIL ACTION NO.: 07-2137-CD

**PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT**

The plaintiff, ROCKSTONE Capital, LLC ("ROCKSTONE"), through its undersigned counsel, submits the instant motion seeking the enforcement of a settlement agreement entered into with defendants Century Manufacturing Services, Inc. ("Century") and James Ott (collectively as the "Defendants"), and in support of the Motion avers as follows:

1. ROCKSTONE filed a complaint against Defendants in this Court on December 31, 2007 based on Defendants' defaults under various loan documents.
2. ROCKSTONE filed an amended complaint on March 6, 2008.
3. Defendants filed an answer with new matter to the amended complaint on April 22, 2008.
4. A trial was subsequently scheduled for September 7, 2010.
5. Shortly before the scheduled trial, on or about September 3, 2010, ROCKSTONE and Defendants agreed to settle the above-captioned action with Defendants making a lump sum payment of \$8,000.00 to ROCKSTONE. All material terms of the settlement were agreed to by the parties.
6. The terms of the agreed upon settlement were thereafter memorialized in a

Settlement Agreement and Mutual Release ("Settlement Agreement") that ROCKSTONE's counsel sent to Defendants' counsel for Defendants' execution. The Settlement Agreement provided, inter alia, that Defendants pay ROCKSTONE a lump sum payment of \$8,000.00 (via cashier's check, bank check or wire transfer) by November 2, 2010. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit "A" and incorporated herein.

7. Based upon the parties' agreement to settle the above-captioned action pursuant to the terms set forth in the Settlement Agreement, the parties informed the Court on September 3, 2010, that they had reached a settlement agreement and to take the matter off the Court's trial list.

8. However, Defendants did not execute the Settlement Agreement and have offered no explanation for their refusal to do so.

9. Despite repeated efforts and requests of ROCKSTONE's counsel (*i.e.*, numerous telephone calls and emails to Defendants' counsel) and the passage of eight months since Defendants agreed to the settlement, Defendants have refused to fully execute the Settlement Agreement and make the agreed upon \$8,000.00 payment.

10. Defendants have never objected to the Settlement Agreement's terms. Rather, Defendants have simply ignored ROCKSTONE's attempts to get Defendants to honor their agreement and execute the Settlement Agreement.

11. Defendants failure and refusal to consummate the Settlement Agreement and make the \$8,000.00 payment constitutes a default and breach of the Settlement Agreement.

12. By virtue of the foregoing, a valid and enforceable settlement Agreement exists between ROCKSTONE and Defendants

13. Accordingly, ROCKSTONE requests this Court to enforce the Settlement

Agreement based upon the terms therein and enter an order directing Defendants to properly execute and have notarized the Settlement Agreement as agreed and to pay ROCKSTONE the sum of \$8,000.00, plus interest at the legal rate from and after November 2, 2010, until the date the settlement sum is paid.

14. ROCKSTONE's counsel sought concurrence for the relief requested in the instant Motion from Defendants' counsel but such concurrence was denied.

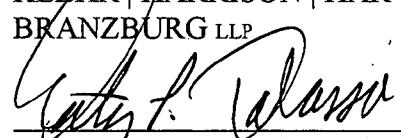
WHEREFORE, ROCKSTONE Capital, LLC requests this Court to enter an Order in the form attached hereto, compelling Defendants' performance of the Settlement Agreement and entering judgment against Defendants, jointly and severally, in the amount of \$8,000.00, plus interest, and such other relief as the Court deems just and proper.

Dated: April 20, 2011

Respectfully submitted,

KLEHR | HARRISON | HARVEY |  
BRANZBURG LLP

By:

  
Anthony P. Tabasso (80851)  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103  
Phone: (215) 569-2700  
Facsimile: (215) 568-6060  
*Attorneys for Plaintiff*  
*ROCKSTONE Capital, LLC*

# **EXHIBIT A**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is entered into this \_\_\_\_ day of September, 2010 by and between ROCKSTONE Capital, LLC ("ROCKSTONE"), James A. Ott ("Ott"), individually, and Century Manufacturing Services, Inc. ("Century") (Ott and Century are collectively referred to as "OBLIGOR").

### BACKGROUND

A. On or about January 24, 2005 Fleet National Bank ("Fleet") agreed to lend to Century the principal amount of \$29,500.00 (the "Loan"), which Loan is evidenced by a certain Promissory Note (the "Note") dated January 24, 2005, executed and delivered to Fleet by Century and which Rockstone contends that Ott guarantied (the "Guaranty"). The Loan, Note, and Guaranty have been assigned to ROCKSTONE.

B. On December 31, 2007, ROCKSTONE commenced an action against the OBLIGOR in Clearfield County bringing claims for breach of contract and unjust enrichment for the OBLIGOR'S alleged failure to repay the note (the "Lawsuit"). The Lawsuit was docketed at ROCKSTONE Capital, LLC v. Century Manufacturing Services, Inc. and James A. Ott, Clearfield Co. Civil Action No. 07-2137-CD.

C. The Obligor has denied all liability to Rockstone.

D. Without any admission of liability, the parties have agreed to settle their dispute and the Lawsuit as follows:

### AGREEMENT

1. On or before November 2, 2010, the OBLIGOR shall pay to ROCKSTONE the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) (the "Payment") via bank check, cashier's check, or wire transfer.

2. Within 10 business days of receipt of the Payment, ROCKSTONE will file a praecipe to Settle, Discontinue, and End the Lawsuit With Prejudice with the Clearfield County Court of Common Pleas.

3. The undersigned OBLIGOR (on behalf of their successors, affiliates, heirs and assigns), hereby remises, releases and forever discharges ROCKSTONE and all of its members and ROCKSTONE and its members' agents, heirs, executors, administrators, trustees, beneficiaries, subsidiaries, affiliates, successors and assigns as well as any of ROCKSTONE's predecessors in interest (including Bank of America, Fleet National Bank, and its predecessors/successors) and any prior holder of the loan documents (all of these parties hereby referred to as "RELEASEE") from all and any manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, decrees, extents, execution, claims, and demands whatsoever, in law or in equity or

otherwise which, against RELEASEE, OBLIGOR (and their successors, affiliates and assigns) ever had, now have or may have by reason of any cause or thing relating directly or indirectly to or arising from the Loan, Note, and Guaranty. The parties acknowledge that the Payment must be actually received by ROCKSTONE on or before November 2, 2010 or ROCKSTONE's obligation to release OBLIGOR under the terms of this Settlement Agreement and Mutual Release shall be voidable at the option of ROCKSTONE.

---

4. ~~FOR GOOD AND VALUABLE CONSIDERATION~~, the receipt and sufficiency whereof are hereby acknowledged, as long as neither of the OBLIGOR files for Bankruptcy protection or becomes the subject of any bankruptcy proceeding or seek protection from creditors within 105 days after the date the Payment actually clears ROCKSTONE's bank, then, the undersigned, ROCKSTONE (and its members, agents, attorneys, trustees, beneficiaries, successors, affiliates and assigns) hereby remise, release and forever discharge OBLIGOR and his/its employees, agents, heirs, executors, attorneys, administrators, subsidiaries, affiliates, predecessors, successors and assigns of and from all and any manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, decrees, extents, execution, claims, and demands whatsoever, in law or in equity or otherwise, which against OBLIGOR, ROCKSTONE (and its members, agents, attorneys, successors, affiliates and assigns) ever had, now have or may have arising out of or related directly or indirectly to the collection of the Loan. Upon receipt of this fully executed Settlement Agreement and Mutual Release and the Payment in immediately available funds by ROCKSTONE, and provided that OBLIGOR does not file for Bankruptcy protection within 105 days after the date the Payment actually clears ROCKSTONE's bank, then ROCKSTONE shall have released OBLIGOR from his/its liability under the Loan.

5. If OBLIGOR files for bankruptcy protection, or becomes the subject of any bankruptcy proceeding or seeks protection from creditors within 105 days after the date the Payment actually clears ROCKSTONE's bank, then any release by ROCKSTONE of OBLIGOR shall not become effective and OBLIGOR shall remain liable for all amounts under the Loan (less any payments ROCKSTONE is legally entitled to retain) and OBLIGOR further agrees to be responsible for all legal fees and costs incurred by ROCKSTONE related directly or indirectly thereto.

6. The parties executing this Agreement represent and warrant, under penalties of perjury, that they have had the opportunity to consult with counsel regarding the transaction contemplated herein and further have obtained any and all requisite authority necessary to enter into this Settlement Agreement and Mutual Release without further action or approval.

7. This Settlement Agreement and Mutual Release shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

8. This is the entire agreement and may not be modified except by a signed writing by all parties. This Settlement Agreement and Mutual Release may be executed in counterparts. Facsimile signatures, or photocopies of signatures, shall be valid and binding as if they were original signatures.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first set forth above and represent and warrant that they have obtained all requisite and appropriate authority to enter into this transaction and to execute this Agreement in the capacity shown without further action or approval.

Attest:

ROCKSTONE CAPITAL, LLC

by: Union Financial Recovery LLC, it's manager  
by: ~~Union Financial Corporation, a member~~

By: \_\_\_\_\_ (Seal)

William B. Buland, Director of Asset Management

Attest:

CENTURY MANUFACTURING, INC.

By: \_\_\_\_\_ (Seal)

James A. Ott

Witness:

\_\_\_\_\_(Seal)

James A. Ott

Commonwealth of Pennsylvania

:

: SS

County of

:

Before me, the undersigned authority, a Notary Public in and for the county and state or other jurisdiction aforesaid, on this day personally appeared **James A. Ott**, President of Century Manufacturing, Inc., known to me to be the person whose name is subscribed to the foregoing instrument in the capacity shown, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Printed Name

Commonwealth of Pennsylvania :  
: SS  
County of :

Before me, the undersigned authority, a Notary Public in and for the county and state or other jurisdiction aforesaid, on this day personally appeared **James A. Ott**, individually, who is either personally known to me or has adequately identified him at the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Printed Name

State of :  
: SS  
County of :

Before me, the undersigned authority, a Notary Public in and for the county and state or other jurisdiction aforesaid, on this day personally appeared **William B. Buland**, Director of Asset Management of Union Financial Corporation, a member of Union Financial Recovery, LLC, manager of ROCKSTONE CAPITAL, LLC, known to me to be the person whose name is subscribed to the foregoing instrument in the capacity shown, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Printed Name

CA

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY**

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

CIVIL ACTION NO.: 07-2137-CD

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2011, upon consideration of the Motion to Enforce Settlement Agreement ("Motion") of plaintiff, ROCKSTONE Capital, LLC ("ROCKSTONE"), and any response thereto, and after good cause being demonstrated, it is hereby

**ORDERED** that the Motion is **GRANTED**; and it is further

**ORDERED** that Century Manufacturing Services, Inc. ("Century") and James A. Ott ("Ott") (collectively as "Defendants") are directed to execute the Settlement Agreement and Mutual Release ("Settlement Agreement") in the form attached as Exhibit A to the Motion and forward it to ROCKSTONE's counsel within ten (10) days of the entry of this Order. If Defendants fail to do so, the Settlement Agreement will be specifically enforced against them and fully binding, without the need for signature or further Court order. And it is further

**ORDERED** that Defendants, jointly and severally, are directed to pay ROCKSTONE the sum of \$8,000.00, plus interest at the legal rate from and after November 2, 2010, until the date the settlement sum is paid, within ten (10) days of the date of this Order. In the event that

Defendants do not comply with this Order, upon certification of ROCKSTONE's counsel, judgment shall be entered by the Prothonotary against Defendants, jointly and severally, in the amount of \$8,000.00, plus interest at the legal rate from and after November 2, 2010, and at the judgment rate after the entry of judgment by the Prothonotary.

BY THE COURT:

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Fredric J. Ammerman, J.

CA

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

CIVIL ACTION NO.: 07-2137-CD

ORDER

AND NOW, this 21<sup>st</sup> day of April, 2011, upon consideration of Plaintiff's Motion to Enforce Settlement Agreement in the above matter, it is the Order of the Court that argument/hearing has been scheduled for the 21<sup>st</sup> day of JUNE, 2011 at 1:30 P M, in Courtroom No. 1, Clearfield County Courthouse Clearfield, PA.

BY THE COURT:

  
Judge

4/3/11  
S FILED 2cc  
APR 21 2011 Atty Tabasso  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

APR 21 2011

**William A. Shaw**  
Prothonotary/Clerk of Courts

DATE: 4/21/11

You are responsible for serving all appropriate parties.

The Prothonotary's Office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

RECEIVED

APR 21 2011

Court Administrator's

CIVIL ACTION NO.: 07-2137-CD

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT  
OF ITS MOTION TO ENFORCE SETTLEMENT AGREEMENT**

The plaintiff, ROCKSTONE Capital, LLC ("ROCKSTONE"), through its undersigned counsel, respectfully submits this memorandum of law in support of its motion to enforce the settlement agreement entered into with defendants Century Manufacturing Services, Inc. ("Century") and James Ott (collectively as the "Defendants").

**I. INTRODUCTION**

This motion presents a straight-forward application of Pennsylvania law to enforce a binding settlement agreement between ROCKSTONE and Defendants. As set forth below, the parties agreed upon a settlement which would have resolved the above-captioned action with a single lump-sum payment by Defendants to ROCKSTONE on November 2, 2010. However, Defendants failed to execute the settlement agreement they agreed to enter into and make the required payment. Even though the settlement agreement has not been executed by Defendants, under Pennsylvania law, there is no question that the factual record presented to the Court in connection with this motion is sufficient to create a binding agreement. As such, Defendants are

in breach of the settlement agreement. For these reasons, the Motion to Enforce the Settlement Agreement (“Motion”) should be granted.

**II. HISTORY OF THE CASE**

Century and Ott breached their obligations to ROCKSTONE under various loan documents by virtue of, *inter alia*, their failure to make payments as and when due. As a result of such defaults, ROCKSTONE filed a complaint against Defendants in this Court on December 31, 2007. ROCKSTONE filed an amended complaint on March 6, 2008. Defendants filed an answer with new matter to the amended complaint on April 22, 2008. A trial was subsequently scheduled for September 7, 2010.

Shortly before the scheduled trial, on or about September 3, 2010, ROCKSTONE and Defendants agreed to settle the above-captioned action with Defendants making a lump sum payment of \$8,000.00 to ROCKSTONE. All material terms of the settlement were agreed to by the parties. The terms of the agreed upon settlement were thereafter memorialized in a Settlement Agreement and Mutual Release (“Settlement Agreement”) that ROCKSTONE’s counsel sent to Defendants’ counsel for Defendants’ execution.<sup>1</sup> The Settlement Agreement provided, *inter alia*, that Defendants pay ROCKSTONE a lump sum payment of \$8,000.00 (via cashier’s check, bank check or wire transfer) by November 2, 2010.

Based upon the parties’ agreement to settle the above-captioned action pursuant to the terms set forth in the Settlement Agreement, the parties informed the Court on September 3, 2010, that they had reached a settlement and to take the matter off the Court’s trial list. However, Defendants did not execute the Settlement Agreement as they agreed they would and have offered no explanation for their refusal to do so. Despite repeated efforts and requests of ROCKSTONE’s counsel (*i.e.*, numerous telephone calls and emails to Defendants’ counsel ) and

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<sup>1</sup> A copy of the Settlement Agreement is attached hereto as Exhibit “A.”

the passage of eight months from the time Defendants agreed to the settlement, Defendants have refused to fully execute the Settlement Agreement and make the agreed upon \$8,000.00 payment.

Defendants have never even objected to the Settlement Agreement's terms. Rather, Defendants have simply chosen to shirk their obligations and ignore ROCKSTONE's attempts to get Defendants to honor their agreement and consummate the Settlement Agreement. Despite repeated efforts by ROCKSTONE to obtain Defendants' cooperation and performance of the settlement, Defendants have failed and refused to communicate at all. For these reasons, ROCKSTONE has filed this Motion to Enforce Settlement Agreement.

### **III. QUESTIONS PRESENTED**

(1) Whether the Court has broad discretion to enforce settlement agreements, such as the Settlement Agreement between the parties herein.

Suggested Answer: Yes.

(2) Whether the Settlement Agreement between ROCKSTONE and Defendants should be enforced when the Settlement Agreement embodies all of the material and essential terms of the settlement and Defendants have never objected to the terms.

Suggested Answer: Yes

### **IV. ARGUMENT**

#### **A. This Court Retains Broad Discretion To Enforce Settlement Agreements In The Interest Of Justice**

The Courts of Pennsylvania strongly favor settlements between the parties. *Mastroni-Mucker v. Allstate Insurance Co.*, 976 A.2d 510, 518 (Pa. Super. 2009) ("The law of this Commonwealth establishes that an agreement to settle legal disputes between parties is favored."). "Because settlement agreements reduce burdens on courts and expedite the transfer

of money into the hands of complainants, there is a strong judicial policy in favor of voluntarily settling lawsuits.” *Verizon Pennsylvania, Inc. v. Lynch*, 11 Pa. D. & C.5th 197 (Pa. Com. Pl. 2010). An agreement to settle a litigation matter pending in the Pennsylvania Courts is enforceable by the Courts. *See Kazanjian v. New England Petroleum Corp.*, 480 A.2d 1153, 1157 (Pa. Super. 1984).

“Settlement agreements are governed by principles of contract law.” *Verizon Pennsylvania*, 11 Pa. D. & C.5th at 197. Thus, “[i]f the requirements for a valid contract are met, a court must enforce the terms of the settlement agreement.” *Id.* “This is true even if the terms of the agreement are not yet formalized in writing.” *Mastroni-Mucker*, 976 A.2d at 518. As long as the parties agree on the essential terms of an agreement and intend to be bound by such terms, a contract for settlement of a matter is formed even though the parties intend to adopt a more formal document at a later date. *See, e.g., Courier Times, Inc. v. United Feature Syndicate*, 445 A.2d 1288, 1295 (Pa. Super. 1982) (“so long as the parties agree on essential terms which they intend to be binding, a contract is formed even though they intend to adopt a formal document with additional terms at a later date”). Even oral agreements to settle litigation matters are enforceable as long as the terms of the oral agreement are clearly spelled out. *Kazanjian*, 480 A.2d at 1157. Thus, under these standards, as long as it is apparent to the Court that the parties have agreed on essential terms to the settlement, the Settlement Agreement is enforceable.

**B. ROCKSTONE And Defendants Expressly Agreed To The Essential Terms Of The Settlement, As Embodied In The Settlement Agreement, And, As Such, The Settlement Agreement Should Be Enforced**

Here, there can be little question that ROCKSTONE and Defendants expressly agreed to settle this case under the provisions identified in the Settlement Agreement. The terms of the settlement, such as the amount of the settlement payment, timing of the payment and mutual releases upon receipt of the payment, which Defendants accepted in full, were agreed upon

between the parties and then formally memorialized in the Settlement Agreement. Indeed, there was an offer (*i.e.*, the settlement figure), acceptance of that offer by Defendants, and consideration (*i.e.*, the exchange of ROCKSTONE terminating the action and providing a release upon Defendants payment of \$8,000). The Settlement Agreement contains all of the requisites for a valid contract and, thus, the Court must enforce the terms of the agreement.

Further, Defendants never objected to or otherwise advised ROCKSTONE that the terms set forth in the Settlement Agreement were not consistent with the settlement with which defendants verbally agreed. Indeed, Defendants have never offered any explanation for their failure to consummate the Settlement Agreement. Further, there have never been any communications from Defendants suggesting that they did not intend to perform the settlement agreement.

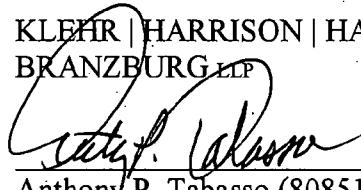
Despite Defendants' agreement to settle this action and the creation of a valid and enforceable Settlement Agreement, Defendants have completely failed to honor and satisfy their obligations under the Settlement Agreement. Under these circumstances, the liberal standards necessary to enforce settlement agreements in the Pennsylvania Courts have easily been met. There could be no question that the parties agreed on the essential terms of a settlement, that all of the requirements of valid contract have been established (*i.e.*, offer, acceptance and consideration) and that Defendants have simply refused to perform their contractual obligations and complete the settlement. Defendants' failure to execute a written settlement agreement does not preclude enforcement of the agreement in the Pennsylvania Courts, especially where there is no question that the essential terms set forth in the Settlement Agreement embody the agreement of the parties.

V. **CONCLUSION**

Based upon the foregoing, ROCKSTONE'S Motion to Enforce Settlement Agreement should be granted in its entirety.

Respectfully submitted,

KLEHR | HARRISON | HARVEY |  
BRANZBURG LLP

By: 

Anthony P. Tabasso (80851)  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103  
Phone: (215) 569-2700  
Facsimile: (215) 568-6060  
*Attorneys for Plaintiff*  
*ROCKSTONE Capital, LLC*

Dated: April 20, 2011

# **EXHIBIT A**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is entered into this \_\_\_\_ day of September, 2010 by and between ROCKSTONE Capital, LLC ("ROCKSTONE"), James A. Ott ("Ott"), individually, and Century Manufacturing Services, Inc. ("Century") (Ott and Century are collectively referred to as "OBLIGOR").

### BACKGROUND

A. On or about January 24, 2005 Fleet National Bank ("Fleet") agreed to lend to Century the principal amount of \$29,500.00 (the "Loan"), which Loan is evidenced by a certain Promissory Note (the "Note") dated January 24, 2005, executed and delivered to Fleet by Century and which Rockstone contends that Ott guarantied (the "Guaranty"). The Loan, Note, and Guaranty have been assigned to ROCKSTONE.

B. On December 31, 2007, ROCKSTONE commenced an action against the OBLIGOR in Clearfield County bringing claims for breach of contract and unjust enrichment for the OBLIGOR'S alleged failure to repay the note (the "Lawsuit"). The Lawsuit was docketed at ROCKSTONE Capital, LLC v. Century Manufacturing Services, Inc. and James A. Ott, Clearfield Co. Civil Action No. 07-2137-CD.

C. The Obligor has denied all liability to Rockstone.

D. Without any admission of liability, the parties have agreed to settle their dispute and the Lawsuit as follows:

### AGREEMENT

1. On or before November 2, 2010, the OBLIGOR shall pay to ROCKSTONE the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) (the "Payment") via bank check, cashier's check, or wire transfer.

2. Within 10 business days of receipt of the Payment, ROCKSTONE will file a praecipe to Settle, Discontinue, and End the Lawsuit With Prejudice with the Clearfield County Court of Common Pleas.

3. The undersigned OBLIGOR (on behalf of their successors, affiliates, heirs and assigns), hereby remises, releases and forever discharges ROCKSTONE and all of its members and ROCKSTONE and its members' agents, heirs, executors, administrators, trustees, beneficiaries, subsidiaries, affiliates, successors and assigns as well as any of ROCKSTONE's predecessors in interest (including Bank of America, Fleet National Bank, and its predecessors/successors) and any prior holder of the loan documents (all of these parties hereby referred to as "RELEASEE") from all and any manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, decrees, extents, execution, claims, and demands whatsoever, in law or in equity or

otherwise which, against RELEASEE, OBLIGOR (and their successors, affiliates and assigns) ever had, now have or may have by reason of any cause or thing relating directly or indirectly to or arising from the Loan, Note, and Guaranty. The parties acknowledge that the Payment must be actually received by ROCKSTONE on or before November 2, 2010 or ROCKSTONE's obligation to release OBLIGOR under the terms of this Settlement Agreement and Mutual Release shall be voidable at the option of ROCKSTONE.

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4. ~~FOR GOOD AND VALUABLE CONSIDERATION~~, the receipt and sufficiency whereof are hereby acknowledged, as long as neither of the OBLIGOR files for Bankruptcy protection or becomes the subject of any bankruptcy proceeding or seek protection from creditors within 105 days after the date the Payment actually clears ROCKSTONE's bank, then, the undersigned, ROCKSTONE (and its members, agents, attorneys, trustees, beneficiaries, successors, affiliates and assigns) hereby remise, release and forever discharge OBLIGOR and his/its employees, agents, heirs, executors, attorneys, administrators, subsidiaries, affiliates, predecessors, successors and assigns of and from all and any manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, decrees, extents, execution, claims, and demands whatsoever, in law or in equity or otherwise, which against OBLIGOR, ROCKSTONE (and its members, agents, attorneys, successors, affiliates and assigns) ever had, now have or may have arising out of or related directly or indirectly to the collection of the Loan. Upon receipt of this fully executed Settlement Agreement and Mutual Release and the Payment in immediately available funds by ROCKSTONE, and provided that OBLIGOR does not file for Bankruptcy protection within 105 days after the date the Payment actually clears ROCKSTONE's bank, then ROCKSTONE shall have released OBLIGOR from his/its liability under the Loan.

5. If OBLIGOR files for bankruptcy protection, or becomes the subject of any bankruptcy proceeding or seeks protection from creditors within 105 days after the date the Payment actually clears ROCKSTONE's bank, then any release by ROCKSTONE of OBLIGOR shall not become effective and OBLIGOR shall remain liable for all amounts under the Loan (less any payments ROCKSTONE is legally entitled to retain) and OBLIGOR further agrees to be responsible for all legal fees and costs incurred by ROCKSTONE related directly or indirectly thereto.

6. The parties executing this Agreement represent and warrant, under penalties of perjury, that they have had the opportunity to consult with counsel regarding the transaction contemplated herein and further have obtained any and all requisite authority necessary to enter into this Settlement Agreement and Mutual Release without further action or approval.

7. This Settlement Agreement and Mutual Release shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

8. This is the entire agreement and may not be modified except by a signed writing by all parties. This Settlement Agreement and Mutual Release may be executed in counterparts. Facsimile signatures, or photocopies of signatures, shall be valid and binding as if they were original signatures.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first set forth above and represent and warrant that they have obtained all requisite and appropriate authority to enter into this transaction and to execute this Agreement in the capacity shown without further action or approval.

Attest:

ROCKSTONE CAPITAL, LLC

by: Union Financial Recovery LLC, it's manager  
by: Union Financial Corporation, a member

By: \_\_\_\_\_ (Seal)

William B. Buland, Director of Asset Management

Attest:

CENTURY MANUFACTURING, INC.

By: \_\_\_\_\_ (Seal)

James A. Ott

Witness:

\_\_\_\_\_(Seal)

James A. Ott

Commonwealth of Pennsylvania

: SS

County of

:

Before me, the undersigned authority, a Notary Public in and for the county and state or other jurisdiction aforesaid, on this day personally appeared **James A. Ott**, President of Century Manufacturing, Inc., known to me to be the person whose name is subscribed to the foregoing instrument in the capacity shown, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Printed Name

Commonwealth of Pennsylvania

: SS

County of

Before me, the undersigned authority, a Notary Public in and for the county and state or other jurisdiction aforesaid, on this day personally appeared **James A. Ott**, individually, who is either personally known to me or has adequately identified him at the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Printed Name

State of

:  
: SS

County of

Before me, the undersigned authority, a Notary Public in and for the county and state or other jurisdiction aforesaid, on this day personally appeared **William B. Buland**, Director of Asset Management of Union Financial Corporation, a member of Union Financial Recovery, LLC, manager of ROCKSTONE CAPITAL, LLC, known to me to be the person whose name is subscribed to the foregoing instrument in the capacity shown, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Printed Name

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

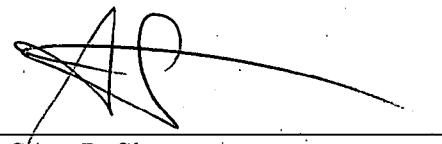
Defendants.

CIVIL ACTION NO.: 07-2137-CD

**CERTIFICATE OF SERVICE**

I, Scott P. Shectman, hereby certify that a true and correct copy of Plaintiff's Memorandum of Law in Support of Its Motion to Enforce Settlement Agreement has been served upon the following parties via First Class U.S. Mail on April 20, 2011:

Jeffrey S. DuBois, Esq.  
210. McCracken Run Road  
DuBois, PA 15801  
Attorney for Defendants



Scott P. Shectman

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CIVIL ACTION NO.: 07-2137-CD

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

**PRAECIPE TO DISCONTINUE ACTION**

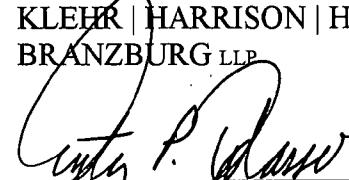
TO THE PROTHONOTARY:

Kindly mark the above-captioned action as settled, discontinued and ended.

Respectfully submitted,

KLEHR | HARRISON | HARVEY |  
BRANZBURG LLP

By:

  
Anthony P. Tabasso (80851)  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103  
Phone: (215) 569-2700  
Facsimile: (215) 568-6060  
Attorneys for Plaintiff  
ROCKSTONE Capital, LLC

Dated: June 10, 2011

**FILED** *M12:3730V* <sup>NOCC</sup>  
JUN 13 2011 *(66)*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

ROCKSTONE CAPITAL, LLC, as successor to  
Bank of America, N.A., successor to Fleet  
National Bank,

Plaintiff,

v.

CENTURY MANUFACTURING SERVICES,  
INC. and JAMES A. OTT,

Defendants.

CIVIL ACTION NO.: 07-2137-CD

**CERTIFICATE OF SERVICE**

I, Scott P. Shectman, hereby certify that a true and correct copy of the foregoing Praeclipe to Discontinue Action has been served upon the following parties via First Class U.S. Mail on June 10, 2011:

Jeffrey S. DuBois, Esq.  
210 McCracken Run Road  
DuBois, PA 15801  
Attorney for Defendants



\_\_\_\_\_  
Scott P. Shectman