

Expert Witness Report
Gerald Fritts

Thorco Inc
vs
Whitefish Credit Union

February 2022

Gerald M. Fritts

234 Shelter Valley Drive, gmf@acshf.com
Kalispell MT 59901 (406) 235-6593

Summary: Demonstrable expertise in Development Strategy for Rural Affordable Housing Programs, Opportunity Zone Programs, Low Income Housing Tax Credits, Project Funding Methods and New Market Tax Credits

Executive Director, ACSHF **2003 – present**

Low Income Housing Consultant / President, Evergreen International, Inc. **1986 – present**

- Own, Operate and Develop low and moderate-income housing throughout North America.
- Coordinate funding using mostly USDA 515 loans, as well as Low Income Housing Tax Credits. Current projects include 24 up to 74-unit properties, with and without rental assistance, serving seniors and the disabled, along with occasional high feasibility family projects.
- Created first All Native American Housing Bond (privately placed with Fannie Mae enhancement)
- Started Evergreen International, Inc., which provides financial consulting for projects primarily located in rural America. Affiliated with Allied Mortgage Capital Corp. (Houston, TX) in same time period.
- Produced over \$190 million in Section 538 USDA Multifamily loans, by pioneering the use of Low Income Housing Tax Credits in partnership with Native American Reservations and securing USDA, and HUD, loan guarantees.
- Originated over 50% of all Section 184 loans in the nation (from 1986 to 2007)

Executive Vice President **1982 – 1986**
Puget Sound National Mortgage Kirkland, WA

- Managed 57 loan officers and staff; sold company to Puget Sound National Bank.
- Began origination of Native American Trust Loans

Executive Vice President **1972 – 1982**
Columbia Pacific Mortgage Corp. Richland, WA

- Managed 5 offices in 4 Western states / 2nd year 'before tax' income \$1,000,000
- Marketed both commercial and residential loans

Asset Management **1966 – 1972**
International Business Machines (IBM) Spokane, WA

- Accounts GSA Collection

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Accomplishments

Projects and Funding: Grants – Loans with minimal requirement to be repaid

1992 - 6.5 million (Tribal)	2015 - .4 million Nevada HOME
1993 - 4.3 Million (Tribal)	2015 - Utah 3.1 million LIHTC
1996 - 17.2 Million (Tribal)	2015 - Utah 2.7 million LIHTC
1998 - 12.4 Million (30% Tribal)	2015 - 17K grant - Lake County, MT
2001 - 4.0 Million (Low Income Housing)	2016 - 300K Montana Coal Board - NCMA
2005 - 6.2 Million (Low Income Housing)	2016 - .4 million Olene Walker Trust
2006 - 7.8 Million (Tribal)	2016 - .46 million Olene Walker Trust
2008 - 6.8 Million (Biodiesel)	2017 - Summerhill 1 & 2 ~ 2.6 million loan/800K grant
2011 - 480 Million (Low Income Housing)	2018 - 400K Summerhill HOME
2011 - CBDG 1.2 Million	2018 - 440K Summerhill HOME
2012 - 33 million Alpena	2018 - USDA transfers (4)
2013 - 32 million RNFL	2019 - 400K Overton
2014 - 5 million Lincoln County LIHTC	Several since

States with completed projects: WA, OR, ID, MT, ND, CA, MS, FL, GA, SC, NC, AZ, NM, TX, NV, UT, CO

Education:

1964-1972 Whitworth College Spokane, WA
 B.A., Business Administration and History

Boards & Awards:

National Republican "Business Man of the Year" 2003	Texas A&M – chair of the Advisory Board 2000-2007
ICA Mortgage "President's Club"	NorthStar (monitors research grants) 2005-2008
Allied Home Mortgage "President's Circle"	Oregon State University (Advisory Board) 1993-1999
HUD "2000 Best of the Best"	Pacific NW Archaeological Society – Chairman 1983-1993
ACSHF Executive Director	Willamette Savings and Loan Board Member, 1979-1982
IBM's Means Service Award – 23 Awards Innovation	

Contributions:

Speaker / or panel participant for: USDA Rural Development, Novogradac, HUD, Washington Housing Commission, Wisconsin Housing Finance Authority, Office of Native American Programs

References:

Stephen Wasserman, Developer - (770) 874-8800

Dan Garrett, WNC & Associates, Inc. – (515) 333-2537

EXPERT WITNESS REPORT OF GERALD FRITTS

(The information in this report spans three decades. There may be information in this report that some feel is not necessary, but others may greatly appreciate—depending on their education and expertise.)

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I. INTRODUCTION

I, Gerald Fritts, have been tasked by Dennis Thornton to prepare an Expert Witness Report in an ongoing matter involving: Thorco Inc. (aka Thorco), the shareholders of Thorco Inc., Dennis and Donna Thornton in Person, & Whitefish Credit Union (hereinafter WCU).

The Thornton's formed Thorco Inc. almost 30 years ago as a logging and land development company. Thorco regularly purchased large tracts of land with sufficient timber to harvest, which could lead to the development of the land and produce a profitable outcome for Thorco. Thorco also purchased very large timber sales (State and Federal), along with and including other government contracts, to the extent that, Thorco was regularly bonded for more than 20 million dollars. I point these things out to illustrate that Dennis Thornton is no mere vagabond, having shown many times he can repay an obligation.

Most, if not all, of these contracts required the

borrowing of money. There is no indication that Thorco experienced any difficulties in repaying previous loans. I reviewed Thorco Inc.'s, & Dennis and Donna Thornton's credit report and transactions in aggregate; the creditors, reports and transactions state 'paid as agreed,' with the exception of Whitefish Credit Union.

As a premise, I look for inconsistencies and deviations from standard practice and procedures, this report will highlight some of these issues within this case. The intended use of this Expert Witness Report is to be a guideline for law enforcement, regulatory agencies, oversight committees, and for any varied & yet unnamed reasons.

In drafting and crafting this report, every effort was made to align and bring it into compliance with the Federal Rules of Procedure, Rule 26, and Federal Rules of Evidence.

The expressions contained within this report are formed by my experience and opinions and should not be construed as conclusions otherwise separate from that expertise. My opinions are based on my education, training,

and industry related work. By my very nature, any of my opinions will be based purely on the facts as I know them. Therefore, my work contained within, will be presented as such.

II. Disclosure

For the sake of transparency, let it be known I am being compensated for this report.

III. CONTROVERSY HISTORY AND ANALYSIS

November 2, 1992, Dennis and Donna Thornton formed Thorco Inc. as a Subchapter S Montana Corporation for the purpose of logging and land development.

November 11, 1992 I found documentation showing that Thorco Inc. had a bonding line of \$26,300 through Western Surety.

March 29, 1993 In reviewing the documents, I found that Thorco Inc. purchased the subject property from Helen Marie Connor for \$1 million.

December 1, 1997 I found documentation showing that Thorco Inc. had an approved bonding limit of \$3,383,000 through Western Surety

July 23, 2003 I found documentation showing Thorco Inc. had a bonding limit of \$20,735,000.00 (twenty million seven hundred thirty- five thousand dollars) through Western Surety.



Analysis

(1) In the financial world, a bond is an irrevocable letter of credit the same as a blank check.

(2) In order for any corporation to obtain a bond of this amount, (a) a thorough review of the business history and financial transactions would have to be completed and (b) the transaction history would have to be exceptional and (c) there would have to be a proven need for such a large bonding line.

.....
I found documentation were loan officer Douglas Johnson stated the Thornton's had excellent credit.

July 17, 2013. Deposition of Doug Johnson by James Manley

Q. And you remember whether you received information indicating that the Thorntons had excellent credit and had an excellent relationship with Glacier Bank?

A. I believe both gentlemen gave them a positive reference.

Q. And in fact, in order to have a member loan or anything near the magnitude of \$3,000,000. It would require the borrower to have excellent credit and an excellent credit history?

Q. And did, they in fact, have that--

A. Correct.

May, 2006 Thorco Inc. took out an equity predevelopment loan against subject property with Glacier Bank in the amount of \$1,360,000.

.....
Exhibit (01)
.....

May, 2006 Thorco Inc. took out an equity predevelopment loan against subject property with Glacier Bank in the amount of \$1,360,000.

I found documentation showing that Glacier Bank submitted a loan request to Whitefish Credit Union on behalf of Thorco Inc. in the amount of \$7,200,000.

Exhibit (02)

February 16, 2009 I found an internal work document called Whitefish Credit Union Commercial Loan Worksheet prepared by loan officer Doug Johnson, WCU turned over in discovery that shows the collateral to be a 200-acre tract of land and a 300-acre tract of land with a combined as-is value of \$8,775,000 Dollars, prior to the WCU loan. The document lists, use of funds as third-party payoff, roadwork, utilities, landscaping, engineering and surveying, interest carry, and clearly states with no paved roads and no water system.

Exhibit (03)

.....
ANALYSIS

(3) This indicates that the construction loan was to be funded into two parts. The second half in the banking world is considered an unfunded commitment that lenders must honor. The second half (the unfunded commitment) was the method of repayment of the first half. Lenders often do this on jumbo loans so that the total amount is not reserved until needed to keep interest rates down. This was clearly a collateral-dependent loan meaning repayment was intended to come from the sale of the collateral, once developed. The amount of the first loan clearly did not provide the necessary funding to complete the development. Developers cannot sell their product until the work is complete or bonded. Lenders cannot make loans unless there is a method of repayment.

(4) WCU did not plan on funding the full \$7,200,000 request. As such, WCU is required to reject the loan request and send the file back. There is no indication that WCU ever rejected the request. This indicates that the method of repayment was a planned refinance, the second construction loan taking out the first construction loan.

.....

March 11, 2009 I found an approval letter with Whitefish Credit Union heading from member business loan officer Doug Johnson approving a loan to Thorco Inc. in the amount of \$3,360,000. It states in part, the following:

Whitefish Credit Union has approved your request for refinancing and infrastructure improvements on approximately 300 acres on Boone Road in Somers.

Whitefish Credit Union will subordinate its first lien position on the 200-acre tract up to an amount of \$500,000 without additional committee approval for income producing projects undertaken by the borrower.

Exhibit (04)



ANALYSIS

(5) the agreed-upon conditions of accepting this loan was based on, in part, as stated (Whitefish Credit Union will subordinate its first lien position on the 200-acre tract up to an amount of \$500,000 without additional committee approval for income producing projects undertaken by the borrower.) If those terms are violated or breached the whole entire loan is in question.

(6) I reviewed the title report and there is no indication that this subordination agreement was recorded as required in MCA 71-1-206 recording of subordination or waiver agreements.

(7) I reviewed the file and on June 9, 2011 WCU CEO Jim Kenyon and loan officer Randy Cogdill refused to subordinate additional collateral stating WCU would loan Thorco Inc. the \$500,000 instead and then denied loan request on August 3, 2011. The mortgage contract was breached by WCU.

Exhibit (05)

March 19 2009 I found that Thorco Inc. entered into a two-part construction mortgage contract with WCU for the construction an upper scale development of 300 acres near Somers Montana overlooking Flathead Lake. This mortgage contract was personally guaranteed by Dennis and Donna Thornton and the mortgage document contains the **Banker System Insignia**. The first payment from this loan was to pay off Glacier Bank.

Exhibit (06)

In reviewing the litigation documents turned over in discovery in DV-12-174B, I found that Glacier Bank submitted a loan request on behalf of Thorco Inc. in the amount of \$7,200,000, the amount necessary to complete a 62-lot subdivision.

I did not find any loan request by Thorco Inc., or the Thornton's to WCU. I found WCU funded \$3,360,000 of the \$7,200,000 request.

August 2009, I found that shortly after Thorco Inc., Dennis and Donna Thornton entered into the 2009 mortgage contract WCU was barred from making any loans by the Montana Division of Banking and Financial Institutions and the National Credit Union Association hereafter (NCUA), see expert witness report of former NCUA director Alan Carver.

Exhibit (08)

Below are Excerpts from a July 16, 2013 Deposition of Randy Cogdill taken by attorney James Manley that show WCU never notified the borrowers there loans were not going to be refinance.

Pages 21-25 Q. By Mr. Manley A. By Mr. Cogdill

Q. Okay. So, could you look at 104?

A. Is that A or B?

Q. 104B. Could I ask you to look at page 13.

Please? Line 7. When you were asked. We have been told that there had been a policy in 2009 of not loaning any more money on these development loans. Do you recall that policy being enacted?

And was your answer. Yes?

A. Yes.

Q. Okay. Do you remember that policy now?

A. Yes.

Q. Was that an honest answer when you made that answer in that deposition?

A. Yes.

Q. And then the next question is. Could you tell us what you recollect about that? When, who did it, what the explanation was? Did you answer, my recollection was that somewhere in that time.

There was a regulatory shift with regard to our examiner's who had been coming in, and certainly whether it was absolute edict, if you will, from the regulators. Certainly, they came in and they discourage any spec. home financing and any subdivision financing. Was that an honest answer?

A. Yes.

Q. And then the next question. They were putting pressure on you not to do that? Your answer was. Yes?

Q. Was that an honest answer?

A. Yes.

Q. And then the next question. Were there some instances in which it was done, that is ongoing developments were provided further lending? What is your answer. None that I recall?

A. Yes.

Q. Was that an honest answer?

A. Yes.

Q. So the next question is. So, all of them were just caught off at that point, as far as you recall. And your answer was as far as I know. Was that an honest answer?

A. Yes

Q. Next question. Are you aware of Whitefish Credit Union notifying these members or customers, these members with loans, notifying

them of that policy when it was adopted in 2009? And your answer was. Could you be more specific with your question? And then the next question was. Yeah it's our understanding from prior depositions that when this new CEO came aboard in March 2009--I'm going to skip through because there is some disagreement about the date and then I came back and at a line 25 on page 14. You're right. I think it was August--July or August 2009. And your answer was August or September. Were talking about the CEO coming aboard.

A. Okay.

Q. Okay. Does that help refresh your recollection?

A. Yes.

Q. Okay. And then the next question was okay. Whatever it was-- I'm on page 15 at line 3 now. Okay. Whenever it was, he's testified that there was a new policy adopted by him and followed by the credit union regarding this new lending on ongoing development loans. My question was, what, if anything was done to notify the developers of the new policy? And your answer was as far as a formal notification or announcement, none that I know of. Was that your answer and was that an honest answer?

A. Yes.

Q. And then the next question was. How about an informal? And your answer was. Certainly nothing informal as well. Correct?

A. Yes.

Q. Next question. Does that seem fair to you that these people were notified of the new policy? And your answer was. I think the notification, at least on the loans that I was involved in, would have come at the time there was a new application or, again--I mean that's where the notification would come from. As far as whether I thought that

was fair that was the world I was operating in
was that an honest answer when you gave it?

A. Yes.

Exhibit (09)

ANALYSIS

(8) WCU did not notify any of its member borrowers as required by law, that WCU could not make any new loans. See expert witness report of Alan Carver

(9) WCU did not make the second loan as agreed.

Shortly after Thorco Inc. took out the 2009 loan with WCU, loan officer Randy Cogdill admitted in his deposition that he was touring the property with another developer, by the name of Pat Corrick, a principal of the Farran Group from Missoula Montana, Thorco's competitor **for the possible sale of the development property.**

Below are Excerpts from a **July 16, 2013** Deposition of Randy Cogdill taken by attorney James Manley that show WCU was in contact with at least one other developer for the possible purchase of the development property.

Pages 37-43 Q. By Mr. Manley A. By Mr. Cogdill

Q. There were communications between one or more people in the Farran Group. Who is the Farran Group?

A. I don't recall.

Q. As I understand it is a financial entity in Missoula that, among other things, bought property that was up for foreclosure. Does that ring a bell?

A. No.

Q. Would you--Pat Corrick or "Corrick"? Does that name ring a bell?

A. Yes.

Q. Who is that?

A. **A developer out of Missoula.**

Q. Doing business as the Farran Group?

A. I'm not sure.

Q. And could you describe the history and nature of your relationship with Pat Corrick?

A. I was an accountant officer on a project that he was involved in in Whitefish.

Q. Could you explain what that means to a layperson?

A. It was a vertical development called Monterra.

Q. And what's a vertical development?

A. Which was a condo project.

Q. On a cliff?

A. No. It's just he was. In--.

Q. We don't know what a vertical development means.

A. He was involved in the construction and the development of a parcel of ground that created a condominium village.

Q. Where was that located?

A. In Whitefish.

Q. And he had a loan with Whitefish Credit Union for that?

A. No.

Q. Had he purchased that property from a Whitefish Credit Union foreclosure or loan workout situation? A. Not that I'm aware of.

Q. You know who he purchased the property from?

A. No.

Q. And so what was your involvement with regards to Mr. Corrick and that development project at Whitefish?

A. The bank I was working for had the financing on the project.

Q. What bank?

A. It Was Glacier Bank of Whitefish.

Q. And was that before you went back--was that

before 2009 when you went back to work for Whitefish?

A. That is my recollection.

Q. Okay. So, you first got to know him because in your relationship with--in your employment at Glacier Bank there was a lending relationship to Mr. Corrick you described in Whitefish.

A. Yes.

Q. And then, with respect to the Thornton's matter, while you were at Whitefish Credit Union, there's one or more emails from you to Corrick, and I'm asking you to please explain to us why that was. Why would you have been emailing him with regard to the Thornton's property?

A. I believe it was in--this is my recollection. It was in conjunction with an assessment that we were trying to complete on the project, either before or after an appraisal that we had on the property, to try to understand what the value was of the project up there.

Q. When you say "an assessment", is that something different than an appraisal?

A. Yes.

Q. Could you explain in lay terms, what that means, what the difference is?

A. An expert in my view, in the development side would be able to come in and take a preview or a review of the project site and give us as a lending institution an idea of ultimately what the market value could be in terms of desirability of the lots and ultimately who would be interested maybe in purchasing these lots.

Q. Is that the same type of information that was provided in the appraisal that the Whitefish Credit Union had?

A. No.

Q. And how would that be different?

A. From the perspective of a developer, it would give a different approach.

Q. And did he respond with a report or information to your request for that?

A. Not to my knowledge.

Q. Were you personal friends with him?

A. No.

Q. For instance, when you have sent an email congratulating him on a pregnancy or that type of thing? A. Within the body of the business email, that's possible?

Q. Were you also contacting him or communicating with him to see if he was interested in perhaps getting involved as a purchaser of the Thornton's property?

A. Not to my knowledge.

Q. See when you say "not to my knowledge" we have to try to figure out what that means. There's "yes" or "no" and then--.

A. I have no recollection of that.

Q. So you don't know if you were contacting him, in part, to see if he was--might be interested in purchasing the Thornton property?

A. I don't have any recollection of that.

Q. Is that possible?

A. It's possible.

Q. Okay. Did you talk to anyone else to determine if anyone else might be interested in taking over the Thornton property or investing in it or purchasing it?

A. I don't have any recollection of anyone else.

Q. So I guess that means you don't remember whether you did or not.

A. That is correct.

Q. And is that possible that you did that?

A. It is possible.

Q. Now, to the best of your recollection. What reason or reasons were therefore the decision not to loan money to the Thorntons on this project or to renew their loan?

A. On the first part of the question which I can

answer is the market conditions certainly had deteriorated so severely that it wouldn't have been prudent to go forward. At that point, in my view. Q.

Okay. And you said that's with respect to the first half of the question. It was a bad question. I apologize.

A. And--.

Q. So that referenced to the reason for declining not to loan no money on it.

A. Yes.

Q. Okay. And what were the reasons as you recall any reasons you recall, for not renewing it or extending it?

A. My recollection is that we made every effort to renew the loan.

Exhibit (10)

I found documentation that shows Randy Cogdill was touring the development property in August 2010. I found emails from Pat Corrick on February 1, 2012 that states the following:

Randy,

Please see the attached. Per our conversation this week. Please let us know if you need additional information, I'm happy to run up to whitefish and meet with your team as needed. Talk soon, Pat Corrick

I found an email from Randy Cogdill to Pat Corrick on June 19, 2012 that states the following:

Pat,

The first four lines are blocked out

Also, I'll forward contact info, to Sean Frampton who is representing us in the WCU vs. Thorco, Inc. matter. Talk to you soon. Regards, Randy

Cogdill, VP, Special Assets Group Whitefish
Credit Union.

Exhibit (11)

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ANALYSIS

(10) The above conduct is illegal, a violation of financial privacy, a violation of the Bank Security Act, and many others.

(11) from that day forward WCU did everything possible to come into the ownership of Thorco Inc.'s property.

(12) WCU's conduct can best be described as predatory in nature.
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August 10, 2010 I found a Comment to File: Thorco, Inc.
#966428-700:

I visited the construction site on August 10, 2010. Road construction is nearly complete with a couple of rock walls to complete. The principal (Dennis Thornton) of the project was on-site and in a conversation with me indicated that the engineer was working on the plat. Dennis said that there would be 60 lots plotted with 180 acres of common ground. The lots would be 1 to 3 acres in size. Dennis said he would be done with rock walls in 30 days.

Dana Henderson,
Business Loan Analyst

January 8, 2011 I found that Thorco Inc., ordered an appraisal by engaging Barrie Appraisal Services. I found

that Thorco Inc., tendered \$8500 of the \$17,000 appraisal to the principal, Lloyd Barrie of Barrie Appraisal Services. I found that explicit appraisal instructions were given to Lloyd Barrie to appraise the **as is value** in 20-acre tracts and for **its intended use** as a 62 Lot subdivision. I found on January 20, 2011 a document prepared by Larsen Engineering, Engineer/Surveyor Jeff Larsen titled (Summary of Thorco Development Construction to Date Somers, Montana, January 20, 2011) was delivered to Lloyd Barrie. This document shows Larson Engineering Calculated \$16,595,782.00 in value added construction work had been completed on the development property as of January 20, 2011. Barrie was to appraise the value-added construction work.

Exhibit (12)

February 3, 2011 I found that Jennifer Foultnier of WCU (now Jennifer Archer, wife of WCU foreclosure agent Aaron Archer) without Thorco Inc.'s knowledge or consent conspired with Lloyd Barrie and changed the appraisal instructions to what can only be described as foreclosure instructions. I found that Lloyd Barrie ignored the \$16,595,782.00 in value added construction work and did not appraise the property for its **intended use**. I found the interference was not discovered by Thorco Inc. until after discovery took place in WCU's foreclosure lawsuit Cause No. DV-12-174B, almost a year and a half later.

Exhibit (13)

I found on page 15 of the 2011 Barrie appraisal that shows the projected revenue for 20-acre parcels was \$10,176,000 and was discounted by 76.8% to a value of \$2,353,000.

Exhibit (14)

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ANALYSIS

(13) WCU engineered a foreclosure against Thorco Inc., and Personal Guarantors Dennis and Donna Thornton.

(14) WCU engaged in illegal conduct of appraisal fraud and equity stripping.

September 25, 2013 the 300-acre development property was reappraised and a 200-acre tract of additional collateral by Roy Nicolette. The Nicolet appraisal shows an as-is value of \$8 million for the 300-acre development property and \$26 million for the 300-acre development property's intended use. The additional collateral of 200 acre was appraised at 790,000.

Exhibit (15)

I found that Donna Thornton, Sec. of Thorco Inc. made several attempts to contact Thorco Inc.'s loan officer Doug Johnson in preparation of the second phase the development, construction loan (refinance/ take out). Donna initially tried to make phone contact with Doug Johnson, starting in September 2010 after no success, Donna began putting notes on draw request asking for Doug Johnson to please contact her. Neither Doug Johnson or anyone else ever responded until phase 1 of the construction loan matured.

Exhibit (16)

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ANALYSIS

(15) This is in violation of the mortgage contract itself. The mortgage contract states WCU will have a representative available upon request.

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March 15, 2011 I found the 2009 loan matured.

Below are Excerpts from a July 16, 2013 Deposition of Randy Cogdill taken by attorney James Manley that show Thorco had met all of the terms of the 2009 mortgage.

Pages 34-36 Q. By Mr. Manley A. By Mr. Cogdill

Q. It was a bad question. Would you agree that as of the time, March 14 of 2011. They had met all

the matrix required under the loan?

A. Yes. Q. Okay. Not just money requirements, but they were doing what they were supposed to be doing with the development as far as Whitefish Credit Union was concerned.

A. As far as my knowledge on the file.

Q. Right. Right. And having looked through the file, I don't see that Dana Henderson or Jim Kenyon or Doug Johnson or anyone else indicated they were in any way forming in adequately in all respects of what was required of them. Are you aware of any?

A. No.

Q. And do you recall then discussing with them over a period of time to the effect that you would be willing to discuss with them. You know some way to work this out or make arrangements that would provide them with more time, but one of the requirements was they would have to bring the interest due current?

A. I don't have specific recollections of those conversations.

Q. Does that sound like it was your policy at the time that you were following such loans?

A. Yes.

Q. And it was in fact a consistent policy; wasn't it?

A. As far as my knowledge.

Q. Okay. Have you had the occasion to review any of the Whitefish Credit Union documents with respect to the Thornton's?

A. No.

Q. In preparation for this?

A. No.

Q. Are you aware that the Whitefish Credit Union loan documents make it clear that the only source that they had--the Thornton's had to pay off this loan, or pay interest was continuing funding from the Whitefish Credit Union until they could

complete the project and sell lots?

A. Not to my knowledge

March 29, 2011 I found the first contact Donna received from WCU was a letter from Randy Cogdill mailed some two weeks after the loan had matured that stated it was time to come in and refinance the letter also stated Randy Cogdill was Thorco Inc.'s new loan officer.

April 13, 2011 I found a letter from Dennis Thornton requesting \$1,938,680 from the unfunded commitment.

I found where loan officer, Randy Cogdill did not send the loan application out until April 27, 2011. This is 43 days past the maturity date.

Exhibit (17)

I found after Donna and Dennis received the letter from Randy Cogdill, that Randy was immediately contacted. I found that several meetings were set up with Randy Cogdill and CEO Jim Kenyon to view the development before WCU would accept a finance request or phase 2 of the development funding. I found that Randy Cogdill canceled several of the meetings.

April 27, 2011 Randy Cogdill sends the Thornton's a letter that states, in part the following:

RE: Additional Subdivision Financing

Dear Dennis and Donna

Please find enclosed loan application that needs to be completed for us to consider any additional financing request with regard to your project in Somers.

We also need to schedule a tour of the property and need to include our CEO, Jim Kenyon as part of inspection.

Exhibit (18)

May 2011, I found that a meeting took place on the development property with Dennis Thornton, Donna Thornton, Engineer Jeff Larson, representing Thorco Inc. and Randy Cogdill and CEO Jim Kenyon representing WCU. I found that Cogdill and Kenyon agreed to finance the second phase of construction but wanted Thorco Inc. to try and keep the numbers as low as possible. I found that Dennis Thornton and Engineer Jeff Larson had explained at the meeting to Cogdill and Kenyon that certain items could be bonded and paid for after sales were generated.

May 2011, I found that Thorco Inc. submitted a loan request to WCU in the amount of \$1,900,000 almost \$2 million less than the \$3,840,000 that was agreed to in the unfunded commitment. I found that Thorco Inc. having \$20 million in available bonding was planning on bonding certain items such as paving and other improvements until sales were generated.

Exhibit (19)

I found that WCU withheld the equity stripped appraisal until after a loan request was submitted.

I found that Dennis Thornton was given the appraisal without WCU's altered instructions and that the complete appraisal that included the altered instructions was not turned over until discovery. I discovered that Dennis Thornton requested the property be reappraised and the request was rejected by Randy Cogdill.

I found that after Dennis Thornton reviewed the appraisal, he contacted Lloyd Barrie to find out why the instructions given by Thorco Inc. were not followed. Barrie did not have a satisfactory answer. I found that Dennis Thornton demanded Barrie re-appraise the property and use the instructions that were given to him in January or return the \$8500. I found that Barrie refused and returned the \$8500.

May 2011, I found that Randy Cogdill after finding out that Barrie had returned the \$8500 demanded Dennis Thornton to return the \$8500 to Barrie and that Dennis refused.

May 2011, I found that than Cogdill ask Dennis and Donna Thornton for permission to take \$3750 from Thorco Inc.'s remaining construction funding to pay Barrie for the appraisal in both Dennis and Donna Thornton refused to give permission.

May 2011, I found that Cogdill took the \$3750 out of Thorco Inc. construction loans account without permission and paid it to Lloyd Barrie and in doing so overdrew the closed ended construction loan by \$172.

Exhibit (20)

May 27, 2011, I found a letter sent to WCU loan officer Randy Cogdill from Dennis Thornton, that clearly shows that WCU had been unresponsive prior to the maturity of the loan.

Exhibit (21)

May 2011, I found after Thorco Inc. submitted loan request for the second phase of funding that all communications ceased and that Donna Thornton's emails or even blocked by WCU.

I found that Thornton's phone calls were ignored and not returned.

June 2011, I found that because of the ignored phone calls and blocked emails Thorco Inc.'s business attorney James Bartlett instructed Dennis Thornton to contact WCU's main office in Whitefish and inform the receptionist that Thornton's would be coming to the Whitefish office to meet with CEO Jim Kenyon and would not be leaving until Kenyon met with them.

June 9, 2011, I found that Kenyon informed the Thornton's that there was not going to be any new money for the development and that Kenyon stated Thorco Inc's development was underwater and cited the equity stripped appraisal. This was 86 days past maturity.

I found that the Thornton's then requested WCU to subordinate the additional collateral a 200-acre tract of

land so that Thorco Inc., could take on an income-producing project. I found that this was a preapproved condition and a signed agreement of the 2009 construction mortgage loan.

Exhibit (22)

I found that Kenyon refused to subordinate the additional collateral as agreed, but instead stated WCU would loan Thorco Inc. the funding for an income-producing project.

June 2011, I found that the Thornton's then went to Williston, North Dakota, found a gravel pit and put it under contract and lined up gravel sales in the booming Bakken oilfields with several oil companies. Thornton's then came back and submitted a loan request for \$500,000 to WCU. I found that at this exact same moment in time WCU was requesting documents from Donna Thornton. WCU's attorney, Ryan Purdy, was working on a foreclosure action against Thorco Inc.

Exhibit (23)

August 3, 2011, I found WCU denied the loan request and refused to subordinate the additional collateral. This is further laid out in former NCUA director Allen Carvers expert witness report.

Exhibit (24)

I found there were two of Thorco Inc.'s business attorneys Rich DeJana and James Bartlett worked very diligently to find a resolution between Thorco Inc. and WCU to no avail.

I found where there was an agreement set up by James Bartlett for Thorco Inc. to meet with WCU's attorney Ryan Purdy in January 2012 for a required workout before a foreclosure action can be commenced.

Exhibit (25)

December 2011, I found that in that WCU made a demand that Thorco Inc. bring audited financial statements to the

workout meeting. I found that Thorco Inc.'s accountant Vicki Heilman had stated her office would not be able to prepare an audited financial statement until after tax season sometime in May or June. I found that this was conveyed to Ryan Purdy by James Bartlett. The response to Bartlett was bring the audited financial statements or there would be no workout meeting and WCU would file a foreclosure action.

February 2012, I found WCU filed a foreclosure action without required workout meeting, in the 11th Judicial District Ct. in Kalispell, MT (DV-12-174B) on the first phase of the 2009 mortgage/ lien construction loan against Thorco Inc. and that Dennis and Donna Thornton were included in the suit as personal guarantors. I found that WCU cited the equity stripped appraisal stating Thorco Inc. lost all of its equity as the reason for not financing the unfunded commitment or in other words second phase of funding.

Exhibit (26)

February 2012, I found that James Manley, now the Honorable James Manley, was hired to represent Thorco Inc. and the Thornton's. I found that Manley filed a \$60 million counterclaim on behalf of Thorco Inc. and the Thornton's.

I did not find where WCU claimed the \$60 million counterclaim as a contingent liability as required under General Acceptable Accountability Principles (GAAP) Allowance for Lease and Loan Loss (ALLL) that WCU is required to use because of WCU's claimed assets being over \$500 million. This is a clear violation of several banking regulations.

I found where Manley withdrew from the case after being appointed by the Montana Supreme Court as Judge to Montana's 20th judicial district court located in Polson Montana.

I found where three other attorneys entered into the case Mick McKeon, Mike McKeon and Josh Morigeau. I found where

James Bartlett suggested that Thorco Inc. file a Chapter 11 bankruptcy to buy time to find new counsel to replace the three attorneys because of failure to meet expert witness disclosure deadlines.

May 5, 2014, I found where Thorco Inc. filed a chapter 11 bankruptcy a automatic stay was put on the District Court action.

Exhibit (27)

November 3, 2014, I found where WCU filed a Proof of Claim with U.S. Bankruptcy Court in Case 14-60633-RBK Claim 4 Filed on 11-3-2014 in the amount of \$4,188,854.24. I found that WCU did not use the equity stripped Barrie appraisal, but used the lesser amount of \$8,790,000 contained in the Nicolette appraisal. I found on page 2 of the Proof of Claim that WCU claimed to be an over-secured creditor and that WCU is also entitled to attorney fees, costs and interest post -petition.

Exhibit (28)

I found that Thorco Inc. and the Thornton's hired two Montana law firms and one Idaho law firm to represent them and fired Mick McKeon, Mike McKeon and Josh Morigeau. The firms hired were the Beck Amsden Stalpes law firm from Bozeman, Montana John Amsden as lead counsel for the firm, the Bishop and Heenan Law firm from Billings, Montana John Heenan as lead counsel for the firm and the Elsaesser Jarzabek Anderson Elliott & MacDonald from Sandpoint, Idaho, Ford Elsaesser as lead counsel for the firm.

I found where Thorco Inc. on advice of new counsel dismissed the chapter 11 bankruptcy Case 14-60633-RBK after finding new replacement counsel. This caused the automatic stay to be lifted and the District Court case in DV-12-174B was rescheduled for trial.

February 23, 2016 I found where WCU filed another motion for Summary Judgment under Montana's rules of civil procedure rule 56 Summary Judgment and received a Judgment of Foreclosure and Order of Sale on February 23, 2016 in the amount of \$4,348,880.81 to accrue at 10% per annum

until paid against Thorco Inc. Dennis Thornton and Donna Thornton.

Exhibit (29)

I found the names Thorco Inc. Dennis Thornton and Donna Thornton contained in the caption.

I found where counsel for Thorco Inc. Dennis Thornton and Donna Thornton appealed the summary Judgment of Foreclosure and Order of Sale to the Montana Supreme Court to stop sale of the property because the sale of the property was premature until Thorco Inc. Dennis Thornton and Donna Thornton counterclaims were litigated.

Exhibit (30)

I found where counsel for WCU filed a motion with the Montana Supreme Court claiming the appeal was premature.

I found where the Montana Supreme Court ruled that the Judgment of Foreclosure and Order of Sale was premature and could not be certified as final until the counterclaims brought by Thorco Inc. Dennis Thornton and Donna Thornton were tried in front of a jury.

Exhibit (31)

The Montana Rules of Civil Procedure were adopted from the Federal Rules of Civil Procedure. I found in the Federal Rules of Civil Procedure Rule 56 Summary Judgment [Notes of Advisory Committee on Rules-1946 Amendment] that perhaps is the best description of what WCU's February 23, 2016, Summary Judgment of Foreclosure and Order of sale truly is. It clearly lays out that the Summary Judgment was just a partial Judgment and is merely a pretrial adjudication that certain issues, shall be deemed established for the trial of the case.

**Federal Rules of Civil Procedure Title VII Judgment
Rule 56 Summary Judgment**

Notes of Advisory Committee on Rules-1946 Amendment

Subdivision (d). Rule 54(a) defines "judgment" as including a decree and "any order from which an appeal lies." Subdivision (d) of Rule 56 indicates clearly, **however, that a partial summary judgment" is not a final judgment,** and, therefore, that it is not appealable, unless in the particular case some statute allows an appeal from the interlocutory order involved. **The partial summary judgment is merely a pretrial adjudication that certain issues shall be deemed established for the trial of the case.** This adjudication is more nearly akin to the preliminary order under Rule 16, and likewise serves the purpose of speeding up litigation by eliminating before trial matters wherein there is no genuine issue of fact. See *Leonard v. Socony-Vacuum Oil Co.* (C.C.A.7th, 1942) 130 F.(2d) 535; *Biggins v. Oltmer Iron Works* (C.C.A.7th, 1946) 154 F.(2d) 214; 3 *Moore's Federal Practice*

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ANALYSIS

(16) After the Montana Supreme Court ruling, WCU's February 23, 2016 Judgment in the amount of \$4,348,880.01 became nothing more than a pretrial claim of the maximum claim that WCU would ever be able to obtain against Thorco Inc. and the Thorntons that was held in limbo that could not be certified until a jury added to or subtracted from the judgment and not a claimable judgment until those actions occurred.

(17) WCU claims to the February 23, 2016 Judgment as a final Judgment are in error.

.....

March 31, 2016 I found in District Court judge Robert Allison's ruling Order and Rationale on Motion for Summary Judgment Re: Negligent Misrepresentation and Motions In Limine, Allison's ruling states in part, on page 4 lines 1 through 5. The following:

Thorco did list all of the elements of damages. It is seeking in response to

interrogatories and responded that it sought \$26,000,000 for the highest and best use of the property which would be as a fully developed subdivision. WCU did not request any amount of damages in any of its discovery. If the discovery responses were inadequate or Dennis Thornton's responses at his deposition were inadequate, WCU's remedy was to seek to compel discovery and then seek discovery sanctions pursuant to Rule 37, M.R.Civ.P. Evidence of Thorco's damages is relevant and admissible.

Exhibit (32)

ANALYSIS

(17) The District Court accepted Nicolet's \$26 million appraised value for the development.

In reviewing the court file in DV-12-174B, I found WCU's justification for not financing the second phase of funding which was the method of repayment of the 2009 construction mortgage was based on the February 23, 2011 equity stripped Lloyd Barrie appraisal.

In reviewing the court file in DV-12-174B, I found where WCU made claims stating that Thorco Inc. failed to install a water system, pave roads, apply for preliminary plat, etc.. I found internal documents, WCU turned over in discovery that clearly state in the first phase of funding, there was to be no water system paved roads or preliminary plat, etc, funding was, not provided for that work. In reviewing the document prepared by Larsen engineering (Summary of Thorco Development Construction to Date Somers, Montana, January 20, 2011), it is clear to see that Thorco Inc. completed millions of dollars more of construction value added work to the development property that was not funded by WCU. I found WCU inspection reports and photos

that clearly support the Larsen engineering document. In addition, I have viewed the subject property.

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ANALYSIS

(18) Thorco Inc. and the Thornton's were not going to have much difficulty proving the appraisal was engineered to strip equity. After reviewing the former NCUA director's expert witness (Alan Carver) report I do not believe it was going to be very difficult to prove that WCU was barred from making loans and that WCU chose instead of notifying the member business borrowers to engineer foreclosures against them and that the equity stripped appraisal was part of the engineering process. Once a loan is foreclosed on its no longer considered a loan. It is a loan in foreclosure and is no longer counted as a loan. I believe WCU used this strategy get back in compliance on the Member Business Loans.

(19) The single greatest material fact indicative of WCU motive is Randy Cogdill's deposition where he admitted that shortly after Thorco Inc. took out the loan with WCU, that he was touring the development property with another developer for the possible sale of the property, that did not belong to WCU. There would have been no way for Cogdill to know that WCU would ever come into ownership of the development unless he had inside knowledge of planned events. This clearly shows to me that WCU was intending on stealing the property by using an engineered foreclosure and the judicial system to achieve the theft.

Exhibit (33)

March 23, 2016, I found an email from attorney John Amsden sent to the Thornton's referencing a hearing stating, in part, the following:

The judge indicated he was going to run the two cases Sean had "concurrently."

After the hearing. Sean asked Anthony if you would be interested in another mediation. We indicated that we would be interested in using Tracy Axelberg or Mikel Moore, both well-known attorneys and mediators from the area. Do you have an issue with either one of them?

Exhibit (34)

Apparently neither Tracy Axelberg or Mikel Moore, was used.

March 30, 2016, I found mediator attorney Benjamin Hursch from the Crowley Fleck law firm sent WCU's attorney Sean Frampton and Thorco Inc. Dennis Thornton and Donna Thornton's, attorney John Amsden, a mediation agreement consenting to use Benjamin Hursch as the mediator to try and resolve the dispute. The mediator's agreement states the parties must have representatives with decision-making authority and must sign the agreement consenting to Benjamin Hursch's terms. I found that Dennis and Donna Thornton signed on April 1, 2016, consenting to a mediation conference to be held in Missoula, Montana on April 4, 2016.

Exhibit (35)

April 4, 2016 I found a Settlement Term Sheet that was generated settling the dispute. The document appears to be signed by a Whitefish Credit Union Special Asset Officer believed to be Aaron Archer and attorney for WCU Sean Frampton. The document is signed by Dennis Thornton Thorco Inc.'s president and is believed to be signed by attorney for Thorco Inc. John Amsden. The document is also signed by Dennis Thornton personally and by Donna Thornton personally in their personal capacity.

Exhibit (36)

I found WCU is a loan originator and operates under NMLS ID: 409281 Aaron Archer operates under WCU's loan originator license as a licensed underwriter for WCU with NMLS ID: 1746977. NMLS stands for the Nationwide Mortgage Licensing System that all financial institutions must have.

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ANALYSIS

(20) The Settlement Term Sheet is a Debt Cancellation Agreement to cancel Thorco Inc. and the Thorntons \$60 million counterclaim of debt owed to them by WCU and a Debt Cancellation Agreement to cancel WCU's claim of debt owed to them by Thorco Inc. and the Thorntons.

(21) the February 23, 2016. Summary Judgment of Foreclosure and Order Sale establishes WCU's value at \$4,348,880.81 by subtracting \$1,400,000, one ends up with \$2,948,880.81. \$2,948,880.81 plus the \$150,000 in cash which is \$3,098,880.81 is the value of Thorco Inc. and the Thorntons counterclaims that the parties both agreed to by signing the document.

(22) The Settlement Term sheet Is a financial contract that lays out the general terms between WCU and Thorco Inc. and the Thorntons and is the template for the cancellation of the 2009 mortgage and debt and the creation of two new mortgage contracts after settlement.



The Settlement Term Sheet states the following:

The Judgment shall be vacated and the Case dismissed with prejudice and the borrower parties shall not be liable for any deficiency that WCU claims under any loan document note or guaranty at issue in that Case.

Under the Federal Credit Union Act (FUCA), (NCUA), Montana Division of Banking and Financial Institutions, laws, rules and regulations Archer would have been required to have authority from WCU's Board of Directors prior to entering into (The Settlement Term Sheet Contract).

The mediators agreement states the parties must have representatives with decision-making authority and must sign the agreement consenting to Benjamin Hursch's terms.



ANALYSIS

(23) By attending and signing The Settlement Term Sheet which is a financial contract, Aaron Archer must be able to produce the WCU Board of Directors meeting where such authority was granted. If Aaron Archer cannot produce board of director minutes showing he was granted that authority, his conduct is in violation of the Federal Credit Union Act (FUCA), (NCUA), Montana Division of Banking and Financial Institutions, laws, rules and regulations.

(24) After signing The Settlement Term Sheet, Aaron Archer is required to have the transaction ratified by WCU's Board of Directors Under the Federal Credit Union Act (FUCA), (NCUA), Montana Division of Banking and Financial Institutions, laws, rules and regulations. The Board of Directors then should have sent the ratification and The Settlement Term Sheet to WCU's accounting department and there should have been a final entry showing the cancellation of the 2009 construction mortgage. Next, it should have went to WCU's loan department for the creation of two new mortgages, one in the amount of \$300,000 with 200 acres as security, the other in the amount of \$1,100,000 with 300 acres as security.

.....

I found Benjamin Hursch's mediators report indicating to the court that the case was settled.

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ANALYSIS

(25) Under Federal Rules of Civil Procedure > TITLE VI. TRIALS > Rule 53. Masters (3) *Reviewing Factual Findings*. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that: (B) the findings of a master appointed under Rule 53(a) (1) (A) or (C) will be final

.....

I found no objections by the court to Benjamin Hursch's mediators report.

Exhibit (37)

I found several emails after the mediation between several attorneys on both sides. The main issue was how to handle the cancellation of debt (COD) in the creation of the next document titled Settlement Agreement and Mutual Release.

Exhibit (38)

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ANALYSIS

(26) The Settlement Agreement creates two new mortgages and is a separate transaction from the 2009 mortgage. There was \$150,000 paid in new money to Thorco Inc by WCU.

(27) This should have been a very simple transaction, all that was necessary was for WCU to create a mortgage for \$300,000 for the 200 acres, a create mortgage for the 300 acres for \$1,100,000, release the 2009 mortgage, record the new mortgages, send Thorco Inc. and the IRS 1099-C for the cancellation of debt.

.....

June 7, 2016, I found the Thorntons were emailed a copy of the mortgage contract called (Settlement Agreement and Mutual Release) instructed to sign and deliver to WCU's attorney Sean Frampton for signatures. The Thorntons were instructed to sign as officers of Thorco Inc. and on a separate signature document personally.

June 8, 2016, I found the document was resent from Newport, Washington because it lacked a signature.

Exhibit (39)

In my Expert Opinion after Analyzing the Settlement Agreement and Mutual Release. It Is so Disturbing That Any

Financial Institution Operating in This Manner Should Be Put into Receivership and Liquidated.

Regarding the Settlement Agreement and Mutual Release:

1. The mortgage document is not a Federally approved document that all Federally insured institutions must use, that only have one meaning or interpretation that are approved by the NCUA, Montana Division of Banking and The Montana Associated Clerk and Recorders that contain the **Banker System Insignia**. This mortgage agreement is open to multiple interpretations, and for that reason alone should be void.

2. The mortgage document is a three-party document, Thorco Inc., WCU, First American Title that calls for the use of deeds for security which creates what is sometimes called (security deed/mortgage deeds/ deed of trust/ trust indenture) and is not allowed under 71-1-302 which states in part: **(it is the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than 40 acres as provided in this part.)** Both tracts of land exceed 40 acres and therefore the document is void. This is another example where an approved mortgage document was required to be used.

71-1-101. Definition. "Mortgage" is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

71-1-103. Mortgage a special lien -- on what a lien. (1) The lien of a mortgage is special, unless otherwise expressly agreed, and is **independent of possession.**

71-1-105. **Mortgagee not entitled to possession.** A mortgage does not entitle the

mortgagee to the possession of the property unless authorized by the express terms of the mortgage, but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

71-1-107. Transfers of interest. (1) Every transfer of an interest in property, other than in trust, **made only as a security for the performance of another act is to be deemed a mortgage**, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

(2) The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

3. The mortgage document does not contain a severance clause allowing for the severance of any unlawful portion. The mortgage document has an embedded forfeiture and is in restraint of redemption in violation of MCA 71-3-109 and therefore the document is void.

MCA 71-1-202 states in part. Mortgage not considered conveyance -- recovery of possession. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property **without a foreclosure and sale.**

MCA 71-3-109. Certain contracts void. Except as otherwise provided by the Uniform Commercial Code, **all contracts for the forfeiture of property subject to a lien in satisfaction of the**

obligation secured thereby and all contracts in restraint of the right of redemption from a lien are void.

4. The mortgage document(s) references an Exhibit B which is called **Release of Mortgage** the document also references an Exhibit C which is called **Warranty Deed**. In my expert opinion, these documents under 18 US code counterfeiting statutes are considered a forgery under 18 US code , part 1, chapter 25 484 Connecting Parts of Different Notes.

18 U.S. Code § 484 - Connecting parts of different notes

Whoever so places or connects together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined under this title or imprisoned not more than 10 years, or both.

a.

The mortgage document(s) clearly states the 2009 mortgage was extinguished. Item 14 final agreement states, it is the final agreement and supersedes all prior agreements. Item 3 deficiency clearly states there is to be no deficiency referencing DV-12-174B. Item 5 Stipulation to Vacate and **Dismiss With Prejudice** as **fully settled** upon the merits DV-12-174B. when traced all the way back you end up at the 2009 mortgage.

b.

The mortgage document clearly shows there was to be two new separate and distinct mortgages documents. The pledged collateral for the first mortgage is 200 acres and that payment is \$300,000 there is no release in that amount. The

pledged collateral for the second mortgage is 300 acres and the payment is \$1,100,000 there is no release in that amount. There are two different documents both referenced as Exhibit B. It is clear to see that these two documents were signed and notarized at different times.

c.

The order in which Archer signed the document is important. The mortgage document(s) (the Settlement Agreement and Mutual Release) would have been signed first by Aaron Archer. Then the releases of mortgage.

d.

The Mortgage release document Exhibit B references the 2009 mortgage that was extinguished and now is a counterfeit, fictitious, obligation and connects parts of two different notes and is indirect violation of 18 USC 484-Connecting Parts of Different Notes and is considered forgery any class B felony.

e.

The security deed documents There are two warranty deed documents referenced as Exhibit C both documents were signed and notarized at different times by Dennis and Donna Thornton as officers of Thorco Inc.. These documents were the security instrument to be held in the possession of First American Title Company for two separate and distinct mortgage notes as described above. Both documents contain the same language referencing the 2009 mortgage that was extinguished and now is a counterfeit, fictitious, obligation and connects parts of two different notes and is indirect violation of 18 USC 484-Connecting Parts of Different Notes and is considered forgery and a class B felony.



ANALYSIS

(28) In my Expert Opinion fully settled upon the merits has the meaning the debt is canceled. Once Aaron Archer signed the mortgage(s) document(s) (Settlement Term Sheet) and later (The Settlement Agreement and Mutual Release) the debt and the 2009 mortgage was forever extinguished.

(29) Once the Settlement Agreement was signed, the 2009 mortgage note /mortgage lien was satisfied and canceled. Any claim to the 2009 mortgage now becomes counterfeit under 18 US code 472 -Uttering Counterfeit Obligations or Securities, 18 US code 473-Dealing In Counterfeit Obligations or Securities, 18 US code 514-fictitious obligations.

.....

I have reviewed Thorco Inc.'s files in reviewing the emails the Beck Amsden law firm emailed the Thorntons on June 7, 2016 is a PDF of the Settlement Agreement and Mutual Release. The release of mortgage and warranty deeds were not included.

I have reviewed John Amsden's Declaration. He states in part, the fully executed settlement agreement was not returned to his office.

Dennis Thornton received for the first time the fully signed settlement agreement on December 4, 2017 from Alliance Title officer, Debbie Pierce, by email who had received the document from Sean Frampton. Dennis then forwarded it to John Amsden.

I have reviewed the court pleadings and the documents turned over in discovery in (DV-12, 174B) and I have not found the unique identification number in any documentation prior to June 7, 2016. Only WCU would have had the unique identification number (FT 20120081).

.....

ANALYSIS

(30) The release of mortgage and the warranty deeds could have only been prepared by WCU. Both documents

contain WCU's internal personal guarantee unique identification number (FT 20120081).

(31) The Thorntons would not have had the expertise or the knowledge that the deeds they signed would be considered counterfeit or forged. **Exhibit (40)**

Exhibit (41)

(32) This document is intentionally designed to be deceptive and confuse. When one looks at item 2b Option Purchase. It states the following:

2b WCU shall execute releases of its mortgages for the 200- and 300-acre tracts, a copy of which are attached as Exhibit B. At execution of this agreement, the executed releases shall be deposited into escrow with First American Title Company. If Thorco timely exercises its option, First American Title shall record the appropriate release or releases.

(33) There are two exhibit B's contains in this document. There should not be two exhibit B's for two separate independent transactions. Both are for the release of the 2009 mortgage that has nothing to do with this new agreement.

(34) By not putting the proper releases in the document, one in the amount of \$300,000 and one in the amount of \$1,100,000 and separating them out by different exhibits, when one looks at the releases that are contained in the settlement agreement that show releases for the 2009 mortgage one is easily misled into believing the release of the 2009 mortgage was not to occur until the option was exercised. Lenders only get one action to foreclose and collect on a debt under MCA-71-1-222. Once WCU signed the Settlement Term Sheet on April 4, 2016 which is a contract agreeing to vacate WCU's Judgment of Foreclosure and Order of Sale and Dismiss with Prejudice, WCU's Foreclosure Lawsuit DV-12-174B was over and the one action was taken and the 2009 mortgage was terminated. Once the mediator reported back to the court, that the parties settled, it was official.

(34) By combining two different notes using a release from a different note, WCU had already agreed to terminate,

is easy for WCU to convince someone that WCU had the right to leave the 2009 mortgage on the public record. WCU knew by leaving the 2009 mortgage on the public record that all of Thorco Inc.'s efforts to find financing would fail because no title report would ever be able to be issued for \$300,000 for the 200-acre tract or for \$1,100,000 for the 300-acre tract. Then WCU would be able to say Thorco Inc. and the Thorntons failed exercise the option. And that's exactly what happened.

(35) In my Expert Opinion, this mortgage contract is void and is a Fraudulent inducement contract that WCU never intended to honor as described in MCA 70-20-401 Instrument Made With The Intent To Defraud-Void, that was used, to induce Thorco Inc. and the Thorntons into dismissing and releasing the \$60 million counterclaim, in exchange for two new agreements that called for the dismissing and releasing of WCU's \$4,348,880 foreclosure mortgage claim, that also called for Thorco Inc. to provide security deeds for two new mortgages. It is clear to see that WCU's intent was to induce Thorco Inc. and the Thorntons into releasing the counterclaim, knowing full well WCU was not going to take the actions necessary to release WCU's claim from the public record. As described in (18 USC-1341 fraud and swindles) WCU intended to swindle Thorco Inc. out of deeds that could be used for conveyance for the following reasons.

a. In the mortgage contract Item 8 states it is a full satisfaction and accord. Item 3 states there is to be no deficiency under any loan document note or guarantee at issue in the above described civil manner, Cause No. DV-12, 174B. Item 9 states there is to be no additional claims. Item 13 states WCU shall file a form 1099 with the IRS and WCU will only report the principal balance to the IRS as a loss.. This means the cancellation of debt had to occur before the agreement went into effect.

(Note the reason that WCU would not be allowed to report more than principal balance is because there had not been a final certified judgment by a court of competent jurisdiction that showed any interest was earned or owed.)

b.

(36) The cancellation of debt had to occur before any new agreement with WCU and did not occur. The mortgage contract (Settlement Agreement and Mutual Release) is invalid, for that reason alone. There is evidence in the November 27, 2017 Alliance Title report showing the 2009 mortgage still on the public record. Thorco Inc.'s IRS transcript shows that no cancellation of debt occurred. In a civil case brought by Dennis and Donna Thornton Cause No. DV-18-336D WCU is claiming the debt is still owed. This is further evidenced by an affidavit of Aaron Archer on August 31, 2018 where Archer states in part [the total indebtedness on the Thorco loan is currently over \$4 million dollars.

(37) Even if the mortgage contract were a valid contract. It would be void because it was not completed by WCU. The mortgage contract calls for an escrow agreement with First American Title Company. There is no escrow agreement or escrow. This is important because First American Title Company is the designated place of payment. There are many First American Title Companies. The document does not have an address, or mailing address identifying which First American Title Company.

.....
August 12, 2016. I found Joint motions are filed to vacate February 23, 2016 Judgment of Foreclosure and Order of Sale in the amount of \$4,348,880.01

Exhibit (42)

August 16, 2016, I found the Hon. Robert Allison granted the motion by vacating February 23 Judgment of Foreclosure and Order of Sale in the amount of \$4,348,880.01.

Exhibit (43)

August 22, 2016, I found joint motions are filed to dismiss the lawsuit. DV-12-174B with prejudice.

Exhibit (44)

August 24, 2016, I found the Hon. Robert Allison granted the motion, dismissing with prejudice all claims and counterclaims forever.

Exhibit (45)

In December 2017 First American Title Company in Kalispell, Montana refused payment of \$1,400,000 from Dennis Thornton because of no escrow agreement or instructions and no payment instructions. August 12, 2016

Exhibit (46)

In a December 1, 2017 email from Thorco's realtor Jim Kuhlman to Brenda Nahring of First American Title Company in Kalispell, Montana Kuhlman asked [Can you please confirm to us if First American Title is in possession of these agreements being held in escrow and if said agreements were recorded.] Nahring responded by stating [We have searched our computer for an open order since June 2012 on assessor number 0213950 in the name of Thorco Inc and do not find an open order. According to the courthouse IDOC program, there has been nothing recorded on that same assessor number since 2009.]

Exhibit (47)

This is indirect violation of the following MCA statutes in the Montana Mortgage Act. There are escrow instructions, contained in the mortgage agreement. WCU is in violation of the following laws that state in part:

a. MCA 32-9-170. Mortgage servicer duties, states in part In addition to any duties imposed by federal law or regulations or the common law, a mortgage servicer shall: (1) safeguard and account for any money handled for the borrower; **(2) follow reasonable and lawful instructions from the borrower;**

b.

MCA 32-7-121.Unauthorized business practices -- penalty. Unauthorized business practices of escrow businesses include but are not limited to the following:

(3) failing to carry out the escrow

transactions pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;

c.

MCA 32-9-145 states in part that: [an escrow must be established prior to the end of the third business day following their receipt. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.]

d.

MCA 32-9-102. License requirement -- registration require A and B above to be carried out by a licensed individual authorized to conduct credit union business and states in part: (1) Unless exempt under 32-9-104, a person may not regularly engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan unless licensed or registered under the provisions of this part through the NMLS.

e.

MCA 32-9-124 Prohibitions -- required disclosure, states in part. **(1) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records, computer records, or other information from the department; or**

ANALYSIS

(38) All real estate transactions must be recorded. This is necessary for several reasons. The most important reason is to keep everyone honest. It is also necessary so that a proper title search can be achieved to determine the proper amount owed on the property, if any. It is necessary to perfect the lenders secured interest. It is unlawful to keep any financial real estate transaction secret or off

the lending institutions books from the Montana Department of Administration

(39) All lenders must perfect their security interest in order for it to be enforceable under a foreclosure action. The Uniform Commercial Code grants all lenders temporary perfection for 20 business days to perfect their security interest, if not perfected within 20 business days, on the 21st business day, it becomes unperfected and the contract becomes null and void and non-enforceable.

(40) A security interest cannot be perfected before it has attached.. Attachment does not occur until the security interest is enforceable and, a security interest is not enforceable until (1) **the debtor has rights in the collateral**; (2) value has been given; and (3) the debtor has authenticated a security agreement containing a description of the collateral. All three elements must be satisfied and, if any one element is not, the security interest is not valid. Lenders do not come into ownership of the secured interest until the secured interest is so far perfected that it is salable and transferable to any Federally Insured Institution.

(41) All terms agreed to with the borrower must be met on all and any mortgage contracts and must have a closing and a settlement statement and if the closing does not occur under MCA 32-9-148 (5a) the lender must return anything of value given to the borrower, Thorco Inc. at settlement reduced its \$60 million counterclaim to \$3 million and agreed to put it back on the table along with two security deeds for the two mortgages. It is clear from the title report and the email from First American Title Company that the closing never occurred. Since the closing never occurred, WCU is required to return the security deeds, along with the \$3 million.

.....

f. MCA 32-9-148. Disclosure of mortgage costs by mortgage lender. (1) A mortgage lender shall disclose the terms of the loan to the

borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the **terms of any prepayment penalty on the mortgage loan**, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. A mortgage lender shall comply with federal laws and rules regarding prepayment penalties.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a loan commitment fee, upon approval of the mortgage loan application, if the borrower is provided with a loan commitment in writing that is signed by the mortgage lender and the **borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the loan commitment,** including but not limited to:

(i) the time period during which the loan commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from the date of the loan commitment or the date of mailing, whichever is later;

(ii) the amount and payment terms of the loan commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the loan commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid loan commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the loan

commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a loan commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender. (See part compiler's comment regarding contingent suspension.)

.....

(42) For this agreement to be valid, first WCU would have had to release the 2009 mortgage and record to new mortgages against the property. Since neither occurred, the agreement is invalid, for those reasons alone. Based on the reasons described above the mortgage document called The Settlement Agreement and Mutual Release is a fraudulent document that WCU never intended to honor and was only used to fraudulently induce Thorco Inc. and the Thorntons into releasing their claims against WCU by tricking Thorco Inc. and the Thorntons into believing WCU was dismissing its claims. WCU knew full well they intended to leave WCU's unlawful claims in place and only intended to swindle Thorco Inc. out of deeds to 500 acres. Because WCU breached the written agreement, never carried out the duties all lenders are required to do on all mortgage contracts and never canceled the debt this agreement never went into effect.

.....

August 12, 2016 I found a Joint Motion to Vacate the February 23, 2016 Judgment of Foreclosure and Order of

Sale. This motion was filed by WCU's attorney Johnna Preble, Thorco's attorneys John Amsden, John Heenan, and Bruce Anderson. I found the names Thorco Inc. Dennis Thornton and Donna Thornton contained in the caption.

August 16, 2016, the court granted the motion, vacating the February 23 Judgment of Foreclosure and Order of Sale. I found the names Thorco Inc. Dennis Thornton and Donna Thornton contained in the caption.

August 22, 2016, I found a Stipulation to Dismiss with Prejudice by WCU's attorney Johnna Preble, Thorco's attorneys John Amsden, John Heenan, and Bruce Anderson. The stipulation states the following:

Come now, the parties, Whitefish Credit Union, Thorco, Inc., Dennis Thornton and Donna Thornton, who upon grant of the parties' joint motion that the Court's February 23, 2016 Judgment of Foreclosure and Order of Sale be vacated, stipulate to dismiss with prejudice their respective claims which have now been **settled**. I found the names Thorco Inc. Dennis Thornton and Donna Thornton contained in the caption.

August 24, 2016, I found the court granted the motion. The dismissal with prejudice states the following:

It Is Hereby Ordered that the claims between whitefish credit union, Thorco, Inc., Dennis Thornton and Donna Thornton are hereby dismissed with prejudice, each party to bear its own costs and attorney fees. I found the names Thorco Inc. Dennis Thornton and Donna Thornton contained in the caption.

ANALYSIS

(43) The mortgage contract (The Settlement Agreement and Mutual Release), may not have cancelled the debt because of the unlawful terms and WCU's breach, but the two court orders above vacating the February 23, 2016 Judgment

of Foreclosure and Sale on August 16, 2016, and the August 24 Dismissal with Prejudice did cancel the debt and every obligation owed to WCU by Thorco Inc and the Thorntons. There is no judgment, decree retaining the Settlement Agreement or 2009 mortgage the dismissal with prejudice is the controlling document. Title 25 civil procedure chapter 20 Rules of Civil Procedure rule 41 states in part a dismissal of action operates as an adjudication on the merits.

(44) It is very rare that a lender will Vacate a Judgment that the lender worked very hard to get, especially one in the amount of \$4,348,880.01. This is a very large sum of money. In my expert opinion. The only reason WCU was willing to walk away from that Judgment is because WCU feared what a jury would do to them once exposed for the insider abuse and the engineered foreclosure. But once the Judge signed the order and the Clerk of Court recorded the order, Thorco Inc. and the Thorntons debt and obligation to WCU is no longer owed or collectible and is considered satisfied and adjudicated by a court of competent jurisdiction. The Dismissal with Prejudice concludes all litigation that is adverse to the plaintiff which is WCU. In other words, WCU lost its foreclosure lawsuit. Once a lawsuit is Dismissed with Prejudice and the Judge signs the order and the Clerk of Court records it, all claims that could have been brought are forever barred, by Res -Judicata and the Lawsuit Is Final and All US Courts Must Accept As Adjudicated by a Court of Competent Jurisdiction and Final. All courts must use judicial restraint and not look beyond the words Dismissed With Prejudice.

(45) Once WCU Vacated Its Judgment and Dismissed with Prejudice it is considered adjudicated by a court of competent jurisdiction, WCU is required to remove the mortgage lien from the public record under MCA 71-3-131.
.....

MCA 71-3-131 Acknowledgment of lien satisfaction -- penalty. (1) Subject to subsection (2), when a lien

authorized under this chapter is paid and satisfied or the claim upon which it is based has been found **invalid by final order or judgment of a court of competent jurisdiction**, the creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, the creditor is liable to any person injured by the failure for a civil penalty of \$100, plus any other damages provided by law.

The removal of lien is important because left in place gives the false impression that a debt is still owed, which is considered Fictitious under title 18 US code 514-Fictitious Obligations, and is a class B felony.



ANALYSIS

(46) In my expert opinion after September 23 , 2016, any claim made by WCU that Thorco Inc. or the Thorntons owed a debt to WCU would be in violation of title 18 US code 472 uttering counterfeit obligations or securities and title 18 US code 473. Dealing in counterfeit obligations or securities, both of which carry a maximum prison sentence of 20 years.

An example of counterfeiting is if person photocopies a \$100 bill that looks exactly like the original, then throws the original in a fire, the photocopy cannot be used because it is counterfeit. Here the exact same thing happened when WCU vacated its judgment and dismissed its mortgage foreclosure lawsuit with prejudice, it had the same effect as throwing mortgage debt and all other debt owed by Thorco Inc. or the Thorntons to WCU in the fire.

Once the Judge signed the Order and the Clerk of Court recorded the Order, the Judgment debt went from lawful to unlawful, any claim by WCU against Thorco Inc. and the Thorntons after August 24, 2016 is counterfeit and

fictitious and would be the attempt to collect or the collection of an unlawful debt.

.....

18 U.S. Code § 472 - Uttering counterfeit obligations or securities

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S. Code § 473 - Dealing in counterfeit obligations or securities

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined under this title or imprisoned not more than 20 years, or both.

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined under this title or imprisoned not more than 20 years, or both.

.....

ANALYSIS

(47) After the court vacated the February 23, 2016 Judgment of Foreclosure and Order of Sale and dismissed WCU's Foreclosure Lawsuit with Prejudice without a judgment degree retaining any amount owed, the debt is considered forever discharged and no longer a lawful debt, and any attempt collect an unlawful debt under title 18 US code 1962 is considered racketeering.

.....

18 U.S. Code § 1962 - Prohibited activities

(a) it is a crime to "use or invest" any income

derived from "a pattern of racketeering activity" or through "collection of an unlawful debt" to establish, acquire an interest in, or operate "any enterprise" engaged in or affecting interstate commerce.

November 27, 2017, According to the Alliance Title report WCU did not Cancel the Debt as agreed to in two written agreements and as required and by two Adjudicated to Finality Court Judgment Orders.

The NCUA's definition of a failed Credit Union is one that fails to meet its obligations when they become due.

WCU did not file or record an acknowledgment of lien satisfaction with the Flathead County Clerk and Recorder's Office removing the 2009 mortgage from the public record as required.

MCA 71-3-131. Acknowledgment of lien satisfaction -- penalty. (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, the creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, the creditor is liable to any person injured by the failure for a civil penalty of \$100, plus any other damages provided by law.

Thorco Inc.'s IRS transcript shows that WCU did not file the required 1099-C with the IRS for the Cancellation of Debt. This is in direct violation of IRS rules and regulations the Bank Security Act NCUA Rules and Regulations and 12 CFR 702 that deals with WCU's net worth. Once a debt becomes uncollectible under General Acceptable Accountability Principles (GAAP) WCU must charge off the debt as required under Lease and Loan Loss (ALLL) by the end of the following business day in which the loss occurred.

.....

ANALYSIS

(48) Because WCU did not file a lien satisfaction or the required 1099-C's when the obligations became due for those two reasons alone, WCU is a failed Credit Union and is liable for a \$100 civil penalty plus any other damages provided by law to Thorco Inc. and the Thorntons starting at the latest of possible dates being September 23, 2016.

.....

There are several departments that are required by the Federal credit Union Act that all have checks and balances that are in place at WCU all the way from the foreclosure department to the supervisory committee. Either there is no oversight over the foreclosure department as required or worse.

I found documentation where Thorco Inc. submitted several loan applications for different amounts that all exceeded \$1,400,000 in an effort to fulfill an obligation Thorco Inc. believed was owed to WCU. Several of these loan requests failed, not in the initial stages of the loan request but what appears to be in the underwriting process, it is not uncommon for a lender to contact the previous lender to find out information about the borrower and what the payoff is or to simply go to I docs. If a lender finds information in the underwriting process that is not consistent with the information submitted by the borrower, the lender usually declines the loan request without the borrower knowing the true reason. At least three of these loan request appeared to have failed in this process.

October 2017, I found evidence that, over a year after WCU was required by law to file a lien satisfaction that an investor by the name of Ed Harshbarger who was willing to pay \$15,000,000.00 (**fifteen million dollars**) for the 300 acre development walked away because he thought Dennis Thornton lied to him. In his affidavit, he states he found there was no escrow at First American Title Company, the original 2009 mortgage was still on the public record, was told by WCU that more than 4 ½ million dollars was owed on the property and that it was in foreclosure.

Exhibit (48)

October 2017, I found evidence of one approved loan to Thorco Inc. that **(was cleared to close)** from Funding Edge failing in underwriting process because WCU failed to record a mortgage satisfaction on the 2009 mortgage record the new agreement or establish an escrow at First American Title Company and the title agent, Debbie Pierce from Alliance Title could not determine what was owed on the property.

Exhibit (49)

October 2017, I found evidence where Thorco Inc. had 2 acres of lakefront property on Flathead Lake under contract for \$850,000 that was to provide lake access for all residential lots that were to be created on 580 acres of Thorco Inc.'s property.

Exhibit (50)

October 2017, I found evidence where Thorco Inc. had a purchase and sale agreement with investor Jeff Cameron for 12 of the 62 lots for \$2,100,000.

October 2017, I found evidence that Cameron had a purchase and sale agreement with investor John Sheldon for the purchase of three of the 12 lots for \$900,000 that was to close shortly after Cameron's closing.

Exhibit (51)

December 2017, I found where Thorco Inc. had an aggregated amount of over \$14 million, **Fourteen Million Dollars** available to pay \$1,400,000 what was believed to be owed to WCU.

I found all of these transactions failed because Alliance Title agent Debbie Pierce could not determine what was owed on the property.

Exhibit (52)

Exhibit (53)

Exhibit (54)

Exhibit (55)

Exhibit (56)

Exhibit (57)

Exhibit (58)

Exhibit (59)

December 2017, I found whereupon discovery that no closing had occurred in June of 2016 at First American Title Company and no escrow agreement with First American Title Company had ever been established that Thorco Inc.'s attorneys, John Amsden and Mike Black contacted Sean Frampton and requested WCU to deliver the necessary documents to First American Title Company. I found where Sean Frampton claimed to attorney Mike Black he did not know where the documents were for over three months.

Exhibit (60)

December 2017, I found where Sean Frampton did nowhere documents were because he emailed a copy of the documents to Alliance Title agent Debbie Pierce in early December.

Exhibit (61)

.....

ANALYSIS

(49) Whether one believes the mortgage contract (The Settlement Agreement and Mutual Release) was valid or invalid recorded or not recorded, the one thing a lender cannot do is enter into a financial contract where it is believed that the borrower does not have the ability to repay. When Frampton stated he did not know where the documents were and the title agent could not determine what was owed on the property, Thorco's abilities to pay \$1,400,000 was prevented and taken away.

.....

December 2017, I found evidence that Dennis Thornton, on behalf of Thorco Inc. offered First American Title Company \$1,400,000, the place of payment described in the mortgage contract (The Settlement Agreement and Mutual Release) in exchange for the nonmerger warranty deeds. I found evidence that First American Title Company refused to accept any money from Thorco Inc. because of not having an escrow agreement or payment instructions.

December 2017, I found where WCU made an impossible demand of payment of \$1,400,000 that no title company could or would insure clear title without a recorded agreement or payoff from WCU. WCU stated that ownership would be transferred on December 28, 2017 at noon using the non-merger warranty deeds. If payment was not made.

December 2017, I found where Thorco Inc. filed for an emergency Chapter 11 bankruptcy protection on December 28, 2017 at 10 AM, to prevent the unlawful transfer.

Exhibit (62)

January 2018, I found in a CD disc recording of Thorco Inc.'s first bankruptcy creditors meeting where Dennis Thornton requested WCU to deposit and open the escrow with First American Title Company so that Thorco Inc. could obtain title insurance and the \$1,400,000 payment could be made.

March 2018, I found WCU filed a Motion to Modify Stay on March 30, 2018 Case No. 17-6 1219-11 On page 5 of the 9-page document, item 11. It states the following:

The settlement **envisioned that the parties would establish an escrow** at First American Title Company to hold the original Release of Mortgage executed by WCU and the original Warranty Deeds executed by Debtor. Neither party established the escrow at First American Title Company. Instead, **Debtor provided its fully executed Warranty Deeds to WCU's counsel to hold the documents in trust** together with the releases of mortgage pending Thorco's performance or nonperformance of the option to purchase.

Exhibit (63)

The evidence I found shows on June 7, 2016 that the Thornton's were instructed to deliver the mortgage contract (The Settlement Agreement and Mutual Release), after signing to WCU's attorney Sean Frampton so that WCU could sign the documents and open the escrow. I found no evidence

of any trust agreement between Thorco Inc. or the Thornton's and WCU's counsel. If there is a trust agreement, WCU and or WCU's counsel should be to able to produce the trust agreement, trust instructions, the name of the trustee, etc.

Exhibit (64)

On page 3 item (f) states the following:

Debtor's bankruptcy schedule value WCU's collateral at \$8,790,000.00. However, according to an appraisal obtained by WCU, the fair market value of Creditor's collateral as of June 15, 2017 was \$1,780,000.00

I found in the proof of claim that WCU was connecting parts of different notes by combining the 2009 adjudicated mortgage with the unlawful uncompleted mortgage contract called The Settlement Agreement and Mutual Release.

Exhibit (65)

18 U.S. Code § 484 - Connecting parts of different notes

Whoever so places or connects together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined under this title or imprisoned not more than 10 years, or both.

I found a proof of claim filed on April 26, 2018 by WCU's attorney, Dean Stensland under the penalty of perjury with the US Bankruptcy Court stating WCU had recorded mortgages totaling \$1,400,000. I found a listing request submitted by realtor Kim Barstow to Alliance Title to see if WCU had recorded mortgages totaling \$1,400,000 after that. November 28, 2017 Alliance Title report. The listing request shows WCU did not and does not have recorded mortgages totaling \$1,400,000.

I found in the proof of claim, the value of the property has now dropped from the first bankruptcy Thorco Inc. filed in 2014, where WCU submitted a proof of claim stating the value of the property of 8,790,000 to a value of \$1,700,000 in 2017 bankruptcy action. In my expert opinion, this is another intentional act, by WCU I view this is another equity stripped appraisal. In all courts, lenders are required to show that the borrower received fair or equivalent value for the property. Lenders are allowed a maximum of 15% plus or minus on equivalent value of property. Appraisals are expensive there would have been no reason for WCU to order an appraisal after the parties settled.

.....

ANALYSIS

(50) This appraisal was intended to be used later, to show that WCU was in compliance with the fair or equivalent value. By multiplying \$1,700,000 by 85% one comes up with the value of \$1,445,000. I believe this is no coincidence. I believe again, there is appraisal fraud.

.....

Exhibit (66)

I found where the Thorntons hired attorney Michael Klinkhammer in an effort to have their personal guarantees on the 2009 mortgage extinguished. I found emails where WCU refused to do so, claiming the debt was still owed.

I found on April 6, 2018 where the Thorntons filed a personal lawsuit against WCU in Montana's 11th judicial district court in Kalispell, Montana. The Cause No. Is DV-18-336D District Court judge Dan Wilson presiding.

I found the subject matter was the release of the 2009 mortgage from the public record, or at a minimum, open the escrow with First American Title Company.

May 3, 2018 I found that WCU did not answer the complaint and that the Thorntons received a default judgment in the amount of \$106 million against WCU.

Exhibit (67)

May 10, 2018 I found WCU filed a motion to set aside default. In the motion filed by Sean Frampton on behalf of

WCU. I found that Frampton stated, this court can take judicial notice of pleadings in DV-12-174(B)

I found on page 15 it states the following:

Thorntons claim fraud because WCU represented to lenders that the Thorntons owed more than \$4 million on the Somers property. Obviously, Thorntons are claiming that WCU's mortgage which had been recorded since 2009 was representation since WCU never spoke to any lenders. (Aff Frampton) . Also, the alleged representation was correct in that Thorco and Thorntons owed over \$4 million until and unless they exercise their option, which they never did. Exercising their option was a condition precedent to part of the mortgage per the terms of the Settlement Agreement.

Exhibit (68)

I found no condition precedent in the mortgage document called Settlement Agreement and Mutual Release. This is in direct violation of MCA 32-148, which states in part:

MCA 32-9-148. Disclosure of mortgage costs by mortgage lender. (1) A mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(d) a loan commitment fee, upon approval of the mortgage loan application, **if the borrower is provided with** a loan commitment in writing that is signed by the mortgage lender and the **borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the loan commitment**, including but not limited to:

(iv) conditions precedent to closing; and

ANALYSIS

(51) All conditions must be disclosed to be in compliance with Montana Administrative Rules. If there was a condition precedent which I found no evidence of WCU would have been required to disclose it.

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2.59.118 REQUIRED DISCLOSURES

(1) A bank shall provide the following disclosures to the bank's customer:

(a) notice of the prohibited acts or practices contained in ARM 2.59.119;

(b) the fee applicable to the contract and any payment options;

© the refund policy;

(d) whether the customer is barred from using the credit line to which it pertains if the debt cancellation contract or debt suspension agreement is activated;

(e) eligibility requirements, conditions, and exclusions;

(f) that a debt suspension agreement, if activated, does not cancel the debt, but only suspends payment requirements; and

(g) notice that cancellation of debt may result in a tax liability to the customer if activated.

(2) The requirements for the timing and method of disclosure are:

(a) the bank shall make the disclosures in (1) and the short-form disclosures under ARM 2.59.123 orally at the time the bank first solicits the purchase of a contract;

(b) the bank shall make the long-form disclosures under ARM 2.59.123 in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, the bank shall provide the long-form disclosure in writing at that time;

© if the contract is solicited by telephone, the bank shall provide the disclosures in (1) and the short-form disclosures under ARM 2.59.123 orally and shall mail the long-form disclosures, and, if appropriate, a copy of the contract to the customer within three business days beginning on the first business day after the telephone solicitation: and

(d) if the contract is solicited through written materials such as mail inserts or "take one" applications, the bank may provide only the disclosures in (1) and the short-form disclosure under ARM 2.59.123 to the customer within three business days beginning on the first business day after the customer contacts the bank in response to the solicitation, subject to the requirements of ARM 2.59.122 (3) (b).

(3) The disclosures required by these rules must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. The methods may include use of plain language headings, easily readable typeface and size, wide margins and ample line spacing, boldface or italics for key words, and/or distinctive type style or graphic devices.

(4) The disclosures in the short-form disclosure under ARM 2.59.123 are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

(5) The disclosures described in these rules may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. or the Uniform Electronic Transaction Act, Title 30, chapter 18, part 1, MCA.

History: 32-1-218, MCA; IMP, 32-1-429, MCA; NEW, 2011 MAR p. 2801, Eff. 12/23/11.

2.59.119 PROHIBITED ACTS OR PRACTICES

(1) A bank is prohibited from engaging in any of the following acts or practices:

(a) extending credit or altering the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation agreement or debt suspension agreement with the bank. The prohibition is commonly referred in the regulatory context as the anti-tying provision;

(b) engaging in any practice or using any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under ARM 2.59.118, including what is being offered, the cost, and/or the terms of the contract;

(c) offering debt cancellation contracts or debt suspension agreements that contain terms:

(i) giving the bank the right unilaterally to modify the contract unless:

(A) the modification is favorable to the customer and is made without additional charge to the customer; or

(B) the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect; or

(ii) requiring an up-front, lump-sum single payment for the contract if the extension of credit to which the contract pertains is a residential mortgage loan

.....
ANALYSIS

(52) In the personal action filed by attorney Michael Klinkhammer, DV-18-336D, WCU's attorney Frampton committed fraud on the court. Fraud on the court occurs when the judicial machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in the perpetration of a fraud or makes material misrepresentations to the court. Fraud upon the court makes void the orders and judgments of that court.

(53) Frampton is claiming a fictitious obligation under 18 US code 514. The 2009 mortgage was foreclosed on, adjudicated to finality on August 24, 2016. Frampton, knew

the debt and the mortgage no longer existed. Any claim to the 2009 mortgage is fictitious and counterfeit and the attempt to collect an unlawful debt.

.....

18 U.S. Code § 514 - Fictitious obligations

(a) Whoever, with the intent to defraud—

(1) draws, prints, processes, produces, publishes, or otherwise makes, or attempts or causes the same, within the United States;

(2) passes, utters, presents, offers, brokers, issues, sells, or attempts or causes the same, or with like intent possesses, within the United States; or

(3) utilizes interstate or foreign commerce, including the use of the mails or wire, radio, or other electronic communication, to transmit, transport, ship, move, transfer, or attempts or causes the same, to, from, or through the United States,

18 U.S. Code § 472 - Uttering counterfeit obligations or securities

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

May 10, 2018, I found the Thornton's personal attorney Michael Klinkhammer provided enough information to show no debt was owed to WCU when he filed the (Motion for Order That Whitefish Credit Union File The Mortgage Release with the Flathead County Clerk and Recorder Or At A Minimum, Open the Escrow Pursuant to the Terms of the Settlement Agreement and Mutual Release)

.....

ANALYSIS

(54) Klinkhammer clearly lays out that no money is owed. Klinkhammer entered into evidence a certified copy of DV-12-174B February 23, 2016 Judgment of Foreclosure and

Order of Sale, a copy of the June 8, 2016 Settlement Agreement and Mutual Release, a certified copy of a Joint Motion to Vacate February 23, 2016 Judgment of Foreclosure and Order of Sale filed on August 12, 2016, a certified copy where District Court Robert Allison granted the motion on August 16, 2016, a certified copy filed for a Stipulation to Dismiss with Prejudice on August 22, 2016, and a certified copy of District Court Judge Robert Allison granting the motion on August 24, 2016.

.....

June 18, 2018 I found District Court Judge Dan Wilson set aside the default. I found that Wilson ignored the evidence that Klinkhammer provided that clearly shows the debt and mortgage had been canceled.

In Wilson's order setting aside the default, Wilson ruled there was disputed facts needed to be tried.

I found that WCU did not file any counterclaims, which relief could be granted to WCU.

I found that after the personal action was filed that WCU agreed to deposit and open an escrow at First American Title Company if Thorco Inc. **Dismissed the Bankruptcy** action and agreed not to refile for 18 months.

I found that Thorco Inc. through its bankruptcy attorney Jon Binney accepted the offer after Dennis Thornton and personal attorney Michael Klinkhammer verified the documents were at First American Title Company. See affidavit of Jon Binney

I found after Thorco Inc. dismissed the bankruptcy agreeing not to refile for 18 months, WCU retrieved the documents from First American Title Company and never deposited or opened the agreed-upon escrow.

Exhibit (69)

May 10, 2018, I found the Thornton's personal attorney Michael Klinkhammer provided enough information to show no debt was , not owed to WCU when he filed the **(Motion for Order That Whitefish Credit Union File. The Mortgage Release with the Flathead County Clerk and Recorder or at a**

Minimum, Open the Escrow Pursuant to the Terms of the Settlement Agreement and Mutual Release)

July 5, 2018

Exhibit (70)

July 10, 2018, I found WCU filed a motion called **Answer**
On page 2, item 6 states the following:

Answering paragraph 7, WCU admits that the fully executed Settlement Agreement was held at Frampton Purdy Law Firm, and deny all remaining allegations.

Item 7 states the following:

Answering paragraph 8. WCU admits **that it did not open an escrow** and further admits that the Settlement Agreement provides that the releases and deeds must be placed into escrow with First American Title, and denies all remaining allegations.

Exhibit (71)

ANALYSIS

(55) This is in direct contradiction to what I found WCU filed on March 30, 2018 **Motion to Modify Stay** in the bankruptcy action stating the warranty deeds were given to WCU to hold in Trust.

.....

Motion to Modify Stay March 30, 2018 Case No. 17-6 1219-11
On page 5 of the 9-page document, item 11. It states the following:

The settlement envisioned that the parties would establish an escrow at First American Title Company to hold the original Release of Mortgage executed by WCU and the original Warranty Deeds executed by Debtor. Neither party established the escrow at First American Title Company. Instead, **Debtor provided its fully executed Warranty Deeds to WCU's counsel to hold the documents in trust**

together with the releases of mortgage pending Thorco's performance or nonperformance of the option to purchase.

I found no trust.

Exhibit (72)

I found where the Thorntons filed several motions to amend and enjoin Thorco Inc. into the personal suit.

I found where District Court Judge Dan Wilson denied the amended complaints to include Thorco Inc.

August 31, 2018 I found Frampton used and affidavit from Aaron Archer to support WCU's claim in the attempt **to collect an unlawful debt**, they both knew was not owed. The affidavit states in part, the following:

item 2. The total indebtedness on the Thorco loan is currently over \$4 million. Since the option was not exercised, the total indebtedness remains.

Exhibit (73)

I found evidence where District Court Judge Dan Wilson made rulings that affect Thorco Inc. that he did not have personal matter jurisdiction to do.

October 4, 2018, I found evidence where District Court **Judge Dan Wilson counterfeited by reusing** the February 23, 2016 Judgment of Foreclosure and Order of Sale that WCU was able to obtain through Summary Judgment in DV-12-174B that he knew or should have known no longer existed.

October 4, 2018, I found evidence where Wilson states in his ruling that the Thorntons and Thorco Inc. still owe the February 23, 2016 Judgment Of Foreclosure And Order Of Sale that he knew no longer existed **which now carries a balance of almost \$8 million (Eight Million Dollars)**, and in addition, Wilson gave 24 tracts of land totaling 500 acres of Thorco Inc.'s property away to WCU, when he did not have jurisdiction over Thorco Inc. with no trial.

October 4, 2018, the following are excerpts from Dan Wilson ruling, 2018:

Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.

On Page 2

Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.

In February 2012, WCU commenced a foreclosure action against Thorco Inc. and the Thorntons. The action involved two tracts of land—a 300 acre tract and a 200 acre tract ("the Property") Pursuant to Mont.R. Evid. 202(6), the Court takes judicial notice of the proceedings in *Whitefish Credit Union V Thorco Inc. Dennis Thornton, Donna Thornton and John Doe(s)*

On Page 3

Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.

In late February 2016, the court in DV-12-174, having granted summary judgment to WCU on its claims for foreclosure, enter judgment of foreclosure in favor of WCU and against Thorco Inc. and the Thorntons and decreed that the total indebtedness, including accrued interest, due and owing by Thorco Inc. and the Thorntons was \$4,348,880.01, said amount to accrue interest at the statutory rate of 10% per annum until paid in full DV-12-174 Dkt. No. 217, J. of Foreclosure and Or. of Sale (Feb. 23, 2016).

On Page 12

Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.

The Thorntons cannot show that continuing to own the Property—presently free of the recording of the Non-Merger Warranty Deeds conveying all of *Thorco's* right, title, and interest in the

Property to WCU-has caused them any compensable damages.

On Page 14

Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.

WCU's loan to Thorco, Inc. guaranteed by the Thorntons remains in default and owing.

On Page 16

Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.

Further, it is not disputed that the underlying loan is in default and that the mortgages on the Property merely secures payment of the loan.

Exhibit (74)

October 10, 2018 District Court Judge Dan Wilson in DV-18-336D enters a Judgment that states the following:

Judgment Is Hereby Entered in favor of defendant Whitefish Credit Union and against the Plaintiff's Dennis and Donna Thornton.

Exhibit (75)

ANALYSIS

(56) Judge Dan Wilson knowingly and willfully committed fraud on the court, counterfeited a Judgment that no longer existed, created a fictitious obligation against Thorco Inc. and the Thorntons, aided and abetted WCU in the collection of an unlawful debt. Wilson had to have researched the previous case DV-12-174B court file because neither party submitted the February 23, 2016 Judgment of Foreclosure and Order of Sale with the docket numbers, unless WCU did through Ex Parte communication. Anyone reviewing DV-12-174B would know the February 23, 2016 Judgment of Foreclosure and Order of Sale, was not a final

judgment, and was vacated on August 12, 2016 and Dismissed with Prejudice on August 24, 2016.

.....

Below are excerpts from the US criminal resource manual.

Criminal Resource Manual

910. Knowingly and Willfully

A defendant is not relieved of the consequences of a material misrepresentation by lack of knowledge when the means of ascertaining truthfulness are available. the

government may establish the defendant's knowledge of falsity by proving that the defendant either knew the statement was false or acted with a conscious purpose to avoid learning the truth.

Fraud on the Court

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

.....

ANALYSIS

(57) Wilson knowingly and willingly counterfeited this judgment and knew or should have known that WCU was trying to collect an unlawful debt. Wilson had enough evidence to obtain the truth. In the vacated judgment, Frampton talks about the exact same judgment. In one paragraph he says the debt is still owed in another paragraph he says it is not owed. In one paragraph he says no title is clouded in another paragraph he says WCU has a right to have the title clouded.

.....

July 24, 2018 WCU filed a Motion for Summary Judgment and Brief in Support Cause No DV-18-336D on Page 13, lines 16 through 24 states the following:

Thorco, Inc. is, indeed, in default on his loan and it owes well over \$4 million dollars. The fact the parties entered into a Settlement Agreement and vacated the Judgment, which are legal means to achieve repayment, does not change the fact that Thorco, Inc. is in default and owes WCU over \$4 million dollars. Accordingly, even if WCU said what was alleged, this statement is truthful, and it therefore did not breach the implied covenant and it is entitled to summary judgment.

page 16, lines 1 through 7 it states the following:

The only possible way a WCU lien could show on Thorntons' title report is with a judgment in favor of WCU and against Thorntons. See 25-9-301, MCA. The only judgment WCU received was on February 23, 2016. However, that judgment was vacated on August 16, 2016.

Accordingly, since it is undisputed that WCU is not causing any cloud on the Thorntons' real property held in their personal names, this count should be dismissed.

Exhibit (76)

MCA 71-3-131 Acknowledgment of lien satisfaction -- penalty. (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found **invalid by final order or judgment of a court of competent jurisdiction**, the creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, the creditor is liable to any

person injured by the failure for a civil penalty of \$100, plus any other damages provided by law.

I found evidence where Dennis Thornton was advised by surveyor Rick Breckinridge to obtain certified copies from the Clerk of Court and record the documents in the land records with the Flathead County Clerk and Recorder's Office against the title to the 24 tracts of land totaling 500 acres. Starting with the February 23, 2016 Judgment of Foreclosure and Order of Sale, the Montana Supreme Court ruling on the February 23, 2016 Judgment of Foreclosure and Order of Sale, the joint motions to vacate the February 23, 2016 Judgment of Foreclosure in Order Sale, the court order granting the motion, the joint motion to dismiss DV-12-174B with prejudice and the District Court ruling granting the motion dismissing DV-12-174B with prejudice.

October 15, 2018, I found evidence where Sen. Mark Blasdel (Montana Senate president at the time) and Rep. Mark Noland (Bank oversight committee at the time) held and oversaw several meetings on October 15, 2018 with several other WCU member business borrowers with the Montana Banking Commissioner Melanie Hall and Wayne Johnston asking for an investigation into WCU.

October 15, 2018, I attended the meeting on behalf of Thorco Inc. and the Thorntons I witnessed Dennis Thornton, Surveyor Rick Breckinridge, Realtor Kim Barstow and attorney Michael Klinkhammer turning over evidence explaining what WCU had done to Melanie Hall and Wayne Johnston. I witnessed Sen. Mark Blasdel and Rep. Mark Noland and all who had attended on behalf of Thorco Inc. and the Thorntons asking Melanie Hall to investigate the transactions between Thorco Inc. and the Thorntons. I witnessed Melanie Hall and Wayne Johnston, promising and agreeing to investigate WCU.

I found no evidence where the Montana Division of Banking investigated anything. I found several emails from Dennis Thornton to the Montana Division of Banking requesting information on investigation. Each and every request was stonewalled in some way or another. In contrast, I found several emails to the security commissioners office Lynn

Egan each and every request was responded to within minutes thoroughly addressing the requested information.

ANALYSIS

(58) Commissioner Melanie Hall of Montana Division of Banking and Financial Institutions, is derelict in the faithful performance of duty that the commissioners position requires. I found no evidence where the Montana Division of Banking investigated anything.

October 24, 2018, I found evidence where Dennis Thornton recorded certified copies of the court orders that Breckinridge advised him to do.

Exhibit (77)

October 25, 2018, I found evidence that WCU used the security deeds provided in the mortgage contract called The Settlement Agreement and Mutual Release for conveyance deeds and electronically transferred the ownership of 24 tracts of land totaling 500 acres into the ownership of WCU. WCU transferred the property without Thorco Inc.'s permission.

Exhibit (78)

ANALYSIS

(59) According to the law, the deeds could only be categorized as security deeds and were not conveyance deeds, the deeds were security deeds, the deeds came from an agreement, that was not perfected or recorded with in the statutory time limit of 20 days and as laid out earlier in my expert report from an agreement that was unlawful, not in noncompliance with any banking rules or regulations and never went into effect.

I found evidence where the Thorntons appealed this ruling to the Montana Supreme Court.

I found evidence where the Montana Supreme Court affirmed Wilson's ruling and also ruled that there ruling was not precedent-setting was not to be published anywhere.

ANALYSIS

(60) The Montana Supreme Court ruling that states, in part : (this case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports). This has the appearance of a secret ruling, by the Montana Supreme Court. This can only be viewed as keeping secret the unlawful ruling, aiding and abetting WCU, District Court Judge Dan Wilson in a racketeering scheme to collection of an unlawful debt that is currently almost \$8 million Eight Million Dollars.

.....

Below are excerpts taken directly from the Montana Supreme Court ruling:

This case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

I found evidence after the Montana Supreme Court ruling where Dan Wilson amended his judgment and ruled that public certified court documents that Dennis Thornton recorded with the Flathead County Clerk and Recorder's Office against the title of Thorco Inc.'s property must be destroyed.

I found a ruling by Dan Wilson recorded with the Flathead County Clerk and Recorder's Office that also states that the Flathead County Clerk and Recorder's Office is not to accept any documents for recording from Dennis Thornton.

I found where the 12 shareholders of Thorco Inc. filed a lawsuit against WCU for the enforcement of the mortgage contract, The Settlement Agreement and Mutual Release.

July 2018, I found evidence where Thorco Inc. hired accountant Andrew Johnson, a former IRS fraud investigator to investigate and file Thorco Inc.'s tax return.

September 15, 2018, I found evidence where Johnson determined the property had been stolen by WCU. In the tax return that was filed with the Montana Department of Revenue and IRS. I found evidence that both the IRS and the Montana Department of Revenue determined the tax return was filed correctly and that the tax return has not been challenged since its date of filing of 9-15-2018. I found evidence that the tax return was amended to \$26,790,000. I found evidence of a CMA completed by realtor Kim Barstow that shows the value of the property with lake access to be in excess of \$100 million. Dennis Thornton has indicated to me that Thorco Inc. intends to have the property appraised with the lake access to determine the actual loss and amend the return if the property is not returned to Thorco Inc.. Even if the tax return is not amended, this is a substantial loss to Thorco Inc. and its shareholders along with the Montana Department of Revenue and the IRS.

I found evidence where the 12 shareholders of Thorco Inc. hired attorney Nathan Wagner to file a suit against WCU on behalf of Thorco Inc.

I found that this case was assigned to District Court Judge Robert Allison. Allison was the District Court Judge in WCU's foreclosure lawsuit DV-12-174B that granted February 23, 2016 Summary Judgment of Foreclosure and Order of Sale against Thorco Inc. and the Thorntons. Allison was the District Court Judge that granted the motion on August 16, 2016 to vacate the Summary Judgment of Foreclosure and Order of Sale and was the District Court Judge that granted the motion to Dismiss with Prejudice. WCU's foreclosure lawsuit and Thorco's counterclaims.

I found where WCU accused Thorco Inc. and the shareholders of being a vexatious litigator claiming Thorco Inc. and the shareholders were trying to relitigate DV-12-174B and DV-18-336D. I found no evidence that Thorco Inc. or the shareholders were trying to litigate either of the previous lawsuits. I did find evidence where WCU was relitigating DV-12-174B by trying to collect a debt that had already been adjudicated.

I found where District Court Judge Robert Allison ruled that Thorco Inc. and the shareholders were vexatious litigators.

I found where Thorco Inc. appealed the ruling to the Montana Supreme Court.

August 17, 2021, I found where the Montana Supreme Court affirmed Robert Allison's ruling designating Thorco Inc. and its shareholders vexatious litigators.

Again, I found the same language this case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

I found again the Montana Supreme Court ruling was not precedent-setting was not to be published anywhere . **This has the appearance of a secret ruling, by the Montana Supreme Court.** In my expert opinion, this can only be viewed as aiding and abetting WCU, District Court Judge Dan Wilson in a racketeering scheme to collection of an unlawful debt.

I found after the Montana Supreme Court ruling Dennis Thornton acting as president of Thorco Inc. rejected the rulings because of the fraud and criminal acts committed by WCU, District Court Judge Dan Wilson, the Montana Supreme Court justices, District Court Judge Robert Allison and the Montana Supreme Court for the second time.

I found where Dennis Thornton acting as President of Thorco Inc. cut WCU's locks off the gates to Thorco Inc.'s property on September 29, 2020.

I found equipment inspection reports by equipment inspector Richard Richmond showing that all of Thorco Inc.'s equipment had been vandalized, that several pieces of equipment had been stolen and parts pieces were missing from several of the remaining pieces of heavy equipment.

In my expert opinion, Frampton committed fraud on the court. Fraud on the court occurs when the judicial

machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in perpetration of a fraud or makes material misrepresentations to the court. Fraud upon the court makes void the orders and judgments of that court.

In *Bulloch V. United States*, 763F. 2d 1115, 1121 (10th Cir 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted, or where the judge has not performed his judicial function--- thus where the impartial functions of the court have been directly corrupted."

It's

IV. RELEVANT QUESTIONS

I was asked to investigate the questions below and provide an Expert Opinion.

Q. Was it legal for *WCU Loan Officer* Randy Cogdill to tour Thorco Inc.'s development property with another developer for a potential sale?

A. No.

Q. Was there appraisal fraud or misconduct?

A. Yes.

Q. Is the Settlement Term Sheet a financial contract?

A. Yes.

Q. Is the mortgage referred to as a Settlement Agreement and Mutual Release a legal contract?

A. No.

Q. Is it the lenders responsibility to establish Escrow?

A. Yes.

Q. Is it the lenders responsibility to record all real estate transactions?

A. Yes.

Q. Does a *Vacated Judgment* cancel the debt?

A. Yes.

Q. Is a *Vacated Judgment* by the plaintiff, adverse to the plaintiff, meaning the plaintiff lost?

A. Yes.

Q. Is a *Dismissal with Prejudice* by the plaintiff, adverse to the plaintiff, meaning the plaintiff lost?

A. Yes.

Q. Is there a debt still owed by Thorco Inc. or the Thornton's after the Judgment was Vacated and the Foreclosure Lawsuit Dismissed with Prejudice?

A. No.

Q. If WCU claimed there a debt still owed by Thorco Inc. or the Thornton's after the Judgment was Vacated and the Foreclosure Lawsuit Dismissed with Prejudice, would that be a claiming an unlawful debt?

A. Yes.

Q. If WCU attempted or collected an unlawful debt, would that be considered racketeering under title 18 US code 1962?

A. Yes.

Q. Was WCU required to file a mortgage lien satisfaction on Thorco's loan with WCU by September 23, 2016?

A. Yes.

Q. Did WCU file a lien satisfaction for Thorco Inc.'s 2009 mortgage as required with the Flathead County clerk and recorder's office?

A. No.

Q. Was WCU required to send Thorco Inc. and the IRS a 1099-C for the cancellation of debt?

A. Yes.

Q. Did WCU send Thorco Inc. and the IRS a 1099-C for the cancellation of debt?

A. No.

Q. If WCU did not send Thorco Inc. and the IRS a 1099-C for the cancellation of debt, is that a violation of the Bank security act?

A. Yes.

Q. Did Thorco Inc. believe \$1,400,000 was owed to WCU?

A. Yes.

Q. Did Thorco Inc. in December 2017 have the funding to pay what Thorco Inc. believed was owed to WCU?

A. Yes.

Q. Did WCU prevent Thorco Inc. from paying \$1,400,000 that Thorco Inc. believed was owed to WCU?

A. Yes.

Q. Did *District Court Judge Dan Wilson* aid WCU in the collection of an Unlawful Debt?

A. Yes.

Q. Did the *Montana Supreme Court* aid WCU in the collection of an Unlawful Debt?

A. Yes.

Q. Did *District Court Judge Robert Allison* aid WCU in the Collection of an Unlawful Debt?

A. Yes.

V. FINDINGS

I have come to conclude that several employees at WCU hatched and engaged in a complicated criminal conspiracy (involving judges, lawyers, at least one land developer, appraisers, officials, and more), which began with the Conversion (theft) of Dennis and Donna Thornton's, and Thorco Inc.'s, real property. I very earnestly believe this could be the largest criminal conspiracy case, involving a Credit Union, in Montana's history. I assert that Dennis and Donna were targeted solely and specifically for their Equity rich land, in which these WCU Agents and conspirators, using unconventional channels-processes-and-procedures, could strip said Equity for their own very-personal gain.

Subsequently, these bad actors supported their initial conversion in-part with: racketeering, counterfeiting, money laundering, fraud on the court, creating and dealing in fictitious obligations.

A. PLANNED CONVERSION FROM THE BEGINNING

In *my expert opinion*, a bond is an irrevocable letter of credit, in similitude to a blank check. First-in-order for any corporation to obtain a bond of such a great amount, would be a thorough review of the businesses history and its financial transactions.

If Whitefish Credit Union had not set-forth to fund the \$7,200,000 request, they are required to reject the loan request and send the file back. There is no indication that WCU ever rejected the request. There is also overwhelming evidences that the method of repayment for the first-half of the loan, was a prerequisite refinance (a common practice on large loans). The second "half" of the construction loan would have satisfied any obligations held over from the first.

As part of my process, I have reviewed the title report, and there is no denotation that this subordination agreement was recorded as required in MCA 71-1-207; 71-1-

208; recording of subordination or waiver agreements. I have reviewed the file from June 9, 2011 – where WCU CEO Jim Kenyon and Loan Officer Randy Cogdill refused to subordinate additional collateral – stating WCU would loan Thorco Inc. the \$500,000 instead. Subsequently, they denied the loan request which they suggested themselves, on August 3, 2011; in my expert opinion, the mortgage contract was breached by Whitefish Credit Union.

They, Whitefish Credit Union, have violated financial privacy provisions, the Bank Security Act, and much more. Upon review and scrutiny, it's clear that WCU used these processes to obstruct the Thornton's ability to pay, manifest in their overall peculiar use of non-standard processes, and their prevaricate communications (or lack of) – in response to the Thornton's *multiple* requests to settle the loan.

It is a patentable fact, that previous to Whitefish Credit Union's 2009 involvement in the Thornton's finances, Thorco Inc. could secure soft and hard money loans with ease. That is just one of the material things you must

know to compartmentalize the magnitude of this ongoing event, and then, only through serious formal investigation, will the evidence and the patterns in this case become manifest to the reader; in that, these bad actors engineered a foreclosure to attempt to complete a Conversion on the Thornton's real property, that they engaged in as far back as 2009. As a professional it takes little effort to see they manufactured what could only legally be two Security Deeds, instead they are attempting to use them as Transference Deeds.

Whitefish Credit Union also interposed with Thorco's property assessor, changing the assessment instructions to "foreclosure instructions," even though WCU did not hire or pay the assessor themselves. This is considered appraisal fraud, leading to equity stripping, and is criminal.

Now to this so-called foreclosure and the processes WCU were legally obliged to follow. Their foreclosure process was such a departure from the standard, it can only be classified as a "type and kind" of foreclosure – while appearing to be genuine at a glance, it is anything but

genuine, truly counterfeit. There was absolutely zero evidence WCU ever attempted mediation or advocacy for the Thornton's, and opted to move for "foreclosure" immediately. The minutia of which can be seen in exhibit.

B. INTERFERENCE, FRAUD AND MISCONDUCT

After much review, I can earnestly say that this entire ordeal was craftily calculated to victimize and steal from Thorco Inc. and the Thornton's. By 2016, Whitefish Credit Union was claiming the property had somehow experienced sudden-extreme-devaluation, so that they could leverage their lower "pseudo-appraisal" to officially deny the unfunded-portion of the loan, and thereby cut-off the Thornton's agreed upon method of repayment.

It was a noticeable departure from the previous land appraisals; the *District Court* previously accepted a \$26 million dollar appraisal value for the aforementioned land. From that instance, sufficient time had not passed for the market to shift in such a way that could possibly explain the reduction.

After reviewing former NCUA director Alan Carver's Expert Witness Report, I'm also convinced WCU was barred from making loans just before the unfunded portion of the Thornton's loan was supposed to begin (which would satisfy any remaining obligations on the 'first half').

Whitefish Credit Union, as a legitimate lender, had written and unwritten obligations to reach out to, and work with, customers to rectify delinquencies; mediate, and only as a last resort foreclose. What WCU chose to do instead, can only be described as infamous. They retain a legal obligation to report their deficiencies on member business loans, they chose instead to lead borrowers past their respective due dates – to engineer foreclosures against them – using *Equity Stripping* as the means to close their Conversion.

In *Loan Officer Randy Cogdill's* sworn deposition, he admitted that shortly after Thorco Inc. contracted for the loan with Whitefish Credit Union, he was caught by Dennis Thornton touring Thorco's gated land with another Property Developer. It's clear a relationship was previously formed

between WCU and this developer, and what they were there to accomplish. Credit Unions are strictly prohibited from developing land, for reasons that should be obvious.

Short of a crystal ball, it would be impossible that *Loan Officer Randy Cogdill* would come into the knowledge that Thorco Inc. would be in a default position in the distant future. Bankers aren't tasked with *prospecting land* they immediately entered in a legal agreement to lend out money on – nor can they plan for 'just in case' there might be a future default; in expectation that they could take the land through lawfully-begotten means.

Whitefish Credit Union could only ever legally or legitimately come into *ownership* of Thorco's development by two available means.

- 1) Exhaust mediation with the Thornton's, find they lack the ability to pay, and secure the property through instrumentation of a legal foreclosure.
- 2) Purchase the property for a fair-market-value offered to the Thornton's, as an outright offer to purchase.

We know #2 isn't an option, because Credit Unions aren't land developers, nor is "Land Developer" part of their charter. By now, you the reader, should have a very basic grasp of what has and continues to transpire. It is a Conversion of Property without right of Administration, theft and obfuscation – with multiple associated-crimes to support the initial Conversion.

C. DEBT CANCELLATION AND JUDGMENTS WITH PREJUDICE

By my count, Whitefish Credit Union has entered into three separate contracts with Thorco Inc. (et al) since 2009. In my purview, they have breached all three in one way or another. A prerequisite for entering into the second-contract (Mutual Settlement Agreement), is that WCU must abandon a previous judgment they had secured against the Thornton's (with prejudice). **(see: Exhibits)**

In order for this new agreement to start, both parties had obligations to perform. The initial duty was bestowed on Whitefish Credit Union, and that was to open a new Escrow. They failed to open the Escrow, and attempted to pass the responsibility off onto Dennis Thornton secretly.

This erroneous assertion, that Dennis was responsible for Escrow, even appears in, and affirmed by, the judgment by *District Judge Dan Wilson*.

This wasn't the only fraud perpetrated on the court, as Wilson's judgment also resurrected the very same judgment abandoned with prejudice, in order to contract fully in the Mutual Settlement Agreement. A judgment, once concluded as prejudiced, can never be used as a legitimate judgment again, it is effectively a record only.

It would be ILLEGAL for Dennis Thornton to even attempt to open an Escrow, as he is unlicensed to do so, being required and annotated in the MCA. As a professional, it seems inconceivable to me that multiple lawyers, judges, assessors, secretaries, and the like, could simply overlook this VERY important fact! This speaks to the complicated criminal nature of this conspiracy, even now we don't understand the full depth and breadth of the bad actors and players involved here. To ignore the patterns of evidence here is impossible.

VI. RECOMMENDATIONS

It is clear to me through tedious and mechanical investigation – that there is a continued effort by the aforementioned parties, to defame, slander, arrest, wrongfully evict and threaten Dennis Thornton, while they remain vigilant to continue the criminal conversion of the Thornton's property for their own uses, using Malicious Prosecution, Fraud on the Court, dealing in false securities and obligations, conspiring with local officials and agents, accounting fraud, tax fraud, color of title and office violations, and more still. In such rare occasions as these, Grand Juries have been empaneled because of the very complex nature of these crimes. This maintains a longer open-investigation than a standard jury, secrecy when it's needed, and validation that a case exists at all. As I'm not a Grand Jury expert, on this matter I can only pontificate and suggest based on my purview, and provide for equitable solutions as I see them.

I have also concluded that at no point, with the exception of a few players, has Dennis ever received Due Process nor protection of the law from any court of competent or original jurisdiction, nor from his lender

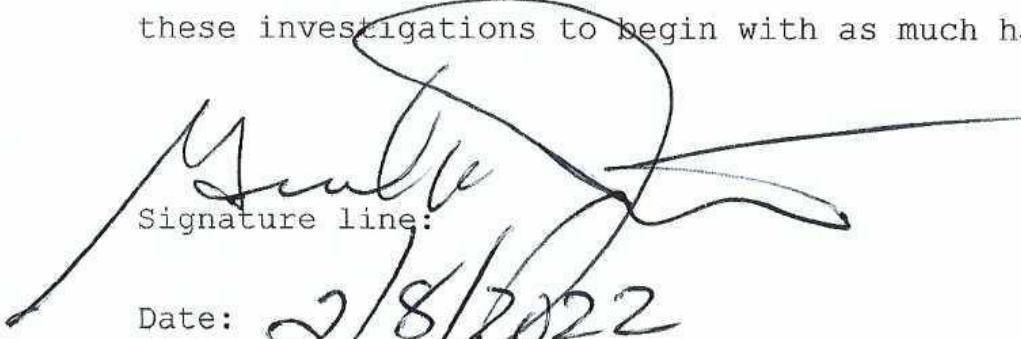
WCU, nor has he yet to be treated as the victim of a crime. He instead has been steadily vilified, mislabeled, defamed, slandered, & libeled, by the very systems and people put in place to protect him and his papers and properties.

It is there for my recommendation and confidence, that Thorco Inc., Dennis & Donna Thornton, the shareholders of Thorco, et al, be conclusively given the opportunity to finally have their voice heard, their claims taken seriously, investigations opened, arrests made, fines levied, and remedy given to the Thornton's. I can only imagine the nightmare they have had to endure these years, while trying to maintain their innocence and reputation. It is my hope that this report serves as the catalyst for these investigations to begin with as much haste possible.

Signature line:

Date:

Thorco, et al, be conclusively given the opportunity to finally have their voice heard, their claims taken seriously, investigations opened, arrests made, fines levied, and remedy given to the Thornton's. I can only imagine the nightmare they have had to endure these years, while trying to maintain their innocence and reputation. It is my hope that this report serves as the catalyst for these investigations to begin with as much haste possible.


Signature line:

Date:

2/8/2022

This document was signed before me,
Meghan Glaze, by Gerald M. Fritts on
Feb 8, 2022, in Kalispell, MT.

Meghan Glaze

