## **EXHIBIT D**

#### LANGER GROGAN & DIVER P.C.

ATTORNEYS AT LAW 1717 ARCH STREET **SUITE 4130** PHILADELPHIA, PA 19103

HOWARD LANGER JOHN J. GROGAN\* EDWARD A. DIVER IRV ACKELSBERG PETER LECKMAN<sup>†</sup>

215-320-5660

GEOFFREY C. HAZARD, JR.<sup>†</sup> OF COUNSEL

JUDAH LABOVITZ OF COUNSEL

Fax: 215-320-5703

2263 CALIFORNIA STREET SAN FRANCISCO, CA 94115 415-292-6535 ahazard@lanaeraroaan.com

† ALSO ADMITTED IN CALIFORNIA

HOWARD LANGER DIRECT DIAL (215) 320-5661 hlanger@langergrogan.com

May 30, 2014

Director, Office of Information Policy United States Department of Justice Suite 11050 1425 New York Avenue Washington, DC 20530-0001

> Freedom of Information Act Appeal of Denial of Request 13-594 Re:

Dear Sir or Madam:

This is a formal appeal of denial of Request 13-594 (enclosed). This request sought a copy of a letter already publicly disclosed in the Complaint filed in *United States v. First Bank of* Delaware (enclosed). Paragraph 64 of that complaint quotes a May, 2010 letter from an official at the Federal Reserve to an Officer of First Bank of Delaware. The request for the document was rejected in the entirety under exception (b)(4). We request expedited hearing of the request because the publicly quoted content of the letter has been used in an ongoing litigation. It is quoted, among other places, in a brief filed by United States Senators Casey, Markey and Blumenthal and Congresswoman Schwartz, (enclosed, see page 16) in support of an appeal presently pending in the United States District Court for the Third Circuit.

Appellant appeals this rejection because by quoting the above information in a public complaint, any confidentiality was effectively waived, certainly as to the content of the information actually quoted and likely to the entire letter which was placed at issue. Also, the information sought is not "trade secrets and commercial or financial information obtained from a person and privileged or confidential" under (b)(4).

Appellant is willing to accept a redacted version of the letter containing the letterhead, addressee, date, text quoted in the Complaint, and signature block. The text quoted in First Bank of Delaware case reads:

Director, Office of Information Policy United States Department of Justice May 30, 2014 Page 2

[A] return rate of 10% (which is on its face significantly in excess of industry norms) would likely be regarded by bank supervisory agencies and/or law enforcement agencies as prima facie evidence that your bank knew or should have known that your [third-party payment processors and/or merchants] had engaged in fraudulent activities. Whether a return rate of 10% might expose your bank to potential liability is an issue that we urge you to consider carefully in consultation with your legal counsel.

Exception (b)(4) exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The quoted material is not in any way a trade secret or commercial or financial information obtained from a person. Rather, it is a statement of views by a Federal Reserve official. Nothing about it is secret or privileged because it is disclosed in a public filing. The letterhead of a person employed by the Federal Reserve, the signature block of the person writing the letter and the letter's date are not in any way a "trade secret" or "commercial" or "financial" information. This is particularly so because the author is an employee of the Federal Reserve. The individual addressee, while not a "trade secret" or "commercial" or "financial" information may be redacted so long as the name of the bank (already disclosed as First Bank of Delaware) and its address remain.

Sincerely,

Howard Langer

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVAN

NOV 1 9 2012

MICHAEL FLUNZ, Clerk
Dep. Clerk

UNITED STATES OF AMERICA,

Plaintiff,

**3**7

CIVIL ACTION NO.

12

6500

FIRST BANK OF DELAWARE,

Defendant.

#### CIVIL COMPLAINT

Plaintiff, the United States of America, by its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Joel M. Sweet, Susan Dein Bricklin, and Judith A. Amorosa, Assistant United States Attorneys for the same district, alleges as follows:

- 1. This is a civil action by the United States of America against First Bank of Delaware ("First Bank of Delaware" or the "Bank").
- 2. From 2009 to 2011, First Bank of Delaware engaged in a scheme to defraud consumers by originating electronic-payment transactions knowing, or by remaining willfully blind to the fact, that the consumer authorizations for the transactions had not been obtained, or had been obtained by dishonest merchants using fraud, trickery, and deceit.
- 3. First Bank of Delaware originated more than two million debit transactions worth more than a hundred million dollars on behalf of third-party payment processors in cahoots with fraudulent Internet and telemarketer merchants, and directly with other fraudulent merchants.

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No. 14-1228

## IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

#### REYNALDO REYES,

on behalf of himself and all others similarly situated, *Plaintiff/Appellant* 

v.

#### NETDEPOSIT,

## MP TECHNOLOGIES d/b/a MODERN PAYMENTS, ZIONS FIRST NATIONAL BANK, et al

Defendants-Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania

Case No. 10-345

The Honorable Juan R. Sanchez

# BRIEF AMICI CURIAE BY UNITED STATES SENATORS EDWARD J. MARKEY, ROBERT CASEY, RICHARD BLUMENTHAL, AND

## UNITED STATES REPRESENTATIVE ALLYSON SCHWARTZ IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

Senator Robert P. Casey, Jr. (PA) Richard D. Spiegelman Chief Counsel 393 Russell Senate Office Building Washington, DC 20510 Telephone: (202) 224-6324

Representative Allyson Y. Schwartz Gary Gorski Senior Policy Advisor 1227 Longworth HOB Washington, DC 20515 Telephone: (202) 225-6111

Robert J. LaRocca Kohn, Swift & Graf, P.C. One South Broad Street, Suite 2100 Philadelphia, PA 19107 Telephone: (215) 238-1700 Senator Edward J. Markey (MA) Justin B. Slaughter General Counsel 218 Russell Senate Office Building Washington, DC 20510 Telephone: (202) 224-2472

Senator Richard Blumenthal (CT) Richard Kehoe State Director 724 Hart Senate Office Building Washington, DC 20510 Telephone: (202) 224-2823

Of Counsel: Stephen B. Burbank 3501 Sansom Street Philadelphia, PA 19104 Telephone: (215) 898-7072