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Time is valuable—for you and your customers. Wouldn't your clients appreciate it if you could save them hours, or even days when completing transactions with your institution? **FIPCO eSign by DocuSign** can help you do just that. What's more, this innovative solution can also support and improve compliance, and dramatically reduce processing costs.

As an integrated solution for *Compliance Concierge*™, FIPCO eSign by DocuSign allows you to securely send documents to your customers for signatures at account opening, and application and closing stages of the loan workflow. Because approvals and agreements can be completed from anywhere and on any device, the process no longer takes days to complete, and multiple visits to the financial institution are no longer a necessity. With the powerful tracking tools, your institution can effectively meet compliance requirements through the controlled signing process, full audit trail, easy signer verification, and secure information.

The process is easy. After retrieving and reviewing transaction data, simply select the "DocuSign List" option and select the documents that you'd like to prepare for electronic signature. Signers are authenticated using either the SMS or LexisNexis verification tools, and are notified that they have been sent an envelope of documents for review and signature. After receiving a confidential code for accessing the DocuSign system, they can then provide their signature using their personal computer, iPhone, iPad, Notebook, Android, or other mobile device.

"Today's customers are incredibly tech-savvy, and appreciate it when their financial institution is too," said FIPCO President, **Pam Kelly**. "Giving them the option to sign documents quickly, conveniently, and securely offers a value-added service they're sure to appreciate."

Your customers will love the convenience, and you'll value just how easy it is to track the transaction progress. As each signer completes their portion, you'll receive an email notification, and when all are received, a Certificate of Completion is ready for download.

Getting started is just a click away. There's no need to contact DocuSign, and we'll handle the entire process for you. In fact, when you subscribe directly through FIPCO, your annual subscription will include an *unlimited* number of electronic envelopes that contain the documents for your customer to sign. For more information, please contact FIPCO Vice President Sales and Marketing, **Art Weber** at (800) 722-3498, ext. 254.



May 15 · Holiday Inn Madison at the American Center · Madison
May 17 · Grand Lodge Waterpark Resort · Rothschild

Registration Now Open for Compliance & Software Forum

The sessions are set; the presenters are ready...all we need is you! As final preparations are completed for the 2018 **FIPCO Compliance and Software Forum – Deposit**, we're pleased to announce that registration is now open for this engaging and enlightening conference.

Regardless of your level of software experience, this user-focused meeting offers the perfect opportunity to enhance your knowledge of FIPCO's *Compliance Concierge*™ **Deposit** software solution with beneficial sessions like the following:

The New Diversification (Presented by Ascensus) – New data indicates Americans are strengthening their efforts to save for the future by increasing their use of 401(k) plans, 529 plans, and HSAs. Gain insight into current trends, and how today's demands on consumer dollars are changing.

Open New and Maintenance Existing Accounts – From Account Maintenance, TISA disclosures, CD renewals, and more, discover what's new in *Compliance Concierge*™ while the FIPCO experts illustrate the latest modifications and enhancements.

Parameters Fundamentals – See the latest in system parameters as the experts answer frequently asked questions regarding User Information, Product Information, Fees, and much more.

CDD Requirements – Beneficial Ownership Identification and Verification – Focusing on legal aspects and software functionality, our experts will review FinCEN's rule, as well as the 140A Certification of Beneficial Owner form, and will discuss how *Compliance Concierge*™ meets today's requirements.

Open Forum – This is your opportunity to ask questions, share ideas, and discuss processes with your colleagues, as well as participate in discussions regarding enhancements, updates, and more.

Legal Q&A (Presented by Wisconsin Bankers Association Legal Department) – A consistent highlight of this annual forum, you'll get answers to deposit-related questions from the Wisconsin Bankers Association legal department and expert FIPCO staff.

Registration is now open for two exceptional and convenient forum venues: **May 15th** at the Holiday Inn Madison at the American Center, and **May 17th** at the Grand Lodge Waterpark Resort, Rothschild. Complete details can be found on the [FIPCO website](#) or by contacting the [FIPCO Education & Training Department](#) at (800) 722-3498, option 4.

From the President



Pamela Kelly

It's an exciting time throughout the financial industry, and for us at FIPCO as well. With a host of innovative product, service, and education offerings on the horizon, we're optimistic for the future, and we think you'll be as well. As we continue to embrace fintech trends and advancements in technology, as well as the forward progress in meeting today's compliance demands,

we're honored to be your trusted source for the tools you need to effectively compete in an ever-changing market, and improve your customers' overall experience.

This issue of *FIPCO Focus* highlights the integration of *Compliance Concierge™* and FIPCO eSign by DocuSign. Providing the highest level of customer service is vital in recruiting and retaining valued customers, and offering the convenience, ease, and security of electronic signature capabilities is advantageous to you, and your clients. We value the opportunity to show you how eSign can benefit your institution, and invite you to [contact us](#) or visit the [FIPCO website](#) for further details.

And speaking of the FIPCO website, you'll soon notice some changes when you visit us at www.fipco.com. Redesigned with you in mind, and continuously updated with the most current information, we've streamlined and enhanced the site to make sure that it best supports *you* in your daily operations—providing user-friendly and efficient online tools that promote direct access to essential information. Some of the enhancements we think you'll enjoy include:

- » Re-categorization of information for easy navigation, and a clean, modern look.
- » Integration with Shopify® for online orders and credit card use.
- » Quick-links to provide access to frequently-used web pages such as Blank Forms, eSatellite Manuals, Software Release Notes, WebEx Sessions, and much more.

Finally, I'd like to personally invite you to our annual [Compliance & Software Forum – Deposit](#) with host locations in Madison and Rothschild. We understand that [Compliance Concierge™ Deposit](#) is a vital component of your organization, and we appreciate you investing one day with industry experts and the FIPCO professional staff for this engaging event focusing on your deposit operations, and how to get the most out of this powerful solution. We look forward to seeing you this May!

Pam Kelly is President of FIPCO® and can be reached at pkelly@fipco.com.

The ONE Conference



FIPCO's Vice President Sales and Marketing, [Art Weber](#) met with participants of the Illinois Bankers Association's [The ONE Conference](#) held March 1-2 in East Peoria, IL.



Pam Kelly to Speak at University of Wisconsin – Whitewater Event

FIPCO President, **Pam Kelly** will be a featured speaker at the University of Wisconsin – [Whitewater's Community Banking in the U.S. Conference](#) scheduled for April 27-28. Hosted by the Fiscal and Economic Research Center, and supported by the Jim and Julie Caldwell Banking Professorship Fund and the UW-Whitewater College of Business and Economics, the conference will focus on current issues of concern for community bankers, and provide planning insight for establishing future strategy in such areas including fintech applications, mobile banking, mobile wallet, real-time payment systems (Zelle and real-time ACH), managing cybersecurity, corporate tax structures, tax planning, and economic outlook. As a part of the program on April 27th, Kelly's presentation will highlight opportunities for technology, and will focus specifically on adaptation in community banks. Wisconsin Bankers Association President and CEO **Rose Oswald Poels** will also be a featured speaker during the event.

Shaurette Featured Presenter at Upcoming MBA Event

We invite you to join [Ken Shaurette](#) at the Michigan Bankers Association [Bankers Education Summit and Trade Show \(BEST\)](#) as he discusses "Surviving The Mock Disaster – Building an Effective Tabletop Exercise." The event is scheduled to take place April 18-20 in Traverse City, MI.

Take a Closer Look: FIPCO's IT Audit & Security Services

Information Technology has become a great source of potential vulnerability for financial institutions. Any compromise in the confidentiality, integrity or availability of customer information can result not only in a loss of reputation, but in substantial legal and financial exposure as well.

Our **IT Audit & Security Services** department can work with you to identify improvements in the risk management of your computing environment before concerns and deficiencies are identified by examiners – or worse, vulnerabilities are exploited causing losses from unauthorized access. With a proactive approach to risk management, we can offer your organization professional guidance regarding:

- » Cybersecurity Framework awareness training and consulting
- » Information/Cyber Security Program and supporting policy development
- » IT Risk Assessments
- » Information Security Program, Policy and Procedure Auditing
- » Human Firewall Testing (USB/mobile media, email or phone social engineering)
- » Internal and external technical vulnerability/penetration assessments
- » Risk Focused Strategic Security and Audit Consulting
- » Facilitated Tabletop Exercise for Incident Response, Business Continuity/Disaster Recovery and Actionable Remediation

And, just as you'd expect, compliance is our paramount priority. Our services meet both examiner expectations and industry regulations, and are customized to your unique situation. We combine our experience and expertise with industry best practices to deliver actionable results that you can be confident in.

Getting started is just a call or click away! Contact FIPCO's **Ken Shaurette** at (800) 722-3498, ext. 251 for more information.

Shaurette's Knowledge, Expertise Shared Internationally

Congratulations to FIPCO Director – InfoSecurity and Audit, **Ken Shaurette** who was recently recruited to work with a team of international cybersecurity experts to assist with updating *The International Guide to Cybersecurity Version 2*. This resource is sponsored and supported by the American Bar Association Privacy and Computer Crime Committee.



Taking the Plunge for Special Olympics

FIPCO Director – InfoSecurity and Audit, **Ken Shaurette** makes a splash during the Polar Plunge in February. The annual event supports the Special Olympics organization.

FIPCO Software Training: Because You Deserve More

We understand that no two individuals, departments or institutions are exactly alike, which is why we think you deserve more than just a one-size-fits-all approach to software training. The courses we offer are developed, updated, and modified with you in mind to reflect this philosophy. Whether you're looking for hands-on training, instructional webinars, or customized training options, **FIPCO's education and training** courses are offered through a variety of formats to provide you with the most convenient and beneficial education experience possible. We pride ourselves in giving you the information, tools, and skills you need in an environment that suits you best, and invite you to join us for an upcoming educational event:

- (All events are *Compliance Concierge™* training courses.)
- April 9-12, 8:30am – 4pm: Loan and Mortgage 4-day Training
 - April 17, 9am-Noon: Deposit Accounts Webinar
 - April 24, 9-11am: Real Estate Purchase Webinar
 - April 24, 1-3pm: Real Estate Refinance Webinar
 - April 25, 9-11am: Commercial Webinar
 - April 25, 1-3pm: Ag Loans Webinar
 - April 26, 1-3pm: Basic Consumer Loans Webinar

To learn how you can benefit from FIPCO software training, visit the **FIPCO website**, or contact the **FIPCO Training Department** today at (800) 722-3498, ext. 233.

Horizon Bank, NA v. Marshalls Point Retreat LLC

Unexpected contract interpretation means banks need to revisit their guarantee stipulation language.

On March 6, 2018, the Wisconsin Supreme Court issued its decision in the case of *Horizon Bank, NA v. Marshalls Point Retreat LLC*. The facts in the case, as well as the legal arguments raised, are somewhat complex, and the Court's decision raises some troubling issues for lenders in the state.

The Case

This case involved a typical lending situation. The bank made a loan to a borrower, secured by an upscale house in Sister Bay, Wisconsin. The owner of the borrower provided an unlimited guaranty of the debt. After multiple unsuccessful attempts to sell the property, the borrower defaulted. The bank brought one action under which it sought *both* to foreclose upon the property and to obtain a judgment on the guaranty. Importantly, before the sheriff's sale of the property, the parties (including the guarantor) entered into a negotiated stipulation in which they agreed in writing to resolve all issues in one proceeding and agreed to the terms of an "order of judgment."

The order for judgment stated that the borrower owed the bank approximately \$4 million, and granted the bank a money judgment in the same amount against the guarantor. The key language of the stipulation is the following:

"[t]he amount paid to [the bank] from the proceeds of [the] sale of the Premises, remaining after deduction by [the bank] of the amount of interest, fees, costs, expenses, disbursement and other charges paid or incurred by [the bank] not included in the monetary judgment against [the guarantor] . . . shall be credited by [the bank] on said monetary judgment.

Pursuant to the order, the property was sold at a sheriff's sale. The bank was the only bidder, with a credit bid of \$2,250,000. The bank then moved to have the trial court confirm the sale pursuant to §846.165 of the Wisconsin Statutes (the foreclosure statutes). The bank asserted that its credit bid represented the property's "fair value", and submitted two valuation affidavits in support. The guarantor voluntarily chose not to provide evidence that the fair value of the house was higher. As dictated by the stipulated judgment, the bank moved the trial court to reduce the amount of the money judgment against the guarantor by the amount of bank's winning credit bid. The trial court determined "fair value" for the property to be the \$2,250,000 sale value, and confirmed the sale. The sale of the property for \$2,250,000 by sheriff's sale to the bank is not being challenged in this case.

At issue is the amount to be credited against the money judgment under the guaranty. The guarantor, apparently not liking the amount of the bank's winning credit bid and, consequently, not liking the deal he struck in the stipulation, asked the trial court to *not* rule on the credit to be applied to the amount he owed on the guaranty. The trial court granted the guarantor's motion and left open the question of the amount of the credit against the guaranty. The bank argued that this should not have happened because the stipulation both (i) governs the question of how much to credit against the judgment under the guaranty, and (ii) requires the trial court to apply the credit bid amount to reduce the obligation due under the guaranty. The Court of Appeals agreed with the bank. The case was then appealed to the Wisconsin Supreme Court, and the WBA filed an amicus brief in support of the bank.

At the Supreme Court, the guarantor raised various arguments under §846.165, along with constitutional due process claims. The foundational issue that underpins this case is this: the bank received the property for a credit bid of \$2,250,000, and the bank believed the stipulation requires the guarantor's obligation for the debt to be reduced by the \$2,250,000. The guarantor believed that the bank took possession of property worth much more than \$2,250,000, and that his obligation under the guaranty should be reduced by the (higher) actual

value of the property. The bank, the WBA and the Court of Appeals all agree that this is really a contract interpretation case, and that under the stipulation signed by the guarantor, the trial court should have applied the sale proceeds to the guarantor's obligation.

The Decision

In a long decision, the Wisconsin Supreme Court decided for the guarantor. The Court agreed that this is really a contract case, but interpreted the contract (the stipulation) very differently than the bank, the WBA and the Court of Appeals. The Court essentially re-wrote the stipulation into a different contract. The stipulation language is "[t]he amount paid to [the bank] from the proceeds of [the] sale of the Premises . . . shall be credited by [the bank] on said monetary judgment." The Court decided that this meant the "fair value" established in the foreclosure hearing was the *minimum amount* to be credited to the guaranty, even though the contract said nothing about "minimum amount." The Court sent the case back to the trial court to determine the value of the house for purpose of determining the amount to be credited to the guarantor's obligation. This means that Horizon Bank will have to litigate the value of the property twice, and potentially have one value for purposes of the mortgage debt and a totally different value for the guaranty. The Court stated that decoupling the confirmation of sale from the guaranty credit determination was within the trial court's discretion. This creates uncertainty and makes it difficult for lenders to price loans, and raises concerns about how courts will interpret guarantees and stipulations already in place. The WBA is disappointed with the decision and believes that the stipulation, under standard contract principles, is clear.

What the Decision Means for Wisconsin Lenders

Banks are not looking for "good deals" when they credit bid. Banks are not real estate companies. They are not looking to take back property. However, sometimes they end up having to bid at the sheriff's sale, as happened here, because no one else bid on the house. Banks will have to take the results of this case into account when they end up in a credit bid situation that also involves a guarantor.

Primarily, banks will have to think about the language of their stipulations and guarantees, and use language that is crystal clear about the amount that will be credited to the guarantor's obligation as a result of the sale of the borrower's collateral. The guaranty used in the *Horizon* case was a LaserPro form, which did not include any language specifically addressing the amount to be credited to the guarantor's obligation in the event of a credit bid. The existing WBA guaranty used by FIPCO already has language stating that "[i]f, in any action to realize upon any collateral securing the Obligations, the collateral that is the subject of such action is sold, the amount of the Obligations which is secured by such collateral shall be reduced by the price for which such collateral is sold, whether by credit bid of Lender or otherwise, even if the collateral sold is worth more than the sale price." We expect that a court, interpreting the WBA guaranty language as it is currently written, would apply the amount of the credit bid for collateral to the guaranty, and solely that amount. However, FIPCO will be reinforcing the WBA guaranties in light of the *Horizon* case.

Under current guarantees and stipulations, banks need to be aware that a guarantor may argue the value of the collateral for purposes of a foreclosure is different than the value of the collateral for purposes of reducing the guarantor's obligation under the guaranty. The result is that banks may have to litigate "fair value" twice in situations where they have a guarantor. When laying out the foreclosure/collection strategy, banks will need to decide with their counsel whether to join foreclosure claims with guaranty claims, or proceed separately, and if separately, which action to undertake first.

Attorney Kirsten E. Spira, Boardman & Clark, LLP, Madison