**BUSINESS RECORDS EXCEPTION**

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, **made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity,** and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, **unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.** The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

**SOURCE OF BOA/FIA DEBT INFORMATION WAS TRUE AND ACCURATE**

You work for? You don’t work for Midland.

Q. Have you ever seen the Credit Card Agreement Mr. Bassett signed to obtain this debt? Affidavit Reference. Rebut testimony show she is lying.

Q. Was this a Visa Card, Master Card or Discover Card? How do you know.

Q. What was the interest rate that the agreement charged?

Q. What date was the credit card account opened and with whom. Is Bank or America the Original Creditor or is FIA Card Services the original creditor?

Q. No copy of the cardholder’s agreement? So, you are not able to advise this court why Mr. Bassett would owe the amount alleged regarding the amount made up by interest, late fees or other charges included from anything before August 8, 2013.

Q. Is there anything in the documents from Bank of America/FIA Card Services that identifies the actual, SPECIFIC account of Mr. Bassett?

Q. What date was the credit card account opened and with whom, BOA or FIA.

Q. What is the name of the Original Creditor? What documents reflect BOA to FIA?

**BOA/FIA to Asset**.

Q. Does the Bill of Sale reflect a transaction where either BOA or FIA sold a pool of debts to Asset Acceptance.

Q. What is the name of the pool of debts to Asset Acceptance?

Q. The Bill of Sale here is a single page of a larger agreement that sold the “right, title and interest in and to each and all of the Loans, as included on the electronic file referenced in Schedule 1 of the Loan agreement as BAC Bulk Asset Acceptance LLC Sale File 1212 Final.xlsx,” correct?

Q. The Bill of Sale does not specifically reference Bassett or his Account Number?

Q. Where in all the paperwork is there a reference to AAA Financial Services?

Q. What training have you had on the business records creation and retention policies of Bank of America, FIA Card Services, and Asset Acceptance.

Q. The referenced in Schedule 1 of the Loan agreement as BAC Bulk Asset Acceptance LLC Sale File 1212 Final.xlsx,” was not attached as evidence in this case, correct?

\*\*\* If they have the Schedule 1, compare dates of Sale doc to Schedule 1.

\*\*\* If they try to say Schedule A holds the debt then, No document in Ex Bill of Sale references Schedule A. What it the perceptible connection between Schedule A and Ex Bill of Sale-meaning, where is the reference in Ex Bill of Sale to this Schedule A- it mentions agreement, mentions BAC Bulk but no Schedule A, right? (DON’T ASK HER TO EXPLAIN THIS, JUST YES OR NO).

NO FOUNDATION HERE TO BRING IN EX. BILL OF SALE AND EX. A.

Q. of (Exhibit C) Top says:

THIS BILL OF SALE AND ASSIGNMENT OF LOANS is made and entered into between Asset Acceptance LLC (Purchaser) and FIA Card Services, NA (Seller) pursuant to the **Loan Sale Agreement** Dated December 11, 2012, (the Agreement) which is incorporated herein by reference), entered into between Purchaser and Seller.

Q. Where is the Loan Sale Agreement that this Exhibit is based upon?

Q. Exhibit C Bill of Sale and Assignment of Loans says “Seller does hereby sell, transfer, convey, assign and deliver, free and clear of all liens and encumbrances to Purchaser all of Seller’s right, title and interest in and to each and all of the Loans, as included on the electronic file referenced in Schedule 1 of the Loan agreement as BAC Bulk Asset Acceptance LLC Sale File 1212 Final.xlsx”

HAVE YOU SEEN? BE CAREFUL Schedule 1” Each and all of the Loans as included in the electronic file referenced in Schedule 1 of the Loan agreement (which you said you have not seen) as BAC Bulk Asset Acceptance LLC Sale File 1212.xisx.

Q. That is where the id of the loan or debt of Mr. Basset to show that Basset’s debt was one of the pool of debts sold by BOA to Asset, correct?

Q. When did you first become aware of this Exhibit C Sale and Assignment contract when it was being created or after it was created?

Personal loans may be [secured or unsecured](https://www.nerdwallet.com/blog/loans/personal-loans-secured-versus-unsecured-difference-choosing-between/). They often have lower interest rates than credit cards, especially if you have good credit. Unlike credit cards, a personal loan is “installment” debt — you get money in a lump sum and make equal payments over a specified period — usually two to five years. Your loan payments will include principal and interest.

Q. Were you present when the BOA Asset agreement was created and signed?

Q. Agreement says Laws of State of Delaware-Original Agreement 3 years.

Q. Knowledge of the BOA/FIA business and its regular practices back in 2012.

Q. Attached to BOA/FIA records is Schedule Loan Schedule. Are they the same records as Schedule A. When was each created?

Q. How do you know the claim is valid?

Q. Is this lawsuit for a breach of contract or account stated.

Q. Has Mildand Funding obtained any Affidavits from Bank of America/FIA Card Services which assert the accuracy of BAC Bulk Asset Acceptance LLC Sale File 1212.xisx the statements or sale documents in this case?

Q. Is FIA Card Services NA the Seller or Assignee?

**CASES**

“(6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. The term ‘business’ as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.” MRE 803(6).

The Michigan Supreme Court summarized the business records hearsay exception as follows: “In order to ensure the same high degree of accuracy and reliability upon which the traditional, but narrowly construed business records exception was founded, the current rules also recognize that trustworthiness is the principal justification giving rise to the exception. Thus, FRE 803(6) and MRE 803(6) provide that trustworthiness is presumed, subject to rebuttal, when the party offering the evidence establishes the requisite foundation. Even though proffered evidence may meet the literal requirements of the rule, however, the presumption of trustworthiness is rebutted where ‘the source of information or the method or circumstances of preparation indicate lack of trustworthiness.’” Solomon v Shuell, 435 Mich 104, 125-126 (1990), quoting MRE 803(6).

The difficulty of Debt Buyers in proving chain of title without such proof was recently illustrated in the Missouri Court of Appeals case styled Asset Acceptance v. Lodge (No. ED 93264, Mo. App. E.D. September 28, 2010). In that case, a representative of the Debt Buyer (Asset Acceptance) testified to establish the foundation for the original loan contract between the debtor and the Issuer. The trial court accepted this testimony and admitted the original loan contract (and the assignment of the account from the Issuer to the Debt Buyer), but on appeal the Missouri Court of Appeals reversed and entered judgment for the debtor on the basis that the Debt Buyer’s employee (since he was not an employee of the Issuer) could not have knowledge of the original loan agreement sufficient to establish foundation.

HOLDING:

Lodge contends the documents did not constitute the business records of Asset because they were not created by Asset in the ordinary course of Asset’s business at or near the time of the events they purported to record.

Before a document may be received in evidence, it must meet a number of foundational requirements including relevancy, authentication, the best evidence rule, and hearsay.

The qualification of records within the business records exception to the hearsay rule requires testimony as to the mode of preparation of the record and that it was made at or near the time of the act, condition or event it purports to show. Estate of West, 32 S.W.3d at 653. A witness is qualified to testify regarding a business record if he or she has sufficient knowledge of the business operation and methods of keeping records of the business to give the records probity. Id.

The only testimony regarding the documents came through Beach, an employee of Asset.

Beach could not specifically testify to the mode of the documents preparation or the time of their preparation given the documents were prepared by HSBC. Although personal knowledge of the sponsoring witness as to the mode of preparation of the documents sought to be admitted as business records is not required for the admission of those documents, C & W Asset Acquisition, LLC v. Somogyi, 136 S.W.3d at 137, these documents were not even prepared by Asset in its ordinary course of business. The documents prepared by HSBC were merely transferred to Asset by HSBC as part of the transaction between Asset and HSBC.

In Zundel v. Bommarito, 778 S.W.2d 954, 958 (Mo. App. E.D. 1989), the court held “[t]he business records exception to the hearsay rule applies only to documents generated by the business itself.” Thus, documents that are part of a file belonging to a holder’s business but were not generated or prepared by the holder in the holder’s ordinary course of business do not fall under the business records exception. Id. In Zundel, the court found the trial court properly excluded documents contained in a file that were not generated by the holder in the business’s ordinary course of business but were generated elsewhere. Id. The court in Zundel stated, “[w]here the status of the evidence indicates it was prepared elsewhere and was merely received and held in a file but was not made in the ordinary course of the holder's business it is inadmissible and not within a business record exception to the hearsay rule under [Section] 490.680.” Id.

In the present case, as in Zundel, Asset did not prepare the documents in question, but rather only received the documents from HSBC and held them in their files. Beach 5 was not qualified to testify regarding documents not prepared by Asset. Thus, the documents do not fall under the business records exception.

**Wirth v**. **Cach**, **LLC**, **300 Ga**.**App**. **488**, 489 (**685 S.E.2d 433**) (**2009**).

To the extent that the trial court may have relied on this document to find a valid assignment between Providian and Cach of the subject account, the Bill of Sale contradicts Corrales' affidavit in that it refers to accounts assigned from Washington Mutual to Cach while Corrales' affidavit alleges a valid assignment of Wirth's account from Providian to Cach. Moreover, there is no contract or Appendix A appended to the Bill of Sale which identifies Wirth's account number as one of the accounts Washington Mutual assigned to Cach. The record is also devoid of any evidence which reflects that Washington Mutual purchased Providian to support the chain of assignment to Cach. See *Ponder v. CACV of Colorado, LLC,* 289 Ga.App. 858, 859, [658 S.E.2d 469](http://www.leagle.com/cite/658%20S.E.2d%20469) (2008) (record was devoid of evidence supporting CACV's allegation that it was the successor in interest to Fleet Bank's right to recover any outstanding debt from Ponder).