JEFFREY J. VAN WINKLE'S TESTIMONY TO HOUSE BANKING COMMITTEE

November 12, 2009

My name is Jeff Van Winkle, and I am a member and Corporate Practice Group leader at the law firm of Clark Hill PLC. I have actively represented small- and medium-sized that are mostly headquartered in Michigan. For most of the past 20 years, I have primarily represented business clients in Western Michigan, but as a part of Clark Hill since 2006, I have gained a much broader perspective of the activities of small- and mid-sized business clients throughout the state of Michigan.

I am providing testimony concerning my assessment of the availability of financing for small- and mid-sized businesses, primarily arising out of my interactions with Michigan clients. Although the focus is the availability of credit today, I want to set the context. Beginning as early as June of 2008, clients approached me with questions about how to obtain renewal of financing arrangements that banks were not renewing. It became commonly understood that certain lenders at that time were diligently scrutinizing loans, and in some instances, stating that the bank would not renew lines of credit, not because of payment defaults, but because of loan covenant violations. Typical loan covenants causing problems are the lender's requirement on the business to meet certain performance expectations, such as net income, net worth and a minimum working capital amount.

As we approach the end of 2009, the relationship between banks and their business customers has changed. Since June 1, 2009, I have assisted several clients who are seeking to obtain new or continued financing from commercial lenders. Generally, it has been difficult to obtain a commitment for financing on terms that have been satisfactory to the borrowers. These are some of the new challenges for borrowers seeking new loans or simply to extend existing loans:

1. Substantial devaluation of the value of collateral offered to secure the loan.

2. Exceptionally restrictive covenants regarding continued operation of the business. These include limitations on capital expenditures, debt to equity ratios, and similar restrictions.

3. A requirement of improved debt to equity ratio, specifically requiring cash equity to be injected into the business.

Borrowers are experiencing additional problems in connection with financing. Many borrowers are spending more, perhaps even substantially more, time to explore financing alternatives, review options, and to pursue additional leads. These activities distract from the ability to focus on business activities. I have observed that borrowers are not routinely being directed toward SBA financing alternatives that are available either through guaranty programs or other SBA sponsored financing. Additionally, during the past 90 days businesses using lines of credit obtained from credit card companies or simply consistently using credit cards have experienced rate increases and limit reductions. These changes hamper the availability of that credit resource.

There are businesses throughout Michigan that are delaying expansion of business activities because of the financing limitations. Or in some instances, they are closing businesses altogether. In either instance the outcome is fewer jobs for Michigan workers. Furthermore, the financing limitations are a direct consequence of the absence of cash available to the borrower to add as equity to a business operation.

It appears that small businesses are getting squeezed in the revised regulatory requirements being imposed on banks. Part of the changed environment means that banks have different capital requirements. If a bank has a limited capacity to lend, the individual loan decisions may be premised on the fact that a better borrower may be just around the corner. If a bank has less capacity to loan funds because of the regulatory requirements imposed on the banks, it may be in the best interest of the bank to turn down loans that show a moderate or higher risk in order to be able to extend loans to a stronger business borrower. Many businesses believe that their bank does not want to provide loans because of the loan loss reserve required for a loan backed by devalued collateral. For example, I have a client whose line of credit has been reduced because the value of its primary collateral, wood working equipment, is substantially less. However, the cash flow needs for the business have remained the same.

Borrowers will benefit from any increase in the market value of collateral. If real estate prices rise, used equipment values stabilize or even rise, or inventory turnover increases, borrowers may have an increased ability to present a better collateral package to a bank in order to obtain the funds it needs to operate.

In essence, without suitable, consistent financing, many small businesses – my clients – will not stay in business. Although it may have sales, it will not have a necessary ingredient to stay in business.

Thank you Mr. Chairman, I would be happy to answer any questions you or the committee may have regarding my testimony.