

IN THE SUPREME COURT OF OHIO

MAXINE F. SPILLER, : CASE NO. 2008-0900  
Appellant and Appellee : Cross-Appeal on Appeal from the  
-vs- : Logan County Court of Appeals,  
 : Third Appellate District  
SKY BANK – OHIO BANK REGION, : Court of Appeals  
 : Case No. CA8-07-03  
Appellee and Appellant. :

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COMBINED MEMORANDUM OF CROSS-APPELLANT AND APPELLEE  
MAXINE F. SPILLER

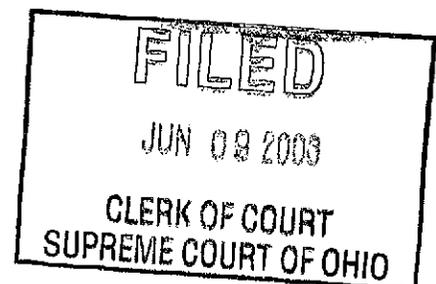
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<b><u>Appendix</u></b> (attached to Appellant’s, Sky Bank-Ohio Bank Region, Memorandum; not attached hereto pursuant to Rules of Practice of the Supreme Court of Ohio Rule III, Section 4(A).	
A. Journal Entry of the Court of Appeals of the Third Appellate District of Ohio, Logan County, in <u>Spiller v. Sky Bank – Ohio Bank Region</u> , Case No. 8-07-03, March 24, 2008.	
B. Opinion of the Court of Appeal of the Third Appellate District of Ohio, Logan County, in <u>Spiller v. Sky Bank – Ohio Bank Region</u> , Case No. 8-07-03, March 24, 2008.	
C. Memorandum of Decision of the Court of Common Pleas of Logan County, Ohio, in <u>Spiller v. Sky Bank – Ohio Bank Region</u> , Case No. CV05-03-0118, January 31, 2007.	
D. Judgment Entry of the Court of Common Pleas of Logan County, Ohio, in <u>Spiller v. Sky Bank – Ohio Bank Region</u> , Case No. CV 05-03-0118, February 6, 2007.	
E. Findings of Fact/Conclusion of Law of the Court of Common Pleas of Logan County, Ohio, in <u>Spiller v. Sky Bank – Ohio Bank Region</u> , Case No. CV 05-03-0118, February 22, 2007.	

**I. EXPLANATION OF WHY THIS CASE INVOLVES A MATTER  
OF PUBLIC OR GREAT GENERAL INTEREST**

In the event the Supreme Court of Ohio accepts the Appeal of Sky Bank – Ohio Bank Region, Cross-Appellant Maxine F. Spiller wishes to preserve her right to also appeal the portions of the judgment of both the Trial Court and the Third Appellate District Court which are adverse to her. Both the Trial Court and the Third District Court of Appeals have issued a decision which was favorable in part to Appellant Maxine F. Spiller and unfavorable in part to her.

Frankly, if this matter were left to the sole judgment of Appellant herein, Maxine F. Spiller, we think the matter has gone far enough. The Trial Court has determined the issues and that decision was affirmed by the Third Appellate District Court of Appeals. Maxine F. Spiller as an individual has neither the money nor the inclination to go further and she would abide by the decisions of these Courts. However, Sky Bank has chosen to appeal to the Supreme Court. If the Court accepts the Appeal of Sky Bank and therefor considers the case, Maxine F. Spiller would like to preserve the right to also appeal the issues unfavorable to her about that decision.

This case is either a public or great general interest for all of the reasons set forth in Sky Bank – Ohio Bank Region’s appeal or it is not. In other words, we have nothing further to present to this Court about whether or not the Court should accept the case.

There is no conflict between the Courts of Appeals. The only two Courts of Appeals that have passed on the issue involved have ruled in the same regard or manner.

This case will therefor only be heard by the Supreme Court if it involves a matter of public or great general interest.

We submit to the Court that if the Court determines that the case involves a matter of public or great general interest as relates to Sky Bank – Ohio Bank Region, the same applies on our appeal. Our Cross-Appeal and the Appeal of Sky Bank involve the exact same fact pattern and the exact same issues.

Unlike counsel for Sky Bank, we do not think that the Third Appellate District decision herein nor the *Brentlinger v. Bank One of Columbus, N.A.* (2002), 150 Ohio App.3d 589, cases have failed to follow the applicable statutes or this Court's holding in *Abraham v. National City Bank Corp.* (1990), 50 Ohio St.3d 175. Both the Tenth District and the Third District Courts of Appeals have made a distinction in our case, namely that a self renewing certificate of deposit could be distinguished from a passbook savings account. We think that holding is correct. We also think there is no conflict between the Appellate Districts and that this Court should probably deny jurisdiction to both Sky Bank and to Maxine F. Spiller.

On the other hand, if the Court grants the Appeal to Sky Bank, we wish to have the right to preserve our Appeal and we wish to argue to the portions of the decision which are unfavorable to us.

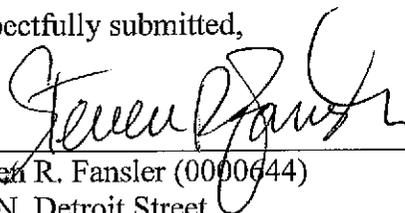
## **II. CONCLUSION**

We disagree with the Conclusion of Sky Bank in its Memorandum of Support. We do not believe that there was an error in the *Brentlinger* case and we do not believe that there was an error in the Third District Court of Appeals decision in this case. We do not think that either case modified the Ohio Revised Code and we do not think that either

case failed to follow the Supreme Court *Abraham* decision. We therefor urge the Court to do either of the following:

- A. Dismiss the Appeal of Sky Bank as being as case which is not of public or great general interest; or
- B. In the event the Court allows the Appeal of Sky Bank – Ohio Bank Region, also allow our Appeal which involves the exact same issues, the same facts and the same interpretation and application of cases and statutes to our fact pattern.

Respectfully submitted,



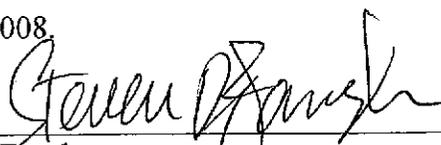
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AND APPELLEE MAXINE F. SPILLER

**PROOF OF SERVICE**

I certify that a copy of this Memorandum of Cross-Appellant and Appellee Maxine F. Spiller was sent by First Class U.S. Mail to counsel for Cross-Appellee and Appellant, Matthew D. Harper, Eastman & Smith Ltd., One SeaGate, 24<sup>th</sup> Floor, P.O. Box 10032, Toledo, OH 43699-0032, on June 9, 2008.



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