

STATEMENT OF ISSUE INVOLVED

National banks are authorized to issue guaranties when the bank has a "substantial interest" in the performance of the obligation guarantied. A substantial interest exists when the guaranty is "validly incidental to another authorized activity of the bank involved in the transaction." Did the Circuit Court err when it decided that Marquette/Wells Fargo did not have a substantial interest in the performance of the Facility Management Contract at issue, and therefore, that the Buyout Provision contained therein was unenforceable?

The trial court found that Marquette/Wells Fargo did not receive sufficient benefit from its execution of the Buyout Provision to render the guaranty enforceable. In doing so, the trial court found that the Bank "did not receive any additional consideration in return for the guaranty," and that there was "no benefit to the Bank beyond the normal benefits expected from a lender relationship." Northwestern contends that these conclusions were based upon an erroneous interpretation of undisputed facts and should be reversed.