

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION:	:	
	:	
Plaintiff,	:	
vs.	:	Civil Action No.
	:	
AMERI-FIRST FUNDING, INC.,	:	
a/k/a AMERIFIRST FUNDING, INC.	:	
a/k/a AMERI FIRST FUNDING, INC.	:	
a/k/a AmeriFirst Funding, Inc.	:	
	:	
AMERI-FIRST ACCEPTANCE CORPORATION :	:	
a/k/a AMERIFIRST ACCEPTANCE CORP:	:	
	:	
JEFFERY C. BRUTEYN	:	
DENNIS W. BOWDEN	:	
	:	
Defendants,	:	
	:	
AMERICAN EAGLE ACCEPTANCE	:	
CORPORATION	:	
	:	
HESS FINANCIAL CORPORATION	:	
	:	
Relief Defendants	:	

DECLARATION OF JOHN M. OSES

I, John M. Oses, declare under penalty of perjury (28 U.S.C. § 1746) that the following is true and correct and I am competent to testify to the matters stated below.

1. I am an attorney in the Fort Worth District Office of the Securities and Exchange Commission. I have been employed with the Commission since 1999. I am the attorney responsible for conducting the investigation into defendants Amerifirst Funding, Inc. and Amerifirst Acceptance Corporation (collectively “AFI”), Jeffery C.

Bruteyn (“Bruteyn”) and Dennis W. Bowden (“Bowden”) and relief defendants American Eagle Acceptance Corporation (“AEAC”) and Hess Financial, Inc. (“Hess”).

2. During the Commission’s investigation of the defendants, I reviewed documents obtained during the investigation, including documents produced by AFI sales agents, subpoenaed documents, bank account records, documents produced by individuals who invested in AFI, Commission records, public records and information from other state and federal agencies. The Commission’s investigation shows:

3. Amerifirst Funding, Inc. (“Amerifirst”) is a Texas corporation [**Exhibit 19**] located at 3333 Lee Parkway, Suite 600, Highland Park, Texas. [**Exhibit 1**] Bowden is the president and a director of Amerifirst. [**Exhibit 19**] Bruteyn holds himself out as the Managing Director of Amerifirst. [**Exhibit 1**] Amerifirst is also known as Ameri-first Funding, Inc., Ameri first Funding, Inc. and AmeriFirst Funding, Inc.

4. Amerifirst Acceptance Corp. (“A Acceptance”) is a Texas corporation [**Exhibit 19**] located at 3333 Lee Parkway, Suite 600, Highland Park, Texas. [**Exhibit 22**] Bowden is the president and a director and Bruteyn is the vice president and managing director of A Acceptance. [**Exhibit 22**].

5. American Eagle Acceptance Corporation (“AEAC”) is a Texas corporation located at 2720 Sylvan, Dallas, Texas. Bowden is the president of AEAC. AEAC also operates under the assumed name Central Park Motorcars, located at 633 W. Division, Arlington, Texas. [**Exhibit 20**]

6. Hess Financial Corporation (“Hess”) is a Texas corporation located at 3333 Lee Parkway, Suite 600, Highland Park, Texas. Bruteyn is the president and sole owner of Hess. [**Exhibit 21**]

7. Bruteyn was born on May 13, 1970 and is a resident of Dallas, Texas. Bowden was born on February 3, 1953 and is a resident of Dallas, Texas. Bruteyn and Bowden are involved in all aspects of AFI's operations, including communicating with potential investors, the creation and dissemination of offering documents and AFI agreements and the control of company bank and brokerage accounts. **[Exhibits 1, 3, 6, 8, 22, 27, 33, 34, 36, 37 and 38]**

8. On December 13, 1996, Bruteyn filed for Chapter 7 personal bankruptcy. The bankruptcy was discharged on May 28, 1998. **[Exhibit 25]**

9. In 2002, Bruteyn filed for Chapter 7 personal bankruptcy. The bankruptcy was discharged on July 28, 2004. **[Exhibit 25]**

10. Bruteyn claims that he currently holds 7, 24 & 63 securities licenses **[Exhibit 22]** and is a Certified Regulatory and Compliance Professional, a NASD certification. **[Exhibit 1]**

11. Bruteyn was an associated person of broker-dealers from approximately 1994 until January 2002, when the NASD suspended him from associating with any NASD member for 18 months and fined him \$15,000 for executing unauthorized trades, failing to follow customer instructions and making misrepresentations. **[Exhibit 24]**

12. In March 2002, the NASD ordered him to pay an arbitration award of \$287,000 to a former client for breaching his fiduciary duties, churning the customer's account, making misrepresentations and omitting information, negligence in handling the account and unauthorized trading. **[Exhibit 39]**

13. In August 2003, the NASD permanently barred Bruteyn from associating with any NASD member, as punishment for his failure to respond to the NASD's requests for documents and information. **[Exhibit 23]**

14. Bruteyn was Chief Executive Officer of Amerifirst Securities Corporation, a broker-dealer whose membership in the NASD was cancelled in July 2001 for failure to pay fees. **[Exhibit 24]**

15. There is evidence strongly suggesting that AFI, Bruteyn and Bowden violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 [15 U.S.C. §77q(a)] ("Securities Act") and Section 10(b) of the Securities and Exchange Act of 1934 [15 U.S.C. §78j(b)] ("Exchange Act") and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

16. That from at least June 2006, AFI, Bruteyn and Bowden raised at least \$35,000,000, and possibly as much as \$55,000,000 from the sale of securities called "Secured Debt Obligations" and "Collateral Secured Notes" (collectively "SDOs"). **[Exhibit 43]** AFI utilized a network of sales agents located in Texas and Florida who received at least a 4% to 5% commission.

17. The SDOs are described as a note guaranteed by a commercial bank and reinsured by two outside AA rated insurance companies. **[Exhibit 2]**

18. The SDOs are purportedly secured by automobile financing notes that AFI either purchases on the open market or that one of its affiliates (American Eagle Acceptance Corporation) creates when it sells a car on credit. **[Exhibit 22]**

19. AFI claims to be a "bank holding company" whose affiliate, American Eagle, has a "banking license issued by the State of Texas, Office of the Consumer Credit

Commissioner.” **[Exhibit 2]** AFI includes a copy of American Eagle’s Motor Vehicle Sales Finance License as proof of this “banking license.” **[Exhibit 1]**

20. The Texas Office of The Consumer Credit Commissioner informed me that the license allows AEAC to sell cars and make a note for the sale, or to purchase and hold loans other car dealers make (Chapter 348 Texas Financial Code). It does not authorize them to operate a bank. **[Exhibit 13]**

21. AFI describes the investment as a “Collateral Secured Note guaranteed by a commercial bank and reinsured by two outside AA rated insurance companies.” **[Exhibit 2]**

22. AFI or its affiliates are not licensed by the State of Texas, US Comptroller or FDIC to operate a bank. I have not been able to find any evidence that the SDOs are guaranteed by a commercial bank.

23. AFI states that Allianz and Lloyd’s of London are the reinsurers of the SDO. **[Exhibit 2]** AFI includes background information on these companies as well as a copy of a Lloyd’s Certificate, but with pertinent information selectively redacted in its offering materials. **[Exhibit 1]**

24. The staff has interviewed representatives of Allianz who have stated that they have found no policies with AFI or any of its affiliates.

25. AFI and AEAC do have a Single Interest Insurance policy with Lloyd’s, but it only covers the collateral (the cars loans are made on) and only has an annual aggregate coverage of \$200,000 per year. **[Exhibit 27 attached exhibit B]** I have exchanged correspondence and interviewed John Marks, an underwriter for Lloyd’s of

London who reviewed the exhibits attached to **[Exhibit 27]** and informed me of the following:

(a) Lloyd's is not an insurance or reinsurance company; it is an insurance market of members. Lloyd's members conduct their insurance business in syndicates, each of which is run by a managing agent. Among other functions, managing agents employ underwriters, such as the Small Business Consortium ("SBC"), to accept or decline risks for the syndicate.

(b) SBC underwrites on behalf of Syndicate 727, which trades at Lloyd's. S.A. Meacock & Company, Ltd. is the managing agent for Syndicate 727, and manages SBC.

(c) Syndicate 727 issued a Lender's Single Interest Policy, Lloyd's Certificate No. NL000360f, for the period March 1, 2006 through March 1, 2007 to AmeriFirst/American Eagle Acceptance Corp. (the "2006 Policy"). A true and accurate copy of the 2006 Policy is attached as **Exhibit A**. The schedule which is on the second page of **Exhibit A** ("2006 Policy Schedule") reflects the coverage of the policy and the limits of liability under the policy.

(d) Syndicate 727 also issued a Lender's Single Interest Policy, Lloyd's Certificate No. NL000360g, for the period March 1, 2007 through March 1, 2008, to AmeriFirst/American Eagle Acceptance Corp. (the "2007 Policy"). A true and accurate copy of the 2007 Policy is attached as **Exhibit B**. The schedule which is on the second page of **Exhibit B** ("2007 Policy Schedule") reflects the coverage of the policy and the limits of liability under the policy.

(e) He was the underwriter for the 2007 Policy. He made the determination to accept the risk covered by the 2007 Policy based only on the application for that policy. He relied on the accuracy of the information contained in the application and did not speak with anyone at Amerifirst or American Eagle Acceptance Corp. regarding the application. A true and accurate copy of the application for the 2007 Policy is attached as **Exhibit C**.

(f) The 2006 Policy, **Exhibit B**, and the 2007 Policy, **Exhibit C**, are Lender's Single Interest Policies. The 2006 Policy Schedule and the 2007 Policy Schedule specify that the policies provide coverage for vehicles securing loans in four instances:

COVERAGE A: All Risk Physical Damage Installment Loan Insurance

This covers the impairment of the loan should the borrower cancel, non-renew, or not have physical loss or damage coverage in place when a loss occurs.

COVERAGE B: Unintentional Non-filing Insurance

This covers the unintentional non-filing of the instrument by the financial institution which impairs the loan.

COVERAGE C: Skip Insurance

This covers loss of the vehicle when neither it nor the borrower can be located, and the borrower essentially has stolen the vehicle.

COVERAGE D: Repossession Insurance

This covers all risks of physical loss or damage to the repossessed vehicles within 30 days of repossession, such as while they are on a lot prior to being sold at auction.

(g) The 2006 Policy and the 2007 Policy cover only physical loss or damage to the vehicles. They do not insure the receivable from the borrower, and they do not cover the failure of a borrower to pay the receivable.

(h) The 2006 Policy and the 2007 Policy insure only the interest of the lender in the vehicles collateralizing the loans to the borrower. They do not insure the interest of any person in investments offered by AmeriFirst, American Eagle Acceptance Corp., or any of their affiliates.

(i) The 2006 Policy Schedule specifies that the maximum liability of the underwriter on any one loan is \$10,000, and the total annual aggregate limit of liability for all coverage purchased under the policy is \$200,000. This means that the total amount that would ever be paid under the 2006 Policy is \$200,000.

(j) The 2007 Policy Schedule specifies that the maximum liability of the underwriter on any one loan is \$31,000, and the total annual aggregate limit of liability for all coverage purchased under the policy is \$200,000. This means that the total amount that would ever be paid under the 2007 Policy is \$200,000.

(k) In its application for the 2007 Policy, AmeriFirst/American Eagle Acceptance Corp. represented that it had outstanding exposures on 663 vehicles with a total aggregate value of \$5,320,575. In the application, the company estimated that it would have 700 new loans in the twelve months following the application.

(l) Mr. Marks reviewed the following documents:

(i) A list titled “Introducing the Secured Debt Obligation Account (SDO Account)” on AmeriFirst Funding letterhead referencing reinsurance of the SDO account by Lloyd’s. A true and correct copy of that document is attached as **Exhibit D** hereto.

(ii) A Lloyd's Certificate and Lender Single Interest Certificate on AmeriFirst Funding letterhead. A true and accurate copy of these documents is attached as **Exhibit E** hereto.

(n) Mr. Marks stated that **Exhibit D** describes the Secured Debt Obligation Account investment as a collateral secured note reinsured by two outside AA rated insurance companies, and it states that Lloyd's of London is one of the two reinsurers. Mr. Marks remarked that this is not a true statement because Lloyd's does not reinsure investments in collateral secured notes as described in **Exhibit D**, it does not provide coverage against the investment risks inherent to the collateral secured notes and Lloyd's does not provide any coverage to AmeriFirst or American Eagle Acceptance Corp. that would protect investors against loss or guarantee investors a financial return.

(o) Mr. Marks stated that **Exhibit E** is not a copy of the Single Interest Certificate for the 2006 Policy or the 2007 Policy and **Exhibit E** does not reflect the limitations on liability in the 2006 Policy or 2007 Policy, and it does not include all of the endorsements on the policies.

(p) Mr. Marks searched the records of the SBC and found no additional policies, other than the policies described above, underwritten by the SBC providing coverage for Amerifirst or American Eagle Acceptance Corp.

(q) Mr. Marks is in the process of providing the Commission with a sworn Declaration regarding the statements he made to me during his interview.

26. AFI represents that Fireman's Fund Insurance Group insures all of their receivable accounts. **[Exhibit 1]** AFI also includes background information regarding Fireman's Fund. **[Exhibit 1]**

27. AEAC did have a Single Interest Automobile Physical Damage Insurance Policy with Fireman's from November 2000 to November 2003, but that policy only protected the collateral securing the car loan. **[Exhibits 28 & 29]**. Fireman's representatives have informed me that they ceased offering that type of insurance coverage in 2003. They have had no policies with AEAC during the offering period of 2006 and 2007. Fireman's has never had a policy with AFI. **[Exhibit 29]**

28. AFI claims that the SDOs are backed by Fraud and Dishonesty Insurance up to \$100,000 per account issued by Western Surety Corp. and underwritten by CNA (the usual FDIC Bank insurance).” **[Exhibit 2]** AFI includes a copy of its “dishonesty” bond in its offering materials. **[Exhibit 1]**

29. The Fraud and Dishonesty Insurance only covers fraudulent or dishonest acts committed by an employee against the company (like embezzlement or theft). It also is limited to \$100,000 per employee, not account, and for a total of \$600,000 a year. **[Exhibit 30]**

30. AFI represents that it will keep a fully covered single interest policy on all “uninsured receivables” at all times by The American National Insurance Company or an A+ or better rated company. **[Exhibits 1, 3 and 5]**

31. I have spoken with representatives of American National Insurance Company and they stated that the company has searched its records and has not been able to locate any policies issued to AFI or its affiliates.

32. AFI states in its offering materials that it will keep investor funds “separate and apart” from its property. **[Exhibits 1, 3 and 5]**

33. My review of AFI’s bank account and brokerage account records indicate that investor funds have been routinely commingled in AFI accounts and transferred to AFI brokerage accounts without segregation. **[Exhibit 43]**

34. AFI maintains that at all times, any funds advanced by investors shall be held either in cash in the investor’s separate account, government or corporate AAA bonds, qualified receivables (the car notes) or publicly traded stock, namely IFCH; **[Exhibit 1, 3 and 5]**

35. My analysis of bank account and brokerage account records indicates that cash funds are not maintained in separate investor's accounts and that only a relatively small portion of investor funds have been placed in automobile receivables or used to purchase the type of secure investments described in the offering materials. **[Exhibits 43 & 32]** Rather, AFI has invested millions of dollars of investor funds in such risky investments as junk-rated corporate bonds, put and call options, common stocks in volatile industries such as the technology sector, and floating rate funds. **[Exhibits 32 and 40]**

36. Investors are given the opportunity to receive their returns in monthly payments, or to compound their interest by rolling in their monthly interest payments into their SDO and receiving their principal and compounded interest upon the maturity of the SDO. **[Exhibits 3 and 4]**

37. Most investors have chosen to roll their interest payments into their SDO and defer receiving their interest until the SDO matures.

38. A Acceptance issues securities called "Collateral Secured Notes" ("C Notes") that are identical to the SDOs in all major aspects. **[Exhibits 2 and 22]** The C Notes are 3 year notes paying 8% annual interest and investor funds will be used to purchase automobile loans from AEAC. AEAC is currently offering the C Notes on its Internet site. **[Exhibit 22]** A Acceptance also transferred funds to Bruteyn, through Hess, as consulting fees. **[Exhibit 43]**

39. Investors also have not been told about AFI, Bruteyn and Bowden's extensive misappropriation of investor funds. Bank records indicate that the defendants

have used significant investor funds in a manner inconsistent with what was represented to investors, including paying for personal expenses, including the following:

- (a) \$1.4 million of investor funds was used to purchase commercial real estate. **[Exhibit 43]**
- (b) \$2.3 million went to fund AFI's operations, including AFI and AEAC car lots. **[Exhibit 43]**
- (c) At least \$4.7 million was transferred from AFI accounts to Hess Financial's accounts and \$2.49 million of investor funds have been directly deposited in that account, which Bruteyn effectively treats as his personal checking account. **[Exhibit 43]**
- (d) Among the personal payments Bruteyn has made through this account is a \$1.98 million wire transfer to purchase real estate through a Florida broker. **[Exhibit 14]**
- (e) In addition, Bruteyn has made payments for a \$200,000 investment in other real property; \$160,000 in credit card payments; \$109,000 for his divorce settlement and child support; \$100,000 as a partial payment on an Aston Martin automobile, \$35,000 for flooring at "Tile Land," \$30,000 payment for an airplane (Bowden is a pilot); and various amounts totaling more than \$750,000 for other personal expenses such as country club dues, interior decorating services (provided by Bowden's wife), landscaping services, utilities, travel and cash withdrawals. **[Exhibit 44]**

(d) Bowden also received \$700,000 from Hess to purchase a house from Bruteyn **[Exhibit 15]** and used approximately \$200,000 to remodel it.

40. A search of Commission records indicate that AFI, Ameri-first Funding nor A Acceptance have ever registered a securities offering under the Securities Act and have not registered any class of securities under the Exchange Act. **[Exhibit 41]** The securities offered by AFI and A Acceptance are not registered with any state.

41. The Defendants utilized instrumentalities of Interstate commerce during the fraudulent offering, including, mailing offering materials to investors and sales agents in at least 2 states, sending millions of dollars in out-of-state wire transfers and causing investors to mail checks and wire funds from at least one other state to Texas. **[Exhibits 3, 4, 5, 6, 8, 9, and 10]**

42. Evidence gathered from bank records indicates that Bruteyn, through Hess, maintains a bank account at First Caribbean International Bank through Meridian Trust Company Limited **[Exhibit 17]**, wired \$210,000 to Island Properties bank account at St Georges Bank & Trust Company in Montserrat to purchased property **[Exhibit 16]**, and has utilized Hess' First Caribbean account to wire over \$1 million in apparent commissions to a Florida sales agent. **[Exhibit 18]**

43. Attached to this declaration are true and correct copies of documents I collected as part of the Amerifirst Funding, Inc. investigation.

- A. AFI Offering Materials and Agreements **[Exhibit 1]**
- B. Introducing the Secured Debt Obligation **[Exhibit 2]**
- C. Collateral Secured Debt Obligation and Servicing Agreement, signed by Bowden, and account statement indicating "roll-over" of returns for investors Richard and Irene Hyde **[Exhibit 3]**
- D. SDO Account Statement indicating "roll-over" **[Exhibit 4]**
- E. Collateral Secured Debt Obligation and Servicing Agreement **[Exhibit 5]**

- F. Welcome letter for investors – sent after investment made and signed by Bruteyn as Managing Director **[Exhibit 6]**
- G. Investor letter from Frank and Margaret Wickham to AFI requesting proof of FDIC coverage. **[Exhibit 7]**
- H. AFI Response to Wickham letter, signed by Bowden as president of AFI. **[Exhibit 8]**
- I. Letter from investor George Molter to Florida regulators. Indicates he saw newspaper ad and insured by Lloyd’s and Allianz. Also contains a photocopy of investment check made to Amerifirst. **[Exhibit 9]**
- J. Amerifirst investor check deposited in Washington Mutual Bank **[Exhibit 10]**
- K. Newspaper Ads – Colonial First **[Exhibit 11]**
- L. Newspaper Ads – Secured Capital **[Exhibit 12]**
- M. State of Texas Office of Consumer Credit Commissioner, Certification of AEAC’s Vehicle Sales Finance Licenses **[Exhibit 13]**
- N. \$1.9 million wire transfer from Hess to Advantage Real Estate **[Exhibit 14]**
- O. \$700,000 wire to Landamerica American Title for 6717 Lakeway **[Exhibit 15]**
- P. \$210,000 wire from Hess to Island Properties **[Exhibit 16]**
- Q. Meridian Trust Company and First Caribbean bank account **[Exhibit 17]**
- R. Meridian Trust Company Hess transfers to Hall Financial, Inc. **[Exhibit 18]**
- S. Texas Secretary of State Records – Ameri-first Funding, Inc. and Ameri-first Acceptance Corporation **[Exhibit 19]**
- T. Texas Secretary of State Records – American Eagle Acceptance Corporation **[Exhibit 20]**
- U. Texas Secretary of State Records – Hess Financial Corporation **[Exhibit 21]**
- V. Amerifirst Acceptance Internet Site **[Exhibit 22]**
- W. NASD Records – Bruteyn Bar **[Exhibit 23]**
- X. NASD Records – Bruteyn Suspension **[Exhibit 24]**
- Y. Bankruptcy Records – Bruteyn, 1996 and 2002 **[Exhibit 25]**
- Z. Investor List indicating at least 327 investors and \$33.9 million raised **[Exhibit 26]**
- AA. Lloyd’s of London Applications and Policy **[Exhibit 27]**
- BB. Fireman’s Insurance Policy **[Exhibit 28]**
- CC. Fireman’s Declaration **[Exhibit 29]**
- DD. Western Surety Declaration **[Exhibit 30]**
- EE. Hess Fidelity Account Profit and Loss Analysis **[Exhibit 31]**
- FF. Brokerage Spreadsheet indicating “risky” investments **[Exhibit 32]**
- GG. Merrill Lynch Opening Account Statement **[Exhibit 33]**
- HH. Fidelity Opening Account Statement – Amerifirst **[Exhibit 34]**
- II. Fidelity Opening Account Statement – Hess Financial **[Exhibit 35]**
- JJ. E*Trade Opening – Amerifirst **[Exhibit 36]**
- KK. E*Trade Bank Opening – Amerifirst **[Exhibit 37]**

- LL. Letter to E*Trade to transfer securities to Merrill account [**Exhibit 38**]
- MM. NASD Arbitration award – CRD Printout [**Exhibit 39**]
- NN. Fidelity and Merrill Amerifirst accounts profit and loss [**Exhibit 40**]
- OO. U.S. Securities and Exchange Commission Attestation of Non-Registration [**Exhibit 41**]
- PP. Commission payment on June 4, 2007 - wire transfer from Hess to Hall Financial [**Exhibit 42**]
- QQ. Declaration of William R. Rector [**Exhibit 43**]
- RR. Use of Proceeds Spreadsheet [**Exhibit 44**]

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

John M. Oses