

Cincinnati Insurance Company v. Wachovia Bank

Wachovia Bank Wins Lawsuit Over Customer That Refused Positive Pay

Background

On December 1, 2005, Todd's Snax, Inc., dba Schultz Foods Company ("Schultz Foods"), issued a check in the amount of \$153,856.46 to Amerada Hess Corporation drawn on Wachovia Bank. Thieves stole the check out of the mail, changed the name of the payee to "Kenneth Payton," and induced Payton (an unwitting accomplice) to endorse the check and deposit it into his account at TCF Bank. Payton was a minister who had been beguiled by the fraudsters into believing he was helping a refugee family in South Africa. Payton wired out \$150,356.46; the benevolent fraudsters allowed him to keep \$3,500.

By the time Schultz Foods discovered the fraud, Payton had wired the funds to a bank in Singapore, and the thieves had disappeared with the money.

On or about January 13, 2006, the fraud came to light. Schultz Foods reported the altered check to Wachovia, demanding that Wachovia re-credit its account. Schultz Foods claimed that Wachovia must bear the loss because it processed an altered check in violation of the Uniform Commercial Code. Wachovia disagreed, citing the fact that Schultz Foods had declined to implement "Positive Pay," that would have identified the altered payee name and prevented the loss. Wachovia refused to pay.

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Prior to this loss, Schultz Foods had been a victim of check fraud on three separate occasions. After the first incident in March 2002 when two fraudulent checks cleared its account, Wachovia recommended that Schultz Foods either close its account or implement Positive Pay. Schultz Foods closed its account but did not implement Positive Pay. After the second incident in October 2003 when a check for \$410 was altered to read \$3,942.68, Wachovia again covered the loss. After the third incident in September 2004, Schultz Foods closed its account but again did not implement Positive Pay. Instead, Schultz Foods purchased a check fraud insurance policy from Cincinnati Insurance Company.

After the \$153,856.46 loss, Schultz Foods made a claim against Wachovia, and also made a claim under its policy with Cincinnati Insurance Company. Cincinnati paid the claim and filed suit against Wachovia to recover its loss...

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In issuing its Order on July 14, 2010, the Court...

Read the full account of the lawsuit won by Wachovia Bank. Download the Summary and Court Order at:

www.safechecks.com/services/fraudprevention.html

A point to consider

Typically, an altered payee is the liability of the bank of first deposit, in this case, TCF Bank. The attorneys who won this case were retained by TCF Bank, not Wachovia Bank. When Wachovia Bank was sued by Cincinnati Insurance, it expected TCF Bank to pay for the altered check. Under the UCC, if one party in the legal chain has a good defense, the liable party, in this case TCF Bank, can assume that party's defense to defend itself. TCF Bank did precisely that. It took over Wachovia's position and defended itself. This case demonstrates that a customer can have a great relationship with its bank and still lose a check fraud lawsuit.