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Litigation

By Cathy Ghiglieri

Bankers can reduce odds of being sued

Any bank can be sued, but the smart banker prepares for lawsuits before they happen.

I have been serving as an expert witness in banking cases for the past six years and I have come to realize that it is often the small things that result in large settlements against the banks. Consider these examples.

The teller line. A great deal of banking litigation surrounds events that take place at the teller window. Tellers are often the first line of defense for the bank in preventing fraud.

A particularly thorny issue for banks is the cashing of corporate checks by tellers. A recurring theme is one where the teller cashes a corporate check made out to a company employee and signed by that employee. A similar theme is the one where a teller takes a deposit of a corporate check signed by the employee, with the check being deposited into the employee's personal account. In the end, the bank finds out that the employee is stealing money from the company.

In litigation where bank tellers handle the checks in question, the bank usually fairs poorly where there are no or inadequate procedures in place for the tellers, or where the tellers did not follow the procedures. Refresh your memory on what your tellers are doing and reduce your litigation risks.

New accounts area. Banks also incur a great deal of litigation in the new accounts area. Actions taken by new accounts personnel can sometimes be the difference between catching a fraud before it starts and taking large losses because of a fraud.

Taking the time to ensure that your procedures are in place and are being followed can pay huge dividends in the event of litigation.

A recurring theme is the one where a thief opens up a corporate account at a bank with little or no documentation. In many cases, the bank does not even take the simplest step to check with the Secretary of State to determine if the corporation exists and the identity of the officers. Simply following the requirements of the Bank Secrecy Act for opening new accounts can help you prevent fraud and minimize litigation losses, as well as prevent money laundering.

ATMs. More customer transactions take place at ATMs. Does your bank have basic fraud detection procedures in

place so that you know if a transaction is out of character for that customer?

One recurring theme surrounds the elderly person who goes into the hospital or nursing home and his ATM card is stolen. ATM withdrawals are then made by the thief each day for the maximum daily amount. In one case, the withdrawals were made on 120 consecutive days from locations around the United States, Europe and the Bahamas. No one at the bank questioned the transactions as unusual behavior for an elderly man who did not travel and who rarely used an ATM card. The bank ended up settling the case.

Review and strengthen your fraud detection procedures for ATM transactions to reduce your litigation risks.

Large checks. Large checks are often the focus of litigation. In many instances, the large checks are processed with fraudulent signatures or fraudulent endorsements, and if reviewed by the bank, would be considered "unusual activity" for that account. Because banks look at very few signatures or endorsements, or large checks for that matter, this type of fraud is not often detected. Reinstatement of these types of review procedures can help detect fraud and reduce the bank's litigation risks.

Long-time customers. Much of the litigation I have reviewed has concerned long-time customers of the bank. A recurring theme is one in which the banker has dealt with the customer for years and has not done a real review of the financial health of the customer for a long time. The customer begins to have financial problems and eventually runs up large overdrafts, defaults on loans, and creates losses for the bank. When the banker realizes what is happening, it is too late to do anything about it.

A thorough periodic financial analysis of your customers, especially your long-time customers, can help you take steps to prevent problems before litigation becomes necessary.

Over the past six years, I have often thought that if only the banks would have practiced some "Banking 101" principles, they could have minimized their litigation risks. Look into these five places to see if you can't reduce your litigation risks. ❖

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