Banks Say Case Could Lead To Increase In Fraud

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suing bad checks, improper use of credit cards, and burglary."

He continued his criminal activities in 2002 by opening an account with the school's tax identification number. He proceeded to deposit into the account, over the course of four years, more than 1,000 checks, some payable to the school and others drawn on the school's operating fund account.

"Bank employees knew him and came over to shake his hand and joke around with him when he visited the branch," according to the school's court papers. "In the years to follow, the defendant [Bank of America] sent statements for the account to Licitra's home address; issued Licitra an ATM card; and processed hundreds of transactions on the account for Licitra."

Licitra's embezzlement continued until his position at the school was eliminated in 2006. He was arrested in July 2007, after officials at the Diocese of Norwich discovered the scam, and is currently serving a seven-year prison sentence.

Exculpatory Clauses

In the meantime, St. Bernard filed a civil lawsuit in an attempt to recoup some of its losses.

The school, noting that it was a longtime customer of Bank of America, argued that the bank violated its own policies and let Licitra open a checking account in the school's name even though he was not an authorized signer of documents for the school's accounts. The bank even failed to disclose the existence of the illicit account to the school's accountants for four transactions within 60 days. Any customer not acting within this time frame, according to the agreements, is barred from bringing "any legal proceeding or action against us to recover any amount alleged to have been improperly paid out of your account."

During the trial, New London Superior Court Judge James Devine declared that those exculpatory clauses—requiring St. Bernard to notify Bank of America about problems within 60 days in order to be able to sue the bank—were contrary to Connecticut public policy. He cited the 1995 case of *Hanks v. Powder Ridge Restaurant Corp.*, in which the Supreme Court held that it was against the public interest to allow a ski resort to limit its liability through an exculpatory contract clause.

And so, in an apparent issue of first impression, Devine interpreted Connecticut General Statute Section 42a-4-103 to find that the Bank of America deposit agreements were unenforceable. The law states: "Parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack of failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable."

Devine reasoned that the "exculpatory language in the agreement affects the public interest adversely, and, therefore, it is unenforceable because it violates public policy."

The result of the judge's ruling, Bank of America said, was that the trial jury was not

Attorney Ryan Barry, former cochairman of the Legislature's Banks Committee, said most states allow banks to limit the amount of time consumers have to bring legal claims linked to problems with their accounts.

Law Tribune File Photo

The Connecticut Bankers Association has filed an amicus brief in the case. That brief argues that public policy *does* support exculpatory clauses in the contractual relationship between banks and their depositors. The organization said the bank's exculpatory clause isn't really comparable to that of the ski resort, which is over their patrons.

To allow exculpatory clauses, such as the one used by Bank of America, "would allow banks to run roughshod over our legislature and their customers alike," St. Bernard's lawyers said.

Further, the school's lawyers argue, even if St. Bernard had a responsibility to review