



A.S. Pratt

RE: *Brady on Bank Checks and Funds Transfers*—2011 Update No. 3

Dear Customer,

Your enclosed 2011 No. 3 Update to *Brady on Bank Checks and Funds Transfers* discusses significant developments in the law governing bank checks and funds transfers and helps you to stay informed about important issues that can affect you. *New Title*: The title of *Brady on Bank Checks* has been changed to reflect the changes in content over the years as Brady has grown with changes in payment systems. The new title, *Brady on Bank Checks and Funds Transfers*, reflects material primarily found in Chapters 20 and 21. While the law of checks remains an extremely important component of payment systems law, *Brady* has been providing coverage of the changing landscape of payment systems law over recent years, and we feel it is important to reflect the ongoing timeliness of this cornerstone treatise by updating the title as well.

The update includes information on the following topics:

- *Federal court in Arizona finds mutual fund company to be a bank.* Thus, the UCC bank statement provision was applicable to the case before the court. The mutual fund company in connection with a trust account provided checks, honored drafts, and regularly mailed account statements. See *Borchers v. Vanguard Group, Inc.*, ¶¶ 1.24, 32.01[1].
- *Effect of drawee bank's issuance of cashier's check on presented personal check examined in Michigan federal court.* The court held that issuance of the cashier's check discharged all obligations on the personal check for which the cashier's check was issued. See *Crawford v. JP Morgan Chase Bank, N.A.*, ¶ 4.11.
- *Ohio court applies UCC accord and satisfaction rule applicable to full-satisfaction checks.* The drawer issued the check to settle litigation with the payee. The payee tendered repayment of the check. The court found that the tender effectively avoided any accord and satisfaction. See *Nexus Communications, Inc. v. Qwest Communications Corp.*, ¶ 4.13[2].
- *Two cases involve UCC Article 3 statute of limitations.* A Nebraska court, dealing with a check conversion claim, refused to apply the “discovery rule” in determining when the limitation period began to run. See *Mandolfo v. Mandolfo*, ¶ 4.14[2]. A federal court in Illinois, also dealing with a check conversion claim, held that the “continuing violation” doctrine did not apply to the conversion claims before it. The series of

checks involved gave rise to separate conversion claims for each check. See *Dhingra v. PNC Financial Services Group, Inc.*, ¶ 4.14[2].

- *Claim for theft of checks, forgery of indorsements, and cashing of checks subject to UCC Article 3 three-year statute of limitations, according to Idaho court.* The court reached this conclusion because although the plaintiff based his claim in malpractice or fraud, the basis of the claim was actually in conversion. Conversion of checks is governed by UCC Article 3, including the Article 3 statute of limitations. See *McCormick v. Caldwell*, ¶¶ 4.14[2], 30.03.
- *Federal court applying Pennsylvania and Utah law holds that UCC Article 3 displaces common law claims related to negotiation of unauthorized misappropriated checks.* The court concluded that UCC Article 3 provides a comprehensive treatment of such claims. See *Mackin Engineering Co. v. American Express Co.*, ¶ 4.14[2], 30.03.
- *Federal court in Colorado applies UCC provision applicable to lost, stolen, or destroyed cashier's, teller's, and certified checks.* In so doing, the court approved of the bank's use of an interpleader to resolve issues related to the remitter's attempt to have the bank not pay the cashier's check. The case also indicates that the issuing bank could not assert fraud on the remitter as a defense to the bank's obligation to pay the cashier's check. Other issues were also raised in the case. See *Bank of Colorado v. Berwick*, ¶¶ 4.16[2], 26.13[3].
- *California case deals with damages recoverable when depositary bank fails to forward deposited check for collection within reasonable time.* The case illustrates that the amount of damages recoverable is the amount of the check reduced by an amount that could not have been realized by the exercise of ordinary care. See *Wells Fargo Bank, NA v. FSI, Financial Solutions, Inc.*, ¶ 11.09[3].
- *Effect of UCC Article 4A security procedure on unauthorized wire transfer considered in Michigan federal court.* The bank involved in the case had complied with the security procedure used to initiate wire transfers from the plaintiff-customer's account. As a result, the customer bore the loss caused by a thief through a phishing scheme. See *Experi-Metal, Inc. v. Comerica Bank*, ¶ 20.03.
- *New Jersey court hears case involving bank automated payments.* When checks were presented for payment to the drawee bank, the bank did not verify signatures on checks of less than \$500. The court held that this was consistent with the UCC and federal law and that the bank was not engaging in an unconscionable business practice. In turn, the court held that the bank had not violated the New Jersey Consumer Fraud Act. See *Estate of Paley v. Bank of America*, ¶¶ 21.02, 21.05.
- *Texas court permits recovery of attorney's fees in check enforcement case.* The claimant can recover attorney's fees when bringing an action to recover on a dishonored check due to a Texas statute that permits fee recovery in actions on oral or written contracts. See *½ Price Checks Cashed v. United Auto. Ins. Co.*, ¶ 22.03.
- *New York case emphasizes importance of notice of dishonor.* A check-cashing business cashed checks for a customer that were dishonored later by the drawee bank. Although the check-cashing business qualified as a holder-in-due-course, it still had to prove whether and when it gave notice of dishonor to its customer in order to recover from the customer. See *J & B Check Cashing Corp. v. Jensen*, ¶ 23.05.

- *Midnight deadline rule applicable to payor banks at issue in Georgia case.* The court found that the payor bank returned the checks before the midnight deadline notwithstanding that the Federal Reserve Bank, to which the check was returned, did not mark the checks as received until after the midnight deadline had passed. See *Whooping Creek Constr., LLC v. Bartow*, ¶ 24.10[1].
- *Ohio court deals with two negligence issues related to forged checks paid by drawee bank.* Negligence of the account holder in reporting improper payment of the checks reflected in a bank statement was one of the issues, the court finding that the customer was not negligent. Negligence of the account holder that substantially contributed to the forgeries was also at issue, the court again finding that the customer was not negligent. See *Chesler v. Dollar Bank Fed. Sav. Bank*, ¶¶ 28.07[1], 32.06[1].
- *Federal court in Illinois finds bank not responsible for checks paid with arguably unauthorized signatures.* An embezzler wrote checks to himself on accounts for which he was an authorized signatory. He then indorsed the checks, but in a different capacity than identified on the checks. The court found that the bank had no obligation to verify that the indorsement matched the type of account into which each check was deposited. The court also indicated that had the bank informed the embezzler of a problem regarding the indorsements, he could have re-indorsed the checks properly and redeposited them. See *Crawford Supply Group, Inc. v. Bank of America, N.A.*, ¶ 29.01.
- *UCC bank check-collection provision applied by federal court in Minnesota.* The case involved a conversion claim related to a check brought against the payor bank. The UCC provides that “a representative, other than a depository bank, who has in good faith dealt with an instrument . . . on behalf of one who is not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds it has not paid out.” See UCC ¶ 3-420(c) (1990). The court held that this defense is not available to a payor bank; it is only available to a collecting bank that is not a depository bank. See *USBank, N.A. v. Northern Trust Co.*, ¶ 30.03.
- *Georgia case illustrates that payee cannot bring conversion claim on check not delivered to payee.* Even if the payee’s indorsement was forged, the UCC does not permit a conversion claim unless the payee received delivery of the check. See *Jenkins v. Wachovia Bank, N.A.*, ¶ 30.03[4].
- *UCC imposter rule inapplicable in case before federal court in California.* Although there was an impersonation in the case that led to a forged indorsement, the rule did not apply because the impersonation did not induce the issuance of the check. See *Charles Schwab & Co. v. Bank of America*, ¶ 31.02[1].
- *Illinois court upholds drawee bank account agreement related to customer reporting of improper payment of forged checks.* The agreement required the customer to report an improper payment of a forged check within thirty days of mailing a bank statement to the customer reflecting payment of the forged check. See *Napleton v. Great Lakes Bank, N.A.*, ¶ 32.05[2].

Our goal with *Brady on Bank Checks and Funds Transfers* is to provide you with the definitive source on which to rely for information regarding the law of bank checks. Please let

us know how we are doing or if you have suggestions. Visit our web site at www.aspratt.com or call us at 1-800-456-2340.

Sincerely,

Catherine Dillon
Editor