

BEWARE OF EMBEZZLEMENT!

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There is a rise in white-collar crime in Jackson Hole. Embezzlement is becoming the most common crime in resort communities and in growing cities with a shortage of qualified employees. Employers are losing vast sums of money because their employees are embezzling from them.

Bankers must be aware that the embezzler's methods could lead to liability for the banking institution cashing those funds. In the second largest embezzlement case in Teton County, Wyoming, a building contractor was duped out of over \$430,000. While the contractor recovered some of its losses with insurance proceeds, the contractor's primary bank was liable for a significant sum as well.

How did this happen? The employee was a signor on the company account. She also held an account at the same bank. The employee would simply deposit checks made to the contractor and endorsed by the contractor with the contractor's account number on them, into her own account rather than the employer's. She would then wire the funds to another out of state account.

The bank was liable for those losses under the Uniform Commercial Code ("UCC") for three reasons. First, the UCC imputes liability of the loss to the Bank if the Bank fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to the resulting loss. Second, the Bank is liable if it has notice of a breach of fiduciary duty because it should have noticed that the deposit slip did not match the endorsed account number and name of the payee. Under a third provision, the Bank converted the checks because it took them and deposited them into an account that did not match the endorsement.

Financial institutions need to be wary of this relatively simple, but extraordinarily lethal embezzlement practice. The contractor in this case was able to recover *from the Bank* all of the funds negligently placed in the employee's account without having to file suit. Thus, branch managers must train and re-train tellers to avoid this kind of loss. For more on the embezzlement case, see www.jessicarutzick.com/notablecases.