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Melissa A. Murphy

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Banks and Retailers Develop New Technologies to Combat Check Fraud

As new technology takes off, so have the possibilities for check fraud. Facing increasing losses, banks and retailers are fighting back with their own technology to cut down on check fraud.

Improvements in technology make check fraud easier by increasing forgers' abilities to produce counterfeit checks that are extremely accurate. "With a personal computer, a laser printer, some very cheap software, a hand-held scanner and some check stock, you can manufacture checks that look remarkably like the original," said Bruce Brett, chairman of the American Bankers Association's check-fraud task force. According to Brett, check forgery is the fastest-growing segment of the country's bad-check problem.

Paul Finch, president and chief executive officer of the Arizona Clearing House Association, says his organization now receives four or five warnings a day from banks and other clearinghouses about forged checks, compared with one or two a month a few years ago. He blames high-tech equipment for this increase. "I think it coincides directly with the technol-

ogy of the computer world, where you can scan checks and make changes," Finch said.

Check fraud costs banks an estimated \$568 million in 1991, a study of 459 banks nationwide showed.

The marketing strategies of banks competing for customers also contributes to the increase in check fraud. Many banks allow customers access to deposits within 24 hours, well before some checks have cleared. This policy permits a customer to deposit a bad check, and then withdraw those funds before the check has cleared.

With such easy access to bank funds, "I'm always amazed why somebody would rob a bank and risk getting a whole posse after them," said Richard Mure, a detective in the Miami Police Department's economic crimes unit.

At the same time, however, banks and other financial institutions are taking steps to combat check fraud. For example, many banks issue debit cards with the customer's photograph. Used like a credit card, debit cards deduct money directly from the customer's checking account. These cards eliminate the need for paper checks, which have become so simple for forgers to duplicate.

Other measures employ technology to combat fraud. Electronic check presentment allows a bank to investigate a deposited check by scanning the account number at the bottom of the check. The account number is then sent electronically to the paying bank, which can immediately tell the bank of deposit whether it should put a hold on the check before disbursing the funds.

"The key to stopping check fraud is to create electronic files and accelerate the flow of information," said Henry Farrar, a New York Clearing House official.

Banks are also making checks more difficult to forge by using special designs and tints, ultra-violet, infra-red,

and metallic inks, special images that show the word "void" when a check is copied, and holograms. "As technology increases, so does the technology of detecting these things," said Woody Cropp, manager of investigations for Bank One Arizona.

Retailers and other corporations also work to deter check fraud. They have a strong incentive to do so: according to the National Retail Federation, retailers who accept bad checks lose upwards of \$5 billion annually. Moreover, forged checks worth at least \$1 billion are written against the accounts of corporations. Corporate check logos, bank identification numbers, and executive signatures are easily copied. "If people knew how easy it is, half a million more people would be doing it," said Frank Abagnale, a former check fraud convict who advises companies how to prevent fraud.

Banks and retailers have started to work together to deter check fraud. They share data on check bouncers and closed bank accounts, and have begun to link up electronically. Companies also pay extra for "copy-proof" check paper. Some companies also transmit "positive pay" checklists — lists of the checks they have written — to their banks, so the banks can verify checks when they are presented. Additionally, a newly revised Uniform Commercial Code section requires corporations to exercise "due diligence" to prevent theft of blank checks and reliance on checks that can be easily copied. Under the current law, corporations must notify their banks to avoid liability when bad checks come in for payment.

Many security experts believe that the introduction of such extensive fraud-protection procedures will help deter check fraud thieves. "A year from now, the current level [of check fraud] will be cut in half," said Jerry Milano, executive director of the California Bankers Clearing House. ❖

Consumer News is prepared by the News Editor, Melissa A. Murphy. A limited list of materials used in preparing the stories appearing here is available for a \$5 compilation charge. Please be specific (include volume number, issue number, and story title) when ordering. Send requests to: News Editor, *Loyola Consumer Law Reporter*, One East Pearson Street, Chicago, Illinois 60611.

Homeowners Gain a New Strategy in the Battle Against High Power Lines

A new trend is emerging in the legal battle over high-voltage power lines and the electro-magnetic fields (EMFs) they emit. In the past, homeowners unsuccessfully sued power companies for the alleged health risks posed by the EMFs. Now, homeowners are trying a new legal strategy: suits based on decreased property values.

This shift in emphasis follows a landmark decision last fall of New York's highest court. In that case against the Power Authority of the State of New York, the court decided that landowners whose property is seized by utilities for the construction of high-voltage power lines can seek damages if "cancerphobia" lowers the value of the rest of their property. Property owners must present credible and tangible evidence of that fear, however.

Plaintiffs' lawyers would like to see that ruling extended beyond homeowners whose property has been actually seized by a utility. These attorneys argue the ruling should apply to homeowners who live near new or existing power lines and have experienced a decline in their property values as a result.

Until the New York case, plaintiffs alleging that they had been harmed by EMFs have had little success. Since last fall, however, California and Florida have joined New York in allowing EMF lawsuits which bypass medical issues, and focus instead on the economic impact on homeowners resulting from home buyers' fears.

As a result of plaintiffs' new ability to avoid medical issues and proof, utility companies are expecting more EMF-related lawsuits. "The potential impact of these suits may be greater because it's a lot easier to find someone who merely lives near a power

line than someone with substantial EMF exposure who has died of cancer," said Mark Warnquist, a lawyer who represents the utility industry.

Plaintiffs' lawyers agree. "Property devaluation suits are going to be a major source of litigation against utilities," said Michael Withy, a Seattle plaintiffs' lawyer. "They are cheaper to bring than personal injury cases because you don't have to conduct mini-trials on the science."

EMFs are invisible fields of energy that exist wherever there is electric power. Scientists all over the world have been studying them since 1974, but there has been no consensus on whether EMFs pose a health threat. Many studies have indicated that EMFs can produce a variety of health problems, such as changes in the levels of specific chemicals in the body and in nervous system functions. Some epidemiologists have also suggested a link between EMF exposure and an increased rate of cancer in children and workers in certain electrical occupations.

Realtors confirm the theory that high-power lines cause property values to decrease. Julie Mitchel, a Chicago-area realtor, has had many buyers refuse even to look at homes because of the nearby power lines. "The problem is becoming more and more prevalent," Mitchel said. "Every time a new article comes out about EMFs, I hear even more concerns from buyers about living near power lines."

Many real estate agents have noted that home values and time on the market are likely to be affected by a home's proximity to high-voltage power lines. "If they have a choice, buyers will shy away from buying a home near a power line," said Louis Papadakos, another Chicago-area realtor. "I'd say that a house is on the market about 90 days longer than usual and sells for a lower price — anywhere from 10 to 20 percent lower — when it is located near a power line."

Given these fears, home sellers with property located near a high-voltage power line can probably expect a dif-

ficult sale. To alleviate buyer's fears, sellers may consider taking EMF readings in the house before putting it on the market. Conversely, buyers who are considering buying a house near high-voltage power lines may want to make the sale contingent on an EMF reading.

Until research becomes more conclusive, and more cases are resolved by the courts, homeowners and utilities must fight out the property value debate with minimal guidance.

"I think this is an issue we will see more and more," said Don Rose, the city manager of Wheaton, a Chicago suburb. "It's hard because people don't know what the power lines will do, and everything around us is electrical." ♦

More People Going to Court "Lawyerless"

More poor and middle-income people with legal problems go to court without a lawyer, usually because they cannot afford one. These people either become *pro se* litigants or turn to nonlawyer "legal technicians" and other alternative services for help. Since the increasing number of unrepresented litigants burdens court resources, some court systems have found innovative solutions to help ease the problem.

A 1989 study conducted by the American Bar Association found that 80 percent of poor people and 40 percent of middle-income people could not afford needed legal help. A later study showed that lawyers' high fees force potential clients to seek alternative representation because lawyers refuse to lower fees. Typically, *pro se* litigants appear in divorce, child support, and eviction actions.

Lawyers argue in response that they are not able to lower fees because the business of law is depressed. Large law firms with high overhead costs are not hiring as many new associates.

In the past, these new attorneys were encouraged to help the poor for free or for reduced fees. Solo practitioners are often struggling to make ends meet, and therefore cannot afford to take many cases that do not generate large fees.

As the dispute over fees rages, those who cannot afford an attorney are often left to handle their legal problems alone. Legal-aid budgets are strained, causing many legal assistance groups to turn away all divorce and custody cases. And private lawyers, for a variety of reasons, are also not doing enough *pro bono* work to fill the void. "I wish this were a world where, realistically, the poor could have the same justice as the people who aren't poor," said Arthur E. Balbirer, head of the American Academy of Matrimonial Lawyers. "It's a shame. Justice is sometimes expensive."

Pro se litigants usually face a difficult struggle. Learning the law and the requisite court procedures is time-consuming and complex, causing many *pro se* litigants to expect extra attention and assistance from the courts. However, many courts are so underfunded and overloaded that they simply cannot offer such assistance. Even if they want to help, court employees, judges, and attorneys are often prevented from doing so by ethics codes that require the court to remain neutral and avoid coaching or favoring any one party. "You can't say 'I'm going to weigh this person's argument 60 percent because they're unrepresented, and I'll weigh the attorney's argument 40 percent,'" said Judge Clifford L. Nakea.

To help prepare themselves for court, many *pro se* litigants turn to the myriad of books and computer software that have recently flooded the market. Some courts are taking innovative steps of their own to help *pro se* litigants.

Maricopa County, Arizona, for example, has recently established an experimental project in three of its courthouses called "Quickcourt." Quickcourt, a do-it-yourself computer

kiosk that looks like an ATM machine, can handle common legal problems such as eviction, divorce, and child support. A *pro se* litigant starts the machine, and the image of an actor appears on the screen. Speaking in either English or Spanish, the actor asks and answers a series of questions, explains court forms, and calculates such things as child support payments. When an inquiry is finished, Quickcourt prints the necessary completed forms, which are ready for filing. Most importantly, Quickcourt is free.

Mary Budinger, spokeswoman for the Maricopa County Superior Court, calls the \$119,000 project a success. She estimates about 200 people a month use Quickcourt at the Mesa, Arizona, courthouse alone. At that rate, court officials figure that Quickcourt can handle one-quarter of the divorces filed each year in which parties choose not to use attorneys.

In addition to representing themselves, many *pro se* litigants turn to non-lawyer "legal technicians" for help. Legal technicians help prepare pleadings and documents that the *pro se* litigant will file in court. Because of differing state requirements, legal technicians range in qualification from paralegals to those who have no formal education or legal experience.

The American Bar Association has been studying legal technicians and the services they provide. *Pro se* advocacy groups have criticized the bar association for its attempt to keep legal technicians from practicing law. Yet lawyers argue that not only is the unauthorized practice of law illegal in most jurisdictions, but also that incorrect legal advice often harms the client.

"Where does filling in the blank stop and what you put in the blank start?" asked Robert C. Withington, a lawyer who directs the Mid-America Paralegal Institute. "The whole issue is to make sure if someone puts their trust in statements given by a paralegal, they aren't injured because of inexperience or wrong information."

Regardless, the increasing numbers of *pro se* litigants make it clear that the entire issue must be addressed by the bar. "The consumer demand is for affordable legal services," said William E. Hornsby, staff counsel at the American Bar Association in Chicago. Although some lawyers complain that their profession is the only one constantly pressured to work for free, Margaret Morrow, president of the California State Bar Association, thinks otherwise. According to Morrow, as long as access to the courts — a constitutional right — is a problem, lawyers have an obligation to provide affordable legal services. "We are expected to be gatekeepers of the system," said Morrow. "We are part of the societal-dispute-resolution system that is bigger than the business of law." ♦

Announcements

Study Finds Movie Popcorn Full of Fat

Tests done by a non-profit consumer group show that a small bag of popcorn bought at a movie concession stand contains almost an entire day's recommended serving of saturated fat — and that is without the butter-flavored topping. Saturated fat is the kind of fat that is blamed for causing heart disease.

The tests, arranged by the Center for Science in the Public Interest, tested popcorn from 12 theaters in Chicago, San Francisco, and Washington, D.C. A medium-sized bucket of popcorn with butter topping has more fat than having bacon and eggs for breakfast, a Big Mac and large fries for lunch, and steak and sour cream for dinner.

In response to the study, several theater chains have promised to offer moviegoers popcorn popped in oil with less saturated fat. Some theaters may even offer air-popped popcorn.