

Scammed Boston law firm in tussle over insurance coverage

Proceeds of bogus settlement check wired to phony client

By: [Pat Murphy](#) December 9, 2022



The law firm received what looked like a legitimate cashier's check from Wells Fargo for \$89,960. It later turned out to be a fake. (DEPOSIT PHOTOS)

Nov. 4, 2021, had "bad day" written all over it for law firm Brooks & DeRensis.

That's the day the Boston firm's partners received notice that a cashier's check for nearly \$90,000 that the firm had deposited into its IOLTA account just days earlier had been dishonored by Wells Fargo.

The firm's error in accepting the bona fides of the check was compounded by the fact that \$88,385 of the deposited amount had been promptly wired to the bank account of a new "client" who apparently had retained the firm under a false identity.

And soon the firm would learn that its insurer would deny coverage of the loss on grounds that it did not fall within the scope of the business policy that Brooks & DeRensis had purchased.

All this is alleged in a [complaint the firm filed on Nov. 21 in U.S. District Court](#) against Twin Cities Fire Insurance Co. Representing the firm in the insurance coverage suit is Brooks & DeRensis principal Steven J. Brooks.

"This a lesson for law firms to make sure that the insurance policies they have will cover this type of malfeasance," Brooks said. "These things do happen. We thought we had all the restrictions and safeguards in place. But since then we have put in place additional safeguards to make sure this never happens again."

Brooks said the matter has been reported to the FBI and other law enforcement agencies, but that to his knowledge the client who represented himself as Richard Rodriguez has not been caught.

Experts say that all too often lawyers and their firms find themselves ensnared in such scams largely because of the way the banking system operates.

“Lawyers can go to their bank and ask the teller or banker whether a check is good, has cleared, and the money is in their account,” said Providence attorney Geoffrey W. Millsom. “In multiple cases, the law has said that you can’t rely on a bank saying a check has cleared and the funds are in your account.”

Lawyers typically get into trouble when they’re in a hurry to satisfy a client’s urgent demands, according to Terence J. Welsh, president of the Massachusetts Bar Association Insurance Agency.

“On the claims that we’ve paid and we’ve seen, it’s one of those things where a very busy law office gets an email to please wire proceeds of a transaction to this email address,” Welsh said. “You come to find out that the law firm has been spoofed in any number of ways. But they wire the money and it turns out to be to a bank in China, North Korea, wherever, and it’s gone. You don’t get that money back.”

According to Welsh, lawyers need to proceed with caution to minimize their risk of exposure.

“Before any transaction is wired, don’t rely on any emails and don’t rely on any letters,” Welsh advised. “You make the phone call to the person who is supposed to receive the funds, and you verify everything by phone.”

Boston business litigator David L. Evans said attorneys need to be mindful of the timelines the banking system follows in processing transactions.

“None of these scams could succeed but for the time [frame] between the provision of the bogus funds to the lawyer and then the wiring of monies by the lawyer,” Evans said. “They rely on the fact it might take several days for a check to be dishonored, but they immediately require the wiring of funds based on the assumption that those funds are good.”

‘Good as gold’?

According to the Brooks & DeRensis suit, the firm’s misadventures began in the fall of 2021 when someone calling himself Richard Rodriguez engaged the firm to represent him in recovering what he claimed he was owed under the terms of a severance agreement with his former employer.

After retaining the firm, Rodriguez purportedly emailed the employer, demanding payment of the sum he was owed within a week.

Within a week, Brooks & DeRensis received from the employer what by all appearances was a Wells Fargo cashier’s check in the amount of \$89,960. The check was made payable to the law firm and was accompanied by a letter describing the reasons for payment.

“One common misperception is that a cashier’s check is as good as gold,” Millsom said. “It’s not. It follows the rules of the [Uniform Commercial Code]. If it’s forged, liability for the dishonoring is on the person who deposited it.”

On Oct. 28, 2021, the law firm forwarded the check to Cambridge Trust for deposit into its IOLTA account.

On Nov. 3, in accordance with instructions from Rodriguez, the firm directed Cambridge Trust to wire transfer \$88,350 to a Citibank account in New York.

“If you don’t have a prior track record with a particular client, and there’s a request to pay a large amount of the check you are receiving within seven days, you should absolutely assure yourself that something funny isn’t going on,” said Andover attorney John B. Flemming.

The bad news for Brooks & DeRensis came the following day when the firm received a letter from Cambridge Trust explaining that Wells Fargo had dishonored the \$89,960 cashier’s check as being an “Altered/Fictitious item.”

Under the current system, a law firm’s bank should know after about six business days whether or not a check has been returned, Flemming said.

“But they don’t have to tell you right away,” he added. “They can just put [the notice] in the mail. That’s what [the bank] did in this particular case.”

‘You’re on your own’

Stung by the bad check, Brooks & DeRensis submitted a claim for coverage of its losses under its business owner’s insurance policy issued by Twin Cities. According to the firm, its losses fell within the scope of the policy’s forgery provisions, which includes property coverage for losses due to “forged or altered instruments” and “counterfeit currency and money orders.”

Twin Cities denied the claim. In correspondence attached to the complaint, a Twin Cities claims adjuster explained that the law firm’s losses did not come within the terms of the policy’s forgery coverage because there were no allegations that the losses resulted from someone impersonating the insured or their agent.

As to counterfeit currency and money order coverage, the claims adjuster said a cashier’s check is not a money order and does not qualify as currency within the meaning of the policy.

“Also, the loss occurred when Brooks & DeRensis accepted a Cashier’s Check which ultimately was determined to be fraudulent,” the claims adjuster wrote in denying the firm’s claim. “This loss did not result directly from theft, disappearance or destruction of ‘money’ or ‘securities’ from inside or outside of the scheduled premises.”

In its suit, the firm asserts claims for breach of contract and unfair trade practices in violation of G.L.c. 93A.

In denying coverage, the insurance company also invoked a “false pretenses” exclusion in its policy.

Welsh, of the MBA Insurance Agency, declined to speculate as to the merits of the firm’s claim against Twin Cities.

However, he acknowledged that false pretense and similar policy exclusions can be difficult hurdles for insureds to clear in obtaining coverage for losses due to fraud.

“You may think you have coverage in your malpractice policy, but a false pretense exclusion takes it out, so you’re on your own,” Welsh said.

Welsh said the current term of art used in the insurance industry is “social engineering” coverage.

Standard language defines a “social engineering claim” as one “that is based upon or arises out of the loss of client funds resulting from an Insured having transferred those funds in good faith as a result of social engineering fraud committed by a person or entity who is not, but purports to be, a person or entity with appropriate authority to instruct the Insured to make payments or transfer funds.”

Under the standard, social engineering fraud is defined as “the intentional misleading of an Insured through the use of a communication.”

Welsh said the malpractice coverage offered by the MBA Insurance Agency does include coverage for “social engineering” losses.

“All malpractice policies are different,” Welsh said. “Ours covers full policy limits for social engineering loss to client funds. If it’s not client funds, it’s not going to be covered.”

‘Burden is on the customer’

Flemming represented the plaintiff law firm in the [2018 case *Sarrouf Law LLP v. First Republic Bank*](#).

Business Litigation Session Judge Mitchell H. Kaplan ruled that the plaintiff, which had been victimized in an internet scam, bore the financial loss after wiring more than \$310,000 from its IOLTA account to offshore accounts. Kaplan’s decision was later [affirmed by the Appeals Court](#).

Flemming said the unfortunate result in Sarrouf Law’s case stands for the proposition that the bank customer bears the consequences of such third-party fraud.

“Now, an awful lot of transactions are done electronically through [ATM] machines at the bank,” Flemming said. “The Uniform Commercial Code says that, under those circumstances, the bank doesn’t even have an obligation to look at the check. The way it’s set up now, the burden is on the customer.”

According to Millsom, there are two statutory schemes that figure into the type of scams that victimized Brooks & DeRensis.

“The federal Funds Availability Act requires banks to make the proceeds of checks available on a provisional basis before the check clears,” Millsom said. “And under the Uniform Commercial Code, if you give somebody a check, you warrant that the check is good. The same basic principle applies to banks. If you give a bank a check to deposit and the check comes back to be dishonored, it’s on you.”

Evans, who represented a co-defendant lawyer in *Sarrouf Law*, said in the end attorneys are in control of their own fate.

“You can prevent these [scams] very easily by not sending any funds until you have absolute confirmation that the funds that have been provided have cleared the account and are irretrievable — they can’t be clawed back under any circumstances,” Evans said.

Millsom agreed.

“Lawyers want to provide good service to their clients, but the only thing they can do to protect themselves is wait two weeks after depositing a check before forwarding the proceeds to anybody,” Millsom said.