



WHOSE MEMO LINE IS IT, ANYWAY?

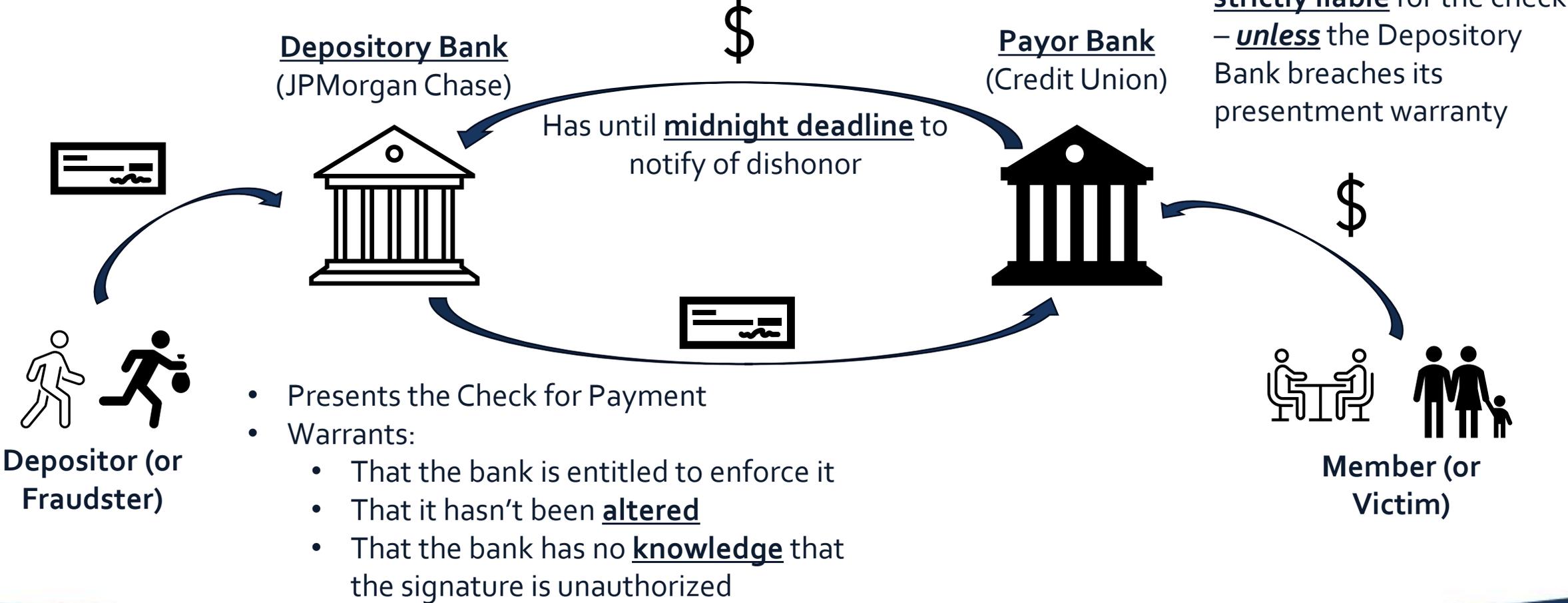
U.C.C. Warranties and Bank Liability for Forged, Altered, and
Counterfeit Checks

What's in a name?

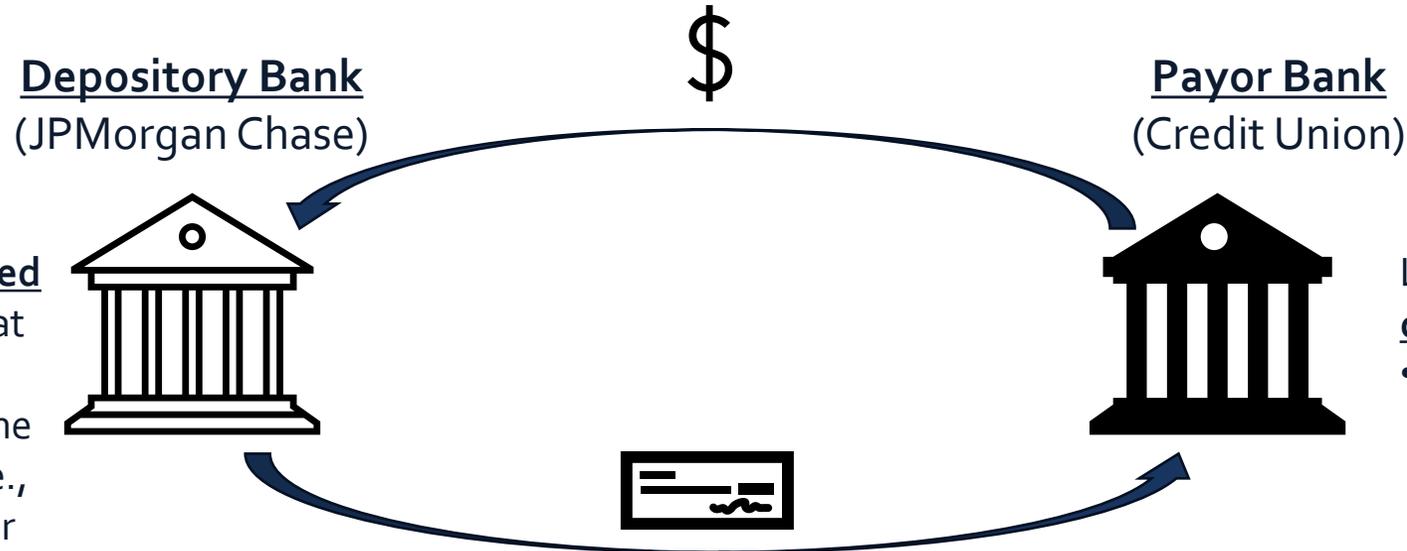
- “Depository Bank” – The bank that accepts a check for deposit or cash
- “Drawee Bank” or “Payor Bank” – the bank on which the check is drawn, and that ultimately pays the check



U.C.C. Presentment Warranties



U.C.C. Presentment Warranties



Liable if the Check is **altered**

- A **legitimate check** that has had something altered that changes the drawer's obligation (i.e., changed the amount or the payee)

Liable if it has **actual knowledge** that the drawer's signature is forged

Liable if the Check is **counterfeit** or **forged**

- A copy or re-creation of a false check that was never issued by the drawer

Generally **strictly liable** for a check that is paid or held past the midnight deadline, unless there is a breach of warranty

Impact of Reg CC (12 C.F.R. 229)

- Presumption of Alteration

- Where a dispute arises regarding substitute or electronic checks transferred between banks, and original check is unavailable, there is a rebuttable presumption that the check is altered
- Can be overcome by a preponderance of the evidence
- Does not apply if original check is available for inspection by all banks involved



Timelines

- Notice to Warrantor
 - 30 days from the date claimant knows of the nature of the breach and identity of the warrantor. A delay relieves warrantor to the extent of the loss caused by the delay
 - Credit Union A member writes check made payable to ABC Corporation for \$95,000
 - Member informs Credit union A on September 14 that check was altered and deposited by fraudster at Chase Bank
 - Credit Union should inform Chase by October 14 of fraud
 - Claimant barred from asserting breach of warranty for transactions that appeared on a member's statement more than 1 year previously
 - 3 year statute of limitations for breach of warranty



Timelines

- Member Duty to Report
 - Member must exercise “reasonable promptness” in reviewing account statement
 - Fact specific
 - Member must report unauthorized signature or alteration within 1 year of statement being available
 - Timelines are variable by agreement
 - Credit Union cannot disclaim responsibility for lack of good faith or failure to exercise reasonable care
 - Standards of credit union responsibility cannot be “manifestly unreasonable”



Delay, Deny...Defend?



- Big banks – particularly JPMorgan Chase – seem to have a strategy of
 - Ignoring breach of warranty claims
 - Asserting counterfeit when pressed (often with very weak supporting evidence)
- What if litigation occurs?

Analysis of Federal Breach of Warranty Cases



- Reviewed two years of cases
- Caveats:
 - Only federal cases (at least \$75,000)
 - Settlements are confidential
 - Manual search based on names of parties

Analysis of Federal Breach of Warranty Cases



- Summary:
 - 17 of 26 cases involve JPMorgan Chase
 - 19 cases more than 6 months old
 - 15 settled (or were dismissed and likely settled)
 - Dollar amounts range from \$38,000 to \$500,000 (but remember – federal courts have minimum jurisdictional amounts)
 - 4 cases being “defended” – only 2 are in discovery
 - Other 2 cases: Early motions to get rid of non-UCC claims

Takeaways and Strategy:

- JPMC seems to be the worst offender
- Vast majority of cases settle (although Chase will launch early attacks on extraneous claims)
- Difficult to tell if there is a “dollar threshold” (due to federal jurisdictional limits)

Takeaways and Strategy:

- Be mindful of deadlines
 - Notify Depository Bank of breach within 30 days of knowledge of breach
- Consider aggregation of multiple checks
 - Advantages: Increase dollar amount to make more financial sense
 - Disadvantages: More opportunities for Bank to attack merits of claim
- Remember the Reg CC presumption of alteration



Prevention

- Exception Holds
 - Regulation CC: “Reasonable cause to believe the check is uncollectible”
- Educating Members
- Educating/Training Staff
- Verifying Instruments
 - Treasury Checks
 - Money Orders
- Positive Pay



REGULATION E: KEEPING FRAUD IN CHECK



Scope

Electronic Fund Transfers:

- Debit card transactions
- ATM transactions
- ACH payments
- Online banking transfers
- P2P payments (Zelle, Venmo, Cash App)

Not EFTs:

- Business accounts
- Checks
- Wire transfers



What is an Error?

- Unauthorized EFT
 - EFT from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit
- Incorrect EFT
- Missing from Statement/Unidentified
- Computational/Bookkeeping
- Dispensed Cash
- Requests for documentation or clarification about a transfer



Timelines

- Member Duties
 - 2 Business Days
 - \$50 limit on liability
 - 2 Business Days to 60 Days
 - \$500 limit on liability
 - 60 Days and Beyond
 - Potential unlimited liability



Timelines

- Credit Union Duties
 - Promptly begin investigation
 - 10 Business Days to investigate
 - Provisional credit required for longer investigation
 - 3 Business Days
 - Provide written findings of investigation
 - Time extensions are available depending on circumstances
 - Newly funded accounts
 - Point of sale debit card transactions
 - Out of state transactions



Common Pitfalls

- Conflating “exceeding authority” with “fraud”
- Refusing to investigate unless police reports are filed
- Automatically denying claims without sufficient information
- Failing to timely provide provisional credit to extend the investigation timeframe
- Failing to provide timely written explanation of findings



Cases

- Navy Federal
 - “Mechanical rejection” of claims
 - \$1.7 million class action settlement
- Bank of America Multidistrict Litigation
 - “Summarily denied” claims without sufficient investigation
 - Alleged overreliance on technology tools: “claims were denied within one to two days based on the results of an unreliable Claim Fraud Filter, and [BoA] issued form letters lacking individualized information.”



REG E TRAININGS

NOW OFFERING!

PRACTICAL. ACTIONABLE. TAILORED TO YOUR CU.

WHAT YOU WILL GAIN:

- Clarity on the legal framework of Regulation E (12 C.F.R. Part 1005)
- How to spot and define errors with confidence
- Guidance on unauthorized EFTs and your obligations
- Mastering timeframes & credit union responsibilities
- Insight into internal workflows & risk points
- Case studies & real-world dispute resolution scenarios

WHY THIS TRAINING STANDS OUT:

- Tailored to your team
- Live Q&A
- 90 minutes
- Flat fee



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