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### Ohio Criminal Supreme Court Decision Permits Banks to Recover Restitution for Forged Checks

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By 6-1 vote, the Ohio Supreme Court recently ruled that under Ohio criminal law, a bank that cashes a forged check and then recredits a depositor's account is a "victim" such that the person who forged the check may be required to pay restitution to the bank. See *State of Ohio v. Allen*, 2019-Ohio-4757.

Ohio criminal statute, Revised Code section 2929.18, allows a court to order a criminal offender to repay the victim of the offender's crime based on the victim's economic loss. The word "victim" is not defined in this statute.

The forger argued at the trial court level that banks were not the true victims and therefore, no criminal restitution order under this statute could be ordered related to the banks' losses. The trial court rejected that argument but the Tenth Circuit Court of Appeals reversed in favor of the forger, finding that banks were not the victims under the statute. The Supreme Court of Ohio then reversed the Tenth Circuit, clarifying that banks are victims that can be compensated under the statute.

The dissenting opinion was written by Justice Michael P. Donnelly who wrote that the Tenth District Court of Appeals was correct in finding that banks were "third parties" such that the actual victims were the account holders whose checking accounts were debited by the amount the forger took from them. Under this view, the bank was under contract with the account holders and reimbursed them for the losses. This dissenting view found that the bank could not recoup the money through the criminal restitution statute, similar to other case law where insurance companies could not recover as victims.

By contrast, the majority ruled that a bank can be considered to be victim of a forgery crime. Justice R. Patrick DeWine wrote the banks "were the victims of [the forger's] crimes under any plausible, common-sense understanding of the word 'victim.'" The majority explained that

under Ohio law, banks are liable and must reimburse customers for the payment of a forged check. As a result, the economic loss is on the bank, and not the account holder. Moreover, the forger targeted tellers at the banks – the banks were not mere insurers who accepted the risk of loss but were directly targeted by the forger's fraudulent actions.

This ruling supports an order of criminal restitution in favor of banks against forgers, in addition to potential criminal fines and/or confinement against forgers. This is effectively another avenue for banks to recover losses separate from a civil lawsuit. As a result, bankers and counsel for bankers should carefully coordinate any recovery actions to include working closely with prosecutors to obtain restitution rights under Ohio law and the new decision.

Vorys regularly represents financial institutions in, among other matters, civil lawsuits, insurance claims, and referrals for criminal prosecution in cases of forgers and other criminal wrongdoers. Contact your Vorys lawyer to if you have any questions about this case.