

Small World, Big Schemes

Navigating the Global Landscape of Payment Fraud Litigation

1. In the United States, UCC Article 4a governs most loss allocation issues and preempts common law claims that would create rights, duties, and liabilities inconsistent with its provisions.
2. Implementation of commercially reasonable security procedures is key. These procedures should be revisited and updated regularly. Payment fraud litigation is often a fight between victims of the fraud. The party best positioned to prevent the imposter from committing the fraud usually bears the loss.
3. Receiving bank liability is limited. However, if a beneficiary bank accepted funds when it knew or should have known that the funds were fraudulently obtained, it may be held liable. Thus, determining when a fraudster opened a given account and whether the account was flagged for prior fraudulent acts may bear significantly on the litigation.
4. Australia took the lead in groundbreaking fraud prevention legislation. The Scams Prevention Framework (SPF) imposes obligations on both local and overseas entities in banking, telecommunications, and digital platforms to take “reasonable steps” to support consumers in avoiding scams. The law’s overarching principles are: (1) Governance, (2) Prevent, (3) Detect, (4) Report, (5) Disrupt and (6) Respond. It remains to be seen who will follow.
5. International wire fraud cases require courts to determine whether federal wire fraud statutes apply extraterritorially or constitute permissible domestic applications of federal law. U.S. Circuit courts have developed varying approaches to the analysis of identifying a permissible domestic application for the statute. Contractual forum selection and choice of law clauses will generally withstand scrutiny.

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Rachel Hytken
QUILLING SELANDER LOWNDS
WINSLETT & MOSER, P.C.
Dallas, Texas
rhytken@qslwm.com

Daniel Peterson
COSGRAVE VERGEER KESTER LLP
Portland, Oregon
dpeterson@cosgravelaw.com

Brendan Taylor
MILLS OAKLEY
Perth, Australia
btaylor@millsOakley.com.au