

Inside bank job

by *The St. Louis Post-Dispatch*

Suppose you're a big bank involved in a long-running lawsuit. A Texas company has accused you of violating its patents on a method for digitally scanning, sending and archiving checks. The outcome of the suit is uncertain, but just in case, you'd like to unload any liability onto the backs of American taxpayers. Fat chance, right?

Not if you're Bank of America, Wells Fargo, Wachovia and Citigroup. With the help of Bryan Cave Strategies, the lobbying arm of the high-powered St. Louis-based law firm, the banks got just such protection inserted into a patent reform bill that is expected to come before the U.S. Senate later this month.

If the banks lose the lawsuit, taxpayers would be forced to pay the bill, as much as \$1 billion over 10 years, according to the provisions of an amendment sponsored by Sen. Jeff Sessions, R-Ala.

Sessions has been a reliable champion of the banking industry, and he has reaped the rewards. He already has received \$104,248 in contributions to his 2008 re-election campaign from people and political action committees involved in commercial banking, according to the nonpartisan Center for Responsive Politics.

Sessions sits on the Senate Judiciary Committee, which approved his amendment unanimously and without discussion. At the time he offered it last July, he owned stock valued at between \$115,000 and \$300,000 in a Birmingham bank that would benefit from the amendment. Additionally, Sessions' wife owned shares in Citigroup worth somewhat less. When those ties were reported by the Wall Street Journal last fall, Sessions and his wife sold their stock. He told the Journal that his support for the amendment had "nothing to do" with the stocks they owned.

It's not unprecedented for Congress to get involved in a private patent suit, but it's exceedingly rare. It's even less common to stick taxpayers with the bill.

Although it's not mentioned by name, Sessions' amendment is aimed at a Texas company called DataTreasury Corp. The firm applied for patents on its check-scanning technology in 1997 and 1998. Both were upheld last year after being challenged by a competitor.

At one time, federal banking law required financial institutions to have physical possession of checks before they could draw upon the funds they represented. Every night at airports across America, small planes would take off laden with bags stuffed with checks being transferred to banks.

When aircraft were grounded following the terror attacks on Sept. 11, 2001, that became impossible. The law was changed to allow funds to be transferred electronically. That made check scanning a much more valuable process.

There's an argument - and we've made it here - that patents have been granted too freely in recent years. The U.S. Patent Office has issued patents for such frivolous "inventions" as an anti-gravity space ship. Courts, including the U.S. Supreme Court, have been cracking down on those undeserved patents in recent years.

If DataTreasury's patents truly fall into that category, banks would win the case in court. They do not need a special law that makes an end run around the ongoing legal battle, with a guarantee that if they lose, taxpayers are on the hook.

The Senate should strip out of the patent reform bill the amendment that frees banks of possible liability in the DataTreasury lawsuit. Then it should investigate Sessions' conduct for possible conflict-of-interest violations.

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