

Supreme Court Drives Nail Into Self-Service Box Coffin

There is a shiny new “no fault” self-service box concept, which is currently being marketed to financial institutions across America, and it is spreading like wild fire in a Kansas wheat field.

If your institution is now offering, or is contemplating offering, this “revolutionary” service to your safe deposit box clientele, be advised that there could be costly financial consequences down the road.

Zealous equipment vendors are successfully convincing senior management that the rental of self-service boxes is appropriate and that the financial institution is totally protected from any liability provided a “no fault” clause in the rental contract is signed by all renters exonerating the institution from any and all liability due to loss of box contents. The self-service box renters are now being asked to exchange security for convenience.

Terms such as “unique”, “latest state of the art”, “convenient”, “zero liability” and “less costly” will be mentioned as many financial officers are seduced into embracing this self-service scheme.

Supreme Court Ruling

One unfortunate institution found itself defending its box rental system before the Illinois Supreme Court. All the glowing modifiers that had convinced them to offer a “no fault” box rental contract were now being replaced with terms such as “grossly negligent”, “breach of responsibility” and “failure to exercise ordinary care”. The court ruled that the exculpatory clause in the rental contract was not enforceable, and it was subsequently overturned. The negative court ruling cost the institution millions. The names in following lawsuit have been changed to protect the identities of all parties involved.

Mutual Insurance Company vs. XYZ Bank (Illinois Supreme Court)

Background: XYZ Bank’s negligence caused more than \$1 million of diamonds to be stolen from safe deposit boxes rented by three jewelry dealers. This bank offered its safe deposit box renters two contract options: a standard contract that contained a clause exculpating XYZ Bank from any liability for loss of or damage to contents, and a more expensive option under which the bank would charge more in exchange for its assumption of more liability risk. The jewelry dealers had elected the less expensive, standard contract. When XYZ Bank was sued to recover the financial loss caused by its negligence, the bank relied on the exculpatory clause in the standard agreement.

Issue: Did the exculpatory clause in the standard agreement excuse XYZ Bank from any liability when its negligence allowed unauthorized access to the safe deposit boxes and the theft of the boxes’ contents?

Result: The Illinois Supreme Court ruled that XYZ Bank could not accept a rental fee in exchange for its promise to exercise ordinary care with respect to the rented boxes, and then exculpate itself from liability for its own negligence. The Court noted that the exculpatory clause, if allowed to stand, would logically allow XYZ Bank to hand the keys over to anyone off the street who would be free to rummage through people’s safe deposit boxes without any penalty to the bank. Therefore, the Court concluded that XYZ Bank did owe a duty of care to the renters of the boxes and was liable for the losses, and that the exculpatory clause in the standard agreement was not enforceable. The Court distinguished a Florida case in which a safe deposit box rental agreement limiting the Florida bank’s liability to “instances of gross negligence, fraud or bad faith” was upheld. That distinction may preserve the ability of an Illinois bank to include some measure of liability limitation in safe deposit box rental agreements.

Other Time Bombs Ticking

Many distressing self-service horror stories are beginning to surface. These tales of woe reinforce the strong recommendations of many nationwide safe deposit experts (myself included) warning financial institutions that implementing this self-service concept is neither the safe nor the prudent way to offer a proper box rental service to consumers.

24 -7 Access Available

One Colorado financial institution developed a very unique way to offer their self-service boxes. They now provide their renters with 24-hour, 7 days a week box access. They were able to offer this convenient service because their self-service boxes were not installed inside a vault. If you think this is impossible or illegal, think again. There are no federal or state laws that require a vault to be used.

To implement this unique service, the bank removed the glass windows from the front wall of their facility thereby creating a second and separate entrance. This entrance opened into a multistory atrium. Some architectural modifications converted this atrium area into a self-service box repository. Within this vault-less, unsecured space, the self-service boxes were installed. Now, without the need for tedious vault access procedures, box renters could stroll into the “atrium lobby” any time, day or night, seven days a week with only their single box key as security.

Unfortunately, locksmith tools are now available on-line, and with these tools safe deposit boxes can be opened in a matter of seconds without a key. It would seem that now thieves can also enjoy the convenience of this 24-7 self-service concept. If these existing box renters knew this, I do not think any of them would entrust their most valued possessions to a system this vulnerable.

Biometrics at Work

Many financial institutions are now using a biometric vault-entry system to allow access to only authorized renters. This system worked well for a Texas institution, but many renters became confused when they attempted to exit through the vault’s day gate. Consequently, a motion-sensitive relay switch was installed in the ceiling. The day gate automatically opened whenever a renter passed under it.

This seemed to eliminate the problem until a savvy senior citizen stuck his walking cane through the day gate. This activated the relay switch, the gate opened, and our renter easily entered the vault, no biometrics needed. How many con men, armed perhaps with one of Ebay’s locksmith tools, could also do the same thing?

Insurance Policies Cancelled

A very large nationwide insurance company has recently notified their agents and financial clients that liability insurance coverage will not be provided if self-service boxes are offered without a secure vault for protection. Financial institutions should never implement this concept without obtaining adequate liability coverage. The tragic outcome of even one disappearance claim could be very significant.

These institutions must now make some very difficult decisions. Do they continue offering this dangerous service and hope for the best? If they choose not to provide it, the cost of retrofitting all of the one-key, self-service locks back to the preferred dual-key lock system will be formidable. Finally, renters accustomed to the ease and convenience of these self-service boxes must now be convinced that a dual-lock safe deposit box, housed inside a secured vault, is in their best interest.

In Conclusion

These stories are just a few of many nightmare situations that have occurred when management is not properly informed, correct access procedures are not followed, and your safe deposit contracts are not structured properly. If you would like further information about self-service boxes, call (713) 937-9929 or visit our web site at www.sdspec.com. On this web site there are other informative “self-service” news articles and a manual with additional information about this dangerous concept.

About the Author: David P. McGuinn, President of Safe Deposit Specialists, is a former banker and is often referred to nationwide as the safe deposit GURU. In all 50 states he has trained over 200,000 safe deposit personnel since 1969 and has served as President of the American Institute of Banking and the American, Texas and Houston Safe Deposit Associations. He has created numerous safe deposit manuals, training videos, compliance brochures and other products including a comprehensive manual titled “The Pros and Cons of Offering Self-Service Boxes”. During the past 35 years, McGuinn’s safe deposit products have been recognized as the national standard for the financial industry.