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COMPUTERIZED CHECK PROCESSING

DE MINIMIS ERRORS IN CHECK DESCRIPTION ON STOP PAYMENT ORDERS

I. INTRODUCTION

The Uniform Commercial Code ("U.C.C.") gives a bank customer the right to stop payment on a check he or she has written, so long as the bank has a reasonable opportunity to act on the stop payment order.\(^1\) To stop payment on a check, a customer usually describes the check on an order form provided by the bank.\(^2\) Customers sometimes misstate by one digit the check's amount, number, or date when describing checks on the stop payment orders.\(^3\) If a bank pays a check which a customer has misdescribed, who should be liable for the check's payment? The answer depends on whether the customer's description of the check gave the bank "a reasonable opportunity to act" on the stop payment order.\(^4\)

Before the use of computers in banking became widespread, courts evaluated "reasonableness of opportunity" in terms of whether a bank might confuse the check ordered stopped with other checks, given the bank's manual processing of the checks.\(^5\) Today the volume of checks

1. The U.C.C. § 4-403(1) (U.L.A. 1977) provides:
   A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 4-303.

2. Customers may make oral stop payment orders as well as written ones. U.C.C. § 4-403(2) provides that "an oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period."


4. U.C.C. § 4-403(1).

processed daily is enormous,\(^6\) and computers, not people, process stop payment orders.

While a person processing a stop payment order might catch a *de minimis* inaccuracy in check description, the same inaccuracy could slip by a computer. Computers process information according to the manner in which they are programmed. Unless specifically programmed to do so, computers are unable to catch slight variances in check description.

The U.C.C.'s standard of "a reasonable opportunity to act" does not explain how banks' use of computers fits into its analysis. Instead, the standard leaves some important questions unanswered: Should a bank's use of computers be considered when evaluating the reasonableness of opportunity? Should a bank be able to avoid liability for its customers' *de minimis* errors by giving the customers notice of the computer's accuracy requirement? Should the relative sophistication of a bank's computer program, and the cost of updating computer systems, factor into this analysis?

This Note discusses only customers' *de minimis* inaccuracies (i.e. one-digit errors in "cents," or in the date or check number). It does not address the question of who should bear responsibility for more substantive customer errors. This Note first examines a bank customer's right to stop payment. It describes the reasoning courts have used to determine whether a bank has had a reasonable opportunity to stop payment, and evaluates policy considerations used by courts in handling *de minimis* inaccuracies. It then addresses important policy considerations not discussed by courts, including how computer programming capabilities should factor into the analysis. The Note concludes that banks should be liable for customers' *de minimis* inaccuracies in check description if (1) the customer did not have notice at the time of making the stop payment order that absolute accuracy in a certain variable was required; or (2) the bank did not use a reasonably flexible, up-to-date computer system to process the stop payment orders.

II. THE RIGHT TO STOP PAYMENT

A. THE RIGHT TO STOP PAYMENT

Comment 2 of U.C.C. section 4-403 provides that stopping payment on a check is a bank customer's right, even though it may cause the bank some inconvenience.\(^7\) This Comment suggests that banks should


\(^7\) U.C.C. § 4-403, comment 2 states that:
consider any losses incurred on stop payment services as a cost of doing business. Section 4-403, along with its accompanying Comment, codifies the earlier common law notion that "since a check is merely an order to a bank to make payment in the manner set forth, the customer has the right to revoke such order before it is carried out."9

The manner in which a check is placed into circulation has no bearing on the customer's right to stop payment on it. If a drawer becomes intoxicated and loses a check, the bank is not excused for failing to honor the customer's stop payment order.10 The customer's negligence did not cause or contribute to the bank's making payment on the check.11 Under the common law, a bank could neither debit the drawer's account, nor could it recover the funds from the presenter, so long as the presenter acted in good faith.12

A stop payment order is binding under the U.C.C.,13 (as under the common law14) if it is timely received and contains the information necessary for a bank to comply with the order. Usually, an order is considered timely if the bank is not already obligated to pay the check.15

A check can be described in a stop payment order by a number of

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The position taken by this section is that stopping payment is a service which depositors expect and are entitled to receive from banks notwithstanding its difficulty, inconvenience, and expense. The inevitable occasional losses through failure to stop should be borne by the banks as a cost of the business of banking.

8. Id.


11. Id.


13. See U.C.C. § 4-403(1).


15. According to U.C.C. § 4-303(1), a stop payment order comes too late if the bank has done any of the following:

(a) accepted or certified the item;
(b) paid the item cash;
(c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;
(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or
(e) become accountable for the amount of the item under subsection (1)(d)
variables. These variables include the names of the drawer, the drawee, and the payee, the number and date of the check, the amount, the account number, and special notations of purpose. Courts have suggested that there are subsets of these variables which describe the check with reasonable accuracy.

What stop payment rights the U.C.C. gives customers with one hand, however, it seems to take away with the other. Banks' subrogation rights under U.C.C. section 4-40718 insulate them from liability to a great degree. Further, section 4-403(3) places on the customer the burden to establish the fact and amount of loss due to the bank's failure to honor a valid stop payment order. A showing that the customer's account was debited by the amount of the check may not suffice to show actual loss. Together, the above provisions substantially curtail...
a customer's right to stop payment.\textsuperscript{22}

\textbf{B. THE CURRENT COMPUTER SYSTEM}

The system presently used by banks in the check collection process is the Magnetic Ink Character Recognition ("MICR") Encoding System.\textsuperscript{23} In 1954, the American Bankers Association (the "Association") identified the need to automate the check collection system. The Association's Bank Management Committee formed the Technical Sub-Committee on Mechanization of Check Handling (the "Subcommittee") to automate the physical handling and sorting of checks and the recognition and recording of data on the checks.\textsuperscript{24} The Subcommittee recommended the MICR system, which is the system used by nearly all banks today.

Under the MICR system, all checks are pre-encoded with a Transit Number Field to identify the drawee bank, and an On-Us Field to identify the customer's account number. A ten-digit Amount Field is subsequently encoded on the check to identify the check by its dollar value.\textsuperscript{25} In addition, some banks pre-encode the individual check number on each check.\textsuperscript{26} In effecting stop payment orders, banks employ the MICR numbers to identify the instrument.

\textbf{III. FJS ELECTRONICS}

Banks assert that they are required to use computers to process the

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  \item the ultimate burden of proving loss shifts back to the customer.
  \item\textsuperscript{23} The holding in Thomas v. Marine Midland Tinkers Nat'l Bank, 86 Misc. 2d 284, 381 N.Y.S. 2d 797 (1976), is similar. The drawee bank has the burden of coming forward with some evidence that would show absence of actual loss to the customer. If the bank fails to meet this burden, mere proof by the customer that the bank paid the item over a valid stop order is enough for summary judgment. However, where the burden of going forward is met by the bank, the customer must sustain the ultimate burden of persuasion that actual loss was caused by the bank's payment of the check.
  \item\textsuperscript{22} Banks also retain common law rights, \textit{e.g.} to recover money paid under a mistake (section 103), in cases where the payment is not made final; and common law defenses, \textit{e.g.} that by conduct in recognizing the payment the customer has ratified the bank's action in paying over a valid stop payment order. U.C.C. § 1-103. See South Shore Nat'l Bank v. Donner, 104 N.J. Super. 169, 249 A.2d 25 (1969); Bryan v. Citizens Nat'l Bank, 628 S.W. 2d 761 (Tex. 1982).
  \item\textsuperscript{24} See generally B. CLARK, \textit{supra} note 6, ¶ 10.5, at 10-8; and J. CLARKE, H. BAILEY & R. YOUNG, \textit{BANK DEPOSITS AND COLLECTIONS} 10-14 (4th ed. 1972).
  \item\textsuperscript{25} Note, \textit{Computerized Check Processing and a Bank's Duty to Use Ordinary Care}, 65 TEX. L. REV. 1173, 1176 (1987).
  \item\textsuperscript{26} B. CLARK, \textit{supra} note 6, ¶ 10.5, at 10-8; J. CLARKE, H. BAILEY & R. YOUNG, \textit{supra} note 23, at 11-12.
vast quantity of checks received each day. In *FJS Electronics, Inc. v. Fidelity Bank*, the bank argued that because its computer required precise information to stop payment on a check, the customer's failure to provide precise information could not have given the bank a "reasonable opportunity" to stop payment.

On February 27, 1976, FJS Electronics drew a check for $1,844.98 on Fidelity Bank ("Fidelity"). On March 9, the president of FJS Electronics telephoned the bank to stop payment on the check. The information describing the check was correct except for a single-digit discrepancy in the amount, which the president described as $1,844.48 (an error of fifty cents). Fidelity sent FJS Electronics a confirmation notice bearing the inaccurate amount of the check. The notice contained the request, "PLEASE ENSURE AMOUNT IS CORRECT." FJS Electronics returned the confirmation notice to Fidelity without correcting the inaccurate amount.

Fidelity's computer was programmed to read three sets of numbers on the bottom of each check: the Federal Reserve number of the bank, the account number, and the amount of the check. If both the Federal Reserve number and account number agreed with the amount of the check, the computer would stop payment on the check. If the amount was correct and the other two numbers did not match the stop payment order, the check was pulled for hand sorting. According to this procedure, if the amount of the check was off by even one cent, the computer system could not stop payment on the check.

The bank gave FJS Electronics no notice of, nor did FJS Electronics inquire about the bank's stop payment procedures. The bank paid the check over the stop payment order on March 15, 1976. The court held that the stop payment order was timely received, and even though it contained an error, the order was given in such a manner as to give the bank a reasonable opportunity to act.

IV. COURTS' POLICY ANALYSIS

In the majority of cases, courts have held that a stop payment order with a *de minimis* inaccuracy in amount, check number, or date satisfies the U.C.C.'s "reasonable opportunity to act" requirement. How-

28. Id. at 139, 431 A.2d at 328.
29. Id. at 139, 431 A.2d at 327.
30. Id.
ever, courts’ approaches in reaching this determination have differed.

Some courts have held that because banks choose to use computers to facilitate check processing, banks must assume the risk that computers might not catch all the errors a person might catch. Other courts have held that banks have a reasonable opportunity to act on stop payment orders with one-digit errors because such errors are trivial. Courts have also held that banks must give their customers adequate notice that an inaccuracy in description will defeat a stop payment order. Finally, a number of courts have held that a bank should have reasonably flexible computer systems to catch de minimis errors. These analyses are examined below in more detail.

A. ASSUMPTION OF THE RISK

General banking usage would seem to require computer handling of stop payment orders, but “a bank wishing to obtain the benefits of automation must at the same time bear the costs of automation: assumption of the risk that the customer will not know what is required in a stop payment order and will issue an incomplete one.” Banks use computers to process checks because there are many advantages in doing so. A number of courts have said that banks cannot accept the ad-

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[34. Courts have differed as to what degree of notice will be considered adequate. Some have stated that notice of an accuracy requirement is enough to absolve a bank from liability. See Delano, 33 U.C.C. Rep. Serv. (Callaghan) 635; Parr, 680 P.2d 648; Poullier, 108 Misc. 2d 913, 439 N.Y.S.2d 85.]


[38. One obvious benefit is the increased volume of checks capable of being processed. See B. CLARK, supra note 6, ¶ 10.1, at 10-3.]
vantages associated with computerized check processing without also accepting the disadvantages.

In *FJS Electronics*, the bank argued that its technique for processing stop payment orders required absolute accuracy as to the amount of a check, and therefore the amount described in the stop payment order had to be absolutely accurate for the bank to have a reasonable opportunity to act on it. Rejecting this argument, the court stated that U.C.C. section 4-403 should not be read as requiring a customer to comply with the computer procedures of a particular bank without regard to what the procedures were, or whether the customer had been made aware of them. The court concluded that the reasonableness of the bank's opportunity to stop payment should not be evaluated exclusively on the basis of the technique the bank used to stop payment.

Fidelity made a choice when it elected to employ a technique which searched for stopped checks by amount alone. It evidently found benefits to this technique which outweighed the risk that an item might be inaccurately described in a stop order. A bank's decision to reduce operating costs by using a system which increases the risk that checks as to which there is an outstanding stop payment order will be paid invites liability when such items are paid.

The court disallowed Fidelity's claim that its computer check-processing system dictated what constituted a reasonable opportunity for the bank to act. The court maintained that along with the increased profits associated with the computer processing of checks, came increased liability.

A similar argument for placing liability on banks was articulated by the court in *Staff Service Associates, Inc. v. Midlantic National Bank*.

B. Notice to the Bank

Courts have also analyzed one-digit inaccuracies in terms of notice to the bank: Was the description of the check in the stop payment order

40. Id.
41. Id.
42. Id. at 139, 431 A.2d at 328.
43. Id.
45. Id. at 333, 504 A.2d at 152. There was a fifty-cent disparity in amount.
sufficient to give the bank a reasonable opportunity to stop payment on it?

The court in *Poullier v. Nacua Motors, Inc.*,46 held that a customer’s one-digit inaccuracy in a stop payment order did not give the bank reasonable notice. The court stated that “a computer, not unlike an infant of tender years, is totally dependent on being spoon-fed by a human world. A computer error must always relate back to a human error...”47 The court explained that if the customer had presented the bank with the correct amount, and the computer erred, then the bank could be blamed.48 Moreover, the court stated that the bank’s request for preciseness in amount was not unreasonable because the bank’s computer system required it. “[O]ne digit can be a world of difference to a computer, who by nature, is quite finicky.”49

The court in *Pokras v. National Bank of North America*50 also addressed this issue. In *Pokras*, the stop payment order accurately described the date and the check number, as well as the name of the payee, but there was a two-cent disparity in the amount of the check.51 The court held that if the bank could not distinguish the check ordered stopped from other checks, the bank did not have a reasonable opportunity to act.52

In its analysis, the court did not state whether the bank’s use of computers factored in the court’s determination of how much information the bank needed to distinguish the check. Also, the court did not mention what standards it used to determine whether the bank would confuse the specified check with another, or by what standard the question should be measured.

C. NOTICE TO THE CUSTOMER

Courts seem to have enunciated two slightly different standards in determining whether a bank customer had notice. Did the customer

47. *Id.* at 914, 439 N.Y.S.2d at 86.
48. *Id.*
49. *Id.*
51. *Id.* at 1091.
52. *Id.* at 1090. A number of courts have used this reasoning, but found that the bank could distinguish the check ordered stopped from other checks. See Elsie Rodriguez Fashions, Inc. v. Chase Manhattan Bank, 23 U.C.C. Rep. Serv. (Callaghan) 133 (N.Y. Sup. Ct. 1978) (a ten-cent error in the check amount was insignificant where other items were described accurately); Thomas v. Marine Midland Tinkers Nat'l Bank, 86 Misc. 2d 284, 381 N.Y.S.2d 797 (1976) (a single-digit mistake in the check number seemed trivial). But see Sherrill v. Frank Morris Pontiac-Buick-GMA, Inc., 366 So. 2d 251 ( Ala. Sup. Ct. 1978); Capital Bank v. Shuler, 421 So. 2d 633 (Fla. App. 1982) (court required certainty in check description).
have notice that the bank required accuracy? Did he or she have notice that any inaccuracy, no matter how insignificant, would invalidate the stop payment order?

Courts have seemed reluctant to allow *de minimis* errors in check description to render stop payment orders invalid if a customer has not been warned that accuracy is required.\(^5\) It seems unfair to impose liability on a customer if he or she had no notice that such errors would defeat the order.

The court in *Parr v. Security National Bank*\(^5\) found for the plaintiff in such circumstances, stating that she had described the check on her stop payment order with reasonable accuracy. It indicated, however, that a bank could avoid liability if it notified the customer at the time of making the stop payment order that an exact description was required.\(^5\)

A bank's general notice to customers to be accurate in check description may not always satisfy a notice requirement, however. Such notice may not inform the customer that the bank's computer system relies exclusively on a single variable of check description (such as amount). Absent this more particular notice, some courts have held that the notice may be inadequate.\(^5\)\(^6\) A customer may not realize that even a one-cent discrepancy on a check for several thousand dollars will defeat the stop payment order. "[I]t is manifestly unreasonable to measure a bank's responsibility by a term not brought to the customer's attention with such specificity as to permit him to give the bank notice 'in such manner as to afford the bank a reasonable opportunity to act.'"\(^5\)\(^7\)

Most customers assume that banks require accurate information in banking transactions, and may think that a general notice that accuracy is required merely refers to this general accuracy requirement. One court commented that the advent of the computer in processing orders . . . has changed the procedure [of stopping payment] from a consideration of all the check characteristics noted on the stop payment form to the exclusive reliance on one or two factors of information. Courts have held that banks have a duty in that situation to describe their procedure while a depositor is completing the form emphasizing the elements that must be precise if a

54. *Id.*
stop payment order is to be effective.58

For notice to be adequate, some courts have said a customer must be warned at the time of making the stop payment order that the descriptive information must be exact and be given an explanation of the importance of the requirement.59

The appropriate question to ask next is whether such notice really changes a customer’s expectations about what gives a bank a reasonable opportunity to stop payment on a check.

It is suggested that the only safe course for a bank handling stop orders on its computer is to notify all customers that stop orders must be accurate with respect to . . . [a certain number or else to alert] the computer to report all checks drawn on all the customer’s accounts until it is obtained.60

A customer is not likely to know or understand what is involved when computers process stop payment orders. He or she may feel that the order is adequate if the check description is accurate in everything but a de minimis error (i.e., five out of six variables in the check’s description are correct).61 A warning to the customer that the bank’s computer system requires absolute accuracy may or may not change a customer’s expectations.

Should banks be able to evade their statutory obligations by simply warning customers that accuracy in check description is required? Customers may justifiably feel that a stringent accuracy requirement puts an excessive burden on their right to stop payment.

The U.C.C. confers upon the parties the power to vary by mutual agreement the effect of the provisions of its Article 4, so long as the agreement does not lower the bank’s responsibility for acting in good faith or with ordinary care.62 In addition, the parties may further agree

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61. Some argue that the terms of a contract should mean what reasonable people think they mean. Slawson, The New Meaning of Contracts: The Transformation of Contract Law by Standard Forms, 46 U. Pitt. L. Rev. 21 (1984). If one were to follow this reasoning, a bank’s warning that preciseness was required for a stop payment order would be valid only if it changed the reasonable expectations of the customer.

62. Comment 2 to U.C.C. § 4-103 states:

Subsection (1) confers blanket power to vary all provisions of the Article by agreements of the ordinary kind. The agreements may not disclaim a bank’s responsibility for its own lack of good faith or failure to exercise ordinary care and may not limit the measure of damages for such lack or failure, but this subsection like Section 1-102(3) approves the practice of parties determining by agreement
that the standard by which such responsibility is to be determined may be provided by supervisory authorities, clearinghouse rules, general banking rules and the like.\textsuperscript{63} Thus, Article 4 prohibits banking institutions from disclaiming liability for their own negligence, but the U.C.C. fails to resolve whether a bank can narrow the scope of its stop payment responsibility by the computer system it uses to process checks.

Many might argue that allowing banks to disclaim liability for their customers' \textit{de minimis} inaccuracies in check description would be to allow them to disclaim their negligence in not having a reasonably flexible computer system. This is especially true if the bank's computer could reasonably be programmed to allow for such minor errors.

D. PROGRAMMING CAPABILITIES

The banking industry's programming capabilities for processing checks is obviously important. "The reasonableness of [a check's] description is a factual question which may in part be related to the institution's method for flagging customer accounts and searching for stopped checks."\textsuperscript{64} This position has been echoed by William Hawkland.

The kind of information that is needed by the bank often will depend on its ... technology ... therefore the resolution of specific fact situations under one set of circumstances may not be valid for another. ... While the common law principle of "reasonable accuracy" seems to be continued by the Code, our changing technology and times may result in different applications of this principle from those that were generated in the past.\textsuperscript{65}

One must know whether the capabilities for a different system exist, and what the cost of such a system is, in order to apply the reasonable opportunity standard to the computer system of a certain bank.

In \textit{Hughes v. Marine Midland Bank. N.A.},\textsuperscript{66} the court recognized the capabilities of modern computers to respond to programmed software. In holding a stop payment order with a \textit{de minimis} inaccuracy valid, the court explained that "banks have had ample time to de-

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\item the standards by which such responsibility is to be measured. In the absence of a showing that the standards manifestly are unreasonable, the agreement controls.
\item Owners of items and other interested parties are not affected by agreements under this subsection unless they are parties to the agreement or are bound by adoption, ratification, estoppel or the like.
\item It is important to keep in mind that the term "ordinary care" possess its normal meaning under tort law. U.C.C. § 4-103, comment 4.
\item U.C.C. § 4-103(1).
\item Hawkland, supra note 12, at 58-59.
\item 127 Misc. 2d 209, 484 N.Y.S.2d 1000 (1985).
\end{itemize}
sign software to identify and stop payment on checks from a specific account simply by account number and dollar amount.\textsuperscript{67}

The court in \textit{Migden v. Chase Manhattan Bank}\textsuperscript{68} also took industry programming capabilities into account when analyzing reasonableness of opportunity. There, the bank failed to honor a stop payment order with a five dollar error in description.\textsuperscript{69} The court placed the burden of proving that its system was state of the art on the bank.\textsuperscript{70} The bank's officer had testified that when the incident occurred, the bank's computer could stop payment only if an error in the amount were no more than $1/10$ of one percent of the amount of the check, or one dollar, whichever was greater. The officer indicated, however, that the computer in use at the time of trial would have been able to stop payment despite the $5$ error.\textsuperscript{71} The court found that the check description was reasonably accurate, and the bank was negligent in not programming its computer to avoid payment on a check with a discrepancy in amount of only $2/3$ of one percent.\textsuperscript{72}

In reaching its decision, the court did not make an explicit cost/benefit analysis. However, the court felt the fact that the bank's new computer system could have stopped payment on the check provided good evidence that such a system was a reasonable requirement.\textsuperscript{73}

\section*{V. OTHER POLICY CONSIDERATIONS}

Missing from the courts' analyses are three important policy considerations. A standard which recognizes and makes allowances for computers, encourages their use. As a threshold question, is this use something to be encouraged? Next, how should the industry-wide use of computers by the banking industry factor into the U.C.C.'s reasonable opportunity standard? Finally, a cost/benefit analysis is made through an examination of alternative computer systems which are more flexible and the cost of their implementation.

\subsection*{A. COMPUTER USE SHOULD BE ENCOURAGED}

Without a doubt, banking is conducted in a different manner today than before the advent of computers. Not only has the quantity of

\begin{itemize}
  \item \textsuperscript{67} \textit{Id.} at 211, 484 N.Y.S.2d at 1003.
  \item \textsuperscript{69} The amount of the check was $754.92, but the stop payment order described the check as $759.92. \textit{Id.} at 938.
  \item \textsuperscript{70} \textit{Id.} at 940.
  \item \textsuperscript{71} \textit{Id.} at 939.
  \item \textsuperscript{72} \textit{Id.} at 940.
  \item \textsuperscript{73} \textit{Id.}
\end{itemize}
checks processed increased by an exponential factor, \(^7\) but the manner in which checks are processed is entirely different. \(^5\) The increased operating capacity benefits customers because it allows banks to operate at increased efficiency. Increased operating capacity also allows banks to provide a greater and wider range of services to the banking community. \(^6\)

To ignore the fact that virtually all banks use computers to some degree penalizes banks and discourages computer use. It also denies banking customers the increasing benefits which result from computer use. If computer use is treated as if it were a risky new idea employed only by a few, banks will be dissuaded from keeping their technology up to date.

B. INDUSTRY-WIDE COMPUTER USE

Because the use of computers is the standard practice of the banking industry, analyzing responsibility for de minimis customer errors in terms that view computers as new and experimental is a mistake. U.C.C. section 4-103 provides that "action or non-action consistent with . . . a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care." \(^7\) However, Comment 4 to section 4-403 defines ordinary care as possessing its normal meaning under tort law, rather than in any special sense relating to bank collections.

Industry-wide use of a certain type of computer system does not necessarily mean that such use is reasonable. \(^8\) The standard practice of an industry is only evidence of the practice's reasonableness. An industry cannot be permitted to set its own uncontrolled standard or no industry would ever have any great incentive to make progress.

As one court commented:

[In] most cases reasonable prudence is in fact common prudence; but strictly it is never its measure; a whole calling may have unduly lagged in the adoption of new and available devices. It may never set its own tests . . . . Courts must in the end say what is required; there are pre-

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\(^7\) See B. CLARK, supra note 6, ¶ 10.1, at 10-3; Holahan, supra note 16, at 53.

\(^5\) See supra notes 23-26 and accompanying text for a discussion of the MICR encoding system.

\(^6\) See B. CLARK, supra note 6, ¶ 10.1, at 10-3; Holahan, supra note 16, at 53.

\(^7\) U.C.C. § 4-103(3).

cautions so imperative that even their universal disregard will not excuse their omission.79

The programming capabilities of the industry for discovering de minimis errors, and the cost of implementing more flexible computer systems are essential factors of a cost/benefit reasonableness analysis. Courts must weigh the cost, savings and efficiency provided by computerized stop payment processing, against the risks associated with such a system. If the risk of error of a bank's computer system is small, and would not be reduced substantially by a different system, then the balance favors the bank's computer system. However, if the bank's system has a larger risk of error, and the cost of changing to a more flexible system is not too great, then the balance would favor requiring the bank to change.80

C. ALTERNATIVE COMPUTER SYSTEMS

Few courts have compared the computer systems used by the banks at the time of the check payment with other systems which might have prevented payment.81 Contrary to what many banks have asserted, several such alternative systems exist. According to Roberts and Mann,

[I]t is imperative that the law define "reasonable identification" to conform with modern technology as well as to take into consideration the practicalities and difficulties of modifying a check collection system. Consequently, a stop payment order should be considered sufficient if it provides the following information: (a) the name of the drawer or his account number, and (b) the amount of the check. If the bank has pre-encoded an individual check number, then that number could be provided in lieu of the amount of the check.82

If banks were to rely on the magnetically encoded check number as well as the amount of the check, instead of relying exclusively on the check's amount, many customer errors could be caught. Bank computers would be able to match a customer's account number with either the amount of the check, or the check number. This would avoid forcing banks to hand process all of the checks from a single account to ensure that a check whose amount was inaccurately described was not

79. The T.J. Hooper, 60 F.2d 737, 740 (2d Cir. 1932), cert. denied, 287 U.S. 662 (1932).
80. A balancing of the social costs and benefits must consider two questions: (1) whether "human intervention in a computer-supported system reduce[s] the likelihood of errors or their impact," and (2) "whether the presumed gains from human intervention outweigh costs and time delays." R. Nimmer, THE LAW OF COMPUTER TECHNOLOGY § 7.08, at 7-32 to 7-33 (1985).
paid.\textsuperscript{83}

An alternative system would have computers scan only for the dollar amount of any check, disregarding any portion of the encoded Amount Field to the right of the decimal point (the cents). This would avoid the problem in \textit{FJS Electronics} of a stop payment order for over one thousand dollars defeated by an error of a few cents. Such a system, however, would not detect a one-digit inaccuracy anywhere to the left of the decimal point (\textit{i.e.} if the amount were one dollar off).\textsuperscript{84}

The cost of implementing either of these two systems is unclear, but a number of banks already use the individual check number as one of the magnetically encoded variables on checks.\textsuperscript{85} A requirement of this type of program flexibility may be a standard which is acceptable to both banks and their customers.

Some banks might consider the implementation of either of these types of systems too expensive and accept liability for \textit{de minimis} errors. Because banks are infrequently required to reimburse customers for paying checks over valid stop payment orders due to the many available defenses,\textsuperscript{86} this may be a significantly lesser cost.

\textbf{VI. CONCLUSION}

The value and inevitability of integrating computers into all aspects of banking — and into business in general — requires that the reasonable opportunity standard for stop payment orders recognize banks' increased use of computers. However, banks should not be allowed to assert the computer system they use to process checks as the only standard by which reasonableness may be evaluated. There are a number of other factors which must be weighed.

The role of notice to the customer is an important consideration. One must examine to what extent notice really changes customer expectations and understanding of how banks' computer systems operate.

\textsuperscript{83} This procedure is mentioned by Holahan, \textit{supra} note 16, at 39. Such a procedure would seem unreasonable in the case of institutional check writers that may issue a high volume of checks.

\textsuperscript{84} While it might be possible for banks to program their computers to scan the tens place or even the hundreds place to catch this type of inaccuracy, to do so would require hand processing of virtually all of the checks from some large accounts. To implement a program in which the number of digits scanned depended on the total amount of the check might prove expensive. Banks might prefer to accept the losses resulting from their failure to honor inaccurate stop payments, rather than make such expensive programming changes. \textit{But see Misden v. Chase Manhattan Bank}, 32 U.C.C. Rep. Serv. (Callaghan) 937 (N.Y. Civ. Ct. 1981).

\textsuperscript{85} See \textit{supra} note 26 and accompanying text.

\textsuperscript{86} See \textit{supra} notes 18-22 and accompanying text for a discussion of burden of proof and banks' subrogation right under U.C.C. §§ 4-303, 4-403, and 4-407.
It is also important to keep in mind that the U.C.C. guarantees customers the right to stop payment on their checks. This guarantee should not be significantly curtailed by evaluating reasonableness based on a bank's computer system or through exculpatory clauses.

The level of sophistication of computer programs is increasing daily. A standard which evaluates the reasonableness of a bank's computer system must take into account (1) the programming capabilities of the industry, (2) the cost of requiring banks to update their computer systems, and (3) the detrimental effects of "freezing" the law at a certain stage of technological achievement.

A number of alternative computer systems exist which would eliminate many of the problems associated with de minimis errors. The simple addition of one extra magnetically encoded variable — the check number — would eliminate a great many of the problems associated with de minimis errors and give bank computers the flexibility to detect these errors. Another alternative is to continue to allow banks to rely exclusively on amount, but have them disregard any digits to the right of the decimal point. A two-fold requirement that banks (1) warn customers at the time of making a stop payment order that absolute accuracy in a variable is required, and (2) maintain a reasonably flexible up-to-date computer system to process checks would not impose too great a burden on banks.87

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87. Remember that placing liability on banks might not result in a significant increase in cost because of banks' many defenses to paying checks over valid stop payment orders. See supra notes 18-22 and accompanying text.