IMPOSTORS, INSURANCE AND THE UCC

Douglas J. Whaley* and Mark A. Yegerlehner**

"I must confess, however, that I have never fully understood § 3-405 (the Impostor Rule) . . . ."
Letter from an insurance attorney to the authors.

I. INTRODUCTION

The Uniform Commercial Code section 3-405 states:

Impostors; Signature in Name of Payee.

(1) An indorsement by any person in the name of a named payee is effective if

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

The purpose of this article is to explain section 3-405 and its effect on the checks that insurance companies mail to their insureds in response to requests for loans or policy surrenders. Inevitably some of these checks are cashed on forged indorsements, either because they were stolen from the insured or because the insurance company itself has been duped by a phony request. The authors analyze herein the existing insurance practices designed to avoid victimization by impostors and, to the extent these practices are inadequate, suggest several possible steps that the insurance companies can take to improve their practices or eliminate their problem and decrease losses.

* Assistant Professor of Law, Indianapolis Law School (Indiana University-Purdue University at Indianapolis). B.A., University of Maryland, 1965; J.D., University of Texas, 1968.

** Supervisor of Policyowner Service for an insurance company located in Indianapolis, Indiana. A.B., Indiana University, 1955; third year student, Indianapolis Law School (Indiana University-Purdue University at Indianapolis).
The article begins with an explanation of the so-called "impostor rule" in its historical and commercial setting, and then proceeds to summarize the results of a questionnaire mailed to fifty insurance companies to determine their current loan and surrender practices. Those readers who already understand the impostor rule, the fictitious payee rule, and how to distinguish them from a basic forgery situation, would do best to skip the primer section and plunge immediately into the insurance discussion.

II. THE IMPOSTOR RULE — A PRIMER

In order to appreciate the significance of the impostor rule, one must first wade through and digest a host of basic principles of the law of commercial paper, as follows:

A bank may properly charge a check against its depositor's account only when there are no forgeries in the chain of title. If a depositor discovers that the bank has wrongfully honored a check containing a forged indorsement in the title, he can demand that the bank recredit his account with the amount of the check. On so doing, the bank can in turn demand repayment from the person presenting the check to it, and so on up the chain of indorsements to the person who took it directly from the forger. The person who trusted the forger and was thereby duped must bear the loss (unless of course the forger himself can be found in a solvent condition). These rules apply even where the drawer of the check has been

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1. Technically, the bank may charge an account only when the item is "properly payable". Uniform Commercial Code § 4-401 [1]. A forged indorsement, under the Code, is an "unauthorized signature", and is effective only as the signature of the thief. § 3-404(1). Assuming the thief's signature is meaningless to transfer title, as is normally the case, the instrument, though appearing to have a regular chain of indorsements, is in fact missing a signature necessary to transfer title. There has been no valid "negotiation" of the instrument subsequent to the forgery. § 3-202[1]. "(A) bank paying a check with a forged endorsement has in effect paid an unendorsed check." Jerman v. Bank of America Nat'l Trust & Sav'n, 7 Cal. App. 3d 882, 87 Cal. Rptr. 88, 91 (1970).

2. This is not inequitable, although at first glance it may appear the depositor gets the benefit of money he would have spent had the check not contained the forgery. The check itself is still the property of the person whose name was forged on the instrument and that person can replevy the check, sign it, and demand payment from the drawee bank. At that time the money will validly be withdrawn from the depositor-drawer's account. See Henderson v. Lincoln Rochester Trust Co., 303 N.Y. 27, 100 N.E.2d 117 (1951). Under § 4-406 of the Code, the customer must examine his bank statements promptly to discover irregularities. The section sets an absolute limitation period of three years from availability of the statement in which to discover and report unauthorized indorsements.

3. The drawee bank's recovery is predicted on the presentment warranty of "good title", § 3-417(1)[a]. Cf. § 3-416; if the indorser has not "changed his position in reliance on the payment" in good faith, it is possible to recover from him on his § 3-414 contract.
careless and thus aided the forger in his deception.4

The only major exception occurs when the drawer of the check has himself either dealt with the forger-impostor and issued him the check, or where a defalcating employee-agent of the drawer has seen to it that the drawer’s check is issued to the forger. In this case, herein loosely referred to as the “impostor rule” (although it is also technically the “fictitious payee rule”), the resulting forgery is said to be “effective” to pass title. The drawer is precluded from asserting the unauthorized signature in the chain of indorsements and may not require the drawee bank to recredit his account. This rule is embodied in Uniform Commercial Code section 3-405(1).5

A. A Little History

That the drawer of an instrument should not be able to say that the initial payee was a fictitious person first appears in an English opinion growing out of a notorious financial scandal, in which the drawer deliberately drew drafts to a payee whom he knew was non-existent.6 The court held that paper issued to a fictitious payee should be treated as bearer paper, requiring no indorsement to transfer good title to subsequent holders.7 By 1896, when the Na-

4. Section 3-406, the negligence rule, appears to create an exception by stating that where a person (including the drawer) by his negligence “substantially contributes” to the forgery he is estopped to assert this defense against a person making payment “in good faith and in accordance with reasonable commercial standards.” In actuality this has been interpreted as a balancing test, and the courts have been reluctant, absent grossly negligent conduct by the drawer, to permit the drawee bank to escape the normal penalties for payment on a forged indorsement. See, e.g., Creshman State Bank v. O & K Constr. Co., 231 Ore. 106, 370 P.2d 726, 372 P.2d 187 (1962).

5. The Official Comment 2 to § 3-405(1) states that in the first situation (where the drawer has issued the check to the impostor), the policy is:
that the loss, regardless of the type of fraud which the particular impostor has committed, should fall upon the maker or drawer.

As to the second situation (where the check reaches the forger through the aid of a dishonest employee), Official Comment 4 states:
The principle followed is that the loss should fall upon the employer as a risk of his business enterprise rather than upon the subsequent holder or drawee. The reasons are that the employer is normally in a better position to prevent such forgeries by reasonable care in the selection or supervision of his employees, or, if he is not, is at least in a better position to cover the loss by fidelity insurance; and that the cost of such insurance is properly an expense of his business rather than of the business of the holder or drawee.


7. In the opinion of Baron Hotham in the House of Lords decision:
The great principle that I go upon is, that parties to a bill shall not, any more than parties to any deed or instrument, take advantage of their own fraud. In truth what is the end and effect of acceptance but a liability to pay? The acceptors having given this bill a currency when they knew that it never could be paid to the order of White, the law will presume that they intended that
tional Conference of Commissioners on Uniform State Laws approved and recommended the enactment of the Negotiable Instruments Law, the principles had been codified as the "fictitious payee" rule:

The instrument is payable to bearer . . . when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable . . . .

Strangely enough, this statute was interpreted to also apply to the situation where the payee was a real person, but the person drawing the check did not intend for the payee to have an interest therein; this contingency was thought sufficiently analogous to the fictitious payee problem to call for the same result.

The rule that the drawer must bear the risk of loss resulting from the forgery of the payee's name by an impostor with whom the drawer has dealt was a purely common law development. The courts considering the issue, with only one major exception, held that since the drawer of the check intended to deal with the person standing before him, he should not be heard to complain if he received the indorsement of that person. The courts reasoned that the drawer has two intentions: to issue the check to the person standing before him, and to issue it to the name written in the payee blank. The first intention was said to be dominant and therefore controlling. Thus, in a textbook-like impostor situation, where two con men hoodwinked a retired lady schoolteacher into issuing them checks for charity made out to the phony "secretary" of local wealthy men in her community, sometimes by personal solicitation and sometimes by having a messenger boy pick up the check, the New Jersey Court of Errors and Appeals held that the checks received by personal solicitation were valid because signed by the very person she intended to have sign them (the "secretary"), but that those picked up by the messenger boy were mere forgeries, and therefore she was not liable on the check as she did not intend for the messenger boy to have an interest, and therefore was not

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8. Section 9(3), Negotiable Instruments Law (1896). The equivalent English statute was the Bills of Exchange Act of 1882, § 7(3).
10. Tolman v. American Nat'l Bank, 22 R.I. 462, 48 A. 480 (1901). The court apparently feared that if the phony signature of the impostor were held not to be technically a "forgery" then the criminal might escape penalty. The case was much criticized: see 14 Cal. L. Rev. 45, 45-48 (1925).
12. The leading case is Boatsman v. Stockman's Nat'l Bank, 56 Colo. 495, 138 P. 764 (1914). See also the cases cited in Britton, supra note 11, §151.
dealing with an impostor. This "dominant intent" theory was recognized by many of the courts as fallacious; the New York Court of Appeals once stated that "in truth, both intents are so inseparable that the choice of one intent rather than the other is purely arbitrary — an example of rationalization, perhaps unconscious, to reach a desired result." In the same case, the dissenting judge found the underlying principles to be: (1) The business necessity of keeping commercial paper negotiable; (2) the maker's delivery to the person intended, although deceived as to the identity of that person; (3) the maker's opportunity to ascertain the true identity of the person to whom the instrument is delivered (while a purchaser for value may know the signature of the drawer, he cannot in the ordinary course of business know to whom the maker intended to deliver the instrument); and finally, (4) that where one of two innocent persons must suffer a loss, that loss should fall upon the one who was at fault in the first instance and made the loss possible.

B. The Uniform Commercial Code

The development of the "fictitious payee" rule by statute and the "impostor" rule by court decision created several problems. For one thing, the criminal mind being as inventive as it is, in some situations it was difficult to tell whether the courts were dealing with an impostor problem, a fictitious payee problem, or a mere forgery. Thus in Atlantic National Bank v. United States, when a government agent filed false tax returns requesting refunds for nonexistent persons, the fifth circuit court of appeals, while adopting the impostor rule, could arguably have used either doctrine to preclude the drawer from denying liability on the checks. Similarly, in an early case involving a fraud on an insurance company, a field agent

13. Russell v. Second Nat'l Bank, 136 N.J.L. 270, 55 A.2d 211 (1947). As to the checks picked up by the messenger, the court said:

(N)ot only was the name of the payee fictitious, but there was no one representing himself as, or represented by another to be, the person of that name. The name had no embodiment and presented no objectivity. Identification was not afforded by visible presence; not even at the other end of the communications system was there a personality identifiable as such. 55 A.2d at 216.

14. Cohen v. Lincoln Sav. Bank, 275 N.Y. 399, 10 N.E.2d 457, 461 (1937). In this case the drawer's agent left blank the payee space on the check and handed the instrument to the impostor who filled in the phony name. Applying the impostor rule very technically, the court held that the subsequent indorsement of the phony name on the back of the check was a forgery and not an effective signature since the drawer did not actually fill in the impostor's name. There was a strong dissent.

15. 10 N.E.2d at 465 (Judge Hobbs dissenting). The Official Comment to § 3-405 states flatly that it rejects the dominant intent reasoning as a fiction.

16. 250 F.2d 114 (5th Cir. 1957).

17. Judge Rives, dissenting, was upset at the majority's adoption of the impostor rule for the federal courts.
created a fictitious name, signed the fictitious applicant up for a life insurance policy, filed a proof of death, and cashed the check sent by the insurance company as death benefit proceeds. The St. Louis Court of Appeals decided against the insurance company, finding that the agent’s knowledge that the payee was fictitious was imputed to the company, making the resulting check bearer paper. The same result, that the insurance company cannot take advantage of the forgery and escape liability on the check, can of course also be reached under the impostor rule. However, using the impostor rule does not result in bearer paper, merely esoppel to assert the forgery. This doctrinal difference was a factor militating towards a new uniform rule. The new statute, section 3-405 of the Uniform Commercial Code, eliminated all remedial differences between the fictitious payee rule and the impostor rule, saying that both situations result in a check that can be effectively indorsed by the impostor (or anyone).

Certainty and definiteness are perhaps the most desirable characteristics of the law of negotiable instruments. The “impostor rule” introduces confusion, requiring the ascertainment of nonexistent intent and almost metaphysical speculation degenerating into mere logomachy. In actuality the court was not free to use the fictitious payee rule, as the United States Supreme Court in a series of decisions had refused to saddle the federal government with the usual liability. Clearfield Trust Co. v. United States, 318 U.S. 363 (1943); National Metropolitan Bank v. United States, 325 U.S. 454 (1945). The federal government is not, of course, bound by any of the rules of the uniform state laws. This special treatment has been justified by one court because the Government "operates less profitably, finds it more difficult to insure against such losses, and may in many cases have difficulty in exercising the control over its employees that private enterprise does." United States v. Philadelphia Nat'l Bank, 304 F.Supp. 955, 956-57 (E.D. Pa. 1969). See also United States v. Bank of America Nat'l Trust & Sav. Ass'n, 288 F.Supp. 343 (N.D. Cal. 1968), aff'd, 438 F.2d 1213 (9th Cir. 1971). The lower federal courts have, however, felt free to adopt the impostor rule. See Atlantic Nat'l Bank v. United States, 250 F.2d 114 (5th Cir. 1957), and United States v. Bank of America Nat'l Trust & Sav. Ass'n, 274 F.2d 366 (9th Cir. 1959).

19. The instrument as issued is order, not bearer, paper and requires some indorsement of the payee's name prior to payment. Those interested in why the drafters of the Code reached this result are referred to Official Comment 1 following § 3-405. Another major problem with the old Negotiable Instruments Law was that some courts held that the fictitious payee rule did not apply in the situation where a dishonest employee was padding the payroll, but was not actually the individual who physically signed the checks. New York Cas. Co. v. Sazenski, 240 Minn. 202, 60 N.W.2d 368 (1953); Edgington v. Security-First Nat'l Bank, 78 Cal. App. 2d 849, 179 P.2d 640 (1947); American Sash & Door Co. v. Commerce Trust Co., 332 Mo. 98, 56 S.W.2d 1034 (1932). Some courts avoided this result by stretching the impostor rule to fit the situation, Hartford Accident & Indem. Co. v. Middletown Nat'l Bank, 126 Conn. 179, 10 A.2d 604 (1939), and some by amending the Negotiable Instruments Law to a form similar to UCC § 3-405(1)(c); see discussion in Phoenix Die Casting Co. v. Mfrs. and Traders
The only major flaw in the Code's resolution of the problem is that in one situation it still retains the dominant intent theory. The Official Comment to section 3-405 states that the impostor rule does not “extend to a false representation that the party is the authorized agent of the payee. The maker or drawer who takes the precaution of making the instrument payable to the principal is entitled to have his indorsement.” Essentially this means that the retired lady schoolteacher who gives her check to the messenger boy might be protected because she does not intend to deal with anyone other than his principal. The cases have followed this idea, but the authors feel that a departure from the basic result of section 3-405 in this situation is nonsensical.

In addition it should be noted that the impostor rule, even as recodified in § 3-405, does not help the drawee bank in a host of complicated situations where, for one of a myriad of reasons, the exact situation envisioned by the drafters of the Code does not occur. Since the drafters could not foresee all of the possible frauds that check forgers could create, it can and has been argued that the policy of the section (to make the drawer of the check bear the loss when he has been the dupe of an impostor or a faithless employee) should extend to all similar situations. The cases have not gone this far. Thus where a dishonest employee misdirected com-

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22. The commentators have also been critical of this § 3-405 defect. See O'Malley, Common Check Frauds and the Uniform Commercial Code, 23 Rutgers L. Rev. 188, 226 (1969); Note, Impostors and the UCC, 1 Val. L. Rev. 139 (1966).
24. In Philadelphia Title Ins. Co. v. Fidelity-Philadelphia Trust Co., 419 Pa. 78, 212 A.2d 222 (1965), a wife received a mortgage loan check by misrepresenting to the drawer that the man in the office was her husband. To rebut the impostor rule, the drawer argued that since the man was silent at all times he had not “induced” the issuance of the check. In rejecting this argument the court stated:

Naturally, the Legislature could not have predicted and expressly included all the ingenious schemes designed and carried out by impostors for the purpose of defrauding the makers or drawers of negotiable instruments. Something had to be left to the courts by way of statutory construction. For purposes of imposing the loss on one of two "innocent" parties we see no reason for distinguishing between the drawer who is duped by an impersonator communicating directly with him through the mails and drawer who is duped by an impersonator communicating indirectly with him through third persons. Thus, both the language of the Code and common sense dictates (sic) that the drawer must suffer the loss in both instances. 212 A.2d at 225.
company checks to his own creditors by making them the payees, where a construction superintendent appropriated company checks to his own use rather than delivering them as directed, and where the depositor has been supplied payee names by a fraudulent agent and procures a cashier's check (thereby making the bank the drawer), the imposter rule has been held not to apply, and the drawer was protected, normally at the expense of the drawee bank.

If the courts are to avoid the "almost metaphysical speculation" that the imposter situation generates in the close cases, they should eschew tests based on either the drawer's intent or the literal language of the statute, and instead concentrate on the basic policy considerations that prompted the courts and legislatures to carve out this exception to the normal forgery rule. "In such cases the controlling inquiry is whether the drawer, by failure to use ordinary diligence to avert a loss, has so increased the risk and responsibility of the drawee as to take the case out of the general rule of liability for payment of money on a forged instrument." The matter is thus reduced to the simple proposition that where two innocent parties have both been deceived, the loss must be borne by the one who primarily made the loss possible.

C. THE INSURANCE CASES

Section 3-405 of the Code can prevent recovery on forged insurance drafts in each of the three situations outlined in the first subsection of the statute. That is, the indorsement of the payee's name is effective in the following instances:

1. The basic imposter situation, section 3-405 (1)(a), where an imposter "by use of the mails or otherwise" induces the insurance company to issue the check to him or his confederate. In Metropoli-

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25. Hobart Mfg. Co. v. Fidelity & Deposit Co., 360 F.2d 453 (6th Cir. 1966). This is actually an action on a forgery bond for loss on the misdirected checks. The court held there was no recovery since there was technically no forgery.

26. Snug Harbor Realty Co. v. First Nat'l Bank, 105 N.J. Super. 572, 253 A.2d 581, aff'd, 54 N.J. 95, 253 A.2d 545 (1969). An analogous situation in insurance problems of the type discussed in this article would occur where the insured sends a policy loan request to the company through the local agent; when the check comes back the agent forges the insured's indorsement on the back and cashes the check. Apparently the courts will not stretch § 3-405 to meet this situation, though it is a tougher question than this case indicates.


29. 138 P. at 766.
tan Casualty Co. v. First National Bank\(^{30}\) the brother-in-law of the insured procured a loan against the policy by pretending to be the insured and intercepting the check sent to the insured by the company. The insured was not even aware of the loan request. The court held that this was the basic impostor situation and that the insurance company was estopped to assert the forged indorsement on the check against the drawee bank. The court stated that the insurance company's remedy in the future was simply to be more careful with whom it dealt.\(^{31}\)

2. The dishonest insurance company treasurer who draws up checks to fictitious payees is the most obvious example of section 3-405(1)(b), a “person signing as or on behalf of a maker or drawer” who intends the named payee to have no interest in the instrument. This problem is more fully discussed below.

3. The dishonest agent who requests loans for insureds who have never asked for them is the “agent or employee of the maker or drawer” who supplies the company with “the name of the payee intending the latter to have no such interest,” described in section 3-405(1)(c). An insurance company is bound by the fraudulent acts of its agent when acting within the actual or apparent scope of his authority.\(^{22}\) In *Equitable Life Assurance Society v. National Bank of Commerce*\(^{33}\) the Missouri Court of Appeals extended this basic rule to the insurance agent submitting phony claims against the company. The court stated that the insurance company, “a corporation, can act only through agents. When those agents, acting within the apparent or real scope of their authority, commit a tort, the principal is bound for the consequences.”\(^{34}\) In *Delmar Bank v. Fidelity & Deposit Co.*\(^{35}\) the agent procured a series of loans from the insurance company in the aggregate amount of $24,600 (over a two year period) by simply informing the company that the insured wished to borrow this amount on his policy. The insured neither requested the loans nor received the money. The federal district court, applying the third part of section 3-405, found that the checks issued to the defalcating agent were not paid on forged indorsements. The eighth cir-

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\(^{30}\) 139 Neb. 329, 297 N.W. 593 (1941).

\(^{31}\) Another insurance impostor case has been discussed previously. See *Equitable Life Assur. Soc'y v. Nat'l Bank of Commerce*, 181 S.W. 1176 (Mo. Ct. App. 1916), aff'd, 197 S.W. 115 (Mo. 1917). The insurance loan cases are of course directly analogous to cases where a bank loans money to an impostor; see, e.g., *Franklin Nat'l Bank v. Shapiro*, 7 U.C.C. REP. SER. 317 (N.Y. Sup. Ct. 1970), where, after superficial investigation, a bank loaned money to a woman impersonating her husband, who forged his name to the loan check: the court applied § 3-405 to validate the check. Cases like this are obvious precedents in insurance impostor problems.


\(^{33}\) 181 S.W. 1176 (Mo. Ct. App. 1916), aff'd, 197 S.W. 115 (Mo. 1917).

\(^{34}\) 181 S.W. at 1181.

court of appeals reversed on other grounds. In two other reported cases involving check forgeries by field agents, the agents misappropriated $1,800 and $25,000.

At this point it is perhaps appropriate to raise a technical negotiable instruments argument that insurance companies might use to avoid section 3-405. Section 3-405 by its own terms only applies to "instruments" issued by the drawer. The word "instrument" is defined in section 3-102(1)(e) to mean a negotiable instrument. By chance, most insurance checks (technically drafts, since they are payable through a bank and not by it) are not "negotiable" within the meaning of section 3-401(1) because most insurance checks have stamped across their face "NOT VALID UNLESS CASHED WITHIN 60 DAYS" (or similar words). Such language violates the section 3-104(1) requirement that the promise or order to pay be "unconditional," and therefore the check is non-negotiable and not an "instrument" within the meaning of section 3-405. This argument should have a certain appeal to those whose tastes run to pedantic

36. Delmar Bank v. Fidelity & Deposit Co., 428 F.2d 32 (8th Cir. 1970). The actual issue of the cases was whether the plaintiff depository bank, having admitted its liability to the drawee-payor bank, could recover its loss on the forgery indemnification provision in the Banker's Blanket Bond issued by defendant to plaintiff. The court held that the Code defense had been waived by the bonding company's failure to raise it at the proper moment in the trial. The court went on to find that the language of the bond defined "forgery" broader than the Code provision in issue.

37. United Security Life Ins. & Trust Co. v. Central Nat'l Bank, 185 Pa. 586, 40 A. 97 (1898). In this case the life insurance company escaped loss on the checks only because the fictitious payee rule had not yet been adopted in Pennsylvania.

38. Nat'l Shawmut Bank v. Fidelity Mut. Life Ins. Co., 318 Mass. 142, 61 N.E.2d 18 (1945). The agent actually stole this amount from six different insurance companies, all of whom were repaid when the agent had the audacity to refinance his borrowings by signing a promissory note with a note broker. At the latter's request, plaintiff bank repaid the outstanding loan amounts to each of the insurance companies and, when the fraud was discovered, brought this action for restitution against each of the companies. The court held that plaintiff could recover on this theory.

39. Further, it can be argued that the drafters of the Code deliberately chose to use the word "instrument" in § 3-405 in its technical § 3-102 sense because the "Definitonal Cross Reference" at the end of the Official Comment to § 3-405 mentions "instrument" and refers the reader to § 3-102. On the other hand, it should be noted that the Code itself occasionally uses "instrument" in sentences where it can only refer to non-negotiable instruments. See, e.g., § 3-105(2). This sort of confusion is inevitable in any large statute, particularly one having the brobdingnagian complexity of the Uniform Commercial Code.

40. Section 3-104(1) gives the basic definition of negotiability under the Code. It reads:

(1) Any writing to be a negotiable instrument within this Article must
(a) be signed by the maker or drawer; and
(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this article; and
(c) be payable on demand or at a definite time; and
(d) be payable to order or to bearer.
intricacies, but should be rejected out of hand if ever raised. The drafters of section 3-405 could not conceivably have intended that drawers be able to escape its effect by the simple device of making their checks technically non-negotiable (which can be done in any of a number of ways). The policy considerations that prompted the formulation of section 3-405 apply with equal force to technically non-negotiable checks, so that a separate rule for them would be inane. This is not to say that it is impossible for the insurance company to shift the risk of impostor fraud to the presenting bank by appropriately worded language appearing on the draft itself. The feasibility of this solution and others along with a full exposition of current insurance company practices follows.

III. INSURANCE COMPANIES—LOAN AND POLICY SURRENDER PRACTICES

A. POLICY LOANS

Commercial activity in the United States during the 1960's was generally characterized by rising prices and interest rates and an overall inflationary pattern. During the latter half of the decade interest rates in general rose to new records, and it became very difficult for consumers to purchase new homes and automobiles and other consumer goods at reasonable interest rates. This complex of economic pressures led the consumer to seek sources of funds which would be readily available at lower interest rates. One of these sources was the accumulated cash values of life insurance policies.

Borrowing the cash value of one's life insurance policy is a rather uncomplicated procedure, and it has several features which distinguish it from commercial loans:

41. For example, the insurance company could stamp the restrictive language described infra in the text at note 59 on the front of the check, thereby adding a condition to the instrument. The non-negotiable character of insurance drafts has apparently bothered neither the banks, which routinely honor them, nor the courts (the authors were unable to discover a single case considering the issue).


43. One of the major distinctions is that the borrower is never under any absolute obligation to repay the loan. In the event he elects not to repay the loan, the insurance company simply acquires a lien upon the face amount of the policy, and upon the death of the insured-borrower the company deducts the amount of the loan from the gross proceeds payable to the beneficiary of the policy. Also, so long as the policy in question continues to have sufficient value, the borrower is not under any real pressure to pay the annual interest as it comes due. If he so chooses he can ignore the interest payment, and in the event he does this, the company merely adds the amount of the interest due to the existing loan balance. Of course, when the loan balance equals the cash surrender value of the policy, the company surrenders the policy and the insurance contract between the company and the insured terminates.
A typical insurance contract which has cash values will bear an interest rate of 5% or 6%, and as most (if not all) companies require annual interest payment in advance, this results in effective rates of 5.26% and 6.38%, respectively. In the consumer market today, and even during the preceding five years, these effective rates are almost in the category of a super-bargain. When coupled with the easy availability and non-repayment features, the very low rates appear to make the insurance policy loan a most attractive source of consumer working capital.  

The November, 1970 Best's Review included a special study reflecting policy loan figures for 1968 and 1969, and percentage figures as ratios to assets for the years of 1965 through 1967 for the 100 largest insurers in the United States and Canada. A reproduction of the results as to the 50 largest companies appears as Table One in the Appendix. The table is intended to impress upon the reader the truly monumental nature of the business of insurance policy loans in terms of the dollar amounts and the number of companies involved. Bear in mind that the table includes only the 50 largest insurance companies in the United States and Canada, and there are approximately 1,800 life insurance companies doing business in the United States alone. Of course, the ultimate question relating to the statistical data in this table is whether insurance companies are protecting themselves and their insureds from the possibilities of risk of loss arising from external fraud and internal defalcation.

B. Policy Surrenders

If an insured wishes to discontinue the insurance contract, he can elect to surrender and take the accumulated cash values, provided the policy is a whole life or endowment policy. The industry is currently experiencing, with surrenders, something akin to the "phenomenon" which Best's Review described in relation to policy loans. The official publication of the Institute of Life Insurance, the

44. William J. Killen in The Policy Loan Phenomenon, 70 BEST'S REVIEW 10-11 (September, 1969), outlines the experiences of insurance companies which were then encountering marked increases in their cash outflows because of policy loans:

In December 1964, Life Insurance Companies had $7.1 billion invested in outstanding policy loans. This constituted about 4.8% of admitted assets. By June 1966, policy loans had increased to $8.1 billion or 5.0% of assets. Then credit began to tighten, and... at year-end 1967, loans had increased to $10 billion or 5.7% of admitted assets.

The phenomenon of increasing policy loans is directly related to the Federal Reserve Board's tight money policy. Increasing interest rates and the unavailability of money at commercial banks and elsewhere sends more and more people to their insurance companies to borrow the cash value of their policies.

In the view of a senior financial officer of a large Eastern life insurer, temporary loans — for new autos, home improvements, college tuition — form a significant part of new loan applications.
Life Insurance Fact Book shows the following surrender payments to policyowners:

<table>
<thead>
<tr>
<th>Year</th>
<th>Cash Values Paid to Owners of Ordinary Life Insurance Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>$2.5 Billion</td>
</tr>
<tr>
<td>1969</td>
<td>2.4</td>
</tr>
<tr>
<td>1968</td>
<td>2.1</td>
</tr>
<tr>
<td>1967</td>
<td>1.9</td>
</tr>
<tr>
<td>1966</td>
<td>1.8</td>
</tr>
</tbody>
</table>

Table Two in the Appendix shows surrender ratios for the year of 1969 for 50 leading companies in the United States and Canada. As is the case with policy loans, inclusion of the table is intended to impress upon the reader the magnitude of the policy surrender operation. The rationale underlying policyowners’ decisions to surrender is not attributable solely to high interest rates and the short supply of available commercial money, although a certain percentage of surrenders is motivated by this consideration. Since World War II general inflationary trends have tended to weaken the fixed values of life insurance as an effective instrument for providing an adequate estate, or as an ample source of funds for retirement.

C. The Questionnaire — An Empirical Study

An empirical study was utilized by the authors to discover the current administrative procedures that insurance companies employ in effecting loans and surrenders. A two-part questionnaire was devised and mailed along with a cover letter to fifty insurance companies throughout the United States. There were no specific criteria for determining the companies selected. The only general require-


46. Also, over the past two decades there has developed a kind of rapport in reverse between the insurance buying public and the industry itself — large segments of the general population mistrust the industry and its representatives. During the 1980's, two popular writers certainly did much to exacerbate that suspicion. In What's Wrong With Your Life Insurance (1963) which, commercially speaking, may be hailed as a classic in iconoclastic writing, author Norman F. Dacey pressed a vigorous attack upon cash value life insurance. His overriding central theme: cash value life insurance is a gimmick which the life insurance industry has used to overcharge the insurance buying public. Mr. Dacey is a very forceful writer, and his well-articulated ideas may have been influential in motivating owners of cash value insurance policies to surrender them in favor of other types of insurance and investments. A similar work is James Gollin's Pay Now, Die Later (1966) which, by sabotaging public confidence in insurance marketing techniques, casts suspicion upon the mainstay of any company's sales portfolio: the cash value life insurance policy.
ments related to size of operations and time in business. Very small or very new companies were thought less likely than the larger well established companies to have a great volume of loan and surrender business, and for that reason, the survey included only companies whose total ordinary life insurance in force was equal to at least $2,000,000 as of the end of 1969. Many of the companies included in the survey are well known business names, but several would not be known beyond their respective geographical regions. The survey included companies from all regions of the United States, i.e., both coastal regions, the midwest, the south, and the mountain areas. The cover letter assured the companies anonymity, and included a self-addressed envelope so that the identity of the sender was concealed. The cover letter also contained a statement explaining the practical application of section 3-405 in relation to loan and surrender situations.47

Forty-four companies replied. Thirty-two replies furnished supplemental information in the “Comments” section or in memoranda which accompanied the reply. Most of the comments related to answers that called for more than a “yes” or “no” answer. In some cases it simply was not possible for the company to give a satisfactory “yes” or “no” answer, and wherever appropriate this report will list qualified answers thought significant. The questionnaire is reproduced below, with the number of usable answers to each question indicated in brackets.

47. The letter stated in part:

Much of the loan and surrender business between insureds and companies is handled by mail. One of the practical consequences of the application of the UCC section outlined above could be this: a forger obtains a company loan form, completes the form in the name of the insured and then mails the form to the company with instructions for a change of address so that the company would send the loan check to the address designated by the forger. Under the UCC section the forger’s indorsement of the payee’s (insured’s) name would be effective, and the drawee bank would not be liable to the insurance company on the theory that the bank accepted a forged indorsement. Equally serious problems would arise if a forger stole a policy, obtained a surrender form and by the same method induced an unsuspecting company to issue to him a check for the surrender value of the policy.
SURRENDER QUESTIONNAIRE

Policy Surrenders - "Company" refers either to home or branch office.

(1) Does the company furnish a printed surrender agreement which the insured must sign.
   (a) Is signature of witness required
   (b) Must form be notarized
   (c) Do company personnel compare form signature to application signature
   (d) Can insured obtain form from agent
   (e) Can insured obtain form from company upon written or telephone request
   (f) Can an insured, or any person, obtain a surrender form by simply appearing at the company office and requesting such form

   Yes(42)  No(2)
   Yes(27)  No(15)
   Yes(4)  No(37)
   Yes(29)  No(13)
   Yes(38)  No(4)
   Yes(42)  No(0)
   Yes(38)  No(4)

(2) Can an insured initiate surrender action by contacting the company directly (telephone or mail).
   (a) Company will accept written request only
   (b) Company will accept telephone request

   Yes(44)  No(0)
   Yes(6)  No(33)
   Yes(33)  No(6)

(3) If an insured writes to or calls the company requesting surrender, does the company first refer the request to the servicing agent for conservation purposes
   (a) If the insured specifically request "Send no agent" will the company generally honor that request
   (b) If the answer to (a) is "yes" will the company "tip" the agent

   Yes(32)  No(12)
   Yes(35)  No(9)
   Yes(25)  No(9)

(4) If an insured writes to or calls the company stating an emergency which requires immediate surrender, will the company handle the transaction
direct with the insured  Yes(41)  No( 3)

(5) If an insured lives in a community not serviced by any agent, will the company send the insured a surrender form (if required) upon his written or telephone request  Yes(42)  No( 0)

(6) If an insured wishes to surrender his policy but has lost it, does the company require completion of a "surrender of lost policy" form  Yes(41)  No( 3)
   (a) If "yes", can the insured obtain this form directly from the company upon written or telephone request  Yes(41)  No( 0)

(7) If the company receives a completed surrender form with the policy by mail, does it issue a surrender check to the insured  Yes(42)  No( 0)

(8) (COMMENTS)

Policy Loans

(1) Does the company furnish a printed loan agreement which the insured must sign  Yes(24)  No(20)
   (a) Signature of witness required  Yes(18)  No( 6)
   (b) Form must be notarized  Yes( 3)  No(21)
   (c) Company personnel compare form signature to application signature  Yes(15)  No( 9)
   (d) Agent usually furnishes form to the insured  Yes(17)  No( 5)
   (e) Can the insured obtain form directly from the company through telephone or written request  Yes(24)  No( 0)

(2) If (1) above is "No" does the company nevertheless require a written request from the insured to initiate a loan  Yes( 1)  No(16)

(3) Does the company accept loan re-
quests made by telephone
(a) If "yes", does it issue checks on the basis of these requests
(b) If (a) is "yes", are the loan checks subject to a maximum amount

Yes(40) No(4)
Yes(29) No(11)
Yes(15) No(14)

(4) Does the company mail the loan check to the insured if the loan request has come directly from the insured
   Yes(43) No(1)

(5) Does the company require possession of the policy until the insured repays the loan
   Yes(0) No(44)

(6) (COMMENTS)

IV. RESPONSE AND ANALYSIS

A. RESPONSE TO THE SURRENDER QUESTIONNAIRE

A healthy majority of the companies responding to question (1), as to whether they required a printed surrender form, checked the yes space. These forms vary widely, however, as to the degree of solemnization required. The use of a printed surrender form would be a fairly effective shield against impostor fraud, but the practices shown in questions (1)(e) and (1)(f) indicate a tendency to make these forms available to almost anyone who informs the company of his need for one. If a thief is in possession of a policy having a cash surrender value, he can, under (1)(e), simply call the company's home or branch office and ask that the company send him a surrender form. Even if he does not know that a surrender form is required, a minimal amount of questioning by the impostor will enable him to ascertain the company's surrender procedure.48 He can then direct the company to send the form to an address of his choosing, or he can intercept the form after the company has sent it to the insured's correct address. Of course, question (1)(f) indicates that an impostor could obtain a surrender form from 38 of the 42 reporting companies by simply going to the company's home or branch office and requesting the form. There is apparently some recognition of potential impostor problems, as two questionnaires indicated that the companies would give the forms only to the insured or to the owner. One of these questionnaires indicated that anyone other than

48. A company may or may not require a surrender form, but nearly all companies require surrender of the policy to the insurance company, or written evidence of some kind that the policy has been lost or destroyed.
an insured or owner who requested a surrender form would be re-
quired to identify the capacity in which he was acting.

It is probably safe to generalize about the safekeeping of insurance policies. Most people are not careless, i.e., most insureds keep policies with other valuable papers, and it is reasonable to as-
sume that relatively few policies are actually stolen. However, there are some troublesome instances where easy access to surrender forms could lead to impostor fraud. These involve dishonest agents, overreaching spouses, and insurance company employees who have access to policyowner information.

Most companies have a few agents who will resort to acts which are tortious or even criminal. Dishonesty in agent behavior is mo-
tivated primarily by economic pressures. It is certainly conceivable that a financially hard-pressed agent would complete a surrender form in the name of his client to fraudulently obtain funds. Very often for many valid reasons insureds will leave their policies in the custody of their agents; there is nothing unusual in this practice. Frequently agents actually fail to deliver policies which the home office has issued. Thus, at any given time, an agent may have several policies in his possession. Question (1)(d) indicates that 38 out of 42 of the reporting companies allow their agents to have possession of surrender forms, and a surrender form accompanied by a policy which has come from an agent's office would seldom raise questions concerning the agent's good faith. The questionnaire did not furnish any supplemental information relative to defalcating agents, but the possibilities for fraud do exist so long as the general public has access to surrender forms, and there are dishonest insurance agents who will convert the funds of others.

The second category of fraud involving the misuse of surrender forms relates to "overreaching spouses". Some of the most illumin-
ating comments concerning the subject of impostor forgeries came from a midwestern insurance company, in a letter discussing a re-
cent surrender forgery, and suggesting possible defenses which the insurance company might raise. The letter stated, in part:

The case involved the forged surrenders of both an endow-
ment policy and a whole life policy by the recently deceased wife of our policyowner. The forgeries were discovered at the time of the wife's death, some five years after the forged surrenders had been executed. Because of our policyowner's si-
ence for over five years (during which the endowment policy would have matured and premium notices and similar com-
munications typically sent by insurance companies termi-
nated) the Company has taken the position that the forged surrenders were either effected by the wife with her hus-
bard's authorization or, in the alternative, were ratified by the husband's silence during the time in which he was, or reasonably should have been, on notice of the surrenders.

I mention this case because it is typical of forged loans and
surrenders in that it was done by a member of the policyowner's family and was achieved by way of mailings directly to the policyowner's address on file with the Company. The fact that many forgeries are by family members makes it difficult to protect the insurance company by way of mechanical procedures. Family members are skillful forgers, familiar with the existence and value of policies, and in a unique position to intercept the policyowner's mail.

However, the family situation often carries with it the presumption of authorization or ratification and the possibility that the surrender or loan funds inured, directly or indirectly, to the benefit of the policyowner. Thus, in some instances the insurance company is not completely doomed by the impostor rule to bear the loss resulting from forgeries.

Another element of such cases is that in situations where the forgery is effected by a living family member there is a reluctance on the part of the defrauded policyowner to make a claim against the insurance company for fear of criminal prosecution of the forger.

There is some question as to the efficacy of the ratification and benefit defense theories. It is a general rule that wrongful surrender of an insurance policy by a spouse does not bind the insured, absent clear ratification. In a leading New York case having facts similar to the problem mentioned, Whitehead v. New York Life Ins. Co., the court held that the husband's wrongful surrender of his wife's policy on him did not bind her, and that the wife was in no way prejudiced by her failure to pay premiums after the surrender. The court stated that the insurer could not take advantage of a default that its own negligent wrongdoing had helped cause.

Whatever the merits of the ratification or benefit theories, they do not protect the insurance company from the loss which arises initially when the impostor negotiates the instrument. The drawee bank, rather than the insured, is the second party directly involved, and the comments in one reply very succinctly summarized the position which any bank would surely take whenever a forgery claim was raised: "(A)ll banks uniformly invoke the impostor rule in cases of forged signatures. I would be deeply interested in any companies that have avoided imposition of the impostor rule under the U.C.C."

The third category of potential impostor fraud involving forged surrender documents relates to the forgery opportunities available to employees who process the transactions at the home or branch office. These employees are in a unique position to obtain knowledge and information to enable them to carry through defalcations, and a really clever forger could so select his cases that the company's

50. 102 N.Y. 143, 6 N.E. 267 (1886).
normal safeguards, i.e., internal auditing procedures or premium notices, would not be wholly effective in preventing the fraud. A hypothetical will serve to show the ease with which an impostor-employee could effect a fraudulent surrender. Most employees have access to policyowner files; the nature of insurance operations requires this to be the case. The impostor wishes to select only those files which he knows will have relatively high cash surrender values, so he concentrates on certain features or combination of features which will maximize his prospects for success and minimize or eliminate entirely the risk of being caught. He selects several files, and among these is one which has the following points of interest: (1) The policy is a "20 Pay Endowment" (high cash value) on which the insured has already made 20 payments (the policy endows at a later date) — therefore, the company no longer sends the insured premium notices; (2) the agent who originally sold the policy to the insured is no longer under contract with the company; (3) the insured lives in an area which is no longer serviced by any agent of the company. (The latter is by no means an uncommon situation, and the industry jargon labels these policyowners as "orphans".) Since the company requires physical possession of the policy before it will process the surrender, the would-be forger must either obtain possession of the policy or side-step the requirement as follows. Because policyowners do occasionally lose their policies (or because the policies are destroyed), companies furnish forms which any insured can complete and forward to the company as a substitute for the policy itself. Hence the impostor simply completes one of these forms and mails it to the company — mailing the form naturally imparts to the transaction the air of authenticity which might otherwise be lacking. Reference to question (5) reveals that all companies replying will handle written or telephone surrender requests in areas not serviced by any company agent. Of the 41 companies which require completion of a "lost policy form," all 41 will send the form directly to the insured upon written or telephone request. Presumably, therefore, the impostor would not excite any suspicion by simply mailing the completed form to the company's home office. The company would be in possession of the document necessary to complete the transaction, and employees doing the processing would simply send the surrender check to the insured's address of record. This last step might cause the impostor some difficulty, but the difficulty is not insurmountable. It is an easy matter to effect a change of address for any policyowner. Several days before the impostor carries out the fraudulent transaction, he simply forges a letter from the

51. The comments on one questionnaire: "We receive from 2,500 to 3,000 change of addresses each month and the volume dictates that we assume some of the risk as to the authenticity of an address change request. This request can be made by phone, through an agency office or by mail."
insured requesting a change of address to a post office box in the same city, to a prearranged address, or perhaps to a fictitious address, knowing that when the post office is unable to deliver the instrument, it will return the instrument to the home office at which time the impostor will intercept. Then too, there is always the possibility that the impostor will be in a position to misappropriate the check before it leaves the company premises. The variations here are manifold but the point is this: final interception would not pose serious problems to the impostor determined to get results. During this entire process the impostor would be aided enormously by the technologies which have served to orient internal insurance operations toward the goal of satisfying the demands of mass consumer marketing — the storing of policy and policyowners information on magnetic tape. In most companies this information is available to scores of employees. The most distinguishing characteristic of the double phenomena of insurance surrenders and loans is that the insurance companies appear to be conducting a very sizable commercial banking business on the basis of transactions which are not face-to-face, and which consequently do not incorporate the safety features indigenous to such transactions.

Questions (2) through (7) were designed to elicit information concerning various situations in which an impostor could go about obtaining the information and documents essential to effecting a successful impostor fraud. Question (2) simply indicates that companies will allow an insured to initiate surrender action by mail or telephone communications. The answers to (2), (2)(a) and (2)(b) are essentially a quantitative confirmation of question (1)(e), and indicate that an insured can initiate surrender action without directing his request through a company agent. The survey results are significant because the requirement that all surrender requests be routed through a company representative would have considerable effect upon success of an impostor scheme, and if it were practical or possible for companies to require such channeling in every instance, very few impostor opportunities would arise.

The subject of telephone communications is one which probably merits an independent, in depth study beyond the scope of this article. The questionnaires indicate that a substantial majority of companies do permit the initiation of surrender requests by telephone. This fact is of particular significance because telephone communication injects a personal element into any business relationship that simply cannot exist in any communication which involves only the written word. A clever, knowledgeable impostor could so fabricate a putative fact situation as to induce the company to take surrender action under circumstances which would make it appear that to do otherwise would cause the insured a real hardship. The ploy would not be successful in every instance, but the thrust is this: if an impostor can make his fabrication appear to be plausible to the party
answering the telephone, he will have been able to set in motion a chain of events which will likely end in the success of his scheme.

All companies are reluctant to have insureds terminate their contracts by surrendering them.\textsuperscript{52} As the questionnaire results indicate, (question (3) ) 73% of the companies do attempt to salvage or "conserve" those cases in which an insured has indicated a desire to terminate the contractual relationship. What is significant for this study is that 80% of the companies indicate that they will respect the wishes of those insureds who specifically request that the company refrain from dispatching an agent to "talk them out" of their decisions. The implications for impostor fraud are obvious. Consider, for example, the family situation in which one spouse has decided to "cash in" the other spouse's policy. The defrauding spouse knows that the action is definitely contrary to the other's intentions. He or she also knows that the agent who sold the policy is likely somehow to be involved in any transaction between the insured spouse and the company which results in the company's issuing a check or draft to the insured. A telephone call to the home office imparting a tone of righteous indignation or wrath directed at a fabricated misconduct by the agent would in many cases suffice to convince the company that the agent should not be allowed to aggravate an already sensitive situation.\textsuperscript{53} In some situations the impostor might combine the request of "send no agent" with a change of address in order to make it impractical or impossible for an agent

\textsuperscript{52} If an insured chooses to surrender his policy at an early stage in the life of the policy, the company will incur a loss because there will not have been time for the company to offset the high acquisition costs against years when commissions payable to the agent are low or no longer payable, and the company can begin to realize a profit. If termination comes after a policy has accumulated a high cash value, the company loses a source of premium income and the cash outlay needed, for termination diminishes the amount of cash on hand which would otherwise be used as working capital.

\textsuperscript{53} Question (3)]{b]] indicates that 71.4\% of those companies which honor the insured's request to "send no agent" will nevertheless notify the agent that surrender action has been requested. Whether this procedure would prevent impostor fraud is impossible to postulate with any degree of certainty. The hypothetical situation discussed involved facts which would lead any agent to believe that the situation was largely outside the scope of his influence and control simply because of the physical distance separating him from the insured's new residential location. Also, if the company makes it clear that it has honored the insured's request, the agent may feel that his attempt to contact the insured would create an awkward situation and at best would be merely a waste of his time. On the other hand, if the agent is personally acquainted with the policy-owner, he may be in a position to know that something is amiss, and would probably be motivated to investigate an apparent irregularity. Agent attitudes toward conservation efforts are a curious mixture ranging from complete indifference and apathy to genuine gratitude to the company home office personnel for placing the agent on notice that a policyowner and source of commission income is about to be lost, but because an impostor would not choose his victim on the basis of whether the policyowner has a superior or mediocre agent, it is not possible to determine in any given case whether the company's notification to the agent would be effective to prevent a fraudulent transaction.
to attempt conservation. There could be concern by the impostor that a surrender request accompanied by a change of address might excite some suspicion, although this is not necessarily the case.\textsuperscript{54}

Question (4) shows that under “emergency” circumstances a large percentage (93\%) of the reporting companies will deal directly with the policyowner. It is the authors’ personal opinion that few impostors would actually resort to the “emergency” approach. Yet the fact that 93\% of the reporting companies show they will handle emergency surrender requests on a direct basis with the insured, i.e., by-passing the agent, raises questions as to whether this accommodating approach opens avenues for particular classes of impostors. Generally, these would be persons who, by an adroit combination of apparent authenticity and documentation, would be able to convince an insurance company home office of their need for immediate cash funds.

Question (5) treats situations in which no agent of the company is available to service the needs of insureds living in a particular geographical or administrative area or region. For the insurance industry as a whole, agent “turnover” is high, and the contractual relationships between insurance companies and the agents are drafted heavily in favor of the companies. Upon terminating an agent, the company will become successor to all the premium income and service needs of that agent’s clients unless the agent has earned a “vested” right to retain commissions, or has come to a special arrangement in which he agrees to service the continuing needs of active clients. Thus, it is not surprising that 100\% of the replying companies will furnish surrender forms to an insured who lives in a non-service area upon the insured’s written or telephone request. The possibilities involving impostor fraud in a non-service area situation are apparent, and a person possessing knowledge of a company’s clientele and procedures would be in a position to initiate and carry through a fraudulent surrender scheme. The most obvious loss could come from machinations in which the company’s former agent becomes the principal dynamic force.

An agent rarely forgets a client to whom he has sold an insurance

\textsuperscript{54} A clever impostor would send a written change of address to the company about ten days prior to initiating the surrender action. At the end of the ten days, he sends a letter to the company in which he states that because of sudden, unexpected expenses incurred in moving from his prior location to his present one, he has been forced, albeit reluctantly, to surrender his policy. His letter might go on to say that his agent in his previous city had already advised him that he should write directly to the company for the necessary surrender forms. The impostor then awaits the surrender form at the decoy address or post office box rented for this purpose, and receiving it, completes it and mails the form and stolen policy to the company. If the company in question is one which compares signatures between the application and the surrender form, the impostor will have a specimen signature on which to practice forgery, since every policy contains a photostatic copy of the application on which the insured’s signature conveniently appears.
policy or policies, and this is especially true if the policy in question has produced a high commission income for him. Any agent is likely to keep a listing of his clients — their names, addresses, and policy numbers — as sources of new business. It is not unusual for an unsuccessful agent to incur large debts with the company, resulting from “advances” which the company makes to the prospectively successful salesman until he has established commission income sufficient to carry him as an independent operator. If the salesman is unsuccessful and the company begins to pressure him or terminates his contract, he may conjure up a scheme to relieve his financial pressures. If his inclination runs to forgery, the possibilities are manifold. The agent will generally have a list of existing local clientele, photocopies of most applications (and signatures) submitted to the home office, and if resourceful possibly even temporary possession of the policies themselves. The remainder is fairly simple. If he has no reservations about removing any and all doubt as to his involvement, he can send the policy, surrender form, and a written but forged authorization signed by the client directing him to handle the surrender transaction. Once the home office has received these documents, it will process the surrender and forward the check or draft through the agent’s office. This hypothetical does presuppose that the agent knows events and circumstances will sooner or later expose this scheme and bring it into the open. If the agent is more circumspect and decides to employ the address change scheme, the home office is unlikely to suspect any irregularity. As the questionnaires show, 100% of the companies under both questions (5) and (6)(a) will honor telephone or written requests for surrender forms involving circumstances indigenous to those questions. If the agent has selected a former client who pays his premium annually rather than semi-annually, quarterly, or monthly, an additional advantage is gained: If the policyholder has just paid an annual premium, there will be no reason for him to become concerned for at least another ten or eleven months. If the policyholder dies in the interim, i.e., between defrauding and discovery, but after the next billing date, the rights and responsibilities of all parties involved become intriguing legal questions.

55. For example, he could say that the company is introducing a new policy similar to the one the client (Z) now owns, but which is really superior. The agent (X) is also writing business for Company B, and B can offer the same coverage to Z for considerably less premium; however, for X to determine whether it would be advantageous for Z to make this change, X would like to examine Z’s policy. There is really nothing irregular about such a procedure; legitimate agents often obtain temporary possession of their clients’ policies for the purpose of analyzing those policies in light of their clients’ changing estate considerations and income potential. In this instance, if X succeeds in obtaining possession of Z’s policy, he will give Z a receipt, and there are fair odds that Z will not know that X no longer represents Company A.

56. Because different principles of law are likely to be involved, e.g., apparent
Question (7) does not ask whether the company mails the checks direct to the insured or routes delivery through the agent of record (if any). This was simply a drafting error by the writers who confused the word “issue” with “mails”. In only one instance did the comments shed any light upon this. One company indicated that in the absence of emergency circumstances it sends the surrender check to the general agent for delivery to the insured. Absence of comments in the remaining surveys would appear to support the conclusion that when a company has finally issued a surrender check, it mails that check to the insured rather than routing it through an agent for delivery.55

B. RESPONSE TO THE POLICY LOAN QUESTIONNAIRE

The impostor risks inherent in the surrender of life insurance policies by use of the mails and telephone are even greater in transactions where the impostor is seeking a loan against an insurance policy he does not own. This is true for a variety of reasons. First, an impostor does not need possession of the policy to initiate the defrauding scheme; second, in many cases, as the survey shows, the companies require no loan agreement beyond a special indorsement which appears upon the loan check; and, third, the agent who sold the policy or who services the insured's needs has no real interest

55. The authors know from personal experience that this is the procedure with many insurance companies. In addition, the nature of the transaction itself, i.e., termination of the contract, general unwillingness of agents to spend time upon fruitless business transactions, and the unavailability of agents in some instances, also suggests that companies will mail surrender checks directly to terminating insureds in the majority of cases.
in dissuading the insured from borrowing against his policy's cash values. In short, there is nothing in a loan transaction which is comparable or analogous to the danger signals that may alert the company when an insured wishes to surrender a policy. The agent continues to receive full commissions, and the policy remains in force, encumbered only by the amount of the loan as a lien upon the face amount payable to the beneficiary upon the insured's death.

Analysis of the loan survey questions will proceed along lines similar to the analysis of the surrender questions. Certain questions appear in both surveys, and for that reason, their discussion will be minimal to avoid a restatement of material covered above. This pertains primarily to questions (1)(a) through (1)(e). The data contained in the loan survey offer yes and no answer percentage figures which do not differ substantially from comparable surrender data. In short, those companies which require the execution of a loan agreement embodied in a form use the same procedural safeguards and the same distribution techniques in processing those forms that they use in processing surrender forms.

On the other hand, one of the major differences between the processing of loans and surrenders is the fact that only 55% of the reporting companies require execution by an insured of a separate loan form or agreement. Also, the comments contained in the survey suggest a great degree of flexibility on the part of companies in their handling and processing of loan requests. These comments embodied in the footnote below58 will give the reader some insight into the procedural flexibility which the companies employ in handling loan transactions, and suggest that the companies have a fair measure of confidence that their loan procedures are safe and efficient. The comments in one reply seem to summarize the companies' desire to provide fast, efficient services to their insureds:

If you would telephone the Company in the morning wanting a loan on your policy, the loan check will be mailed to you in the afternoon and you will not be required to sign a loan agreement or deliver the policy. The loan check has a statement on its face indicating that the insured is assigning the policy as security for the loan. This method of doing business is for benefit of the insured — and, incidentally, the Company — usually a person seeking a policy loan or surrender has a

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58. Loan Survey General Comments:

(a) Companies are continually moving away from restrictive administrative procedures in order to save costs and provide faster service. We take many risks every day and the number of resulting problems is really quite small. With policy loans . . . generally the only protection we have is a brief statement on the back of the check. . . .

(o) One occasional problem we have with loans involves a marital difficulty whereby a spouse tries to raid the values of a policy. . . . I can recall only one case where we paid $400 to a husband after a wife had forged his name on the back of the loan check.
particular need for money and wishes prompt service. We believe our procedure provides the service.

The reader will recall that the discussion of the insurance cases introduced three categories of impostors who were in unique positions to carry out fraud or defalcations which would ultimately result in the issuing of negotiable instruments to insureds, but which the impostors would intercept and negotiate. There is no reason to believe that these same impostors would be any less successful with schemes involving policy loans. Forty-five per cent of the answering companies do not require the execution of a separate loan form. These companies satisfy the requirements of the loan agreement by printing or typing language on the reverse side of the instrument — in effect, a restrictive indorsement. One of the comments contained the following language which the reporting company stamps on the reverse side of its check:

**Loan Agreement and Policy Assignment**

This check, when indorsed and presented for payment, represents payment of the proceeds of a policy loan as per voucher attached, and becomes a proper loan agreement and assignment of the policy, under the provisions thereof, to the com-

---

(b) "Printed Loan Agreement," for cash loans is endorsement of policy loan check.

We have had more difficulty with agents than with policyholders in regard to forgery.

(c) The loan check has a loan agreement on the back; when the insured endorses the check he signs the loan agreement.

(d) Majority of cases loan agreement is on the reverse of the loan check which is executed when the insured endorses the check.

(e) We do have a form which is available for request of a loan, but it is not necessary.

(f) Our loan agreement is printed on the reverse side of our check and endorsement of the check constitutes the loan agreement. The check bears the notation "Personal Endorsement Required."

No application for loan is required. We will accept a request by phone, letter, wire, etc. All loan checks are sent to our agent for delivery if there is an agent of record in the vicinity. If not, the check is mailed direct.

(g) Our Company furnishes a printed loan agreement but the insured's signature is not compulsory.

(h) The printed loan agreement is required (only) when the policy is assigned.

(i) (Signature) comparisons may be made if accompanied by change of address notice or instructions to deliver check to a "strange" address.

(j) The combination check-policy loan agreement (is a) plan (that) involves special procedures applicable only for loans up to $1,500. The intent is to handle such loans more expeditiously than ordinary policy loans. These loans may be requested by letter directly from the policy-owner, by telephone call or other methods.

(k) A statement of the loan transaction is sent to the policy-owner in every case. A loan check is not sent to just anybody. Some reasonable precautions are exercised.

(l) Our only problems with the impostor rule have resulted when agents, having forged the insured's name (on application for insurance), later forges (named insured's) name on loan application.

59. See 3-206. Stamping this language on the front of the check would destroy negotiability under § 3-104(1), but for the reasons stated supra in the text at footnote 41, the language would appear to have no other legal effect.
pany, and is a representation that the payee's interests are not impaired by any bankruptcy proceedings or by any prior assignment of said policy.

A second company uses a stamp which embodies the following language:

\textit{Notice to Bank and Payee: Personal Endorsement is Required}

This check is the net payable under a policy loan herein applied for in the full amount stated on its face and such loan is made subject to the terms of the loan provisions in the described policy.

The language in this stamp probably establishes and clarifies the debtor-creditor relationship between the insured and the company, and streamlines the procedures for getting a loan check into the insured's hands, but how does such a simplified procedure aid the machinations of the faithless home office employee? Let us assume that X is an employee of Company A. X decides to defraud A by using a scheme whereby he will induce A to issue a loan check, payable to an insured, which X will thereafter manage to intercept. X wishes to avoid early detection of the defalcation so he selects his victim with as much care as possible. Let us further assume that X selects Z as his victim because (1) Z's policy has accumulated considerable gross cash value, (2) Z has already borrowed heavily from the policy's value, and (3) Z's individual policy records contain many written requests to borrow money. Under these circumstances, two results are likely: (1) Z will be more prone to overlook the increase in his loan balance than he would if there were no loan balance at all; and (2) personnel who process policy loans are not likely to question a loan request from an insured who has made many similar requests in the past. X simply drafts a letter similar to the others on file and either mails the letter to the home office, or, in the event he is in a position to guide the policyowner's file and letter to the loan processing department, uses this method. If the employee in question has access to out-going mail, he will be able to intercept the instrument before it leaves the processing department or the company premises, or in the event he is involved in the processing of loan requests he simply misappropriates the instrument. Prior discussion has outlined the ease with which almost anyone can effect a change of address on a company's records, and in the event such a change is necessary, X will encounter no difficulty in so doing. This hypothetical is based upon a situation in which the company does not use a separate loan agreement. If we assume that the company does employ such a form, the opportunities for X to execute a defalcation are no less likely to be successful. Unless the department having custody of these forms keeps them under lock and key (very unlikely), X can obtain a form or forms simply by making a request to the appropriate per-
sonnel. The remainder is elementary: X obtains the policy records, forges Z's signature upon the loan form and mails (if necessary) the forged loan form and a decoy cover letter to the home office. The end result is the same — X has induced the company to issue an instrument to the order of the insured. Again, the availability of forms and information, and an impostor's ability to alter company records would combine to allow a defalcation scheme to succeed with alarming ease.

Until this point the discussion has focused (with the exception of the experience reported by one company involving two forged surrenders), upon possibilities for impostor fraud. To bring home the reality of the problem, the reader should recall the $24,600 loss caused by a real impostor-agent in the recent case of Delmar Bank v. Fidelity & Deposit Co., discussed above. The case is significant not only because of the amount of loss involved but also because of the time element, i.e., the total elapsed time (two years) between the agent's initiation of the scheme and discovery by the company. It is also significant because the bête noire was a company agent who, because of his position, was able to carry through his scheme with apparent ease.

The third category of impostors — the faithless spouse or family member — offers as many potential problems as each of the other categories. Discussion of this category in relation to surrenders was premised in part upon the availability of documents, and the opportunities to execute excellent forgeries and intercept an insured's mail. If these factors can combine to facilitate fraudulent policy surrenders, there is no factor present which would make fraudulent loan requests by family impostors any less successful. In fact, such attempts are more likely to succeed than their surrender counterparts. Ninety-seven percent of the reporting companies indicate that they mail loan checks to insureds if the requests have originated from the insureds, and this procedure suggests impostor opportunities which are nearly impossible to police or to control. Whether the document which initiates the loan request is a letter or a loan form, the family impostor is in a dominant position to carry through a successful operation. Furthermore, in this situation there is no analogue to the "conservation" efforts which companies emphasize so heavily in relation to policy surrenders. Companies do not at-


61. This decision did not go below the surface facts to show what combination of circumstances and events led to such a degree of credulity on the part of those responsible for processing loans that would permit an agent of the company to defraud 20 times over a period of two years. The thing that gives this case its bizarre shading is the fact that insureds do not ordinarily borrow so heavily against their policy values. It is this factor which should have eventually rendered the agent's instructions suspect, and which should have caused the company auditors to do some probing to determine whether the insured was really receiving those loan checks.
tempt to dissuade insureds from exercising their loan rights.

Question (2) deals with those 20 companies which do not require a separate loan form for an insured to initiate a loan request. The question asked if the companies nevertheless required a written loan request, to which all but one of the companies replying answered no. The obvious corollary is that those companies which responded with a negative answer will handle loan requests in which telephone communications are not supplemented by written documentation. Further analysis reveals that all 16 companies which replied with a negative answer will issue checks on the basis of telephone requests. Nine of the 16 impose no maximum amount upon checks which are issued from requests initiated by telephone. Sixteen companies comprise over 38% of all the replying companies, and the implication which emerges from this analysis is that 38% of the companies included in the study will entertain loan requests originated solely by telephone, and will issue negotiable instruments on the strength of those telephone communications. Projected on a nationwide basis, something on the order of 684 companies will allow a caller to identify himself as an insured, and then proceed to honor his request to issue a check.

Twenty per cent of the surveyed companies (9 of 16 included in question (2) ) impose no maximum upon the amount of the loan check, subject to the maximum cash value available. Thus, those companies which have eliminated documents of any kind in effecting loan transactions appear to be the ones which will most readily take the risks associated with issuing negotiable instruments on the basis of telephone communications. Prior discussion has underscored the risk associated with undue reliance upon telephone communications. This medium is very effective and enables companies to process a great volume of loan requests, but it also is a very convenient mechanism which has the potential to enable impostors to defraud.

Question (3) gives an overall view of the company practices in relation to loan requests made by telephone. Ninety per cent of the reporting companies allow insureds to initiate loan requests by telephone. There is evidence of some caution by certain companies in issuing checks solely upon this basis, as eleven companies indicate that they require additional written documentation before issuing checks. Twenty-four companies state that they require loan forms to process loan requests, yet 29 state that they will issue checks on the basis of telephone communication alone. The authors conjecture that the companies read something into 3(a). What some of these companies are probably saying is that they will issue checks from requests which have been originated by telephone, but are unwittingly omitting an intermediate requirement of some sort of documentation. Another possibility is that certain companies
which use forms as a matter of general procedure dispense with them under certain circumstances. The general comments did suggest a great deal of flexibility in loan procedure, and the procedures may be altered to accommodate special situations as they arise. Some of the companies appear to have answered (3)(b) on the basis of “maximum amount” being the equivalent of “maximum cash value.” In other words, if a company responded with a yes answer but qualified that answer, as one company did, by adding “to maximum loan value available,” such answer is really a no answer as any policy loan is always subject to the maximum loan value. The comments furnished no clarification about this point, and it is impossible to determine how many companies interpreted the question in this manner. However, of the 29 companies issuing checks on the basis of telephone communications, 15 show that they issue checks which are not subject to maximum amounts, and 15 companies comprise over one-third of the total included in the survey.

Question (5) deserves brief comment. The question asked if the company requires possession of the policy until the loan is repaid. All responses were negative. The comments of the companies do not mention question (5) even once. One can speculate why companies reject this procedure, but administrative considerations probably rank as the primary factor — companies simply do not wish to be burdened with the custodial responsibilities involved in keeping and safeguarding thousands of policies. There is merit in this, but such a system would obviously offer a certain amount of protection to any company. After all, a telephone impostor who must obtain an insured’s policy and forward it to the home office will find this undertaking more difficult than merely inducing the company to issue a check on the basis of this telephone conversation.

V. AVOIDING THE LOSS — POSSIBLE SOLUTIONS

A. THE BONDING SOLUTION

Several companies responding to the questionnaire mentioned the possibility of securing fidelity bonds for their agents and home office employees. Regrettfully, the questionnaires did not ask about bonding practices, and the authors frankly acknowledge that whether a company bonds its employees can have a significant effect upon its attitude toward losses occasioned by forgeries.62 All insurance companies can and should protect themselves by fidelity bonds for their agents and employees where possible, but the authors question whether it is feasible to bond every employee with access to the home office files. Perhaps the blanket bond insuring against

62. Two responses commented on the possibilities of blanket bonds specifically covering insurance frauds. They stated:
all forms of insurance fraud is the answer, but the extent of coverage may be limited, and as the incidence of insurance impostors rises, it is questionable how long and to what extent the bonding companies will relieve the insurance companies from their own negligence. It would indeed be interesting to determine if bonding companies have realized increasing losses in the impostor situation. In any event, fidelity bonds cannot protect the company from non-employee impostors, and if other solutions to the problem can be found, the companies would be well advised to consider them.

B. The Negotiable Instruments Solution

In Bank of Italy v. First Bank of Kern, an impostor had stolen from the mails a check made payable to the order of one E. Smith. The impostor forged Smith's name and presented the check to plaintiff bank, which refused to cash the check because the impostor could not present proper identification. On the urging of the impostor, plaintiff did put the check through for payment, but held the resulting proceeds for the account of E. Smith, issuing the impostor a receipt describing the prior instrument and stating: "This is intended as a letter of advice only, is not negotiable, and is not to be construed as establishing, directly or indirectly, any credit." The impostor took the receipt to defendant bank, convinced the bank that he was Smith, and asked them to get the money from plaintiff for him. Defendant asked plaintiff to mail a cashier's check, which plaintiff did, making the check "payable to the order of E. D. T. Smith, being the same person as the payee of said draft hereinbefore mentioned, and payable to no other E. D. T. Smith,

There are hazards which can only be protected against by crime insurance. During the past ten years we have had two instances of agents requesting policy loans for our insureds with the insureds never seeing the loan checks which were forged and the proceeds converted by the agents. We looked to the protection afforded by a fidelity bond to protect us in each of these instances.

It should be noted that insurance companies generally carry a broad form of blanket Bond (Insurance Companies Blanket Bond-Standard Form N. 25) which contains very broad protection for losses caused by forgery or alteration of policy loan agreements and/or checks, drafts, promissory notes, etc. It would be interesting to perhaps determine if bonding companies have noticed increasing losses in the "impostor" area from insurance companies and what, if anything, they suggest.

63. The authors believe it is possible that a clever impostor scheme combining a home office employee, a computer for print-outs of policy information, and a little luck in avoiding detection could deal a financial blow to an insurance company.

64. 69 Cal. App. 319, 231 P. 44 (1924). The results of the case on its peculiar fact situation have been approved by Britton, supra note 11, § 151, and by 14 Cal. L. Rev. 45 (1925).

65. 231 P. at 45.
or other person whomsoever." The defendant bank then cashed this check on the forged indorsement of the impostor, and returned it to the plaintiff bank. When the latter was held liable on the first check, it sued defendant on the second. The court held that the restrictive language in the payee section of the check was sufficient to preclude defendant from successfully asserting the impostor defense.

Using the rationale of this case, it may be possible for an insurance company to devise a method of transferring money to its insured when he surrenders or borrows on his policy, and shift the risk that it is dealing with an impostor to the bank cashing the check. The procedure would be something like the following: The insurance company receives a request for a loan or a demand for surrender from an insured. It ascertains from him the name of his local bank and mails a check made payable to the insured to the bank along with a covering letter asking the bank to check the claimant for positive identification showing he is the named payee prior to cashing the item. The bank does so and discovers the impostor, or the bank does so and does not discover the impostor before cashing the check. Yet, arguably, since the bank has been alerted to the danger of an impostor and specifically asked to take extra precautions, the bank itself will be liable for paying on a forgery and the impostor rule will not apply. The Code states that before the rule applies the drawer must "issue" the check to the impostor by use of the "mails or otherwise;" by issuing the check through an agent (the bank), the drawer has an arguable position that the impostor rule should not operate to relieve the agent from the agent's own negligence. To the argument that the banks do not have a procedure set up whereby they provide this service to insurance companies, it can be said that banks are forever expanding the number of methods by which they aid the business community, and may easily be persuaded to take on this task. It is at least worth investigation.

66. Id.
67. It might also be possible to issue the check directly to the depository bank. If some scheme is developed whereby the insured's name is listed as payee with an automatic indorsement over to the depository bank, the scheme must be careful to deal with the rule that a holder can strike any indorsement or restriction not necessary to his title. See Hall v. Bank of Blasdell, 306 N.Y. 336, 118 N.E.2d 464 (1954); see also §§3-208 and 3-605. If the impostor-payee possessed the check he could cross out the indorsement over to the bank, and negotiate it to anyone.
68. "Issue" is defined in §3-102 to mean "the first delivery of an instrument to a holder or remitter." "Holder" is defined in §1-201(20) to include a person in possession of an instrument "issued or indorsed" to him.
69. Banks have been willing in the past to work out special arrangements for insurance companies. For example, most banks will permit their depositors to sign an
C. The Careful Insurance Company Solution

Over and over again the “impostor-fictitious payee” court opinions stress the idea that the careless drawer should bear the loss caused by his own negligence. In Franklin National Bank v. Shapiro,70 a 1970 section 3-405 case involving a bank loan to an impostor, the court specifically condemned the “superficial investigation” that the bank conducted to determine the identity of its mail correspondent. The court added:

The plaintiff in the instant case adopted a procedure that was superficial and careless in establishing the identity of the payee. The plaintiff’s negligence permitted the fraudulent scheme to gain existence, and permitted its perpetuation without scrutiny or concern until a default occurred.

Based on the accepted rule of loss distribution, the plaintiff cannot be permitted to succeed in recouping a loss created and set in motion by a policy of investigation that was totally lacking in circumspection. Proper diligence and vigilance would have obviated the chicanery practiced in this case in its embryonic state.71

In Metropolitan Casualty Ins. Co. v. First National Bank,72 the Nebraska supreme court held a plaintiff insurance company responsible on the forged check, as it had created the matrix the forger operated within. The court singled out as negligent the very practices explored above:

To apply herein the statute as invoked would permit plaintiff to exact of defendants greater vigilance to prevent fraud than that exercised by plaintiff itself. It changed the beneficiary in a policy on an application signed by an impostor and not by the insured. It granted a loan on a policy under an application of which the insured knew nothing. It had in its possession at the time genuine signatures of insured which, if compared with spurious signatures accepted by it as genuine, might have prevented the fraud. In trusting the check to the mails, a registered letter and a demand for a receipt bearing the genuine signature of insured would quite likely have avoided the loss. Through negligence of the insurer the check fell into the hands

authorization whereby the bank automatically issues premium checks to the insurance company each month, thus making payment more likely. In this situation, however, the banks insist that the insurance companies agree not to hold them liable for resulting errors. Even should the banks only accept the proposed solution with this proviso, the scheme would still have the advantageous result of substituting a face-to-face payment for a mail transaction. The banks have been willing to undertake the collection of bills of lading and documentary drafts; the Code even provides for a statutory delineation of the bank’s duties in this situation, see § 4-501 et seq.

71. Id. at 322.
72. 139 Neb. 329, 297 N.W. 593 (1941).
of an impostor .... The conduct of insurer and the surrounding circumstances as shown by the evidence are sufficient to estop it from asserting the forgery of the first indorsement as against defendants. 73

If the insurance companies would institute any of a number of safeguards they could reduce their losses to impostors, and likely fare better in the courts. The authors would suggest the following procedural safety devices, even at the expense of some administrative efficiency, recognizing that all are subject to certain limitations: The company should (1) require the execution of separate loan as well as surrender forms, and (2) require a notary seal on all loan and surrender forms. General company reluctance to adopt this procedure, as evidenced by the questionnaires, is somewhat curious. Routine insurance company practices call for other forms, such as absolute and collateral assignment forms, to be executed under notary seal. Notary seals are subject to certain limitations (like dogged formality at the expense of diligence), but in the main notaries should be trustworthy. The company can also see to it that (3) any person who requests a loan or surrender form in person at the home or branch office furnishes satisfactory identification. The surrender survey showed that most companies make these forms available upon request to anyone. (4) Companies should cease issuing loan checks solely on the basis of telephone requests. If an insured initiates a loan request by telephone, the company should verify two items: (a) the current address of record against the address to which it is to send the form, and (b) the insured's telephone number. The company can verify independently through the telephone company the insured's number, and if necessary, verify the loan request, although this method has the limitations inherent to telephone communications generally. Finally, (5) The company should mail a statement of each loan transaction to the insured after it has sent the check to the insured, and this statement should be prepared from the check requisition by a person other than he who prepares the check requisition.

The above are not all inclusive, and one can conjure up other ideas for the prevention of schemes which impostors might perpetrate. However, there are practical limits to the employment of any procedural safeguard, and the safeguards must be realistic in terms of their effects upon administrative efficiency. Perhaps each company should evaluate its own internal procedures to determine whether it is doing all it can or should to prevent the raiding of its assets from within or without the company.

73. Id. at 332, 297 N.W. at 594-95.
VI. CONCLUSION

The message by now should be clear. Insurance companies are leaving themselves vulnerable to unacceptable business risks which could easily be avoided by more sensible procedures. The modern insurance company, with its bank of computer printouts that conveniently makes policy information available to every secretary in the office, is setting itself up for a financial beating to be delivered by the first clever home office employee with a larcenous heart and a devious mind. If the companies do not take immediate preventative steps, the club that delivers the beating is going to be section 3-405 of the Uniform Commercial Code.
## TABLE ONE

<table>
<thead>
<tr>
<th>COMPANY</th>
<th>1969</th>
<th>1968</th>
<th>1967 %</th>
<th>1966 %</th>
<th>1965 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aetna Life</td>
<td>$166,313</td>
<td>6,948,733</td>
<td>2.39</td>
<td>129,681</td>
<td>1.95</td>
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<td>American National Life</td>
<td>87,288</td>
<td>1,359,792</td>
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<td>The Bankers Life</td>
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<td>4.61</td>
<td>96,158</td>
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<td>Confederation</td>
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<td>4,724,631</td>
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<td>15.06</td>
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<td>Equitable Life, la.</td>
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<td>902,780</td>
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<td>Equitable Life, N.Y.</td>
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<td>5.78</td>
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<td>Franklin Life</td>
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<td>10.46</td>
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<td>Great-West, Canada</td>
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<td>6.44</td>
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<td>Guardian Life</td>
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<td>Home Life, N.Y.</td>
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<td>Jefferson Standard</td>
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<td>John Hancock</td>
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<td>4.80</td>
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<td>Lincoln National</td>
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<td>Manufacturers, Canada</td>
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<td>6.17</td>
<td>97,433</td>
<td>5.30</td>
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<td>Massachusetts Mutual</td>
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<td>14.50</td>
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<td>11.58</td>
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<td>Metropolitan Life</td>
<td>1,148,208</td>
<td>26,829,862</td>
<td>4.28</td>
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<td>Minnesota Mutual</td>
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<td>1,857,099</td>
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<td>1,374,292</td>
<td>24.18</td>
<td>271,537</td>
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<td>New York Life</td>
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<td>10,388,572</td>
<td>11.91</td>
<td>1,001,316</td>
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<td>No. American, Canada</td>
<td>37,121</td>
<td>667,600</td>
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<td>29,348</td>
<td>4.87</td>
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<td>617,670</td>
<td>9.25</td>
<td>46,211</td>
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<td>Occidental Life, Calif.</td>
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<td>1,573,166</td>
<td>7.95</td>
<td>106,682</td>
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<td>Pacific Mutual</td>
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<td>791,211</td>
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<td>Penn Mutual Life</td>
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<td>205,430</td>
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<td>10.06</td>
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<tr>
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<td>684,798</td>
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<td>6.96</td>
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<td>Sun Life, Canada</td>
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<td>3,516,154</td>
<td>5.41</td>
<td>149,919</td>
<td>4.43</td>
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<td>2,024,065</td>
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<td>3,209</td>
<td>0.18</td>
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<td>4,506,414</td>
<td>3.32</td>
<td>143,849</td>
<td>3.30</td>
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<td>888,296</td>
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<td>80,467</td>
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<td>Western &amp; Southern</td>
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<td>1,779,534</td>
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</table>

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### TABLE TWO

#### 1969 Surrender Ratios, Ordinary Life — 50 Leading Companies

<table>
<thead>
<tr>
<th>Company</th>
<th>Face Amount of Surrenders [000 omitted]</th>
<th>New Ordinary Insurance Issued [000 omitted]</th>
<th>Ratio of Surrenders to New Business Issued</th>
<th>Ordinary Insurance in Force [000 omitted]</th>
<th>Ratio of Surrenders to Ins. in Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prudential</td>
<td>$1,183,953</td>
<td>$10,451,154</td>
<td>11.14</td>
<td>$84,770,976</td>
<td>1.37</td>
</tr>
<tr>
<td>Metropolitan</td>
<td>1,699,005</td>
<td>9,242,096</td>
<td>18.38</td>
<td>73,084,516</td>
<td>2.32</td>
</tr>
<tr>
<td>New York Life</td>
<td>557,478</td>
<td>5,101,431</td>
<td>10.93</td>
<td>36,257,303</td>
<td>1.54</td>
</tr>
<tr>
<td>John Hancock</td>
<td>655,065</td>
<td>5,080,444</td>
<td>12.86</td>
<td>29,404,375</td>
<td>2.23</td>
</tr>
<tr>
<td>Equitable, N.Y.</td>
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<td>3,048,379</td>
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<td>24,471,122</td>
<td>2.18</td>
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<td>Northwestern Mutual</td>
<td>238,844</td>
<td>1,953,923</td>
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<td>17,218,164</td>
<td>1.38</td>
</tr>
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<td>Lincoln National</td>
<td>263,332</td>
<td>2,603,468</td>
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<td>13,866,797</td>
<td>1.91</td>
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<td>Massachusetts Mutual</td>
<td>538,320</td>
<td>1,967,222</td>
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<td>13,216,299</td>
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<td>Occidental, Calif.</td>
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<td>6.00</td>
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<td>Mutual Of N.Y.</td>
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<td>1,591,587</td>
<td>17.48</td>
<td>11,554,351</td>
<td>2.41</td>
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<td>New England Life</td>
<td>306,432</td>
<td>1,611,819</td>
<td>19.01</td>
<td>11,130,510</td>
<td>2.75</td>
</tr>
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<td>Connecticut General</td>
<td>324,428</td>
<td>2,280,346</td>
<td>14.23</td>
<td>10,126,939</td>
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<tr>
<td>Sun Life, Ca.</td>
<td>298,847</td>
<td>1,221,989</td>
<td>23.64</td>
<td>9,707,301</td>
<td>2.31</td>
</tr>
<tr>
<td>Connecticut Mutual</td>
<td>228,376</td>
<td>1,220,114</td>
<td>18.72</td>
<td>9,445,946</td>
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<tr>
<td>Travelers</td>
<td>190,520</td>
<td>1,229,072</td>
<td>51.50</td>
<td>8,853,355</td>
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<td>London Life, Can.</td>
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<td>972,114</td>
<td>31.95</td>
<td>8,398,039</td>
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<td>Mutual Benefit</td>
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<td>887,691</td>
<td>44.27</td>
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<td>Penn Mutual</td>
<td>195,418</td>
<td>967,154</td>
<td>20.21</td>
<td>7,652,479</td>
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<td>Franklin Life</td>
<td>144,689</td>
<td>1,208,445</td>
<td>11.97</td>
<td>7,598,174</td>
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<tr>
<td>Aetna Life</td>
<td>219,186</td>
<td>1,189,644</td>
<td>18.42</td>
<td>7,525,791</td>
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<td>State Farm Life</td>
<td>69,438</td>
<td>1,811,103</td>
<td>3.83</td>
<td>7,127,857</td>
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<td>National L. &amp; A.</td>
<td>125,901</td>
<td>1,514,300</td>
<td>8.31</td>
<td>6,848,987</td>
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<td>1,402,317</td>
<td>8.46</td>
<td>6,700,427</td>
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<td>Western &amp; Southern</td>
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<td>1,119,301</td>
<td>14.25</td>
<td>5,884,539</td>
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<td>Manufacturers, Can.</td>
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<td>14.76</td>
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<td>Continental Assur.</td>
<td>153,311</td>
<td>678,000</td>
<td>22.61</td>
<td>5,258,038</td>
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<td>National Life, Vt.</td>
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<td>565,099</td>
<td>22.37</td>
<td>4,672,481</td>
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<td>Allstate Life</td>
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<td>1,750,771</td>
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<td>773,138</td>
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<td>4,387,611</td>
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<td>491,414</td>
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<td>Business Men's Assur.</td>
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<td>Great-West Life, Can.</td>
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<td>3,745,404</td>
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<td>Guardian Life, N.Y.</td>
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<td>807,002</td>
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<td>622,374</td>
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<td>3,374,165</td>
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<td>479,294</td>
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<td>American United</td>
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<td>North American Re.</td>
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<td>2,769,677</td>
<td>1.37</td>
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TABLE TWO