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## Florida Court Unlikely to Find Wachovia, Mastercard Civilly Liable for Missing Ponzi Scheme

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By [Colby Adams](#)

A Florida court is likely to dismiss a civil claim brought by three Ponzi scheme victims against Wachovia Bank and Mastercard Worldwide for allegedly lax anti-money laundering controls, say analysts.

The three victims claim that, in opening accounts for Ponzi schemers, four financial institutions facilitated money laundering by failing "to implement and operate appropriate security policies and procedures in violation of the Bank Secrecy Act and applicable regulations," according to the complaint, filed in Broward County, FL in December.

The perpetrators of the Ponzi scheme, both U.S. citizens and foreigners, bilked up to \$220 million from at least 6,000 investors from several countries, including the United States, Panama, Jamaica and other Caribbean nations, according to the complaint. The suit names Hallmark Bank and Trust Limited and the recently closed Turks & Caicos-based TCI Bank Ltd, in addition to Wells Fargo & Co.-owned Wachovia and Mastercard.

The plaintiffs, who lost over \$8.4 million to the scheme, allege that the five perpetrators transferred money from OLINT, an online foreign exchange platform set up to bilk investors, into accounts at the three banks. The financial institutions failed to file suspicious activity reports as required by the Bank Secrecy Act (BSA), according to the complaint.

The Florida court is likely to throw out the complaint because private citizens have no rights to financial restitution in cases involving BSA violations, said Fred Abrams, a New York-based attorney specializing in asset recovery.

Under U.S.C. Title 31, only governmental authorities possess a right to proceed against a U.S. financial institution under the Bank Secrecy Act, he said.

The complaint echoes a recently dismissed case brought against Green Bay, WI-based Associated Bank. The bank allegedly overlooked "obvious red flags symptomatic of fraud or other illicit activity" by maintaining accounts for Ponzi schemer Trevor Cook, who is awaiting sentencing by a federal court for tax evasion

and mail fraud related to a \$190 million scheme.

The cases highlight the limited extent of a bank's responsibility to third party investors in policing suspicious transactions on their behalf.

"Maintaining an effective BSA program is not an obligation owed to their depositing customers and third parties, but to their regulators," said Bob Pasley, former legal counsel for the U.S. Treasury Department's Office of the Comptroller of the Currency.

The plaintiffs suing the four institutions are alleging that banks owe "a standard of care" to the "customer's customer," although the bank has no such duty, said Pasley, an independent BSA compliance consultant based in Alexandria, VA. "It seems they're just trying to go after the deepest pockets, and those belong to the bank," he said.

The argument that banks cannot be held civilly liable has legal precedent as well. In August 2006, a federal court judge in the Southern District of New York ruled in *Marlin v. Moody National Bank* that "under the BSA, "banks do not become guarantors of the integrity of the deals of their customers."

The BSA ultimately "does not create a private right of action and, therefore does not establish a standard of care," according to the ruling.

"These types of cases never go anywhere," said David Caruso, managing director of Dominion Advisory Group, a Centreville, VA-based AML consultancy. "I've testified in a number of these cases and judges dismiss or the plaintiffs drop their case because, in almost all instances, the fault lies with the person who lost their investment."

Calls to Wells Fargo, which purchased Wachovia in December 2008, and Mastercard were not returned by press time.