

In Good Times and Bad, Companies Must Guard Against Embezzlement

FRANK A. MAYER, III | MAYERF@PEPPERLAW.COM, JOSEPH C. CRAWFORD | CRAWFORDJC@PEPPERLAW.COM

FRANCIS P. DEVINE, III | DEVINEF@PEPPERLAW.COM

This could be happening to your company right now: your CFO or other trusted employee has embezzled money from your coffers, or is still stealing from you unchecked. The results can be dire for any company, and unfortunately, often not even a company's own auditors can discover thefts like these before it's too late.

Examples of embezzlement from all kinds of companies, large and small, appear in the news regularly, and usually, the money disappears quickly.

But in one case, Pepper attorneys Frank A. Mayer, III, Joseph C. Crawford and Francis P. Devine, III helped their business owner client recover more than \$5.2 million of embezzled funds within seven months after discovering the theft. Their quick action prevented a very substantial loss from becoming permanent. The facts of the case show how difficult it can be to stop the theft and recover the money, as the Pepper lawyers:

- directed the work of forensic accountants in investigating, documenting and calculating the amount of the embezzlement
- pursued limited and very focused discovery from banks and stockbrokers
- subpoenaed the necessary bank and other records tracing the CFO's spending and transactions
- requested an expedited hearing
- asked the presiding judge to enjoin any asset transfers by the embezzler and his family, freeze all the miscreant's assets, impose a constructive trust over the assets of the embezzler

and his spouse, including their homes, brokerage accounts and bank accounts

- presented only the most essential evidence, and
- persuaded the judge to grant all of the requested relief.

After obtaining the injunction freezing the former CFO's assets, the Pepper lawyers presented the pertinent testimony, exhibits and background information to the U.S. Attorney's Office in Philadelphia, which started a criminal investigation. The Pepper attorneys then submitted a proof of loss to the client/employer's fidelity insurer, gathered and provided the necessary loss documentation and recovered those policy proceeds. To date, the Pepper attorneys have recovered more than 80 percent of the embezzler's stolen funds. The investigation and prosecution culminated with the embezzler's guilty plea to federal criminal charges and the court's imposition of a substantial prison sentence.

This was a hard-won happy ending, and an example of how Pepper can help a company prevent or recover from situations like this. But victims of embezzlement, ideally, do not want to find themselves in this situation – having to react to, stop and remediate the damage. Francis P. Devine, III, a Pepper partner and co-chair of the firm's Litigation and Dispute Resolution Department, offers these tips for companies to help prevent embezzlement in the first place:

- Understand that your auditor may not, and probably will not, discover embezzlements during the annual audit of your books and records. Audits generally do not uncover frauds. In this particular case, the fraud was discovered when auditors were reviewing the company's finances, to get a clearer

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picture of how the company was faring in this economic downturn. Devine warns that in better times, business owners often do not watch money as carefully, and therefore, may not detect missing funds as readily, or as soon.

- Review carefully and periodically the steps, procedures and actions that your trusted employees who handle accounts receivable, accounts payable and other finances undertake in discharging their duties.
- Investigate anything suspicious; do not assume missing money or an accounting error is an isolated event, or an unusual experience.
- Report and ask your accountant to explore any unusual transactions, suspicions or events.
- Review your electronic data system to ensure that your trusted employees do not use a thumb drive or other supplementary device to download confidential company information.

- Retain a forensic accountant and/or an electronic data expert sooner rather than later, if you encounter suspicious behavior.
- Continue to keep your eyes and ears open for suspicious activities and unusual financial transactions even when business is booming. Good times conceal thefts.
- Remember that embezzlers and other thieves tend to spend the stolen money, and unless you track it quickly, you may not recover the money.

Experienced legal counsel working with management can efficiently and effectively implement many of the preventative steps, and is vital in recovering from theft. If you have questions or concerns about preventing embezzlement, or if you believe you are the victim of such theft, please contact the authors: Frank A. Mayer, III, Joseph C. Crawford or Francis P. Devine, III. Each of these partners is experienced in dealing with embezzlements, obtaining quick recoveries and interacting with the appropriate insurance and law enforcement authorities, which they can bring to bear in serving your unique circumstances.

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