

The Philadelphia Inquirer

City & Region

INSIDE
INQings 2
Whatever Happened To? 2
News in Brief 2
Obituaries 7

SECTION
B

SUNDAY, SEPTEMBER 7, 2003 C

The Philadelphia Inquirer

WWW.PHILLY.COM

Wachovia gets a surprise acquisition

A predecessor got a swindler to repay a big loan. His victims say their money was used. Wachovia could get hit with the bill.

By L. Stuart Ditzen
INQUIRER STAFF WRITER

The Bible says the sins of the fathers shall be visited upon the sons, and the same can happen in business.

Wachovia — Philadelphia's newest and largest bank — may be facing just such a situation, though it has not yet been determined whether it has inherited a sin, or merely a nasty legal

problem from a predecessor.

In a highly unusual lawsuit in U.S. Bankruptcy Court, CoreStates Bank, formerly one of Philadelphia's premier financial institutions and now part of Wachovia, is accused of silent complicity in a major fraud.

CoreStates is portrayed in legal papers as pressuring a swindler named David Burry to repay a \$5 million loan

in 1998, knowing that Burry would extract the money from unsuspecting victims of a huge — and soon-to-collapse — investment and check-kiting operation.

Burry used a company called CF Foods of Chadds Ford, now in bankruptcy, as a front. A bankruptcy trustee for CF Foods is seeking to recover more than \$5 million that CoreStates collected from Burry during an intense three weeks in 1998.

"The facts were grim, and the bank made the wrong choice," asserts lawyer Maurice R. Mitts, representing

the trustee. "It took money it knew couldn't be legal."

Elizabeth K. Ainslie, a lawyer for Wachovia, says CoreStates did nothing wrong. Ainslie argues in legal pleadings that CoreStates had no clear information that Burry was engaged in fraud at the time the bank spurred him to repay his loan.

Because CoreStates merged with First Union in 1998 and First Union later merged with Wachovia, the claim has passed down through the

generations and now rests at Wachovia's door.

If Bankruptcy Judge Kevin J. Carey, presiding over the CF Foods case, orders Wachovia to pay the claim, the money would be returned to Burry's victims as partial restitution.

Burry, 44, formerly of Kennett Square, is serving a 12-year prison sentence for money laundering, bank fraud and mail fraud. He pleaded guilty in U.S. District Court in 1999, admitting that he used CF Foods, a wholesale candy distributor, to bilk \$25 million from dozens of investors and several banks.

Victims were astonished to discover that CF Foods was a sham. The company had seemed fabulously successful. The engaging and persuasive Burry had convinced backers that he was making millions buying large quantities of candy from manufacturers at closeouts and reselling it to discount stores.

Investors received 18 percent to 30 percent interest on their money. But it was a classic pyramid scheme. The profit paid to one investor was drawn from money invested by another. At the end, Burry tried to keep the scam afloat in a frenzy of check kiting.

All of that happened even though Burry had pleaded guilty to an earlier check-kiting scheme in 1995 — and his major investors knew it. Burry convinced them that he had reformed and become a devout Christian.

The CF Foods scam operated for four years before collapsing early in 1999. As Burry headed for prison, CF Foods was forced into bankruptcy.

But CoreStates managed to get its money back before the bubble popped.

Four years later, bankruptcy trustee Arthur P. Liebersohn is engaged in a long, slow process of trying to recover millions of dollars for about 75 creditors, most of them investors in CF Foods, who were defrauded.

Paul B. Maschmeyer, a lawyer working with Liebersohn in the collection effort, said \$2.3 million had been recovered and \$3 million more in judgments had been won but not yet collected.

The largest remaining claim is against Wachovia.

Documents filed in bankruptcy court paint a picture of a bank, confronted with possible illegal activity in an account and seeing a large loan at risk, deftly recovering its money and easing itself out of a vulnerable situation.

In summary, this is what happened:

As CoreStates and First Union were merging in September 1998, loss prevention staff at First Union spotted what looked like check kiting in CF Foods' account at CoreStates.

Alerted to the situation, CoreStates officials checked but saw no clear pattern of kiting.

But CoreStates was troubled enough by "unanswered questions," according to an internal memo, that it decided to nudge Burry — sharply — to take his business elsewhere.

At the time, Burry owed slightly more than \$5 million on his \$6 million credit line.

On Sept. 28, 1998, Maria B. Samson, a bank vice president, sent Burry a letter telling him that an auditor was being dispatched *that day* to CF Foods to inspect the company's books and records.

Burry started repaying his loan at a feverish pace the next day.

It took just three weeks. By Oct. 20, the credit line was fully paid and CoreStates had its \$5 million back.

Records show that during those same three weeks, Burry raised more than \$5 million from investors in CF Foods.

Immediately after receiving full payment, CoreStates called off its audit and closed the CF Foods account.

Samson wrote Burry on Oct. 20, 1998, saying: "We have decided not to continue a banking relationship with CF Foods. We appreciate your cooperation ... in connection with the repayment of the line of credit. ... We wish you the best of luck in all of your future endeavors."

Burry's pyramid scheme collapsed six months later.

Mitts, the lawyer suing Wachovia, contends that CoreStates, in pressing Burry to repay the loan, knowingly shifted a potential \$5 million loss to his victims.

Ainslie, the bank's lawyer, says there is no evidence that the bank played a silent role in Burry's fraud. She is seeking to have the case dismissed.

Contact staff writer L. Stuart Ditzen at 215-854-2431 or sditzen@phillynews.com.