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Jun. 14, 2013

DIXON, Illinois — Had [Fifth Third Bank](#)'s predecessor flagged two fishy cash withdrawals that Dixon, Illinois' city controller Rita Crundwell made more than a decade ago, it could have saved the city \$40 million of the \$54 million she swiped, the city's attorney says.

Court documents filed last week show the former comptroller was allowed to withdraw cash straight from Dixon's capital development fund at the bank at least twice; the total was more than \$38,000.

[Crundwell is serving nearly 20 years in prison](#) for federal wire fraud. It took her 22 years to perpetrate what appears to be the largest municipal theft in U.S. history.

The information is part of the city's response to Fifth Third Bank's assertion that it should not be included in a lawsuit laying blame on the bank and auditors for Crundwell's theft.

On May 25, 2000, Old Kent Bank, a predecessor to Fifth Third, allowed Crundwell to withdraw \$29,032.16 in cash from the city's capital development fund, according to the withdrawal slip copied in court documents.

On July 19, 2000, Crundwell was allowed to withdraw \$19,080.55 in cash, another slip shows. Both slips are signed by Crundwell and no one else.

That's a violation of "reasonable banking standards" and should not have been allowed to occur, argues Dixon's attorney, Devon Bruce.

The mere attempt should have flagged a report to the bank's fraud detection staff,

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The bank “intentionally and deliberately ‘turned a blind eye’ to the tens of millions of dollars and thousands of checks Crundwell wrote for purely personal items” from a secret account, dubbed RSCDA, that the former Dixon comptroller created to siphon money from the city, he said.

The bank argues that it should not be party to the suit because of the Illinois Fiduciary Obligations Act, which protects banks from liability for its dealings with an account holder's dishonest finances.

But that's only if the bank is considered to have acted in “good faith,” and that was not the case, Bruce argues.

He said the bank knew Crundwell was acting improperly — that she lacked the authority to open the secret account — but failed to investigate, he said.

A valid resolution is required to open a city account, former Fifth Third Bank manager Amanda Powers said in a deposition. No resolution was presented.

Bruce said the bank was required by law to maintain procedures that allowed it to know the true identity of each customer, and when an account is opened by an entity and not an individual.

Powers said the bank knew that as the city's treasurer, Crundwell was allowed to sign and deposit checks into the account that were made payable to “treasurer of the city of Dixon” or “city of Dixon,” and nothing else. Crundwell, however, signed and deposited made out to “treasurer” only.

Powers said that that violated banking standards, and that Crundwell never should have been allowed to deposit checks from the city and pay them to herself, because she was never given authorization from the city.

Bruce said the “sheer number of checks” Crundwell wrote that went through the

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The bank had software put into place to monitor theft, and Bruce argues that the bank staff who monitored the software and implemented the banking procedures “intentionally chose not to investigate further.”

The secret account made Crundwell one of Fifth Third bank's largest customers, and so the bank benefitted by allowing her to open and maintain it, Bruce said.

The bank has until July 10 to file its response to Bruce's arguments. A hearing is set for 10 a.m. July 16.

In its initial defense, Fifth Third Bank said the city itself was negligent in detecting the theft, and Fifth Third is not liable for the results of that negligence.

It does not owe the city any money, because the bank no longer has any of the city's funds that “in equity and good conscience should be returned.”

Also, it says the city can't claim a breach of contract, because no contract has been provided in court documents, and because the secret account was not listed as a city account, among other defenses.

The city's lawsuit also names its former auditors — CliftonLarsonAllen, LLP, Clifton Gunderson, LLP, Janis Card Co., LLC, Samuel S. Card, CPA, P.C., Samuel S. Card, Todd Etheridge and Ron Blaine — saying they should have detected the 20-year theft.

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