

The New York Times

Safe Deposit Boxes Aren't Safe

In the early 1980s, when Philip Poniz moved to New Jersey from Colorado, he needed a well-protected place to stash his collection of rare watches. He had been gathering unusual pieces since he was a teenager in 1960s Poland, fascinated by their intricate mechanics. His hobby became his profession, and by the time of his relocation, Mr. Poniz was an internationally known expert in the history and restoration of high-end timepieces.

At first, he kept his personal collection in his house, but as it grew, he wanted something more secure. The vault at his neighborhood bank seemed ideal. In 1983, he signed a one-page lease agreement with First National State Bank of Edison in Highland Park, N.J., for a safe deposit box.

Over the next few decades, the bank — a squat brick building on a low-rise suburban street — changed hands many times. First National became First Union, which was sold to Wachovia, which was then bought by Wells Fargo. But its vault remained the same. A foot-thick steel door sheltered cabinets filled with hundreds of stacked metal boxes, each protected by two keys. The bank kept one; the customer held the other. Both were required to open a box.

In 1998, Mr. Poniz rented several additional boxes, and stored in them various items related to his work. He separated a batch of personal effects — photographs, coins he had inherited from his grandfather, dozens of watches — into a box labeled 105. Every time he opened it, he saw the glinting accumulation of his life's work.

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“I thought my heart would fail,” Mr. Poniz said. He paused in his retelling of the memory. At age 67, he has a strong Polish accent and speaks English carefully. He struggled to find the right words to describe the day he discovered his watches were missing. “I was devastated,” he said. “I was never like that in my life before. I had never known that one can have a feeling like that.”

There are an estimated 25 million safe deposit boxes in America, and they operate in a legal gray zone within the highly regulated banking industry. There are no federal laws governing the boxes; no rules require banks to compensate customers if their property is stolen or destroyed.

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Every year, a few hundred customers report to the authorities that valuable items — art, memorabilia, diamonds, jewelry, rare coins, stacks of cash — have disappeared from their safe deposit boxes. Sometimes the fault lies with the customer. People remove items and then forget having done so. Others allow children or spouses access to their boxes, and don't realize that they have been removing things. But even when a bank is clearly at fault, customers rarely recover more than a small fraction of what they've lost — if they recover anything at all. The combination of lax regulations and customers not paying attention to the fine print of their box-leasing agreements allows many banks to deflect responsibility when valuables are damaged or go missing.

“The big banks fight tooth and nail, and prolong and delay — whatever it takes to wear people down,” said David P. McGuinn, the founder of [Safe Deposit Specialists](#), an industry consulting firm. “The larger the claim, the more likely they are to battle it for years.

In the days after Mr. Poniz found his box empty, he began piecing together what had happened: Wells Fargo had apparently tried to evict another customer for not keeping up with payments, and bank employees had mistakenly removed his box instead. After drilling No. 105 open, the bank shipped its contents to a storage facility in North Carolina. After Mr. Poniz discovered the loss, Wells Fargo sent back everything it had in storage, but some items had vanished.

In a six-page report filed with the Highland Park Police, Mr. Poniz described the waxes, coins, documents and other items that were gone. Using auction records and sales reports, he estimated that their combined value was more than \$10 million. That would make it one of the largest safe-deposit-box losses in American history.

Jason Bourne is not the norm

Moviemakers love safe deposit boxes much more than bank executives do. On film, they're an essential tool for spies — Jason Bourne, for example, retrieved cash and passports from a Swiss box with the help of a device implanted in his hip — and a magnet for cunning thieves. Cinematic burglars have raided highly secured vaults by tunneling in (“The Bank Job”), drilling through a wall (“Sexy Beast”), disabling alarms (“King of Thieves”), taking hostages (“Inside Man”) or simply blowing off the doors (“The Dark Knight”).

Real-world criminals have tried similarly spectacular attacks. In Conroe, Tex., someone [cut through the roof of a bank](#) last year and looted its safe deposit vault. Robbers [took a similar route](#) three years ago into two banks in Brooklyn and Queens, where they left empty boxes scattered in their wake. (Four men were [convicted of the crime](#), which netted them more than \$20 million in cash and goods.) But such capers are rare. Of the 19,000 bank robberies [reported](#) to the F.B.I. in the last five years, only 44 involved safe-deposit heists.

Banks increasingly regard safe deposit boxes as more of a headache than they're worth. They're expensive to build, complicated to maintain and not very lucrative. The four largest American

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banks — JPMorgan Chase, Bank of America, Wells Fargo and Citigroup — rarely install them in new branches. Capital One stopped renting out new boxes in 2016. A dwindling number of customers wanted them, a bank spokeswoman said.

“All of the major national banks would prefer to be out of the safe-deposit-box business,” said Jerry Pluard, the president of [Safe Deposit Box Insurance Coverage](#), a small Chicago firm that insures boxes. “They view it as a legacy service that’s not strategic to anything they do, and they’ve stopped putting any real focus or resources into it.” He estimates that about half of the safe deposit boxes in the country are empty.

The number of bank branches in the United States has been steadily declining — [down 10 percent in the last decade](#) — and safe deposit boxes are being relocated, evicted and sometimes misplaced. In Maryland, a large bank closed several branches and lost track of hundreds of safe deposit boxes, according to a lawsuit filed by a customer who said he lost gold and gems valued at \$500,000. In Florida, [a customer accused Chase](#) of losing her box and all of its contents — coins, jewelry and family heirlooms worth more than \$100,000. (She sued; a federal judge ruled that she had waited too long to file her negligence claim and decided in the bank’s favor.) In California, a Wells Fargo customer said the bank [accidentally re-rented her box](#); the diamond necklace and other jewels she had in it were never found.

‘Safe’ doesn’t mean ‘safe’

When such cases go to court, the bank often has the upper hand. Lianna Saribekyan and her husband, Agassi Halajyan, leased a large safe deposit box at a Bank of America branch in Universal City, Calif., in 2012. They filled it with jewelry, cash, gemstones and family heirlooms that they wanted to keep safe as they renovated their home. They paid \$246 for a one-year rental. Nine months later, Ms. Saribekyan returned to the branch and discovered that her box was gone. The Bank of America location was closing, employees told her; the bank had drilled open all of its safe deposit boxes. (The bank said it sent multiple letters to customers about the branch closure. Ms. Saribekyan said she never received them.)

When Bank of America retrieved her items from its storage depot, many were missing. The bank’s own before-and-after inventories, written by its employees, showed discrepancies, according to court records. Among the items that vanished, Ms. Saribekyan said, were 44 loose diamonds, a gold-and-diamond necklace, valuable coins and more than \$24,000 in rare United States currency.

She sued the bank in Los Angeles Superior Court, seeking \$7.3 million. Bank of America sought to have the case dismissed, citing language in its lease agreement stating that the renter “assumes all risks” of leaving property in the box. But in 2017, after a monthlong trial, a jury awarded Ms. Saribekyan \$2.5 million for her lost items and an additional \$2 million in punitive damages. Bank of America then challenged the verdict, arguing that any recovery should be restricted

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by [the terms detailed in its rental contract](#): “The bank’s liability for any loss in connection with the box for whatever reason shall not exceed ten (10) times the annual rent charged for the box.

One of Mr. Poniz’s remaining timepieces. Credit Andrew White for The New York Times

Judge Rita Miller agreed. She reduced the compensation for lost items to \$2,460 and cut the punitive damages to \$150,000.

“We were shocked, furious and in disbelief that such a thing could happen,” Mr. Halajyan said. “The attorneys were throwing stupid counterarguments at us, asking, ‘Why would you put so many valuables in the safe deposit box?’ We were like, where else do you want us to put it? The word ‘safe’ is supposed to mean ‘safe.’”

A Bank of America spokeswoman declined to comment on the case.

The company’s restrictive terms aren’t unusual. Wells Fargo’s safe-deposit-box contract [caps the bank’s liability at \\$500](#). Citigroup [limits it to 500 times the box’s annual rent](#), while JPMorgan Chase has [a \\$25,000 ceiling on its liability](#). Banks typically argue — and courts have in many cases agreed — that customers are bound by the bank’s most-current terms, even if they leased their box years or even decades earlier.

No regulator formally tallies customer losses in safe deposit boxes. Mr. Pluard, who tracks legal filings and news reports, estimates that around 33,000 boxes a year are harmed by accidents, natural disasters and thefts. He often gets phone calls from people who are fighting their bank for compensation. “I tell them it’s hard, almost impossible,” he said. “What drives banks’ conduct is regulatory oversight, and none of the regulators pay any attention to safe deposit boxes. This just falls through the cracks. If the banks do something inappropriate, it’s very hard for customers to get any sort of relief.”

The Office of the Comptroller of the Currency, the banking industry’s main federal overseer, said it had no grounds to get involved. “No provision of federal banking law expressly regulates safe deposit boxes,” said Bryan Hubbard, an agency spokesman.

And the scant protections offered by state laws are often simply ignored — as Mr. Poniz discovered when he began searching for the missing contents of his empty box.

The singing bird

For over a decade, Mr. Poniz’s Box 105 sat at the bottom of a seven-foot shelf in Wells Fargo’s Highland Park vault, accessible via a metal-barred door with an old-fashioned crank. But halfway up a different wall in the vault was another Box 105 — a product of the bank’s having

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consolidated several branches' safe deposit boxes into a single location and having kept their original numbering. Bank employees got them mixed up, and emptied the wrong one.

“There’s no question that Wells Fargo drilled the box and took the contents out of it, put in storage and then returned it,” John North, a lawyer representing the bank, said at a court hearing last year. “The underlying dispute is, was everything returned or not?”

That isn’t really in dispute. When Wells Fargo employees opened Mr. Poniz’s box, they created an inventory that included 92 watches. When workers at the bank’s storage facility in North Carolina counted the items, they listed only 85. Also missing were dozens of rare coins that were listed in the first inventory, but not the second. According to Mr. Poniz, photographs and family documents also disappeared.

Oddly, the bank returned to him five watches that weren’t his. “They were the wrong color, the wrong size — totally different than what I had,” Mr. Poniz said. “I had no idea where they came from.”

New Jersey law [requires a bank to bring in an independent notary](#) when it opens and empties a safe deposit box, and to place the box’s contents in a sealed package signed by the notary. The disappearance of the coins and watches suggests that Wells Fargo — which in recent years has admitted to systematically ripping off customers with [fake accounts](#), hidden fees and [a variety of unwanted and unnecessary financial products](#) — didn’t follow that law.

“Wells Fargo is reviewing the facts and circumstances of this case,” said Jim Seitz, a bank spokesman. “We cannot comment further due to pending litigation.”

Mr. Poniz hired lawyers. One of them, Kerry Gotlib, said he pressed the bank to find the missing items. It couldn’t. He asked for a financial settlement; the bank said no. So Mr. Poniz sued in New Jersey’s Superior Court.

Wells Fargo sought to move the case into arbitration, a venue that keeps disputes out of the public record and [tends to favor companies over the individuals challenging them](#). For nearly two years, the two sides battled over that request, until a judge ruled in November 2018 that the case should remain in court. Wells Fargo appealed, prolonging the dispute.

The lawsuit appears nowhere near resolution, and Mr. Poniz already has run up tens of thousands of dollars in legal fees. “The bank has spent a tremendous amount of resources and put them into defending the case, instead of stepping forward and saying, ‘We made a mistake here, let’s make it right,’” said Craig Borgen, another lawyer representing Mr. Poniz.

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The watches that vanished were the largest and most visually striking in his collection, Mr. Poniz said. There was a Tiffany watch that tracked the moon's phases on its gold dial, and an early Breguet engraved with the coat of arms of the Duke of Orléans,

The highlight was a rare 19th-century pocket watch, whose face was dotted with pearls and rubies and concealed a pop-up bird, slightly larger than a thumbnail, that twittered and sang. Such "singing bird" watches rarely come to market. One of the last, in 1999, was sold at auction for \$772,500 to the Patek Philippe Museum in Geneva.

Mr. Poniz, who spent a decade working at Sotheby's and now consults for Christie's as a horological expert, had hoped that the singing-bird watch would one day be the centerpiece of an auction of his own collection. He considered the trove to be his retirement fund.

"My impression about safe deposit boxes was that it was like you were putting things in Fort Knox," he said. "Nothing could happen to it." He doesn't think that anymore.

By Stacy Cowley

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