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Fraud victims may benefit from UBS' disclosures

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Swiss banking giant UBS' decision to turn over information on 4,450 "secret" bank accounts to the U.S. Internal Revenue Service (IRS) signaled a major shift in accountability for the world's financial markets. With new investor frauds uncovered daily, international banks now recognize the importance of opening their records and cooperating with investigators.

That's good news for fraud victims in South Florida and throughout the country, because locating a criminal's bank accounts is the first, and perhaps most important, step toward freezing those assets. Then, if the victims prevail in court, those funds can be recovered to provide compensation for their losses.

In today's climate, banks in traditional tax-shelter jurisdictions from Switzerland to the Cayman Islands understand that they may no longer be able to ensure a customer's privacy in the face of a legitimate investigation. Last month, Switzerland's Justice Minister Eveline Widmer-Schlumpf noted that UBS could have faced criminal prosecution had it not released its records to the IRS.

It's not just Swiss bankers who see that the world is changing. When fraud victims file suit, both U.S. and foreign courts today are more open-minded about the potential need for immediate remedies, such as freezing a defendant's assets without notification. Those types of extreme steps become necessary when a financial con artist can quickly transfer funds from one jurisdiction to another.

Of course, freezing a defendant's funds in an offshore bank account is only one step in the long and complex asset recovery process. In order to prevail in court, the plaintiffs must build a solid case right from the start, such as conducting a thorough review of all fraud-related documents, including e-mail messages, fund transfers and receipts.

Before filing a lawsuit, a fraud victim may want to conduct a careful, private investigation in order to identify potential witnesses and determine where investors' money has been hidden. At the same time, the victim's legal team can begin preparing the lawsuits, which may need to be filed overseas as well as in the U.S. The overall strategy is to have a powerful case to present to the judge without alerting the defendant in advance. The element of surprise is extremely important in any asset recovery case.

Based on the UBS action, global banks today are more likely to cooperate with investigators than they have been in the past. Otherwise, they run the risk of being accused of complicity with any criminal actions. For fraud victims, that's a clearly a change for the better.

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