



Bank Class Action Developments: Latest Wave Targets Fees for Returned Third-Party Checks

“Trouble comes in threes” is an old saying that may occur to some bankers regarding the latest wave of class action lawsuits against banks.

Three large Wall Street banks — Citibank, JP Morgan Chase and Wells Fargo Bank — have all been sued recently over charging the same type of fees to customers for depositing checks that are later returned.

The type of fee in question is a charge against a bank customer for depositing a check written by a third party that is later returned unpaid, because, for example, the check has bounced or the third-party check originator has stopped payment on the check or has closed the checking account before the check is presented.

As bankers have learned over the years, consumer class action lawsuit trends in the banking industry tend to begin with suits against the largest banks, like the three banks being sued over these third-party returned check fees, but then those same

lawsuits are gradually filed against super-regional banks, then regional banks and eventually some unlucky community banks.

Lawsuit Theory — The theory behind these third-party returned check lawsuits is that the depositing bank customer has no way of knowing whether the third-party check will be returned and, therefore, no way of avoiding the fee.

Of course, the customer’s bank that accepts the check for deposit from the customer also has no way of knowing whether the check will be returned by the check originator’s bank, and the depositing customer would usually have more knowledge than the depository bank about the writer of the check and the validity of the payment it represents.

In addition, there also are scenarios in which the customer depositing the check is actually in collusion with the originator of the check or may otherwise have knowledge that the check may be returned.

Legal Claims in Suits — Among the allegations in the lawsuits are claims for breach of contract (based on alleged failure to properly disclose and authorize the fees in the applicable deposit account agreement), breach of the implied covenant of good faith and fair dealing and unjust enrichment, as well as claims under state consumer protection laws. The Chase lawsuit has fewer types of claims than the other two.

CFPB Cited by Plaintiffs — Each of the lawsuits cites the Consumer Financial Protection Bureau’s guidance issued in CFPB Bulletin 2022-06, which indicates that “blanket policies” by banks that impose fees on customers depositing checks that are later returned are likely unfair under federal law if the fees are imposed “irrespective of the circumstances of the transaction or patterns of behavior on the account.” The CFPB also states in the bulletin that disclosures made by a bank about the fees may not be able to remedy the perceived violation.

Outlook — One of the law firms representing plaintiffs in each of the three class actions against the Wall Street banks has already stated publicly that it is looking into similar class action lawsuits against more than two dozen other financial institutions. Of course, Citi, Chase, Wells and future bank defendants may prevail in these suits and may even get them tossed early. However, assuming the initial lawsuits against the three big banks are harbingers of a spate of similar suits against banks across the country, bankers at other banks may want to review their fee structures, deposit account agreements, fee disclosures and policies to see if preemptive action would be appropriate or could potentially mitigate risk.



Greg Omer, a partner with Armstrong Teasdale, has more than 25 years of experience in banking and corporate law as general counsel and executive vice president at a regional bank holding company, partner at law firms and chief counsel for the Missouri Division of Finance. Learn more at armstrongteasdale.com. Armstrong Teasdale is a MBA associate member.

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Steve Middelkamp
Director of Business Development



Quade Wood
Principal



Terry Visintine
Director of Loan Review