

BankBCLP

CLASS ACTIONS FILED AGAINST FOUR GEORGIA BANKS OVER ATM PHYSICAL FEE DISCLOSURE

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Four class action complaints have been filed in the last two weeks against four different Georgia community banks alleging that the banks have violated the Electronic Fund Transfer Act. The complaints were filed in the federal courts and all allege that the banks imposed fees on consumers who withdrew cash from the bank's ATMs and that the banks allegedly failed to post a physical notice on the ATMs that a fee would be imposed for such services.

The Electronic Fund Transfer Act requires both a physical notice at or on the ATM in addition to the electronic notice the customer receives on the computer screen when making the withdrawal. There are statutory penalties for a failure to comply with the Act. While there is no minimum penalty proscribed for a class action, the statute provides that in a successful class action, plaintiffs may recover up to "the lesser of \$500,000 or 1 percent of the net worth of the (ATM operator)," plus attorneys' fees and costs. There may be a defense to such claims when the bank maintains procedures reasonably adapted to avoid a failure to comply with the Act and the failure to comply was a "bona fide error."

The attorneys associated with these cases have filed similar class actions, alleging the same violations of the Electronic Fund Transfer Act, against other banks, hotels and retailers around the country.

Even where banks have been in full compliance with the physical notice requirements, many banks have found that their fee notice placards have mysteriously disappeared or have been removed by persons as yet unknown in the time periods preceding the institution of litigation against them. Please take a moment to survey all of your ATMs to ensure that they have the necessary notice affixed to them and that the notice has not been removed. We also recommend that you photograph each ATM when it goes into service and that you periodically inspect your machines and photograph them so that you will have evidence of your compliance with the Act, if subsequently needed. Additionally, if you utilize a servicing company to maintain your ATMs, we recommend that you confirm that the servicing company is periodically inspecting your machines and photographing them. The Act does provide banks with a defense when the notices are removed by third persons other than bank employees.

Bryan Cave has been defending similar class actions across the country and is fully prepared to assist its banking clients in the defense of these new actions in Georgia. If you have questions about this litigation, compliance with the statute, or the defense of these cases, please do not hesitate to call Walt Moeling (404.572.6629), Bill Custer (404.572.6828) or Jennifer Dempsey (404.572.6985).

MEET THE TEAM



William V. Custer

Atlanta

bill.custer@bclplaw.com

[+1 404 572 6828](tel:+14045726828)



Jennifer B. Dempsey

Atlanta

jennifer.dempsey@bclplaw.com

[+1 404 572 6985](tel:+14045726985)

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