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NLJ Home > News > Lawsuits accusing banks of illegal overdraft fees start to add up

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Lawsuits accusing banks of illegal overdraft fees start to add up

Tresa Baldas
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For the third time in a month, Washington, D.C.'s Tycko & Zavareei has filed a lawsuit challenging overdraft fees. The latest case, filed Feb. 1 in federal court in Atlanta, targets Cincinnati-based Fifth Third Bank.

Two similar suits were filed in January — one against TD Bank in Washington, D.C., and the other against Citizens Financial Group in Chicago. The firm says more are in the pipeline.

In the Fifth Third suit, customers allege that the bank charges unjustified overdraft fees in violation of state and federal laws. Specifically, the suit accuses Fifth Third of manipulating debit postings to maximize overdraft fees, even when the customer has enough funds to cover some of the withdrawals or purchases. The suit also challenges the bank's practice of charging overdraft fees every day an account is overdrawn, even if it's overdrawn solely because of the overdraft fees.

The plaintiffs want the bank to refund hundreds of millions of dollars in alleged unlawful overdraft charges.

"We're just trying to get people's money back. We're talking millions and millions of dollars...It just becomes this spiral of debt," said partner Hassan Zavareei, who is representing the plaintiffs in the Georgia, Illinois and Washington suits.

Zavareei said that manipulation of overdraft fees has been "going on for years without consumers knowing it."

"There's no disclosure when you go to your ATM machine or when you go to Starbucks. Most people assume that it's not going to accept your card if there's no money in the bank," he said. "It would be a very simple matter just for them to say, 'Hey, you don't have enough money in this account. We'll charge you \$35 if you still want to do this anyway.'"

Officials at Fifth Third Bank declined comment. The bank has not yet filed a response.

No response has been filed in the Illinois suit, either. In the Washington suit, William Kayatta Jr. of the Portland, Maine, office of Pierce Atwood, who is representing TD Bank, declined to comment.

According to Zavareei, the banking industry made \$24 billion in overdraft charges last year.

Tycko & Zavareei's suits are not the only ones seeking legal recourse over the fees. In Miami, seven lawsuits challenging overdraft fee policies were consolidated in July before Senior U.S. District Judge James Lawrence King. A motion to dismiss was filed last month. The consolidated suit challenges high-low policies, whereby banks will clear the highest check or debit transaction first, causing several smaller ones to bounce, even though the highest one came in later.

A similar lawsuit challenging overdraft fees is pending against U.S. Bank in federal court in Oregon. And last summer, Bank of America and its affiliated banks agreed to pay \$35 million to resolve class action claims that it unlawfully used overdraft fees to boost revenues.

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