

Ohio Court of Appeals Affirms Class Certification in Lawsuit Against FirstMerit Bank Related to Bank's Unfair and Deceptive Overdraft Fee Practices

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The Ohio Court of Appeals largely affirmed the grant of class certification in a case brought by consumers who allege that they were improperly assessed overdraft fees by FirstMerit Bank. The Court of Appeals rejected FirstMerit Bank's arguments that that trial court had not rigorously analyzed the class certification question and that individual lawsuits were necessary in light of numerous unique factual and legal issues specific to each bank customer.

The lawsuit alleges that the Plaintiffs, and other FirstMerit customers in Ohio, were charged additional overdraft fees because of FirstMerit's unfair and deceptive standardized practice of posting debit card transactions to customer accounts from the highest dollar amount to the lowest dollar amount, regardless of the chronological order in which the transactions were actually made by the customer. According to Plaintiffs, because of the bank's manipulation of its posting order, bank customers were charged overdraft fees when their accounts were not actually overdrawn. The Plaintiffs also allege that, in order to maximize the fees that it could charge its customers, FirstMerit grouped together customer's debit card transactions with checks and other non-check debits for purposes of posting. According to the lawsuit, these practices breached FirstMerit's agreement with its customers as well as constituted fraud by the bank. FirstMerit, who claims its mission is to "improve and preserve the financial well-being of [its] customers, shareholders, and the communities [it] serve[s,]" has nearly 200 branches in the Ohio, Western Pennsylvania, and Chicago,

"The Ohio Court of Appeals made the correct call in largely affirming Judge Lucci's well-reasoned class certification decision. FirstMerit's customers should be able to fight the bank's deceptive banking practices, which were applied uniformly to all customers, together. Banks like FirstMerit cannot continue to pocket huge amounts of money from their own customers by unfairly engineering their transaction posting processes," said Hassan Zavareei.

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