

## ATM fee-notice suits continue

Some possible remedies suggested by two vendors

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A year ago, in an article on ababj.com, ABA's Associate General Counsel Greg Taylor warned banks that plaintiffs' attorneys had begun targeting banks and credit unions for violation of ATM disclosure rules. As he explained:

The Electronic Fund Transfer Act (EFTA) and its implementing regulations, Regulation E, require that financial institutions must provide a disclosure regarding fees that are (or may be) associated with using an ATM. Under the regulations, two forms of notice are required. The first, which most banks handle without a problem, is the "screen or paper notice." This is the notice that pops up on the ATM screen (or appears on a slip of paper) during the transaction that alerts a customer that a specific amount will be charged for the pending transaction, allowing the consumer to cancel the transaction request to avoid the fee. The second form of disclosure, known as the "on machine" notice, requires a bank to post a notice in a "prominent and conspicuous location" on the ATM that a fee may be imposed. It is this second set of disclosures that is generating litigation.

By putting the Reg E-required fee notice in the signs (known as "toppers") attached to off-site ATMs, financial institutions can make it harder for the notices to be removed or to fall off inadvertently. Toppers typically are encased in plastic.

The problem is that even though the on-screen notice is present, if the on-machine notice has fallen off, been removed, or is illegible, the ATM-operating institution is in violation of the EFTA. The law allows for damages to plaintiffs and attorneys fees.

As of last June, class action lawsuits had been filed in Michigan, Ohio, Pennsylvania, and Texas. Since then, the pace has picked up. An April 22, 2011 article in the Detroit Free Press stated, "Nationwide, a cottage industry of plaintiffs firms have spawned a flurry of ATM fee lawsuits." The suits have triggered settlements ranging from tens of thousands to \$2.5 million. The article went on to say that in Michigan alone 30 such lawsuits are pending in two federal courts, and that one bank had settled one suit in April for \$350,000.

Taylor suggested in his article that banks routinely check the physical fee notices on their ATMs and take photos of them as evidence of their good-faith attempt at compliance. In a late June interview, Taylor added that a compliance plan to regularly inspect and update the photos, and to keep contemporaneous notes of the inspections, would go a long way to helping a bank avoid having missing notices, or having to settle if a notice somehow came off the machine, resulting in a lawsuit.

#### Another possible solution

In a related development, the recently announced partnership of GetBranded.com and NSA provides another way to avoid ATM fee-notice lawsuits. GetBranded provides ATM wraps (vinyl coverings that contain promotional or other messages that cover much of the surface area of the machine), other signage, fee and network notices, and custom screens for off-premise ATMs. NSA provides the project management, logistics, and on-site execution for ATM rebranding/compliance projects.

"Once the ATM wrap is installed, NSA will be able to house an archive of digital photos proving the work was done to the client's specifications—which also means proof that the fee disclosure decal was installed in the event a decal is removed," said Howard Latshaw, national sales director with GetBranded.

A spokeswoman for the two companies noted that putting the fee notices in the "toppers"—signs that rise from the back of many off-premise machines—makes them less susceptible to damage or removal. Topper messages are encased in heavy plastic, she observed.

In an online article, GetBranded recaps the legal challenges banks face and suggests seven steps they can take to help ensure compliance with Reg E's fee-notice requirements. One is to ensure that the bank's implementation, service call, and cash drop checklists include instructions for checking that the sticker is in place.

[Read the GetBranded article and checklist \[pdf\]](#)

[Read Greg Taylor's article](#)

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