

Commerce Bank subject of suit over fees

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Round two in a potential series of class action lawsuits against Missouri banks over overdraft fees came last week in Jackson County Circuit Court.

Commerce Bank is the latest defendant in a complaint that nearly mirrors petitions filed against UMB Bank this spring.

The Kansas City firm of Stueve Siegel Hanson represents clients accusing the Missouri-based institutions of altering account holders' transaction histories in order to optimize the amount of overdraft fees they can charge - allegedly even in cases when sufficient funds existed and the banks weren't out any money.



The west side of Commerce Bank headquarters at 920 Main St. The bank is the second based in Missouri to be targeted with a class action lawsuit over overdraft fees. Photo from Wikimedia

"Broadly speaking, we're challenging the same type of bank," plaintiffs' attorney Patrick Stueve said in an interview Friday.

Reached by phone, Commerce spokeswoman Molly Hyland said the lawsuit didn't surprise her, but she declined to comment. She added that the chief legal counsel for Commerce Bancshares Inc., a co-defendant, was out of the office and unavailable Friday.

Commerce's headquarters is in Kansas City. Stueve said the firm, at the request of clients, began investigating various banks' overdraft fees, prompting the two suits. The firm continues to investigate other banks he believes may employ the same practices, but he said he's not yet sure if more suits will follow.

Attorneys in other states are looking into similar bank practices, Stueve said. He attributed the trend to the now-common use of debit cards.

Martin Green, a partner with Green Jacobson in St. Louis, said he currently has between eight and 10 clients interested in making similar allegations against banks on overdraft fees of checks.

He also recently fielded a call from a Boston attorney looking to pursue comparable litigation there.

“It is a trend. Right now it’s one of the lawsuits at the head of the list,” Green said. “What makes it so attractive is the number of times the banks are doing this.”

Green, who previously landed a \$490 million class action settlement against Bank of America, said if the allegations are correct, the banks could be made to pay back up to 90 percent of the overdraft fees.

“That would involve a lot of money,” he said. “It’s not an accident. Those banks do it as a policy. It’s a money-maker.”

Stueve also said more plaintiffs are coming forward with complaints as news spreads of banks’ overdraft procedures in the mainstream media, he said.

“There’s a greater awareness of these practices among consumers than there was before,” he said.

Stueve said the firm hasn’t yet studied whether new rules instituted by the Federal Reserve regarding banks and overdraft fees would’ve helped his clients. Effective July 1, the changes prevent banks from automatically enrolling new account holders into their standard overdraft programs. New account holders will be able to reject overdraft “protection,” allowing them to simply be declined when they attempt to exceed their account balances instead of racking up fees. Existing account holders will be able to opt out, as well.

In the latest Missouri suit, plaintiff Harold Joseph Jr., a St. Louis County resident, contends he tried to alleviate his negative account balance of -\$39.26 with a \$387 deposit on April 17. With his own debits and \$70 in overdraft fees, he ended the Friday with a balance of \$255. Over the weekend, he made about \$222 in purchases and started the following Monday with a positive account balance of \$33.

Still, Commerce charged him with seven overdraft fees amounting to \$245, according to the petition filed last week.

Joseph accuses the bank of constructing a fictionalized account balance, subtracting all of his pending transactions before they settled so it could slam him with overdraft fees.

“This deceptive scheme of charging exorbitant overdraft fees without adequate disclosure or notice to customers is intentionally designed to maximize overdraft fee revenue for Commerce. And it is extraordinarily profitable,” the petition stated. “On information and belief, banks generate more than \$27 billion in overdraft fees annually.”

The firm published a similar overdrawn scenario involving David Johnson in a lawsuit against UMB Bank in Jackson County Circuit Court in April. He allegedly received 17 of the fees all in the same weekend.

UMB defense attorneys removed the suit to federal court (*Johnson v. UMB Bank et al.*, 4:10-cv-483), but it was dismissed without prejudice May 13, meaning attorneys could refile the complaint.

Stueve that week filed a new petition against UMB Bank in the state trial court, clarifying that only Missourians could be members of the proposed class. Such also is the case in the Commerce Bank suit.

“We just think that these two cases that involve Missouri state laws, that have Missouri residents against Missouri banks - that it’s just appropriate to be litigated in Missouri courts,” Stueve said.

Both cases allege violations of the Missouri Merchandising Practices Act.

The Commerce case is *Harold Joseph Jr. v. Commerce Bank et al.* No case number has been assigned yet. The new UMB Bank case is *David Johnson v. UMB Bank et al.*, 1016-CV14991.