



Retail ATM Operators Get Banks' Safe Harbor

By Harry Levy

The Electronic Fund Transfer Act (“EFTA”) requires that the operator of an automated teller machine (“ATM”) display on or about the ATM a notice that the operator may charge a fee for an electronic fund transfer. Violations of the EFTA can subject the ATM operator to actual and statutory damages. The EFTA, however, provides a safe harbor for such notice violations if, upon notice of a violation, the operator cures the ATM notice defect, adjusts the consumer’s account, and pays actual or statutory damages.

Does this safe harbor provision also apply to retail operators of ATMs, such as convenience stores, groceries and wine shops, which are not financial institutions and cannot adjust a consumer’s account for EFTA violations? On March 2, 2012, the United States District Court for the District of Maryland concluded that the EFTA’s safe harbor was not limited to financial institutions and extends more broadly to any ATM operator, including retail stores, so long as the violator responds properly to consumer complaints by curing the defect and refunding the improper transaction fee, together with any proven actual damages.

If you would like to discuss this decision, compliance with the Electronic Fund Transfer Act or defense of a claim under the Electronic Fund Transfer Act, please contact Harry Levy or Martin B. Ellis at (410) 825-5223 or levy@shumakerwilliams.com or ellis@shumakerwilliams.com.