

# PNC's \$7.5M Overdraft MDL Settlement Put Before A Judge

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Law360 (November 7, 2019, 2:45 PM EST)-- Customers of the [Royal Bank of Canada's](#) former U.S. retail banking arm asked a Florida federal judge Wednesday to consider the \$7.5 million settlement they've reached with the unit's successor-in-interest, [PNC Bank NA](#).

U.S. District Judge James Lawrence King was alerted in February that a deal had been struck that resolved claims against the RBC unit in a long-running multidistrict litigation over checking account overdraft fees, but according to the preliminary approval motion filed Wednesday, the parties continued negotiating approval and implementation terms until an agreement was finalized last month.

The approval motion notes the former RBC customers had managed to avoid dismissal and forced arbitration thus far in the nearly decade-old case, but that arbitration disputes, which were recently decided [in Wells Fargo's](#) favor, would likely arise again as the customers pursued class certification and the case moved toward trial.

"Under the circumstances, settlement class counsel appropriately determined that the benefits of the settlement outweigh the gamble of continued litigation," the customers said. "Even if plaintiffs prevailed at trial, any recovery could be delayed for years by an appeal."

Under the terms of the settlement, PNC will pay \$7.5 million into an escrow account for a class of individuals who held RBC accounts between October 2007 and March 2012 and incurred overdraft fees as a result of so-called high-to-low posting.

The claims against the U.S. RBC, which were transferred to PNC after a 2012 merger, were first filed in 2010 before being folded into an MDL against a flurry of banks similarly accused of fleecing customers with excessive overdraft fees. Customers claimed the RBC unit and other banks were re-ordering debit card transactions in a way that caused accounts to become overdrawn more quickly. PNC's practices are not being challenged as part of the cases.

When Judge King was given [notice of the deal](#) in February, he was still weighing a class certification motion that the RBC unit [had lost](#) based on the argument that the proposed account holder classes included customers whose claims must be arbitrated.

A month earlier, the [U.S. Supreme Court](#) refrained from wading into other pending cases covered by the bank overdraft MDL, denying the plaintiffs' appeal of an Eleventh Circuit decision that Wells Fargo NA [did not waive](#) its arbitration rights against absent class members in five suits against it.

That decision led Judge King to rule in September that the arbitration agreement in Wells Fargo's customer contracts were valid and to dismiss the claims of unnamed class members in that case. The plaintiffs notified the judge last month that they were appealing the dismissal.

The enforceability of arbitration provisions was likewise an issue in the RBC case, customers said Wednesday, with the bank consistently arguing that the claims against it were subject to mandatory individual arbitration.

Settlement talks between the parties started in 2018, according to approval motion, and resulted in a deal that would have PNC not only pay \$7.5 million into a settlement fund but also cover the costs of the settlement's notice and administration.

The customers say they've used available RBC data to determine which account holders were harmed by the disputed overdraft posting method and what their share of the settlement fund will be.

The parties are asking for a final approval hearing to be scheduled no sooner than the week of April 13,

2020. Counsel for the plaintiffs and the RBC unit did not immediately respond to requests for comment

Thursday.

The plaintiffs are represented by Podhurst Orseck PA, Grossman Roth Yaffa Cohen PA, Bruce S. Rogow PA, Kopelowitz Ostrow Ferguson Weisberg Gilbert, Webb Klase & Lemond LLC, LieffCabraser Heimann & Bernstein LLP, Baron & Budd PC, Trief & Olk, Golomb & Honik PC and Darren Kaplan Law Firm PC.

RBC Bank (USA) is represented by Christopher S. Carver of Akerman LLP and Mark J. Levin and Philip N. Yannella of Ballard SP-ahrLLP.

The cases are Dasher v. RBC Bank (USA) and Avery v. RBC Bank, from In re: Checking Account Overdraft Litigation, case number I : 09-md-02036, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Nathan Hale. Editing by Gemma Horowitz.

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