

Stuart Richter Shares Overdraft Litigation Insight on the *Alternative Litigation Strategies* Podcast

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Class Action/Consumer Finance Litigation partner Stuart Richter was a guest on a recent podcast episode of *Alternative Litigation Strategies* on overdraft and bank-fee litigation. With the host and director of Risk Settlements, Kevin Skrzysowski, he discussed filing trends, effective defenses, dispositive motion strategies, settlement and trial considerations, copycat lawsuits, class action settlement insurance, arbitration agreements and best practices for businesses to avoid litigation.

Stuart commented on the many class action cases that have been filed against banks and credit unions challenging overdraft fees and other fees, and regulator attitudes towards bank fees. He noted that "[t]he plaintiff's lawyers are not challenging overdraft fees and saying they are unfair or unreasonable. They are not challenging the fees and disclosures as being inadequate. These claims are preempted by federal law. The claims that they make are that the bank breached its own account agreement because the agreement says they will only charge fees in specific circumstances … boiling down to a breach of contract." Regulators, however, can be seen more actively challenging the fairness of bank fees and the adequacy of disclosures.

Based on these trends, Stuart focuses not only on defending the pending claims, but also mitigating future risk of lawsuits and regulatory proceedings. He advises clients to constantly monitor litigation trends and review disclosures periodically. "Your lawyer or your in-house lawyer and compliance people have to be continually monitoring. It's easy to see trends when monitoring other class actions." Based on litigation trends, it is important to review revise disclosures and contracts. "Go take a look at your disclosures and look at what you are charging your customers — they better match … Accurately describe what you are doing or you are a target."

"The Renewed Focus on Bank-Fee Class Action Litigation," *Alternative Litigation Strategies*, October 4, 2022

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