



June 30, 2014

ELEVENTH CIRCUIT HOLDS FLORIDA'S BANK CHECK-CASHING FEE STATUTE PREEMPTED BY FEDERAL LAW

In *Pereira v. Regions Bank*, the Eleventh Circuit held that a Florida law prohibiting a financial institution from charging a check-cashing fee does not apply to an out-of-state state bank because federal law preempts the Florida law. No. 13-1-10458, 2014 WL 2219166 (11th Cir. May 30, 2014). Plaintiffs cashed a check at a Regions Bank branch in Florida and Regions charged Plaintiffs a fee. Regions is an Alabama state bank. Alabama law permits a bank to impose charges for any services. Plaintiffs filed a putative class action claiming that Regions violated Florida Statute § 655.85, which prohibits a financial institution from settling "any check drawn on it otherwise than at par," by charging Plaintiffs a check-cashing fee. Plaintiffs argued that Section 655.85's prohibition applies to any bank operating in Florida.

Prior to *Pereira*, the Eleventh Circuit concluded that the National Banking Act ("NBA") and the Office of the Comptroller of the Currency's ("OCC") regulation preempt Florida Statute § 655.85 because Florida's prohibition on charging fees to nonaccount-holders presenting checks for payment substantially conflicts with the OCC's specific authorization to charge such fees. See *Baptista v. JP Morgan Chase Bank, N.A.*, 640 F.3d 1194, 1198 (11th Cir. 2011). *Baptista's* holding is limited to national banks because the NBA and OCC regulations apply only to national banks. In *Pereira*, the Eleventh Circuit addressed whether federal law preempts Section 655.85 as to an out-of-state state bank.

The Eleventh Circuit held that federal law preempts Florida Statute § 655.85 as to an out-of-state state bank. The Eleventh Circuit based its decision on (i) the plain language of 12 U.S.C. § 1831a(j)(1), (ii) the statute's legislative history and (iii) *Baptista's* preemption determination. Section 1831a(j)(1) provides, in pertinent part, that "the laws of a host State ... shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch." Before Congress enacted a 1997 amendment, the section read "the laws of the host State ... shall apply to any branch in the host State

of an out-of-State State bank to the same extent as such State laws apply to a branch of a bank chartered by that State." (emphasis added). The 1997 amendment as well as floor statements from Congress "clearly indicate" that Congress sought to preempt the effect of state banking laws on out-of-state state banks to the same extent as on national banks and not to the same extent as in-state state banks.

Since prior Eleventh Circuit case law indicates that federal law preempts Florida Statute § 655.85 as to an out-of-state national bank, federal law must also preempt Florida Statute § 655.85 as to an out-of-state state bank. Therefore, the Eleventh Circuit concluded that Regions may charge Plaintiffs any check-cashing fee permitted under Alabama law without regard to Florida law. Plaintiffs' counsel indicated that Plaintiffs will likely petition the U.S. Supreme Court to hear this case.

Please feel free to contact us if you have any questions regarding state law restrictions on out-of-state banks or if you need assistance analyzing whether such laws are preempted. □

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