UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO: FOURTH TRANCHE ACTION

Swift v. BancorpSouth, Inc.
N.D. FL, C.A. No. 1:10-00090-SPM-AK
S.D. Fla. Case No. 1:10-cv-23872-JLK

PLAINTIFFS' REPLY IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT AS TO CERTAIN OF DEFENDANT BANCORPSOUTH BANK'S AFFIRMATIVE DEFENSES

Plaintiff Shane Swift, on behalf of himself and the certified class ("Plaintiffs"), files this reply in support of the Motion for Summary Judgment as to Certain of Defendant BancorpSouth Bank's Affirmative Defenses ("Motion") (DE # 2997), and in support states:

INTRODUCTION

BancorpSouth's Response to the Motion ("Response") (DE #3035) fails to even address many of the infirmities fatal to the affirmative defenses at issue. Plaintiffs' Motion addresses certain affirmative defenses that fail as a matter of law – not only because they lack factual support, but also because there is no legal basis for their application to Plaintiffs' claims. "BancorpSouth's Response to Plaintiff's Statements of Fact" (Response at 2) does not affect this outcome. Likewise, "BancorpSouth's Statement of Additional Material Facts" (Response at 4) merely provides additional facts that are either immaterial or do not provide the requisite support for the factual elements of the affirmative defenses asserted so as to create a genuine issue of

material fact. Because BancorpSouth does not set forth facts supporting the affirmative defenses or overcome the legal hurdles that preclude their application, it is of no moment that BancorpSouth is currently unable to identify all the individuals comprising the certified class. These affirmative defenses fail as to all members of the certified class, as a matter of law.

ARGUMENT

I. Course of Dealing

BancorpSouth agrees unequivocally in its Response that the explicit terms of the Deposit Agreement bar a course of dealing regarding the payment of debit card transactions in overdraft between the parties. (Response at 6). This admission should end the Court's inquiry. With no dispute that BancorpSouth's course of dealing defense is precluded by the express terms of the Deposit Agreement, Plaintiffs are entitled to summary judgment, as a matter of law.

Despite its admission, however, BancorpSouth argues that it should be allowed to assert a course of dealing affirmative defense as to the claims for breach of the covenant of good faith and fair dealing and unjust enrichment.[1] (Response at 7). Essentially, BancorpSouth contends that it may disregard the express terms of its own Deposit Agreement when alleging a course of dealing affirmative defense because Plaintiffs are purportedly disregarding the terms of the Deposit Agreement in pursuit of their claims. BancorpSouth is wrong.

Plaintiffs do not need to vary the terms of the Deposit Agreement in their implied covenant of good faith and fair dealing claims. In fact, this Court correctly held that plaintiffs are not varying the terms of a deposit agreement in its Order Ruling on Omnibus Motion to

[1] Later in its argument, BancorpSouth takes issue with Plaintiffs' claims for breach of the covenant of good faith and fair dealing and unconscionability, not unjust enrichment. Presumably, BancorpSouth erred when it referred to unjust enrichment in the first instance given that a course of dealing affirmative defense should never apply to a claim for unjust enrichment, which by its very nature is not based on a contract.

Dismiss, stating:

> Plaintiffs counter, and the Court agrees, that they do not seek to vary the language of the contract, but rather to have the express contractual terms carried out in good faith. Plaintiffs do not ask the Court to tell the banks *how* to order transactions, but simply that the ordering must be carried out as contemplated by the covenant of good faith and fair dealing. There are a number of cases supporting the proposition that when one party is given discretion to act under a contract, said discretion must be exercised in good faith.

In re Checking Account Overdraft Litigation, 694 F. Supp. 2d 1302, 1315 (S.D. Fla. 2010) (citations omitted). The Court's Order denying BancorpSouth's Motion to Dismiss incorporated this ruling. (DE # 1305 at 2).

Because Plaintiffs are not departing from the terms of the Deposit Agreement to support their claims of breach of the implied covenant of good faith and fair dealing and unconscionability, BancorpSouth should not be allowed to ignore the express language of the adhesive Deposit Agreements it drafted, which say that "[o]ur payment of an item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or order in overdraft will be created between us." (DE # 2274-4 at p. 4; DE # 2274-5 at p. 4; DE #2276-6 at p.7; DE # 2274-7 at p. 4; DE # 2274-8 at p. 4; DE # 2274-9 at p.5; DE # 2274-10 at p. 4; DE # 2274-11 at p.4) (emphasis added). In any event, if Plaintiffs prevail on their unconscionability claim, then BancorpSouth's course of dealing defense will be moot because the provision BancorpSouth relies on to re-sequence debit card transactions will be declared unenforceable. Accordingly, Plaintiffs are entitled to summary judgment as a matter of law.

II. Voluntary Payment Doctrine

Contrary to BancorpSouth's contention on page 8 of its Response, Plaintiffs do not "miscomprehend the voluntary payment doctrine." Rather, BancorpSouth miscomprehends what

constitutes a voluntary payment. BancorpSouth fails to present any authority to support its contention that a customer's deposit of funds into a bank account constitutes a payment under Arkansas law. BancorpSouth even claims that Plaintiff deposited the funds in his account in order "to bring [his] account to a positive balance." (Response at 8). Thus, by BancorpSouth's own admission, the deposits were not payments. Perhaps unwilling to acknowledge its tenuous position, BancorpSouth erroneously claims that Plaintiff deposited funds into his account in order "to pay the fee" with knowledge of his claims against the Bank. However, BancorpSouth does not cite to any record evidence to support this contention. In fact, when Plaintiff Swift was specifically questioned about whether he paid all of the overdraft charges assessed by BancorpSouth, Plaintiff Swift testified that they were "automatically taken out of [my] account." (DE # 3043-1 at ¶ 96). Accordingly, the testimony cited by BancorpSouth does not support the affirmative defense.

As argued in the Motion, even assuming *arguendo* that the deposits were "payments," BancorpSouth's argument that the payments could not have been made by mistake fails because the record lacks evidence that Plaintiffs had full knowledge of the re-sequencing scheme at the time the deposits were made. It is undisputed that the "Notices for Charge for Overdrawn Account" and Plaintiff's online account statements upon which BancorpSouth relies do not disclose BancorpSouth's high-to-low posting order (DE # 2997 at ¶ 2; DE # 3043-1 at ¶¶ 86, 88), nor did the bank disclose the Overdraft Matrix Limit that lead to other debit card authorizations (DE # 3043-1 at ¶ 76). Thus, even if BancorpSouth's overdraft notices and the online statements disclosed the overdraft fees assessed – the only information BancorpSouth claims was disclosed – they do not provide Plaintiffs with the "full knowledge of the facts" as required by Arkansas law. *See Hall v. Hawkins Oil & Gas, Inc.*, 715 S.W.2d 462, 463 (Ark. App. 1986). Because the

Bank's concealment prevented Plaintiffs from gaining the requisite knowledge to apply the defense, Plaintiffs are entitled to summary judgment on this affirmative defense.

III. Accord and Satisfaction

Plaintiffs argue in the Motion that the affirmative defense of accord and satisfaction fails as a matter of law because no set of facts can establish an agreement between Plaintiffs and BancorpSouth whereby Plaintiffs agreed to discharge their claims challenging excess overdraft fees due to re-sequencing. (Motion at 10). Specifically, Plaintiffs correctly note that for the defense to apply in the instant case, BancorpSouth would have had to make some type of payments to Plaintiffs, and Plaintiffs would have had to accept the payments in settlement of their claims. In response, BancorpSouth oddly claims that it "made an offer to Plaintiff when it paid Plaintiff's transactions when he did not have sufficient funds and charged him a fee for that service, and Plaintiff accepted this offer by continuing to deposit funds to cover these overdrafts and continuing to incur overdraft fees without complaining or requesting a refund of these fees." (Response at 10). BancorpSouth's claim is nonsensical.

BancorpSouth ignores that this case is not about the payment of transactions into overdraft, but rather the re-sequencing of debit card transactions from highest to lowest dollar value, thereby resulting in excessive overdraft fees. Re-sequencing artificially results in the payment of debit card transactions into overdraft even though accounts contained sufficient funds when the transactions were initiated and authorized by the Bank. BancorpSouth cannot point to any settlement between the Parties as to the issue of excessive overdraft fees. Indeed, BancorpSouth's entire argument completely ignores its re-sequencing of Plaintiffs' debit card transactions. Absent BancorpSouth's re-sequencing of debit card transactions, the payment of transactions into overdraft because an account truly lacked funds to cover the transaction is not

being challenged. Thus, the Court should ignore BancorpSouth's entire discussion about its purported "offers" to Plaintiffs.

Because BancorpSouth could not possibly have made an offer to Plaintiffs, there was nothing for Plaintiffs to accept that would make a contract. Even more fatal to BancorpSouth's defense, is that even if Plaintiffs accepted BancorpSouth's purported consideration, there is no evidence of a meeting of the minds such that Plaintiffs accepted the consideration in satisfaction of the claims they had against BancorpSouth. At best, BancorpSouth has simply shown that Plaintiffs agreed to pay overdraft fees for transactions that BancorpSouth paid into overdraft. Thus, in order to assert this affirmative defense, BancorpSouth must admit that Plaintiffs did not agree to BancorpSouth's re-sequencing of debit card transactions, but nevertheless agreed to an accord and satisfaction thereafter. *Vent v. Johnson*, 303 S.W.3d 46, 52 (Ark. 2009) (affirmative defense is "[a] plea in which a defendant admits allegations but pleads additional facts that deprive the admitted facts of an adverse legal effect"). Indeed, as argued in the Motion, BancorpSouth has not offered any objective indicator, nor could it, that Plaintiffs agreed to settle with BancorpSouth. Accordingly, Plaintiffs are entitled to summary judgment as to the accord and satisfaction defense.

IV. Ratification, Acceptance, and Release

BancorpSouth provides no response to Plaintiffs' argument in support of summary judgment on BancorpSouth's affirmative defense of release. Accordingly, the Court should view BancorpSouth's failure to respond as an admission that the defense fails as a matter of law, given that it is undisputed that no release exists in this instance.

With regard to the defense of ratification and acceptance, BancorpSouth completely ignores Plaintiffs' arguments that the defense cannot apply absent an agency relationship.

(Motion at 12). Thus, BancorpSouth's discussion of what Plaintiffs purportedly knew and accepted is irrelevant given that it has failed to provide *any* evidence of the existence of an agency relationship. Even if the cases cited by BancorpSouth applied the doctrine outside the context of an agency relationship, those cases are factually distinct. In both *Vibo Corp. Inc. v. State*, No. 10-758, 2011 WL 1196915 (Ark. March 31, 2011), and *Sims v. First Nat. Bank, Harrison*, 590 S.W.2d 270 (Ark. 1979), the doctrine was specifically applied to avoid the application of the *plaintiffs'* defenses, such as duress, to the entry of the contracts at issue. Further, the court applied the doctrine only after concluding there was no dispute that the plaintiffs in those cases were charged with full knowledge of the contents of the documents they sought to avoid. Here, there is no evidence that Plaintiffs had full knowledge of BancorpSouth's re-sequencing practices, inclusive of the Overdraft Matrix that the Bank admits to concealing. Accordingly, Plaintiffs are entitled to summary judgment as to this affirmative defense as well.

V. Statutes of Limitation

BancorpSouth's statutes of limitations defense flatly ignores the allegations of the Second Amended Complaint and this Court's Order Granting Class Certification. (DE # 994, 2673). BancorpSouth erroneously claims that "[a]s currently pleaded, Plaintiff's complaint seeks compensation for overdraft charges and other damages that are so far in the past that recovery for those charges is barred by the statutes of limitations governing each purported class member's claims." (Response at 12). Plaintiffs' class definition, contained in the Second Amended Complaint, clearly states:

> All BancorpSouth customers, in the United States who, within the applicable statutes of limitations preceding the filing of this action to the date of class certification, maintained a non-commercial account, and incurred an overdraft fee as a result of BancorpSouth's practice of re-sequencing debit card transactions from highest to lowest (the "National Class").

Thus, Plaintiffs do not seek compensation outside of the applicable statutes of limitations. Indeed, BancorpSouth even concedes that there is no dispute that Plaintiffs cannot recover overdraft fees beyond the statutory limitations period. (Response at 12-13). Further, were there any question as to the damages for which Plaintiffs seek compensation, which there is not, the Court certified a class period "within the applicable statute of limitations preceding the filing of this action to August 13, 2010" (DE # 2673 at 4), a fact which BancorpSouth again acknowledges. (Response at 13).

Nevertheless, BancorpSouth maintains that somehow "facts are in dispute regarding what limitations periods apply." (Response at 13). However, BancorpSouth fails to identify any bona fide dispute, and no facts have been offered that would create one. Plaintiffs will stipulate to the statute of limitations identified for each states' breach of contract and breach of the covenant of good faith and fair dealing claim identified in footnote 14 of BancorpSouth's Response. These limitations periods also apply to Plaintiffs' claim for unconscionability given that it is undisputed that the claim is an action on a contract. In addition, it has never been disputed that a five-year statute of limitations applies to the claims brought under the Arkansas Deceptive Trade Practices Act. *See* ARK. CODE ANN. § 4-88-115. Further, BancorpSouth does not raise an issue with regard to the applicable statutes of limitation of the unjust enrichment claims under Arkansas and Mississippi law, presumably because it acknowledges that there can be no legitimate dispute that a three-year period applies in both instances. *See Roach Mfg. Corp. v. Northstar Industries, Inc.*, 630 F. Supp. 2d 1004, 108 (E.D. Ark. 2009) (citing ARK. CODE ANN. § 16-56-105); *Kersey v. Fernald*, 911 So.2d 994, 996 (Miss. App. 2005) (citing MISS CODE ANN. § 15-1-49).

Thus, with no dispute as to the applicable limitations periods to each of Plaintiffs' claims, there is no need to address this defense at trial. Accordingly, Plaintiffs are entitled to summary

judgment as to this affirmative defense.

VI. Laches

BancorpSouth does not dispute that its affirmative defense of laches is inapplicable to Plaintiffs' claims for breach of contract and breach of the covenant of fair dealing, conversion, and violations of the Arkansas Deceptive Trade Practices Act. Accordingly, Plaintiffs are entitled to summary judgment as to these claims, as a matter of law.

In addition, given BancorpSouth's acknowledgement that laches "applies only where Plaintiff seeks equitable relief," (Response at 4) the defense is likewise inapplicable to Plaintiffs' claim for unjust enrichment under Arkansas law. Indeed, BancorpSouth even cites *Warford v. Union Bank of Benton*, No. CA 09-1301, 2010 WL 3770745, at *5 (Ark. App. Sept. 29 2010), which Plaintiffs cite on page 7 of the Motion, in support of the fact that "the doctrine of laches is only applicable where equitable relief is sought." *Id.* Nevertheless, BancorpSouth still contends that laches may be applied to Plaintiffs' claim for unjust enrichment because it is an "equitable doctrine." (Response at 14). However, that is not a correct statement of Arkansas law. As Plaintiffs' argued in the Motion, and as acknowledged by BancorpSouth, the inquiry turns on the type of relief that is sought, not the nature of the claim. Plaintiffs cited *Rogers Iron & Metal Corp. v. K & M, Inc.*, 738 S.W.2d 110, 111 (Ark. App. 1987), which confirms that laches, although an equitable defense, has no application in a case where plaintiff is suing to obtain a money judgment. *See also Landreth v. First Nat'l Bank of Cleburne County*, 45 F.3d 267, 271 (8th Cir. 1995) ("[l]aches is not applicable to actions for damages"). Because Arkansas jurisprudence has firmly established that laches does not apply where a claim for unjust enrichment seeks a money judgment alone, Plaintiffs are entitled to summary judgment, as a matter of law.

Although a laches defense *could* apply to an unconscionability claim, it does not apply to Plaintiffs' unconscionability claim here for two independent reasons. First, the defense cannot apply because the evidence offered by BancorpSouth in its Response does not establish an unreasonable delay on the part of Plaintiff in filing the instant action, as required by Arkansas law. While BancorpSouth claims that the evidence establishes a genuine issue of material fact as to whether there was an unreasonable delay, the entire line of questioning from which BancorpSouth elicited the evidence on which it relies does not address the relevant timeframe in a manner that establishes an unreasonable delay occurred. (DE # 2999-3 at ¶¶ 25, 36). As previously argued by Plaintiffs, the testimony referenced by BancorpSouth suffers from a hindsight bias given that Plaintiff Swift had engaged counsel and filed suit. Notwithstanding, the documentation provided or made available to Plaintiff did not disclose BancorpSouth's re-sequencing practice. Thus, the undisputed facts do not support any unreasonable delay on the part of Plaintiff Swift based on his knowledge of the high to low posting order. Accordingly, summary judgment should be granted on this basis alone.

Further, should the Court perceive there to be a genuine issue of fact as to whether an unreasonable delay existed, BancorpSouth's defense still fails, as a matter of law, because the record is devoid of evidence that BancorpSouth has suffered or changed its position as a result of the purported unreasonable delay of Plaintiff. As argued in the Motion, Arkansas courts have made it clear that "the passage of time is not the only element necessary to establish the defense of laches." *Gable v. Anthony*, No. CA 10-234, 2010 WL 4525401, at *6 (Ark. App. Nov. 10, 2010). Instead, "[l]aches requires a showing of some sort that the party asserting the doctrine has suffered or changed its position as a result of the lack of diligence or delay in assertion of rights." BancorpSouth has completely ignored this element of the laches defense and has not even

attempted to provide this Court with any evidence that it detrimentally relied on or changed its position as a result of Plaintiff's purported inaction. Accordingly, Plaintiffs are entitled to summary judgment as to this affirmative defense, as a matter of law.

VII. Statutes of Repose, Collateral Estoppel, and *Res Judicata*

Instead of providing a substantive response to Plaintiffs' arguments for summary judgment as to the affirmative defenses of statutes of repose, collateral estoppel, and *res judicata*, BancorpSouth asserts in footnote 19 of the Response that it "does not anticipate at this time putting on evidence of its affirmative defenses of statutes of repose, *res judicata*, and collateral estoppel," and asserts that it "preserves these defenses as to unidentified class members." (Response at 16). Having failed to provide any evidence in support of the affirmative defenses or that raises a genuine issue of material fact as to the applicability of the defenses, at the very least, this Court should grant the Motion in favor of Plaintiff Swift on these three affirmative defenses.

With regard to summary judgment as to the class, BancorpSouth incorrectly argues that, despite its present inability to factually oppose Plaintiffs' Motion, summary judgment is not proper at this stage because BancorpSouth is currently unable to identify the certified class members. However, BancorpSouth's argument lacks merit because there is simply no set of facts, regardless of the identities of the members of the certified class, which could ever support the affirmative defenses asserted. Further, as to *res judicata* and collateral estoppel, at all material times BancorpSouth possessed knowledge as to whether it was ever the party to a lawsuit regarding overdrafts caused by its re-sequencing of consumer debit card transactions.

A. Statutes of Repose

As Plaintiffs argued in the Motion, there are no statutes of repose under the laws of

Alabama, Florida, Louisiana, Mississippi, Tennessee or Texas that would bar, or are even applicable to, any of the Plaintiffs' claims. BancorpSouth does not dispute this in its Response. Accordingly, regardless of the identities of the members of the certified class, the affirmative defense fails as a matter of law.

B. Collateral Estoppel and Res Judicata

Other than the *Lawson* Arkansas state case and the *Thomas* Arkansas federal case, the latter of which was enjoined by this Court (DE # 2666), and both of which have been dismissed, there has never been a ruling in a prior lawsuit between the Parties from which *res judicata* or collateral estoppel could arise to bar recovery in this lawsuit as to any class member. Indeed, when questioned about these affirmative defenses, BancorpSouth's corporate representative, Jeff Jaggers, admitted that there have been no consumer cases commenced against BancorpSouth relating to overdraft fees as a result of the re-sequencing of debit card transactions or otherwise. August 15, 2012 Deposition of Jeff Jaggers at 87:9 – 90:9, attached hereto as Exhibit A.[2] Accordingly, Plaintiffs are entitled to summary judgment as to these two affirmative defenses, as a matter of law.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court enter an Order granting summary judgment in Plaintiffs' favor as to BancorpSouth's Second, Third, Fourth, Fifth, Eighth, Ninth, Fourteenth, and Fifteenth affirmative defenses.

[2] Plaintiffs recognize that this fact was not submitted in support of its Motion; however, Plaintiffs did not anticipate that BancorpSouth would ever suggest, contrary to the Bank's representative's own testimony, that unidentified class members' claims would be barred by collateral estoppel or res judicata since the Bank confirmed no suits had ever been filed other than *Lawson* and *Thomas*.

Dated: December 10, 2012.

Respectfully submitted,

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Plaintiffs' Executive Committee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

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Swift vs. BancorpSouth, Inc.
N.D. FL Case No. 1:10-cv-00090-SPM
S.D. FL Case No. 1:10-cv-23872-JLK

THE 30(b)6 DEPOSITION OF
JEFF JAGGERS
Taken on Behalf of the Plaintiffs
August 15, 2012
8:57 A.M. - 11:33 A.M.

Edward F. Kidd, RPR, LCR #501

My License Expires: 6/30/14

banking officer for being too generous in waiving or refunding overdraft fees?

A. No.

MR. TAYLOR: I'm going to let him answer but that's way beyond the scope of the 30(b)(6).

THE WITNESS: No.

BY MR. KAPLAN:

Q. Okay. Ninth affirmative defense refers to Res judicata and judicial estoppel. I'm not seeing any way there would be a factual basis for that claim.

Well, let me ask you this: Mr. Jaggers, are you aware of any other litigation that has been commenced outside of this litigation related to overdraft fee charges against BancorpSouth?

MR. TAYLOR: Object to the form.

THE WITNESS: Am I aware of it right now.

BY MR. KAPLAN:

Q. How about like ever, let's start with that?

A. Has there ever been a suit filed against BancorpSouth related to overdraft

fees?
Q. Apart from this one?
A. Yes.
Q. How long ago -- how many cases have been filed apart from this one?
A. Oh, I --
MR. TAYLOR: Let me object to the form.
THE WITNESS: I'm aware of --
MR. TAYLOR: Let me object to the form as beyond the scope. You know the law.
THE WITNESS: Right.
MR. KAPLAN: Oh, you're talking about Thomas.
MR. TAYLOR: Yes.
MR. KAPLAN: I wasn't getting at Thomas. I'm talking about Res judicata. I want to know if there is some other litigation. Let's get that on the record.
BY MR. KAPLAN:
Q. Let's lay a foundation for this first. Your attorney referenced a specific case against BancorpSouth related to

overdraft fees. Are you familiar with that case, apart --

A. Yes.

Q. For purposes of this?

A. Thomas Lawson case.

Q. The Thomas Lawson case, that was in the Western District of Arkansas?

A. Yes.

Q. And that was also a class action that had been brought ostensibly to challenge BancorpSouth's overdraft fee practices?

MR. TAYLOR: Object to the form. Beyond the scope.

THE WITNESS: It was, from my perspective it was a suit regarding the bank's overdraft practices.

BY MR. KAPLAN:

Q. Okay. Apart from the Thomas Lawson case in the Western District of Arkansas, are you aware of any other litigation that was commenced against BancorpSouth relating to overdraft fees?

A. Yes.

MR. TAYLOR: Let me object to the form and draw -- are you talking

about commercial?

MR. KAPLAN: No.

MR. TAYLOR: Or consumer?

THE WITNESS: We have commercial.

BY MR. KAPLAN:

Q. No, I'm only talking about consumer cases, not commercial cases?

A. Consumer cases, no.

Q. Yes. Okay.

Mr. Jaggers, how did you become aware of the Thomas Lawson lawsuit?

MR. TAYLOR: Object to the form. Beyond the scope.

THE WITNESS: Our attorneys contacted me.

BY MR. KAPLAN:

Q. Okay. Would that be outside counsel?

A. I believe our general counsel's office contacted me.

Q. Did you have a discussion about the Thomas Lawson lawsuit with anybody who is not an attorney?

MR. TAYLOR: I'm going to object to the form and instruct not to answer.