Consumer Finance Monitor (Season 5, Episode 38): A Close Look at The FDIC's Supervisory Guidance and Class Action Litigation Regarding Multiple Non-Sufficient Funds Fees Arising from Re-Presentment of the same Unpaid Transaction

Speakers: Alan Kaplinsky, Marty Bryce, and Kristen Larson

Alan Kaplinsky:

Welcome to Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer finance. I'm Alan Kaplinsky, senior council and former chair of the Consumer Financial Services Group at Ballard Spahr, and I'm very pleased that you've downloaded our podcast for today. Today, I, first of all, want to introduce our two guests for today. I'm going to make our listeners guess what they're going to be talking about, but I will let you know as soon as I introduce them. First of all, I want to introduce Martin Bryce. Marty is a Consumer Financial Services litigator, works out of the Philadelphia office.

Marty joined Ballard Spahr I think very shortly after I did or maybe before I did many years ago, many decades ago. He has represented clients in class actions around the United States for nearly 30 years. Among the many class actions that Marty has litigated, he's represented literally a ton of clients dealing with overdraft NSF class actions. Oops, I think I gave away the subject for today. Yes, that's what we're going to be talking about. There's nobody the more experienced in that overdraft NSF fee avalanche of class actions that's been going on for probably almost two decades that Marty. He was involved in the overdraft multi-district litigation out of Miami in front of Judge King.

I remember that very well. There were a lot of clients. It seemed like all the major banks in the country and some of the smaller banks were involved in that litigation. This is the litigation that just won't go away. It's still pending. There are many overdraft and NSF fee class actions pending around the country. Marty is I guess you could say privileged to be involved in many of them. I think he's got more than a half a dozen of these, several of them involving NSF fees, which is going to be the topic of the day. Then I want to introduce to you the newest member of our Consumer Financial Services Group, Kristen Larson. Kristen is in our Minneapolis office.

She's got almost two decades of in-house experience advising midsize and large national banks on consumer financial services matters. Her practice involves consumer, small business, Treasury management, products and services, digital banking, emerging payments, marketing, complex service contracts. She's involved literally or has had experience with the whole alphabet soup of former Federal Reserve Board regulations now with CFPB regulations and has had a lot of experience on the regulatory side of dealing with overdraft fees and NSF fees.

Kristen is, one final thing I want to mention, the 11th attorney to join our growing Consumer Financial Services Group in the past six months, and the first to join us in that timeframe from the Midwest, namely from Minneapolis. A very warm welcome, Marty, to you and to Kristen.

Martin Bryce, Jr.:

Very happy to join and hopefully have some interesting information to impart.

Kristen Larson:

Thanks for having me, Alan. I'm really excited to be here today and to share some of my experiences and highlight some of the guidance.

Alan Kaplinsky:

Terrific. Well, let's get into it. All right. We're going to be talking about NSF fees and in particular the FDIC guidance that was issued very recently. In fact, if you go on our blog, consumerfinancemonitor.com, you'll be able to find the blog that we wrote about it. But before we get into the nitty-gritty of the FDIC guidance, I would like to have you explain, Kristen, exactly what is an NSF fee. It stands for non-sufficient funds. A lot of people probably aren't aware of that, but what is it and how does it differ from an overdraft fee?

Kristen Larson:

Essentially an NSF fee is the fee that a bank charges when it does not pay an item. Usually it would be for an ACH debit transaction or a check that the customer wrote when the account doesn't have enough funds in it to cover the amount of the transaction. On the reverse side, an overdraft is when a bank pays an item when the customer does not have enough money in their account to pay for the transaction. That's how the two differ. It depends on the payment decision that the bank makes for the item.

Alan Kaplinsky:

I take it's a payment decision that it's just up to the bank, right? It's discretionary with the bank and they probably look at a lot of factors in deciding whether to bounce the item or whether to accept it and create an overdraft. Is that how that works?

Kristen Larson:

Yeah, absolutely. The way it works is that a lot of banks have a pay return modeling or decisioning platform they use that helps them to determine whether for a particular transaction when there's not enough funds in the customer's account, whether the items should be paid or returned unpaid.

Alan Kaplinsky:

Okay. So, a lot of people have been very critical of the banking industry for what they consider to be unfair fees that over the years that they have charged consumers overdraft fees, NSF fees. Some of these fees, I think, maybe ranging at least $35, maybe even more than that. It has been admittedly an important source of income for a number of banks. But what is the thinking behind an NSF fee, because that's a fee that the bank basically charges when it doesn't take on any risk? It has bounced the check or whatever the item may be or the ACH transaction. It's not like an overdraft where somebody has got a debit balance that has got to be taken care of. What is the thinking of banks?

Kristen Larson:

The primary reason that banks have been charging these fees is to deter customers from bouncing checks or making automated payments when their accounts have non-sufficient funds.

Alan Kaplinsky:

It has a deterrent value.

Kristen Larson:

Absolutely.

Alan Kaplinsky:

It's not so much that when they bounce, that the cost of bouncing it is maybe all that much. There needs to be a deterrence in the same way that banks will charge a late fee if you don't pay your credit card bill on time. Part of that is also a deterrence. Banks don't want really to charge these fees. They really want people to pay. They don't want people to bounce checks. They

don't want people to overdraft. Let's get now into the nitty-gritty of the supervisory guidance that the FDIC recently issued regarding NSF fees.

Kristen Larson:

The FDIC'S guidance, what it really is dealing with is the charging of multiple NSF fees arising from the same item. In terms of NSF fees, you can have an item get represented for payment if it was unpaid the first time. The guidance is focusing on identifying those times where an item is represented for payment and an additional NSF fee is charged. In the guidance, the FDIC is assessing the potential risks arising from these multiple resentment of NSF fees, the risk mitigation practices and their supervisory approach.

Alan Kaplinsky:

This guidance that got issued not so long ago, not a complete surprise I don't think to the banking industry because there was an earlier guidance that got issued where the FDIC identified during consumer compliance exams so-called UDAP violations, that's Unfair, Deceptive Acts and Practices, in connection with the represented practices that some banks were engaging in. In that guidance, the FDIC addressed potential risks arising from multiple representment of NSF fees, risk mitigation practices, and the FDIC supervisory approach. Before we get into the specifics of this guidance, who does it directly... It doesn't apply to all banks directly, right?

Kristen Larson:

That's right. The guidance directly applies to only state chartered banks and thrifts that are not members of the Federal Reserve System. If you're a national bank or a federal thrift and you're supervised by the OCC or you're a state charter bank that are members of the Federal Reserve System and supervised by the Fed, then this isn't going to directly apply to you. And then also remember, the CFPB has supervisory authority for compliance with the federal consumer financial laws, including UDAAP under Dodd-Frank, overall banks and thrifts with 10 million or more in total assets.

Alan Kaplinsky:

One little footnote I'd add to that is that the CFPB uses a different UDAAP statute. It's in the Consumer Financial Protection Act. It's UDAAP, unfair, deceptive and abusive acts and practices. It's broader than what the FDIC can use. What are the three categories of risk that the FDIC discusses in this new supervisory guidance?

Kristen Larson:

The FDIC guidance focuses on consumer compliance risk, third party risk, and litigation risk.

Alan Kaplinsky:

Let's go through each of them briefly. What does the FDIC say about consumer compliance risk?

Kristen Larson:

The FDIC'S focus on consumer compliance risk is related to the failure of the financial institution to clearly and conspicuously provide information that adequately advises consumers that it assesses the multiple NSF fees from the same transaction. They're focusing on if you're not disclosing that fee correctly and saying that it can be charged more than once, that that could be deceptive pursuant to UDAP under section five of the FTC Act.

In certain circumstances, they think the risk of unfairness may also be present if they're charged the NSF fees over a period of time without giving customers notice to be able to bring their accounts positive or the opportunity to avoid the assessment of the additional fees. Because in some situations, the fees could be charged over a two to three day period where the customer may not have yet the notice that the first item was returned unpaid.

Alan Kaplinsky:

What they're saying, staying with the consumer compliance risk for a minute, that if you put in your account agreement a clear disclosure that you're charging multiple fees for essentially the same item because it's been represented, if that's disclosed, you get rid of the deception part of UDAP. But I guess they're going a little bit further and saying that it also could be considered to be an unfair practice if after they present the item for the first time and it bounces, you don't give them a notice at that point that the item was presented and you bounced it. They're going to be charged $35 for that and that you're going to represent it again on a certain date.

If you haven't deposited sufficient funds in your account to cover the item plus I guess the $35 fee that's been assessed for the first bouncing, they'll be charged yet another $35 fee. Have I got that right, Kristen?

Kristen Larson:

You do. Part of the problem that we have here is.. It's a hard and tricky thing for banks to disclose things that are outside of their control. But what they can disclose is have that notice to the customer that this item was presented for payment and resulted in an NSF so that they are aware of that first item. But the issue becomes, does the customer see that before the item is represented?

Alan Kaplinsky:

You're right. You make a good point that bank has no idea when the merchant's going to represent it or if the merchant's going to represent. It's conceivable the merchant might just charge off the item. But apparently, the FDIC is saying that in addition to the disclosures in the account agreement, there's got to be a transactional disclosure after the item bounces for the first time. I take it, although the FDIC isn't completely clear on those, at least my reading of the guidance, that you can't deal with that through disclosure in the account agreement.

In other words, I had a client ask me recently, "Well, okay, I want to revise my account agreement to make it clear we're charging multiple fees when the same item gets represented." The client wanted to know, could we put in the account agreement and thereby avoid the transactional disclosure that would come later that this item may be represented by a merchant or another third party outside our control? We don't know if and when that will happen. But if it happens again, we're going to charge you another fee.

Kristen Larson:

The FDIC is really looking for that disclosure at the time of the transaction versus the upfront disclosure, so the customer can, to the extent there's time, react and make a change to avoid incurring another fee.

Alan Kaplinsky:

Let me ask you, we covered consumer compliance risk, what about third party risk? Kristen? What do the FDIC say about that?

Kristen Larson:

This isn't really new. We've heard oversight of third party service providers for years from our regulators. But what they pointed out is that they're expecting their institutions to maintain adequate oversight of their third party providers. This could be the core processors, the pay return systems that you're using, and to have that appropriate quality control over the products and services provided through those arrangements. They further note that the institutions are responsible for identifying and controlling risk from those third party relationships to the same extent that the activity was handled internally.

The FDIC further encourages institutions to review and understand the risk presented from their core processing systems related to multiple NSF fees, as well as the risk presenting from their core processing systems such as tracking the initial items, the represented items and maintaining data. But here's where the problem comes in, Alan. Many core processors do not have the capability to identify whether it's a new transaction or it's a representment of the first transaction. But the FDIC here

doesn't really provide a ton of relief. They say, "Well, that limitation does not relieve a bank from compliance with the guidance."

They do recognize that these software changes do require time to implement and will show some leniency to banks and thrifts that have self-reported a problem and provided a remedial plan to the FDIC before their next compliance exam.

Alan Kaplinsky:

We'll get to that in a little more detail later. You've really put your finger on the issue here and that is that I would venture to say most core processors, their software is not basically designed to distinguish the first presentment from any subsequent representment, right? It's got to be revised. Maybe that sounds simple to the three of us on the podcast today and our listeners, but believe me, that is a tall order. That requires a lot of retooling. It takes time and can't be done overnight. I mean, I guess it's nice to hear that the FDIC is willing to show some leniency.

I guess what the FDIC is implicitly saying, and we'll get to this a bit later, is if you can't do that, you do have another option and that is stop charging NSF fees, or as soon as there's one NSF fee charged on an item, I guess, well, I'm not even sure that would work. You wouldn't know. I think you'd actually have to adopt a policy of no more NSF fees. Am I right? Some banks have done that.

Kristen Larson:

That's the easiest way to comply with some of this guidance is to just say, "We're not going to charge the fees," because you're reliant on the timeline of your core processor if it's not internal to figure out when can they fix this or make the change.

Alan Kaplinsky:

Yeah, sure. Now, let's turn to the so-called litigation risk, Kristen. What does the FDIC say about that?

Kristen Larson:

They pointed out, as you mentioned earlier with Marty's involvement, that financial institutions have faced class action lawsuits alleging breach of contract and other claims, some of which have resulted in substantial settlements. This, again, is based on their failure to adequately disclose these representment and multiple NSF fee practices. Because you can fall into that trap where with overdraft you just say, "We charge a $35 fee per item." If you use that same terminology with NSF, that's where you fall into a dilemma because you are charging the fee twice per item. You really have to focus it on each time the item is presented for payment.

Alan Kaplinsky:

Marty, I did have some questions for you. Thank you for your patience while Kristen provided this background. But Marty, I'd like you to discuss this class action litigation involving NSF fees, what the plaintiffs are alleging and how these cases have been defended, and how have they've been settled, if any of them have been settled.

Martin Bryce, Jr.:

Sure. Happy to, Alan. I certainly enjoyed hearing everything I've heard up until this point. One thing hasn't changed in the 15 or so years I've been handling OD, overdraft, NSF fee the litigation is OD and NSF fees are most frequently challenged through class actions. I've had a few zealots here and there who've brought individual actions challenging overdraft and NSF fees, but they're rather rare. Most often brought as a class action for the simple reason that the dollars involved on an individual basis are small. From the point of view of the plaintiff's bar, you're dealing with respect to each bank with a specific deposit agreement that over a period of time, often years, hasn't changed where the punitive class is concerned.

From the point of view of the plaintiff's bar, that's a ready made class action. They always bring claims for breach of contract. Again, breach of the deposit agreement. Sometimes you'll see those coupled with a state UDAP unfair trade practice claim. From the perspective of a class action though, that can ultimately prove problematic because in a lot of states, you've got to

deal with issues of reliance or at the very least causation. Those two issues are inherently individualized, which at the end of the day would present a problem where class certification is concerned. Even when a complaint starts with more than a breach of contract count, once the dust has settled, that's typically all you're left with.

The first and best and simplest line of defense if you're able to take it is to file a motion to compel arbitration if the deposit agreement contains an arbitration agreement with a class action waiver. I certainly don't have to tell you, Alan, those are enforceable. You can get them enforced even in state courts. As I've mentioned, I've never or very rarely ever seen a plaintiff's class action lawyer pursue an individual claim in arbitration.

If you not fortunate enough to have the benefit of an arbitration agreement with a class waiver, the first line of defense becomes the deposit agreement and specifically a motion to dismiss, seeking to dismiss the breach of contract claim precisely because the deposit agreement allows for the assessment of another NSF fee upon representment. The issue that ends up arising in the briefing and the decision on that kind of emotion is, does the deposit agreement unambiguously provide for the assessment of a second NSF fee upon representment?

If it does, the motion to dismiss is granted. If the court on the other hand finds an ambiguity, finds the language ambiguous, the court will deny the motion to dismiss. That becomes a fact issue. The plaintiff's bar then moves to attempt to get the class certified, operating on the assumption that no one will actually bring a certified NSF or OD case to trial. And frankly, I've never seen that done. As I said, the issue comes down to does the deposit agreement unambiguously allow for the assessment of a second NSF fee?

The gold standard, and this is a more recent situation in response largely to this litigation, is to have a deposit agreement that very expressly states, if an item is presented again, we will assess an NSF fee again. That very unambiguously spells out that that's exactly what will happen. As you may remember, Alan, we've worked with clients to amend their deposit agreements to be that explicit. Now, a deposit agreement does not have to be that explicit. Courts outside of that gold standard have found deposit agreements that have allowed for the multiple assessment of NSF fees.

Generally, as long as the agreement doesn't directly tie the assessment of an NSF fee to an item, if the agreement can be read as a whole, because basic contract law applies here. You read agreements according to their plain meaning. You read them as a whole. You read the various provisions in conjunction with each other, not in isolation. If an agreement does not directly tie the assessment of an NSF fee to presentment of an item, it is possible for a court to conclude that not withstanding the express gold standard language, the agreement does allow for the assessment of multiple NSF fees.

At that point, then the court will dismiss the action. If the court doesn't go that route, then the next steps are obviously class certification and settlement.

Alan Kaplinsky:

Also, in addition to these NSF fees, my understanding based on what I've seen is although this overdraft fee, NSF litigations have been pending for well over a decade and the multi-district litigation in front of Judge King, the Southern District of Florida, most of that dealt with the practice of overdraft fees and processing them in high dollar amount to low dollar amount. That was a particular practice being challenged then. Everybody thought when a lot of banks change their practice on that or they settle class action litigation, that was going to be the end of this overdraft fee class action litigation. Marty, once all this NSF fee litigation gets resolved, is that the end or is it still more?

Martin Bryce, Jr.:

I think we'd all like it to be the end, but I'd hesitate to say that. The plaintiff's bar is nothing if not creative. Your memory is good, Alan. We started handling these cases more than a decade ago. They were high to low posting cases. Once again it came down to what does the deposit agreement allow. A lot of deposit agreements were not that explicit, so the banks amended their deposit agreements to deal with posting order. The plaintiff's bar got creative and came up with the multiple NSF fee approach.

Their creativity continues, what they're now also increasingly bringing either a standalone class actions were coupled with a multiple NSF fee claim or what are sometimes called authorized positive, purportedly settle negative. APPSN for short. What those claims deal with are debit card transactions. You walk into a merchant. You pay with your debit cards. You swipe it.

Your bank approves the transaction. The transaction doesn't actually settle. I.E., the merchant doesn't get paid until several days later. What might very well happen in that interim period is because of other transactions, when the bank goes to pay the merchant, your account is now in a deficit.

The bank having authorized the transaction has to pay the merchant. It pays the merchant, but it assesses you an overdraft fee. The theory of the plaintiff's bar is once the bank authorizes the transaction on day one, that's it. No matter what happens in the intervening days before settlement, even if it has to pay the merchant while you're in the negative, the bank cannot assess an overdraft fee. Those cases, just like the multiple NSF fee cases, come down to the disclosures. If the disclosures and deposit agreement are adequate, no ambiguity, motion to dismiss granted. If they're not, ambiguity, motion denied, and you're looking to further litigation and potentially a settlement.

Alan Kaplinsky:

My takeaways, Marty, from what you just told our listeners, is number one, if you don't have an arbitration provision in your deposit account agreement, it's never too late to put one in. We've done a lot of that for clients over the years. I mean, we really pioneered that area. Both you and Mark Levin and I, I can't even count the number of arbitration provisions with class action waivers that we've got clients adopt.

And then the second take takeaway is even if you're doing that and even if you're not doing it, you should take a very close look at your deposited account agreement to see what it says about these issues you've talked a bit about today, the charging multiple fees on representment of the same item, the authorized positive, subtle negative issue that you discussed at the end. We can certainly help on all that. That probably fits more in your domain, Kristen. Thank you, Marty. I'm going to get back to you on one other thing.

But now, I want to go back to you, Kristen, and ask what risk mitigation practices does the FDIC ask financial institutions to take in order to reduce the risk of consumer harm and to avoid potential violations of law resulting from multiple representment NSF fee practices? You said a little about that earlier, but maybe you could expand on that a little bit.

Kristen Larson:

As we previously discussed, the FDIC likes it if the financial institutions would just altogether eliminate NSF fees or not charge more than one NSF fee for the same transaction. But there's additional steps that financial institutions can do. The first is conducting a comprehensive review of policies, procedures, and monitoring activities related to representments and making any appropriate changes and clarifications. Now, I know from being in house, this can be a difficult process because it does involve talking to several different parties to make sure that you truly understand the practices when you're drafting disclosures, but it is an important step to take.

The second item was clearly and conspicuously disclosing the amount of the fees and when and how such fees will be imposed. You heard a little bit from Marty about how the litigation centers around the imposition of those fees and the disclosures. And lastly, they want you to review your customer notification or alert practices related to NSF transactions and the timing of fees to ensure that the customers do have the ability to avoid multiple fees for represented items.

Alan Kaplinsky:

Which we talked about a little bit. The FDIC, they seem to be saying... They're not directing all their supervised institutions to go look at this issue. I think you could say it's almost implicit in what they've said in the guidance that they're expecting those banks to go and see what they're doing and if they've got the same issue that the FDIC has identified in a number of other banks. And then they want you to self identify, that is to tell the FDIC what you've found if you found the problem and how are you going to remedy it.

And then the FDIC will let you know whether they agree with your approach, which I'm sure will provide a certain amount of restitution of any fees more than one fee, assuming you can figure that out, which is a difficult issue if you're still using the same software. They sort of suggest that they'll go light on you. They won't hit you with a civil money penalty if you do that. But if you don't do that and they come in for an exam and they identify the problem, then you got a problem. Because at that

point, it sort of sounds like not only will you have to make restitution, but you'll be charged civil money penalties. Have I got that right, Kristen?

Kristen Larson:

Yeah. Unfortunately, that's right. They want you to self-identify and correct the issue before they come in. But if you don't, you won't have some of those protections they'll give you for self-identifying the risk.

Alan Kaplinsky:

Yeah. Marty, I want to go back to you, because what happens... Let's just say a hypothetical example. You're defending an FDIC supervised bank and the plaintiff has already a class action pending claiming that they're engaged in this practice. Your client calls you in a panic and says, "It sounds like I've got to let the FDIC know about this problem. And if I do that and I tell them the remedy and then they approve it and I have to implement the remedy, what happens with the class action?" Put a little bit differently, Marty, how do you juggle both of those balls?

Martin Bryce, Jr.:

You try to keep them both up in the air as well as you can. I mean, I'll tell you, in my class action experience in general, going back nearly 30 years, I've rarely encountered a situation where a client had an already or ready generated class list. In fact, in most class actions, identifying who the class members are presents an issue and may even serve depending on the circuit and the court you're in to ultimately be a very good defense to any class action. What I always advise clients in any class action is be very careful about deciding whether you're going to do something that makes it easy to identify the class, because that's something that can come back and bite you.

You need to tread very, very rarely. Now, that said, as good as the plaintiff's bar is at times, one thing they can't do is collect the same dollar twice. If you're forced to deal with the FDIC and come to some accommodation with the FDIC, which obviously is important because it's your regulator, that could potentially move any pending class action or any future class action as well because the plaintiff's lawyers are looking for the whole pie for themselves and the class. If you've already worked out something with the FDIC, it'll be very difficult for them to come in at the tail end of that train.

Alan Kaplinsky:

I guess it's sort of the silver lining, I guess, of self-identifying.

Martin Bryce, Jr.:

It can be. I'll tell you briefly, Alan, there are a lot of plaintiffs firms that bring these cases around the country. They tend when they settle, and it can be specific to the case, the court, the main plaintiff, the decisions, et cetera. There's no cookie cutter approach, but they tend to settle for somewhere around 50 cents on the dollar generally. The fact is that the FDIC makes you pay more than that. The silver lining is you don't have to pay twice.

Alan Kaplinsky:

Let's say you're in the midst of settling the class action and then now you got to deal with this self-identification and you've worked out a deal to settle at 50 cents on the dollar, you got to tell the FDIC what you're about to do. You could be darn sure that they're not going to like 50 cents on the dollar. That they're going to want a hundred cents.

Martin Bryce, Jr.:

I've heard through the grapevine, so to speak, without saying too much that the FDIC has at times indicated it wants something closer to a hundred cents on the dollar. But when push comes to shove, if a pending class action is being settled and they view the settlement as fair, you can work things out with both them and the plaintiff's council.

Alan Kaplinsky:

Yeah, okay. Kristen, we really talked about the next thing I was going to ask you, and that was about the supervisory approach if the institution's proactive and self-identifies and corrects the violations. But let's go to the penultimate question. I have two more questions for you. You said earlier this guidance only applies to state chartered FDIC insured banks that aren't members of the Federal Reserve System. It applies to thrift institutions as well.

But what about all that big universe of all the others that are supervised by the comptroller or the currency, the Fed and the CFPB in the case of the very large banks. Have any of these regulators issued any specific guidance on this issue that we've been talking about today?

Kristen Larson:

They haven't, Alan. However, generally, the prudential regulators and CFPB take consistent positions. And as you know, the Comptroller and CFPB director are members of the FDIC board of directors. The other agencies, well, they haven't taken a formal position on the NSF fee presentment. They have made overdraft practices an area of their focus. We'd expect a similar position from the other agencies. However, I don't think we expect formal rulemaking at this time because some of the regulatory pressures have already caused the practices to evolve at banks.

Some banks have removed these NSF fees or changed their practices and lowered their fees. The changes happening in response to the regulatory pressure and criticism without the need for elongated rule making, which we don't see a lot of from the CFPB.

Alan Kaplinsky:

Well, Rohit Chopra has been very effective using the bully pulpit ever since he went into office and basically excoriating the banks and thrifts for charging these what he refers to as exorbitant overdraft and NSF fees. Final question before we wrap it up, and that is a couple of state regulators have also gotten into this game, right?

Kristen Larson:

That's right. Massachusetts and New York have weighed in on this issue and it gets around kind of the same issue of the multiple presentment in NSF fees and how good your disclosures are. If you are in those two states, you'll want to look at those regulatory guidance as well, because they may be applicable to you as well.

Alan Kaplinsky:

Yeah, okay. All right. Well we've come to the end of our program today. Thank you, Kristen. Thank you, Marty. Really appreciate sharing your thoughts with our audience. I want to thank our audience in particular for downloading our podcast today. Just to remind you that our podcast is a weekly podcast and it's available on just about any major platform where you may access your podcasts. Not to toot our own horn, but I will toot our own horn. A law firm advisory consultant, a consultant to law firms that deals with social media last year ranked our podcast show as the second best podcast show in the country for large law firms.

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