

Legal analysis to guide the mortgage industry and protect its interests.

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## **Plaintiffs File Suits Alleging FACTA Violations**

**by David R. Mellon**

Sirote is defending a number of classification suits against Birmingham-based restaurants and a local grocery store that allege violations of the Fair & Accurate Credit Transactions Act. An amendment to the Fair Credit Reporting Act, FACTA requires the merchant who receives a credit card for payment of a consumer's purchase of goods or services to delete all but the last five digits of the credit card's account number. Additionally, the card's expiration date may not be printed on the receipt. If the merchant does not comply, then there can be an award of actual damages that a consumer suffers as a result of the merchant not properly truncating the credit card number or eliminating the expiration date. If the violation is found to be "willful," there can be an additional award of statutory damages of \$100 minimum to \$1,000 maximum per transaction for each violation. The damages statute also allows for punitive damages and attorneys fees and costs.

The named plaintiffs in the five FACTA cases have sued on behalf of an alleged class of hundreds of thousands of customers. The plaintiffs have made claims for statutory and punitive damages on behalf of the named plaintiff class representative, and on behalf of the class and for attorney's fees. The plaintiffs have not made claims for actual damages.

In May 2008, Congress passed H.R. 4008, the "Credit and Debit Card Receipt Clarification Act of 2007." This bipartisan bill impacts those cases involving only merchants who improperly printed expiration dates on consumers' receipts. The bill, which is on its way to President Bush for his signature, amends the damages statute of the Fair Credit Reporting Act so that expiration dates printed on consumers' receipts is no longer a "willful" violation of the law. As such, the statutory damages of \$100 minimum to \$1,000 maximum are no longer available to the plaintiff or proposed class of plaintiffs. This law, once signed by the President, is retroactive.

Additionally, one federal judge in the U.S. District Court for the Northern District of Alabama has found in four FACTA cases pending before him that the statutory damages of \$100 minimum to \$1,000 maximum make the damage statute itself unconstitutional. Presumably, the plaintiffs will appeal this ruling to the U.S. Court of Appeals for the Eleventh Circuit.

The cases are pending in Federal and State Court.