

Visa/MasterCard Settlement: Frequently Asked Questions

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1. Essentials of the Suit:

Q: What is this case about?

A: The lawsuit, which is officially called “In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,” originated as a dispute between merchants, card-issuing banks, and payment card associations over interchange fees.

Merchants claimed that card associations set interchange fees and rules governing payment card acceptance in ways that amounted to illegal price fixing. The card associations, the principle ones in this case being Visa and MasterCard, and card-issuing banks countered that the fee structures are reasonable, and the merchants are free to negotiate better terms if they so desire.

Before the case was fully litigated, both sides reached a negotiated settlement. The settlement provides that Visa and MasterCard contribute to a \$6+ billion-dollar cash settlement fund, which will be distributed to merchants who accept the settlement. An additional \$1.2 billion is set aside to cover an adjustment in interchange fees for an eight-month period that starts on July 29, 2013.

All merchants received a notice from the claims settlement administrator saying that if they wished to participate in the settlement, they must register with the claims settlement administrator.

Q: What is interchange?

A: Interchange is a swipe fee that every merchant pays whenever they accept payment from a customer who is using a credit or debit card. Interchange is typically about 1.6 percent of the transaction amount. It is automatically deducted from the money a merchant receives when a transaction is settled.

Q: Who is suing whom in this case?

A: In 2005, a number of merchants filed separate lawsuits against card associations and issuing banks claiming they were engaging in unfair practices. Because the complaints in these various cases were essentially the same, they were consolidated into a single class action lawsuit. In the class action lawsuit, 19 named plaintiffs, representing the class of all merchants, is suing Visa, MasterCard, and a number of card-issuing banks, including Bank of America, Citi Group, and many others.

Q: Who are the plaintiffs in this case?

A: There were originally 19 plaintiffs representing the merchant class in this case. When the court finally approved of the settlement, 10 of the original 19 chose not to join the settlement.

The remaining 9 are now the plaintiffs in this case. They are: Photos Etc. Corporation; Traditions, Ltd.; Capital Audio Electronics, Inc.; CHS Inc.; Crystal Rock LLC; Discount Optics, Inc.; Leon's Transmission Service, Inc.; Parkway Corp.; and Payless Shoe Source, Inc.

Q: Who are the defendants in this case?

A: The defendants in this case are as follows:

- “Visa Defendants”: Visa U.S.A. Inc.; Visa International Service Association; and Visa Inc.;
- “MasterCard Defendants”: MasterCard International Incorporated and MasterCard Incorporated; and
- “Bank Defendants”: Bank of America, N.A.; BA Merchant Services LLC (formerly known as National Processing, Inc.); Bank of America Corporation; MBNA America Bank, N.A.; Barclays Bank plc; Barclays Bank Delaware; Barclays Financial Corp.; Capital One Bank (USA), N.A.; Capital One F.S.B.; Capital One Financial Corporation; Chase Bank USA, N.A.; Chase Manhattan Bank USA, N.A.; Chase Paymentech Solutions, LLC; JPMorgan Chase Bank, N.A.; JPMorgan Chase & Co.; Bank One Corporation; Bank One Delaware, N.A.; Citibank (South Dakota), N.A.; Citibank N.A.; Citigroup Inc.; Citicorp; Fifth Third Bancorp; First National Bank of Omaha; HSBC Finance Corporation; HSBC Bank USA, N.A.; HSBC North America Holdings Inc.; HSBC Holdings plc; HSBC Bank plc; National City Corporation; National City Bank of Kentucky; SunTrust Banks, Inc.; SunTrust Bank; Texas Independent Bancshares, Inc.; Wachovia Bank, N.A.; Wachovia Corporation; Washington Mutual, Inc.; Washington; Mutual Bank; Provident National Bank (also known as Washington Mutual Card Services, Inc.); Provident Financial Corporation; Wells Fargo Bank, N.A. and Wells Fargo & Company.

Q: Why is this case a class action?

A: A class action enables a small number of plaintiffs to sue on behalf of a larger group with similar interests. When this case began, a number of merchants were suing, each making essentially the same complaint. The court decided to combine all their cases into a class action in which 19 named plaintiffs would represent the entire class of merchants who accept debit and credit cards. The outcome of the case will apply to all members of the class.

Q: What is the essential issue in this case?

A: This case originated as a dispute over interchange fees.

The original purpose of interchange was to generate revenue that paid for all the services needed to make card payment possible. In recent years, merchants have found their interchange payments rising rapidly. They believe that because of restrictive rules governing card payment acceptance and the way interchange rates are set, they have no control and no ability to negotiate better rates from service providers. They contend that Visa and MasterCard illegally collude with card-issuing banks to set rates, and this amounts to a monopolistic practice.

2. Important Updates:

Q: Is there any recent news regarding the progress of the settlement?

A: The Court has formally approved a proposed settlement of a maximum of approximately \$6.24 billion and a minimum of at least \$5.54 billion in a class action lawsuit, called *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL 1720 (MKB) (JO). The lawsuit is about claims that merchants paid excessive fees to accept Visa and Mastercard cards because Visa and Mastercard, individually, and together with their respective member banks, violated the antitrust laws.

The settlement creates the following Rule 23(b)(3) Settlement Class: All persons, businesses, and other entities that have accepted any Visa-Branded Cards and/or Mastercard-Branded Cards in the United States at any time from January 1, 2004 to January 25, 2019, except that the Rule 23(b)(3) Settlement Class shall not include (a) the Dismissed Plaintiffs, (b) the United States government, (c) the named Defendants in this Action or their directors, officers, or members of their families, or (d) financial institutions that have issued Visa-Branded Cards or Mastercard-Branded Cards or acquired Visa-Branded Card transactions or Mastercard- Branded Card transactions at any time from January 1, 2004 to January 25, 2019. The Dismissed Plaintiffs are plaintiffs that previously settled and dismissed their own lawsuit against a Defendant, and entities related to those plaintiffs. If you are uncertain about whether you may be a Dismissed Plaintiff, you should call 1-800-625-6440 or [view the list of Dismissed Plaintiffs](#) for more information.

Q: Has the settlement been finalized?

▪ **A:** There was a Fairness Hearing on November 7, 2019 and on December 13, 2019, Judge Brodie of the U.S. District Court in Brooklyn, NY granted final approval of the Visa/MasterCard Interchange Fee Settlement. The terms of this proposed settlement modify and supersede the previous settlement that was remanded by the Second Circuit Court of Appeals in 2016.

Q: How much money will the lawyers be paid?

A: Class Counsel will file papers with the court seeking the court's final approval of the settlement. Along with those papers, class council will seek court approval of attorney's fees and expenses. According to the terms of the settlement, class counsel will ask the court for attorneys' fees that represent a reasonable proportion of the cash settlement fund, but not to exceed 11.5% of that fund (or \$1.2 billion). Class counsel will also seek reimbursement of their expenses not to exceed \$40 million, and up to \$200,000 per class plaintiff in service awards for their efforts on behalf of the class.

3. Filing a Claim:

Q: How do I file a claim?

A: The court is in the process of approving an official claims form and setting a deadline for members of the Cash Settlement Class to submit their claims. To receive a payment, you must file a claim using the official claims form. Merchants are able to file on their own and do not have to use a recovery service.

Once the settlement and claims form are approved, a claims form will be sent to merchants who have not excluded themselves from the settlement.

You can file a claim yourself using the official claims form, or you can work with a qualified claims recovery service that will prepare and submit your claim for you.

A claim form is not yet available. Class members are not required to sign up for a third-party service like Brownstone Recovery in order to participate in any monetary relief, and “no-cost” assistance is available from the Class Administrator and Class Counsel. You can file yourself by going to www.paymentcardsettlement.com or by calling 1-800-625-6640.

Q: Can I file a claim now?

A: No. The Court will approve a claim form and set a deadline for members of the Rule 23(b)(3) Settlement Class to submit claims. In order to receive a payment, you must submit a Claim Form.

If you received a Notice in the mail, a claim form will be mailed, or emailed, to you automatically. The Claim Form will also be posted on this website and available by calling,

Q: Is there a deadline for filing a claim?

A: No. In the future there will be a deadline.

Q: How will I know when it is time to file my claim?

A: You will need to track the case before, during, and after the fairness hearing, and be aware of all filing deadlines. Or you can register with a reputable claims recovery service that will follow the case closely for you and be sure that your claim, and all supporting data, is prepared and submitted before the deadline.

Q: What happens after I file a claim?

A: After you file your claim, the Claims Administrator will examine your claim and, based on available information, decide how much money you are owed. Once they make that determination, they will send you a settlement offer.

Q: How does the Claims Administrator decide how much money I am owed?

A: The amount of money you will receive in this settlement is a percentage of the total interchange fees you paid between January 1, 2004, and January 25, 2019. So the first thing the Claims Administrator needs to decide is how much interchange

you paid. The process used by the Claims Administrator to determine this is detailed in pages I-1 to I-16 in Appendix I of the settlement agreement.

According to the agreement, the Claims Administrator will make an effort to determine how much interchange each merchant paid between January 1, 2004, and January 25, 2019 based upon “the best available information or a reasonable estimate.” More specifically, the settlement states, “The amounts of Interchange Fees Paid by each Authorized Cash Claimant will be determined or estimated – to the extent possible and for as many Claimants as possible – from data obtained by Class Counsel from Visa, MasterCard, the Bank Defendants, non-defendant acquiring banks, and independent service organizations (‘ISOs’) subpoenaed by Class Counsel, and from Authorized Cash Claimants themselves.”

If the Claims Administrator does not have all of your information, they will try to make a good guess based on your total sales, credit and debit card transaction volume, merchant discount fees paid and your merchant category. If this information isn’t available, then the Claims Administrator will make an informed guess, with help from the Class Counsel, based on estimates from similar merchants.

Q: How do I object if I do not agree to the Claims Administrator’s offer?

A: If your claim is denied, or if you feel the offer from the Claims Administrator is inaccurate in any way, you will need to file a challenge directly with the Claims Administrator. Your challenge should be supported by all documentation and data that supports your case. The Claims Administrator will review your challenge and make a judgment as to whether your original claim should be denied, approved, or adjusted.

Q: Can I appeal the Claims Administrator’s decision?

A: If your challenge to their initial offer is rejected, you may appeal the Claims Administrator’s decision, and if necessary, take the Claims Administrator to court.

Q: When can I expect to receive my share of the settlement?

A: At this point, it is not known exactly how long it will take to distribute the cash settlement. Now that the court has approved the settlement, they are working on approving an official claims form.

Q: How do I object or exclude myself from the settlement?

A: The deadline to exclude or object to the settlement was July 23, 2019.

Q: Will the Claim Administrator work up estimates for all merchants?

A: No, just the merchants who filed a claim.

4. Utilizing a Third-Party

Q: Does Brownstone Recovery change any up-front fees?

A: No. Brownstone Recovery only charges a fee when we recover funds for our clients. When you sign a contract with Brownstone Recovery, you agree to pay us a percentage of your settlement when the Claims Administrator pays out your claim.

Q: If I pre-registered on my own at the Claims Administrator's web site, can I still use a claims recovery service?

A: Yes. You'll be able to specify that you'd like to use a recovery service at the time the official claim form is submitted. You do not have to use a recovery service.

Q: What will a claim recovery representative do for me?

A: A reputable claim recovery representative will closely track the progress of this case and be aware of key filing dates and other actions you must take. They will also register your intent to file a claim, help you compile data and documentation to support your claim, and file the claim on your behalf.

A good claim recovery representative will not do the following:

- Charge you a fee up front for their services.
- Try to sell you additional paid services.

Q: How do I know I can trust a claims recovery representative?

A: The best claim representatives for this case will have experience dealing with cases involving interchange and they will understand merchants and payment services. They will also have lots of experience working with court appointed Claims Administrators.

Q: Why should I choose to retain Brownstone Recovery?

A: There are four reasons why you might choose to retain Brownstone Recovery:

- **Expertise:** Our expertise is incredibly, narrowly focused on this very niche topic. We know how to mitigate the specific moving parts, potential unexpected changes, and processes involved with this case to get you the payout you deserve.
- **Experience:** Brownstone Recovery experts have decades of experience in settlement recovery, with special expertise in cases involving payment and interchange. Brownstone Recovery has worked on other card payment cases, including a previous case involving Visa and MasterCard. We are experienced enough to know how to mitigate the changes that may come up in a case like this.
- **Transparency throughout the process:** We update you throughout the process. We help you with your claim, we notify you of important milestones in the process, we tell you what the Claims Administrator is offering, and we work with you to appeal a settlement offer if necessary. From start to finish, we keep you informed of the status of your claim.

- **We make it easy for you:** Brownstone Recovery does the work of collecting your transaction history, supporting your claim, and staying on top of the process.

Q: If I retain Brownstone Recovery, what will they do for me?

A: When you retain Brownstone Recovery, our staff goes to work for you right away. Throughout the settlement process, we will work for you in these ways:

- Brownstone Recovery will register your intent to participate in the settlement with the Claims Administrator.
- When the court gives final approval of the settlement, Brownstone Recovery will file an accurate claim on your behalf with the Claims Administrator.
- Brownstone Recovery will follow up with you for any additional information needed to support your claim.
- Brownstone Recovery will track the settlement process and notify you about progress and status.

Q: Is there someone at Brownstone Recovery I can talk to if I have questions?

A: Yes, to speak with a Brownstone Recovery representative, you can call us at 877-202-2454.

5. Additional Details of the Suit:

Q: Why is this case important?

A: This is important because interchange fees generate about \$40 billion dollars per year, all paid for by merchants. The outcome of the case can impact the way merchants are able to negotiate fees, and whether they can promote alternative forms of payment. The outcome can also have a big impact on the payment card industry.

Q: What did the court decide?

A: The court did not render a decision in this case. The participants in this case: card associations, card-issuing banks, and merchants, agreed to settle before the case was fully litigated.

Q: Why is there a settlement?

A: This lawsuit was started in 2005. After 7 years of litigation involving the review of more than 50 million pages of documents and more than 400 depositions, but before an actual trial began, all parties in the case, including the court, recognized it was in everyone's best interest to settle.

Q: Does everyone agree with the terms of the settlement?

A: After the preliminary settlement was announced, only 9 of the original 19 named plaintiffs joined. 10 of the original 19 have refused to join in the settlement and maintain it is a bad deal for merchants. Others have objected as well.

For instance, Wal-Mart, Target, and a number of the largest merchants have already announced they will not participate in the settlement. A number of major trade organizations that represent merchants, including The National Retail Federation, the National Grocers Association, the National Community Pharmacists Association, the National Association of Convenience Stores, the ATM Industry Association, and others are urging their members not to participate in this settlement. Most of their objections relate to three areas of dissatisfaction:

- The monetary settlement is too small. Some objectors believe that \$300 billion dollars would be a fairer monetary settlement than \$6 billion.
- Most objectors agree that the settlement does nothing to fix what they perceive as anti-competitive practices related to the setting of interchange rates.
- Most objectors are concerned that they will be restricted by the terms that prohibit them from ever suing Visa and MasterCard in the future, even for matters that may not be related to the case at hand.

In spite of these objections, for many merchants the legal nuances of this case are of less interest to them than collecting their share of the \$6.05 billion-dollar settlement. Also, the card associations and issuing banks are confident this settlement will prevail, and the court will give its final approval after a final fairness hearing set for the November 2019.

Q: What are the settlement classes?

A: There are three settlement classes:

- **The Cash Settlement Class** – this includes all merchants who are eligible for, and who have not opted out of, receiving a share of the \$6.05 billion cash settlement fund. That includes any merchant who receive Visa or MasterCard credit and debit card payments between January 1, 2004 and November 28, 2012 and who files a claim to receive a share of this settlement.
- **The Interchange Classes** – this includes all merchants who receive Visa or MasterCard credit card payments during an eight-month period starting July 29, 2013. Eligible merchants who exclude themselves from the cash settlement class are still members of this class and will benefit from adjustments in interchange rates during this eight-month period.
- **The Rules Class** – this includes all active merchants, for all merchants will be subject to the rule changes governing interchange and payment card acceptance. Merchants who exclude themselves from the cash settlement class will still be part of the rules class.

Q: What are the rule changes related to payment cards and interchange?

A: Beginning on January 27, 2013, Visa and MasterCard will observe a number of changes in the rules practices related to payment card acceptance.

- One significant change is that merchants will be allowed to charge an extra fee to all customers who pay with Visa or MasterCard branded credit cards (not debit cards). This is a brand-level surcharge, and it is allowed if the surcharge conforms to all these rules:
 - It is the same for all Visa credit cards or all MasterCard credit cards.
 - It is not more than the merchant's average Visa or MasterCard merchant discount rate, and it is not more than the maximum surcharge cap, which will be posted on Visa's and MasterCard's websites.
 - For merchants that accept other brands of credit cards, such as American Express, Discover, or PayPal, there are other requirements that depend on the costs of those brands to the merchant and those brands' surcharge restrictions.
 - If the merchant accepts a competing brand of credit card that is as or more expensive than Visa or MasterCard, and that limits the merchant's ability to surcharge, the merchant may surcharge Visa or MasterCard cards only in the same way as the merchant would be allowed to surcharge the competing brand's cards or on the terms on which the merchant actually surcharges the competing brand's cards.
 - If the merchant accepts a competing brand of credit card that prohibits or effectively prohibits the merchant from surcharging in a particular channel of commerce, the merchant may not surcharge Visa or MasterCard cards unless it also surcharges the competing brand's cards regardless of the cost of that brand to the merchant. The amount of the surcharge must equal whichever is less: the cost to accept the competing brand or the surcharge imposed on Visa or MasterCard cards.
 - A merchant may individually negotiate an agreement with the competing brand to waive or limit its ability to surcharge that brand, if that agreement fulfills the terms of the Class Settlement Agreement.
 - A merchant may impose a surcharge on a particular Visa or MasterCard credit card product, such as Visa Signature. The amount of the surcharge must not be more than the merchant's cost to accept the particular Visa or MasterCard credit card product, minus the Durbin Amendment's cap on debit-card interchange fees. The surcharge must be

the same for all transactions on the particular Visa or MasterCard credit card product, regardless of the card's issuer.

- For merchants that accept credit cards issued by competing brands (e.g., American Express, Discover, or PayPal), there are requirements similar to the brand level surcharge rules summarized above.
- Under this settlement, merchants must comply with all applicable state or federal laws, including state laws regarding surcharging of credit or debit card transactions, and federal and state laws regarding deceptive or misleading disclosures. The fact that a merchant's ability to surcharge may be restricted under the laws of one or more states is not intended to limit that merchant's ability under the settlement to surcharge Visa or MasterCard credit cards where permitted by state law.

In addition to this surcharge, there are additional rules modifications. These include:

- **Discount Rule:** Merchants may offer discounts or other financial incentives at the point of sale to customers who do not pay with Visa or MasterCard cards.
- **All-Outlets:** Merchants may accept Visa or MasterCard at fewer than all of the merchant's "trade names" or "banners" if the merchant operates multiple businesses under different trade names or banners. For stores operating under the same "trade name" or "banner," however, merchants must accept or decline a network's cards at all of its stores operating under the same "trade name" or "banner."
- **Buying Groups:** Merchants that form buying groups that meet certain criteria may make proposals to Visa and MasterCard about card acceptance on behalf of the group's members. If Visa or MasterCard believe that the group's proposal "provides reasonable commercial benefits to the parties," it must negotiate with the buying group and decide, in "good faith," whether or not to make an agreement with the group.
- **\$10 Minimum Rule:** This rule, which allows merchants to set a \$10 minimum purchase for Visa and MasterCard credit cards, will not change even if the requirements of the Dodd-Frank Wall Street Reform Act end.