

RETAILERS WIN REVERSAL OF VISA/MASTERCARD CASE AT SECOND CIRCUIT COURT OF APPEALS

New York, New York (July 7, 2016) – After a four-year fight, Constantine Cannon won the reversal of a class action settlement that attempted to resolve merchant antitrust claims against Visa, MasterCard, and the nation's largest banks. The settlement tried to force the entire existing U.S. merchant community, and future merchants that accept Visa and MasterCard, to release all antitrust claims in exchange for limited money damages and virtually worthless injunctive relief. In the words of the Second Circuit, "class counsel knew at the time the Settlement Agreement was entered into that this relief was virtually worthless to vast numbers of class members." As one member of the court put it, "This is not a settlement; it is a confiscation."

Constantine Cannon represented dozens of the nation's largest retailers along with a majority of the original class representatives who objected to the settlement when it was first announced in July 2012. Our objector clients included a who's who of the nation's retailers: Walmart, Amazon, Gap, Costco, Starbucks, Lowe's, and 7-Eleven, among many others, along with prominent merchant trade associations representing thousands of individual members, including RILA, NACS, and the National Grocers Association.

While the proponents of the settlement touted as "historic" the \$7.25 billion in damages offered by the now-defunct settlement, the appeals court found that class counsel failed to adequately represent merchants, particularly the many existing and future merchants that are far more interested in future-looking relief than money damages. The court found that a single class counsel could not adequately represent one class of merchants interested in monetary damages, while at the same time representing another class more interested in future-looking relief. The result is a "structural" conflict, and one reason why under the vacated settlement some merchants stood to gain by receiving money damages while others would release their claims – forever – in exchange for absolutely nothing.

The ruling is a landmark for both merchants and consumers in class action and antitrust law. "This is a big win for retailers who were willing to stand up to a proposed settlement that, despite a seemingly large damages number, was both inadequate and unfair – and dangerous in its potential future effects on competition," said Jeffrey Shinder, a Constantine Cannon partner who led the legal effort on behalf of the largest group of merchants and has led complex payments litigations for decades.

In addition to forcing major companies to release ongoing damages claims, the settlement would have foisted a broad release on all U.S. merchants and handed Visa, MasterCard, and the nation's largest banks antitrust immunity from merchant lawsuits indefinitely. As the court ruled, however, "[t]he benefits of litigation peace do not outweigh class members' due process right to adequate representation."

Now that the settlement has been set aside, Visa, MasterCard and the banks face even broader litigation against their anticompetitive practices. Constantine Cannon leads a

large group of merchants seeking billions in damages from 2005 to the present and meaningful injunctive relief to bring competition to a largely broken payments market.

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ABOUT CONSTANTINE CANNON LLP

Constantine Cannon, with offices in New York, Washington, D.C., San Francisco, and London, has deep expertise in practice areas that include antitrust and complex commercial litigation, whistleblower representation, government relations, securities, and e-discovery. The firm's antitrust practice is among the largest and most well recognized in the nation. Constantine Cannon's experience spans multiple industries including healthcare, banking, electronic payments, insurance, high tech, telecommunications, the Internet, and government contracting.