

# Federal Case Provides Warning to Financial Institutions on Discrimination When Dealing with Suspected Fraud

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As financial institutions are becoming more proactive in the battle against check fraud, a federal court case from Michigan provides a cautionary tale on potential liability an institution can face if its actions are viewed as discriminatory against persons in protected classes.

In the Michigan case,<sup>[1]</sup> an African-American woman sought to deposit a \$27,616.14 insurance settlement check into her bank account. The bank employee questioned the authenticity and source of the check and allegedly said that “if the check came in the mail, it’s probably not real.” The check was ultimately deposited and the customer was told that \$5,000 from it would be available the next day.

When the customer sought to withdraw \$5,000 three days later the bank refused. The customer alleged that the branch manager told her that the check she originally deposited looked suspicious and was fraudulent, and another bank employee pointed out that the customer had never deposited such a large check before. The customer also alleged that the bank then froze her account and disabled her debit card. The bank ultimately allowed the withdrawal after her attorney called the bank.

The customer sued the bank claiming that the bank discriminated against her based on her race in violation of both Federal and Michigan civil rights statutes. The bank then filed a motion to dismiss the case for failing to state a claim upon which relief can be granted. In a July 21, 2023 opinion, a federal District Court judge in Michigan denied the bank’s motion, finding that the customer’s “allegations support the inference that [the bank’s] employees acted with discriminatory intent” with respect to the check and her account.

This opinion merely resolves the motion to dismiss and allows the case to proceed; it is not a finding that the bank did in fact discriminate against the customer. The opinion does, however, provide an important warning for financial institutions to ensure that their actions in general, and specifically in the battle against check fraud, do not discriminate against persons in protected classes.

This advisory is a general overview of this issue and is not intended as legal advice. If you have any questions, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at [jsimon@cullenllp.com](mailto:jsimon@cullenllp.com), Kevin Patterson at (516) 296-9196 or via email at [kpatterson@cullenllp.com](mailto:kpatterson@cullenllp.com), Elizabeth A. Murphy at (516) 296-9154, or via email at [emurphy@cullenllp.com](mailto:emurphy@cullenllp.com), or Gabriela Morales at (516) 357-3850 or via email at [gmorales@cullenllp.com](mailto:gmorales@cullenllp.com).

## Footnotes

[1] *Tamica Branscumb v. Horizon Bancorp, Inc.*, 2023 WL 4676874 (W.D. Mich. Jul. 21, 2023).

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