

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(JG)(JO)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(JG)(JO)
_____	:	
	:	<u>ELECTRONICALLY FILED</u>
This Document Relates To:	:	
ALL CLASS ACTIONS.	:	DECLARATION OF H. THEODORE
_____	X	GRINDAL IN SUPPORT OF CLASS
	:	PLAINTIFFS' MOTION FOR FINAL
	:	APPROVAL OF THE PROPOSED CLASS
	:	SETTLEMENT

**DECLARATION OF H. THEODORE GRINDAL IN SUPPORT OF
CLASS PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF THE PROPOSED CLASS SETTLEMENT**

I, H. Theodore Grindal, declare as follows:

1. I am the Partner in charge of the Lockridge Grindal Nauen P.L.L.P. ("LGN") state and federal government relations practice. LGN is one of the Counsel for Class Plaintiffs in the Payment Card Interchange Fee and Merchant Discount Litigation Case No. 05-md-1720(JG)(JO).

2. I submit this Declaration (1) in support of Class Plaintiffs' Motion for Final Approval of the Proposed Class Settlement, and (2) in response to the Declaration of Jeffrey I. Shinder in Support of Opposition to Class Plaintiffs' Motion for Final Approval of the Proposed Class Settlement, dated May 28, 2013 ("Shinder Declaration"). Paragraphs 4 through 30 of the Shinder Declaration discuss 2013 state surcharging legislation.

A. Overall Summary of 2013 State Legislative Action

3. During the 2013 state legislative sessions, anti-surcharge bills which would create new restrictions on credit card surcharges were introduced in 23 states. However, sixteen of those states chose not to pass this legislation, and their sessions have adjourned for 2013. Those states are: Arkansas, Hawaii, Indiana, Iowa, Kentucky, Maryland, Missouri, Nevada, New Hampshire, New Mexico, Rhode Island, South Carolina, Tennessee, Vermont, Washington and West Virginia.

4. One anti-surcharge bill passed in Utah; that legislation sunsets July 2014. Mississippi also passed anti-surcharge legislation, but it only applies to state-issued credit cards.

5. There are five remaining states with active legislative sessions in which anti-surcharge bills remain: Illinois, Michigan, New Jersey, Pennsylvania and Wisconsin. To date, none of these bills have passed.

6. The following is a synopsis of each state's action:

B. States in Which Bills Did Not Pass

7. In Arkansas, Senate Bill 291, prohibiting credit card surcharge from being passed on to card holders, was introduced on February 12, 2013. This bill was referred to the Committee on Commerce and Insurance. Before a hearing was scheduled, the bill was withdrawn by its author, Sen. Jane English. No action was taken on this bill. No anti-surcharge legislation was passed in Arkansas, and the legislature adjourned on April 23, 2013 and sine die adjournment on May 17, 2013.

8. In Hawaii, Senate Bill 470, prohibiting credit card surcharges from being passed on to consumers, was introduced on January 18, 2013, and was referred to Commerce and Consumer Protection. On February 14, 2013, the Senate Committee on Commerce and Consumer Protection recommended that the measure be passed with amendments. The bill was moved through the Senate Committee process and received in the House of Representatives on February 28, 2013. SB 470 was referred to the House Committee on Economic Development and Business and then to Consumer Protection and Commerce on March 7, 2013, and, on March 19, 2013, the committee recommended that the bill be passed with amendments and, on March 22, 2013, was reported in the Committee on Economic Development and Business. After passing out of the committees, the bill was given its Third Reading on April 9, 2013. On April 11, 2013, the Senate did not accept the House language and appointed a conference committee. The House refused to appoint members of the committee and the bill stalled. No anti-surcharge legislation was passed in Hawaii, and the legislature adjourned on May 2, 2013.

9. In Indiana, House Bill 1081 was introduced on January 7, 2013. House Bill 1081 was an omnibus bill out of the Committee on Financial Institutions. On April 25, 2013, this bill was passed without any anti-surcharge language included. Although at one point an amendment was added to House Bill 1081 prohibiting credit card surcharges from being passed on to consumers, that language was removed. No anti-surcharge legislation was passed in Indiana, and the legislature adjourned on April 27, 2013.

10. In Iowa, Senate Study Bill 1134, prohibiting a portion of credit card surcharges from being passed on to consumers, was recorded on February 11, 2013, and referred to the Ways and Means Committee. No hearings were held on this bill. No anti-surcharge legislation was passed in Iowa, and the legislature adjourned on May 23, 2013.

11. In Kentucky, Senate Bill 256 was introduced on February 6, 2013, and referred to the Committee on Banking and Insurance. The bill did not pass out of the committee. Senate Bill 194 was also introduced on February 15, 2013 and was referred to the Committee on Banking and Insurance. This bill did not pass out of the committee. Both bills prohibited credit card surcharges from being passed on to consumers. No anti-surcharge legislation passed in Kentucky, and the legislature adjourned on March 26, 2013.

12. In Maryland, House Bill 1167 was introduced on February 8, 2013. The bill was given its First Reading on February 8, 2013, and referred to the Committee on Economic Matters. Also introduced on February 8, 2013, was House Bill 1218. This bill was referred to the Committee on Economic Matters. Both bills prohibit credit card surcharges from being passed on to consumers. Both bills were scheduled to be heard on February 22, 2013, yet they were never discussed. No anti-surcharge legislation was passed in Maryland, and the legislature adjourned on April 8, 2013.

13. In Missouri, House Bill 495 was introduced on February 7, 2013. On February 14, 2013, it was referred to the Committee on Special Standing Committee on Small Business. A public hearing was held on March 6, 2013, where there was no further action. In addition, a similar bill was introduced, House Bill 496, on February 7, 2013, that was also given a public hearing in the Special Standing Committee on Small Business. This bill did not see additional action either. A final bill, Senate Bill 354, was introduced on February 20, 2013. This bill was referred to the Financial and Governmental Organizations and Elections Committee. On March 25, 2013, a hearing was held in this committee with no action taken on the bill. All these bills prohibited some form of credit card surcharges from being passed on to consumers. No anti-surcharge legislation was passed in Missouri, and the legislature adjourned on May 17, 2013.

14. In Nevada, Assembly Bill 220, prohibiting credit card surcharges from being passed on to consumers, was introduced on March 8, 2013, and referred to the Committee on Commerce and Labor. On April 13, 2013, the bill was deemed no longer eligible as it failed to meet committee deadlines. No anti-surcharge legislation was passed in Nevada, and the legislature adjourned on June 3, 2013.

15. In New Hampshire, House Bill 682, prohibiting credit card surcharges from being passed on to consumers, was introduced on February 20, 2013. It was referred to Commerce and Consumer Affairs Committee. A public hearing was held on February 26, 2013, and, in an Executive Session on March 5, 2013, the bill was retained in committee. On May 14, 2013, a subcommittee work session was held to discuss the bill. No action was taken. No anti-surcharge legislation was passed in New Hampshire, and the legislature adjourned on June 28, 2013.

16. In New Mexico, House Bill 545, prohibiting credit card surcharges from being passed on to consumers, was introduced on February 12, 2013. It was referred to the Committee on Business and Industry Committee/House Judiciary Committee. On February 22, 2013, House Bill 545 was recommended for passage in the House Business and Industry Committee and moved to House Judiciary. This committee was then postponed indefinitely. No anti-surcharge legislation was passed in New Mexico, and the legislature adjourned on March 16, 2013.

17. In Rhode Island, House Bill 5213, prohibiting credit card surcharges from being passed on to consumers was introduced on January 31, 2013, and referred to House Corporations. On February 5, 2013, during a hearing in that committee, it was recommended that the measure be held for further study. No anti-surcharge legislation was passed in Rhode Island, and the legislature adjourned on July 3, 2013.

18. In South Carolina, House Bill 3477, prohibiting credit card surcharges being passed on to consumers, was introduced on February 5, 2013, and referred to the Committee on Labor, Commerce and Industry, where the bill was never heard. No anti-surcharge legislation was passed in South Carolina, and the legislature adjourned on June 6, 2013.

19. In Tennessee, Senate Bill 1117 was filed for introduction on January 31, 2013. It was introduced on February 4, 2013. On February 6, 2013, it was referred to the Senate Commerce and Labor Committee. On March 19, 2013, Senate Bill 1117 was assigned to the General Subcommittee of Senate Commerce and Labor. Also in Tennessee, House Bill 897 was filed for introduction on February 5, 2013. It was referred to the Insurance and Banking Committee and then to the Subcommittee of Insurance and Banking. Both bills prohibited credit card surcharge being passed on to consumers. On March 20, 2013, House Bill 897 was taken off notice for calendar in this committee. No anti-surcharge legislation was passed in Tennessee, and the legislature adjourned on April 19, 2013.

20. In Vermont, Senate Bill 87, prohibiting credit card surcharge being passed on to consumers was introduced on February 7, 2013, and referred to the Committee on Judiciary. The bill was never placed on the agenda. No anti-surcharge legislation was passed in Vermont, and the legislature adjourned on May 14, 2013.

21. In Washington, House Bill 1870, prohibiting credit card surcharges from being passed on to consumers, was introduced on February 13, 2013, and referred to the Committee on Business and Financial Services. A public hearing was held on February 19, 2013, in the House Committee on Business and Financial Services. On February 21, 2013, Executive action was taken in the House Committee on Business and Financial Services to pass. On February 22,

2013, the bill was passed on to the Rules Committee for Second Reading. On March 7, 2013, House Bill 1870 was given the first substitute bill (BFS 13). Floor amendments were adopted, allowing credit card surcharges with disclosure and rules suspended. The bill was placed on Third Reading and passed. The bill then returned to its original committee. On March 11, 2013, the bill was given First Reading in Senate and referred to Commerce and Labor. A public hearing was held on March 27, 2013, in the Committee on Commerce and Labor, and on April 3, 2013, the bill was recommended to pass to the Rules Committee for Third Reading. On April 28, 2013, by resolution, the bill was returned to House Rules. On May 13, 2013, House Bill 1870 was returned to the House for reintroduction and was retained in present status. No anti-surcharge legislation was passed in Washington, and the legislature adjourned its regular session on April 28, 2013, and its special session II on June 29, 2013.

22. In West Virginia, Senate Bill 499, prohibiting credit card surcharges being passed on to consumers, was introduced on March 12, 2013, and referred to the Committee on Banking and Insurance. The bill was never heard in the committee. No anti-surcharge legislation was passed in West Virginia, and the legislature adjourned its regular session on April 13, 2013, and from a special session on June 18, 2013.

C. States in Which Bills Passed with Limited Application

23. In Mississippi, House Bill 759, prohibiting credit card surcharges from being passed on to consumers, was introduced on January 21, 2013, and was referred to the Banking and Financial Services and the Ways and Means Committees. On February 5, 2013, the bill died in committee. House Bill 1433 was introduced on January 21, 2013. It was referred to the Banking and Financial Services Committee. On February 5, 2013, the bill died in committee. Senate Bill 2601 was introduced on January 21, 2013, and referred to the Accountability,

Efficiency, and Transparency Committee; on February 12, 2013, it passed the Senate and was transmitted to the House. In the House, it was referred to the Banking and Financial Services and Appropriations Committees. On March 5, 2013, it died in committee. House Bill 964 was introduced on January 21, 2013, and referred to Appropriations Committee. On February 7, 2013, the bill was passed by the House and transmitted to the Senate. On February 15, 2013, it was referred to the Accountability, Efficiency, and Transparency Committee. On March 8, 2013, it was passed in the Senate, transmitted back to the House, and sent to the Governor for signature. Bill was approved by the Governor on March 20, 2013. However, this legislation prohibiting credit card surcharges from being passed on applies only to state-issued credit cards. The Mississippi legislature has adjourned for 2013.

24. In Utah, Senate Bill 67, prohibiting credit card surcharges from being passed on to consumers, was introduced on February 8, 2013. The bill passed through the Senate Amendment Recommendation–Senate Committee with a favorable recommendation by the Standing Committee. It passed Senate floor and was introduced in the House on March 4, 2013, and was referred to the Standing Committee. On March 11, 2013, the bill was passed on the House floor and sent to the Governor for signature. The bill was signed on April 1, 2013; however, this bill sunsets in July 2014. The Utah legislature adjourned on March 14, 2013.

D. States Where Legislatures are Still in Session

25. In Illinois, House Bill 977 was introduced on January 28, 2013. It was given its First Reading on January 29, 2013 in House and referred to Rules Committee. On February 13, 2013, the bill was assigned to Consumer Protection Committee. On March 22, 2013, the bill was re-referred to the Rules Committee. A second bill, House Bill 2328, was introduced on February 19, 2013, filed and given its First Reading and then referred to Rules Committee. The bill was

assigned to the House Committee on Consumer Protection on February 25, 2013. On March 22, 2013, the bill was re-referred to the Rules Committee. Both bills prohibit retailers from passing on surcharges to consumers. No action is scheduled to be taken on these bills. To date, no anti-surcharge legislation has passed in Illinois; however, Illinois has a veto session scheduled in October.

26. In Michigan, House Bill 4255 was introduced on February 14, 2013, and referred to the House Commerce Committee. In addition, Senate Bill 240 was introduced on February 28, 2013, and referred to the Committee on Banking and Financial Institutions. Both bills prohibit credit card surcharges from being passed to consumers. In Michigan, there was an informational hearing on HB 4255 on April 10, 2013; however, no legislative action was taken. To date, no anti-surcharge legislation has passed in Michigan; however, Michigan continues to meet until December 31, 2013.

27. In New Jersey, Senate Bill 2533 was introduced on February 4, 2013, and referred to Senate Commerce Committee. It was reported from Senate Committee with Amendments and placed on Second Reading. On February 7, 2013, it was passed by the Senate and received in the Assembly. Assembly Bill 3758 was introduced on February 7, 2013, and was referred to the Assembly Financial Institutions and Insurance Committee and reported from Assembly as a Substitute and placed on Second Reading. Assembly Bill 3743 was introduced on February 7, 2013, and was referred to the Assembly Financial Institutions and Insurance Committee. This bill has been combined with Assembly Bill 3758. Senate Bill 2550 was introduced on February 7, 2013, and was referred to the Senate Commerce Committee. A final bill, Assembly Bill 3867, was introduced on February 21, 2013, and referred to the Assembly Financial Institutions and Insurance Committee. These bills all prohibited various forms of credit card surcharges from

being passed on to consumers. To date, no anti-surcharge legislation has passed both bodies and become law. However, the New Jersey Legislature continues to meet until December 31, 2013.

28. In Pennsylvania, House Bill 750, prohibiting credit card surcharges from being passed on to consumers, was introduced on February 14, 2013, and referred to the Committee on Consumer Affairs. Bill was heard on April 17, 2013, but no action was taken. No anti-surcharge legislation has passed in Pennsylvania; however, the Pennsylvania legislature continues to meet until December 31, 2013.

29. In Wisconsin, Senate Bill 213, prohibiting credit card surcharges from being passed on to consumers, was introduced on June 5, 2013, and referred to the Committee on Financial Institutions and Rural Issues. A second bill, Assembly Bill 239, prohibiting credit card surcharges from being passed on to consumers, was introduced on June 6, 2013, and referred to the Committee on Consumer Protection. No hearings have been scheduled on either bill. To date, no anti-surcharge legislation has passed in Wisconsin; however, the Wisconsin legislature continues to meet until December 31, 2013.

E. Conclusion

30. Sixteen states that had bills prohibiting credit card surcharges from being passed on to consumers took no action. All of these sixteen states (Arkansas, Hawaii, Indiana, Iowa, Kentucky, Maryland, Missouri, Nevada, New Hampshire, New Mexico, Rhode Island, South Carolina, Tennessee, Vermont, Washington and West Virginia) have adjourned for 2013.

31. Ten of these states (Arkansas, Hawaii, Iowa, Indiana, Kentucky, Maryland, Missouri, New Mexico, Tennessee and Vermont) had concluded their legislative session and took no action prior to the May 28, 2013, date of the Shinder Declaration.

32. Of the five states in which the legislature is still in session (Illinois, Michigan, New Jersey, Pennsylvania and Wisconsin), only in New Jersey has there been serious consideration of an anti-surcharge bill. To date, in the other four states, no bills have passed.

33. Only in Utah is there a full prohibition that passed, and even that bill sunsets in July 2014.

34. Mississippi passed a very limited bill only applying to state-issued credit cards.

35. In summary, introducing legislation does not mean a bill will become law. This conclusion is clear from an analysis of all 23 states referenced in the Shinder Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Minneapolis, Minnesota
August 1, 2013


H. THEODORE GRINDAL