

For Immediate Release

Date January 20, 2010

Contact:

Benjamin F. Johns CHIMICLES & TIKELLIS 610-642-8500

Cory S. Fein CADDELL & CHAPMAN 713-751-0400

**PROPOSED VISA/HEARTLAND DATA BREACH SETTLEMENT MAY
PAY BANKS AND CREDIT UNIONS PENNIES ON THE DOLLAR**

**ACCORDING TO INTERIM CO-LEAD COUNSEL IN THE CLASS ACTION
LAWSUIT IN HOUSTON FEDERAL COURT**

(Houston, TX) Banks and Credit Unions that issued VISA payment cards compromised by the Heartland Payment Systems data breach, the largest data breach in history, should carefully review the proposed settlement between Heartland and VISA.

The proposed settlement has many weaknesses: (1) it may offer little compensation to payment card issuers, (2) it gives banks and credit unions little time to decide whether to participate, (3) it releases Heartland and other parties that may be liable, and (4) it is being touted for reasons that are not entirely accurate.

Notice of the proposed settlement was communicated to banks and credit unions throughout the country on January 14. Both VISA and Heartland are aggressively pushing the settlement on the eligible VISA issuers by giving them only until January 29—a total of 15 days—to decide whether to participate. Court appointed Interim Co-lead Counsel representing the proposed class of VISA issuers against Heartland in the pending class action lawsuit in Houston federal court, however, say not so fast—the proposed settlement is not as generous as Heartland and VISA want you to believe.

Pennies on the dollar. According to Interim Co-lead Counsel Mike Caddell of Caddell & Chapman, “There were over 86 million VISA payment cards compromised by the data breach. Once a financial institution factors in the costs it incurred to cancel and reissue the payment cards and the unauthorized charges it was forced to absorb, its share of the settlement most likely will be pennies on the dollar.”

Other potentially liable parties are released by contributing little, if anything, to the settlement. “Perhaps the most egregious aspect of the proposed settlement is that Heartland’s acquiring banks—KeyBank and Heartland Bank—which also are potentially liable for the data breach damages, will receive a complete release of any liability even though they are contributing little, if anything, to the settlement,” said Interim Co-lead Counsel Richard Coffman

of the Coffman Law Firm. “The majority of the settlement funds are provided by Heartland, which is downplaying its ability to pay any more money. Yet, KeyBank has \$97 billion of assets and Heartland Bank has over \$1 billion of assets, which suggests that there are additional sources of money to compensate the issuers for their damages.”

“It certainly makes one wonder,” Coffman continued, “why VISA would secretly negotiate a settlement on behalf of its issuers that lets the two richest potentially culpable parties off the hook with little, if any, financial investment and then force its issuers to decide within two weeks whether to accept the deal. If I were an executive of a financial institution harmed by the Heartland data breach, I would seriously question whether VISA truly has the best interests of its network members at heart.”

Interim Co-lead Counsel filed a complaint yesterday against KeyBank and Heartland Bank in Houston federal court, which alleges that these acquiring banks share responsibility for damages caused by the Heartland data breach.

The settlement selling points are not quite accurate. According to Interim Co-lead Counsel Joe Sauder of Chimicles & Tikellis, “In the informational webinars conducted by VISA, the issuers have been told that this settlement is similar to the one in the TJX data breach case where approximately 97% of the financial institutions elected to participate.”

“VISA and Heartland, however, omit some important information,” Sauder continued. “The Visa settlement in TJX occurred when that case was in a very different stage in the litigation. There, it was late in the case and the court had issued opinions denying the issuers’ motion for class certification and narrowing their legal claims, which meant, as a practical matter, there was no viable alternative for the issuers but to accept the settlement or file individual lawsuits. Also, prior to the settlement, TJX produced over 500,000 pages of documents.”

“Here, on the other hand, it is early in the case and there has been no formal discovery. There also are other important factual differences between TJX and the Heartland case. In our view, the proposed VISA settlement clearly is designed to circumvent the safeguards inherent in the judicial process.”

Notwithstanding these weaknesses in the proposed settlement, “in the end,” Caddell said, “each financial institution must perform its own cost/benefit analysis to determine whether to accept or reject the settlement. While we intend to continue to vigorously pursue our cases against Heartland and its acquiring banks to maximize the recovery for financial institutions, litigation is uncertain at best, and there are risks associated with all cases. There is no such thing as a lay down case, and there are no guarantees that our proposed class action lawsuit will be successful. We simply want to ensure that the financial institutions are making this important decision based on all of the pertinent information.”

Interim Co-lead Counsel will conduct conference calls in an effort to provide financial institutions with as much information as possible in order to make a fully informed decision whether to accept or reject the proposed settlement.

To participate in a conference call, please register for one of the scheduled calls listed below by going to the indicated web link:

(All times are Eastern)

Friday, January 22 at 3 pm: <http://web.meetme.net/r.aspx?p=1&a=UbxPkHkknMIsAA>

Monday, January 25 at 3 pm: <http://web.meetme.net/r.aspx?p=1&a=UyxbNOvoOndxnA>

Tuesday, January 26 at 10 am: <http://web.meetme.net/r.aspx?p=1&a=UjdkINAMYONzhA>

Questions you would like addressed during the conference call can be submitted, either during the call or in advance, to csf@caddellchapman.com.

Interim Co-lead Counsel also welcomes the opportunity to individually discuss the case and the proposed settlement with issuers.

<p>Richard L. Coffman THE COFFMAN LAW FIRM First City Building 505 Orleans St., Suite 505 Beaumont, TX 77701 Phone: 409-833-7700 RC@cofflaw.com</p>	<p>Michael A. Caddell CADDELL & CHAPMAN 1331 Lamar, # 1070 Houston, TX 77010 Phone: 713-751-0400 Fax: 713-751-0906 MAC@caddellchapman.com</p>	<p>Joseph G. Sauder CHIMICLES & TIKELLIS 361 W. Lancaster Avenue Haverford, PA 19041 Phone: 610-642-8500 Fax: 610-649-3633 JGS@Chimicles.com</p>
--	--	---

###