

## Insights

### Indiana Supreme Court Limits the Ability of Indiana Financial Institutions to Amend Account Agreements

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Earlier this week, the Indiana Supreme Court issued its long-awaited decision in the matter of ***Decker v. Star Financial Group, Inc.***, Supreme Court Case No. 22S-PL-305, 2023 WL 2583381 (Ind. Mar. 21, 2023), in which the Court addressed the enforceability of arbitration clauses in certain deposit account agreements. In *Decker*, the plaintiffs filed a class action lawsuit against the financial institution alleging violations of state law in connection with overdraft fees. The defendant bank sought to enforce an arbitration provision that it had added to its deposit account agreement less than a year earlier. The bank included the arbitration provision in an addendum to the deposit account agreement, which customers received as a supplement to their regular monthly account statement. The bank provided customers a ten (10) day notice period before the arbitration provision went into effect.

The amendment section of the deposit account agreement read in part, "We may change any term of this agreement." *Id.* at \*1. The plaintiffs argued, among other things, that this language did not allow the bank to add an addendum containing a new arbitration provision; rather, it only permitted the bank to amend existing terms on matters already addressed in the deposit account agreement. The Supreme Court agreed with the plaintiffs' position, holding that "[b]ecause the original account agreement had no general dispute-resolution provision or specific arbitration or class action provisions, the Bank could not add such provisions by amendment. Thus, the addendum was not a valid amendment to the account agreement." *Id.* at \*3.

#### So what does this mean for Indiana financial institutions?

The answer will depend on the language of each financial institution's deposit account agreement with respect to changes or amendments. Financial institutions should review their deposit account agreements in light of the Supreme Court's opinion in *Decker*.

Krieg DeVault's **Financial Services attorneys** are available to assist your institution with the review of your deposit account agreement to assess the impact of the court's ruling in *Decker*, and provide guidance as to best steps to protect your institution from litigation risk moving forward.

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