K. Todd Wallace comments on Ohio v. American Express, US Supreme Court decision that may have far reaching effect

So that merchants do not dissuade card holders from using Amex instead of other credit cards, American Express has had anti-steering provisions

K Todd Wallace, Attorney with Wallace Meyaski Law Firm

NEW ORLEANS, LOUISIANA, UNITED STATES, October 24, 2018 /EINPresswire.com/ -- In June 2018, the United States Supreme Court issued a 5-4 decision in Ohio v. American Express, which stemmed from a group of states' challenges to American Express' anti-steering provision in its contracts with Amex merchants. The anti-steering provision prohibits merchants from discouraging customers from using their Amex card after they have already entered the store and are prepared to buy something, thereby avoiding Amex's fee.

Antitrust Attorney K. Todd Wallace explains that the underlying issue is one of the fundamental ways that American Express' business model differs from other credit card issuers such as Visa or Mastercard.

> the case may have far reaching consequences for other multi-party transactions, including those in health care, [with] patients, insurance companies, and healthcare providers"
>
> *K. Todd Wallace, Attorney in New Orleans*

The Court noted that "[w]hile Visa and MasterCard earn half of their revenue by collecting interest from their cardholders, Amex does not. Amex instead earns most of its revenue from merchant fees. Amex's business model focuses on cardholder spending rather than cardholder lending. To encourage cardholder spending, Amex provides better rewards than other networks. Due to its superior rewards, Amex tends to attract cardholders who are wealthier and spend more money. Merchants place a higher value on these cardholders, and Amex uses this advantage to recruit merchants." To ensure that merchants do not dissuade card holders from using Amex instead of other credit cards, American Express has implemented anti-steering provisions into their contracts with merchants since the 1950's.

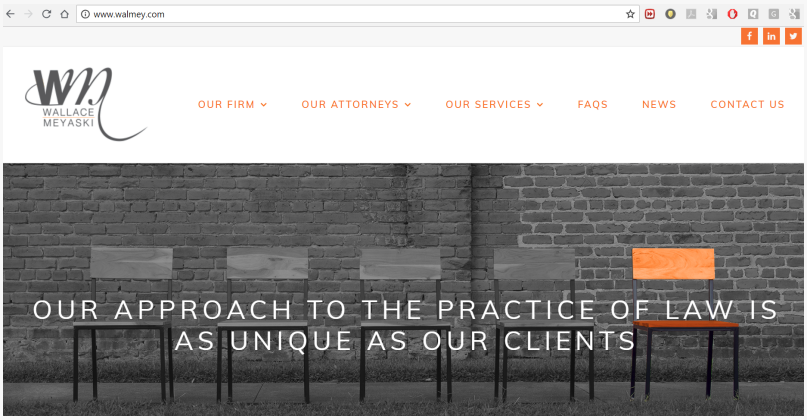
Several states sued American Express, asserting that the anti-steering provision violated antitrust laws. After a 7-week trial, the district court ruled in the states' favor, finding that "that the credit-card market should be treated as two separate markets—one for merchants and one for

cardholders." Thus, "[e]valuating the effects on the merchant side of the market, the District Court found that Amex's anti-steering provisions are anticompetitive because they result in higher merchant fees."

The Supreme Court, however, explained that credit card transactions should be evaluated as a two-sided transaction market. "With credit cards, for example, networks often charge cardholders a lower fee than merchants because cardholders are more price sensitive. In fact, the network might well lose money on the cardholder side by offering rewards such as cash back, airline miles, or gift cards. The network can do this because increasing the number of cardholders increases the value of accepting the card to merchants and, thus, increases the number of merchants who accept it. Networks can then charge those merchants a fee for every transaction (typically a percentage of the purchase price). Striking the optimal balance of the prices charged on each side of the platform is essential for two-sided platforms to maximize the value of their services and to compete with their rivals." Therefore, the Court explained that the two-sided transaction market must be evaluated as a whole. Going on to review the anti-steering practice, the Court concluded that American Express' practice does not violate antitrust laws when both merchant and consumer transactions are viewed in conjunction.

Mr. Wallace notes that the case may have far reaching consequences for other multi-party transactions, including those in health care, where patients, insurance companies, and healthcare providers could certainly be viewed as forming a two-sided transaction like the American Express case. Indeed, Justice Breyer's dissenting opinion, joined by Justices Ginsburg, Sotomayor, and Kagan, notes that such multi-party transactions are rather common. The dissenting opinion

K Todd Wallace, Wallace Meyaski Law Firm



Website of Law Firm Wallace Meyaski, K. Todd Wallace

Todd Wallace, Attorney of the Month, Attorney at Law Magazine 2013

argues that “[n]othing in antitrust law, to [Justice Breyer’s] knowledge, suggests that a court, when presented with an agreement that restricts competition in any one of the markets my examples suggest, should abandon traditional market-definition approaches and include in the relevant market services that are complements, not substitutes, of the restrained good.” Mr. Wallace notes that “how widely the Court will apply the multi-party transaction approach to antitrust cases remains to be seen. It is something on which attorneys and businesses in certain industries should keep a careful watch.”


K. Todd Wallace, Attorney in New Orleans, Louisiana

The case is Ohio v. American Express, available at https://www.supremecourt.gov/opinions/17pdf/16-1454_5h26.pdf

About Kenneth Todd Wallace

Kenneth Todd Wallace is an attorney and founding partner of the law firm Wallace Meyaski LLC. He has nearly 20 years of experience in the legal and business professions with established excellence in trial advocacy, negotiation, strategic and initiative planning, employment law compliance, government relations, mergers and acquisitions, and team building.

Law Firm Website: http://www.walmey.com/our-attorneys/k-todd-wallace/
Facebook page of the Law Firm: https://www.facebook.com/WallaceMeyaski/
Facebook page of Kenneth Todd Wallace, Attorney at Law: https://www.facebook.com/kennethtodd.wallace.3
LinkedIn Profile of Kenneth Todd Wallace: https://www.linkedin.com/in/k-todd-wallace-03895358/
Lawyer Profile at: http://lawyers.lawyerlegion.com/louisiana/kenneth-todd-wallace-18001529
Attorney Profile: https://www.lawyers.com/new-orleans/louisiana/kenneth-todd-wallace-604175-a/
Attorney Profile: https://solomonlawguild.com/k-todd-wallace
Lawyer Profile: http://www.lawyerdb.org/LawFirm/Wallace-Meyaski-LLC-New-Orleans/ http://www.lawyerdb.org/LawFirm/Wallace-Meyaski-LLC-New-Orleans-Lawyer/
Twitter: www.twitter.com - Todd Wallace@tarheeltodd94
Blog at: http://ktoddwallaceblog.blogspot.com/

K. Todd Wallace, Attorney at Law
Wallace Meyaski Law Firm
+1 504-644-2011
email us here
Visit us on social media:
Facebook
LinkedIn