

**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

JASON MACHIELA,)	
individually and on behalf of all)	
others similarly situated,)	
)	
Plaintiff,)	Case No. 05 C 3562
)	
v.)	Judge St. Eve
)	Magistrate Judge Nolan
TRIZEC HOLDINGS, INC. d/b/a)	
TWO NORTH LASALLE STREET,)	
)	CLASS ACTION
Defendant.)	

PRELIMINARY APPROVAL ORDER

This matter coming before the Court on the joint request of the parties for preliminary approval of a Class Action Settlement Agreement, and based upon the papers submitted to the Court and all of the proceedings had in this matter to date, IT IS HEREBY ORDERED:

1. The following Settlement Class is certified pursuant to Fed. R. Civ. P. 23(b)(3): All persons who, from June 16, 2004 to June 17, 2005, were charged a “transaction fee” for the use of the ATM machine located at 2 North LaSalle Street, Chicago, Illinois 60602, when no “transaction fee” amount was posted on the outside of that ATM machine.

2. Based on the parties’ stipulations, and for settlement purposes only: (A) the class as defined is sufficiently numerous such that joinder is impracticable; (B) common questions of law and fact predominate over any questions affecting only individual Class Members, and concern whether or not the absence of a posted notice at the ATM machine located at 2 North LaSalle Street, Chicago, Illinois 60602 violated the requirements of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*; (C) the claims of Plaintiff Jason Machiela are typical of

the Class Members' claims; (D) Plaintiff Jason Machiela is an appropriate and adequate representative for the Class and his attorneys, Lance A. Raphael, Stacy M. Bardo, and Allison A. Krumhorn are hereby appointed as Class Counsel; and (E) a class action is the superior method for the fair and efficient adjudication of the claims of the Class Members.

3. The Court finds that the proposed settlement is within the range of fairness and reasonableness and grants preliminary approval to it. In the event that the proposed settlement is not finally approved for any reason, Defendant shall, pursuant to the Settlement Agreement, retain its right to contest certification of the Class.

4. The Court approves the proposed forms of notice to the Class, and directs that notice be implemented in accordance with paragraph 31 of the Settlement Agreement. Counsel will file an affidavit with the Court, at least 5 business days prior to the Final Approval Hearing, attesting that notice has been so published and posted.

5. The Court finds that the notice proposed in paragraph 31 of the Settlement Agreement is the only notice to the Class Members that is required and further finds that such notice satisfies the requirements of due process and Fed. R. Civ. P. 23.

6. Class Members shall have forty-five days after the first date notice is published in the Chicago Tribune to send in a claim form, opt out or object to the proposed Settlement Agreement.

7. Any Class Member who wants to receive a monetary portion of the Settlement Fund shall send in a letter addressed to Class Counsel stating words to the effect of: "I AFFIRM UNDER PENALTIES OF PERJURY THAT I USED THE ATM AT 2 NORTH LASALLE STREET, CHICAGO, ILLINOIS AND AM A MEMBER OF THE *MACHIELA* CLASS DESCRIBED IN THE CLASS NOTICE AND WANT TO RECEIVE MY SHARE OF THE

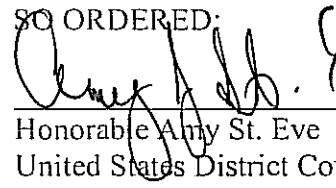
SETTLEMENT FUND.” The form must include identifying information from the consumer, including their name, address, telephone number, and the last four digits of their ATM card. To be timely, a Claim Form must be sent to Class Counsel and received by January 17, 2006, 45 days after the first date Notice is published in the Chicago Tribune.

8. Any Class Member who desires to exclude himself or herself from the Class shall not be bound by the Settlement and shall not be entitled to any of its benefits. To be timely, a request for exclusion must be sent to Class Counsel and Defendant’s Counsel and received by January 17, 2006, 45 days after the first date Notice is published in the Chicago Tribune. To be effective, the request for exclusion must make clear that exclusion is sought by stating: “I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN *MACHIELA V. TRIZEC HOLDINGS, INC.*” The request for exclusion must also contain the excluded Class Member’s name, address, and signature.

9. Any Class Member who objects to the Settlement contemplated by this Agreement shall have a right to appear and be heard at the Final Approval Hearing provided that such Class Member files with the Court and delivers to Class Counsel and Defendant’s Counsel a written notice of objection together with a statement of reasons for the objection no later than 14 days before the Final Approval Hearing date, or January 17, 2006. Class Counsel and Defendant’s Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law of no more than 15 pages filed and served no later than 5 days prior to the Settlement Hearing.

10. A Final Approval Hearing on the fairness and reasonableness of the Settlement Agreement will be held before this Court on Jan. 30, 2006 at 9:15 a.m./p.m.

SO ORDERED:

A handwritten signature in black ink, appearing to read "Amy St. Eve", is written over a horizontal line.

Honorable Amy St. Eve
United States District Court Judge