

CBA CONSUMER BANKERS ASSOCIATION *bank alert*

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Banks Win Victory in California Supreme Court

Today, in an important opinion for banks, the California Supreme Court affirmed the Court of Appeal's holding that Bank of America can recoup overdrawn amounts and charge insufficient fund (NSF) fees, notwithstanding social security or other public benefit funds in the account. The Court held that, since overdrafts and bank charges are not debts under California law, they are not subject to the limitations placed on a bank's right of setoff in the state. CBA filed an *amicus* brief in support of the bank.

In the case, *Miller v. Bank of America*, The Court affirmed a decision by the Court of Appeals in November 2006 dismissing a class action suit against the bank. The suit alleged that Bank of America had illegally debited accounts containing Social Security payments and other governmental benefits for overdrafts and NSF fees. The order would have required the bank to pay \$284 million in restitution and \$1,000 each to approximately 1.3 million customers who had overdraft fees withdrawn from their accounts.

According to the Court of Appeals, the case being relied upon as precedent, *Kruger v. Wells Fargo Bank*, was distinguishable, because the *Kruger* case involved the setoff of a customer's account to pay a separate credit card debt with the same bank, while the *Miller* case involved setoff of a customer's account to satisfy fees that accrued in connection with that particular account.

The California Supreme Court agreed. In its holding, the Court stated:
We conclude that Bank of America's practice does not run afoul of our holding in *Kruger* because the setoff of independent debt at issue in *Kruger* is not implicated here. We further conclude that Bank of America's practice of recouping overdrafts and charging insufficient funds fees is permissible in light of the [California] Legislature's unequivocal statement in Financial Code section 864 that overdrafts and bank charges are not debts and are therefore not subject to the limitations placed on a bank's right of setoff set forth in that statute. Because we conclude that Bank of America's practices do not violate state law, we do not reach the issue of federal preemption. Accordingly, we affirm the judgment of the Court of Appeal.

If you have any questions, contact Marcia Sullivan (msullivan@cbanet.org), Steve Zeisel (szeisel@cbanet.org), Darlene Rosenkoetter (drosenkoetter@cbanet.org) or David Pommerehn (dpommerehn@cbanet.org).