

Interstate Consumer Credit Transactions: Card Issuers Win Fee Exportation Cases

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I. Introduction

This article is the fourth in a recent series of articles in the *Quarterly Report* discussing interstate lending in the context of consumer credit transactions.¹ The previous article appeared in the Spring 1992 issue and reported the Massachusetts district

court decision in *Greenwood Trust Company v. Massachusetts*² prohibiting the exportation of late fees by Greenwood Trust, a federally insured Delaware-chartered bank, to Massachusetts cardholders under section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDA").³ On appeal, the United States Court of Appeals for the First Circuit⁴ ruled in favor of Greenwood Trust on the issue of federal preemption, holding that late fees are "interest" for purposes of exportation under section 521 and thus may be charged to residents of other states (referred to as the "exportation" of interest and fees). The United States Supreme Court denied certiorari in *Greenwood Trust* on January 11, 1993.⁵

In a ruling issued just days before the First Circuit's decision and involving two class action lawsuits filed in the wake of the district court decision in *Greenwood Trust*,⁶ a Minnesota federal district court in *Hill v. Chemical Bank* and *Fasulo v. Chemical Bank*⁷ (collectively, *Hill*) similarly concluded, in the course of denying motions to remand to state court, that late fees, over-limit fees, and similar charges are "interest"

for purposes of exportation under section 521.

The First Circuit's decision in *Greenwood Trust* and the Minnesota district court's ruling in *Hill* followed a ruling of the Minnesota federal district court in *Nelson v. Citibank (South Dakota), N.A.* and *Tikkanen v. Citibank (South Dakota), N.A.*⁸ (collectively, *Nelson*) in which the court concluded, in denying motions for remand to state court, that late fees and overlimit charges are "interest" for purposes of sections 85 and 86 of the National Bank Act.⁹ The *Nelson* ruling was followed by a decision¹⁰ in which the court granted defendants' motions for summary judgment and denied plaintiffs' motions for voluntary dismissal. The plaintiffs did not appeal. *Nelson*, like *Hill*, involved class action lawsuits filed in the wake of the district court decision in *Greenwood Trust*.

Three recently issued administrative interpretations also bear on interstate consumer credit transactions and are discussed *infra*.

II. The *Greenwood Trust* Appeal

In *Greenwood Trust* the First Circuit found express preemption of state usury laws based on the language of section 521.¹¹ Because federal preemption provided a resolution of the matter, the court did not reach any

2. 776 F. Supp. 21 (D. Mass. 1991).

3. Pub. L. No. 96-221, § 521, 94 Stat. 132, 164 (1980) (codified at § 27 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831d (1988 & Supp. I 1989)).

Section 521, as amended, states in relevant part:

(a) In order to prevent discrimination against State-chartered insured depository institutions . . . with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank . . . would be permitted to charge in the absence of this subsection, such State bank . . . may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank . . . is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

12 U.S.C. § 1831d (1988 & Supp. I 1989).

4. 971 F.2d 818 (1st Cir. 1992).

5. — U.S. — (No. 92-784).

6. Over forty lawsuits and administrative proceedings were filed in nine states following the district court's decision in *Greenwood Trust*. See Appendix *infra*.

7. 799 F. Supp. 948 (D. Minn. 1992); *Hill* was dismissed without prejudice Aug. 10, 1992; *Fasulo* was dismissed without prejudice Aug. 7, 1992. These non-consolidated cases were combined in a single decision by the court because of the similarities in facts and parties.

8. 794 F. Supp. 312 (D. Minn. 1992). These non-consolidated cases were combined in a single decision by the court because of the similarities in facts and parties.

9. 12 U.S.C. §§ 85, 86 (1988).

10. 801 F. Supp. 270 (D. Minn. 1992).

11. 971 F.2d at 831.

1. See Tomkies, *Interstate Consumer Credit Transactions: Greenwood Trust and Other Developments*, 46 Consumer Fin. L.Q. Rep. 50 (1992); Tomkies, *Interstate Consumer Credit Transactions: Recent Developments*, 43 Consumer Fin. L.Q. Rep. 152 (1989); Langer & Wood, *A Comparison of the Most Favored Lender and Exportation Rights of National Banks, FSLIC Insured Savings Institutions, and FDIC Insured State Banks*, 42 Consumer Fin. L.Q. Rep. 4 (1988).

of the Massachusetts law issues raised on appeal.¹²

With respect to the scope of preemption under section 521, the court found that the inquiry reduces to a consideration of what Congress intended by the terms "interest" and "interest rates" in section 521.¹³ The court rejected as unpersuasive the lower court's narrow "plain meaning" analysis of the text of section 521, noting that the plain meaning of "interest" is not necessarily restricted to numerical percentage rates and that federal court opinions have long suggested that, in ordinary usage, interest may encompass late fees and "kindred charges."¹⁴ The First Circuit observed that plain meaning is more an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence of Congressional intent contradicting supposedly plain meaning.¹⁵

Finding that the text of the statute is inconclusive, the court turned to a consideration of legislative and historical context. The court determined that "[t]he historical record clearly requires a court to read the parallel provisions of [section 521] and [section 85 of the National] Bank Act *in pari materia*," because Congress intended to create parity between federally insured state-chartered banks and national banks.¹⁶ The First Circuit noted that many principles inherent in section 85 are consequently "transfused" into section 521, including exportation authority (which the court characterized as a mechanism whereby a bank may continue to use the favorable

interest laws of its home state in certain transactions with out-of-state borrowers), and the "most favored lender" doctrine.¹⁷ The court stated that "[t]o the extent that a law or regulation enacted in the borrower's home state purposes [sic] to inhibit the bank's choice of an interest term under section 521, DIDA expressly preempts the state law's operation"; in *Greenwood Trust* Massachusetts law must yield to the preemptory force of section 521 insofar as the regulation of "interest" is concerned.¹⁸ Because the court found DIDA's text and legislative history also to be "at bottom, inconclusive" with respect to the interpretation of the terms "interest" and "interest rates," the court indicated that federal common law or state law must give content to these terms.¹⁹ Although the terms are contained in a federal statute, the court noted that resort to uniquely federal definitions is not automatic if Congress intends state law to fill the interstices within a federal legislative scheme.²⁰ The court stated that while state law cannot be permitted to define a statutory term in a way entirely strange to ordinary usage, where there are permissible variations in the ordinary concept of the term, a court may deem state law controlling.²¹ However, because, in the court's view, both state law and federal common law produce the same result in *Greenwood Trust*, the court declined to decide which law is the appropriate point of reference.²² If state law is applicable, the court said, it must in *Greenwood Trust* emanate from the laws of Delaware (the bank's home state), and the court expressly so held.²³ The court said that it was bolstered in its interpretation by recognition of the fact that section 85 "adopts the entire case law" of a bank's home state, not simply the numerical rate adopted by the state.²⁴ Be-

cause Delaware law explicitly incorporates late fees into its definition of interest and allows lenders to assess such fees against cardholders,²⁵ the court said that reference to Delaware law would include late fees in "interest" under section 85.²⁶ The court noted that federal common law provides "precisely the same result," observing that courts have had "little trouble" construing "interest" to encompass a variety of lender-imposed fees and financial requirements that are independent of a numerical percentage rate.²⁷ While noting that some such cases were decided with respect to intrastate loans and not in the exportation context, the court said that it discerned no principled basis for defining "interest" differently in intrastate and interstate contexts.²⁸ The court rejected the lower court's reliance on section 501 of DIDA for the meaning of "interest" as "misplaced," since these provisions are part of different statutes and have "materially different preemption terms."²⁹

In the court's view, construing the terms "interest" and "interest rates" to include late fees "fits most comfortably with the rationale undergirding section 521."³⁰ The court also found "broad support" for its construction in administrative rulings and informal opinion letters of various federal agencies, citing by way of example the Comptroller's interpretive ruling on the most favored lender doctrine³¹ for the proposition that all

12. *Id.* at 831 n. 12. *Greenwood Trust* challenged the lower court's rulings that Massachusetts' prohibition against late fees on credit card loans reaches out-of-state credit card issuers and that Massachusetts law evidences a fundamental public policy that overrides the contractual choice-of-law provision in the cardholder agreement choosing Delaware law. See Brief for Appellant *Greenwood Trust Company, Greenwood Trust*, 971 F.2d 818 (1st Cir. 1992); *Greenwood Trust*, 776 F. Supp. at 47; Mass. Gen. Laws Ann. ch. 140 § 114B (West 1991) (late fee prohibition); Tomkies, *supra* note 1, 46 Consumer Fin. L.Q. Rep. at 53, 55 (discussion).

13. 971 F.2d at 824.

14. 971 F.2d at 825.

15. *Id.* (quoting *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928) (Holmes, J.)).

16. *Id.* at 826-27. Section 85 contains language substantially similar to § 521, permitting national banks to charge:

on any loan . . . interest at the rate allowed by the laws of the State . . . where the bank is located; or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal reserve district where the bank is located, whichever may be the greater.

12 U.S.C. § 85 (1988); *cf.* § 521, *supra* note 3.

17. 971 F.2d at 827, 827 n. 8. The concept of exportation authority was established in *Marquette Nat'l Bank v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978). The most favored lender doctrine was established in *Tiffany v. National Bank*, 85 U.S. (18 Wall.) 409, 411 (1874).

18. 791 F.2d at 827.

19. *Id.* at 828.

20. *Id.*

21. *Id.* at 829 (quoting *DeSylva v. Ballentine*, 351 U.S. 590, 581 (1956)).

22. 791 F.2d 829.

23. *Id.*

24. *Id.* (quoting *First Nat'l Bank v. Nowlin*, 509 F.2d 872, 876 (8th Cir. 1975) and citing numerous additional cases).

25. See Del. Code Ann. tit. 5, § 950 (1985 & Supp. 1990).

26. 971 F.2d at 829.

27. *Id.* at 829-30 (citing *Nelson, supra* note 8, among other cases).

28. *Id.* at 830.

29. 971 F.2d at 830 n. 10; see Pub. L. No. 96-221, § 501, 94 Stat. 132, 161 (1980) (codified at 12 U.S.C. § 1735f-7a (1988)). Section 501 preempts state law limitations on the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved with respect to certain specified types of federally related first mortgage loans. Pub. L. No. 96-221, § 501(a)(1), 94 Stat. 132, 161 (1980) (codified at 12 U.S.C. § 1735f-7a(a)(1) (1988)).

30. 971 F.2d at 830.

31. *Id.* The Comptroller's interpretive ruling on the most favored lender doctrine provides in relevant part as follows:

(8) A national bank may charge interest at the maximum rate permitted by State law to any competing State-chartered or licensed lending institution. If State law permits a higher interest rate on a specified class of loans, a national bank making such loans at such higher rate is subject only to the provisions of State law relating to such class of loans that are material to the determination of the interest rate. For example, a national bank may lawfully charge the highest rate permitted to be charged by a State-licensed small loan company or mortgage plan bank, without being so licensed.

12 C.F.R. § 7.7310 (1992). For a discussion of this interpretive ruling and case law interpreting the materiality concept, see Langer & Wood, *supra* note 1, at 7-14, 17. See also *infra* Part VI.B.

"material" home-state laws are exportable. The court did not dwell on administrative interpretations because the court said it would have reached the same result independent of them.³² Because the court found that Massachusetts had opted back into federal preemption,³³ the court did not address the issue of the effect of state opt-out under section 525 of DIDA³⁴ on the exportation authority of federally insured state-chartered banks.³⁵

III. The Hill Decision

The Minnesota federal district court in *Hill* engaged in a two-step analysis: (1) whether section 521 completely preempted the field of usury claims against federally insured state-chartered banks and (2) whether the plaintiffs' claims were in fact usury claims challenging the rate of interest charged by a federally insured state-chartered bank within the meaning of section 521. The court noted that section 521 establishes the maximum interest rate for federally insured state-chartered banks and creates a federal remedy.³⁶ The court further noted that under the National Bank Act, section 86 has been construed to provide an

exclusive remedy for violation of section 85.³⁷ Because section 521 contains provisions nearly identical to sections 85 and 86, the district court concluded that, following the reasoning of *M. Nahas & Co. v. First National Bank*,³⁸ section 521 completely preempts the field of usury claims against federally insured state-chartered banks.³⁹

With respect to whether the plaintiffs' state law claims nevertheless may fall outside the preemptive scope of section 521, the court cited the ruling in *Nelson* for referencing a "wealth of authority" in case law and agency determinations interpreting "interest" under section 85 to include fees other than periodic interest rate charges.⁴⁰ The court stated that the same result must hold true under section 521, because the statutes have nearly identical language and Congress enacted section 521 to prevent discrimination against federally insured state-chartered banks.⁴¹ Among other authorities, the *Hill* court relied on *Fisher v. National Bank*,⁴² for the proposition that flat fees (in *Fisher*, for cash advances on a credit card account) are "interest" under section 85 and, because of the parity intended between sections 85 and 521, under section 521 as well.⁴³ The court also cited a recent Federal Deposit Insurance Corporation ("FDIC") interpretive letter confirming the agency's interpretation that section 521 authorizes federally insured state-chartered banks to export the same fees and charges on interstate loans as section 85 authorizes for national banks, including late payment fees.⁴⁴ The *Hill* court, like the First Circuit, specifically rejected the district court's analysis in *Greenwood Trust*⁴⁵ with respect

to the relevance and applicability of sections 501⁴⁶ and 525 of DIDA.⁴⁷

Following the issuance of the *Hill* court's ruling on the motions for remand, the plaintiffs voluntarily dismissed their suits.

IV. The Nelson Decisions

The *Nelson* court's ruling denying remand to state court employed an analysis of the remand issue substantially similar to that later employed in *Hill*. Because the court found that under the authority of *M. Nahas, Fisher*, and other cases, sections 85 and 86 preempt the field of usury claims against national banks, and flat fees (in *Nelson*, late fees and overlimit charges) constitute "interest" for purposes of sections 85 and 86, the court concluded that the plaintiffs' claims were in fact federal questions properly removable to federal court.⁴⁸

In its subsequent decision, the *Nelson* court rejected the plaintiffs' attempts, after the defendants had filed summary judgment motions, to obtain voluntary dismissal of the cases, or stays of the actions, on grounds that the relevant law was "unsettled."⁴⁹ The plaintiffs asserted that consideration by the United States Supreme Court was necessary to resolve the legal issues in question.⁵⁰ In response, the *Nelson* court noted that (1) the law had in fact become more settled since the cases were filed as a result of the First Circuit's decision in *Greenwood Trust* and the court's own remand ruling, (2) the United States Supreme Court did not appear to be prepared to address the issues imminently, (3) the defendants had already com-

32. 971 F.2d at 830 n. 11.

33. *Id.* at 823 n. 4.

34. Pub. L. No. 96-221, § 525, 94 Stat. 132, 167 (1980) (codified at 12 U.S.C. § 1730g note (1988)). Section 525 provides:

The amendments made by sections 521 through 523 of this title shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

Pub. L. No. 96-221, § 525, 94 Stat. 132, 167 (1980); see 12 U.S.C. § 1730g note (1988).

The states of Colorado, Iowa, Massachusetts, Maine, Nebraska, North Carolina, Wisconsin, and the Commonwealth of Puerto Rico formally opted out of §§ 521 through 523 of DIDA, although two states have since repealed their statutes opting out of §§ 521 through 523. See Colo. Rev. Stat. § 5-13-104 (Supp. 1990); 1980 Iowa Acts ch. 1156 § 32 (not codified); Me. Rev. Stat. Ann. tit. 9A, § 1-110 (Supp. 1990); 1981 Mass. Acts ch. 231, § 2 (codified at Mass. Gen. L., ch. 183, § 63 note (1987), repealed by 1986 Mass. Acts ch. 177); 1982 Neb. Law 913, § 2; N.C. Gen. Stat. § 24-2.3 (1986); 1981 Wis. Laws ch. 45, § 50 (not codified); and P.R. Laws Ann. tit. 10, § 9981 (Supp. 1988).

35. 971 F.2d at 823 n. 4. Section 525 was codified at 12 U.S.C. § 1730g note. Section 1730 was repealed by Title IV of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, § 407, 103 Stat. 183, 363. For a discussion of the effect of the repeal of § 1730g on opt-out authority under § 525, see Langer, *FIRREA Removes Opt-Out Limitation on Interest Rate Exportation by Insured Savings Associations*, 44 Consumer Fin. L.Q. Rep. 213 (1990).

36. 799 F. Supp. at 951.

37. *Id.* at 952.

38. 930 F.2d 608 (8th Cir. 1991) (holding that 12 U.S.C. § 86 completely preempts the field of usury claims against national banks).

39. 799 F. Supp. at 952.

40. *Id.* at 953 (citing *Nelson*, supra note 8, 794 F. Supp. at 318-20); see also *infra* Part VI.

41. 799 F. Supp. at 953.

42. 548 F.2d 255 (8th Cir. 1977).

43. 799 F. Supp. at 953.

44. *Id.* citing FDIC Letter from Douglas H. Jones, Deputy Gen. Counsel, FDIC (July 8, 1992) ("FDIC Letter"); see *infra* Part VI, A.

45. See 776 F. Supp. at 29-32, 35-36; Tomkies, supra note 1, 46 Consumer Fin. L.Q. Rep. at 52-53 (discussion).

46. Pub. L. No. 96-221, § 501; 94 Stat. 132, 161 (1980) (codified at 12 U.S.C. § 1735f-7a (1988)). Section 501 states in relevant part:

The provisions of the constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply

Pub. L. No. 96-221, § 501(a)(1), 94 Stat. 132, 161 (1980); see 12 U.S.C. § 1735f-7a(a)(1) (1988). A Senate committee report on the House Bill that, after the later addition of §§ 521 through 523, eventually became the DIDA states that the purpose of the passage of § 521 was to ease the severity of mortgage crunches that were prevalent at the time of the bill's consideration through the "limited" preemption of mortgage ceilings, S. Rep. No. 368, 96th Cong., 2d Sess. 18-19, reprinted in 1980 U.S.C.A.N. 236, 254-55. The report further states that "[i]n exempting mortgage loans from state usury limitations, the Committee intends to exempt only those limitations that are included in the annual percentage rate. The Committee does not intend to exempt limitations on prepayment charges, attorney fees, late payment charges or similar limitations designed to protect borrowers." *Id.*

47. 799 F. Supp. at 953-54.

48. 794 F. Supp. at 320-21.

49. 801 F. Supp. at 273.

50. *Id.*

mitted substantial resources to the cases, and (4) ruling on the summary judgment motions (which had been fully briefed by both sides) would be the most efficient way to resolve the actions.⁵¹ The court therefore deemed denial of the plaintiffs' motions appropriate.

With respect to the merits, the *Nelson* court noted that the issues arose out of two lines of cases interpreting section 85 of the National Bank Act: (1) cases interpreting the definition of "interest" under section 85 and (2) those interpreting the "exportation" principle of section 85.⁵² With respect to the first line of cases, the court said that it held in its remand ruling that "interest under section 85 could not be defined narrowly to include only periodic interest charges, but included flat fees as well."⁵³ With respect to the second line of cases, the court noted that the United States Supreme Court acknowledged in *Marquette National Bank v. First of Omaha Service Corp.*⁵⁴ that the exportation of interest pursuant to section 85 could impair the ability of states to enact effective usury laws.⁵⁵ While acknowledging that the plaintiff's policy arguments for preserving an individual state's authority to enforce consumer protection laws had some appeal, the court dismissed them, stating that it must apply the controlling law.⁵⁶ The court consequently turned to a consideration of the plaintiffs' attempts to limit the application of the two lines of relevant case law.

The *Nelson* court reiterated its earlier rejection of the plaintiffs' arguments that section 85 refers only to numerical interest rates and that the broad definition of interest applied under the "most favored lender" doctrine should apply only to intrastate, and not interstate, transactions.⁵⁷ The court then explored a third argument proposed by the plaintiffs, that late and overlimit fees may be

characterized under the common law as penalties outside the scope of interest limitations. The court ultimately rejected the penalty/interest distinction as unpersuasive, noting that the cases cited by the plaintiffs did not hold that late fees may never be deemed "interest" implicating usury laws and that the few cases cited by the plaintiffs did not necessarily reflect a universal common law approach.⁵⁸ The court observed that, indeed, the variation among state usury statutes and cases construing them was the very genesis of the actions before the court.⁵⁹

Addressing the plaintiffs' attack on the exportation principle on historical grounds, the court rejected the plaintiffs' argument that the National Bank Act was created only to address intrastate problems of bank note redemption. The court noted that the Supreme Court determined in *Marquette*⁶⁰ that the National Bank Act was intended to facilitate a national banking system that included interstate loans.⁶¹ Finally, the court addressed the plaintiffs' constitutional arguments that (1) exportation under section 85 violates principles of state sovereignty and (2) the incorporation of state law definitions of interest represents an unconstitutional delegation of Congress' legislative authority to the states. In disposing of these arguments, the court concluded that the impairment of state authority results from the interaction of state and federal laws, not simply conflicts between two state laws, and that such impairment results from the Supremacy Clause of United States Constitution.⁶² The court also concluded that while section 85 limits the scope of an individual state's laws, the statute does not

preempt state laws in their entirety.⁶³ Because section 85 dictates the laws governing national banks but does not affect the operation of a particular state's laws with regard to banks within its borders, the court concluded that section 85 does not constitute an impermissible delegation of Congressional authority.⁶⁴

The *Nelson* decision addresses several issues respecting exportation authority not previously addressed by the First Circuit's *Greenwood Trust* decision or the *Nelson* court's remand ruling, such as the penalty/interest distinction and the constitutional arguments advanced by the *Nelson* plaintiffs. Because the district court decided the *Nelson* cases under section 85, the court did not reach arguments by the defendants that the plaintiffs' state law causes of action represented impermissible state law interference with lending powers conferred on national banks under section 24 (Seventh) of the National Bank Act.⁶⁵

V. The Effect of the Decisions

These decisions are well reasoned, well written, and consistent and therefore are likely to be persuasive to other courts. Indeed, these decisions have been cited in several subsequent state court cases also allowing the exportation of additional fees as "interest" under federal preemption.⁶⁶ The First Circuit's decision in *Greenwood Trust* is binding only in Maine, Massachu-

51. *Id.* at 273-74.

52. *Id.* at 274-75.

53. *Id.* at 275.

54. 439 U.S. 299, 318-19 (1978).

55. 801 F. Supp. at 275.

56. *Id.* 276.

57. *Id.* at 276-77.

58. *Id.* at 278.

59. *Id.*

60. See *supra* note 54.

61. *Id.* at 279.

62. 801 F. Supp. at 280; see U.S. Const. art. VI, cl. 2.

63. 801 F. Supp. at 280.

64. *Id.*

65. 12 U.S.C. § 24 (Seventh) (1988 & Supp. II 1990).

66. See, e.g., *Sherman v. Citibank (South Dakota), N.A.*, No. L-01834-92 (Super. Ct. Camden County, N.J. Order filed Nov. 25, 1992) *dismissed with prejudice*, (court dismissed plaintiffs' challenge of late charge provisions on grounds of failure to state a claim; court found that the meaning of "interest" under § 85 is not limited to numerical interest rates, observing that "interest" is a charge on borrowed money that can come in many forms, including (under federal case law) late fees, closing costs, prepayment charges and "other varieties"); *Mazulka v. BANK ONE, COLUMBUS, N.A.*, No. 4058, slip op. (C.P. Philadelphia County, Pa. Dec. 17, 1992) (court sustained defendant's objection that plaintiffs had no valid cause of action under Pennsylvania law; plaintiffs had challenged annual fee, late charge, returned check charge and overlimit charge provisions; court characterized the rationale of recent federal decisions as defining "interest" to include "those fees and charges that arise out of the extension and maintenance of credit"); *Harris v. Chase Manhattan Bank, N.A.*, No. 941164 (Super. Ct. San Francisco County, Cal. Order filed Jan. 19, 1992), *dismissed* (court granted general demurrer on grounds that California statutory and common law limitations on late fees are preempted by §§ 85 and 521); *Stoorman v. Greenwood Trust Co.*, No. 92-CV-1789 (Dist. Ct. Denver County, Colo. Order filed Feb. 4, 1993), *dismissed* (court followed First Circuit decision in *Greenwood Trust*, *supra* note 4).

