

Interstate Consumer Credit Transactions: Recent Developments

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In the Winter 1988 edition of the *Quarterly Report* Jeffrey I. Langer and Jeffrey B. Wood discussed interstate lending by national banks and other federally-insured financial institutions and, in particular, the exportation of interest rates and other credit terms in connection with consumer credit transactions.¹ Langer and Wood compared the most favored lender and exportation rights of national banks, savings institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC), and state-chartered banks insured by the Federal Deposit Insurance Corporation (FDIC). Since the publication of that article, several court decisions and interpretative letters of federal regulators have been issued. Additionally, briefs have been filed in the continuing litigation between Citibank (South Dakota), N.A. (Citibank)

and the Iowa Attorney General (the *Citibank* litigation).² These materials contribute to the ongoing discussion of issues and considerations which national banks and other federally-insured financial institutions must analyze and weigh when contemplating interstate consumer lending programs. This article considers issues previously discussed in the work of Langer and Wood and the reader is referred to that article and to the articles cited therein for a more general treatment of issues raised in this article.

I. Most Favored Lender and Exportation Rights of Federally-Insured Savings Institutions

One issue not previously decided in the courts was whether federally-insured savings institutions enjoy most favored lender and exportation rights under section 522 (section 522) of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA).³ In *Gavey Proper-*

ties/762 v. First Financial Savings & Loan Association,⁴ the United States Court of Appeals for the Fifth Circuit held that federally-insured savings institutions do enjoy such rights. The Fifth Circuit affirmed a trial court ruling which granted summary judgment to an Illinois-chartered savings and loan against a Texas debtor's claim of usury.

Gavey Properties/762 (Gavey), a Texas-based real estate developer, obtained a loan from Illinois-based First Financial Savings and Loan Association (First Financial), to finance the renovation of a Dallas-area apartment project. The note executed by Gavey stated that the parties intended for the laws of the State of Texas and the United States to control the usury limitations of the transaction. The deed of trust which secured the note provided also that the deed of trust was to be made with reference to and was to be construed as a Texas contract governed by the laws of Texas. However, Gavey executed a letter to First Financial affirming that the loan which Gavey was undertaking was intended to be a business loan as outlined in "Chapter 74, section 4, paragraph c" of the Illinois usury law.⁵ During the relevant period, the Texas usury limit did not exceed 28%. Because the loan was prepaid through a refinancing transaction, the effective interest rate on the loan exceeded 28%. The trial court and the Fifth Circuit agreed that the Illinois law cited in Gavey's letter was applicable to the transaction. That law contained no interest rate limitation for business loans. Thus, the loan was not usurious and plaintiff's motion for summary judgment was denied.

The Fifth Circuit first reviewed the applicable federal law, stating that First Financial obtained its rate-charging authority from section 522.⁶ The court interpreted section 522 to allow a federally-insured savings institution to charge the highest of three possible interest rates: (i) the rate it would be permitted to charge in the absence of section 522; (ii) a rate of not more than 1% in excess of the discount rate

2. *Citibank (South Dakota), N.A. v. Miller*, No. 88-258-E (S.D. Iowa, filed May 6, 1988) [hereinafter the *Citibank* litigation]; see also *Iowa ex rel. Miller v. Citibank (South Dakota)*, No. CE 029-16973 (Dist. Ct. Polk County, Iowa, filed May 13, 1988) (the state court litigation had been set for trial June 1, 1989, by court Order dated September 15, 1988, but the trial date has been rescheduled for October 23, 1989). The parties have begun settlement negotiations, but significant issues must be resolved. *Weiner, Card Fees Law May Make Iowa Suits Moot*, *Ain. Banker*, June 29, 1989, at 2, col. 1. N date for oral argument on motions for summary judgment pending in the federal case has been set as of the date of this printing. The briefs of Citibank, the Iowa Attorney General, and various *amicus curiae* in the *Citibank* litigation are discussed below in Part V. Related cases are also pending: *Iowa ex rel. Miller v. United Missouri Bank, U.S.A.*, No. CE 029-17028 (Dist. Ct. Polk County, Iowa, filed May 31, 1988), and *United Missouri Bank, U.S.A. v. Miller*, No. 88-1343-E (S.D. Iowa, filed August 1, 1988); and *Iowa ex rel. Miller v. United Missouri Bank of Kansas City, N.A.*, No. CE 029-17029 (Dist. Ct. Polk County, Iowa, filed May 31, 1988), and *United Missouri of Kansas City, N.A. v. Miller*, No. 88-1344-E (S.D. Iowa, filed August 1, 1988). Both *United Missouri Bank of Kansas City, N.A.* actions have been stayed pending the outcome of the *Citibank* litigation.

3. Pub. L. 96-221, 94 Stat. 164 (Mar. 31, 1980). Section 522 of DIDMCA states in relevant part:

(a) If the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section, such institution 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 institution is located or at the rate allowed by the laws of the State, territory, or district where such institution is located, whichever may be greater.

Pub. L. 96-221, § 522, 94 Stat. 165 (Mar. 31, 1980) (codified at 12 U.S.C. § 1730g (1982)) (prior to 1983 amendment).
The 1983 amendment to section 522 added, after the words "insured institution," "(which, for the purposes of this section shall include a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation)." Pub. L. 97-457, § 33, 96 Stat. 2511 (Jan. 12, 1983) (codified at 12 U.S.C. § 1730g (Supp. V. 1987)).

4. 845 F.2d 519 (5th Cir. 1988).

5. See Ill. Rev. Stat. ch. 74, § 4(c) (Supp. 1980).

6. 845 F.2d at 520.

1. Langer and 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) [hereinafter Langer & Wood].

on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the institution is located; or (iii) the rate allowed by the laws of the state, territory or district where the institution is located, *i.e.*, the institution's "home" state.⁷ The Fifth Circuit opined that Congress passed sections 521 (section 521), 522 and 523 (section 523) of the DIDMCA in order to assure that borrowers could obtain credit in states with low usury limits and that federally-insured state-chartered institutions would not be competitively disadvantaged by those usury rates.⁸ The court noted that absent federal legislation, federally-insured, state-chartered lending institutions would be unable to compete with national banks which were allowed to charge higher rates of interest by federal law.⁹ Because the language in sections 521, 522 and 523 is "substantially identical" to that of 12 U.S.C. section 85 (section 85) which governs national banks, the Fifth Circuit opined that federally-insured institutions are granted the same most favored lender status and exportation rights enjoyed by national

banks.¹⁰ Because it concluded that a consistent interpretation of section 85 and section 522 is warranted, the Fifth Circuit reasoned that federally-insured savings institutions such as First Financial are permitted to export the favorable interest rates of their home state to other states in the same manner as national banks may export rates.¹¹

The court stated that the Federal Home Loan Bank Board (FHLBB) has interpreted section 522 "to harmonize fully with Section 85."¹² The court recognized that the FHLBB regulation interpreting section 522 defines the "applicable rate" as the greater of the most favored lender rate under state law or 1% over the federal reserve discount rate.¹³ The court further noted that in a published interpretive letter (the FHLBB letter), the FHLBB General Counsel has advised that a savings institution can export the most favored lender rate of its home state to other states based upon the parallel between sections 522 and 85.¹⁴ The court recognized that to the extent that section 522 is ambiguous, the FHLBB letter is entitled to deference provided that the interpretation is reasonable.¹⁵ While the court believed that the argument for ambiguity in the statutory language was weak, the court found the interpretation expressed in the FHLBB letter to be reasonable.¹⁶

Gavey argued that section 522 was inapplicable because the initial conditional clause ("if the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section") was not satisfied.¹⁷ Gavey submitted that the "applicable rate" which First Financial could charge did not exceed the Texas usury rate that First Financial would have been permitted to charge in the absence of section 522. The court believed Gavey's interpretation to be "counterintuitive"¹⁸ but recognized that Gavey's interpretation was arguably adopted in *In re Lawson Square, Inc.*¹⁹

In *Lawson Square* a loan secured by a first mortgage for the purchase of an Arkansas apartment complex had contained a provision for interest at the 90-day treasury bill rate plus 4%. Arkansas's most favored lender interest rate at the time was the Federal Reserve discount rate plus 5%. The Eighth Circuit found that the loan was not usurious because of section 501 (section 501) of the DIDMCA.²⁰

Under section 501, no usury limit was applicable to the loan on the basis of federal preemption, said the Fifth Circuit. The application of section 501 therefore rendered the Eighth Circuit's discussion of section 522 mere dicta.²¹ Moreover, the Fifth Circuit observed, the Eighth Circuit was "faced with a considerably different set of facts."²² The court believed that the Eighth Circuit would not literally apply its interpretation to a situation like *Gavey*.²³ The Fifth Circuit noted that in *Lawson Square* the interest rate the lender could charge in the absence of section 522 was the same as the rate allowed by the state where the lender was located.²⁴ The court further noted that the Eighth Circuit did not examine the legislative history of the DIDMCA or the FHLBB's regulations because no question of exportation was raised. Thus, *Lawson Square* was distinguishable, and section 522 governed the *Gavey* loan.

Gavey also asserted that section 522 must be interpreted differently than section 85 because the conditional clause con-

7. *Id.* at 520-21.

8. *Id.* at 521. Sections 521 and 523 of the DIDMCA have been codified at 12 U.S.C. §§ 1831d and 1785(g)(1), respectively. Section 521 of DIDMCA states in relevant part:

(a) In order to prevent discrimination against State-chartered insured banks, including savings banks and insured mutual savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign 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 or 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 or such insured branch of a foreign 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.

Pub. L. 96-221, § 521, 94 Stat. 164 (Mar. 31, 1980). Section 523 of the DIDMCA, respecting credit unions, is nearly identical to section 522 and, like section 522, differs from section 521 only in the absence of the first statement of intent to prevent discrimination found in the above quoted portion of section 521. Section 521 was the first of the three sections dealing with federal preemption of state usury law with respect to "Other Loans" by federally-insured institutions enacted in the DIDMCA.

9. 845 F.2d at 521. See, e.g., 126 Cong. Rec. 6907 (Mar. 27, 1980) (statement of Sen. Bumpers). The legislation to which the court referred was sections 521, 522 and 523 of the DIDMCA.

10. 845 F.2d at 521. Section 85 provides in relevant part:

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory or District 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, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter. When no rate is fixed by the laws of the State, or territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 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, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

12 U.S.C. § 85 (1982). The most favored lender doctrine was first expressed in *Tiffany v. National Bank*, 85 U.S. (18 Wall.) 409, 411 (1874). The right to export rates under section 85 was clarified by the United States Supreme Court in *Marquette Nat'l Bank v. First of Omaha Service Corp.*, 439 U.S. 299, 313-20 (1978). See *Langer & Wood, supra*, note 1, and Finkelstein, *Most Favored Lender Status for Insured Banks*, 42 Bus. Law. 915, 916 (1987), for a general discussion of these concepts.

11. 845 F.2d at 521.

12. *Id.* See 12 C.F.R. § 570.11(a) (1988).

13. 845 F.2d at 521. See 12 C.F.R. § 570.11(a).

14. 845 F.2d at 521. See Letter from General Counsel to the Federal Home Loan Bank Board (Aug. 6, 1982), reprinted in [Tr. B. 1988-89] Fed. Banking L. Rep. (CCH) para. 82,022.

15. 845 F.2d at 521 (citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843-44 (1984)).

16. 845 F.2d at 522.

17. See 12 U.S.C. § 1730(ga).

18. 845 F.2d at 522.

19. 816 F.2d 1236 (8th Cir. 1987).

20. Section 501 of the DIDMCA permanently preempted state usury ceilings on certain first mortgage loans, subject to qualifying state override. Pub. L. 96-221, Title V, 94 Stat. 161 (Mar. 31, 1980) (codified at 12 U.S.C. § 1735f-7).

21. 845 F.2d at 522.

22. *Id.*

23. *Id.*

24. *Id.*

tained in section 522 does not appear in section 85. Gavey asserted that the conditional clause would have no meaning if the "applicable rate" is interpreted to include the rate where the savings institution is located. The Fifth Circuit disagreed. It did not read section 522 to create a different interest ceiling for federally-insured savings institutions but believed that section 522 "can be seen as simply providing a more exacting formulation than § 85 of Congress' intent to aid federally insured financial institutions."²⁵ The court noted that section 85 does not explicitly provide for the exportation of the interest rate of a national bank's home state to other states in which it does business, but that the United States Supreme Court had construed section 85 to have such an effect in *Marquette National Bank v. First Omaha Service Corporation*.²⁶ Similarly, the court observed, the conditional clause of section 522 can be seen as allowing a savings and loan to "import" the favorable interest rates of another state when it lends funds to a borrower in that state.²⁷ The Fifth Circuit asserted that its construction of section 522 fully and accurately conforms section 522 to the most favored lender status of national banks as that status is currently understood.²⁸

Finally, the Fifth Circuit rejected Gavey's assertion that the parties had contracted out of section 522 by choosing Texas law. Despite the "inartful" choice of law provisions contained in the documents, the Fifth Circuit held that federal law in the form of section 522 still applies.²⁹ The Fifth Circuit observed that in *Fidelity Federal Savings and Loan Association v. de la Cuesta*,³⁰ the United States Supreme Court rejected an attempt to avoid federal due on sale clause regulations by choosing to have the deeds of trust at issue governed by "the law of the jurisdiction where the property was located."³¹ In *de la Cuesta*, the Supreme Court held that the "law of the jurisdiction" includes federal as well as state law.³²

Thus, because federal law in the form of section 522 was applicable to the loan transaction in *Gavey*, notwithstanding choice of

law provisions in the loan documents, and because First Financial was located in Illinois and able to avail itself of section 522, First Financial was authorized to charge interest at the rate permitted by Illinois law. Because Illinois law was applicable and contained no relevant limitation, the loan was not usurious, notwithstanding the fact that the rate of interest charged would have exceeded Texas law limitations for business loans.

II. Most Favored Lender Status of Federally-Insured, State-Chartered Banks

In *VanderWeyst v. First State Bank*,³³ decided June 3, 1988, the Supreme Court of Minnesota, *en banc*, affirmed the determinations in four appellate cases that federally-insured, state-chartered banks have most favored lender status under federal law and that federally-insured state banks in Minnesota may charge the same interest rates that Minnesota industrial loan and thrift companies may charge on agricultural loans.³⁴ The United States Supreme Court has denied a petition for certiorari.³⁵

In the four appeals, debtor-farmers sued the respective banks for usury. The plaintiffs contended that section 334.011 of the Minnesota Statutes (section 334.011) regulated the interest rate chargeable on agricultural loans under \$100,000 and limited the interest chargeable to not more than 4½% in excess of the applicable federal discount rate.³⁶ The contested loans provided for interest ranging from 11.85% to 16%, which exceeded the rate specified in section 334.011.

The banks claimed, however, that the DIDMCA granted them most favored

lender status³⁷ and that the most favored lender doctrine authorized them to charge the highest interest rate allowed under Minnesota law to any lender empowered to make agricultural loans. Because Minnesota law authorized industrial loan and thrift companies to make agricultural loans at rates not exceeding 21.75% per annum, the banks argued that pursuant to the most favored lender doctrine, they also could make agricultural loans at rates not exceeding 21.75% per annum. The farmers countered that the DIDMCA does not accord federally-insured state banks most favored lender status, that state law did not permit industrial loan and thrift companies to charge 21.75% interest on agricultural loans, and that, even if banks could charge a 21.75% rate of interest, the banks had failed to comply with other material provisions of state law that regulated loans made by industrial loan and thrift companies, in violation of Minnesota usury laws.³⁸

In each of the cases consolidated in *VanderWeyst* the appellate courts held (i) that the DIDMCA permits extension of the most favored lender doctrine to insured state banks; (ii) that under the most favored lender doctrine the banks may charge interest on their agricultural loans at the rate allowed industrial loan and thrift companies in Minnesota; and (iii) that to qualify for most favored lender status, insured state banks need not adhere to the licensing, lending, and loan splitting, and ceiling provisions required for industrial loan and thrift companies. The Minnesota Supreme Court agreed.

The banks submitted that the "rate allowed" language in section 521 of the DIDMCA is the same wording that appears in section 85. In the opinion of the Minnesota Supreme Court, however, the DIDMCA "uses language inviting uncertainty and disagreement."³⁹ The court suggested that such confusion is not surprising because "usury law, whether federal or state, has become so arcane and impenetrable (as commentators frequently observe) that one yearns to start over with a clean slate."⁴⁰ After noting that the FDIC, the FHLBB, the National Credit Union Administration, and the Minnesota Commissioner of Banks had all previously issued inter-

25. *Id.*

26. 845 F.2d at 522. See *Marquette*, 439 U.S. at 313-20.

27. 845 F.2d at 522-23.

28. *Id.* at 523.

29. *Id.*

30. 458 U.S. 141 (1982).

31. 485 F.2d at 523; see *de la Cuesta*, supra, 458 U.S. at 157.

32. 458 U.S. at 157.

33. 425 N.W.2d 803 (Minn.), cert. denied, ____ U.S. ____, 109 S.Ct. 369 (1988).

34. The four cases consolidated on appeal were *VanderWeyst v. First State Bank*, 408 N.W.2d 208 (Minn. App. 1987); *Walsh v. First State Bank and Heimark v. Norwest bank Montevideo*, 409 N.W.2d 5 (Minn. App. 1987); and *Bandas v. Citizens State Bank*, 412 N.W.2d 818 (Minn. App. 1987). The *Bandas* case was remanded for further proceedings to determine whether, in fact, the "origination fee" charged constituted interest and to determine a separate Racketeer Influenced and Corrupt Organizations (RICO) Act issue that was left undecided by the appellate court. 425 N.W.2d 811-12.

The Minnesota Supreme Court denied further review in the case of *First Bank East v. Bobeldyk*, 391 N.W.2d 17 (Minn. App. 1986), in which a Minnesota court of appeals held that the DIDMCA extended most favored lender status to federally-insured state banks. The cases consolidated in *VanderWeyst* all followed the decision in *Bobeldyk*. Because of the continuing litigation, the Minnesota Supreme Court agreed to review the question first raised in *Bobeldyk*. The Minnesota Supreme Court denied rehearing of the consolidated cases on July 5, 1988.

35. *VanderWeyst v. First State Bank*, No. 88-591, ____ U.S. ____, 109 S.Ct. 369 (1988).

36. Minn. Stat. § 334.011 (1986).

37. See 12 U.S.C. § 1831d (section 521 of the DIDMCA).

38. Additionally, in *Bandas*, the farmer claimed that the bank charged 51.52% interest on one particular loan in violation of the Racketeer Influenced and Corrupt Organizations Act.

39. 425 N.W.2d at 806.

40. *Id.*

pretative opinions construing the DIDMCA to give insured institutions most favored lender status, the court concluded that the "rate allowed" clause of section 521 should be construed as granting to federally-insured, state-chartered banks most favored lender status.⁴¹ The court was persuaded that by using the same language in the DIDMCA as appears in section 85, Congress intended to give most favored lender status to insured state banks.⁴² Moreover, the court believed that Congress' desire to put insured state banks on an equal footing with their national competitors was clear from a reading of the Congressional Record and the DIDMCA and that such a goal of equality is achievable only if state banks are afforded the same most favored lender status as national banks.⁴³

The court was not dissuaded by the clause found only in section 85 which states that "except that where by the laws of any State a different rate is limited for banks organized under State laws, the rates so limited shall be allowed for associations organized or existing in any such State under this chapter" (the exception clause).⁴⁴ The farmers argued that the absence of the exception clause from the DIDMCA meant that Congress did not intend to incorporate the most favored lender doctrine into the DIDMCA. The court disagreed. Citing *Northway Lanes v. Hackley Union National Bank & Trust Co.*,⁴⁵ the court noted that courts have relied upon the "rate allowed" clause as the source of most favored lender status for national banks since *Tiffany v. National Bank*.⁴⁶ In the Minnesota Supreme Court's opinion, the exception clause means that if "a different rate is limited," i.e., if state law provides a higher rate limited only to state banks, that rate, too, is available to the national bank.⁴⁷ Thus, the exception clause was omitted from the DIDMCA because it was not needed, the court reasoned.⁴⁸ The court observed that the DIDMCA's purpose was "to put insured state banks on a parity with national banks, and to do this it was unnecessary to say—as the 'except' clause in this context would

then say—that state banks can charge what state law says they can charge."⁴⁹

Notwithstanding the language of section 521, the farmers argued that the DIDMCA did not extend most favored lender treatment to agricultural loans. The farmers observed that the Public Law version of the DIDMCA addresses business and agricultural loans under Title V, Part B,⁵⁰ but the "rate allowed" language is found in Part C which addresses "Other Loans."⁵¹ Further, only Part C was directed to be codified at 12 U.S.C. section 1831d. The court was not persuaded, noting that Part B had a three-year sunset provision and concluding that Parts B and C are not mutually exclusive but more cumulative in effect.⁵² Moreover, the court observed, the text codified as 12 U.S.C. section 1831d applies to "any" loan, without distinction.⁵³ Thus, the Minnesota Supreme Court concluded that most favored lender status is conferred on federally-insured, state-chartered banks and that section 521 may be applied to agricultural loans notwithstanding other provisions of the DIDMCA also governing agricultural loans.⁵⁴

While recognizing the restrictive provisions of section 334.011, the court noted that under the most-favored lender doctrine a federally insured state bank, like a national bank, "may... charge the higher rate of interest allowed under state law to any competing state-licensed or chartered lending institution for the same specified class of loans."⁵⁵ The court noted that the competing lending institution ordinarily need not be the same type of lender, but the interest rate used must be for the same class of loan, such as an agricultural loan.⁵⁶

The court rejected the plaintiffs' contention that industrial loan and thrift companies were intended to make only consumer loans. The court observed that nothing in the applicable provisions of Minnesota law limited industrial loan and thrift companies to loans for particular purposes. Thus industrial loan and thrift companies had

the right to make agricultural loans, whether or not they in fact exercised such a right.⁵⁷

The relevant provision of Minnesota law governing the authority of industrial loan and thrift companies permitted such companies to extend credit or lend money and to collect and receive charges, as provided by Chapter 334, or "in lieu thereof" to charge, collect and receive interest at the rate of 21.75% per annum.⁵⁸ The court construed this provision to mean that industrial loan and thrift companies may make Chapter 334 loans and charge interest as provided in Chapter 334, but that in lieu of the interest allowed by Chapter 334 on such loans, these companies may charge 21.75% interest.⁵⁹ The court read the "[n]otwithstanding the provisions of any law to the contrary" language found in section 334.011 to mean that the floating rate of section 334.011 is permitted for agricultural loans even though other provisions of Minnesota law provide for contrary rates.⁶⁰ Even if the language in section 334.011 were read to mean that the floating rate for agricultural loans in section 334.011 was the exclusive rate that may be charged on agricultural loans, the court determined, the general provisions of section 53.04 of the Minnesota Statutes (section 53.04), which were enacted subsequently to the specific provisions of section 334.011, exhibited a manifest intent on the part of the legislature to prevail over section 334.011.⁶¹ Therefore, section 53.04 should control.⁶² Consequently, the court held, "the floating rate under § 334.011 is not an exclusive rate for agricultural loans for all lenders under state law, but 21.75 percent is available for agricultural loans made by [industrial loan and thrift companies] and, hence, also to insured state banks with most favored lender status."⁶³

The court also considered whether a \$35,000 loan limit prescribed by the Minnesota Regulated Loan Act was a class determinant with respect to loans for agricultural purposes. The court noted that one must distinguish between the amount of the loan which determines the class and a

11. *Id.*

12. *Id.*

3. *Id.* at 806-07; see 12 U.S.C. § 85.

4. 425 N.W. 2d 806 n.2 (citing 12 U.S.C. § 85 (1982)).

5. 464 F.2d 855, 862-63 (6th Cir. 1972) (quoting *Tiffany*), 85 U.S. (18 Wall.) at 412.

6. 425 N.W.2d at 806 n.2.

7. *Id.*

8. *Id.*

49. *Id.* at 806-07 n.2.

50. See 94 Stat. at 164.

51. See 94 Stat. at 164-68.

52. 425 N.W.2d at 807. Cf. *Lawson Square*, 816 F.2d at 1239 (stating Parts A and C not mutually exclusive).

53. 425 N.W.2d at 807.

54. *Id.*

55. *Id.* (citing 12 C.F.R. § 7.7310(a) (1988)).

56. 425 N.W.2d at 807.

57. *Id.* "Whether, in fact they are actually making agricultural loans is not the test; it is enough for the most favored lender doctrine that the lender has the right to make these loans." the Minnesota Supreme Court said. *Id.* (citing *Fisher v. First Nat'l Bank*, 548 F.2d 255, 257 (8th Cir. 1977)).

58. See Minn. Stat. Ann. § 53.04, Sub. 3a(a) (West 1988).

59. 425 N.W.2d at 807.

60. *Id.* (see Minn. Stat. Ann. § 334.011 (West 1981)).

61. *Id.*

62. *Id.*

63. *Id.* at 808.

