Interstate Delivery of Consumer Financial Services: *Greenwood Trust* Decision Rendered

By Darrell L. Dreher and Michael C. Tomkies***

In *Greenwood Trust Co. v. Massachusetts*,[1] a Massachusetts federal district court held that a federally insured, Delaware-chartered bank cannot impose late charges as permitted by Delaware law on credit card transactions with residents of Massachusetts because of a Massachusetts prohibition on such charges.[2] Thus, the bank cannot "export" Delaware late charges to Massachusetts.[3] The court's ruling represents the first significant judicial pronouncement on the scope and interplay of federal usury preemption, state law, and choice-of-law principles in the context of fee exportation. While ruling on the exportation of late charges by a federally insured, state-chartered bank, the court's decision has broad implications, affecting the scope of exportation authority granted to national banks, federally insured savings associations, and federally insured credit unions, as well as the exportability of various charges and terms in addition to late charges. Earlier litigation raising similar issues in Delaware and Iowa, involving both national and state-chartered banks, was settled prior to any adjudication.[4]

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1. 776 F. Supp. 21 (D. Mass. 1991).

2. *Id.* at 47.

3. The briefs of the parties on cross-motions for summary judgment and the briefs of several *amicus curiae* were reported in the last survey. *See* Harvey N. Bock, et al., *Developments in the Interstate Delivery of Consumer Financial Services*, 46 Bus. Law. 1223, 1236-46 (1991).

4. *See* Iowa *ex rel.* Miller v. United Mo. Bank of Kansas City, N.A., No. CE 029-17029 (Dist. Ct. Polk County, Iowa filed May 31, 1988, dismissed per stipulation Feb. 27, 1990); United Mo. Bank of Kansas City, N.A. v. Miller, No. 88-1344-E (S.D. Iowa filed Aug. 1, 1988, dismissed per stipulation Feb. 27, 1990); Iowa *ex rel.* Miller v. United Mo. Bank, U.S.A., No. CE 029-17028 (Dist. Ct. Polk County, Iowa filed May 31, 1988, dismissed per stipulation June 8, 1990); United Mo. Bank, U.S.A. v. Miller, No. 88-1343-E (S.D. Iowa filed Aug. 1, 1988, dismissed per stipulation June 8, 1990); Citibank (S.D.), N.A. v. Miller, No. 88-258-E (S.D. Iowa filed May 6, 1988, dismissed per stipulation Nov. 29, 1989); Iowa *ex rel.* Miller v. Citibank (S.D.), No. CE 029-16973 (Dist. Ct. Polk County, Iowa filed May 13, 1988, dismissed per stipulation Nov. 29, 1989); Iowa *ex rel.* Miller v. First Nat'l Bank, No. 88-20 (D. Del. filed Jan. 19, 1988, dismissed per stipulation Apr. 15, 1988). *See generally* Bock et al., *supra* note 3; Michael C. Tomkies, *Interstate*

THE COURT'S DECISION

The specific issue in *Greenwood Trust* was whether Greenwood Trust, a Delaware-chartered, federally insured bank, could impose late charges permitted under Delaware law on its Massachusetts Discover Card cardholders when Massachusetts law prohibited such charges. Greenwood Trust filed suit against the Commonwealth of Massachusetts and the Massachusetts Attorney General (Attorney General) on November 14, 1989 in response to the Attorney General's assertions that Greenwood Trust's practice of imposing late charges constituted an unfair and deceptive act or practice in violation of the Massachusetts Consumer Protection Act[5] and regulations promulgated thereunder,[6] as well as a violation of Massachusetts usury law.[7]

The court restated the primary issue in *Greenwood Trust* more broadly as a consumer protection issue:

> [M]ay a bank located in a state with permissive consumer lending laws take advantage of those favorable non-interest rate provisions in its own state's laws and "export" them to or impose them upon residents of another state which maintains greater consumer protection for its residents when they borrow in that state?[8]

Consumer Credit Transactions: Recent Developments, 43 Consumer Fin. L. Q. Rep. 152 (1989); Jeffrey I. Langer & Jeffrey B. 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).

5. Mass. Gen. Laws Ann. ch. 93A, §§ 1-11 (West 1984). Section 2 of chapter 93A declares unfair methods of competition and deceptive acts or practices in the conduct of any trade or commerce to be unlawful. *Id.* ch. 93A, § 2.

6. The Attorney General's regulations promulgated under chapter 93A provide in relevant part:

> Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of M.G.L. c. 93A, s. 2 if . . .
>
> (3) It fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection . . . .

Mass. Regs. Code tit. 940, § 3.16 (1986).

7. *See* Letter from Ernest L. Sarason, Jr., Asst. Att'y Gen., Mass., to Greenwood Trust Co. (Oct. 27, 1989) (on file with author). Section 114B of chapter 140 of the Massachusetts General Laws provides that "[n]o creditor shall impose a delinquency charge, late charge, or similar charge on loans made pursuant to such an open end credit plan." Mass. Gen. Laws Ann. ch. 140, § 114B (West 1991). The term *open end credit plan* means "a plan under which the creditor reasonably contemplates repeated transactions . . . and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance." *Id.* ch. 140D, § 1. This definition of open end credit plan, taken from the Massachusetts Truth-in-Lending Act, is expressly incorporated by reference into § 114B. *Id.* ch. 140, § 114B. The term *creditor* as used in § 114B is not defined. *See id.* Two bills introduced in the fall of 1991 in the Massachusetts legislature addressing the foregoing prohibitory language died in committee on December 31, 1991.

8. *Greenwood Trust*, 776 F. Supp. at 23 n.3.

The court declared that resolution of this issue required consideration of two subsidiary issues: whether Massachusetts usury law is preempted under the Supremacy Clause of the United States Constitution[9] by section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA)[10] and, if not so preempted, whether Massachusetts usury law prohibiting late charges[11] contemplates the regulation of out-of-state credit card issuers.[12] In finding against Greenwood Trust and for the Attorney General, the court held that (i) the provisions of section 521 of DIDMCA do not preempt Massachusetts' prohibition on late charges, (ii) Massachusetts law evidences a fundamental public policy that overrides the contractual provision in the cardholder agreement choosing Delaware law to govern the cardholder agreement, and (iii) Massachusetts' prohibition against late charges on credit card loans reaches out-of-state credit card issuers.[13] The court recited the facts as stipulated by the parties[14] and devoted the majority of its opinion to an analysis of the legal issues.

PREEMPTION ANALYSIS

The court first analyzed the federal preemption issue. The court presented a history of DIDMCA and Massachusetts law, attributing the source of the present controversy to "the increasingly unsettled relations among banks, state regulators, and federal authorities over the last decade."[15] Against a background of the historical interplay of state and federal usury and banking law, the court noted that in enacting section 521 of DIDMCA, "Congress also recognized the

9. U.S. Const. art. VI, cl. 2.

10. Pub. L. No. 96-221, § 521, 94 Stat. 132, 164 (1980) (codified as amended at 12 U.S.C. § 1831d (1988 & Supp. II 1990)). Section 521 of DIDMCA, as amended, states in relevant part:

> 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. II 1990) (emphasis added).

11. Mass. Gen. Laws Ann. ch. 140, § 114B (West 1991); *see supra* note 7.

12. *Greenwood Trust*, 776 F. Supp. at 23.

13. *Id.* at 47.

14. *See id.* at 24-25. The court adopted the facts as presented by the Attorney General, stating that Greenwood Trust had failed to make a filing. *Id.* at 24 n.5. *But see* Statement of Undisputed Material Facts attached to Greenwood Trust Company's Motion for Summary Judgment, Greenwood Trust Co. v. Massachusetts, No. 89-2583-Y (D. Mass. filed Nov. 14, 1989) (motion filed Sept. 7, 1990).

15. *Greenwood Trust*, 776 F. Supp. at 25.

continued importance of state consumer protection laws" by including a state opt-out provision in section 525 of DIDMCA.[16] The court's view of the controversy as essentially a clash of state interests rather than a matter of statutory interpretation is evidenced by the court's characterization of the issues and its citation of commentary.[17]

Taking a narrow view of preemption and the interpretation of section 521, the court stated that by its "literal terms," section 521 preempts only "state *interest rates* which conflict with the federal rate permitted [by section 521]."[18] Thus, the court found that the "plain meaning" of section 521 "does *not* evince Congressional intent to preempt state regulation as to other credit terms, apart from interest rates, such as the late charges challenged by Massachusetts."[19]

Starting from a position apparently skeptical of preemption, the court found authorities, including the legislative history of section 501 of DIDMCA (the provision preempting state usury restrictions on certain first mortgage loans),[20] certain post-DIDMCA legislative history[21] and, although not decided under section 521, two state supreme court decisions,[22] to be generally supportive of

16. *Id.* at 26. Section 525 of DIDMCA 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).

The states of Colorado, Iowa, Maine, Massachusetts, Nebraska, North Carolina, Wisconsin, and the Commonwealth of Puerto Rico formally opted out of §§ 521 through 523 of DIDMCA, although two of these states (including Massachusetts) have since repealed their statutes opting out of these sections. *See* Colo. Rev. Stat. Ann. § 5-13-104 (Supp. 1990); 1980 Iowa Acts ch. 1156, § 32 (not codified); Me. Rev. Stat. Ann. tit. 9A, § 1-110 (West Supp. 1991); 1981 Mass. Acts ch. 231, § 2 (previously codified at Mass. Gen. Laws Ann. ch. 183, § 63 note) (*see infra* note 27); 1982 Neb. Laws 623, § 2 (codified at Neb. Rev. Stat. § 45-1,104 (1988) (repealed by 1988 Neb. Laws 913, § 2); N.C. Gen. Stat. § 24-2.3 (1986); 1981 Wis. Laws ch. 45, § 50 (not codified); P.R. Laws Ann. tit. 10, § 998*l* (Supp. 1988).

17. *See Greenwood Trust*, 776 F. Supp. at 26.

18. *Id.* at 27.

19. *Id.*

20. Pub. L. No. 96-221, § 501, 94 Stat. 132, 161 (1980) (codified at 12 U.S.C. § 1735f-7a(a)(1) (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" to certain specified kinds of first mortgages. 12 U.S.C. § 1735f-7a(a)(1) (1988).

21. The court cited certain bills to amend DIDMCA (passed by the Senate but not by the House in the early 1980s) containing provisions expressly exempting late charges from preemption under those bills. *See* S. 730, 98th Cong., 1st Sess. (1983); S. 1720, 97th Cong., 1st Sess. (1981).

22. Perdue v. Crocker Nat'l Bank, 702 P.2d 503, 521-22 (Cal. 1985) (holding that in enacting DIDMCA Congress intended only a narrow intrusion into state substantive regulation of consumer

the court's view that the "preemption of credit card regulation" under DIDMCA is confined to "numerical" interest rates.[23] The court found Congress' accommodation of state usury restrictions through the opt-out mechanism to be significant as evidence of congressional intent to preserve state consumer protection laws and to impose only limited preemption under Title V of DIDMCA.[24] In the state supreme court decisions, the court found support for the rejection of state law to define interest more broadly than Congress intended and for skepticism that Congress intended DIDMCA to effect more than "a limited intrusion into state substantive regulation of consumer transactions."[25]

The court's understanding of the nature and effect of state opt-out under section 525 and the relationship of section 501, which contains a separate state opt-out provision, to other sections in Title V of DIDMCA is confused, as exhibited by a number of inaccuracies throughout the opinion. For example, the court stated that Massachusetts and fourteen other states have opted out of DIDMCA as allowed under section 525, citing 12 U.S.C. § 1730g, which has been repealed.[26] In fact, only seven states and the Commonwealth of Puerto Rico have opted out of section 521 pursuant to section 525, two of which—Massachusetts and Nebraska—have opted back in.[27] This confusion might not be significant except that throughout the court's consideration of the scope of federal preemption under section 521 and its construction of the purpose and terms of the section, the court gives such great weight to the legislative history of section 501, decisions under section 501, and the existence of "common" state opt-out authority.[28] The court minimizes the parallels between section 85 of the

transactions), *appeal dismissed*, 475 U.S. 1001 (1986); Seiter v. Veytia, 756 S.W.2d 303, 305 (Tex. 1988) (holding that state law cannot be used to define interest more broadly than Congress intended).

23. *See Greenwood Trust*, 776 F. Supp. at 29-32.

24. *Id.* at 30.

25. *Id.* at 32.

26. *Id.* at 26 & n.15, 30-31. For the repeal of 12 U.S.C. § 1730g, see Pub. L. No. 101-73, § 407, 103 Stat. 363 (1989). The court also suggested that the several sections of Title V of DIDMCA share a "common" state opt-out provision and that this shared section permits state opt-out only within three years of April 1, 1980. *Greenwood Trust*, 776 F. Supp. at 30. In fact, each subpart of Title V has its own unique state opt-out provision. *Compare* Pub. L. No. 96-221, § 501(b) (codified at 12 U.S.C. § 1735f-7a (1988)) (Part A, three year opt-out period) *and* Pub. L. No. 96-221, § 512 (Part B, three year opt-out period) *with* Pub. L. No. 96-221, § 525 (found at 12 U.S.C. § 1730g note (1988)) (Part C, no limitation on opt-out period).

27. *See supra* note 16. In 1986, Massachusetts reenacted its opt-out provision, but in reenacting its opt out of §§ 501 and 511 of DIDMCA, Massachusetts did not reenact its express opt out of § 521. The apparent effect of this action is the repeal of Massachusetts' opt out of § 521. The *Greenwood Trust* court does not appear to have understood the import of the 1986 action. The court focused only on the caption of the enactment in its analysis. *See Greenwood Trust*, 776 F. Supp. at 30-31 n.24.

28. In fact, §§ 501 and 521 contain substantially different language, serve different purposes, and do not share a common legislative history. *Compare* DIDMCA § 521, 12 U.S.C. § 1831d (1988 & Supp. II 1990) (applicable generally to loans by federally insured state banks, see *supra* note 10) *with* DIDMCA § 501, 12 U.S.C. 1735f-7a (1988) (applicable only to certain "federally related" first mortgage loans by certain lenders, see *supra* note 20). *See, e.g., Greenwood Trust*, 776 F. Supp.

National Bank Act[29] and section 521 and the interpretations of the federal banking agencies under section 85 and section 521.

The court specifically considered and rejected the argument that the most favored lender doctrine,[30] the Supreme Court's decision in *Marquette National Bank v. First of Omaha Service Corp.*,[31] and several informal FDIC opinions support a broader view of congressional intent to preempt state law.[32] As the court summarized:

> [N]otwithstanding the scattered suggestions in informal administrative interpretations, *Marquette's* discussion of the National Bank Act does not teach a general dynamic of ever-expanding preemption or a Congressional strategy of uniform credit regulation which extends irresistibly to displace all state restrictions on state banks. Nor can preemption by necessity be implied logically from [*Gavey Properties/762 v. First Financial Savings & Loan Ass'n*[33]], based as it is upon deferential incorporation of FDIC administrative opinions which are themselves contradictory as to the scope of preemption and the breadth of Congressional purpose in enacting [DIDMCA].[34]

at 26 & n.14, 29 (explaining that "[s]ection 521 of [DIDMCA] allowed state banks, like the national banks, to charge interest at the federal rate and thereby preempted state usury laws," that §§ 501 and 521 amended different statutes, and that Senate Report No. 96-368 was written before Congress' consideration of the language of S. 1988 that was incorporated into H.R. 4986 and subsequently became § 521); *see also supra* note 26 (no shared state opt-out provision).

29. 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) (emphasis added); *cf.* DIDMCA § 521, 12 U.S.C. § 1831d (1988 & Supp. II 1990) DIDMCA § 501, 12 U.S.C. § 1735f-7a(a)(1) (1988); *see also* notes 10, 20.

30. The most favored lender doctrine was first expressed in Tiffany v. National Bank, 85 U.S. (18 Wall.) 409, 411 (1873). For a more detailed discussion of the most favored lender doctrine, see Langer & Wood, *supra* note 4.

31. 439 U.S. 299 (1978).

32. *See Greenwood Trust*, 776 F. Supp. at 32-36.

33. 845 F.2d 519 (5th Cir. 1988).

34. *Greenwood Trust*, 776 F. Supp. at 36. In fact, *Gavey* deferred to an opinion of the General Counsel of the Federal Home Loan Bank Board (FHLBB). *Gavey*, 845 F.2d at 521-22; *see* Letter from the FHLBB General Counsel (Aug. 6, 1982), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 82,022. The *Greenwood Trust* court's reference to contradictory opinions of the Federal Deposit Insurance Corporation (FDIC) is a reference to the *Gavey* court's analysis of a letter by the FDIC's Deputy General Counsel regarding state opt-out under § 525. *See Greenwood Trust*, 776 F. Supp. at 35-36 (quoting FDIC Letter No. 88-45 from Douglas H. Jones, Deputy Gen. Counsel (Jun. 29, 1988), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,110. For a discussion of FDIC Letter No. 88-45, see Tomkies, *supra* note 4, at 157-58. The *Greenwood Trust* court found it "difficult to square" the letter's recognition of the preservation of "principles of federalism" through § 525 and the letter's conclusion that the right of "countermand" granted by § 525 belongs to the state where the loan is made. *Greenwood Trust*, 776

The court next turned to the concept of interest that the court recognized as being at the "heart" of the dispute.[35] The court rejected as untenable Greenwood Trust's arguments that late charges were either components of finance charges or material to the determination of the rate of interest.[36] In the court's view, the late charges at issue "do not involve the facilitation of credit which undergirds the preemption provision of Title V" of DIDMCA, but rather reflect a "technical default and breach" of the cardholder agreement.[37] The court concluded that "[w]hatever may be the merits of the financial or policy arguments that non-rate provisions are 'material' to the determination of interest rates, Congress regards late charges such as these in a class apart from interest rates generally."[38]

Because "[p]rinciples of federalism operate with particular force to preserve traditional spheres of state regulation such as consumer protection through usury laws," the court found that Massachusetts is entitled to enforce its laws.[39] Thus, the court concluded that Greenwood Trust failed to meet its burden of showing federal preemption.[40]

CHOICE-OF-LAW

On the choice-of-law issue, the court found that existing Massachusetts precedent generally adopts the approach of the Restatement (Second) of Conflict of Laws (Restatement).[41] A Massachusetts court, therefore, would be inclined to uphold the general application of Delaware law to the cardholder agreement pursuant to the choice-of-law provision in the cardholder agreement, even though the cardholder agreement was a contract of adhesion.[42] The court concluded, however, that Massachusetts' "evident concern" with the protection of its citizens generally "outweighs" Delaware's interest in late charges imposed by Delaware banks.[43] In reaching its conclusion, the court did not explicitly determine that Massachusetts had a materially greater interest in the late charge issue, as generally required by the Restatement,[44] nor did it compare each state's statements of the relative significance of this issue as evidenced by the language of the respective statutes.[45]

F. Supp. at 35-36. Pursuant to the letter's reasoning, § 525 should not affect the usury preemption of § 521 for a bank not located in the countermanding state so long as the loan is not made in the countermanding state.

35. *Greenwood Trust*, 776 F. Supp. at 37-38.

36. *Id.* at 24-25 n.7.

37. *Id.* at 38.

38. *Id.*

39. *Id.* at 39.

40. *Id.*

41. *Id.* at 41; *see* Bushkin Assocs., Inc. v. Ratheon Co., 473 N.E.2d 662 (Mass. 1985).

42. *Greenwood Trust*, 776 F. Supp. at 40-41.

43. *Id.* at 41.

44. *See* Restatement (Second) of Conflict of Laws § 187(2)(b) & cmt. g (1971).

45. *Compare* Mass. Gen. Laws Ann. ch. 140, § 114B (West 1991) (silent) *with* Del. Code Ann. tit. 5, § 956 (Supp. 1990) ("A revolving credit plan between a bank and an individual borrower

REACH OF MASSACHUSETTS LAW

On the final issue of the reach of the Massachusetts law, the court found that the Massachusetts usury law is "silent" with respect to reaching out-of-state creditors[46] and that there is "no direct evidence" that the Massachusetts legislature intended to reach out-of-state creditors.[47] Nonetheless, the court concluded that section 114B is "not ambiguous"[48] and that the Massachusetts legislature "simply and unequivocally" barred credit card late charges.[49]

CONCLUSION

Because of the significance of the legal issues relating to the scope of federal preemption and the application of choice-of-law analysis to interstate consumer credit transactions, additional litigation seems inevitable.[50] The court's interpretation of section 521 in *Greenwood Trust* may provide gloss to section 85 and

shall be governed by the laws of [Delaware]."). *See also* Del. Code Ann. tit 5, § 945 (1985 & Supp. 1990) (permitting in addition to or in lieu of periodic interest certain interest charges, including late fees); *id.* § 955 (Supp. 1990) (stating that all terms, conditions and other provisions of Delaware statute are deemed material to determination of interest rate under Delaware law, most favored lender doctrine, § 85 of the National Bank Act and § 521 of DIDMCA); *infra* notes 46-49 and accompanying text.

46. *Greenwood Trust*, 776 F. Supp. at 42.

47. *Id.* at 44.

48. *Id.* at 46.

49. *Id.* at 47.

50. This case has been appealed to the United States Court of Appeals for the First Circuit. Greenwood Trust Co. v. Massachusetts, Nos. 91-2205, 91-8096, 92-1065 (petition filed Dec. 27, 1991). As of April 1992, eight briefs have been filed on behalf of Greenwood Trust, including amicus briefs by (i) the Federal Deposit Insurance Corporation; (ii) the States of Arizona, Illinois, Louisiana, Nevada, Ohio, South Dakota and Utah; (iii) the American Financial Services Association; (iv) the Consumer Bankers Association; (v) the Delaware State Bank Commissioner, the Delaware Bankers Association, and the American Bankers Association; (vi) Bank of America, N.T. & S.A., Bank One, Columbus, N.A., FCC National Bank, Household Bank, N.A., and MBNA American Bank, N.A.; and (vii) MasterCard International and VISA U.S.A., Inc. Five briefs have been filed on behalf of Massachusetts, including amicus briefs by (i) the States of Arkansas, Colorado, Connecticut, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, West Virginia and the District of Columbia; (ii) Bankcard Holders of America and the American Federation of Investors and Consumers; (iii) the National Association of Consumer Credit Administrators and the American Conference of Uniform Consumer Credit Code States; and (iv) Consumer Action and Consumers Union. In apparent response to the *Greenwood Trust* decision, a number of class action lawsuits also have been filed in several states, including Alabama, California, Colorado, Massachusetts, Minnesota, New Jersey, Pennsylvania, and Wisconsin. *See, e.g.*, Lagorio v. Citicorp, No. 91-13025S (D. Mass. filed Nov. 21, 1991) (Citicorp sued as proposed defendants' class representative for alleged defendant class of "over 200" banks and corporations) (late charges); Syx v. Greenwood Trust Co., No. CV91-8824 (Cir. Ct. Jefferson County, Ala. amended complaint filed Nov. 12, 1991) (late charges); Gilbert v. Greenwood Trust Co., No. 1233 (C.P. Philadelphia County, Pa. filed Jan. 20, 1992) (late charges); Ament v. PNC Nat'l Bank, No. GD 92-0129 (C.P. Allegheny County, Pa. amended complaint filed Jan. 8, 1992) (annual fees, late charges, returned check charges, overlimit charges); Magaw v. Citibank (S.D.), N.A., No. GD 91-22507 (C.P. Allegheny County, Pa. filed Dec. 24, 1991) (late charges); Magaw v. Barnett Bank, No. GD 91-

define the scope of exportation authority under *Marquette*. In deciding the scope of preemption under section 521, the court addressed the terms of section 85 and the purposes behind the National Bank Act. While the court apparently left some room for distinguishing section 521 from section 85, the court's mode of "plain meaning" analysis may render distinctions more difficult to make. Because of the similarities in preemption language, the court's interpretation of section 521 also could affect the exportation rights of federally insured savings associations and credit unions.

The district court's opinion raises important questions regarding the efficacy of choice-of-law provisions not just in the context of interstate consumer credit contracts but, more broadly, affecting all types of contracts where a choice-of-law analysis similar to that of the Restatement is applicable. The court provided only an abbreviated analysis of the relative interests of the forum and non-forum states and no analysis of the applicability of Massachusetts law in the absence of the contractual provision. The appellate decision in *Greenwood Trust* may provide much needed guidance on this issue.

The district court's decision in *Greenwood Trust* represents the first judicial effort at weighing the numerous arguments for and against the exportation of fees and other terms in interstate credit transactions by federally insured institutions. The decision does not fully discuss or resolve all issues. While the appellate process in this case may fill in certain gaps, significant issues will remain with respect to the impact of this decision (i) on other types of institutions, (ii) on other fees and terms contracted for by federally insured institutions, and (iii) in other states that have statutes different from those of Massachusetts.

22639 (C.P. Allegheny County, Pa. filed Dec. 24, 1991) (late charges); Irwin v. Citibank (S.D.), N.A., No. 2557 (C.P. Philadelphia County, Pa. filed Dec. 17, 1991) ("delinquency, late or similar charges"). Additional suits against additional defendants in other states are expected.

In Maine, the administrator of the Maine Consumer Credit Code has instituted proceedings to determine whether to issue an order against Greenwood Trust with respect to Greenwood Trust's assessment of late fees on Maine Discover Card cardholders. *In re* Greenwood Trust Co., No. CCP-92-101 (Maine Bureau of Consumer Credit Protection filed Jan. 16, 1991).