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Protecting Consumers from Illegal Fund Seizure – *Miller v. Bank of America, et al.*

A San Francisco jury concluded that the Bank of America illegally seized exempt Social Security funds to pay insufficient funds charges ("NSFs"), overdrafts and other claims, and awarded over \$75 million against the Bank in favor of a statewide class of California Social Security direct deposit account customers. In addition to the sum of \$75 million, the jury also awarded special statutory damages of \$1,000 per class member available under California's Consumer Legal Remedies Act, Civil Code §1780(b), to members of the class, whom it concluded suffered substantial emotional or economic damage as a result of the bank's conduct.

The class action was filed in August, 1998, by Paul Miller, an SSI recipient who the Social Security Administration has found is totally and permanently mentally disabled as a result of brain damage he suffered in the late 1980's in a physical assault. In January, 1998, the bank erroneously credited a sum of nearly \$1,800 to Mr. Miller's checking account which was set up by the bank to electronically receive Social Security benefits. At that time, Miller received approximately \$640 each month in SSA and SSI benefits. In mid-April, without prior notice to Miller, the bank debited his account in the full amount of the erroneous deposit, causing Mr. Miller's account to be "swallowed." The bank subsequently admitted that this action was erroneous, and created a new account. However, failing to close the original account, its internal collections systems continued to collect from the new account and Mr. Miller's account was frozen in July and August to collect the alleged debt.

Miller filed this action in August 1998, on behalf of a class which now numbers nearly 1.1 million customers who have established Social Security direct deposit accounts with Bank of America in California. In addition to the class damages, the jury awarded Mr. Miller \$275,000 recognizing the substantial harm that he suffered at the hands of the bank.

Part of the basis for the lawsuit was a decision issued by the California Supreme Court in 1974, *Kruger v. Wells Fargo Bank*, 11Cal.3d 352, which held that exempt funds, like Social Security benefits, are exempt from internal collection activities by a bank, known as "set-off," when the bank seeks to recover its debts or charges from these recipients. Bank representatives testified at trial that 85 percent of the NSF fees it collects are taken from bank accounts having a daily balance of only \$1,000 or less.

This is the first time in California history in which a jury has awarded special statutory damages under the California Consumer Legal Remedies Act, which is designed to protect consumers from misrepresentations about their rights or remedies and which authorizes additional special damages for elderly or disabled people who are victimized by the practices of a defendant. ■