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## CLIENT ALERT: California Supreme Court Issues Opinion in *Miller v. Bank of America*

[Gene Elerding](#)

This morning, the Supreme Court made its final, eagerly-awaited ruling in *Miller v. Bank of America*, a case involving the use of Social Security and other public benefit payments to cover overdrafts and service charges occurring in the same account. Below is a brief excerpt from the ruling, as well as a link to the full opinion.

Relying upon our decision in *Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 356 (*Kruger*), account holders who deposited Social Security or other public benefit funds into checking or savings accounts and then overdrew those accounts contend that Bank of America may not recoup the overdrawn amounts and charge insufficient funds fees for each transaction that results in an overdraft. In *Kruger*, we held that a bank may not satisfy a credit card debt by deducting the amount owed from a separate checking account containing deposits that "derived from unemployment and disability benefits" and, thus, were "protected from the claims of creditors." (*Ibid.*) One year later, the Legislature enacted Financial Code section 864, which comprehensively governs the manner in which banks may exercise the right to set off debts. Financial Code section 864, subdivision (a)(2) expressly excludes overdrafts and bank charges from the statute's definition of debt. We conclude that Bank of America's practice does not run afoul of our holding in *Kruger* because the setoff of independent debt at issue in *Kruger* is not implicated here. We further conclude that Bank of America's practice of recouping overdrafts and charging insufficient funds fees is permissible in light of the Legislature's unequivocal statement in Financial Code section 864 that overdrafts and bank charges are not debts and are therefore not subject to the limitations placed on a bank's right of setoff set forth in that

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statute. Because we conclude that Bank of America's practices do not violate state law, we do not reach the issue of federal preemption. Accordingly, we affirm the judgment of the Court of Appeal.

The Supreme Court's opinion in its entirety may be accessed by clicking [here](#).

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