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[Back to Article](#)

U.S. Judge Remands Action Against Bank to State Court

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A proposed class action lawsuit accusing New York-based Banco Popular of violating state usury laws with its overdraft fees has been remanded from federal court back to the Commercial Division where it was filed.

Southern District Judge Louis Stanton ([See Profile](#)) ruled on Tuesday in [Valle v. Popular Community Bank](#), 1:12-cv-09315, that the case should stay in state court because all of its claims arise under state law, even though the federal court could choose to exercise diversity jurisdiction since some potential class members are in other states.

The plaintiffs, Popular account holders Josefina and Wilfredo Valle, filed the case in Manhattan Supreme Court's Commercial Division in November on behalf of themselves and other similarly situated account holders.

The plaintiffs allege the bank charged excessive overdraft fees to customers, and that these fees "are in fact interest charges for loans made by Popular to its deposit customers." The effective interest rate for such loans is sometimes as high as 1,400 percent, the plaintiffs allege. They claim the charges violate New York's usury law, which caps interest charged by banks at 16 percent.

The plaintiffs also allege that Popular failed to warn customers when a transaction would result in an overdraft and did not obtain customer approval before providing overdraft protection, violating New York General Business Law §349 and the duty of good faith and fair dealing.

Before the case was assigned to a state court judge, Popular removed it to the Southern District. The bank said the federal court had jurisdiction because the amount in controversy exceeded \$5 million and because many of the potential class members are in states other than New York. About 55 percent of the bank's customers are in other states.

The bank also said the plaintiffs' state law usury claim is preempted by the federal Depository Institutions Deregulation and Monetary Control Act of 1980, or DIDA, which limits interest rates for state-chartered, federally insured banks. It further argued that the General Business Law claim is really a claim under the Federal Reserve Board of Governors' Regulation E, which establishes rights for consumers involved in electronic funds transfers.

The plaintiffs moved to remand the case.

Stanton ruled that the case should return to the state court. He invoked the "discretionary exception," which allows federal judges to decline to exercise jurisdiction in class actions where between one-third and two-thirds of the potential class members are located in the state where the action was originally filed.

"Because the plaintiffs plead only claims under New York law against a New York bank with a large percentage (roughly 45 percent) of New York customers, the court declines to exercise jurisdiction under the discretionary exception," he wrote.

Stanton also rejected Popular's argument that the suit was preempted by DIDA, because DIDA specifically says that if a state allows

higher interest than DIDA, the state law takes precedence. DIDA's interest cap is linked to the Federal Reserve discount rate on commercial paper, and was lower than 16 percent throughout the class period.

Finally, Stanton held that the General Business Law claim does not depend on the federal Regulation E and should go forward in state court.

The case's state court index number is 653936/12.

The plaintiffs are represented by Joseph Guglielmo of Scott + Scott and by Joseph Tusa.

"Our clients are pleased with the court's decision," Tusa said. "We believe it was the correct result."

Popular is represented by Jonathan Lupkin of Rakower Lupkin and by Andrew Nieland of Barack Ferrazzano Kirschbaum & Nagelberg.

Lupkin declined to comment.

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