

**BankBCLP**

## **FDIC BRINGS SUIT AGAINST FORMER DIRECTORS AND OFFICERS OF FREEDOM BANK OF GEORGIA**

Mar 22, 2012

On March 2, 2012, the FDIC, in its capacity as receiver for Freedom Bank of Georgia, brought suit against twelve (12) former directors and officers of the Bank, many of whom served on the bank's Loan Committee. The complaint alleges that, because of the defendants' misconduct, the FDIC, as receiver, is entitled to recover at least \$11,050,623. Interestingly, Freedom was closed by the Georgia Department of Banking & Finance on March 6, 2009, thus the FDIC's lawsuit was filed almost exactly three (3) years from the date that the bank went into receivership, which is the applicable statute of limitations.

The FDIC's damage claim is based on losses from twenty-one (21) commercial real estate and acquisition development and construction loans which were approved by the bank from May 16, 2005 through June 20, 2007. The complaint alleges an undifferentiated laundry list of problems related to these loans, including, but not limited to, a lack of internal control in the loan policy limiting the amount of such loans, the absence of a requirement in the loan policy to conduct the global cash flow analysis of all contingent liabilities for the bank's borrowers and guarantors, inadequate due diligence market research for loans outside the bank's geographic area, insufficient analysis of ability to repay, failing to secure adequate collateral, incomplete or inadequate appraisals, and failing to ensure appropriate loan to value ratios.

The complaint also more generally alleges that the Bank had a rapid growth plan that involved high concentrations in commercial real estate loans and acquisition, development and construction loans. The complaint suggests that fluctuations in real estate markets are "foreseeable risks" and thus over-concentrations in certain real estate lending may in and of itself be actionable.

Interestingly, the complaint not only alleges gross negligence and breach of fiduciary duty, but also simple negligence, a claim which the Court in the Integrity Bank decision held was not viable under Georgia law.

## MEET THE TEAM



### **John R. Bielema**

Atlanta

[john.bielema@bclplaw.com](mailto:john.bielema@bclplaw.com)

[+1 404 572 4504](tel:+14045724504)

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