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FDIC SUES FORMER DIRECTORS OF BENCHMARK BANK (AURORA, ILLINOIS)

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On October 2nd, the FDIC filed its 33rd lawsuit against former directors or officers of failed banking institutions since the beginning of the current economic recession. This suit is against the former directors of Benchmark Bank ("Benchmark" or the "Bank") of Aurora, Illinois, which was placed into FDIC receivership on December 4, 2009. For a copy of the FDIC's complaint, click here.

A central theme of the FDIC's complaint is that the director defendants, all of whom served on the Director's Loan Committee, embarked on a strategy of aggressive growth through the approval of high-risk acquisition, development and construction ("ADC") and commercial real estate ("CRE") loans. The director defendants approved the high-risk loans, the FDIC alleges, "without analysis of their economic viability or a complete evaluation of the creditworthiness of borrowers and guarantors". Even after the real estate market declined, the FDIC contends, the director defendants exacerbated the Bank's problems by making new loans and renewing existing troubled loans, rather than curtailing ADC/CRE lending and preserving capital to absorb losses from existing loans went bad.

The most unique of the FDIC's case theory centers on the role of Benchmark's former chairman, Richard Samuelson, who was not only a director, CEO, and long-time acting president of the Bank, but also the principal originator of the Bank's ADC and CRE loans. As CEO and acting president of the Bank, Mr. Samuelson was ultimately responsible for the underwriting and credit administration of loans. Yet those functions were never segregated from the loan origination function, leaving the Bank with a significant internal control deficiency. Moreover, since Mr. Samuelson originated most of the ADC and CRE loans, it created a dynamic in which credit analysts were very reluctant to report underwriting deficiencies on his loans. To make matters worse, the FDIC contends, Mr. Samuelson earned generous incentive awards from his loan originations, providing him with additional motivation to ensure that loans were approved. In view of these facts, the FDIC alleges, the director defendants knew or should have known that the ADC and CRE loans required a higher degree of scrutiny and monitoring. The FDIC contends that the director defendants breached their duties with respect to 11 specific ADC and CRE loans, resulting in losses of over $13.3 million.

This case represents an extreme example of a single director who apparently dominated the Bank and its overall lending function. (One employee is quoted in the complaint as having said that Mr. Samuelson "was the Bank.") Whether or not your bank has such a dominant player or personality, this case serves as a helpful reminder that the FDIC will seek to hold directors ultimately responsible for the lack of appropriate checks and controls in the lending function.

MEET THE TEAM

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