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## FDIC FILES SECOND D&O LAWSUIT IN FLORIDA

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Despite having more than its fair share of failed banks, Florida has not been a hotbed of D&O litigation. On November 9<sup>th</sup>, the [FDIC filed only its second lawsuit](#) against former directors of a failed banking institution. The defendants here are former directors of Century Bank, FSB (Sarasota, FL), which was placed into receivership in mid-November 2009.

The FDIC's **complaint** is consistent with most of its prior D&O lawsuits, with typical allegations of negligent overconcentration in ADC and CRE, as well as various failures to follow the Bank's loan policy or to exercise safe and sound banking practices. What makes this complaint a little different is that it focuses on ten specific loan transactions which were approved *after* it was apparent that the Bank was in "dire financial condition" and not meeting regulatory capital requirements. Several of the criticized loans were made to a New York real estate investor and investment manager, William Landberg, who was later convicted of operating a massive Ponzi scheme. In fact, two of the defendant directors had invested in Mr. Landberg's investment funds. According to the Complaint, the Bank approved a \$5 million line of credit to one of Mr. Landberg's funds while its regulatory capital was impaired, and then approved a second \$5 million line of credit to the same borrower four months after receiving official regulatory notice that the Bank was critically under-capitalized. The FDIC theorizes that the director defendants approved in these transactions, despite express reservations, in the hopes that Mr. Landberg would provide a capital injection to the Bank.

The D&O defense community will be watching this case closely. It was filed in the same judicial district that previously ruled that Florida's statutory version of the Business Judgment Rule shields corporate directors for claims for ordinary negligence. The FDIC will seek to test that ruling here, as it has asserted a claim for ordinary negligence and has specifically alleged that the director defendants do not qualify for BJR protection. Stay tuned to BankBryanCave for updates on this and other important D&O cases.

## MEET THE TEAM



### **W. Bard Brockman**

Atlanta / Miami

[bard.brockman@bclplaw.com](mailto:bard.brockman@bclplaw.com)

+1 404 572 4507

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