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FDIC SUES FORMER OFFICERS AND DIRECTORS OF TWO FAILED GEORGIA BANKS IN OCTOBER 2012

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As has been noted on this blog before, the State of Georgia has the dubious distinction of leading the nation in the number of failed financial institutions. In the month of October 2012, the number of lawsuits against former officers and directors of those failed institutions increased by two (2).

In the first lawsuit, filed on October 17, 2012, the FDIC brought suit in its capacity as Receiver for American United Bank of Lawrenceville, Georgia against two former officers and 6 former directors of the bank. (A copy of the complaint can be found [here](#).) In that suit, the FDIC alleged both ordinary negligence and gross negligence in connection with the management of the lending function of the bank. The FDIC alleged that the failure of American United caused a loss to the Federal Deposit Insurance Fund in the amount of \$45.2 million, and, through alleged damages in the lawsuit, seeks to recover an amount in excess of \$7.3 million.

The FDIC's complaint as receiver for American United is fairly consistent with many recent FDIC complaints, and basically alleges that the defendants took unreasonable risks with the bank's loan portfolio, by allowing rapid and unsustainable growth concentrated in high risk and speculative Acquisition Development and Construction ("ADC") and Commercial Real Estate ("CRE") loans and loan participations. The complaint also contains allegations that the defendants continued to engage in such activity even despite regulatory warnings to cease it, and that the bank's former directors and officers violated the bank's own lending policies and procedures. The complaint names the bank's former CEO, who was also a member of the loan committee, as well as the bank's chief lending officer, and six (6) director defendants, all of whom were at various times members of the bank's loan committee.

In the second suit, the FDIC, in its capacity as Receiver for United Security Bank of Sparta, Georgia, filed suit on October 23, 2012 against Pierce Neese, the former CEO of the bank. (A copy of the complaint can be found [here](#).) United Security failed on November 6, 2009, allegedly causing a loss to the deposit insurance fund in the amount of \$63.1 million. Defendant Neese was the CEO of the bank, as well as a long time director of the bank and a member of the loan committee. The complaint alleges claims for negligence and gross negligence in connection with the management of the lending function of the bank. The complaint is interesting in that alleges that the lending

function of the bank was effectively controlled by defendant Neese. Specifically, the FDIC alleged that United Security functioned as a "one man bank" from 2002 until March 22, 2006. The complaint alleges that during that time and beyond Neese allowed irresponsible and unsustainable rapid asset growth concentrated in high risk ADC loans and CRE loans, and that Neese routinely violated the bank's own lending policy and disregarded regulators warnings. The complaint identifies sixteen (16) specific loans between November 10, 2005 and March 27, 2008, and seeks approximately \$6.373 million in damages.

Interestingly, both complaints continue to allege counts for ordinary negligence under Georgia law, despite authority that such claims are not viable because of the protections of Georgia's Business Judgment Rule. The FDIC is now specifically including allegations that defendants are not entitled to protections of the business judgment rule because they failed to adequately inform themselves of the relevant risks in connection with the loans they approved. It does not appear that the FDIC is as of yet willing to concede that it must meet the significantly higher standard of gross negligence in order to attach liability to the former directors and officers of failed banks in Georgia.

MEET THE TEAM



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