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FDIC FILES THIRD D&O LAWSUIT IN FLORIDA

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The pace of FDIC suits continued to pick up steam in the fourth quarter, with the FDIC filing its third lawsuit in Florida, this time against the former directors of Peoples First Community Bank (Panama City, FL). Peoples First Community Bank ("Peoples First" or the "Bank") was closed and put into receivership on December 18, 2009. The FDIC's lawsuit was filed on December 17, 2012 – one day prior to the expiration of the three-year limitations period.

The FDIC's complaint against the former Peoples First directors is strikingly similar, both in tone and substance, to its last several D&O complaints. As we previously reported, the FDIC now must overcome a ruling by the Middle District of Florida that Florida's statutory version of the Business Judgment Rule bars claims against former directors for ordinary negligence. It appears that, as a matter of legal strategy, the FDIC is attempting to "plead around" the Business Judgment Rule by alleging that the director defendants approved each of the bad credits at issue *after*: (i) they were specifically warned by regulators about deficiencies in the Bank's loan underwriting procedures; (ii) they knew or should have known about the Bank's overexposure in CRE loans and the "inevitable cyclical decline in real estate values." In this case, the FDIC highlights eleven CRE transactions that ultimately resulted in over \$77.1 million in losses to the Bank.

This complaint was filed in the Northern District of Florida, which has not yet ruled on the applicability of Florida's statutory Business Judgment Rule to ordinary negligence claims. Nevertheless, we fully expect that the director defendants here will seek to dismiss some or all of the claims early in the case. We will be monitoring this case, along with the two other pending Florida cases, to see which of the FDIC's claims are allowed to move beyond the initial pleadings stage.

MEET THE TEAM



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