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FDIC SUES FORMER SENIOR LENDER OF NEW CENTURY BANK (CHICAGO, IL).

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In a departure from its typical litigation practice, the FDIC has sued not only the directors and officers who voted for failed loans, but also the senior loan officer who originated those same loans. The claims arise from the failure of New Century Bank, which was placed into receivership in April 2010. The FDIC filed its complaint against the former D&Os on March 26, 2013, just a few weeks prior to the expiration of the three-year limitations period. For a copy of the FDIC's **complaint,** click **here**.

The FDIC seeks to recover damages in excess of $33 million in connection with fourteen bad credits. According to the FDIC's complaint, each of the fourteen loans was approved in violation of the Bank's loan policy. Common violations of the loan policy included: (i) failure to establish adequate debt repayment programs; (ii) extension of credit in excess of permitted LTV ratio limits; (iii) failure to adhere to required debt-to-income ratios; (iv) approval of debt service coverage ratios below minimum requirements; and (v) reliance on outdated, unverified and inadequate financial information from borrowers and guarantors.

Several of the Bank's failed credits were particularly problematic because they were for development projects in Las Vegas, which was far outside the Bank's normal trade area. Not only could the Bank not monitor these projects as effectively as those in its normal market area, the loan policy itself prohibited the extension of credit outside the Bank's market footprint.

The most unique aspect of this case is the FDIC's decision to pursue separate claims against the Bank's former SVP of Commercial Lending. Nowhere in its lawsuit does the FDIC allege that the lender voted to approve any of the failed credits. Rather, the FDIC asserts negligence and gross negligence claims against the lender arising from his origination, recommendation and administration of the bad loans.

It is not unusual for the FDIC to include senior lenders among its target D&O defendants. However, in almost every case to this point, those senior lenders had voted to approve the failed loans in question. That is not the case here. It will be interesting to see whether this case marks the beginning of a new FDIC theory of recovery against loan officers with no authority to approve loans.

MEET THE TEAM

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