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FDIC prepares to crack down on officials of failed banks

Dozens of former officers and directors are advised to work out settlements or face legal action for their alleged misdeeds during the financial crisis.



The FDIC warns bank officials that it's time to sit down and work out settlements in fraud and breach of fiduciary duty cases, or head to court to decide the matters there. (Patrick Fallon / Bloomberg)

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By E. Scott Reckard, Los Angeles Times
November 10, 2010 | 9:38 p.m.

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For former insiders at some of the several hundred banks that collapsed during the financial crisis and in its aftermath, a day of reckoning has arrived.

The Federal Deposit Insurance Corp. has told dozens of former bank officers and directors that it has drawn up lawsuits accusing them of misdeeds such as fraud and breach of fiduciary duty. The federal agency is seeking damages to help offset losses in the nation's deposit insurance fund.

It's time, the FDIC warns these officials, to sit down and work out settlements — or head to court to decide the matters there.

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The letters being sent by the agency are "very detailed," said Jeffrey A. Tisdale, a Los Angeles lawyer for former officials of five banks targeted by the agency.

"I mean eight to 10 single-spaced pages of purported misdeeds," he said.

The showdowns follow FDIC probes that typically take well over a year.

"We're only doing this after careful investigation. We don't bring suit every time a bank fails," said Richard Osterman, the FDIC's acting general counsel.

The FDIC board has authorized suits seeking to recover more than \$2 billion from more than 80 former bank officials, up

from about 50 a month ago, Osterman said. The number could multiply as the agency works through its investigative backlog.

The agency could end up suing or settling with former insiders of about one-quarter of the more than 300 banks that have failed since the start of 2008, officials say.

"This is only the first wave," Tisdale said. "I've got my next five-year professional plan laid out pretty well."

Although the FDIC says it will try to settle the cases, officials expect to file a significant number of suits. Criminal charges could result in a few cases.

"We are investigating [criminal] bank fraud and related cases in many different parts of the country, including in California," said Fred Gibson, deputy inspector general at the agency.

So far only two civil suits have been filed. The first, filed in July, accuses four executives of Pasadena's defunct IndyMac Bank of negligence in granting construction and development loans that the suit says were unlikely to be repaid. The defendants are contesting the suit, which seeks \$300 million in damages.

Last week, the FDIC sued 11 former insiders at defunct Heritage Community Bank in Glenwood, Ill. Calling the case "regrettable and wrong," defense lawyers said in a statement that their clients, in failing to foresee the economic meltdown, were no different from Wall Street and the FDIC itself.

Tisdale concurs that the FDIC is going after people for failing to accurately predict the future.

"The economy is the real culprit here," he said. "There was no way to plan for real estate values dropping 30% to 50% throughout California, Nevada and Arizona."

But Darren Robbins, a San Diego lawyer who specializes in filing investment fraud suits, says the FDIC has plenty to work with just by looking at what banks said about their assets toward the end of the boom.

"It's our belief that in places like Illinois, Georgia, California and Arizona there was an inordinate amount of game-playing with financial statements in '07 and '08," said Robbins, whose firm has fraud suits pending against several casualties of the bust, including PFF Bancorp, the former parent company of Pomona's PFF Bank & Trust, which failed in November 2008.

In targeting the former officials, the FDIC typically also has its eyes on insurance companies that would be on the hook for damages stemming from alleged misconduct by the bankers. In many cases, the FDIC formally gave notice of possible litigation months ago, just before the expiration of the relevant insurance policies, to ensure that the coverage would apply.

Some policies covering directors and officers don't apply to actions by the FDIC. In such cases, the agency is going after bank officials only if they have sufficient assets to justify the expense and risk of litigation, Osterman said.

The FDIC's litigation strategy borrows from a playbook the agency used after the savings and loan meltdown of about two decades ago. From 1986 through 1996 the FDIC recovered \$5.1 billion from

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former insiders at failed banks and savings and loans, Osterman said. That's a small fraction of the eventual cost of the S&L crisis.

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NoHopeLeft at 5:26 AM November 11, 2010

They got my children's home. I want there puss pukes to have a nice Thanksgiving. Think about the families they have devastated through their actions.

Bankers, shame...

ErwinRuiz at 11:52 PM November 10, 2010

A day of reckoning is coming.

mr. gittes at 11:48 PM November 10, 2010

"Tisdale, a Los Angeles lawyer for former officials of five banks targeted by the agency."

Oops, my bad...NOW it makes sense...

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