FDIC Sues Ex-Indy Mac Chief

By Anna Scott

In the latest sign of its aggressive but slow-moving crackdown on former officers of failed banks, the Federal Deposit Insurance Corp. this week targeted former IndyMac Chief Executive Officer Michael Perry.

The case against Perry is only the eighth complaint filed so far, while the FDIC board has authorized civil lawsuits against 249 individuals connected to 28 institutions to date. Regulators are seeking to recoup $6.8 billion in losses to the nation's deposit insurance fund. Nearly 400 banks have been shut down by the federal receiver since 2008.

The lawsuit, filed Tuesday in Los Angeles federal court, blames the former CEO for more than $600 million in losses from risky mortgage loans that could not be sold in the months leading up to the Pasadena-based bank's 2008 failure.

The lawsuit broadens the FDIC's legal attack on IndyMac's onetime leaders. It comes one year after another complaint that seeks $300 million in damages from four former executives in IndyMac's Homebuilding Division for alleged negligence in giving out construction loans. That case is ongoing.

Perry's lawyer, D. Jean Veta of Covington & Burling LLP, called the new lawsuit "baseless" in an emailed statement.

"Mr. Perry led IndyMac with integrity and intelligence," Veta said. "The FDIC's belated claim that Mr. Perry was somehow 'negligent' is dead wrong."

The FDIC accuses Perry of negligence for overseeing the bank's origination and purchase of more than $10 billion in risky residential loans in 2007 to sell off in the secondary market, despite signs that the market was unstable. "Perversely, instead of enforcing credit standards, Perry chose to roll the dice in an aggressive gamble to increase market share," the complaint reads, "... even though a reasonable banker of a depository institution would have suspended, limited or stopped the production of these risky loans during this time of known, unprecedented, and escalating risks." After being unable to sell the loans, according to the complaint, IndyMac transferred them into its own investment portfolio and ultimately lost more than $600 million.

The FDIC seeks to make up the losses in damages.

The complaint against Perry came almost exactly three years after the bank's failure, narrowly beating the statute of limitations to file such a suit. That suggests the FDIC is playing catch up to the wave of bank collapses across the country since 2008.

"It's glacial," said lawyer Jeffrey Tisdale of Tisdale & Nicholson LLP, who represents former officers and directors of seven failed California banks. But, he added, the Perry lawsuit "definitely demonstrates the FDIC intends to make the 'black hats' pay."

The slow pace of litigation reflects the painstaking process of investigating bank failures and ferreting out blame, said FDIC spokesman David Barr.

"Typically, every time a bank fails, the FDIC conducts an investigation for these types of civil, professional liability suits," he said. "We try and wrap up those types of investigations within about 18 months. Then we go to our board of directors to get authority to file. If we do get authority, then we attempt to go through settlement talks with the defendants" before resorting to a lawsuit.

The scope of the current crisis has also slowed things down, lawyers say.

"I think government lawyers who are doing this are overwhelmed because of the volume of failed banks and the pervasiveness of the misconduct," said Darren Robbins of Robbins Geller Rudman & Dowd LLP, who specializes in representing institutional investors in securities fraud litigation. "They find themselves handling volumes of reviews that are much bigger than what they're used to historically."