Characteristics of FDIC Lawsuits against Directors and Officers of Failed Financial Institutions

February 2014
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EXECUTIVE SUMMARY

This is the seventh in a series of reports that analyzes the characteristics of professional liability lawsuits filed by the Federal Deposit Insurance Corporation (FDIC) against directors and officers of failed financial institutions (D&O lawsuits). The FDIC may also file lawsuits against other related parties, such as accounting firms, law firms, appraisal firms, or mortgage brokers, but we generally do not address such lawsuits here.

The FDIC has released information about D&O lawsuits authorized between January 1, 2009 and January 24, 2014, although it did not file any lawsuits until 2010. The three D&O lawsuits filed in January 2014 are not included in the analyses in this report.

KEY FINDINGS

- The FDIC filed 40 D&O lawsuits in 2013—14 more than in 2012. The pace of new lawsuits, however, slowed dramatically in the fourth quarter of 2013. The FDIC filed 10 lawsuits in the first quarter, 15 in the second quarter, and 12 in the third quarter; but only three in the fourth quarter. (page 2)
- The 40 lawsuits filed in 2013 are claiming at least $1.2 billion in damages from the actions of directors and officers. (page 11)
- The 2013 D&O lawsuits were most commonly targeted at the directors and officers of institutions that failed in 2009 and 2010. Of the 140 failed financial institutions in 2009, the directors and officers of 64, or 46 percent, either have been the subject of an FDIC lawsuit or have settled claims with the FDIC prior to the filing of a lawsuit. For the 157 institutions that failed in 2010, the comparable figure is 53, or 34 percent. (pages 7–9)
- From 2010 through 2013, the FDIC has filed 84 lawsuits against 639 former directors and officers of failed institutions. (pages 2 and 10)
- The FDIC has claimed damages of at least $3.8 billion in the 77 lawsuits that have specified a damages amount. The average and median damages amounts are $49 million and $22 million, respectively. (page 11)
- Directors and officers of failed Georgia, California, Illinois, and Florida financial institutions are defendants in 63 percent of the 84 lawsuits filed by the FDIC. (page 13)
- Of the 84 filed lawsuits, at least 17 have settled in whole or in part and one has resulted in a jury verdict. (page 14)
- Chief executive officers continue to be the most commonly named defendants. They were named in 83 percent of the complaints filed in 2013. (page 10)
- The FDIC seized 24 financial institutions in 2013—the lowest number since 2007. The median size of failed financial institutions has declined steadily over the last six years. (pages 3–4)
OVERVIEW OF LITIGATION ACTIVITY

FDIC litigation against directors and officers of failed financial institutions increased in 2013 compared with prior years. The increase in filing activity is consistent with the peak in financial institution failures in 2009 and 2010, the three-year statute of limitations for tort lawsuits, and the likely existence of tolling agreements allowing the FDIC additional time to determine if it will file a lawsuit.

KEY FINDINGS

- In 2013, the FDIC filed 40 lawsuits, 54 percent more than the number of lawsuits filed in 2012.
- Only three D&O lawsuits were filed in the fourth quarter of 2013, a steep decline from the numbers observed in the first three quarters of the year.
- The FDIC filed more lawsuits in the second quarter than it had in any quarter since the current wave of D&O litigation began in 2010.
- In total, 84 lawsuits were filed between 2010 and 2013 against the directors and officers of 83 institutions.
- Following only three new lawsuits in the fourth quarter of 2013, an additional three were filed in the initial weeks of January 2014. The January 2014 lawsuits are not included in the analyses in this report.

Number of FDIC Lawsuits Filed against Directors and Officers of Failed Financial Institutions 2010–2013

Source: FDIC Professional Liability Lawsuits (http://www.fdic.gov/bank/individual/failed/pls/)

Note: Financial institutions include commercial banks, savings banks, and savings and loans (thrifts).
FINANCIAL INSTITUTION FAILURES

The FDIC’s litigation activity stems from prior financial institution failures.

Financial institution failures continued to decline in 2013, following a peak in 2010. Since the beginning of 2007, 492 financial institutions have failed.

KEY FINDINGS

- In 2013, 24 institutions failed—a 53 percent decline from the number of failures in 2012.
- The decline in the pace of failures was especially pronounced during the second half of 2013. There were four failures in the first quarter, 12 in the second quarter, six in the third quarter, and only two in the fourth quarter.
- There were fewer failures in 2013 than in 2008, at the onset of the financial crisis.

Number of Failed Financial Institutions 2007–2013

Note: Financial institutions include commercial banks, savings banks, and savings and loans (thrifts).
The aggregate total assets of failed financial institutions have decreased more rapidly since 2010 compared with the decline in the number of failures.

**KEY FINDINGS**

- The total assets of financial institutions that failed during a given year have steadily declined since peaking in 2008.
- The median size of a failed financial institution has also steadily declined since 2008. The median total asset size in 2013 was $96 million—an 82 percent decline from the median total asset size of $528 million in 2008.
- The average size of a failed financial institution also steadily declined from 2008 to 2012, but increased modestly in 2013 due to the failure of a single institution with total assets of $3.1 billion.

### Total Assets of Failed Financial Institutions 2007–2013

**Dollars in Millions**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Assets of WaMu</th>
<th>Total Assets Excluding WaMu</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>$2,615</td>
<td>$1,212</td>
</tr>
<tr>
<td>2008</td>
<td>$371,945</td>
<td>$169,709</td>
</tr>
<tr>
<td>2009</td>
<td>$169,709</td>
<td>$92,085</td>
</tr>
<tr>
<td>2010</td>
<td>$92,085</td>
<td>$380</td>
</tr>
<tr>
<td>2011</td>
<td>$34,923</td>
<td>$235</td>
</tr>
<tr>
<td>2012</td>
<td>$12,001</td>
<td>$253</td>
</tr>
<tr>
<td>2013</td>
<td>$6,063</td>
<td>$96</td>
</tr>
</tbody>
</table>

**Excluding WaMu:**

- **Average Assets:**
  - 2007: $872
  - 2008: $2,705
  - 2009: $1,212
  - 2010: $587
  - 2011: $380
  - 2012: $235
  - 2013: $253

- **Median Assets:**
  - 2007: $125
  - 2008: $528
  - 2009: $260
  - 2010: $248
  - 2011: $199
  - 2012: $164
  - 2013: $96


Note: Financial institutions include commercial banks, savings banks, and savings and loans ( thrifts ).
**TIMING OF LAWSUITS**

The FDIC has typically waited to file a lawsuit against a failed financial institution’s directors and officers until approximately three years after the failure of the institution. Most lawsuits have been filed just prior to the expiration of the three-year statute of limitations for tort lawsuits.

*See also Appendix 1.*

**KEY FINDINGS**

- D&O lawsuits filed in 2013 were generally filed more slowly than lawsuits in prior years.
- Twenty-six of the D&O lawsuits in 2013 were filed between two and a half and three years after the failure of the financial institution. All but four of these lawsuits were filed within a week of the three-year statute of limitations from the institution’s date of failure.
- Fourteen lawsuits in 2013 were filed more than three years after the institution failed, presumably due to the existence of tolling agreements that provided the FDIC with additional time to file.
- While the length of a typical tolling agreement is unknown, only one D&O lawsuit in 2013 was filed more than four years after the associated institution’s failure.

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**Distribution of Time between the Failure of an Institution and the FDIC’s Filing of a D&O Lawsuit 2010–2013**

SIZE OF INSTITUTIONS SUBJECT TO LITIGATION

To date, 17 percent of financial institutions that have failed since 2007 have been the subject of an FDIC D&O lawsuit. These lawsuits generally have targeted larger failed institutions and those with a higher estimated cost of failure.

KEY FINDINGS

- The median total asset size of institutions targeted in 2013 was smaller than the median size of institutions targeted in previous years.
- D&O lawsuits in 2013 targeted institutions with median total assets of $520 million, compared with $624 million for institutions targeted in 2012 and $735 million for institutions targeted before 2012.
- The FDIC’s 84 D&O lawsuits filed between 2010 and 2013 cover 83 institutions; IndyMac was the subject of two lawsuits. The financial institutions that are the subjects of D&O lawsuits had median total assets of $560 million and a median estimated cost to the FDIC of $135 million at the time of seizure. In contrast, failed institutions were typically smaller (median total assets of $217) and less costly (estimated cost of failure of $50 million).
- Of the 83 institutions that are the subjects of FDIC lawsuits through 2013, 63 had total assets greater than $217 million, the median total asset size of failed institutions since January 2007.

Comparison of Asset Size and Failure Cost
Institutions Subject to FDIC D&O Lawsuits, Institutions That Failed, and All Financial Institutions

<table>
<thead>
<tr>
<th></th>
<th>Number of Institutions</th>
<th>Median Total Assets (Millions)</th>
<th>Median Estimated Cost of Failure (Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutions Subject to FDIC Lawsuits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010–2011</td>
<td>17</td>
<td>$735</td>
<td>$158</td>
</tr>
<tr>
<td>2012</td>
<td>26</td>
<td>$624</td>
<td>$133</td>
</tr>
<tr>
<td>2013</td>
<td>40</td>
<td>$520</td>
<td>$131</td>
</tr>
<tr>
<td>Total</td>
<td>83</td>
<td>$560</td>
<td>$135</td>
</tr>
</tbody>
</table>

Failed Institutions (1/1/07–12/31/13) | 492 | $217 | $50 |
Active Financial Institutions (as of 12/31/12) | 7,151 | $166 | N.A. |


Note:
1. Financial institutions include commercial banks, savings banks, and savings and loans (thrifts).
2. Total assets as of the last reporting period prior to seizure by the FDIC.
3. Institutions that are the subject of multiple FDIC lawsuits are counted only once.
4. Cost of failure is the FDIC’s estimate of the cost to the Deposit Insurance Fund at the time of seizure of the failed institution, when available. Otherwise, the cost of failure is based on FDIC estimates from December 31, 2010.
ANNUAL NUMBER OF FAILED INSTITUTIONS SUBJECT TO LITIGATION

The fraction of failed financial institutions subject to FDIC litigation has changed over time. In addition to the formal filing of lawsuits, the FDIC also publishes settlement agreements with directors and officers that generally reflect the resolution of claims with the FDIC prior to the filing of a lawsuit.

KEY FINDINGS

- FDIC lawsuits filed in 2013 primarily targeted institutions that failed in 2010 and, to a lesser degree, in 2009. No lawsuits were filed in 2013 against institutions that failed in other years.
- Of the 92 failures in 2011, only one has been the subject of a D&O lawsuit to date. We have not identified any published settlement agreements by the FDIC with directors and officers of the remaining 91 failed institutions.
- Assuming a three-year statute of limitations, even if tolling agreements are in place in several FDIC investigations, the institutions that failed in 2008 and 2009 are unlikely to be subject to many additional D&O lawsuits.
- An examination of the failures in each year suggests that the FDIC has to date pursued claims against a smaller fraction of the failures in 2009 and 2010 than it has against 2008 failures. This pattern may be associated with the relative number and size of failures in 2009 and 2010 compared with 2008.

Failed Financial Institutions That Have Settled Claims or Are Subjects of FDIC D&O Lawsuits

Source: FDIC Failed Bank List (http://www.fdic.gov/bank/individual/failed/banklist.html); FDIC Historical Statistics on Banking (http://www2.fdic.gov/hsob/index.asp); Highline Financial Intelligence based on regulatory filings

Note:
1. Settlements data are based on agreements published by the FDIC through the end of January 2014.
2. Washington Mutual Bank is excluded from the total assets chart in 2008 to more clearly show the degree of the FDIC’s claims against the other 24 institutions that failed in 2008.
The FDIC has targeted directors and officers of both large and relatively small financial institutions that failed in 2009. In total, the directors and officers of at least 46 percent of the 2009 failures have been involved in negotiations or litigation with the FDIC.

**KEY FINDINGS**

- Of the failures in 2009, 37 financial institutions, or 26 percent, have already been the subject of an FDIC D&O lawsuit.
- The directors and officers of another 27 institutions that failed in 2009 have settled claims with the FDIC prior to the filing of a lawsuit.
- Consistent with the likely expiration of the statute of limitations, FDIC lawsuits against 2009 failures were less common in 2013 than in prior years.

### Financial Institutions That Failed in 2009

**Ordered by Ascending Total Asset Size**

**Dollars in Millions**

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>FDIC Lawsuits Filed in 2013</th>
<th>FDIC Lawsuits Filed in 2010–2012</th>
<th>Settlements Pre-Lawsuit</th>
<th>Presently No FDIC Lawsuit or Known Settlements</th>
<th>Number of 2009 Failed Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
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<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
<tr>
<td>$10,000</td>
<td>11</td>
<td>26</td>
<td>27</td>
<td>76</td>
<td>140</td>
</tr>
</tbody>
</table>


Note:
1. Total assets are presented on a logarithmic scale.
2. Settlements data are based on agreements published by the FDIC through the end of January 2014.
The FDIC’s D&O lawsuits in 2013 have particularly focused on the largest institutions that failed in 2010.

- Of the failures in 2010, 36 financial institutions, or 23 percent, have already been the subject of an FDIC D&O lawsuit.
- The directors and officers of another 17 institutions that failed in 2010 settled claims with the FDIC before the filing of a lawsuit.
- Directors and officers of at least 34 percent of the failed institutions in 2010 have been the target of lawsuits or claims by the FDIC.
- In contrast, of the largest 20 failures in 2010, 15, or 75 percent, have already been subject to FDIC lawsuits or settled claims with the FDIC.

### Financial Institutions That Failed in 2010

**Ordered by Ascending Total Asset Size**

**Dollars in Millions**

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>FDIC Lawsuits Filed in 2013</th>
<th>FDIC Lawsuits Filed in 2010–2012</th>
<th>Settlements Pre-Lawsuit</th>
<th>Presently No FDIC Lawsuit or Known Settlements</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000</td>
<td>29</td>
<td>7</td>
<td>17</td>
<td>104</td>
</tr>
<tr>
<td>$100,000</td>
<td>23% of total</td>
<td>34% of total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Number of 2010 Failed Institutions**: 157

Source: FDIC Failed Bank List (http://www.fdic.gov/bank/individual/failed/banklist.html); FDIC Historical Statistics on Banking (http://www2.fdic.gov/hsob/index.asp); Highline Financial Intelligence based on regulatory filings

Note:
1. Total assets are presented on a logarithmic scale.
2. Settlements data are based on agreements published by the FDIC through the end of January 2014.
DEFENDANTS AND CLAIMS

Defendants named in the 84 FDIC D&O lawsuits filed through 2013 included 639 former directors and officers.

All 40 lawsuits filed in 2013 included allegations of gross negligence. Thirty-five of these lawsuits included allegations of breach of fiduciary duty and 32 included allegations of negligence.

KEY FINDINGS

- Inside and outside directors have routinely been named as defendants in FDIC D&O lawsuits. This pattern continued in 2013 (30 of the 40 lawsuits filed in 2013).
- Outside directors were exclusively named as defendants in rare instances and only in lawsuits filed in 2013 (8 percent). Somewhat more common were lawsuits in which only inside directors were named (15 percent of 2013 lawsuits, compared with 23 percent of lawsuits filed before 2013).
- The likelihood of CEOs being named as defendants in 2013 lawsuits was similar to prior years—83 percent and 89 percent, respectively.
- Other financial institution officers were less likely to be named as defendants in 2013 than in prior years:
  - Chief financial officers were named as defendants in 10 percent of lawsuits filed in 2013, compared with 16 percent in prior years.
  - Chief credit officers, chief loan officers, chief operating officers, or chief banking officers were named in 43 percent of 2013 lawsuits, compared with 57 percent in prior years.

Source: FDIC Professional Liability Lawsuits (http://www.fdic.gov/bank/individual/failed/pls/); complaints filed by the FDIC
Note: CCO refers to chief credit officer, CLO refers to chief loan officer, COO refers to chief operating officer, and CBO refers to chief banking officer.
DAMAGES CLAIMED

In 77 of the 84 complaints against directors and officers of failed financial institutions, the FDIC explicitly stated damages amounts. In total, the FDIC claimed at least $3.8 billion in damages.

The size of the FDIC’s damages claims has dropped over time. The decline is related to the FDIC pursuing the largest perceived claims first, but may also be influenced by differences in other characteristics of the failed institutions that are subject to lawsuits from year to year or a change over time in the FDIC’s approach to claimed damages.

KEY FINDINGS

• Of the 40 lawsuits filed in 2013, damages were specified in 39. In total, the FDIC claimed at least $1.2 billion in damages from the actions of directors and officers.

• For all D&O lawsuits filed by the FDIC through 2013, the average damages claim was $49 million while the median was $22 million. In 2013, the corresponding figures were $30 million and $14 million.

• The average damages claim for lawsuits filed during a given year declined from $87 million in 2011 to $30 million in 2013. The median claim declined from $33 million to $14 million over the same period.

• The median damages claim for lawsuits involving institutions that failed during a given year declined from $70 million for 2008 failures to $18 million for 2009 and 2010 failures.

<table>
<thead>
<tr>
<th>Year of Lawsuit</th>
<th>Number of Lawsuits with Specified Damages</th>
<th>Damages Claimed</th>
<th>Average Damages Claimed</th>
<th>Median Damages Claimed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>1</td>
<td>$20</td>
<td>$20</td>
<td>$20</td>
</tr>
<tr>
<td>2011</td>
<td>15</td>
<td>$1,302</td>
<td>$87</td>
<td>$33</td>
</tr>
<tr>
<td>2012</td>
<td>22</td>
<td>$1,301</td>
<td>$59</td>
<td>$25</td>
</tr>
<tr>
<td>2013</td>
<td>39</td>
<td>$1,181</td>
<td>$30</td>
<td>$14</td>
</tr>
<tr>
<td>Total</td>
<td>77</td>
<td>$3,804</td>
<td>$49</td>
<td>$22</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year of Failure</th>
<th>Number of Lawsuits with Specified Damages</th>
<th>Damages Claimed</th>
<th>Average Damages Claimed</th>
<th>Median Damages Claimed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>7</td>
<td>$1,064</td>
<td>$152</td>
<td>$70</td>
</tr>
<tr>
<td>2009</td>
<td>34</td>
<td>$981</td>
<td>$29</td>
<td>$18</td>
</tr>
<tr>
<td>2010</td>
<td>35</td>
<td>$1,752</td>
<td>$50</td>
<td>$18</td>
</tr>
<tr>
<td>2011</td>
<td>1</td>
<td>$7</td>
<td>$7</td>
<td>$7</td>
</tr>
<tr>
<td>Total</td>
<td>77</td>
<td>$3,804</td>
<td>$49</td>
<td>$22</td>
</tr>
</tbody>
</table>


Note:
1. Damages claimed are not available for seven lawsuits. The complaints filed by the FDIC state that damages will be estimated at trial. These observations are excluded from the chart above.
2. Damages totals may not add due to rounding.
DAMAGES CLAIMED continued

Claimed damages against directors and officers of failed financial institutions have ranged from $3 million to $600 million.

KEY FINDINGS

• Claimed damages have most commonly been less than $20 million. Approximately 44 percent of the FDIC’s D&O lawsuits have sought damages of less than or equal to $20 million.

• A greater portion of the 2013 lawsuits—55 percent—have claimed damages of less than $20 million.

• Damages claims between $20 million and $60 million have been roughly evenly distributed within that range.

• Claims in excess of $60 million have been less common. Fourteen lawsuits have claimed damages in excess of $60 million, although only three of these were filed in 2013.

Source: FDIC Professional Liability Lawsuits (http://www.fdic.gov/bank/individual/failed/pls/); complaints filed by the FDIC

Note: Damages claimed are not available for seven lawsuits. The complaints filed by the FDIC state that damages will be estimated at trial. These observations are excluded from the chart above.
The greatest number of FDIC D&O lawsuits have involved Georgia institutions. This may not be surprising given that Georgia has experienced more financial institution failures since 2007 than any other state. California, Illinois, and Florida are states with the next most frequent D&O lawsuits.

KEY FINDINGS

- Of the 84 D&O lawsuits filed between 2010 and 2013, 53—or 63 percent—stem from failures in Georgia, California, Illinois, and Florida. Approximately $2.1 billion, or 56 percent of the FDIC’s total claimed damages, stem from these lawsuits.
- Claimed damages have been highest for D&O lawsuits stemming from failed California institutions.
- The FDIC has filed D&O lawsuits related to all three failed Puerto Rico financial institutions. Damages claims in these lawsuits have also been sizeable and so far exceed all states other than California.
- Half of the failed Nevada institutions have been targeted in D&O lawsuits, with claimed damages of $303 million.
- The FDIC’s aggregate claimed damages of $3.8 billion amount to 11 percent of the estimated cost of the failures that have been targeted by lawsuits, although the ratio of claimed damages to cost of failure varies widely from institution to institution.

Geographic Distribution of FDIC Lawsuits, Claimed Damages, and Failed Financial Institutions

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Number of Lawsuits</th>
<th>Claimed Damages (Millions)</th>
<th>Claimed Damages/Estimated Cost of Failure</th>
<th>Number of Failures</th>
<th>Percent of Failed Institutions Subject to FDIC Lawsuits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>19</td>
<td>$440</td>
<td>10%</td>
<td>88</td>
<td>22%</td>
</tr>
<tr>
<td>California</td>
<td>12</td>
<td>$952</td>
<td>7%</td>
<td>39</td>
<td>31%</td>
</tr>
<tr>
<td>Illinois</td>
<td>11</td>
<td>$491</td>
<td>22%</td>
<td>56</td>
<td>20%</td>
</tr>
<tr>
<td>Florida</td>
<td>11</td>
<td>$264</td>
<td>9%</td>
<td>70</td>
<td>16%</td>
</tr>
<tr>
<td>Nevada</td>
<td>6</td>
<td>$303</td>
<td>20%</td>
<td>12</td>
<td>50%</td>
</tr>
<tr>
<td>Washington</td>
<td>4</td>
<td>$102</td>
<td>5%</td>
<td>18</td>
<td>22%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>3</td>
<td>$51</td>
<td>13%</td>
<td>7</td>
<td>43%</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>3</td>
<td>$683</td>
<td>13%</td>
<td>3</td>
<td>100%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>2</td>
<td>$12</td>
<td>10%</td>
<td>9</td>
<td>22%</td>
</tr>
<tr>
<td>Utah</td>
<td>2</td>
<td>$230</td>
<td>31%</td>
<td>6</td>
<td>33%</td>
</tr>
<tr>
<td>States with One Lawsuit</td>
<td>11</td>
<td>$276</td>
<td>15%</td>
<td>72</td>
<td>15%</td>
</tr>
<tr>
<td>All Other States</td>
<td>0</td>
<td>N/A</td>
<td>N/A</td>
<td>40</td>
<td>0%</td>
</tr>
<tr>
<td>Total</td>
<td>84</td>
<td>$3,804</td>
<td>11%</td>
<td>492</td>
<td>17%</td>
</tr>
</tbody>
</table>


Note:
1. The estimated cost of failure is only for those institutions that are the subject of an FDIC D&O lawsuit. IndyMac Bank F.S.B. is subject to multiple FDIC lawsuits; however, its cost of failure is included only once in the total for California.
2. Of the 84 lawsuits filed by the FDIC against failed financial institutions, 77 lawsuits stated a damages amount.
3. Failed institutions are institutions that have failed between January 1, 2007, and December 31, 2013.
4. Dollar totals may not add due to rounding.
RESOLUTIONS AND SETTLEMENTS

In mid-2013, the FDIC began to publish settlement agreements related to its professional liability claims. Court records also reveal cases that have settled. The amounts reported in settlement agreements with directors and officers are occasionally contingent on resolving coverage issues with insurance carriers. In these circumstances, the ultimate recoveries may differ from the settlement amounts.

KEY FINDINGS

- Our analysis of the agreements and other legal documents indicates that at least 17 of the filed lawsuits have settled, in whole or in part, since 2011. In addition, one has reached a jury verdict.
- We are aware of no trials in 2013.

Details of Resolutions of FDIC D&O Lawsuits by Settlement Date

<table>
<thead>
<tr>
<th>Settlements</th>
<th>Dollars in Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Institution</td>
<td>State</td>
</tr>
<tr>
<td>The Bank of Asheville</td>
<td>NC</td>
</tr>
<tr>
<td>Omni National Bank</td>
<td>GA</td>
</tr>
<tr>
<td>Benchmark Bank</td>
<td>IL</td>
</tr>
<tr>
<td>American United Bank</td>
<td>GA</td>
</tr>
<tr>
<td>1st Centennial Bank</td>
<td>CA</td>
</tr>
<tr>
<td>Columbian Bank and Trust Co.</td>
<td>KS</td>
</tr>
<tr>
<td>Bank of Wyoming</td>
<td>WY</td>
</tr>
<tr>
<td>IndyMac Bank F.S.B. (Perry)</td>
<td>CA</td>
</tr>
<tr>
<td>County Bank</td>
<td>CA</td>
</tr>
<tr>
<td>Westsound Bank</td>
<td>WA</td>
</tr>
<tr>
<td>Heritage Community Bank</td>
<td>IL</td>
</tr>
<tr>
<td>Silverton Bank</td>
<td>GA</td>
</tr>
<tr>
<td>Washington Mutual Bank</td>
<td>NV</td>
</tr>
<tr>
<td>Corn Belt Bank and Trust Co.</td>
<td>IL</td>
</tr>
</tbody>
</table>

Trial

<table>
<thead>
<tr>
<th>Trial</th>
<th>Dollars in Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Institution</td>
<td>State</td>
</tr>
<tr>
<td>IndyMac Bank F.S.B. (Van Dellen)</td>
<td>CA</td>
</tr>
</tbody>
</table>


Note:
1. Cost of failure is the cost estimated at the time of failure.
2. The settlement agreements are not available for these lawsuits.
3. This represents a partial settlement. Seven of the ten directors and officers entered into two settlement agreements with the FDIC on 10/31/13 and 12/6/13.
4. The six D&Os entered into four separate settlement agreements with the FDIC on 9/7/11, 3/5/12, 3/7/12, and 2/15/13.
5. The directors and officers settled for $500,000 by assigning their rights to the FDIC for their claims against the bank’s bankrupt holding company and its insurance carrier. The settlement agreement also allowed for a final judgment that the FDIC could seek to recover from the insurance carrier. On April 1, 2013, the court awarded to the FDIC a final judgment of $48.5 million.
6. This represents a partial settlement. One of the 17 directors and officers entered into a settlement agreement with the FDIC on 4/10/12.
7. Comprising $39.575 million cash obtained from the D&O insurance policies and cash payments from the defendants of $0.425 million. Defendants also agreed to pay the FDIC an unspecified amount based upon the amounts defendants may receive, after tax, from certain of their claims pending in the Washington Mutual Chapter 11 proceedings.
8. Two directors and officers entered into settlement agreements with the FDIC on 10/13/11 and 2/1/13.
RESOLUTIONS AND SETTLEMENTS continued

As of January 2014, approximately 501 settlement agreements related to financial institutions that failed since the onset of the financial crisis were posted on the FDIC’s website. These settlements relate to 103 failed institutions across 29 states and are dated as early as October 2008 and as late as January 2014.

Since our last examination of settlement agreements in April 2013, the FDIC has published agreements from 2009 through 2013 covering settlements of approximately $227 million.

KEY FINDINGS

- The aggregate settlement amount specified in the agreements was $728 million.
- Settlements with directors and officers comprised 60 percent of the FDIC’s professional liability settlement amounts.
- Settlements with defendants in D&O lawsuits were $120 million, while an additional $314 million resulted from settlements of claims involving directors and officers that did not result in a lawsuit.
- The remaining $294 million was from settlements with parties other than directors and officers. The majority of this last category of settlements involved claims against parties such as mortgage brokers, realty firms, appraisal firms, title insurance firms, accounting firms, and individuals involved in loan origination.


Non-Director and Officer Claims $294 Million 40%

Filed Lawsuits against Directors and Officers $120 Million 16%

Other Claims Involving Directors and Officers $314 Million 43%

60% of Total

Source: FDIC Professional Liability Settlement Agreements (http://www.fdic.gov/about/freedom/plsa/index.html); complaints filed by the FDIC; PACER; public press

Note:
1. In some settlements with directors and officers, other parties may be part of the agreement. Occasionally, the terms of the agreements do not specify what each party is obligated to pay.
2. Percentages do not add up due to rounding.
RESOLUTIONS AND SETTLEMENTS continued

The FDIC has stated that it will continue to publish settlement agreements on an ongoing basis, but has not indicated whether it has released all data on past settlements. From our analysis of settlement agreements, it appears there can be a substantial delay before the FDIC makes its settlement agreements publicly available.

KEY FINDINGS

- The total settlement amounts of $331 million and $341 million from agreements related to financial institutions that failed in 2008 and 2009, respectively, greatly exceed other years.
- Nearly half of the total settlement amount related to 2009 failed financial institutions stems from large settlements with the directors and officers of two institutions.
- A review of the settlement agreements shows that, of the 82 agreements involving directors and officers (regardless of whether a lawsuit was filed), as many as 38 agreements, or 46 percent, required out-of-pocket payments by the directors and officers. Directors and officers agreed to pay at least $34 million out of pocket in these cases.

Amount of FDIC Settlements of Professional Liability Claims by Year of Failure 2008–2013

Dollars in Millions

<table>
<thead>
<tr>
<th>Year</th>
<th>Filed Lawsuits against Directors and Officers</th>
<th>Other Claims Involving Directors and Officers</th>
<th>Non-Director and Officer Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>$2.1</td>
<td>$78</td>
<td>$52</td>
</tr>
<tr>
<td>2008</td>
<td>$331</td>
<td>$220</td>
<td>$78</td>
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<tr>
<td>2009</td>
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<tr>
<td>2010</td>
<td>$46</td>
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<tr>
<td>2011</td>
<td>$7</td>
<td></td>
<td>$42</td>
</tr>
<tr>
<td>2012</td>
<td>$0.8</td>
<td></td>
<td>$7</td>
</tr>
</tbody>
</table>

Source: FDIC Professional Liability Settlement Agreements (http://www.fdic.gov/about/freedom/plsa/index.html); complaints filed by the FDIC; PACER; public press

Note: In some settlements with directors and officers, other parties may be part of the agreement. Occasionally, the terms of the agreements do not specify what each party is obligated to pay.
FUTURE DIRECTOR AND OFFICER LAWSUITS

The FDIC reports the number of D&O lawsuits it has authorized as well as the number it has filed. The number of lawsuits authorized has always exceeded the number filed.

The difference between the number of lawsuits authorized and the number filed increased throughout 2012 and through the first part of 2013. This increase in backlogged lawsuits was reversed in the second half of 2013. The reversal may indicate that the FDIC is identifying fewer cases to pursue or having more success negotiating settlements before a lawsuit is authorized.

KEY FINDINGS

• As of January 24, 2014, the FDIC had authorized 133 lawsuits against 1,071 defendants. In the 87 lawsuits it has filed, 667 individuals have been sued.

• The 404 former directors and officers who have not been named in a filed lawsuit either negotiated settlements with the FDIC before the lawsuit was filed or are still awaiting a decision on whether the FDIC will file a lawsuit against them.

• As of January 24, 2014, 46 lawsuits were authorized but not filed, compared with 55 such lawsuits as of April 2013, when the difference between authorized and filed lawsuits was at its peak.

• Since August 2013, the number of newly authorized lawsuits and newly filed lawsuits has each increased by 11.

Source: FDIC Professional Liability Lawsuits (http://www.fdic.gov/bank/individual/failed/pls/)
APPENDIX 1

FDIC D&O Lawsuits
Time from Financial Institution’s Failure to Lawsuit and Time Spent in Litigation


Note: Financial institutions are ordered based on the date of lawsuit. Lawsuits are deemed completed when a final judgment has been ordered.
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ABOUT CORNERSTONE RESEARCH

For more than twenty-five years, Cornerstone Research staff and affiliated testifying experts have provided economic and financial analysis of complex issues arising in commercial litigation and regulatory proceedings. During this time, the firm has worked on behalf of defendants in lawsuits brought by the FDIC and Resolution Trust Corporation. Cornerstone Research has four hundred fifty staff and offices in Boston, Chicago, Los Angeles, Menlo Park, New York, San Francisco, and Washington.

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