

THE BANKING LAW JOURNAL

VOLUME 127

NUMBER 5

MAY 2010

HEADNOTE: FOCUS ON THE FDIC

Steven A. Meyerowitz

385

**THE CHANGING RULES FOR FDIC-ASSISTED ACQUISITIONS: STRATEGIES FOR
MINIMIZING BUYER'S RISK IN FAILED BANK TRANSACTIONS**

Lorraine M. Buerger

387

**REVISITING THE FDIC'S "SUPERPOWERS": CONTRACT REPUDIATION AND *D'OENCH
DUHME***

Erin Burrows and F. John Podvin, Jr.

395

BANKS NEED TO USE THE CLASSIC TURNAROUND METHODOLOGY

Christopher J. Zinski

407

NEW ANALYSIS OF THE REPURCHASE OBLIGATION IN PARTICIPATION AGREEMENTS

Michael Cavendish

417

**TITLE INSURERS TO END CREDITORS' RIGHTS COVERAGE NATIONWIDE, BUT THE
ISSUES FOR LENDERS REMAIN**

Paul G. Mackey

428

**"THERE YOU GO AGAIN": THE OBAMA ADMINISTRATION SENDS PROPOSED TEXT OF
VOLCKER RULE TO CONGRESS**

Douglas Landy and Jillian Ashley

437

**FEDERAL RESERVE AND FEDERAL TRADE COMMISSION ISSUE RISK-BASED PRICING
NOTICE RULE**

James A. Huizinga, Karl F. Kaufmann, Michael F. McEnaney, and Ryan H. Rogers

442

**BANKRUPTCY DISCLOSURE BY AD HOC OR INFORMAL COMMITTEES UNDER
RULE 2019**

Bennett J. Murphy

448

**FOREIGN BANK ISSUER. FOREIGN PLAINTIFF. FOREIGN TRANSACTION. CLASS
ACTION EXPOSURE IN THE U.S. UNDER FEDERAL SECURITIES LAWS?**

James F. Moyle and Steven L. Penaro

458

REGIONAL BANKING OUTLOOK: REVIVAL

James F. Bauerle

463

BANKING BRIEFS

Donald R. Cassling

476

EDITOR-IN-CHIEF

Steven A. Meyerowitz

President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Paul Barron

*Professor of Law
Tulane Univ. School of Law*

George Brandon

*Partner, Squire, Sanders & Dempsey
LLP*

Barkley Clark

*Partner, Stinson Morrison Hecker
LLP*

John F. Dolan

*Professor of Law
Wayne State Univ. Law School*

Stephanie E. Kalahurka

Hunton & Williams, LLP

Thomas J. Hall

Partner, Chadbourne & Parke LLP

Michael Hogan

Ashelford Management Serv. Ltd.

Mark Alan Kantor

Washington, D.C.

Satish M. Kini

Partner, Debevoise & Plimpton LLP

Paul L. Lee

Partner, Debevoise & Plimpton LLP

Jonathan R. Macey

*Professor of Law
Yale Law School*

Martin Mayer

The Brookings Institution

Julia B. Strickland

*Partner, Stroock & Stroock & Lavan
LLP*

Marshall E. Tracht

*Professor of Law
New York Law School*

Stephen B. Weissman

Partner, Rivkin Radler LLP

Elizabeth C. Yen

Partner, Hudson Cook, LLP

Bankruptcy for Bankers

Howard Seife

Partner, Chadbourne & Parke LLP

Regional Banking Outlook

James F. Bauerle

*Keevican Weiss Bauerle & Hirsch
LLC*

Directors' Perspective

Christopher J. Zinski

Partner, Schiff Hardin LLP

Banking Briefs

Donald R. Cassling

Partner, Quarles & Brady LLP

Intellectual Property

Stephen T. Schreiner

Partner, Goodwin Procter LLP

THE BANKING LAW JOURNAL (ISSN 0005 5506) is published ten times a year by A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207. Application to mail at Periodicals postage rates is pending at Washington, D.C. and at additional mailing offices. Copyright © 2010 ALEX eSOLUTIONS, INC. All rights reserved. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. Requests to reproduce material contained in this publication should be addressed to A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207, fax: 703-528-1736. For subscription information and customer service, call 1-800-572-2797. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 10 Crinkle Court, Northport, New York 11768, SMeyerow@optonline.net, 631-261-9476 (phone), 631-261-3847 (fax). Material for publication is welcomed—articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207.

REVISITING THE FDIC'S "SUPERPOWERS": CONTRACT REPUDIATION AND *D'OENCH* *DUHME*

ERIN BURROWS AND F. JOHN PODVIN, JR.

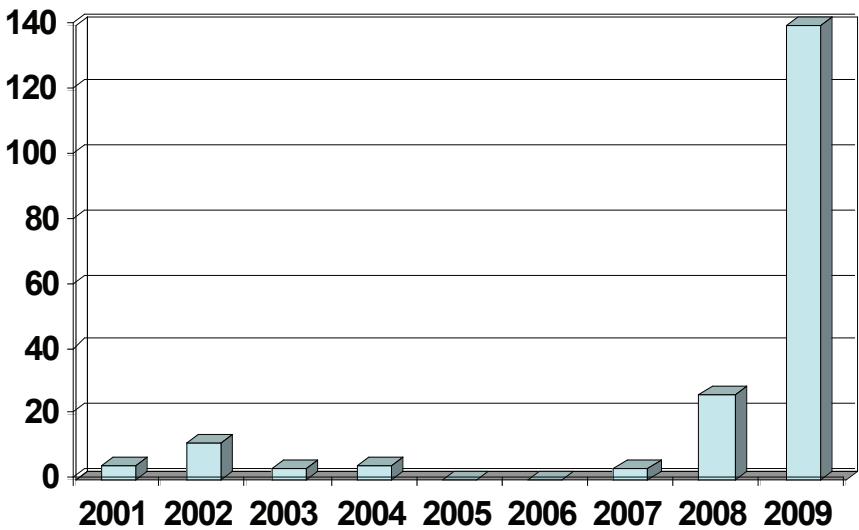
In this article, the authors briefly review the Federal Deposit Insurance Corporation's powers to facilitate a failed bank's orderly liquidation, dissolution, asset sale and/or merger. When a bank is declared insolvent, the authors advise all counterparties to review the specific provisions of their contracts with the failed bank to evaluate the likelihood of, and prepare a response to, the receiver's exercise of its repudiation powers and authority under the D'Oench Duhme doctrine.

The current economic climate has led to a dramatic increase in bank failures over the past several years. (See Figure 1 on following page.) In 2009 alone, 140 banks failed, compared to 26 bank failures in 2008 and only three bank failures in 2007.¹ In the first four months of 2010, 64 banks have already closed.² This acute trend has heightened the awareness and interest in the role of the Federal Deposit Insurance Corporation ("FDIC") as receiver of failed banks.

The determination that a bank is insolvent is typically made by its chartering authority (*i.e.* the state bank supervisor for state chartered banks, the Office of the Comptroller of the Currency or the Office of Thrift Supervision for federally chartered banks or thrifts, respectively). Once the bank is con-

Erin Burrows is an associate in the Finance practice group in the Dallas office of Haynes and Boone, LLP. John Podvin is of counsel at the firm practicing in the areas of banking and finance. The authors may be contacted at erin.burrows@haynesboone.com and john.podvin@haynesboone.com, respectively.

Figure 1: Failed Banks by Year, 2001-2009³



sidered insolvent, the regulator will then appoint the FDIC as receiver. The Federal Deposit Insurance Act (as amended, the “Act”) grants to the FDIC as receiver substantial powers and flexibility to facilitate the bank’s orderly liquidation, dissolution, asset sale and/or merger.⁴ The receiver, by operation of law, succeeds to all rights, titles, powers and privileges of the failed bank, and of any stockholder, member, accountholder, depositor, officer, or director of such bank with respect to the bank and its assets.⁵

CONTRACT REPUDIATION

In addition to any other rights the receiver may have, the receiver for any insured depository institution may disaffirm or repudiate *any* contract or lease: (i) to which the institution is a party; (ii) the performance of which the receiver, at its discretion, determines to be burdensome; and (iii) the disaffirmance or repudiation of which the receiver determines, in its discretion, will

promote the orderly administration of the failed institution's affairs.⁶

Virtually any type of contract to which the bank is a party can be repudiated, including financial instruments issued by the bank (such as loan agreements, bonds, certificates of deposit and certain letters of credit), leases, employment contracts, and employee benefits, just to name a few.⁷ There is scarce case law regarding whether the FDIC may repudiate a portion of a contract, or whether it must repudiate each contract in its entirety, and public commentary on the topic yields conflicting outcomes. The Act provides special provisions related to the repudiation of various types of agreements, such as service contracts,⁸ real estate contracts,⁹ and qualified financial contracts.¹⁰

The FDIC has broad discretion in determining whether to repudiate a contract. It is not required to make any formal findings as to why a contract is burdensome, or why repudiation of the contract will promote the orderly administration of the failed bank's estate.¹¹ Although there is no statutory standard for what constitutes a "burdensome" contract or lease, one court opined that a contract is burdensome if the receiver has reason to believe that it would be detrimental to the conservation of the assets of the failed bank.¹² It is important to note that even though the FDIC may continue to perform under a contract after its appointment as receiver (for example, it continues to accept performance under a service contract), this does not bar it from later repudiating the contract, so long as the repudiation satisfies the reasonable time period requirement (discussed below).¹³

If the receiver repudiates a contract, the repudiation is treated as if the contract were breached on the date the receiver was appointed. Repudiation normally suspends any future obligation of the receiver to perform under the contract.¹⁴ It is unclear, however, whether repudiation of one contract that is part of a larger transaction operates to repudiate the entire transaction.¹⁵ Courts addressing this issue have produced conflicting results. One court held that repudiation of a lease resulted in repudiation of the entire related transaction because the lease represented an "integrated and indivisible" part of a single transaction.¹⁶ Other courts have treated the repudiation of a single contract as an isolated occurrence that did not trigger the repudiation of related contracts.¹⁷ One court held, for example, that the repudiation of an end loan financing agreement did not result in the repudiation of related notes, reasoning that the notes lacked specific provisions regarding how defaults

under the financing agreement were to be treated (*i.e.* cross-default provisions).¹⁸ Another court, after affirming the validity of the FDIC's repudiation of a bid agreement, declined to repudiate a related participation agreement because the bid agreement was not dependent upon the participation agreement for its existence.¹⁹

The FDIC is limited in its ability to repudiate loans secured by the institution's assets. The FDIC cannot avoid any legally enforceable or perfected security interest in any assets of the institution except where such interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the institution's creditors.²⁰ The Act assures creditors and others with valid security interests against the institution that their secured claims will be recognized.²¹ But a secured creditor only has rights in the collateral equal to the amount of the creditor's claim; once that claim is satisfied, the lien is of no further consequence.²² The Act guarantees that the secured party will receive full value of its valid claim, up to the value of the collateral.²³

D'OENCH DUHME DOCTRINE

In addition to its repudiation authority, another significant power of the FDIC as receiver is its ability to avoid certain "side agreements" entered into by the bank prior to its failure. In *D'Oench, Duhme & Co. v. FDIC*, the Supreme Court held that any agreement between a bank and counterparty entered into prior to the bank's failure will only be enforceable against the FDIC, as receiver of the failed bank, if particular conditions are met.²⁴ The Court emphasized the strong public policy considerations for protecting the assets of failed banking institutions.²⁵ In view of these public policy considerations, the Court's ruling bars would-be plaintiffs from asserting defenses against the FDIC and its assignees that are based on secret or unrecorded agreements.²⁶

Under the so-called *D'Oench Duhme* doctrine, which has subsequently been codified in the Act, no agreement which tends to diminish or defeat the interest of the FDIC in any asset acquired by it under Section 1821 or Section 1823 of the Act, either as security for a loan or by purchase, or as receiver of any insured depository institution, shall be valid against the FDIC unless such agreement:

- Is in writing;
- Was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution;
- Was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee; and
- Has been, continuously, from the time of its execution, an official record of the depository institution.²⁷

The purpose behind the *D'Oench Duhme* doctrine and its statutory counterpart is to allow federal and state bank examiners to rely on a failed bank's records in evaluating the bank's assets and to prevent fraudulent insertion of new terms into agreements.²⁸ The doctrine applies only to ordinary banking transactions, such as loan agreements, and other conventional transactions the bank enters into in the ordinary course, such as vendor agreements or employment agreements.²⁹ Courts have held that it does not apply to non-banking transactions such as the sale of partnership interests in real estate development ventures, or the sale of a trust company.³⁰ One court held that agreements not meeting the *D'Oench Duhme* doctrine criteria may still be used to determine the intentions of contracting parties and to clarify ambiguities in a properly documented, enforceable contract.³¹

PRACTICAL CONSIDERATIONS

When a receiver is appointed to act on behalf of a failed bank, it is natural for those who have contracted with the bank to experience some level of stress and uncertainty. Questions are likely to arise, such as:

How will I know if my contract has been repudiated?

Typically, the FDIC will notify the counterparties to a repudiated contract in writing, via certified mail, return receipt requested, that their contract has been repudiated ("Repudiation Notice"). The Repudiation Notice will

state that the bank in question has been closed, and that the FDIC has been appointed as receiver of the bank. The Repudiation Notice will identify the contract to which the recipient of the letter may be a party and state that the FDIC has elected to repudiate or disaffirm the contract. The FDIC is also required to publish a notice to the failed bank's creditors to present their claims to the FDIC, and must republish such notice approximately one month and two months after the initial publication.³²

How long does the receiver have to notify me that my contract was repudiated?

The FDIC must determine whether or not to exercise its repudiation rights within a reasonable period of time following its appointment as receiver.³³ What constitutes a "reasonable period" is not defined in the Act, but rather is a fact specific determination that varies case by case.³⁴ Courts have considered a number of factors in evaluating the reasonableness of a receiver's delay in notification, such as: the potential for harm to the counterparty caused by the delay; the existence of bad faith on the part of the receiver; and the legitimacy of the receiver's reasons for delay.³⁵

The time for calculating a reasonable period commences with the appointment of a receiver.³⁶ Courts have allowed the FDIC as receiver a great deal of flexibility in determining the timeliness of contract repudiation. At least one court proffered that 90 days should generally be considered a reasonable period of time.³⁷ The court stated that although the Act does not provide for a fixed time period, the period should be short and in most cases should not exceed 90 days following appointment of the receiver.³⁸ Other courts have been much more lenient in allowing for reasonable time periods, some permitting the receiver up to four and a half months to repudiate a contract, and in one case, up to eight months.³⁹ The FDIC has indicated that, generally, no more than 180 days from the date of appointment of the FDIC as receiver is a reasonable amount of time to elect whether to repudiate a secured obligation.⁴⁰

Am I entitled to damages? If so, how much?

The counterparty (or parties) to a repudiated contract may be able to recover damages resulting from the repudiation.⁴¹ The liability of the receiver

for the repudiation of any contract is limited to actual direct compensatory damages, determined as of the date of the appointment of the receiver.⁴² Most courts have avoided offering a clear definition of the term "actual direct compensatory damages," other than to stress that the measure of damages to which a counterparty may be entitled is unique to the individual facts of each case. One court suggested that "actual direct compensatory damages" appears to include those damages, flowing directly from the repudiation, which make one whole, as opposed to those which go further by including future contingencies such as lost profits and opportunities or damages based on speculation.⁴³ The Act is clear that the receiver is not liable for punitive or exemplary damages, damages for lost profits or opportunity, or damages for pain and suffering.⁴⁴

How do I claim my damages?

If a counterparty believes it may be entitled to damages resulting from the repudiation, it must file a timely claim with the FDIC ("Proof of Claim") in writing, together with proof thereof, for an administrative determination by the FDIC regarding the claim's validity. The Repudiation Notice and public notice will specify the deadline for filing a Proof of Claim, which must be at least 90 days from the date of such Repudiation Notice or publication.⁴⁵ The Repudiation Notice and public notice will provide a method (usually a phone number) by which a Proof of Claim form may be obtained. Failure to comply with this claims process precludes the counterparty from seeking relief in federal district court.⁴⁶

How do I know if my claim for damages was allowed or disallowed?

The FDIC may allow or disallow any claim based on whether the claimant has proved its claim "to the satisfaction of the receiver."⁴⁷ The FDIC must make its determination within 180 days after the Proof of Claim is filed.⁴⁸ If a claimant's Proof of Claim is disallowed, it will receive a Notice of Disallowance of Claim from the FDIC, typically in the form of a certified letter, return receipt requested. The letter will state that the FDIC has reviewed the claim and has determined to disallow it, and will contain a statement of each reason for the disallowance.⁴⁹ The letter will also describe the procedure for

obtaining further review of the FDIC's determination. If a claimant's Proof of Claim is allowed, the claimant receives a Receivership Certificate and becomes an unsecured general creditor of the failed institution, as explained in more detail below.

How and when will I be paid if my claim is allowed?

Damages allowed by the FDIC are paid through the issuance of a Receivership Certificate, also known as a receiver's Certificate of Award. A Receivership Certificate represents a formal record that the claim was allowed, and entitles the holder to a pro rata share of the proceeds of the liquidation of the failed institution, following the payment of claims with higher priority. As the FDIC liquidates the assets of the failed bank, the holder may periodically receive payments on the claim through dividends.⁵⁰

Subject to the satisfaction of secured claims and FDIC-insured deposits, amounts realized from the liquidation or other resolution of the failed bank are distributed in the following order of priority:

- Administrative expenses of the receiver, which includes all costs and expenses incurred by the receiver after commencement of the receivership;
- Insured deposit liabilities of the institution (amounts which exceed the FDIC limit);
- General unsecured creditors of the institution;
- Any obligations subordinated to depositors or general creditors; and
- Any obligations to shareholders or members of the institution arising as a result of their status as shareholders or members.⁵¹

In the case of a less than fully secured creditor, whose claim is secured by any property or other asset of the bank, the FDIC may treat the portion of the claim which exceeds the fair market value of the property or other asset as an unsecured claim, and may not make any payment with respect to such unsecured portion other than in connection with the payment of all other unsecured claims of the bank.⁵²

Do I have any further remedies if my claim is disallowed?

If a counterparty's claim for damages is disallowed, it may request administrative review of the claim or file a lawsuit against the FDIC as receiver in the U.S. District Court for the District within which the failed bank's principal place of business is located or in the U.S. District Court for the District of Columbia.⁵³ The lawsuit must be filed within 60 days after the earlier of (i) the end of the FDIC's 180 day determination period following the filing of the Proof of Claim, or (ii) the date of the Notice of Disallowance.⁵⁴ If the FDIC determines to disallow a claim before its 180 day deadline has elapsed, the first date never comes into play (in other words, the 180 day period is a maximum).⁵⁵ Failure to file suit within the 60 day period will result in the claim being permanently barred, and the claimant will have no further rights or remedies with respect to the claim.⁵⁶

After filing a claim, it is imperative that claimants carefully monitor the situation and the calendar. At least one court has held that the receiver's failure to notify a potential claimant about the disallowance of its claim does not toll the 60 day period within which the claimant must contest the determination.⁵⁷ Emphasizing the plain language of the Act, the court held that if 180 days pass following the filing of a Proof of Claim, the 60 day period automatically begins to run, and the claimant cannot rely on the defense that it did not receive a Notice of Disallowance.⁵⁸ Therefore, a claimant must take action on a claim *either* within 60 days of receiving a Notice of Disallowance, or, if no such notice is received, within 60 days after expiration of the 180 day period for consideration of the claim.⁵⁹

CONCLUSION

When a bank is declared insolvent, it is prudent for all counterparties to review the specific provisions of their contracts with the failed bank to evaluate the likelihood of, and prepare a response to, the receiver's exercise of its repudiation powers and authority under the *D'Oench Duhme* doctrine. If the receiver repudiates a contract, it is imperative that the counterparties file their claims for damages (if any) in a timely manner. Under federal law, with limited exceptions, failure to file a timely claim for damages will result

in the disallowance of the claim by the receiver, which disallowance will be final, and further rights or remedies with respect to the claim will be forever barred.⁶⁰

NOTES

¹ See <http://www.fdic.gov/bank/individual/failed/banklist.html>.

² *Id.*

³ *Id.*

⁴ 12 U.S.C. § 1821(d)(2).

⁵ *Id.*

⁶ 12 U.S.C. § 1821(e)(1).

⁷ *IBJ Schroder Bank & Trust Co. v. RTC*, 26 F.3d 370, 373 (2d Cir. 1994); *Lawson v. FDIC*, 3 F.3d 11, 12-14 (1st Cir. 1993); *Credit Life Ins. Co. v. FDIC*, 870 F. Supp. 417, 426 (D.N.H.1993).

⁸ 12 U.S.C. § 1821(e)(7).

⁹ 12 U.S.C. § 1821(e)(6).

¹⁰ 12 U.S.C. § 1821(e)(8).

¹¹ *Monrad v. FDIC*, 62 F.3d 1169, 1172 (9th Cir. 1995); *Hennessy v. FDIC*, 58 F.3d 908,919-920 (3d Cir. 1995); *1185 Ave. of the Americas Assocs. v. RTC*, 22 F.3d 494, 498 (2d Cir. 1994).

¹² *Union Bank v. FSLIC*, 724 F. Supp. 468, 471 (E.D. Ky. 1989).

¹³ 12 U.S.C. § 1821(e)(7)(C).

¹⁴ Banks & Thrifts: Govt. Enforce & Receivership § 20.02 (Matthew Bender & Company, Inc. 2009).

¹⁵ *Id.*

¹⁶ *Hackel v. FDIC*, 858 F. Supp. 289, 292 n. 5 (D. Mass. 1994).

¹⁷ Banks & Thrifts: Govt. Enforce & Receivership §20.02 (Matthew Bender & Company, Inc. 2009).

¹⁸ *In re Miraj and Sons, Inc.*, 192 B.R. 297, 311-12 (Bankr. D. Mass. 1996).

¹⁹ *Union Bank v. Federal Savings and Loan Ins. Corp.*, 724 F. Supp 468, 471 (E.D. Ky. 1989).

²⁰ 12 U.S.C. § 1821(e)(12).

²¹ *Resolution Trust Corp. v. Ford Motor Credit Corp.*, 30 F.3d 1384, 1387-88 (11th Cir. 1994).

²² *Id.*

²³ *The Employees' Retirement System of Alabama v. Resolution Trust Corp.*, 840 F. Supp. 972, 985 (S.D.N.Y. 1993).

- ²⁴ *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942).
- ²⁵ *MVB Mortg. Corp. v. FDIC*, 2009 U.S. Dist. LEXIS 58890, *8 (S.D. Ohio July 9, 2009).
- ²⁶ *EMC Mortg. Corp. v. Davis*, 167 S.W.3d 406, 416 (Tex. App. Austin 2005).
- ²⁷ 12 U.S.C. § 1823(e)(1).
- ²⁸ *EMC Mortg. Corp.*, 167 S.W.3d at 416.
- ²⁹ *In re New Valley Corporation*, 168 B.R. 82, 87-88 (1994).
- ³⁰ *Id.*
- ³¹ *EMC Mortg. Corp.*, 167 S.W.3d at 417.
- ³² 12 U.S.C. § 1821(d)(3)(i), (ii).
- ³³ 12 U.S.C. § 1821(e)(2).
- ³⁴ *Resolution Trust Corp. v. CedarMinn Bldg. Ltd. P'ship*, 856 F.2d 1446, 1455 (8th Cir. 1992).
- ³⁵ *Id.* at 1456; *Monument Square v. Resolution Trust Corp.*, 792 F.Supp. 874, 879 (D. Mass. 1991); *Central Buffalo Project Corp. v. FDIC*, 29 F. Supp. 2d 164, 170 (W.D.N.Y. 1998).
- ³⁶ 12 U.S.C. § 1821(e)(2).
- ³⁷ *Rechler P'ship v. Resolution Trust Corp.*, No. 90-3091, 1991 U.S. Dist. LEXIS 18714 (D. N.J. Sept. 7, 1990).
- ³⁸ *Id.*
- ³⁹ *Hackel v. FDIC*, 858 F. Supp. at 291; *IBJ Schroder Bank & Trust Co. v. RTC*, 803 F. Supp 878, 884 (S.D.N.Y.) 1992; *Hawke Assoc. v. City Federal Sav. Bank*, 787 F. Supp. 423, 427 (D.N.J. 1991).
- ⁴⁰ *Statement of Policy Regarding Treatment of Security Interests After Appointment of the FDIC as Conservator or Receiver*, 58 Fed. Reg. 16833 (March 31, 1993).
- ⁴¹ 12 U.S.C. § 1821(e)(3).
- ⁴² *Id.*
- ⁴³ *McMillian v. FDIC*, 81 F.3d 1041, 1055 (11th Cir. 1996).
- ⁴⁴ *Id.*
- ⁴⁵ 12 U.S.C. § 1821(d)(3)(B).
- ⁴⁶ 12 U.S.C. § 1821(d)(5)(C)(i).
- ⁴⁷ 12 U.S.C. § 1821(d)(5)(B), (D).
- ⁴⁸ 12 U.S.C. § 1821(d)(5)(A).
- ⁴⁹ *Id.*
- ⁵⁰ 12 U.S.C. § 1821(d)(10).
- ⁵¹ 12 U.S.C. § 1821(d)(11)(A).
- ⁵² 12 U.S.C. § 1821(d)(5)(D).
- ⁵³ 12 U.S.C. § 1821(d)(6).
- ⁵⁴ *Id.*

⁵⁵ *Capitol Leasing Company v. FDIC*, 999 F.2d 188, 193 (7th Cir. 1993).

⁵⁶ 12 U.S.C. § 1821(d)(6).

⁵⁷ *Capitol Leasing Company*, 999 F.2d at 192.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 12 U.S.C. § 1821(d)(6)(B).