

From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint

Is Hindsight 20/20?

When financial institutions fail, the clean up involves examining the actions (and inactions) that lead to the failures. Questions arise as to whether the failure involved breaches of fiduciary duty including breach of independence, loyalty and care.

Top executives seek to prop up a failing institution with desperate acts. Examiners will look into minutes (and lack of minutes) for key meetings including loan committees and board meetings. Emails will be read with a discerning eye. Because insurance is typically woefully less than the amount of loss on the failure, it is necessary to pursue personal liability against the D&O's. An examination will be made of any asset protection done by the top executives including invoices to trusted advisors - such as accountants and attorneys. Transfers will be evaluated to see if they were bogus and made simply to insiders or spouses. Recordings against real estate will also be evaluated to determine if bogus encumbrances were made against them.

Examiners will closely look at what preceded the failure including lending practices. For example, Broadway Bank had received a lot of unwanted attention prior to its failure for allegedly lending about \$20 million to mob figures. Also, it supposedly paid out to its shareholders about \$80 million for varying explanations including for diversification and estate taxes. Amcore Bank seems to have gotten too big too fast in CRE allegedly to the point of recklessness.

Typically there is not a "smoking gun" - one single act that lead to the failure. However, from a thorough examination, a case is built that can prove culpability.

We can work with you to recover the most for the least cost. Call us so that we may assist you with:

Breach of fiduciary duty litigation
(including D&O, accounting malpractice, employee benefits)
Commercial litigation
Banking litigation
Mortgage fraud litigation
Default & foreclosure
Complex real estate transactions

<p>Jeanne M. Kerkstra, Esq., CPA KERKSTRA LAW OFFICES LLC 53 W. Jackson Blvd. Suite 1530 Chicago, IL 60604 312.427.0493 312.675.0500 (fax) jmk@kerkstralaw.com</p>	<p>KERKSTRA LAW OFFICES LLC Problem? Solved.®</p> <p>asset protection • estate planning corporate work • business succession planning forensic investigation • litigation and more</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

This material is intended for educational purposes only. The conclusions expressed are those of the author and do not necessarily reflect the views of Kerkstra Law Offices LLC. While this material is based on information believed to be reliable, no warranty is given as to its accuracy or completeness. Concepts expressed are current as of the date appearing in this material only and are subject to change without notice.

TAX ADVICE NOTICE: The Internal Revenue Service (IRS) now requires specific formalities before written tax advice can be used to avoid penalties. This communication does not meet such requirements. You cannot contend that IRS penalties do not apply by reason of this communication.

Posted: Archived