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10 years later

Suits stemming from the 1991 seizure of Southeast Bank finally have been settled, but that doesn't mean underlying issues of bank's demise have been resolved

by **Sharon Harvey Rosenberg**

Charles Zwick, the former chairman and chief executive officer of now defunct Southeast Bank, was in no mood to settle a nearly 10-year-old lawsuit filed against him and other directors and officers of Southeast Banking Corp.

This summer, when faced with the choice of fighting 1992 accusations that the board of Southeast Bank was responsible for the $10 billion bank's 1991 failure, Zwick wanted to fight. After all these years, he wanted his day in court.

"I felt that if it went to trial, we would demonstrate that the institution did nothing wrong," says Zwick.

Indeed, although the bank clearly had its share of financial and strategic missteps, a loud chorus of voices — including Zwick's — says federal banking regulators were at fault in Southeast's rapid seizure and sale of the bank to North Carolina's First Union Bank.

"I think what they did was wrong. The bank was not insolvent," says Zwick. It was a sentiment voiced even by those who are bitter about Zwick's stewardship of what was once Florida's largest bank.

As settlement talks became more concrete this year, Zwick vehemently argued against his own lawyer, Michael Nachwalter of Miami, who for the sake of practicality recommended a settlement.

"Mike and I had some strong words about settling," recalls Zwick.

But in the end, Zwick — as did his Southeast Bank peers — resolved the case in early June for $9 million in cash and an agreement by the directors and officers to give up $12 million in claims they made against the bank.

Since then, most litigation in the aftermath of the bank's 1991 crash has come to a conclusion.

Two professional malpractice suits spawned by the Southeast takeover have been settled in recent weeks. A fourth dispute, which involved a threat of a lawsuit, has also been resolved. Final papers in those cases will be filed in the U.S. District Court and U.S. Bankruptcy Court in Miami in the coming weeks.

(The filing of final agreement documents is expected to be delayed by the terrorist attacks in Washington and New York, where a number of the lawyers in the case have offices.)

The various settlements involve millions of dollars. The expense will be largely picked up by insurance companies that provided coverage to the directors and officers, as well as to the bank's former team of legal and accounting professionals.

But 10 years after Southeast Bank was shut down, bitterness, finger pointing and countless unanswered questions persist. For one, with the pay-out of well over $400 million in funds for creditors and the recovery of other assets, critics of the Federal Deposit Insurance Corp. and Office of the Comptroller of the Currency claim that the bank was not insolvent as initially charged. What's more, in some quarters rancor remains about speculation that First Union — after courting Southeast as a potential merger partner — may have played a behind-the-scenes role in the OCC's decision to swiftly take over Southeast.

First Union denies the allegation.

With the depletion of Florida's supply of large homegrown banks, the demise of Southeast Bank still is keenly felt in this region.

"Southeast was a very fine institution," says Jeff Beck, trustee for the bank. "It had a great reputation and a great history."

In its heyday, Miami-based Southeast Bank was headquartered in the tallest building in Florida, which then bore its name. Now the 55-story building is called First Union Financial Center.

A Who's Who

From its humble beginnings as First National Bank of Miami in 1902, Southeast Bank was a hometown special. Early founders of the predecessor bank included the mayor of Miami and a patriarch of the Burdines family, which founded what is now one of the largest department store chains in the Southeast.

South Florida civic stars backed the bank as it grew through acquisition and reputation. And by 1986, with $10.7 billion in assets, Southeast Bank could flaunt a board of directors that was truly a Who's Who of Miami. Members included top executives from Ryder System, Texas Air, Harris Corp., Southern Bell (since renamed BellSouth), Arvida Disney Corp., Burger King and Saks Fifth Avenue. The bank's board also boasted sugar baron Alfonso Fanjul and lawyers such as Lloyd N. Cutler and Louis J. Hector from Steel Hector & Davis.

Southeast Bank also had a strong customer base in the local business community. The pages of its 1986 annual report are filled with testimonies from entrepreneurs from around the state. A good corporate citizen, Southeast was a big supporter of local charities and cultural programs.

But cracks had already appeared in the empire. During the 1970s, the bank's loan portfolio was hard hit by real estate losses. In 1987, the bank's financial performance was hurt by Latin American debt write-offs.

What's more, there were skirmishes in the board room and at shareholder meetings during the mid-to-late 1980s, when disagreements over the bank's direction and performance sparked an outcry about the direction of the bank under Zwick, a former director of the U.S. Bureau of Budget who joined Southeast Bank as president in 1969 and was subsequently named chairman and chief executive.

Zwick was determined to keep the bank independent and pursued several acquisitions that were considered controversial at the time. In 1988, Southeast purchased First Federal Savings and Loan of Jacksonville for $1.3 billion, in a controversial move that later played a role in some of the lawsuits filed by the trustee on behalf of the creditors committee.

Critics called the First Federal purchase a "poison pill," meaning that the acquisition was designed to discourage would-be suitors.

As the financial health of the bank faltered and the stock of the publicly traded bank plummeted, Zwick stepped down as president in July 1990. Doug Ebert was named president and chief operating officer. As the losses worsened, Zwick retired as chairman and chief executive in 1991. Ebert took over that position on the bank level.

By then, the bank had lost $199.2 million, primarily loan losses.

The bank continued to be profitable on an operating basis. In what has proven to be a controversial issue, the 1990 and 1991 losses were driven by federal regulatory demands that the bank increase its loan loss reserves, which some argue was a subjective call that led to a bottom line deficit.

In an effort to save the bank, Ebert sought out several merger partners, including First Union, which allegedly held confidential talks with Southeast prior to the Federal takeover.

A First Union spokeswoman denies the bank

Kendall Coffey, who began handling appellate work for Southeast Bank's trustee in 1996, won reinstatement of lawsuits that had been dismissed.

Southeast Bank — the settlements

Directors and officers suit

Filed: June 1992 by trustee for Southeast **Settled:** June 2001
Settlement amount: $9 million in cash (directors and officers also agreed to drop $12 million in claims against the bank)
Trustee's claim*: breach of fiduciary duty in approving the First Federal of Jacksonville acquisition

Steel Hector & Davis
Filed: November 1995 by trustee **Settled:** September 2001
Settlement: together with Ross & Hardies — the firm that represented trustee William Brandt — combined settlement is for $26 million
Trustee's claim: firm failed to advise Southeast board not to complete deal with First Federal of Jacksonville

Ross & Hardies (settlement of potential lawsuit)
Settlement amount: part of $26 million settlement with Steel Hector
Trustee's claims*: diminished value of settlement with directors and officers, additional cost of litigation, failure to pursue derivative claim about the lending practices at Southeast Bank, for the loss of a claim against Lazard Freres & Co. due to expiration of the statute of limitations

Deloitte & Touche
Filed: September 1993 by trustee **Settled:** September 2001
Settlement amount: $4.95 million
Trustee's claims: accounting firm approved an allegedly inappropriate accounting method in the First Federal of Jacksonville purchase

**sample of claims*
Source: U.S. District Court documents

over $300 million.

But early in the case, after looking over key documents and investigating, William Brandt, who was appointed trustee in 1992, had his doubts about the FDIC claims.

To anyone who would listen, he voiced his concern that the government takeover was premature.

"I got a little feisty," Brandt says, recalling how he told the FDIC that it may owe money to Southeast creditors. "I began to be their worst nightmare. I realized that the bank had been taken over prematurely. In my mind, I caught the government lying."

Ebert, the bank's former president, and others agree with Brandt that the government swift move against Southeast was due to the economic and political landscape at a time when savings and loans across the nation were failing at a huge cost to taxpayers.

"Without pressure from Congress, the regulators would have given us more time to work through the problems," said Ebert, who is now an executive at Michigan National Bank.

Ebert points out that First Union was able to resolve the lending problems it inherited from Southeast Bank. Ultimately, he adds, the FDIC made money on the bank.

The creditors' voice

As trustee for the creditors, Brandt believed that various groups held responsibility for the bank's failure, namely the federal banking regulators, First Union, the directors and officers of the bank and its team of professionals: investment banker, legal counsel and auditor.

Brandt, who was brought into the case after overseeing a recovery at Florida Park Banks, near Tampa, quickly began to file a series of controversial lawsuits.

In 1992, Brandt filed suit against the directors and officers. In the following three-year period he filed a number of suits, including a $140 million malpractice suit against Deloitte & Touche and separate malpractice suits against Miami law firm Steel Hector & Davis and investment banking firm Lazard Freres & Co. Suits were also filed against the FDIC and First Union.

Initially, the courts were hostile to Brandt's legal moves and, in June 1996, U.S. Magistrate Judge Barry Garber issued a scathing report accusing Brandt and his chief litigation counsel of disregarding court orders by talking to the media. Later, the lawsuits were dismissed.

Brandt said the courts were reluctant to take on the FDIC and to fight against the civic stars on the bank's board.

But ultimately, Brandt's outspoken stance outraged bondholders, who believed his conduct had become a liability in their quest to recover their money. Under pressure, Brandt resigned on April 1, 1998, and Jeff H. Beck succeeded him.

Some angry bondholders still talk about a possible suit against Brandt.

But before he departed, Brandt recovered about $400 million for creditors.

The OCC stands by its decision to close the bank. "The bank was having severe liquidity problems," says Dean Debuck, a spokesman for the OCC.

At the FDIC, David Barr, a spokesman, says that Federal Courts have thrown out Brandt's suits against banking regulators.

"He's been singing that tune about wrongful closings for 10 years now," says Barr.

Stunning reversals

Meanwhile, Brandt lawsuits dismissed by U.S. District Judge Edward Davis in Miami were appealed. Miami lawyer Kendall Coffey, a former U.S. attorney for South Florida, began handling Brandt's appellate work in 1996 and continued to do so for Beck, the new trustee.

"I took the case at a time in which the principal matters were litigation assets," Beck says. "From the very beginning, we thought it was important to review the cases and allegations that were made."

In what proved to be a stunning reversal, a federal appeals court reinstated the $140 million lawsuit against Deloitte & Touche in June 1998. Last year, the malpractice suit against Steel Hector & Davis and the suit against the directors and officers were also reinstated by 11th U.S. Circuit Court of Appeals.

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