

Banking and Finance Law Daily Wrap Up, RECEIVERSHIPS—E.D.N.Y.: Investors lack standing to sue failed bank over alleged public misrepresentations, (Mar. 24, 2025)

Banking and Finance Law Daily Wrap Up

By Steven D. Cole, J.D.

The FDIC, which was appointed as the bank's receiver, succeeded to the securities fraud claims asserted by the class action's lead plaintiff.

The lead plaintiff in a securities fraud class action against a failed bank lacked standing because the Federal Deposit Insurance Corporation, as receiver, took over the claims pursuant to the succession provision of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), held the United States District Court for the Eastern District of New York. The consolidated complaint alleged that public misrepresentations issued by the bank's representatives and auditor inflated the stock's price, which crashed to \$0.13 per share (a 99.81 percent drop) immediately following the bank's abrupt closure. This erased billions of dollars in shareholder value ([AP-fonden v. Depaolo](#), No. 1:23-cv-01921-FB-JRC (E.D.N.Y. Mar. 21, 2025)).

Background. Signature Bank (Signature) was an FDIC-insured, New York state-chartered commercial bank with 40 branches in several states. As of the end of 2022, it held total assets of approximately \$110 billion, with total deposits of approximately \$89 billion. On March 12, 2023, the New York Department of Financial Services closed Signature Bank, and the FDIC was immediately appointed as receiver. That same day, the Treasury Secretary, Federal Reserve Board Chair, and FDIC Chair issued a joint statement assuring depositors that they would be made whole, but noted that shareholders and certain unsecured debtholders would not be protected by the federal actions (see [Banking and Finance Law Daily](#), Mar. 13, 2023).

Complaint. Lead plaintiff Sjunde AP-fonden (AP7), a Swedish public pension fund, brought this securities fraud class action, asserting claims under Section 10(b) of the Securities Exchange Act and Rule 10b-5(b) against KPMG, which was Signature's auditor from 2001 to 2023, and seven former directors, senior executives, and officers of Signature (collectively, Defendants). The consolidated complaint alleged that shareholders acquired Signature common stock between Jan. 21, 2021, and Mar. 12, 2023, in reliance on Defendants' public misrepresentations about Signature's liquidity and risk management, which encouraged uninsured deposits of digital assets and inflated the stock's price. AP7 also alleged that the officers lied to and ignored warnings by regulators to implement adequate liquidity risk management, and that KPMG either intentionally misrepresented or recklessly disregarded Signature's financial position in producing audits that incorrectly assured its health. The FDIC, after having intervened, moved to dismiss the claims pursuant to Rules 12(b)(1) for lack of standing and 12(b)(6) for failure to state a claim.

Lack of standing. The court agreed with the FDIC's assertion that AP7 did not have standing because, among other reasons, the FDIC now owns AP7's claims pursuant to the Succession Clause of FIRREA. Under the Succession Clause, the FDIC, as conservator or receiver of a bank, "succeed[s] to ... all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution." 12 U.S.C. § 1821(d)(2)(A). Thus, only the FDIC can bring claims based on rights to which it succeeded.

There exists a circuit split with regard to whether to apply the Succession Clause according to its plain text or by differentiating between direct and derivative claims. AP7 argued that the FDIC did not inherit its claims because the Succession Clause "only extinguishes a shareholder's derivative claims brought on behalf of a corporation (and

therefore does not implicate direct claims brought by shareholders against the corporation).” *Verdi v. FDIC*, 2024 U.S. Dist. LEXIS 170814, at *6–7 (S.D.N.Y. Sept. 20, 2024). In *Verdi*, Judge Ho agreed with the First Circuit’s decision in *Zucker v. Rodriguez*, 919 F.3d 649 (1st Cir. 2019), finding that “the text of the Succession Clause does not explicitly require categorizing claims as derivative or direct.” *Id.* at *11. He noted, however, that “at the very least, [it] does not explicitly foreclose the possibility that at least some direct claims are covered by the Clause.” *Id.*

Here, the court agreed with “Judge Ho’s thoughtful and thorough analysis,” explaining that the Succession Clause’s applicability does not hinge on some distinction between direct and derivative claims, but on the statutory text. Thus, the Succession Clause covers claims that satisfy the two conditions set forth therein—that the claim asserts a “right[] ... of any stockholder” and that this right is “with respect to the institution and the assets of the institution.” 12 U.S.C. § 1821(d)(2)(A)(i).

AP7 argued that the court should not adopt Judge Ho’s reasoning with regard to the Succession Clause in this case because AP7’s claims were not brought against Signature, but against its former officers and auditor. However, Signature’s absence did not remove the claims from the scope of the Succession Clause because any damages recovered, at least against the officers, would be paid from Signature’s director and officer insurance policies, which are assets of the bank. Nonetheless, Defendants’ misstatements still related to Signature and its assets. Thus, AP7’s claims were “with respect to” Signature and its assets, and the FDIC succeeded to these claims.

Financial Institutions Reform, Recovery, and Enforcement Act. FIRREA’s purpose and structure also counseled this outcome. The priority scheme therein provides that “amounts realized” from liquidating a failed bank “shall be distributed” first to cover the FDIC’s administrative expenses, then to “[a]ny deposit liability of the institution,” next to “[a]ny other general or senior liability,” then to subordinate obligations, and finally to shareholders or members. 12 U.S.C. § 1821(d)(11)(A). Erroneously reading in a direct/derivative distinction would usurp claims from which the FDIC could recover and then distribute proceeds pursuant to the priority scheme. It would thus enable direct claims to be paid from the very assets that the FDIC had in order to satisfy the failed bank’s obligations.

Therefore, the court granted the FDIC’s motion to dismiss.

The case is [No. 1:23-cv-01921-FB-JRC](#).

Judge: Block, F.

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Companies: KPMG; Signature Bank

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