MEMO

TO: Board of Directors

THROUGH: Harrel M. Pettway
General Counsel

FROM: Melanie D. Coates
Assistant General Counsel
Professional Liability and Financial Crimes Section

DATE: February 28, 2022

RE: Professional Liability Annual Report for 2021

The Professional Liability and Financial Crimes Section (PLFCS) of the Legal Division of the Federal Deposit Insurance Corporation (FDIC) submits this report on the results of the professional liability program for 2021. The purposes of the professional liability program are to recover funds for FDIC receiverships and to hold accountable directors, officers, and professionals who caused losses to insured financial institutions that later failed and were placed in FDIC receivership. The program's existence also enhances industry awareness of sound corporate governance standards. On behalf of the FDIC in its receivership capacity, PLFCS and the Investigations Department of the Division of Resolutions and Receiverships (DRR) investigate potential professional liability claims arising from every financial institution failure but pursue claims only if they are both meritorious and expected to be cost-effective. PLFCS also assists DRR to obtain criminal restitution from defendants convicted of banking crimes and, where appropriate, refers cases to the Legal Division's Enforcement Section for administrative enforcement action.

Recoveries and Expenses

During 2021 PLFCS and DRR recovered $35,093,779 and incurred $25,414,763 in expenses for professional liability program activity. The recoveries were obtained from the following types of claims:

FDIC Federal Deposit Insurance Corporation

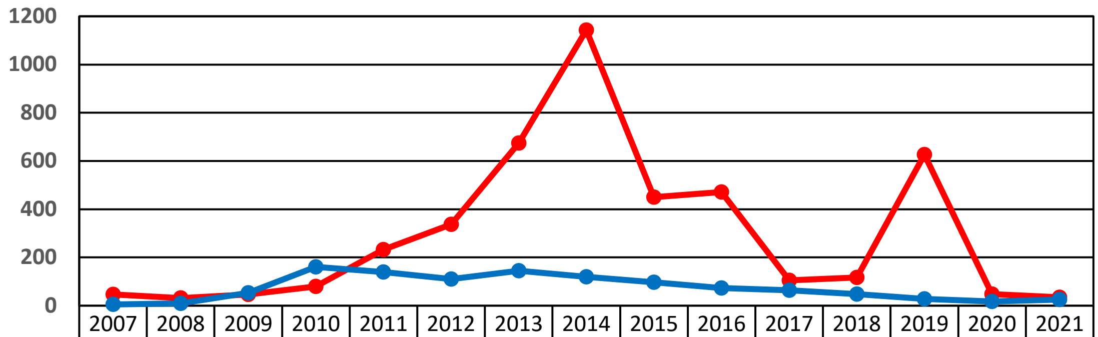
Type of Claim	Recoveries—2021	
Securities		
Residential Mortgage-Backed Securities (RMBS)	$33,650,000	(95.9%)
Other Securities	$246	(0.0%)
Miscellaneous		
U.S. Dollar London Interbank Offered Rate (LIBOR)	$696,454	(2.0%)
Other	$13,152	(0.0%)
Bond	$510,400	(1.5%)
Mortgage Malpractice and Fraud (MMF)	$223,528	(0.6%)
TOTAL	**$35,093,779**	**(100.00%)**

The $33.65 million in RMBS recoveries resulted from three settlements out of four receiverships. The largest of the three settlements, $16.4 million, resolved securities law claims against RBS Acceptance Inc., NatWest Markets Securities Inc., and RBS Holdings USA Inc. (collectively, RBS), the underwriter for one RMBS certificate purchased by United Western Bank (UWB), Denver, Colorado. The second largest settlement of $15.4 million resolved securities law claims against HSBC Securities (USA) Inc. (HSBC), the underwriter for one RMBS certificate purchased by Colonial Bank (Colonial), Montgomery, Alabama. In both cases, the FDIC's claims were based on the defendants' misrepresentations in the offering documents for the RMBS certificates. UWB failed on January 21, 2011, with $2.15 billion in assets. Colonial failed on August 14, 2009, with $25.5 billion in assets.

Of the total 2021 program expenses of $25,414,763, the Legal Division incurred $23,798,413 (93.6 percent), DRR incurred $ 1,572,995 (6.2 percent), and other FDIC Divisions and Offices incurred $43,355 (0.2 percent). Legal Division expenses comprise $18,942,199 paid to outside counsel and consultants and $4,874,214 for other expenses (primarily in-house PLFCS salaries associated with the professional liability program). DRR expenses are entirely expenses for in-house staff. The ratio of total recoveries to total expenses is 1.4 to 1, and the ratio of recoveries to outside counsel and consultant expenses only is 1.9 to 1.

Professional liability program expenses are primarily receivership funding expenses incurred by PLFCS and DRR to conduct professional liability investigations and litigation arising from insured financial institutions that failed since 2007. Typically, program expenses are incurred years before associated recoveries are received because staff spends substantial time and money to investigate and develop claims before settlements or judgments are obtained. Program expenses also include substantial costs for investigations that do not ultimately identify meritorious and cost-effective claims and, as a result, produce no recoveries. Investigation expenses for a failed institution include these sunk costs while recoveries from more cost-effective claims from the same institution may not be obtained until years later. In addition, program recoveries result not only from settlements reached and judgments obtained in the current reporting period but also from collections from structured settlements reached in earlier reporting periods. Given this characteristic lag time between the incurrence of program expenses and the receipt of associated recoveries, the cost-effectiveness of the program is best assessed by relating recoveries to expenses over many years rather than in any single reporting period.

FDIC Professional Liability Recoveries and Expenses
2007-2021 ($millions)



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Recoveries	47.1	31.3	47.1	79.4	231.9	337.3	674.2	1142.7	450.3	470.9	105.4	116.3	626.4	47.4	35.1
Expenses	5	9.7	52.9	160.8	139.5	110.1	144.6	119.8	96.5	73.5	63.5	47.3	27.6	17.3	25.4

Recoveries Expenses

As shown in the attached historical table, from 1986 through 2021 the overall recoveries-to-expenses ratio for the professional liability program is 4.2 to 1.

Report on Total Recoveries and Expenses From 2007 Through 2021

The amounts recovered for different claim types from January 1, 2007, through December 31, 2021, are shown in the following table.

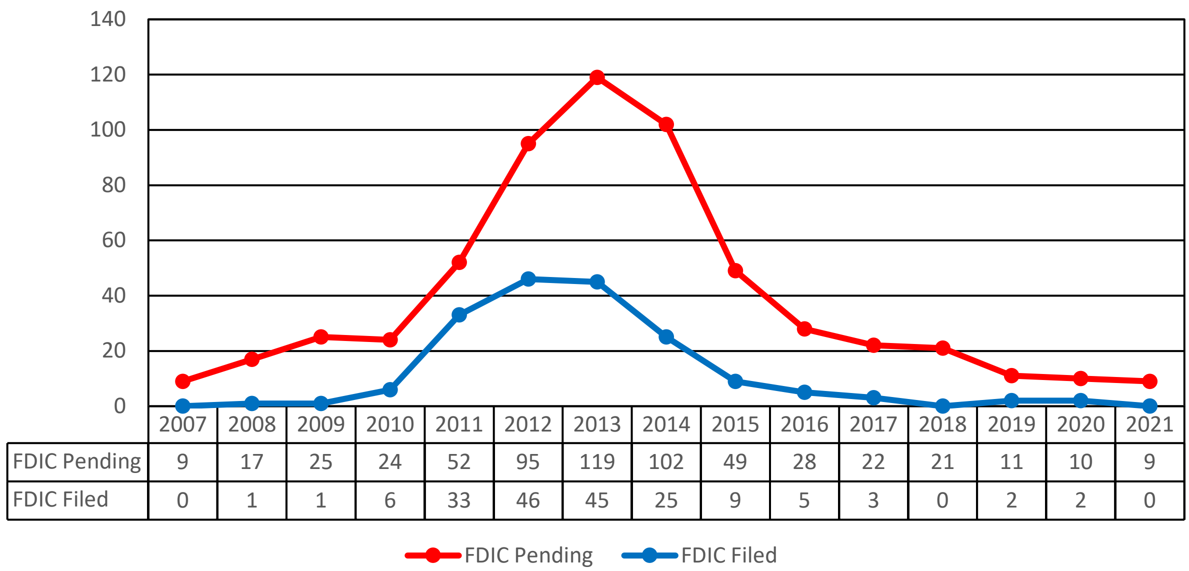
Type of Claim	Total Recoveries – 2007-2021	
Securities		
RMBS	$2,003,138,409	(45.1%)
Other	$62,850,268	(1.4%)
D&O Liability	$1,325,717,105	(29.8%)
Accountant Malpractice	$461,635,367	(10.4%)
MMF	$237,663,234	(5.4%)
Fidelity Bond	$204,239,458	(4.6%)
Appraiser Malpractice	$45,738,132	(1.0%)
Attorney Malpractice	$44,424,157	(1.0%)
Miscellaneous		
LIBOR	$696,454	(0.0%)
Other	$34,413,216	(0.8%)
Insurance	$22,478,837	(0.5%)
TOTAL	**$4,442,994,638**	**(100.0%)**

Authorized and Pending Lawsuits

As of year-end, 13 professional liability lawsuits were pending, four of which were MMF lawsuits. In addition, in December 2021 delegated authority approved one MMF lawsuit to sue a mortgage broker for breach of an indemnification contract in connection with loans brokered to Washington Mutual Bank, Henderson, Nevada.

The following graph shows pending professional liability civil cases excluding MMF cases from 2007 through year-end 2021. (Pending actions include claims that the FDIC as Receiver itself filed as well as claims that institutions filed before they failed and that the FDIC inherited as Receiver.)

FDIC Professional Liability Civil Actions, 2007-2021
(Excludes MMF)



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
FDIC Pending	9	17	25	24	52	95	119	102	49	28	22	21	11	10	9
FDIC Filed	0	1	1	6	33	46	45	25	9	5	3	0	2	2	0

Significant Developments During 2021

In 2021 the FDIC as Receiver for 20 failed banks and thrifts continued to litigate two large lawsuits in the federal district court for the Southern District of New York and in the High Court of Justice in London, England, alleging that 34 defendants wrongfully suppressed U.S. Dollar LIBOR causing damages to the 20 institutions. In 2021 the FDIC dismissed claims by 19 other receiverships from the New York lawsuit and 20 other receiverships from the London lawsuit after determining that those claims were no longer cost-effective to pursue. The dismissals do not affect the claims of the remaining failed bank receiverships or the merits of the FDIC's claims as a whole. Limited discovery has commenced in the London lawsuit. The New York lawsuit was effectively stayed in 2021 due to the pendency of appeals in related cases filed by other plaintiffs.

During 2021 the FDIC continued to pursue state and federal securities law claims in three RMBS cases out of four receiverships: UWB; Colonial; and Citizens National Bank, Macomb, Illinois, and Strategic Capital Bank, Champaign, Illinois (consolidated case referred to as Citizens/Strategic). In January, the FDIC settled the UWB RMBS case against the last remaining defendant, leaving two cases pending in the U.S. District Court for the Southern District of New York. In the Colonial case, discovery is nearly complete but no trial date has been set yet. In the Citizens/Strategic case, fact and expert discovery are ongoing.

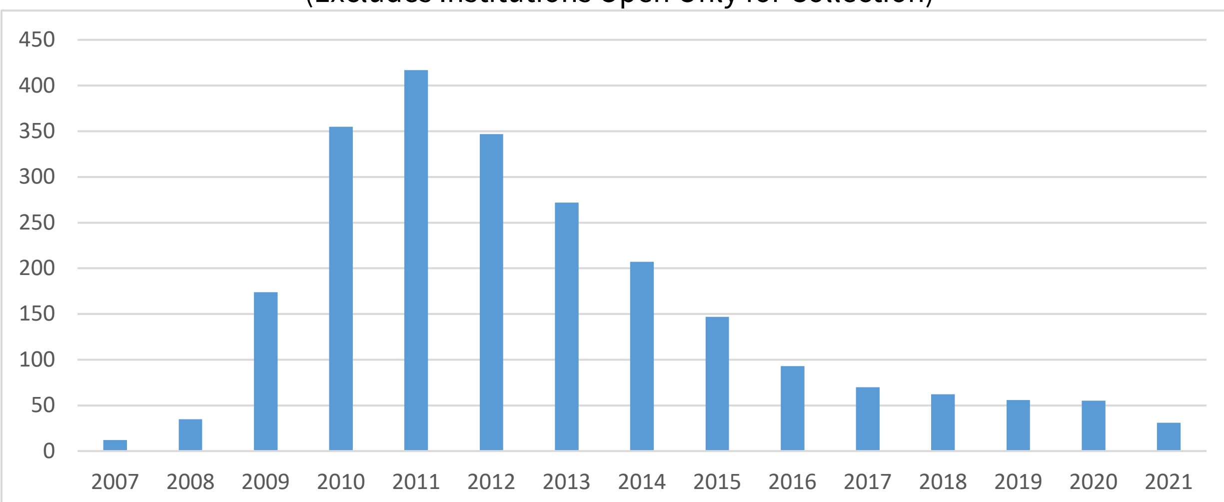
In 2021 the FDIC as Receiver for Omni National Bank (Omni), Atlanta, Georgia, continued to pursue a claim for $3 million in interest from Certain Underwriters at Lloyd's, London (Underwriters) in the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit). In this case the FDIC is appealing an unfavorable district court decision on the FDIC's right to recover prejudgment interest under a Georgia statute. The FDIC sued Underwriters to recover the unpaid interest accruing from Underwriters' delayed payment of insurance proceeds after the FDIC settled its claim against certain directors and officers of Omni. The district court held that the FDIC's demand for interest was untimely under Georgia law because it came after the entry of final judgment in an earlier but separate action brought by Underwriters seeking a declaratory judgment on coverage. On appeal, the FDIC argues that its interest demand was timely because it was made before any money judgment was entered, and that the district court erred in interpreting Georgia law to require a demand to precede a judgment awarding solely declaratory relief. The Eleventh Circuit heard arguments in November but has not yet issued an opinion.

In August the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) issued a partially favorable and partially unfavorable decision in an appeal brought by the FDIC as Receiver for Founders Bank (Founders), Worth, Illinois, in connection with a lawsuit against Chicago Title Insurance Company and Chicago Title and Trust Company (Chicago Title). In 2017, a jury awarded $1.45 million in damages to the FDIC arising out of Chicago Title's role as an escrow agent in closing four real-estate transactions financed by Founders without disclosing that they were the subject of same-day flips that artificially inflated the values of the properties unknown to the lender, Founders. In March 2020, after post-trial briefing, the district court entered judgment for $945,644 after reducing the jury's award by $500,000, the amount of a prior settlement with a separate defendant in the lawsuit. The FDIC appealed the district court's rulings, including the $500,000 reduction in damages, the denial of prejudgment interest to the FDIC, and one other issue. The Seventh Circuit reversed the district court's order reducing damages and remanded with instructions to add the $500,000 back to the judgment, and it affirmed the district court's rulings on the other two issues. One panel member dissented from the majority opinion on prejudgment interest, adopting the FDIC's position that 12 U.S.C. § 1821(l), a statutory provision in the Federal Deposit Insurance Act, requires an award of prejudgment interest to the FDIC. In November, the Seventh Circuit denied the FDIC's petition for rehearing *en banc* on the prejudgment interest ruling.

PLFCS Workload and Staffing at Year-End

As of year-end, PLFCS had 22 permanent staff and 1 part-time intern working on professional liability matters (and 4 additional permanent staff working on financial crimes matters). With regard to professional liability matters at year end, there were 74 open institutions[1] (comprising 31 with active investigations or litigation and another 43 open solely for collection purposes[2]). The activity on the 74 open institutions includes 13 pending professional liability lawsuits (including 4 MMF lawsuits), open investigations in 6 claim areas out of 4 open institutions, and 75 collection matters.[3] No FDIC-insured financial institutions failed in 2021. The following graph shows PLFCS's open professional liability investigations workload from 2007 through 2021.

Institutions With Open Investigations or Lawsuits at Year-End
(Excludes Institutions Open Only for Collection)



Conclusion

During 2021 the FDIC's professional liability program continued to operate cost-effectively, recovering $35,093,779 and expending $25,414,763. Overall, from 1986 through the end of 2021, the program remains cost-effective with total recoveries of $10.5 billion and total expenses of $2.5 billion.

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[1] All institutions in PLFCS's inventory are failed institutions and are considered "open" while PLFCS is working on any professional liability matter relating to that failed institution. An "open investigation" is an investigation that has not yet been settled or otherwise resolved.

[2] Collection matters are those for which recoveries are obtained as a result of judgments, structured settlements, or claims submitted in bankruptcy proceedings, probate estates, or class action lawsuits.

[3] For each institution that fails, PLFCS opens 11 different types of investigations, although most are soon closed once it becomes clear that no viable claims exist. The 11 types of investigations are: (1) D&O, (2) fidelity bond, (3) MMF, (4) attorney, (5) accountant, (6) appraiser, (7) securities (including RMBS), (8) commodities, (9) insurance, (10) insurance issuer, and (11) other (including LIBOR).

FDIC Federal Deposit Insurance Corporation

FDIC PROFESSIONAL LIABILITY RECOVERIES AND EXPENSES ($ MILLIONS)

	Recoveries*	In-House PLFCS Expenses	DRR Expenses	Outside Counsel Expenses	Total Expenses**	Ratio of Recoveries to Outside Counsel Expenses	Ratio of Recoveries to Total Expenses
2021	$35.1	$4.9	$1.6	$18.9	$25.4	1.86 to 1	1.38 to 1
2020	$47.4	$5.1	$1.7	$10.5	$17.3	4.51 to 1	2.74 to 1
2019	$626.4	$6.8	$1.9	$18.9	$27.6	33.25 to 1	22.69 to 1
2018	$116.3	$9.4	$2.1	$35.8	$47.3	3.25 to 1	2.46 to 1
2017	$105.4	$8.8	$6.4	$48.4	$63.5	2.18 to 1	1.66 to 1
2016	$470.9	$9.2	$5.5	$58.8	$73.5	8.00 to 1	6.40 to 1
2015	$450.3	$12.1	$11.2	$73.1	$96.5	6.16 to 1	4.67 to 1
2014	$1,142.7	$13.3	$16.3	$90.1	$119.8	12.68 to 1	9.54 to 1
2013	$674.2	$13.5	$36.8	$94.2	$144.6	7.16 to 1	4.66 to 1
2012	$337.3	$12.6	$29.3	$68.1	$110.1	4.96 to 1	3.06 to 1
2011	$231.9	$12.0	$62.3	$64.7	$139.5	3.58 to 1	1.66 to 1
2010	$79.4	$10.1	$102.5	$47.2	$160.8	1.68 to 1	0.49 to 1
2009	$47.1	$5.2	$35.9	$11.3	$52.9	4.18 to 1	0.89 to 1
2008	$31.3	$2.0	$5.3	$2.4	$9.7	13.1 to 1	3.23 to 1
2007	$47.1	$2.0	$.7	$2.3	$5.0	20.62 to 1	9.40 to 1
2006	$34.5	$2.6	$.9	$3.7	$7.2	9.30 to 1	4.80 to 1
2005	$122.2	$3.4	$1.1	$3.9	$8.5	31.04 to 1	14.38 to 1
2004	$79.0	$4.0	$3.1	$9.0	$16.2	8.79 to 1	4.88 to 1
2003	$59.9	$3.5	$3.0	$13.7	$20.2	4.38 to 1	2.96 to 1
2002	$49.1	$3.2	$2.8	$13.1	$19.1	3.75 to 1	2.57 to 1
2001	$128.6	$3.4	$2.1	$10.5	$16.0	12.25 to 1	8.04 to 1
2000	$54.4	$4.0	$2.7	$14.0	$20.7	3.89 to 1	2.63 to 1
1999	$84.2	$5.8	$3.2	$17.4	$26.4	4.84 to 1	3.19 to 1
1998	$186.5	$5.8	$4.2	$21.9	$31.9	8.52 to 1	5.85 to 1
1997	$156.8	$7.8	$2.3	$29.1	$39.2	5.39 to 1	4.00 to 1
1996	$195.9	$15.8	$4.0	$48.1	$67.9	4.07 to 1	2.89 to 1
1995	$563.9	$14.0	$5.3	$98.1	$117.4	5.68 to 1	4.75 to 1
1994	$909.9	$17.7	$11.2	$135.5	$164.4	6.72 to 1	5.53 to 1
1993	$1,231.2	$18.4	$17.9	$187.3	$223.6	6.57 to 1	5.51 to 1
1992	$972.6	$15.7	$16.6	$179.3	$211.6	5.42 to 1	4.60 to 1
1991	$425.2	$11.7	$7.7	$183.7	$203.1	2.31 to 1	2.09 to 1
1990	$374.3	$6.1	$5.2	$94.8	$106.1	3.95 to 1	3.53 to 1
1989	$152.1	$4.5	$4.5	$32.0	$41.0	4.75 to 1	3.71 to 1
1988	$90.0	$1.4	$3.7	$20.8	$25.9	4.33 to 1	3.47 to 1
1987	$71.5	$1.1	$4.3	$15.2	$20.6	4.70 to 1	3.47 to 1
1986	$83.3	$1.0	$3.0	$10.9	$14.9	7.64 to 1	5.59 to 1
Total	$10,467.9	$277.9	$428.3	$1,786.7	$2,495.4	5.86 to 1	4.19 to 1

* Recoveries comprise all FDIC, RTC, and FSLIC recoveries, including RTC and FDIC Drexel-Milken recoveries of $1.143 billion.

** Expenses include Drexel-Milken expenses of $106.1 million. The following categories of expenses are unavailable: all FSLIC fees and expenses for 1986-1988; FSLIC in-house (legal and investigation) expenses for 1989; and RTC in-house expenses (1989-1995), and certain electronic data costs. DRR investigation expenses (shown in column 3) for all years before 1998 are staff compensation only (and exclude other direct costs). In-house expenses for all years shown exclude overhead.