

MEMO

TO: Board of Directors

THROUGH: Matthew P. Reed
Acting General Counsel

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

DATE: May 2, 2025

RE: Professional Liability Annual Report for 2024

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 2024. 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 failed and were placed in FDIC receivership. On behalf of the FDIC in its receivership capacity, PLFCS, the Investigations Department of the Division of Resolutions and Receiverships (DRR), and for certain large institutions, the Division of Complex Institution Supervision and Resolution (CISR), 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 and the Legal Division's Financial Crimes program in obtaining criminal restitution from defendants convicted of banking crimes and, where appropriate, refers cases to the Legal Division's Enforcement Section for administrative enforcement action.

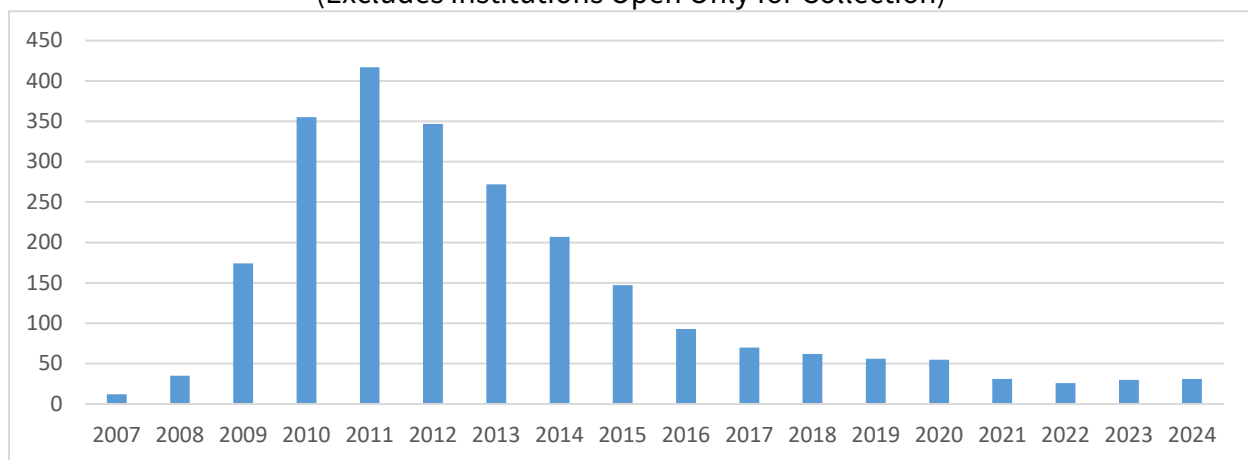
Professional liability program expenses are primarily receivership funding expenses incurred by PLFCS and DRR to conduct professional liability investigations and litigation. Program recoveries result from settlements reached and judgments obtained in the current reporting period as well as collections from structured settlements reached in earlier reporting periods. 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 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. 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.

PLFCS Workload at Year-End

During 2024, two FDIC insured financial institutions failed. The first failure was Republic First Bank, Philadelphia, Pennsylvania, which failed on April 26, with \$5.9 billion in assets, followed by First National Bank of Lindsay, Lindsay, Oklahoma, which failed on October 18, with \$107.9 million in assets.

As of year-end 2024, the professional liability workload included 58 institutions in PLFCS's portfolio of matters¹ (27 of which were in its portfolio solely for collection purposes²), 14 pending professional liability lawsuits (including 1 arbitration), open investigations in 32 claim areas out of 9 institutions, and 55 collection matters.³ The following graph shows PLFCS's open professional liability investigations and lawsuits workload from 2007 through 2024.⁴

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



¹ All institutions in PLFCS's inventory are failed institutions, but an individual institution is considered "open" for professional liability program purposes 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 structured settlements, or claims submitted in bankruptcy proceedings, probate estates, or class action lawsuits, or when staff is seeking collection on an unpaid settlement or judgment.

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 categories of investigations are: (1) D&O, (2) MMF, (3) bond, (4) accountant, (5) attorney, (6) appraiser, (7) securities including RMBS, (8) financial instruments, (9) insurance/issuer, (10) digital assets/technology, and (11) other professional claims. In 2022, these 11 investigation claim areas were revised and updated. Recoveries from prior years that would fit more naturally into the new categories generally have not been reclassified.

⁴ All filed lawsuits are identified and settlement agreements are posted on the FDIC's public website at: www.fdic.gov/resolutions/professional-liability-program.

Recoveries and Expenses

Overall, from 1986 when PLFCS started tracking recoveries and expenses through the end of 2024, the program recovered \$10.6 billion and incurred total expenses of \$2.6 billion. As shown in the attached historical table, from 1986 through 2024 the overall recoveries-to-expenses ratio for the professional liability program is 4.1 to 1.⁵

During 2024 only, PLFCS and DRR recovered \$46,022,445 and incurred \$48,141,764 in expenses for professional liability program activity. The ratio of total recoveries to total expenses for 2024 is 0.96 to 1, and the ratio of recoveries to outside counsel and consultant expenses only is 1.2 to 1. The 2024 ratio of recoveries to expenses is consistent with the characteristic lag time between the incurrence of program expenses and the receipt of associated recoveries, reflecting in part the up-front work associated with the three large regional failures in 2023 and litigation expenses associated with on-going litigation.

The recoveries from 2024 were obtained from the following types of claims:

Type of Claim	Recoveries—2024	
Director and Officer (D&O)	\$25,000,001	(54.3%)
Financial Instruments		
U.S. Dollar London Interbank Offered Rate (LIBOR)	\$13,500,000	(29.3%)
Other	\$1,944	(0.0%)
Mortgage Malpractice and Fraud (MMF)	\$7,520,500	(16.3%)
TOTAL	\$46,022,445	(100%)

The \$25 million in D&O recoveries resulted from settlement of claims against the former President, CEO, and director of First NBC Bank (FNBC), New Orleans, Louisiana, 6 additional former directors, and 10 D&O liability insurers. The FDIC's claims were based on the directors' and officer's gross negligence and breaches of fiduciary duties in approving loans that suffered losses. FNBC failed on April 28, 2017, with \$3.3 billion in assets.

The \$13.5 million in LIBOR recoveries arose out of a settlement of claims by the FDIC as Receiver for 20 failed banks against the Bank of Tokyo-Mitsubishi UFJ (BTMU) and Société Générale (SocGen) for their roles in suppressing LIBOR. In 2014, the FDIC filed claims in federal court in New York against BTMU, SocGen, and multiple other defendants. The FDIC's claims against the other defendants remain pending.

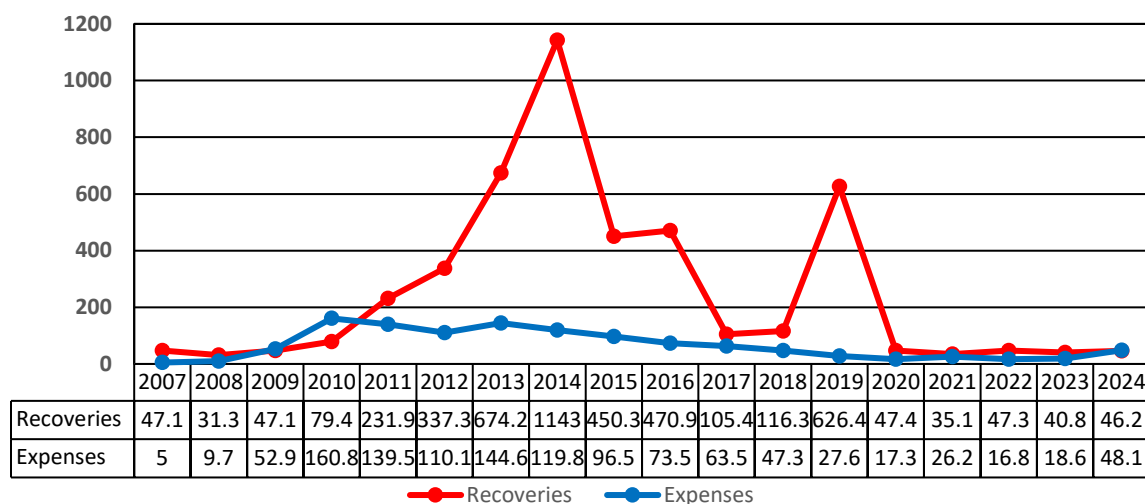
The \$7.5 million in MMF recoveries resulted primarily from settlements of the FDIC's contractual indemnification claims against 14 third party mortgage originators (TPOs) that had brokered defective loans to Washington Mutual Bank (WaMu), Henderson, Nevada, which WaMu had then sold to residential mortgage-backed securities (RMBS) trusts. In 2009, the

⁵ Staff recently determined that certain expenses totaling \$830,727 incurred in 2021 were inadvertently omitted from the 2021 Professional Liability Annual Report and subsequent reporting of 2021 expense numbers. The 2021 expense numbers have been updated in the FDIC Professional Liability Recoveries and Expenses graph and the historical table in this Report.

RMBS trustee for these trusts sued the FDIC for losses on thousands of defective loans that WaMu had sold to the trusts, including losses from the TPO-brokered loans. In 2017, the FDIC settled the RMBS trustee's claims and later sued the TPOs for indemnification. WaMu failed on September 25, 2008, with \$307 billion in assets.

Of the total 2024 expenses of \$48,141,764, the Legal Division incurred \$43,927,790 (91.25 percent), DRR incurred \$4,199,901 (8.72 percent), CISR incurred \$13,956 (0.03 percent), and other divisions incurred \$117 (0.00 percent). Of the Legal Division expenses, \$37,906,228 was paid to outside counsel and other third parties, and \$6,021,562 was for other expenses (primarily in-house PLFCS salaries and travel expenses associated with the professional liability program).⁶ All expenses for DRR and CISR were entirely expenses for in-house staff.

FDIC Professional Liability Recoveries and Expenses 2007-2024 (\$millions)⁷



Report on Total Recoveries From 2007 Through 2024

Total amounts recovered from different claim types from January 1, 2007, through December 31, 2024, are shown in the following table.

⁶ Staff retains counsel to assist with larger complex matters or when internal resources are insufficient to conduct matters in-house.

⁷ Data is presented from 2007, which generally reflects the beginning of the most recent banking crisis.

Type of Claim	Total Recoveries – 2007-2024	
Securities		
Residential Mortgage-Backed Securities (RMBS)	\$2,070,643,910	(45.2%)
Other	\$65,002,496	(1.4%)
D&O Liability	\$1,354,604,934	(29.6%)
Accountant Malpractice	\$461,635,367	(10.1%)
MMF	\$251,390,446	(5.5%)
Bond	\$204,239,458	(4.5%)
Attorney Malpractice	\$52,003,775	(1.1%)
Appraiser Malpractice	\$45,738,132	(1.0%)
Other Professional Claims	\$34,413,216	(0.8%)
Insurance/Issuer	\$22,478,837	(0.5%)
Financial Instruments		
LIBOR	\$14,852,236	(0.3%)
Other	\$51,212	(0.0%)
TOTAL	\$4,577,054,019	(100.0%)

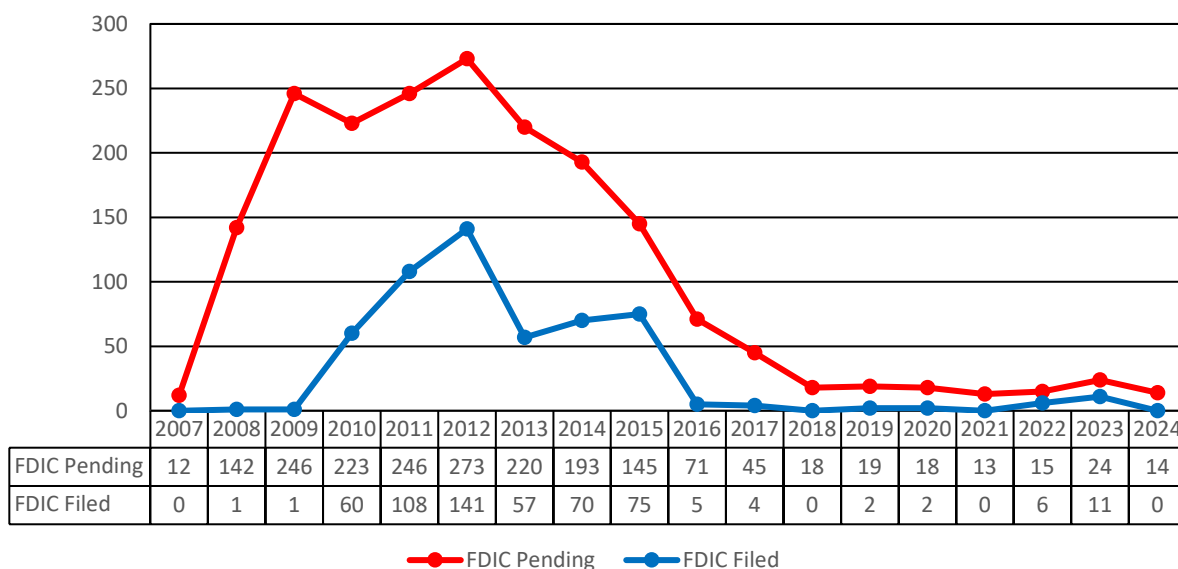
Authorized and Pending Lawsuits

During 2024, the FDIC Board of Directors approved a D&O lawsuit against 6 former officers and 11 former directors of Silicon Valley Bank (SVB), which was filed on January 16, 2025, in the U.S. District Court for the Northern District of California. The lawsuit is based on the directors' and officers' negligence, gross negligence, and breaches of fiduciary duties in mismanaging SVB's held-to-maturity and available-for-sale securities portfolios and the improper payment of a bank-to-parent dividend. SVB failed on March 10, 2023, with \$209 billion in assets.

As of year-end, 13 professional liability lawsuits and 1 arbitration were pending. These comprise one D&O liability case, one probate case, two LIBOR cases, one RMBS case, one accounting malpractice case (which is the one matter in arbitration), one financial institution bond case, four MMF lawsuits, one miscellaneous lawsuit, and two class action securities law cases in which the FDIC has intervened to seek dismissal of the pending cases.

The following graph shows pending professional liability lawsuits from 2007 through year-end 2024. (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 Lawsuits, 2007-2024



Significant Developments During 2024

During 2024, the FDIC continued to litigate two LIBOR suppression cases on behalf of 20 receiverships—one in the U.S. District Court for the Southern District of New York (New York case) in a multidistrict litigation (MDL) and one in the High Court of Justice in London, England (London case). In the New York case, as mentioned previously, the FDIC recovered \$13.5 million in settlement of the LIBOR suppression claims against BTMU and SocGen. In addition, the first stage of fact and expert discovery was completed and summary judgment motions on liability issues and motions to exclude experts were filed in the New York case. Briefing on those motions was largely completed in early 2025. Discovery in the London case and the development of expert testimony continued and will conclude in 2025. The London case is set for trial in early 2026 for claims out of three of the plaintiff receiverships. No trial date has been set yet for the New York case.

During 2024, in addition to fully resolving the FNBC D&O case noted previously, PLFCS continued to litigate accounting claims against Ernst & Young (EY), FNBC's former external auditor. In April 2020, the FDIC filed a lawsuit against EY and its captive liability insurer in federal court for damages based on EY's breaches of its audit duties resulting in its failure to detect repeated fraudulent conduct of FNBC's former President and CEO. Following a January 23 decision in which the court granted EY's motion to compel the FDIC to arbitrate its claims against EY, the FDIC served a notice of arbitration on EY. The court stayed and administratively closed the case pending the outcome of the arbitration. In August, the FDIC, the Trustee for FNBC's holding company, and EY filed a joint request to commence arbitration with the International Institute for Conflict Prevention and Resolution. Staff anticipates that the case will be heard in 2026 before the arbitration panel.

On September 20, the U.S. District Court for the Southern District of New York granted a motion by the FDIC as Receiver for Signature Bank (Signature), New York, New York, to dismiss a lawsuit that *pro se* plaintiff Cameron Verdi filed against the FDIC. Verdi, a former

shareholder of Signature, alleged fraud and breaches of fiduciary duties by some of Signature's former officers that rendered his stock worthless. The court held that Verdi lacked standing because under 12 U.S.C. § 1821(d)(2)(A), the FDIC owns Verdi's claims. The court reasoned that the FDIC succeeds to a claim if the claimant asserts the rights of any stockholder, member, accountholder, depositor, officer, or director of the failed bank and the rights asserted are "with respect to the institution and the assets of the institution." The court found that Verdi's claims satisfy those two conditions and thus are owned by the FDIC. Signature failed on March 12, 2023, with \$110 billion in assets.

Conclusion

During 2024, the FDIC's professional liability program recovered \$46,022,445 and expended \$48,141,764 as PLFCS and DRR Investigations devoted substantial resources to investigations and complex litigation, including in connection with the three large regional banks that failed in 2023. These three regional bank failures in 2023 are the second, third, and fourth largest bank failures by asset size in U.S. history. These expenses, including the substantial costs incurred in the two LIBOR lawsuits and in the investigations of the three regional bank failures, are expected to be recovered through future settlements and judgments. Overall, from 1986 through the end of 2024, the program remains cost-effective with total recoveries of \$10.6 billion and total expenses of \$2.6 billion.

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
2024	\$46.0	6.0	4.2	37.9	48.1	1.2 to 1	.96 to 1
2023	\$40.8	5.0	2.6	11.0	18.6	3.7 to 1	2.2 to 1
2022	\$47.3	5.1	1.4	10.3	16.8	4.6 to 1	2.8 to 1
2021	\$35.1	\$4.9	\$1.6	\$19.7	\$26.2	1.8 to 1	1.3 to 1
2020	\$47.4	\$5.1	\$1.7	\$10.5	\$17.3	4.5 to 1	2.7 to 1
2019	\$626.4	\$6.8	\$1.9	\$18.9	\$27.6	33.1 to 1	22.7 to 1
2018	\$116.3	\$9.4	\$2.1	\$35.8	\$47.3	3.3 to 1	2.5 to 1
2017	\$105.4	\$8.8	\$6.4	\$48.4	\$63.5	2.2 to 1	1.7 to 1
2016	\$470.9	\$9.2	\$5.5	\$58.8	\$73.5	8.0 to 1	6.4 to 1
2015	\$450.3	\$12.1	\$11.2	\$73.1	\$96.5	6.2 to 1	4.7 to 1
2014	\$1,142.7	\$13.3	\$16.3	\$90.1	\$119.8	12.7 to 1	9.5 to 1
2013	\$674.2	\$13.5	\$36.8	\$94.2	\$144.6	7.2 to 1	4.7 to 1
2012	\$337.3	\$12.6	\$29.3	\$68.1	\$110.1	5.0 to 1	3.1 to 1
2011	\$231.9	\$12.0	\$62.3	\$64.7	\$139.5	3.6 to 1	1.7 to 1
2010	\$79.4	\$10.1	\$102.5	\$47.2	\$160.8	1.7 to 1	0.5 to 1
2009	\$47.1	\$5.2	\$35.9	\$11.3	\$52.9	4.2 to 1	0.9 to 1
2008	\$31.3	\$2.0	\$5.3	\$2.4	\$9.7	13.0 to 1	3.2 to 1
2007	\$47.1	\$2.0	\$7	\$2.3	\$5.0	20.5 to 1	9.4 to 1
2006	\$34.5	\$2.6	\$9	\$3.7	\$7.2	9.3 to 1	4.8 to 1
2005	\$122.2	\$3.4	\$1.1	\$3.9	\$8.5	31.3 to 1	14.4 to 1
2004	\$79.0	\$4.0	\$3.1	\$9.0	\$16.2	8.8 to 1	4.9 to 1
2003	\$59.9	\$3.5	\$3.0	\$13.7	\$20.2	4.4 to 1	3.0 to 1
2002	\$49.1	\$3.2	\$2.8	\$13.1	\$19.1	3.8 to 1	2.6 to 1
2001	\$128.6	\$3.4	\$2.1	\$10.5	\$16.0	12.3 to 1	8.0 to 1
2000	\$54.4	\$4.0	\$2.7	\$14.0	\$20.7	3.9 to 1	2.6 to 1
1999	\$84.2	\$5.8	\$3.2	\$17.4	\$26.4	4.8 to 1	3.2 to 1
1998	\$186.5	\$5.8	\$4.2	\$21.9	\$31.9	8.5 to 1	5.8 to 1
1997	\$156.8	\$7.8	\$2.3	\$29.1	\$39.2	5.4 to 1	4.0 to 1
1996	\$195.9	\$15.8	\$4.0	\$48.1	\$67.9	4.1 to 1	2.9 to 1
1995	\$563.9	\$14.0	\$5.3	\$98.1	\$117.4	5.7 to 1	4.8 to 1
1994	\$909.9	\$17.7	\$11.2	\$135.5	\$164.4	6.7 to 1	5.5 to 1
1993	\$1,231.2	\$18.4	\$17.9	\$187.3	\$223.6	6.6 to 1	5.5 to 1
1992	\$972.6	\$15.7	\$16.6	\$179.3	\$211.6	5.4 to 1	4.6 to 1
1991	\$425.2	\$11.7	\$7.7	\$183.7	\$203.1	2.3 to 1	2.1 to 1
1990	\$374.3	\$6.1	\$5.2	\$94.8	\$106.1	4.0 to 1	3.5 to 1

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
1989	\$152.1	\$4.5	\$4.5	\$32.0	\$41.0	4.8 to 1	3.7 to 1
1988	\$90.0	\$1.4	\$3.7	\$20.8	\$25.9	4.3 to 1	3.5 to 1
1987	\$71.5	\$1.1	\$4.3	\$15.2	\$20.6	4.7 to 1	3.5 to 1
1986	\$83.3	\$1.0	\$3.0	\$10.9	\$14.9	7.6 to 1	5.6 to 1
Total	\$10,602.0	\$294.0	\$436.5	\$1,846.7	\$2,579.7	5.7 to 1	4.1 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.