

BANKING LEGISLATION

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Recent Developments

White House Halts Bankruptcy Reform Legislation

President Clinton's failure to sign the Bankruptcy Reform Act of 2000 by December 20 brought to an end contentious attempts to overhaul federal bankruptcy statutes. The President's actions adhered to earlier White House statements voicing displeasure with the tone and content of the legislation (H.R. 2415). Usually, a President's veto or failure to act on a bill can be overridden by a congressional challenge. However, since both Houses recessed soon after presenting the bill to the White House, President Clinton's action was the final determinant of the legislation's fate.

The pocket veto was the culmination of charged interactions among politicians, consumer groups, and industry representatives regarding the direction of reform. The financial services industry had criticized current bankruptcy statutes as being too lenient on those individuals who walk away from their debts. The industry contended that many debtors, aided by bankruptcy consultants, have become very knowledgeable about the nuances of bankruptcy law and have used its protections to shirk their financial obligations to creditors who entered into lending agreements in good faith. Rather than using bankruptcy as a means of last resort, the bankruptcy codes are used by some debtors as a financial planning tool to maximize their economic well being.

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The White House opined that blame for bankruptcy abuse must be shared. Creditors have been far too eager to expand their markets, and they have done so by lending to consumers with questionable credit histories and abilities to repay. Although anecdotes of outright bankruptcy abuse tend to inflame reform proponents, most debtors use bankruptcy for legitimate purposes. Furthermore, opponents of the bill contend that the modifications proposed in H.R. 2415 would unfairly penalize middle-class and poor debtors vis-à-vis wealthy debtors.

In addition to the ideological split over the nature of bankruptcy filings,

there were several specific issues that led to the defeat of the legislation. The White House and congressional allies were discouraged that the act did not adequately address the homestead exemption in certain states that permits debtors to shield their assets from creditors. Congressional Democrats also questioned the heavy-handedness of the means test that the bill would impose. In addition, the administration was also concerned that the bill could weaken the federally mandated credit card disclosure statements that assist consumers in understanding the debt they are incurring.

Pending Legislation

1. Bank Reserves Modernization Act of 2000 (H.R. 4209). Introduced by Representative Kelly (R-NY) on April 6, 2000.

Status: Reported out of the Committee on Banking and Financial Services on October 17, 2000.

This bill would authorize the payment of interest on reserves maintained by banks at a Federal Reserve Bank. The Federal Reserve Board, during fiscal years 2001-2005, would be required to make transfers to the Department of the Treasury in the amounts necessary to cover such interest payments.

2. Bankruptcy Reform Act of 2000 (H.R. 2415). Introduced by Senator Grassley on October 11, 2000.

Status: Language of H.R. 2415 struck out and the conference committee inserted the provisions of S. 3186. Pocket vetoed by the President. Passed in the Senate on December 7, 2000. Passed in the House on October 11, 2000.

This bill would overhaul the United States Bankruptcy Code (11 U.S.C.). It is intended to end perceived abuses of the current bankruptcy system. These changes would become effective 180 days after the enactment of this bill. The major provisions that apply to the banking industry are summarized below.

Consumer Bankruptcies. Creditors and interested parties to a bankruptcy proceeding would be permitted to ask the judge to convert a case from Chapter 7 (liquidation) to Chapter 13 (debt adjustment). The bill would require bankruptcy courts to adhere to a means test in establishing a presumption of debtor abuse of bankruptcy protection. If the debtor has applied for Chapter 7 relief but has current monthly income,

less expense allowances and payments on secured debts, greater than the lesser of: a) \$167 or b) the larger amount of \$100 or 0.4 percent of the unsecured claims against the debtor, the bankruptcy court could dismiss or convert the case to Chapter 13. The bill also limits to \$100,000 the federal homestead exemption for home equity acquired within two years of filing for bankruptcy. To claim a state's homestead exemption, the debtor must establish residency in that state at least two years prior to filing for bankruptcy protection.

The bankruptcy trustee would also take into account whether the debtor has extraordinary expenses—such as health care for chronically ill immediate family members or up to \$1500 in school tuition for each dependent child—when deciding if the debtor has abused the right to file under Chapter 7. The trustee would then make a recommendation to the bankruptcy court, which would make the final judgment as to whether the case should be converted or dismissed. Dismissal of a case along with the findings of improper actions by the debtor's attorney could result in civil damages to be paid by the attorney.

The bankruptcy court would be able to terminate the automatic stay on actions against the debtor's property if the court determines that the debtor has been abusing the protection. Certain consumer debts, including credit card cash advances obtained within 70 days of filing, would be nondischargeable. Leased items would need to be returned to the creditor within 30 days of filing unless the creditor allows the debtor to assume the lease.

A debtor would be ineligible for bankruptcy relief under Chapter 7 or Chapter 13 if he or she has received a discharge within eight or five years, respectively. A judge would be prohibited from approving a bankruptcy plan that does not address the payment of outstanding domestic support obligations. These obligations would be

assigned top priority on the list of unsecured claims against the debtor.

To be eligible for a discharge of debts, debtors would also be required to complete a financial management course.

Consumer Protections. This bill would protect consumers by requiring a debt relief agency (DRA) to supply consumers with certain information before an agreement is entered into. DRAs are defined as for-profit persons or entities that provide bankruptcy assistance to a debtor. These agencies would be required to supply to the consumer information on: 1) his or her options regarding legal representation; 2) the costs and types of services provided by the agency; 3) information on the different types of bankruptcy; and 4) fees and documents needed to proceed with a case. The DRA would be required to show the debtor how to properly value assets and income and would need to explain to the debtor the importance of supplying accurate information to the court. An agency that does not make the required disclosures, does not follow the federal rules of bankruptcy procedure, or was responsible for the conversion of a case because of the improper filing of papers could be held liable to the debtor for civil damages.

A creditor would be required to make a debtor aware of his or her right to a bankruptcy hearing before the reaffirmation of a debt. At the hearing, the judge would be required to rule on whether the affirmation is in the best interest of the debtor. Creditors would be prohibited from coercing a debtor into a reaffirmation. In addition, a debtor could have his or her obligation to a creditor reduced by 20 percent if the debtor can prove the creditor unreasonably refused to negotiate an alternative payment schedule put forth by an approved credit counseling agency in the 60 days prior to a filing for bankruptcy protection.

The bill would also mandate enhanced disclosures by creditors to

consumers of open-ended credit plans or credit extensions secured by a home. Creditors would be required to disclose the amount of time it would take for consumers to pay off balances if they make only minimum payments. Credit issuers would also be required to provide enhanced disclosure regarding introductory rates and late payment penalties. They would also be prohibited from early termination of credit plans simply because finance charges have not been incurred.

International Bankruptcies. This bill would create Chapter 15 of Title 11 to

manage cross-border bankruptcies. This chapter would expand the scope of bankruptcy laws to incorporate the model law on cross-border insolvency. It would establish a statutory mechanism to address cross-border insolvencies and facilitate cooperation between the trustees and debtors in the United States and their foreign counterparts.

Financial Contracts. The bill would amend the bankruptcy code and the Federal Deposit Insurance Act to clarify the treatment of various derivative contracts when a counterparty becomes insolvent. For the most part, such

agreements are exempted from the automatic stay and remain apart from the property of an estate.

The bill recognizes master agreements between counterparties as contracts exempted from the automatic stay. Such agreements govern netting arrangements across a number of contracts between counterparties.

The bill also clarifies conditions in which walkaway clauses—language that eliminates the payment obligation of one party as a result of the default of another party—in financial contracts with depository institutions in default could not be exercised.

SUMMARY OF FEDERAL REGULATIONS

Board of Governors of the Federal Reserve System

Truth in Lending (10/03/2000)

The Board made final a rule revising the disclosure requirements applicable to credit card applications and solicitations. The new rule requires that the annual percentage rate (APR) applicable to purchases be posted in at least 18 point type and appear under a separate heading from other APRs associated with the card—for example, a penalty APR. The rule also imposes a more stringent “readily noticeable” requirement on Truth in Lending Act (TILA)-mandated disclosures. Credit card issuers whose disclosures were in at least 12-point type would be in compliance with this requirement.

The final rule provides further guidance on the current requirement that disclosures also be sufficiently prominent. Disclosures located on the same page as the application or solicitation reply form would be compliant. Disclosures located elsewhere would also be considered compliant with the sufficiently prominent requirement if there is a reference to the location of the disclosures on the reply form.

Finally, with regard to the disclosure

table and APRs, the final rule requires that only the penalty rate—if any—may appear inside the table. The event(s) that trigger the penalty rate must appear outside of the table. In addition, the APR applicable to cash advances and balance transfers must appear in the table. Balance transfer fees and cash advance fees must appear outside the table. Prior regulation did not prohibit balance transfer fees from appearing inside the table. For further information, see 65 *Federal Register*, pp. 58903-11. This rule became effective September 27, 2000. Compliance is not mandatory until October 1, 2001. (Regulation Z).

Mortgages (12/15/2000)

The Board proposed a regulation that would modify the requirements of Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). The proposal would require lenders to report requests for preapprovals in which the lender specifies: 1) the maximum amount of credit that it commits to extend; 2) the period of time the commitment is valid; and 3) that the commitment may be subject to conditions.

Current regulations require a nondepository lender to submit HMDA data if in the preceding year, home

purchase loan originations comprised at least 10 percent of the lender’s total number of originations. The proposal would add a dollar value threshold to this coverage test. Nondepository lenders whose prior-year home purchase loan originations, including refinancings, equaled or exceeded \$50 million would be required to submit HMDA data, even if they did not cross the percentage threshold. The definition of the term refinancing would be modified with the goal of standardizing data received from all lenders. In addition, the proposal would modify the current regulatory definition of the term refinancing to mean a new obligation that satisfies and replaces an existing obligation by the same borrower, where both the existing and the new obligation are secured by a lien on a dwelling.

Current Board regulations define a home improvement loan as any loan classified by the lending institution as a home improvement loan and any part of whose proceeds are to be used for the improvement of a dwelling. The proposal would also modify this definition by defining any loan where part of the proceeds are used for home improvement as a home improvement loan—regardless of how the institution classifies

the loan. An exception would be made for home-equity lines of credit. The full line of credit would be reported as a home-improvement loan regardless of how much of the loan is used for that purpose. Current Board regulations do not require the reporting of these loans unless the institution classifies the loan as a home improvement loan.

The proposal would require creditors to report the annual percentage rate (APR) charged on loans covered by the Truth in Lending Act (TILA). Creditors would also be required to indicate whether the loan is covered by the Home Ownership and Equity Protection Act of 1994 (HOEPA). Comments must be received by March 9, 2001. For further information, see 65 *Federal Register*, pp. 78655-85. (Regulation C)

Bank and Financial Holding Company Activities (12/21/2000)

The Board proposed a regulation that would allow a financial holding company (FHC) to increase its nonfinancial data processing operations. Current Board regulations permit a bank holding company to own a subsidiary engaged in processing nonfinancial data so long as the revenues generated by the processing of nonfinancial data did not exceed 30 percent of that company's total revenues. The proposal would increase the cap from 30 to 49 percent. In addition, the proposal would allow FHCs to invest up to an aggregate of 5 percent of its Tier 1 capital in companies involved in data storage, general data processing, and electronic information portal services. Such investments would be subject to further conditions as described in the rule. Comments were due by February 16, 2001. For further information, see 65 *Federal Register*, p. 80384-88. (Regulation Y).

Financial Holding Company Activities (12/22/00)

The Board, in consultation with the Secretary of the Treasury, made final a rule determining that acting as a finder be considered an activity that is

incidental to a financial activity, and thus, permissible for a financial holding company (FHC). Acting as a finder entails the bringing together of buyers and sellers of products or services for transactions that the buyers and sellers themselves negotiate and finalize. A finder's role is more limited than that of a broker, since a finder lacks the authority to negotiate on behalf of either party or to bind a party to the terms of a transaction. The FHC would be required to provide disclosures distinguishing between the products and services it offers and those offered by third parties through the FHC's finder service. This rule became effective January 22, 2001. For further information, see 65 *Federal Register*, pp. 80735-41. (Regulation Y).

Home Ownership and Equity Protection Act (12/26/2000)

The Board proposed a regulation that would broaden the scope of mortgage loans subject to the Home Ownership and Equity Protection Act (HOEPA) in addition to prohibiting certain creditor practices with regard to HOEPA loans. HOEPA was passed in 1994 and sought to protect subprime consumers by identifying and placing creditor activity restrictions on certain high-cost mortgage loans.

HOEPA loans are identified as those loans where: 1) the APR exceeds the rate of comparable maturity Treasury securities by more than 10 percentage points, or 2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan or \$465—an amount that is adjusted for inflation. The proposal would lower the APR trigger to 8 percentage points above the rate of comparable maturity Treasury securities. In addition, the fee-based trigger would be amended to include premiums paid at loan closing for optional credit life insurance, credit disability insurance, and other credit protection products.

The proposal would prohibit creditors of HOEPA loans from refinancing the loan within the first 12 months, unless it is in the borrower's interest. Creditors

would also be prohibited from refinancing a zero-interest or other low rate loan at a higher rate during the first five years unless the refinancing was in the best interest of the borrower. In addition, language discouraging creditors' use of abusive call provisions is included in the proposal. The proposal would add to current HOEPA-mandated disclosures a statement regarding the total amount the consumer will borrow as reflected by the face amount of the note.

The proposal would also close a loophole some creditors have employed to avoid HOEPA compliance. Since HOEPA covers only closed-end credit, some creditors have represented mortgage loans as open-ended credit lines. The proposal would prohibit this form of compliance evasion by requiring the loan to meet Regulation Z's definition of open-end credit in order for the lender to classify it as an open-end credit plan. Comments must be received by March 9, 2001. For further information, see 65 *Federal Register*, pp. 81438-52. (Regulation Z).

Federal Deposit Insurance Corporation

Depository Institution Sales of Insurance (12/4/2000)

The FDIC, together with the Federal Reserve System, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, made final a rule codifying consumer protection statutes related to insurance sales enacted by the Gramm-Leach-Bliley Act. The act contains several passages aimed at helping consumers navigate potentially confusing issues that may arise as depository institutions begin to engage more freely in insurance sales.

To these ends, depository institutions and those operating on their behalf, are required to disclose the following before the completion of the sale of an insurance product: 1) that the product is not guaranteed by the institution or an affiliate; 2) that the FDIC does not insure the product; 3) that the product may have

investment risk; and 4) that the purchase of an insurance product from the institution is not a condition for receiving a loan. These disclosure requirements are applicable only in cases where an individual is purchasing or applying for insurance products for personal, family, or household purposes. In most cases, these disclosures must be made both orally and in writing. There is an exception for disclosures made via electronic media. Electronic disclosures, made in a manner compliant with the rule, would not need to be disclosed orally.

Finally, the proposed rule would place limitations on the physical location of insurance sales within a depository institution branch. In addition to physically keeping insurance activities and deposit-taking activities separate, a depository institution is required to clearly delineate and distinguish its insurance sales area from its retail deposit-taking area. Bank tellers would be permitted to refer customers to the institution's insurance sales area. However, any compensation paid to the teller for this service must be a one-time, fixed dollar amount per referral, and the fee could not be conditioned on the customer's purchasing insurance from the institution. This rule will become effective April 1, 2001. For further information, see 65 *Federal Register*, pp. 75821-48.

Risk-Based Capital Guidelines
(12/5/2000)

The FDIC, together with the Office of the Comptroller of the Currency and the Federal Reserve Board, issued an interim rule, with a request for comment, adjusting the capital treatment of cash collateral used in securities borrowing. Banking organizations that have implemented the market risk rules are now permitted to exclude from risk-weighted assets receivables arising from securities borrowing transactions provided the transaction: 1) is based on securities that are liquid and readily marketable; 2) is marked to market daily;

3) is subject to daily margin maintenance requirements; and 4) is compliant with applicable provisions of the Bankruptcy Code, Federal Deposit Insurance Act, Federal Deposit Insurance Improvement Act of 1991, or the Federal Reserve Board's Regulation EE.

Traditionally, when a banking organization has needed to borrow securities, the organization posts collateral with the lender. The collateral may take the form of cash or securities. In the case of cash collateralization, the cash is considered a loan to the lender and therefore is treated as a receivable on the banking organization's books. This classification as a receivable resulted in a standard 100 percent risk weight charge to the banking organization. Under current capital rules, the posting of securities as collateral results in no incremental capital charge to the banking organization. The interim rule eliminates the divergence in capital treatment based on the type of collateral.

In addition to the conditions listed above, the risk weight exemption would apply only to the amount of the cash receivable that is collateralized by the borrowed security. If the amount of the cash receivables exceeds the value of the borrowed securities, that amount would be subject to the risk weight appropriate to the borrower. This interim rule became effective January 4, 2001. Comments were due January 19, 2001. For further information, see 65 *Federal Register*, pp. 75856-9. (Regulation H and Y).

Office of the Comptroller of the Currency

Fair Credit Reporting Regulations
(10/20/2000)

The OCC, together with the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, proposed regulation addressing the sharing of information among affiliates. In general, the Fair Credit Reporting Act (FCRA) imposes certain obligations on firms communicating certain information—for

instance, credit reporting agencies are required to furnish reports to consumers upon request. The Consumer Credit Reporting Reform Act of 1996 (CCRA) amended the FCRA by exempting certain types of affiliate information-sharing arrangements. The CCRA also prohibited the banking agencies from issuing regulations implementing the law. The Gramm-Leach-Bliley Act repealed the prohibition.

This proposal would exempt institutions that share information with their affiliates from these FCRA reporting obligations provided that: 1) the institution has communicated to the consumer that other information—data covered by the FCRA, but not transaction data—may be communicated; 2) the consumer has been given an opportunity to opt out of the nontransaction information share; and 3) the consumer has not done so.

Financial institutions would be required to provide a clear and conspicuous opt-out notice. The proposal also addresses the duration—if any—of an opt out, the time frame by which a decision to opt out must be complied with, and rules regarding opt-out procedures applicable to joint accounts. Comments were due December 4, 2000. For further information, see 65 *Federal Register*, pp. 63119-41. (Regulation V).

Operating Subsidiaries of Federal Branches and Agencies (12/5/2000)

The OCC proposed extending to federal branches and agencies of foreign banks requirements similar to those applicable to national banks with regard to the establishment or maintenance of a subsidiary. Therefore, the proposal would allow federal branches and agencies of foreign banks that are well capitalized and well managed to acquire or establish an operating subsidiary by filing notice with the OCC within 10 days of the affiliation.

The OCC would consider a foreign branch or agency well capitalized if the branch or agency meets the definition of

well capitalized used by the regulator when authorizing extended examination cycles for foreign branches or agencies. Similarly, a foreign branch or agency would be considered well managed if it has a composite Risk Management and Operational Controls, Compliance, and Asset Quality (ROCA) rating of 1 or 2. Comments were due by February 5, 2001. For further information, see 65 *Federal Register*, pp. 75870-2.

Office of Thrift Supervision

Significant Activities and Capital Adequacy (10/27/2000)

The OTS is proposing a rule to require certain savings and loan holding companies (SLHCs) to notify the OTS before engaging in or committing to certain significant activities and transactions. The rule would apply to SLHCs seeking to issue, renew, or guarantee a certain level of debt. The debt threshold would be crossed if the debt transaction, when combined with all other debt transactions during the past 12 months, would increase the SLHC's consolidated nonthrift liabilities by 5 percent and the SLHC's consolidated

nonthrift liabilities after the debt transaction equaled at least 50 percent of the SLHC's consolidated tangible capital. The rule would also require notice for certain asset acquisitions. In general, acquisitions—excluding cash or United States government securities—would require notice if the transaction amount, combined with other asset acquisitions during the past 12 months, would exceed 15 percent of the SLHC's consolidated assets. Finally, any transaction—when combined with transactions during the past 12 months—that would reduce the SLHC's ratio of consolidated tangible capital to consolidated tangible assets by 10 percent or more would require notice. General exemptions would apply to an SLHC whose thrifts comprise less than 20 percent of the holding company's assets or an SLHC with a significant capital cushion. Comments were due December 26, 2000. For further information, see 65 *Federal Register*, pp. 64392-401.

Risk-Based Capital Standards (12/6/2000)

The OTS, together with the Federal

Reserve System, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, proposed a regulation relaxing risk weighted capital standards applicable to claims on qualified securities firms. The proposed rule would reduce the risk weight applied to claims on qualifying securities firms from 100 percent to 20 percent under the respective risk-based capital rules of the agency.

To qualify, securities firms must be: 1) incorporated in an Organization for Economic Cooperation and Development (OECD) country; 2) subject to supervisory and regulatory arrangements comparable to those imposed on OECD banks; and 3) rated in one of the three highest investment grade rating categories from a nationally recognized rating agency. In addition, a domestic securities firm must be a broker-dealer registered with the Securities and Exchange Commission (SEC). The firm must also be in compliance with the SEC's net capital rule, margin, and other regulatory requirements. Comments were due January 22, 2001. For further information, see 65 *Federal Register*, pp. 76180-4. (Regulations H and Y).

SUMMARY OF JUDICIAL DEVELOPMENTS

On November 2, 2000, the U.S. Court of Appeals for the Fifth Circuit upheld a lower court ruling denying class status for a suit brought against a lender for disclosure violations under the Truth in Lending Act (TILA) and the Consumer Leasing Act. The case (*Perrone et al. v. General Motors Acceptance Corp.*, 5th Cir., No. 99-30958) centers on a lease agreement that the plaintiffs entered into at a local automobile dealership. That agreement was later assigned to GMAC. The contract failed to itemize an acquisition fee of \$400 that GMAC charged to the local dealership. That fee was eventually passed on to the consumer.

The plaintiffs requested class action status arguing that their actual damage was \$400—the amount of the unitemized acquisition fee. The trial court, however, reasoned that the theory of detrimental reliance should apply in this case. Under this theory, plaintiffs are required to show that: 1) they read the TILA disclosure statement; 2) they understood the charges being disclosed; 3) had the disclosure been accurate, they would have sought a lower price; and 4) they would have obtained the lower price. In essence, each plaintiff would need to show that he or she relied on the misrepresentation in the disclosure statement to his or her detriment. The damage award should

reflect the level of harm that each plaintiff suffered. The plaintiffs appealed.

The fifth circuit upheld the trial court's findings and its decision not to certify class status. The circuit found that neither TILA's nor CLA's language allowed for simple restitution in the amount of the misrepresentation in a civil case such as this. Rather, each defendant is required to demonstrate the amount of harm he or she suffered as a result of the misrepresentation.

On November 9, the U.S. Court of Federal Claims awarded \$15 million to a group of savings and loan (S&L) investors who claimed damages as a

result of a breach of contract by the government. The significance of this case lies in the language used by the court in its decision. The language is specifically scripted so as to provide a template for future damage awards in the more than 100 remaining lawsuits of this nature.

The case (*Castle v. U.S., Ct.Fed.Cls., No. 90.1291 C, 11/9/00*) centers on government actions during the S&L crisis of the late 1980s. As a result of deteriorating economic conditions, many thrifts faced bankruptcy. The insurer of thrift deposits, the Federal Savings and Loan Insurance Corporation, realized that the insurance fund would not be able to absorb the aggregate cost of these bailouts and sought out private investors or healthy thrifts to assume the operation and management of many troubled thrifts. Private monies were enticed into these arrangements by the promise of special treatment in return for assuming control of the failed thrift.

In this particular instance, the investors (Castle Harlan) submitted a business plan that incorporated investments in high-yield bonds. This in addition to relaxed capital requirements

and an exemption from liability growth limitations comprised the crux of the contract entered into between Castle Harlan and thrift regulators in December 1988, by which the Western Empire Savings and Loan Association (Western Empire) would be taken over.

In August 1989, the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) was passed. Its enforcement by regulators resulted in Western Empire being prohibited from investing in high-yield bonds. In addition, Western Empire was ordered to come into compliance with the more stringent capital requirements of FIRREA. Unable to meet these requirements, Western Empire was seized by regulatory authorities in February 1990.

In 1999 the Court of Federal Claims found that the government had indeed breached its contract with Castle Harlan. The remaining action involved the calculation of damages arising from the breach. The three damage theories that the court deliberated among were expectation, reliance, and restitution. An award of expectation damages would

put Castle Harlan in the economic position it would have attained had the contract been adhered to. A reliance award would put Castle Harlan in the economic position it would have been in had the contract not been entered into. Finally, a restitution award would return to Castle Harlan the value of the benefit conferred to the government.

The court disallowed the defendant's argument that the benefit conferred by plaintiffs should reflect the fact that it cost more to liquidate the bank in 1990 than it would have in 1988. Similarly, the court chose to repudiate the plaintiffs' claim that they had suffered a 'taking of property' prohibited by the Fifth Amendment. The claims court found that the plaintiffs were entitled to restitution in the amount of their original \$15 million investment. At the time of the contract, the government bargained for "an infusion of capital . . . and the subsequent operation of [Western Empire] in accordance with an approved business plan." The government got what it bargained for but did not live up to its end of the contract.

SUMMARY OF THIRD DISTRICT DEVELOPMENTS

New Jersey

On November 1, 2000, Governor Whitman signed into law a bill that prohibits lending institutions—with the exception of commercial banks, savings banks, savings and loan associations, or

their subsidiaries—from acting as insurance producers for a title insurance company. New Jersey statutes define an insurance producer to be any person engaged in the business of an insurance agent, broker, or consultant. The new

law, P.L. 2000, c. 140, also prohibits lending institutions from conditioning a mortgage loan on the purchase of title insurance from a particular provider, agent, or broker.

