

# Office of Inspector General



October 19, 2000  
Audit Report No. 00-047

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**Audit of American Pension  
Management's Administration of  
Employee Benefit Plans for Failed  
Financial Institutions**



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**DATE:** October 19, 2000

**TO:** A. J. Felton, Deputy Director  
Division of Resolutions and Receiverships  
Dallas Field Operations Branch

Arleas Upton Kea, Director  
Division of Administration



**FROM:** Sharon M. Smith  
Assistant Inspector General

**SUBJECT:** *Audit of American Pension Management's Administration of Employee Benefit Plans for Failed Financial Institutions (Audit Report No. 00-047)*

This report presents the results of an audit of American Pension Management's (APM) administration of pension plans for failed financial institutions. The Office of Inspector General (OIG) initiated the audit at the request of the Closed Banks Administration department head in the Division of Resolutions and Receiverships' (DRR) Northeast Service Center (NESC) in Hartford, Connecticut. The department head requested the OIG's assistance in reviewing activities related to APM's administration of pension plans for Goldome Bank (Goldome) and Meritor Savings Bank (Meritor). We provided periodic briefings to employee benefits officials during the audit. We also issued a management letter to the NESC regarding the availability of records necessary to complete required audits. The NESC closed on June 30, 2000, and transferred its remaining workload to DRR's Dallas Field Operations Branch.

## **BACKGROUND**

When a regulatory authority closes a financial institution, the FDIC is appointed receiver and takes control of the closed institution's assets and assumes the responsibility to administer the failed financial institution's pension plans—both retirement plans and incentive savings plans.<sup>1</sup> Specifically, the FDIC becomes the plan administrator responsible for ensuring that (1) plan

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<sup>1</sup>Pension plans include defined benefit and defined contribution plans. Defined benefit plans—usually referred to as retirement plans—provide a set amount of benefits to the participant, and the Pension Benefit Guaranty Corporation (PBGC) insures them. Defined contribution plans are usually tax-deferred plans, such as incentive savings and 401K plans; do not guarantee a specific benefit; depend on each participant's salary and level of contributions; and are not PBGC insured.

assets are safeguarded and appropriately distributed, (2) plans are terminated in a timely manner, and (3) reasonable efforts are made to locate missing plan participants.<sup>2</sup> In addition, the FDIC becomes responsible for ensuring that litigation settlement awards<sup>3</sup> related to failed financial institutions' pension plans are properly administered, safeguarded, and distributed. The FDIC may perform plan administration services in-house or contract with an independent plan fiduciary to administer pension plans and litigation settlement awards for the Corporation. The FDIC and/or independent plan fiduciary may also use other outside contractors such as actuaries, accountants, trustees, and law firms to administer and terminate pension plans and litigation settlement awards and distribute funds.

The FDIC contracted with APM to provide independent plan fiduciary services for Goldome and Meritor. The Resolution Trust Corporation (RTC)<sup>4</sup> also contracted with APM to provide similar services for Centrust Savings Bank (Centrust) and AmeriFirst Savings Bank (AmeriFirst). The consolidation of FDIC and RTC offices and the FDIC's subsequent assumption of RTC operations affected responsibility for the oversight and administration of pension plans and APM's contractual agreements. For instance, responsibility for the Goldome and Meritor plans and contracts transferred from the FDIC's South Brunswick Consolidated Office in South Brunswick, New Jersey, to the NESC. In addition, responsibility for the Centrust and AmeriFirst plans and contracts transferred from the RTC's Mid-Atlantic Consolidated Office in Atlanta, Georgia, to the FDIC's Southeast Service Center in Atlanta, Georgia, and finally to the Dallas Field Operations Branch in Dallas, Texas.

As an independent fiduciary, APM administered (1) Goldome's retirement plan, incentive savings plan, and litigation settlement award; (2) Meritor's retirement plan and incentive savings plan; (3) Centrust's incentive savings plan and litigation settlement award; and (4) AmeriFirst's litigation settlement award. In addition to administering the litigation settlement awards, APM also distributed those funds to settlement participants except the Goldome award, which the FDIC distributed.

Goldome maintained and administered two retirement plans—Goldome Retirement Plan and Goldome Incentive Savings Plan. On January 10, 1992, the FDIC's former South Brunswick Consolidated Office executed an *Administrative Service Provider and Independent Fiduciary Agreement* engaging APM as an independent plan fiduciary for the Goldome plans. According to the NESC's Employee Benefits Section (EBS) officials, the FDIC executed the agreement with APM before the Corporation established formal contracting procedures through its Acquisition Services Branch (ASB) and, accordingly, did not assign a contract number to the agreement. In addition, APM began administering Goldome's litigation settlement award in May 1993.

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<sup>2</sup>Undeliverable or returned mail may identify missing plan participants. After the plan administrator makes reasonable efforts to locate missing participants for defined benefit plans, the FDIC may turn undistributed pension plan funds over to the PBGC or establish accounts at financial institutions for missing participants.

<sup>3</sup>Litigation settlement awards represent funds awarded to specific pension plan participants based on a legal determination that the participants have been damaged (e.g., by actions of the failed financial institution, plan administrator, or its agent).

<sup>4</sup>As provided in the *RTC Completion Act of 1993*, the RTC went out of existence on December 31, 1995, and the FDIC took over its functions on January 1, 1996.

However, neither APM nor EBS officials could provide a copy of a contractual agreement for the Goldome litigation settlement award.

On July 13, 1993, the South Brunswick Consolidated Office contracted with APM to perform similar fiduciary services for the Meritor Pension Plan and Meritor Tax-Deferred Savings Plan. APM's administration of the Meritor plans was under basic ordering agreement 93-01504-N-RA, task order 93-001, effective July 13, 1993. Through modifications and extensions, the FDIC extended the contract period to December 31, 1996.

In addition to the Goldome and Meritor pension plans and Goldome litigation settlement award, APM also administered the Centrust incentive savings plan and the Centrust and AmeriFirst litigation settlement awards. In February 1991, the RTC appointed APM as administrator for the Centrust incentive savings plan but did not specify contracting terms and conditions. In addition, neither APM nor FDIC officials could provide copies of contracts for the Centrust litigation settlement award. In November 1995, the RTC contracted with APM under agreement 0710-95-0074-001 to act as an independent plan fiduciary and trustee for AmeriFirst's litigation settlement award.

As administrator for the various plans, APM served as the primary contact for plan participants and worked with actuaries, trustees, and legal and accounting firms to administer the plans and calculate and distribute participant benefits. APM's responsibilities included (1) instructing trustees on the distribution of pension funds,<sup>5</sup> (2) distributing litigation settlement awards to plan participants, (3) attempting to locate missing participants, and (4) assisting the FDIC in terminating the plans.

As a fiduciary, APM's control over participant funds varied. For instance, APM did not have direct control over pension plan and incentive savings funds. Instead, APM instructed trustees who managed and invested pension plan funds to distribute participants' benefits via monthly, lump sum, or rollover payments. On the other hand, APM established bank accounts for litigation settlement awards for Goldome, Centrust, and AmeriFirst and had direct control over those accounts. APM also distributed payments from the Centrust and AmeriFirst accounts to litigation settlement participants. Although APM performed some administrative services for the Goldome litigation settlement, it returned the funds from that settlement to the FDIC for distribution to participants.

The FDIC had trouble getting APM to complete its contractual responsibilities and obtaining pension plan records from APM. Accordingly, NESC's EBS officials visited APM's offices in January 1998 and obtained some records from APM. After reviewing those records, EBS officials (1) concluded that APM had not provided all pension plan-related documents in its possession and (2) identified questionable transactions related to the Goldome litigation settlement award. Subsequently, NESC's Closed Banks Administration department head requested the OIG's assistance. Specifically, the department head asked that we (1) retrieve

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<sup>5</sup>Trustees assist in administering retirement and incentive savings plan funds. Their duties include analyzing, investing, and distributing retirement and incentive savings plan funds; paying plan expenses; and providing monthly reports on plan activities.

additional plan documents necessary for the FDIC's contracted audit firm to complete audits of the Goldome and Meritor plans and (2) determine whether APM properly accounted for pension plan funds.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The objectives of our audit were to determine (1) the availability of records necessary to complete audits of the Goldome and Meritor plans and (2) whether APM properly accounted for pension plan funds for the Goldome and Meritor financial institutions. Because of questionable transactions identified by EBS officials, we expanded the objectives to determine whether APM billed the FDIC in accordance with contract terms and conditions. During the audit we expanded the scope to review bank transactions and APM's billings for Centrust's and AmeriFirst's litigation settlement award accounts and APM's billings for Centrust's incentive savings plan.

To accomplish our objectives, we interviewed NESC officials in DRR's Closed Banks Administration and EBS and the Division of Administration's (DOA) Acquisition Services Branch. We also interviewed officials in DRR's Employee Benefits Group (EBG) and the Division of Finance (DOF) in the Dallas Field Finance Center. In addition, we interviewed APM's president to obtain an understanding of procedures used to distribute litigation settlement awards, locate missing participants, and invoice the FDIC.

We reviewed EBS's pension plan files for Goldome and Meritor and EBG's pension plan files for Centrust and AmeriFirst. We also obtained pension plan payment data from DOF officials. We reviewed the FDIC's manual entitled *The Failed Financial Institution Employee Benefits Termination Manual* dated September 1995, which outlined pension plan administrator responsibilities and policies and procedures for terminating receivership pension plans. We also reviewed EBS's procedures to pay, monitor, and track routine trust expenses, including reimbursements to APM. In addition, we reviewed EBG's reports used to track missing participants and undistributed pension plan benefits for retirement and incentive savings plans.

Further, we reviewed ASB's contracts and related correspondence files for Goldome, Meritor, Centrust, and AmeriFirst. However, neither ASB nor employee benefits officials could locate a formal contract for APM's administration of the Goldome litigation settlement award or the Centrust litigation settlement award.

We interviewed representatives of Manufacturers and Traders Trust Company (M&T) in Buffalo, New York, and The Bank of New York (BONY) in New York, New York. Those financial institutions served as trustees for the Goldome and Meritor plans, respectively. We reviewed correspondence between the trustees, the FDIC, and APM and reviewed trustee reports that documented the pension plans' disbursements and investment activities. We also reviewed copies of trust reports for the Centrust incentive savings plan provided by EBS. In addition, we reviewed bank records and transactions related to the Goldome, Centrust, and AmeriFirst litigation settlement awards, because APM acted as both the trustee and administrator for those funds.

To determine the availability of records necessary to complete audits of the Goldome and Meritor plans, the OIG retrieved 30 boxes of records from APM related to FDIC failed financial institutions during February 1999. We provided those records to EBS for use by its contracted audit firm—McGladrey & Pullen in Fort Lauderdale, Florida—in completing audits of the Goldome and Meritor plans. We also interviewed a representative from McGladrey & Pullen and reviewed the firm’s audit files related to APM’s administration of the Goldome and Meritor pension plans.

To determine whether APM properly accounted for pension plan funds for Goldome and Meritor, we reviewed monthly, lump sum, and rollover disbursements and selected a random sample of participant disbursements from those retirement plans. The sample consisted of 150 payments from each plan. In addition, we selected a judgmental sample of 30 payments for Goldome and Meritor participants for detailed review. Selection criteria for the judgmental sample included items such as undelivered payments, unusual payment amounts and dates, and participant social security numbers and last names. For various reasons, such as purged records, the plans’ trustees—M&T and BONY—could only locate 184 of the 330 sampled disbursements. Accordingly, we reviewed 184 disbursements totaling \$657,652. That sample represented \$507,537 or about 1.2 percent of the \$42,223,167 that M&T disbursed from Goldome’s retirement plan and \$150,115 or about 1 percent of the \$14,948,234 that BONY disbursed from Meritor’s retirement plan.

To determine whether the 184 sampled disbursements were appropriate, we reviewed canceled checks to determine payee endorsements and whether funds had been deposited into accounts for APM, its president, or other individuals or businesses related to APM’s president. To identify potential discrepancies in amounts distributed to participants, we compared disbursed amounts to actuary participant listings that showed calculated participant benefits. We did not review incentive savings plan disbursements because participants should be aware of the specific amounts due to them, thus reducing the risk of inappropriate administration.

In addition, to determine whether APM properly accounted for pension plan funds and litigation settlement awards, we issued administrative subpoenas to Washington Mutual Bank—APM’s bank of record—located in Lake Worth, Florida, on August 3, 1999. The subpoenas requested all financial records related to Washington Mutual Bank accounts for APM, its president, and American Holdings Group.<sup>6</sup> We received and analyzed financial documents for 16 bank accounts including 4 business accounts, 4 personal accounts for APM’s president, and 8 litigation settlement award accounts. We analyzed the bank accounts by reviewing bank statements, canceled checks, deposits, withdrawals, and account transfers from the initial opening of the accounts through account closings or the most recent bank statements available at the time Washington Mutual complied with the OIG’s subpoena.

To determine whether APM’s billings to the FDIC complied with contract terms and conditions, we reviewed available contractual agreements for Goldome, Meritor, and AmeriFirst. We also

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<sup>6</sup>American Holdings Group was the parent company for three subsidiaries including APM. Based on information that EBS provided, we included American Holdings Group in our review to determine whether American Holdings Group commingled pension plan funds with its funds.



reviewed invoices and reimbursement data obtained from DOF and EBS. In addition, we reviewed trustee disbursement reports for Goldome, Meritor, and Centrust. However, we did not review the FDIC's policies and procedures to review and approve invoices that APM submitted for services related to Goldome, Meritor, Centrust, and AmeriFirst.

To determine whether APM's billings were valid and adequately supported, on December 14, 1999, the OIG issued a subpoena to APM's president requesting documents supporting the contractor's billings to the Corporation. Specifically, we requested that APM provide contracts, contract modifications, invoices, correspondence, employee listings and classifications, hourly labor rates, project codes, time cards, automated billing system records, and documentation to support billed expenses. We also interviewed APM's president to discuss the requested documentation and APM's billing practices.

When we delivered the subpoena, APM's president stated that he would provide all requested documents to the OIG. On March 11, 2000, APM's president certified that he had provided the OIG all records in his possession regarding the items requested in the subpoena. However, APM's president did not provide adequate documentation to support charges billed to the FDIC for any of the institutions included in our review. Specifically, APM's president only provided records that related to invoices for the Centrust incentive savings plan. In addition, APM's president provided participant distributions for Centrust's litigation settlement award, including canceled checks, missing participant data, substitute W-9s, and correspondence. However, those records were not adequate to determine whether APM billed in accordance with contract terms and conditions. The OIG views the lack of full compliance with the subpoena as an external impairment affecting the scope of the audit. Accordingly, we could not determine whether APM billed the FDIC in accordance with contract terms and conditions or its charges were valid and adequately supported.

We did not evaluate DRR's internal controls over pension plans because the OIG concluded that it could meet the audit objectives more efficiently by conducting substantive tests rather than placing reliance on internal controls.<sup>7</sup> The OIG conducted the audit from May 1999 through June 2000 in accordance with generally accepted government auditing standards.

## **RESULTS OF AUDIT**

APM did not provide sufficient pension plan documents to the FDIC or its outside audit firm to facilitate completion of required audits of the Goldome and Meritor pension plans and related Internal Revenue Service (IRS) reports. Because the numerous attempts to retrieve necessary pension plan documents proved unsuccessful, EBS officials took appropriate steps to comply with IRS reporting requirements and terminate the Goldome and Meritor plans.

Although participant distributions made from retirement plan accounts maintained and controlled by trustees appeared to be appropriate, APM did not always properly account for and distribute

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<sup>7</sup>The OIG issued a report entitled *Internal Controls Over Receivership Employee Benefit Plans* (audit report number 00-001, dated January 12, 2000), that addressed the adequacy of internal controls over receivership employee benefit plans managed by DRR's Dallas Field Operations Branch.

litigation settlement awards for Goldome, Centrust, and AmeriFirst. Specifically, we identified \$305,011 in questionable transfers, withdrawals, and lost interest from litigation settlement award accounts and at least \$77,439 in litigation settlement award funds that APM had not distributed to award participants or returned to the FDIC. The FDIC's policies and procedures addressing the administration of pension plans did not include specific guidance regarding litigation settlement awards.

During our audit we issued a management letter to Dallas Field Operations Branch officials suggesting that DRR close dormant litigation settlement accounts and recover about \$19,000 in funds for the Centrust and AmeriFirst failed financial institutions. In addition, we questioned APM's reimbursements for services performed for the Goldome, Meritor, Centrust, and AmeriFirst failed financial institutions. We questioned \$1,419,202 as unsupported because APM did not provide documentation to support those billings.

Accordingly, we recommend that the Director, DOA, disallow funds related to questionable account transactions and unsupported reimbursements made to APM. We also recommend that the Deputy Director, Dallas Field Operations Branch, DRR, research and distribute, as appropriate, litigation settlement award participants' funds and establish policies and procedures to adequately address the administration and distribution of litigation settlement award funds.

#### **APM DID NOT PROVIDE DOCUMENTATION TO COMPLETE REQUIRED AUDITS**

Despite repeated efforts by FDIC program officials, the outside audit firm, and the OIG to obtain records necessary to complete required audits of the Goldome and Meritor pension plans, APM did not provide the required records. Accordingly, EBS officials initiated alternative methods to terminate those plans and coordinated its efforts with the IRS to satisfy the IRS's reporting requirements.

Although the OIG obtained additional records from APM during February 1999, EBS officials determined that those records were not sufficient to assist EBS and its outside audit firm in completing required audits of the Goldome and Meritor plans. The delay in completing the audits and terminating the plans was exacerbated by the fact that the FDIC's former South Brunswick Consolidated Office provided original pension plan records to APM to administer the Goldome and Meritor plans and did not make copies of those records for the FDIC's retention. Although APM, as an independent plan fiduciary, was required to return all plan documents to the FDIC, its president did not return the records necessary to complete pension plan audits.

On May 13, 1999, the OIG issued a memorandum to the NESC Assistant Regional Manager for Closed Banks Administration regarding our efforts to obtain additional records from APM. We informed the Assistant Regional Manager that EBS officials had determined that the additional records that the OIG obtained were not sufficient to complete the outstanding audits of the Goldome and Meritor pension plans. Accordingly, after consulting with the IRS, EBS officials decided to terminate the pension plans and file the required IRS reports without completing the audits or by requesting its audit firm to issue qualified opinions on the audits.

## TRUSTEE ACCOUNT DISBURSEMENTS WERE APPROPRIATE

We sampled 184 disbursements totaling \$657,652 from the Goldome and Meritor pension plan accounts, which the trustees controlling those funds appeared to have appropriately made. Our review of the participants' canceled checks, trustee reports for the 184 disbursements, and APM's financial records did not identify any discrepancies. The trustee disbursements were correct in amount and properly accounted for and the recipients properly endorsed each check.

## APM DID NOT PROPERLY ACCOUNT FOR LITIGATION SETTLEMENT AWARDS

We questioned \$305,011 or about 28 percent of the \$1,077,542 in litigation settlement funds that APM administered because of inappropriate transfers, withdrawals from those funds, and lost interest income. Table 1 shows the total amount of litigation settlement awards by institution that APM administered and the amounts that we questioned.

**Table 1: Summary of Litigation Settlement Awards That APM Administered**

<b>Institution</b>	<b>Award</b>	<b>Amount Questioned</b>
Centrust	\$ 807,267 <sup>a</sup>	\$300,186
AmeriFirst	143,542 <sup>b</sup>	0
Goldome	126,733	4,825 <sup>c</sup>
<b>Totals</b>	<b>\$1,077,542</b>	<b>\$305,011</b>

<sup>a</sup>The Centrust award included the original award amount of \$798,912, earned interest of \$9,295, and expenses of \$940.

<sup>b</sup>The AmeriFirst award total included the original award amount of \$139,306, earned interest of \$4,296, and expenses of \$60.

<sup>c</sup>EBS officials were aware of \$60,664 in withdrawals from and \$57,839 in deposits to the Goldome litigation settlement account. EBS had refunded the litigation settlement account for the difference of \$2,825 plus calculated interest of \$2,000. The award included the original award amount of \$116,522 and earned interest of \$10,211.

Source: OIG analysis of financial documents for the Goldome, Centrust, and AmeriFirst litigation settlement award bank accounts and EBS's analysis of the Goldome account.

## Questionable Transactions Related to Centrust

Our review of financial documents for the Centrust litigation settlement award identified questionable transactions totaling \$300,186 or about 37 percent of the \$807,267 awarded to Centrust litigation participants. During the time that APM distributed the Centrust litigation settlement award—between August 1996 and August 1997—APM's president made questionable withdrawals and account transfers and wrote checks to APM and legal firms totaling \$300,186. Those transactions included withdrawals of \$302,186 and deposits totaling \$2,000 for a net amount of \$300,186.

Although EBS officials could not address FDIC's prior practices of reimbursing APM, EBS officials stated that in current practice only participant distributions and any pre-approved expenses would be paid from settlement funds. APM's president stated that he made two withdrawals from the Centrust litigation settlement award for expenses incurred in administering the award and made payments to a law firm for professional services. However, APM's president could not provide documentation to support his contention that those withdrawals were appropriate.

### **Questionable Transactions Related to Goldome**

Because APM did not properly account for Goldome litigation settlement award funds, the FDIC, as plan administrator, had to reimburse the Goldome litigation settlement account \$2,825 plus interest totaling \$2,000. EBS officials were aware of questionable transactions related to the Goldome litigation settlement award account and informed the OIG of those transactions at the initiation of our audit. Those transactions involved \$60,664 in withdrawals from and \$57,839 in deposits to the Goldome litigation settlement award account. The net effect of those withdrawals and deposits resulted in an account shortage of \$2,825 and lost interest of \$2,000 based on EBS's calculations.

The \$60,664 withdrawn from the Goldome account included amounts transferred to APM's president, American Holdings Group, and other individuals. APM and an unidentified source made the deposits into the account. Again, EBS officials stated that under current practice it would only pay participant distributions and any pre-approved expenses from settlement funds. The FDIC, as plan administrator, was responsible for safeguarding and distributing plan funds, including litigation settlement awards. Accordingly, the FDIC refunded the Goldome account \$2,825 for the shortage and \$2,000 in interest for a total of \$4,825.

### **UNDISTRIBUTED AND DORMANT LITIGATION SETTLEMENT AWARD FUNDS**

Approximately \$77,439 of the litigation settlement award funds that APM administered had not been distributed to award participants or returned to the FDIC based on August 1999 bank statements for those awards. Of the \$77,439 in undistributed funds, \$59,820 related to 261 Centrust settlement participants. Documentation that APM provided related to the Centrust litigation settlement award indicated that an amount greater than the identified \$59,820 had not been distributed for Centrust participants. The remaining \$17,619 related to 84 AmeriFirst litigation settlement award participants. The Centrust and AmeriFirst accounts had been dormant since November 1997 and July 1997, respectively, except for monthly bank charges against the AmeriFirst account. Accordingly, we advised Dallas Field Operations Branch officials to close the accounts and recover those funds.

## **Undistributed Centrust Litigation Settlement Award Funds**

APM provided documentation supporting \$59,820 that it did not distribute to 261 Centrust participants. Specifically, the United States Postal Service returned 201 participant checks totaling \$29,932 as “undeliverable.” We did not find any evidence that APM had mailed replacement checks to those 201 participants, and those 201 recipients did not present checks for payment. In addition, we identified 60 participants for whom APM had never issued checks totaling \$29,888 because APM did not have addresses for those individuals. However, as of August 1999, the Centrust litigation settlement account balance was only \$1,337.

Although available information showed that 261 Centrust litigation settlement award participants had not received distributions, the OIG believes that the number of participants that have not received distributions exceeds 261. Information on returned undeliverable disbursements that APM’s president provided was not complete. The information included 261 participants whose names began with the letter “A” through the letter “R.” The original participant listing for the Centrust litigation settlement award also included participants with names beginning with the letters “S” through “Z.” On June 12, 2000, APM’s president stated that there were participants with last names beginning with the letters “S” through “Z” that had not received distributions. He further stated that he could not provide records for those participants because he could not locate them. Accordingly, we believe that the amount of undistributed funds is greater than the \$59,820 identified for those 261 participants.

The Centrust litigation settlement award totaled \$807,267 for at least 1,320 participants. However, APM had made payments totaling \$505,744 to 1,013 participants, indicating that it had not distributed funds for at least 307 participants. We believe that the difference in the total funds available for distribution and the total actually distributed—\$301,523—includes the \$300,186 in questionable transfers made by APM. Further, documentation provided by the FDIC and APM’s president did not explain whether APM could deduct its reimbursement for services or pay legal fees directly from the Centrust award.

## **Undistributed AmeriFirst Litigation Settlement Award Funds**

APM should have distributed the AmeriFirst litigation settlement award totaling \$143,542 to 636 participants. However, APM only made payments totaling \$125,923 to 552 participants. APM did not make payments to 84 participants totaling \$17,619. Before transferring responsibility for the AmeriFirst litigation settlement award to the Dallas office, the FDIC’s former Southeast Service Center in Atlanta, Georgia, initiated efforts to establish individual accounts for the missing AmeriFirst participants who APM had not paid. However, neither the Southeast Service Center nor the Dallas Field Operations Branch established individual accounts because the \$17,619 in undistributed award funds was still in the AmeriFirst bank account as of August 1999.

## **Litigation Settlement Award Funds in Dormant Accounts**

On January 11, 2000, the OIG issued a memorandum to EBG officials informing them of bank balances totaling \$18,956 for the Centrust and AmeriFirst litigation settlement awards located in Washington Mutual Bank in Lake Worth, Florida. Our analysis of those accounts showed that the accounts had been dormant since about November 1997 and July 1997, respectively. One of the accounts was decreasing due to bank service charges. As of August 1999, the Centrust account totaled \$1,337 and the AmeriFirst account totaled \$17,619. In response to our memorandum, on February 28, 2000, EBG officials recovered total available funds of \$18,890. The difference of \$66 between the totals cited in our memorandum and the amount that EBG recovered was due to bank service charges.

## **ADDITIONAL GUIDANCE NEEDED FOR LITIGATION SETTLEMENT AWARDS**

EBG officials responsible for the oversight and monitoring of the administration of pension plans and litigation settlement awards did not have specific guidance to ensure the proper administration of litigation settlement award funds. Specifically, officials lacked adequate guidance to ensure that they properly tracked and safeguarded undistributed participant funds. Although *The Failed Financial Institution Employee Benefits Termination Manual* provided guidance on the administration and termination of employee pension plans, including incentive savings plans, EBS and EBG officials agreed that the manual did not specifically address the administration and termination of litigation settlement awards. In addition, EBG's inventory of missing pension plan participants, dated April 18, 2000, did not include a complete listing of those individuals who had not received litigation settlement award fund distributions.

EBG officials confirmed that they were not aware of the undistributed funds for the Centrust and AmeriFirst litigation settlement award accounts that we brought to their attention. In addition, EBG officials stated that the FDIC or its agent should establish individual bank accounts or an account in the FDIC's name, as receiver, for missing participants when individuals are not located and funds cannot be distributed. Although information on the AmeriFirst litigation settlement award indicated that the former Southeast Service Center had initiated efforts to establish individual accounts for lost participants, EBG officials reviewed their inventory of missing participant accounts and confirmed that the AmeriFirst participants were not included in that inventory. Further review indicated that the inventory also did not include missing participants for Centrust's litigation settlement award. Officials stated that the inventory was composed of missing participants for retirement accounts and incentive savings plans and did not include litigation settlement awards. They further stated that they would not include litigation settlement award participants unless notified of the existence of a litigation settlement award and any related lost participants.

In an attempt to provide additional guidance on the responsibilities related to the accounting for lost participant funds, DRR and DOF were negotiating a memorandum of understanding to address lost participants for employee benefit plans. However, the draft memorandum did not address missing participants related to litigation settlement awards. On June 22, 2000, an EBG official stated that DRR and DOF were continuing their negotiations on the memorandum.

We believe that the FDIC needs specific guidance for the administration and termination of litigation settlement awards to ensure proper accounting, tracking, and distribution of those funds. The dormant bank accounts and undistributed litigation settlement award funds as well as the lack of guidance in the FDIC’s employee benefits termination manual and the DRR and DOF memorandum of understanding being negotiated demonstrate that need.

## UNSUPPORTED APM BILLINGS

We could not determine whether \$1,419,202 in APM billings that the FDIC paid complied with contract terms and conditions, because APM did not provide records necessary to make that determination. APM’s reimbursements were from trustee accounts or from the FDIC for the payment of invoices submitted for the administration of retirement plans, incentive savings plans, and litigation settlement awards. Table 2 shows the amount that the FDIC reimbursed APM for its billings.

**Table 2: Summary of FDIC Payments to APM**

Institution	Amount Paid to APM for		Total
	Retirement and Incentive Plans	Litigation Settlements	
Goldome	\$ 475,552	\$ 0 <sup>a</sup>	\$ 475,552
Meritor	504,597	0 <sup>b</sup>	504,597
Centrust	405,470	0 <sup>c</sup>	405,470
AmeriFirst	0 <sup>d</sup>	33,583	33,583
<b>Totals</b>	<b>\$1,385,619</b>	<b>\$33,583</b>	<b>\$1,419,202</b>

<sup>a</sup>Although APM performed some administrative services for the Goldome litigation settlement award, it eventually turned the responsibility for the distribution of those funds over to the FDIC. Our review of the Goldome award records did not show any reimbursements to APM for administrative services.

<sup>b</sup>APM did not administer a litigation settlement award for Meritor.

<sup>c</sup>The FDIC did not have records related to reimbursements to APM for Centrust’s litigation settlement award. APM’s president stated that he did not remember how much reimbursement he received for services related to Centrust’s litigation settlement award.

<sup>d</sup>APM was not involved in the administration of AmeriFirst’s retirement plan.

Source: OIG analysis of trustee reports, APM invoices, DOF financial reports, EBS invoice logs, and APM contractual agreements with the RTC and FDIC.

Agreements between the FDIC and APM for the Goldome and Meritor pension plans and the AmeriFirst litigation settlement award specified that the FDIC would reimburse APM based on approved labor rates for specified employee classifications or flat fees for litigation settlement

award services. The Meritor agreement also allowed reimbursement for expenses such as postage, photocopying, and travel. The RTC resolution appointing APM as administrator for the Centrust incentive savings plan did not specify reimbursement terms and conditions. Further, because officials could not locate a contractual agreement for the Goldome and Centrust litigation settlement awards, we could not review those contractual terms and conditions.

Although we obtained copies of some invoices from APM and the FDIC, APM did not provide documentation such as employee listings and classifications, hourly labor rates, project codes, time cards, and automated billing system records to support APM's invoiced charges. In addition, on June 12, 2000, APM's president stated that he did not have documentation to support his billings to the FDIC. Accordingly, we could not determine whether \$1,419,202 that APM billed the FDIC was in accordance with contractual terms and conditions and question that amount as unsupported.

## **CONCLUSIONS AND RECOMMENDATIONS**

APM did not provide the records necessary to complete audits of the Goldome and Meritor pension plans. Nonetheless, EBS officials responsible for the administration of pension plans and litigation settlement awards took appropriate steps to terminate those plans and comply with the IRS's reporting requirements. In addition, EBS officials appropriately refunded the Goldome litigation settlement award account \$2,825 for funds that were inappropriately used by APM and lost interest of \$2,000. EBG officials also recovered \$18,890 from dormant bank accounts for the Centrust and AmeriFirst litigation settlement awards. However, the FDIC's policies and procedures governing the administration and termination of pension plans did not provide specific guidance for the administration and oversight of litigation settlement awards.

We questioned \$305,011 related to APM's inappropriate transfers or withdrawals from Goldome and Centrust litigation settlement award accounts. In addition, APM did not ensure that all funds due participants were either disbursed or returned to the FDIC for appropriate safeguarding until distributions could be made. Finally, we questioned \$1,419,202 that the FDIC paid APM because APM did not provide support for its billings. Accordingly, we recommend that the Director, DOA, take the following actions:

- (1) Disallow \$2,825 (questioned costs, all of which is unsupported) for APM's inappropriate withdrawals from the Goldome litigation settlement award account.
- (2) Disallow \$2,000 (questioned costs) in lost interest associated with APM's inappropriate withdrawals from the Goldome litigation settlement award account.
- (3) Disallow \$300,186 (questioned costs, all of which is unsupported) for APM's inappropriate withdrawals from the Centrust litigation settlement award account.
- (4) Disallow \$1,419,202 (questioned costs, all of which is unsupported) that APM billed for services related to Goldome, Meritor, Centrust, and AmeriFirst pension plans and litigation settlement awards.



In addition, we recommend that the Deputy Director, Field Operations Branch, DRR, take the following actions:

- (5) Research Centrust and AmeriFirst litigation settlement award participants who did not receive their payments and take appropriate action to distribute those funds. (We documented payments for at least 261 participants totaling \$59,860 for Centrust and 84 participants totaling \$17,619 for AmeriFirst that APM did not make.)
- (6) Establish policies and procedures to specifically address the administration of litigation settlement awards including the oversight and monitoring of third-party contractors.

### **CORPORATION COMMENTS AND OIG EVALUATION**

On September 15, 2000, the Director, DOA, provided a written response to a draft of this report addressing recommendations 1, 2, 3, and 4. On October 6, 2000, the Deputy Director, Dallas Field Operations Branch, DRR, provided a written response to a draft of this report addressing recommendations 5 and 6. The Director and Deputy Director's responses agreed with the recommendations and provided the requisites for a management decision on each of the six recommendations. We did not summarize the responses because the actions planned or completed are identical to those recommended. Appendix I to this report presents the Director and Deputy Director's responses. Appendix II presents management's proposed actions on our recommendations and shows that there is a management decision for each recommendation in this report.

Based on the audit work, the OIG will report questioned costs of \$1,724,213 (of which \$1,722,213 is unsupported) in its *Semiannual Report to the Congress*.



**FDIC**

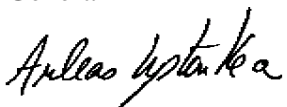
**Federal Deposit Insurance Corporation**  
550 17th Street, NW, Washington, DC 20429

**APPENDIX I**

Division of Administration

September 15, 2000

**TO:** Sharon M. Smith  
Assistant Inspector General

**FROM:** Arleas Upton Kea   
Director, Division of Administration

**SUBJECT:** Management Response to Draft Report Entitled *Audit of American Pension Management's Administration of Employee Benefit Plans for Failed Financial Institutions*

The Acquisition and Corporate Services Branch (ACSB) has completed its review of the subject Office of Inspector General (OIG) draft report. The OIG made four recommendations to the Director, Division of Administration (DOA) related to two audit findings, that included \$1,724,213 in questioned costs. Exhibit A summarizes the two audit findings, the related recommendations, and provides our expected completion dates and the documentation that will confirm that completion.

**Management Decision:**

**FINDING #1:** **American Pension Management (APM) Did Not Properly Account for Litigation Settlement Awards**

**Recommendation #1:** Disallow \$2,825 (questioned costs, all of which is unsupported) for APM's inappropriate withdrawals from the Goldome litigation settlement award account.

**Management Response #1:** We agree with the recommendation. DOA will disallow and pursue recovery of this amount if it cannot be adequately supported by the contractor. A decision memorandum and a demand letter, if necessary, will confirm our completion of corrective action.

**Recommendation #2:** Disallow \$2,000 (questioned costs) in lost interest associated with APM's inappropriate withdrawals from the Goldome litigation settlement award account.

**Management Response #2:** We agree with the recommendation. DOA will disallow and pursue recovery of this amount if it cannot be adequately supported by the contractor. A decision memorandum and a demand letter, if necessary, will confirm our completion of corrective action.

**Recommendation #3:** Disallow \$300,186 (questioned costs, all of which is unsupported) for APM's inappropriate withdrawals from the Centrust litigation settlement award account.

**Management Response #3:** We agree with the recommendation. DOA will disallow and pursue recovery of this amount if it cannot be adequately supported by the contractor. A decision memorandum and a demand letter, if necessary, will confirm our completion of corrective action.

**FINDING #2: Unsupported APM Billings**

**Recommendation #4:** Disallow \$1,419,202 (questioned costs, all of which is unsupported) that APM billed for services related to Goldome, Meritor, Centrust, and AmeriFirst pension plans and litigation settlement awards.

**Management Response #4:** We agree with the recommendation to the extent that any amounts paid to the contractor exceeded what was fair and reasonable for the services provided. The OIG has questioned 100 percent of the service fees billed by APM because the contractor did not provide supporting documentation for those charges. We will confer with our Legal Division and will disallow and pursue recovery of any unsupported charges if we are unable to determine (a) what the charges were for, and (b) whether they were fair and reasonable for the service provided.

The schedule for completion of these corrective actions is included in Exhibit A. If you have any questions regarding this response, you may contact Andrew Nickle, Audit Liaison for the Division of Administration, at (202) 942-3190.

Attachment

cc: Howard Furner  
Andrew Nickle  
Richard Johnson

**EXHIBIT A**

<p><b>DIVISION OF ADMINISTRATION</b>  <b>SUMMARY OF MANAGEMENT DECISION</b></p>
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NO.	FINDING DESCRIPTION	QUESTIONED COST	MANAGEMENT AGREEMENT	DESCRIPTION OF CORRECTIVE ACTION	EXPECTED COMPLETION DATE	DOCUMENT VERIFYING COMPLETION
<b>1</b>	American Pension Management did not properly account for litigation settlement awards.					
	a. Goldome litigation settlement award	\$2,825	Agree	<b>CORRECTIVE ACTION FOR REC #1:</b> We will disallow and pursue recovery of the unsupported withdrawals.	01/31/2001	Decision Memo or Demand Letter
	b. Goldome lost interest	2,000	Agree	<b>CORRECTIVE ACTION FOR REC #2:</b> We will disallow and pursue recovery of the inappropriate withdrawals.	01/31/2001	Decision Memo or Demand Letter
	c. Centrust litigation settlement award	300,186	Agree	<b>CORRECTIVE ACTION FOR REC #1:</b> We will disallow and pursue recovery of the unsupported withdrawals.	01/31/2001	Decision Memo or Demand Letter
<b>2</b>	Unsupported APM billings.	\$1,419,202	Partially Agree	<b>CORRECTIVE ACTION FOR REC #4:</b> We will disallow and pursue recovery of any unsupported and unreasonable charges we cannot verify.	01/31/2001	Decision Memo or Demand Letter



October 6, 2000

**TO:** Sharon M. Smith  
Assistant Inspector General

**FROM:** A. J. Felton, Deputy Director  
Division of Resolutions and Receiverships  
Dallas Field Operations Branch

**SUBJECT:** Management Response to Draft Report Entitled *Audit of American Pension Management's Administration of Employee Benefit Plans for Failed Financial Institutions*

In subject report, the OIG made two recommendations to the Dallas Field Operations Branch, Division of Resolutions and Receiverships (DRR) related to two audit findings.

**Undistributed Centrust and AmeriFirst Litigation Settlement Award Funds**

**Recommendation #5:** "Research Centrust and AmeriFirst litigation settlement award participants who did not receive their payments and take appropriate action to distribute those funds. (We documented payments for at least 261 participants totaling \$59,860 for Centrust and 84 participants totaling \$17,619 for AmeriFirst that APM did not make.)"

**Management Response:** We concur with the recommendation. The names and social security numbers for the 261 participants in the Centrust plan and the 84 participants in the AmeriFirst plan have been requested from the Office of Inspector General (OIG). Using the information provided, DRR will locate the participants identified by OIG and issue individual checks in an amount equal to the plan participant's share of the settlement award. Checks returned as undeliverable, if any, will be handled in accordance with current procedures followed by DRR and the Division of Finance (DOF). A schedule listing each participant, social security number, mailing address, gross amount, withholding, and net amount of distribution will confirm completion of the corrective action. In the event of returned checks, a schedule listing each participant, social security number, mailing address, gross amount, withholding, and net amount deposited with the FDIC will confirm completion of the corrective action. Expected completion date is 7/31/2001.

## **Additional Guidance Needed for Litigation Settlement Awards**

**Recommendation #6:** "Establish policies and procedures to specifically address the administration of litigation settlement awards including the oversight and monitoring of third-party contractors."

**Management Response:** We concur with the recommendation. The distribution of litigation settlement awards will be afforded the same monitoring and tracking safeguards as plan assets. Checks returned as undeliverable, if any, will be handled in accordance with the current procedures followed by DRR and DOF. Receivership Benefit Specialists will be required to complete training courses offered by the Acquisition Services Branch (ASB) for oversight managers and technical monitors. A memorandum advising staff of this policy will confirm completion of this corrective action. Expected completion date is 12/31/2000.

If you have any questions regarding the response, you may contact Ben Groner, Supervisory Terminations Specialist, Receivership Benefits, at 972.761.3167.

Cc: James Forrestal  
Giovanni Recchia  
William Ostermiller  
Alan Rouse  
Ben Groner  
Steven Hester  
Mike Lamb

**MANAGEMENT RESPONSES TO RECOMMENDATIONS**

The Inspector General Act of 1978, as amended, requires the OIG to report on the status of management decisions on its recommendations in its semiannual reports to the Congress. To consider the FDIC’s responses as management decisions in accordance with the act and related guidance, several conditions are necessary. First, the response must describe for each recommendation

- the specific corrective actions already taken, if applicable;
- corrective actions to be taken together with the expected completion dates for their implementation; and
- documentation that will confirm completion of corrective actions.

If any recommendation identifies specific monetary benefits, FDIC management must state the amount agreed or disagreed with and the reasons for any disagreement. In the case of questioned costs, the amount that the FDIC plans to disallow must be included in management’s response.

If management does not agree that it should implement a recommendation, it must describe why it does not consider the recommendation valid.

Second, the OIG must determine that management’s descriptions of (1) the course of action already taken or proposed and (2) the documentation confirming completion of corrective actions are responsive to its recommendations.

This table presents management’s responses on recommendations in our report and the status of management decisions. The OIG based the information for management decisions on management’s written response to our report.

<b>Rec. Number</b>	<b>Corrective Action: Taken or Planned / Status</b>	<b>Expected Completion Date</b>	<b>Documentation That Will Confirm Final Action</b>	<b>Monetary Benefits</b>	<b>Management Decision: Yes or No</b>
1	The Director, DOA, agreed with the recommendation and stated that DOA will disallow and pursue recovery of the questioned costs that the contractor cannot adequately support.	01/31/01	Decision memorandum or demand letter.	\$2,825 disallowed costs	Yes
2	The Director, DOA, agreed with the recommendation and stated that DOA will disallow and pursue recovery of the questioned costs that the contractor cannot adequately support.	01/31/01	Decision memorandum or demand letter.	\$2,000 disallowed costs	Yes
3	The Director, DOA, agreed with the recommendation and stated that DOA will disallow and pursue recovery of the questioned costs that the contractor cannot adequately support.	01/31/01	Decision memorandum or demand letter.	\$300,186 disallowed costs	Yes

<b>Rec. Number</b>	<b>Corrective Action: Taken or Planned / Status</b>	<b>Expected Completion Date</b>	<b>Documentation That Will Confirm Final Action</b>	<b>Monetary Benefits</b>	<b>Management Decision: Yes or No</b>
4	The Director, DOA, agreed with the recommendation. The Director stated that DOA will disallow and pursue recovery of the unsupported questioned costs that it cannot determine (a) what the charges were for and (b) whether the charges were fair and reasonable for the service provided.	01/31/01	Decision memorandum or demand letter.	\$1,419,202 disallowed costs	Yes
5	The Deputy Director, Dallas Field Operations Branch, DRR, agreed with the recommendation. The Deputy Director stated that DRR would locate the participants who did not receive their litigation settlement payments and issue them checks for their share of the settlement awards.	07/31/01	Participant distribution list.	\$-0-	Yes
6	The Deputy Director, Dallas Field Operations Branch, DRR, agreed with the recommendation. The Deputy Director stated that DRR would afford the distribution of litigation settlement awards the same monitoring and tracking safeguards as pension plan assets.	12/31/00	Policy memorandum.	\$-0-	Yes