

Office of Inspector General



May 31, 2002
Audit Report No. 02-019

Audit of the Professional Liability Claims Process



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DATE: May 31, 2002

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SUBJECT: Report Entitled *Audit of the Professional Liability Claims Process* (Audit Report Number 02-019)

The Office of Inspector General (OIG) has completed an audit of the Federal Deposit Insurance Corporation's (FDIC) professional liability claims¹ process. These professional liability claims are claims under civil law for losses caused by the wrongful conduct of people or organizations that have provided professional services to a failed insured depository institution. The FDIC Division of Resolutions and Receiverships works closely with the FDIC Legal Division to identify, investigate, and pursue these claims. As of January 31, 2002, the FDIC was tracking potential or open claims related to 79 failed institutions (33 institutions with pending investigations or lawsuits and 46 failed institutions with outstanding collections of a settlement or judgment). For 2001, collections to the FDIC from professional liability claims for 41 failed institutions totaled \$128.6 million. The audit objective was to determine whether professional liability claims were identified, developed, pursued, and tracked in compliance with FDIC policies and procedures. Appendix I of this report discusses our objective, scope, and methodology in more detail.

BACKGROUND

When an institution fails, the FDIC is appointed as receiver² to liquidate the institution's assets and liabilities in the most expedient and cost-effective manner possible.³ The FDIC's

¹ There are 11 possible professional liability claims categories for each failed institution. These are (1) director and officer, (2) fidelity bond, (3) accountant, (4) attorney, (5) appraiser, (6) security brokers, (7) commodities brokers, (8) borrower fraud, (9) director and officer insurance, (10) issuer, and (11) other. (See Appendix V for definitions of each type of claim.)

² As receiver, the FDIC may collect all obligations and money due to the institution and preserve and liquidate its assets. The FDIC can also be appointed as a conservator, operating the institution for a period of time in order to return the institution to a sound and solvent operation.

³ If there is any excess cash generated from the sale of assets less disposition costs and reserves met (cash it must hold to meet the obligations of the receivership), then a dividend may be declared. The priority of dividend distribution is as follows: administrative expenses of the receiver, any deposit liability of the institution, any other general or senior liability of the institution, any subordinated obligations, and any obligations to the shareholders.

roles and responsibilities when serving as a receiver are defined by specific statutory provisions contained in the Federal Deposit Insurance Act (FDI Act) of 1950 as codified in 12 U.S.C. 1821 (d) "powers and duties of the Corporation as conservator or receiver." In addition, the FDIC has an important role in recovering losses from these failures that may have arisen from a breach of professional fiduciary responsibilities. The FDIC, as receiver, acquires legal rights, titles, and privileges that are generally known as professional liability claims. Professional liability claims are addressed in 12 U.S.C. 1821 sections (k) "liability of directors and officers" and (l) "damages." Excerpts of pertinent federal laws are contained in Appendix III.

The FDIC's objective is to discharge statutory duties and maximize recoveries through the pursuit of claims against those whom the FDIC believes contributed to the failure of the respective institution. The FDIC pursues the institution's legal causes of action in order to collect on these claims. Such pursuit often takes the form of lawsuits against professionals for losses resulting from their breach of duty to the failed institution. These legal causes of action include bond, directors' and officers' liability, and professional malpractice claims against insurance carriers and/or other professionals whose actions or inaction caused damage or losses to the institution. These claims are typically based on the application of civil law.⁴ Professional liability claims are treated as assets of the receivership. These claims can be quite complex and contentious, often requiring many years and substantial investments in investigation and litigation before actual recovery is realized in any particular case.

According to the FDIC's General Counsel, no claim is pursued unless it satisfies both components of a two-part test. First, the claim must be sound on the merits. Second, any necessary litigation must likely be cost-effective, considering any liability insurance coverage and the personal assets held by the individuals believed to be responsible for the wrongdoing. Besides the actual cash collections, the professional liability program seeks to have a positive impact on the overall awareness of professional standards.

The overall objectives of the FDIC's professional liability claims process are first to investigate all potential claims resulting from each receivership and then to recover losses based on meritorious claims in a cost-effective manner. The principal participants, with a shared task and responsibility, are the Investigations Unit (IU) of DRR's Receivership Operations Branch and the Legal Division's Professional Liability Unit (PLU).⁵ The work of the DRR IU group is heavily focused on the events and actions associated with pre-closing, closing, and post-closing activities up to the decision to pursue or close out a claim. The PLU attorneys are primarily focused on the litigation phase and, if necessary, the subsequent oversight of outside fee counsels. Prior to and at each bank closing, DRR IU investigators and PLU attorneys, using checklists, identify and collect all available records associated with potential claims. Both entities must justify, document, and approve any decision to close out or pursue a claim. If both DRR IU and the PLU attorneys agree that a claim should be pursued, the PLU attorney will prepare an Authority to Sue (ATS) document. The FDIC Board of Directors must approve the ATS document before the claim can be pursued. This ATS document contains an estimate of the expected recovery amount, the estimated cost of recovery efforts using either in-house

⁴ Most professional liability claims have a 3-year statute of limitations. At a minimum, Section 1821(d)(14) of FIRREA gives the FDIC 6 years from appointment of a receiver or conservator to bring a professional liability claim based on a contract and 3 years to bring a tort (wrongful act or damage done willfully or by negligence) claim.

⁵ Effective May 17, 2002, the PLU was renamed the Receivership Litigation and Policy Section.

or outside fee counsel and, if appropriate, a discussion of non-monetary benefits. A flow chart of the investigation process for professional liability claims is included as Appendix IV.

If outside counsel is retained, PLU uses a set solicitation process, Legal Services Agreements, and an approved budget process. PLU also tracks outside fee counsel expenditures using the Legal Payments System. Once a settlement occurs, payments or collections are remitted to the FDIC either via a direct wire transfer, mailed to a designated lock box, or mailed directly to pertinent PLU attorneys.

IU investigators and PLU attorneys work closely to resolve claims. To assist and facilitate the timely disposition of claims, DRR and the Legal Division have a shared annual strategic and performance planning goal that calls for completion of 80 percent of all investigations (completion signifies a decision to pursue or close a matter) within 18 months from the date of an institution failure.

DRR's Receivership Operations Branch completed a substantive reorganization in 2000 that both reduced staff and restructured the work so staff works on both criminal and civil investigative cases. As of April 30, 2002, the DRR IU had 33 staff persons assigned to investigations, 26 in Dallas and 7 in Washington. Of the 26 staff in Dallas, 3 are supervisors, 14 are investigators, and 9 are technicians. All of the Dallas IU staff work on both criminal restitutions and professional liability claims. Of the DRR IU Washington staff, two work on both criminal and civil matters, two are dedicated to criminal restitutions and three work only professional liability claims. The Legal Division's most recent reorganization effort began in March 2002. As of April 30, 2002, PLU had two senior counsel, eight attorneys, seven paralegals, and eight technical support and/or secretarial staff. PLU staff work only on professional liability claims and most staff are located in Washington, D.C.

DRR uses and maintains the Division of Liquidation Locating and Reporting System (DOLLARS). DOLLARS was designed to track the status and progress of criminal restitution orders and professional liability claims. Concurrently, the Legal Division uses the PLS Case Tracking System (PLSCTS) to track the development and status of each professional liability service matter.

RESULTS OF AUDIT

The DRR's IU and the Legal Division's PLU were complying with FDIC policies and procedures for identifying, developing, pursuing, and tracking professional liability claims. We reviewed 33 potential claims (11 possible civil claim categories for 3 sampled failed institutions). Of the 33, the Corporation had closed 26 and was pursuing 7. The IU and PLU identified, investigated, and closed the 26 claims in accordance with established policies and procedures. Likewise, the 7 claims were being processed, disposed of, or litigated in accordance with established policies and procedures. Further, both DRR and PLU officials properly recorded the information accurately and timely into DOLLARS and PLSCTS.

The FDIC investigates potential professional liability claim areas in all failed institutions. To expedite net returns to the receivership, DRR and PLU have as a shared corporate strategic goal making a decision to close or pursue all professional liability claim areas within 18 months after the failure. This goal also seeks to ensure that the Corporation prioritizes the

allocation and use of its resources and professional services in a concerted effort towards resolving a claim within the 3-year statute of limitations. PLU reported that the 18-month goal was achieved for nine failed institutions during 2001. Our sample, containing two institutions that closed in 1999 and 2000, had claims that did not meet the 18-month criteria because of extenuating circumstances. We discussed the circumstances with responsible management officials and were satisfied that the claims were being processed effectively given the circumstances.

CORPORATION COMMENTS AND OIG EVALUATION

On May 22, 2002, the OIG provided the Director of DRR and the Legal Division's General Counsel with the draft report for comment. Corporate officials did not provide any formal comments. However, the Legal Division provided informal oral comments and comments by way of e-mail addressing the clarification of certain legal matters. These comments were considered and, where appropriate, changes were made to the report.

One matter raised by the Legal Division merits discussion. This matter concerns the shared corporate strategic goal of making a decision to close or pursue all professional liability claim areas within 18 months after the failure. The goal is somewhat ambiguous. The OIG believes it is institution-specific. The Legal Division's position as expressed in the e-mail is that "the 18 month goal is to reach a decision to sue with respect to, or to close out, PL investigations in 80% (not "all") of all investigations open in PLU. In addition, the 80% goal is program-wide, not institution specific; that is, the goal is not to close 80% of investigations for each failed institution individually but to close 80% of investigations overall. For example, PLU may succeed in closing out only 60% of the investigations for institution A but 100% of the investigations for institution B within 18 months, but these two "balance out" to 80% when taken together - and the goal is met in this example." The OIG agrees that from a program-wide perspective, the PLU did achieve its 80 percent goal for the nine failed institutions in 2001.

OBJECTIVE, SCOPE, AND METHODOLOGY

The audit objective was to determine whether professional liability claims were identified, developed, pursued, and tracked in compliance with FDIC policies and procedures. The audit scope included potential professional liability claims resulting from the 19 institutions that failed during 1999, 2000, and 2001. The FDIC Division of Resolutions and Receiverships (DRR) and the Legal Division jointly identify, develop, pursue, and track 11 civil claim categories for a receivership. The civil claims are collectively referred to as professional liability claims. The team judgmentally sampled 3 receiverships--First National Bank of Keystone, Keystone, West Virginia; Town and Country Bank of Almelund, Almelund, Minnesota; and the Malta National Bank, Malta, Ohio--to determine risk in relation to the audit objective. Our judgmental sample considered the size of institution, type of claims, collections or lack of collections, and geographic dispersion. We performed our work from December 2001 through March 2002 in accordance with generally accepted government auditing standards.

Methodology

The professional liability claims process has evolved over time. It is complex, involving a multitude of participants, including DRR's Receivership Operations Branch, the Legal Division's Professional Liability Unit, the Division of Finance's (DOF) Cashier's Office, and the Division of Administration's (DOA) Facility Services mailroom operations. The FDIC's roles, responsibilities, and activities associated with developing, pursuing, and tracking professional liability claims are outlined in pertinent governing legislation and the FDIC's policies and procedures. To gain an understanding of these policies, procedures, and legislation, our audit methodology included reviewing the:

- Federal Deposit Insurance Act of 1950, dated September 9, 1950, as amended;
- Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), PL. 101-703 (1989);
- DRR *Investigations Procedures Manual*;
- The Legal Division's PLU Procedures Manual, 1998 and 2001 revisions;
- FDIC Circular 7000.1 *DOS/DRR Information Sharing for Failing Institutions*, December 1999;
- DRR Bank Closing Manual;
- FDIC Statement of Policy on *Statement Concerning the Responsibilities of Bank Directors and Officers*, April 30, 1997;
- FDIC Circular 4200.2 *Procedures for Processing Cash, Check and Wire Transfer Remittances Due the FDIC in its Receivership Capacity*, August 11, 2000;
- Dallas Regional Office/Facility Services' Standard Operating Procedures on Mailroom Operations, revised date August 31, 1999, and FDIC's *New Facility for Headquarters Mail Processing, Security Update*, effective October 29, 2001;
- Memorandum of Understanding, dated February 7, 1997, between DOF/National Finance Center and the Legal Division/Professional Liability Section, subject: *Procedures for Collections of Bond and Professional Liability Claims*;

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- DOF Memorandum on *Procedures for Collections of Bond and Professional Liability Claims*, February 17, 1997; and
- Legal Services Agreements.

Our methodology also included interviewing:

- Management and staff from DRR's Field Operations Branch office in Dallas, Texas, and DRR's Receivership Operations Branch in Washington, D.C.;
- Attorneys with the Legal Division's Professional Liability Unit in Dallas, Texas, and Washington, D.C.;
- Officials in the Division of Finance's Field Finance Center in Dallas, Texas; and
- Officials from the Division of Administration's Facilities Management Section for mail room operations and activities in Dallas, Texas, and Washington, D.C.

We reviewed the detailed procedures in the *Investigation Procedures Manual* as well as the *Bank Closing Manual* for the identification and development of potential claims. We developed flow charts and checklists of the various steps and phases of claims development. We identified the critical internal control points as those generally associated with required documents (for example close-out memorandums or ATS documents) and the required approval levels. We then reviewed the 33 case files and interviewed respective investigators and attorneys about their collection efforts for these three failed banks. In the process, we completed the checklists on each failed bank, identifying the key control points and testing for compliance with required procedures. We also attended the annual review committee meeting wherein DRR investigation officials and PLU attorneys discussed how to resolve and overcome problems on active civil claims, including those in litigation. We looked at PLU reports (monthly, quarterly, end-of-year) and reviewed the corresponding information reported in DOLLARS and PLSCTS.

The work of the DRR IU is heavily focused on what we refer to as the events and actions associated with pre-closing, closing, and post-closing activities up to the decision to pursue or close out a claim (See flow chart in Appendix IV). The professional liability attorneys are primarily focused on the litigation phase and, if necessary, the subsequent oversight of outside counsel.

To determine whether DRR's IU and/or the Legal Division's PLU had any performance measures that we should consider in this audit, we reviewed respective 2001 and 2002 Strategic and Annual Performance Plans. We identified one shared strategic goal related to collection efforts for civil claims. Investigations are conducted into potential liability claim areas in all failed institutions. The target is to make a decision to close or pursue all professional liability claim areas within 18 months after the failure. PLU reported that the 18-month goal was achieved for nine failed institutions during 2001. Our sample, containing two institutions that closed in 1999 and 2000, had claims that did not meet this criteria because of extenuating circumstances. We discussed the circumstances with responsible management and determined that the claims were being processed effectively given the circumstances.

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We reviewed the FDIC's policies and procedures for the receipt and handling of professional liability claim collections whether by wire transfer, check, and/or the use of a lock box. We identified, flowcharted, and documented the handling and recording of "collections".

Additionally, we developed and used a structured checklist (based on corporate procedures) for interviews with both PLU attorneys and facilities services officials regarding internal controls and actual collection practices. We reviewed the FDIC's Office of Internal Control Management internal control review reports on the Legal Division's monetary receipt process. We did not sample or test the actual receipt of collections because the average monthly volume of checks was minimal. Consequently, we make no conclusion on the actual operation of the collections process and controls.

To assess whether DRR and the Legal Division were accurately reporting information concerning professional liability claims, we compared the information in the hard copy files for our sampled claims to that contained in DOLLARS and in PLSCTS. We conducted additional tests as described below in the section entitled Reliance on Computer-Processed Data.

Reliance on Computer-Processed Data

We identified four individual databases that contain information related specifically to professional liability claims.

DRR uses and maintains the Division of Liquidation Locating and Reporting System (DOLLARS). This application does not feed data to a major FDIC application through an automated interface and is not identified by DRR as being mission critical. DOLLARS is DRR's database for storing and tracking information on failed financial institutions. DOLLARS was designed to track the status and progress of professional liability claims and court-ordered restitutions.

PLU uses and provides information for the Legal Management Information System (LMIS). Staff attorneys are responsible for the accuracy and currency of the data in LMIS. LMIS is a multi-user application that the Legal Division uses to manage legal matter information and documents. A matter is added to LMIS when a member of the Legal Division engages in a legal analysis or performs a legal process that results in the production of a substantive work product, either written or oral.

The PLS Case Tracking System (PLSCTS) is used to track the development and status of each professional liability service matter. Staff attorneys are solely responsible for the accuracy and currency of information. Each matter in PLSCTS must have a corresponding matter in LMIS. PLS paralegals will add new matters and update existing matters in LMIS. However, they are dependent on the attorneys providing them with the necessary information.

The Legal Payment System (LPS) is a payment and tracking system for Outside Counsel invoices and budgets. It also allows the user to view legal matter data and Outside Counsel data. LPS interfaces with LMIS overnight to update legal matter information. The matter number in LPS is the same as the matter number in LMIS.

APPENDIX I

On this assignment, we focused primarily on DOLLARS and PLSCTS because these were the two systems that managers used extensively for tracking and reporting on professional liability claims. We obtained and reviewed DIRM's Information Security Section security reports such as sensitivity assessment questionnaires and individual security review reports. We obtained access to each of the database systems. Then, we downloaded system bank information and reports and tested information via file reviews and/or interviews with DRR investigative officials and PLU attorneys relative to respective failed banks. We verified the system's user access listings and authority levels. We assessed the reliability of these data by comparing information in the failed bank files with that recorded in the management information systems and later used by management in periodic reports. We also conducted tests of the data in conjunction with our samples of claims described above. As a result of the tests and assessments, we concluded that the computer-processed data were sufficiently reliable to be used in meeting the audit objectives.

SUMMARY OF PRIOR COVERAGE

We reviewed testimony by the U. S. General Accounting Office (GAO) that relates to professional liability claims collection efforts by the federal government. DRR Internal Review had not performed any reviews on professional liability claims. Conversely, the Legal Division's Internal Review group issued, and we reviewed, two visitation reports on the PLU activities. Also, the OIG issued an audit memorandum in 1998 to the FDIC's General Counsel on the processing of Legal Division remittances. This was followed by an OICM detailed review of the area.

1. *Bank and Thrift Failures: RTC Needs to Improve Planning for Professional Liability Staff Changes* (GAO/T-GGD-92-69, August 11, 1992). Testimony before the Committee on Banking, Housing, and Urban Affairs, United States Senate. GAO testified that both the Resolution Trust Corporation (RTC) and FDIC needed to improve their professional liability programs. GAO noted that staff shortages, inadequate asset tracing procedures, and weak oversight had limited these agencies' ability to pursue potential civil liability claims arising from insured bank and thrift failures.
2. DRR Internal Reviews (none)
3. OIG Audit Memorandum to FDIC's General Counsel on "*Processing Remittances*", dated December 9, 1998. The current professional liability remittance processing practices do not provide for functional separation of duties for the receipt of funds and do not provide for maximizing interest income.
4. Legal Division, Internal Review, Visitation Reports
 - (a) PLU Visitation Report, June 19, 1998, mentions unit strengths as knowledge and experience of attorneys, communication between staff, and usefulness of policies and procedures. Unit weaknesses were a lack of defined roles, lack of sufficient detail in LMIS, lack of utilization of technicians and secretaries, and lack of consistency in contents of files.
 - (b) PLU Visitation Report, May 24, 2000, mentions recommendations wherein file labels should include LMIS number, PLU should put matters in automated records management system, the Legal Division should list judgements and settlements that are being timely paid as inactive, and passwords should be protected. Primary problems identified were a lack of coordination between the Legal Division and IU investigators and various problems with data and utilization of LMIS.
5. OICM Internal Control Review(s) on: "Follow-up on Matters for Further Consideration-Receipts", March 25, 1999, and OICM's "Legal Division Review of Monetary Receipts", August 30, 1999. In response to concerns raised by the OIG over legal remittances processing, OICM initiated a review to determine the extent to which remittances were identified, processed and accounted for in a timely manner. OICM's

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analysis of the process disclosed low level internal control risks related to the custody, segregation, and posting of legal remittances. Nevertheless, it did identify the need to revise or implement new procedures to address weaknesses in the current remittance process. Among other things, it recommended that the Legal Division, together with the Division of Finance (DOF) establish a PLU lock-box or mail box, revise current policies and procedures to enhance controls over the process, ensure the proper application of collections to appropriate accounts, and perform periodic reconciliations with DOF to verify the final disposition of settlements. We noted that both DOF and PLU had taken corrective action. According to an OICM official, OICM had not revisited the area but planned to do so in the future.

PERTINENT FEDERAL LAWS

Federal Deposit Insurance Act of 1950, as amended October 31, 1994

Pertinent sections include:

12 U.S.C. 1821 (d) "Powers and duties of Corporation as conservator or receiver" under (2) General powers, (A) Successor to institution, states: "The Corporation shall, as conservator or receiver, and by operation of law, succeed to (i) all rights, titles, powers and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer or director of such institution with respect to the institution and the assets of the institution; and (ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution."

12 U.S.C. 1821 (d) (18) addresses asset freezes. Section (18) "Attachment of assets and other injunction relief" states: " Subject of paragraph (19), any court of competent jurisdiction may, at the request of- (A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 1821, 1822, or 1823 of this title); or (B) any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets."

12 U.S.C. 1821 (k) "Liability of directors and officers" states: " A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation- (1) acting as conservator or receiver of such institution, (2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or (3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 13, for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law."

12 U.S.C. 1821 (l) "Damages" states: " In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest."

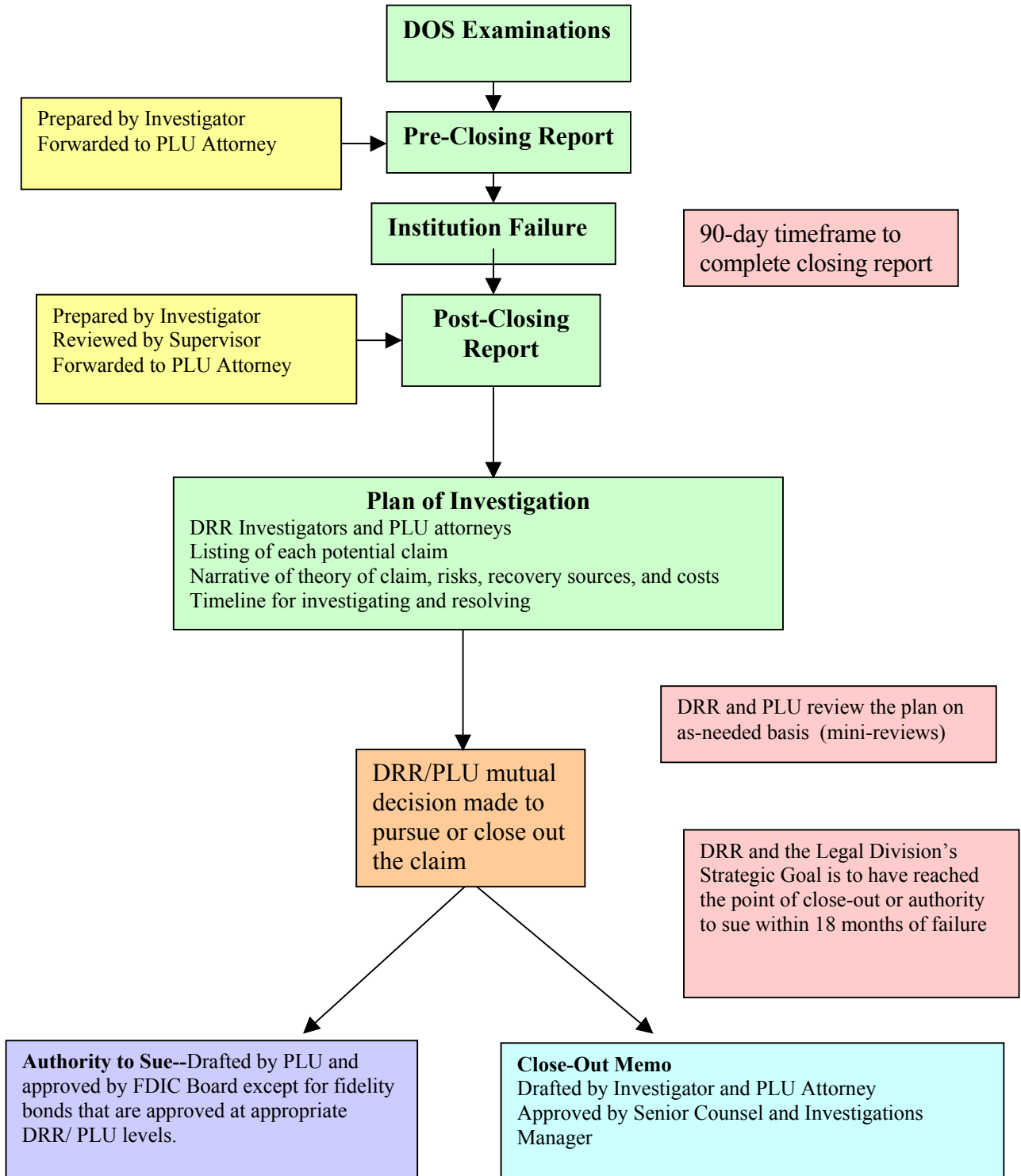
APPENDIX III

Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), P.L.101-73 (1989)

FIRREA provides that the statute of limitations for tort claims brought by the FDIC is either 3 years or the period applicable under state law, whichever is longer. The courts have added the further requirement that the claim must not be barred under state law at the time the FDIC is appointed as receiver.

This is codified in 12 U.S.C. 1821 (d) (14) Statute of limitations for actions brought by conservator or receiver (A) In general: "Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be-- (i) in the case of any contract claim, the longer of- (I) the 6-year period beginning on the date the claim accrues; or (II) the period applicable under State law; and (ii) in the case of any tort claim (other than a claim which is subject to section 1441a (b) (14) of this title), the longer of-(I) the 3-year period beginning on the date the claim accrues; or (II) the period applicable under State law."

**OVERVIEW OF INVESTIGATION PROCESS
FOR PROFESSIONAL LIABILITY CLAIMS**



GLOSSARY OF TERMS

1. **Director and Officer** -- Investigation of whether former directors and officers of an institution may have caused actionable losses to the institution.
2. **Fidelity Bond** -- Investigation of acts that (1) may have been discovered during the coverage of any fidelity bond purchased by the institution and (2) may be covered by the terms of the fidelity bond.
3. **Accountant** -- Investigation of accounting firms and accountants whose work for the failed institution or for others may have caused actionable losses to the institution.
4. **Attorney** -- Investigation of attorneys and law firms whose work, either for the institution or for others, may have caused actionable losses to the institution.
5. **Appraiser** -- Investigation of appraisal firms and individual appraisers whose work for the institution or for others may have caused actionable losses to the institution.
6. **Security Brokers** -- Investigation of entities or individuals that performed service for the institution regarding the purchase or sale of securities that may have caused actionable losses to the institution.
7. **Commodities Brokers** -- Investigation of entities or individuals that performed service for the institution regarding the purchase or sale of commodities that may have caused actionable losses to the institution.
8. **Borrower Fraud** -- Investigation of persons or entities who gave false or misleading information to an institution in order to induce the institution to loan money, where that loan may have caused actionable losses to the institution.
9. **Director and Officer Insurance** -- Investigation of whether former directors and officers had insurance coverage and whether it covers any acts investigated in 1. above. Resulting litigation is usually a declaratory judgement action.
10. **Issuer** -- Investigation of whether the issuer of any insurance policies may have caused actionable losses to the institution.
11. **Other** -- Investigation of whether other professionals or control persons of an institution may have caused actionable losses to the institution.

Source: The Legal Division's Professional Liability Unit