



LENDER LIABILITY SUITS CAN BE COSTLY

Two entrepreneurs decided to start a business marketing products that had become very popular with teenagers. One of the entrepreneurs was a well-known and popular local retired sports figure. They formed a company to market these products through major retailers through the United States. They applied for and received a commitment from a bank for a \$500,000 and \$1,000,000 lines of credit. The SBA was to guarantee a portion of the \$500,000 line.

The bank that approved the line of credit merged with another bank. When the SBA approval came through, there was no provision for other borrowings. Furthermore, the bank that was to participate in the line of credit withdrew, apparently, because of the questions as to the SBA provisions. The bank agreed only to fund \$250,000 of the \$500,000 line of credit while seeking to resolve the issues with the SBA and the participating bank. The clothing company allegedly was forced to cancel orders in excess of a half-million dollars due to the lack of funding.

The bank advanced the remaining \$250,000 while continuing to attempt to solve the problems with the SBA and the participating bank, but refused to fund any of the \$1,000,000 line of credit. Bank officers allegedly assured the borrowers that additional funds would be available to solve or alleviate the problems caused by the delays in funding. Based on these assurances, the borrowers obtained substantial orders from several major nation-wide retailers.

After approximately eight months, the bank finally managed to get the matter resolved with the SBA. However, by this time the borrowers had lost their contracts with the retailers and run out of cash. The bank refused to lend the additional funds that the bank officers had allegedly agreed to loan.

The borrowers sued the bank and three of its officers with allegations including breach of contract, misrepresentation, and negligence. The succeeding bank had directors' and officer's liability insurance coverage with a lender liability endorsement with BancInsure. BancInsure reimbursed the bank over \$400,000 in defense costs and paid \$2,000,000 to settle the matter.

The preceding is an excellent example of how a relatively simple, straight forward lending arrangement became a complicated nightmare and demonstrates the need for protection for the directors and officers and the bank provided by a directors' and officers' liability policy with a lender liability endorsement.

Please note that coverage for similar claims would depend upon the particular facts of that claim and the applicable coverage in effect.

BancInsure, Inc.'s Directors' and Officers' Liability Insurance Policy offers protection for a broad range of claims made against directors and officers. BancInsure, Inc. also offers entity coverage to the bank for certain claims in the form of endorsements to the Directors' and Officers' Policy covering bankers' errors and omissions, professional services, employment practices liability, lender liability, trust department errors and omissions; and mutual funds, insurance and annuity sales. If you would like to learn more about BancInsure's Directors' and Officer's Liability Insurance Policy and its entity endorsements, please contact your state BancInsure marketing representative.