



TERMINATION OF SENIOR OR EXECUTIVE OFFICERS

Sometimes it becomes necessary for a bank to terminate an executive officer. This can be a difficult time for everyone including the officer involved, the other directors and officers, and the bank's customers; however, it also can be a very expensive. Several years ago BancInsure handled a claim that illustrates this point very well.

A bank of approximately \$50 million in assets located in a town of approximately 5,000 population terminated its president and chief executive officer. The reason for the termination was poor performance. It appears that the performance problems were due to the distractions of a divorce, a fierce child custody dispute and his filing of bankruptcy. The former president filed a lawsuit against the bank and its board of directors alleging wrongful termination, termination in violation of the automatic stay in bankruptcy and lack of proper notice of the board of directors' meeting during which he was terminated.

Typical of wrongful termination cases, expensive litigation followed in the form of extensive legal filings, interrogatories and document production requests, and depositions of numerous directors, officers and employees. As a result of these, the bank and BancInsure became convinced that the bank would have a difficult time persuading a jury that the bank did not wrongfully terminate its former president. Legal analysis indicated that some issues may be won on appeal, but even these were far from being certainties. As a result, a negotiated settlement was reached. BancInsure contributed over \$400,000 to the settlement and paid over \$300,000 in defense costs in excess of the Bank's retention (deductible).

Many small banks lack sophistication in the area of human relations due to their small staffs and limited resources to commit to human resource issues. Even when small banks consult attorneys, often times they consult with the usual bank counsel whose forte may be commercial banking rather than employment law.

The need for competent internal and/or external expertise relative to handling these situations should be obvious. A bank should conduct a thorough investigation and seek expert advice before deciding to terminate. A thorough investigation will aid in eliminating surprises during the discovery phase of litigation. Sound advice, practical as well as legal, hopefully will give the guidance needed to avoid claims of wrongful termination. However, a bank may do everything exactly right and still be the victim of wrongful termination claims. Such claims, even though they are without merit, still can be very expensive to defend when former officers aggressively pursue them.

BancInsure offers coverage for certain employment-related claims including wrongful termination for directors and officers through its basic Directors and Officers Liability Insurance Policy. Entity coverage for the bank itself is available through the Employment Practices Liability Endorsement. The coverage provided is subject to the terms, conditions and limitations of the Policy and Endorsement.

BancInsure has become a leading writer of Directors' and Officers' Liability Insurance Policies in the United States by providing a sound stable market, excellent service and fair claims treatment. If you would like to learn more about BancInsure's Directors' and Officers' Liability Insurance Policies, Financial Institution Bonds or other coverages, please contact your BancInsure marketing representative.