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GLENDALE FEDERAL BANK, FSB,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 90-772 C

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ORDER

Pursuant to the discussions with counsel in the past several months during the trial of this case, the court has reviewed both parties' submissions of proposed findings of fact and conclusions of law. It is the court's hope that this process will focus the post-trial briefs in the most efficient manner possible. Based upon those submissions and the court's own analysis, the court has reformulated the issues to be decided into a set of relatively narrow and focused questions. Each party may address these questions in its brief and reply. The questions should be answered in not more than 150 words with backup support involving no more than four hypertext cites to the transcript, the exhibits, the stipulations, or the law (case or statute). While limits on the amount of a hypertext backup cite are hard to set, the parties are cautioned to include only that material which directly supports the point being made. Since there are a large number of questions, excessive cite pages will only obscure the point the party is attempting to make. The reply brief will be allowed two hypertext cites and 100 words per question. Each side shall have until May 19, 1998 to make final suggestions to the questions. At the conference on May 8, 1998 a new briefing schedule will be set to take into account a longer, and probably more realistic time frame. The former briefing schedule is vacated.

GLENDALE POST-TRIAL QUESTIONS

1. What was the economic and financial condition of plaintiff at the time of merger?

2. What was the significance of this condition for purposes of the contract consideration?

3. Would Broward have been liquidated?

4. If it would probably not have been liquidated, does this have any legal significance?

5. What benefit did plaintiff confer on the government by purchasing Broward?

6. What was the dollar value of that benefit?

7. What was the legal cause of plaintiff falling out of capital compliance in 1992?

8. Would it have fallen out of capital compliance absent the breach?

9. Absent the breach, would such falling out of capital compliance have damaged plaintiff and in what amount?

10. What was the value of the leverage that plaintiff had as a result of the contract supervisory goodwill?

11. Could plaintiff have raised additional capital after the breach, in sufficient amount, to compensate for the breach? In 1989? 1990? 1991? 1992?

12. If plaintiff could have raised such capital, what would the total cost have been?

13. What was the actual cost of the capital raised in 1993?

14. Could plaintiff have found profitable opportunities to employ the additional capital after the breach and prior to 1993?

15. What was the effect of the California recession on plaintiff in the early 1990s?

16. Was plaintiff taking steps to minimize any negative effect of the recession prior to the breach?

17. What effect did the breach have on these efforts of plaintiff?

18. What evidence is there that plaintiff would have taken steps, absent the breach, to minimize the effects of the recession?

19. What would have been the result of those steps given the standard of a reasonable and competent bank management?

20. Was the plaintiff's management a reasonable and competent bank management?

21. Was the California recession of the early 1990s legally foreseeable when the contract was entered into?

22. Was the recession predictable when the breach occurred?

23. What is the legal significance of the Trafton, Fink and Snyder affidavits and the Statement of Remedy Claims?

24. What is the factual significance?

25. What weight should the court give Mr. Trafton's statement in his affidavit attributing the bank's restructuring of its balance sheet to the loss of the supervisory goodwill as regulatory capital?

26. What facts or actions and legal standards under 28 U.S.C. § 2514 require the forfeiture of plaintiff's claims?

27. Did the breach cause plaintiff to shed much of its high risk portfolio?

28. What facts support or contradict the level of certainty required for the past lost profits claims?

29. What facts support or contradict the level of certainty required for the future lost profits claims?

30. What facts support or contradict the claim that the purchased assets portfolio of Dr. Baxter was a conservative estimate of what plaintiff would have made as a return on the foregone assets?

31. What facts support or contradict the findings that plaintiff would have, in the non-breach world, been able to maintain the foregone assets at their pre-breach level and earn a 1.1% rate of return on them over the life of the contract?

32. What facts support or contradict the findings that plaintiff's interest rate risk would or could have been that implied in Dr. Baxter's model?

33. What facts support or contradict defendant's claim that Mr. Hunt's failure to account for the costs of natural hedging is fatal to the reliability of the Price Waterhouse study?

34. Do the facts support or contradict Professor Fischel's claim that a consistent 1.1% return over the life of the contract (40 years) would have been impossible?

35. What assumptions about the post-FIRREA competitive environment are supported by the record and legally relevant?

36. Did plaintiff underestimate the severity of the California recission?

37. Did the phase-out of supervisory goodwill cause plaintiff to curtail its investment in high credit risk lines of business, to adopt a secondary market underwriting standard, and to increase its investment in purchased assets?

38. Are purchased assets funded by wholesale borrowing a conservative base for measuring lost

profits?

39. Does the fact that plaintiff did not raise more capital after 1993 support the inference that it lacked additional profitable opportunities?

40. Does the fact that it was not leveraged to the legal maximum support the inference that it lacked profitable opportunities?

41. Does Dr. Baxter's lost profits model require a foreknowledge of economic developments that plaintiff could not have had in the real world?

42. What is the net present value of Dr. Baxter's lost profits model?

43. If it is zero, why should plaintiff recover lost profits?

44. Is the Price Waterhouse study reliable?

45. Does leverage have market value?

46. Is the 18 basis point advantage over 11th District COFI, testified to by Dr. Baxter, supported by the record?

47. Is it probable that this advantage would have continued over the life of this contract if a breach had not occurred?

48. Did plaintiff's cost of funds receive a quantifiable benefit from the passage of the breaching provision of FIRREA?

49. But for the breach, would plaintiff have sold Broward?

50. But for the breach, would plaintiff have sold University?

51. Is there evidence that Broward was sold for non-breach-related reasons?

52. Is there evidence that University was sold for non-breach-related reasons?

53. What was the net cost or benefit from the sale of Broward?

54. What was the net cost or benefit from the sale of University?

55. Was plaintiff's increased cost of funds after the breach caused by general disintermediation or by breach-related factors?

56. Is Mr. Plantiko's analysis of plaintiff's restitution and reliance claims reliable to the degree required by law?

57. Does the general consolidation and rapid change in the thrift industry make any long-term claim of lost profits speculative?

58. Is there any basis for assuming that plaintiff would likely grow over the next 25 years by 3% per year?

59. Did the government regard the merger of Glendale and Broward as a permanent solution to the problem posed by Broward?

60. What did plaintiff pay for Broward over the course of the contract?

61. What was the purpose of the government's contract with plaintiff?

62. Was part of that purpose to protect plaintiff's viability or solvency?

63. Was it foreseeable at the time of contracting that plaintiff would leverage its regulatory capital in order to grow and increase earnings to replace the supervisory goodwill as it amortized?

64. Was it foreseeable at the time of contracting that if the government breached the regulatory capital portion of the contract that plaintiff would likely be forced to shrink and loose profits or suffer losses?

65. Did the government receive a benefit from plaintiff in that it avoided spending money from the FSLIC insurance fund to liquidate Broward?

66. Does the interest earned on this saved amount constitute a real benefit to the government?

67. Do the increased deposit insurance premiums and OTS assessments of $14.4 million and $4.7 million, respectively, constitute benefits that the government received from the contract?

68. Does the $18.24 million that plaintiff paid when interest rates fell constitute benefits that the government received from the contract?

69. Did plaintiff perform well between the merger and the breach?

70. But for the breach would plaintiff's asset size remained constant through mid-1993?

71. What was the intended function of regulatory capital under the contract?

72. Absent the breach would plaintiff have been able to acquire thrift deposits and assets at favorable rates in relation to their economic value from the RTC?

73. Absent the breach would plaintiff have likely suffered any adverse regulatory consequences as a result of its capital level?

74. Did plaintiff take reasonable steps to mitigate the consequences of the breach?

75. Was the government in a better position than plaintiff to mitigate the consequences of the breach?

76. Did the 1993 recapitalization fully restore plaintiff to the condition it would have been in absent the breach?

77. How would the foregone assets likely have been financed in the absence of the breach?

78. Were the post-1993 higher cost of funds of plaintiff attributable to the ongoing effects of the breach?

79. When discounting future damages to net present value, what discount rate or rates should be used?

80. Which damage theory is most appropriate, expectancy (lost profits), restitution or reliance? (*The 150 word limit does not apply to this question as it is really an important legal argument. Here the limit is 20 pages with no hypertext cites.*)

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LOREN A. SMITH

Chief Judge