IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	**Chapter 11**
	)	
CORUS BANKSHARES, INC.,	)	**Case No. 10-26881**
	)	
Debtor.	)	
	)	
	)	
CORUS BANKSHARES, INC.,	)	
	)	
Plaintiff,	)	**Honorable Pamela S. Hollis**
	)	
v.	)	**Adversary No. 10-_____**
	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
Defendant.	)	
	)	

COMPLAINT

Corus Bankshares, Inc. ("CBI"), the above-captioned debtor and debtor-in-possession and plaintiff in the above-captioned Adversary Proceeding, hereby alleges for its Complaint, upon knowledge of its own acts and upon information and belief as to all other matters, as follows:

Nature of Relief

1. This is an Adversary Proceeding brought pursuant to Federal Rules of Bankruptcy Procedure 7001(1) and (2) to recover money and property and to determine the validity, priority, or extent of an interest in property.

Parties

2. The Debtor is CBI, the plaintiff in this adversary proceeding. CBI is a holding company incorporated in Minnesota and headquartered at 10 South Riverside Plaza, Suite 1800,

Chicago, Illinois 60606. CBI is a former bank holding company and was the corporate parent of Corus Bank, N.A. ("Bank"). On June 15, 2010, CBI filed a voluntary petition for bankruptcy protection under Title 11 of the United States Code ("Bankruptcy Code") in the Bankruptcy Court for the Northern District of Illinois, Eastern Division.

3. Defendant Federal Deposit Insurance Corporation ("FDIC") is the federal agency that, among other things, administers the Federal Deposit Insurance Act and the federal bank deposit insurance system. On September 11, 2009, the FDIC was appointed receiver for Bank.

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 12 U.S.C. § 1821(d)(6); 28 U.S.C. § 1331; and 28 U.S.C. § 1334.

5. This Adversary Proceeding is a core proceeding pursuant to 28. U.S.C. § 157(b)(2).

6. Venue of this action in this District is proper pursuant to 12 U.S.C. § 1821(d)(6); 28 U.S.C. § 1391(e) and 28 U.S.C. § 1409.

7. This matter is an adversary proceeding governed by Part VII of the Federal Rules of Bankruptcy Procedure pursuant to Federal Rule of Bankruptcy Procedure 7001(1) and (2).

Background

8. As a bank holding company, CBI was subject to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Bank, like other depository institutions chartered as a national banking association, was subject to regulation, examination, and oversight by the Office of Comptroller of the Currency ("OCC") and the FDIC.

9. On September 11, 2009 ("Receivership Date"), the FDIC was appointed receiver for Bank. As such, pursuant to 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC succeeded to all of the

rights, title, and interests in and to the assets of Bank. Unless otherwise indicated, references to the FDIC on or after the Receivership Date shall be as receiver for Bank.

10. Pursuant to section 1821(d) of Title 12 of the United States Code, the FDIC set December 17, 2009 as the last day on which to file claims against the receivership. Accordingly, as further described below, CBI asserted claims against the receivership by timely filing a Proof of Claim. (*See* CBI Proof of Claim, attached as Attachment 1.)

11. On June 15, 2010 (the "Petition Date"), CBI filed its voluntary petition for bankruptcy protection under Chapter 11 of Title 11 of the United States Code in the Bankruptcy Court for the Northern District of Illinois, Eastern Division.

12. In a letter dated June 21, 2010, the FDIC, as receiver for Bank, denied CBI's Proof of Claim. (*See* FDIC June 21, 2010 letter, attached as Attachment 2.)

13. On June 28, 2010, CBI filed an adversary complaint against the FDIC in these bankruptcy proceedings seeking a declaratory judgment that certain tax refunds are the property of the bankruptcy estate and not the property of Bank. The FDIC sought and was granted an extension of time until August 16, 2010 to answer that adversary complaint.

14. On August 16, 2010, the FDIC filed a motion to dismiss the June 28, 2010 adversary complaint.

CBI's Proof of Claim

15. CBI prepared its Proof of Claim based on incomplete information because much of that information was seized by the FDIC and remains in the possession of the FDIC. Therefore, in its Proof of Claim, CBI reserved the right to amend and/or supplement its claims based on information of which CBI later become aware. CBI also reserved the right to assert any and all other claims of whatever kind or nature that it has, or that it may have against Bank

and/or the FDIC, including, but not limited to, interest, costs of collection, and other expenses incurred prior to payment in full of its claims.

16. CBI reserved its rights to assert administrative claims in the amounts of any and all costs and/or expenses paid by CBI or for which CBI may have become liable, that inured to the benefit of Bank after the commencement of the receivership. CBI agreed to provide documentation with respect to any and all administrative claims when such documents become available.

17. In addition, CBI reserved all rights to assert any or all of the claims described herein and any additional claims against third parties other than Bank.

18. CBI specifically requested that it be contacted if the FDIC required any further information or documentation in order to process or determine its claims. This would have provided CBI the opportunity to deliver additional information or documentation to the FDIC in connection with the FDIC's consideration of its claims.

19. The claims asserted are unsecured unless otherwise noted, and except to the extent that Bank and/or the FDIC asserts claims against CBI. To the extent the FDIC and/or Bank asserts claims against CBI, CBI's claims against the FDIC and Bank are secured by rights of setoff.

Claims Based on Future Causes of Action

20. CBI reserved its rights to assert any causes of action that have not yet arisen but may arise in the future.

Indemnification Claims

21. CBI asserts contingent, unliquidated claims for indemnification against Bank. For example, CBI's Amended and Restated Articles of Incorporation provide for the indemnification of CBI's directors and officers—including individuals who also were Bank directors, officers, or

employees. Accordingly, CBI asserts claims for reimbursement based on potential claims for indemnification by a former Bank director, officer, or employee.

22. Moreover, CBI had purchased and paid for directors' and officers' liability insurance coverage. To the extent such coverage benefits directors, officers, or employees of Bank, CBI asserts a claim against Bank for Bank's share of the cost of such insurance coverage.

Taxes And Tax Refunds

23. On account of the payment of certain federal, state, and/or local taxes, CBI is, or will be, entitled to tax refunds currently estimated to be approximately at least $258.3 million. These refunds are owned by CBI and are not assets of Bank. As such, CBI's entitlement to such refunds is based on an ownership interest rather than a claim against Bank. Alternatively, to the extent that CBI's asserted right to such refunds is determined to be a claim against Bank, then CBI reserves the right to assert, and in such case has so asserted, a claim against Bank on account of any such refunds.

24. To the extent that Bank has not reimbursed CBI for any federal, state, or local tax payments made on behalf of Bank, CBI reserves the right to add any such intercompany debt to its claims.

25. CBI reserves all rights to supplement and/or amend its claims to include amounts attributable to additional taxes arising from any audits by federal, state, and local taxing authorities.

Other Contingent, Unliquidated Claims

26. Out of an abundance of caution, CBI asserts contingent, unliquidated and presently unknown claims against Bank to the extent CBI is obligated or becomes obligated on account of or with respect to Bank, including but not limited to, on account of claims arising from certain loan participation agreements between Bank and CBI.

Asset Sales

27. As a result of its receivership, the FDIC, as receiver for Bank, may have taken possession and control of certain property (including, but not limited to, furniture, fixtures, equipment, and other tangible and intangible assets) owned by CBI. To date, the FDIC, as receiver, has neither accounted for nor compensated CBI for this property. The FDIC, as receiver, may have converted CBI's property by purporting to transfer an ownership interest in some or all of such property to MB Financial Bank, N.A. CBI thus asserts a claim against Bank for payment, in full, for such transferred property, to the extent applicable, in an amount to be determined.

28. CBI expressly reserves its rights to make additional claims against Bank for reasonable payment for the use value of such property, plus interest, for each month the transferred property is and has been used.

Employee Related Costs

29. Prior to the receivership, CBI was the sponsor of a defined benefit plan and other employee benefit programs, some of the beneficiaries of which were employees of Bank. CBI reserves its rights to assert claims for reimbursement of any and all such amounts to which CBI is entitled.

30. In addition, CBI also reserves all rights to assert claims against Bank for any and all other employee or employer related costs incurred by CBI on behalf of Bank and its employees, which may include, without limitation, payroll, severance and related taxes.

Interest

31. CBI asserts a claim against Bank for interest, at a reasonable market rate, on account of amounts owed to CBI pursuant to CBI's claims from the Receivership Date until receipt of payment.

Equity Interests

32. CBI owns 100% of the outstanding stock of Bank. Without waiving any other claim set forth herein or in its Proof of Claim, CBI makes a claim against Bank, pursuant to 12 U.S.C. § 1821(d)(11)(B), for the right to have distributed to it all funds, property, or interests remaining after all depositors, creditors, other claimants and administrative expenses of the receivership are paid, together with the required accounting report.

Fees, Costs And Expenses

33. As a direct result of the actions of the FDIC, CBI has been forced to incur substantial fees, costs, and expenses, including, without limitation, professional fees, costs, and expenses. These fees, costs, and expenses relate to the actions and proceedings that have been, or will be, commenced in connection with the FDIC receivership. As a result, CBI asserts claims against Bank for all such fees, costs, and expenses incurred on or after the commencement of the FDIC receivership forward, until such time as those fees, costs, and expenses are paid in full.

The FDIC's Denial of Proof of Claim

34. In a letter dated June 21, 2010, the FDIC provided CBI a one-page form notice that its claims had been disallowed for the following reason:

> "The claims presented are unproven to the satisfaction of the Receiver since they lack sufficient documentation or specificity, they fail to state claims against the receivership, or there is no legal basis for the claims. Equity claims are paid in accordance with 12 U.S.C. sec 1821(d)(11)."

Att. 2 at 1.

35. The June 21, 2010 notice provides no further detail, explanation, basis, or reason for the FDIC's denial of CBI's claims.

36. In its Proof of Claim, CBI specifically requested that "[i]f the FDIC requires any further information or documentation in order to process or determine the claims herein," the

FDIC should "contact CBI and inform CBI of what additional information or documentation is so required, so that CBI has the opportunity to provide additional information or documentation to the FDIC in connection with [the] FDIC's consideration of [its] Proof of Claim." Att. 1 at 6.

37. Despite this request, the FDIC never contacted CBI for further information or documentation.

38. Section 1821(d)(6) of Title 12 of the United States Code provides that a claimant may either (i) request an administrative review of the FDIC's disallowance of its claims or (ii) file suit in the district court for the district where Bank' principal place of business is located. The June 21, 2010 notice, however, provides no reference to any administrative review options, but rather instructs CBI that if it did not file a lawsuit within sixty days of the June 21, 2010 notice, the FDIC's disallowance would be final. Accordingly, CBI files this suit.

COUNT I

DETERMINATION OF PROOF OF CLAIM

39. CBI repeats and realleges the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

40. 12 U.S.C. §11(d)(2)(H) provides that the FDIC "shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this chapter."

41. 12 U.S.C. §11(d)(5)(B) provides that the FDIC must "allow any claim received on or before the date specified in the notice published under paragraph 3(B)(i) by the receiver from any claimant which is proven to the satisfaction of the receiver."

42. CBI seeks a determination pursuant to 12 U.S.C. § 1821(d)(6) on its Proof of Claims filed against the receivership.

43. Each claim in CBI's Proof of Claim is a valid and proven claim which should be allowed by law.

COUNT II

TAKING OF CBI'S PROPERTY WITHOUT JUST COMPENSATION

44. CBI repeats and realleges the allegations contained in the preceding paragraphs of the Complaint as if fully set forth herein.

45. The FDIC took possession and control of certain property belonging to CBI without any accounting or compensation for this property. This constitutes a taking of CBI's property without just compensation in violation of the Fifth Amendment to the United States Constitution.

COUNT III

CONVERSION OF CBI'S PROPERTY

46. CBI repeats and realleges the allegations contained in the preceding paragraphs of the Complaint as if fully set forth herein.

47. The FDIC's refusal to compensate CBI for property taken into the receivership that (a) belonged to CBI; (b) was improperly transferred to Bank; and/or is property that otherwise should be returned to CBI under applicable law, constitutes conversion of CBI's property, which is actionable under the Federal Torts Claims Act.

WHEREFORE, the Debtor respectfully requests relief as follows:

(i) An order that CBI's claims in its Proof of Claim are valid and proven against the receivership;

(ii) An order directing the FDIC to pay the claims identified herein and in CBI's Proof of Claim from the assets of the receivership pursuant to 12 U.S.C. § 1821(d)(11);

(iii) An order directing the FDIC to provide CBI with an accounting of the disposition of the assets of the receivership if any claim is not satisfied in full;

(iv) An order directing the FDIC to provide CBI with an accounting of all property transferred from CBI in connection with the receivership;

(v) A judgment against the FDIC for damages, in an amount to be determined, for CBI property taken by the FDIC without just compensation;

(vi) A judgment against the FDIC for damages, in an amount to be determined, equal to the value of CBI's property converted by the FDIC;

(vii) Award CBI costs and attorney fees as may be permitted by law; and

(viii) Award CBI such other relief as is just and proper under the circumstances.

Dated: August 16, 2010
Chicago, Illinois

Respectfully Submitted,

CORUS BANKSHARES, INC.

By: /s/ *Jeffrey W. Gettleman*

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