UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CORUS BANKSHARES, INC.,	)	Case No. 10-26881
	)	
Debtor.	)	Honorable Pamela S. Hollis
	)	
	)	
	)	
SALVATORE A. BARBATANO, not individually but as Litigation Trustee,	)	
	)	Adversary No. __________________
Plaintiff,	)	
	)	
v.	)	
	)	
ROBERT GLICKMAN and TIM TAYLOR,	)	
	)	
Defendant(s).	)	

COMPLAINT

SUMMARY OF THE ACTION

Salvatore A. Barbatano, not individually but solely as the Litigation Trustee (the "Trustee") of the Litigation Trust established pursuant to The Debtor's Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, brings this case to recover millions of dollars in damages that Corus Bankshares, Inc. suffered because defendants, Robert Glickman and Tim Taylor (collectively, "Defendants") failed to properly manage and supervise Corus Bankshares, Inc. and its commercial real estate lending program ("CRE Lending Program"). The Complaint alleges claims of breach of fiduciary duty, violations of the National Bank Act, and for money had and received.

1. On June 15, 2010, debtor, Corus Bankshares, Inc. ("Debtor," "Corus," or the "Company"), filed a voluntary petition for relief under chapter 11 of title 11 of the United States

Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Illinois.

2. On September 26, 2011, the Debtor filed Debtor’s Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (With Technical Modifications)(the “Plan”) with the Bankruptcy Court.

3. By order dated September 27, 2011, the Bankruptcy Court approved the Plan.

4. Defendants are former senior officers of the Debtor, who held their respective positions during the operative events. Each defendant, as officers (and Glickman also as a director) of the Debtor, owed fiduciary duties to Corus to act in good faith, with fair dealing and the due care that an ordinarily prudent individual in a similar position would exercise under similar circumstances. These duties include, but are not limited to, the obligation to act in the best interest of Corus and not themselves, to ensure that effective internal controls were in place over Corus’ loan processes, underwriting procedures, appraisal policy, risk management and accounting, and to present Corus’ board of directors (the “Board”) with accurate financial information so as to allow the Board to make informed decisions.

5. Defendants breached the aforementioned duties in multiple respects. By no later than mid 2007, each Defendant knew or should have known that its CRE Lending Program and its attendant portfolio of CRE loans were in serious financial trouble and threatening the Company’s viability. But instead of curtailing CRE lending, working out troubled loans, and preserving capital of Corus’ wholly owned subsidiary, Corus Bank, N.A. (the “Bank”), Defendants took acts to conceal the Bank’s mounting problems, while draining the Bank of precious capital. Defendants made and approved new CRE loans and renewed and made additional loan advances on existing troubled loans without the benefit of new appraisals, often

replenishing "interest reserves," which allowed borrowers to pay interest with more funds borrowed. As such, while the Bank recognized substantial amounts of non-cash income, the Bank's cash reserves were used to fund the payment of incentive awards, stock repurchases and dividends, while not appropriately setting aside reserves for loan losses, which further weakened the financial position of Corus, causing and then deepening its insolvency.

6. As a result of Defendants' derelictions, Corus suffered millions of dollars in damages as a result of its losses from its CRE Lending Program and at least $28 million in illegal dividends to the Bank's shareholders.

THE PARTIES

7. The Trustee is the trustee of the Litigation Trust established pursuant to the Plan. Pursuant to the Plan, the Litigation Trust was established to appoint a litigation trustee to pursue Former Officer Causes of Action (as defined in the Plan) and distribute the proceeds from any judgments, settlements or recoveries therefrom.

8. Corus, a Minnesota corporation, operated as the holding company for the Bank, its wholly owned subsidiary, and was headquartered in Chicago, Illinois. The Company primarily engaged in generating deposits and originating loans. Prior to its demise, the Bank's loan portfolio was primarily comprised of commercial real estate ("CRE") loans, including condominium construction and conversion loans, residential real estate loans and other commercial loans.

9. Defendant Robert J. Glickman ("Glickman") is an Illinois resident and was, at all relevant times, the President, CEO and a Director of Corus and the Bank. After the demise of the Bank and Corus was publicly clear and nearly complete, Glickman resigned as CEO, President and Director from Corus and as Chairman of the Board of the Bank on April 24, 2009.

At the time of his resignation, approximately 43% of Corus' outstanding shares were owned by Glickman and/or his immediate and extended family. Consequently, Glickman at all times had effective control over who sat on Corus' and the Bank's boards of directors. At all relevant times, Glickman controlled and had authority over all major decisions pertaining to the Bank and Corus.

10. Defendant Tim H. Taylor ("Taylor") is a resident of Texas and was, at all relevant times, the Executive Vice President and CFO of Corus, until his resignation on October 6, 2008. As CFO, Taylor was in charge of all financial affairs of the Bank and reported directly to Glickman.

JURISDICTION AND VENUE

11. The Trustee brings this adversary proceeding pursuant to Bankruptcy Rule 7001(1).

12. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334.

13. The adversary proceeding relates to *In re Corus Bankshares, Inc.*, Case No. 10-26881, pending in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. The matter is a non-core proceeding. Plaintiff consents to the entry of final orders and judgments by the Bankruptcy Court.

14. Venue in this adversary proceeding is proper in this district pursuant to 28 U.S.C. §1409.

FACTUAL BACKGROUND

Corus' Conservative Beginning

15. Corus was incorporated in Minnesota in 1958 and began as a single-office bank. The Bank was active in the student loan market and residential mortgages. In the early 1990s, it turned to hotel, office construction, and condominium loans.

16. When the Bank first began lending to commercial real estate developers in the early-1990s, its loans ranged from only $250,000 to $4 million. The Bank's loans were originated by a small executive team under a compensation system that penalized loan officers for originating what would prove to be failed loans and rewarded them for originating performing loans.

Corus' Speculative Lending Practices

17. Beginning in 2002, under the direction and control of Glickman, Corus' Board and Management implemented a high-growth strategy for the Bank by aggressively pursuing the commercial real estate market and through the origination of CRE loans.

18. Corus' assets increased from $2.5 billion in 2002 to nearly $10 billion by 2006, primarily due to an increase in its CRE loan portfolio. Corus increased its total CRE loans from $1.6 billion in 2002 to a peak of $4.4 billion during 2005.

19. As of December, 2007, condominium projects comprised nearly 95% of Corus' total loan commitments, with construction loans representing 90% of those commitments.

20. Corus' loan policy provided that it would not underwrite loans on projects unless at least 80% of the apartments in the development were under contract before construction commenced, commonly referred to as "pre-sales."

21. These CRE loans were largely "collateral dependent," meaning the principal source of repayment was the sale of the condominium units that were constructed as part of the development project. Without assurance that the units would be sold or the project would sell out, Corus assumed the risk that even if the projects were completed, its loans could not be repaid.

22. The loans Corus was underwriting grew increasingly risky because Corus often financed projects without verified pre-sales. Glickman was so bullish on the condominium market beginning in 2005, that in some cases he knowingly authorized and allowed Corus to depart from the 80% pre-sale policy and make loans if only half of a proposed project's apartments were pre-sold, or in some cases if none were pre-sold.

23. The loan amounts that Corus issued also grew exponentially larger, ranging from a minimum of $20 million to over $288 million in 2006. Glickman personally approved every Corus loan.

24. Corus closed twelve CRE loans totaling $746 million in March 2006 alone, and another five CRE loans totaling $870.6 million during the month of December 2006. Corus even closed a $191.8 million construction loan in 2006 for a 52-story, 530 unit condominium tower in downtown Miami by providing both the first and mezzanine (subordinate) mortgages, and then later funded another 500 unit building nearby.

Defendants Fail To Implement Minimum Levels of Internal Controls

25. Corus' focus on one market niche (condominium lending) required heightened risk management processes and sound underwriting. However, Corus' loan management procedures were not commensurate with its high-risk lending practices and Defendants failed to implement effective controls over Corus' CRE loan administration.

26. Examiners from the Office of the Comptroller of the Currency (the "OCC") observed in both the 2006 and 2007 reports of examination (ROEs) that Corus' concentration in CRE lending and certain geographic regions posed significant risk to the Bank.

27. In December 2006, the OCC, together with the Board of Governors of the Federal Reserve System and the Federal Insurance Corporation issued guidelines for commercial real estate lending in order to promote sound risk management practices and appropriate levels of capital. According to the interagency guidance on CRE concentrations, a CRE loan portfolio representing more than 100% of an institution's capital is considered a CRE concentration risk, requiring heightened risk management practices. As early as 2006, Corus' CRE concentration levels far exceeded 100%.

28. The volume of Corus' CRE loan portfolio expressed as a percentage of the Bank's total risk based capital was exceptionally high, increasing from 397% at December 31, 2006, to 424% as of December 31, 2007 to 570% on December 31, 2008.

29. Corus, under Defendants' helm, failed to implement heightened (or even minimally acceptable) risk management practices.

30. By mid-2006, the housing market was showing signs of deterioration. Defendants were acutely aware of the slowdown in the housing cycle and Corus issued the following disclosure in its publicly filed 10-Q report dated June 30, 2006: "*At this point in the housing cycle, we are experiencing a disappointing decrease in origination volume, and a certain, albeit very manageable, degree of problem loans. We anticipate that problem loans could get worse before they get better*."

31. The report further stated: "*The housing market though has been showing broad-based signs of weakness for the past year or more. That weakness is clearly placing meaningful*

stress on a number of Corus' condominium loans as evidenced by the recent increases in nonaccrual or otherwise nonperforming loans. ***As a result it is quite possible that Corus may experience significant charge-offs in the coming year(s)****."*

32. Not only were Defendants conscious of the slowdown in the housing market generally, but they were acutely aware in 2006 that the state of the market was impacting Corus' financial health and the viability of the Bank's CRE Lending Program. Thus, Management's Discussion and Analysis, which accompanied Corus' 2006 Annual Report stated: ". . . *the slowdown in the housing market is also impacting Corus in terms of credit quality of loans already on its books. The Company has witnessed various projects that are experiencing slower sales of condominium units and/or lower prices than the developer or Corus would like."*

33. Prior to 2007, Glickman and his father, Joseph Glickman, Corus' founder, personally participated in Bank loans, while keeping in place a restriction prohibiting Corus from doing so. However, in 2007, Glickman caused the restriction to be lifted and Corus took on additional risk by investing approximately $50 million in participation interests. Glickman and his father stopped participating in loans individually in 2007, thereby reducing Glickman's personal risk.

34. Defendants should have caused Corus to cease new CRE lending, aggressively work out distressed loans, increase reserves and strengthen Bank capital.

35. Instead, Defendants caused and allowed the Bank to make new, high-risk CRE loans and to extend, renew and make additional advances on non-performing loans to mask their problems and manipulate Corus' financial statements. Instead of increasing capital and its allowances for loan and lease losses ("ALLL"), the Defendants continued dividend and incentive compensation payments, all the while ignoring the cratering real estate market.

36. On December 13, 2006, Bank Regulators issued an Interagency Policy Statement on allowances for ALLL. The 2006 ALLL Policy Statement, which replaced the 1993 Interagency Policy Statement on ALLL, stated: "The ALLL represents one of the most significant estimates in a [bank or bank holding company's] financial statements and regulatory reports. Because of its significance, each institution has a responsibility for developing, maintaining and documenting a comprehensive, systematic, and consistently applied process for determining the amounts of the ALLL . ..." Defendants had a fiduciary duty to the Holding Company to ensure this responsibility was fulfilled, so that accurate financial statements could be issued by the Holding Company and presented to the Holding Company's Board.

37. The 2006 ALLL Policy Statement further stated: "An appropriate ALLL covers estimated credit losses on individually evaluated loans that are determined to be impaired as well as estimated credit losses inherent in the remainder of the loan and lease portfolio."

38. The 2006 ALLL Policy Statement emphasized that banks could not rely solely on historical losses or recent trends in losses to determine the appropriate ALLL. In this regard, it stated:

> While historical loss experience provides a reasonable starting point for the institution's analysis [of the ALLL], historical losses, or even recent trends in losses, do not by themselves form a sufficient basis to determine the appropriate level for the ALLL. Management should also consider those qualitative or environmental factors that are likely to cause estimated credit losses associated with the institution's existing portfolio to differ from historical loss experience, including but not limited to:
>
> - Changes in lending policies and procedures, including changes in underwriting standards and collection, charge-off, and recovery practices not considered elsewhere in estimating credit losses.
> - Changes in international, national, regional, and local economic and business conditions and developments that affect the collectibility of the portfolio, including the condition of various market segments.
> - Changes in the nature and volume of the portfolio and in the terms of loans.

- Changes in the experience, ability, and depth of lending management and other relevant staff.
- Changes in the volume and severity of past due loans, the volume of nonaccrual loans, and the volume and severity of adversely classified or graded loans.
- Changes in the quality of the institution's loan review system.
- Changes in the value of underlying collateral for collateral-dependent loans.
- The existence and effect of any concentrations of credit, and changes in the level of such concentrations.
- The effect of other external factors such as competition and legal and regulatory requirements on the level of estimated credit losses in the institution's existing portfolio.

(2006 ALLL Policy Statement at 8-9).

39. The 2006 ALLL Policy Statement also specified that: "[a]n institution's failure to analyze the collectability of the loan portfolio and maintain and support an appropriate ALLL in accordance with GAAP and supervisory guidance is generally an unsafe and unsound practice." (2006 ALLL Policy Statement at 5).

40. Glickman and Taylor, the two individuals in charge of the financial affairs of the Bank and Corus, failed to consider the above factors in establishing Corus' ALLL. Indeed, Corus did little to position itself for the loan defaults Defendants anticipated Corus would encounter. Corus considered a loan that was 90 days past due as a non-performing loan ("NPL"). During the first and second quarters of 2006, Corus classified less than $1 million of its CRE Loan Portfolio as NPLs. Yet its ALLL was a conservative $42 million. In the third quarter of 2006, Corus' NPLs increased to approximately $37 million, while the ALLL remained at $42 million; $115% of NPLs. In the fourth quarter of 2006, Corus reported that it had $115 million in NPLs, but that it only slightly increased its ALLL to $45 million, which was 39% of its NPLs. By the second quarter of 2007, Corus' NPLs had jumped to $272 million. Incredibly, Corus only increased its ALLL by a modest 5% to $48 million, a mere 17% of its NPLs. During

the fourth quarter of 2007, Corus' NPLs had skyrocketed to $473 million, which was a 310% increase from the prior year's end. Yet, Corus only increased its ALLL to $71 million, 15% of its NPLs. Overall, during 2007, while its NPLs rose by $358 million, Corus increased its ALLL a miniscule $26 million.

41. To make matters worse, in addition to NPLs, Corus classified a substantial percentage of loans as potential problem loans ("PPLs"). In 2006, Corus had an additional $115 million in PPLs. In 2007, the number increased to approximately $300 million. Adding the PPLs to the NPLs, it is clear that Corus' ALLL for 2006 and 2007 were unequivocally insufficient.

42. Corus' financial statements were materially misstated in violation of Generally Accepted Accounting Principles ("GAAP") because Defendants failed to record adequate and timely ALLL. Consequently, Corus' reported net loans and pre-tax income were materially overstated and its provision for credit losses was understated.

43. Corus' loan portfolio was rapidly deteriorating, yet Defendants failed to recognize the losses in accordance with GAAP.

44. Defendants were required, under GAAP, to take into account various portfolio attributes (e.g., Corus' high concentration in condo construction loans, Corus' increases in charge-offs and foreclosures, etc.) in evaluating the possible impairment of Corus' loan portfolio and in the calculation of appropriate loan loss reserves at the end of each quarter.

45. In calculating Corus' ALLL, Defendants were required to consider the declining value of the collateral backing its loans.

46. In assessing loans for impairment, Defendants should have identified loans in which it was probable that the Company would be unable to collect all amounts due according to

the terms of the loan agreements and then evaluated the fair value of the underlying collateral to arrive at estimated impairment losses.

47. Given that the value of the underlying assets of Corus' loans was dropping rapidly, market conditions required that Defendants adjust Corus' ALLL to reflect the heightened default risks.

48. Defendants failed to timely adjust Corus' ALLL or reassess the value of the Company's collateral assets.

49. Ultimately, Corus had to increase its ALLL four-fold, from 1.61% of loans as of December 31, 2007, to 6.641% as of December 31, 2008, and 8.14% as of March 31, 2009. The provision for credit losses increased to $637.5 million in 2008, almost ten times as much as was recorded in 2007.

50. In accordance with GAAP, and reflecting the already known risks and impairments to Corus' loan portfolio, a substantial portion of these losses should have been taken in the form of loan loss reserves beginning no later than December 2007.

51. Had Defendants properly accounted for the loan loss reserves, Corus' financials would have revealed losses in 2007 in amounts exceeding the earnings Corus had "reported" for the previous five years.

52. In fact, Corus had never reported a quarter-to-quarter loss until the second quarter of 2008 when Corus, as directed by the OCC, obtained reappraisals for a number of its loans.

53. Beginning no later than January 2007, Defendants began "rejecting" appraisals that required them to increase provisions for loan losses.

54. The reappraisals directed by the OCC required Corus to adjust many loans' underlying property values down.

55. The cumulative effect of those adjustments, among other things, resulted in a net loss for Corus of $455 million for 2008, a dramatic decline from the previous year's net income of $113 million. Classified assets more than quadrupled during 2008, amounting to over $2.8 billion and representing 262% of Tier 1 capital.

56. As a result of Defendants' failure to ensure that Corus properly accounted for its ALLL, beginning in 2006, the financial statements Defendants delivered to the Corus Board were materially overstated and resulted in the Board approving decisions that were detrimental to Corus.

57. With the flawed financial information provided by the Defendants, the Company's Board authorized capital draining stock repurchases and wasteful dividend payments.

58. In 2007, the Corus Board approved dividends of $2.00 per share, totaling approximately $113 million in dividend payments. These dividend payments included a special $1.00 per share dividend issued in August, 2007 and approximately $14 million in dividend payments in the fourth quarter of 2008. The level of dividends exceeded Corus' (actual) net income by a significant amount.

59. In October 2007, the Corus Board also approved a new share repurchase program to acquire up to 5 million of the Company's shares. The 2007 share repurchase program was in addition to the 1,588,800 shares that were still available for repurchase under the Company's 2004 repurchase program.

60. In the first quarter of 2008, the Corus Board approved the payment of approximately $14 million in dividends to Corus shareholders.

61. These actions divested Corus of precious capital at a time when Corus should have been focused on preservation of capital.

Corus Originates Even More Speculative Low-Quality Loans

62. The negative outlook on the commercial real estate market expressed by Corus in its 2006 public filings proved to be correct. At an April 23, 2007 Corus Board meeting, Glickman advised the Board that loan originations for 2007 had been "quite weak," falling by 67% from the fourth quarter of 2006. From June 2007 through August 2007, condo sales in Las Vegas and Miami alone (areas where Corus was heavily concentrated) fell 46% and 29%, respectively, from the same three-month period the prior year.

63. At the same time, nearly all of Corus' construction loans were approaching maturity. $3.96 billion of Corus' loans – about 90% of the Company's loans outstanding – were due for maturity or re-pricing by early to mid-2008. More than $2 billion of these loans were in South Florida alone.

64. Thousands of condominium units that were being developed during the robust housing years were due to become available for sale amid buyer cancellations, declining property values and a gridlocked mortgage market.

65. In May 2007, the OCC communicated the results of a quarterly review to Corus, noting that loan concentrations in the weakening housing market were conditions that Corus' management team had not faced previously.

66. Meanwhile, on July 18, 2007, Glickman advised Corus' audit committee that while Corus used appraisals on properties, it also looked at its own internal valuations when assessing collateral values. When pressed on this practice, Glickman conceded to the committee

that Corus' valuation assessments could be more rigorous. Glickman further represented to the committee that he would pursue enhancing such analysis.

67. Defendants knew that Corus' capital position was deteriorating. Construction on many new condominium development projects had fallen behind schedule and construction costs had risen, thereby threatening the completion of many projects, including those Corus had funded.

68. Corus' construction loans were typically structured with "interest reserves," which are provisions that provide developers with funds to pay interest during construction, usually a two to four year period. Under such provisions, the loan proceeds are used to make periodic payments of interest such that the lender is in effect funding the developer/borrower's payments of interest over the period of time the condominium project is being constructed. Once construction ends, the developer/borrower pays off the interest and principal with proceeds from condominium sales.

69. The majority of Corus' loans were non-recourse loans, which meant they were secured solely by the value of the underlying property which served as Corus' only collateral.

70. Because the condominium bubble had burst, Corus-funded condominium projects were not generating sales sufficient to repay the loans.

71. By 2008, mortgage loans had become increasingly difficult for purchasers to obtain. As a result, an increasing number of the buyers that had entered into pre-sale purchase agreements could not obtain the funding necessary to close on the condominiums they had agreed to purchase. Without sufficient sales and sales proceeds generated from closings, Defendants had little to no expectation that Corus' borrowers could repay their loans as they approached maturity.

72. Defendants knew that many of these loans, even if still technically "performing" by virtue of interest reserves, were fast approaching failure and/or potential foreclosure.

73. Defendants knew that Corus could not continue to originate healthy loans at profitable levels in the collapsing real estate market and would not be able to "weather the storm." In response, in an attempt to pump up loan originations, Defendants modified Corus' long-standing commission policy to reward loan officers for originating risky, low-quality loans.

74. Historically, Corus maintained a Commission Program for Commercial Loan Officers (the "CLO Program"). Pursuant to the CLO Program, a portion of an officer's commission was withheld by the Company for a substantial period of time ("holdbacks"). The holdbacks were then at risk of loss or divestiture in the event the Company suffered a loss on a loan originated by the officer.

75. In 2007, and contemporaneous with the housing market decline, the Company modified its CLO Program so that loans originated on or after November 1, 2006 would no longer be subject to holdbacks (the "New CLO Program"). Under the New CLO Program, loan officers were allowed to keep their full commission on new loans originated even if those loans resulted in a loss.

76. Defendants' scheme to pump up loan originations incentivized loan officers to make poor quality, under-collateralized loans, thereby making an already bad situation even worse. Corus maintained the false perception that it was continuing to originate healthy loans throughout 2007 and 2008 despite the deteriorating market conditions. In reality, however, Corus was making risky, low-quality loans for which its officers were being rewarded, further deteriorating its loan portfolio and deepening its insolvency.

77. For example, Corus originated a loan for a development that was 5 to 10 miles off the Las Vegas strip, funded Florida developments surrounded by car dealerships instead of water, and even funded a project in the Everglades.

78. Corus' escalating volume of problem loans resulted in significant losses. In 2008, Corus lost $455 million.

Sham Condo Purchases

79. In a desperate attempt to conceal Corus' dire financial condition and falsely stimulate the condominium market, Glickman manufactured sham condominium sales.

80. On November 24, 2008, Colonnade Artech Owner ("Colonnade"), which was managed by four of Corus' executives and used Corus' headquarters as its principal address, bought four units, including three of the most expensive units, in the Artech Residences at Aventura, a condominium project for which Corus had provided a $130 million loan. Colonnade, using Corus' money, paid approximately $5 million for the units.

81. Colonnade was managed by Laguna Bay Marketing Corporation, which also used Corus' headquarters as its principal address and listed Tina Dendrinos, a loan officer for Corus, as its managing member.

82. Prior to Colonnade's purchases, only 12 of the 235 units in the development had been sold.

83. Glickman attempted to use these sham purchases to inflate the appraised values of the condominiums in order to delay Corus having to recognize losses on financing for these projects.

84. As reported by the South Florida Business Journal, "[s]ales history is one of the most important factors in appraisals," and "[g]etting appraisals to match presale values has been

a major challenge for many South Florida condo developers. If the appraisals come in too low, the buyer would qualify for less financing."

85. Glickman wanted to inflate developers' sales figures to increase the likelihood of successful future sales and inflate appraisal values for the condos to ensure inflated future prices.

86. However, in implementing this scheme, Colonnade paid significantly above market value for the units. It paid $481 per square foot for one unit, when a similar unit was listed for sale at an asking price of only $388 per square foot. Glickman's sham efforts did not work.

87. In an October 29, 2008 press release, Corus announced that it was in preliminary discussions with banking regulators regarding funds made available by the U.S. Treasury Department under its Troubled Asset Relief Program Capital Purchase Program ("TARP CPP").

88. By 2008, the OCC had determined that, under Defendants' guidance, Corus (1) had not consistently performed timely and accurate appraisals to support the value of its loans, (2) had inappropriately re-extended loans without reappraisals in situations where property prices were falling, and (3) had failed to perform sufficient analyses to determine market capacity for condominium sales and probable future conditions as the market weakened.

89. As a result of its October 2008 examination, the OCC designated Corus to be in a troubled condition on December 9, 2008. That same day, the OCC transferred supervision of Corus to its Special Supervisions Division (SSD), which was responsible for overall supervision of the Bank until it was closed on September 11, 2009.

90. After the supervision transferred to SSD, the OCC took enforcement action to address the numerous deficiencies identified in the October 2008 examination. These deficiencies included a quadrupling of Corus' classified assets over the previous year, resulting

in problem loan levels that were among the highest in the nation for commercial banks, as well as insufficient capital, liquidity, and earnings.

91. Corus became critically undercapitalized for prompt corrective action purposes on July 30, 2009.

92. The OCC subsequently closed Corus on September 11, 2009, and appointed FDIC as receiver.

COUNT I (BREACH OF FIDUCIARY DUTY, DUTY OF CARE)

93. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-92 above as if fully set forth in this Count.

94. The Defendants owed a fiduciary duty to Corus to discharge their duties in good faith, with the care an ordinarily prudent person in a like position (having the special skills and knowledge reasonably expected of a person in his position) would exercise under similar circumstances.

95. The Defendants owed Corus a fiduciary duty to act with the utmost care and best interests of the Bank in supervising management in the design, implementation, and operation of the CRE Lending Program to protect the Bank against excessive risk.

96. The Defendants owed Corus a fiduciary duty to ensure that management designed and implemented the CRE Lending Program to comply with safe and sound lending practices.

97. Defendants' fiduciary duties included, but were not limited to, the following:

a. Establishing and enforcing lending policies, including limits on CRE concentrations and limits on speculative and/or high loan to value CRE projects;

b. Establishing sufficient reserves for loan losses and maintaining adequate capital consistent with the risk inherent in the CRE Lending Program;

c. Complying with regulatory standards regarding its CRE Lending Program; and

d. Correcting deficiencies identified by and heeding the warnings in ROEs performed by state and federal bank examiners.

98. The Defendants breached their fiduciary duties by failing to supervise management in the design, implementation, and operation of the CRE Lending Program to ensure that it met appropriate standards, including those identified in the preceding paragraph.

99. The Defendants breached their fiduciary duties by failing to take corrective actions to respond to lending problems and failing to institute proper internal controls to make prudent loans.

100. The Defendants breached their fiduciary duties by: (1) failing to consistently perform timely and accurate appraisals to support the value of Corus loans, (2) inappropriately re-extending loans without reappraisals in situations where property prices were falling, and (3) failing to perform sufficient analyses to determine market capacity for condominium sales and probable future conditions as the market weakened.

101. The Defendants breached their fiduciary duties by failing to enforce and knowingly departing from its lending policies, including its 80% pre-sale requirement.

102. The Defendants breached their fiduciary duties by failing to heed the OCC's warnings concerning the risks of CRE loans given the housing market and by increasing its origination of even riskier CRE loans under the New CLO Program.

103. As a direct and proximate result of the Defendants' breaches of fiduciary duties, Plaintiff suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, Salvatore A. Barbatano, not individually but solely as the Litigation Trustee of the Litigation Trust established pursuant to The Debtor's Third Amended

Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, seeks judgment against defendants, ROBERT GLICKMAN and TIM TAYLOR, in an amount to be determined at trial, along with any other relief this Court deems appropriate.

COUNT II (BREACH OF FIDUCIARY DUTY, DUTY OF LOYALTY)

104. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-92 above as if fully set forth in this Count.

105. The Defendants owed Corus a fiduciary duty of loyalty to act in a manner reasonably believed to be in the best interests of Corus.

106. The Defendants breached their fiduciary duty by:

a. implementing the New CLO Program pursuant to a scheme to pump up loan originations so they could maintain the false perception that Corus was continuing to originate healthy loans throughout 2007 and 2008 when, in fact, Corus was making risky, low-quality loans for which its officers were being financially rewarded, further deteriorating its loan portfolio and deepening its insolvency; and

b. materially misstating the financials presented to the Corus Board, failing to provide the Corus Board with all relevant information concerning Corus' deteriorating capital position, and failing to provide the Corus Board with a reasonable opportunity to consider whether, in light of this information, it was in Corus' best interest to declare a dividend, repurchase shares, or approve executive compensation.

107. Defendants should have caused Corus to cease new CRE lending, aggressively work out distressed loans, increased reserves, and strengthened Bank capital.

108. Instead, in breach of their fiduciary duty of loyalty, Defendants caused and allowed the Bank to make new, high-risk CRE loans and to extend, renew and make additional advances on non-performing loans to mask their problems and manipulate Corus' financial statements.

109. Instead of increasing capital and ALLL, the Defendants authorized dividends and incentive compensation payments in breach of their duty of loyalty owed to and to the detriment of Corus. These actions divested Corus of precious capital at a time when Corus should have been focused on preservation of capital. Defendants' actions in this regard were the antithesis of good faith, care, and devotion to the best interests of Corus. As a consequence, Defendants breached their fiduciary duties of loyalty to Corus.

110. As a direct and proximate result of the Defendants' breaches of fiduciary duties, Plaintiff suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, Salvatore A. Barbatano, not individually but solely as the Litigation Trustee of the Litigation Trust established pursuant to The Debtor's Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, seeks judgment against defendants, ROBERT GLICKMAN and TIM TAYLOR, in an amount to be determined at trial, along with any other relief this Court deems appropriate.

COUNT III (BREACH OF FIDUCIARY DUTY, DEEPENING INSOLVENCY & WASTE)

111. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-92 above as if fully set forth in this Count.

112. Defendants owed Corus a fiduciary duty to act in a manner reasonably related to the best interests of Corus.

113. Defendants breached their fiduciary duties by increasing Corus' originations of speculative and risky CRE Loans pursuant to a scheme to pump up loan originations for the purpose of maintaining the false perception that Corus was continuing to originate healthy loans throughout 2007 and 2008 despite the deteriorating market conditions.

114. In reality, however, Corus was making risky, speculative loans for which its officers were being financially rewarded, further deteriorating its loan portfolio which prolonged Corus' life and deepened its insolvency.

115. Defendants, by virtue of their overreaching, domination, and control over the businesses of Corus, negligently prolonged Corus' existence and further deteriorated Corus' loan portfolio, committing waste.

116. As a direct and proximate result of the Defendants' breaches of fiduciary duties, Plaintiff suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, Salvatore A. Barbatano, not individually but solely as the Litigation Trustee of the Litigation Trust established pursuant to The Debtor's Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, seeks judgment against defendants, ROBERT GLICKMAN and TIM TAYLOR, in an amount to be determined at trial, along with any other relief this Court deems appropriate.

COUNT IV (BREACH OF FIDUCIARY DUTY AGAINST GLICKMAN)

117. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-92 above as if fully set forth in this Count.

118. Glickman owed Corus a fiduciary duty to act in a manner reasonably related to the best interests of Corus.

119. Glickman breached his fiduciary duty by orchestrating a scheme whereby a third party entity, formed and controlled by Corus, purchased condominiums at the above market price of approximately $5 million.

120. As a direct and proximate result of Glickman's breach of his fiduciary duties, Plaintiff suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, Salvatore A. Barbatano, not individually but solely as the Litigation Trustee of the Litigation Trust established pursuant to The Debtor's Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, seeks judgment against defendants, ROBERT GLICKMAN, in an amount to be determined at trial, along with any other relief this Court deems appropriate.

COUNT V (VIOLATION OF THE NATIONAL BANK ACT)

121. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-92 above as if fully set forth in this Count.

122. The National Bank Act, 12 U.S.C. § 60 (b) (the "NBA") provides,

> A national bank may not declare and pay dividends in any year in excess of an amount equal to the sum of the total of the net income of the bank for that year and the retained net income of the bank for the preceding 2 years, minus the sum of any transfers required by the Comptroller of the Currency and any transfers required to be made to a fund for the retirement of any preferred stock, unless the Comptroller of the Currency approves the declaration and payment of dividends in excess of such amount.

123. On information and belief, the total dividends paid in 2007 exceeded an amount equal to the sum of the total of the net income of Corus for 2007 and the retained income of Corus for the preceding two years.

124. On information and belief, Defendants did not seek or obtain approval from the Comptroller of the Currency with respect to any portion of the dividends paid in 2007.

125. On information and belief, the total dividends paid in 2008 exceeded an amount equal to the sum of the total of the net income of Corus for 2008 and the retained income of Corus for the preceding two years.

126. On information and belief, Defendants did not seek or obtain approval from the Comptroller of the Currency with respect to any portion of the dividends paid in 2008.

127. Corus' financial statements were materially misstated in violation of GAAP because Defendants failed to record adequate and timely loan loss reserves. As a result, Corus' reported net loans and pre-tax income were materially overstated and its provision for credit losses was understated.

128. As a result, Defendants knowingly authorized, approved and caused Corus to issue illegal dividends in 2007 and 2008 in violation of section 60(b) of the NBA.

129. Pursuant to section 93 of the NBA, because Defendants knowingly participated in the violation of section 60(b), they are liable for damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, Salvatore A. Barbatano, not individually but solely as the Litigation Trustee of the Litigation Trust established pursuant to The Debtor's Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, seeks judgment against defendants, ROBERT GLICKMAN and TIM TAYLOR, in an amount to be determined at trial, along with any other relief this Court deems appropriate.

COUNT VI (MONEY HAD AND RECEIVED AGAINST GLICKMAN)

130. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-92 above as if fully set forth in this Count.

131. By virtue of the illegal dividends, Glickman is in possession of money which in equity and good conscience does not belong to him.

132. As such, Glickman should in good conscience return those funds to Plaintiff in an amount to be determined at trial.

WHEREFORE, Plaintiff, Salvatore A. Barbatano, not individually but solely as the Litigation Trustee of the Litigation Trust established pursuant to The Debtor's Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, seeks judgment against defendants, ROBERT GLICKMAN, in an amount to be determined at trial, along with any other relief this Court deems appropriate.

Salvatore A. Barbatano, not individually but
solely as the Litigation Trustee

By: /s/ Jeffrey L. Widman

Jeffrey L. Widman (#6226367)
Joseph L. Cohen (#6279024)
Shaw Gussis Fishman Glantz Wolfson &
Towbin LLC
321 N. Clark, Suite 800
Chicago, IL 60654
(312) 541-0151