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## Former Westernbank Chiefs Seek To Toss \$176M FDIC Suit

By **Jamie Santo**

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Law360, New York (April 12, 2012, 8:06 PM ET) -- Executives and directors of the now-defunct Westernbank Puerto Rico asked a federal judge Wednesday to dismiss a \$176 million Federal Deposit Insurance Corp. suit accusing the group of gross negligence in its handling of loans prior to the bank's closure in 2010.

In a motion filed in the U.S. district court in Puerto Rico, the six former Westernbank executives and directors argue that the FDIC is trying to hold them accountable for not adequately anticipating the recent financial crisis — which had a devastating effect on the bank — even though financial luminaries including FDIC senior officials have admitted that nobody could have reasonably foreseen such a meltdown.

"The FDIC has embarked on a quest to scapegoat the bank's officers and directors, whose lives have been as thoroughly turned upside down by this chain of events as any other investors or creditors," the motion claimed.

The defendants are asking the court to either dismiss the complaint or require the FDIC to state a more definite claim against the six defendants, including former Westernbank Chairman and CEO Frank C. Stipes Garcia.

The Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico closed Westernbank on April 30, 2010, and the FDIC, which estimates it lost \$4.25 billion in the matter, was named as receiver.

The FDIC is seeking \$176 million against six officers and directors of the former company for "gross negligence" in their approval and administration of 21 losing loans from January 2004 to July 2009, according to an amended complaint filed in January.

"The defendants approved the loss loans pursuant to an aggressive and reckless growth strategy that placed short-term income and profits ahead of the safety and soundness of the federally insured depositor funds entrusted to them," the FDIC claimed.

The six main defendants — former Westernbank Chairman and CEO Frank C. Stipes Garcia, Juan Carlos Frontera-Garcia, Hector L. Del Rio Torres, William M. Vidal-Carvajal, Cesar A. Ruiz-Rodriguez and Pedro R. Dominguez Zaya — originally brought action in



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### Case Information

#### Case Title

W Holding Company, Inc. et al v. Chartis Insurance Company- Puerto Rico (/cases /4efe2d86adbdc06d5000002)

#### Court

Puerto Rico (/courts/puerto-rico)

#### Nature of Suit

Insurance (/search /cases?q=ns:%22Insurance%22)

#### Case Number

3:11-cv-02271 (/cases /4efe2d86adbdc06d5000002)

#### Judge

Gustavo A. Gelpi (/judges /gustavo-a-gelpi)

#### Date Filed

December 30, 2011

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## Banking

### CFPB Tells 3rd Circ. Home Loan Rescission Suits Valid (/banking/articles/330539/cfpb-tells-3rd-circ-home-loan-rescission-suits-valid)

The Consumer Financial Protection Bureau on Friday urged the Third Circuit to allow more flexibility for loan recipients who have allegedly legally rescinded home loans to pursue legal action against lenders who fail to recognize the agreement as null.

### Industry Groups Seek Broad 'Qualified Mortgage' Definition (/banking/articles/330601/industry-groups-seek-broad-qualified-mortgage-definition)

A wide coalition of industry groups and consumer and community activists on Monday told the Consumer Financial Protection Bureau that a broad definition of "qualified mortgage" was necessary to boost the collapsed housing market.

### Temasek Grabs ICBC Shares Worth \$2.3B In Goldman Sale (/banking/articles/330276/temasek-grabs-icbc-shares-worth-2-3b-in-goldman-sale)

Singapore investment banking firm Temasek Holdings Pte. Ltd. will buy up \$2.3 billion worth of Goldman Sachs Group Inc.'s shares in Industrial and Commercial Bank of China Ltd., the world's biggest bank by market capitalization, the firm said Monday.

## Insurance

### ELNY Liquidation Plan Gets Nod Over Beneficiaries' Protests (/insurance/articles/330737/elny-liquidation-plan-gets-nod-over-beneficiaries-protests)

A New York state judge on Monday signed off on a plan to liquidate Executive Life Insurance Co. of New York, which is strapped with a \$1.5 billion deficit, despite the objections of beneficiaries who claim they will lose hundreds of millions of dollars under the plan.

### UnitedHealth, Lexington End Coverage Feud In 1st Circ. (/insurance/articles/330102/unitedhealth-lexington-end-coverage-feud-in-1st-circ)

The First Circuit on Thursday dismissed UnitedHealth Group Inc.'s appeal of a ruling that it is not entitled to \$28.2 million from Lexington Insurance Co. to cover the costs of a breach of contract suit, after the companies reached a settlement.

### Travelers Levied \$3.7M For Making Co. Cover Fire Up Front (/insurance/articles/330239/travelers-levied-3-7m-for-making-co-cover-fire-up-front)

A California arbitrator on Friday ordered Travelers Indemnity Co. of Connecticut to pay about \$3.7 million in damages to kosher food distributor Mave Enterprises Inc. over claims that the insurer illegally refused to pay for damages caused by a fire in a Mave plant until the company paid out of pocket.

Puerto Rico commonwealth court against the Chartis Insurance Co. of Puerto Rico for declarations of D&O coverage.

As receiver for Westernbank, the FDIC intervened in January and became plaintiff against the group of six. The FDIC included claims against their spouses and conjugal partners, as required by Puerto Rico law, among other additions, according to the complaint.

The spouses of the director and officer defendants filed their own motion to dismiss Wednesday, as did a lower-ranking employee of one of the bank's divisions.

The FDIC sold Westernbank's assets to Banco Popular de Puerto Rico.

The six bank executives and directors are represented by Andres Rivero, M. Paula Aguila and Charles E. Whorton of Rivero Mestre LLP and Ramon Coto-Ojeda of Coto & Associates.

The case is FDIC v. Frank Stipes Garcia et al., case number 3:11-cv-02271, in the United States District Court for the District of Puerto Rico.

--Editing by Katherine Rautenberg.