2007-5063, -5064, -5089

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

FRANK P. SLATTERY, JR., (on behalf of himself and on behalf of all other similarly situated shareholders of Meritor Savings Bank),

Plaintiff-Cross Appellants,

and

STEVEN ROTH and INTERSTATE PROPERTIES,

Plaintiffs-Cross Appellants

v.

UNITED STATES,

Defendant-Appellant.

Appeal from the United States Court of Federal Claims in 93-CV-280,
Senior Judge Loren A. Smith

EN BANC BRIEF OF *AMICUS CURIAE* THE FEDERAL DEPOSIT INSURANCE CORPORATION

Supporting Defendant The United States and
Supporting Reversal in Part and Affirmance in Part

Federal Deposit Insurance Corp.
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Of Counsel:
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Deputy General Counsel
D. Ashley Doherty
Counsel
Federal Deposit Insurance Corporation

May 7, 2010

CERTIFICATE OF INTEREST

Counsel for the Federal Deposit Insurance Corporation certifies the following:

1. The full name of every party or amicus represented by me is:

Federal Deposit Insurance Corporation, as receiver for Meritor Savings Bank

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Federal Deposit Insurance Corporation, as receiver for Meritor Savings Bank

3. Any parent corporation or any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me:

None

4. The names of all law firms and the partners and associates that appear for the party or amicus now represented by me in the trial court or are expected to appear in this court are:

John V. Thomas (FDIC Legal Division), Dorothy Ashley Doherty (FDIC Legal Division), John M. Dorsey III (FDIC Legal Division)

Dated: May 7, 2010

By: John Dorsey
John M. Dorsey III

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I. INTRODUCTION

The Federal Deposit Insurance Corporation ("FDIC"), acting in its capacity as receiver for Meritor Savings Bank, Philadelphia, Pa. ("Meritor"), respectfully submits this brief as *amicus curiae* in response to the Court's Order of March 19, 2010.

II. QUESTIONS PRESENTED

1. Is the FDIC, in its capacity as receiver for Meritor, a non-appropriated funds instrumentality ("NAFI")?
2. If FDIC as receiver is a NAFI, what is the effect upon the jurisdiction of the Court of Federal Claims over the claims asserted by the Roth intervenors?[1]

III. SUMMARY OF POSITION

The brief of the United States focuses primarily on the NAFI issues raised directly by the derivative claims advanced by Plaintiff-Cross Appellant Slattery. FDIC as receiver concurs with the United States that FDIC in its corporate capacity is a non-appropriated funds instrumentality and that the Court of Federal Claims lacks jurisdiction to hear the claims asserted herein. The entire case should be dismissed on that basis. FDIC as receiver notes, however, that there is a second NAFI issue, one raised by the claims asserted by the intervening Roth

[1] FDIC as receiver adopts the arguments of the United States in response to the question, "What is the appropriate standard for determining whether an entity is a NAFI?" and therefore does not address that question herein.

shareholders (Plaintiff-Appellants). The Roth shareholders have asserted claims against the FDIC in its capacity as receiver of Meritor, and seek an order directing distribution of assets of the Meritor receivership to the Roth shareholders. The Court of Federal Claims dismissed the claim for lack of jurisdiction. The vacated panel decision of this Court would have reversed that dismissal and reinstated the Roth shareholder claims.

In this brief we explain how the nature and role of FDIC as receiver of failed financial institutions compel the conclusion that, in that capacity as well, FDIC is a NAFI and as such is not subject to the jurisdiction of the Court of Federal Claims.

IV. FACTUAL BACKGROUND

A. The Meritor receivership

The pre-failure history of the former Meritor is set forth in the En Banc Brief for Defendant-Appellant, The United States (April 30, 2010) at 2-3 ("US Br."). The post-failure history of Meritor begins with the thrift's closing by the Pennsylvania Secretary of Banking on December 11, 1992. *Slattery v. United States*, 35 Fed. Cl. 180, 182 (1996) ("Slattery I").[2] That same day, the Pennsylvania Secretary of Banking appointed the Federal Deposit Insurance Corporation as receiver for Meritor. *Id.* The FDIC, acting in its receivership capacity,

[2] For ease of reference, FDIC as receiver adopts the short names used by the United States in its en banc brief to refer to the four published opinions of the Court of Federal Claims in *Slattery v. United States*, 93-CV-280.

continues to administer the Meritor receivership estate. *Slattery v. United States,* 73 Fed. Cl. 527, 530 (2006) ("*Slattery IV*").

As receiver, FDIC succeeds to the rights of the failed bank Meritor, 12 U.S.C. §1821(d)(2)(A), and is charged with marshalling and liquidating its assets and distributing "the amounts realized from the liquidation" to receivership claimants, i.e., creditors and shareholders, in the order of priority set forth at 12 U.S.C. §1821(d)(11). The assets of the Meritor receivership came from the failed institution. These assets do not include appropriated funds.

Upon Meritor's failure, FDIC as receiver sold Meritor's assets and transferred certain of its liabilities, including its deposit liabilities, to Mellon Bank for $181.3 million. *Slattery IV* at 529. The proceeds of that sale were included in the Meritor receivership estate, and like all other assets of the estate, have been used by the receiver to satisfy receivership obligations as required by statute. The Meritor receivership as of December 31, 2008 (the most recent evidence we have seen) reflects not a receivership deficit of some $31 million.[3] The receivership remains open pending the conclusion of this litigation. *Id.*

B. The Court of Federal Claims Lawsuits

After Meritor's failure, the Slattery plaintiffs, shareholders of the former Meritor, filed suit in the Court of Federal Claims. The Slattery plaintiffs ac-

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[3] FDIC, Goodwill Financial Reporting Package – Meritor Savings Bank (February 12, 2009). A copy is attached hereto as Attachment A.

knowledge that they are "pursuing this action derivatively on behalf of Meritor" *Slattery I* at 183-84. The derivative action is based on alleged breaches of contract by the FDIC, acting in its corporate capacity as the federal supervisor of Meritor. *Id.* at 181-82. The United States is the named defendant. The FDIC is not a named party in any capacity.[4]

Initially, in addition to its derivative claims, the Slattery plaintiffs' complaint alleged claims on behalf of all shareholders of Meritor as of December 11, 1992, i.e., the date on which Meritor was seized by the Pennsylvania state authorities. *Slattery IV* at 529. Subsequently, the Slattery plaintiffs moved to redefine as plaintiffs only those persons who were shareholders as of the date of final judgment in this action. *Id.* The proposed redefinition excluded shareholders Roth et al., who owned Meritor stock at the time the bank was closed but sold their shares the following year. *Id.* Shareholders Steve Roth and Inter-

4 The corporate owner of a derivative claim is an indispensible party in any derivative action brought by one of its shareholders. *Ross v. Bernhard*, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 727 (1970); *Meyers v. Fleming*, 327 U.S. 161, 66 S.Ct. 382, 90 L.Ed. 595 (1946). The Slattery claims herein are expressly derivative, and the FDIC as receiver of Meritor owns them. 12 U.S.C. §1821(d)(2)(A)(1). Nevertheless the Slattery plaintiffs did not join FDIC as receiver as a party. Courts lack jurisdiction over a derivative action in the absence of corporate owner as party and these cases should be dismissed on that basis as well.

The trial court mistakenly stated that it had "denied the FDIC's Motion to File a Brief as intervenor in this case at oral argument on June 15, 2006." *Slattery IV* at 531. In fact, FDIC as receiver had moved for leave to file a brief as *amicus curiae*. FDIC's Motion for Leave to Appear As Amicus Curiae and Motion for Leave to File Amicus Brief, *Slattery v. United States*, No. 93-208C (Fed. Cl. May 16, 2006) (Docket Item No. 427).

state Properties then moved to intervene.

The Roth shareholders' Second Amended Complaint in intervention, filed April 7, 2006, states three claims for relief based upon the receiver's "retention" of the $181.3 million payment from Mellon Bank in the Meritor receivership estate.[5] The Roth shareholders alleged that the receiver was required to distribute a claimed receivership surplus in the Meritor receivership to the shareholders.[6] They claimed further that by not doing so the receiver had taken their property in violation of the Fifth Amendment to the U.S. Constitution and caused them an "injury." The Roth plaintiffs sought a declaratory judgment that they were entitled "to a portion of any surplus" and the creation of a constructive trust of their proportionate share of any such surplus." *Id.* at 529, 530.

The Court of Federal Claims granted the Roth shareholders' motion to intervene. The United States then moved to dismiss for lack of jurisdiction. The trial court, stating that "the argument turns on whether the FDIC-Receiver is the United States for purposes of satisfying the jurisdictional requirement," held that

> because the [Roth plaintiffs] are alleging injury due to acts by the FDIC-Receiver, and not due to acts by the United States, the relief requested [by the Roth plaintiffs] is against a defendant other than the United States and the Court must dismiss the action for lack of jurisdiction.

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[5] A fourth claim for relief, based on a third-party beneficiary theory, is no longer at issue in the case. *Slattery v. United States*, 583 F.3d 800, 826 (Fed. Cir. 2009).

[6] As noted above, the Meritor receivership in fact has a deficit, not a surplus.

Slattery IV at 530-31. Accordingly, the trial court ordered the dismissal of the Roth shareholders' Second Amended Complaint. *Id.* at 531.

V. ARGUMENT

A. FDIC in its capacity as Meritor's Receiver is a NAFI

The trial court correctly found that FDIC in its capacity as receiver of Meritor was not the United States. *See, O'Melveny & Myers v. FDIC,* 512 U.S. 79, 85 (1994) ("[T]he FDIC is not the United States…."). In so doing, the Court did not focus on the specific question of whether or not FDIC as receiver is a NAFI. That question is, however, now posed by this Court's Order of March 19, 2010.

The United States has set forth the appropriate standard for determining whether an entity is a non-appropriated fund instrumentality. US Br. at 8-12. It has also demonstrated that FDIC in its corporate capacity is a NAFI. *Id.* at 14-23. The United States did not, however, describe the specific situation of FDIC acting in a receivership capacity, which is the entity against which the Roth plaintiffs seek judgment.

As we show, FDIC acting as receiver entails no use of appropriated funds. Upon receivership, FDIC succeeds to all right, title and interest in the failed institution's assets. 12 U.S.C. §1821(d)(2). These assets are the only assets of the receivership. *See* 12 U.S.C. §§1821(d)(2)(A), (d)(2)(B), (d)(2)(E). FDIC Corporate may advance funds from the Bank Insurance Fund to pay deposit liabilities, but those are funds paid to, or for the direct benefit of, the insured depositors themselves. They are never funds of the receivership estate. To the extent that FDIC Corporate may advance limited funds to fund administrative expenses or for other purposes,[7] such advances are loans to be repaid according to the statutory order of priority set forth at 12 U.S.C. §1821(d)(11). 12 U.S.C. §1823(d)(4). The loans are administrative expenses of the receivership, 12 C.F.R. §360.4, which have first priority for repayment. 12 U.S.C. §1821(d)(11)(A).

Receivership debts that remain after all bank assets have been liquidated simply go unpaid. Neither the FDIC's Deposit Insurance Fund nor the U.S. Treasury will make those creditors whole. In short, FDIC as receiver does not receive any funds by Congressional appropriation. There are no appropriated funds in the Meritor receivership estate, and there will be no appropriated funds in the Meritor receivership estate.

B. The Court of Federal Claims Lacks Jurisdiction over the Roth Plaintiffs' Claims

The Roth shareholders' precise theories of liability and recovery are not well explained, particularly in light of the statutory provisions that establish the

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[7] For example, "the institution's last payroll, guard services, data processing services, utilities, and expenses for leased facilities." FDIC, *Managing the Crisis: The FDIC and RTC Experience 1980-1994* at 254 (1998).

order in which receivership assets are to be distributed. As they themselves state, however,[8] their bottom line is that they are asking the Court of Federal Claims to order a distribution to the Roth shareholders not from the U.S. Treasury or other appropriated funds, but instead out of the Meritor receivership estate, made up entirely of assets of the former bank.

The Court of Federal Claims has no jurisdiction to hear claims asserted against receivership assets.[9] Federal statute expressly requires that judgments awarded against the government in the Court of Federal Claims "be paid out of appropriated funds." *Core Concepts of Florida, Inc. v. United States*, 327 F.3d 1331, 1334 (Fed. Cir. 2003) (citations omitted); *see* 28 U.S.C. §2517. ("[E]very final judgment rendered by the United States Court of Federal Claims against the United States shall be paid out of any general appropriation therefore[.]") The assets of the Meritor receivership against which the Roth plaintiffs seek to recover consist solely of assets of the failed bank Meritor. The assets include no appropriated funds, and cannot include appropriate funds. Accordingly the Court of Federal Claims lacks jurisdiction over the Roth plaintiffs claims.

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[8] "Roth has alleged claims against the United States for the failure to distribute the liquidation surplus." Reply Brief for Plaintiffs-Cross Appellants, Steven Roth and Interstate Properties, February 26, 2008 (refiled April 30, 2010) at 10 n.4.

[9] This conclusion is likewise compelled by 12 U.S.C. §1821(d)(13)(D), which provides that "no court shall have jurisdiction over… any claim or action or payment" from the estate of a failed bank except as provided in that subsection of the Federal Deposit Insurance Act (which grants U.S. District Court jurisdiction in specified situations).

The Roth plaintiffs rely upon a decision by the U.S. Court of Appeals for the D.C. Circuit. Brief for Plaintiffs-Cross Appellants Steven Roth and Interstate Properties (originally filed Oct. 11, 2007; re-filed for en banc consideration, April 30, 2010) at 22-25, discussing *Auction Co. of America v. FDIC*, 132 F.3d 746 (D.C. Cir. 1997) ("*Auction Co. I*"), reh. denied, *Auction Co. of America*, 141 F.3d 1198 (D.C. Cir. 1998) ("*Auction Co. II*"). That case involved a breach of contract suit in federal district court against the FDIC, acting in its receivership capacity.

In *Auction Co. I*, the D.C. Circuit found that contract cases could be brought against FDIC as receiver in federal district court not only under the Little Tucker Act but also under 28 U.S.C. §1331, pursuant to the waiver of sovereign immunity effected by the FDIC's sue-or-be-sued clause. *Auction Co. I,* 132 F.3d at 751; 12 U.S.C. §1819(a)(Fourth). For purposes of such jurisdiction, the D.C. Circuit found irrelevant the fact that recovery against FDIC as receiver would not come from general Treasury funds. *Id.*

Auction Co. I is inapposite. District court jurisdiction over contract cases against FDIC as receiver requires (in addition to a waiver of sovereign immunity) only "subject matter jurisdiction based on [FIRREA]." *Auction Co. II,* 141 F.3d at 1199; see also *Village of Oakwood v. State Bank & Trust Co.*, 539 F.3d 373, (6th Cir. 2008) (finding district court jurisdiction over contract case against FDIC as receiver). In such cases, "[t]he source of funds for any recovery . . . is not jurisdictional and does not bear on whether a suit against the FDIC as Receiver is a suit against the United States for purposes of [the statute of limitations]." *Auction Co. I* at 752-53. In contrast, the Roth shareholders have attempted to allege claims against FDIC as receiver in the Court of Federal Claims, in which Court the source of funds for recovery *is* jurisdictional.

VI. CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Court of Federal Claims and dismiss the Slattery shareholders' complaint against defendant the United States, and affirm the judgment of the Court of Federal Claims insofar as it dismissed the Roth shareholders' Second Amended Complaint.

Respectfully submitted,

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May 7, 2010

Attachment A

FDIC
Federal Deposit Insurance Corporation
3501 North Fairfax Drive
Arlington, VA 22226

February 12, 2009

TO: Floyd Robinson, Senior Counsel
Legal Division

FROM: Robert Ferrer, Acting Manager
Subsidiary Accounting and Resolution Support Unit
Division of Finance

SUBJECT: Goodwill Financial Reporting Package – Meritor Savings Bank

Attached is the Division of Finance's Goodwill Financial Reporting Package for the Meritor Savings Bank receivership as of December 31, 2008. Included in this package are the following four reports specifically prepared to support this goodwill litigation matter:

Report 1 - Inception Pro Forma Recap
Report 1A - Mapping of Total Assets Inception Balance from Report #1 to Report #2
Report 2 - Statement of Assets and Liabilities in Liquidation (unaudited) - Adjusted
Report 3 - Projected Receivership Results as of 12/31/2008

A standard set of receivership financial statements for Meritor Savings Bank as of December 31, 2008 is also provided. DOF releases these receivership financial statements to the public upon FOIA or other requests.

Attachments

cc: Susan Bank, Legal Division
John V. Thomas, Legal Division

MERITOR SAVINGS BANK
Receivership Fund Code: 4556
Inception Date: 12/11/1992

Goodwill Package as of December 31, 2008

REPORT 1: Inception Pro Forma Recap

This report summarizes the inception balances of this receivership per the Pro Forma package prepared by the Closing team. Adjustments are made to the failed institution's balance sheet in order to convert these balances to the cash basis of accounting.

REPORT 1-A: Mapping of Total Assets Inception Balances from Report 1 to Report 2

This report provides a mapping of how the Pro Forma inception balances in Report 1 were combined and or reclassified to record the inception balances on the receivership's general ledger, as presented in Report 2.

REPORT 2: Statement of Assets and Liabilities in Liquidation (unaudited) - Adjusted

This report presents the financial position of this receivership as of December 31, 2008 based on actual general ledger results and two small, but subsequent post-close adjustments. The total asset, liability, and net assets/(deficit) balances at inception are carried forward from Report 1.

REPORT 3: Projected Receivership Results as of 12/31/2008

This report projects the financial position of this receivership after application of estimated liabilities based on assumed priority. The focus of this report is the underlying net asset/(deficit) position at various stages of claim distribution. Refer to Report 3 footnotes for additional information.

Receivership Financial Statements

The Statement of Assets and Liabilities in Liquidation (unaudited), Statement of Operations (unaudited), and accompanying footnotes are produced from the FDIC general ledger accounting system and present both year-to-date and inception-to-date receivership activity for the period ended December 31, 2008.

Meritor Savings Bank

INCEPTION PRO FORMA RECAP

(Rounded in Dollars)

REPORT 1

Receivership Fund Code: 4556
Inception Date: 12/11/1992

	Pro Forma Unadjusted Balance	Pro Forma Adjustments [a]	Inception Balances (Per Pro Forma) (Adjusted by FDIC)
Assets			
Currency and Coin	$ 33,285,199	$ 3,032,850	$ 36,318,049
Cash Items in Process	12,687,791	(1,621,666)	11,066,125
Time and Saving Balances	750,000	-	750,000
Subtotal Cash and Due From Balances	46,722,990	1,411,184	48,134,174
US Treasury Securities	10,701,997	-	10,701,997
State & Political Subdivisions	196,825,520	-	196,825,520
Other Bonds, Notes, Debentures	553,109,711	(354,224)	552,755,487
Fed Funds Sold	83,000,000	(2,000,000)	81,000,000
Trading Account Securities	65,847,337	598,945	66,446,282
Subtotal Securities & Obligations	909,484,565	(1,755,279)	907,729,286
Real Estate Loans	1,290,177,174	(3,806,151)	1,286,371,023
Commercial Loans	347,619,523	349,025	347,968,548
Installment Loans	429,651,575	310	429,651,885
Overdrafts and Other Loans	29,854,380	(30,313)	29,824,067
Less: Unearned Income	(1,578,209)	815,067	(763,142)
Allowance for Loan Losses	(95,315,584)	95,315,584	-
Subtotal Loans	2,000,408,859	92,643,522	2,093,052,381
Bank Premises & Furniture & Fixtures	89,103,798	-	89,103,798
Other Real Estate Owned	91,914,777	3,523,451	95,438,228
Investments in Subsidiaries	62,940,914	(4,102,536)	58,838,378
Accrued Interest - Loans	25,906,696	(3,378,432)	22,528,264
Miscellaneous Receivables	221,989,086	(1,500,880)	220,488,206
Intercompany Receivables	1,997,415	2,517,889	4,515,304
Prepaid Expenses	24,886,473	(22,415,408)	2,471,065
Other Assets	89,381,414	(65,707,763)	23,673,651
Subtotal Other Assets	608,120,573	(91,063,679)	517,056,894
Total Assets	**$ 3,564,736,987**	**$ 1,235,748**	**$ 3,565,972,735**
Liabilities			
Demand Deposits	611,642,827	(507,421)	611,135,406
Savings Deposits	487,556,312	(2)	487,556,310
Time Deposits	1,602,665,103	5,000	1,602,670,103
Subordinated Notes & Debentures	31,357,784	-	31,357,784
Long Term Borrowings	465,542,239	474,326	466,016,565
Accrued & Withheld Taxes	1,464,182	(1,079,524)	384,658
Miscellaneous	257,264,872	(57,152,572)	200,112,300
Total Liabilities	**$ 3,457,493,319**	**$ (58,260,193)**	**$ 3,399,233,126**
Net Assets/(Deficit)			
Common Stock/Surplus/Undivided Profits	107,243,668	59,495,941	166,739,609
Total Net Assets/(Deficit)	**107,243,668**	**59,495,941**	**166,739,609**
Total Liabilities and Net Equity	**$ 3,564,736,987**	**$ 1,235,748**	**$ 3,565,972,735**

[a] Pro Forma Adjustments are commonly prepared by the FDIC/RTC to record unprocessed work, non-booked items, corrections of posting errors, and resolved reconciling items, in order to reflect the proven balance of the balance sheet accounts of the Failed Institution through the date of closing. Adjustments also include the conversion from an accrual basis of accounting to a cash basis of accounting for assets and liabilities retained by the FDIC/RTC.

REPORT 1 - A

Meritor Savings Bank
Receivership Fund Code 4556
Mapping of Total Asset Inception Balances from Report#1 to Report #2

Per Report #1 - Inception Pro Forma Recap		Per Report #2 - Statement of Assets and Liabilities	
Line Item Description	**Inception Balances**	**Inception Balances**	**Line Item Description**
Assets:			
State & Political Subdivisions	196,825,520		
Other Bonds, Notes, Debentures	552,755,487		
U.S. Treasury Securities	10,701,997		
Fed Funds Sold	81,000,000		
Trading Account Securities	66,446,282		
	907,729,286	**907,729,286**	Securities
Installment Loans	**429,651,885**	**429,651,885**	Consumer Loans
Commercial Loans	**347,968,548**	**347,968,548**	Commercial Loans
Real Estate Loans	**1,286,371,023**	**1,286,371,023**	Real Estate Mortgages
Currency and Coin	36,318,049		
Cash Items in Process	11,066,125		
Time & Saving Balances	750,000		
Overdrafts & Other Loans	29,824,067		
Unearned Income	(763,142)		
Accrued Interest - Loans	22,528,264		
Miscellaneous Receivables	220,488,206		
Prepaid Expenses	2,471,065		
Intercompany Receivables	4,515,304		
Other Assets	23,673,651		
Rounding	1		
	350,871,590	**350,871,590**	Other Assets/Judgments
Other Real Estate Owned	95,438,228		
Bank Premises & Furniture & Fixtures	89,103,798		
Rounding	(1)		
	184,542,025	**184,542,025**	Owned Assets
Investments in Subsidiaries	**58,838,378**	**58,838,378**	Net Investments In Subsidiaries
Total Assets	**$ 3,565,972,735**	**$ 3,565,972,735**	**Total Assets**

REPORT 2

Meritor Savings Bank
Statement of Assets and Liabilities in Liquidation (Unaudited) - Adjusted
INCEPTION TO 12/31/2008
(Rounded in Dollars)

Receivership Fund Code: 4556
Inception Date: 12/11/1992

	Inception Balances (Per FDIC General Ledger)	Net Change In Balances	12/31/2008 Actual G/L Balances	Adjustments to 12/31/2008 Actual G/L Balances	Adjusted 12/31/2008 Balances
	[a]	[b]	[c]	[d]	
Assets:					
Cash/Investments	$ -	$ 570,788	$ 570,788		$ 570,788
Receivables	-	-	-		-
Assets in Liquidation					
Securities	907,729,286	(907,590,298)	138,988		138,988
Consumer Loans	429,651,885	(429,651,885)	-		-
Commercial Loans	347,968,548	(347,968,548)	-		-
Real Estate Mortgages	1,286,371,023	(1,286,371,023)	-		-
Other Assets/Judgments	350,871,590	(350,871,590)	-		-
Owned Assets	184,542,025	(184,542,025)	-		-
Net Investments in Subsidiaries	58,838,378	(58,838,378)	-		-
Subtotal: Assets in Liquidation	3,565,972,735	(3,565,833,747)	138,988		138,988
Less: Estimated Loss on Assets	-	-	-		-
Advances on Assets	-	-	-		-
Total Assets	**$ 3,565,972,735**	**$ (3,565,262,959)**	**$ 709,776**	**$ -**	**$ 709,776**
Liabilities:					
Administrative Liabilities					
Accounts/Notes Payable	-	-	-		-
Suspense/Escrow Accounts	-	298,258	298,258		298,258
Due to FDIC for Service - Billed Expenses	-	1,390	1,390		1,390
Due to FDIC for Borrowed Funds	-	-	-		-
Estimated Litigation Losses - Probable	-	-	-		-
Other Contingent Liabilities	-	-	-		-
Subtotal - Administrative Liabilities	-	299,648	299,648	-	299,648
Proven Depositor/Creditor Claims					
Due to FDIC Subrogated Deposit Claims	-	13,806	13,806	-	13,806
Uninsured Deposit Claims Due Others	-	-	-	-	-
Other Creditor Claims	-	-	-	-	-
Estimated Interest Due to Others	-	2,049,924	2,049,924	-	2,049,924
Estimated Interest Due to FDIC	-	29,066,340	29,066,340	973	29,067,313
Subtotal Proven Depositor/Creditor Claims	-	31,130,070	31,130,070	973	31,131,043
Other Claims					
Estimated Federal Income Tax Liability	-	-	-		-
Other Subordinated Obligations	-	-	-		-
Liabilities at Inception - Unproven	3,399,233,126	(3,398,339,553)	893,573		893,573
Subtotal - Other Claims	3,399,233,126	(3,398,339,553)	893,573	-	893,573
Total Liabilities	**$ 3,399,233,126**	**$ (3,366,909,835)**	**$ 32,323,291**	**$ 973**	**$ 32,324,264**
Net Assets / (Deficit):					
Net Assets / (Deficit) At Inception	166,739,609	-	166,739,609		166,739,609
Premiums Received / (Paid) at Resolution	-	181,300,000	181,300,000		181,300,000
Asset - Related Equity Adjustments	-	29,240,747	29,240,747		29,240,747
Liability/Claims - Related Equity Adjustments	-	(94,894,794)	(94,894,794)	-	(94,894,794)
Income /(Loss) of the Liquidation Since Inception	-	(313,999,077)	(313,999,077)	-	(313,999,077)
Total Net Assets/(Deficit)	**$ 166,739,609**	**$ (198,353,124)**	**$ (31,613,515)**	**$ -**	**$ (31,613,515)**
Total Liabilties and Net Assets/(Deficit)	**$ 3,565,972,735**	**$ (3,565,262,959)**	**$ 709,776**	**$ 973**	**$ 710,749**

Estimated additional litigation considered reasonably possible: $ - 0 -

[a] The inception balances per the General Ledger agree in total with the adjusted inception balances on Report 1 - Inception Pro Forma Recap. Refer to Report 1 - A for the mapping of total asset line items on Report 1 to the corresponding asset categories on Report 2.

[b] The amounts in this column reflect the net change in balances reported at inception (column entitled "Inception Balances") versus those as of the report date (column entitled "12/31/2008 Actual G/L Balances").

[c] These balances reflect amounts reported on the receivership's Statement of Assets and Liabilities in Liquidation. Refer to the accompanying footnotes applicable to the Statement of Assets and Liabilities in Liquidation, as these notes are an integral part of this statement.

[d] Adjustment to reflect accrued interest on discovered unclaimed deposits of $13,806.00.

THIS REPORT CONTAINS 12/31/2008 ESTIMATES BASED ON THE BEST INFORMATION AVAILABLE AS OF 12/31/2008. AS WITH ALL ESTIMATES AND PROJECTIONS, ACTUAL RESULTS MAY DIFFER.

REPORT 3

Meritor Savings Bank

Projected Receivership Results as of 12/31/2008
(Rounded in Dollars)

Receivership Fund Code 4556
Inception Date: 12/11/1992

	Adjusted 12/31/2008 Balances		Federal Income Tax Liability		Projected Receivership Results as of 12/31/2008
Assets:					
Cash/Investments	$ 570,788				$ 570,788
Receivables	-				-
Assets in Liquidation					
Securities	138,988.00				138,988
Consumer Loans	-				-
Commercial Loans	-				-
Real Estate Mortgages	-				-
Other Assets/Judgments	-				-
Owned Assets	-				-
Net Investments in Subsidiaries	-				-
Subtotal: Assets in Liquidation	**138,988**				**138,988**
Less: Estimated Loss on Assets	-				-
Advances on Assets	-				-
Total Assets	**$ 709,776**				**$ 709,776**
Liabilities:					
Administrative Liabilities					
Accounts/Notes Payable					-
Suspense/Escrow Accounts	298,258				298,258
Due to FDIC for Service - Billed Expenses	1,390				1,390
Due to FDIC for Borrowed Funds	-				-
Estimated Litigation Losses - Probable	-				-
Other Contingent Liabilities	-				-
Subtotal - Administrative Liabilities	**299,648**				**299,648**
Proven Depositor/Creditor Claims					
Due to FDIC Subrogated Deposit Claims	13,806				13,806
Uninsured Deposit Claims Due Others	-				-
Other Creditor Claims	-				-
Estimated Interest Due to Others	2,049,924	[a]			2,049,924
Estimated Interest Due to FDIC	29,067,313	[a]			29,067,313
Subtotal Proven Depositor/Creditor Claims	31,117,237				31,117,237
Other Claims					
Estimated Federal Income Tax Liability	-		13,793,468	[b]	13,793,468
Other Subordinated Obligations	-				-
Liabilities at Inception - Unproven	893,573				893,573
Subtotal - Other Claims	893,573		13,793,468		14,687,041
Total Liabilities	**$ 32,324,264**		**$ 13,793,468**		**$ 46,117,732**
Net Assets / (Deficit):					
Net Assets / (Deficit) At Inception	166,739,609				166,739,609
Premiums Received / (Paid) at Resolution	181,300,000				181,300,000
Asset - Related Equity Adjustments	29,240,747				29,240,747
Liability/Claims - Related Equity Adjustments	(94,894,794)		(13,793,468)		(108,688,262)
Income /(Loss) of the Liquidation Since Inception	(313,999,077)				(313,999,077)
Total Net Assets/(Deficit)	**$ (31,613,515)**		**$ (13,793,468)**		**$ (45,406,983)**

[a] Post insolvency interest has been calculated on unpaid proven deposit and general trade creditor claims through 12/31/2008 using a rate of 6.00% per annum in accordance with Pennsylvania State Law. Interest on subordinated debt has been calculated using the contracted rate of 12.00% per annum. Interest will continue to accrue until unpaid proven claims have been paid in full.

[b] Tax returns and IRS transcripts for this receivership reflect federal income taxes due in the amount of $4,180,629. Another $9,522,530 in accrued interest and $90,309 in penalties have been estimated through 12/31/2008. Federal law provides for a deferral of these tax liabilities until such time as all deposit claims have been paid in full. Once deposit claims have been paid in full, the tax liability becomes due. The potential tax effect of any pending litigation settlement has not been considered.

FOR INTERNAL USE ONLY

MERITOR SAVINGS BANK
Fund Number: 4556
Statement of Assets & Liabilities in Liquidation (unaudited)
(Rounded in Dollars)

PHILADELPHIA, PA
Inception Date: 12/11/1992
For Period Ending: December 31, 2008
Run Date & Time: 02/11/2009 3:23:02PM

	Current Balance	Inception Balance
Assets		
Cash and Investments	$ 570,788	$ 0
Receivables	0	0
Assets in Liquidation		
Securities	138,988	907,729,286
Consumer Loans	0	429,651,885
Commercial Loans	0	347,968,548
Real Estate Mortgages	0	1,286,371,023
Other Assets/Judgments	0	350,871,590
Owned Assets	0	184,542,025
Net Investments in Subsidiaries	0	58,838,378
Subtotal - Assets in Liquidation	**$ 138,988**	**$ 3,565,972,735**
Less: Estimated Loss on Assets in Liquidation (Note 3)	0	0
Advances on Assets	0	0
Total Assets	**$ 709,776**	**$ 3,565,972,735**
Liabilities (Note 5)		
Administrative Liabilities		
Accounts/Notes Payable	0	0
Suspense/Escrow Accounts	298,259	0
Due to FDIC for Service - Billed Expenses	1,390	0
Due to FDIC for Borrowed Funds	0	0
Estimated Litigation Losses - Probable (Note 7)	0	0
Other Contingent Liabilities	0	0
Subtotal - Administrative Liabilities	**$ 299,649**	**$ 0**
Proven Depositor/Creditor Claims		
Due to FDIC for Subrogated Deposit Claims	13,806	0
Uninsured Deposit Claims Due Others	0	0
Other Creditor Claims	0	0
Estimated Interest on Claims (Note 6)	31,116,264	0
Subtotal - Proven Depositor/Creditor Claims	**$ 31,130,070**	**$ 0**
Other Claims		
Estimated Federal Income Tax Liability (Note 10)	0	0
Other Subordinated Obligations	0	0
Liabilities at Inception - Unproven	893,573	3,399,233,126
Subtotal - Other Claims	**$ 893,573**	**$ 3,399,233,126**
Total Liabilities	**$ 32,323,292**	**$ 3,399,233,126**
Net Assets/(Deficit)		
Net Assets / (Deficit) At Inception	166,739,609	166,739,609
Premiums Received / (Paid) at Resolution	181,300,000	0
Asset - Related Equity Adjustments (Note 8)	29,240,747	0
Liability/Claims-Related Equity Adjustments (Note 8)	(94,894,794)	0
Income / Loss of the Liquidation Since Inception	(313,999,077)	0
Total Net Assets/(Deficit)	**($31,613,515)**	**$ 166,739,609**
Total Liabilities and Net Assets/(Deficit)	**$ 709,776**	**$ 3,565,972,735**
Estimated additional litigation losses considered reasonably possible: (Note 7)	**$ 0**	

FOR INTERNAL USE ONLY

MERITOR SAVINGS BANK
Fund Number: 4556
Statement of Operations (unaudited)
(Rounded in Dollars)

PHILADELPHIA, PA
Inception Date: 12/11/1992
For Period Ending: 12/31/2008
Run Date & Time: 02/11/2009 3:21:16PM

	Year-to-Date	Inception-to-Date
Liquidation Revenues		
Interest on Cash and Investments	$ 13,988	$ 62,829,100
Interest and Late Fee Income on:		
Securities	0	5,152,040
Consumer Loans	0	3,375
Commercial Loans	0	32,901,332
Real Estate Mortgages	0	8,005,405
Other Assets and Judgments	0	331,642
Recoveries from Charged-Off Assets	0	52,440,671
Professional Liability / Litigation Recoveries	6,900	22,825,550
Other Miscellaneous Income	7,350	5,655,873
Total - Liquidation Revenues	**$ 28,238**	**$ 190,144,988**
Liquidation Expenses		
Operations		
FDIC Service-Billed Expenses for:		
Marketing / Closing / Settlement	0	0
Oversight / Claims / Accounting	4,599	141,024
Asset Marketing / Management	0	102,186
Investigation and Others	8,618	68,404
Salaries and Indirect Costs	0	44,004,391
Asset Servicing-Related Expenses	0	6,238,489
Asset Sales-Related Expenses	0	1,126,760
Legal and Other Professional Fees	0	4,391,516
Travel and Other Liquidation Expenses	0	5,577,932
Subtotal - Operating Expenses	**$ 13,217**	**$ 61,650,702**
Interest on FDIC Borrowed Funds	0	691,078
Other Interest Expense	0	15,103,593
Litigation Losses	0	10,712,465
Loss on Contingent Liabilities	0	135,709,400
Total Liquidation Expenses	**$ 13,217**	**$ 223,867,238**
Net Income/(Loss) from Operations	**$ 15,021**	**($33,722,250)**
Net Income/(Loss)on Managed Assets		
Owned Assets	0	(5,979,450)
Net Investments in Subsidiaries	0	(3,584,335)
Total Net Income/(Loss)on Managed Assets	**$ 0**	**($9,563,786)**
Gain/(Loss) on Disposition of Assets		
Securities	0	(5,303,076)
Consumer Loans	0	(1,308)
Commercial Loans	0	(99,796,337)
Real Estate Mortgages	0	(9,534,331)
Other Assets / Judgments	0	(18,086,958)
Owned Assets	0	(128,112,694)
Net Investments in Subsidiaries	0	(9,878,337)
Total - Gain/(Loss) on Disposition of Assets	**$ 0**	**($270,713,041)**
Income/(Loss) of the Liquidation	**$ 15,021**	**($313,999,077)**

The accompanying notes are an integral part of these financial statements.

Notes to Financial Statements:

1. Basis of Accounting : The FDI Act authorizes the FDIC, as receiver for a failed insured depository institution ("Receivership"), to administer and conclude the affairs of such institution. Financial statement presentations are based on the premise that the assets of the receivership will be liquidated and proceeds distributed to the institution's creditors over time as provided by applicable laws and regulations. While a receivership's average lifespan is three to six years, some may require longer time frames to conclude. At the onset of a receivership, the failed institution's financial records are reviewed and restated to establish a new basis of accounting. The assets and liabilities of the failed institution are adjusted to remove all estimated losses, accruals, and deferrals. These adjustments include loss allowances; partial write downs; prepaid, deferred or accrued expenses having no recovery value; and accrued or deferred income. Restated balances are shown under the Inception Balance heading of the Statement of Assets and Liabilities in Liquidation. After inception, FDIC's liquidation valuation and measurement practices, as described more fully in the paragraphs that follow, are adopted for all assets and liabilities. In general, transactions are recorded when cash is received or disbursed. Accruals may be used when prospective cash flows are probable and reasonably estimated.

2. Use of Estimates : As appropriate, estimates of asset values, liabilities, revenues, and expenses are reflected in the financial statements. These amounts are updated over time to compensate for uncertainties inherent in the estimation process. As with the use of all estimates, actual results may differ.

3. Valuation of Assets/Loss Allowances : Assets of the receivership are shown at values representing cash on deposit or the book value of amounts invested; the principal balance of loans, notes, other debt instruments or receivables (note that interest on these assets is not accrued after failure but is recognized when received); the foreclosed value of real and/or personal property or the book value of assets (cost less depreciation or amortization through date of the institution's failure); and the historical cost of the net investment in subsidiaries, partnerships or joint ventures, adjusted where appropriate to reflect the receivership's portion of the underlying net earnings or losses.

An Estimated Loss on Assets is provided when anticipated future asset disposition proceeds, including associated expenses, are less than recorded amounts. Future asset disposition proceeds are generally estimated by determining, via statistical sampling or recent disposition activity, the recovery rates for similar assets across all receiverships. However, actual recovery rates for this receivership may differ according to the quality and type of individual asset, as well as over time with changing market conditions. Accordingly, the gains or losses ultimately realized for this receivership will likely vary from amounts estimated.

4. Contingent Recoveries : Assets of the receivership generally exclude potential collections from activities such as professional liability or other types of pending legal actions. Significant uncertainties prevent reasonable estimation of the amounts ultimately collectible. Instead, these recoveries are generally recognized when cash is received, or when the collection is probable and the amount collectible can be reasonably estimated.

5. Actual and Estimated Liabilities : The FDIC, as receiver, determines (allows/disallows) claims and distributes proceeds derived from the disposition of the failed institution's assets according to applicable state and federal law governing the payment of creditor claims. Recorded liabilities comprise 1) proven or pending (unproven) claims against the receivership estate, 2) various operating liabilities, and 3) estimates of other probable losses such as pending defensive litigation. Applicable law governing the payment priority of distributions may vary depending on the inception date of the receivership. Therefore, liabilities of the receivership estate are not ranked in order of preference or payment priority on the Statement of Assets and Liabilities in Liquidation.

6. Estimated Interest on Claims : Applicable law governs or directs the payment of post-insolvency interest to creditors holding proven claims against the receivership estate, including the claim(s) held by the FDIC in its Corporate capacity. Post-insolvency interest is the interest calculated and paid on proven creditor claims, under certain circumstances, after a receiver is appointed. Uncertainties exist as to the universe of creditors whose claims will ultimately be allowed and whether creditors will receive the full principal amount of proven claims against the receivership estate or any post-insolvency interest. No distribution will be made to holders of equity interests until allowed creditor claims have been paid principal and any post-insolvency interest in full. Generally, the estimated liability for the total amount of post-insolvency interest payable respective to creditor claims is recognized in these financial statements when at least 95% of the principal of proven creditor claims has been paid.

7. Reasonably Possible Litigation Losses : In addition to the amounts recorded for probable litigation liabilities, the FDIC Legal Division has determined that the receivership may be subject to reasonably possible losses from unresolved litigation. Reasonably possible losses differ from those which are probable in that there is a lesser likelihood of loss and payment from the receivership. As such, reasonably possible losses are not accrued in the accounts until the FDIC, through periodic review, determines either that the litigation settlement expense has been incurred or that the likelihood of loss has become probable. While not recognized in the Statement of Assets and Liabilities in Liquidation, FDIC management may use all or part of the estimate of reasonably possible litigation losses to determine the assets that must be retained by the receivership to satisfy these potential obligations. The amount of reasonably possible losses is shown at the bottom of the receivership's Statement of Assets and Liabilities in Liquidation as a separate disclosure. Further, receiverships may be subject to significant losses from cases where uncertainties prevent a reasonable assessment of the ultimate outcome and/or an estimate of the amount of loss which could result.

8. Non-Cash Adjustments : Unrecorded assets and claims determined to have existed as of the institution's failure are deemed discovered assets and liabilities, respectively, and are recorded as non-cash equity adjustments. Other non-cash equity adjustments include the Estimated Loss on Assets in Liquidation, the Estimated Interest on Claims, as well as the write-off of remaining unpaid liabilities prior to the inactivation of a receivership. Note that certain non-cash adjustments such as the estimated loss on assets and probable litigation are reversed when they are recognized as liquidation transactions in the Statement of Operations.

9. FDIC Service-Billed Expenses (Statement of Operations) : FDIC personnel, who are employed by the FDIC in its Corporate capacity, are responsible for conducting all liquidation-related activities for FDIC receiverships. The FDIC in its Corporate capacity bills the receiverships for various liquidation services provided on their behalf. Since 2002, these receivership billings are calculated by multiplying the actual workload volume attributable to an individual receivership by the benchmark rate for the service provided. Benchmark rates are developed and periodically reviewed by FDIC management after considering empirical and industry data relevant to the service provided as well as an overhead component. These expenses are presented by service type under the "FDIC Service-Billed Expenses" section in the Statement of Operations.

Prior to 2002, the costs of FDIC-provided services were billed to receiverships in two components comprising 1) employee salaries based on actual labor hours directly attributable to an individual receivership and 2) indirect costs allocated amongst active receiverships based on liquidation activity, as reflected by each receivership's salary charges. Where applicable, these billed expenses are reflected as "Salaries and Indirect Costs" in the Statement of Operations.

10. Income Taxes : Federal tax law requires that receivers of corporations, including depository institutions for which the FDIC serves as receiver, continue to file federal income tax returns for the receiverships they manage. A receivership may therefore incur a federal income tax liability from activities that occur during the life of the receivership, as well as during pre-receivership periods. Payment of federal income taxes is deferred until higher priority claims are satisfied, but prior to any payment made to equity holders of the failed institution. Because of the contingent nature of these tax claims, federal income tax liabilities are generally not recognized in these financial statements unless circumstances indicate that there is a high probability that they will be paid. Federal law provides an exemption from income taxes imposed by any State or local taxing authority once FDIC is appointed as receiver.

CERTIFICATE OF SERVICE

I certify under the penalty of perjury that on this 7th day of May, 2010, I caused to be placed in the United States mail, postage pre-paid, two copies of the foregoing, addressed to:

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