

U.S. Century Bank lawsuit now names current and former executives, directors

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File photo / Current and former officials at U.S. Century Bank were named in a shareholder lawsuit.

The shareholder lawsuit against **U.S. Century Bank** has been amended to target the bank's current and former executives and directors while the plaintiff field was expanded as well, including a major local developer.

This lawsuit comes as U.S. Century bank shareholders are set to vote Tuesday afternoon on whether to approve the Doral-based bank's sale to St. Petersburg-based C1 Bank.

Shareholders would receive \$2.5 million, or about 1.7 cents on the dollar, from the sale. The banks asked the government to accept a \$6.27 million payout to redeem the \$50.2 million in taxpayer money that U.S. Century Bank accepted from the Trouble Asset Relief Program (TARP) – an offer that the **U.S. Department of the Treasury** has yet to accept.

The bank, which is called “undercapitalized” by regulators, has a \$20 million directors and officers liability insurance policy that would be cut in half after the sale closes. The lawsuit could be an attempt to tap into that money, which is considerably more than the merger compensation.

The original lawsuit was filed on Nov. 14 by minority shareholders Carlos E. Silva and Jorge E. Silva, the co-partners of a Coral Gables law firm, claiming breach of contract and breach of fiduciary duty against the bank only. The complaint was recently amended into a shareholder derivative action seeking damages against current and former officials with the bank on behalf of both U.S. Century Bank and its shareholders.

Big names among plaintiffs, defendants

Other shareholders were added as plaintiffs, including Masoud Shojaee, the president of Miami-based Shoma Homes, and attorneys Jesus R. Tome and Anibal Duarte-Viera.

The amended complaint names the bank's current directors, attorney Ramon Rasco, managing

partner of Rasco, Klock, Reininger, Perez, Esquenazi, Vigil & Nieto; Francisco Angones, managing partner of Angones, McClure & Garcia; and Jose Cancela, general manager of Telemundo KVEA-52 Los Angeles. It also names director/President and CEO Carlos Davila, who joined the bank in August, and CFO Samuel Milne.

The former U.S. Century Bank officials named in the amended complaint are ex-President and CEO Octavio Hernandez, who is still an advisor to its board; ex-senior lending officer Abel Montouri; ex-senior VP of commercial lending Jorge Carvallo and former directors Sergio Pino, Armando Guerra, Agustin Herran, Manuel A. Herran, Rodney Barreto, Adolfo Henriques and Carlos M. Garcia.

Pino is the president of Century Homes while Agustin Herran is president of Sedano's Supermarkets. Barreto owns consulting firm Floridian Partners and electronic medical records seller Healthcare Data Solutions while being the former chairman of the Florida Fish and Wildlife Conservation Commission and the South Florida Super Bowl Host Committees in 2007 and 2010.

Henriques is the president and CEO of Coral Gables-based Gibraltar Private Bank & Trust. His tenure on the U.S. Century Bank board, from 2005 to early 2007, was shorter than that of the other defendants. Henriques declined comment.

Officials with U.S. Century Bank couldn't immediately be reached for comment.

Allegations in lawsuit

The lawsuit claims both a breach of shareholder agreement against the bank and a derivative action to recover money that was allegedly wasted by the "wrongful and negligent" actions of the bank's leadership. If they win on the latter claim, the officers named would have to pay the bank for any damages they caused it.

The claim of negligence against officers and directors in the amended complaint should be enough to trigger the D&O insurance policy, said **Barton S. Sacher, founding shareholder of Sacher, Zelman, Hartman, Paul, Beiley & Sacher, P.A.** The question is whether the shareholders could receive funds directly from the bank or whether their derivative claims could see only the bank get compensated.

Sacher noted that the complaint was filed on behalf of "all similarly situated shareholders" yet it doesn't appear to contain class action allegations.

The complaint alleges the bank was created to help its directors and their friends and family members finance construction projects under unusually favorable terms under lax underwriting standards. The complaint cited the high level of loans to bank insiders and nine of 24 branches being leased from bank directors Pino, Guerra and Herran in 2011.

Banking regulators allow insider loans and leases as long as the insiders don't vote on them and the terms are comparable to market conditions. C1 Bank's merger agreement calls for the

rental rates on the insider branches to be reduced. The lawsuit alleges the rents for the insider branches were above market value.

The insider loans had little underwriting scrutiny and U.S. Century Bank's loan transactions were used to help its directors and business associates gain political leverage, the complaint alleges. Davila previously told the *Business Journal* that U.S. Century Bank hasn't taken any losses on its insider loans, but it has taken reserves for potential losses on them and some of those loans were modified in "troubled debt restructuring."

"The defendant directors wasted corporate assets by, among other things, failing to supervise the unproportional level of insider lending which led to an over-abundance of non-performing loans, employing a liberal loan forgiveness program for insiders and/or their friends and business associates which were more favorable than those available to normal customers of the bank, failing to ensure diversification of the bank's assets so as to avoid the risk of the bank's undercapitalization and using the bank branch locations as an avenue to maximize personal profit for those defendant directors who owned the properties which housed said branches," the complaint states.

The complaint also seeks to hold the bank's officials responsible for the violations of banking law cited in a 2011 enforcement action, including anti money-laundering violations.

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