

# **U.S. Would Hurt RTC Sales By Reneging on Deals**

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A recent article in the Los Angeles Times began by saying that "some of the nation's largest and toughest law firms, noted for their aggressive tactics in takeovers and merger battles, say that they are willing to represent the federal government to help overturn controversial 1988 sales of dozens of S&Ls to private investors."

This and other news about the thrift mess makes me sick to my stomach.

In 1985 and before, my law firm sought to structure a number of deals with the Federal Savings and Loan Insurance Corp. whereby financial institutions or groups of investors would take the walking wounded of the S&L industry off the government's hands. We were invited to submit bids.

Our clients weren't altruistic - they were out to make a buck. In most cases, they were in allied financial services industries and wanted to expand. In some cases, the clients were household names.

They weren't trying to fleece the federal government or the American taxpayer. They were just trying to cut a commercially reasonable deal and buy what the FSLIC was selling.

## **Deals Fell Through**

As 1988 came to a close, we were not on the winning side. For one reason or another, the deals that we had worked on fell through. In some cases, we were outbid; in others, our clients got tired of dealing with the whims of the federal government, and in still others, we lost out to other law firms that did the deals with clients that we had courted.

Thus, as 1988 came to a close, we were standing on the sidelines watching others do the deals. I know how hard they worked, because

during the earlier bidding process, we had been working against many of them.

I also know something about how hard the federal regulators worked. Despite being maligned by the press and many on Capitol Hill, Danny Wall and company did a first-rate job. The man is honest, as he proved through many years of government service. He was trying to do the best he could to solve problems with the limited financial resources at his disposal, before the carrying costs related to these institutions overwhelmed the system.

Could better deals have been struck? Sure, if the federal government had been in a better bargaining position and if there had been more genuine buyers instead of lots of tire kickers.

### **Best Interests at Heart**

Anyone who ever suggested that Danny Wall didn't do what he thought was in the best interests of the country and the American taxpayer doesn't know Danny Wall. The fact that the deals could later be characterized as sweet doesn't change the facts.

The FSLIC had been criticized for not moving the troubled thrifts to willing buyers, and finally it did just that. Once the deals were struck, in good faith, a deal was a deal. That's the American way. It's also the law of contracts.

I am among those who spent many frustrating years trying to convince potential buyers that the government was trustworthy and reasonable to deal with. The buyers were actually coming forth in large numbers and were ready to deal.

But then the rules started to change.

Capital requirements and other ingredients have been ratcheted up, and the regulatory structure has changed. Now, swarms of regulators and lawyers will be trying to undo the deals that were made. Looking back, many buyers have got to be thinking that they made an enormous mistake in doing such deals in the first place.

### **Dangerous Business**

As 1988 was coming to a close, I was beginning to conclude that buyers would deal with the federal government at their peril. As subsequent events unfolded, I am sad to say that it came true.

In the past year, the president of one company asked for my advice about buying individual branches from the Resolution Trust Corp. as a way to start a bank. I reluctantly told him that it would be better to structure private deals or stick with unregulated industries entirely. He'd probably sleep better at night, and make more money in the process.

It's a sad day when the federal government cannot be relied on as an honest and decent party to deal with, but that's what the yearend 1988 buyers must be feeling now. However, the issue goes far beyond them, for it sends signals to others who might wish to deal with the RTC that the government isn't a reliable or reputable party after all.

### **Deals Have to Be Sweet**

While Congress and the regulators have every right to review the deals that were struck to determine if there were any improprieties, it is another thing to change the deals now because they were too sweet for the buyers. By definition, the deals have to be sweet for buyers to put up with the aggravation of dealing with the federal government.

If the deals aren't somewhat sweet, the buyers will go away and the government will be talking with itself. However, the notion of having bloodthirsty, bounty-hunting lawyers descend on the yearend 1988 buyers is, frankly, repulsive. They are motivated by contingent fees and the prospect of ingratiating themselves with the federal government and getting more business in the process.

Like ambulance-chasing lawyers or those who have been harassing the medical profession for years, there is no doubt that they will heed the call. But it does little for the legal profession's already tarnished reputation or for the sanctity of government contracts.

From the tone of the Los Angeles Times article, one would think that the law firms mentioned were heroes riding in to save the republic. Quite the contrary, they are guns for hire - this time being used to intimidate many who thought that they were acting honestly and in good faith.

It is also sad but understandable that the impetus for such activities is coming from Congress. With the public up in arms over elected officials standing by while the banks were robbed, and vowing to take vengeance at the polls in November, it is small wonder that the politicians are once again scurrying to deflect attention from themselves and lay blame elsewhere.

Congress gave us the S&L mess, and it is not surprising that its members are running for cover now. It was Congress that deregulated the industry at a time when most S&L managers were ill-prepared for such a move. It was Congress that relaxed the rules so that S&Ls could make risky loans in an attempt to generate earnings to meet the higher interest rates demanded by depositors after deregulation.

### **Congress' Fault**

It was members of Congress themselves who had their hands out soliciting S&L contributions at every turn and doing what the S&L lobby wanted, regardless of whether it was good public policy. It was Congress that failed to provide adequate money to fund the regulators so that they could police the new activities that S&Ls embarked on.

And now it is Congress that is demagoguing at a time when some polls suggest that the electorate will be voting out incumbents this fall to vent its frustrations and anger at the whole mess.

I'm sure there will be no reluctance on the part of big law firms to jump on the bandwagon, especially since it will be considered fashionable and may bring in more business. But what about the good of the republic? If the public really looks for the culprit in the S&L mess, it might look no further than Capitol Hill.

### **Don't Blame the Whole Industry**

The most enormous economic debacle in the history of this country has occurred, but there is no point in compounding the problems by breaking legitimate contracts and defaming an entire industry just because some crooks got away with their pound of flesh.

The banking industry as a whole isn't in wonderful shape, and the federal government has lots of cleaning up to do in the years to come. It doesn't need the added worry that legitimate buyers are going to shy away because they can't trust the government.

As in the case of qualified people who refuse to run for public office because of the stench involved, qualified buyers may back off dealing with the RTC because of what they've seen done to others.

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