

Alabama banking: Colonial exit plan nixed, more debate on way

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The legal drama swirling around the Colonial BancGroup bankruptcy continues to grow as the case approaches the two-year mark.

Late this month, a proposed plan for the company to exit bankruptcy was denied, after a contentious hearing with plenty of name-calling in U.S. Bankruptcy Court in Montgomery.

The judge in the case wrote in his post-hearing opinion that the debt repayment plan proposed by Colonial was shot down because it was not "in the best interests of creditors."

Now, additional hearings are scheduled for next week on the bankrupt bank holding company's fate. The bankruptcy is almost two years old, and has rung up \$8.2 million in legal fees. One of the key legal tussles: Should the case remain a Chapter 11 plan overseen by people owed money by Colonial, or should it be converted to a Chapter 7 case overseen by an impartial trustee?

Not much is at stake for average folks. Most creditors are Wall Street investors speculating on the payout to be made on Colonial's bonds after the assets are divvied up.

Colonial Bank's depositors and branches were long ago absorbed by North Carolina-based BB&T Corp. after what was once Alabama's second-largest bank went insolvent from lending money to people who couldn't pay it back.

But there is something at issue for the population at large: the claims of the Federal Deposit Insurance Corp. It was the FDIC that seized and closed insolvent Colonial Bank in August 2009, at a cost of \$2.8 billion to the insurance fund that protects depositors from shoddily run banks.

Now, the federal agency figures that whatever is left at the bankrupt holding company belongs to it. The bankrupt shell company has cash on hand of about \$34 million, but many millions more might eventually come available through real-estate liquidations and proceeds from lawsuits the company is part of.

The FDIC has strongly objected to the general goings-on in the bankruptcy. Last month, lawyers for the FDIC filed a brutally frank document demanding the case be converted to a straight Chapter 7 liquidation of remaining assets for payout to creditors.

"In the more than nineteen months since the debtor filed its petition commencing this Chapter 11 case, it has been successful in only one area: the incurrence and payment of administrative expenses that have dramatically depleted its cash," the FDIC lawyers wrote.

BB&T also has an interest in the case, with about \$300 million in investment securities at stake. Colonial says those assets belong to it, while BB&T also makes a claim. That led BB&T to also request the Chapter 7 liquidation, as opposed to a Chapter 11 run by a committee of creditors controlled by late-inning investors looking to turn Colonial's misfortune into profitable action.

Chris Glenos, BB&T's lawyer, said during this month's hearing on the matter: "The creditors deserve a case run by an impartial Chapter 7 trustee whose actions and compensation are subject to the provisions of the bankruptcy code and the court's oversight, rather than a case run by a committee of hedge funds with their own agenda who want to gamble the bankruptcy estate's assets pursuing scorched-earth, high-stakes litigation."

Another hearing on the matter is scheduled for Tuesday. Edward Dobbs, Colonial's Atlanta-based lawyer, said his side plans to offer up a modified Chapter 11 plan at that time.

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