

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
VANTUS BANK,

Plaintiff,

v.

MICHAEL W. DOSLAND, MICHAEL S.
MODERSKI, ARLENE T. CURRY, BARRY
E. BACKHAUS, GARY L. EVANS,
RONALD A. JORGENSEN, JON G.
CLEGHORN, AND CHARLES D.
TERLOUW,

Defendants.

Case No. _____

**COMPLAINT
AND JURY DEMAND**

COMES NOW Plaintiff Federal Deposit Insurance Corporation (“FDIC”), as Receiver for Vantus Bank (“FDIC-R”), by and through the undersigned counsel, and for its Complaint makes the following allegations. All paragraphs are incorporated into all parts of the Complaint.

COMPLAINT

I. INTRODUCTION

1. The FDIC-R brings this lawsuit in its capacity as Receiver for Vantus Bank of Sioux City, Iowa (“Vantus” or “Bank”) to recover in excess of \$58 million in losses Vantus suffered as a result of the negligence, gross negligence and breach of fiduciary duty of the Defendants in causing the Bank to use \$65 million – 120 percent of its core capital – to purchase high risk collateralized debt obligations backed by trust preferred securities

(“CDO-TruPS”) without due diligence and in disregard and ignorance of regulatory guidance about the risks and limits on purchases of such securities.

2. As further detailed in this Complaint, the eight Defendants, all former officers and/or directors of the Bank, fundamentally changed Vantus’s investment policy to an aggressive growth strategy without adopting procedures to ensure that Vantus was engaging in prudent risk management practices. Pursuant to this new investment policy, from October 2006 through March 2007 and between examinations of Vantus by the Office of Thrift Supervision (“OTS”), Defendants used more than \$65 million of Vantus’s capital to purchase high risk CDO-TruPS. In the aggregate, these purchases constituted 120 percent of Vantus’s capital, eight times the OTS guidance limit of 15 percent of capital for these types of investments. At least two of the purchased securities also exceeded the regulatory limit on purchases from a single issuer by \$12.5 million.
3. The two Defendants who were officers of Vantus, Michael Dosland and Michael Moderski (collectively “Officer Defendants”), had little or no experience in selecting or buying CDO-TruPS, failed to perform due diligence on these securities (failing even to obtain and review the prospectuses), and were completely unaware of OTS guidance concerning the high risks of these securities. The remaining Defendants, all members of Vantus’s Board of Directors (collectively, with Michael Dosland, “Director Defendants”), failed over a sustained period to devote attention and make appropriate inquiry concerning the nature and risks related to the new investment policy and investments, and failed to make appropriate inquiries about these investments when a reasonably attentive bank director would have been alerted of the need for such attention

and inquiry. These Director Defendants relied on representations by the Officer Defendants concerning the nature and risks related to these investments when they knew, or when a reasonably attentive bank director should have known, that Dosland and Moderski had not performed adequate due diligence; had little or no experience in selecting or buying CDO-TruPS or effectively analyzing, monitoring and managing the risks associated with the investments in CDO-TruPS; and that the Officer Defendants needed greater oversight in making the investments.

4. In this lawsuit, the FDIC-R does not seek to collect upon outstanding CDO-TruPS, but rather seeks to collect damages flowing from the negligence, gross negligence and breach of fiduciary duties of the Defendants, as specifically alleged in this Complaint.

II. PARTIES AND OTHERS

5. FDIC is a corporation organized and existing under the laws of the United States. 12 U.S.C. § 1811-1835a *et seq.* The FDIC is an instrumentality of the United States of America and is charged with, among other duties, the orderly liquidation of failed financial institutions. 12 U.S.C. § 1821(d). On September 4, 2009, OTS closed Vantus and appointed the FDIC-R as receiver. Pursuant to 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC-R succeeded to all rights, titles, powers, and privileges of Vantus and its shareholders, accountholders and depositors, including but not limited to, claims against its former directors and officers for negligence, gross negligence and/or breaches of fiduciary duties or other legal duties. FDIC-R is a real party in interest to this action and is entitled to recover the damages alleged in this Complaint.
6. OTS was created by Congress in 1989 as a United States agency within the Department

of Treasury, and it was granted the powers to, among other things, regulate and govern banks such as Vantus Bank. In 2010, Congress abolished OTS and transferred its powers to the Office of Comptroller of the Currency.

7. The Federal Home Loan Bank System was created by Congress in 1932, and it consists of twelve regional Federal Home Loan Banks (“FHLB”) whose purpose is, among other things, to provide a source of funds from which federal saving and loan banks can borrow.
8. Vantus was a federal savings bank with its home office in Sioux City, Iowa.
9. Defendant, Michael W. Dosland (“Dosland”), is a citizen of the State of Wisconsin, and was the Bank’s Chief Executive Officer, President, and a member of its Board of Directors (“Board”) from January 2006 until he resigned in July 2008.
10. Defendant, Michael S. Moderski (“Moderski”), is a citizen of the State of Wisconsin, and was the Bank’s Chief Financial Officer and Controller from April 2006 until the OTS closed the Bank on September 4, 2009.
11. Defendant, Barry E. Backhaus (“Backhaus”), is a citizen of the State of Iowa. Backhaus was the Bank’s Interim President from July 2008 to December 2008, and a member of its Board from 1987 until the OTS closed the Bank on September 4, 2009.
12. Defendant, Arlene T. Curry (“Curry”), is a citizen of the State of South Dakota, and was a member of the Bank’s Board from 2002 until the OTS closed the Bank on September 4, 2009.
13. Defendant, Gary L. Evans (“Evans”), is a citizen of the State of Iowa, and was a member of the Bank’s Board from 1989 until the OTS closed the Bank on September 4, 2009.

14. Defendant, Ronald A. Jorgenson (“Jorgenson”), is a citizen of the State of Iowa, and was a member of the Bank’s Board from July 2005 until the OTS closed the Bank on September 4, 2009.
15. Defendant, Jon C. Cleghorn (“Cleghorn”), is a citizen of the State of South Dakota, and was a member of the Bank’s Board from 1998 until the OTS closed the Bank on September 4, 2009.
16. Defendant, Charles D. Terlouw (“Terlouw”), is a citizen of the State of Iowa, and was a member of the Bank’s Board from July 2006 until the OTS closed the Bank on September 4, 2009.
17. The Officer Defendants and Director Defendants shall collectively be referred to as “D&O Defendants.”

III. JURISDICTION AND VENUE

18. Pursuant to 12 U.S.C. § 1819(b)(1), the FDIC-R is an agency of the United States for purposes of 28 U.S.C. § 1345, and therefore this Court has subject-matter jurisdiction of this action under 28 U.S.C. § 1345. Pursuant to 12 U.S.C. § 1819(b)(2)(A), this action arises under the laws of the United States, and therefore this court has subject-matter jurisdiction of this action under 28 U.S.C. § 1331.
19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events, errors and omissions giving rise to the FDIC-R’s claims occurred in the Northern District of Iowa, particularly within the Western Division.

IV. FACTUAL ALLEGATIONS

20. The Bank opened for business in 1923 as First Savings Bank of Siouxland, and it changed its name to First Federal Bank in 1999 and to Vantus Bank in 2007.
21. Prior to hiring Dosland and Moderski, the Bank's organizational structure included a Loan Committee ("LCO"), an Assets Liability Committee ("ALCO"), and an Audit Committee ("ACO").
22. The responsibilities of LCO, ALCO and ACO included, among other things, (a) reviewing and recommending investment policies and procedures to the Board, (b) reviewing and recommending investments to the Board, and (c) ensuring investments were compliant with federal guidelines, rules and regulations and with Bank policies.
23. Final responsibility for all aspects of the Bank's investment activities resided with the Board.
24. In January 2006, the Board hired Dosland as President and Chief Executive Officer of the Bank, and he became a member of the Bank's Board at that time. He held these positions until he resigned in July 2008.
25. In April 2006, on Dosland's recommendation, the Board hired Moderski as the Bank's Chief Financial Officer and Controller. He held these positions until OTS closed the Bank on September 4, 2009.
26. Prior to hiring Dosland and Moderski, the members of the Board, including the Director Defendants, failed to properly inform themselves in respect to Dosland's and Moderski's experience and knowledge in respect to the positions for which they were hired and the authority they were given.

27. Dosland and Moderski did not possess the necessary experience and knowledge in respect to the positions for which they were hired and the authority they were given.
28. During their tenures at the Bank, both Dosland's and Moderski's compensation included, among other things, a base salary, bonuses, stock in the Bank's holding company, First Federal Bankshares, Inc. ("FFB"), and stock appreciation rights.
29. The Director Defendants also received compensation, including but not limited to lump sum payments, deferred compensation and FFB stock.
30. On June 8, 2006, Dosland and Moderski presented the Board with an amendment to the Bank's Investment Policy which proposed substantial and substantive changes to the Bank's loan and investment policies.
31. The amendment, among other things, eliminated and/or severely reduced the participation and roles of the Board, LCO, ALCO, and ACO in the Bank's investment policies, procedures, and reviews, and provided Dosland and Moderski with carte blanche authority over the Bank's investment policies, procedures, and reviews with little or no oversight by the Board, including but not limited to the power to unilaterally modify and alter the Bank's investment strategies and portfolio.
32. The amendment did not authorize the Bank to invest in CDO-TruPS.
33. CDO-TruPS are high risk and complex securities, some of which, among other things, permit the issuer to defer payment of interest and dividends for up to 20 consecutive months without a default.
34. CDO-TruPS are also comprised of tranches (levels) whereby lower tranches have increased risk and less liquidity than higher tranches.

35. CDO-TruPS were subject to, among other things, OTS Thrift Bulletin 73a, (“TB 73a”) which described the risks of these instruments and set regulatory limits on purchases of them by banks.
36. Dosland and Moderski had little to no knowledge, background, or experience in respect to CDO-TruPS.
37. On June 15, 2006, on the motion of Director Jorgenson, the Board, including the Director Defendants except Terlouw, approved the amendment, with a limit of \$5 million on “Exceptions” between board meetings.
38. On October 10, 2006, Moderski, with the consent and knowledge of Dosland, selected and purchased more than \$10 million of CDO-TruPS (including but not limited to many at low level tranches). Of this amount, at least \$6 million in CDO-TruPS were purchased in contravention of the Bank’s investment policy and TB 73a, and with no review or analysis of federal guidelines and regulations, including limitations set forth in TB 73a.
39. The selections and purchases of CDO-TruPS were made with little or no due diligence, analysis, or guidance by or for Dosland and Moderski and with little or no oversight by the Board, including by the Director Defendants. Dosland and Moderski had no knowledge of TB 73a at the time of the purchases, and prior to the purchases they never reviewed or researched the applicable circulars, and/or prospectuses for the CDO-TruPS.
40. From December 2006 through March 2007, Moderski, with the consent and knowledge of Dosland, borrowed \$50 million through certificates of deposit and advances from the FHLB and used the proceeds to purchase \$50 million of CDO-TruPS (including but not limited to many at low level tranches).

41. Most, if not all, of the CDO-TruPS purchases were made through Keefe, Bruyette and Woods (“KBW”), a boutique investment bank and securities broker-dealer.
42. Dosland and Moderski relied almost entirely, if not entirely, on KBW for information related to CDO-TruPS when they knew or, in the exercise of reasonable care, should have known that KBW had a pecuniary interest in selling the CDO-TruPS.
43. The CDO-TruPS purchases were not authorized in advance, were in contravention of the Bank’s investment policy and TB 73a and disregard and ignorance of federal guidelines set forth in TB 73a, and were done with little or no due diligence, analysis, or guidance by or for Dosland and Moderski and with little or no oversight by the Board, including by the Director Defendants. Dosland and Moderski had no knowledge of TB 73a at the time of the purchases, and prior to the purchases they never reviewed or researched the applicable circulars and/or prospectuses for the CDO-TruPS.
44. The borrowing for and purchasing of more than \$65 million of CDO-TruPS comprised more than 120% of the Bank’s capital, in violation, disregard and ignorance of the limitations in TB 73a.
45. The CDO-TruPS purchases were made between OTS examinations of the Bank and without OTS’s knowledge, and constituted a high-risk investment in complex securities.
46. After OTS learned of the Bank’s purchases of the CDO-TruPS, it gave notice to the D&O Defendants that at least two of the purchases were in excess of regulatory guidelines. OTS directed the Bank not to purchase any additional CDO-TruPS, and directed the Bank to sell two of the CDO-TruPS to reduce the Bank’s exposure.
47. Dosland thereafter sent a letter to OTS dated June 29, 2007, in which he advised OTS

that the Bank would comply with the OTS directive to reduce the Bank's exposure in two of the CDO-TruPS. Board Chair Curry was aware of Dosland's letter on or around the time it was sent, and the members of the Board, including the Director Defendants, were advised of the letter at its next Board meeting on July 19, 2007.

48. The Bank, with the knowledge and consent of the D&O Defendants, never reduced the amount of CDO-TruPS it held, did not comply with the OTS directive to reduce the Bank's exposure, but instead continued to hold the CDO-TruPS it had previously purchased.
49. The procedural and substantive aspects related to the Bank's purchases of the CDO-TruPS, the continued holding of them, and the failure to comply with OTS' directives to reduce the Bank's exposure through sale:
 - a. was done in the absence of full, sufficient, and adequate information and/or reasonable and adequate due diligence;
 - b. was not reasonably prudent;
 - c. was not in the best interests of the Bank's depositors, account holders, and other creditors and stockholders;
 - d. was unreasonable;
 - e. was contrary to Bank policy;
 - f. was contrary to reasonably prudent banking policies and standards;
 - g. was in violation, disregard and ignorance of federal guidelines; and
 - h. caused the loss of more than fifty eight million dollars (\$58,000,000.00).
50. The Director Defendants failed over a sustained period to devote attention and make

appropriate inquiry concerning the nature and risks related to the Bank's new investment policy and investments in CDO-TruPS, and failed to make appropriate inquiries about these investments, when a reasonably attentive bank director would have been alerted of the need for such attention and inquiry. The Director Defendants relied on representations by the Officer Defendants concerning the nature and risks related to these investments when they knew, or when a reasonably attentive bank director should have known, that the officers had not performed adequate due diligence; had little or no experience in selecting or buying CDO-TruPS or effectively analyzing, monitoring and managing the risks associated with the investments in CDO-TruPS; and that the Officer Defendants needed greater oversight in making the investments.

51. Each of the D&O Defendants failed to exercise that degree of care that a person in like position would reasonably exercise under similar circumstances.
52. For these and other reasons, the D&O Defendants are not protected by the business-judgment rule, including but not limited to any protections provided under Iowa Code Sections 490.830, 490.831, 490.841, and 490.842.

V. CLAIMS

COUNT 1: NEGLIGENCE AGAINST DOSLAND AND MODERSKI

53. The Officer Defendants owed the Bank and its depositors, account holders, and other creditors and stockholders, the obligation to exercise the degree of diligence, care and skill which ordinarily prudent persons in like positions would exercise under similar circumstances.
54. The Officer Defendants breached their duties by, among other things,

- a. Recommending and proposing an amendment that reduced Board oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS.
- b. Recommending and proposing that the Board abdicate its oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS to the Officer Defendants.
- c. Recommending and proposing the elimination and/or reduction of the roles and participation of the LCO, ALCO, and ACO in the Bank's investment policies and activities.
- d. Failing to properly and fully inform the Board in respect to Bank investments in CDO-TruPS.
- e. Causing the Bank to make investments in CDO-TruPS that violated Bank policies, disregarded and were made in ignorance of federal guidelines, rules and regulations, and were contrary to reasonably prudent banking policies and standards.
- f. Failing to properly inform and educate themselves about Bank investments in CDO-TruPS.
- g. Causing the Bank to borrow substantial funds to purchase more than \$65 million of CDO-TruPS in violation, disregard and ignorance of federal guidelines.
- h. Failing to assure that the Bank timely complied with OTS's directives to reduce the bank's exposure in two CDO-TruPS.

- i. Relying on brokers for information related to investments in CDO-TruPS when they knew or, in the exercise of reasonable care, should have known that the brokers had a pecuniary interest in selling the CDO-TruPS.
- j. Violating the standards and duties of Iowa Code §§490.841, 490.842, and/or 524.702.

55. As a direct and proximate result of the actions and inactions of the Officer Defendants, the FDIC-R suffered damages to be proven at trial in excess of \$58 million.

WHEREFORE, FDIC-R requests that the court enter judgment for it and against the Officer Defendants, jointly and severally, for compensatory damages, interest pursuant to 12 U.S.C. § 1821(l), costs, and for such further relief as the court determines is appropriate.

**COUNT 2: GROSS NEGLIGENCE OR OTHER STRICTER STANDARD OF CARE
AGAINST DOSLAND AND MODERSKI**

56. Section 1821(k) of the Financial Institutions Reform, Recovery and Enforcement Act (“FIRREA”) holds directors and officers of financial institutions personally liable for loss or damage caused by their gross negligence or other stricter standard of care, as defined by applicable state law, in this case Iowa law.
57. The Officer Defendants owed the Bank and its depositors, account holders, and other creditors and stockholders, the obligation to exercise the degree of diligence, care and skill which ordinarily prudent persons in like positions would exercise under similar circumstances.
58. The Officer Defendants committed an extreme departure from the ordinary standard of care which ordinarily prudent persons in like positions would exercise under similar circumstances by, among other things,

- a. Recommending and proposing an amendment that reduced Board oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS.
- b. Recommending and proposing that the Board abdicate its oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS to the Officer Defendants.
- c. Recommending and proposing the elimination and/or reduction of the roles and participation of the LCO, ALCO, and ACO in the Bank's investment policies and activities.
- d. Failing to properly and fully inform the Board in respect to Bank investments in CDO-TruPS.
- e. Causing the Bank to make investments in CDO-TruPS that violated Bank policies, disregarded and were made in ignorance of federal guidelines, rules and regulations, and were contrary to reasonably prudent banking policies and standards.
- f. Failing to properly inform and educate themselves about Bank investments in CDO-TruPS.
- g. Causing the Bank to borrow substantial funds to purchase more than \$65 million of CDO-TruPS in violation, disregard and ignorance of federal guidelines, rules and regulations.
- h. Failing to assure that the Bank timely complied with OTS's directives to reduce the bank's exposure in two CDO-TruPS.

- i. Relying on brokers for information related to investments in CDO-TruPS when they knew or, in the exercise of reasonable care, should have known that the brokers had a pecuniary interest in selling the CDO-TruPS.
- j. Violating the standards and duties of Iowa Code §§490.841, 490.842, and/or 524.702.

59. The Officer Defendants' breaches, gross negligence, and/or violation of a stricter standard of care under Iowa law are a proximate cause of damages sustained by FDIC-R to be proven at trial in excess of \$58 million.

WHEREFORE, FDIC-R requests that the court enter judgment for it and against the Officer Defendants, jointly and severally, for compensatory damages, interest, costs, and for such further relief as the court determines is appropriate.

COUNT 3: BREACH OF FIDUCIARY DUTY AGAINST DOSLAND AND MODERSKI

60. Each of the Officer Defendants served in a fiduciary capacity and owed the Bank and its depositors, account holders, and other creditors and stockholders fiduciary duties.
61. The Officer Defendants breached their fiduciary duties by, among other things,
- a. Recommending and proposing an amendment that reduced Board oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS.
 - b. Recommending and proposing that the Board abdicate its oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS to the Officer Defendants.
 - c. Recommending and proposing the elimination and/or reduction of the roles

and participation of the LCO, ALCO, and ACO in the Bank's investment policies and activities.

- d. Failing to properly and fully inform the Board in respect to Bank investments in CDO-TruPS.
- e. Causing the Bank to make investments in CDO-TruPS that violated Bank policies, disregarded and were made in ignorance of federal guidelines, rules and regulations, and were contrary to reasonably prudent banking policies and standards.
- f. Failing to properly inform and educate themselves about Bank investments in CDO-TruPS.
- g. Causing the Bank to borrow substantial funds to purchase more than \$65 million of CDO-TruPS in violation, disregard and ignorance of federal guidelines, rules and regulations.
- h. Failing to assure that the Bank timely complied with OTS's directives to reduce the bank's exposure in two CDO-TruPS.
- i. Relying on brokers for information related to investments in CDO-TruPS when they knew or, in the exercise of reasonable care, should have known that the brokers had a pecuniary interest in selling the CDO-TruPS.
- j. Violating the standards and duties of Iowa Code §§490.841, 490.842, and/or 524.702.

62. The Officer Defendants' breaches of fiduciary duties are a proximate cause of damages suffered by the Bank and FDIC-R to be proven at trial in excess of \$58 million.

WHEREFORE, FDIC-R requests that the court enter judgment for it and against the Officer Defendants, jointly and severally, for compensatory damages, interest, costs, and for such further relief as the court determines is appropriate.

COUNT 4: NEGLIGENCE AGAINST DOSLAND, CURRY, BACKHAUS, EVANS,
JORGENSEN, CLEGHORN, AND TERLOUW

63. The Director Defendants owed the Bank and its depositors, account holders, and other creditors and stockholders, the obligation to exercise the degree of diligence, care and skill which ordinarily prudent persons in like positions would exercise under similar circumstances.
64. The Director Defendants breached their duties by, among other things,
- a. Failing to maintain and exercise proper oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS.
 - b. Abdicating their oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS to Dosland and Moderski.
 - c. Approving the elimination and/or reduction of the roles and participation of the LCO, ALCO, and ACO in the Bank's investment policies and activities.
 - d. Failing to assure that Defendant Officers complied with the Bank's investments policies and federal guidelines, rules and regulations.
 - e. Approving an amendment to the Bank's investment policies that violated Bank policies, disregarded and were made in ignorance of federal guidelines, rules and regulations, and was contrary to reasonably prudent banking policies and

standards.

- f. Failing to properly inform and educate themselves about investments in CDO-TruPS.
 - g. Failing to properly inform themselves in respect to Dosland's and Moderski's experience and knowledge in respect to the positions for which they were hired and the authority they were given.
 - h. Permitting Dosland and Moderski to borrow substantial funds for and purchase more than \$65 million of CDO-TruPS in violation, disregard and ignorance of federal guidelines rules and regulations.
 - i. Failing to assure that the Bank timely complied with OTS's directives to reduce the bank's exposure in two CDO-TruPS.
 - j. Violation of the standards and duties of Iowa Code §§490.830, 490.831, 524.604, and/or 524.605.
65. Each of the Director Defendants failed over a sustained period to devote attention and make appropriate inquiry concerning the nature and risks related to the new investment policy and the CDO-TruPS, and failed to make appropriate inquiries about these investments when a reasonably attentive bank director would have been alerted of the need for such attention and inquiry. The Director Defendants relied on representations by the Officer Defendants concerning the nature and risks related to these investments when they knew, or when a reasonably attentive bank director should have known, that the Officer Defendants had not performed adequate due diligence; had little or no experience in selecting or buying CDO-TruPS or effectively analyzing, monitoring and managing the

risks associated with the investments in CDO-TruPS; and that the Officer Defendants needed greater oversight in making the investments.

66. The Director Defendants' breaches and negligence are a proximate cause of damages sustained by FDIC-R to be proven at trial in excess of \$58 million.

WHEREFORE, FDIC-R requests that the court enter judgment for it and against the Director Defendants, jointly and severally, for compensatory damages, interest, costs, and for such further relief as the court determines is appropriate.

COUNT 5: GROSS NEGLIGENCE OR OTHER STRICTER STANDARD OF CARE
AGAINST DOSLAND, CURRY, BACKHAUS, EVANS, JORGENSEN, CLEGHORN, AND
TERLOUW

67. Section 1821(k) of FIRREA holds directors and officers of financial institutions personally liable for loss or damage caused by their gross negligence or other stricter standard of care, as defined by applicable state law, in this case Iowa law.
68. The Director Defendants owed the Bank and its depositors, account holders, and other creditors and stockholders, the obligation to exercise the degree of diligence, care and skill which ordinarily prudent persons in like positions would exercise under similar circumstances.
69. The Director Defendants committed an extreme departure from the ordinary standard of care which ordinarily prudent persons in like positions would exercise under similar circumstances by, among other things,
- a. Failing to maintain and exercise proper oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS.

- b. Abdicating their oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS to Dosland and Moderski.
- c. Permitting the elimination and/or reduction of the roles and participation of the LCO, ALCO, and ACO in the Bank's investment policies and activities.
- d. Failing to assure that Defendant Officers complied with the Bank's investments policies and federal guidelines.
- e. Proposing and approving an amendment to the Bank's investment policies that violated Bank policies, disregarded and were made in ignorance of federal guidelines, rules and regulations, and was contrary to reasonably prudent banking policies and standards.
- f. Failing to properly inform and educate themselves about investments in CDO-TruPS.
- g. Failing to properly inform themselves in respect to Dosland's and Moderski's experience and knowledge in respect to the positions for which they were hired and the authority they were given.
- h. Permitting Dosland and Moderski to borrow for and purchase more than \$65 million of CDO-TruPS in violation, disregard and ignorance of federal guidelines.
- i. Failing to assure that the Bank timely complied with OTS' directives to reduce the bank's exposure in two CDO-TruPS.
- j. Violation of the standards and duties of Iowa Code §§490.830, 490.831,

524.604, and/or 524.605.

70. Each of the Director Defendants failed over a sustained period to devote attention and make appropriate inquiry concerning the nature and risks related to the new investment policy and the CDO-TruPS, and failed to make appropriate inquiries about these investments when a reasonably attentive bank director would have been alerted of the need for such attention and inquiry. The Director Defendants relied on representations by the Officer Defendants concerning the nature and risks related to these investments when they knew, or when a reasonably attentive bank director should have known, that the Officer Defendants had not performed adequate due diligence; had little or no experience in selecting or buying CDO-TruPS or effectively analyzing, monitoring and managing the risks associated with the investments in CDO-TruPS; and that the Officer Defendants needed greater oversight in making the investments.
71. The Director Defendants' breaches, gross negligence, and/or violation of a stricter standard of care under Iowa law are a proximate cause of damages sustained by FDIC-R to be proven at trial in excess of \$58 million.

WHEREFORE, FDIC-R requests that the court enter judgment for it and against the Director Defendants, jointly and severally, for compensatory damages, interest, costs, and for such further relief as the court determines is appropriate.

COUNT 6: BREACH OF FIDUCIARY DUTY AGAINST DOSLAND, CURRY, BACKHAUS, EVANS, JORGENSEN, CLEGHORN, AND TERLOUW

72. Each of the Director Defendants served in a fiduciary capacity and owed the Bank and its depositors, account holders, and other creditors and stockholders fiduciary duties.
73. The Director Defendants breached their fiduciary duties by, among other things,

- a. Failing to maintain and exercise proper oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS.
- b. Abdicating their oversight, review, and control over the Bank's investment policies and activities related to the investments in CDO-TruPS to Dosland and Moderski.
- c. Approving the elimination and/or reduction of the roles and participation of the LCO, ALCO, and ACO in the Bank's investment policies and activities.
- d. Failing to assure that Defendant Officers complied with the Bank's investments policies and federal guidelines.
- e. Approving an amendment to the Bank's investment policies that violated Bank policies, disregarded and were made in ignorance of federal guidelines, and were contrary to reasonably prudent banking policies and standards.
- f. Failing to properly inform and educate themselves about investments in CDO-TruPS.
- g. Failing to properly inform themselves in respect to Dosland's and Moderski's experience and knowledge in respect to the positions for which they were hired and the authority they were given.
- h. Permitting Dosland and Moderski to borrow substantial funds for and purchase more than \$65 million of CDO-TruPS in violation, disregard and ignorance of federal guidelines.
- i. Failing to assure that the Bank timely complied with OTS's directives to

reduce the bank's exposure in two CDO-TruPS.

- j. Violation of the standards and duties of Iowa Code §§490.830, 490.831, 524.604, and/or 524.605.

- 74. Each of the Director Defendants failed over a sustained period to devote attention and make appropriate inquiry concerning the nature and risks related to the new investment policy and the CDO-TruPS, and failed to make appropriate inquiries about these investments when a reasonably attentive bank director would have been alerted of the need for such attention and inquiry. The Director Defendants relied on representations by the Officer Defendants concerning the nature and risks related to these investments when they knew, or when a reasonably attentive bank director should have known, that the Officer Defendants had not performed adequate due diligence; had little or no experience in selecting or buying CDO-TruPS or effectively analyzing, monitoring and managing the risks associated with the investments in CDO-TruPS; and that the Officer Defendants needed greater oversight in making the investments.
- 75. The Director Defendants' breaches of fiduciary duties are a proximate cause of damages sustained by FDIC-R to be proven at trial in excess of \$58 million.

WHEREFORE, FDIC-R requests that the court enter judgment for it and against the Director Defendants, jointly and severally, for compensatory damages, interest, costs, and for such further relief as the court determines is appropriate.

JURY DEMAND

FDIC-R hereby demands a jury trial to the fullest extent permitted by law.

WHITFIELD & EDDY, P.L.C.

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By /s/ Maureen R. Tobin
Maureen R. Tobin

By /s/ Stephen D. Marso
Stephen D. Marso

ATTORNEYS FOR PLAINTIFF, FEDERAL
DEPOSIT INSURANCE CORPORATION, AS
RECEIVER FOR VANTUS BANK

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER
FOR VANTUS BANK,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Maureen Roach Tobin, Whitfield & Eddy, P.L.C.
317 Sixth Avenue, Suite 1200, Des Moines, IA 50309-4195
Telephone: (515) 288-6041

DEFENDANTS

BARRY E. BACKHAUS, MICHAEL W. DOSLAND, MICHAEL S.
MODERSKI, ARLENE T. CURRY, GARY L. EVANS, RONALD A.
JORGENSEN, JON G. CLEGHORN, AND CHARLES D. TERLOUW

County of Residence of First Listed Defendant Woodbury County, IA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

David A. Tank, Dorsey & Whitney LLP
801 Grand Avenue, Suite 3900, Des Moines, IA 50309-2790
Telephone: (515) 283-1000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input checked="" type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
12 USC 1819(b)

Brief description of cause:

Claims based on negligence, gross negligence & breach of fiduciary duty on the part of former D&Os of Vantus Bk

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
58,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Donald E. O'Brien

DOCKET NUMBER 5:12-cv-04041-DEO

DATE

SIGNATURE OF ATTORNEY OF RECORD

s/Maureen Roach Tobin

FOR OFFICE USE ONLY

RECEIPT #

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