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July 28, 1995

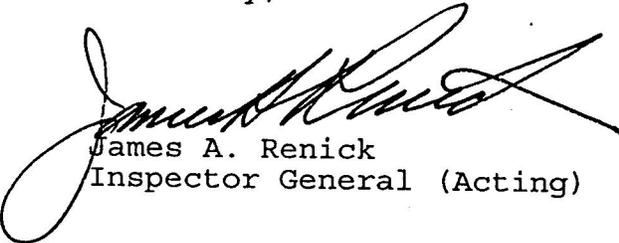
Honorable Kenneth W. Starr
Office of the Independent Counsel
Suite 134
10825 Financial Centre Parkway
Little Rock, Arkansas 72211

Dear Mr. Starr:

The Office of Inspector General of the Federal Deposit Insurance Corporation has completed its investigation into alleged conflicts of interest of the Rose Law Firm and the review conducted by the FDIC Legal Division. Enclosed is a copy of the Report of Investigation and accompanying Exhibits; together the Report and Exhibits comprise a four-volume set. We will be making copies of the Report's Executive Summary section available for public release at noon on Monday, July 31, 1995, and are providing you with a separate advance copy. Also enclosed are copies of relevant transmittal letters from me to other recipients of the Report.

If you or your staff have any questions about this Report, please feel free to contact me at (202) 942-3615, or Thomas D. Coogan, Assistant Counsel, at (202) 942-3622.

Sincerely,



James A. Renick
Inspector General (Acting)

Enclosures: 1 Report set
Executive Summary

REPORT OF INVESTIGATION

Sensitive Investigative Information

-- For Official Use Only --

**ALLEGED CONFLICTS OF INTEREST
BY THE ROSE LAW FIRM**

Case Number IO-94-096

VOLUME 1 of 4

Report



**Federal Deposit Insurance Corporation
Office of Inspector General**

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LIST OF EXHIBITS
VOLUME 2

<u>Exhibit Number</u>	<u>Description</u>
1	December 21, 1987, letter from the FDIC to Mr. Hubbell, Rose Law Firm, concerning the firm's representation of the FDIC for Director and Officer liability at Corning Bank, enclosing the Legal Services Agreement for the bank and a copy of the FDIC <u>Guide for Legal Representation</u>
2	June 1989 FDIC <u>Guide for Legal Representation</u>
3	<u>Model Rules of Professional Conduct</u> developed by the American Bar Association
4	Court case of First American Carriers, Inc., v. The Kroger Company
5	Court case of Norman L. Burnette d/b/a Burnette Flying Service v. Billy Morgan
6	Rose Law Firm background
7	Sworn statements (3), dated March 29, 1994, of Jeffrey C. Gerrish, Director/Shareholder, Gerrish & McCreary, P.C.
8	Sworn statements, dated June 8, 1994, February 23, 1995, and July 18, 1995, of April A. Breslaw, Counsel, RTC, Division of Legal Services
9	FDIC Legal Division <u>Guidelines for Selection and Termination of Outside Counsel</u> , dated August 27, 1987
10	Sworn testimony of Webster L. Hubbell, former Rose Law Firm attorney, on March 16, 1995, and RTC interview of Mr. Hubbell on April 20, 1995
11	Memorandum from Mr. Hubbell to all Rose Law Firm attorneys concerning a conflicts check relative to the firm's representation of the FDIC as conservator for Madison Guaranty Savings and Loan
12	Interview of Richard T. Donovan, Attorney, Rose Law Firm, on October 4, 1994
13	Interview of Hillary Rodham Clinton, former Rose Law Firm attorney, on November 10, 1994
14	December 1987 Legal Services Agreement relative to the liquidation of Corning Bank, signed by Mr. Hubbell

VOLUME 2 (continued)

<u>Exhibit Number</u>	<u>Description</u>
15	Sworn statement, dated March 15, 1994, of Paul A. Jeddelloh, Senior Program Attorney, FDIC Office of the Executive Secretary
16	June 8, 1989, letter from Mr. Jeddelloh to Ms. Breslaw, concerning a possible conflict of interest due to the relationship between Mr. Hubbell and Seth Ward, his father-in-law
17	Sworn statement, dated April 7, 1994, of Sue Strayhorn, former secretary to James McDougal, President of Madison Financial
18	Sworn statement, dated May 6, 1994, of David Paulson, former FDIC Managing Agent of Madison Guaranty Savings and Loan
19	June 28, 1989, letter from Mr. Hubbell to Mr. Paulson informing him that Mr. Hubbell has not represented Mr. Ward in the latter's disputes with Madison Guaranty Savings and Loan
20	June 23, 1989, letter from Ms. Breslaw to Mr. Paulson informing him of her hesitancy to replace the Rose Law Firm in its representation of the Madison Conservatorship for the FDIC
21	Sworn statement, dated March 21, 1994, of Pamela A. Shea, Regional Counsel, FDIC Legal Division, Chicago
22	August 10, 1989, letter from Kenneth K. Schneck, Supervisory Liquidation Specialist, FDIC Division of Depositor and Asset Services, Chicago, to John A. O'Donnell, concerning a possible conflict of interest for the Rose Law Firm because of the Hubbell/Ward relationship
23	Sworn statement, dated March 21, 1994, of Kenneth K. Schneck
24	Sworn statement, dated April 5, 1994, of John A. O'Donnell
25	November 3, 1988, memorandum from Vincent Foster, Jr., of the Rose Law Firm to all firm attorneys concerning the Firm's representation of an S&L in receivership by the FSLIC
26	November 21, 1988, letter from Thomas L. Hinds, Senior Trial Attorney, FHLBB, to Mr. Foster
27	Sworn statement, October 5, 1994, of Seth Ward, Mr. Hubbell's father-in-law
28	January 18, 1990, letter from David M. Powell, an attorney with the law firm of Wright, Lindsey & Jennings, to Mr. Hubbell, enclosing a draft of a suggested letter concerning a proposed indemnification agreement in favor of the RTC

VOLUME 2 (continued)

<u>Exhibit Number</u>	<u>Description</u>
29	Sworn statement, dated March 29, 1995, of David M. Powell, Partner, Wright, Lindsey & Jennings
30	January 18, 1990, letter from Mr. Ward to Alston Jennings, Sr., of Wright, Lindsey & Jennings concerning a proposed indemnification agreement in favor of the RTC
31	Sworn statement, dated March 29, 1995, of Alston Jennings, Sr.
32	Sworn statement, dated April 29, 1994, of Thomas Ray, Partner, Shutts, Ray & Kurrus, and interview of Mr. Ray on March 29, 1995
33	Interview of Seth Ward II, Mr. Hubbell's brother-in-law, on December 7, 1994
34	September 24, 1985, letter from Mr. Ward to James B. McDougal, President, Madison Financial Corporation, setting forth the agreement between the two concerning Mr. Ward's purchase of the Industrial Development Company of Little Rock property

LIST OF EXHIBITS
VOLUME 3

<u>Exhibit Number</u>	<u>Description</u>
35	December 11, 1986, draft letter from Mr. Hubbell to H. Don Denton, Senior Vice President of Madison Guaranty S&L, enclosing a deed in lieu of foreclosure to property securing two nonrecourse Madison notes in the names of Seth and Yvonne D. Ward
36	Interviews of Martha Patton, Mr. Hubbell's former secretary, on December 8, 1994, and March 21, 1995
37	April 30, 1985, letter from the Rose Law Firm to Charles Hanley of the Arkansas Securities Department
38	May 14, 1985, letter from Beverly Bassett, a savings and loan supervisor at the Arkansas Securities Department, to Hillary Rodham Clinton of the Rose Law Firm
39	May 23, 1985, letter from Hillary Rodham Clinton, Rose Law Firm, to Jim McDougal, Madison Guaranty S&L
40	Follow-up submission, dated July 25, 1985, from Richard N. Massey, Rose Law Firm, to the Arkansas Securities Department concerning an application by Madison Guaranty S&L to engage in brokerage activities
41	October 17, 1985, letter from Ms. Bassett, Arkansas Securities Department, to Mr. Massey, Rose Law Firm
42	Handwritten note of Ms. Bassett, Arkansas Securities Department, indicating that Madison's application (to engage in brokerage activities) was never approved because Madison never completed its capitalization
43	Affidavit, dated September 16, 1994, of Hillary Rodham Clinton, a former Rose Law Firm partner
44	Interview of Richard N. Massey, Partner, Rose Law Firm, on October 4, 1994
45	Interview of Michael D. Robinson, Director, Tax Division, Frost & Company, on July 11, 1995
46	Interview of Gary N. Speed, Partner, Rose Law Firm, on October 5, 1994
47	July 14, 1986, letter from Hillary Rodham Clinton of the Rose Law Firm to Messrs. Jim McDougal and John Lathan of Madison Guaranty S&L
48	Sworn statements, dated September 7, 1994, and June 27, 1995, of Jimmy D. Alford, a former partner of Frost & Company

VOLUME 3 (continued)

<u>Exhibit Number</u>	<u>Description</u>
49	Sworn statements, dated April 29, 1994, and May 18, 1995, of Peter G. Kumpe, Partner, Williams & Anderson
50	Borod & Huggins Report, dated December 9, 1986, and February 6, 1987, interviews of Patricia Heritage, a former executive assistant at Madison,
51	Affidavit, dated September 16, 1994, of David E. Kendall, Attorney for Hillary Rodham Clinton
52	Sworn statement, dated April 26, 1994, of Antony S. Burt, Partner, Hopkins & Sutter
53	Summary of hours billed by Rose Law Firm personnel to represent the FSLIC in the court case of First American v. Lasater and Company
54	Rose Law Firm fee bill invoice, number 17530, dated June 2, 1987, to Hopkins & Sutter for services rendered on behalf of First American Savings and Loan Association relative to litigation with Lasater and Company
55	Motion to Amend Complaint, filed May 8, 1987, by the Rose Law Firm in the case of First American v. Lasater and Company
56	Motion for Continuance and Extension, filed May 8, 1987, by the Rose Law Firm in the case of First American v. Lasater and Company
57	Plaintiff's Motion to Compel Discovery, filed May 8, 1987, by the Rose Law Firm in the case of First American v. Lasater and Company
58	Brief in Support of Motion to Compel, filed May 8, 1987, by the Rose Law Firm in the case of First American v. Lasater and Company
59	May 20, 1987, First American v. Lasater and Company - Amended Complaint filed May 20, 1987, by the Rose Law Firm and Verified (original) Complaint filed October 2, 1985, by Hardin and Grace on October 2, 1985.
60	Sworn statement, dated March 31, 1994, of B. Michael Bennett, a former associate of the Rose Law Firm
61	Affidavit, dated July 15, 1994, of Patrick J. Goss, Partner, Wright, Lindsey & Jennings
62	Unsigned and undated statement of Dan R. Lasater, former President and Owner of Lasater and Company
63	Interview of Dan Moudy, former In-house Counsel for Lasater and Company/United Capital Corporation, on June 22, 1994.

VOLUME 3 (continued)

<u>Exhibit Number</u>	<u>Description</u>
64	June 29, 1984, and April 26, 1984, flight logs for Dan Lasater's airplane
65	February 17, 1994, FDIC Legal Division report on the retention of the Rose Law Firm for the Madison Guaranty Savings and Loan Conservatorship
66	March 2, 1994, letter from Congressman James A. Leach, to FDIC Inspector General James A. Renick, concerning a review by the FDIC Office of Inspector General of possible conflicts of interest surrounding the Rose Law Firm's representation of the U.S. government
67	Sworn statement, dated May 25, 1994, of Jack D. Smith, Jr., Deputy General Counsel, FDIC Legal Division
68	Copies of the various interviews conducted by the FDIC Legal Division during its review of the retention of the Rose Law Firm
69	Sworn statements, dated May 6, 1994, and March 1, 1995, of John T. Downing, Senior Attorney
70	Memorandum from Thomas A. Schultz, Assistant General Counsel, FDIC Legal Division to FDIC/RTC Conflicts Committee transmitting a draft report of the Legal Division's inquiry of the circumstances under which the Rose Law Firm was retained to represent the FDIC in the Madison Guaranty S&L litigation, including the existence of any conflicts
71	Sworn statements, dated April 18, 1994, and May 4, 1994, of James T. Lantelme, Assistant General Counsel, FDIC Legal Division
72	Sworn statements, dated June 7, 1994, and March 20, 1995, of Douglas H. Jones, Senior Deputy General Counsel, FDIC Legal Division
73	Memorandum, dated February 2, 1987, from Thomas A. Rose, Deputy General Counsel, to Deputy General and Assistant General Counsels concerning FDIC Legal Division Procedures for Employing Outside Counsel
74	Memorandum, dated May 3, 1990, from Douglas H. Jones, Acting General Counsel, FDIC Legal Division, to all FDIC and RTC in-house and outside counsel, attaching Guidelines of the FDIC/RTC with Respect to Conflicts of Interest and Confidentiality and General Policies of Waiver Favored by the Outside Counsel Conflicts Committee
75	Sworn statements, dated May 31, 1994, and May 4, 1995, of Thomas A. Schultz, Assistant General Counsel, FDIC Legal Division

**LIST OF EXHIBITS
VOLUME 4**

<u>Exhibit Number</u>	<u>Description</u>
76	Interview of Kenneth R. Shemin, Partner, Rose Law Firm, on December 8, 1994
77	Sworn testimony, dated December 12, 1994, of Patsy L. Thomasson, a former officer of Lasater, Inc.
78	Memorandum, dated March 18, 1987, from John B. Beaty, Trial Attorney, to Dorothy L. Nichols, Associate General Counsel, concerning retention of the Rose Law Firm as counsel for the FSLIC
79	FDIC <u>Guide for Outside Counsel</u> , dated December 1991
80	Declaration, dated July 12, 1995, of Gary N. Speed, Partner, Rose Law Firm
81	Rose Law Firm fee bill, invoice number 35331, dated March 7, 1990, to the FDIC for legal services rendered in connection with the Madison Guaranty S&L litigation against Frost & Company
82	Various statements and interviews related to Madison Guaranty Savings and Loan Association
83	Various statements and interviews related to First American Savings and Loan Association
84	Various statements and interviews related to the FDIC Legal Division review of the Rose retention for Madison
85	Interview of King Betz, the former president and chief executive officer of Home Federal Savings and Loan Association of Centralia, on October 5, 1994, and of Tom Mars, a former Rose Law Firm attorney, on October 3, 1994, both related to Home Federal Savings and Loan Association

Office of Investigations
Office of Inspector General
Federal Deposit Insurance Corporation

REPORT OF INVESTIGATION

Title

ALLEGED CONFLICTS OF INTEREST BY THE ROSE LAW FIRM

Case Number

IO94-096

Date

July 28, 1995

The Federal Deposit Insurance Corporation (FDIC) Office of Inspector General (OIG) has completed an investigation into alleged conflicts of interest related to the retention of the Rose Law Firm, Little Rock, Arkansas (Rose or Firm), to represent failed insured depository institutions. These allegations related to the Firm's FDIC and Federal Savings and Loan Insurance Corporation (FSLIC) contract work on behalf of the Madison Guaranty Savings and Loan Association Conservatorship, McCrory, Arkansas (Madison); and the First American Savings and Loan Association Conservatorship, Oak Brook, Illinois (First American).

Specifically, allegations of conflicts of interest were based on media reports in late 1993 and early 1994 that Rose did not inform FDIC when the Firm was hired by FDIC in 1989 to represent Madison that:

- In 1985 the Firm had represented Madison before the Arkansas Securities Department;
- A former Rose partner, Webster L. Hubbell, who was the Associate Attorney General, U.S. Department of Justice, when the allegations were made, was the son-in-law of a Madison borrower and consultant who was in litigation adverse to the Madison Conservatorship; and
- Another former Rose partner, Hillary Rodham Clinton, had assisted in Rose's representation of First American against a corporation owned by a personal friend of Mrs. Clinton's family who was a contributor to her husband's political campaign for Governor of Arkansas.

We also investigated a review conducted by the FDIC Legal Division into the circumstances surrounding the retention of Rose to perform legal work for the Madison Conservatorship. In addition, we completed a review of all legal fee payments made to Rose by FDIC since July 1, 1987. The highlights of our investigation are included in the following Executive Summary.

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EXECUTIVE SUMMARY

In February 1989, Madison Guaranty Savings and Loan Association was designated as a conservatorship and pursuant to an agreement with FSLIC, the FDIC Legal Division was responsible for managing Madison litigation, including a lawsuit pending against Madison's former auditors, Frost and Company, P.A. (Frost). According to the Resolution Trust Corporation's (RTC) 1989 annual report, 175 institutions were designated as conservatorships in February and March 1989, one of which was Madison. In March 1989, April A. Breslaw, who was then an attorney with FDIC Legal Division's Professional Liability Section (PLS), was designated as the responsible attorney for PLS matters related to Madison. On or about March 24, 1989, Ms. Breslaw hired Rose to take over the pending Frost lawsuit from another firm that was conflicted. Rose continued to represent the Madison Conservatorship until this lawsuit was settled in April 1991.

CONFLICTING RELATIONSHIPS AND REPRESENTATIONS¹

The results of our investigation evidenced conflicting relationships among the Rose Law Firm, Rose partner Webster L. Hubbell, and Mr. Hubbell's father-in-law since 1971, Seth Ward. During the time that Mr. Hubbell represented the Madison Conservatorship on behalf of FDIC, Mr. Hubbell's father-in-law was engaged in litigation adverse to the Madison Conservatorship. We found that neither the Firm nor Mr. Hubbell had informed FDIC of these relationships when the Firm was hired in March 1989 to handle the lawsuit against Frost or while the Firm was acting as litigator for the Madison Conservatorship.

¹For purposes of this investigation, evidence of relationships or representations by the Rose Law Firm, or its attorneys, in matters affecting the interests of FSLIC and FDIC that could be viewed as relevant to the agency in making an informed determination with respect to the retention of the Firm as agency counsel, has been included as conflicting relationships and representations.

Executive Summary (contd.)

Further, we found during the time from 1989 to 1991 while the Rose Law Firm was litigating the Frost lawsuit for FDIC and RTC, Mr. Hubbell was:

- Involved in his father-in-law's \$300,000 lawsuit against the Madison Conservatorship;
- Providing legal advice for one of Mr. Ward's companies, POM, Inc. (POM); and
- A part-owner of POM.

With respect to POM, we found that Mr. Hubbell served as corporate counsel for POM from 1981 through 1992, in addition to providing legal services for several of Mr. Ward's other companies during the 1980s.

The Rose Law Firm's responsibility to identify and disclose conflicts to its clients was set forth not only in federal banking agency agreements, guides and letters, but also in rules adopted by the Arkansas Supreme Court governing conflicts. However, our investigation evidenced that neither Mr. Hubbell nor the Rose Law Firm disclosed to FDIC information pertaining to these conflicting relationships. Ms. Breslaw stated to OIG special agents that she did not learn that Mr. Hubbell was Mr. Ward's son-in-law until months after hiring Rose when, in June 1989, FDIC employees working at the Madison Conservatorship raised concerns about the relationship. Ms. Breslaw further stated that when she asked Mr. Hubbell about his relationship with Mr. Ward, Mr. Hubbell did not inform her about Mr. Hubbell's business relationship with the Wards, or his legal role and ownership interest in his father-in-law's company, POM.

At the time the Rose Law Firm accepted the engagement to represent FDIC for the Madison Conservatorship in the Frost lawsuit, Mr. Hubbell was:

- The Rose partner responsible for billing FDIC, in addition to being the lead Rose attorney for litigating the Frost lawsuit;

Executive Summary (contd.)

- One of three attorneys comprising the Rose Law Firm's Conflicts Committee; and
- The Rose partner who, on behalf of the Firm, had negotiated and signed a 1988 settlement agreement with FSLIC related to a conflict of interest between the former Rose managing partner and FSLIC.

The results of our investigation also evidenced conflicting representations on the part of the Rose Law Firm with respect to its representation of FDIC regarding the Madison Conservatorship. Specifically, we found that the Firm had represented Madison and its wholly owned subsidiary, Madison Financial Corporation, in 1985 and 1986 on various legal matters, including representation of Madison in 1985 before the Arkansas Securities Department (ASD). During its 1985 representation of Madison the Firm submitted materials to the ASD which were prepared by Frost, the firm that was later sued by Rose on behalf of FDIC for the Madison Conservatorship. We further found that for many years the Rose Law Firm represented Mr. Hubbell's father-in-law, Seth Ward, or Mr. Ward's companies regarding various legal matters. However, there was no evidence to show that Mr. Hubbell or the Rose Law Firm disclosed these representations to FDIC when the Firm was hired or during its representation of the Madison Conservatorship in the Frost lawsuit.

When interviewed, Mr. Hubbell admitted to FDIC special agents that he had not disclosed to FDIC at the time he was retained to represent the Madison Conservatorship that the Rose Law Firm was still representing a client who was adverse to the FSLIC Receivership for Universal Savings Association, F.A., Chickasha, Oklahoma. Moreover, Mr. Hubbell admitted that at the time FDIC retained Rose to represent the Madison Conservatorship against Frost and during the time he was litigating the Frost lawsuit, the Firm failed to inform FDIC of another conflicting representation. The Firm was representing a company partially owned by its president who was the former Frost partner in charge of the Madison audits which formed the basis for Madison's lawsuit against Frost. The former Frost partner also was a named defendant in the Madison litigation.

Regarding the conflicts allegations relating to the First American Conservatorship, the results of our investigation evidenced that a relationship did exist, as alleged, between Hillary Rodham Clinton's in-laws and Danny Ray Lasater, owner of Lasater and Company, the

Executive Summary (contd.)

defendant corporation in a lawsuit being handled in 1986 and 1987 by the Rose Law Firm for FSLIC and the First American Conservatorship. When interviewed, Mrs. Clinton stated to OIG special agents that she had met Mr. Lasater twice, did not consider him a personal or social friend, and did not do any legal work for him or Lasater and Company. Mrs. Clinton's attorney, David Kendall, from the law firm of Williams & Connolly, in an affidavit to the OIG indicated that between 1982 and 1985, Mr. Lasater, his companies or his family, contributed a total of \$16,000 to President Clinton's political campaigns for Governor of Arkansas, or referendum initiatives. When interviewed, Mr. Lasater informed OIG special agents that he was friends with the Clintons, but has not spoken with them since 1986. He further explained that he was close friends with President Clinton's brother, Roger Clinton, and his mother, the late Virginia Kelley.

Our investigation also evidenced that in 1987 Mrs. Clinton, while a Rose partner, performed work on the First American litigation against Lasater and Company. The late Vincent Foster, Jr., not Mrs. Clinton, was the Rose partner who was in charge of the First American litigation. We determined from billing records that Mrs. Clinton, on one occasion in May 1987, billed two hours to review, sign and file three motions and one brief in Mr. Foster's absence. One of the motions Mrs. Clinton filed was a motion to amend the complaint. The amended complaint was subsequently signed and filed with the court by Mr. Foster. We interviewed witnesses involved in the First American litigation, all of whom stated they could recall no involvement by Mrs. Clinton related to this lawsuit. The Rose Law Firm billed a total of 467 hours related to the Lasater and Company lawsuit, and total fees and expenses paid to the Firm amounted to \$59,471. The actual loss to First American had been estimated at \$361,000. The lawsuit was settled in November 1987, and the First American Conservatorship recovered \$200,000 from the defendant. Mrs. Clinton stated to OIG special agents that she did not participate in the settlement negotiations.

FDIC LEGAL DIVISION REVIEW OF ROSE LAW FIRM

The FDIC Legal Division conducted a review of FDIC's retention of the Rose Law Firm for the Madison litigation. The Legal Division's review concluded that neither Rose's representation of Madison before the ASD nor the Hubbell-Ward family relationship constituted a conflict of interest. The Legal Division's opinion that Rose did not have a

Executive Summary (contd.)

conflict of interest was based on the relevant information available to the Legal Division at that time, and from the Legal Division's decision to rely on Model Rule 1.7 to determine whether the Firm had a conflict of interest. The Legal Division, however, did not include in its evaluation of Rose other conflict criteria, including the "appearance of impropriety" standard or FDIC guidelines and policies. The Legal Division's review also did not address whether FDIC procedures were followed when Rose was retained in 1989. In addition, the Legal Division did not criticize itself for Ms. Breslaw's lack of documentation regarding her discussions with Mr. Hubbell, or how she arrived at the conclusion there was no conflict of interest in view of concerns raised by other FDIC employees at the Madison Conservatorship.

The OIG investigation went beyond the Legal Division's review; therefore, additional evidence and information was obtained that was not considered by the Legal Division during its review. Our investigation disclosed evidence of conflicting relationships and representations. Even though the Legal Division pointed out in its report that law firms are expected to disclose prior representation and family relationships similar to Mr. Hubbell's, the Legal Division did not criticize Rose for its failure to inform FDIC of matters that had a direct relationship to the work Rose was hired to do for FDIC. During our investigation, we found no evidence that FDIC Legal Division attorneys were compromised or inappropriately influenced during their review of the retention of the Rose Law Firm.

LEGAL FEE PAYMENTS TO ROSE LAW FIRM

In conjunction with our investigation, we conducted a fee bill review of all FDIC payments to the Rose Law Firm for legal services subsequent to July 1, 1987, and FSLIC payments subsequent to January 1, 1989. The review covered \$1,049,930 in payments to Rose and included those payments related to the failure of the Madison Guaranty Savings and Loan Association and three other failed financial institutions. Webster L. Hubbell, Rose partner, was the Rose billing attorney on the Madison lawsuit against Frost, for which Rose received

Executive Summary (contd.)

\$375,380. The RTC approved settlement of the Madison lawsuit against Frost for \$1.025 million on or about February 26, 1991. Our review identified questioned costs² totaling \$156,286 related to payments for work on the four institutions, of which \$78,391 related to Madison. Of the \$156,286 in questioned costs, Mr. Hubbell pleaded guilty to defrauding FDIC and RTC by falsifying expenses and inflating fees totaling \$41,995. Mr. Hubbell's fraudulent claims to FDIC primarily involved misrepresenting and billing his personal expenses as legitimate business expenses on behalf of FDIC. Mr. Hubbell pleaded guilty to one count of mail fraud and one count of tax evasion related to fraudulent billings sent to FDIC and RTC. On June 28, 1995, Mr. Hubbell was sentenced to 21 months in prison and ordered to make restitution in the amount of \$135,000 to the Rose Law Firm.

Our review of the Rose Law Firm's billing system disclosed that the Firm did not have the internal controls necessary to safeguard the integrity of the billing process. Therefore, Mr. Hubbell was able to misrepresent the expenses billed to FDIC. Mr. Hubbell was allowed to sign Firm checks for expenses that would later be billed to clients without submitting receipts or invoices verifying that the checks were actually written for the expenses and clients identified by him. As a result, Mr. Hubbell was able to write Firm checks to pay for his personal expenses and have the expenses billed to Rose clients without verification that these expenses were legitimate business expenses. The Firm is ultimately responsible for the actions of its billing partners.

Other questioned costs from our review related primarily to instances in which the Rose Law Firm did not comply with the terms of applicable guidelines and agreements. Rose billed fees such as those which were 1) unsupported or did not agree with original timesheets; 2) in excess of authorized hourly rates; 3) duplicated or miscalculated; and 4) excessive related to depositions. Also, expenses billed were questioned because they were 1) unsupported by vendor invoices; 2) in excess of the Firm's cost; and 3) non-billable per the FDIC contract.

²For purposes of this investigation, questioned costs are those that have been questioned by the OIG with respect to a finding that:

- 1) the cost was not authorized by the contract;
- 2) at the time of the review, the cost was not supported by adequate documentation; or
- 3) the expenditure of funds for the intended purpose was unnecessary or unreasonable.

Executive Summary (contd.)

REFERRAL TO THE FDIC VICE CHAIRMAN AND GENERAL COUNSEL

This investigative report is being forwarded to the Office of the Vice Chairman for consideration and appropriate administrative action. The report is also being forwarded to the newly appointed FDIC General Counsel for final determination with respect to the Rose Law Firm's failure to comply with FDIC policies regarding the reporting of conflicts of interest, including appropriate sanctions; the referral of professional misconduct to appropriate authorities; overbillings by the Rose Law Firm; and FDIC Legal Division assessment of current policies and procedures.

DETAILS OF INVESTIGATION

BASIS FOR INVESTIGATION

On February 24, 1994, the United States Senate Committee on Banking, Housing, and Urban Affairs conducted a hearing on the semiannual report of the RTC Thrift Depositor Protection Oversight Board. Former FDIC Acting Chairman Andrew C. Hove, Jr., who is currently FDIC Vice Chairman, was present at the hearing since at that time he was a member of the RTC Oversight Board. During the proceedings, Senator Alfonse D'Amato, Ranking Minority Member (now Chairman), questioned FDIC Legal Division's February 17, 1994, report regarding FDIC retention of the Rose Law Firm as legal counsel for the Madison Conservatorship. Senator D'Amato expressed his view that FDIC's Inspector General should review this matter. Mr. Hove agreed to ask the Inspector General to conduct an investigation.

On February 25, 1994, Mr. Hove requested that the FDIC Office of Inspector General (OIG) initiate an investigation into 1) the 1989 retention by FDIC of the Rose Law Firm for the representation of the Madison Conservatorship and 2) the handling by Rose of a lawsuit captioned First American Savings and Loan Association v. Lasater and Company on behalf of the First American Conservatorship.

Additionally, on March 2, 1994, the OIG received a letter from James A. Leach, Ranking Minority Member, Committee on Banking, Finance and Urban Affairs, United States House of Representatives (now Chairman, Committee on Banking and Financial Services). Congressman Leach stated that he was pleased that Mr. Hove had agreed to request an OIG investigation into Rose's role in representing FDIC. Congressman Leach requested that the OIG also examine FDIC Legal Division's recent determination that no conflict of interest existed related to Rose's representation of the Madison Conservatorship. Subsequently, we met with staff from the Senate and House Banking Committees to obtain any relevant documentation they had and to inform them that our investigation had begun.

As part of our investigation, the OIG's Office of Legal Audits performed a fee bill review of all FDIC legal payments since July 1, 1987, and FSLIC since January 1, 1989, to the Rose Law Firm. The results of this review are presented in a separate section of this report. During our investigation, we worked with the RTC OIG in areas of joint authority.

GOVERNING FEDERAL STATUTES

The federal criminal and civil statutes that may relate to this investigation are contained in Appendix A.

CONFLICT OF INTEREST CRITERIA

FDIC CONFLICT OF INTEREST POLICIES

Because of the numerous allegations that the Rose Law Firm failed to disclose conflicts of interest to FDIC, we expanded our traditional law enforcement criteria to include various contractual provisions requiring law firms to disclose conflicts, and criteria used to evaluate conflicts. When Rose was retained by FDIC and FSLIC as agency outside legal counsel, the Firm was contractually responsible for identifying and disclosing conflicts of interest in its representation on behalf of the agencies. The Firm's responsibility to identify and disclose conflicts was set forth in federal banking agency agreements, guides, and letters and also in rules adopted by the Arkansas Supreme Court governing conflicts.

In addition to having knowledge of previous FSLIC policies regarding conflicts, the Rose Law Firm had knowledge of FDIC conflicts policies no later than 1987. A letter to Webster L. Hubbell, former Rose partner, in late 1987, from Ronald R. Glancz, FDIC Acting Deputy General Counsel, enclosed a Legal Services Agreement and Guide for Legal Representation (Guide). (See Exhibit 1.) The Guide was prepared by the FDIC Legal Division for use by outside attorneys engaged in representing FDIC in connection with its liquidation and receivership activities. Mr. Hubbell, as the billing attorney, signed the FDIC Legal Services Agreement (LSA) related to work performed for the Corning Bank Receivership, Corning, Arkansas, in December 1987. The following are relevant sections of the Guide and the LSA. Section B1. of the Guide, Conflicts of Interest, provides in part:

We expect the highest ethical standards in your representation of the FDIC. Your firm must be free of conflicting interests. At the time you are retained, you will be asked to provide the FDIC with a list of potentially conflicting representations. Thereafter, any potential conflict must be discussed with us as soon as you recognize its existence.

We reserve the right to decide whether an actual or potential conflict exists. If, in our opinion, an actual or potential conflict does exist, you will not be permitted to go forward with your representation until the situation has been resolved.

In addition to actual or potential conflicts covered by the Code of Professional Responsibility or applicable federal or state provisions, there are other actual or potential conflict situations peculiar to your representation of the FDIC of which we should be promptly informed. These include such matters as: participation of any member of the firm as a director or officer of any insured bank that has failed or that is the subject of any ongoing supervisory action, representation of an officer, director, debtor, creditor or stockholder of any failed or assisted bank in a matter relating to the FDIC; representation of a creditor whose claim competes with that of the FDIC; and representation of a client in a matter adverse to the FDIC. Upon notification, we will inform you promptly whether we believe a conflict exists.

The Legal Services Agreement signed by Mr. Hubbell in December 1987 provides in part:

The Undersigned state and represent that they do not and did not formerly represent the Bank as general attorney(s), do not have a managerial or ownership interest therein, are not directors or shareholders thereof, have no professional or personal interests adverse to or in potential conflict with the FDIC, (whether in its Corporate or Receivership capacity), and are not otherwise ethically disqualified to represent the FDIC.

The Guide was updated by FDIC in June 1989. The conflicts of interest section remained virtually unchanged. The Rose Law Firm was sent a copy of the June 1989 Guide (Exhibit 2), and in October 1990 Mr. Hubbell, as the billing attorney, signed the Madison LSA which incorporated the Guide for the Firm.

CONFLICT RULES FOR ARKANSAS LAWYERS

The Rose Law Firm's representation of FDIC and FSLIC was also subject to the rules of professional conduct adopted and interpreted by the Arkansas Supreme Court. The rules of professional conduct for Arkansas lawyers were adopted from model rules developed by the American Bar Association (ABA). From July 1976 to the end of 1985, the Rose Law Firm's conduct was governed by the Model Code of Professional Responsibility. Beginning on January 1, 1986, and during the period of this inquiry, the Firm's conduct was governed by the Model Rules of Professional Conduct. (See Exhibit 3.) The Preamble to the Model Rules provides in part:

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

* * *

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

Model Rule of Professional Conduct 1.7, which is the general rule for conflicts of interest, provides in part:

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) each client consents after consultation.

- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
 - (1) the lawyer reasonably believes the representation will not be adversely affected; and
 - (2) the client consents after consultation.

The official Comment following Model Rule 1.7 relating to loyalty to a client provides in part:

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. The lawyer should adopt reasonable procedures appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

Model Rule 1.10, which is the general rule for imputed disqualification, provides in part:

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9, 2.2 or 3.7.

Canon 9 of the former Model Code of Professional Responsibility provided that "a lawyer should avoid even the appearance of professional impropriety." The Model Rules do not include an "appearance of professional impropriety" standard. However, the Arkansas Supreme Court has ruled in at least two cases that the appearance of impropriety standard remains in effect in Arkansas.

First American Carriers, Inc. v. The Kroger Company,
302 Ark. 86, 787 S.W.2d 669 (1990)

Canon 9 was a part of the ABA Code of Professional Responsibility and the exact language is not in the Model Rules of Professional Conduct adopted by this court. Canon 9 provided that "a lawyer should avoid even the appearance of impropriety." The fact that Canon 9 is not in the Model Rules does not mean that lawyers no longer have to avoid the appearance of impropriety. (See Exhibit 4.)

Norman L. Burnette, d/b/a Burnette Flying Service v. Billy Morgan,
303 Ark. 150, 794 S.W.2d 145 (1990)

The "appearance of impropriety" prohibition of Canon 9 of the American Bar Association Code of Professional Responsibility [is] not a part of the Model Rules of Professional Responsibility which we have adopted. Nevertheless, the principle is yet alive and, though not controlling, is a rock in the foundation upon which is built the rules guiding lawyers in their moral and ethical conduct. (See Exhibit 5.)

ROSE LAW FIRM PROCEDURES TO IDENTIFY AND DISCLOSE CONFLICTS

According to the Rose Law Firm in a letter dated September 27, 1994, each Rose attorney is charged with the responsibility of determining whether a proposed client engagement in a particular matter might create a conflict of interest. Associate attorneys with less than three years of service are not permitted to accept an engagement without the prior consent of a Firm partner. The Rose Law Firm asks clients with a new engagement to provide a list of parties that will be involved in the proposed engagements under consideration. The

responsible Rose attorneys compare parties so identified with a list of clients and other parties in prior engagements to determine if the two lists overlap. If there are such overlaps, responsible attorneys must compare the proposed engagement with the existing or prior engagement so as to evaluate whether the proposed engagements could raise a conflict issue.

During the 1970s and early 1980s, the process stated above was achieved by oral and written communications among attorneys. Thus, attorneys considering new engagements circulated memorandums identifying the interested parties and describing the nature of proposed engagements. They asked the other Firm attorneys to notify them of any potential conflicts. Often, but not always, copies of the memorandums were kept with client files. In 1987 the Firm obtained a software system to supplement the conflicts checking procedures.

If there is an overlap between new client information involved in a proposed engagement and existing client information identified through the conflicts checking procedures, the attorneys involved are obligated to determine if a conflict exists under the Model Rules or other applicable rules. In addition, overlaps may reveal situations that do not involve legal conflict issues under the Model Rules, but may present business issues that may have an impact on an existing client relationship.

The Rose Law Firm established a Conflicts Committee in August 1988 consisting of three elected members. The original members were Webster L. Hubbell and two other Rose partners, each to serve until a successor was nominated and elected. In 1994 another Rose partner was elected to fill the position vacated by Mr. Hubbell. The Conflicts Committee generally meets informally as issues arise and typically does not keep any minutes. A decision of the Conflicts Committee may be appealed to the partners of the Firm.

MADISON GUARANTY SAVINGS AND LOAN ASSOCIATION

BACKGROUND

In February 1989 the Federal Home Loan Bank Board (FHLBB) placed Madison into conservatorship and, pursuant to an agreement with FSLIC, the FDIC Legal Division was responsible for managing Madison litigation, including a lawsuit pending against Madison's former auditors, Frost & Company, P.A. In January 1982 James B. McDougal and his wife, Susan, had purchased a majority interest in Madison. Madison Financial Corporation (MFC) was established on February 3, 1982, as a wholly owned subsidiary service corporation for Madison to engage in real estate investment, development and management. The following are some of the more significant events related to Madison:

- On January 20, 1984, a report of a limited examination of Madison by the Office of Examinations and Supervision, FHLBB, identified questionable investment and lending practices in real estate development projects. Other deficiencies included poor underwriting practices, inadequate recordkeeping, and little or no savings and loan experience by either the Chief Executive Officer or the Board of Directors. Based on declining capital and regulatory violations, the FHLBB executed a Supervisory Agreement on July 19, 1984, stipulating a number of requirements for Madison and its Board of Directors.
- In March 1985 Frost & Company, P.A., Madison's outside auditors, issued an unqualified opinion on Madison's 1984 Financial Statements. In February 1986 Frost issued an unqualified opinion on Madison's 1985 Financial Statements, concluding that Madison was solvent.
- In March 1986 the FHLBB again identified unsafe and unsound practices at Madison and identified insider abuse by Mr. McDougal, Madison's major shareholder. A Cease and Desist Order signed in August 1986 imposed severe operating restrictions on Madison's operations and required Madison to obtain a new audit for 1985. At the FHLBB Supervisory Agent's request, Madison retained the law firm of Borod & Huggins in September 1986 to investigate internal abuses.

- In August 1987 a FHLBB examination concluded that Madison had been insolvent since December 1985. A second audit of Madison for 1985, completed by Peat Marwick Main & Company after Frost had already performed the 1985 audit, determined severe capital deficiencies, including inadequate reserves for loan losses.
- Jeffrey C. Gerrish, then of the law firm of Borod & Huggins, completed the investigation, issued a report and prepared the Frost lawsuit. Mr. Gerrish had been the Regional Counsel for FDIC's Memphis Regional Office in the early 1980s before he left FDIC to begin a private law practice. In February 1988 Madison filed suit against Frost seeking \$10 million for defective audits and negligent preparation of financial statements. Guthrie Castle and the law firm of Borod & Huggins were retained by Madison for the Frost lawsuit.
- On March 1, 1988, Borod & Huggins separated into three new law firms, one of which was Gerrish & McCreary. The Frost lawsuit was transferred to the Gerrish & McCreary law firm.

On February 7, 1989, FDIC entered into an agreement with FSLIC and the FHLBB to act as agent for FSLIC in any conservatorship or receivership appointed for an insured savings and loan association after January 1, 1989. Consequently, on March 2, 1989, FDIC was appointed managing agent for the Madison Conservatorship. As managing agent, FDIC was required to pursue all claims by, and defend those against, Madison. The FDIC Legal Division separates issues concerning general litigation involving liquidation matters from those issues involving possible impropriety by former officers and directors or outside professionals who were hired to perform work for an institution. Any professional liability lawsuits are handled by FDIC Legal Division's Professional Liability Section (PLS). The formal role of FDIC related to thrifts ended on August 9, 1989, when the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) was enacted and the Resolution Trust Corporation (RTC) was created. However, FDIC Legal Division continued to provide legal support to the RTC until September 1991, when FDIC attorneys working on RTC matters transferred to the RTC to form its Legal Division.

When Madison was placed into conservatorship in February 1989, Madison's lawsuit against its former outside audit firm, Frost, had been in process for about one year in Arkansas state court. Madison had filed suit against Frost alleging that Frost had breached its contract by failing to fairly present Madison's financial condition in the 1984 and 1985 audits. After Madison was placed into conservatorship, the PLS of FDIC Legal Division was responsible for managing the Frost lawsuit. In 1989 all PLS matters were directly managed from FDIC Washington, D.C., headquarters, unlike other legal matters, such as general collection or foreclosure work, which were managed by the regional offices.

In February 1989 Paul A. Jeddelloh of the FDIC Burnsville Consolidated Field Office in Burnsville, Minnesota, was named Managing Attorney for the Madison Conservatorship. One of Mr. Jeddelloh's duties was to hire local counsel to represent the conservatorship regarding general litigation matters. Soon after Madison was placed into conservatorship, Mr. Jeddelloh hired the law firm of Friday, Eldredge & Clark, Little Rock, Arkansas (Friday), to represent the Madison Conservatorship on all general litigation matters. Mr. Jeddelloh stated that he based his selection on the fact that Friday was on the FDIC List of Counsel Available (LCA), formerly known as the List of Counsel Utilized. The LCA is a formal list of law firms from which FDIC attorneys may select firms to handle general litigation matters on behalf of FDIC. Mr. Jeddelloh also stated that the firm had been recommended by other FDIC attorneys who had been assigned to other failed institutions in Little Rock, Arkansas.

Friday, however, was not given the responsibility for the Frost lawsuit because this was a PLS matter. In March 1989 April A. Breslaw, an attorney for PLS, FDIC Legal Division, was named as the responsible attorney for PLS matters related to Madison. Ms. Breslaw transferred into the RTC Legal Division when it was created in September 1991, and she remained Madison's PLS attorney until all of the professional liability matters were resolved. Former RTC Special Counsel Gerald Jacobs and former RTC Deputy Executive Director William Roelle approved settlement of the Frost lawsuit for \$1.025 million on or about February 26, 1991. The RTC concluded the damages were actually \$6 million, although the only meaningful recovery source was Frost's \$3 million insurance policy. The \$3 million, however, was self-liquidating; therefore, the policy was being reduced to pay Frost's attorney and expert fees. The settlement agreement was executed on April 8, 1991. See Appendix B for a chronology of events related to Madison and the Frost lawsuit.

HIRING OF THE ROSE LAW FIRM FOR FROST LAWSUIT

The Rose Law Firm is a Professional Association located at 120 East Fourth Street in Little Rock, Arkansas. The number of Firm attorneys grew from 24 in 1980, to more than 50 in 1991. The Firm handled many areas of legal practice including litigation and banking. From 1987 the Firm listed FSLIC as a representative client and listed FDIC from 1990. Prior to 1989 the Rose Law Firm represented FSLIC regarding failed savings and loan institutions, including Guaranty Savings and Loan Association, Harrison, Arkansas. Also prior to 1989 the Rose Law Firm represented FDIC regarding failed banks, including Corning Bank, Corning, Arkansas. (See Exhibit 6 for additional background on the Rose Law Firm.)

In March 1989 Ms. Breslaw determined that Madison's law firm for PLS matters, Gerrish & McCreary, had a conflict of interest. In a March 1989 letter to Mr. Jeddloh, Mr. Gerrish listed two lawsuits and an enforcement proceeding that his firm was currently involved in that were adverse to FDIC. They were defending one of the directors in the Corning Bank PLS lawsuit brought by FDIC. Mr. Gerrish provided a sworn statement to OIG special agents (Exhibit 7) in which he said he did not believe then and he does not believe now that his firm had a conflict of interest which would have prevented the firm from continuing with the Frost lawsuit. Mr. Gerrish did state that his firm was representing a director who was a defendant in the Corning Bank lawsuit and that the lawsuit was set for trial about the same time Madison was placed into conservatorship. He further stated that, apparently, FDIC used the Corning Bank litigation as its reason for removing the Frost lawsuit from Gerrish & McCreary.

Ms. Breslaw subsequently was sent a copy of Mr. Gerrish's March 1989 letter. In a sworn statement provided to the OIG (Exhibit 8), she said the letter also stated that Mr. Gerrish did not consider these representations to be conflicts because they were opposed to FDIC in bank matters, and the Madison litigation involved a savings and loan. Ms. Breslaw said she did not find this argument persuasive because she believed FDIC was a single entity that performed different functions. She said that regardless of the context, she believed that opposing FDIC in litigation created a conflict of interest for a firm that sought to represent FDIC at the same time. Ms. Breslaw stated she was concerned that, if Gerrish & McCreary was allowed to continue the Frost lawsuit, the firm could become aware of confidential information about FDIC practices, procedures, and policies and be tempted to use it against FDIC in one of the matters adverse to FDIC.

Ms. Breslaw stated that she knew of Gerrish & McCreary's involvement in the Corning lawsuit because she was also the FDIC attorney responsible for the Corning PLS lawsuit. She stated that this litigation involved claims against approximately 17 former Corning directors and officers and that this case had been transferred to her from another FDIC attorney after the lawsuit had already been filed. The former FDIC attorney had retained Rose for the Corning lawsuit, and Webster L. Hubbell was the responsible Rose attorney with whom Ms. Breslaw worked. Ms. Breslaw further stated that the only requirement that she was aware of for hiring a law firm was that the law firm had to be included in the List of Counsel Available or had to go through the application process to be added to the List. Each time a law firm was selected for a new representation, the law firm would have to check for conflicts of interest.

Ms. Breslaw said she only considered two firms to replace Gerrish & McCreary. She first considered Wright, Lindsey & Jennings because of her previous experience working with that firm on FDIC matters. However, she learned that Wright, Lindsey & Jennings had a conflict of interest because they were representing someone who was adverse to Madison. She next considered the Rose Law Firm because of the good work they were doing on the Corning lawsuit. She considered only these two firms because they were the only Little Rock law firms she believed capable of handling a complex accounting malpractice case. She considered only local firms because of the associated travel costs and expense of using a more distant firm.

Ms. Breslaw could not specifically recall, but it was her belief that in March 1989 she first contacted Mr. Hubbell regarding Madison to have him conduct a Rose internal conflicts check and evaluate whether the Firm could assume the litigation. She further stated that she believes she would have explained the Gerrish & McCreary conflicts to Mr. Hubbell and that it was likely he would have known about Gerrish & McCreary's work on the Corning matter due to his own involvement on the FDIC side. She did not know what action was taken by Rose to conduct an internal conflicts check after her request. Ms. Breslaw informed us that it was her practice to ask for a written response to the conflicts check, but she did not recall receiving one from Rose. She added that she believes Mr. Hubbell told her that there was no conflict and that she was too busy to note that she had not received a written confirmation. Ms. Breslaw further said that there was no FDIC requirement at that time that she receive a written confirmation.

Agent's Note: Our investigation evidenced that in 1987 FDIC issued internal policies and procedures for its managing attorneys relating to the retention of outside counsel. One of these procedures was set forth in a memorandum from FDIC Deputy General Counsel to the Regional Counsels, Liquidation Branch, FDIC Legal Division, dated August 27, 1987. (See Exhibit 9.) This memorandum transmitted internal procedures for the selection and termination of outside counsel. Section g. of the memorandum states that FDIC attorneys should ask outside counsel to perform a thorough conflicts check and to submit a written response. This memorandum was not addressed to other branches of the Legal Division, including the branch responsible for professional liability matters. In January 1988 Ms. Breslaw transferred to Washington, D.C., to work in the Professional Liability Section (PLS) of FDIC Legal Division. Before transferring to PLS, Ms. Breslaw was an attorney in the Liquidation Branch in the Dallas Region of FDIC Legal Division when these internal procedures were issued.

Ms. Breslaw informed the OIG that she was not familiar with the internal procedures and did not recall having received them in 1987. Ms. Breslaw also stated that in 1989, when FDIC was given responsibility to manage savings and loan matters for FSLIC, all FDIC attorneys already had full caseloads comprised of banking matters. She said the sheer volume of work created a chaotic situation. According to RTC's 1989 annual report, 175 institutions were placed into conservatorship in February and March 1989, one of which was Madison.

Mr. Hubbell stated under oath to the OIG that he could not specifically recall conducting a conflicts check related to Madison, but believes that he did. (See Exhibit 10.) During our review of the Rose Law Firm's litigation files, we found a Rose memorandum dated March 21, 1989, from Mr. Hubbell to all Rose attorneys in which he asked the Firm members to conduct a conflicts check related to the Frost lawsuit. (See Exhibit 11.) Mr. Hubbell also said that a Firm meeting was held to discuss whether or not to accept this case. Some of the tax partners did not want to sue Frost because they did not want to be adverse to Frost. They decided to accept the case because they wanted to form a relationship with FDIC. Mr. Hubbell also informed the OIG that, due to the compensation arrangement at the Firm, it was necessary that he actually perform the work in order to be compensated.

Richard T. Donovan, Rose Law Firm partner, was interviewed by OIG special agents during our investigation. (See Exhibit 12.) Mr. Donovan declined to be placed under oath during the interview. Mr. Donovan stated that he recalls a Firm meeting that was held in March 1989 to discuss whether to accept the Frost lawsuit. Mr. Donovan said that the Firm members agreed to accept the case. Hillary Rodham Clinton, a former Rose partner, was also interviewed by OIG special agents during our investigation. (See Exhibit 13.) Mrs. Clinton declined to be placed under oath during the interview. Mrs. Clinton said she does not recall Mr. Hubbell conducting a conflicts check regarding the Madison litigation although that was the normal practice.

Mr. Hubbell recalls that, after the conflicts check was completed, he telephoned Ms. Breslaw to tell her that Rose had no conflicts and could accept the case. According to Mr. Hubbell, this was a 15-second conversation wherein he told Ms. Breslaw that there were three issues that were discussed, but that none of them amounted to a conflict of interest. The issues discussed with Ms. Breslaw were that 1) some of the partners did not want to sue Frost because some Rose clients were also Frost clients; 2) some Rose attorneys had done some minor work for Madison; and 3) Mr. Hubbell's father-in-law was a Madison borrower and had a lawsuit against Madison. He also believed that he did not tell Ms. Breslaw his father-in-law's name during the conversation. Mr. Hubbell said that he did not discuss any of these issues in detail during the telephone call.

Mr. Hubbell stated under oath to OIG special agents that he did not inform Ms. Breslaw that the prior work Rose had done for Madison was before the Arkansas Securities Department because, at the time of the telephone call, he was not aware of the ASD representation. (See page 37 of this report for details on Rose's representation of Madison before the ASD.) Mr. Hubbell said he knew that Richard Massey, a Rose attorney, had done work for Madison, but he thought this had been lending and collection work. Mr. Hubbell stated that he did not have a lengthy discussion regarding these issues because he did not think any of them were significant. He further said that he did not document anything in writing concerning his conflicts check because Ms. Breslaw did not ask him to do so.

Ms. Breslaw stated to the OIG that she does not specifically recall Mr. Hubbell's calling her back and telling her that Rose could accept the case. She also said that she does not believe that Mr. Hubbell told her anything about Mr. Ward when he agreed to litigate the Frost lawsuit because she believes she would have had Mr. Hubbell write her a letter explaining the situation, which is what she did when the issue was raised in June 1989. Ms. Breslaw

further said that she does not believe that Mr. Hubbell told her in March 1989 that Rose had done any prior work for Madison, and she is fairly certain that he did not mention any work Rose did for Madison before the ASD. We found no documentation in the Madison Conservatorship litigation files or from Ms. Breslaw to substantiate this telephone call.

Mr. Hubbell explained that he believed Ms. Breslaw was replacing the Gerrish & McCreary firm because it had a conflict of interest. He said it was his understanding that Gerrish & McCreary was being replaced because the firm was representing a client who was suing FDIC in its corporate capacity. He did not think that Gerrish & McCreary was being replaced because the firm was adverse to the Corning Bank Receivership. Mr. Hubbell did not inform Ms. Breslaw about any Rose clients that he knew were adverse to a receivership or conservatorship. He thought that FDIC treated each failed institution as a separate entity so that the Firm could be adverse to FDIC regarding one failed institution but could also represent another failed institution for FDIC. However, during the investigation we obtained a copy of a Legal Services Agreement (LSA) related to the Corning Bank Receivership and signed by Mr. Hubbell for the Rose Law Firm in December 1987. The LSA contained a statement indicating that FDIC did not differentiate between its Corporate or Receivership capacity with respect to conflicts. The LSA signed by Mr. Hubbell for the Rose Law Firm states: "The Undersigned state and represent that they . . . have no professional or personal interests adverse to or in potential conflict with the FDIC, (whether in its Corporate or Receivership capacity), and are not otherwise ethically disqualified to represent the FDIC." (See Exhibit 14.)

On or about March 24, 1989, Rose was retained and immediately began to represent FDIC in the Madison litigation concerning the Frost lawsuit. An already existing LSA signed by Mr. Hubbell on December 28, 1987, for the Corning Bank Receivership prevailed until an LSA which was effective on October 3, 1990, was signed by Rose and FDIC for the Madison Conservatorship. Rose continued to represent the Madison Conservatorship until this lawsuit was settled in April 1991. The Frost lawsuit was the only matter Rose handled for the Madison Conservatorship.

CONFLICT OF INTEREST ISSUE RAISED WITH FDIC

Paul A. Jeddelloh, former FDIC Managing Attorney for the Madison Conservatorship, provided a sworn statement to OIG special agents. (See Exhibit 15.) According to Mr. Jeddelloh, soon after the March 1989 transfer of the Frost lawsuit to the Rose Law Firm, Sue Strayhorn, a former employee of both Madison and MFC who was working for the Madison Conservatorship, raised concerns to him about a conflict of interest because of Mr. Hubbell's family relationship with Mr. Ward. She informed Mr. Jeddelloh that she saw Mr. Hubbell at Mr. Ward's trial against Madison, which took place in August 1988. He further said that Ms. Strayhorn was noticeably agitated over Mr. Hubbell's involvement in the Frost lawsuit and expressed concern over the possibility that information garnered from the Frost lawsuit could be used against Madison in the Ward lawsuit. Mr. Jeddelloh stated that he also discussed the Hubbell-Ward relationship with David Paulson, FDIC Managing Agent for the Madison Conservatorship, and that Mr. Paulson had the same concerns as Ms. Strayhorn. Mr. Jeddelloh said that he then telephoned Ms. Breslaw to relay the concerns expressed by both Ms. Strayhorn and Mr. Paulson. He said that during the telephone conversation Ms. Breslaw advised him that 1) she wanted Rose for the litigation because they were influential; 2) that it was not his case; and 3) he should mind his own business. Mr. Jeddelloh was left with the impression that Ms. Breslaw did not think the Ward lawsuit against Madison was a significant matter. Mr. Jeddelloh stated that he considered the conflict of interest issue significant enough to write to Ms. Breslaw and believed that, by putting his concerns in writing, she would deal with the situation appropriately. Mr. Jeddelloh forwarded Ms. Strayhorn's information to Ms. Breslaw in a June 8, 1989, letter for her resolution. (See Exhibit 16.)

Ms. Strayhorn was interviewed and provided a sworn statement to OIG special agents. (See Exhibit 17.) She said that during the time she was employed at Madison Financial Corporation (MFC) Seth Ward was also employed at MFC, but she was not aware if he was being paid by MFC or Madison. She further stated she was aware that Webster L. Hubbell was Mr. Ward's son-in-law and that he was associated with the Rose Law Firm. Ms. Strayhorn said that, soon after Madison was placed into conservatorship in March 1989, the Frost lawsuit was transferred to Rose. When she learned that the litigation files had been transferred to Mr. Hubbell, she became concerned that the FDIC personnel responsible for the transfer were not aware of the relationship between Messrs. Hubbell and Ward and that Mr. Ward's lawsuit against Madison was still pending. She stated that she informed Billy Carroll, who was FDIC Managing Agent for Madison at that time, about the Hubbell-Ward

relationship. Ms. Strayhorn remembers that Mr. Carroll called either Mr. Jeddelloh or Ms. Breslaw to check on the situation. She could not recall being present during this telephone call. However, she does recall being told that Mr. Hubbell would be acting as lead attorney, but would not be arguing the case and that Rose attorneys Richard Donovan or Gary Speed would be responsible for all aspects of the case.

Mr. Paulson was interviewed and provided a sworn statement to OIG special agents. (See Exhibit 18.) He stated that he replaced Billy Carroll as Madison's Managing Agent in May 1989. He explained that a professional liability case that was ongoing when he arrived at the Madison Conservatorship involved Frost. The first information he received concerning a possible conflict of interest with Rose came from Ms. Strayhorn. Mr. Paulson stated that Ms. Strayhorn told him that Mr. Hubbell was related by marriage to either Seth Ward or Seth Ward II, both of whom were involved in litigation against Madison, and that Ms. Strayhorn felt it was a conflict of interest for Rose. Mr. Paulson asked Kenneth K. Schneck, FDIC Credit Specialist assigned to Madison, to look into the situation for him. He said that Mr. Schneck was adamant that the Hubbell-Ward relationship was a conflict of interest. Mr. Paulson believes that Mr. Schneck discussed the issue with Ms. Breslaw by telephone, but that Ms. Breslaw did not agree there was a conflict. Mr. Paulson also recalls discussing the issue with Mr. Jeddelloh. He further said he recalls correspondence from Ms. Breslaw and Mr. Hubbell on the matter. Mr. Paulson explained that, after he and Mr. Schneck did not get anywhere with Ms. Breslaw on this issue, they decided to write a letter to John O'Donnell, FDIC Savings and Loan Project Area Coordinator, and inform him of their concerns. Mr. Paulson stated that once the letter was sent to Mr. O'Donnell, he had no further involvement in this issue.

Ms. Breslaw informed OIG special agents that her first recollection of being told about a potential conflict for Rose with Madison was a letter she received from Mr. Jeddelloh after Rose had begun work on the Frost lawsuit. She also stated she believes she received either a letter or telephone call at about the same time from Mr. Paulson, who was Madison's Managing Agent at the time. OIG special agents showed Ms. Breslaw the June 8, 1989, letter to her from Mr. Jeddelloh. After reviewing the letter, Ms. Breslaw questioned whether the letter raised true conflict issues. Nevertheless, she stated that, after having received Mr. Jeddelloh's letter originally, she contacted Mr. Hubbell and discussed with him over the telephone his relationship with his father-in-law. Mr. Hubbell explained to her that he did not have a close relationship with his father-in-law. She specifically recalls that Mr. Hubbell told her that he and Mr. Ward had different political affiliations and that he was not

representing Mr. Ward. Mr. Hubbell did not inform her of any of his other relationships with Mr. Ward. From this information, Ms. Breslaw concluded that there was no conflict of interest. However, she requested that Mr. Hubbell write to Mr. Paulson to inform him that he was not representing Mr. Ward. Mr. Hubbell wrote a letter (Exhibit 19) to Mr. Paulson on June 28, 1989, stating that he had not represented Mr. Ward in his dispute with Madison and had no intention of representing Mr. Ward in the future concerning any matter relating to Madison. As a result of Mr. Jeddelloh's letter to her, Ms. Breslaw also wrote a letter (Exhibit 20) to Mr. Paulson on June 23, 1989, stating that she was not inclined to take the Frost lawsuit away from Rose because of Mr. Hubbell's relationship to Mr. Ward. However, according to Ms. Breslaw, in his telephone conversation with her Mr. Hubbell omitted addressing his business relationship with Mr. Ward. Mr. Hubbell also did not disclose his business relationship with Mr. Ward in his June 28, 1989, letter to Mr. Paulson.

The Regional Counsel for the Chicago Regional Office in 1989 was Pamela A. Shea. During our investigation, Ms. Shea provided OIG special agents with a sworn statement (Exhibit 21) in which she recalled that Mr. Jeddelloh was the Managing Attorney for the Madison Conservatorship. OIG special agents showed Ms. Shea the June 8, 1989, letter from Mr. Jeddelloh to Ms. Breslaw, which indicates a copy was sent to Ms. Shea. After reviewing the letter, Ms. Shea stated that she had no recollection of having received a copy of the letter in 1989. Ms. Shea said that she had no supervisory responsibility for PLS matters and very little interaction or communication with the Washington, D.C., Professional Liability Section. Ms. Shea believes that Mr. Jeddelloh took the appropriate action by informing Ms. Breslaw of the situation, and that no further action was required by her or Mr. Jeddelloh.

Concerns regarding the Hubbell-Ward relationship were raised again in an August 10, 1989, letter from Mr. Schneck to Mr. O'Donnell. (See Exhibit 22.) In a sworn statement provided to the OIG by Mr. Schneck (Exhibit 23), he stated that he was assigned as Credit Specialist at Madison in late June or early July 1989. Mr. Schneck said that his main duties were to collect the loans and handle the credit side of the institution and that he had no responsibility over the professional liability issues at Madison. Someone at the Madison Conservatorship, whom he could not recall, informed him that Mr. Hubbell's father-in-law was Seth Ward and that Mr. Ward had been a Madison borrower and was involved in litigation adverse to the Madison Conservatorship.

Mr. Schneck also was concerned whether a conflict of interest existed because of Mr. Hubbell's relationship to Mr. Ward. In late July or early August 1989 Mr. Schneck attended

a strategy meeting at the Rose Law Firm to discuss settling the Frost lawsuit. He stated that during a break in the meeting he pulled Ms. Breslaw aside and informed her he felt the Hubbell-Ward relationship was a conflict of interest and that, from a credit standpoint, it would be best to replace the Firm. Mr. Schneck said that Ms. Breslaw responded by telling him that it was no concern of his because it was a Professional Liability Section issue. He further said that it was his impression that talking with Ms. Breslaw about this issue was not going to do any good and, therefore, decided to put something in writing. Mr. Schneck believed that Ms. Breslaw's opinion that there was no conflict was incorrect and that he wanted to bring this issue to someone else's attention in the hope that she would be overruled. Therefore, sometime after the meeting he wrote the letter to Mr. O'Donnell. He said he wrote to him because Mr. O'Donnell was next in the chain of command after Mr. Paulson. Mr. Schneck does not know what action Mr. O'Donnell took after he received the letter, but he later heard from Mr. Paulson that the Rose Law Firm was not going to be replaced. He said that after hearing that, he decided not to waste any more of his time dealing with this issue.

Mr. O'Donnell provided a sworn statement (Exhibit 24) to OIG special agents in which he stated that his main duties as FDIC Savings and Loan Project Area Coordinator were to review credit cases and handle the administrative responsibilities associated with the managing agents and credit specialists who were assigned to Arkansas savings and loan institutions that were in conservatorship. He stated that he did not recall that Rose had been hired to represent the Madison Conservatorship or the lawsuit that had been filed against Frost. Mr. O'Donnell said that he did remember that Messrs. Paulson and Schneck were assigned to the Madison Conservatorship. He further stated that he remembers discussing with someone a conflict of interest situation involving Seth Ward, but he does not recall the specifics of the conflict. After Mr. O'Donnell reviewed the August 10, 1989, letter, he stated to OIG special agents that he does not recall receiving this letter. However, he said that, since the issue involved the Legal Division, his normal procedure in 1989 would have been to have made sure that someone in the Legal Division at the Chicago Regional Office was made aware of the issue. Mr. O'Donnell stated that the legal aspects of the conservatorships were handled by the Legal Division, and he had no responsibility in this area. He believes he would have told Mr. Schneck to make sure that someone at the Chicago Regional Office was aware of the issue. He said that he does not recall speaking with anyone about this matter. Ms. Breslaw also was shown a copy of Mr. Schneck's August 10, 1989, letter, and she stated that she does not believe the letter was sent to her when it was written. She further said that she does not recall discussing this issue with Mr. Schneck.

In addition to substantiating the personal relationship between Messrs. Hubbell and Ward, our investigation evidenced that Mr. Hubbell also had been for several years a part owner and corporate official of POM, Mr. Ward's company. (See page 34 of this report for details of Mr. Hubbell's involvement with POM.) The Rose Law Firm and Mr. Hubbell had regularly represented Mr. Ward and his company in legal matters. Neither the Rose Law Firm nor Mr. Hubbell provided the OIG evidence that this information was communicated to FDIC or the RTC.

Further, during interviews by OIG special agents, both Ms. Breslaw and various individuals at Rose stated that the Firm set up a "firewall" to ensure that Mr. Hubbell did not learn about issues from the Frost lawsuit that could affect his father-in-law. However, we found no documents that confirmed the firewall existed or that Mr. Hubbell was prevented from learning of developments regarding his father-in-law's case. Further, we found that Mr. Hubbell billed the Madison Conservatorship on two separate occasions for reviewing the Borod & Huggins report, which included information on loans Mr. Ward received from Madison, which were the same loans that were later charged off by Madison, and his employment with MFC. Ms. Breslaw informed the OIG that she knew of the firewall, but that it was not imposed at her direction. Mr. Hubbell stated to the OIG that the firewall was formed because of the concerns raised by the Madison Conservatorship staff. Mr. Hubbell said there was nothing in writing relative to the firewall. He said that the firewall eventually broke down because he needed to review documents that related to Mr. Ward in order to be prepared for the Frost trial. Mr. Hubbell stated that initially he did not review the Borod & Huggins report because it contained material on Mr. Ward. However, once he learned that the defense attorneys had a copy of it he read the report. Mr. Ward's lawsuit against the Madison Conservatorship was still ongoing when Mr. Hubbell read the Borod & Huggins report.

FAILURE TO INFORM FDIC OF CONFLICTING REPRESENTATION - UNIVERSAL SAVINGS

Universal Savings Association, F.A., Chickasha, Oklahoma (Universal), was placed into Receivership by the Federal Home Loan Bank Board (FHLBB) on February 13, 1987. Prior to being placed into Receivership, Universal filed suit in 1985 against First Investment Securities Corporation (FIS), which was being defended in the lawsuit by the Rose Law Firm. The lawsuit alleged securities fraud against FIS and others. After Universal was placed into

receivership FSLIC, as receiver for Universal, was substituted as the plaintiff in this action in February 1987. During 1987 all of the parties agreed on a settlement; however, FSLIC ultimately rejected the settlement due to unacceptable indemnification provisions. In January 1988 FSLIC filed a motion to return the cause of action to the docket for a trial date. In February 1988, FIS, still being defended by Rose, filed a motion to enforce the settlement agreement against FSLIC. These motions were never ruled on by the court, and the case became essentially dormant in 1989. The FDIC Legal Division currently lists this as an open matter and is attempting to reactivate the lawsuit.

Our investigation evidenced that Rose was informed as early as November 1986 by FSLIC which wanted to know if the Firm was representing any client in litigation against or otherwise known to have interests in conflict with FSLIC, either in its corporate capacity or as receiver or conservator. We also obtained a November 3, 1988, Rose memorandum from Vincent Foster to all Rose attorneys. (See Exhibit 25.) The memorandum states that the Firm represents defendants in an action by a savings and loan that was put into receivership by FSLIC. Further, Mr. Foster's memorandum states that under FSLIC policy, Rose therefore was disqualified from receiving any new business while the Firm was representing defendants adverse to a FSLIC receivership. Mr. Foster wrote to the FHLBB which was responsible for FSLIC matters, and asked that the Firm not be disqualified from receiving new business because of the conflict with FSLIC. By a November 21, 1988, letter, the FHLBB informed Mr. Foster that Rose would be allowed to bid on new legal matters related to savings and loan associations. (See Exhibit 26.) On February 28, 1989, Mr. Foster wrote a letter to both FSLIC and FDIC requesting that Rose be considered for legal services arising out of failed savings and loans in Arkansas. The FSLIC letter disclosed that Rose was currently representing FIS against the FSLIC Universal Receivership; the FDIC letter did not.

In addition to being informed of FSLIC policies regarding conflicts of interest, in December 1987 Mr. Hubbell was sent the FDIC's Guide for Legal Representation. The Guide containing a section regarding conflicts of interest was sent to the Firm in connection with its representation of the Corning Receivership. (See Exhibit 1.) This section provides that FDIC be promptly informed of a representation of a client adverse to FDIC. Also, the Corning Bank LSA signed in December 1987 prohibited the Firm from having any professional or personal interests adverse to or in potential conflict with FDIC, whether in its Corporate or Receivership capacity. In May 1990 FDIC and RTC issued joint guidelines, which were sent to Rose concerning conflicts of interest. The guidelines do not differentiate between FDIC's various capacities, including its conservator, receiver and corporate capacity.

Our investigation evidenced that Mr. Hubbell did not inform FDIC of Rose's representation of FIS in 1989 when he agreed to represent FDIC in the Madison litigation. Mr. Hubbell admitted during his sworn testimony to the OIG that he did not inform Ms. Breslaw that Rose was representing FIS against the Universal Receivership. He stated that it was his belief that FSLIC and FDIC treated each receivership or conservatorship as a separate entity. Mr. Hubbell further said that Rose would have a conflict of interest if the Firm was representing someone against FSLIC or FDIC in their corporate capacities.

In sworn testimony to the OIG (Exhibit 8), Ms. Breslaw said that Mr. Hubbell did not inform her of the FIS representation. She further said that she believed that Rose's representation of FIS against the Universal Receivership was a conflict of interest for Rose and that, had she been informed of this matter, she would have brought it to the attention of her supervisor. Ms. Breslaw stated that, in order for the Firm to represent the Madison Conservatorship, a waiver for Rose related to the Universal Receivership would have been necessary.

WARD LAWSUITS AGAINST MADISON

Mr. Hubbell's father-in-law, Seth Ward, was hired in 1985 by James McDougal, President of Madison's wholly owned subsidiary, Madison Financial Corporation (MFC), to represent MFC in real estate transactions. Mr. Ward provided a sworn statement (Exhibit 27) to the OIG in which he said that he received a salary of \$25,000 per year from MFC and was to receive a 10 percent commission on sales he arranged. In one such transaction, known as the Castle Grande Development, Mr. Ward negotiated and signed for the purchase of \$1.75 million of real estate for MFC from the Industrial Development Company (IDC). According to information contained in the Borod & Huggins report, at that time MFC had an investment limitation of \$600,000. Consequently, Madison loaned \$1.15 million to Mr. Ward, who purchased part of the property, and MFC purchased the remainder of the property for \$600,000. The loan to Mr. Ward was made on a nonrecourse basis and, therefore, Mr. Ward was not personally obligated to repay the loan, and Madison's sole security was the property. Through an agreement with MFC, Mr. Ward was able to pay down the \$1.15 million debt with proceeds from Castle Grande sales.

Mr. Hubbell stated to the OIG that he recalls Rose had represented both Mr. Ward and Madison concerning the purchase of property from the IDC. He stated that at least one Rose attorney attended the closing for this property on behalf of Mr. Ward and Madison.

Mr. Hubbell said that he did not work on this matter and that he did not perform any legal work for Madison while it was an open institution.

During the period October 1985 through July 1986, Mr. Ward and his son, Seth Ward II, received several separate loans from Madison totaling approximately \$1.9 million. The \$1.9 million figure includes the \$1.15 million that Mr. Ward borrowed for the purchase of the IDC property. At least two of the loans to Mr. Ward - one for \$400,000 on March 31, 1986, and another on June 6, 1986, for \$70,000 - were charged off by Madison on October 31, 1988. Madison also charged off a third loan for \$93,000 on September 30, 1987. During its litigation of the Frost lawsuit, Rose obtained information concerning Mr. Ward's loans.

Mr. Ward filed suit in Circuit Court of Pulaski County, Little Rock, Arkansas on September 2, 1987, against Madison and MFC, claiming Madison failed to pay him commissions of \$300,000 plus interest on land he sold. Madison countersued Mr. Ward claiming he owed Madison \$93,000. The jury entered a verdict for Mr. Ward, and a judgment for \$353,502 was entered against Madison on September 6, 1988. Madison and MFC appealed the decision to the Arkansas Court of Appeals on October 6, 1988.

Mr. Alston Jennings, Sr., an attorney with the law firm of Wright, Lindsey & Jennings, Little Rock, Arkansas, originally represented Mr. Ward in this case against Madison. Madison was represented by the Mitchell, Williams, Jackson, Selig & Tucker law firm. However, in March 1989, after Madison had been placed into conservatorship, Mr. Jennings' law firm developed a conflict of interest regarding FDIC work and withdrew as counsel for Mr. Ward. Thomas Ray, an attorney with Shults, Ray and Kurrus then became Mr. Ward's attorney during the appeal. While the case was pending, the RTC and Mr. Ward entered into a settlement agreement in April 1993 and, as part of the agreement, Mr. Ward paid the RTC \$325,000. This matter was concluded on May 10, 1993, when the United States District Court, Little Rock, Arkansas, ordered all claims and counterclaims dismissed with prejudice as a result of the settlement.

While Mr. Hubbell was handling the Frost lawsuit for the Madison Conservatorship and during the appeal of Mr. Ward's lawsuit against Madison, Mr. Hubbell had several telephone conversations with Mr. Ward's attorney, Mr. Ray, and received copies of significant briefs and filings in this matter. Further, Mr. Hubbell also called Mr. Ward's former attorney, Mr. Jennings, on or about October 26, 1989, and informed him of the dismissal of the Madison appeal. After Mr. Hubbell called him, Mr. Jennings removed the funds from the

Madison escrow account that had been established to cover Mr. Ward's judgment. Mr. Hubbell confirmed during his testimony to the OIG that he received copies of documents from Mr. Ray that related to the lawsuit, but did not give Mr. Ray any advice on this matter.

During our investigation we obtained the file and documents from Rose regarding Seth Ward's lawsuit against Madison. One of these documents was a letter sent by David M. Powell, Attorney, Wright, Lindsey & Jennings, to Mr. Hubbell on January 18, 1990, regarding an indemnification agreement between Mr. Ward and the Wright, Lindsey & Jennings law firm. (See Exhibit 28.) Mr. Powell's letter was sent to Mr. Hubbell during the time Mr. Hubbell was handling the Frost lawsuit for the Madison Conservatorship. Further, this letter enclosed a draft agreement slightly revising the proposed agreement Mr. Hubbell had recently submitted to Alston Jennings, also with the Wright, Lindsey & Jennings firm. The proposed letter agreement that was enclosed was also dated January 18, 1990, and it was from Seth Ward to Alston Jennings, Sr. According to the proposed letter, RTC wanted the agreement as assurance that Mr. Ward would pay any final judgment entered against him in favor of the RTC related to their ongoing litigation.

In a sworn statement (Exhibit 29) provided to the OIG by Mr. Powell, he said that in 1990, he was a member of Wright, Lindsey & Jennings' Executive Committee and became involved with an issue related to the removal of the escrow funds related to the Ward lawsuit. After Mr. Jennings learned that the state court had dismissed Madison's appeal, Mr. Jennings involved himself in releasing funds held in escrow at the Worthen Bank and delivering the funds to Mr. Ward. According to Mr. Powell, RTC became extremely upset with Mr. Jennings and his firm for what it perceived as his improper involvement in obtaining the escrow funds. The proposed agreement resulted when RTC took the position that it was a conflict of interest for Wright, Lindsey & Jennings to have anything to do with the Ward v. Madison lawsuit and refused to give the firm any new work. Mr. Powell said that the firm did not believe Mr. Jennings' actions constituted a conflict of interest, but wanted to resolve the matter to RTC's satisfaction. The RTC wanted Mr. Ward to return the funds to an escrow account, but Mr. Ward refused to do so. The RTC also requested that the firm put up collateral for the judgment amount in case the lawsuit was reversed on appeal. The members of the firm decided not to put up collateral, but they agreed to enter into an indemnification agreement with RTC stating the firm would be responsible for the judgment if it was reversed and Mr. Ward refused to pay any judgment rendered against him.

Mr. Powell said that he is not sure how Mr. Hubbell became involved in the matter, but believes that Mr. Ward asked the firm to deal with his son-in-law on this issue. Mr. Powell stated that he did not know whether Mr. Hubbell was just helping Mr. Ward because of his family relationship with him or if Mr. Hubbell was actually advising Mr. Ward on how to deal with this matter. Either Mr. Powell or Mr. Jennings contacted Mr. Hubbell concerning the indemnity. Mr. Powell believes he drafted the original agreement and sent it to Mr. Hubbell. He said that either Mr. Hubbell or Mr. Ward made changes to the agreement. Mr. Powell recalls that a few drafts went back and forth before they agreed on a statement. Mr. Powell provided the OIG with a copy of the signed January 18, 1990, agreement. (See Exhibit 30.)

Mr. Jennings also provided a sworn statement to the OIG regarding this matter. (See Exhibit 31.) He stated that he thought Mr. Ward needed to have Mr. Hubbell review the draft indemnification agreement because Mr. Ward was in an adversarial position with Wright, Lindsey & Jennings and needed representation. He did not recall whether he suggested that Mr. Hubbell represent Mr. Ward on this issue or if Mr. Ward suggested that Mr. Hubbell review the agreement. Mr. Jennings believed that another reason Mr. Hubbell became involved was that Mr. Ward did not want to incur any additional legal fees. Mr. Jennings further said that he did not want to place Mr. Ray in the middle of this issue because it was a potentially awkward situation, since Mr. Jennings had recommended that Mr. Ray handle Mr. Ward's appeal.

Office of Inspector General special agents interviewed Mr. Ray and showed him a copy of the January 1990 indemnification agreement. During his interview, Mr. Ray stated that he had not previously seen the agreement and did not know of its existence. (See Exhibit 32.) He further said that Mr. Ward did not ask him to represent him regarding this matter even though he was representing Mr. Ward on the appeal. He could only speculate that Wright, Lindsey & Jennings thought it would be easier to get Mr. Ward to sign the agreement if they went through Mr. Hubbell rather than approaching him.

Negotiation of the indemnification agreement took place while Mr. Hubbell was litigating the Frost lawsuit on behalf of the Madison Conservatorship. Mr. Hubbell became involved with this matter after stating to FDIC in a June 28, 1989, letter (Exhibit 19) to the Madison Conservatorship that he would not become involved in Mr. Ward's dispute with Madison. Mr. Hubbell stated to OIG special agents that in January 1990, at the request of attorneys from the Wright, Lindsey & Jennings law firm, he agreed to become involved in negotiating

the indemnification agreement between the firm and his father-in-law. Mr. Hubbell did not believe his involvement in this agreement was contrary to his June 1989 letter to the Madison Conservatorship because he did not think of this as being involved in the lawsuit, rather, he saw this as a private agreement between Mr. Ward and Wright, Lindsey & Jennings. Mr. Hubbell acknowledged to OIG special agents that he did not inform Ms. Breslaw of his involvement in this matter.

Seth Ward II, Mr. Hubbell's brother-in-law, also had active litigation against Madison at the time it was placed into conservatorship. The litigation began in December 1988 when Mr. Ward II filed a lawsuit against Madison alleging that Madison was charging him a higher rate of interest on his \$260,000 mortgage loan than was agreed upon. Mr. Ward II was represented in this lawsuit by Judd Kidd, an attorney with the Little Rock law firm of Dodds, Kidd, Ryan & Moore. After Madison was placed into conservatorship, FDIC removed the case to federal court in March 1989. A hearing was held in January 1990 in United States District Court that granted Madison's motion for summary judgment and dismissed the case. Had Mr. Ward II prevailed, the result would have been a loss of interest earned to Madison in the amount of \$28,654 over the life of the mortgage.

Seth Ward II stated to OIG special agents that Mr. Hubbell was not involved in his lawsuit against Madison. He further stated that a personal friend, Judd Kidd, represented him, and Mr. Hubbell did not advise him or Mr. Kidd regarding this lawsuit. (See Exhibit 33 for a copy of Mr. Ward II's interview.)

WEBSTER HUBBELL RELATIONSHIP WITH AND REPRESENTATION OF POM, INC.

Mr. Hubbell had a longstanding business relationship with Seth Ward that was not disclosed to FDIC. We contacted the Office of Secretary of State, State of Arkansas, and confirmed that Seth Ward, as President, filed Articles of Incorporation for the Deta Corporation in Arkansas on August 12, 1981. The application was signed by "Webb Hubbell" acting as incorporator, and using the address of the Rose Law Firm. On August 16, 1984, the name of Deta Corporation was changed to POM, Incorporated, with the application for amendment signed by Seth Ward as President and Webb Hubbell as Secretary. The stated business purpose of POM was described as the manufacture of parking meters.

Mr. Hubbell and his wife owned five percent of POM's stock and the remaining shares were held by Mr. and Mrs. Ward and Seth Ward II. Mr. and Mrs. Hubbell continued to hold POM stock at the time Rose was hired by FDIC to handle the Madison litigation against Frost. Mr. and Mrs. Hubbell subsequently deeded their shares to Seth Ward II in October 1989. Mr. and Mrs. Ward also deeded their shares to Seth Ward II during 1989. In addition, we learned that Mr. Hubbell was Acting Secretary for the company from 1981 to January 1987. POM records evidenced that Mr. Hubbell was the corporate counsel for the company from 1981 through 1992, around the time Mr. Hubbell left Rose to become the Associate Attorney General of the U.S. Department of Justice. Mr. Hubbell acknowledged to the OIG that he incorporated Deta Corporation. He further stated that he was elected secretary, and served in that capacity for many years until Mr. Ward II asked him to resign because having to send him documents to sign was cumbersome. Mr. Hubbell also acknowledged that he acted as POM's general counsel and performed legal services for POM without charge. He said that he received no salary or dividends from POM and that he received no money from Mr. Ward II when he deeded his POM stock to him in 1989. Mr. Hubbell stated that, during the time he was litigating the Frost lawsuit, he did not inform Ms. Breslaw that he was representing POM or that he had owned stock in the company.

While Rose was still litigating the Frost lawsuit, POM filed suit against Duncan Industries Parking Control Systems Corporation of Delaware (Duncan Industries). The May 4, 1990, complaint alleged a variety of issues, including patent infringement, false advertisement, and monopoly or attempts to monopolize. Mr. Hubbell and the Rose Law Firm filed the complaint and represented POM. This representation by Rose was also principally handled by Mr. Hubbell. A trial began on November 6, 1991, and a verdict was rendered in favor

of the defendant on December 3, 1991. In addition to representing POM in the 1990 lawsuit against Duncan Industries, Mr. Hubbell and Rose represented POM as defendant and counter-claimant with respect to a patent infringement lawsuit filed June 26, 1992, by Duncan Industries. Our investigation also evidenced that several Rose attorneys routinely represented POM regarding legal matters. Mr. Hubbell, Richard Donovan, Richard Massey and Gary Speed all performed legal services for POM in the 1980s. Messrs. Hubbell, Donovan and Speed handled the Frost lawsuit for the Madison Conservatorship.

ROSE AND HUBBELL REPRESENTATION OF WARDS

Our investigation evidenced several instances in which Rose and its predecessor law firm, Rose, Nash, Williamson, Carroll, Clay & Giroir, had represented Mr. Ward as early as 1975. For example, during December 1975, Mr. Hubbell represented Mr. Ward regarding property tax payments. Other Rose attorneys represented Mr. Ward in 1976 regarding the creation of a life insurance trust and litigation of a tax matter. Mr. Ward had a longstanding relationship with the Rose Law Firm that spanned a period of time before, during and after Rose litigated the Frost lawsuit for FDIC and RTC from March 1989 through April 1991.

We also found instances where Mr. Hubbell was involved with Mr. Ward regarding Madison issues. We obtained from Rose a September 24, 1985, letter from Mr. Ward to James McDougal, President, MFC. (See Exhibit 34.) This letter sets forth the terms of an agreement between Mr. Ward and Madison concerning the purchase and resale of the Industrial Development Company property. Mr. Hubbell was shown this letter during his interview with the OIG. He stated that he did not draft this letter for Mr. Ward although he may have seen it. He said that his father-in-law would visit his office and would occasionally give his secretary, Martha Patton, handwritten notes to type. We also obtained from Rose a December 11, 1986, draft letter, from Mr. Hubbell to H. Don Denton, Senior Vice President, Madison. (See Exhibit 35.) The subject of the letter was two loans that Madison had made to Mr. Ward. The text of the letter stated that Mr. Ward did not intend to pay off these loans and, instead, offered a deed in lieu of foreclosure on the property that secured the loans. These loans were later charged off by Madison and figured into the damage assessment calculated for the Frost lawsuit. Mr. Hubbell was shown this letter and stated to the OIG that his name at the bottom of the letter below the signature line was a typographical error and that the letter should have been signed by Mr. Ward. He further said that his secretary probably typed this letter for Mr. Ward from his handwritten notes and accidentally

typed his (Hubbell's) name at the bottom. Mr. Hubbell said that he did not represent Mr. Ward regarding his dealings with Madison while it was an open institution.

We interviewed (Exhibit 36) Martha Patton who was Mr. Hubbell's secretary at Rose until December 31, 1986. After reviewing the September 24, 1985, letter from Mr. Ward to Mr. McDougal, Ms. Patton stated she believes she typed it because the type is similar to the IBM typewriter she used at Rose and the second page is formatted in the style she used while a Rose secretary. Ms. Patton also reviewed a copy of the December 11, 1986, letter and stated that she believes she typed it because her initials are at the bottom and the type resembles the IBM typewriter she used while at Rose. She further said that both letters appear to be in her style of typing. She said she cannot recall Mr. Ward's handing her handwritten notes to type for him, and she does not think she ever saw Mr. Ward's handwriting. Ms. Patton said she is sure that Mr. Ward never directly asked her to type anything for him. She recalled that Mr. Ward was one of Mr. Hubbell's clients and that, over the years, he had many businesses for which Mr. Hubbell did legal work. She also recalled that Mr. Hubbell represented Mr. Ward on matters related to Madison, although she could not recall any of the specific issues.

OTHER RELATIONSHIPS BETWEEN HUBBELL AND WARD

At the time Mr. Hubbell accepted the engagement for the Madison Conservatorship, he was indebted to his father-in-law regarding real estate he had purchased from him. Seth Ward and his wife, Yvonne, sold property located in Little Rock, Arkansas, to Webster and Suzanna Hubbell on June 1, 1981. The Hubbells purchased the property for \$200,718.81 and agreed to make monthly payments to the Wards over 14.5 years. The Wards granted the Hubbells a warranty deed related to the property on January 31, 1991. Mr. Hubbell stated to the OIG that Mr. Ward had a mortgage on this property that he paid in full in the late 1980s or early 1990s. Once Mr. Ward paid the mortgage he deeded the property to the Hubbells. However, Mr. Hubbell stated that he continued to pay on the note after Mr. Ward deeded the property to him. He further stated that he currently owes the Wards approximately \$100,000 regarding this property. Mr. Hubbell said that he did not inform Ms. Breslaw that he was indebted to the Wards at the time FDIC retained Rose to handle the Frost lawsuit for Madison.

ROSE REPRESENTATION OF MADISON BEFORE ARKANSAS SECURITIES DEPARTMENT

We investigated whether Rose informed FDIC in March 1989 that the Firm was retained in 1985 to represent Madison before a state agency, the Arkansas Securities Department (ASD). Our investigation evidenced that in April 1985 Rose was retained to represent Madison before the ASD in order to get approval of a proposed capitalization plan to allow Madison, an Arkansas chartered savings and loan association, to issue preferred stock and engage in brokerage activities. An April 30, 1985, letter from Rose to the ASD stated Rose's opinion that it is permissible for an Arkansas savings and loan association to authorize and issue preferred stock. (See Exhibit 37.) The letter was signed "Rose Law Firm" and identified Hillary Rodham Clinton or Richard Massey as the responsible Rose attorneys for this matter. On May 14, 1985, Beverly Bassett, Savings and Loan Supervisor, ASD, wrote Mrs. Clinton concurring with Rose's opinion that Madison's proposed capitalization plan was not inconsistent with Arkansas law, but did not authorize Madison to proceed with the issuance of the stock. (See Exhibit 38.) This information was forwarded to Madison by Mrs. Clinton in a May 23, 1985, letter addressed to Mr. McDougal at Madison. (See Exhibit 39.)

On July 25, 1985, Rose responded to concerns raised by the ASD regarding Madison's proposed brokerage activities by submitting additional information to the ASD. (See Exhibit 40.) This submission contained a letter from John Latham, Chairman and Chief Executive Officer, Madison, in which he stated that the independent auditor's adjusting entries for the year ended December 31, 1984, were included as Attachment 2. Madison's independent auditor at the time was Frost & Company. Mr. Massey's submission also included a letter dated July 24, 1985, from Michael D. Robinson, a Frost partner, to the ASD, explaining the difference in the calculation of net worth under Generally Accepted Accounting Principles versus Regulatory Accounting Principles (RAP). Ms. Bassett subsequently wrote to Mr. Massey on October 17, 1985, and informed him that Madison's request to engage in brokerage activities was approved by the ASD on September 20, 1985, conditioned upon Madison's meeting the Federal Home Loan Bank Board's minimum net worth requirements by December 31, 1985. (See Exhibit 41.) Our investigation evidenced an undated handwritten memorandum to the file written by Ms. Bassett that stated that Madison never completed the additional capitalization of the association. Therefore, the application was never approved. (See Exhibit 42.)

During our investigation, Mrs. Clinton provided the OIG with an affidavit. (See Exhibit 43.) She was subsequently interviewed by OIG special agents. (See Exhibit 13.) Mrs. Clinton declined to be placed under oath for our interview. She stated that she was the billing partner on this matter; however, the great bulk of the work was done by Richard Massey, who was then an associate at Rose. She further said that Mr. Massey's specialty was securities law, and that she was not involved in the day-to-day work on the project.

We also interviewed Mr. Massey who declined to provide us with a sworn statement. (See Exhibit 44.) He stated that he was given the assignment to represent Madison before the ASD in 1985. He stated that he worked on two issues: 1) obtaining the authority from the ASD for Madison to issue preferred stock, and 2) obtaining authority from the ASD for Madison to operate a broker-dealer securities business they had purchased. Mr. Massey said he used Mrs. Clinton's name in correspondence to the ASD because, at the time, he was an associate, and it was a procedure at the Firm to name a partner as a contact. Mr. Massey also stated to the OIG that, while working on the preferred stock issue, he relied on audit information provided by Frost. He further stated that he neither endorsed the Frost information nor reviewed the audit work Frost performed for Madison. Mr. Massey said that in 1985 he had no reason to believe there was anything wrong with the Frost audits of Madison.

Mr. Robinson was interviewed by OIG special agents (Exhibit 45) and stated that he is currently the Director of Frost's Tax Division. Mr. Robinson said that Frost first was hired by Madison as a result of a telephone call from John Selig, an attorney with the Little Rock law firm of Mitchell, Williams, Selig, Jackson & Tucker. Mr. Selig requested Mr. Robinson's assistance as a consultant regarding recapitalization issues for Madison. Mr. Robinson further said that he could not recall the exact services Frost performed for Madison. However, he did recall meeting with Messrs. Selig and Latham and Madison's Chief Financial Officer, Greg Young, to discuss various recapitalization ideas. Mr. Robinson stated that his primary contact for the recapitalization issues was Mr. Selig and that he did not have any contact with any Rose attorneys regarding this issue. Mr. Robinson also said that Frost prepared tax returns for Madison. He further stated that Jimmy Alford, a former Frost Audit Director, was involved in performing audits for Madison and that the audit work evolved from Frost's consulting work on the recapitalization. OIG special agents showed Mr. Robinson the July 25, 1985, submission by Rose to the ASD, which included a July 24, 1985, letter that Mr. Robinson wrote to the ASD. After reviewing the letter, Mr. Robinson acknowledged that he, or his staff, wrote the letter that he subsequently signed.

Mr. Robinson also reviewed Attachment 2 to the July 25, 1985, submission which contained the adjusting journal entries. He stated that the adjusting journal entries could have been prepared by Frost. He added that one of the journal entries included the statement "Client will not book entry in accordance w/RAP" which lead Mr. Robinson to believe that the adjusting journal entries could very well have been prepared by Frost.

Mr. Hubbell, in his sworn testimony to the OIG, stated that he did not inform Ms. Breslaw of the prior representation of Madison before the ASD because he did not know about it in March 1989. He said he informed Ms. Breslaw that Rose did not have a conflict, although they had done a small amount of work for Madison. Mr. Hubbell stated that this was a 15-second conversation with Ms. Breslaw and that he did not elaborate on what the earlier Madison work had entailed. He stated that he became aware of the ASD representation only after Rose had begun the Frost lawsuit. Once Mr. Hubbell became aware of the representation before the ASD, he recalled discussing it with the other Rose attorneys who were assisting him with the Frost lawsuit. He does not recall discussing this matter with Ms. Breslaw, although he said that he could have. Mr. Hubbell stated that he did not see the prior ASD representation as a significant issue because Rose was representing Madison in both matters.

Mr. Hubbell was assisted in the Frost lawsuit by another Rose partner, Gary N. Speed. During the FDIC OIG interview of Mr. Speed (Exhibit 46), he declined to be placed under oath. Mr. Speed stated that he discussed Rose's 1985 representation of Madison before the ASD with Mr. Hubbell when he began working on the Frost lawsuit. According to Mr. Speed, Mr. Hubbell told him that he, Mr. Hubbell, had discussed the matter with Ms. Breslaw and that there was no conflict of interest. Mr. Speed did not directly speak to Ms. Breslaw about the prior ASD representation.

In addition, Mr. Speed informed the OIG that Julie Baldrige, his wife at the time he was working on the Frost lawsuit, and her former husband, Steve Smith, along with James and Susan McDougal and others had purchased Madison in 1982. Ms. Baldrige reportedly sold her interest in Madison less than one year later. Mr. Speed indicated he reported this information to Mr. Hubbell. According to Mr. Speed, Mr. Hubbell told him that he discussed this issue with Ms. Breslaw and it was determined that there was no conflict of interest. Mr. Speed stated that he did not personally discuss this issue with Ms. Breslaw because he believed the matter had been resolved. Mr. Hubbell stated that once Mr. Speed started working on the Frost lawsuit Mr. Speed told him that his wife was a former Madison

stockholder. Mr. Hubbell said he did not know why Mr. Speed did not mention this issue in response to the conflicts check that was done prior to accepting the case. He stated that since Ms. Baldrige's stock ownership did not overlap with the Frost audits, they determined it was not a conflict of interest. He does not recall discussing this issue with Ms. Breslaw but he said either he, Mr. Donovan or Mr. Speed could have done so. Ms. Breslaw informed the OIG that she does not recall previously learning of the information regarding Mr. Speed's wife, and does not recall ever discussing this issue with him. She further said that she could not recall ever discussing any personal conflict of interest issue with Mr. Speed.

Our investigation also evidenced that Mrs. Clinton advised Madison in April 1985 that Rose would credit legal fees against a monthly retainer and then bill Madison for whatever fees might be in excess of the retainer at the end of each month. Madison records indicate that at least eleven \$2,000 payments to Rose were made in 1985 and 1986. By letter dated July 14, 1986, from Mrs. Clinton to Mr. McDougal (Exhibit 47), she said that Madison was relying on other law firms to provide ongoing representation and that Rose's representation had been for isolated matters and had not been continuous or significant. Mrs. Clinton further stated in the letter that Rose did not believe it appropriate to take a prepayment of fees from Madison when Rose was only representing them on one matter and she returned the \$4,622.53 balance of fees in Madison's account.

FAILURE TO INFORM FDIC OF CONFLICTING REPRESENTATION - PACE INDUSTRIES

Our investigation evidenced Rose was representing Pace Industries, Inc. (Pace), at the direction of a former Frost partner during the time Rose was representing the Madison Conservatorship against the same former Frost partner. Jimmy D. Alford, a vice president and stockholder of Pace, hired Rose to represent the company regarding a labor dispute. Mr. Alford was the former Frost partner who was responsible for the oversight of the Madison audits that were the subject of the Madison Conservatorship's lawsuit against Frost and was a named defendant in the Frost lawsuit. Mr. Alford informed the OIG in sworn statements (Exhibit 48) that he left Frost and joined Pace in September 1988. Pace had been one of Mr. Alford's audit clients since 1979. Also in September 1988 Mr. Alford and others at Pace formed Precision Industries, Inc. (Precision), to acquire the assets of Universal Die Casting, Inc. (UDC), which owned aluminum die casting plants in Little Rock and Malvern, Arkansas. According to Mr. Alford, Rose had previously performed labor relations work for UDC. Precision became a division of Pace in August 1990.

Mr. Alford stated that in approximately July or August 1988 he and his business partners had a discussion with Tim Boe, Rose partner, about hiring criteria to be used after Precision acquired the UDC assets. Mr. Alford felt it would be a good idea to hire Rose to guide Precision through the administration of rehiring the plant workers and renegotiating the contract. Mr. Alford recommended hiring Rose to the Pace Board of Directors and the Board approved the recommendation. In October 1988 Pace, through Precision, acquired the UDC Little Rock and Malvern plants. In addition to his position with Pace, Mr. Alford was the president and chief operating officer of Precision and he owned five percent of the stock. According to Mr. Alford, in approximately December 1988, several Precision employees filed complaints with the U.S. Equal Opportunity Commission (EEOC) and Rose handled the matter for Precision. He said the Rose attorneys who worked on this matter were Mr. Boe and Jim Birch, another Rose partner. The EEOC matter lasted approximately two and a half to three years.

According to Mr. Alford, the next matter Rose was involved in was a National Labor Relations Board (NLRB) complaint filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) in approximately April 1989. Mr. Boe originally estimated that the representation would cost between \$25,000 and \$50,000. However, the case became much more complicated, and Precision ultimately paid Rose \$400,000 to \$500,000 in legal fees.

On June 8, 1989, Rose, on behalf of Precision, filed an answer to the complaint with the NLRB. Records further evidence that the hearing began on November 13, 1989, and that Messrs. Boe and Birch appeared at the hearing on behalf of Precision. The hearing took place over several sessions, and a final decision was reached in the UAW's favor on May 4, 1993. According to Mr. Alford, this case is currently on appeal.

Mr. Alford stated to OIG special agents that he has a vague recollection of discussing with Mr. Boe the fact that Rose was representing him on one matter and suing him on another as he was individually named as a defendant in the Frost lawsuit. He stated that Mr. Boe replied that he had nothing to do with the Frost lawsuit. Mr. Alford also said that he discussed the Precision matter with Peter Kumpe, the attorney representing Frost in the Madison litigation. Mr. Alford did not recall Mr. Kumpe's reaction, but he believes that Mr. Kumpe may have discussed this issue with the Rose Law Firm. Mr. Alford never had any indication that hiring Rose for the Precision matter had any influence on the Frost settlement. Mr. Kumpe said in a sworn statement (Exhibit 49) to the OIG that he did not see

how the defense could have used the Precision issue to help their case. He further stated that he did not discuss the Precision matter with anyone at Rose, and he believes the Precision representation had no impact on the settlement that was reached in the Frost lawsuit.

Mr. Hubbell initially stated to the OIG that he was very concerned about the Precision matter when he became aware of it late in the Frost lawsuit. He said that he discussed the situation with Messrs. Donovan and Speed. He also said that they did not discuss this with Ms. Breslaw. Mr. Hubbell stated that, before they could decide what to do, the Frost lawsuit was settled.

The OIG obtained Mr. Speed's handwritten notes regarding an April 1990 conference he had with other Rose attorneys, including Jim Birch, who was working on the Precision matter. On the bottom of page three of the notes Mr. Speed wrote, "Pat has worked a little bit on Precision case, but Jim will cut her out of it." This indicates that Rose was aware of the Precision case as early as April 1990, a full year prior to the settlement of the Frost lawsuit. The FDIC's Guide for Legal Representation requires law firms to inform FDIC of conflicts of interest as soon as the firm becomes aware of the conflict.

In a subsequent interview of Mr. Hubbell by RTC special agents, he was again questioned about the possible conflict of interest regarding Rose's representation of Precision. (See Exhibit 10.) Mr. Hubbell stated during the second interview that he discussed the possible conflict with Mr. Boe. Mr. Hubbell stated that Mr. Boe refused to withdraw from his representation of Precision and he (Hubbell) refused to withdraw from his representation of the Madison Conservatorship. He further said that Rose did not obtain consent from Mr. Alford to represent him in the Precision matter while simultaneously representing the Madison Conservatorship against him. Mr. Hubbell again admitted that Rose did not inform Ms. Breslaw about this situation.

The Rose Law Firm refused to allow OIG special agents to interview Mr. Boe and Mr. Birch regarding the Firm's representation of Precision.

Ms. Breslaw stated to the OIG (Exhibit 8) that she was not informed of Rose's representation of Precision during the time they were litigating the Frost lawsuit. She believes that the Precision representation was a conflict of interest for the Firm and that Rose was required to inform her of this matter. She further said that, if any of the Rose attorneys had informed her of the Precision representation, she was required to request a waiver to allow the Firm

to litigate the Frost lawsuit. Ms. Breslaw stated that she would not have been inclined to seek a waiver for Rose on this matter.

FORMER MADISON EMPLOYEE HIRED BY ROSE DURING FROST LAWSUIT

The Rose Law Firm did not inform FDIC that in October 1989 Rose hired Patricia J. Heritage, who was a former Madison employee. Ms. Heritage began her Rose employment prior to graduating from the University of Arkansas School of Law in December 1989. She left Rose in June 1994. She joined Madison in June 1985 as an administrative assistant to John Latham, the chief executive officer, and later became a collection officer. Ms. Heritage left Madison in June 1987.

An attorney for Borod & Huggins interviewed Ms. Heritage, while she was employed at Madison, twice during their investigation of Madison. The Borod & Huggins Investigative Report includes memorandums of those interviews. (See Exhibit 50.) The report states that Ms. Heritage created minutes of MFC board of directors meetings even though no such meetings took place. The report also indicates that Ms. Heritage created the minutes at Mr. Latham's direction. The report further indicates that Mr. Latham told her what to write in the minutes and that he reviewed and made changes to her first drafts of the minutes. Further, the report states that Ms. Heritage included approvals in the minutes for bonuses that were previously paid. Mrs. Heritage stated that she began creating the minutes in February 1986 because Mr. Latham had received notice that the Federal Home Loan Bank Board examiners would arrive on March 1, 1986, to examine Madison. Ms. Heritage said she created the minutes for January 1985 forward. She said the minutes were presented to the examiners as though they had been written shortly after each meeting, and the examiners never knew the minutes were written after the fact.

During his sworn testimony to the OIG, Mr. Hubbell stated that he was not involved in Rose's hiring of Ms. Heritage. He further said that Mr. Speed came to him after reviewing the Borod & Huggins report and said that it contained allegations against Ms. Heritage and she needed to be fired. Mr. Hubbell said that he then reviewed the Borod & Huggins report to determine if any action was warranted. He stated that he discussed the information in the report with Messrs. Speed and Donovan. He further said that after they looked into the matter they determined that some of the allegations had no merit, and they decided not to fire Ms. Heritage. Mr. Hubbell stated they did not discuss this matter with Ms. Breslaw.

The OIG obtained Mr. Speed's handwritten notes regarding an April 1990 conference he had with Ms. Heritage. Also present during the conference were Rose attorneys Richard Donovan and Jim Birch. The notes indicated that they questioned Ms. Heritage about her duties while she was employed at Madison. According to the notes, Ms. Heritage admitted that she created the minutes for MFC. She further admitted that she knew the minutes were created to satisfy the FHLBB examiners. The notes also state that Ms. Heritage admitted to changing the cover sheet of a property appraisal from \$82,000 to \$182,000 at Mr. Latham's request. Ms. Heritage confirmed to the OIG that this interview took place.

As part of the Madison litigation, Ms. Heritage, who was a Rose attorney, was deposed on February 27, 1991, by Steven Quattlebaum, an attorney who was defending Frost. In her deposition, Ms. Heritage again stated that she wrote the minutes for MFC board meetings that had not taken place. She also stated that, while she was a collection officer she was instructed by Mr. Latham not to send past due letters to certain Madison borrowers. She said there was a list of Mr. McDougal's relatives and friends whom she was not supposed to contact, and Seth Ward was one of the persons on the list.

Ms. Heritage was interviewed by OIG special agents during our investigation. She stated that she did draft MFC minutes for several meetings at Mr. Latham's request. She further said that, although she knew of no formal MFC board meetings, Messrs. Latham and McDougal frequently discussed MFC business. Ms. Heritage stated Mr. Latham told her to write the minutes in order to reflect purchases of property by MFC and bonuses that were paid by MFC. She said that Mr. Latham asked her to write the minutes when he learned that the FHLBB examiners were coming to examine Madison. Ms. Heritage stated that she obtained dates of property purchases and bonus payments and made sure that they were properly reflected in MFC minutes as having been authorized. She stated that in addition to creating new minutes, she reviewed the existing MFC minutes and added authorizations if needed. Ms. Heritage could not recall ever changing the value of an appraisal.

Ms. Heritage also informed the OIG that, during her first two years as a Rose attorney, she specialized in labor law. Ms. Heritage said that Precision was a Rose client and that she handled equal employment opportunity lawsuits for Precision while a Rose attorney. She further said that she knew of the NLRB case Rose was handling for Precision, but she did not assist with this case. She was aware that Mr. Alford, a former Frost partner and a named defendant in the Frost lawsuit, was employed by Precision, but said that she had no contact with Mr. Alford regarding her representation of Precision. Ms. Heritage confirmed that she

was interviewed in April 1990 by Messrs. Speed, Donovan and Birch, and she stated that she learned that Rose was litigating the Frost lawsuit during this interview. She believed the Rose attorneys interviewed her in anticipation that the Frost attorneys would depose her related to her former Madison employment.

Ms. Breslaw stated to the OIG that she did not have any contact with Ms. Heritage until 1992 or 1993. She said she did not realize at that time that the Ms. Heritage working at Rose was the same Ms. Heritage who was a former Madison employee. Ms. Breslaw indicated that she read the Borod & Huggins report in March or April 1989, and did not connect the Ms. Heritage in the report with the Rose attorney three years later. Ms. Breslaw said that she did not believe she was told that Ms. Heritage was deposed in connection with the Frost matter at the time it happened. She was troubled to discover that a Rose attorney was deposed in a Madison matter concerning actions she took while employed at Madison. Ms. Breslaw further said that opposing counsel might have tried to use the situation to RTC's detriment if the Frost lawsuit had not been settled. She stated that Rose should have specifically advised her of Ms. Heritage's involvement with Madison and that opposing counsel sought to depose her.

During our investigation, we interviewed several witnesses that provided us with additional information related to Rose's legal services for the Madison Conservatorship or the Hubbell-Ward relationship. See Exhibit 82 for copies of those additional sworn statements and memorandums of interview.

FIRST AMERICAN SAVINGS AND LOAN ASSOCIATION

BACKGROUND

The First American Savings and Loan Association, Oak Brook, Illinois, was placed into conservatorship on April 14, 1986, by the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation (FSLIC) was appointed conservator. The law firm of Hopkins & Sutter, Chicago, Illinois, was retained by FSLIC to handle all of the legal matters related to the First American Conservatorship. The FDIC was not involved in this matter. Before being placed into conservatorship, First American filed suit on October 9, 1985, in federal court in Arkansas against Lasater and Company, a Little Rock securities brokerage firm under contract with First American. The complaint stated that Lasater and Company had made unauthorized trades for U.S. Treasury Bond futures contracts, which caused First American to lose approximately \$361,000.

Our investigation evidenced that Lasater and Company was owned by Danny Ray Lasater, who allegedly had a relationship to the family of Hillary Rodham Clinton, a former Rose partner. Mr. Lasater is an Arkansas businessman who has been involved over the years in several ventures including the securities brokerage business. In 1982 he became the sole shareholder of Lasater and Company, Inc., a securities brokerage firm he co-founded in 1980 with two partners. All of the stock of Lasater and Company was actually held by Mr. Lasater's holding company, Lasater, Inc. On October 6, 1986, he sold all of the stock of Lasater and Company to a corporation formed by two purchasers who pledged all of Lasater and Company's stock as collateral for the note held by Lasater, Inc., and renamed the company United Capital Corporation (UCC). One of these purchasers was president of Lasater and Company. By September 1988 UCC had defaulted on its note to Lasater, Inc., and Mr. Lasater repossessed the UCC stock and took control of the brokerage. Mr. Lasater's relationship to Mrs. Clinton and the Rose Law Firm was included in the scope of our investigation. However, Mr. Lasater's other business ventures were not included in the scope of our investigation.

On October 30, 1986, shortly after selling the stock of Lasater and Company, Mr. Lasater pleaded guilty to a federal drug offense in Arkansas. He was convicted on December 18, 1986, of knowingly and intentionally conspiring to possess and to distribute cocaine and was sentenced to 30 months' imprisonment. Mr. Lasater was paroled in November 1987, and in

September 1988 he regained control of UCC. He received a conditional pardon from then Governor Clinton in November 1990. Mr. Lasater requested the pardon to restore his right to own and possess firearms for hunting purposes.

In July 1986 Hopkins & Sutter hired Rose to handle the ongoing Lasater and Company lawsuit on behalf of the First American Conservatorship, and the late Vincent Foster, Jr., former Rose partner, was the Rose partner who was in charge of the case. Hopkins & Sutter hired Rose because both Rose and Lasater and Company were located in Little Rock, Arkansas, and the lawsuit had been filed in court in Little Rock. Rose began litigating this lawsuit in July 1986 and negotiated a settlement with UCC in the amount of \$200,000. The settlement was executed on November 19, 1987. This was the only matter Rose handled related to the First American Conservatorship. Rose received fees and expenses totaling \$59,471. The FDIC had no involvement in the retention of the Rose firm in this matter. However, FDIC is the successor in interest to FSLIC due to the enactment of FIRREA. See Appendix B for a chronology of events concerning the First American litigation and Mr. Lasater.

FIRST AMERICAN v. LASATER AND COMPANY

Antony Burt was the Hopkins & Sutter partner who was in charge of the First American Conservatorship legal matters. In a sworn statement (Exhibit 52), Mr. Burt stated to OIG special agents that he attended FSLIC's closing of First American, reviewed pending First American litigation, and determined that the Little Rock law firm of Hardin & Grace was at the time of closing representing First American in a lawsuit against Lasater and Company. He further determined that Hardin & Grace was also representing J.R. Hodges, a large borrower of First American and close associate of former Governor Dan Walker, the controlling shareholder and a director of First American. Mr. Burt told the OIG he concluded that Hardin & Grace should be replaced as outside counsel on the Lasater and Company lawsuit. At that point, according to Mr. Burt, the FSLIC attorney assigned to the First American Conservatorship either recommended or directed Mr. Burt to contact Rose about representing First American against Lasater and Company. Mr. Burt stated that Rose was FSLIC's primary law firm in Little Rock, Arkansas, at that time, and had a standard contract with FSLIC.

Our review of the records provided by Hopkins & Sutter regarding the Lasater and Company lawsuit disclosed no formal contract between Hopkins & Sutter and Rose. Mr. Burt also confirmed that no formal contract existed. However, Hopkins & Sutter did provide to the OIG an unsigned July 11, 1986, engagement letter, addressed to Mr. Foster regarding the Lasater and Company lawsuit. The engagement letter requested that Mr. Foster act as Counsel for FSLIC as Conservator in this action. Mr. Burt stated that Rose agreed to charge FSLIC approved rates regarding the Lasater and Company lawsuit.

The documents provided to the OIG by Hopkins & Sutter and Rose contained no documentation showing that a conflicts check had been conducted by Rose concerning the Lasater and Company lawsuit. Mr. Burt stated that he contacted Mr. Foster by telephone to determine if Rose could handle the case. He discussed with Mr. Foster the Lasater and Company lawsuit and the parties involved. Mr. Burt could not recall specifically discussing any conflict of interest issues with Mr. Foster. However, he was under the impression that, if there was a conflict of interest or any reason why Rose could not handle the Lasater and Company lawsuit, he believed Mr. Foster would have informed him.

First American's original law firm, Hardin & Grace, and then the Rose Law Firm each filed multicount complaints on behalf of First American seeking actual and punitive damages from Lasater and Company. Our investigation evidenced that the actual loss to First American had been estimated at approximately \$361,000, and the final settlement in November 1987 was \$200,000. Allegations that the complaints sought up to \$3.5 million apparently were obtained by adding together separate counts and including punitive damages. We were advised by the First American Conservatorship's attorney, Mr. Burt, that he believes the Lasater and Company settlement was fair, based on the information that was available to him. He also stated that he believed that Mr. Foster and Rose were competent and professional in the representation of First American in the Lasater and Company lawsuit.

HILLARY CLINTON REPRESENTATION OF FIRST AMERICAN AND RELATIONSHIP TO LASATER

In order to determine Mrs. Clinton's involvement in the Lasater and Company lawsuit, we obtained from Hopkins & Sutter and Rose the fee bills submitted by Rose related to this litigation. Rose submitted its fee bills directly to Hopkins & Sutter, which in turn submitted the bills to FSLIC. A review of the fee bills showed that Rose personnel billed a total of

\$59,471 for 467 hours for time spent on the Lasater and Company lawsuit. The following is a breakdown of the Rose attorneys who worked on the Lasater and Company lawsuit, the hours they worked, and the amounts billed for those hours:

- Vincent Foster, Jr., billing partner, 261 hours, \$31,042.64
- B. Michael Bennett, associate attorney, 123 hours, \$10,489.00
- Hillary Rodham Clinton, partner, 2 hours, \$238.00
- Jerry Jones, partner, 0.25 hours, \$25.50

See Exhibit 53 for a complete breakdown of the Rose personnel who worked on this case and the hours that they billed. A review of the litigation records evidenced that Mr. Foster was in Chicago, Illinois, on May 8, 1987; therefore, he was not available to sign and file the documents with the court in Little Rock. A travel agency itinerary indicates that on May 6, 1987, Mr. Foster traveled to Chicago where he worked on several aspects of the litigation on May 6, 7, and 8. We also located other documentation that supports that Mr. Foster was in Chicago on these days. Further, we located documentation to support that on May 9, Mr. Foster traveled from Chicago to Itasca, Illinois, which is just west of Chicago O'Hare Airport, deposed a witness, and then flew back to Little Rock on the evening of May 9, 1987.

The fee bills showed that, during Mr. Foster's absence, Mrs. Clinton billed a total of two hours on the Lasater and Company lawsuit. (See Exhibit 54.) According to the litigation records, on May 8, 1987, Mrs. Clinton reviewed and signed three motions and one brief already prepared related to the lawsuit. The documents signed by Mrs. Clinton were the following:

- Motion to Amend Complaint with attached Amended Complaint (Exhibit 55)
- Motion for Continuance and Extension (Exhibit 56)
- Plaintiff's Motion to Compel Discovery (Exhibit 57)
- Brief in Support of Motion to Compel (Exhibit 58)

All of these signed documents were filed with the court on May 8, 1987. The amended complaint was signed and filed with the court by Mr. Foster on May 20, 1987. (See Exhibit 59 for a copy of the amended complaint and a copy of the original complaint which was filed by Hardin & Grace.) We compared the amended complaint that was submitted with the Motion to Amend Complaint signed by Mrs. Clinton with the amended complaint signed and filed with the court by Mr. Foster. We found the two amended complaints to be virtually identical. Our review of the litigation files for the Lasater and Company lawsuit did not disclose other court documents or correspondence signed by Mrs. Clinton.

Mrs. Clinton provided the OIG with an affidavit (Exhibit 43) and she was subsequently interviewed by OIG special agents. (See Exhibit 13.) She declined to be placed under oath during the interview. Mrs. Clinton stated to OIG special agents that she has no independent recollection of the work she did on this lawsuit. It is her belief that, during part of the two hours, she would have talked with Mr. Foster about the documents she reviewed and about the case, but she has no recollection of such discussions. Mrs. Clinton further said that she did not speak with Mr. Lasater concerning this lawsuit, and she was not involved in the settlement negotiations. She stated that it was a Rose policy that motions and pleadings filed with the court be signed by a partner rather than an associate. Therefore, she believes that is why Mr. Foster asked her to file the documents on May 8, 1987, instead of asking Mr. Bennett, the associate who was assisting him.

In order to determine Mrs. Clinton's involvement in the Lasater and Company lawsuit, we interviewed the following:

- B. Michael Bennett, Former Associate, Rose Law Firm (Exhibit 60)
- Antony Burt, Partner, Hopkins & Sutter (Exhibit 52)
- Patrick Goss, Partner, Wright, Lindsey & Jennings (Exhibit 61)
- Danny Ray Lasater, Former Owner, Lasater and Company (Exhibit 62)
- Dan Moudy, Former In-house Counsel, Lasater and Company (Exhibit 63)

The witnesses we interviewed who were involved in the First American litigation stated that they could recall no involvement by Mrs. Clinton related to the Lasater and Company lawsuit.

Mr. Bennett, a former Rose associate, was interviewed and provided the OIG with a sworn statement. He stated that he joined Rose in July 1987 and began working on the Lasater and Company lawsuit under the direction of Mr. Foster. Mr. Bennett does not recall working with Mrs. Clinton regarding the lawsuit, and he does not know if she performed any work on the litigation. It is his belief that Mrs. Clinton was aware of the Lasater and Company lawsuit and may have discussed it with Mr. Foster. According to Mr. Bennett, both Mr. Foster and Mrs. Clinton worked together as partners in Rose's litigation section. However, Mr. Bennett said that he was not aware of any conflict of interest related to the First American litigation.

Mr. Burt stated to OIG special agents that his primary contact at Rose was Mr. Foster. Mr. Burt also recalls one telephone conversation with Mr. Bennett. Mr. Burt further stated that he had no contact with Mrs. Clinton regarding the Lasater and Company lawsuit, and he believes that Mr. Foster was the primary author of the documents signed by Mrs. Clinton.

Lasater and Company was represented throughout this litigation by the Wright, Lindsey & Jennings law firm. The partner who handled the case was Patrick Goss. Mr. Goss informed the OIG that Mr. Foster was the Rose attorney who handled the lawsuit and he could not recall having any contact with any Rose attorney other than Mr. Foster. He further stated that he did not speak with Mrs. Clinton regarding this lawsuit. Mr. Goss stated that, based on his records, he was in Chicago on May 8, 1987, taking depositions with Mr. Foster; therefore, Mr. Foster was not available to sign the documents that were filed that day. Mr. Goss said that Mr. Foster was the only Rose attorney who attended the taking of the depositions. He further said that all of the settlement negotiations were between Mr. Foster and himself.

Mr. Lasater was interviewed by OIG special agents in the presence of his counsel, Michael Lax, of the law firm Lax, Vaughn, Pender & Evans. A statement was prepared, based on the interview, and Mr. Lasater reviewed and made changes to the statement. However, on the advice of his counsel, Mr. Lasater declined to sign and swear to the statement. Mr. Lasater's counsel informed the OIG that he had advised his client not to sign the statement, due to the investigation currently being conducted by the Office of the Independent Counsel.

Mr. Lasater stated that Lasater and Company employed Dan Moudy as its in-house counsel, and it was Mr. Moudy's responsibility to hire outside counsel to represent the company. Mr. Lasater said that Mr. Moudy hired Wright, Lindsey & Jennings to represent the company regarding the First American litigation. He further stated that he was not aware of the fact that Rose replaced Hardin & Grace as counsel for First American. Mr. Lasater informed the OIG that he did not speak with any of the Rose attorneys regarding the First American litigation. Further, he had no contact with Mrs. Clinton regarding this case and does not recall discussing this lawsuit with any Wright, Lindsey & Jennings attorneys. He said that Mr. Moudy was the Lasater and Company point of contact for all attorneys regarding this lawsuit. Mr. Lasater stated that he was not named personally as a defendant in this lawsuit, nor was he deposed. According to Mr. Lasater, this case was ongoing when he sold his stock in Lasater and Company in September 1986, and he had no input in the settlement process.

Mr. Moudy was interviewed and confirmed to the OIG that he was the in-house counsel at Lasater and Company and that he regularly received updates on the First American litigation from Mr. Goss. Mr. Moudy also stated that he had no dealings with Mrs. Clinton concerning First American. He further said that he did not participate directly in the settlement negotiations, but was involved in approving the final \$200,000 settlement. Mr. Moudy stated that he was aware of the friendship between the Clintons and Mr. Lasater.

We investigated Mr. Lasater's relationship with Mrs. Clinton and her family. Mr. Lasater stated that he was friends with the President and Mrs. Clinton, but has not spoken with them since 1986. Mr. Lasater said that he was close friends with Mrs. Clinton's brother-in-law, Roger Clinton, and her mother-in-law, the late Virginia Kelley. Mr. Lasater also said that he made a contribution to President Clinton's 1984 campaign for Governor of Arkansas. However, he has only been in President Clinton's presence a total of six times (when President Clinton was Governor of Arkansas) and he has had even fewer contacts with Mrs. Clinton.

Mrs. Clinton informed us that she met Mr. Lasater twice, did not consider him a personal or social friend, and did not do any legal work for him or Lasater and Company. She asked her attorney, David Kendall, of the law firm Williams & Connolly, to research contributions made by Mr. Lasater, his companies or his family, to her husband's political campaigns. Mr. Kendall indicated in an affidavit (Exhibit 51) that between 1982 and 1985 Mr. Lasater, his companies or his family, contributed a total of \$16,000 to President Clinton's political campaigns for Governor of Arkansas, or referendum initiatives.

We obtained from Mr. Lasater's attorney a copy of the flight logs for airplanes owned by Mr. Lasater. The logs covered December 1980 through February 1986, when the last airplane was sold. Our review of the flight logs indicated that then - Governor Bill Clinton used a Lasater airplane on two occasions in 1984. (See Exhibit 64.) Governor Clinton's name did not again appear in the log. However, the other entries in the passenger names section of the log only list one name and the number of accompanying passengers. Therefore, every passenger on the plane is not identified in the flight log-by name. We found no entries naming Mrs. Clinton as a passenger, and she stated to OIG special agents that she never flew on Mr. Lasater's plane.

During our investigation, we interviewed several witnesses that provided us with additional information related to Rose's legal services for the First American Conservatorship. See Exhibit 83 for copies of those additional sworn statements and memorandums of interview.

LEGAL DIVISION REVIEW OF ROSE RETENTION FOR MADISON

BACKGROUND

The FDIC Legal Division conducted a review of the retention by FDIC of the Rose Law Firm for the Madison Conservatorship lawsuit against Frost & Company. The Legal Division began its review in October 1993 in response to inquiries by the media regarding Rose conflicts of interest. The Legal Division's stated objective was determining whether: 1) Rose's prior representation of Madison before the Arkansas Securities Department (ASD) constituted a conflict of interest; 2) the litigation against the Madison Conservatorship by Seth Ward, the father-in-law of Webster Hubbell, the Rose partner in charge of the Frost lawsuit, was a conflict of interest; and 3) any action against Rose was warranted.

In late January 1994 Legal Division representatives met with staff of the Senate Banking Committee (Committee) and briefed them on their review. Subsequently, during former Acting Chairman (now Vice Chairman) Hove's confirmation hearings on February 1, 1994, regarding his reappointment to the FDIC Board of Directors, he told the Committee that the Legal Division would soon complete its review. On February 17, 1994, the Legal Division released its report related to Rose, concluding that neither Rose's representation of Madison before the ASD nor Mr. Ward's lawsuit against Madison constituted a conflict of interest and, consequently, that no action against Rose was warranted. (See Exhibit 65 for a copy of the Legal Division report.)

The FDIC OIG conducted an examination of the Legal Division's review at the request of Congressman James A. Leach, Ranking Minority Member (currently Chairman), Committee on Banking and Financial Services. Congressman Leach expressed concern that the Legal Division had investigated itself and had implicitly determined that the Legal Division and Rose had done nothing wrong. Therefore, he requested that the OIG conduct an independent review of the conflict of interest allegations against Rose and examine the Legal Division's determination that no conflict of interest existed. (See Exhibit 66 for a copy of Congressman Leach's request letter.)

BASIS FOR LEGAL DIVISION REVIEW

Jack D. Smith, Jr., Deputy General Counsel, Litigation Branch, FDIC Legal Division, informed the OIG in a sworn statement (Exhibit 67) that, after he had received several telephone calls in October 1993 from reporters concerning the retention of Rose for the Madison Conservatorship, he initiated a review of Rose's retention. Mr. Smith stated that media inquiries were alleging two possible conflict of interest situations related to Rose. Specifically, the reporters were questioning whether Rose informed FDIC of its prior representation of Madison and of the Hubbell-Ward relationship, and wanted to know if either of these situations constituted a conflict of interest for Rose. Mr. Smith asked Thomas A. Schulz, Assistant General Counsel, Corporate and Special Litigation Section, FDIC Legal Division, to conduct a review to determine the facts surrounding Rose's retention and what information Rose had provided to FDIC. John T. Downing, Senior Attorney, Corporate and Special Litigation Section, FDIC Legal Division, assisted Mr. Schulz in this review.

PROCESS, PROCEDURES AND CRITERIA USED BY LEGAL DIVISION

During its review, the Legal Division reviewed the FDIC litigation file related to the Madison lawsuit against Frost, other relevant FDIC and RTC documents, and documents the Legal Division obtained from Rose. Representatives of the Legal Division interviewed current and former FDIC and RTC personnel who were involved in the Madison Conservatorship, and current and former Rose attorneys who worked on the litigation. (See Exhibit 68, containing write-ups prepared by the Legal Division of these witness interviews.) All persons were interviewed by telephone except Mr. Hubbell, then Associate Attorney General, who was interviewed in person by Messrs. Smith and Downing at his office in the U.S. Department of Justice. The documents reviewed from outside FDIC were obtained voluntarily, and the interviews were not conducted under oath.

The criteria used by the Legal Division for determining whether a conflict existed are contained in the American Bar Association's Model Rules of Professional Conduct (Model Rules) that the State of Arkansas adopted effective 1986.

LEGAL DIVISION RESULTS AND HOW THEY WERE REPORTED

Mr. Downing, in a sworn statement (Exhibit 69) to the OIG, said that he prepared the initial draft report regarding the review. The draft report was edited by several Legal Division officials, including Messrs. Schulz, Smith and Douglas H. Jones, Senior Deputy General Counsel, FDIC Legal Division. The draft report (Exhibit 70) was also discussed at the February 9, 1994, meeting of the Outside Counsel Conflicts Committee (OCCC). The OCCC is a joint FDIC-RTC committee that reviews requests for waivers of conflicts concerning outside counsel who wish to represent FDIC or RTC. The OCCC is comprised of FDIC and RTC attorneys. James Lantelme, Assistant General Counsel, Special Projects Section, FDIC Legal Division, is one of its nine members. In a sworn statement (Exhibit 71) provided to OIG special agents, Mr. Lantelme said that the OCCC was asked to review and discuss the draft report. Messrs. Schulz and Downing attended the OCCC February 9, 1994, meeting to answer questions when the draft report was discussed. According to Mr. Lantelme, the members of the OCCC agreed with the conclusions reached by the Legal Division in its draft report that there were no conflicts of interest.

The Legal Division found no documentation to show that any information was provided to FDIC by Rose when it was retained in March 1989. Current and former Rose attorneys and April A. Breslaw, the FDIC staff attorney who retained Rose, gave the Legal Division conflicting accounts about what was disclosed. Richard Donovan, a Rose partner who worked on the Frost lawsuit, told the Legal Division that Mr. Hubbell had advised Ms. Breslaw of Rose's prior representation of Madison before the Arkansas Securities Department. However, Mr. Hubbell told the Legal Division that at the time Rose was retained, he was not aware of the ASD representation so he did not discuss it with Ms. Breslaw. Mr. Hubbell also said that he believed he told Ms. Breslaw that Rose had done a small amount of lending and collection work for Madison years earlier. Ms. Breslaw informed the Legal Division that she had no recollection of the ASD representation being raised by any Rose attorney.

The Legal Division concluded that it was unclear whether Rose may have orally disclosed the prior Madison representation to FDIC. The Legal Division went on to state that the more important question was whether a conflict of interest existed that should have been disclosed by Rose before the Firm agreed to represent the Madison Conservatorship. The Legal Division relied on the Model Rules of Professional Conduct as its criteria but did not include FDIC Legal Division or FSLIC policies. The Legal Division concluded that Rose's

representation of Madison before the ASD was not directly adverse to its 1989 representation of the Conservatorship. Further, the Legal Division found no indication that Rose had done any work on the Frost audit of Madison and no indication that Rose edited or participated in the preparation of Frost material that was presented to the ASD by Rose. Therefore, the Legal Division further concluded that the prior Rose representation of Madison did not represent a conflict.

As to the involvement of Webster L. Hubbell, the Rose partner for Madison, in his father-in-law's litigation against Madison, the Legal Division reported that:

- It was uncertain whether the Hubbell-Ward relationship was disclosed at the time of retention, but that it was clearly discussed within three months after the retention;
- The staff attorney (Ms. Breslaw) concluded that this relationship was not a conflict of interest, and the Legal Division agreed with that assessment;
- Mr. Hubbell did not represent Mr. Ward in his lawsuit against Madison so there was no conflict of representation [sic] directly adverse to the Conservatorship, and Mr. Hubbell's representation of the FDIC did not appear to have any effect on Mr. Ward; and
- Although there was no requirement that Mr. Hubbell's relationship with Mr. Ward be disclosed, they wanted to emphasize that the better course would have been for the attorney (Mr. Hubbell) to make full disclosure in writing to the FDIC.

Representatives of the Legal Division also spoke by telephone to four outside experts in the conflicts field and discussed the review results with them without divulging the identity of the law firm. All four experts agreed with the Legal Division's conclusion that neither situation was a conflict of interest.

RESULTS OF OIG INVESTIGATION OF LEGAL DIVISION REVIEW

The results of the OIG's investigation evidenced that in March 1989 Rose did not inform FDIC of either its prior representation of Madison before the ASD or Mr. Hubbell's business relationship with his father-in-law, Seth Ward - a frequent borrower and consultant of Madison Financial Corporation. Mr. Hubbell stated to the Legal Division during its review that he attended the closing arguments in his father-in-law's trial against Madison, but had no other involvement in the lawsuit. We found that although Mr. Hubbell was not his father-in-law's attorney of record in Mr. Ward's lawsuit against Madison, the evidence is that Mr. Hubbell:

- Involved himself in his father-in-law's lawsuit against the Madison Conservatorship;
- Was a part owner of POM, Incorporated, with Seth Ward and Seth Ward II at the time he accepted the Madison Conservatorship engagement and until October 1989 when Mr. Hubbell transferred his shares of stock to Seth Ward II;
- Served as corporate counsel for POM from 1981 through 1992;
- Represented POM in an antitrust lawsuit in 1990 while Rose was still representing the Madison Conservatorship in the Frost lawsuit; and
- Was indebted to his in-laws, the Wards, regarding property that he had purchased from them in 1981.

With regard to Seth Ward, the evidence is that he had:

- Worked for the Madison subsidiary, Madison Financial Corporation;
- Won a \$353,502 judgment against Madison that was being appealed by Madison when it was placed into conservatorship; and

- Received loans from Madison on which he defaulted and which were included in the damage calculation being used in its lawsuit against Frost & Company.

At the time the Legal Division conducted its review, they did not learn the information concerning Mr. Hubbell, but they did learn the information concerning Mr. Ward. The Legal Division's review concluded that neither Rose's representation of Madison before the ASD nor the Hubbell-Ward relationship constituted a conflict of interest.

The Legal Division's opinion that Rose did not have a conflict of interest resulted from the relevant information available to the Legal Division, and the Legal Division's decision to limit its analysis to determine whether the Firm violated Model Rule 1.7. Our investigation did not disclose that the Legal Division in reaching its decision failed to consider relevant information that had been gathered. The Legal Division, however, did not include in its evaluation of Rose other relevant conflict criteria, including the "appearance of impropriety" standard or FDIC guidelines and policies. Douglas H. Jones, Senior Deputy General Counsel, FDIC Legal Division, provided two sworn statements (Exhibit 72) to the OIG during our investigation. Mr. Jones was the Acting General Counsel for FDIC Legal Division from November 12, 1993, to January 3, 1995. Mr. Jones explained in his statements that in 1989, the Legal Division was still developing the more global conflict of interest guidelines that were ultimately adopted in 1990 as the "Guidelines of the FDIC/RTC With Respect To Conflicts Of Interest." Therefore, the Legal Division used the conflict of interest provisions in the Model Rules as its criteria and did not rely on other criteria from FDIC contracts and policies. The Arkansas Supreme Court in 1990 recognized the continued validity of the appearance of impropriety standard that had been codified before 1986 in the Model Code adopted in Arkansas. The Legal Division review footnoted, but declined to adopt this standard. Mr. Jones stated that the Legal Division did not want to hold Rose responsible for something that occurred in 1989 based on a 1990 court decision. He further said it was not clear that the facts in this instance arose to the level of an "appearance of impropriety" under existing court precedent. The Legal Division also chose not to include in its criteria the Guide for Legal Representation, which was in effect in 1989 and had been provided to Rose as early as 1987. Among other things, the Guide (Exhibit 1) informed Rose that FDIC:

- Expected the highest ethical standards in the firm's representation;
- Required the firm to be free of conflicting interests;

- Required any potential conflict to be discussed with the FDIC as soon as the firm recognized its existence;
- Reserved the FDIC's right to decide whether an actual or potential conflict exists; and
- Required the firm to list conflict of interest situations peculiar to the firm's representation of the FDIC, in addition to actual or potential conflicts covered by the Code of Professional Responsibility or applicable federal or state provisions.

Our investigation evidenced that in 1987 FDIC issued internal policies and procedures for its managing attorneys relating to the retention of outside counsel. (See Exhibits 73 and 9.) One of these procedures was set forth in an August 27, 1987, memorandum from FDIC Deputy General Counsel to the Regional Counsels, Liquidation Branch, FDIC Legal Division. This memorandum transmitted internal procedures for the selection and termination of outside counsel. Section g. of the memorandum states that FDIC attorneys should ask outside counsel to perform a thorough conflicts check and submit a written response. This memorandum was not addressed to other branches of the Legal Division, including the branch responsible for professional liability matters. In January 1988 Ms. Breslaw transferred to Washington, D.C., to work in the Professional Liability Section (PLS) of FDIC Legal Division. Before transferring to PLS, Ms. Breslaw was an attorney in the Liquidation Branch in the Dallas Region of FDIC Legal Division when these internal procedures were issued. Ms. Breslaw informed the OIG in a sworn statement (Exhibit 8) that she was not familiar with the internal procedures and did not recall having received them in 1987. She further said that she was not aware of any written FDIC or RTC internal conflicts procedures prior to May 1990; however, she was aware of the Guide when she hired Rose to represent the Madison Conservatorship in March 1989. Other than the two 1987 policies and the Guide discussed above, the Legal Division did not have extensive policies regarding conflicts of interest in 1989. Further, the Legal Division's review did not address whether FDIC procedures were followed when Rose was retained in 1989.

The conflicts of interest section is in Section B1. of the Guide for Legal Representation, and this section of the Guide did not specifically mention family relationships or prior representation of financial institutions. However, Ms. Breslaw pointed out that this section did state that at the time a law firm is retained it will be asked to provide a list of potentially

conflicting representations and that FDIC reserves the right to decide whether an actual or potential conflict exists. Ms. Breslaw believes that the Guide makes it clear that the law firm should disclose anything that could be a potential conflict. She further stated that the Seth Ward matter and the prior representation of Madison before the ASD might have been considered potential conflicts or might have raised appearance questions. Given the overall tone of the Guide, Ms. Breslaw expected a firm, including the Rose Law Firm, to err on the side of broad disclosure.

Douglas A. Jones, FDIC Deputy General Counsel, informed the OIG in sworn statements that, while some procedures for the retention of outside counsel had been established prior to 1989, it became clear during the Legal Division's review that these procedures were not consistently provided to Legal Division staff. Mr. Jones said that the Legal Division did not locate the 1987 internal policies during its review. However, after reviewing the policies and the Guide that was in effect in 1989, Messrs. Jones, Schulz and Downing, the attorneys who conducted the review, stated to the OIG that the policies and Guide would not have required law firms to disclose prior representation, such as the ASD matter, or relationships such as the Hubbell-Ward family relationship. They further said that, had these policies been located during the review, the report would not have been affected. Mr. Jones also stated, that even though FDIC had a Conflicts Committee in 1989 and only the Conflicts Committee could issue a waiver, the Legal Division did not have a clear-cut policy defining conflicts of interest. Mr. Jones said that each Legal Division branch was allowed to issue its own policies until 1990. Mr. Schulz advised that there was no requirement that policies issued by one branch, be followed by other branches. Therefore, the Professional Liability Section was not bound by the policies and procedures issued by the Liquidation Branch when the Rose Law Firm was hired to represent the Madison Conservatorship. However, in 1990 the Legal Division issued formal written procedures on the retention of outside counsel and conflict of interest matters, and these procedures were applicable to all branches within the Legal Division.

We found in Rose's records a copy of FDIC's Guide for Legal Representation which was sent to Rose in December 1987 when it was hired by FDIC in connection with the Corning Bank failure. This Guide was still in effect in 1989 when Rose was hired to represent the Madison Conservatorship. Our review of Rose records also disclosed that, in addition to receiving the Guide, Rose received in September 1988 a draft copy of the Outside Counsel Handbook prepared by FSLIC's Office of General Counsel which included conflicts policies. Further, we found in Rose records a copy of a May 3, 1990, letter from Mr. Jones addressed to all

FDIC and RTC outside counsel, stating that the Outside Counsel Conflicts Committee had adopted guidelines regarding conflicts of interest and waiver of conflicts, and enclosing the guidelines. (See Exhibit 74.)

The Legal Division stated in its report that when law firms are aware of prior representation of institutions or family relationships they expect the firms to make full disclosure to FDIC. However, the Legal Division did not criticize Rose for its failure to inform FDIC of relationships and representations that could be viewed as relevant to FDIC in making a final determination with respect to the retention of the Firm. Further, the Legal Division did not criticize itself for Ms. Breslaw's lack of documentation regarding her discussions with Mr. Hubbell or how she arrived at the conclusion there was no conflict of interest in the face of concerns raised by other FDIC employees at the Madison Conservatorship. Mr. Jones stated that the Legal Division was not more critical of Rose because it could not be certain that Rose had not orally disclosed the ASD representation. He further said that the Legal Division did not criticize Rose for not informing Ms. Breslaw that Mr. Hubbell's father-in-law was involved in litigation with the Madison Conservatorship because, when she was informed, she determined that it was not a conflict of interest. Therefore, the Legal Division concentrated on determining if a conflict of interest existed that should have been disclosed.

Even though the Legal Division spoke to four outside experts concerning its review, Mr. Smith explained to the OIG during our investigation that the experts were given no written materials to review, were not paid, and were not asked to give FDIC a written opinion. Mr. Smith added that the Legal Division report did not mention the consultations because they did not believe it would be fair to the experts for the foregoing reasons. During our investigation, we interviewed the four outside experts and they confirmed that, they were contacted by telephone, not given any written materials to review, and received no compensation for their opinion. The experts also confirmed that based on the information they were provided, they agreed with the Legal Division's conclusion that there was no conflict of interest violation.

During our investigation, we informed the Legal Division attorneys who had conducted the review of the business relationship Mr. Hubbell had with the Wards and of apparent instances when Mr. Hubbell represented Mr. Ward concerning Mr. Ward's loans from Madison. The attorneys who conducted the Legal Division review stated that they did not uncover these facts during the Legal Division review. They were particularly concerned when they learned that Mr. Hubbell involved himself in Mr. Ward's lawsuit against the Madison

Conservatorship in January 1990. Mr. Schulz stated (Exhibit 75) that Mr. Hubbell should have informed Ms. Breslaw about his involvement with Mr. Ward when she asked him to represent the Madison Conservatorship. He also said that the January 1990 correspondence regarding Mr. Ward's agreement with Wright, Lindsey & Jennings leads him to believe that Mr. Hubbell was much more involved with Mr. Ward than the Legal Division discovered during its review. He further said that he does not believe Mr. Hubbell should have represented Mr. Ward regarding the indemnification agreement. Mr. Schulz stated that, had he been the responsible FDIC attorney for the Frost lawsuit and learned of Mr. Hubbell's involvement with Mr. Ward's lawsuit, he would have terminated the services of the Rose Law Firm. He also stated that, had the Legal Division learned of Mr. Hubbell's relationship with POM and his involvement with Mr. Ward's dealings with Madison, their report probably would have stated that Mr. Hubbell should not have been involved in the Frost lawsuit.

All of the Legal Division attorneys involved in the Rose review provided the OIG with sworn statements asserting that no influence was exerted on their review of Rose by any FDIC official or anyone outside of FDIC. Messrs. Schulz and Downing stated that no restrictions were placed on their review by anyone in the Legal Division or at FDIC. Mr. Downing in his sworn statement to the OIG added that he was never prevented from speaking with anyone or reviewing any documents that he believed were necessary to review. Messrs. Schulz and Downing also said that they had no prior dealings with Rose and had never met any of the Rose attorneys prior to their review. All of the Legal Division officials we interviewed who were involved with conducting the review stated that they were not contacted by anyone from the White House regarding the review. They further stated that they did not contact the White House to discuss the review. In addition, they stated that they agreed, when the report was issued in February 1994, with the determination in the Legal Division's report that no conflict of interest existed.

During our investigation, we interviewed several witnesses that provided us with additional information related to the Legal Divisions review of the Rose retention for the Madison Conservatorship. See Exhibit 84 for copies of those additional sworn statements and memorandums of interview.

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION

BACKGROUND

Home Federal Savings and Loan Association of Centralia, Illinois (Home Federal), filed a lawsuit against United Capital Corporation (UCC) on March 14, 1988. Home Federal was represented by Vincent Foster and Michael Bennett of the Rose Law Firm. The lawsuit alleged that UCC defrauded Home Federal by making unauthorized trades of U.S. Treasury futures contracts using Home Federal's account. On March 16, 1989, while the litigation was still ongoing, Home Federal was placed into conservatorship and FDIC became the Conservator.

ROSE ATTORNEY SHEMIN RELATIONSHIP TO LASATER

During our investigation, we obtained draft letters prepared in August 1988 by a Rose attorney, Kenneth Shemin, regarding possible representation of Dan Lasater. OIG special agents interviewed Mr. Shemin (Exhibit 76) about this possible representation. On advice from his counsel, Mr. Shemin refused to be placed under oath for our interview. Mr. Shemin stated that he was approached in the summer of 1988 by Gerald Hannahs, a mutual friend of his and Mr. Lasater's. According to Mr. Shemin, Mr. Hannahs explained that Mr. Lasater was concerned about the viability of UCC since Mr. Lasater was UCC's primary creditor. At that time, Mr. Lasater was acting as a consultant to UCC, and Mr. Shemin gave him some advice. Mr. Shemin stated that he did not charge Mr. Lasater for his advice and did not obtain a client billing number for Mr. Lasater related to this issue.

Mr. Shemin also informed the OIG that Mr. Lasater requested that he represent Mr. Lasater in the sale of UCC's assets. Mr. Shemin further stated that he discussed possibly representing a new entity that might be formed by the buyers and Mr. Lasater regarding UCC's assets. Mr. Lasater was anticipating regaining control of UCC because UCC was no longer making payments to Mr. Lasater regarding the 1987 sale of Lasater and Company to UCC. Mr. Shemin stated that in July 1988 he attended a meeting held at Mr. Lasater's residence to discuss the possible sale of UCC assets. After this meeting, Mr. Shemin discussed the possible representation with Rose's Executive Committee and with Mr. Foster, who was litigating the Home Federal lawsuit. In connection with this possible representation,

Mr. Shemin drafted letters of waiver to the parties involved. He stated that he believed Mr. Foster discussed the possible representation with King Betz, the president of Home Federal, and that it was his understanding that Mr. Betz did not have a problem with Mr. Shemin's possible representation.

Mr. Shemin stated that he ultimately decided he would not become involved in the sale of UCC's assets because one of Rose's partners, William Bishop, objected to Rose having any involvement with the potential buyers. Mr. Shemin said that Mr. Bishop had some unpleasant experiences with the buyers in the past and did not want Rose to be involved with them. According to Mr. Shemin, the decision not to become involved in the sale of UCC's assets was made between August 20 and August 25, 1988. Since the decision was made not to become involved in the sale of UCC's assets, Mr. Shemin did not know if Mr. Foster drafted a waiver letter to Mr. Betz or Home Federal regarding this issue.

LASATER REGAINED CONTROL OF UCC

Mr. Lasater informed the OIG that the investors who purchased Lasater and Company and renamed it UCC defaulted on their note. Therefore, in 1988 he began to take steps to repossess the company. He asked Kenneth Shemin to represent him regarding the repossession of UCC; however, Mr. Shemin informed him that Rose had a conflict of interest so he could not accept the case. Mr. Lasater could not recall what the conflict was, but Rose was representing Home Federal in its lawsuit against UCC at that time. Mr. Lasater stated that he then hired John Calhoun, an attorney with Hilburn, Calhoun, Harper, Pruniski & Calhoun to represent him. Records provided by Mr. Lasater confirm that he reacquired UCC's stock on September 14, 1988. According to Mr. Lasater, at that time UCC was inactive, but there were approximately five or six lawsuits that were ongoing. Mr. Lasater recalls that one of the litigation matters was a lawsuit filed against UCC by Home Federal. Wright, Lindsey & Jennings was the law firm handling this case for UCC when he regained control, but Mr. Lasater replaced them with Mr. Mars of Stanley, Harrington & Mars. Mr. Mars was UCC's attorney when the Home Federal case was settled in 1989.

Mr. Lasater stated that he signed the Home Federal settlement in his capacity as president of UCC. He further stated that he was not personally involved in the settlement negotiations, as those were handled by Messrs. Mars and Foster. According to Mr. Lasater, he had no contact with any Rose attorney, including Mrs. Clinton, regarding the Home Federal lawsuit.

According to Mr. Bennett, during the settlement process between Home Federal and UCC he was instructed by Mr. Mars to send drafts of the settlement agreement directly to Patsy L. Thomasson, who Mr. Bennett believed was an officer of UCC. At that time, Mr. Bennett did not know of any connection between Ms. Thomasson and the Clintons. He has since learned that Ms. Thomasson is the Director, Office of Administration, at the White House.

We interviewed Ms. Thomasson under oath (Exhibit 77) regarding her involvement with Lasater and Company. She stated that she met Dan Lasater through a mutual friend in 1975, and began working for one of his companies in 1983. After approximately six months, Ms. Thomasson began working as Mr. Lasater's assistant at his holding company, Lasater Farms, Inc. This company was subsequently renamed Lasater, Inc., and was the holding company for Mr. Lasater's business interests. Ms. Thomasson stated Mr. Lasater gave her his power of attorney to run his businesses while he was serving his prison term in 1988. She said she ended her affiliation with Mr. Lasater in August 1992 when she began working for the Democratic Party of Arkansas.

Ms. Thomasson recalled that when Mr. Lasater reacquired control of UCC in 1988 there were six or seven ongoing lawsuits, but she could not recall if the Home Federal case was one of the open litigation matters. She could not recall reviewing the draft settlement agreements related to Home Federal, but she stated it was possible that she did. Ms. Thomasson stated that she did not speak with any Rose attorney, including Mrs. Clinton, about the Home Federal lawsuit.

Ms. Thomasson said she first met President Clinton in 1968 during the Fulbright campaign in Arkansas. She believes she did not meet Mrs. Clinton until she became the First Lady of Arkansas. According to Ms. Thomasson, Mr. Lasater did not have a close relationship with the Clintons. She described Mr. Lasater as being an associate of the Clintons and said that he occasionally saw them at Arkansas events. She added that Mr. Lasater was close friends with Roger Clinton and President Clinton's mother, the late Virginia Kelley. Our review of the litigation files we obtained from Rose related to the Home Federal/UCC lawsuit did not evidence that Mrs. Clinton was involved in this lawsuit. We found no pleadings signed by

her, no correspondence authored by her, and the fee bill we reviewed did not list Mrs. Clinton as having charged time to this case. We also obtained and reviewed a copy of the court file related to this lawsuit. None of the pleadings or motions were signed by Mrs. Clinton.

Our investigation evidenced that the settlement agreement between the Home Federal Conservatorship and UCC was signed by Mr. Lasater, who used the title, "President" of UCC. The settlement agreement was also signed by a representative of the Home Federal Conservatorship and was approved by FDIC in its capacity as conservator. The UCC paid \$250,000 to the Home Federal Conservatorship in 1989 to settle the lawsuit. Home Federal had claimed damages in the amount of \$1,264,336.

During our investigation, we interviewed two witnesses that provided us with additional information related to Rose's legal services for the Home Federal Conservatorship. See Exhibit 85 for copies of those additional memorandums of interview.

CONFLICT OF INTEREST ISSUES INVOLVING ROSE LAW FIRM AND FSLIC

Our investigation evidenced the following instances when the Rose Law Firm and the Federal Savings and Loan Insurance Corporation (FSLIC) were involved in resolving conflict of interest issues regarding Rose while the Firm was representing FSLIC concerning a failed savings and loan association. The Rose Law Firm was hired by FSLIC in November 1985 to handle all of the litigation matters arising out of the Guaranty Savings and Loan Association Receivership, Harrison, Arkansas (Guaranty). The Rose Law Firm represented the Guaranty Receivership until March 1993. During this period, FSLIC raised several concerns over conflicts of interest at the Rose Law Firm.

FIRSTSOUTH, F.A.

On January 28, 1988, FSLIC in its corporate capacity and in its capacity as Receiver for FirstSouth, F.A., Pine Bluff, Arkansas (FirstSouth), alleged that the Rose Law Firm had a conflict of interest regarding a partner of the firm and FirstSouth. The conflict concerned transactions involving letters of credit and financing involving a company owned by Rose's former managing partner, C. Joseph Giroir; FirstSouth; and other financial institutions. The transactions, which took place in 1984, 1985, and 1986, allegedly resulted in a financial loss to FirstSouth. Webster Hubbell was the Rose Law Firm partner who participated in the negotiations with FSLIC. The FSLIC regarded Rose's involvement in the transactions as a conflict of interest, and in order to avoid being sued by FSLIC, Rose entered into a settlement agreement the terms of which are subject to a confidentiality provision between FSLIC and Rose.

BOHEMIAN SAVINGS AND LOAN ASSOCIATION

Bohemian Savings and Loan Association, St. Louis, Missouri (Bohemian), was placed into conservatorship by the FHLBB on January 30, 1986. As a result of the passage of the Financial Institutions Reform, Recovery, and Enforcement Act in August 1989, responsibility for this conservatorship was transferred to FDIC. Bohemian, while an open institution, was party to a participation loan in which the Worthen Bank and Trust Company, Little Rock,

Arkansas (Worthen), a longstanding Rose client, was the lead lender. The participation loan was for a development project in Arizona, and Worthen retained local counsel in Arizona to represent them on the project in addition to retaining Rose. Documentation obtained by the OIG evidenced that a Rose attorney assisted the Arizona counsel with drafting loan documents. The borrowers defaulted on the project, and Worthen, as lead lender, foreclosed.

The other participants, unsatisfied with the manner in which Worthen was managing the project during the foreclosure, filed a lawsuit against Worthen in July 1987. The FSLIC Bohemian Receivership was a named plaintiff in the lawsuit. Worthen added Rose as a third-party defendant in December 1987. The lawsuit was settled in March 1989, and Rose paid \$200,000 as part of the settlement. Therefore, Rose was a third-party defendant in a FSLIC lawsuit while the Firm was representing FDIC regarding the Guaranty Receivership.

KNOX FEDERAL SAVINGS AND LOAN ASSOCIATION

Knox Federal Savings and Loan Association, Knox, Tennessee (Knox), was placed into receivership by the Federal Home Loan Bank Board in November 1984. In December 1986, FSLIC learned that Rose was a defendant in a pending lawsuit and that the Knox Receivership might need to join. According to a FSLIC memorandum dated March 18, 1987, the lawsuit alleged that Rose had represented Worthen, while knowing that Worthen had been accused of securities fraud. The lawsuit also alleged that Rose attorneys engaged in malpractice and fraud. The memorandum recommended that due to conflicts of interest, Rose be released from representing the Guaranty Receivership due to the Knox and FirstSouth matters. (See Exhibit 78.)

REVIEW OF LEGAL PAYMENTS TO ROSE LAW FIRM

In support of our investigation, Office of Inspector General auditors reviewed all payments, which totaled \$1,049,930, to the Rose Law Firm (Rose or Firm) for legal services provided to FDIC since July 1, 1987 and the Federal Savings and Loan Insurance Corporation (FSLIC) since January 1, 1989. This includes all payments made for legal services related to the failure of the Madison Guaranty Savings and Loan Association, McCrory, Arkansas, for which FDIC hired the Rose Law Firm prior to the creation of RTC which in August 1989 assumed responsibility for the Madison litigation. In addition to Madison, the review covered work performed by Rose related to the failed financial institutions of Corning Bank, Corning, Arkansas; Guaranty Savings and Loan Association, Harrison, Arkansas; and Bohemian Savings and Loan Association, St. Louis, Missouri. A limited review was also performed of Rose billings related to its representation of the First American Savings and Loan Association, Oak Brook, Illinois, Conservatorship for FSLIC from July 1986 through November 1987. Rose was a subcontractor for the Hopkins & Sutter law firm of Chicago, Illinois, during the First American litigation and received ten payments totaling \$59,471.

Webster L. Hubbell, Rose partner, was designated by Rose as the FDIC billing attorney for the Rose Law Firm on the Corning, Madison, and Bohemian representations, and Vincent Foster, Jr., was the designated billing attorney for the Guaranty and First American representations. According to the Rose Law Firm, the billing attorney is responsible for understanding and complying with the provisions in the governing agreements and rate schedules and to ensure the accuracy of all fees and expenses billed. The Firm is ultimately responsible for the actions of its billing partners.

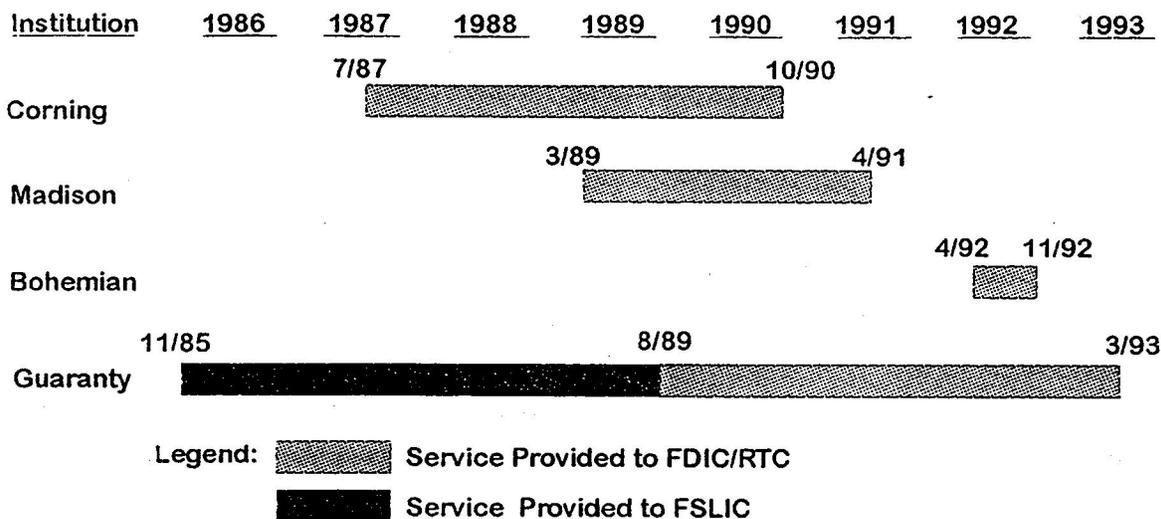
FDIC hired Rose in July 1987 to provide legal services arising from the failure of Corning Bank. A Legal Services Agreement (LSA) signed by Mr. Hubbell on December 28, 1987, established the authorized hourly rates and incorporated FDIC's Guide for Legal Representation that provided the rules to be followed during the Firm's representation of FDIC. The LSA provided that these terms would extend to any other employment or service by the Firm to FDIC, or its representatives, as receiver or other fiduciary.

A new LSA signed by Mr. Hubbell was executed between the Rose Law Firm and FDIC effective as of October 3, 1990. This LSA required the Firm to maintain all billing records for at least three years from the billing date. This criteria was later amended by FDIC Guide

for Outside Counsel dated December 1991, which was received by the Rose Law Firm on January 27, 1992. (See Exhibit 79.) The Guide for Outside Counsel required that the Firm retain copies of all bills and underlying documentation, including original timesheets and other time and expense records for four years after payment. The October 3, 1990, LSA incorporated these amendments by stating that FDIC periodically changes the Guide, and the firm hereby expressly agrees to be bound by any such changes, modifications, clarifications, and supplemental instructions. While the Firm was not required to have maintained billing information prior to October 3, 1990, a substantial portion was made available for our review.

As shown by the chart on the next page, the Rose Law Firm provided legal services related to Corning Bank from July 1987 through October 1990. Rose received 14 payments totaling \$279,204 for legal services related to Corning Bank. In March 1989 FDIC contracted with the Rose Law Firm to provide counsel with respect to the Madison Conservatorship lawsuit against Frost & Company, P.A. The FDIC Legal Division supervised the Madison litigation on behalf of the RTC until the creation of the RTC Legal Division in September 1991. The Rose Law Firm received 19 payments related to the Madison litigation totaling \$375,380 with the last payment being made by the RTC in April 1993. Legal services were also provided by the Rose Law Firm related to Bohemian Savings from April 1992 through November 1992. The October 3, 1990, LSA was amended to include legal services related to Bohemian. The hourly rates for professional services related to Bohemian were also amended specifically for this litigation. Mr. Hubbell signed this amended Legal Services Agreement in May 1992. Rose received six payments totaling \$3,443 for work related to Bohemian Savings.

Rose Law Firm Periods of Legal Service



The Federal Savings and Loan Insurance Corporation (FSLIC) contracted with the Rose Law Firm to provide counsel to FSLIC with respect to Guaranty Savings and Loan Association, Harrison, Arkansas (Guaranty). The FSLIC contract with Rose was effective December 4, 1985, with several amendments extending the contract through September 30, 1990. When FSLIC was abolished under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Rose Law Firm contract was transferred to FDIC. The FDIC Legal Division informed the Firm that the legal services provided to FDIC would continue to be governed by the existing FSLIC contract. Our review of Guaranty related invoices began with those paid after January 1, 1989. We identified 191 separate legal cases for Guaranty. The review covered total payments of \$391,903 on 904 invoices submitted by the Rose Law Firm.

Hopkins and Sutter hired the Rose Law Firm as a subcontractor to provide legal services on behalf of the First American Conservatorship for FSLIC in July 1986. The Rose Law Firm did not have a written agreement with Hopkins and Sutter stating billing rates or expense terms related to their work as subcontractor on the First American litigation. The Firm also advised that, due to the age of the litigation, they did not have timesheets related to work on

First American. As such, our review of fees billed was limited to comparing the billing rates to those agreed to between Hopkins and Sutter and FSLIC. Rose was able to locate vendor receipts for \$10,940 of \$16,137 in expenses billed on First American. We compared vendor information to the invoices submitted to Hopkins and Sutter to determine the accuracy of expenses billed.

For payments authorized by FDIC, the Rose Law Firm submitted invoices for payment to the FDIC managing attorney. The FDIC did not require outside counsel to provide supporting expense documentation with their billings. Therefore, the review of these billings by FDIC managing attorney was limited to the information shown on the face of the bill. Due to the workload of the FDIC Legal Division during the time these invoices were submitted, a detailed review of the information on the face of the invoices was not generally performed. Of the \$156,286 in questioned costs³ from our review, \$29,219 related to the rates billed, miscalculated fees, and non-billable expenses that should have been questioned by FDIC managing attorney when the invoices were submitted for payment.

The review identified questioned costs totaling \$156,286 related to payments for work on the four institutions of which \$78,391 related to Madison. Of the \$156,286 in questioned costs, Mr. Hubbell pleaded guilty to defrauding FDIC and RTC by falsifying expenses and inflating fees totaling \$41,995. Mr. Hubbell's fraudulent claims to FDIC primarily involved misrepresenting and billing his personal expenses as legitimate business expenses on behalf of FDIC. Mr. Hubbell pleaded guilty to one count of mail fraud and one count of tax evasion related to fraudulent billings sent to FDIC and RTC. On June 28, 1995, Mr. Hubbell was sentenced to 21 months in prison and ordered to make restitution in the amount of \$135,000 to the Rose Law Firm.

Our review of the Rose Law Firm's billing system disclosed that the Firm did not have the internal controls necessary to safeguard the integrity of the billing process. Therefore, Mr. Hubbell was able to misrepresent the expenses billed to FDIC. Mr. Hubbell was allowed

³For purposes of this investigation, questioned costs are those that have been questioned by the OIG with respect to a finding that:

- 1) the cost was not authorized by the contract;
- 2) at the time of the review, the cost was not supported by adequate documentation; or
- 3) the expenditure of funds for the intended purpose was unnecessary or unreasonable.

to sign Firm checks for expenses that would later be billed to clients without submitting receipts or invoices verifying that the checks were actually written for the expenses and clients identified by him. As a result, Mr. Hubbell was able to write Firm checks to pay for his personal expenses and have the expenses billed to Rose clients without verification that these expenses were legitimate business expenses.

Other questioned costs from our review related primarily to instances in which the Rose Law Firm did not comply with the terms of applicable guidelines and agreements. Rose billed fees such as those which were 1) unsupported or did not agree with original timesheets; 2) in excess of authorized hourly rates; 3) duplicated or miscalculated; and 4) excessive related to depositions. Also, expenses billed were questioned because they were 1) unsupported by vendor invoices; 2) in excess of the Firm's cost; and 3) non-billable per the FDIC contract.

Tables 1 and 2 below summarize total payments and questioned costs from our review of legal payments to the Rose Law Firm. The RTC Office of Inspector General has conducted a separate audit of legal fees paid to the Rose Law Firm which included payments on the Madison litigation. Questioned costs related to payments on the Madison litigation from our review will be reported to the RTC Office of Inspector General for further action. Other questioned costs related to Corning, Guaranty, and Bohemian will be reported to FDIC Legal Division for collection. No questioned costs were noted from our review of billings on the Rose Law Firm's representation of First American.

Table 1

SUMMARY OF PAYMENTS REVIEWED					
DESCRIPTION	MADISON	CORNING	GUARANTY	BOHEMIAN	TOTAL
FEES	\$ 329,627	\$ 197,636	\$ 328,844	\$ 2,984	\$ 859,091
EXPENSES	\$ 45,753	\$ 81,568	\$ 63,059	\$ 459	\$ 190,839
TOTAL	\$ 375,380	\$ 279,204	\$ 391,903	\$ 3,443	\$1,049,930
QUESTIONED COSTS	\$ 78,391	\$ 57,762	\$ 19,752	\$ 381	\$ 156,286
QUESTIONED COSTS AS A PERCENTAGE OF PAYMENTS REVIEWED	21%	21%	5%	11%	15%

Table 2

SUMMARY OF QUESTIONED COSTS						
CONDITION		MADISON	CORNING	GUARANTY	BOHEMIAN	TOTAL
1	Unsupported Fees	\$ 23,823	\$ 2,124	\$ 5,817	\$ 10	\$31,774
2	Unsupported Fee Adjustments	9,823	14,601	375	156	24,955
3	Unauthorized Billing Rates	6,808	11,452	2,440	0	20,700
4	Miscalculated Fees	6,556	0	0	0	6,556
5	Fees for Depositions Not Attended	4,982	0	0	0	4,982
6	Excessive Time for Depositions	3,227	N/A	N/A	N/A	3,227
7	Multiple Representation at Depositions	1,533	0	N/A	N/A	1,533
8	Duplicate Payments	4,571	1,539	7,864	0	13,974
9	Unsupported Expenses	12,911	13,850	1,730	44	28,535
10	Expense Discrepancies	2,484	12,220	0	0	14,704
11	Increased Expenses	1,511	321	1,440	111	3,383
12	Non-Billable Expenses	162	1,655	86	60	1,963
TOTAL		\$ 78,391	\$ 57,762	\$ 19,752	\$ 381	\$ 156,286
N/A - Depositions were not reviewed for these conditions related to Corning, Guaranty and Bohemian						

UNSUPPORTED FEES (Table 2, Condition 1)

The Rose Law Firm received legal fees totaling \$859,091 (Table 1) for time billed by attorneys and other legal staff. However, the Firm could not provide original timesheets to support \$177,764 of the \$859,091 in legal fees. Of the \$177,764 which was not supported, \$145,990 was paid prior to the October 3, 1990, LSA. The remaining unsupported fees of \$31,774 (Table 2) related to work that was paid after October 3, 1990. Rose was required to maintain this documentation for three years from the billing date based on the October 1990 LSA. The FDIC Guide for Outside Counsel then amended this contract to require outside counsel to retain copies of all FDIC bills and underlying supporting material, including original timesheets for at least four years after final payment.

Rose provided printouts of time billed from the Firm's billing database as support for fees billed to FDIC. We did not accept these as adequate support for fees billed because information entered to the Firm's database from original timesheets is subject to error and modification by others without review by the employee who originally provided the service and recorded their time. Therefore, we consider hours charged to FDIC that cannot be verified by an original timesheet as unsupported.

The lack of timesheets during our review limited the extent to which we could verify the validity and accuracy of FDIC legal fee payments to the Rose Law Firm. For example, during trial preparation on the Madison litigation in August 1990, Mr. Hubbell billed a total of 173 hours during a 22 consecutive day period at a cost to FDIC of \$21,625. Timesheets were not provided by Mr. Hubbell or the Firm for these billings. Therefore, we could not determine whether fee adjustments were made to hours billed by comparing the original timesheet to the invoice submitted for payment. Where timesheets were provided for our review, numerous adjustments were found to have been made to Mr. Hubbell's billings, as shown in Condition 2, Unsupported Fee Adjustments.

The Firm responded that they agreed to keep "billing records" for three years from the billing date based on the October 1990 LSA. The Firm maintained billing memos, automated billing records, and copies of final bills to comply with this criteria. The Firm did not consider timesheets as part of a client's billing records because they contain confidential and privileged information about work being done for many clients. Rose further responded that, once they received the FDIC Guide for Outside Counsel on January 27, 1992, they began maintaining timesheets as part of their billing records, and none of the missing timesheets from the OIG review relate to those required after January 27, 1992.

We do not accept the Firm's contention that the 1990 LSA requirement to maintain billing records did not include original timesheets. The original timesheet of an employee performing the work is the best record of the time for which FDIC should be charged for the related service. It is the basis for the hours billed to FDIC and, as such, is considered a billing record.

UNSUPPORTED FEE ADJUSTMENTS (Table 2, Condition 2)

The Rose Law Firm was paid \$24,955 (Table 2) more in legal fees than was supported by timesheets prepared by the employee providing the service. Further, Mr. Hubbell has admitted that \$4,650 of these adjustments were falsely made by him to cover personal expenses he charged to the Rose Law Firm. For fees paid, we compared the hours shown on the invoice submitted for payment to an original timesheet prepared by the attorney or legal staff performing the service. By comparing the timesheets to the invoice submitted for payment, we noted that 246 more hours were billed to FDIC than were shown on the employees timesheets. According to the Firm, these adjustments were made by the billing attorney during the billing process.

During the period of our review, Rose employees typically recorded the time that they billed to FDIC and other Firm clients on timesheets. The time was then entered into the Firm's automated billing databases. From these systems, Rose's accounting personnel generated draft bills that identified all of the fees and charges that individual attorneys and paraprofessionals allocated to Firm clients. Rose officials explained that the draft bills were distributed to the partner who had been designated as the FDIC's billing attorney. The billing attorney would then review the bills for accuracy and make adjustments based on their understanding of the billing agreement with FDIC. For example, certain expenses were written off or hours billed were adjusted because the billing partner believed the associate or other employee may have underestimated or overestimated their time.

Most of the time adjustments between the original timesheets and final invoice identified during our review occurred on the Madison and Corning litigation in which Mr. Hubbell was the billing partner. On the Madison litigation, 47 adjustments increased hours billed and five adjustments decreased hours billed, resulting in a net increase of 97 hours. On the Corning litigation, 108 adjustments increased hours billed and eight decreased hours billed, resulting in a net increase of 146 hours billed. However, on the Guaranty cases in which Mr. Foster

was the billing attorney, no adjustments were noted. Differences found between timesheets and final invoices related to Guaranty totaling three hours were determined to be the result of a transcription error by a secretary when entering timesheet data into the billing system.

Where description changes were noted between the original timesheet and the final bill, we attempted to verify the reasonableness of the time adjustments. In some instances, adjustments were noted where additional description that did not appear on the timesheet was added to the final invoice. For example, one Rose attorney may have omitted a conference with another Rose attorney from his timesheet which was added to the final invoice. When we could verify that the second Rose attorney had recorded the conference on their timesheet, we did not take exception to the adjusted hours.

The Rose Law Firm responded that FDIC's Guide for Outside Counsel recognizes that time and expense records may be "adjusted" to ensure accuracy. Out of the thousands of time records reviewed, the questioned adjustments are an infinitesimal percentage, approximately 1 percent of the hours originally recorded, and less than 2 percent of the dollars billed. As with timesheets, the adjustments cover times for which the Firm was not obligated to retain records. The Firm advised that they do not possess the necessary information to further address this issue at this time.

We understand that time adjustments may occasionally be necessary to ensure accuracy as the Firm contends. As noted above, we did not question time adjustments where additional description of work performed was included on the final bill. We question the unexplained adjustments because of the lack of evidence that additional work was performed to justify the increased hours. Further, Mr. Hubbell's admission that he made false adjustments leads us to question all unsupported adjustments related to the Madison and Corning invoices.

UNAUTHORIZED BILLING RATES (Table 2, Condition 3)

Our review identified that the Rose Law Firm billed hourly rates that were unauthorized and, as a result, was overpaid \$20,700 (Table 2) in legal fees. The hourly rates authorized by FDIC were provided in the December 1987 and October 1990 Legal Services Agreements that Rose executed with FDIC. The December 1987 LSA provided that any increase in rates must be requested and approved in writing. However, the Firm could not provide any correspondence authorizing increased rates.

Most of the unauthorized rates were related to hours billed on the Corning and Madison litigation prior to the signing of the October 1990 Legal Services Agreement (LSA). We compared rates billed to those authorized in the December 1987 LSA and noted numerous instances where Rose billed hourly rates exceeding those authorized in the LSA. While the December 1987 LSA was executed in connection with the Corning Bank litigation, it provided that: "The representations made herein and the terms hereto shall also extend to every employment or service by the Undersigned whether in connection with the Bank named herein, or any other matter, and to any co-partner, associate or employee engaged by the Undersigned to assist in any such matter." Therefore, we applied the rates authorized in the December 1987 LSA for both the Corning and Madison litigation until execution of the October 1990 LSA.

The Firm responded that the hourly rates stated in the December 1987 LSA should not apply to the Madison litigation. The Firm contends that no written Legal Services Agreement covered the Madison litigation, and the best evidence of the fee schedule is the invoices received, reviewed, approved, and paid by FDIC - not recollections colored by time or other factors. By cover letter Mr. Hubbell always submitted statements to the supervising attorney for "review and comment" and regularly invited the reviewer to call if the statements were inaccurate. Rose also contends that the Corning Bank LSA was with FDIC - not the RTC, which was the Firm's client.

The Firm's contention that the rates stated in the Corning LSA should not apply to the Madison litigation differs with statements Mr. Hubbell made to the FDIC OIG. Mr. Hubbell stated that the terms and rates in the Corning LSA applied to the Madison litigation until the October 1990 LSA was signed. He also did not recall ever discussing a rate increase with anyone at FDIC during his time as billing partner. Further, the contention that the Corning LSA was with FDIC and not the RTC is not valid because FDIC hired the Rose Law Firm for the Madison litigation prior to the creation of the RTC.

MISCALCULATED FEES (Table 2, Condition 4)

Rose incorrectly calculated the fees for professional services on two of its invoices resulting in overcharges of \$6,556 (Table 2). During our review, we noted discrepancies between the hours shown on the time summary and the fee detail information reported on the same invoice. The time summary shows the total hours each attorney and paraprofessional charged during the entire billing period. The fee detail describes the services and hours billed by the attorney on a daily basis. The time summary information should equal a total of the fee detail on the invoice. However, for two of the invoices submitted for the Madison litigation, the time summary included 75.5 hours over those included in the fee detail. The FDIC made payments based on the totals included in the summary information on these invoices and therefore overpaid Rose for legal services provided during this billing period.

The Firm responded that they were not obligated to maintain billing records for the period of time covered by the two invoices in question. They believe that the error resulted from an overlap in the billing periods when the time summary information was generated. Unlike fee detail, summary information was created by hand. Since draft fee statements often covered different billing periods than final invoices did, it is likely that the time summary was not changed when the final bill was prepared.

FEES FOR DEPOSITIONS NOT ATTENDED (Table 2, Condition 5)

The Rose Law Firm charged \$4,982 (Table 2) for Mr. Hubbell to attend eight depositions related to the Madison litigation for which the official deposition transcripts produced by a court reporter did not indicate that he was present at any of those depositions. Mr. Hubbell has admitted that he falsely billed fees totaling \$3,648 related to these depositions.

The Rose Law Firm also charged \$875 for Mr. Speed's services in connection with two depositions held on the same day. According to Firm billing information, Mr. Speed billed seven hours for "Depositions of Bill Blackwell and Lee Sorenson," indicating to us that Mr. Speed attended the two depositions. The deposition transcripts, however, did not indicate that Mr. Speed was present at either of these depositions. Mr. Speed provided the OIG with a sworn statement regarding his activities on the day in question. (See Exhibit 80.) In his statement, Mr. Speed explained that he did not attend the depositions, but, instead, was working on matters related to the ongoing depositions. We found Mr. Speed's explanation plausible and have, therefore, decided not to question the related costs.

EXCESSIVE TIME FOR DEPOSITIONS (Table 2, Condition 6)

We evaluated the reasonableness of the Firm's time charges to attend depositions. Rose billed 522 hours for legal services provided on days Firm attorneys attended depositions. If the Firm's bills did not specify the time spent attending depositions, we estimated such time. We estimated that the Firm billed 368 hours to attend the 50 depositions for the Madison litigation.

We then computed the length of the deposition from the beginning and ending times shown on the deposition transcript, and added one hour for preliminary or closing matters not recorded on the transcript. We then compared the length of the deposition to the actual or estimated hours charged by Rose for attending the depositions. For 25 of the 50 depositions, we determined that Rose attorneys charged 47.6 hours of excessive time to attend those depositions. We did not include charges by Mr. Hubbell to attend depositions that he did not, in fact, attend; these charges are already questioned in Condition 5. We included in the 47.6 hours of excessive time 19.6 hours for lunch breaks that appear to have been taken by Rose attorneys during the course of various depositions. The Firm explained that lunch breaks were used for reviewing the morning session of a deposition and preparing for the afternoon session. Our exceptions related to the 47.6 hours of excessive time charged for attending depositions total \$3,227 (Table 2).

MULTIPLE REPRESENTATION AT DEPOSITIONS (Table 2, Condition 7)

Rose billed FDIC \$1,533 for more than one Rose Law Firm attorney or paraprofessional to attend certain depositions at which only one attorney actively participated. The FDIC Legal Division's Guide for Legal Representation (Guide) provided to the Rose Law Firm in 1987 states that outside counsel should avoid multiple representation at meetings or depositions. The Guide further states that multiple representation at meetings should be discussed in advance with the FDIC managing attorney. Of the 50 Madison depositions, more than one attorney or paraprofessional billed for attending 17 depositions, not including the eight depositions charged for but not attended by Mr. Hubbell. We determined that in eight of the 17 depositions, the Firm's multiple representation was unnecessary because either Mr. Hubbell did not actively participate in the deposition, or the deposition primarily consisted of questions by the opposing counsel.

Mr. Hubbell, the Rose billing partner for the Madison litigation, stated to the OIG that he does not recall obtaining approval or discussing the issue of multiple representation with FDIC managing attorney, Ms. Breslaw. Ms. Breslaw stated that she did not recall discussing deposition attendance with any Rose attorneys; however, she would disallow time charged by Mr. Hubbell if he did not actively participate in depositions taken by Rose attorneys who, at the time, were not experienced in conducting depositions. Ms. Breslaw further stated that she would question multiple representation by Rose attorneys at those depositions primarily consisting of questions by opposing counsel. The Rose Law Firm stated that multiple representations were reasonable because the Firm's three attorneys were assigned different roles in the Madison litigation, and these assignments were known to the FDIC managing attorney.

DUPLICATE PAYMENTS (Table 2, Condition 8)

Our review identified duplicate payments made to the Rose Law Firm totaling \$13,974 (Table 2) that the Firm had not reimbursed. We found 48 duplicate payments totaling \$10,641 to Rose for work related to Guaranty Savings. These involved instances where the Rose accounting department resubmitted charges for lack of payment, and both the original charge and the resubmission were paid by FDIC. Rose had identified and reimbursed FDIC \$2,993 of this amount prior to our review. However, \$7,648 has not been returned to FDIC by the Firm. Two duplicate payments were also identified on invoices related to the Madison litigation. Both of these involved photocopy expense charges and totaled \$878. The FDIC's Guide for Legal Representation dated June 1989 cautioned firms not to include past due invoice amounts in their fee bills, as such practices could cause duplicate payments.

We also noted 17 instances resulting in overpayments of \$5,448 in which FDIC was billed twice for services performed on the same day. Of the total duplicate entries identified, 11 occurred in the Madison litigation, five in the Corning Bank litigation and 1 entry was identified in the Guaranty litigation. Ten of the 17 duplicate entries were billed within the same invoice. (See Exhibit 81.) The remaining seven duplicate entries were same-day services, but were billed on separate invoices. It appears that many of these duplicate fee charges resulted from overlaps in the cutoff period used by the Firm for billing services.

The Rose Law Firm responded that they did not maintain the necessary documentation to research these payments and that the records related to these payments were outside the record retention guidance of FDIC.

UNSUPPORTED EXPENSES (Table 2, Condition 9)

The FDIC reimbursed the Rose Law Firm a total of \$190,839 (Table 1) for expenses such as long-distance telephone calls, computer research, travel expenses, deposition expenses, postage, photocopying and other miscellaneous expenses. However, the Firm could not provide evidence from outside vendors to support \$85,382 of the \$190,839 which showed that the expenses were incurred by the Firm on behalf of FDIC. Of the \$85,382 in unsupported expenses, \$75,271 was paid prior to the October 3, 1990, LSA that required the Firm to maintain billing records. However, Mr. Hubbell has admitted to the OIG that \$21,740 of these unsupported expenses were for his personal expenses that were falsely billed to FDIC. In addition to the personal expenses of Mr. Hubbell, we question as unsupported an additional \$6,795 of the \$85,382 which was paid after the October 3, 1990, Legal Services Agreement requiring Rose to maintain billing records. Therefore, we question unsupported expenses totaling \$28,535 (Table 2).

The lack of third-party documentation supporting expenses limited the extent to which we could verify the validity and accuracy of FDIC legal expense payments to the Rose Law Firm. For example, we noted discrepancies between expense descriptions on the Firm's internal billing memoranda and final legal bills submitted to FDIC. Therefore, we could not verify that the costs billed for these unsupported expenses were on behalf of FDIC.

The Firm advised that documentation to support expenses incurred by their attorneys on behalf of clients is not maintained in a central location. Each Firm attorney was responsible for maintaining their own expense receipts. When Rose attorneys incurred expenses they were permitted to obtain Rose Law Firm checks from the accounting department and to address and sign the checks for expenses incurred on behalf of clients. In these cases, the attorney or the attorney's secretary was required to note on the check a brief description of the expense for which the check was written and which client should be billed. Until 1993, the Firm did not require its attorneys to submit any type of receipt to the accounting department to verify that the checks were actually written for legitimate business expenses on behalf of clients.

Rose provided canceled checks or carbons of checks to the OIG as support for many of these expenses. However, the checks did not contain sufficient third party information for us to verify that the amounts paid were for legitimate business expenses incurred on behalf of FDIC. In addition, most of the canceled checks were made payable to the billing attorney,

his personal credit card company, or cash and were not supported by invoices, detailed cash register receipts, etc.

The Rose Law Firm reimbursed \$12,895 of the \$28,535 (Table 2) in unsupported expenses in February 1995 based on an in-house review that the Firm conducted indicating that the charges were inappropriately billed to FDIC by Mr. Hubbell. Of the \$12,895 reimbursement, \$6,884 related to payments for Madison litigation and \$6,011 related to payments for Corning litigation.

EXPENSE DISCREPANCIES (Table 2, Condition 10)

We identified \$14,704 (Table 2) in expense discrepancies where expense descriptions changed during the Firm's billing process. We noted numerous instances in which the expense descriptions noted on the invoice submitted for payment to FDIC conflicted with the descriptions on the checks and/or underlying billing records of the Firm. For instance, 13 separate expenses described on the Firm's internal billing documents as travel expenses were stated as expert witness fees, court reporter, photocopy expense, computer research expense, or deposition expense on the final invoice submitted to FDIC. For example, a \$600 deposition charge on the Firm's check register appears to have been carried forward as a computer research charge on the final invoice to FDIC. We identified 14 of these expense discrepancies related to billings on the Corning litigation and 6 related to the Madison litigation. Many of the checks were written to the personal credit card companies of Mr. Hubbell or to Mr. Hubbell himself. Mr. Hubbell has admitted to the OIG that \$10,957 of these expense discrepancies related to his personal expenses and should not have been charged to FDIC.

In February 1995 the Firm reimbursed \$10,591 of these expense discrepancies to FDIC based on information that the Firm had at that time indicating that the charges were inappropriately billed to FDIC by Mr. Hubbell. Of the \$10,591 reimbursement, \$1,237 related to payments for Madison litigation and \$9,354 related to payments for Corning litigation.

INCREASED EXPENSES (Table 2, Condition 11)

Terms of FDIC's LSA specified that the Firm will be reimbursed for necessary expenses at the Firm's cost, not including overhead. During our review of expense documentation, we noted that expenses were increased without explanation on one invoice and on others Rose billed various expenses above the Firm's cost. As a result, Rose was overpaid by FDIC a total of \$3,383 (Table 2) for expenses including computer research, photocopying, facsimile and long-distance telephone charges.

Related to the Madison litigation, one invoice was found to have been increased by a total of \$1,000 prior to billing FDIC. The increase was related to expenses on an interim billing document reporting total expenses of \$3,027. However, these same expenses were carried forward to the invoice to FDIC totaling \$4,027. A credit memo for the \$1,000 in expenses appeared on the Firm's interim billing document the subsequent month; however, the credit memo was marked off by Mr. Hubbell and not included in the final invoice to FDIC. Mr. Hubbell has admitted to the OIG that the \$1,000 credit memo was deleted to cover personal expenses he charged to the Rose Law Firm.

We determined that computer research was billed to FDIC at cost for each minute of research performed plus an additional \$1.00 per minute. As a result, FDIC was overcharged \$795 for computer research. The FDIC considers any charges over those of the research service as overhead.

We also noted that photocopy charges related to Madison, Guaranty, and Bohemian were in excess of those permitted in the governing agreements. The October 3, 1990, LSA specified that photocopy charges would be reimbursed at a cost not to exceed \$.15 per copy. In January 1992, Rose received FDIC's Guide for Outside Counsel which amended this to \$.08 per copy. Our review noted that Rose billed for photocopying at rates up to \$.20 per page, resulting in an overcharge to FDIC of \$960.

Facsimile charges were billed at a rate of \$2.00 for the first page and \$1.00 for each additional page. The Firm contends that these charges include their direct cost for long-distance service, cost of facsimile equipment, paper and other supplies for facsimile service. The FDIC policy is only to pay for the cost of the long distance telephone rates associated with the production of facsimiles. As a result of the Firm's billing practices, we determined that Rose was overpaid by FDIC \$443 for facsimile charges.

Long-distance telephone charges billed to FDIC by Rose were increased \$185 above the Firm's cost. Rose used a phone system to bill clients for long distance telephone that automatically added a surcharge to the programmed long distance rate. The surcharge included in the programmed rate table is used to recover overhead costs to the Firm. The FDIC's guidance specifies that the Firm will not bill for overhead.

Rose has agreed to reimburse \$1,000 related to the credit memo deleted by Mr. Hubbell. The Firm responded that they considered the other charges billed to FDIC to be direct costs incurred by the Firm for services provided. However, they agree that similar charges are consistently denied during audits of other law firms by the OIG.

NON-BILLABLE EXPENSES (Table 2, Condition 12)

Rose billed FDIC for expenses totaling \$1,963 (Table 2) that were not reimbursable according to FDIC's guidance to the Firm. The majority of these expenses related to secretarial overtime charges on the Corning matter totaling \$1,421. The FDIC only pays for secretarial overtime if required by the nature and timing of our projects. We did not find any authorization for Rose to bill for this secretarial overtime. The other non-billable expenses included charges for supplies, business meals, and parking. These should not have been paid by FDIC per the Guide for Legal Representation. Rose responded that the Firm does not have, nor is it suppose to have, records showing authority for these charges under FDIC record retention guidance. Mr. Hubbell stated to the OIG that he does not recall obtaining authorization for the non-billable expenses.

REDACTED

STATUS OF INVESTIGATION

This investigative report is being forwarded to the Office of the Vice Chairman for consideration and appropriate administrative action. The report is also being forwarded to the newly appointed FDIC General Counsel for final determination with respect to the Rose Law Firm's failure to comply with FDIC policies regarding the reporting of conflicts of interest, including appropriate sanctions; the referral of professional misconduct to appropriate authorities; overbillings by the Rose Law Firm; and FDIC Legal Division assessment of current policies and procedures.

Office of Investigations
Office of Inspector General
Federal Deposit Insurance Corporation

REPORT OF INVESTIGATION

Title ALLEGED CONFLICTS OF INTEREST BY THE ROSE LAW FIRM	
Case Number IO94-096	Date July 28, 1995
Distribution: Andrew C. Hove, Jr., Vice Chairman William F. Kroener, III, General Counsel	

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GLOSSARY OF TERMS

ABA - American Bar Association

ARH - Allison, Rosenblum and Hannahs, Incorporated

ASD - Arkansas Securities Department

Duncan Industries - Duncan Industries Parking Control Systems Corporation

FDIC - Federal Deposit Insurance Corporation

FHLBB - Federal Home Loan Bank Board

Firm - Rose Law Firm, Little Rock, Arkansas

FIRREA - Financial Institutions Reform, Recovery, and Enforcement Act

First American - First American Savings and Loan Association, Oak Brook, Illinois

FirstSouth - FirstSouth. F.A., Pine Bluff, Arkansas

FIS - First Investment Securities

Friday - Friday, Eldredge & Clark, Little Rock, Arkansas

Frost - Frost & Company, P.A.

FSLIC - Federal Savings and Loan Insurance Corporation

Guaranty - Guaranty Savings and Loan Association, Harrison, Arkansas

Guide - FDIC Guide for Legal Representation

Home Federal - Home Federal Savings and Loan Association, Centralia, Illinois

IDC - Industrial Development Company

LCA - FDIC List of Counsel Available

LSA - FDIC Legal Services Agreement

Madison - Madison Guaranty Savings and Loan Association, McCrory, Arkansas

MFC - Madison Financial Corporation

GLOSSARY OF TERMS

Model Rules - American Bar Association Model Rules of Professional Conduct

NLRB - National Labor Relations Board

OCCC - FDIC/RTC Outside Counsel Conflicts Committee

OIG - Office of Inspector General

Pace - Pace Industries, Incorporated

PLS - Professional Liability Section

POM - Park O Meter, Incorporated, Russellville, Arkansas

Precision - Precision Industries, Incorporated

Rose - Rose Law Firm, Little Rock, Arkansas

RTC - Resolution Trust Corporation

UAW - United Automobile, Aerospace, and Agricultural Implement Workers of America

UCC - United Capital Corporation

UDC - Universal Die Casting, Incorporated

Universal - Universal Savings Association, F.A., Chickasha, Oklahoma

GOVERNING FEDERAL STATUTES

The following federal criminal and civil statutes relate to this investigation:

Title 18 United States Code, Section 1001
Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Title 18 United States Code, Section 1007
Federal Deposit Insurance Corporation transactions

Whoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowingly makes or invites reliance on a false, forged, or counterfeit statement, document, or thing shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Title 18 United States Code, Section 287
False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

Title 18 United States Code, Section 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any

counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Title 18 United States Code, Section 1343
Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Title 31 United States Code, Section 3729 False claims

- (a) Liability for certain acts. Any person who:
- (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
 - (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

- (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

* * *

- (7) knowingly makes, uses or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person,

B

CHRONOLOGY OF EVENTS

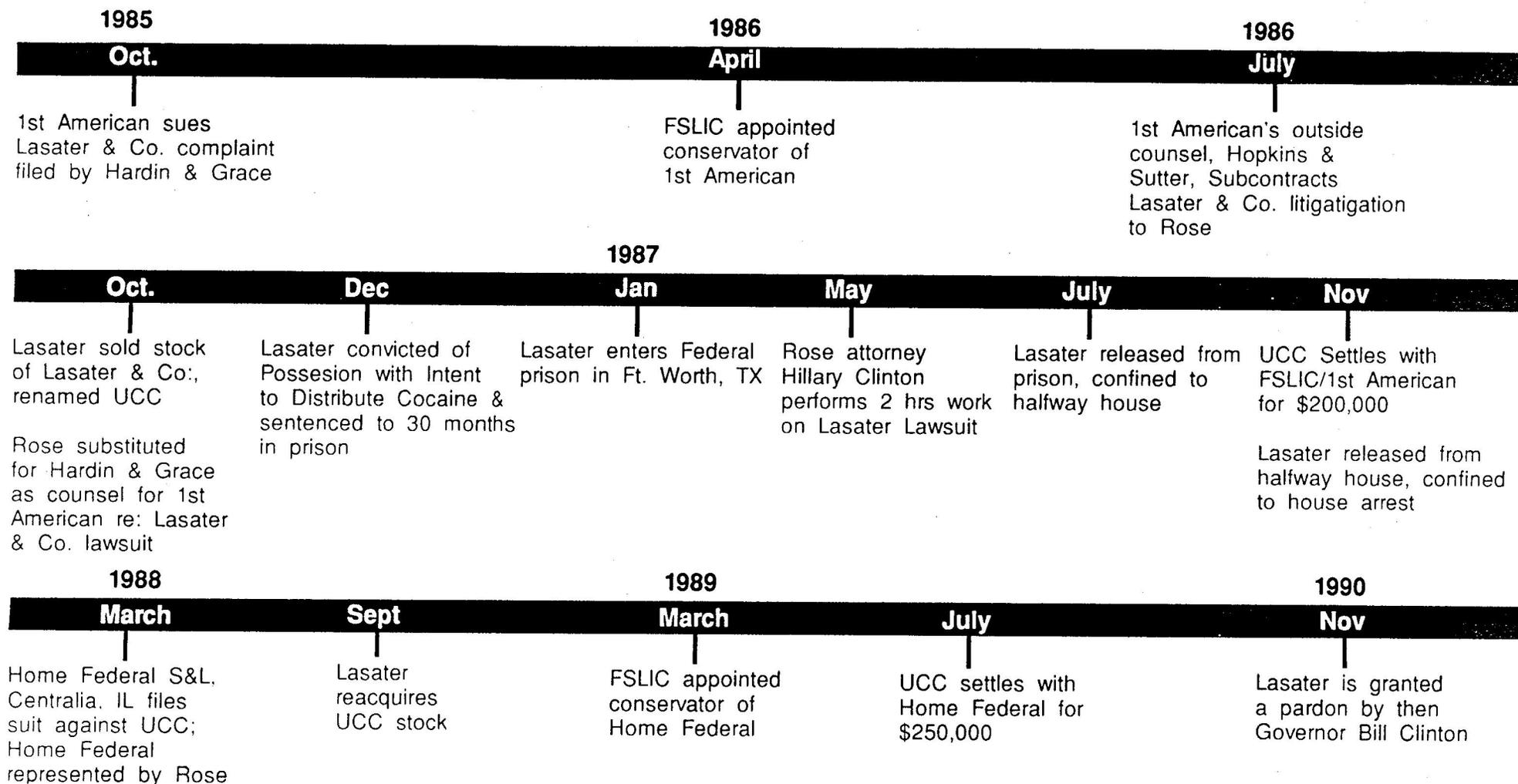
DATE	EVENT	REPORT REFERENCE
Aug. 1981	Seth Ward files Articles of Incorporation for Deta Corporation. Webster Hubbell signs as incorporator using Rose Law firm address	p.34
Jan. 1982	James McDougal purchases majority interest in Madison	p.15
Feb. 1982	MFC incorporated as wholly owned subsidiary of Madison	p.15
Jan. 1984	FHLBB examination finds questionable investment and lending practices at Madison	p.15
Mar. 1984	Worthen enters into participation with Bohemian SLA. Rose represents Worthen	p.68
Jul. 1984	FHLBB executes Supervisory Agreement with Madison	p.15
Aug. 1984	Name of Deta Corporation changed to POM, Incorporated. Seth Ward signs as President and Webster Hubbell signs as Secretary	p.34
Nov. 1984	Knox Savings and Loan Association fails; FSLIC inherits lawsuit	p.69
Mar. 1985	Frost issues unqualified opinion regarding Madison 1984 financial statements (concludes that Madison is solvent)	p.15
Apr. 1985	Rose retained to represent Madison before Arkansas Securities Commissioner re: preferred stock and broker/dealer subsidiary	p.37
May 1985	Arkansas Securities Commissioner issues opinion - thrifts are permitted to issue stock to raise capital	p.37
Oct. 1985	First American sues Lasater & Co. - complaint filed by Hardin & Grace	p.47
Nov. 1985	Universal Savings Association sues FIS; Rose represents FIS	p.27
Dec. 1985	Guaranty Savings and Loan Association fails; FSLIC appointed Conservator	p.68
Dec. 1985	FSLIC contracts with the Rose Law Firm to provide counsel for Guaranty Savings and Loan Association Conservatorship	p.68
Jan. 1986	Bohemian Savings and Loan Association fails and FSLIC appointed Conservator	p.68
Feb. 1986	Frost issues unqualified opinion regarding Madison 1985 financial statements	p.15

Mar. 1986	FHLBB examination discloses unsafe/unsound practices, and insider abuse by McDougal	p.15
Apr. 1986	FSLIC appointed conservator of First American	p.46
Jul. 1986	First American's outside counsel, Hopkins & Sutter, subcontracts Lasater & Co. litigation to Rose	p.47
Aug. 1986	Cease and Desist Order signed: imposes severe operating restrictions; requires Madison to obtain new audit for 1985	p.16
Sept. 1986	At Supervisory Agent's request, Madison retains Borod & Huggins to investigate internal abuses	p.15
Oct. 1986	Lasater sold stock of Lasater & Company; renamed UCC	p.46
Dec. 1986	Lasater convicted of Possession with Intent to Distribute Cocaine & sentenced to 30 months in prison	p.46
Feb. 1987	FHLBB places Universal Savings Association, F.A., into Receivership	p.27
May 1987	Rose attorney Hillary Clinton performs two hours of work on Lasater lawsuit	p.49
Jul. 1987	FDIC hires Rose Law Firm for legal services related to the failure of Corning Bank	p.18
Aug. 1987	FHLBB examination concludes that Madison has been insolvent since December 1985	p.16
Sept. 1987	Seth Ward files suit against Madison and Madison Financial Corporation, claiming Madison failed to pay him commissions for land he sold	p.30
Nov. 1987	UCC settles with FSLIC/First American for \$200,000	p.48
Dec. 1987	Mr. Hubbell signs FDIC Legal Services Agreement on behalf of Rose Law Firm to provide legal services for the failure of Corning Bank	p.10
Dec. 1987	FDIC <u>Guide for Legal Representation</u> sent to Mr. Hubbell at the Rose Law Firm	p.10
Dec. 1987	Worthen files claim against Rose Law Firm concerning Bohemian representation	p.69
Jan. 1988	Rose settles FirstSouth allegation with FSLIC	p.68
Feb. 1988	Madison files suit against Frost for defective audits; retains Gerrish and McCreary. Lawsuit seeks \$10 million in damages	p.16
Mar. 1988	Borod & Huggins separates into three new law firms, one of which is Gerrish & McCreary. The Frost lawsuit is transferred to the Gerrish & McCreary law firm	p.16

Mar. 1988	Home Federal Savings and Loan Association files a lawsuit against United Capital Corporation. Home Federal is represented by the Rose Law Firm	p.64
Mar. 1988	Home Federal is placed in conservatorship with the FDIC as conservator	p.64
Aug. 1988	Rose Law Firm establishes a Conflicts Committee. Original members include Webster Hubbell and two other partners	p.14
Sept. 1988	Seth Ward obtains judgement against Madison for \$353,000 in commissions owed by Madison. Ward represented by Wright, Lindsey & Jennings. Madison appeals the decision	p.30
Sept. 1988	Dan Lasater reacquires UCC's stock	p.47
Dec. 1988	Seth Ward II, Mr. Hubbell's brother in law files a lawsuit against Madison and MFC alleged interest overcharges	p.33
Feb. 1989	FDIC entered agreement with FSLIC to act as agent for FSLIC in any conservatorship/receivership appointed for an insured Savings and Loan association after January 1, 1989	p.16
Feb. 1989	Vincent Foster, of Rose, sends letter to FDIC that generally solicits business in Arkansas	p.28
Feb. 1989	FSLIC appointed conservator of Madison	p.15
Feb. 1989	Paul Jeddelloh, FDIC, named Managing Attorney for the Madison Conservatorship.	p.17
Mar. 1989	April Breslaw, Professional Liability Section, FDIC Legal Division, designated as the responsible attorney for PLS matters related to Madison.	p.17
Mar. 1989	Wright, Lindsey & Jennings develops conflict regarding Ward v. Madison and withdraws as counsel. Thomas Ray becomes Ward's attorney	p.30
Mar. 1989	FDIC accepts appointment as FSLIC's Managing Agent for Madison	p.16
Mar. 1989	Gerrish discloses that his firm is representing three sets of D&Os in litigation against the FDIC; FDIC refuses to waive conflicts	p.18
Mar. 1989	Webster Hubbell and other members of Rose Firm retained to represent government in Frost malpractice case	p.22
Mar. 1989	Home Federal placed into FSLIC conservatorship	p.64
Mar. 1989	Settlement between Rose Law Firm and Worthen for \$200,000 concerning Bohemian representation	p.69
Jun. 1989	Letter from Paul Jeddelloh to April Breslaw expressing concern about Hubbell-Ward relationship	p.23
Jun. 1989	Letter from Breslaw to David Paulson responding to Jeddelloh's letter of 6-8-89; Breslaw refuses to replace Rose	p.25

Jun. 1989	Letter from Hubbell to Paulson stating Hubbell had not represented Ward in dispute with Madison, and had no intention of doing so in the future	p.25
Jul. 1989	Precision Industries Inc., retains Rose Law Firm for representation in a labor dispute at it's Malvern plant	p.40
Aug. 1989	RTC created by FIRREA	p.16
Aug. 1989	Letter from Ken Schneck to John O'Donnell asking him to look into possible conflict of interest concerning Hubbell-Ward relationship	p.26
Sept. 1989	Settlement of Home Federal lawsuit for \$250,000	p.68
Oct. 1989	Webster Hubbell signs a new Legal Services Agreement on behalf of Rose Law Firm with the FDIC	p.22
Oct. 1989	Rose Law Firm hires Patricia J. Heritage, a former Madison employee	p.43
May 1990	POM files suit against Duncan Industries, Webb Hubbell and the Rose Law firm file the complaint and represent POM	p.34
May 1990	FDIC and RTC issue joint guidelines concerning conflicts of interest. A copy of the guidelines is sent to the Rose Law Firm	p.28
Oct. 1990	Webster Hubbell signs Madison Legal Service Agreement on behalf of Rose	p.22
Nov. 1990	Lasater is granted a pardon by then Governor Bill Clinton	p.48
Fall 1991	RTC Professional Liability Section created; FDIC lawyers responsible for RTC projects are transferred to RTC Legal Division	p.16
Feb. 1991	RTC approves \$1,025,000 settlement of Frost lawsuit	p.17
Apr. 1991	Frost settlement documents executed	p.17
Apr. 1993	RTC settles Seth Ward claims	p.30
Oct. 1993	FDIC Legal Division begins a review of the retention of the Rose Law Firm by the FDIC	p.54
Feb. 1994	FDIC Legal Division releases its report on the retention of Rose	p.54
Jun. 1995	Webster Hubbell sentenced to 21 months in prison and ordered to make restitution of \$135,000 to the Rose Law Firm	p.7

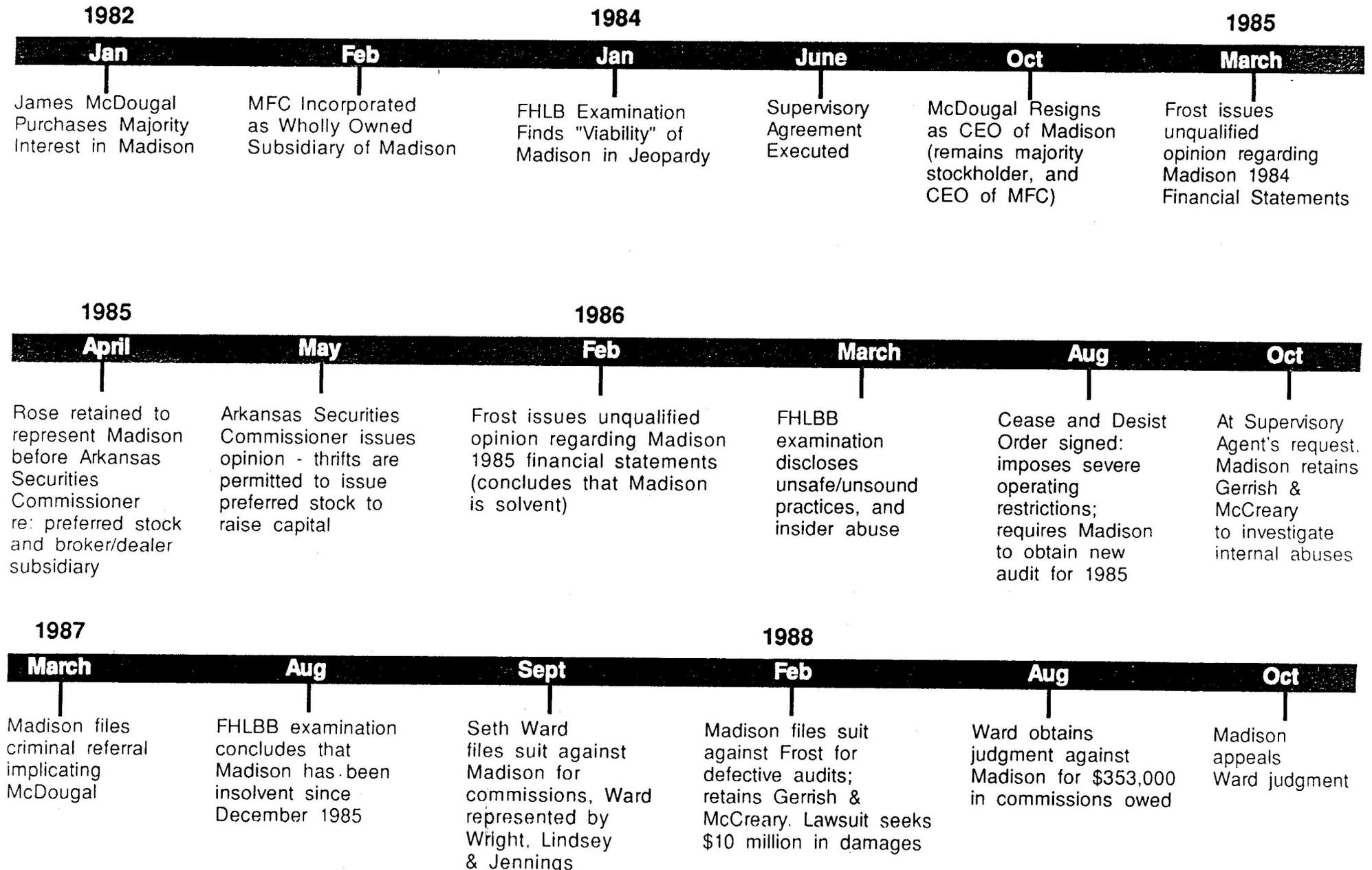
Conflict of Interest Chronology of Events First American - Lasater



Legend

Madison	= Madison Guaranty Savings & Loan Association of McCrory, AR	Rose	= Rose Law Firm
MFC	= Madison Financial Corporation	UCC	= United Capital Corporation
Frost	= Frost & Company	FHLBB	= Federal Home Loan Bank Board
1st American	= First American Savings & Loan Association of Oak Brook, IL	FSLIC	= Federal Savings and Loan Insurance Corporation

Conflict of Interest Chronology of Events Madison - Hubbell - Ward



Conflict of Interest Chronology of Events Madison - Hubbell - Ward

1989

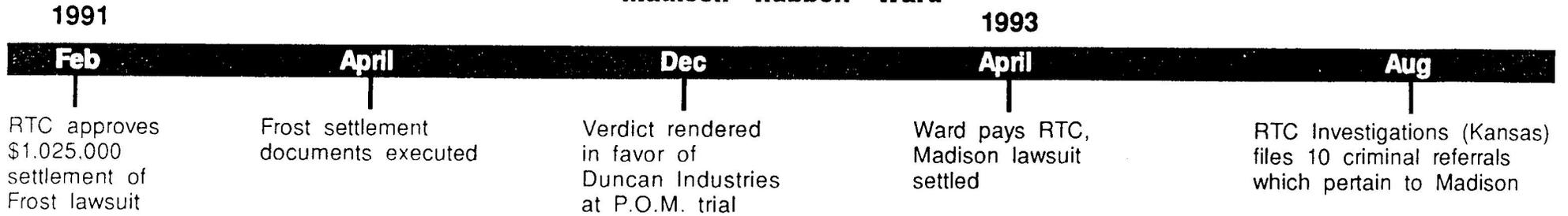
Feb	March	June	Aug
<p>FDIC entered agreement with FSLIC to act as agent for FSLIC in any conservatorship/ receivership appointed for an insured Savings and Loan association after January 1, 1989</p> <p>Vincent Foster of Rose, sends letter to FDIC which generally solicits business in Arkansas (no mention of Madison as either prior or prospective client)</p> <p>FSLIC appointed conservator of Madison</p>	<p>Wright, Lindsey & Jennings develops conflict regarding Ward v. Madison and withdraws as counsel. Thomas Ray becomes Ward's attorney</p> <p>FDIC accepts appointment as FSLIC's Managing Agent for Madison</p> <p>Gerrish discloses that his firm is representing 3 sets of D&O's in litigation against the FDIC; FDIC refuses to waive conflicts</p>	<p>Webster Hubbell and other members of Rose firm retained to represent government in Frost malpractice case</p> <p>FDIC substituted as party in Frost case, matter removed to Federal District court for Eastern District of AR</p>	<p>Letter from Paul Jeddelloh to April Breslaw expressing concern about Hubbell/Ward relationship</p> <p>Letter from Breslaw to David Paulson responding to Jeddelloh's letter of 6-8-89, Breslaw refuses to replace Rose</p> <p>Letter from Hubbell to Paulson stating Hubbell had not represented Ward in dispute with Madison, and had no intention of doing so in the future</p>
			<p>RTC created by FIRREA</p> <p>Letter from Ken Schneck to John O'Donnell asking him to look into possible conflict of interest re: Hubbell/Ward relationship</p>

1990

1990

Jan	May	Oct	Nov
<p>Hubbell becomes involved in Ward's lawsuit against the Madison Conservatorship</p>	<p>P.O.M., Inc. files suit against Duncan Industries for patent infringement; P.O.M. represented by Rose, primarily Hubbell</p>	<p>Madison Directors' and Officers' Liability investigation closed (not cost effective); Fidelity bond investigation closed (conditions precedent to recovery under bond cannot be met)</p>	<p>RTC appointed Receiver of Madison</p>

Conflict of Interest Chronology of Events Madison - Hubbell - Ward



BIOGRAPHIES OF WITNESSES

ALFORD, JIMMY D.

Former Partner, Frost & Company, P.A. (Frost), currently Vice President for Corporate Development, Pace Industries, Fayetteville, Arkansas. He was responsible for oversight of the two audits Frost completed for Madison Guaranty Savings and Loan Association (Madison).

BASSETT (SCHAFFER), BEVERLY

Former Commissioner, Arkansas Securities Department (ASD), currently an attorney in private practice. She was appointed Commissioner by then Governor Bill Clinton.

BENNETT, B. MICHAEL

Former Associate, Rose Law Firm (Rose). During Rose tenure, he worked on the First American Savings and Loan Association v. Lasater and Company and the Home Federal Savings and Loan Association v. United Capital Corporation lawsuits. He currently works for a Dallas, Texas, law firm.

BRESLAW, APRIL A.

Counsel, Professional Liability Section (PLS), Division of Legal Services, RTC, Washington, D.C. She was the PLS Attorney for the Madison Conservatorship.

BURT, ANTONY S.

Partner, Hopkins & Sutter, Chicago, Illinois. Hopkins & Sutter was hired by the FSLIC to handle legal matters for the First American Savings and Loan Association, Oak Brook, Illinois (First American), Conservatorship. He hired Rose to litigate the Lasater and Company lawsuit.

CASTLE, F. GUTHRIE, Jr.

Attorney, private practice. Formerly, an attorney with Gerrish & McCreary, the law firm that Madison hired to file suit against Frost.

CLINTON, HILLARY RODHAM

Former Partner, Rose Law Firm. She performed a limited amount of work on the First American v. Lasater and Company lawsuit. She also represented Madison before the ASD.

DENTON, HARRY DON

Former Madison executive who served as senior vice president and loan officer.

DONOVAN, RICHARD T.

Partner, Rose Law Firm. As an associate, he assisted Webster Hubbell with the Frost lawsuit.

DOWNING, JOHN T.

Senior Attorney, Legal Division, FDIC, Washington, D.C. Assisted in the Legal Division's review of the retention of Rose related to the Madison Conservatorship.

EISENSTEIN, DAVID G.

Senior Counsel, PLS, Division of Legal Services, RTC, Washington, D.C. He became Ms. Breslaw's first-line supervisor in October 1989.

GERRISH, JEFFREY C.

Partner, Gerrish & McCreary law firm. His firm was hired by Madison to file the Frost lawsuit.

GIROIR, C. JOSEPH

Former Partner, Rose Law Firm. He left the firm in 1988 when Rose settled a professional liability claim with the FSLIC.

GOSS, PATRICK J.

Partner, Wright, Lindsey & Jennings law firm. He represented Lasater and Company regarding the First American lawsuit.

GRACE, DAVID A.

Partner, Hardin & Grace law firm. He represented First American in the lawsuit against Lasater and Company before being replaced by Rose.

HANDLEY, CHARLES F.

Assistant Commission, ASD. He was at the ASD in 1985 when Rose represented Madison regarding a plan to recapitalize the institution by issuing preferred stock.

HERITAGE (HAYS), PATRICIA

Former Executive Assistant, Madison, and former Rose attorney. She reportedly falsified minutes of Madison Financial Corporation's board of director meetings. She is currently an attorney with the City of Little Rock, Arkansas.

HINDES, THOMAS L.

Assistant General Counsel, PLS, Division of Legal Services, RTC. He became Ms. Breslaw's supervisor in May 1992.

HUBBELL, WEBSTER L.

Former Partner, Rose Law Firm. He was the partner in charge of the Madison Conservatorship litigation against Frost. He is also the son-in-law of Seth Ward, a former Madison insider who had a lawsuit against Madison during the time Rose was litigating the Frost case.

JEDDELOH, PAUL A.

Senior Program Attorney, Office of the Executive Secretary, FDIC, Washington, D.C. Former Intervention Attorney for the Madison Conservatorship. He informed Ms. Breslaw in a June 1989 letter, that Rose had a possible conflict of interest due to the Hubbell/Ward relationship.

JENNINGS, ALSTON, Sr.

Attorney, Wright, Lindsey, & Jennings law firm. He represented Mr. Ward in his lawsuit against Madison in 1988.

JONES, DOUGLAS H.

Senior Deputy General Counsel, Legal Division, FDIC, Washington, D.C. He was the Acting General Counsel of the Legal Division when it conducted its review of the retention of Rose regarding the Madison Conservatorship.

JONES, JERRY C.

Partner, Rose Law Firm. Performed a limited amount of work on the First American v. Lasater and Company lawsuit.

KUMPE, PETER G.

Partner, Williams & Anderson law firm. He was the attorney who represented Frost regarding the Madison litigation.

LANTELME, JAMES T.

Assistant General Counsel, Legal Division, FDIC, Washington, D.C. He is a member of the Outside Counsel Conflicts Committee, and he assisted the Legal Division in its review of the retention of Rose regarding the Madison Conservatorship.

LASATER, DAN R.

Former President and owner of Lasater and Company. He was an acquaintance of the Clintons.

MASSEY, RICHARD N.

Partner, Rose Law Firm. He was the Rose associate who represented Madison before the ASD in 1985 regarding its attempt to raise capital by issuing preferred stock.

MOUDY, DAN

Former In-house Counsel, Lasater and Company/United Capital Corporation (UCC). He was Lasater and Company's in-house counsel during the First American litigation.

O'DONNELL, JOHN A.

Assistant Regional Manager, Division of Depositor and Asset Services, FDIC, Atlanta, Georgia. He was the S&L Project Coordinator for Arkansas when Madison was placed into conservatorship in 1989.

PAULSON, DAVID

Former Managing Agent for the Madison Conservatorship. He was the Managing Agent in June 1989 when Ms. Breslaw was informed of the Hubbell-Ward relationship.

RAY, THOMAS

Partner, Shults, Ray & Kurrus law firm, Little Rock, Arkansas. Represented Mr. Ward when Madison appealed his judgement in 1989.

ROBINSON, MICHAEL D.

Director, Tax Division, Frost & Company. He was a consultant to Madison in 1985 regarding Madison's recapitalization efforts. He also provided a letter that was submitted by Rose to the ASD regarding Madison's application to engage in broker/dealer activities.

SCHNECK, KENNETH K.

Supervisory Liquidation Specialist, Division of Depositor and Asset Services, FDIC, Chicago, Illinois. He was the Credit Specialist for the Madison Conservatorship in August 1989, and he informed Mr. O'Donnell about Rose's possible conflict of interest regarding the Hubbell-Ward relationship.

SCHULZ, THOMAS A.

Assistant General Counsel, Legal Division, FDIC, Washington, D.C. Assisted in the Legal Division's review of the retention of Rose by the Madison Conservatorship.

SELIGA, BENITA M.

Staff Attorney, Litigation Section, Division of Legal Services, RTC, Overland Park, Kansas. She became the Intervention Attorney for the Madison Conservatorship in December 1989.

SHEA, PAMELA A.

Regional Counsel, Legal Division, Chicago Regional Office, FDIC, Chicago, Illinois. She was Mr. Jeddelloh's supervisor in 1989. She was informed by Mr. Jeddelloh in 1989 of a possible conflict of interest for Rose regarding the Hubbell-Ward relationship.

SHEMIN, KENNETH R.

Partner, Rose Law Firm. He was asked to assist Mr. Lasater in regaining control of UCC and selling the assets to a third party. He provided advice but ultimately decided not to formally represent Mr. Lasater.

SMITH, DAVID A.

Partner, Rose Law Firm. He performed work for the Madison Conservatorship regarding the Frost lawsuit.

SMITH, JACK D.

Deputy General Counsel, Legal Division, FDIC, Washington, D.C. Assisted in the Legal Division's review of the retention of Rose by the Madison Conservatorship.

SPEED, GARY N.

Partner, Rose Law Firm. As an Associate, he assisted Mr. Hubbell with the Frost lawsuit.

SORENSEN, LEE

Former Liquidation Assistant, Division of Depositor and Asset Services, FDIC. He assisted Ms. Breslaw and Rose attorneys in the investigation of Frost. Specifically, he was involved in determining the amount of damages FDIC was alleging in the lawsuit.

STRAYHORN, SUE

Former Executive Secretary at Madison. She informed Mr. Jeddloh of Rose's possible conflict of interest due to the Hubbell-Ward relationship.

THOMAS, JOHN V.

Associate General Counsel, PLS, Legal Division, FDIC, Washington, D.C. He was in charge of the PLS office when Ms. Breslaw hired Rose for the Madison Conservatorship. He remained Ms. Breslaw's supervisor until she was transferred to the RTC.

THOMASSON, PATSY L.

Former officer of Lasater, Inc. She is currently employed in the Administrative Office of the White House. She managed Mr. Lasater's business interests for him while he was in jail in 1987.

WARD, SETH

Father-in-law of Webster Hubbell. He was a consultant for Madison Financial Corporation in 1985 and 1986. He helped negotiate the purchase of property from the Industrial Development Company for MFC. His lawsuit against Madison was on appeal when Madison was placed into conservatorship. He obtained several loans from Madison, some of which were charged off for nonpayment. These loans were included in some of the damage calculations related to the Frost lawsuit.

WARD, SETH, II

Brother-in-law of Webster Hubbell. He was a co-owner of P.O.M., Inc., with his father and Mr. Hubbell. He sued Madison in 1988, and the lawsuit was pending when Madison was placed into conservatorship.