Every January, the Willis Executive Risks Practice lists the 10 most impactful Executive Risks cases of the previous year. This year, due to the rise in litigation brought on by the credit crisis, we also compiled a list focusing only on financial institutions. For each case, we note the area of Executive Risks that we believe will be most affected: Directors & Officers (D&O), Errors & Omissions (E&O), Employment Practices (EPL), ERISA Fiduciary (Fiduciary) and Fidelity/Crime (Crime).

1. **HARRIS ASSOCIATES** Mutual fund boards await with bated breath the U.S. Supreme Court’s decision in a battle over the fee negotiation process that pits individual investors against institutional shareholders (who generally pay lower fees). While most look forward to an end to the split among the courts, a decision that goes against the funds could yield a flood of litigation. *Jones v. Harris Associates* [Impact: E&O, D&O]

2. **AEGON USA** A pension plan participant challenged his company’s decision to invest in funds offered by the company’s subsidiaries and affiliates, incurring fees allegedly “higher than the norm.” In deciding for the company and the plan fiduciaries, the court held that the plaintiffs had no right to bring suit as the plan’s surplus was sufficiently large that the investment loss couldn’t cause actual injury to plaintiffs. While the ruling didn’t directly consider the industry practice of investing in the firm’s own proprietary funds, this case will have wide implications for financial institutions and others. *McCullough v. AEGON USA, Inc.* [Impact: Fiduciary]

3. **THE BIGGEST BANKS ON WALL STREET** In an era of huge and numerous securities suits and class actions, one case stands out as the mother of them all: the $586 million settlement of a class action alleging securities violations by over a dozen of the biggest banks on Wall Street and more than 300 companies that they helped go public in the late 1990s. Defendants included 750+ executives at those firms, in what are often referred to as IPO laddering cases. (See our Top 10 Court Awards & Settlements for January 2007.) *In Re Initial Public Offering Securities Litigation* [Impact E&O, D&O]

4. **RESERVE PRIMARY FUND** At the end of 2008, the (almost) unthinkable happened: for only the second time in U.S. history, a money-market mutual fund, viewed by investors as as safe as cash, “broke the buck” its shares falling to 97 cents (largely due to exposure to Lehman Brothers’ debt). By the end of 2009, over $3.5 billion still sat in the Primary Fund when a U.S. district judge ordered the fund to make pro-rata distribution of almost all remaining assets to shareholders. Lawsuits continue over the handling of redemption requests after the Lehman Brothers failure. *SEC v. Reserve Management Company, Inc.* [Impact E&O, D&O]
5. **BEAR STEARNS** The world survived the subprime mortgage meltdown, but the related lawsuits are just beginning to work their way through the courts. In the first major criminal case stemming from these events, prosecutors alleging $1.6 billion in securities fraud lost in court. Their case focused on internal emails that seemed to indicate that two hedge fund executives knew of the dire financial crisis that was looming, prior to informing investors. Even with statements like “the entire subprime market is toast,” the jury essentially found that making a bad investment was not a crime; civil actions still remain, but this initial decision is encouraging to hedge fund officers. *USA v Ciaffi & Tannin [Impact: E&O]*

6. **MADOFF** Many share the blame in what will hopefully be the worst case of fraud this century: a master criminal, now behind bars; his accountants, soon to be in adjoining cells; various financial intermediaries around the world; and even the U.S. Securities and Exchange Commission, which failed to detect the multidecade Ponzi scheme. With many years of litigation still to come, the task of preventing similar schemes will be a key challenge in 2010 and beyond. The temptation to create an even more onerous reporting and regulatory framework will be hard to resist. *Several cases. [Impact: Crime, E&O, Fiduciary]*

7. **WACHOVIA/PRUDENTIAL FINANCIAL INC.** A recent wave of class-action suits has ruffled Wall Street, where stock brokers often referred to as “financial advisers” or “financial adviser trainees,” have alleged that they were misclassified as exempt from overtime pay requirements under the federal Fair Labor Standards Act as well as under state wage and hour laws. Such suits have long been the bane of commercial organizations, and we will be watching in 2010 and beyond for their impact on financial institutions. *In re Wachovia Securities Wage & Hour Litigation [Impact: EPL, D&O, Fiduciary]*

8. **CREDIT SUISSE** An arbitration order from Financial Institutions Regulatory Authority (FINRA) ruled that Credit Suisse had to pay $400 million to an investor that allegedly lost that amount as a result of the unauthorized purchase of risky collateralized debt obligations and credit link notes instead of the federally guaranteed student loan securities it had requested. In effect, the investor gets to have a “do over” by returning its auction rate securities for face value. While the facts here may vary from those of the majority of auction rate securities complaints, the case stands as a warning of what may follow. *STMicroelectronics NV v. Credit Suisse Securities (USA) LLC [Impact: E&O, D&O]*

9. **LLOYDS TSB BANK PLC** In what may be the first prosecution under the Office of Foreign Asset Control (OFAC) involving a non-U.S. financial institution for acts occurring outside the U.S., Lloyds TSB entered into a deferred prosecution agreement with the Justice Department to pay $350 million in penalties. According to the Factual Statement that is part of the agreement, from 1995 to 2007, offices in Britain and Dubai falsified outgoing U.S. wire transfers by removing customer names, bank names and addresses in transactions in Iran and Sudan, allowing them to slip through the filters of international monetary transactions. Heightened scrutiny in these areas is likely to be the norm in the foreseeable future. *U.S. v. Lloyds TSB Bank PLC [Impact: E&O, D&O]*

10. **CLEARING HOUSE ASSOCIATION** In a decision that surprised many and dismayed most, the U.S. Supreme Court upheld New York State’s power to enforce state banking laws against nationally chartered banks. The case started in 2005 with the state’s attorney general sending letters to various federally chartered banks requesting “in lieu of subpoena” that they provide certain nonpublic information about their lending practices to determine if they had violated New York’s fair-lending laws. The federal Office of the Comptroller of the Currency and a banking trade group brought suit to enjoin the information request. The Supreme Court held that while federal banking law prevents states from examining and supervising national banks, it does not bar the “ordinary enforcement of state law.” Stay tuned as there is undoubtedly more to come. *Cuomo v. Clearinghouse Association LLC [Impact: E&O, E&O]*

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