WEST VIRGINIA
BANKER
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ISSUE 3 FALL

Meet George L. Ford
2020-21 WVBankers Chairman

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For more information about the Bowles Rice Banking Team, contact **Sandy Murphy** at (304) 347-1131.

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The West Virginia Banker magazine was recognized with an Award of Distinction in the Overall Design Category.
The Communicator Awards are the leading international creative awards program honoring creative excellence for communication professionals. Founded over two decades ago, The Communicator Awards are an annual competition honoring the best in advertising, corporate communications, public relations and identity work for print, video, interactive and audio. The 24th Annual Communicator Awards received over 6,000 entries from top ad agencies, interactive agencies, production firms, in-house creative professionals, graphic designers, design firms, and public relations firms around the world.

A MESSAGE FROM THE CHIEF EXECUTIVE

By Sally Cline

The Association's New Retirement Solution

After almost three years of steady and persistent work, WVBankers is pleased to announce the offering of a comprehensive retirement plan solution to our member banks who are currently providing (or for those who wish to provide) a 401(k) plan arrangement for their employees. This Multiple Employer Plan (MEP) will go live on Jan. 1, 2021, launching with at least five participating employers. MassMutual will provide the MEP platform, a company with many years of experience in MEPs, and a workforce that is not only based in West Virginia but is ready to assist our West Virginia banks. Together with Graystone Consulting as our investment manager and Metro Benefits as our plan administrator, we have been able to design a first-class retirement solution that will provide benefits to participating banks as well as their participating employees. These benefits include:

- A smooth and seamless installation process. MassMutual's seasoned and dedicated transition team will ensure that the plan installation is seamless to all participants. The team will manage the prior plan review, contact the prior record keeper, and schedule the asset transfer. MassMutual will also ensure the shortest possible blackout period for your employees.

- Reduced administrative burden. Metro Benefits will serve as the ERISA 3(16) operational fiduciary and assume many of the administrative duties on behalf of the adopting employer. Participating banks can then focus on other business priorities knowing that knowledgeable retirement professionals handle the daily operations of the plan.

- Fiduciary risk mitigation. Fiduciary investment duties will be outsourced to the plan investment manager, Graystone Consulting, in an ERISA 3(38) arrangement. In this capacity, Graystone Consulting will assume a majority of the investment responsibilities.

- Cost efficiencies. Aggregating bank-sponsored plans into a single plan creates economies of scale. Employees who participate in the MEP will have access to the same low-cost investment funds that large banks can offer. Because the MEP will be treated as a single retirement plan, it will file a single IRS Form 5500, undergo a single audit, and determine ERISA bonding requirements based on aggregate MEP assets.

- Attractive benefits. Adopting banks will be able to offer competitive retirement benefits to their employees that can more easily compete with larger companies in recruiting and retaining workers.

- Higher level of service. Metro Benefits will help participating banks customize their plan design specifications and options within the MEP to meet the needs of your employees, and MassMutual's Workplace Solutions team will work with you to conduct education sessions to help your employees reach their retirement goals, as well as offer assistance with the enrollment process.

As the plan sponsor and administrator, WVBankers assumes much of the fiduciary and legal risk, but because we have hired an ERISA 3(38) investment manager and an ERISA 3(16) plan administrator, much of that risk has been outsourced. A board of trustees will govern the MEP within the West Virginia Bankers Association Products & Services Corporation, comprising representatives of the participating banks. The board of trustees will be responsible for establishing an investment strategy and for monitoring and evaluating the performance of the service providers.

Participating member banks will continue to have the fiduciary responsibility to choose and monitor the MEP, to forward contributions to the MEP, and to review periodic reports on the management and the administration of the MEP.

If your bank is spending too much time supporting your retirement plan or if you are concerned about your fiduciary risk, I encourage you to reach out to me to discuss our retirement solution to better serve your needs. ■


Deep Banking Expertise + Relationships
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Meet Your Chairman –
George Ford, The Grant County Bank

How did you become a banker?

I worked for about five years for the Farmers Home Administration, with my last position being the community development manager in Parkersburg. I was responsible for a five-county area. In 1996, after the birth of our son, we decided to move closer to my wife's family in Petersburg, so I applied with various banks in the area, as my primary responsibilities with FmHA were in lending. I ended up going to work for Grant County Bank in October that year as a collector.

Are there any individuals who had a major impact on your career?

It's difficult to single out individuals as so many along the way helped shape my career, but I would single out Butch Porter, Virgil Smyer and Gerald Sites here at the bank and Joe McMillion with USDA. I learned a lot from each of them. I also have to give credit to my good friend Alan Harris who convinced me to intern with FmHA for a couple of summers, and that really started me down the path that led to where I am now.

What is the best advice you've received so far in your banking career?

Surround yourself with good people. They will make your job much easier and make the organization and you look good without you having to do all of the work yourself.

What is the most rewarding part of your career?

For me, the most rewarding part of my career was probably when I was a loan officer. I distinctly recall making several young couples their first home loan, and while I've had other satisfying moments in my career, I'm not sure it gets any more rewarding than that feeling.

What do you think will be some of the dominant trends within the banking industry in the next 5-10 years?

The two trends that I believe will continue are related and are the continued push to get bigger and more efficient and the move to a more digital banking experience. The big banks such as Bank of America/Wells Fargo/Chase will continue to grow because they can spend billions of dollars on technology research and attract customers who increasingly want the ability to do all of their banking remotely. This will continue to incentivize banks to merge to be more efficient and competitive in the digital realm.

Why is being a West Virginia Banker member important?

As community banks get squeezed by credit unions on one side and mega-banks on the other, the only chance we have to survive is to band together to make our voices heard. WVBA is the organization that can coordinate and help shepherd all of our voices into one strong chorus that will get the attention of lawmakers at the state and national levels. What makes it beneficial? Beyond the political aspect, there are many other benefits that banks enjoy by being members of the WVBA. The ability to have a curated list of vendors that have been vetted by the WVBA is helpful when looking for a new product or to replace an existing vendor or product. Educational schools and seminars are another significant benefits of membership. The ability to have a well educated and informed workforce is critical to our success as a bank, and we rely on WVBA for a lot of those needs.

How long have you been active in the West Virginia Bankers Association?

I've really only been active since I became CEO in 2011. My activity up to that point consisted mainly of attending various seminars and schools.

What are you looking forward to most as the West Virginia chairman?

The opportunity to work with bankers around the state — bankers' in West Virginia are a wonderful group of people who really want to do what is best for their community and work hard every day to make good things happen.

What advice would you give emerging leaders in the banking industry?

Be open-minded and willing to adapt. A good leader is able to set his own thoughts aside and truly listen to the ideas of others.

What is a favorite memory or experience of your career?

One of my favorite memories actually came last year when a severe storm caused major flooding in and around the small town of Harman in Randolph County. We assembled a team of volunteers from the bank and spent three days helping shovel mud and water out of basements, clean houses, and carry debris out of yards and just assisting people with whatever they happened to need. We also donated cleaning supplies and dehumidifiers to help with the relief effort. People were sincerely appreciative, and being able to help out and give back was very gratifying.

What is something about you that might surprise fellow bankers?

I grew up in a home without electricity for most of my childhood. While I didn't always appreciate it then, I was able to have life experiences that were much more in line with what most bankers grandparents or great-grandparents might have experienced. I've read by kerosene lamp, cultivated behind a horse, made molasses, grown tobacco, milked cows by hand, butchered hogs, and done many things that were common to most West Virginians a hundred years ago.

Please tell us about your family, interests and hobbies.

My wife and I have two children, ages 22 and 24. My son graduated from Liberty University and enlisted in the Navy last year. He is currently deployed on the USS Philippine Sea, a guided-missile cruiser based in Mayport, Florida. My daughter graduated last year from Fairmont University and is currently in her first year of law school at Belmont University in Nashville. I enjoy playing golf and backpacking. In the last two years I've spent the week after the Banking convention backpacking. It's a great way to burn off the extra pounds gained from all of the great food at the Greenbrier! I am going to try my hand at bike packing this fall if all goes well. My plan is to ride from Davis to Lewisburg by piecing together three rail-trails along with some back roads.

What advice would you give someone entering the banking industry today:

There is no substitute for hard work and no shortcut to success. The best way to advance your career is to bloom where you are planted. Do the best job you can, regardless of your position, and those above you will notice. ■

BANK OF MONROE

Since our bank employees are forever essential workers, we wanted to let them know how much we appreciate them, while also supporting our local businesses. We committed to purchasing lunch for our employees every Monday and Friday for over two months. During this time, The Bank of Monroe proudly contributed over $5,000 to local businesses in our area. Through our weekly Facebook posts, we shared our lunch choices of the week with our followers; we wanted to promote local eateries in hopes of encouraging our community to join in and support local. The Bank of Monroe continues to purchase lunch for employees each Friday, supporting and enjoying our valuable local restaurants.

Desiree Reedy, Todd Ramboldt, Shelly Ott, and Hunter Ridgeway at our Fairlea, WV branch

The Bank of Monroe sporting their new face coverings. While their lobbies remain closed, they are continually serving customers through appointments, drive-thru, and walk up windows. Proudly serving with a mask-covered smile.

CITIZENS BANK OF WEST VIRGINIA

Nathaniel Bonnell, president and CEO

In honor of National Medical Laboratory Professionals Week, Citizens Bank of West Virginia provided lunches for lab professionals and pathologists at St Joseph's Hospital and Davis Medical Center who play a vital role in every aspect of health care, especially behind the scenes during COVID-19.

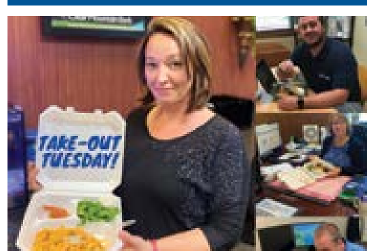
Nathaniel Bonnell, president and CEO, and Gina Ball, Buckhannon branch manager

JEFFERSON SECURITY BANK

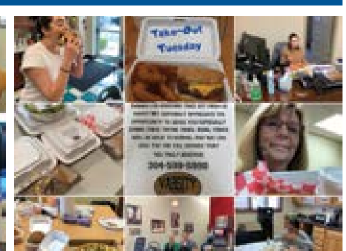
Jefferson Security Bank kicked off a Facebook promotion on July 23 called Thankful Thursday, with the goal of helping our local small businesses during this difficult time. The giveaway takes place every Thursday until August 27. Each Thursday, we post a Thankful Thursday image on the JSB Facebook page. To enter, participants must comment on the name of a local small business that they are thankful for and the reason why. Each week we randomly select one winner to receive a $100 gift card to the small business they are thankful for. The small business not only benefits from the purchase of the $100 gift card, but also from the word-of-mouth marketing they receive on our Facebook posts.

CLEAR MOUNTAIN BANK

Kaleb Athey, teller supervisor; Tonya Stottlemyer, teller supervisor; Lucas Wood, teller; and Colleen Knight, financial advisor



Carmen Pennington, branch manager; Cody Street, teller; Peggy Ruckle, personal banker; and Matt Conard, business development manager



Megan Tehrani, teller; Rachel Anderson, HR assistant; Joyce Lowdermilk, customer service center manager; and Michelle Gillespie, customer service center specialist

TAKE-OUT TUESDAYS! We love supporting local restaurants throughout the communities we serve. Clear Mountain Bank has purchased lunches every Tuesday throughout the months of April and May to thank our valued and dedicated team members who are working in the offices at this time. Special thanks to the 35 local restaurants that served us with delicious lunches. Please continue to support your local businesses during this pandemic! We're all in this together!

Allison Trickett, administrative assistant; Robert Hoskin, financial advisor; Luna; and Colleen Knight, financial advisor.

Work From Home

Our offices at Clear Mountain Investments may look a little different right now but the faces remain almost the same. (An exception is our newest team member, Luna, in the bottom left corner.)

We are here working to help you work to achieve economic success and manage your accounts according to your risk tolerance and time horizon. We're also here to support you in weathering this market storm. If you need to review your accounts or you just have questions, whatever the need is, we are here for you!

UNITED BANK

Sweet Treats for Healthcare Heroes

As a special thank you to healthcare workers on the frontlines during the COVID-19 pandemic, United Bank partnered with hospitals across its footprint to provide ice cream to local community healthcare heroes. The initiative began in April at WVU Medicine J.W. Ruby Memorial Hospital in Morgantown.

As a community bank, United Bank values those that strive to make communities across West Virginia safe. In May, the healthcare professionals and hospital staff at WVU Medicine Camden Clark Medical Center in Parkersburg celebrated National Hospital Week with sweet treats donated by United.

United Bank worked with each hospital's food service vendor to offer the ice cream snacks for employees on all shifts over a 24-hour period. Healthcare professionals and other members of the hospital with WVU Medicine East at the Berkeley Medical Center in Martinsburg also enjoyed their treats during National Hospital Week.

Many hospital employees, such as those at Mon Health Stonewall Jackson Hospital in Weston, are United Bank customers, family members, neighbors and friends. The initiative continued throughout early June. Overall, United Bank donated ice cream to employees of 13 hospitals across the state as a small token of appreciation for their tireless work throughout the pandemic.

Additionally, United Bank's Morgantown Market celebrated local hospital heroes with "Thank You Heroes" signs that traveled around the local offices. Throughout April and May, the signs were displayed at the Westover, Sabraton, Waterfront, Suncrest and Cheat Lake locations as a salute to essential workers in the community. ■

Last Call for LIBOR

By Lester Murray, The Baker Group

With all the distractions and distracting challenges faced this year by the nation's community bankers, it's easy to understand how some may have lost track of an approaching deadline that could have significant consequences for their institutions and their customers. Unless something changes and the authorities have been pretty clear that that's unlikely to happen, the world's most widely used benchmark for short-term interest rates will probably not be around after the end of 2021. After that, the London Interbank Offered Rate (LIBOR), long criticized for lacking transparency and market responsiveness, will be replaced by the Secured Overnight Funding Rate (SOFR) as the primary reference rate for all dollar-denominated loans, derivatives, and debt instruments.

What's the Big Deal?

To many, the transition to SOFR from LIBOR might seem like a simple task; just switch rates. But if that switch affects more than $200 trillion in mortgages, consumer loans, corporate debt, and derivatives, as this one does, there's nothing simple about it. Even though the volume of financial assets subject to the change is massive, that may not represent the greatest hurdle. If LIBOR is an apple, then SOFR is an orange, and while both are fruits, they are not exactly interchangeable parts.

LIBOR's roots go back to the late 60s, when a panel of bankers would each day report their funding costs to what has now become the Intercontinental Exchange Benchmark Administration. Those numbers would be averaged, adjusted, and then reported to the world around noon, London time. The outdated process and its vulnerability to fraud and manipulation, coupled with a dwindling sample size that poorly reflected market conditions, had to go, and pretty soon, it will be gone.

Thankfully, the Alternative Reference Rate Committee (ARRC), a brainchild of the Federal Reserve, has come up with a better idea based on actual transactions in the vast, Treasury-collateralized repo market. SOFR is easy to track, impossible to fudge, and moves with the market. What's not to love?

Well, for one thing, SOFR is an overnight rate, whereas LIBOR comes with terms as short as a day and as long as a year. To come up with term rates, some type of prior-period compounding will likely be used, but the specific methodology is still uncertain. Another incongruity between the two rates is that SOFR reflects financing transactions that are free of credit risk, whereas LIBOR has always been a product of unsecured lending. Some type of spread adjustment to account for that difference will have to be added, but how and how much are still open-ended questions.

Uncertain Life Span

Some are questioning the assumption that LIBOR will even make it to the end of next year. That's not a given. If the ever-dwindling number of reporting banks, currently somewhere between 11 and 16, falls below four, that could trigger an early end to LIBOR. Or, in these tumultuous times, a regulatory determination to prematurely end the use of LIBOR because it fails to reflect market conditions could also lead to an early demise. Fannie Mae and Freddie Mac will no longer be buying ARMs tied to LIBOR after the end of this year, but they will begin accepting SOFR-based ARMs before this year is out.

According to John Williams, president of the New York Fed, the use of LIBOR in loan agreements should have stopped by now, and lenders are encouraged to develop the fallback language for LIBOR referenced loans that will specify the replacement rate (SOFR) upon LIBOR's cessation. For community bankers, communication with customers is key, and the earlier that process is started, the more smoothly the rate transition is likely to go, especially if LIBOR goes away sooner than expected. For more information about the transition, a link to the ARRC's website is provided below. (https://www.gobaker.com/wp-content/uploads/articles/TBG-B0081-ARRC-Best-Practices.pdf) ■

Lester Murray joined The Baker Group in 1986 and is an associate partner within the firm's Financial Strategies Group. He helps community financial institutions develop and implement investment and interest rate risk management strategies. Before joining The Baker Group, he worked at two broker/dealer banks in Oklahoma City and was also an assistant national bank examiner. A graduate of Oklahoma State University, he holds Bachelor of Science degrees in finance and economics. Contact: 800-937-2257, lester@GoBaker.com.

Addition by Subtraction:
Thoughts for Creating Non-Dilutive Capital

By Scott Hildenbrand and Matthew Forgotson, Piper Sandler

Just a couple months ago, the prevailing wisdom was that banks would enter the next downturn from a position of relative strength, manifest in strong pre-provision earnings, pristine credit quality, and an abundance of capital relative to pre-Great Recession levels. Then a black swan named COVID-19 showed up on our doorstep. We are now bracing for a deep recession.

Against this painful backdrop, we examine how banks can bolster capital ratios by selling select bonds into a strong bid and using the proceeds to remove inefficient wholesale leverage. Some institutions might return the balance sheet to its original size by relevering at a wider spread.

Let's evaluate these options from the perspective of our friends at Bank A.

Bank A's Fundamental Profile

Bank A has assets of $500 million and its asset-liability profile is effectively neutral. During a recent review, management identifies $25 million of wholesale leverage earning a negative spread. Management decides to evaluate two strategies: Strategy 1: sell securities and pay down debt and Strategy 2: sell securities, pay down debt, and relever the balance sheet.

Strategy 1: Remove $25 Million of Inefficient Leverage

Bank A has $25 million of securities yielding 2.15% funded with wholesale borrowings costing 2.35%, as shown in the table below. This segment of the balance sheet is "upside down" by 20 basis points, resulting in a pre-tax earnings drag of $50k and an after-tax earnings drag of $40k, assuming a 21% effective tax rate. Simply removing the negative spread would be a penny accretive to EPS, six basis points accretive to ROA, and 24 basis points accretive to NIM. The transaction also shrinks the balance sheet, nudging the TCE ratio from 11.00% to 11.58%.

Simultaneously, management completes a granular review of the loan portfolio, securities portfolio, loan loss reserve, and other real estate owned. Management anticipates that a weakening economy will result in stubbornly high credit costs. Still, management determines that even in the most draconian economic scenario, the bank would remain solidly profitable. Thus, management is open to utilizing the 58 basis points improvement in the TCE ratio.

This segment of the balance sheet is "upside down" by 20 basis points, resulting in a pre-tax earnings drag of $50k and an after-tax earnings drag of $40k, assuming a 21% effective tax rate. Simply removing the negative spread would be a penny accretive to EPS, six basis points accretive to ROA, and 24 basis points accretive to NIM. The transaction also shrinks the balance sheet, nudging the TCE ratio from 11.00% to 11.58%.

Strategy 1: Remove $25 Million of Inefficient Leverage	Balance	Yield/Cost	Int. Inc./Exp.
Securities	25,000	2.15	538
Borrowings	25,000	2.35	588
Pre-Tax Benefit			50
After-Tax Benefit (21% tax rate)			40

Strategy 1: Impact Analysis	Pre-Strategy	Pro Forma	Change
Assets	500,000	475,000	-25,000
Net Interest Income	17,100	17,150	50
Core Net Income[1]	5,000	5,040	40
Core EPS	1.00	1.01	0.01
Return on Assets	1.00	1.06	0.06
Net Interest Margin	3.80	4.04	0.24
Tang. Common Equity/Tang. Assets	11.0	11.6	0.58

[1]Assumes that gain on sale of securities offsets loss on debt extinguishment.
Source: Piper Sandler & Co.

Before pressing on, three notes to consider:

1. For illustrative purposes, we assume that the gain on the sale of securities offsets the debt extinguishment charge. This is convenient, but not always the case. Importantly, the relative size of these accruals dictates the impact on GAAP and regulatory capital. The realized gains on the sale of securities are accretive to regulatory capital, but most likely neutral to GAAP capital because most of the gain already lives in OCI.

   Alternatively, the debt extinguishment charge reduces both regulatory capital and GAAP capital. Today, banks can sell agency MBS and agency CMBS (DUS and GNPLs) into the Federal Reserve's strong bid to source gains that offset the debt extinguishment charge.

   For what it's worth, institutional investors tend to strip both accruals out of core earnings.

2. It is self-evident that wholesale leverage earning a negative spread is inefficient. Wholesale leverage earning a positive spread can also be inefficient if it steers the asset-liability profile away from neutral in a meaningful way, clouds earnings or relative profitability metrics, weighs disproportionately on capital metrics, or precludes alternative uses of capital that could create franchise value or foment incremental demand for the shares.

3. We assume removal of match funded wholesale leverage. Thus, there is no impact on the bank's asset-liability profile. Again, convenient, but not always the case.

Strategy 2: Remove $25 Million of Inefficient Leverage and Relever at a Wider Spread

Management might choose to leverage the 58 basis points of capital by adding $25 million of match funded wholesale leverage. The net effect is to return the balance sheet to its initial size.

Specifically, management evaluates rolling a 3-month FHLB advance and creating term rate protection with a 5-year pay-fixed swap costing 0.55% (a.k.a. the "Beat-the-Spread" funding strategy) and deploying the funds into securities yielding 1.50%.

By executing this strategy, Bank A converts a negative spread of 20 basis points into a positive spread of 95 basis points without skewing its asset-liability profile. The strategy produces five cents of EPS accretion, five basis points of ROA accretion and six basis points of NIM accretion.

Strategy 2: Remove $25 Million of Inefficient Leverage & Relever	Balance	Yield/Cost	Int. Inc./Exp.
Securities	25,000	1.50	375
Borrowings[1]	25,000	0.55	138
Pre-Tax Benefit			238
After-Tax Benefit (21% tax rate)			188

Strategy 2: Impact Analysis	Pre-Strategy	Delever	Relever	Chg. from Base
Assets	500,000	475,000	500,000	0
Net Interest Income	17,100	17,150	17,388	288
Core Net Income[2]	5,000	5,040	5,227	227
Core EPS	1.00	1.01	1.05	0.05
Return on Assets	1.00	1.06	1.05	0.05
Net Interest Margin	3.80	4.04	3.86	0.06
Tang. Common Equity/Tang. Assets	11.0	11.6	11.0	0.00

[1]Reflects 3-month FHLB Pittsburgh borrowing w/ 5 year pay-fixed swap. FHLB rates not dividend adjusted. Pricing is for illustrative purposes only as of May 27, 2020.
[2]Assumes that gain on sale of securities offsets loss on debt extinguishment.
Source: Piper Sandler & Co.

Continued on page 16

Continued from page 15

Strategy 1 (Delever) delivers slight core net income and EPS accretion, but powerful lift in relative profitability metrics. Strategy 2 (Delever/Relever) generates more core net income and EPS accretion, but less improvement in relative profitability metrics. Critically, Strategy 1 is capital accretive, while Strategy 2 is capital neutral. Based exclusively on the numbers, management would prefer to execute Strategy 2. However, management understands that in these uncertain times, capital is king.

The Final Decision

Once the strategies are built, evaluate them side-by-side.

Strategy 1 (Delever) delivers slight core net income and EPS accretion, but powerful lift in relative profitability metrics. Strategy 2 (Delever/Relever) generates more core net income and EPS accretion, but less improvement in relative profitability metrics. Critically, Strategy 1 is capital accretive, while Strategy 2 is capital neutral. Based exclusively on the numbers, management would prefer to execute Strategy 2. However, management understands that in these uncertain times, capital is king. For this reason, management executes Strategy 1.

Side-by-Side: Impact Analysis

	Pre-Strategy	Strategy 1 Delever	Strategy 2 Delev./Relev.
Assets	500,000	475,000	500,000
Net Interest Income	17,100	17,150	17,388
Core Net Income[1]	5,000	5,040	5,227
Core EPS	1.00	1.01	1.05
Return on Assets	1.00	1.06	1.05
Net Interest Margin	3.80	4.04	3.86
Tang. Common Equity/Tang. Assets	11.0	11.6	11.0

[1]Scenario assumes that gain on sale of securities offsets loss on debt extinguishment.
Source: Piper Sandler & Co.

Additional Considerations

We have structured this case study to focus on two narrowly tailored strategies, but there is so much more that banks can do right now. Three strategies come to mind straight away:

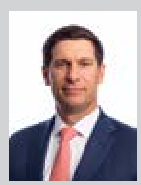
1. Banks can sell MBS or CMBS into the Federal Reserve's strong bid. Again, realized gains bolster regulatory capital, though they're most likely neutral to GAAP capital. Realized gains can also be used to anchor a portfolio repositioning to curtail credit risk, premium risk, and reinvestment risk (i.e., fast paying bonds).

2. Institutions that are participating in the Paycheck Protection Program might view the net income from the program as a "backdoor" capital raise. Banks that are comfortable with their credit and capital profiles might choose to leverage the proceeds.

3. Depositories that are bracing for a deceleration in loan demand could pre-invest projected principal cash flows expected, say, over the next year. This strategy would require sourcing short-term wholesale funding, which would put temporary downward pressure on capital ratios. Still, the principal cash flows would be used to pay down the short-term debt, ultimately returning the balance sheet to its original size.

Concluding Thoughts

The key is to think holistically about your options, assessing each strategy's impact on your institution's asset-liability, earnings, credit, convexity, capital and liquidity profiles. Make sure that the strategy resonates in a world in which safety and soundness matter so much more than profitability and growth. If so, move forward. If not, revisit your options. ■



Scott Hildenbrand is a Managing Director and Head of Balance Sheet Analysis and Strategy in the Financial Services Group at Piper Sandler. Hildenbrand heads the Balance Sheet Analysis and Strategy Group, working with financial institutions on balance sheet strategy development, which includes interest rate risk management, investment portfolio strategy, retail and wholesale funding management, capital planning, budgeting, and stress testing. Mr. Hildenbrand can be contacted at Scott.Hildenbrand@psc.com.

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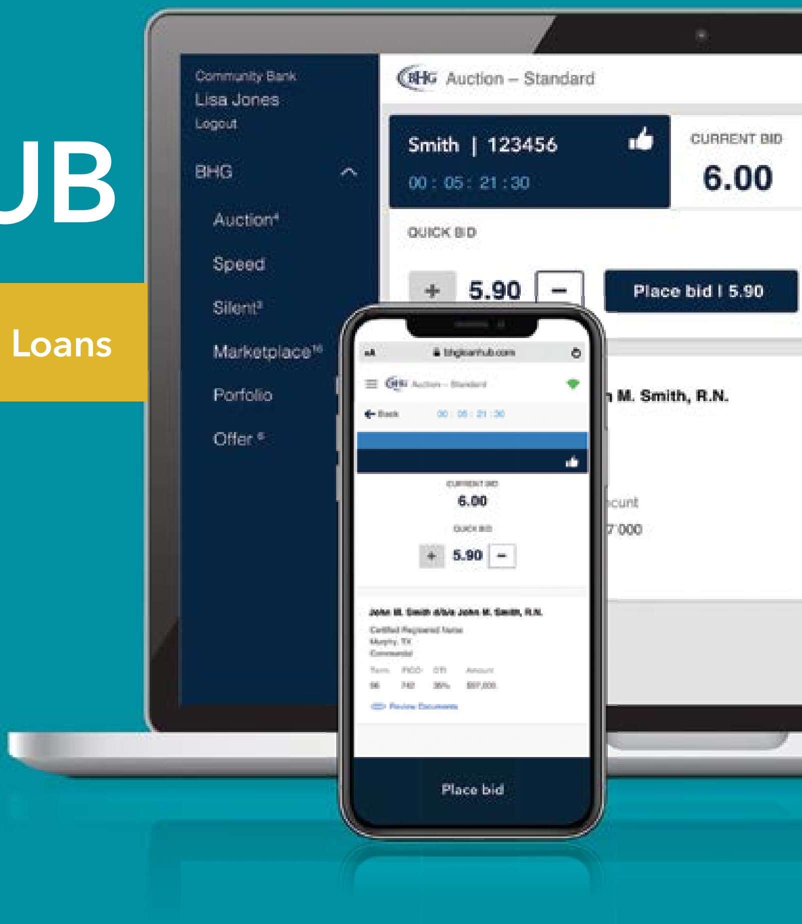

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Commercial Real Estate Will Recover

By Matthew Kingery, Lewis Glasser

The COVID-19 crisis has impacted the commercial real estate ("CRE") market and the greater economy like no other crisis in recent memory. While the West Virginia CRE market has felt the effects, as with many other crises, the West Virginia CRE market has not seen the same level of downturn that has been felt on the national level. Regardless, West Virginia CRE lenders should prepare themselves for significant changes in how business is done in every sector of the CRE market. Being cognizant of what is transpiring with CRE will allow lenders to more accurately anticipate changes in their portfolios and enable them to make better-informed lending decisions.

The Overall Impact

On a national level, CRE has historically lagged the broader economy by several months in terms of experiencing the effects of a downturn, but a report by Deloitte shows that this pandemic started impacting commercial real estate much sooner. All CRE sectors have felt the effects of COVID-19; owners, brokers and developers have all been adversely affected.

Before the pandemic, the CRE industry was in a strong position. Deloitte's 2020 commercial real estate outlook, which was based on a summer 2019 global survey, found that capital availability was expected to increase in 2020 and that U.S. CRE markets continued to maintain global attractiveness. However, the pandemic caused financial markets to decline sharply, and the CRE industry was immediately affected.

Property owners nationally were faced with short-term liquidity issues due to rent relief requested by tenants in industrial, office and retail spaces. Many developers and their timelines have been impacted by a shortage of materials, stay-at-home orders and a lack of PPE. More recently, the pace of construction has been affected by social distancing and cleansing requirements.

Sector by Sector

With respect to the multifamily market, MarketWatch reported in April that more than half of low-income renters lost their jobs because of the shutdowns. A National Multifamily Housing Council poll found that 31% of renters had not paid their rent in

While CRE fundamentals saw an improvement in July, significant challenges for development projects and the CRE markets as a whole are likely to remain for more than a year, according to a COVID-19 impact report released by the NAIOP Commercial Real Estate Development Association.

the first week of April. Many in the media are predicting mass evictions in metropolitan markets in the near term.

The CARES Act took some steps toward addressing housing insecurity, but many of those benefits have expired or are set to expire. Unemployment subsidies, for instance, delayed the impact of unemployment on renters' ability to pay. Since unemployment compensation benefits and eviction moratoriums have ended, defaults are likely, especially in low-income housing, unless Congress is able to negotiate a new relief plan. By comparison, median and higher-end properties in West Virginia do not appear to have been adversely affected to any significant degree as of the date of this article. For example, the largest multifamily complex in the Kanawha Valley was experiencing record occupancy numbers in July and the owner had seen no delinquencies.

The entire retail sector has also been adversely affected by COVID. Major retailers have shuttered stores and filed for bankruptcy protection. The surviving retailers and brand stores face a multitude of short- and long-term challenges. Supply chain, consumer demand, labor force, health and safety, and cash flow challenges abound. The new landscape for the retail sector is likely to include permanent changes in consumer behavior. For instance, many consumers pre-pandemic had turned to digital shopping. The pandemic accelerated the shift from foot traffic to e-traffic. Many Americans are even turning to e-commerce for groceries and other essentials.

COVID has changed the way many of us work. Some prognosticators have even gone so far as to ask if we need offices. A study by Venturebeat found that as many as 75% of employees prefer to work from home out of caution and/or convenience. A third of the workforce is now comprising millennials who value flexibility in when and how they work. Employees are also able to match some of the same technologies at home that were previously only found in the workspace. So long as workers' productivity from home can match their productivity in the office, many businesses may look to downsize their office utilization to save on overhead costs.

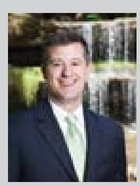
Hospitality is among the hardest-hit sectors. The hotel industry has been affected by lengthy stay at home orders, an unwillingness to travel, and changes in company travel policies. A study by McKinsey and Company found that in early May, occupancy was less than 15% for luxury hotels and around 40% for economy hotels. They predicted that economy hotels would have the fastest return to pre-pandemic levels because they are better able to tap segments of demand that remain relatively healthy despite travel restrictions, such as long-haul trucking and extended stay guests. It also found that economy hotels, based on operating economics, can stay open at lower occupancy rates than upscale chains.

Looking Ahead

While CRE fundamentals saw an improvement in July, significant challenges for development projects and the CRE markets as a whole are likely to remain for more than a year, according to a COVID-19 impact report released by the NAIOP Commercial Real Estate Development Association. A great deal of uncertainty associated with COVID-19 remains, and we are likely to see long term changes in the structure of the CRE business. COVID-19 has affected the way public space is utilized and has resulted in a new normal. It is difficult to predict what the full impact will be on CRE, but there are certainly some changes we can anticipate.

At least in the short run, expect pressure on rents as they are negotiated and adjusted for commercial tenants who have experienced shortfalls due to mandated work stoppages. Although retail spaces are re-opening, expect them to experience decreased traffic for months. Hospitality will continue to see the effects of COVID-19 until Americans are permitted, and feel safe, to travel. Remote work may be here to stay, decreasing the need for office space. The use of virtual property tours will increase. Borrowers' hesitancy to attend in face closings will likely remain.

West Virginia lenders face significant challenges in assessing the impact of COVID on CRE. Existing portfolios are being monitored closely, and new lending decisions involve increased scrutiny. Special Asset divisions may soon find themselves overwhelmed. Despite these challenges, CRE will recover and lenders that weather this storm effectively will find ways to effectively underwrite CRE opportunities in the near and long term. ■



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Enter Sandbox:

West Virginia Adopts Innovative FinTech Regulatory Sandbox Program

By Randall L. Saunders, Esq. and Jonah D. Samples, Esq., Nelson Mullins Riley & Scarborough LLP

The rise in FinTech has significantly impacted the traditional banking model in recent years. Despite the banking industry's initial resistance in embracing these companies, national, regional, and local banks alike have recognized the utility in providing customers with the innovative products and services these FinTech companies can provide. Embracing partnerships with these companies can present customers with innovative solutions to unique problems, increasing revenues and innovation while decreasing costs.

However, many banks are hesitant to dive in and take advantage of the innovation FinTech companies can use to supplement their product portfolio. Much of the hesitancy surrounding the cultivation of these partnerships stems from the difficulty navigating the complex regulatory requirements.

As the financial industry develops, regulators are often slow to react to the ever-changing FinTech landscape. This often results in outdated regulations that prevent FinTech companies from entering the industry and limit a bank's ability to embrace new and innovative products. Additionally, requiring cash-strapped startups to invest significant capital and energy into obtaining licenses to test new products can create significant delays and scare any potential banking partners from contracting for their services.

West Virginia lawmakers recognized these concerns and have proposed a solution. On the 51st day of the West Virginia Legislature's 60-day session, lawmakers unanimously voted to pass House Bill 4621. Governor Justice signed the bill, and it

Much like the sandboxes from the physical playgrounds with which most people are familiar, the idea behind a regulatory sandbox is to allow innovative partners the opportunity to test cutting-edge products and services within the confines of a controlled environment.

will become effective on June 5, 2020. HB 4621 or "the FinTech Regulatory Sandbox Act," is one of the key pieces of legislation to come from the 2020 legislative session. There was immense support for this legislation from both sides of the aisle, as well as from banking and community leaders alike.

Much like the sandboxes from the physical playgrounds with which most people are familiar, the idea behind a regulatory sandbox is to allow innovative partners the opportunity to test cutting-edge products and services within the confines of a controlled environment. The companies approved under the program are given significant leeway to test new products, while still being required to protect consumer interests due to the Act's limitations on the freedom of the participating companies. This will give banks an opportunity to enter into partnerships with these FinTech companies at the early stages while still being assured the FinTech partners will follow certain procedures to prevent undue risk.

The Act is to be administered by the West Virginia Division of Financial Institutions (the "Division"), and the Act allows consultation and collaboration between the Division and the West Virginia Development Office, the Consumer Financial Protection Bureau, and other state agencies or governing boards that have implemented similar provisions. The Division is to oversee the application approval process, and the Act gives the Division the ability to promulgate rules to administer the program.

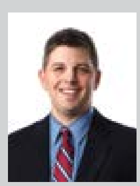
Notably, the Act recommends that applicants attempt to partner with banks or financial institutions licensed in West Virginia before applying. Though this is not a requirement for acceptance into the program, it will certainly spur FinTech companies into attempting to partner with West Virginia banks.

The program is open to businesses with a physical location within West Virginia that wish to test innovative products or services. To apply, the business must go through an application process, which includes providing the Division with information regarding the ability of the applicant to develop, plan and assess the innovative product or service it wishes to implement, as well as show the Division it has the means and expertise to carry out its plan. The applicant must provide the Division with a description of the service or product it wishes to implement. Additionally, there is an application fee for applying for acceptance into the program, which is not to exceed $1,500. Unless agreed to by the applicant, the Division has 90 days from receiving the application to determine whether the applicant is approved to enter the program.

Once approved, the business has two years to implement its products or services. The business will be required to update the Division on the progress of the implementation, and the Division will be required to update the Joint Committee on Government and Finance before December 1 regarding the success of the program overall. At the end of the two years, the business and the Division may agree to extend the business's participation in the program an additional year, or the business may be removed from the program. If extended, the business must then begin the process of obtaining any licenses or authorizations required by law. Following the extension, the business must update the Division on the process of obtaining these authorizations every three months.

However, an approved business is not given free rein to test its products and services. Notably, the provisions of the West Virginia Consumer Credit and Protection Act and the Collection Agency Act still apply to businesses within the program. Additionally, the Division limits participants to test their products with West Virginia consumers, and the participants must go through a notification process with all potential customers outlining the business's involvement in the program. The Division may, with written notice, remove any participant from the program at any time, and may require a bond of not less than $5,000 to insure for possible loss caused by the product or service.

West Virginia's FinTech Regulatory Sandbox Act will forever change the FinTech industry within the Mountain State. While not without its limitations, the Act will certainly give the businesses that choose to utilize this program an opportunity to test new, innovative products without being required to first navigate the complex regulatory system. The rollout of this program on June 5, 2020, will allow banks the unique opportunity to engage in strategic partnerships with FinTech companies like never before, particularly since the Act suggests these partnerships may increase an applicant's chances for acceptance. It will be important for banks to take advantage of this opportunity to stay abreast of the industry's ever-changing landscape. ■



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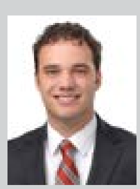

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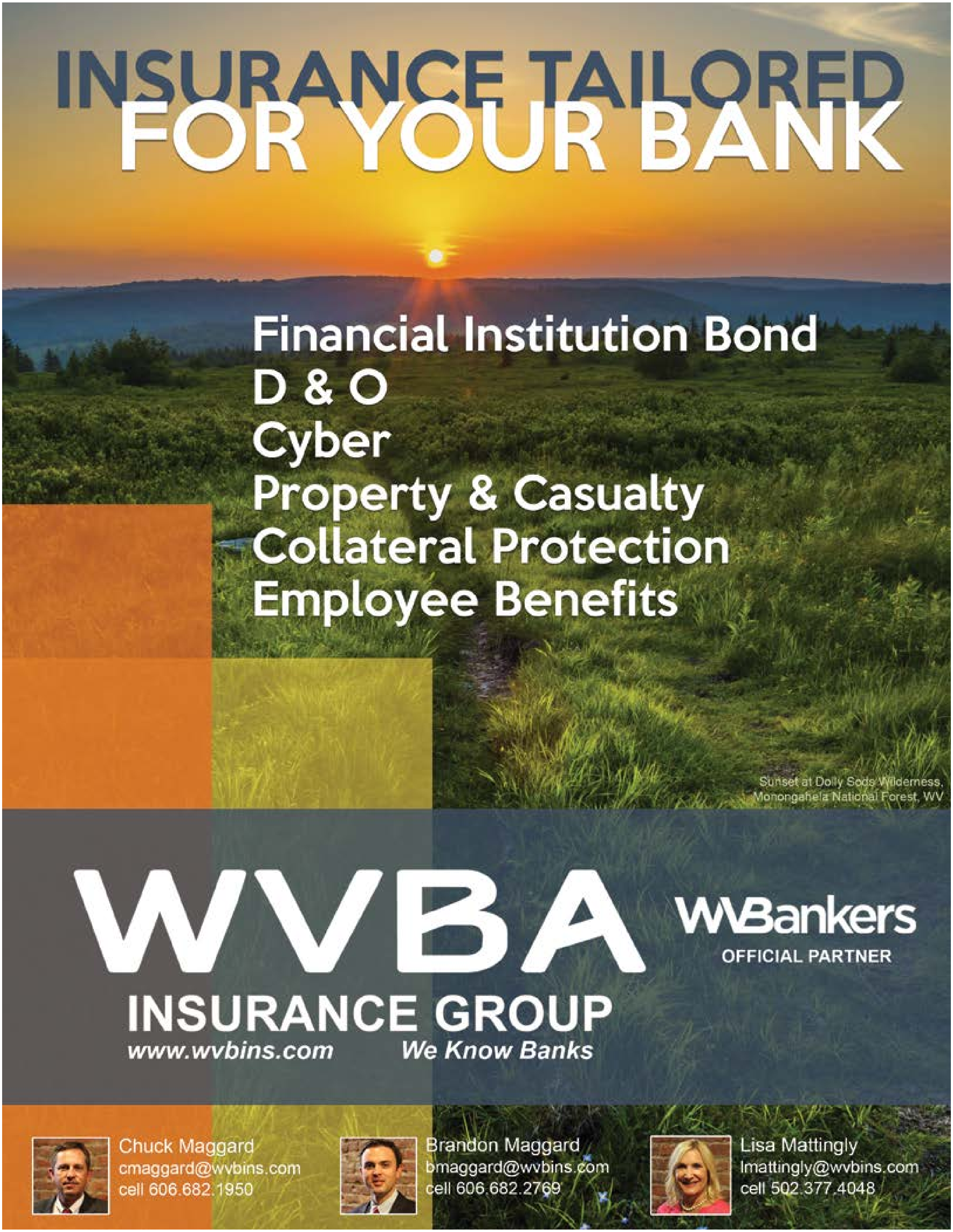
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Sorry, Wrong Number:

Another Federal Court Holds that Callers are Subject to TCPA Liability if They Intend to Make Automated Calls to a Consenting Customer, but Instead Call Someone Else

By Wesley A. Shumway. Edited by Nicholas P. Mooney II, Spilman Thomas & Battle

On June 3, 2020, the Ninth Circuit Court of Appeals dealt a blow to callers governed by the Telephone Consumer Protection Act ("TCPA"), which exempts callers from liability for automatic telephone dialing system-generated ("ATDS") calls if the calls are made with "prior express consent of the called party." In N.L. v. Credit One Bank, N.A., the Ninth Circuit joined other circuits in holding that a caller's intent to call a customer who consented to calls will not exempt the caller from TCPA liability if the caller mistakenly calls someone who did not consent.

The Calls and the Lawsuit

In 2014, D.V., a Credit One customer, gave Credit One consent to call his cellphone. When D.V. fell behind on payments, Credit One's collectors began making automated calls to the cellphone number that they had listed for D.V. However, that number had since been reassigned to Sandra Lemos, whose son was on her cellular service plan and who was using the cellphone with the number that previously belonged to D.V. Neither Lemos, nor her son, had consented to the calls. Well over 100 calls were made to the son's number.

On behalf of her son, Lemos sued Credit One and its collectors for violations of the TCPA, California's Rosenthal Fair Debt Collection Practices Act, and for invasion of privacy. The collectors settled, but the claims against Credit One went to trial.

At trial, the court instructed the jury that consent to receive the calls given by the current subscriber or user of the called phone (in other words, Sandra Lemos or her son) was required, and consent of the intended recipient (D.V.) was irrelevant. The jury found for Credit One on the invasion of privacy claim. However, the jury found for Lemos's son on his TCPA claim and Rosenthal claim.

Credit One appealed to the Ninth Circuit and argued that it should not be liable under the TCPA because it had the consent of the party it intended to call. The court rejected Credit One's "intended recipient" interpretation, relying heavily on the text of the TCPA and other sources.

"Called Party"

The court conducted a detailed analysis of the term "called party," including looking to other parts of the TCPA, Congressional intent, and the FCC's orders in determining how it should interpret that term. In looking at the portions of the TCPA that were at issue, the court noted that the TCPA exempts from liability ATDS-generated or prerecorded voice calls made with "prior express consent of the called party." The court acknowledged that the TCPA does not reference "intended" recipients of calls. Instead, the TCPA provides that calls "made with the prior express consent of the called party" will not violate the statute. The court reasoned that "[u]nder the statute, the 'call' that is 'made' is the call that is received, for it is this received call that provides the basis for the private cause of action and thus civil liability." Further, the court reasoned that it would be "odd if 'called party' referred to some third person external to the potentially actionable communication," such as the intended recipient.

In looking at other parts of the TCPA, the court focused on § 227(b)(1)(A)(iii), which prohibits calls (without consent) "to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call …." Under this TCPA provision, a "called party" that is "charged for the call" could only be the cell phone's current subscriber and could not be some third-party who has no connection to that cellular service plan but who was the intended recipient of the call. It seemed clear to the court that "called party" in that section of the TCPA could only be the current subscriber or, in other words, the person who currently has the phone number being called.

The court cited additional references to "called party" in the TCPA, which further convinced it that "called party" in the TCPA refers to the party actually called and not the party that was intended to be called.

Legislative Intent

The court next addressed Credit One's argument that Congress' statutory purpose supports Credit One's "intended recipient" interpretation. The court disagreed: "[i]n enacting the TCPA, Congress found that '[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call …, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.'"

FCC Orders

The court also rejected Credit One's attempt to find support from the 2015 and 2018 FCC Orders on the TCPA. The FCC issued an order in 2015, which, the court explained, created "a one-call safe harbor for callers who unknowingly dial reassigned numbers if they had obtained consent from the previous subscriber." The safe harbor provision was later vacated by a federal court. In 2018, the FCC issued another order allowing for a comprehensive reassigned number database. The 2018 Order also created a safe harbor for callers that rely on the database. As the court explained, "[i]n Credit One's view, these safe harbors weigh against interpreting 'called party' in a way that creates strict liability for callers that dial reassigned numbers." The court rejected this argument and reasoned that "[i]f a caller's intent could defeat liability,

The Seventh Circuit refused to be persuaded and instead suggested that callers can avoid TCPA liability by having a person call first to confirm the number is correct or callers can "us[e] 'a reverse lookup to identify the subscriber.'" The Credit One court agreed with that rationale.

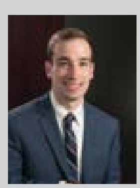
the safe harbors would be unnecessary." Additionally, the court explained the prior 2015 Order "clarif[ied] that the TCPA requires the consent not of the intended recipient of a call, but of the current subscriber (or non-subscriber customary user of the phone)."

Alternatives

Credit One argued that requiring the consent of the called party, instead of the intended party, will leave callers helpless and unable to take reasonable steps to avoid liability. The court disagreed and noted that one of its sister courts, the Seventh Circuit Court of Appeals, already had addressed this argument. The Seventh Circuit refused to be persuaded and instead suggested that callers can avoid TCPA liability by having a person call first to confirm the number is correct or callers can "us[e] 'a reverse lookup to identify the subscriber.'" The Credit One court agreed with that rationale.

Conclusion

This decision marks yet another Federal Circuit Court of Appeals that has held that a caller's intent to call a customer who has expressly consented to ATDS-generated calls will not exempt the caller from TCPA liability if the caller accidentally calls another individual who did not consent. Thus, the landscape regarding these types of calls is becoming increasingly difficult for those using ATDS to place calls to customers. Collectors and other callers would be well-served to review this decision and the other related decisions if they use ATDS-generated calls in contacting individuals. ■



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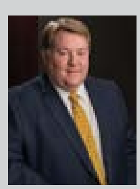

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Limiting Liability:

Handling Accommodation Requests Related to COVID-19

By Julie A. Moore, Bowles Rice

As COVID-19 continues to spread, employers continue to grapple with navigating employment law issues related to the virus. In addition to administrating the new leave requirements imposed by the Families First Coronavirus Response Act, many employers are faced with tackling challenging employment issues under existing laws, including the Americans with Disabilities Act (ADA) and related state laws like the West Virginia Human Rights Act — both of which impose affirmative obligations on employers when it comes to the needs of employees with disabilities.

Many accommodation requests have arisen based upon guidance published by the Centers for Disease Control and Prevention (CDC), declaring that individuals with certain underlying medical conditions are at increased risk for severe illness from COVID-19. According to the CDC, individuals with the following conditions are at increased risk: cancer; chronic kidney disease; chronic obstructive pulmonary disease; immunocompromised state from solid organ transplant; obesity (i.e., BMI of 30+); serious heart conditions, such as heart failure, coronary artery disease or cardiomyopathies; sickle cell disease; and Type 2 diabetes. Additionally, people with the following conditions might be at increased risk: moderate-to-severe asthma; cerebrovascular disease; cystic fibrosis; hypertension; immunocompromised state from blood or bone marrow transplant, immune deficiencies, HIV, or use of corticosteroids or other immune-weakening medicines; neurologic conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis; a blood disorder called thalassemia; and Type 1 diabetes.

Based on the fact that many of these health conditions are likely to constitute disabilities under the ADA, employers see an uptick in accommodation requests from employees wishing to lessen or eliminate their possible exposure to the virus. This recent trend and the new application of the ADA prompted the Equal Employment Opportunity Commission (EEOC) to issue guidance to assist employers. Fortunately, such guidance provides confirmation that many of the basic ground rules about the ADA that we already know and have applied to workplaces for years still apply, notwithstanding the fact that we are in the midst of a pandemic.

First, it remains true that an employer's accommodation obligation is triggered by an employee's request. Accordingly, employers should not assume that employees with known health conditions wish to receive an accommodation and, certainly, should not endeavor to ban employees from the workplace based merely on the fact that they have a health condition that places them at higher risk. Indeed, the EEOC's guidance cautions that the ADA does not allow employers to automatically exclude an employee from the workplace solely because the employee has a disability that the CDC identifies as potentially placing him at higher risk for severe illness if he gets COVID-19. Under the ADA, such action is not allowed unless the employee's disability poses a direct threat to his

health that cannot be eliminated or reduced by reasonable accommodation, which involves an individualized assessment based upon objective facts.

Second, if an employee requests an accommodation that is premised upon a representation that he has one of the medical conditions recognized by the CDC as placing him at higher risk, employers should know that they still have the ability to seek information to evaluate the request. In other words, employers are permitted to ask questions of the employee and may require medical documentation from the employee's physician to evaluate whether he has a disability.

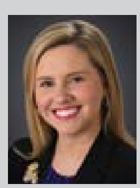
Similarly, employers are still permitted to engage in the interactive process to evaluate the employee's accommodation request. The EEOC's guidance instructs that, as always, an employer is allowed to ask questions of an employee about her disability-related limitations and the nature of her accommodation needs. Further, employers may require that supporting medical documentation be provided to assist with determining whether an employee's disability necessitates an accommodation and what types of accommodation may be needed. However, the EEOC implores employers to be mindful that employees may face difficulty obtaining medical documentation from their health care provider in a timely fashion due to challenges caused by the virus and the strain it has placed on the health care system. Accordingly, the EEOC encourages employers to consider foregoing, modifying or shortening the interactive process as appropriate or proceeding with implementing accommodations on an interim or trial basis, with an end date, while awaiting receipt of medical documentation.

When it comes to granting accommodations, again, many of the familiar, basic rules still apply. It remains true that employers are not required to eliminate essential functions as an accommodation. Elimination of essential job functions is not regarded as being reasonable, which is the applicable standard. Still, some employers are voluntarily electing to temporarily relieve employees of essential functions to accommodate those who are at heightened risk for COVID-19. Should an employer choose to temporarily remove an employee's essential functions during the pandemic, it is recommended that this fact be clearly documented within any accommodation approval letter issued to the employee. Doing so will help to defend against subsequent disputes about whether the removed function is, indeed, regarded by the employer as being essential, as opposed to merely marginal.

Likewise, it remains true that employers are not necessarily required to grant employees their desired accommodation of choice if other effective accommodations exist. Generally, effectiveness, and not the employee's personal preference, is the relevant consideration in selecting a reasonable accommodation. In the context of COVID-19, application of this principle has arisen, perhaps, most frequently, in connection with requests to telework. Generally, employees are not required to permit telework if other effective accommodations exist within the workplace, and so long as the approval of telework is not discriminatorily applied.

Overall, the EEOC encourages employers to be flexible and think outside the box when it comes to granting accommodations related to COVID-19, and to consider approving accommodations on a temporary basis, anticipating that the pandemic will someday come to an end, and the world will return to the normal state we previously knew.

In sum, the importance of properly handling accommodation requests related to COVID-19 cannot be overstated. Under federal and state law, employees may file a claim for failure to accommodate, which can be challenging and costly to defend. Accordingly, employers are encouraged to review their accommodation protocol to ensure that employees know how to make requests; that requests do not fall upon deaf ears or slip through the cracks; that requests are timely and properly vetted by human resources; and that appropriate documentation is generated along the way. ■



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COVID-19 Impact on Information Security Increase in Cyber Events and Attempts

By Chris Joseph, Arnett Carbis Toothman

Introduction. COVID-19 has significantly impacted all industries and the everyday lives of people throughout the world. The financial institution's industry is no exception, especially in the area of information security. There has been a substantial increase in cyberattacks — successful and unsuccessful — over the past several months.

Statistics. There was an upward trend in certain cyberattacks prior to COVID-19, specifically in the area of ransomware. However, there has been a significant increase in activity during the first five months of 2020. According to the VMware Carbon Black third annual "Modern Bank Heists" report, there has been a significant increase in several areas, including ransomware, wire transfer fraud, island hopping, destructive attacks and various other items. The information was obtained from a survey of 25 leading financial institution CISOs. Some of the items noted from the report:

- From February to the end of April, there has been an increase in attacks on the financial industry sector by 238%.
- During the same time, there has been a 900% increase in ransomware attacks.
- Sixty-four percent reported an increase in wire transfer fraud over the past 12 months that represents a 17% increase over 2019.
- Thirty-three percent reported an increase in the use of island hopping. Island hopping is a term that originated during World War II related to the United States going from one island to the next on their way to Japan. In cyberattacks, if the main target has very tight security and a very good information security team to support the security infrastructure, the attacker looks to other relationships (a supply vendor, a software provider, etc.) for a security hole to exploit. The attacker then works their way to their primary target going from one relationship to the other until they reach their intended target.
- One-fourth reported they were targeted by destructive attacks over the past year.

In addition, per a Dell survey, RSA Security LLC reported that 45% of the workforce admitted to one of the following:

- Used a public Wi-Fi for business.
- Shared confidential data through personal email.
- Lost devices (laptops, phones, etc.) containing company information.

In the same survey, one in four indicated they engaged in risky behavior to get the job done.

These statistics illustrate the increase in attacks on all industries, including the financial institution industry. In addition, workforce/employee behavior can place the financial institution in a vulnerable situation.

Risks/Threats. As a result, there has been an increase in attempts to compromise financial institution systems. These risks/threats include many of what has been experienced previously, such as:

- Phishing attacks
- Negligent and malicious insiders

- Zero-day attacks
- Ransomware
- Software vulnerabilities
- Social engineering

The threats have increased due to the COVID-19 environment with employees working remotely where the security at an employee's home is not as robust as what is present at the financial institution.

Ransomware. As indicated previously, ransomware is on the rise at a very high rate (i.e., 900%). Ransomware has been discussed in detail over the past few years, but there have been some changes in the behavior of the fraudsters/bad actors. A summary of the ransomware follows:

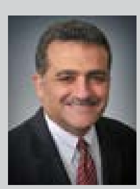
- Ransomware prevents users from accessing their systems and data/files. The first variant of ransomware occurred in the 1980s.
- The bad actor demands payment to regain access to the victim's systems and data/files.
- There have been three types of ransomware over the years:
  - The first type of ransomware was scareware that was more of a nuisance, where the victim received popups claiming malware and demanded payments to remove the popups. There were no real threats to the files.
  - The second type of ransomware was screen lockers that locked the victim's screen and claimed that the victim conducted illegal activity. The bad actor typically claimed to be the FBI and wanted a payment to unlock the screen. The FBI does not operate in this manner, and as more of the victims realized that, the threat was reduced. The victims did not pay the ransom as they became more informed of the way the FBI operated.
  - The third type of ransomware is encrypting ransomware. This type of ransomware can be devastating to the victim. With encrypting ransomware, the victim's files/data are encrypted by the fraudster/bad actor preventing the victim's financial institution from having access to their files. Of course, without access to their files, the financial institution encounters significant issues with providing timely customer service. The fraudster/bad actor demands payment, or ransom, for the decryption key to gain access to the files/data.

When ransomware was in the headlines a few years back, the amount of the ransom typically ranged from a few hundred dollars to a few thousand dollars. Things have changed significantly in the ransom demands. Ransom demands can reach six figures now, and in one case, $14 million was demanded from an IT company in Wisconsin that services 110 companies that, in turn, have 2,400 nursing homes. The fraudsters/bad actors can identify their victims and then assess what the victim's data is worth to them. Another change in the behavior of the fraudsters/bad actors is their willingness to implement destructive behavior. In the past, if your financial institution had good controls to combat the attack, they would typically move on to another target and possibly attempt to compromise the financial institution another day. Today, they are willing to engage in destructive behavior by destroying data files, downloading and publishing sensitive and confidential information, etc.

Should you pay the ransom? The FBI recommends not to pay ransoms, as there is no guarantee that the decryption key will be provided. Also, the ransom money could be used to fund terrorist activity, fund nation-states activities (i.e., North Korea), fund cybercriminals, etc.

Controls. The best way to combat cyber events is through the implementation of sound controls. Most of these are back-to-basic controls such as a regular and ongoing patch management program, next-generation anti-virus solution, next-generation firewall solutions, engaging security testers to conduct penetration testing and vulnerability assessments, ongoing employee training/education, etc. In the area of ransomware, a good backup solution that includes an offline backup component is a strong way to reduce the impact. In the case of the IT vendor supporting multiple nursing homes, the company had a good backup solution, so they did not pay the ransom (the CEO/Owner also indicated they could not afford to pay the ransom). The IT vendor did encounter significant issues as their clients could not access their data for treatment plans, billings, etc. until the systems were brought back online. In addition, there was evidence that the cybercriminal was on their system for 14 months prior to executing the attack, leaving doubt as to how much information the cybercriminal was able to obtain.

Conclusion. COVID-19 has permanently changed the way financial institutions work, operate and how they serve their customers. With the changes comes increased and new risks/threats. Staying proactive with information security and cybersecurity programs is increasingly important and should be part of the financial institution's daily operations. ■



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Calendar of Events

2020 LIVE SEMINARS/SCHOOLS

September	
16	Human Resource Management for Bankers (Zoom)
October	
5 & 6	Bank Security School (Zoom)
7 & 8	Credit Management Conference (Zoom)
20 & 21	BSA/AML School (Zoom)
November	
3 & 4	Consumer Lending Conference (Beginner) (Zoom)
5	Consumer Lending Conference (Advanced) (Zoom)
19 & 20 CFO	Conference (Zoom)

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