

South Florida BUSINESS JOURNAL

CELEBRATING
30
YEARS

THIS WEEK
in the SFBJ

CONSTRUCTION BUCKS

■ About \$327 million in contracts, or 90 percent of the money for construction of the 38,000-seat ballpark that will be home to the Florida Marlins, has been awarded to date. **P4**

LIVING GREEN:

South Florida businesses provide many different products to support a green lifestyle

P13



Bank trial could have broad impact

BY BRIAN BANDELL

The BankAtlantic Bancorp shareholder class action trial is getting to the heart of what banks must tell shareholders about their loan portfolios, so other public banks may want to pay close attention.

With public financial filings the length of novellas, and reams of additional data released by regulators, it might be hard to imagine that a bank could be accused of not disclosing enough to investors about its financial condition. But, there is certain information about loans facing trouble, yet still considered current, that banks aren't bound by law to release to the public.

SEE **BANKATLANTIC** | 36

Search on for next Office Depot CEO

BY BILL FROGAMENI AND KEVIN GALE



Odland

As Office Depot Chairman and CEO Steve Odland steps down from his post, the question of who will succeed him looms over South Florida's third-largest public company.

In recent years, Odland led the Boca Raton-based office supply company (NYSE: ODP) through losses from the recession, significant share price fluctuations, store closings and a series of nagging scandals.

SEE **OFFICE DEPOT** | 37



MARK FREERKS

More international passengers use Fort Lauderdale-Hollywood International Airport.

Fort Lauderdale airport sees jump in international traffic

BY BILL FROGAMENI

Fort Lauderdale-Hollywood International Airport is becoming even more international.

As the airport evolves, the number of its international passengers is rising at a faster clip than that of domestic passengers, and, with market leader Spirit Airlines planning to double its fleet over the next few years, international business should remain a growth area.

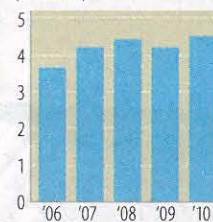
FLL is increasingly seen as a convenient airport to reach the region, which helps it draw international passengers from Miami International Airport, said analyst Stuart Klaskin, CEO of Jetstream Aviation Capital in Miami.

"People who are educated travelers know that Fort Lauderdale is just as valid an option as MIA," he said.

It's unclear how widespread that mes-

FLL international seat capacity

(in millions)



Source: Fort Lauderdale-Hollywood International Airport

sage is at this point, but passengers are on the rise at FLL, with international passengers comprising the biggest growth area.

The airport handled 10.3 percent more passengers in September than it did during the

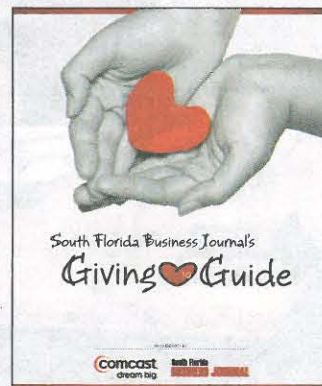
same month last year. Total passengers grew to 1.44 million from 1.31 million last year, according to airport statistics. From January through September, the airport handled 5.1 percent more passengers than during the prior-year period.

SEE **AIRPORT** | 37



CONDO REDO

■ ST Residential is repositioning condos picked up as part of its parent firm's acquisition of some of failed Corus Bank's assets. Victor Ballestas heads ST's local division. **P15**

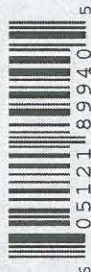


GIVING GUIDE

■ Read about the businesses that help the region's nonprofits make ends meet. **SPECIAL PUBLICATION**

ALSO INSIDE

Week In Review	P12
Real Estate	P15
Foreclosure Roundup	P16
The List: Promotional Products	P25
Growth Strategies	P26
Mary Scott Nabers	P26
People on the Move	P27
Hot Leads	P28
Bruce Rector	P28
Leads	P29
Classifieds	P34
Reader Guide	P39



KEY PARTNERS AWARDS:

Join us on Thursday, Nov. 11, as we celebrate the success of our 2010 Key Partners Awards honorees at the Design Center of the Americas in Dania Beach. For tickets or more information, call (954) 949-7503.

KEY PARTNERS AWARDS
SFBJ | 2010

#BXNNUK*****5-DIGIT 33131
#09231898# 05/13/11 P-1 P14
LEWIS COHEN
1111 BRICKELL AVE STE 2920
MIAMI FL 33131-3128

BANKATLANTIC: Investors don't often find out early about bad loans

FROM PAGE 1

Banks keep track of this on internal loan "watch lists," and regulators often double-check those lists to make sure banks are identifying problem loans correctly. A loan could be classified "special mention" or, worse, "substandard" because of problems like slow unit sales or a declining occupancy rate. This process, called risk grading, helps banks keep a closer eye on struggling borrowers. It can also be a sign that the bank should have more loan loss reserves in case those borrowers default.

Yet, investors often don't know until the loan is in default or is considered nonaccrual because the bank sees a loss as unavoidable.

Miami-based banking analyst and economist Kenneth H. Thomas said the rule on disclosing special mention and substandard loans is a gray area. The most conservative bankers, often those at strongly capitalized institutions, disclose it. One example of a bank that does is Boca Raton-based 1st United Bancorp (NASDAQ: FUBC).

Some bankers would rather not. Sometimes this relates to protecting the privacy of borrowers or competitive lending practices, and sometimes it's about survival, Thomas said.

"For a bank that needs capital, if they suddenly start disclosing this, it will make their 50 cent shares go down to 30 cents," he said.

Thomas recommended those considering investing in a bank ask for a summary of the loan watch list.

Fort Lauderdale-based BankAtlantic (NYSE: BBX) isn't the only one sparring with some unhappy shareholders.

A shareholder securities class action lawsuit was recently filed against Regions Financial Corp. (NYSE: RF). A number of failed banks, including Colonial Bank, Washington Mutual and IndyMac, were served with shareholder class actions over various issues amid their respective demises. Unlike the situation involving BankAtlantic, most of these cases are settled before trial, so issues like loan disclosure aren't brought before a jury.

During the BankAtlantic trial, the plaintiffs' attorneys pointed to the company's SEC filing for June 30, 2007. It disclosed \$55 million in bad assets, in the form of nonaccrual loans, repossessed properties and potential problem loans. That was the last quarter for which the company reported a profit.

Yet, in its confidential examination of the bank that year, the Office of Thrift Supervision said BankAtlantic had \$261 million in criticized assets, which includes special mention and substandard loans, on June 30, 2007. About three-quarters of those were land loans.

"This level of criticized assets causes regu-

THE DETAILS

Executive profiles

JOHN E. "JACK" ABDO
BankAtlantic Bancorp
vice chairman



Abdo got his start in insurance underwriting after graduating from Florida State University, and later scouted locations for a chain of roast beef restaurants. He went on the build homes, apartments and

commercial buildings in Broward and Palm Beach counties for several decades. He joined the board of Atlantic Federal Savings & Loan, which would later become BankAtlantic, in 1984. That's when he met Alan Levan, who was already on the board and would become chairman. He served on the bank's major loan committee, which approved many of the land loans that have caused the bank trouble. Abdo spoke out against some loans in rural areas, but he rarely used his veto power to block them.

Abdo is no longer an active developer, but he is involved with a handful of public companies, all of them with Levan along side him. He is the vice chairman of BFC Financial Corp. (Pink Sheets: BFCF) and Bluegreen Corp. (NYSE: BXG), and on the board of Benihana (NASDAQ: BNHN).

Abdo has been in the courtroom every day of the trial.

JARETT LEVAN
BankAtlantic president and CEO/
BankAtlantic Bancorp director



Son of company Chairman Alan Levan, he got his start at the bank in the mailroom at age 11. He said on the witness stand that he always wanted to work with his father, but calls him Alan in the workplace.

He said that the first and last time he took advantage of being the boss' son came at age 12, when they were giving out bagels at the bank.

"I said 'I am Alan's son, so I can have a second bagel,'" he said. "Alan said not to ever do that again."

Levan said he worked extra hard to prove he wasn't utilizing his advantages. He graduated with a law degree from the University of Miami in 1998 and was hired by the bank soon after. He took seats on its executive management council and board of directors within a year. The bank's longtime top commercial lending executive, Marcia Snyder, whom he has known since he was 12, reported to him in 2005 after he became president. In 2008, a year after becoming CEO, it was his decision to terminate her.

latory concern since asset quality in the near term is uncertain as the housing market remains weak and development in many home projects may be slow," the OTS report stated.

Amy Engelberg, the head of the bank's special asset workout group, sent e-mails to her co-workers at that time, disparaging the quality of many of those criticized loans.

A May 2007 e-mail identified seven "stinker loans" in the land portfolio. An e-mail in early July 2007 listed land development loans she called "ticking time bombs" and "explosive piles of crap we are juggling by the handful."

The land development loans in the two portfolios had balances totaling \$212 million at the time.

The e-mails were to Perry Alexander, who was then the head of the bank's commercial lending in Miami-Dade County and wrote some critical e-mails himself. Plaintiffs' attorney Andrew Zivitz asked BankAtlantic President and CEO Jarrett Levan why the company did not disclose that higher level of criticized assets in its SEC filing and news release.

"Normally, it wasn't our practice to disclose criticized land loans, only the nonaccruing," Levan, who is a defendant in the lawsuit, said.

Zivitz showed Levan a copy of the bank's loan watch list from June 2007, with the executive's name on the distribution list, but Levan said he did not remember receiving it. Levan said he later asked the credit department not

to send the report to him so he could focus on other areas of the bank, such as deposit gathering and branch management. His father, BankAtlantic Bancorp Chairman and CEO Alan Levan, handles the credit side, he said.

BankAtlantic Bancorp attorney Eugene Stearns noted that the company's second quarter 2007 SEC filing disclosed that it had \$537 million in commercial real estate acquisition and development loans, including \$135 million in loans for land with purchase options to homebuilders. It stated that a prolonged decline in the residential real estate market and collateral values would likely result in higher credit losses in that portfolio.

Lewis Cohen, a partner with the Miami law firm of Cohen & Bobotas, said SEC rules require banks to not just report accurate information, but to provide further information to ensure that their reports aren't inaccurate or misleading. Not including such material information could potentially be considered a form of fraud, but the rule doesn't specifically mention special mention or substandard loans.

"The process and standards that different companies use to classify their assets aren't uniform and allow for a certain degree of subjectivity in the reporting process," Cohen said, adding many banks don't report such loans and restructure them hoping they will stay current.

Thomas said such optimism was common during the second quarter of 2007, the last good quarter for banking before the recession. He said the economic landscape changed for the worse in the third quarter - a sentiment echoed by BankAtlantic during the trial as the reason for its loss in that period.

The company announced its levels of substandard and special mention land development loans for the first time in Q3 of 2007, when its news release was followed by a 40 percent decline in share price and the current lawsuit.

BankAtlantic Bancorp Vice Chairman John E. Abdo said at the trial that the bank did not anticipate a big loss following the second quarter of 2007 because it had valuable land as collateral for those criticized loans. He said everything stated in the bank's financial filings and investor conference calls was accurate, and the bank strived to be open with its investors.

"There was never a culture to hide or not disclose or not be forthcoming," said Abdo, a defendant in the lawsuit. "You can't disclose everything because then people wouldn't know where to stop reading. You have to disclose what is material."

bbandell@bizjournals.com | (954) 949-7515

BankAtlantic chairman explains loan decisions in deposition

BankAtlantic Chairman and CEO Alan Levan was asked about land development loans in a videotaped deposition shown to the jury on Oct. 26.

In the first quarter of 2007, the bank identified two nonaccrual land development loans for \$19.6 million and \$12.5 million. They were graded "substandard" on the bank's internal loan watch list. The same list also called the \$20 million Nature Walk land development in Destin "substandard," but that wasn't disclosed in public filings, as the loan was considered current.

Plaintiffs' attorney Mark Arisohn asked Le-

van during the taped deposition why the Nature Walk loan was not disclosed. Levan responded: "We don't report our grading system to the market. If we started reporting this as a grade 11 or grade 9, no one would know what it means. Banks don't have uniform grading systems."

Levan insisted the bank adequately disclosed what it knew at the time, including concerns about the Florida real estate market.

Arisohn asked Levan to agree that the problems with the Nature Walk loan were not disclosed in the first quarter filing. Levan's response seemed to indicate the matter was

private so there would be no reason for him to disclose it. Then the deposition moved on to the second quarter of 2007, when Levan made several statements in an investor conference call that federal Judge Ursula Ungaro ruled false before the trial began.

Levan told analysts the bank was only concerned with the builder land bank portfolio, and the rest of its loan portfolio was fine: "The portfolio has always performed extremely well, continues to perform extremely well."

In the deposition, Levan said those statements were true when taken in the context of the entire conference call and public filing

from that period.

"You can't just take out a few words and hold me to a few words," he said. "It's an entire conversation."

Arisohn asked Levan why he focused on builder land bank loans when other land development loans were also rated "substandard" by the bank in the second quarter.

Levan said he felt builder land bank loans carried greater risk because they had a greater chance of loss due to lower borrower equity in the project.

BRIAN BANDELL