

"Too Big To Fail?" Thank the Lobbyists: The Role of the Banking Lobby on Consumer Protection



By Charles R. Gallagher III

The banking and insurance industries are clearly two of the most powerful industries in the United States. Both the banking and insurance industries employ lobbyists to influence the rule making process and the regulatory landscape. Tracing the origins of consumer protection laws with both insurance and banking will show what the all powerful banking lobby was able to do, what the insurance lobby failed at, which was to limit the reach of consumer protection laws.

While the root cause of the financial meltdown can be linked to the prevalence of unchecked mortgage backed securities and credit default swap insurance, how was this able to fester to such a large problem without drawing the ire of any of the government financial regulators? The answer is simple--flawless lobbying.

In "Too Big To Fail", Andrew Ross Sorkin chronicled just how quickly the U.S. economy plummeted from August 2008 to October 2008. The book highlighted the failure of Lehman Brothers due to its portfolio of toxic sub-prime loans, loans that were rated as good debt. The United States Senate issued the Levin-Coburn Report, which found the cause was "the result of high risk, complex financial products; undisclosed conflicts of interest; and the failure of regulators, the credit rating agencies, and the market itself to rein in the excesses of Wall Street."

The banking lobby was so effective in preaching the virtues of self regulation, free market forces, and limiting government oversight that lending and financial services were able to escape the watch of both rule

making and government regulators. And it was that cover of darkness that provided Angelo Mozillo, Bernie Madoff, and countless others, windows of opportunity to act.



Taking a parallel look at insurance and banking consumer protection regulations in Florida, it is obvious who had the more capable lobby. In the event that your insurance company denies a claim in bad faith, wrongfully fails to renew your policy or engages in other misconduct, you have the benefit of Fla. Stat. 624.155 for bad faith insurance claims practices. Aggrieved citizens can even obtain punitive damages and attorneys fees for bad faith insurance conduct.

Now, consider your rights when a bank gives you false information, makes mistakes on your loan, or pulls a bait and switch. Contrary to your rights for insurance misconduct, you can't sue

your bank and the rights you do have are greatly limited under law. The banking lobby enjoyed much success that resulted in favorable legislation in Florida. For example, take Fla. Stat. 687.0304, also known as the Bank Statute of Frauds, which prohibits consumers from suing their bank for misconduct in connection with extending credit and the closing of a loan. Additionally, banks are excepted from the reach of Florida's Deceptive and Unfair Trade Practices Act, a statute which traditionally prohibits fraud by businesses.

Since attorneys can only advocate under existing legal precedent, and courts can only enforce laws that exist, perhaps it is time to consider and scrutinize the effect of the banking lobby on consumer protection laws. Consider for a moment what could have been if regulations had prohibited the improvident placement of risky loans with uniform mortgage underwriting laws or limited the securitization of risky mortgage debt.

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