



2007

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Recommended Citation

Thomas D. Hills, *The Rise of Southern Banking and the Disparities among the States following the Southeastern Regional Banking Compact*, 11 N.C. BANKING INST. 57 (2007).

Available at: <http://scholarship.law.unc.edu/ncki/vol11/iss1/4>

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THE RISE OF SOUTHERN BANKING AND THE DISPARITIES AMONG THE STATES FOLLOWING THE SOUTHEASTERN REGIONAL BANKING COMPACT¹

THOMAS D. HILLS²

I. INTRODUCTION

In celebration of the vote by the shareholders of C&S/Sovran Corp. in favor of a merger of their bank holding company (which controlled the largest banks in Georgia and Virginia) with North Carolina National Bank Corp. (NCNB) of North Carolina, Hugh McColl, Jr., NCNB's CEO, aptly described the significance of the amalgamation of these important southern banking institutions into a new organization to be known as NationsBank: "Southern banks were last powerful during the pre-Civil War days when they supported the cotton trade But NationsBank sends the signal that the region is back in high cotton."³

This important merger of southern banking companies was enabled by mid-1980s changes to the banking laws of the states in the South. Such changes allowed interstate mergers of banking companies but restricted the mergers to banking companies domiciled in the southern states and required the preponderance of those banking companies' deposits to be garnered from

1. This article is a condensed version of the author's original work. The complete version is available on the North Carolina Banking Institute's web site at <http://www.unc.edu/ncbank/thebalancesheet.htm>.

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3. HOWARD E. COVINGTON, JR. & MARION A. ELLIS, *THE STORY OF NATIONSBANK – CHANGING THE FACE OF AMERICAN BANKING* 307 (1993).

southern states. This collaboration in banking regulation has come to be known as the Southeastern Regional Banking Compact (the Compact). The main premise of the Compact was that southern banking companies needed the opportunity to combine with other banking companies in the South, which was considered to be an area of the country with shared common cultural and societal attributes. Southern bankers and some governmental leaders anticipated that some of the larger southern banking companies would be able to take advantage of the opportunity for intraregional mergers and gain financial strength and size sufficient for them to compete more effectively in the national banking arena against the stronger money center banks that had dominated the United States banking industry for most of the country's history.

The Compact was essentially abrogated a decade later by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,⁴ new national banking legislation that overrode and preempted the various states' interstate banking laws and for the first time allowed for full interstate banking in the United States, effective July 1, 1995. However, by that time, so many intraregional banking company mergers had occurred in the South that several leading southern banking companies were well on their way to attaining sufficient financial scope and size that they became very effective competitors of the large money center banks during the next decade of interstate banking combinations.

While the Compact was arguably quite successful in providing growth opportunities and enhanced economic power for the banking industry in the South as a whole, there have been disparate benefits among the banking industries of the individual southern states. Part II of this article discusses the origins of the Compact. Part III examines how the Compact was implemented by the banking industry in the South and how North Carolina achieved disproportionate benefits from its implementation. Part IV discusses recent consolidation trends and future challenges for the banking industry in the South.

4. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (codified in scattered sections of 12 U.S.C. (2000)).

II. THE CASE FOR NEEDED CHANGE

From the time of the Civil War until the later years of the twentieth century, the economic health of the South, as a region, lagged behind the economic health of the other regions of the United States. In 1938, President Franklin D. Roosevelt proclaimed the South as “the Nation’s No. 1 economic problem.”⁵ By 1960 conditions were improving, with manufacturing jobs exceeding agricultural employment; but per capita income in the South was still only 76% of the income level of the rest of the nation.⁶

In addition to being a region of low per capita income, the South was capital-poor. In a relatively depressed economic region of the country, home-based southern financial institutions were not growing to the same extent that larger commercial and investment banks and insurance companies were developing in New York and in the other larger Eastern and Midwestern financial centers. John Medlin, former CEO of Wachovia, describes this situation: “We used to be a capital-short region. When I first started, most of the big business in the South was done by overlaying the money center banks. We didn’t have a legal limit that could be of much help to them.”⁷ Hugh McColl, Jr. (Hugh McColl), former CEO of NCNB, also comments on the capital limitations of southern banks in the early years of his career: “We had been poor. We were a defeated nation, and all the big New York banks dominated the region. All our triple-A customers banked with J.P. Morgan, Hanover, [and] Chemical [banks in New York].”⁸

The uplifting of the economy of the South was of special interest to Regionalists⁹ who stressed the value of enhanced

5. NUMAN V. BARTLEY, *THE NEW SOUTH, 1945 – 1980*, at 1 (Wendell Holmes Stephenson & E. Merton Coulter eds., 1995).

6. *Id.* at 260.

7. Interview with John G. Medlin, former CEO, Wachovia, in Winston-Salem, N.C. (Nov. 10, 2005).

8. Interview with Hugh L. McColl, Jr., former CEO, NCNB, in Charlotte, N.C. (Feb. 27, 2006).

9. As early as the interwar years, a group of sociologists, working on an interdisciplinary basis with historians, economists and others at the University of

economic development in the South. Historian John Shelton Reed captures the spirit of the Regionalist approach to economic development in an essay in which he quotes the following speech made in 1960 by Rupert Vance, a University of North Carolina sociologist:

In economic development, industrialization and all that goes with it, regional forces and leaders have pushed toward integration with the national economy. As they succeed, regional differences blur, but regional identity remains. Regionalism, like individualism, claims a right to maintain identity - to defend and to cherish certain autonomy in cultural values, a style of life, certain attitudes regarded as Southern.¹⁰

The Regionalist school of thought regarding the economic development needs of the South provides a conceptual framework for the design and implementation of the Compact. The Compact was designed to allow southern banks to merge on a regional interstate basis in order for some of those combined financial institutions to take a leadership role in financing the economy of the South and the Nation, while still maintaining a southern regional identity as described by Rupert Vance.

World War II provided an excellent opportunity for the South to implement the Regionalist concept of more closely integrating its economy with that of the rest of the nation. During the war years the federal government located a disproportionately high number of military training and defense installations in the South. This action had the salubrious effect on the South of creating many new higher-paying jobs for southerners, pumping

North Carolina (UNC), began promoting the theory of "Regionalism," which cultural historian Daniel Joseph Singal has defined as follows: "Under regionalism, in other words, the South would become organically interconnected with the rest of the country to form a coherent 'integrated whole while still retaining part of its identity.'" DANIEL JOSEPH SINGAL, *THE WAR WITHIN - FROM VICTORIAN TO MODERNIST THOUGHT IN THE SOUTH, 1919-1945*, at 149 (1982).

10. JOHN SHELTON REED, *REGIONALISM AND THE SOUTH - SELECTED PAPERS OF RUPERT VANCE* 217 (John Shelton Reed & Daniel Joseph Singal eds., 1982).

new streams of federal spending into the economy and favorably exposing other Americans to life in the South.¹¹

As job opportunities and personal incomes rose in the South in the post-war years, the value of financial assets and the amount of capital in the South continued to lag behind the rest of the nation in the 1970s and early 1980s. Even though the value of bank loans and deposits continued to increase in the South, the region was still a “net importer of capital.”¹² Financial, real estate and insurance services in 1987 were only 16.4% of gross state product in the Southeastern region (which was the lowest regional percentage of any region in the nation) versus a national average of 19.3%.¹³

The *American Banker* rankings¹⁴ generally substantiate the disparities in banking assets and deposits in the South versus the rest of the nation over the last half of the twentieth century. In 1950, six of the top ten banks in the United States were based in New York City, and no bank from the South was listed in the top fifty.¹⁵ In 1960, only Wachovia was listed among the top fifty banks

11. Urban historian David Goldfield describes the benefits of World War II spending in the cities of the South: “It was the federal assistance to southern urban industry that achieved the pump-priming effect on the urban economy.” DAVID R. GOLDFIELD, *COTTON FIELDS AND SKYSCRAPERS – SOUTHERN CITY AND REGION, 1607–1980*, at 184 (1982). Historian James Cobb observed in his analysis of the post-war South that: “World War II resurrected the South’s economy and encouraged its leaders to take whatever action was necessary to keep their states from slipping back In the postwar period, economic progress became a regional obsession as every southern state expanded and intensified [its] industrial development activities.” JAMES C. COBB, *THE SELLING OF THE SOUTH - THE SOUTHERN INDUSTRIAL CRUSADE FOR INDUSTRIAL DEVELOPMENT, 1936–1980*, at 1 (1982).

12. SOUTHERN GROWTH POLICIES BOARD, *1980 COMMISSION ON THE FUTURE OF THE SOUTH* 29 (Pat Watters ed., 1980). According to an early 1980s economic study of bank loans and deposits, in 1981 per capita bank deposits in the Southeast region (excluding Florida, which was 98% of the national average) were only 65% of the national average. On the same basis of comparison, per capita bank loans for the Southeastern states (ex. Florida) were 57% of the national average. THOMAS G. GILES, *COMMERCIAL BANKING AND INTERSTATE EXPANSION: ISSUES, PROSPECTS, AND STRATEGIES* 116 (Larry A. Frieder et al eds., 1987).

13. MARGARET M. POLSKI, *THE INVISIBLE HAND OF U.S. COMMERCIAL BANKING REFORM – PRIVATE AND PUBLIC GUARANTEES* 99 (2003).

14. *American Banker*, a financial services industry daily newspaper, has published at least on an annual basis a listing of the largest banking organizations in the country, as ranked by assets or deposits.

15. The then largest bank in the South, C&S National Bank in Atlanta, had deposits of \$325 million whereas the nation’s then largest bank, Bank of America, NT&SA in California, had deposits of \$6.2 billion, followed by ten New York City,

(at thirty-nine) and only six southern banks¹⁶ were in the top 100. In 1970, three banks from the South – Wachovia, C&S National Bank (C&S), and NCNB – were in the top fifty banks and twelve southern banks¹⁷ were in the top 100. By 1985, as regional interstate banking in the South began, the order of the top ten had not much shifted, but two southern banks – NCNB and Southeast Bank of Miami – were in the top twenty-five and nineteen southern banks¹⁸ were in the top 100.

To some extent the southern banks and bank holding companies had already entered into a period of fast growth, as most states by this point in time now allowed some degree of intrastate banking company consolidation. However, the scope of the large New York and California bank holding companies still eclipsed the holding companies from the South.¹⁹ Hugh McColl describes this issue from the standpoint of a leading southern banker: “I remember one year that Bank of America’s retained earnings grew more than my bank’s assets were. It shook me up. This was in the early 1960s, and I thought, if we don’t do something, we are never going to be anything.”²⁰

Also, in 1983, the nation’s eight largest money center banks alone had accumulated more than 25% of the total banking assets in the United States, signaling that the scope and scale of influence of these money center financial service companies far exceeded the accumulated financial resources and influence of the southern

Chicago and California banks whose deposits ranged between \$1.5 billion and \$5 billion. “The One Hundred Largest Banks in the United States, Listed in Order of Amount of Deposits as of December 31, 1950 and December 31, 1960, AM. BANKER, 1961. Archives of AM. BANKER, Source Media, Inc., New York City, New York.

16. These included two banks from North Carolina, two from Georgia, and one each from Louisiana and Tennessee. *Id.*

17. These included four banks from North Carolina, three from Georgia, two each from Virginia and Tennessee and one from Florida. *Id.*

18. These included three banks from North Carolina, three from Georgia, and now four from Virginia, five from Florida, two from Tennessee and one each from Alabama and South Carolina. In 1985, the South also had twenty-one holding companies in the top 100. *Id.*

19. As of June 30, 1985, Citicorp, the largest bank holding company in the country, with assets of almost \$160 billion, was nearly ten times the size of the largest in the South, NCNB, with assets of only \$16.9 billion.

20. Interview with Hugh L. McColl, Jr., *supra* note 8.

bank holding companies.²¹ Two Atlanta banking attorneys who participated in drafting the interstate banking legislation for Georgia commented in 1985 about a commonly shared fear of takeover by money center banks: “No southeastern financial institution could at present resist the economic power of money-center banks. A very real fear exists that nationwide interstate banking would spell the end of major regional institutions.”²² It seems that the cultural desire to preserve some southern banks was an important driver toward regulatory changes in the South.

Coincidentally, with the cultural urge to protect and preserve southern banks, there were a number of very real economic and technological changes that were occurring in the industry and driving the desire on the part of bank leaders for regulatory change so that their banking companies would be able to sustain their desired growth rates in market share and profitability. The Depository Institutions Deregulation and Monetary Control Act of 1980²³ began a phase-out of previously prescribed interest rate ceilings. The net effect to banks of the deregulation of interest rates was an increase in the cost of deposit funds and pressure on sustaining growth in profitability. Also, non-bank competitors, like Merrill Lynch and other brokerage firms, had created money market mutual fund accounts as an effective competitor to bank savings accounts, and bank deposits were being drained from the banking system to the extent of several billion dollars.²⁴ In addition, banks began to experience more direct competition from less-regulated credit unions and savings and loan associations (S&Ls).²⁵

21. ALLEN C. EWING & CO., *FLORIDA FINANCIAL INSTITUTIONS – BANKS AND BANK HOLDING COMPANIES* 16 (1983).

22. Daniel B. Hodgson & John L. Douglas, *Georgia Legislation: Interstate Banking*, 20 GA. ST. B. J. 186 (1984).

23. Depository Institutions Deregulation and Monetary Control Act of 1980. Pub. L. No. 96-221, 94 Stat. 132 (codified at 12 U.S.C. § 1735f-7a).

24. BERNARD SHULL & GERALD A. HANWECK, *BANK MERGERS IN A DEREGULATED ENVIRONMENT – PROMISE AND PERIL* 92-93 (2001).

25. See Ga. Bankers Ass’n, *History and Impact of Branching Restrictions* 2 (1984) (on file with the Ga. Bankers Ass’n, Atlanta, Ga.). In Georgia and other states with branching limitations, S&Ls were operating under federal charters that permitted “unlimited statewide branching,” providing them with what bankers described as “an unfair competitive advantage.” *Id.*

In the 1970s, technological advances like the ATM and information technology systems began to change the manner in which customers interacted with their banks. ATM networks allowed bank customers in one state to be served in another state or even a foreign country. Economists Jith Jayratne and Philip E. Strahan suggest that these new technologies in deposit taking and lending encouraged the elimination of geographic boundaries in banking.²⁶ Further, they have argued that geographic and product restrictions on banks and other financial institutions may have actually increased the risk of declining profitability or even bank failure in an era of economic downturn.²⁷

Arguably, the two-tiered structure of federal and state regulation of banking has resulted in slower regulatory response to economic and technological changes in the industry.²⁸ Although the number of banks in the United States in 2005 was approximately one-half of the number of banks that operated in the country when interstate banking deregulation began, and one-fourth of the number of banks that operated in the United States in the early 1920s, a large number of banks still existed. The number of commercial banks in the United States grew and then decreased over the course of the twentieth century, as bank expansion and consolidation occurred.²⁹ The series of interstate bank mergers that resulted from liberalization of interstate banking laws accounts for the preponderance of the recent reduction in the number of banks in the United States.

26. Jith Jayratne & Philip Strahan, *The Benefits of Branching Deregulation*, 4 ECON. POL'Y REV. 16 (1997).

27. *See id.* According to Jayratne & Strahan, “[p]revious research has suggested that geographic restrictions destabilized the banking system by creating small, poorly diversified banks that were vulnerable to bank runs and portfolio shocks.” *Id.* at 13.

28. Economist Margaret Polski has observed that the United States banking system is highly fragmented and much more diffused than the banking systems of other advanced economies in the world. One result is that the United States has a much higher number of banking institutions than most nations have. POLSKI, *supra* note 13, at 49.

29. The number of commercial banks in the United States totaled 30,395 in 1920, 14,496 in 1984, and 7,549 in 2005. *See* SHULL & HANWECK, *supra* note 24, at 47, 124-25 (citing various authorities); FDIC, Summary of Deposits - National Totals by Charter Class, <http://www2.fdic.gov/sod/index.asp> (follow “Summary Tables” hyperlink; then follow “Charter Class” hyperlink; then run report for “June 30, 2005”) (last visited Jan. 30, 2007).

Massachusetts and Connecticut enacted the first regional interstate compact in 1982 and 1983.³⁰ In 1984, several banks, including Northeast Bancorp and Citicorp, sued the Federal Reserve to declare the compact to be unconstitutional on the basis of violations of the Commerce and Compact Clauses of the United States Constitution and denial of equal protection of law under the Constitution.³¹ In June 1985, the United States Supreme Court held in *Northeast Bancorp, Inc. v. Board of Governors of Federal Reserve* that the compact was permissible, thereby legitimizing this and other such regional banking compacts.³²

The 1985 Supreme Court decision was well received in the South where several southern states were finalizing a like-type regional banking compact. For more than a decade, banking and governmental leaders had been strategizing a Regionalist approach to enhance the economic development of the South. Intellectual leaders from several southern states organized the L.Q.C. Lamar Society, which, in turn, influenced the formation of the Southern Growth Policies Board. Terry Sanford, Governor of North Carolina from 1961 to 1965 and one of the most influential thought leaders in the formation of the Southern Growth Policies Board, describes his Regionalist philosophy: "A regional approach is desirable. No state can take the necessary steps alone. We are too interrelated and, in a sense, states are too competitive."³³ The vision of Sanford and other southern leaders came into being in 1971 when the Southern Growth Policies Board was organized by the governors of nine southern states as a non-partisan public policy think tank, appropriately based in Research Triangle Park of North Carolina.³⁴

30. The Massachusetts law allowed banks in Connecticut, Rhode Island, New Hampshire, Maine and Vermont to acquire banks in Massachusetts, as long as those states' laws provided reciprocal privileges for Massachusetts banks and bank holding companies.

31. *Northeast Bancorp, Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159 (1985).

32. *Id.*

33. TERRY SANFORD, *THE END OF MYTHS: THE SOUTH CAN LEAD THE NATION* 323-24 (H. Brandt Ayers & Thomas H. Naylor eds., 1972).

34. Southern Growth Policies Board Home Page, <http://www.southern.org/> (last visited Jan. 26, 2007).

In 1980, the Southern Growth Policies Board convened the Commission for the Future of the South (the Commission), a task force that was charged with developing a plan for improving the economic prospects of the region. Recognizing the trends toward nationwide interstate banking,³⁵ the Commission's recommendations laid the foundation for the Compact and the legislation that eventually was passed by the legislatures of most southern states between 1984 and 1985.³⁶ Representatives included twenty-two governmental,³⁷ educational, civic, business and banking leaders from thirteen southern states and Puerto Rico. Prominent among the bankers was Thomas Storrs, CEO of NCNB. Commission member Roy Barnes, who later became Governor of Georgia, comments on the very influential role of Storrs on the Commission's report:

Tom Storrs opened my eyes to a lot of things. He and Jim Hunt were big friends. Jim was governor of North Carolina when I was governor. Storrs started this dialog about the capital starvation of the South since the Civil War. He said the capital currency before the Civil War was cotton. After the Civil War, he said it was poverty He said if we were ever to come out of that, and to control our own destiny and not have it controlled by Northeastern bankers or Midwestern bankers, we had to create some system to allow the collective capital in the Southeast to be assimilated and to grow large

35. See SOUTHERN GROWTH POLICIES BOARD, *supra* note 12. The Commission concluded: "Changes in federal laws to allow interstate banking seem likely during the 1980s. The region's banks need to prepare for this eventuality to protect their competitive situation and at the same time assure a supply of money for expansion of trade and industry." *Id.* at 30.

36. *Id.* at 31. The report advocated: "As a precursor to interstate banking, the southern states should develop reciprocal banking agreements within the region as permitted under current federal law with an eye toward the eventual development of regional, multi-bank holding companies." The report also recommended that state banking laws be amended to permit statewide branching of commercial banks, savings institutions and credit unions. *Id.*

37. Among the governmental representatives were: former Florida governor, Leroy Collins; then U.S. Representative, Al Gore, Jr. of Tennessee; and then state senator and future Georgia governor, Roy Barnes.

enough to compete. It was really the genesis of the interstate banking compact Let me just tell you this. Storrs ran the deal. He took over.³⁸

Thomas Storrs and the executives of NCNB were early leaders in guiding regional interstate banking. For example, in 1979, NCNB introduced legislation in North Carolina to permit reciprocal regional interstate banking; however, the law died in legislative committee. A reciprocal banking law introduced in the Florida legislature in 1982³⁹ met a fate similar to the proposed North Carolina law, despite strong support of then Governor Bob Graham, who at the time also served as Chairman of the Southern Growth Policies Board.⁴⁰ However, NCNB had already gained entry into Florida through its 1972 acquisition of Orlando-based Trust Company of Florida.⁴¹ In 1982, NCNB acquired First National Bank of Lake City, Gulfstream Bank of Boca Raton, Exchange Bank and Trust Company of Tampa and the Downtown Bank of Miami, ramping up NCNB's scope of banking business in Florida to more than \$2 billion in banking assets. This strategy positioned NCNB as the early leader in interstate banking in the South prior to the passage of interstate banking laws in the region.

In anticipation of an eventual change in interstate banking laws, several banks in the South also entered into "stake-out" agreements. These agreements were "relationships between aggressive bank holding companies and their preferred acquisition targets or merger partners, combining limited investment in

38. Interview with Roy E. Barnes, former Ga. Senator & Governor, in Marietta, Ga. (Jan. 27, 2006).

39. See LARRY A. FRIEDER, COMMERCIAL BANKING AND INTERSTATE EXPANSION – ISSUES, PROSPECTS AND STRATEGIES 8 (Larry A. Frieder et al eds., 1987). The Florida legislation passed one chamber of the legislature but failed to pass the state Senate. *Id.*

40. See COVINGTON & ELLIS, *supra* note 3, at 194. Reportedly, Governor Graham advocated for a "Southern Common Market." *Id.*

41. See *id.* at 157. The timing of NCNB's purchase of this state chartered trust company was fortuitous because the Florida legislature closed the loophole that had allowed this out-of-state purchase of a Florida trust company only one week after the NCNB acquisition, but the new law allowed NCNB and two other out-of-state bank owners of Florida trust companies to retain their trust subsidiaries, that had been chartered as banks in that state and thereby maintain a banking foothold that later proved to be very valuable to them. *Id.*

common stock with substantial investment in preferred or non-voting common stock . . . to create the impression of an alliance that will be consummated once laws permit.”⁴² For example, in 1983, First Atlanta Corp. and Southeast Banking Corp. of Miami entered into an agreement to cross-invest in the common and preferred stock of each other’s companies.⁴³ Former First Atlanta executive Paul Hill comments on the Southeast Banking Corp. investment: “Norfolk Southern basically purchased 5% of Southeast Bancorp. Subsequently, First Atlanta acquired that from them. That was perfectly legal because under the Bank Holding Company Act, you could. As long as you owned less than 5%, it was all right.”⁴⁴

A key meeting occurred in late August of 1983 when representatives from the major banks and the state banking associations convened at the Atlanta Marriott Airport Hotel for a two-day conference on the subject of “Will Conventional Interstate Banking Occur in the Southeast in the 80s?”⁴⁵ Dr. Jesse White, Executive Director of the Southern Growth Policies Board, presented a report⁴⁶ that called for a regional interstate banking compact and removal of state bank branching restrictions, consistent with the recommendations of the Commission in 1980.⁴⁷ Attendees at the Atlanta Airport conference included most of the

42. Daniel B. Hodgson & John L. Douglas, *Interstate Banking Comes to Georgia*, THE ATLANTA LAWYER (Atlanta Bar Ass’n, Atlanta, Ga.), Summer, 1984, at 9.

43. ALLEN C. EWING & CO., *supra* note 21, at 86. Southeast Banking needed funding to purchase approximately one quarter of its holding company stock from two outside investor groups and arranged for Norfolk Southern Corp. and First Atlanta to make equity investments in Southeast in order to provide the needed funding. Southeast Banking also agreed to make a cross investment in First Atlanta stock at a later time. *Id.*

44. Telephone Interview with Paul D. Hill, former executive, First Atlanta, in Ashland, Or. (Feb. 10, 2006).

45. Letter of Invitation, Agenda, Registration List and various assigned reading materials for the conference (on file with the Ga. Bankers Ass’n, Atlanta, Ga.).

46. Report by Alton “Bud” Skinner, Southern Regional Banking Committee, to the Executive Committee of the Southern Growth Policies Board (Nov. 14, 1982) (on file with the Ga Banking Ass’n, Atlanta, Ga.).

47. This report was prepared in November of 1982 by a Southern Regional Banking Committee. This committee consisted of seventeen members from nine southern and border states, and the committee was dominated by nine bankers, including regional interstate banking advocates Tom Storrs of NCNB, Charlie Rice of Barnett Banks and Lee Sessions, Executive Vice President of C&S in Atlanta.

leaders of the largest banks in the South, including Ed Crutchfield of First Union in Charlotte. Crutchfield comments on the purpose of the conference:

We had a balkanized banking system in America forever. It prohibited anybody from being outside their own state We had an artificial constraint, or a constraint on, essentially, the free market. Now all of a sudden New York banks want to say “Let’s throw it all open immediately.” My notion is that we have been like fish who have been restricted to a little creek and only allowed to grow to a certain size. By happenstance, in this case of New York, they have grown to a great big size. If you want a healthy pond you don’t turn a six pound trout loose on fingerlings Really, the purpose of the meeting was “let’s go back and get our state legislatures to ratify this pact.”⁴⁸

After the Atlanta Airport conference, a team of lawyers⁴⁹ mostly representing the larger Georgia and North Carolina banks began a cooperative working arrangement to prepare banking legislation that would allow the proposed regional compact an opportunity to work. Once the attorneys representing banking organizations in Georgia, Florida, North Carolina and South Carolina had established a consistent legal framework that accommodated the needs of those four states, it was easier to get other states like Alabama, Tennessee and Virginia to agree to the same basic provisions of the legislation.⁵⁰ If they wanted “to play,”

48. Telephone Interview with Edward E. Crutchfield, former President and CEO, First Union, in N. Palm Beach, Fla. (Mar. 15, 2006).

49. Telephone Interview with John L Douglas, Attorney, Alston & Bird, LLP, in Atlanta, Ga. (Mar. 8, 2006). The attorney working group was composed of in-house counselors, Paul Polking of NCNB, Marion Cowell of First Union, and Ralph Strayhorn of Wachovia, Tom Caldwell, the General Counsel for the Florida Bankers Association, the South Carolina banking commissioner and private practice attorneys Dan Hodgson and John Douglas of Alston and Bird. *Id.*

50. *Id.*

their state legislatures essentially had to adopt the language of the Georgia model legislation.⁵¹

Georgia became the first state to pass legislation implementing the Compact in February of 1984.⁵² Georgia's influential banking commissioner, E.D. "Jack" Dunn, facilitated the passage of the legislation. On December 20, 1983, Commissioner Dunn wrote a letter to Representative Frank Pinkston⁵³ in which Dunn implicitly, and with amusing analogy, indicates his general support for the proposed new legislation:

[R]egional interstate banking would allow institutions to grow into a multi-state operation reasonably close to home in a cultural-economic-business climate with which they are familiar Not unlike the aspiring young boxer who wants to try for the championship some day, our state's institutions need to be given time to develop their skills and financial resources to stand a chance when the bell does ring to begin the big fight.⁵⁴

Lee Sessions, a former executive of C&S, worked closely with Jack Dunn and provided him with plentiful banking industry information in favor of regional interstate banking:

I did a lot of work with Dunn. We never would have had any of these laws without Jack One of the things I spent a lot of time on I took white paper after white paper to Jack, and Jack would use that unbeknownst to anybody else. He

51. *Id.*

52. Hodgson & Douglas, *supra* note 42, at 8. John Douglas was the primary draftsman of the Georgia legislation. *Id.*

53. Pinkston was serving as Chairman of the House Banks and Banking Committee and was himself a trust banker with C&S National Bank in Macon.

54. Letter from E.D. "Jack" Dunn, former Comm'r, Ga. Dept. of Banking & Finance, to Frank C. Pinkston, former Chairman, House Banks & Banking Comm., at 2 (Dec. 20, 1984) (on file with Ga. Dept. of Banking and Finance, Atlanta, Ga.).

would use that for all of his arguments and legal background.⁵⁵

Still, opinion in Georgia was divided. Many of the smaller independent bankers opposed the new legislation, and even Bob Guyton, CEO of Georgia's fourth largest bank, Bank South, opposed the bill as "premature."⁵⁶ Because of a split in opinion among its membership, the Georgia Bankers Association stayed in a neutral position regarding the proposed change in law. On the other hand, former Governor Roy Barnes explains how Governor George Busbee supported the 1984 legislation: "Really, the Southern Governors Association was pushing this. About that time, Busbee was chair of the National Governors Association, and it became a big thing for him. In Georgia, Busbee was the impetus in getting [the Compact] passed."⁵⁷

Representative Pinkston introduced the regional banking compact legislation in the second week of Georgia's 1984 legislative session. This bill amended the state's bank holding company law to authorize the Commissioner of Banking and Finance to approve acquisitions by a Georgia bank holding company of a Southern Region⁵⁸ bank holding company or by a Southern Region bank holding company of a Georgia bank holding company.⁵⁹ The new law was to be effective July 1, 1985, or by January 1, 1985, if any two contiguous states enacted reciprocal legislation by the earlier date.⁶⁰

55. Interview with Lee M. Sessions, Jr., former executive, C&S, in Atlanta, Ga. (Mar. 16, 2006).

56. Letter from Robert Guyton, former CEO, Bank South, to Joe Brannen, former Exec. Dir. Ga. Bankers Ass'n (Jan. 9, 1984) (on file with Ga. Bankers Ass'n, Atlanta, Ga.).

57. Interview with Roy E. Barnes, *supra* note 38.

58. The Southern Region included the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. West Virginia and the District of Columbia were not included.

59. Under the new law, a qualifying Southern Region banking company had to have its principal place of business in a Southern Region state and had to have total deposits in the Southern Region in excess of 80% of total deposits of holding company-owned banks.

60. In the months immediately following the passage of the Georgia legislation, Florida and South Carolina enacted essentially the same law. In May, the Florida legislature passed a similar regional compact bill with the strong support of Governor

Initially, North Carolina was not expected to be able to enact regional banking compact legislation until the 1985 session of its legislature. Surprisingly, NCNB objected to the new Georgia law, possibly because North Carolina was not expected to be able to offer reciprocity to Georgia banking companies until 1985.⁶¹ Through a change in processes, the North Carolina legislature passed a reciprocal interstate banking bill on July 7, 1984, allowing NCNB and the other North Carolina banks to participate early in the expected merger activity.⁶²

Even though the passage of the new regional compact legislation in four southern states triggered the earlier implementation date of January 1, 1985 for Georgia, the Northeast Bancorp lawsuit challenging the constitutionality of regional banking compacts slowed down the merger activity. While many merger discussions took place, most banking companies awaited a United States Supreme Court ruling on this issue.⁶³ Former Wachovia CEO John Medlin comments on the implementation delay caused by the lawsuit:

Well, you really couldn't do very much because there was a suit that challenged it We kind of laid back. Some conversations were going on, and we just sort of tea-talked until I guess that Monday in June 1985 we got word that the Supreme Court had approved the interstate compact.⁶⁴

Graham and the Florida Bankers Association. South Carolina passed the new banking law in the Spring 1984 to become effective in July 1986. In response, New York banks began to lobby the ABA and Congress for a five-year trigger provision for full national interstate banking, but their efforts failed at that time.

61. See Martha Brannigan, *Georgia Seen Passing Bill that May Spur Debut of Regional Banking in Southeast*, WALL ST. J., Feb. 13, 1984, at 8. "NCNB fears that by the time North Carolina passes a regional-banking law, the best opportunities to expand into the Georgia market will have been snapped up." *Id.*

62. When asked if there was any difficulty in passing the bill through the North Carolina legislature, Wachovia's John Medlin responded: "Once the governor got on board, the House, the Speaker of the House – I think there was never any controversy about it in North Carolina." Interview with John G. Medlin, *supra* note 7.

63. See Telephone Interview with Paul D. Hill, *supra* note 44 ("Talks went on. There was every expectation that it was going to get resolved. It was never a factor that slowed things down.")

64. Interview with John G. Medlin, *supra* note 7.

A few months after the Supreme Court's decision in *Northeast Bancorp*, Medlin was quoted more vividly in a banking newspaper article: "After that ruling, all of us felt like a kid in a candy store . . . You try to get as much as you can eat."⁶⁵ The feeding frenzy was about to begin.

III. THE IMPLEMENTATION OF INTERSTATE BANKING

The first significant southern banking combination announced after the Compact was adopted in the South was a merger of equals between Trust Company of Georgia and Sun Banks, Inc. of Orlando, Florida in June of 1985, creating SunTrust Banks, Inc.⁶⁶ John Spiegel, who was then Executive Vice President and Treasurer of Trust Company, explains how this merger developed: "They had a need for capital, and we had the capital. They did not care where the headquarters was or who was the CEO. Our management did, and so it came together pretty easily."⁶⁷ In December 1986, the new SunTrust announced an acquisition of Third National Bank of Nashville, Tennessee. SunTrust then made no other major interstate bank acquisitions for approximately ten years after consummating these two deals.

A second merger of equals arrangement between Wachovia and First Atlanta was announced in mid-June 1985, just one week after the Supreme Court ruling ratified regional banking compacts. Wachovia had to overtake a competing offer from NCNB to combine with First Atlanta. Securities analyst and writer John B. Moore, Jr. explains the appeal of First Atlanta to the two North Carolina banking companies: "Georgia may be more attractive because of the highly concentrated Atlanta Market It is the biggest and fastest growing market in the

65. John G. Medlin, *In Terms of Regional Banking in the Southeast, Florida's Loss Has Been North Carolina's Gain*, AM. BANKER, Oct. 9, 1985, at 3.

66. This merger, announced in November of 1984, was the only significant combination that was both announced and approved by banking regulatory authorities before the Supreme Court ruling in the *Northeast Bancorp* case.

67. Interview with John W. Spiegel, former CFO, SunTrust, in Atlanta, Ga. (Dec. 10, 2005).

Southeast.”⁶⁸ Former Wachovia CEO John Medlin comments on Atlanta’s strategic importance to Wachovia’s plans:

Atlanta was our number one – the biggest place in the Southeast We became aware sometime in the spring of 1985 that NCNB had the same interest in Atlanta that we did, and particularly in First Atlanta. Some conversations got going, and we just tea-talked until I guess that Monday in June 1985 we got word the Supreme Court had approved the interstate compact. I called Tom Williams and said “Do you want to talk?”⁶⁹

Apparently at the same time Wachovia and NCNB were eyeing First Atlanta, First Atlanta was studying combinations with those and other banks. Former First Atlanta executive Paul Hill indicates that his banking company was indeed carrying on discussions simultaneously with many other southern banks:

We talked with Atlantic Bancorp. We talked with Landmark. We talked with Southeast. We had extensive conversations with Sun Banks. I thought at one point we were very, very close to a deal with Sun Banks. At the time we frankly didn’t realize they were having parallel discussions with Trust Company We also looked at North Carolina, and we had extensive conversations with Wachovia, with NCNB and with First Union We also had some conversations going on with banks in South Carolina and Alabama.⁷⁰

In an interview with Merrill Lynch after the merger with Wachovia was announced, Tom Williams of First Atlanta comments on his approach to deciding which of these merger

68. John B. Moore, Jr., *Regional Banks & Southern Markets*, THE S. BANKER, Oct. 1985, at 24.

69. Interview with John G. Medlin, *supra* note 7.

70. Telephone Interview with Paul D. Hill, *supra* note 44.

opportunities to pursue: "We did our homework intensively We finally arrived at a pattern that said there are three major considerations First, market coverage; second, financial strength; and third, management compatibility of the resulting combination."⁷¹ From the comments made by several of the principals involved in the discussions between First Atlanta and NCNB, it appears that the third criterion of management compatibility, or lack thereof, was the stumbling block in the negotiations between Williams and Hugh McColl. Paul Hill reports how the discussions between the two banking companies ensued and developed:

Hugh McColl tried to initiate conversations directly with Tom Williams and then with Raymond [Riddle]. It was clear from the approach it would be a situation where NCNB management would essentially take over the whole situation. Those conversations did not go much of anyplace Then, he approached, through Salomon Brothers, Mack Robinson. Through Salomon, Hugh made a proposal to buy Mack's roughly 10% interest in First Atlanta. Mack was always . . . a very straight up guy. He let it be known to either Tom or Raymond that he had been approached, and he thought we ought to talk with Hugh Through Salomon we arranged a meeting with Hugh, and it was out at the Ritz Carlton in Buckhead. Hugh was still in his kind of Marine mentality, and he was marching strong. He could be pretty abrasive Hugh started talking about the power of the combination and why this made sense and how NCNB was going to run the thing. You could see he was getting more excited about it Then, he paused obviously expecting a reaction. He got kind

71. Thomas R. Williams, Chairman, Board of Dirs. of First Atlanta, Presentation to Merrill Lynch and Co. (June 26, 1985) (on file with Wachovia Bank, Winston-Salem, N.C.).

of a somewhat unenthusiastic reaction from Tom, and he began to get red in the face and started pounding the table.⁷²

McColl actually has a very similar account of the discussions and reveals a consistent and self-effacing understanding of why his approach was rebuffed by First Atlanta executives: "I admit I did a very poor job of it. I was very inexperienced I am quite certain I would have offended anyone because I was too abrasive and too pushy."⁷³

However, McColl did not just walk away from the First Atlanta opportunity. McColl went over the heads of the First Atlanta executive team and appealed directly to the First Atlanta board of directors.⁷⁴ According to the terms of the offer, First Atlanta shareholders were to receive approximately \$33.50 in NCNB common stock per share of First Atlanta stock, which was reported to be a premium of 33% over First Atlanta's most recently traded price per share. In the end, the First Atlanta board of directors accepted the slightly lower per share price of \$30 per share offered by Wachovia based on the belief that the share currency of Wachovia would be worth more over time than the share currency of NCNB.⁷⁵ McColl expresses his grave disappointment in First Atlanta's rejection of the NCNB bid: "I guess I had the worst day of my life on my fiftieth birthday, June

72. Telephone Interview with Paul D. Hill, *supra* note 44.

73. Interview with Hugh L. McColl, Jr., *supra* note 8.

74. Letter from Hugh L. McColl, Jr., former CEO, NCNB, to Board of Dirs., First Atlanta (June 16, 1985) (on file with Wachovia Corp., Charlotte, N.C.). McColl wrote: "Over the past several days, First Atlanta management has made itself unavailable Due to the above circumstances . . . we feel we must present our proposal to you and each of the other directors of First Atlanta." *Id.*

75. Minutes of Wachovia Corp., Specially Called Board Meeting (June 16, 1985) (on file with Wachovia Corp., Charlotte, N.C.), Harry Keefe of the investment advisory firm of Keefe, Bruyette and Woods, Inc. and Joe Flom of the Skadden Arps law firm were advisors to the First Atlanta board of directors. According to the board meeting minutes on June 16,

Mr. Keefe expressed the opinion to the Board that the Wachovia offer of 0.80 shares of Wachovia common stock for each share of the company was financially more attractive to the company's shareholders than the NCNB offer of .77 shares on NCNB common for each common share of the company.

Id.

18, 1985 I woke up to find that Tom Williams had run away and sold himself to Wachovia, and Atlantic had agreed to merge with First Union I was out in the cold, and our company was out in the cold.”⁷⁶ A business report the next year comments on First Atlanta’s rejection of NCNB’s bid: “[T]he moral of the story is that even in the new age of super-regional banks, style and ego can count for more than dollars and cents in making a merger.”⁷⁷

The combination of Wachovia and First Atlanta accomplished some of the anticipated objectives of the Compact. The merger combined the sixth-largest and the eighth-largest banking companies in the South to form the second-largest, behind SunTrust, but slightly ahead of NCNB and First Union.⁷⁸ First Wachovia could provide a broader range of credit services to its large corporate customers by being able to assemble up to \$100 million in line of credit capability, representing a step toward reducing the South’s dependency on northern capital for its banking clients.⁷⁹ Although the Wachovia-First Atlanta merger initially was billed as a merger of equals, it turned out to be more of a conventional buyout. In 1991, First Atlanta ceased operating under its own name and adopted the Wachovia name; the holding company name also reverted simply to Wachovia Corp.

First Union National Bank of Charlotte sprang into interstate action as soon as the United States Supreme Court ruled on the regional interstate banking compact issue in June of 1985 by acquiring Atlantic Bancorp (Atlantic), based in Jacksonville, Florida.⁸⁰ First Union CEO Ed Crutchfield describes how the merger developed:

76. Interview with Hugh L. McColl, Jr., *supra* note 8.

77. John Helyar, *Regional Trend: In the Merger Mania Of Interstate Banking, Style and Ego Are Key – NCNB’s Assertiveness Repels Some Targets, but Rivals in South Are Better Liked – Vicious Huns v. Good Guys*, WALL ST. J., Dec. 18, 1986, at 1.

78. *Banking Industry Study*, 9 Keefe Bruyette & Wood, Inc., July 2, 1985, at 1 (on file with Wachovia Corp., Winston-Salem, N.C.).

79. Williams, *supra* note 71, at 25.

80. Atlantic had been established in 1908 by the Lane family, who also had organized Citizens and Southern Bank in Savannah and the Atlantic Bank in Charleston, which eventually became C&S Bank of South Carolina. See ALLEN C. EWING & CO., *supra* note 21, at 40.

I remember in June of 1985 somebody walked in my office and handed me a thing off the ticker tape which said the Supreme Court has ruled that national banking is legal I had been flying all over everywhere trying to cultivate banks from Maryland to Florida and west to Tennessee, believing that it was going to happen. By Monday morning we had acquired the Atlantic Bank in Jacksonville, Florida The same morning Wachovia acquired First Atlanta.⁸¹

At this time, Hugh McColl of NCNB was also discussing merger possibilities with Atlantic. According to McColl:

we were in discussions with the Atlantic Bankshares, and had reached an agreement for a merger in Jacksonville, but my CFO at the time thought it was too expensive, and we turned away and went after First Atlanta First Union acquired the company I already had under contract but had not closed.⁸²

Ed Crutchfield amplifies the story:

I went down to talk to Billy Walker, who was the Chairman and CEO of Atlantic. We went to his beach cottage at Ponte Vedra I am sitting there talking to Billy, and we do a hand shake. This is one day after the pact is legal. I say "Billy, I am really excited. Do you have a phone here I can call back to my guys and get this merger process started?" He said "Sure, right here." He went into the bedroom and there were twin beds in it, and I sat down. Just before I picked up the phone, Billy looked at me with a crooked grin on his face and

81. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

82. Interview with Hugh L. McColl, Jr., *supra* note 8.

said, "Do you know who slept in that bed last night?" I said "No, I don't." He said, "Hugh McColl."⁸³

Although Crutchfield did not comment on why Billy Walker may have chosen First Union as a merger partner over NCNB, Crutchfield did make a salient observation in a late 1986 interview with a *Wall Street Journal* reporter when he stated: "When you've got five or six major buyers, all capable of paying about the same price, the decision is made on other grounds It's the ability to get along – personality and chemistry."⁸⁴

Unlike the SunTrust and First Wachovia mergers, First Union's acquisition of Atlantic was not packaged as a merger of equals, but more like a conventional buyout. Crutchfield describes First Union's merger philosophy of centralization: "It was a non-negotiable part of our approach. We are going to be on one system. If you can't handle that, then we can't handle you. The reason we did that was we could do it. Other big banks did not have the systems ability."⁸⁵

In 1986, First Union entered the South Carolina market with the purchase of Southern Bancorp of Greenville and the Georgia market with the acquisition of First Railroad and Banking Company.⁸⁶ First Union also acquired smaller community banks in the Georgia communities of Roswell, Mableton, and Clarkston, in what Crutchfield describes as "an in-fill strategy." When asked why First Union had not pursued a merger with any of the three larger Georgia banking companies, Crutchfield replied that the size of his bank at the time was not sufficiently large to acquire C&S, First Atlanta or Trust Company; however, First Union did come close to acquiring Bank South, Georgia's fourth largest bank. Crutchfield explains:

83. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

84. Helyar, *supra* note 77, at 1.

85. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

86. First Railroad was based in Augusta and had a strong statewide distribution system of banks in Atlanta, Savannah, Columbus, Macon, Dalton, Griffin, Newnan, Valdosta and a few smaller cities. When First Union acquired First Railroad, its principal subsidiary bank, Georgia Railroad Bank & Trust Company, was the oldest continually-operating bank in Georgia, dating back to 1833.

You had C&S, First Atlanta and Trust Company I just had a feeling that we would not be seen as a proper bride or groom. We might have been smaller than those three I actually thought these Atlanta banks . . . might even have been insulted. They probably would have said “Who is this guy from North Carolina who thinks he is going to run this thing?” I did not think I was eligible to marry one of the three Atlanta banks. I tried Bank South, and actually had Bank South and the Railroad Bank teed up on the same weekend. By teed up, I mean I could have done either one. I chose Georgia Railroad because I thought what First Atlanta doesn’t have, and what Trust Company doesn’t have, and even C&S doesn’t really have is a real statewide presence.⁸⁷

After absorbing the Georgia banks, First Union refocused on Florida and acquired additional banking companies in Pompano Beach, Naples, Fort Myers, Sarasota, Pensacola, Bradenton and Miami. In 1989, First Union acquired Florida National Bank,⁸⁸ which was headquartered in Jacksonville. This acquisition significantly expanded the Florida franchise of First Union. In 1991, First Union took advantage of the opportunity to purchase the large but ailing Southeast Bancorp⁸⁹ of Miami.

87. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

88. Florida National was a venerable banking company that had been organized in 1888 as Southern Savings & Trust Company, and in 1906, the bank converted to a national charter. In the late 1920s, Alfred I. Dupont acquired a sizeable interest in the bank. In the 1970s Florida National purchased Alliance Mortgage Company, and Jack Uible of Alliance became CEO and held ownership of 11% of the outstanding stock at the time First Union purchased the bank.

89. Essentially, this bank was being auctioned off by the FDIC because of problem loans in its portfolio. At various times in the 1970s and early 1980s Southeast had been the first or second largest bank holding company in Florida and for many years the dominant corporate financier in Florida through its lead bank, the former First National Bank of Miami, renamed Southeast. SunTrust and Barnett Banks were competitive bidders, and NCNB withdrew its bid to focus on its quest for C&S/Sovran instead.

Crutchfield describes this purchase as one of First Union's signal events in its acquisitions of southern banks:

This was a complete, bases loaded, out-of-the-park home run We had bought Atlantic and Florida National We stayed in touch with the FDIC with back and forth trips to Washington, on and on and on Anyway, we figured out if we put a bid in on Southeast, as part of the bid you could put back all of the loans and all of the real estate you did not want I think we paid \$185 million for Southeast, and we made that much in year two. We got our money back.⁹⁰

First Union was particularly active in 1993 when it acquired First American Metro Corp. of McLean, Virginia and Dominion Bankshares Corp., a Virginia holding company that owned the former First National Exchange Bank of Roanoke. In the early 1990s, First Union also purchased a number of S&Ls, including several still-solvent institutions like Georgia Federal Bank, South Carolina Federal, DF Southeastern in Decatur, Georgia, and Home Federal in Washington, D.C. First Union also took advantage of the opportunity to purchase deposit and mortgage loan customers through the acquisition of failing or failed thrifts. By the end of 1993, First Union had grown to become the ninth largest bank holding company in the United States, outranked in the South only by its in-state rival, NationsBank, formerly NCNB.⁹¹

On June 21, 1985, just a week following the acquisitions of First Atlanta by Wachovia and of Atlantic by First Union and only eleven days after the Supreme Court ruling in the *Northeast Bancorp* case, Georgia's largest banking company, C&S, received approval to acquire Florida's fifth largest bank organization,

90. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

91. *Ranking the Banks*, AM. BANKER, Aug. 18, 1994, at 30A.

Landmark Banking Corp. (Landmark).⁹² In explaining the rationale of acquiring Landmark, then C&S President John Poelker, states: "We were looking for a bank that was like our Georgia banking operation, in a high-growth area. Landmark had 23 separate banks serving 13 counties in Florida, and nine of those counties are among the ten fastest growing counties in the state."⁹³ However, former C&S executive Lee Sessions comments on the challenge of assimilating the Landmark organization: "Landmark was an institution, but it was not one institution. It was an amalgamation of mergers of other banks in Florida. They had not really put it together to run as a financial institution They did not have the computer systems hooked up It slowed us down tremendously."⁹⁴

In fact, it was more than a year until C&S made its next major acquisition, the C&S Bank of South Carolina, in 1987.⁹⁵ Although the Compact was not effective in South Carolina until 1986, the two C&S banks took still another year to consummate their merger. Former C&S executive Jim Lientz explains the delay:

The C&S Bank of South Carolina was one that we felt like it was logical for us to own We felt like we had to have it because it would have been inappropriate for anybody else to own it As we tried to acquire it, First Union came in with a competitive bid and ran the price up a lot higher than we should have had to pay It was

92. Just two years earlier Landmark had merged with Southwest Florida Banks to form a holding company with over \$4 billion in assets and 121 branches, mostly in South and West Florida.

93. Charles Craig, *C&S Landmark Acquisition*, THE S. BANKER, May 1985, at 26.

94. Interview with Lee M. Sessions, Jr., *supra* note 55.

95. The South Carolina C&S had been closely affiliated with the Georgia C&S since 1928, when Mills Lane Sr. arranged for Citizens and Southern Holding Co. to purchase Atlantic Savings Bank and Atlantic National Bank of Charleston, South Carolina, and Lane renamed the bank as C&S and installed his son Hugh as President. The two state banking companies were separated in 1940 when the stock of the South Carolina bank was distributed to the shareholders of Citizens and Southern Holding Co. JAN POGUE, THE C&S: GEORGIA'S CORNERSTONE BANK 27, 99 (1993).

something we had worked on for at least two years prior, and it just ended up costing more money.⁹⁶

In 1989, C&S became a takeover target itself when NCNB made an unsolicited bid to acquire it. Hugh McColl asked Craig Wall, an old friend who sat on the C&S board of directors, to approach C&S CEO Bennett Brown with a proposal that the two bankers should meet to discuss the possibility of a banking combination. Brown declined that invitation and other requests to meet with McColl. McColl then called Brown to let him know that his NCNB board of directors was discussing a possible takeover bid. Brown reportedly replied, “You do what you have to do. We’ll just hunker down.”⁹⁷

Brown’s reply represented the first step of the “Just Say No” defense that the C&S team deployed. On the evening of the confrontational phone call, a young NCNB banker delivered to Brown’s home a note from McColl offering NCNB a tax-free exchange of stock valued at \$2.4 billion, which represented a price bigger than any previous buyout in banking history.⁹⁸ The C&S board of directors declined McColl’s offer “as inadequate from a financial point of view” and responded with a public relations campaign to encourage its stockholders to “Just Say No.”⁹⁹ Jim Lientz describes the reaction of the C&S team to this bid:

Bennett’s first response was “we’re not interested” – not just No, but Hell No! He [McColl] offered Bennett a million dollar bonus if he would help him do this Bennett used this to his advantage internally Holding up the letter, he would say this: “He offered me a million dollars to sell y’all as slaves.” Our “Just Say No” was effective at that particular time.¹⁰⁰

96. Interview with James R. Lientz, former executive, C&S, in Atlanta, Ga. (Dec. 23, 2005).

97. COVINGTON & ELLIS, *supra* note 3, at 281.

98. *Id.*

99. POGUE, *supra* note 95, at 104.

100. Interview with James R. Lientz, *supra* note 96.

Banking Commissioner Jack Dunn played a critical role in preventing the buyout. Lee Sessions explains: "I came up with a deal He [Dunn] wrote up a paper, wrote up every single thing, and basically showed them that there was no way that thing could be approved Jack Dunn did not feel it was the thing that should be done."¹⁰¹

On April 10, 1989, the Georgia Department of Banking and Finance released Dunn's public statement on NCNB's proposal to acquire C&S. The statement asserted the authority of the Georgia Department of Banking and Finance as "the primary regulatory agency over a holding company whose corporate authority is granted under Georgia law,"¹⁰² highlighted the various laws that governed banking company acquisitions in Georgia,¹⁰³ and stated that "[a]pplications involving complex legal and technical issues have required twelve to eighteen months state/federal regulatory time. Delays may be experienced."¹⁰⁴ Whether it was Dunn's statement tacitly supporting C&S or the bank's public relations campaign, or both, that dissuaded McColl from pursuing his bid, McColl withdrew his offer for C&S on April 21, 1989.

In September of 1989, C&S, still the largest banking company in Georgia, announced it would merge with Sovran Financial Corp., the largest banking company in Virginia.¹⁰⁵ The merger never really gelled and the new management team and the combined boards of directors were not working cooperatively

101. Interview with Lee M. Sessions, Jr., *supra* note 55.

102. E. D. "Jack" Dunn, *NCNB Proposal to Acquire the Citizens and Southern Corporation*, April 10, 1989, at 1 (on file with Ga. Dep't of Banking and Finance, Atlanta, Ga.).

103. *Id.* These laws included safety and soundness tests, anti-competitive tests and the "Aggregate Deposit test" of the Compact that required qualifying Southern Region banks to have 80% of their deposits in Southern Region states. *Id.*

104. *Id.* at 3.

105. Sovran had recently been formed from a 1983 merger of Virginia National Bankshares, based in Norfolk, and First and Merchants Bank, based in Richmond. With the advent of regional interstate banking, by 1987 Sovran had acquired Commerce Union Bank, based in Nashville, Tennessee and a bank in Maryland, so that Sovran had in excess of \$20 billion in deposits when it merged with a like-sized C&S.

together.¹⁰⁶ Jim Lientz describes the split on the C&S/Sovran board of directors:

The Sovran directors stuck together and they basically ran the company. Bennett was CEO, and he thought his force of personality that had worked for the last ten years could rectify that. What he did not understand was that their board of directors would not and did not ever come out of their bloc vote mentality. Part of the deal was that Denny Bottorff would become the CEO Bennett tried to have him removed as his successor, and that is when the whole thing fell apart. That's why McColl came back.¹⁰⁷

In June 1991, the C&S/Sovran board of directors granted Brown authority to begin talks with McColl about a possible merger with NCNB. McColl had been following the developments at C&S/Sovran and began planning what they hoped would be a more effective approach to Brown this time. NCNB personnel chief Chuck Cooley had commissioned personality profiles of Brown, Bottorff and even McColl and role-played with McColl how he could be most effective in communicating with Brown.¹⁰⁸ Reportedly, McColl and Brown met in late June in Atlanta and then also conferred over the July 4th holiday weekend at Litchfield Beach in South Carolina. In mid-July, the boards of directors of both banking companies approved the new union which would operate under the new name of NationsBank. McColl describes his feelings about the merger: "Truthfully, I always dreamed about acquiring C&S and Sovran, not because I am some sort of genius, but because I wanted to build a bank that

106. See ROSS YOCKEY, *THE MAN WITH AMERICA'S MONEY* 426 (1999). For example, in a June 1991 board vote, the fifteen former Sovran directors voted in a bloc against CEO Bennett Brown in a vote of no confidence while the fourteen former C&S directors supported Brown. *Id.*

107. Interview with James R. Lientz, *supra* note 96.

108. See COVINGTON & ELLIS, *supra* note 3, at 294.

dominated the South; they were the biggest banks in their states.”¹⁰⁹

In 1988, NCNB reached outside of the Southeastern Region compact states in a bold move to acquire First RepublicBank Corp., the largest banking organization in Texas.¹¹⁰ In the early 1980s, McColl was more concerned about takeover attempts by large Texas banks than the threat of a takeover by New York City and other northern banks: “The people we were most afraid of actually were not the northerners, but rather the Texans. They were the richest banks.”¹¹¹ However, in the mid-1980s, the Texas economy experienced a dramatic downturn and even the largest Texas banks were in perilous financial condition and on the brink of insolvency. The FDIC was empowered to sell failing banks to banks headquartered in other states, which provided the legal arrangement by which a North Carolina banking company was able to acquire a bank in Texas.¹¹² McColl describes the importance of the Texas deal, which doubled the size of the NCNB organization:

I always looked at the Texas deal as the turning point of the company . . . it vaulted us to where we could do what we wanted to do, and we did do what we wanted to do after that. After that, we did think we were going to build the biggest bank in the country.¹¹³

The 1991 merger with C&S/Sovran to form NationsBank was the next big step in the growth of NCNB, positioning it as the

109. *Id.* at 280.

110. First Republic had been formed in December of 1986 through a merger of the two largest bank holding companies in Texas, InterFirst Corp. and RepublicBank Corp., both headquartered in Dallas. *See* YOCKEY, *supra* note 106, at 315.

111. Interview with Hugh L. McColl, Jr., *supra* note 8.

112. The 1982 Garn - St. Germain Act permitted out-of-state banking organizations to acquire certain large, troubled commercial banks and insured mutual savings banks while the Competitiveness Equality in Banking Act of 1987 authorized the FDIC to arrange interstate takeovers of institutions with assets of more than \$500 million. B. Frank King, Shelia L. Tschinkel, & David D. Whitehead, *Interstate Banking Development in the 1980's*, *ECON. REV.*, May/June 1989, at 34.

113. Interview with Hugh L. McColl, Jr., *supra* note 8.

fourth largest bank holding company in the United States.¹¹⁴ In 1992, NationsBank acquired MNC, Maryland's largest banking company.¹¹⁵ This acquisition positioned NationsBank as the third largest bank holding company in the country with the largest deposit market shares in Virginia, Maryland, Georgia and Texas and the second largest deposit market shares in South Carolina and Florida, but now only in third place in its home state of North Carolina, with First Union leading the way.¹¹⁶

The Compact had provided the regional banking companies a window of opportunity in which to grow and remain independent under its protective coverage for ten years until full interstate banking was finally permitted in 1995 by the passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Riegle-Neal Act).¹¹⁷ The Riegle-Neal Act permitted the responsible federal agencies to approve mergers between insured banks "without regard to whether such transaction is prohibited under the law of any state," but the mergers were limited by some anti-competitive provisions so that a combined banking company could not have more than 10% of insured deposits nationwide or more than 30% of deposits in the state in which the acquired bank was located.¹¹⁸ States could opt-out but were required to affirmatively do so before June 1, 1997.

McColl had lobbied hard for the Riegle-Neal Act. According to journalist Kenneth Cline, "[t]he Chairman and CEO of NationsBank Corp. put more effort into lobbying for the legislation than any other banker in the country."¹¹⁹ McColl shares the credit with a few other leading bankers of the era:

114. The merger creating NationsBank was also the most costly banking consolidation to occur at that point in time, with an exchange value of more than \$4 billion.

115. MNC was the parent of Maryland National Bank of Baltimore, which, much like C&S/Sovran, was mired in problem real estate loans in the Greater Washington market.

116. Rankings are based on the 1993 year end rankings by *American Banker*.

117. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (codified in scattered sections of 12 U.S.C. (2000)).

118. *Id.*

119. Kenneth Cline, *McColl Downplays Starring Role in Long Campaign for Banking*, AM. BANKER, Sept. 15, 1994, at 4.

We were trapped behind the Southeast wall That's when we began to lobby for interstate banking, and we had very few friends. The only people with us were Terry Murray, Fleet's Chairman, Bank of America was ostensibly with us, but they would kind of come and go. The other, of course was Citibank John McCoy [of Bank One in Ohio] would come and go on it also.¹²⁰

McColl also gives credit to North Carolina congressman Steve Neal for securing passage of the new law: "Neal really helped us He was intellectually interested in it and thought it was good for the South."¹²¹ Similarly, Ed Crutchfield of First Union/Wachovia gives credit to Steve Neal: "Long story short, yeah, you bet, Steve was leading our charge."¹²²

The passage of the Riegle-Neal Act marked a new phase in southeastern banking. Bank holding companies in the South could now acquire banking companies in other regions of the country, as NationsBank and First Union began to do.¹²³ Other southern "superregionals" like Wachovia and SunTrust continued to focus on expanding their franchises only in the South after the passage of the Riegle-Neal Act. In June of 1997, Wachovia announced back-to-back acquisitions of two Virginia banking companies, Jefferson Bankshares of Charlottesville and Central Fidelity Banks, Inc. of Richmond. Later that year, Wachovia announced the purchase of two smaller banks in Boca Raton and Hollywood, Florida, representing Wachovia's first entry into Florida. In 1998, SunTrust merged with Crestar Financial Corp. of Richmond, Virginia, the largest independent banking group remaining in Virginia. In 2001, after a failed attempt to merge with Wachovia, SunTrust announced its acquisition of Huntington Bancshares of Florida to further expand its Florida network of offices. SunTrust's most recent interstate acquisition was made in 2004

120. Interview with Hugh L. McColl, Jr., *supra* note 8.

121. *Id.*

122. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

123. However, for the first time southern banks were at risk of being purchased by banking companies headquartered in other regions of the country.

when it outbid an Ohio bank and acquired Memphis, Tennessee-based National Commerce Financial Corp., parent of National Bank of Commerce (NBC). This acquisition expanded SunTrust's footprint in Tennessee, but it also gained SunTrust entry into North and South Carolina, since NBC had merged with Durham, North Carolina-based CCB Financial Corp.¹²⁴ four years earlier in 2000. SunTrust's merger with NBC in 2004 positioned SunTrust as the nation's seventh largest banking company.

After the passage of the Riegle-Neal Act, a number of smaller southern banking companies grew into a superregional status through acquisitions of banks in their own and other southern states. In North Carolina, Branch Bank and Trust Company (BB&T), the state's fourth largest bank, combined with Winston-Salem-based Southern National Bank, the state's fifth largest bank, in a merger of equals in 1995.¹²⁵ In 1997, BB&T merged with United Carolina Bancshares, which had rolled up several North Carolina banks during the previous two decades. In the late 1990s, BB&T began an aggressive out-of-state expansion program with the purchase of medium-sized banks and S&Ls in Virginia, Maryland, District of Columbia, West Virginia, Georgia, Tennessee, South Carolina, Kentucky and Florida. By 2005, BB&T had grown to become the tenth largest bank holding company in the United States as measured by total deposits.

First Union was the first southeastern superregional banking company to acquire a bank outside of the South after the Riegle-Neal Act became effective. In June of 1995, First Union announced it was acquiring Fidelity Bancorp, the largest bank holding company in New Jersey.¹²⁶ The deal was the highest priced banking acquisition up to that point in time.¹²⁷ In 1997, First Union acquired Signet Banking Corp. of Richmond, Virginia (formerly

124. CCB was the parent of Central Carolina Bank and Trust Company which traced its origins to Durham Bank and Trust Company, chartered in 1915.

125. John Allison became the new CEO and the company retained the BB&T name.

126. Fidelity Bancorp also owned banks in Pennsylvania, New York, Connecticut and Delaware.

127. The deal was valued at \$5.4 billion. INGO WALTER, *MERGERS AND ACQUISITIONS IN BANKING AND FINANCE: WHAT WORKS, WHAT FAILS AND WHY* 241 (2004).

the Bank of Virginia), and CoreStates Financial Corp. of Philadelphia, Pennsylvania, which set a new record for the value of a banking company acquisition at just over \$17 billion.¹²⁸ Ed Crutchfield explains the rationale for these out-of-region mergers:

There was no consolidator in the Northeast. The New York banks were, but by that time they were getting a little on the defensive. Their currency wasn't worth anything, meaning their stock wasn't doing well. They had all these international bad loans. My feeling was this is a pretty good time to steal a march right up in their backyard and do it while they were on the defensive [W]e were beginning to get into the brokerage business in a big way and into the mutual fund business. The thinking was we will bring brokerage, mutual funds, insurance to these customers who had pretty good money It was a play on diversification.¹²⁹

In April of 2001, Wachovia announced that it had agreed to merge with First Union. While SunTrust intervened with a hostile takeover bid with a slightly higher per share premium, the Wachovia shareholders affirmed the consolidation with First Union. First Union Holding Corp. changed its name to Wachovia Corp. The value of the transaction was \$13 billion, less than the value of the CoreStates acquisition.¹³⁰ Ed Crutchfield, who had retired from First Union just before the merger, comments on the discussions with Wachovia: "Bud Baker [then CEO of Wachovia] and I started talking about it. By talking about it, we sniffed around each other. We did not overtly say, 'let's do a deal.' We kind of batted eyes at each other for a year or two before the deal was done."¹³¹ Former Wachovia CEO John Medlin explains why he thinks the merger with First Union was fitting:

128. *Id.* at 243.

129. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

130. WALTER, *supra* note 127, at 247.

131. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

Bud and others, probably Ken Thompson [the new CEO of First Union, succeeding Crutchfield] felt a certain comfort with an in-state knowledge and had known each other so long They [SunTrust] ran independent banks, and we were centralized. They were decentralized, and the model that worked for them worked well, and our model worked fine for us. It was always hard to see how you were going to put together those two models and not have a mess. It was - when you came to the Wachovia-First Union possibility - you had two operating models that were very similar, and I always think you have to see how the top management gets along in a merger.¹³²

While in-state rivals Wachovia and First Union were expanding, NationsBank also continued to acquire banks both inside and outside of the southeastern region. In 1996, NationsBank acquired Atlanta's Bank South in a bidding contest between the superregionals.¹³³ Former Bank South executive Lee Sessions comments on the bid process: "Wachovia, NationsBank and Trust Company - those were the three that were very aggressive They [NationsBank] came in with a price to blow everybody away."¹³⁴ That same year, NationsBank ventured outside of the South to purchase a large Midwestern bank holding company, Boatmen's Bancshares, Inc., the largest banking company in Missouri with offices in nine states and \$41 billion in assets.¹³⁵ Hugh McColl comments on how the Boatmen's merger helped NationsBank: "[I]t allowed us to bulk up capital. I always had a little litany that said, 'No Boatmen's, no Barnett; no Barnett,

132. Interview with John G. Medlin, *supra* note 7.

133. NationsBank had the highest offer, valued at \$1.6 billion. Saul Hansell, *NationsBank to Acquire Bank South*, N.Y. TIMES, Sept. 6, 1995, at D18.

134. Interview with Lee M. Sessions, Jr., *supra* note 55.

135. NationsBank bid against Banc One of Ohio, and two Minneapolis - based interstate holding companies, Norwest Corp. and First Bank System. NationsBank won this bid with a generous offer of \$9.46 billion and a high multiple of 2.7 times the book value of Boatmen's.

no Bank of America.' So, I needed their capital. I needed the amalgamated capital to get larger."¹³⁶ The next year, NationsBank returned to the South with an offer to acquire Barnett Banks, Inc., Florida's only surviving superregional banking company. NationsBank paid almost \$15 billion for Barnett in a competitive bid against Wachovia, First Union and SunTrust.¹³⁷ This combination gave McColl the bulk of capital that he needed to entertain the idea of a merger with Bank of America (B of A) in California, a bank that had consistently ranked in the top two or three banking companies in the country for the last half of the twentieth century.¹³⁸

McColl had considered the B of A and NationsBank combination for several years, since McColl and Dick Rosenberg, the former B of A CEO, had discussed a potential merger in 1995. Rosenberg made an offer to McColl:

You run the show. We'll work out all the details later, but you will be in charge. Imagine, Hugh, running the largest damn bank in the world Then, just to make our board of directors happy, when you retire in five years, one of our people will take over What do you say?¹³⁹

To McColl, the offer sounded like an attempted acquisition of NationsBank, and McColl declined. In February of 1998, the B of A board of directors looked at possible combinations, and Citicorp and NationsBank were the preferred choices of David Coulter, the new B of A CEO. In April, McColl and Coulter agreed to merge in a transaction valued at a record \$61.6 billion, currently still a record price for a United States banking

136. Interview with Hugh L. McColl, Jr., *supra* note 8.

137. Ironically, this combination joined together two banks whose former CEO's, Tom Storrs of NCNB and Guy Botts of Barnett, had visited together at a Reserve City Bankers Association meeting twenty years earlier and talked about the possibility of a later merger if the banking laws ever allowed.

138. Bank of America continued to grow in the early 1990s with its 1991 acquisition of Security Pacific Bank and its saving acquisition of the troubled Continental Bank of Chicago in 1994.

139. YOCKEY, *supra* note 106, at 10.

company.¹⁴⁰ The name of the merged company would be Bank of America, the headquarters location would be Charlotte and the board of directors would be split eleven to nine in favor of NationsBank, since the relative value of the two company's stocks was split fifty-five to forty-five in favor of NationsBank. McColl had clearly won another victory.¹⁴¹

McColl discusses his long-term interest in combining with B of A:

We talked about it from time to time, but we always thought it was too big. I will never forget in November of 1997, Greg Curl, who was head of strategic planning . . . we had been talking about buying Wells Fargo He came to see me, and he said, "Hugh, we can't buy Wells Fargo. They are too expensive, and we can't make it work. But, hey, we don't want to do that anyway." He said, "[w]e ought to buy either Citicorp or Bank of America." I said, "Are you crazy?" "No, no," he said, "let me show you." He got out charts that show what I call "the wonder of it all" – what happens if you put it all together It was a dead flat, perfect fit. I said, "We can't afford them." He said, "Yeah, we can. Let me show you." Remember, they had tried to buy me. They really courted us in 1995 and talked at length about putting the companies together. Well, I wasn't selling my company out.¹⁴²

McColl also comments on one of the social issues of the merger:

140. Economics professor Gary Dymksi described the combination as the largest bank merger in history, "with significant market share in twenty-four states, holding 8 percent of all United States bank deposits, whose span reaches from the Atlantic Ocean to the Pacific." GARY A DYMSKI, *THE BANK MERGER WAVE: THE ECONOMICAL CAUSES AND SOCIAL CONSEQUENCES OF FINANCIAL CONSOLIDATION* 48 (1999).

141. YOCKEY, *supra* note 106, at 559.

142. Interview with Hugh L. McColl, Jr., *supra* note 8.

We carried on negotiations with their CFO He came to talk to me on a Saturday morning. He said we can get a deal, but they don't want to be a southern company. I said, "Tough . . . ! That's what we are." I really did say that. We are a southern company, so we are not going anywhere with this conversation. They blinked, and the rest is history. The California press attacked us unbelievably They thought we were bumptious barbarians We aren't ashamed of being from the South.¹⁴³

The most recent large acquisition by the bank that is now called Bank of America occurred in 2004 after McColl had retired and Ken Lewis became CEO. That year, the company bought superregional FleetBoston, a powerhouse bank holding company in the New England market.¹⁴⁴ There was one potential drawback to the B of A- Fleet merger, however. The Riegle-Neal Act limited the United States deposits of any one institution to 10% of the insured deposits in United States depository institutions. The Fleet acquisition temporarily moved B of A into control of about 9.9% of the national deposit share, thereby limiting its future United States growth by additional acquisitions.¹⁴⁵

In the consolidation of banks in the southeastern United States between 1985 and 2005, there were clear winners and losers. The two big North Carolina banking companies, NCNB, now called Bank of America, and First Union, now called Wachovia, were the most successful southern bank holding companies in terms of the size and scope of their banking and other financial operations. BB&T, also based in North Carolina, is now

143. *Id.*

144. Beginning in the mid-1990s Fleet Financial rolled up several New England banking companies, including Shawmut National Corp., Bank of Boston, National Westminster Corp. of New York, and Summit Bancorp of Princeton, New Jersey. Ironically, it was the proposed combination of one of these rolled-up banks, Shawmut National Corp. and CBT Corp. in the 1980s, which had precipitated the Northeast Bancorp lawsuit that had resulted in the United States Supreme Court decision that legitimized regional banking compacts.

145. *Spotlight on Financial Services – Industry Trends*, AM. FIN. SERVICES ASS'N, Sept. 2004, <http://www.spotlightonfinance.org/2004/September/industry-story4.htm> (last visited Jan. 26, 2007).

positioned among the largest banking companies in the country. SunTrust, based in Georgia, is the other southern banking company that is ranked in the nation's top ten.

The question to be answered is what was it about the environment of North Carolina banking that inspired the relative success of that state's leading financial institutions over the leading financial institutions of most other southern states? Several commentators have suggested that North Carolina's freedom from bank branching and merger restrictions and the earlier development of statewide distribution systems may have been the primary determinant in the relative success of North Carolina banks. In writing about the North Carolina bank attorneys who helped to engineer their banks' expansion strategies, University of North Carolina banking law professor Lissa Broome discusses the opinions of NCNB chief counsel Paul Polking:

North Carolina had long permitted statewide branching, while many of the southeastern states did not. The result was that the North Carolina banks were larger than their competitors in Atlanta, Richmond, Miami and other southeastern financial centers In addition to their size advantage, Polking notes that North Carolina banks through their statewide acquisitions and branching operations knew how to build a branch banking network and how to integrate two different institutions.¹⁴⁶

Former Wachovia CEO John Medlin also comments on how it was relatively easy for North Carolina banks to take advantage of the growth opportunities offered by interstate banking by virtue of their experience in running widespread distribution systems: "You had to develop the expertise and management skill and culture for a statewide organization in banking to be successful. You had to have the infrastructure to

146. Lissa L. Broome, *The Legal Giants That Propelled North Carolina Banks To National Prominence*, 8 N.C. BANKING INST. 125 (2004).

manage something at a long distance . . . so when interstate banking came, it was nothing new for the major North Carolina banks.”¹⁴⁷

By comparison, Georgia did not have the legal or public policy backing for its banks to develop extensive statewide banking systems until much later than North Carolina did. It was not until 1996 that Georgia eventually passed legislation allowing relatively unrestricted statewide branching, and even then it had to be phased in over three years at the rate of only two new branches per year in counties where a bank was not already engaged in banking.¹⁴⁸ Representative Smith, who sponsored the successful legislation, discusses the importance of the passage of the bill: “The bill should have passed in 1985, and I think Georgia would have competed more with North Carolina, who did all the things right in the banking industry, and I think Georgia would have profited by the passage in 1985.”¹⁴⁹ Full statewide branching was thus delayed in Georgia until almost four years after Congress had authorized interstate banking on a nationwide basis. In a speech to the combined banking committees of the House and Senate of the Georgia General Assembly in 1995, former Georgia Banking Association President Jimmy Blanchard¹⁵⁰ comments: “Our laws kept our largest banks out of some of the growing markets throughout the state, and these banks were not able to develop to a size significant enough to survive a merger.”¹⁵¹

Another difference, not so much between the states as between the bankers in each state, seems to be the spirit and determination with which the North Carolina bankers pursued the vision of a nationwide banking network. Certainly, Hugh McColl and Ed Crutchfield reached higher than did most of their southern

147. Interview with John G. Medlin, *supra* note 7.

148. 1996 was the first time that the Georgia Bankers Association and the Commissioner of Banking had ever actively supported legislation in Georgia to remove restrictions on branch banking.

149. Interview with Larry Smith, Georgia House of Representatives, in Atlanta, Ga. (Nov. 8, 2005).

150. Blanchard was also the long-time CEO of Columbus Bank and Trust Company and its parent, Synovus Financial.

151. James Blanchard, Speech to the Banking and Finance Committees of the House and Senate of the State of Georgia (November 17, 1995) (transcript on file with the Ga. Banking Ass'n, Atlanta, Ga.).

banker competitors. Former SunTrust executive John Spiegel compares the competitiveness of the banking environments in North Carolina and Georgia: “You had McColl and you had Crutchfield, who were very competitive. In Georgia, we had a very collegial, gentlemanly-managed business.”¹⁵² Crutchfield also comments on his and McColl’s aggressiveness: “You are going to have to cut me a little slack here because it is going to sound bad. I don’t think they were as aggressive as I was or as Hugh McColl was.”¹⁵³

There are some discernable differences in the microeconomic segment of the commercial banking industry in North Carolina and Georgia. A comparison of total deposits in commercial banks, as a source of capital for investment, over the last several years reveals that North Carolina grew its in-market bank deposit base much faster than Georgia did.¹⁵⁴ In addition, the largest North Carolina banks have invested more capital in their urban office development than the largest Georgia banks have.¹⁵⁵ While Georgia actually had more jobs, on average, in the broadly defined employment sector of Finance and Insurance (of which commercial banking is a sub-sector), North Carolina’s finance and insurance jobs were growing at a faster pace.¹⁵⁶ Moreover, the

152. Interview with John W. Spiegel, former executive, SunTrust, in Atlanta, Ga. (Dec. 10, 2005).

153. Telephone Interview with Edward E. Crutchfield, *supra* note 48.

154. As of June 30, 1994, all FDIC insured commercial banks in North Carolina had total in-market deposits of \$60.2 billion in sixty-nine institutions with 2,281 offices while Georgia FDIC insured commercial banks had total in-market deposits of \$62.1 billion in 396 institutions with 1,940 offices. FDIC, Summary of Deposits – State Totals, <http://www2.fdic.gov/sod/index.asp> (follow “Summary Tables” hyperlink; then follow “State Totals” hyperlink; then run report for “June 30, 1994”) (last visited Jan. 30, 2007). By June 30, 2005, North Carolina banks had in-market deposits of \$178.9 billion in ninety-four banks with 2,396 offices, while Georgia had in-market deposits of only \$143.2 billion in 343 institutions with 2,481 offices. FDIC, Summary of Deposits – State Totals, <http://www2.fdic.gov/sod/index.asp> (follow “Summary Tables” hyperlink; then follow “State Totals” hyperlink; then run report for “June 30, 2005”) (last visited Jan. 30, 2007).

155. In Downtown Charlotte, both B of A and Wachovia have constructed major new office towers in the last decade, whereas neither SunTrust nor the Georgia headquarters of B of A or Wachovia have built new office towers.

156. The rate of growth over the last ten years was 24% for Georgia and 27% for North Carolina. U.S. Dep’t of Labor - Bureau of Labor Statistics, State and Area Employment, Hours, and Earnings, <http://www.bls.gov/data/> (last visited Jan. 30, 2007). In 2000, both states had approximately 6% of their workforces employed in

headquarters location of a banking company arguably provides higher paying jobs than does just a state headquarters of an out-of-state-based banking company. Hugh McColl describes the benefit of having a corporate headquarters location in a community:

The difference is having the CEO and all the top management, who make millions of dollars – I think it's a fair statement to say last year [2005] in Charlotte Bank of America paid over 300 people over a million dollars. Now that shows up in the United Way drive. It shows up in the Arts and Sciences drive. It shows up in the churches. It shows up in the Little League. It shows up at the YMCA. What really pays off is not just having the company's flag there but actually having all the money there.¹⁵⁷

Finally, while the per capita personal income in Georgia for the year 2004 was slightly higher than North Carolina, North Carolina experienced a higher rate of year-to-year growth in personal income.¹⁵⁸

However, the economies of both states and their banking industries remain strong. According to 2005 FDIC state profiles, small business growth was healthy in both states, with Georgia's number of small businesses increasing 5.5% while North Carolina's grew at a 3% annual rate. According to the same report, banks in both states were earning profits at a satisfactory rate, although Georgia had slightly greater Net Interest Margins

the even broader category of Finance, Insurance and Real Estate. Georgia had a slightly higher number of workers, but the overall population of Georgia was slightly larger at the last census date. *Id.*

157. Interview with Hugh L. McColl, Jr., *supra* note 8.

158. Georgia's Per Capita Personal Income (PCPI) in 2004 was \$29,737, an increase of 3.4% from 2003. U.S. Dep't of Commerce - Bureau of Economic Analysis, Regional Economic Accounts, State Bear Facts - Georgia, <http://bea.gov/bea/regional/bearfacts/stateaction.cfm?fips=13000&yearin=2004> (last visited Jan. 30, 2007). North Carolina's PCPI in 2004 was \$29,579, an increase of 5.9% from 2003. U.S. Dep't of Commerce - Bureau of Economic Analysis, Regional Economic Accounts, State Bear Facts - North Carolina, <http://bea.gov/bea/regional/bearfacts/stateaction.cfm?fips=37000&yearin=2004> (last visited Jan. 30, 2007).

(NIM) and Return on Assets (ROA) in its banking sector.¹⁵⁹ Also, Georgia's three year rate of growth in new bank formation has been almost three and one half times the rate of growth in North Carolina's new bank formation.¹⁶⁰ In addition, Georgia continues to serve as the corporate headquarters for more *Fortune Magazine*-ranked largest corporations, and Georgia's primary airport, Hartsfield-Jackson, continues to serve as one of the busiest airports in the world. While the headquarters location of a major banking company does have many benefits for its home state, it does not appear that the banking headquarters locations alone have a significant effect on a state's overall economic performance. Harvard business professor Michael Porter makes a consoling observation about Atlanta's loss of banking headquarters:

Once the home of many bank headquarters, Atlanta no longer is headquarters for a leading national bank. However, the [financial] cluster has continued to grow through the establishment of major regional bank operations and strong development of real estate, insurance, and financial planning services. It is also home to the Southeast Regional Federal Reserve Bank.¹⁶¹

Thus, even though the North Carolina-based banking companies may have achieved relatively greater success in acquiring other banks and may have enjoyed longer endurance than the banking companies of Georgia, it has not made a significant difference in the economic performance of those states.

159. In 2005, Georgia banks had an ROA of 1.20 and NIM of 4.43. FDIC, State Profile – Georgia, <http://www.fdic.gov/bank/analytical/stateprofile/Atlanta/Ga/ga.pdf> (last visited Jan. 30, 2007). North Carolina banks had an ROA of .89 and NIM of 3.87. FDIC, State Profile – North Carolina, <http://www.fdic.gov/bank/analytical/stateprofile/Atlanta/NC/nc.pdf> (last visited Jan. 30, 2007).

160. Georgia has opened an average of thirty-five new banks to North Carolina's ten banks over a three year time horizon.

161. MICHAEL E. PORTER, ATLANTA-COLUMBUS, CLUSTERS OF INNOVATION INITIATIVE xx (Council on Competitiveness 2001).

IV. CONCLUSION

In concluding this analysis of the Compact, it is appropriate to look at the consolidation of the commercial banking industry in the South in the context of the consolidation that was taking place in banking nationwide and also the consolidation that was occurring in the broader financial services industry, of which commercial banking is only a part of the whole. It is also important to examine the issues that were driving an upheaval in the financial services sector of the economy in the last decades of the twentieth century.

Within the commercial banking sector of financial services, consolidation has been extraordinary. Between 1984 and 2005, the number of banks decreased by one-half from 14,496 to 7,549. Economist Margaret Polski reports that there were over 8,000 bank mergers in the United States between 1980 and 1998, involving more than \$2.4 trillion in bank assets.¹⁶² Corresponding to a decrease in the number of banks was a substantial increase in the number of bank offices, growing from 57,417 in 1985 to 78,029 in 2005, according to the FDIC summary reports of FDIC-insured commercial banks. Thus, access to banking services by bank customers seems to have increased.

The concentration of banking deposits in a few larger institutions is significantly even more dramatic than the reduction in the number of banks. In the more restrictive era of banking regulation from the 1930s to the 1970s, the proportion of deposits held by the 10, 25, and 100 largest banks actually declined. For instance, in 1940, the top 100 banks in the country held 57% of all the deposits, and the top 300 banks held 69%. By 1965, the share of deposits held by the top 100 banks had slipped to 48%, while the share held by the top 300 fell to 62%.¹⁶³

In the states of Georgia and Florida, both of which restricted their banking laws in this timeframe, the deposit shares of the larger banks also decreased. In Florida, between 1939 and 1965 the share of deposits held by the largest banks fell from

162. POLSKI, *supra* note 13, at 49.

163. GERALD C. FISCHER, *AMERICAN BANKING STRUCTURE* 331 (1968).

41.5% to 17.1%. In Georgia, the share of deposits fell from 68.4% to 53% over the same years. Contrastingly, in North and South Carolina, where there were no restrictions on branching or merging, the share of market for larger banks increased. Between 1939 and 1965, the market share in North Carolina moved from 48% to 64% for the large banks while the market share in South Carolina for large banks rose from 42% to 48%.¹⁶⁴ Obviously, restrictions on bank expansion, as a matter of public policy, can have meaningful effects on a regulated industry.

As the industry consolidated in the 1980s and 1990s these trends changed again. Between 1985 and 1997, the share of the total United States deposit base held by the largest 100 banks increased from 52% to 69%.¹⁶⁵ While the commercial banking sub-sector of the broad financial services industry was consolidating and concentrating deposits and assets in fewer large banks, the banking industry as a whole was losing market share of the total assets and revenues within the broader financial services industry. Economists Shull and Hanweck report that from 1981 to 1998 the proportion of financial sector assets held by commercial banks fell from 36% in 1981 to 23% by 1998.¹⁶⁶

Because of the serious competitive threats to the banking industry from other financial service providers, commercial banks were very instrumental in lobbying for a change in the banking laws that repealed the Glass-Steagall Act of 1933. In November of 1999, Congress passed the Gramm-Leach-Bliley Financial Modernization Act that effectively repealed Glass-Steagall and modified the bank holding company law to permit commercial banks to once again affiliate with securities firms and insurance companies through holding company structures. As this law became effective, banking companies were able to purchase many other financial service companies because commercial banking companies generally maintained larger capital bases than other types of financial service businesses.¹⁶⁷ As profit opportunities in

164. *Id.* at 334-35.

165. SHULL & HANWECK, *supra* note 24, at 149.

166. *Id.* at 3.

167. Indeed, banking regulations require commercial banks to have relatively larger capital bases in order to support the risk-taking of commercial lending

the commercial banking market narrowed, the leading banking companies simply responded by acquiring other types of financial service businesses with lower capital requirements and higher growth rates.

An interesting anomaly of late twentieth century deregulation in the banking industry is that it began at the state level, rather than the national level. It was also driven more by the business leaders in the banking industry than by governmental regulators. When Hugh McColl was asked why he thought southern bankers had come together to the Compact in the mid-1980s, he stated: "So why would they cooperate like they did to get the legislation passed? The answer is it was enlightened self interest. Getting ten legislatures to approve it had to be couched in terms that what's good for the South is good for us all."¹⁶⁸

Another important reason why the Compact worked was that the South was consistently growing its population and its economy at a faster rate than other regions of the United States. In the last decades of the twentieth century, the profits of southern banks grew, so that their stock prices rose and enhanced the value of the currency used in almost all of the bank mergers in this era.¹⁶⁹ Certainly, the capital-short but high-growth environment of southern banking provided a sufficient number of attractive target banks for the larger and more aggressive southeastern banks that wanted to dominate regional banking after the Compact was adopted, so that there was little need for Southeastern banks to shop for merger partners outside of the region in the early years of the Compact. At the same time, the attractive southern target

activities.

168. Interview with Hugh L. McColl, Jr., *supra* note 8.

169. Atlanta Federal Reserve Bank economists William Hunter and Larry Wall analyzed the bank mergers in the decade of the 1980s and observed:

A cluster analysis of the financial characteristics of a sample of 559 target banks indicates that the strategic profile of the most valued merger partners' characteristics consists of the following items: higher-than-average profitability (as measured by the return on equity), faster growth in core deposits and total assets, and a higher ratio of loans to earning assets, all augmented by the judicious use of financial leverage.

William C. Hunter & Larry D. Wall, *Bank Merger Motivations: A Review of the Evidence and an Examination of Key Target Bank Characteristics*, ECON. REV. 17, Sept./Oct 1989.

banks were protected from acquisition from outside of the South by the Compact that Hugh McColl labeled as “the Berlin Wall of banking.”

In conclusion, the Compact, designed in the 1980s by self-interested southern banks, actually worked and achieved the purpose for which it was established. Although several of the southern states no longer have as many large banks headquartered in their states, by 2005 four of the top ten United States bank holding companies and six of the top twenty-five were headquartered in the South. Also, none of the major banks of the South, with the exception of the two medium-sized Louisiana banks sold to Bank One, have yet been purchased by banks headquartered in states outside of the South.¹⁷⁰

While none of the largest southern banks has been purchased by banks from other regions of the United States, several of the largest southern banks have purchased banks headquartered outside of the South. Notably Wachovia (formerly First Union) and Bank of America (formerly NCNB and later NationsBank) have purchased several banking companies in other regions. Southern Regionalists like Rupert Vance and Howard Odum should be very proud that modern-day southern bankers have emerged to play leading roles in this new economic nationalism.

The perseverance of the leading southern bankers in maintaining their southern heritage while positioning their banks in leadership roles in the national economy seems consistent with the philosophy that Rupert Vance expressed when he addressed the 1960 Southern Historical Society and stated: “Regionalism like individualism claims a right to maintain identity - to defend and to cherish a certain autonomy in cultural values, a style of life, certain attitudes regarded as Southern.”¹⁷¹ Southern identity continues to be of significant importance to most southerners.¹⁷² Perhaps then,

170. There is one additional technical exception to this conclusion. In 2000, Royal Bank of Canada purchased a fast-growing North Carolina bank, Centura Bank, but the United States subsidiary of that Canadian bank. RBC Centura, is a North Carolina-chartered bank, based in the South.

171. REED, *supra* note 10, at 217.

172. Southern historian David Goldfield commented as follows in his 2002 study of the American South: “After more than two decades of significant northern in-

it is not coincidental that essentially all of the leading bankers who guided their southern banking companies into national leadership within the industry were also raised as Southerners and educated in the South.¹⁷³ Therefore, this study concludes that the southern heritage of these leading bankers had some significant influence on their decisions to try and position their southern banks as leaders in the national economy while maintaining their banking headquarters in the South. Hugh McColl comments on the influence of southern identity on the ambitions of many of the southern bankers: "I actually think part of what drove the southerners was that we had been poor so long and were looked down upon."¹⁷⁴

As the banking industry of the South looks ahead to the next phase of consolidation in financial services industry in the twenty-first century and the potential of acquisition of southern banks by large United States banks from outside of the South, or even the possibility of purchase by foreign banks, the influence of the South on its leading bankers still may impact their business decision-making. Southern historian David Goldfield expresses the issue with which southern bankers may still be struggling: "What southern society will become in this new century, especially given the growing economies and political importance of the region, and what Americans will become, as well, will depend largely on how southerners reconstruct their past."¹⁷⁵

migration, a majority of respondents in every southern state still viewed themselves as a distinctive category of Americans, as Southerners." Goldfield also observes that many of the leaders in Congress and the federal judiciary have southern heritage. DAVID R. GOLDFIELD, *STILL FIGHTING THE CIVIL WAR – THE AMERICAN SOUTH AND SOUTHERN HISTORY* 10 (2002).

173. North Carolinians Hugh McColl and Ken Lewis of NCNB/B of A, Ed Crutchfield and Ken Thompson of First Union/Wachovia, John Medlin and Bud Baker of Wachovia and John Allison of BB&T are all Southern. From Georgia, former C&S leaders Bennett Brown, Jim Lientz and Lee Sessions, First Atlanta's Tom Williams, Raymond Riddle, and John Stevens, and Trust Company's Bob Strickland, Jimmy Williams, John Spiegel and Phil Humann are also all Southern in heritage and education.

174. Interview with Hugh L. McColl, Jr., *supra* note 8.

175. GOLDFIELD, *supra* note 172, at 318.