BYU Law Review

Volume 1988 | Issue 1 Article 8

3-1-1988

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FSLIC Claims Exclusive Jurisdiction to Adjudicate Claims Against Assets It Holds as Receiver: Is It Proper?

I. INTRODUCTION

Typically, when a savings and loan institution (S&L) insured by the Federal Savings and Loan Insurance Corporation (FSLIC) becomes insolvent, the Federal Home Loan Bank Board (FHLBB) is required to appoint FSLIC to be the receiver of the failed S&L's assets.[1] As receiver, FSLIC has power to collect and conserve the assets of the insolvent institution[2] and if it determines that the claims of the creditors against those assets are valid,[3] to negotiate and settle those claims as if it were the failed institution.[4] Recently, FSLIC has claimed that Congress

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1. 12 U.S.C. § 1464(d)(6)(D) (1982) ("The Board shall appoint . . . only the [FSLIC] as receiver for an association . . . ."); *see also id.* § 1729(b).

2. 12 U.S.C. § 1729(b) (1982).

3. The power to make preliminary decisions concerning the validity and priority of claims is implied by the language of 12 U.S.C. § 1729(b)(1)(A)(v), which states that FSLIC is authorized "to proceed to liquidate [a failed S&L's] assets in an orderly manner." This power is also implied in 12 U.S.C. § 1729(b)(1)(B), which says that FSLIC "shall pay all valid credit obligations of the association." If FSLIC is to accomplish these objectives, it naturally must make preliminary decisions as to the validity of the claims.

It is important to note the different manner in which FSLIC is authorized to treat depositors of the failed S&L, who have their accounts insured by FSLIC up to an aggregate amount of $100,000, and creditors who have claims against the assets of the failed association. Section 1728(b) provides for "payment of each insured account in such insured institution which is surrendered and transferred to the [FSLIC] . . . by cash." In contrast, section 1729(b)(1)(A)(iv) gives FSLIC power to liquidate the assets of the failed institution or "to make such other disposition of the matter as it deems appropriate." Thus, FSLIC is given much more autonomy when dealing with creditors than when dealing with depositors.

4. 12 U.S.C. § 1729(d) (1982). This section was amended by § 122(g) of the Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, § 122(g), 96 Stat. 1469, 1482-83. However, a sunset clause was inserted into the Act. *Id.* at 1489. When Congress failed to extend the Act in 1986, the amendment expired. "As a result, the final clause of § 1729(d) now reads 'subject only to the regulation of the court or other public authority having jurisdiction over the matter,' instead of 'subject only to the regulation of the FHLBB' . . . ." Lyons Sav. & Loan Ass'n v. Westside Bancorp., Inc., 828 F.2d 387 (7th Cir. 1987).

Section 1345 provides that except as otherwise provided by Congress, the district court shall have original jurisdiction of all actions commenced by any agency expressly authorized to sue. 28 U.S.C. § 1345 (1982). Additionally, 12 U.S.C. § 1725(c)(4) specifically empowers the FSLIC to "sue and be sued, complain and defend, in any court of

intended to give it exclusive jurisdiction to adjudicate the claims against the insolvent institution for which FSLIC is acting as receiver.[5] By so claiming, FSLIC asserts that its decisions concerning the validity and priority of creditor's claims are final and not subject to review by the courts until after all administrative remedies have been exhausted.[6] This unusual attempt by FSLIC, in its capacity as a receiver, to increase its power and to deny the creditor immediate access to federal courts is not supported by statutory authority.[7]

This comment will review the current status of the law on the issue of FSLIC's exclusive jurisdiction by first examining the position which FSLIC has advanced in the Federal District Court for the District of Utah and the circuit courts of the United States. In reviewing the law, the comment will focus on a recent district court case, *FSLIC v. Oldenburg*,[8] where the court held in favor of FSLIC's position. Analysis of FSLIC's position on the circuit court level will concentrate on the Fifth Circuit case of *North Mississippi Savings and Loan Association v. Hudspeth*.[9]

Following a review of FSLIC's position, the comment will address the contrary view, both as it has been presented in the

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competent jurisdiction in the United States."

5. *See, e.g.*, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209 (9th Cir. 1987); Chupik Corp. v. FSLIC, 790 F.2d 1269 (5th Cir. 1986); North Miss. Sav. & Loan Ass'n v. Hudspeth, 756 F.2d 1096 (5th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986); FSLIC v. Oldenburg, 658 F. Supp. 609 (D. Utah 1987); FSLIC v. Provo Excelsior Ltd., 664 F. Supp. 1405 (D. Utah 1987); Lyons Sav. & Loan Ass'n v. Westside Bancorp, 636 F. Supp. 576 (N.D. Ill. 1986), *aff'd on other grounds*, 828 F.2d 387 (7th Cir. 1987).

Exclusive jurisdiction is the term the courts have used to explain the right claimed by FSLIC to adjudicate creditors' claims against the assets of a failed S&L that FSLIC holds in its receivership capacity. Compare this with the normal jurisdiction granted to a governmental agency. In most cases, a federal agency will have exclusive jurisdiction over the subject under its control, subject to judicial review only after all administrative remedies have been exhausted. *See* Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706 (1982). FSLIC, like the Federal Deposit Insurance Corporation (FDIC) is organized to perform two separate functions. *See Morrison-Knudsen*, 811 F.2d at 1216. When an institution insured by FSLIC is functioning properly, FSLIC acts as a supervisor and as such has great power over the activities of the S&L. In this capacity, the Administrative Procedure Act applies and administrative remedies must be exhausted prior to judicial review. *See* 12 U.S.C. §§ 1464(d)(7)(A), 1730(j)(2) (1982). However, when FSLIC is acting in its capacity as receiver, such a broad grant of power is not found.

6. *See Morrison-Knudsen*, 811 F.2d at 1209; *Hudspeth*, 756 F.2d at 1101; *Provo Excelsior*, 664 F. Supp. at 1405.

7. *See infra* notes 70-86 and accompanying text.

8. 658 F. Supp. 609 (D. Utah 1987).

9. 756 F.2d 1096 (5th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986).

Utah federal district court and at the circuit court level. This analysis will concentrate on the district court case of *FSLIC v. Provo Excelsior Limited*,[10] and on the Ninth Circuit decision in *Morrison-Knudsen Company v. CHG International*.[11]

After examining the two positions, the comment will conclude by suggesting additional reasons why the courts should not grant FSLIC the right to exclusive jurisdiction over creditors claims against assets of a failed savings and loan institution held by FSLIC as receiver.

II. FSLIC'S ARGUMENT IN FAVOR OF EXCLUSIVE JURISDICTION

Although FSLIC has been acting as a receiver and conservator of insolvent S&Ls since its creation in 1934, it has only started to claim the right of exclusive jurisdiction over creditors claims against the assets it holds in its receivership capacity since approximately 1980.[12] In the few pre-1980 cases involving claims against FSLIC, no trace of FSLIC's claim to exclusive jurisdiction can be found.[13] Since about 1980, however, FSLIC has attempted to prevent creditors from taking their claims to court until after all administrative remedies have been exhausted.[14] This section of the comment will analyze the reasons behind FSLIC's claim to the power of exclusive jurisdiction. The inquiry will begin by examining cases where the court has accepted FSLIC's argument and ruled in its favor.

A. FSLIC v. Oldenburg

In *FSLIC v. Oldenburg*,[15] FSLIC was appointed by the FHLBB to act as receiver for the insolvent State Savings &

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10. 664 F. Supp. 1405 (D. Utah 1987).
11. 811 F.2d 1209 (9th Cir. 1987).
12. *See id.* at 1216.
13. *Id.* FSLIC explains this glaring inconsistency by stating that:

> Between 1941 and the 1980's, no federally chartered savings and loan institution was liquidated. During the 1960's, several state-chartered associations failed and were liquidated. Federal law at that time did not permit the Bank Board to appoint the FSLIC as receiver for state-chartered institutions, and those liquidations were conducted under the auspices of the state courts that appointed a receiver pursuant to state law.

Federal Savings and Loan Corporation's Petition For Rehearing and Suggestion of Appropriateness of Rehearing En Banc at 7, n.6, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209 (9th Cir. 1987) (Nos. 86-2063, 86-2081, 86-3621, 86-3646, 86-3658).
14. *See Morrison-Knudsen*, 811 F.2d at 1216.
15. 658 F. Supp. 609 (D. Utah 1987).

Loan Association.[16] State Savings & Loan Association had been the leading lender in five condominium projects that involved approximately forty savings and loan and savings banks.[17] FSLIC filed an action in its receivership capacity for the failed State Savings and Loan Association. The other lenders moved to intervene, arguing "that they were entitled to intervene as a matter of right . . . because the FSLIC could not adequately represent the interests of the plaintiff-interveners."[18] FSLIC objected to the motion "to the extent that it sought to adjudicate whether plaintiff-interveners' rights to receivership assets were equitably superior to those of FSLIC."[19]

The District Court stated that intervention was not proper if "the FSLIC has exclusive jurisdiction to adjudicate claims against the assets of insolvent Savings and Loan Associations placed in FSLIC receivership."[20]

In deciding the *Oldenburg* case, the district court felt compelled to follow the Fifth Circuit's decision in *North Mississippi Savings and Loan v. Hudspeth*,[21] decided in 1985. Presently, this is the leading and most influential case in support of FSLIC's position. Indeed, all courts holding in favor of FSLIC have cited *Hudspeth* with approval, while all courts deciding the opposite way since 1985 have distinguished or expressly rejected that decision.[22]

1. *The Fifth Circuit's decision:* North Mississippi Savings and Loan Association v. Hudspeth

Hudspeth involved a contract dispute between Old North, a state-chartered savings and loan institution not insured by FSLIC, and its president, Mr. Hudspeth.[23] Mr. Hudspeth was the president of the S&L until 1977, when the Mississippi legislature passed a law requiring all state thrift institutions to obtain FSLIC insurance. FHLBB refused to allow FSLIC to insure the institution unless Hudspeth was replaced as president of the savings and loan. Hudspeth resigned his position as president

16. *Id.* at 610.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 610-11.
21. 756 F.2d 1096 (5th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986).
22. *See* cases cited *supra* note 5.
23. *Hudspeth*, 756 F.2d at 1099.

and "Old North began paying him a regular monthly amount under what Hudspeth claims was a deferred compensation agreement."[24] In 1983, Old North was put into receivership and FSLIC was appointed receiver. FSLIC formed a new institution and transferred all of the assets and liabilities of Old North, (except any obligations to Old North's stockholders and any liabilities similar to the one owed to Mr. Hudspeth) to the new institution. FSLIC, as receiver, terminated payments to Mr. Hudspeth, and Hudspeth amended his previous suit against Old North to include New North, the new institution, as a party to the action. FSLIC and New North removed the action to federal court and subsequently moved to dismiss.[25] The district court upheld the removal and dismissed the action, holding that "Hudspeth's counterclaim [was] a challenge to the validity of the FSLIC's termination of the compensation contract and its transfer of Old North's assets to New North."[26] Hudspeth appealed to the Fifth Circuit which affirmed the lower court by holding that FSLIC had exclusive jurisdiction over such claims and that Hudspeth was required to exhaust administrative remedies before he could bring his claim to federal court. In affirming the lower courts' decision, the Fifth Circuit held that Congress intended to give FSLIC exclusive adjudicative power over claims against an institution held by FSLIC in receivership.[27] FSLIC argued that two statutes in particular supported its position.

a. 12 U.S.C. section 1464(d)(6)(C): protecting FSLIC's administrative process or granting new powers? In both *Hudspeth* and *Oldenburg*, FSLIC first argued that section 1464(d)(6)(C)[28] prevents the courts from interfering with FSLIC's administrative process. Section 1464(d)(6)(C) provides that "no court may take any action . . . [to] restrain or affect the exercise of powers or functions of a conservator or receiver."[29] FSLIC argued, and the *Oldenburg* court agreed, that

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24. *Id.*

25. *Id.* at 1100.

26. *Id.* at 1101.

27. *Id.* at 1102-03.

28. 12 U.S.C. § 1464(d)(6)(C) (1982).

29. *Id.* The entire subsection reads: "Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the insistence of the Board, restrain or affect the exercise of powers or functions of a conservator or receiver."

this statute limited the authority of the court to "intervene in issues relating to FSLIC receiverships . . . ."[30]

The Fifth Circuit also cited section 1464(d)(6)(C) and stated, "any court ruling that [the S&L in receivership] bears a liability not assigned it by the FSLIC would modify the FSLIC's distribution of assets, and would 'restrain or affect' the FSLIC's powers as a receiver in violation of 12 U.S.C. [section] 1464(d)(6)(C)."[31] The court thus held that FSLIC has exclusive jurisdiction to decide the claims of creditors and that the decision of FSLIC was not subject to judicial review except as provided under the Administrative Procedure Act, which requires that all administrative adjudications be subject to judicial review but only after all administrative remedies have been exhausted.

The Fifth Circuit noted that "[i]n explaining the Bank Protection Act of 1968, which made [section] 1464(d)(6)(C) applicable in receiverships of state thrift institutions, the Senate confirmed that the FSLIC's authority '[i]n carrying out its receivership responsibilities . . . would be subject only to the regulation of the Federal Home Loan Bank Board . . . .' "[32] The Fifth Circuit understood this to mean that "Congress wanted the FSLIC to be able to act quickly and decisively in reorganizing, operating or dissolving a failed institution, and intended that the FSLIC's ability to accomplish these goals not be interfered with by other judicial or regulatory authorities."[33]

Although Mr. Hudspeth claimed that adjudication of creditors' claims was not a receivership function, and that judicial determination of claims does not "restrain or affect" the receivers conduct in violation of section 1464(d)(6)(C), the court disagreed. The court stated that "resolution of even the facial merits of claims outside of the statutory reorganization process would delay the receivership function of the distribution of assets. . .," and determined that "such a delay is a 'restraint' within the scope of the statute."[34]

b. 12 U.S.C. section 1729(d): the power to settle, compromise or release claims. In support of their holdings, both the

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30. FSLIC v. Oldenburg, 658 F. Supp. 609, 610 (D. Utah 1987).

31. North Miss. Sav. & Loan v. Hudspeth, 756 F.2d 1096, 1102 (5th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986).

32. *Id.* at 1101.

33. *Id.*

34. *Id.* at 1102.

Oldenburg court and the Fifth Circuit also cited section 1729(d)[35] which states:

> In connection with the liquidation of insured institutions, the [FSLIC] shall have power . . . to settle, compromise, or release claims in favor of or against the insured institutions, and to do all things that may be necessary in connection therewith, subject only to the regulations of the Federal Home Loan Bank Board . . . .[36]

Primarily on the strength of these two statutes, the Fifth Circuit concluded that "[t]he statutory scheme thus routes to the administrative process Hudspeth's assertion that FHLBB regulations did not authorize the FSLIC here to set aside an otherwise-enforceable contract. That act was unquestionably an exercise of the FSLIC's powers as a receiver . . . ."[37]

2. *The Federal District Court for the District of Utah follows the Fifth Circuit*

In deciding the *Oldenburg* case, the Utah federal district court relied heavily on the Fifth Circuit's reasoning. Like the Fifth Circuit, the *Oldenburg* court also felt that sections 1464(d)(6)(C) and 1729(d), and the FHLBB regulations authorizing an administrative appeals process, required the court to rule in favor of FSLIC.[38] Therefore, while admitting the issue was close, the *Oldenburg* court held that creditors with claims "must pursue their claims of priority against the FSLIC in the administrative arena."[39]

The *Oldenburg* court concluded that Congress had intended FSLIC receivers to have some measure of adjudicatory power.[40] The court then proceeded to hold that FSLIC had not just "some measure" of power, but *exclusive* power to adjudicate creditors claims against the assets held in receivership by the FSLIC.[41] The court further noted that the only recourse available to the creditor from an adverse judgment by FSLIC was ad-

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35. 12 U.S.C. § 1729(d) (1982).

36. *Id.*

37. North Miss. Sav. & Loan Ass'n v. Hudspeth, 756 F.2d 1096, 1102-03 (5th Cir. 1985) (footnote omitted), *cert. denied*, 474 U.S. 1054 (1986).

38. FSLIC v. Oldenburg, 658 F. Supp. 609, 611 (D. Utah 1987).

39. *Id.*

40. *Id.* at 611.

41. *Id.* at 611-12.

ministrative appeal, subject to judicial review only after administrative remedies were exhausted.[42]

B. *Additional Arguments Supporting the Position of FSLIC*

In order to completely understand the issues behind the dispute in these cases, it is necessary first to understand the nonstatutory arguments FSLIC provided in support of its claim of exclusive jurisdiction. Several policy reasons that seem to support FSLIC's position are apparent. First, economic considerations require FSLIC to speed up its liquidation process. Unless it can increase its efficiency, FSLIC itself is in danger of insolvency. Second, most administrative agencies are subject to the Administrative Procedure Act, which requires that claimants must exhaust their administrative remedies before taking their claims to court. Third, by contrasting its situation with that of the FDIC, FSLIC finds additional support for its argument in favor of exclusive jurisdiction. Finally, FSLIC claims that adjudication is a common function of a receiver, and therefore FSLIC should be allowed to adjudicate creditors' claims against the assets it holds in receivership.

1. *Economics*

FSLIC's primary motive for claiming exclusive jurisdiction seems to be economic. Since 1980 there has been a tremendous rise in the number of failed savings and loan institutions,[43] with a corresponding increase in the cost to FSLIC of resolving these problems.[44] In the states within the jurisdiction of the Ninth Circuit alone, FSLIC claims that "there currently are [thirty-six] Bank Board appointed FSLIC receiverships. In those [thirty-six] receiverships 1,385 creditor claims aggregating [almost seven billion dollars] are either pending or resolved. And it is inevitable that the number of receiverships and creditor claims will increase."[45] Given this increased cost, it is understandable that FSLIC would seek to accelerate liquidation of an insolvent

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42. *Id.* at 611.

43. Comment, *The "Brokered Deposit" Regulation: A Response to the FDIC's And FHLBB's Efforts to Limit Deposit Insurance*, 33 UCLA L. REV. 594, 607 (1985).

44. *See* Chamberlain, *Protecting America's Savings*, FED. HOME LOAN BANK BD. J. 10, 12 (May/June 1983).

45. Federal Savings and Loan Corporation's Petition For Rehearing and Suggestion of Appropriateness of Rehearing En Banc at 3, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209 (9th Cir. 1987) (Nos. 86-2063, 86-2081, 86-3621, 86-3646, 86-3658).

S&L's assets. The faster FSLIC can liquidate, the faster it can recover it's costs resulting from the insured S&L's insolvency.[46] FSLIC states its true economic argument in these terms:

> This is the worst possible time for such interference [by the courts] to occur. The FSLIC's insurance fund currently is under the most severe pressures that it has ever experienced. The General Accounting Office has determined that the fund is insolvent by more that three billion dollars. . . . Never in the history of the federal deposit insurance system has the Bank Board been required to place so many thrift institutions in receivership.[47]

2. *Exhaustion of administrative remedies*

In the past, FSLIC has obtained dismissal of lawsuits brought by claimants "based on the principle, confirmed by the Fifth Circuit, that when the Bank Board appoints FSLIC as receiver for a failed institution, all claims against the receivership estate are switched to the administrative track' for determination first by the FSLIC as receiver and then by the Bank Board."[48]

The Fifth Circuit stated that the statutes direct claims of this sort to the administrative track and "[t]he administrative process serves to hasten the resolution of the receivership proceedings, in keeping with the Congressional purpose."[49] The *Oldenburg* court, in similar language concluded that "the plaintiff-intervenors must pursue their claims of priority against the FSLIC in the administrative arena."[50] Although both courts briefly addressed the issue of exhaustion of administrative remedies, the argument was presented in a more compelling manner in a motion for rehearing en banc by FSLIC in the Ninth Circuit case *Morrison-Knudsen Company v. CHG International*:

> By requiring a claimant to exhaust its administrative remedies,

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46. *See* Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209, 1216 (9th Cir. 1987); North Miss. Sav. & Loan v. Hudspeth, 756 F.2d 1096, 1102 (5th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986).

47. Federal Savings and Loan Corporation's Petition For Rehearing and Suggestion of Appropriateness of Rehearing En Banc at 5, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209 (9th Cir. 1987) (Nos. 86-2063, 86-2081, 86-3621, 86-3646, 86-3658) (citations omitted).

48. *Id.* at 3.

49. *Hudspeth*, 756 F.2d at 1102-03.

50. FSLIC v. Oldenburg, 658 F. Supp. 609, 611 (D. Utah 1987).

> it is possible to achieve a more orderly and timely disposition of the receivership estate, which is one of FSLIC's chief duties. In contrast, under the [Ninth Circuit's] decision claimants are not necessarily required to exhaust their administrative remedies [before pursuing their claims in federal court]. If exhaustion is not required, FSLIC receiverships will be seriously disrupted.[51]

Perhaps a more persuasive argument, in the eyes of the various courts that have ruled in favor of FSLIC, is the idea that "if all claimants are required to submit claims to the administrative process before they can proceed in court, some—perhaps most—of those claims will be resolved without resort to the courts."[52] Each of these reasons seem to compel the courts to require creditors to pursue and exhaust their administrative remedies prior to taking their claims to federal court.

3. *FDIC example*

In *Morrison-Knudsen*, the Ninth Circuit pointed out that congressional intent seems to show that FSLIC is not meant to have exclusive jurisdiction over creditors' claims. In support of this finding, the court noted that FSLIC is in the same position that the Federal Deposit Insurance Corporation[53] (FDIC) is in with regard to receivership funcitions.[54] The court noted that FDIC has not claimed exclusive jurisdiction, but has appeared before the court as defendent in its receivership capacity many times in the past.[55]

FSLIC argues that comparison with the circumstances of FDIC strengthens its argument for exclusive jurisdiction over creditors' claims against the assets held by FSLIC in its receiv-

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51. Federal Savings and Loan Corporation's Petition For Rehearing and Suggestion of Appropriateness of Rehearing En Banc at 3-4, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209 (9th Cir. 1987) (Nos. 86-2063, 86-2081, 86-3621, 86-3646, 86-3658).

The brief goes on to give an example of the inconsistent judgments that could arise under the law as it now stands:

> A claimant that has a suit pending against a failed institution in Texas would be switched to the administrative track pursuant to the Hudspeth doctrine, while another claimant that has a suit against the failed association pending in a federal court in California may not be switched to the administrative process.

Id.

52. *Id.* at 4.

53. *See* 12 U.S.C. §§ 1811-1832 (1982).

54. Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209, 1218 (9th Cir. 1987).

55. *Id.* at 1221. For more detail concerning the analysis of the court's comparison between FSLIC and FDIC, see *infra* notes 98-100 and accompanying text.

ership capacity. Two distinct differences between the two agencies serve to illustrate the argument.

First, FSLIC is not under the immediate direction of the court when acting in its capacity as a receiver, and therefore is empowered to liquidate assets without a court order. In doing so, it is subject only to regulation by the FHLBB. Secondly, "there is a specific prohibition against courts restraining or affecting the powers of a Bank Board appointed receiver [when acting in its receivership capacity]."[56]

FSLIC points out that FDIC's system is totally different in these two important areas:

> There is no provision barring court's from interfering with an FDIC receiver comparable to section 1464(d)(6)(C). In fact, the opposite is true: When the FDIC acts as a receiver for a failed national bank, it still must obtain a court order to liquidate assets. Most important, the claimant has the statutory option of asserting its claim either in court or administratively.[57]

Although FDIC does not claim a similar grant of exclusive jurisdiction, and courts have used this fact to support their refusal to grant the jurisdiction to FSLIC, FSLIC argues that this is because the two agencies are fundamentally different in the above areas.

4. *Authority to adjudicate*

Finally, FSLIC asserts that it has authority to adjudicate claims. In *Katchen v. Landy*,[58] a 1966 decision by the Supreme Court, the Court held that "the power to 'allow' or 'disallow' claims authorized the referee to 'adjudicate controversies relating to property within his possession.' "[59] FSLIC interprets this to mean that when the Bank Board's regulations suggest that FSLIC can 'allow' or 'disallow' claims, that it means adjudicate in the normal sense of the word.[60] Although this argument is not

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56. Federal Savings and Loan Corporation's Petition For Rehearing and Suggestion of Appropriateness of Rehearing En Banc at 11, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209 (9th Cir. 1987) (Nos. 86-2063, 86-2081, 86-3621, 86-3646, 86-3658).

57. *Id.*

58. 382 U.S. 323 (1966).

59. *Id.* at 392.

60. Federal Savings and Loan Corporation's Petition For Rehearing and Suggestion of Appropriateness of Rehearing En Banc at 12, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209 (9th Cir. 1987) (Nos. 86-2063, 86-2081, 86-3621, 86-3646, 86-3658).

very persuasive (as even FSLIC seems to agree), it stands in favor of FSLIC's claim to exclusive jurisdiction.

When examined together, each of these arguments provide a measure of support for FSLIC's claim to exclusive jurisdiction. The strength of this argument is evident from the fact that many courts, including the *Oldenburg* court and the Fifth Circuit, have found such reasoning compelling. Recently, however, some courts, most noticeably the Ninth Circuit, have refused to follow the arguments and reasoning of the FSLIC. These courts also present strong reasons for refusing to grant exclusive jurisdiction.

III. The Problems With Exclusive Jurisdiction: The Creditors' Argument

Within a month after the Utah federal district court decided to follow the Fifth Circuit's decision in *Oldenburg*, a different district judge in Utah had a chance to decide another case on the same issue. In *FSLIC v. Provo Excelsior, Ltd.*[61] the district judge refused to follow both the Fifth Circuit, and his own colleague who had written *Oldenburg* a month earlier. Instead, the judge followed the Ninth Circuit and held that FSLIC does not have exclusive jurisdiction to adjudicate claims against the assets of a S&L in receivership.[62] This disagreement within the Utah federal district court leaves FSLIC and the creditors of insolvent S&Ls in Utah in an uncomfortable position, because both sides cite the same statutes in support of their arguments, and federal courts on both the district and circuit levels have disagreed concerning the meaning of those statutes.

A. FSLIC v. Provo Excelsior Limited

The dispute in *Provo Excelsior* revolved around a complex set of facts, but the facts giving rise to the issue with which this comment is concerned can be summed up simply. The case concerns the financing of the Excelsior Hotel in Provo, Utah. Provo City issued industrial development revenue bonds, at least two million dollars worth of which were purchased by Homestead Savings and Loan, an Oklahoma savings and loan association.[63] In 1985 the bonds went into default, and Homestead filed an

61. 664 F. Supp. 1405 (D. Utah 1987).
62. *Id.* at 1417.
63. *Id.* at 1419.

action against Provo Excelsior alleging breach of contract, misrepresentation, and a host of other claims. Provo Excelsior counterclaimed, accusing Homestead of negligence, fraud and other violations. Subsequent to the filing of the action, Homestead was placed in receivership, with FSLIC being sole receiver. FSLIC replaced Homestead as plaintiff in the action and sought to have the counterclaim dismissed due to lack of jurisdiction.[64] The particular issue this comment is interested in was whether "Congress has granted to FSLIC exclusive jurisdiction to adjudicate claims against the assets of a savings and loan association placed in receivership with judicial review [only] available through the Administrative Procedure Act . . . ."[65]

In *Provo Excelsior*, FSLIC presented essentially the same argument that has been outlined above in subsection A.[66] FSLIC first argued that section 1464(d)(6)(C) precluded the court from interfering with the receivership functions of FSLIC. It then quoted section 1729(d) as proof that Congress intended FSLIC to have the adjudicative powers when dealing with the claims of creditors.

Although FSLIC presented the same argument that had been accepted by the Fifth Circuit in *Hudspeth,* and that had been persuasive in *Oldenburg* (argued before the Utah federal district court only a month before), the argument did not prevail. The *Provo Excelsior* court declined to follow the Fifth Circuit, but instead adopted the "very well-reasoned opinion" of the Ninth Circuit in *Morrison-Knudsen Co. v. CHG International Inc.*[67] Since the court accepted the reasoning of the Ninth Circuit nearly verbatim, it is necessary to look closely at the analysis presented in that opinion.

1. The Ninth Circuit Analysis: Morrison-Knudsen, Co. v. CHG International Incorporated

In *Morrison-Knudsen* the FHLBB appointed FSLIC as receiver for Westside Federal Savings and Loan Association. The case was a consolidation of five separate appeals from district court orders either dismissing claims filed by creditors against

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64. *Id.* at 1415.

65. *Id.*

66. *Id.* The court stated, "FSLIC relies heavily on North Mississippi Savings and Loan v. Hudspeth." *Id.*

67. 811 F.2d 1209 (9th Cir. 1987).

the assets held by FSLIC in its receivership capacity, or orders refusing to dismiss similar claims, thus requiring FSLIC to defend those claims in court.[68] The issue involved is identical to that discussed above: whether FSLIC has exclusive adjudicative power over creditors' claims against the assets of a failed S&L which FSLIC holds in receivership.[69]

Again FSLIC presented the same two statutes to support its claim. The Ninth Circuit, however, took a closer look at those statutes, and other proof offered by FSLIC, and held that FSLIC did not have the exclusive jurisdiction that it claimed.[70]

a. The argument against section 1464(d)(6)(C). In *Morrison-Knudsen*, FSLIC suggested that "judicial adjudication of creditors' claims would 'restrain or affect' the exercise of its receivership powers in violation of [section 1464(d)(6)(C)]."[71] FSLIC relied on the wording of the *Hudspeth* decision where the Fifth Circuit stated that "resolution of even the facial merits of claims . . . would delay the receivership function of distribution of assets," and that "such a delay is a 'restraint' within the scope of the statute."[72] The *Hudspeth* court held that FSLIC had exclusive original jurisdiction to adjudicate creditors' claims, subject to judicial review only under the Administrative Procedure Act,[73] which provides for judicial review of any final decision of an administrative agency.[74] The *Morrison-Knudsen* court stated, however, that the logic of *Hudspeth* was fatally flawed. The court said that "[i]f judicial review, [of an agency's final determination] which will delay—perhaps by years—the liquidation process, does not restrain or affect a receiver, then why does *initial* adjudication by a court of creditors' claims do so?"[75] In other words, judicial review during the liquidation process neither restrains nor affects receivership powers any more than initial judicial review. Thus, *Hudspeth*'s reliance on the distinction between judicial review at the initial or intermediate stages is logically inconsistent.

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68. *Id.* at 1212-13.
69. *Id.* at 1212.
70. *Id.*
71. *Id.* at 1216.
72. *See id.* (quoting North Miss. Sav. & Loan Ass'n v. Hudspeth, 756 F.2d 1096, 1102 (5th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986)).
73. 5 U.S.C. §§ 551-559, 701-706 (1982).
74. *Id.*
75. *Morrison-Knudsen*, 811 F.2d at 1216 (emphasis in original).

Moreover, the *Morrison-Knudsen* court stated that the plain meaning of the statutory language illustrates that courts are forbidden to interfere with the powers and functions of FSLIC when it is acting as a receiver or conservator. The statute does not purport to grant new powers that FSLIC did not previously possess. Rather, it attempts to protect the powers that FSLIC has already been given as a receiver and conservator. The *Morrison-Knudsen* court exposes the error of *Hudspeth* and explains that "section 1464(d)(6)(C) does not add to the FSLIC's receivership powers; it simply prohibits courts from interfering with these powers, which the FSLIC must derive from other statutory sources."[76] Also, the statutes that do grant FSLIC the power to act as receiver do not mention the right of exclusive jurisdiction claimed by FSLIC; they merely grant the power to act as receiver.[77] It is widely accepted that the powers of a receiver do not include exclusive jurisdiction to adjudicate claims.[78] Therefore, unless Congress expressly grants this unique power FSLIC cannot correctly claim the right of exclusive jurisdiction. Unfortunately for FSLIC, Congress has not granted it such broad adjudicative power. In sum, the plain meaning of the language of the statute does not grant exclusive adjudicative power to FSLIC.

b. 12 U.S.C. section 1729(d): the power to settle, compromise or release claims. The second statute relied upon by FSLIC is section 1729(d), which FSLIC claims is conclusive evidence of congressional intent to give it exclusive adjudicatory power. In *Morrison-Knudsen*, FSLIC claimed that exclusive "adjudication of creditor claims [was] necessary to orderly liquidation [of an S&L's assets]."[79] The plain meaning of the statute does not support this claim.

The Ninth Circuit decided that even though FSLIC certainly knew more about what was necessary to accomplish its assigned duties than the court did, FSLIC was trying to stretch the authority of the word "necessary" beyond reasonable bounds.[80] Moreover, the court in *Provo Excelsior* stated that "FSLIC places too much emphasis on the word 'necessary' in

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76. *Id.* at 1217.

77. *See* 12 U.S.C. § 1729(b) (1982).

78. *See, e.g.*, Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209, 1217 (9th Cir. 1987).

79. *Id.* at 1219.

80. *Id.*

light of the overall statutory scheme which evidences an intent for FSLIC to be a *receiver*, not an *adjudicator*."[81] Certainly it is not "necessary" that FSLIC have exclusive jurisdiction since there is nothing to indicate that a court could not "settle, compromise or release claims" as effectively as FSLIC.

Moreover, when viewing the statute as a whole, it has been argued that "the terms 'settle' and 'compromise' suggest that the claimant had the power to take the claim to court to be adjudicated rather than merely being subject to a simple recognition or lack of recognition by an all powerful adjudicative body."[82] If FSLIC has absolute adjudicative power, it would never have a reason to settle or compromise a claim. "A body with the power to say 'yes' or 'no' with the force of law has much less need to settle or to compromise,"[83] because its decision would have the finality of law, subject only to judicial review after administrative remedies were exhausted.

Finally, while adjudicative bodies often encourage parties to negotiate and settle disputes, the adjudicative body itself does not become one of the parties in the dispute and engage in negotiation and compromise.[84] FSLIC expressly was given the power to negotiate and settle claims, which shows that Congress assumed that FSLIC would be one of the negotiating parties in the dispute, not the judge. Thus, the plain meaning of the statute cuts against FSLIC's assertion that it has the exclusive right to adjudicate those claims.

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81. FSLIC v. Provo Excelsior Ltd., 664 F. Supp. 1405, 1416 (D. Utah 1987) (emphasis in original).

82. *Id.*

83. *Morrison-Knudsen*, 811 F.2d at 1219.

84. *Id.* Additionally, due to recent changes in the statute, § 1729(d) is an even less powerful support for FSLIC's argument. The Seventh Circuit in Lyons Sav. & Loan Ass'n v. Westside Bancorp., Inc., 828 F.2d 387 (7th Cir. 1987), explains that

> [section] 1729(d) was amended by § 122(g) of the Garn St. Germain Depository Institutions Act of 1982. Section 141(a)(6) of the Act stipulated that the amendment effected by § 122(g) would expire three years after the date of enactment, and § 1729(d) would then read as it had prior to the 1982 amendment.

Id. at 389 n.2 (citations omitted). Congress extended the expiration date on the Act several times, but

> [a] bill to extend the termination date until June 30, 1987 was not acted upon, and thus the 1982 amendment expired on October 13, 1986. As a result, the final clause of § 1729(d) now reads "subject only to the regulation of the court or other public authority having jurisdiction over the matter" instead of "subject only to the regulation of the Federal Home Loan Bank Board.

Id. (citations omitted).

The statutes cited by FSLIC in the several cases in which it has attempted to advance the position that it has been granted exclusive jurisdiction to adjudicate creditors' claims against the assets of a failed S&L simply do not support the FSLIC's contentions. In *Morrison-Knudsen*, the court presented the standard of review applicable to this issue:

> Reviewing courts must ordinarily accord "considerable weight" to an agency's construction of its governing statutory scheme. We have recognized that FSLIC's interpretation of the statutes and regulations it must enforce is entitled to such deference. But deference will not save an agency interpretation that is contrary to clear congressional purpose.[85]

Despite the high standard of review applicable in cases where an agency interprets its own statutes, the position presented by FSLIC does not pass muster. Although it might help speed up the liquidation process, and thus facilitate the efficient functioning of FSLIC,[86] the exclusive right to adjudicate creditors' claims simply is not found in the statutes that empowered FSLIC.

2. *The receivership powers of the FSLIC*

FSLIC has been given the power to act as a receiver for failed S&Ls.[87] Consequently, it has powers common to the office of a receiver and it may exercise these powers without interference by the courts. It is important to ascertain what powers are within the authority of FSLIC as a receiver. In section 1464(d)(6)(C), the powers of FSLIC in its capacity as a receiver and conservator are protected by the language of the statute. As suggested above, this language does not grant FSLIC new powers but merely protects the powers which have been given to FSLIC by other statutes.[88] The statute protects the powers of FSLIC from the court's interference only when FSLIC is acting in its role as a conservator or receiver. When the FHLBB appoints FSLIC as a receiver or conservator of a failed S&L, there are certain functions that FSLIC, as receiver, is entitled to perform. Section 1729(b) outlines what FSLIC is empowered to do:

> (1) In the event that a Federal association is in default, the

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85. *Morrison-Knudsen*, 811 F.2d at 1215 (citations omitted).
86. *Id.* at 1217.
87. 12 U.S.C. § 1729(b)(1) (1982).
88. *See supra* notes 76-78 and accompanying text.

> Corporation shall be appointed as conservator or receiver and as such—
>
> (A) is authorized—
>
> (i) to take over the assets of and operate such association;
>
> (ii) to take such action as may be necessary to put it in a sound solvent condition;
>
> (iii) to merge it with another insured institution;
>
> (iv) to organize a new Federal association to take over its assets;
>
> (v) to proceed to liquidate its assets in an orderly manner; or
>
> (vi) to make such other disposition of the matter as it deems appropriate;
>
> whichever it deems to be in the best interest of the association, its savers, and the Corporation; and
>
> (B) shall pay all valid credit obligations of the association.[89]

The powers of a receiver do not normally include adjudication, despite the argument suggested by FSLIC above. Also, nowhere in the statutes is exclusive jurisdiction and final adjudicatory power granted.

This was pointed out in *Morrison-Knudsen* where the Ninth Circuit stated that "[t]he rock upon which FSLIC's arguments break is that a receiver's ordinary functions do not include adjudication."[90] The statutes do grant some powers that are broader than those a normal receiver possesses. For example, FSLIC has the power to merge a failed S&L, organize a new association, or make other dispositions of the matter.[91] However, the statutes giving receivership power to FSLIC do not purport to grant a special adjudicative power. Since the powers of a receiver do not normally include any adjudicative power, and statutes do not explicitly grant anything like exclusive adjudicative power, FSLIC cannot find adequate support in the statutes for its claim.

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89. 12 U.S.C. 1729(b)(1) (1982).

90. Morrison-Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209, 1217 (9th Cir. 1987).

91. 12 U.S.C. § 1729(b)(1) (1982).

B. Policy Arguments Denying FSLIC the Right to Exclusive Jurisdiction

Just as there are certain arguments that support FSLIC's claim to exclusive jurisdiction, there are those that reinforce the other side of the dispute. These include first, the possible conflict of interest that might arise were FSLIC given the power to be the judge in disputes with creditors. Second, not only do the statutes by their express language fail to support FSLIC's claim, but evidence of congressional intent in favor of FSLIC's position is also suspiciously lacking. Without clear statutory language, or at least strong evidence of Congressional intent, the courts should be slow to grant exclusive jurisdiction to FSLIC.

1. Possible conflict of interest: FSLIC wears three hats

One reason why the courts should be wary of FSLIC's claim of exclusive adjudicative power is the possible conflict of interest that may arise. FSLIC is already involved with the affairs of an S&L in several different capacities. First, FSLIC acts as a supervisor over the S&L when the institution is functioning properly. As such, "FSLIC . . . [has] been empowered by Congress to adjudicate violations of federal law, to issue cease-and-desist orders, to remove offending officers, and to impose civil penalties."[92]

FSLIC also has been empowered by Congress to act as receiver of a failed S&L's assets, when appointed to this position by the FHLBB.[93] When acting in its capacity as a receiver, FSLIC can perform all of the traditional receivership functions in addition to those functions granted expressly by statute.[94]

> As a receiver for failed associations . . . FSLIC stands in the shoes of the insured institution. It takes over assets and liabilities, and it assumes full operational control in its own name. It is empowered and indeed obliged to pay all valid depositors' and creditors' claims up to certain limits in an orderly fashion and without immediate judicial supervision. But when a claim is disputed and agreement cannot be reached, FSLIC is obliged to attend court just as the institutions it represents would have had to do.[95]

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92. *Morrison-Knudsen,*. 811 F.2d at 1219-20.
93. 12 U.S.C. § 1464(d)(6)(D) (1982); *see also id.* § 1729(b).
94. *See supra* notes 87-90 and accompanying text.
95. Morrison-Knudsen Co. v. CHG Int'l, 811 F.2d 1209, 1222 (9th Cir. 1987).

FSLIC is also a competitor with other creditors of the failed S&L for the money resulting from a liquidation of the failed institutions assets. FSLIC, as insurer of the S&L, is obliged to pay depositors from its own funds. It must also pay creditors of the failed S&L after liquidating the assets. In order to recoup its insurance losses, FSLIC competes with the other creditors for the remaining funds.[96] As this comment has suggested, FSLIC does not have sufficient funds to take care of all the S&L failures that have occurred in the recent years. For this reason, when dealing with creditors' claims against the assets it holds in receivership, FSLIC may be tempted to favor its own claim.

Additionally, FSLIC now seeks the authority and power to be judge. Granting this power would compound FSLIC's possible conflict of interest. Not only would FSLIC be the single largest claimholder against the assets it holds in receivership, it would also be the judge which decides the priority and validity of its own claim. This power is well beyond the normal range of powers granted either receivers or judges. It also exceeds any power that FSLIC has ever claimed. "Federal receivers of insolvent banks have never had the power conclusively to adjudicate creditor claims."[97] For this reason, exclusive jurisdiction should not be given to FSLIC absent a clear showing of congressional intent.

2. *Congressional intent*

Before correctly claiming the right of exclusive adjudicative power over the claims of creditors, FSLIC must demonstrate that is what Congress intended. However, all evidence of congressional intent indicates otherwise.

First, a simple look at the statutes is not sufficient to prove that this was Congress' intent.[98] The plain meaning of the stat-

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96. The Ninth Circuit in *Morrison-Knudsen* points out this problem:

> In the event of liquidation, the FSLIC must promptly reimburse depositors out of its insurance fund. It then satisfies nondepositor creditors' claims to the extent that the association's assets permit. The agency in this context becomes both the holder of the claimed assets and, because subrogated to the reimbursed depositor's rights, the single largest claimant against such asset. FLSIC generally recoups a considerable portion of its insurance payouts through its own participation as claimant in the subsequent distribution of assets.

Id. at 1215-16.

97. *Id.* at 1219 n.3.

98. *See supra* notes 70-86 and accompanying text.

utes do not, by themselves, support FSLIC's claim of exclusive jurisdiction.

Second, "[f]ederal receivers of insolvent banks have never had the power conclusively to adjudicate creditors claims."[99] FSLIC and its relationship to S&Ls is very similar to the position of the FDIC and its relationship with federally insured banks. Like the FDIC, FSLIC has been set up to perform two major functions. First the agencies act as supervisors over their respective institutions when the institution is functioning properly. Second, they act as receivers when the institutions get into financial trouble.[100] In recent legislation, Congress "clarified and augmented both FSLIC's and the FDIC's powers as receiver."[101] "The legislative history [of the Garn St. Germain Depository Institutions Act] indicates that Congress meant to give both agencies parallel authority over their respective institutions."[102] FSLIC is supposed to have the same powers as a receiver as FDIC, and the FDIC does not have exclusive adjudicative power over creditors that come to it with claims.[103] Thus, either FSLIC is violating congressional intent by claiming exclusive jurisdiction, or FDIC is wrong in not claiming it. The fact that until recently neither claimed exclusive jurisdiction, and suddenly FSLIC does, indicates it is FSLIC that has diverted from congressional intent.

Third, legislative history gives no indication that FSLIC, acing as receiver, is to have exclusive jurisdiction. By contrast, it is instructive to compare the statutes that empower FSLIC, when it is acting in its capacity as a supervisor over a solvent S&L.

> The statutes conferring this authority, occupying several pages in the United States Code, provide detailed, exact, and comprehensive measures precisely delineating agency procedure, the remedies available, and judicial review. They make explicit reference to review under the APA. The inference is irresistible that had Congress any intention of permitting FSLIC to adju-

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99. *Morrison-Knudsen*, 811 F.2d at 1219 n.3.

100. *See* 12 U.S.C. § 1464(d)(6)(D) (1982), which provides that if the institution is insured by FDIC, then the FHLBB must appoint FDIC as the receiver if the bank fails. This section also states that the FDIC "shall have the same powers as receiver as those powers granted by this paragraph to the [FSLIC] as receiver of other associations." *Id.*

101. Morrison-Knudsen Co. v. CHG Int'l Inc., 811 F.2d 1209, 1221 (9th Cir. 1987).

102. *Id.*

103. *See id.*

> dicate in its capacity as receiver, similar provisions—or provisions having a similar purpose—would have been enacted.[104]

Thus, legislative history, or other indicia showing congressional intent to grant exclusive power of adjudication over creditors' claims to FSLIC, is conspicuous by its absence. There is simply no indication that Congress intended any such thing.[105]

Fourth, other sources within the statutory scheme of FSLIC clearly indicate Congress anticipated that FSLIC would have to defend itself in court just like any other receiver. The provision of a statute of limitations in section 1728(c),[106] shows that Congress anticipated judicial adjudication in the event of a disputed claim. Section 1730(k)(1),[107] governing disputes in which FSLIC is a party, grants original jurisdiction to the United States district courts and indicates what types of suits Congress expects FSLIC to defend in state court. These statutes "expressly [and impliedly] include[] an action against FSLIC 'in its capacity as . . . receiver . . . which involves only the rights . . . of . . . creditors.' "[108] Viewing the statute as a whole, it is clear that Congress anticipated the fact that FSLIC would be subject to court actions brought by creditors having claims against FSLIC in its capacity as receiver.

In cases where Congress has granted a measure of adjudicative power to a federal agency, the statutes are carefully drawn and complex, clearly outlining the rights and duties of both the agency and the person or corporation subject to the agency's control.[109] In the statutes empowering FSLIC to act as a receiver, "nothing is mentioned as to procedural and substantive rights of claimants as well as the rights, duties, and responsibilities of the FSLIC."[110] Without such a clear showing of congres-

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104. *Id.* at 1220 (citation omitted).

105. The federal district court in *Oldenburg* admits that "the statutory authority is meager." FSLIC v. Oldenburg, 658 F. Supp. 609, 611 (D. Utah 1987). The Ninth Circuit also was unable to find support for FSLIC's position either in the statutes or the legislative history. *Morrison-Knudsen*, 811 F.2d at 1222. Evidently FSLIC has also been unable to "locate a single explicit indication in the legislative history or the language of its governing statutes that Congress intended or expected FSLIC to adjudicate claims as part of its receivership functions." *Id.* at 1219.

106. *See* 12 U.S.C. § 1728(c) (1982).

107. *Id.* § 1730(k)(1).

108. *Morrison-Knudsen*, 811 F.2d at 1221.

109. *Id.* at 1220.

110. *Id.* at 1219.

sional intent, the courts should not lightly grant any agency the power of exclusive jurisdiction.

IV. Conclusion

With the astounding rise in the number of failed S&Ls over the last few years and the corresponding jump in the total cost to the Federal Savings and Loan Insurance Corporation to resolving these problem cases, it is understandable that FSLIC would wish to streamline the process for satisfying the claims against the assets of a failed S&L which it holds in receivership. The faster FSLIC can liquidate the assets of such a failed S&L, the quicker it will recoup the money it has paid out. While this may be a laudable goal, if unsupported by statute or solid evidence of congressional intent, the power of exclusive jurisdiction should not be given to FSLIC. Although FSLIC presents statutory language that seems to support its claim to exclusive jurisdiction, upon closer inspection the applicable statutes do not explicitly grant FSLIC the broad adjudicative power it claims. Additionally, not only is there a complete lack of evidence of congressional intent to give an FSLIC receivership exclusive jurisdiction over creditors' claims, but there is ample evidence that Congress intended such claims to be adjudicated by a court.

Finally, if exclusive jurisdiction were given to an FSLIC receivership, it would be entwined in conflicts of interest unbecoming either a receiver or an adjudicative body. FSLIC is already in the unique position of being an administrative agency, a receiver, and a competitor for the assets which it holds in its receivership capacity. Granting FSLIC the power to be the judge over the disputes concerning the distribution of those assets, without clear congressional intent to do so should not be undertaken by the courts. For these reasons, and absent stronger proof in favor of FSLIC's claims, the Utah federal district court, and the circuit courts of appeal should decline to grant this broad power to FSLIC.

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