In ***Korean American Legal Advocacy Foundation v. City of Los Angeles***, 23 Cal. App. 4th 376 (Mar. 17, 1994) (as modified Apr. 15, 1994), the Second District Court of Appeal held that the City of Los Angeles is not preempted by the ABC Act from exercising land use authority over liquor stores as they rebuild after the 1992 Los Angeles riots.

At issue is the interaction of several land use ordinances enacted by the City of Los Angeles. Since 1985, the City has required a conditional use permit for offsite alcoholic beverage sales citywide. In 1987, the City adopted a specific plan for the sale of alcoholic beverages for the South Central area of Los Angeles; the plan required conditional use approvals for establishments dispensing alcohol in South Central and provided that approval was contingent upon specified findings. Under either ordinance, existing uses before their operative dates—such as the business owned by the individual plaintiffs in this matter—became "deemed to be approved" conditional uses.

During the civil disturbance of 1992, a number of these businesses were destroyed or damaged. In the aftermath, the City enacted ordinances with expedited procedures to facilitate rebuilding. Despite these expedited procedures, however, the ordinances required all conditional uses—including conditional uses selling alcoholic beverages for offsite consumption—to submit plans for approval before rebuilding; the ordinances also provided that approval of a rebuilding plan may be made contingent on agreement to conditions imposed "on the same basis as provided for in this section for the establishment of new conditional uses." These conditions typically require owners to agree to remove graffiti promptly, provide adequate lighting, remove trash, provide a security guard, and—in some instances—limit hours of operation. In addition to the plan approval process, the City also instituted a number of "revocation" hearings to revoke or condition an owner's deemed approve status or use permit in the event the business threatens to become, or has become, a nuisance or law enforcement problem in the area.

Plaintiffs primarily challenged the City's ordinances as being preempted by state statutory and constitutional provisions which vest "the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the state" with the State of California and ABC. The trial court denied their motion for preliminary injunction and sustained the City's demurrer on the preemption issue.

In affirming the trial court's ruling, the Court of Appeal stated that the ordinances at issue do not constitute a total prohibition on alcohol sales. "Instead the focus is to abate or eradicate nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects. These are typical and natural goals of zoning and land use regulations." As to the preemption issue, the court stated that the state ABC Act "expressly excludes from the jurisdiction of the ABC and reserves to local governments the right to impose reasonable land use and zoning controls," citing Business and Professions Code sections 23790–91 and Government Code sections 65850–61. The court also noted that the 1992 riots do not qualify as an "act of God" or "toxic accident" to exempt the businesses from regulation, since the destruction was caused by human intervention.

The Second District's opinion in *Korean American Legal Advocacy Foundation* may help the City of Oakland in defending its conditional use permit ordinance at issue in ***California Beverage Retailer Coalition v. City of Oakland***, which is currently pending in the First District Court of Appeal. Last December, Alameda County Superior Court Judge James Lambden issued an order temporarily enjoining enforcement of Oakland's ordinance, under which vandalism, drug sales, assault, prostitution, public drinking, graffiti, gambling, and public urination are grounds for revoking any nearby retailer's local permit to sell alcohol. Under the ordinance, Oakland retailers must pay a $600 annual fee to support the Oakland alcohol beverage control operation, and a $200 reinspection fee each time violations are found. Judge Lambden agreed with the industry-backed coalition that the ordinance is preempted by the ABC Act, and issued a preliminary injunction voiding the ordinance. *[14:1 CRLR 89–90, 92]* The City has appealed Judge Lambden's injunction.

BANKING DEPARTMENT

Superintendent:
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Pursuant to Financial Code section 99 *et seq.*, the State Banking Department (SBD) administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks. The Department is authorized to adopt regulations, which are codified in Chapter 1, Title 10 of the California Code of Regulations (CCR).

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; and the stability, diversity, and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the capital is adequate; the proposed name does not so closely resemble as to cause confusion with the name of any other bank or trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing

business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office; the establishment, relocation, or discontinuance of branch offices and ATM facilities; and the establishment, discontinuance, or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue money orders or travelers checks unless licensed.

The superintendent examines the condition of all licensees when necessary, but at least once every two years. The Department is coordinating its examinations with the Federal Deposit Insurance Corporation (FDIC) so that every year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees security pools that cover the deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS

Dual Banking System Questioned. On March 3, the U.S. Senate Committee on Banking, Housing and Urban Affairs held a hearing to discuss the Treasury Department's proposed consolidation of banking regulation. Under the proposal released in November 1993, a single federal regulator known as the Federal Banking Commission would exercise all of the depository institution regulatory functions currently performed by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Fed), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS).

California Superintendent of Banks James Gilleran testified at the hearing in his role as Chair of the Conference of State Bank Supervisors (CSBS), the national association of state bank regulatory officials. In his comments, Gilleran opined that the proposed single-regulator structure would destroy the dual banking system—the chartering of state and national banks, and their ability to co-exist—because the institutional bias of the federal chartering agency would eliminate the flexibility inherent in the state banking system. According to CSBS, if the dual banking system is to be preserved, the new system must not place federal oversight of state institutions, including federal rulemaking, within the same agency that charters federal institutions; must provide that the agency which administers federal deposit insurance is not the same agency that charters institutions; should not impose new fees on state-chartered institutions; should encourage states to act as "laboratories for innovation" in new bank products, services, and supervision; provide a real choice between state and federal charters and regulatory systems; maintain the checks and balances in bank regulation between federal bank regulators and between federal and state bank regulators; and ensure the political independence of the federal banking agencies.

The Fed has also voiced opposition to the Treasury Department's proposal, claiming that it would create a monopolistic regulatory system and would hamper its ability to react to a financial crisis; as an alternative, the Fed drafted its own proposal which would replace the four existing federal bank agencies with two and authorize the Fed to oversee all state-chartered banks.

On May 12, Fed Governor John LaWare announced that the Fed and the Treasury Department reached a compromise on bank regulatory consolidation, which would let the Fed continue to participate in the regulation and supervision of the largest bank organizations; recognize the important role the Fed must play in maintaining the integrity of the payments system and the stability of the financial system, and in operating the discount window as the lender of last resort; reduce the number of federal regulators in the interest of economies of operation, standardize rulemaking and statutory implementation, and eliminate redundant examinations by multiple agencies; preserve both the dual banking system and the distinction between a federal and state charter; preserve banks' right to choose their regulators by letting them opt for either a federal or a state charter; and avoid the imposition of further costs on banks as a result of the regulatory restructuring. However, one issue which was not resolved concerns who will regulate state-chartered, non-Fed-member banks.

At this writing, Congress is not expected to consider the proposed changes until 1995.

Community Reinvestment Act Rulemaking Update. In July 1993, President Clinton asked OCC, the Fed, FDIC, and OTS to work together propose new regulations implementing the Community Reinvestment Act, which requires financial institutions to provide services to and invest in the communities in which they are located. In response, the four agencies held six public hearings around the country to obtain public input on improving federal enforcement of the CRA; last December, the agencies jointly proposed new regulations to implement the CRA. According to the agencies, the proposed new regulations are designed to provide clearer guidance to financial institutions on the nature and extent of their CRA obligation and the methods by which the obligation will be assessed and enforced; emphasize performance rather than process, to promote consistency in assessments and permit more effective enforcement against institutions with poor performance; and reduce unnecessary compliance burdens while stimulating improved performance. *[14:1 CRLR 93; 13:4 CRLR 100]* On February 3, the agencies announced an extension of the public comment period on the proposed regulatory action from February 22 to March 24.

In comments submitted on March 22, SBD Superintendent Gilleran expressed concern "that the proposal will create safety and soundness problems for the California banking industry." Although expressing support for the original principles of the CRA, which are to meet the credit needs of a bank's entire community (including low- and moderate-income areas) consistent with safe and sound banking practices, Gilleran opined that the proposed action "does not strike the appropriate balance between safety and soundness requirements and community development concerns." Gilleran then expressed concern about specific provisions of the proposal. Among other things, he contended that the proposed lending test requires banks to compete for a very limited market of potentially bankable loans; the proposed service test is based on the assumption that branches should be used rather than allowing new technology to provide services; basing the investment test on a bank's risk-based capital could force wholesale banks and well-capitalized institutions to use more capital for CRA than other banks; the proposed negative sanctions may force banks to ignore safety and soundness in order to comply with the proposed regulations; and imposition of the proposed data collection requirements on banks will be onerous.

At this writing, the four agencies are reviewing the nearly 6,700 comments received regarding the proposed regulations; they are expected to release their final regulations by late summer.

Consumer Group Releases Surveys of State Banking Practices. During the spring, Consumer Action (CA), a nonprofit group based in San Francisco, released the results of three surveys of various practices by banks in California. On February 8, CA released the results of its survey of the banking options available to Bay Area minors; according to the consumer group, although the majority of Bay Area banks allow minors to open savings accounts, only eight have a minimum opening balance of $25 or less, the amount CA considers realistic for a teenager to meet. According to CA, some institutions offer accounts to minors, but require minimum balances as high as $500; others treat young customers disrespectfully when they visit bank branches; and others provide inadequate or incorrect information when minors inquire about their banking options.

On February 17, CA unveiled its latest survey of checking accounts; based on responses concerning 90 types of accounts at 24 California banks and savings institutions and 13 credit unions, CA found that only nine banks and savings institutions offer accounts with monthly fees of $4 or less. The survey also found approximately 50 accounts which charge no fees if a specified minimum balance is maintained; however, those minimum balances range from $100 to $5,000. CA urged consumers to shop around for the best deals on checking accounts, and to use a low-cost bank account instead of a check cashing service which charges a fee of up to 3% of the face value of the check.

On May 10, CA released its 1994 Annual Credit Card Survey, which shows the widest range of interest rates since the group began surveying them in 1983. Rates on 48 regular (unsecured) credit cards offered by 36 surveyed California and out-of-state banks range from a 6% "teaser" to 19.9%, with 22 cards at or below 14%. CA also found a wide range in annual fees for credit cards (from $0 to $39) and learned that many major banks also offer secured credit cards (backed by customer deposits), which can be easier for people with poor credit records to obtain. CA concluded that, with so many choices available, "no one should be paying more than 14% interest."

CA warned consumers to beware of "teaser" rates, which are common (and regulated) on home mortgage loans but new (and unregulated) for credit card solicitations; CA noted that the small-print long-term interest rate actually charged to the cardholder may be two to three times the bold-print "teaser" rate on the solicitation envelope.

Mergers. On January 13, SBD effected the application approved on January 10, to merge First State Bank of the Oaks with and into First Interstate Bank of California, and to operate selected offices of First State Bank of the Oaks as branch offices of First Interstate Bank of California.

On March 14, SBD approved the application filed September 27, 1993 to merge San Diego Trust and Savings Bank with and into First Interstate Bank of California, and to operate all existing offices of San Diego Trust and Savings Bank as offices of First Interstate Bank of California. *[14:1 CRLR 93; 13:4 CRLR 100]*

On April 1, SBD approved the applications filed March 22 by Home Bank and Cerritos Valley Bank to establish branches relating to the purchase of the assets of Mechanics National Bank; the assets of Mechanics National Bank were sold by the FDIC as receiver to Home Bank as lead bank and agent bank for a consortium of seven state and national banks including Cerritos Valley Bank, Landmark Bank, and Foothill Independent Bank.

Conversion to State Charter. On April 1, SBD effected the application of Merced Bank of Commerce to convert to a state-chartered bank under the name of Merced Bank of Commerce.

On April 11, SBD approved the application of Surety Federal Savings Bank of Vallejo to convert to a state-chartered bank under the name Surety Bank.

Cease and Desist Warnings Issued. On March 11, SBD issued a warning to cease and desist from doing business in California without a license to Max Larry and General Merchant Bank in Los Angeles; Larry and General Merchant Bank are not authorized to transact business in the way or manner of a bank and are not authorized to transact business under a name which contains the word "bank" and indicates that business is that of a bank pursuant to Chapter 18 of Division 1 of the California Financial Code.

On March 18, SBD issued a warning to cease and desist from doing business in California without a license to Rob Nite and Mesa Grande Bank in San Diego.

On March 30, SBD issued a warning to cease and desist from engaging in the business of receiving money in California for the purpose of transmitting the same or its equivalent to foreign countries to Empress Travel in San Francisco.

On April 8, SBD issued a warning to cease and desist from engaging in the business of receiving money in California for the purpose of transmitting the same or its equivalent to foreign countries to Cuzcatleco Express in Los Angeles and El Salvador Express in Santa Ana.

On April 15, SBD issued a warning to cease and desist from doing business in California without a license to First American International Bank of Pawnee, Oklahoma.

SBD Responds to Southern California Earthquake. On January 18, the Superintendent of Banks determined that an extraordinary situation existed in the counties of Los Angeles and Ventura, as a result of the Northridge earthquake. Pursuant to Financial Code section 3602, the Superintendent authorized banks located in Los Angeles and Ventura counties to close any or all of their offices until the Superintendent declares that the extraordinary situation has ended or until such earlier time as the officers of the bank determine that one or more closed offices should reopen. In addition, the Superintendent announced that banks needing to relocate offices or set up temporary offices in the affected areas may do so without observing the normal application procedures; SBD only asked that such banks notify it by telephone or fax. Finally, the Superintendent urged banks to review their lending policies in order to grant appropriate latitude to existing customers and to expedite the extension of new credit to finance the rebuilding.

SBD Releases Fourth Quarter Report. According to SBD's quarterly report for the fourth quarter of 1993, at the close of business on December 31, 1993, the 252 state-chartered banks with 1,859 branch offices had total assets of $110.6 billion, a decrease of $0.2 billion (0.2%) from December 31, 1992. During the year, there was a net decrease of eight banks and a net increase of 39 branch offices.

SBD Releases Results of Quality Assurance Review Survey. On April 7, SBD released the results of a survey it conducted to ascertain licensees' views regarding the level of effectiveness and efficiency of SBD's examination process and identify areas for improvement. Surveyed banks were asked to rate SBD's examinations in a number of areas; according to SBD, it received "generally good marks" for its examinations, and SBD's examiners "performed particularly well" at assessing a bank's overall condition, capital adequacy, reserves for loan losses, communication of findings, report consistency, asset/liability management, and professionalism. Banks which responded to the survey expressed the desire that the time spent by SBD in examining banks be reduced further and that completed examination reports be issued more quickly.

LEGISLATION

AB 2830 (Brulte), as amended May 9, contains the provisions formerly in **SB**

1145 (Boatwright), which was rejected on a 5–4 vote by the Senate Judiciary Committee on January 11. The controversial bill would have superseded California caselaw and permitted supervised financial institutions to charge and collect any fee for late payments, over-the-limit usage, and bounced checks which is stated in its customer credit agreement and "commercially reasonable," defined as "less than or equal to a comparable fee used by at least one of the ten largest lenders headquartered outside of California providing a similar type of open-end credit." *[14:1 CRLR 94]* Although the bill's sponsors and proponents argued that it would put an end to expensive class action lawsuits against lenders, consumer groups branded it as a backdoor attempt to exempt credit card fees from the Civil Code requirement that penalty fees be reasonably related to the actual costs they are supposed to cover. Not to be outdone, the banking industry promptly amended the provisions of SB 1145 into AB 2830 (Brulte), which is currently pending in the Assembly Judiciary Committee.

AB 2894 (Caldera), as amended May 5, would require written communications, except promotional or marketing material, sent by a financial institution to its customers to disclose the telephone number of the institution to which a customer may respond, and the general hours of availability at that telephone number.

Existing law provides that benefits accruing from the placement in a demand deposit account of a commercial bank of funds received by a real estate broker who collects certain loan payments or provides services in connection with certain loans, shall inure to the broker, except as specified. This bill would, instead, provide that benefits accruing from the placement in a non-interest bearing account of a commercial bank of those funds shall inure to the broker. *[S. BC&IT]*

AB 2233 (McDonald), as amended May 12, would direct the California Research Bureau of the California State Library to conduct a study of factors affecting credit for small businesses, and report to the legislature on or before July 1, 1995, as specified, and to include within this report, among other things, the effect of state and federal financial institution laws and regulations on small business loans. *[S. BC&IT]*

SB 1542 (Kopp), as amended April 28, would move SBD from the Business, Transportation and Housing Agency to the Business and Housing Agency, which this bill would create. *[A. Trans]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 94–95:

AB 1756 (Tucker), as amended June 9, 1993, would prohibit state, city, and county governments from contracting for services with financial institutions with $100 million dollars or more in assets unless those companies file Community Reinvestment Act reports annually with the Treasurer. The Treasurer would be required to annually submit a report to the legislature and to make summaries available to the public. These reports would include specified information regarding the nature of the governance of the companies, and their lending and investment practices with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. *[A. Inactive File]*

AJR 17 (Costa), as introduced March 5, 1993, would request the federal government and the state to conduct a thorough review of banking regulations, and to revise those that are unnecessarily burdensome and barriers to effective community lending. *[A. Rls]*

AJR 19 (Polanco), as amended September 1, 1993, urges the United States Congress to repeal those laws found to be unduly restrictive, burdensome, and unnecessary to protect the safety and soundness of the banking system and to direct the federal agencies responsible for banking regulations to modify and rescind those regulations that may inhibit lending to small businesses, women, communities of color, and agricultural borrowers. This measure also resolves that the legislature urge the President of the United States to use the authority of the executive branch of the federal government to reduce overregulation of the banking system by administrative act and to seek necessary legislative changes. This measure was chaptered on April 11 (Chapter 15, Resolutions of 1994).

HR 20 (Burton), as amended May 4, 1993, states that the Bank of America (BofA) is known as the leading bank in the West; BofA is one of the most profitable financial institutions in America, making a profit of $1.5 billion in 1992; BofA has achieved this success in part through federal subsidies of FDIC guaranteed borrowing and mergers approved by the federal government; BofA's Chief Executive Officer earned a salary of $1.6 million in 1992 and approximately $12 million in stock options between 1987 and 1991; BofA is opening overseas offices in Vietnam while at the same time closing neighborhood banks in California communities; BofA has asked all employees to sign "at will" statements acknowledging that the bank may fire them without cause at the employer's pleasure, work hours may be cut and health care and other benefits taken away, and employees may be transferred anywhere in the bank's system; this personnel action compromises the principle of employer responsibility by implying that the cutting of employee hours, salaries, and benefits is acceptable behavior while the bank continues to earn large profits; the elimination of employee benefits by BofA may place an additional burden on the state budget by increasing the costs of the Medi-Cal system and of state hospitals for uncompensated care; BofA is moving its credit card operations to Arizona and transferring 1,600 jobs out of San Francisco and Glendale in order to escape California consumer protection laws that do not apply if the credit card business is headquartered in a state with weaker regulations; BofA is the dominant bank in the State of California and is the depository bank for the State of California; in the 1991–92 fiscal year, the State of California's total dollar investment in BofA was $3.9 billion; 91% of all deposits from California state agencies are deposited with BofA; and the State of California has $131 million in debt issuance corporate notes from the Pooled Money Account with the BofA.

Accordingly, the measure would state the Assembly's request that the State Treasurer consider withdrawing all deposits from BofA and investing them in other banks within California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments; that the Treasurer discontinue any investment in BofA's corporate notes and invest in other banks within the state of California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments; and that all state agencies consider withdrawing their deposits from BofA and investing them in other banks within California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments. *[A. Inactive File]*

The following bills died in committee: **AB 320 (Burton)**, which would have prescribed a maximum interest rate or finance charge which could be charged on credit card accounts issued by a bank, savings association, or credit union; **AB 1640 (Bates)**, which would have required the Treasurer to annually report to the Governor and the legislature on specified amounts deposited in each financial institution and to include the institution's rating under the federal Community Re-

investment Act; **SB 179 (Hughes)**, which would have prohibited the Treasurer from depositing or investing state moneys with financial institutions that receive specified ratings from federal authorities pursuant to the federal Community Reinvestment Act; **AB 1995 (Archie-Hudson)**, which would have authorized state-chartered banks, savings associations, and credit unions to restructure a loan or extend credit terms and obligations to minority or women business enterprises in accordance with safe and sound financial operations; **AB 2165 (Areias)**, which would have required the Secretary of Trade and Commerce, in conjunction with SBD, to develop a program to assist and encourage the banking industry to form a privately owned consortium to assist business relocation in California; **AB 2232 (McDonald)**, which would have directed SBD to conduct a study and make recommendations to the legislature on or before July 1, 1994 on the regulatory process and procedures for banks engaged in making small business loans; **AB 2349 (Polanco)**, which would have provide that specified fees which are charged for services performed by the Superintendent, including a $400 dollar per day fee for the services of an examiner, must be paid by a licensee within twelve days after receipt of a statement from the Superintendent for those services; **SB 161 (Deddeh)**, which would have—among other things—required banks to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than seven business days after the date of the initial deposit; **SB 203 (Deddeh)**, which would have provided that the failure of a bank or trust company to open a branch office within one year after the Superintendent of Banks approves the application terminates the right to open the office, except that prior to the expiration of the one-year period a one-year extension may be granted by the Superintendent in which to open and operate a branch office upon filing an application with the Superintendent and the payment of a $350 fee; and **SB 632 (Deddeh)**, which would have provided that in addition to existing law which provides that if a draft, such as a check, is unaccepted by the bank and is dishonored, the drawer is obliged to pay the draft according to its terms, the drawer would be obligated to pay any service charges resulting from dishonor of the draft.

■ LITIGATION

Badie v. Bank of America, No. 944916, filed in San Francisco Superior Court in August 1992, challenges BofA's policy which requires that customer disputes over deposit and credit card accounts be sent to binding arbitration. *[14:1 CRLR 95; 13:4 CRLR 103]* The three-week court trial ended in March; attorneys filed post-trial briefs in April. Among other things, BofA's attorneys have argued that the Federal Arbitration Act preempts the state laws relied upon by plaintiffs in contending that the binding arbitration provision is unfair, unconscionable, and deceptive. At this writing, closing argument began on May 13 and is scheduled to continue on May 19.

In ***Leary v. Wells Fargo Bank***, No. 866229 (Aug. 17, 1993), plaintiffs alleged that defendants Wells Fargo Bank, First Interstate Bank, Crocker National Bank, and Bank of America conspired to fix interest rates on bank credit cards; in August 1993, the jury found for BofA, the only defendant which did not settle. *[13:4 CRLR 103]* Last December, BofA filed a motion seeking more than $500,000 in sanctions and attorneys' fees from the plaintiffs. *[14:1 CRLR 96]* On January 14, San Francisco Superior Court Judge Laurence Kay refused to impose sanctions on the plaintiffs and their attorneys, finding that BofA had not met its burden of showing that the plaintiffs acted in bad faith; Kay also denied plaintiffs' motion for a new trial.

In ***Youngberg v. Bank of America***, No. 953812, filed July 30, 1993 in San Francisco Superior Court, plaintiff alleges that Security Pacific Bank, now owned by Bank of America after a 1992 merger, overcharged its trust account customers. *[14:1 CRLR 96]* On May 5, the case was transferred to Los Angeles County Superior Court pursuant to a motion for change of venue. At this writing, no trial date has been set.

On January 10, the First District Court of Appeal granted plaintiff's motion for rehearing in ***California Grocers Association, Inc., v. Bank of America***, 20 Cal. App. 4th 1355 (Dec. 9, 1993); in its original ruling, the First District found that the $3 deposited item return (DIR) fee charged by BofA to the California Grocers Association (CGA) is not unconscionable and does not violate the implied covenant of good faith and fair dealing; and that the injunction issued by the trial court which required BofA to lower its DIR fee to not more than $1.73 for a ten-year period was an improper use of the unconscionability doctrine and an inappropriate exercise of judicial authority. *[14:1 CRLR 96]* On February 4, the First District released its decision on the rehearing, 22 Cal. App. 4th 205, again finding for BofA in each of the issues described above. At this writing, CGA is awaiting the California Supreme Court's decision on its petition for review.

DEPARTMENT OF CORPORATIONS

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The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing Agency and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by