# **Index**

## **ABANDONMENT**

Contaminated property, 17:95

#### **ACCELERATION**

Bad faith, 2:15

# **ACTIONS**

**Limitations of Actions** (this index) **Litigation** (this index)

**Standing to Sue** (this index)

# ADHESION CONTRACTS

Bad faith claims, 4:5

#### ADMINISTRATION OF LOANS

**Negligence** (this index)

# ADMINISTRATIVE EXHAUSTION

Affirmative defenses exception, 24:16

# AIDING AND ABETTING LIABILITY

Central Bank, post-Central Bank liability for secondary parties, **20:46** 

Fiduciary obligations, breach of fiduciary duty, **5:10** 

Fraud, **6:4** 

Negligence claims, terrorists acts, 7:6 Securities Laws (this index)

# ALTERNATIVE DISPUTE RESOLUTION

**Arbitration** (this index)

Jury trial waiver, 26:9, 26:10

**Mediation** (this index)

Waiver, minimizing risk of liability, **26:19** 

Workout Strategies (this index)

## **ANSWERS**

Counterclaim of debtor for negligence in administration of loan, **App 7A** 

#### ANSWERS—Cont'd

Good faith contractual obligations, claim of breach of, App 2C

# ANTI-MONEY LAUNDERING PROGRAM

Bank Secrecy Act, 21:29, App 21C

#### ANTITRUST CLAIMS

Generally, 15:1 et seq.

See also **Anti-Tying Laws** (this index)

Allocations of customers, **15:7** 

Arbitration, 26:15

Attempts to monopolize, 15:18

Bank sharing of confidential business information, **15:16** 

Businesses, sharing of confidential information of by banks, **15:16** 

Coercive tying arrangements, 15:11

Complaint form, App 15A

Confidential information, sharing of by banks, **15:16** 

Conscious parallelism, 15:4

Contracts, combinations and conspiracies, 15:3

Customers, allocations of, 15:7

Dealing arrangements, reciprocal, **15:14** 

Divisions of markets, 15:7

Exclusive dealing, 15:8

Forms, App 15A, App 15B

Interlocking directorates, 15:21

Interstate commerce, 15:13

Leveraging, monopolistic, 15:19

Litigation (this index)

Markets

divisions of, 15:7

tying arrangements, 15:12

Monopolies

attempt to monopolize, 15:18

leveraging, 15:19

Overview of liabilities, 1:5

| ANTITRUST CLAIMS—Cont'd                    | ANTI-TYING LAWS—Cont'd                       |
|--|--|
| Parallelism, conscious, 15:4               | Bank Holding Company Act—Cont'd              |
| Per se violations, 15:5                    | nontraditional practices, 16:5               |
| Pretrial order, <b>App 15B</b>             | scope of provisions, 16:2                    |
| Price fixing, <b>15:6</b>                  | standing to sue, 16:8 et seq.                |
| Reciprocal dealing arrangements,           | statutory text, App 16A                      |
| 15:14                                      | Brokerage services, 16:14                    |
| Refusals to deal, 15:15                    | Combined balance accounts, 16:16             |
| <b>Regulatory Sanctions</b> (this index)   | Customers protected, 16:8                    |
| RICO Claims (this index)                   | Damages, <b>16:9</b>                         |
| Risk minimization considerations           | Damages, required showing, 16:8              |
| generally, 15:22                           | Defendants, 16:2                             |
| see also Risk Minimization (this           | Elements of violations, 16:4                 |
| index)                                     | Exceptions, 16:13                            |
| Separate products, tying of, <b>15:10</b>  | Exclusive dealing, <b>16:6</b>               |
| Sherman Act provisions                     | Exempt practices, <b>16:5</b>                |
| attempt to monopolize, 15:18               | Federal Reserve Board regulatory             |
| bank anti-tying laws compared,             | interpretations, 16:12 et seq.               |
| 16:3                                       | Forbearance agreements, <b>16:18</b>         |
| per se violations, 15:5                    | Home Owners' Loan Act, 16:1                  |
| Section 1 violations, <b>15:2</b>          | Incomplete transactions, 16:10               |
| Section 2 violations, <b>15:17 et seq.</b> | Interest rate swaps, <b>16:6</b>             |
| Tying arrangements, below                  | Limitations of actions, <b>16:11</b>         |
| Standing to sue, 15:20                     | <b>Litigation</b> (this index)               |
| Tying arrangements                         | Nonbank products, affiliate, <b>16:15</b>    |
| generally, 15:9 et seq.                    | Nontraditional practices, <b>16:5</b>        |
| see also Anti-Tying Laws (this             | Overview of liabilities, 1:5                 |
| index)                                     | Purpose of laws, <b>16:1</b>                 |
| coercion, 15:11                            | Regulatory sanctions, generally,             |
| interstate commerce, 15:13                 | 16:12 et seq.                                |
| market power, 15:12                        | Risk minimization considerations             |
| separate products, 15:10                   | generally, <b>16:17 et seq.</b>              |
| ANTI-TYING LAWS                            | see also <b>Risk Minimization</b> (this      |
| Generally, <b>16:1 et seq.</b>             | index)                                       |
| Affiliates, 16:13                          | Scope of provisions, <b>16:2</b>             |
| Antitrust law violations generally         | Sherman Act compared, <b>16:3</b>            |
| generally, <b>15:9 et seq.</b>             | Standing to sue, <b>16:8 et seq.</b>         |
| see also <b>Antitrust Claims</b> (this     | Thrift Institutions Restructuring Act        |
| index)                                     | generally, <b>16:1</b>                       |
| Arrangements subject to provisions,        | nontraditional practices, <b>16:5</b>        |
| 16:4, 16:5                                 | Sherman Act compared, <b>16:3</b>            |
| Bank Holding Company Act                   | -  |
| generally, <b>16:1</b>                     | statutory text, App 16B                      |
| damages, 16:9                              | Traditional products exception, <b>16:13</b> |
| defendants, 16:2                           | Unusual practices, 16:5                      |
|  | Workout agreements, risk minimiza-           |
| elements of violations, <b>16:4</b>        | tion, 16:18                                  |
| interest rate swaps, <b>16:6</b>           | Workout agreements violating, <b>16:1</b>    |

APPEAL

#### Arbitration, appeal of denial of Fraud claims, 26:16 Issue preclusion, 26:31 motion to compel, 26:18 Judicial review, 26:32 APPELLATE BRIEFS Jury trial waiver, 26:9, 26:10 See Model Briefs (this index) Lender strategies, 26:30 ARBITRATION Mediation compared, 26:12 Modifications, contract, 26:25 Adhesion contracts, 26:21 Antitrust claims, 26:15 Nonarbitrable claims, 26:15 Appeal of denial of motion to compel Non-signatories, enforcement of proarbitration, 26:18 visions, 26:22 Arbitrability, 26:27 Preclusion of issues, 26:31 Arbitrator selection by parties, 26:28 Preemption of state laws, 26:14 Bankruptcy law, enforcement of Procedures, 26:28 arbitration provisions, 26:20 Remedies, drafting considerations, Changes in terms, 26:25 26:28 Choice of law, drafting Reservation of power to arbitrate, considerations, 26:28 26:23 Class actions, 26:24 RICO claims, 18:32, 26:15 Compelling arbitration, appeal of Scope of provisions, 26:29 denial of motion to compel, Securities laws, 26:15 26:18 State laws, 26:14 Damage awards, 26:29 Statutory claims, 26:15 Discovery, drafting considerations, Third parties, enforcement of provi-26:28 sions, 26:22 Dodd-Frank Act and consumer United States Arbitration Act, App arbitration, 26:26 26A Drafting considerations, generally, Vacating awards, 26:32 26:15, 26:28 Enforcement of provisions ASSIGNMENT generally, 26:17 et seq. Equitable subordination of priorities, adhesion contracts, 26:21 9:18 bankruptcy law, 26:20 Mediation of matters, 26:38 changes in terms, 26:25 ATTACHMENT class actions, 26:24 Comprehensive Thrift and Bank Dodd-Frank Act and consumer Fraud Prosecution and Taxpayer arbitration, 26:26 Recovery Act, 25:12, 25:13 lender strategy, 26:30 modifications, contract, 26:25 ATTORNEY FEE AWARDS non-signatories, 26:22 RICO claims, 18:33 reservation of power to arbitrate, ATTORNEY GENERAL 26:23 Comprehensive Thrift and Bank third parties, 26:22 Fraud Prosecution and Taxpayer Federal Arbitration Act Recovery Act, 25:14 generally, 26:13 preemption of state laws, 26:14 ATTORNEYS AT LAW statute, App 26A Duress claims, representation by Form of provision, 26:33 counsel. 3:8

ARBITRATION—Cont'd

| BAD FAITH   | BANK FRAUD                                |
|---|---|
| Generally, 4:1 et seq.                                    | Generally, 24:21                          |
| See also Good Faith Contractual                           | Bank Secrecy Act (this index)             |
| <b>Obligations</b> (this index)                           | Comprehensive Thrift and Bank             |
| Acceleration, bad faith, 2:15                             | Fraud Prosecution and                     |
| Adhesion contracts, <b>4:5</b>                            | <b>Taxpayer Recovery Act</b> (this index) |
| Adoption of remedy by states, <b>4:10</b>                 | Director and Officer Liabilities          |
| Bargaining power as factor, 4:5                           | (this index)                              |
| California cases, <b>4:7</b> , <b>4:8</b>                 | Fiduciary Obligations (this index)        |
| Commercial cases, justification for remedy in, <b>4:4</b> | Litigation (this index)                   |
| Disclosure duties, <b>6:5</b>                             | BANK HOLDING COMPANY ACT                  |
| Economic loss doctrine, bad faith tort                    | (BHCA)                                    |
| claims, <b>4:12</b>                                       | Anti-Tying Laws (this index)              |
| <b>Equitable Subordination of Priori-</b>                 | BANK NOTES                                |
| ties (this index) Fiduciary Obligations (this index)      | Securities laws applicable to, 20:6       |
| Foreclosure, bad faith, 2:15                              | BANKRUPTCY LAWS                           |
| Fraudulent Transfers (this index)                         | Generally, 12:1 et seq.                   |
| Good faith obligations of lenders                         | See also Involuntary Bankruptcy           |
| compared, 1:3   | (this index)                              |
| Historical background, 4:2                                | Appellate review of compromised           |
| Inefficient breach of contract, <b>4:6</b>                | claims, <b>12:7</b>                       |
| Insurance cases, 4:3                                      | Arbitration provisions, 26:20             |
| Justification for remedy in com-                          | Automatic stays                           |
| mercial cases, 4:4  | environmental claims, 17:93, 17:94        |
| Litigation (this index)                                   | violations, 9:13                          |
| Negligence claims, bad faith tort claims, <b>4:9</b>      | Burden of proof                           |
| Origin of remedy, <b>4:2</b>                              | equitable subordination, <b>9:19</b>      |
| Overview of liabilities, 1:3                              | fraudulent transfers, <b>10:4</b>         |
| Peace of mind, 4:5  | Chapter 11 plans                          |
| Petition for hearing on issue, <b>App 4A</b>              | generally, <b>12:12 et seq.</b>           |
| Preferential Transfers (this index)                       | acceptance standards, 12:32               |
| <b>Regulatory Sanctions</b> (this index)                  | approvals of rate changes, 12:31          |
| Rejection of remedy, <b>4:11</b>                          | bad faith votes, 12:23                    |
| Risk minimization considerations                          | classification of claims and              |
| generally, <b>4:13</b>                                    | interests                                 |
| see also <b>Risk Minimization</b> (this                   | generally, 12:16 et seq.                  |
| index)  | impairments, <b>12:17</b> , <b>12:18</b>  |
| States adopting remedy, <b>4:7</b> , <b>4:10</b>          | improvements as impairments,              |
| States rejecting remedy, 4:8, 4:11                        | 12:17                                     |
| Superior bargaining power as factor,                      | payment in full as impairment,            |
| 4:5   | 12:18                                     |
| DANK DDIDEDV ACT  | review, <b>12:19</b>                      |
| BANK BRIBERY ACT  | standard of review, 12:19                 |
| Generally, 24:22  | collateral, sales of, 12:38               |

| BANKRUPTCY LAWS—Cont'd   | BANKRUPTCY LAWS—Cont'd                                    |
|--|---|
| Chapter 11 plans—Cont'd  | Chapter 11 plans—Cont'd                                   |
| compliance of plan   | model plan, App 12B                                       |
| generally, 12:26   | multiple plans, 12:25                                     |
| good faith requirements, 12:28   | nondebtor claims, release of, 12:42                       |
| proponent compliance, 12:27  | et seq.   |
| compromises substituting for, 12:6   | objections to confirmation, 12:24                         |
| confirmation, objections to, 12:24   | one class of claims, acceptance of                        |
| contents of plan, 12:15  | plan by, <b>12:32</b>                                     |
| cram down  | ownership interests, cram down,                           |
| generally, 12:35 et seq.   | 12:41   |
| cash outs by secured creditors,  | parties entitled to, 12:13, 12:14                         |
| 12:36  | payment in full as impairment,                            |
| collateral, sales of, 12:38  | 12:18   |
| dissenting classes, 12:35  | payments for services and                                 |
| equivalent, indubitable, 12:39   | expenses, required disclosures, 12:29                     |
| indubitable equivalent, 12:39  | proponent compliance, 12:27                               |
| lien retention, 12:37  | rate change approvals, 12:31                              |
| ownership interests, 12:41   | release of nondebtor claims, 12:42                        |
| retention of liens, 12:37  | et seq.   |
| sales of collateral, 12:38   | requirements, 12:13                                       |
| secured creditor cash outs, 12:36  | res judicata  |
| unsecured creditors, 12:40   | lender liability claims, <b>12:44</b>                     |
| disclosure requirements  | third party claims, 12:43                                 |
| generally, <b>12:29</b>  | retention of liens, 12:37                                 |
| future management, 12:30   | review of classification of claims                        |
| payments for services and  | and interests, 12:19                                      |
| expenses, 12:29  | sales of collateral, 12:38                                |
| statements, 12:20  | sash outs by secured creditors,                           |
| disclosure statements, 12:20   | 12:36   |
| disqualification of votes, 12:23   | scope of plan, 12:15                                      |
| dissenting classes, 12:35  | secured creditor cash outs, 12:36                         |
| equivalent, indubitable, 12:39   | service payment disclosures, 12:29                        |
| expense payment disclosures,   | small business plans, 12:14                               |
| 12:29  | solicitation, 12:21                                       |
| feasibility, 12:33   | standard of review of classification                      |
| filing requirements, 12:13   | of claims and interests, 12:19                            |
| future management disclosure   | strategies of creditors, 12:45                            |
| requirements, 12:30  | third party nondebtor claims,                             |
| good faith requirements, 12:28   | release of, 12:42 et seq.                                 |
| impaired classes, 12:34  | unsecured creditor cram down,                             |
| impairments, 12:17, 12:18  | 12:40   |
| improvements as impairments, 12:17   | voting, <b>12:22</b> , <b>12:32</b>                       |
|  | Claims, environmental expenses as,                        |
| indubitable equivalent, <b>12:39</b> interests, classification of, <b>12:16 et</b> | 17:99 et seq.   |
| seq.   | Comprehensive Thrift and Bank                             |
| lien retention, 12:37  | Fraud Prosecution and Taxpayer Recovery Act, <b>25:15</b> |
|  |   |

| BANKRUPTCY LAWS—Cont'd                           | BANKRUPTCY LAWS—Cont'd                       |
|--|--|
| Compromising claims                              | Inequitable conduct                          |
| generally, 12:2 et seq.                          | generally, <b>9:9 et seq.</b>                |
| appellate review, 12:7                           | see also Equitable Subordination             |
| approval standards, 12:5                         | <b>of Priorities</b> (this index)            |
| early compromise as strategy,                    | as to tort of deepening insolvency.          |
| 12:45  | See <b>Deepening Insolvency</b> (this index) |
| injunctions, 12:11                               | Injunctions, 12:11, 12:45                    |
| jurisdiction, 12:7                               | Insolvency (this index)                      |
| matter preclusion, 12:10                         | Involuntary Bankruptcy (this                 |
| nondebtors claims, 12:4                          | index)                                       |
| parties, 12:3                                    | Jurisdiction, 12:7                           |
| plans, compromises substituting                  | Lender alternatives, creditor strategy,      |
| for, <b>12:6</b>                                 | 12:45  |
| preclusion, 12:10                                | <b>Litigation</b> (this index)               |
| reference, withdrawal of, 12:8                   | Mediation, 26:34                             |
| remand to state court, 12:9                      | Model reorganization plan, <b>App 12B</b>    |
| state court, remand to, 12:9                     | Multiple plans, 12:25                        |
| withdrawal of reference, 12:8                    | 1984 Code amendments, <b>10:20</b>           |
| Control Person Status (this index)               | Nondebtor claims, release of                 |
| Cram down. Chapter 11 plans, above               | generally, <b>12:42</b>                      |
| Creditors' general obligations, <b>9:6</b>       | •  |
| <b>Deepening Insolvency</b> (this index)         | res judicata claims, <b>12:43</b>            |
| Dischargeability restrictions, 25:15             | Nondebtors claims, compromising,             |
| Discharge of environmental claims,               | 12:4   |
| 17:102   | Overview of liabilities, 1:4                 |
| Disclosure requirements. Chapter 11 plans, above | Ownership interests, cram down, 12:41        |
| Earmarking, 11:9                                 | Parties necessary to compromise              |
| Environmental liabilities                        | claim, <b>12:3</b>                           |
| generally, 17:92 et seq.                         | Partnerships, 10:13                          |
| see also Environmental Claims                    | Plans  |
| (this index)                                     | compromises substituting for, 12:6           |
| Equitable Subordination of Priori-               | model reorganization plan, App               |
| ties (this index)                                | 12B  |
| Estate claims, 12:45                             | Ponzi schemes, 11:23                         |
| Filing of creditor's plan, creditor              | <b>Preferential Transfers</b> (this index)   |
| strategy, 12:45                                  | Presumptive insolvency, 11:15                |
| FLSA claims, 14:8                                | Priorities                                   |
| Fraudulent Transfers (this index)                | environmental cleanup cost, 17:98            |
| Garnishments as preferential                     | Equitable Subordination of                   |
| transfers, 11:5                                  | <b>Priorities</b> (this index)               |
| General obligations of creditors, 9:6            | <b>Regulatory Sanctions</b> (this index)     |
| Good faith requirements                          | Release of nondebtor claims                  |
| Chapter 11 plans, 12:28                          | generally, <b>12:42</b>                      |
| transferees for value, 10:14                     | res judicata claims, 12:43                   |
| Heightened duties to debtor, parties             | Release of nonderivative claims,             |
| owing, 9:3                                       | creditor strategy, <b>12:45</b>              |

| BANKRUPTCY LAWS—Cont'd   | BANK SECRECY ACT—Cont'd   |
|--|---|
| Reorganizations. Chapter 11 plans,                                     | Exports of monetary instruments   |
| below  | generally, 21:15  |
| Res judicata   | exemptions, 21:16   |
| lender liability claims, 12:44   | False statements, 21:23   |
| third party claims, 12:43  | Foreign bank accounts, 21:14  |
| Risk minimization considerations generally, <b>12:45</b>               | Forfeitures of monetary instruments, 21:17, 21:18                         |
| see also Risk Minimization (this                                       | Identification of depositors, 21:8  |
| index)   | Imports of monetary instruments,  |
| Section 548, <b>10:6 et seq.</b>                                       | 21:15   |
| Secured creditor liability for   | <b>Litigation</b> (this index)  |
| environmental claims, 17:97  | Monetary instrument imports and   |
| Small business reorganization plans, 12:14                             | exports   |
|  | generally, 21:15  |
| Standing to Sue (this index) Strategies of creditors, 12:45            | Civil Asset Forfeiture Reform Act of 2000, <b>21:18</b>                   |
| Third party nondebtor claims, release                                  | exempt exports, 21:16   |
| of   | forfeitures, <b>21:17, 21:18</b>  |
| generally, 12:42   | Money laundering  |
| res judicata claims, 12:43   | anti-money laundering program,  |
| Trustee appointment, 12:45   | 21:29, App 21C  |
| Trustee liability for environmental                                    | consent order, BSA/AML  |
| claims, <b>17:96</b>   | programs, <b>App 21C</b>  |
| Unsecured creditors, cram down, 12:40                                  | Money Laundering Control Act of 1986, <b>21:26</b>                        |
| Workout Strategies (this index)  | Money Laundering Prosecution  |
| BANK SECRECY ACT   | Improvements Act of 1988, <b>21:27</b>                                    |
| Generally, 21:1 et seq.  | statutory provisions, App 21B   |
| Anti-money laundering program, 21:29, App 21C                          | Money Laundering Control Act of 1986, <b>21:26</b>                        |
| Civil Asset Forfeiture Reform Act of                                   | Money Laundering Prosecution  |
| 2000, 21:18  | Improvements Act of 1988,   |
| Civil penalties, 21:19   | 21:27   |
| Consent order provisions relating to BSA/AML programs, <b>App 21</b> C | Multiple transactions, <b>21:7</b> Other currency transactions subject to |
| Constitutionality, 21:2  | reporting requirements, 21:13   |
| Criminal penalties   | Overview of liabilities, 1:5  |
| generally, <b>21:20 et seq.</b>  | Patriot Act, 21:28  |
| pattern of illegal activity, 21:22                                     | Pattern of illegal activity, <b>21:23</b>                                 |
| violations furthering other federal                                    | Purpose of transaction reporting  |
| crimes, 21:21  | requirements, 21:3  |
| Currency and Foreign Transactions                                      | <b>Regulatory Sanctions</b> (this index)                                  |
| Reporting Act, 21:3  | Reporting requirements, 21:1 et seq.                                      |
| Depositor identification, 21:8   | Risk minimization considerations  |
| Domestic currency transactions, 21:4                                   | generally, 21:30  |
| Excluded and exempt transactions,                                      | see also Risk Minimization (this  |
| 21:9, 21:16  | index)  |

| BANK SECRECY ACT—Cont'd                                    | BREACH OF CONTRACT—Cont'd  |
|--|--|
| Statutory provisions, App 21B                              | Oral agreements  |
| Statutory text, App 21A, App 21B                           | brief arguing against enforcement,                                       |
| Structured transactions                                    | App 2A   |
| generally, 21:10   | course of dealing, 27:3  |
| legislative and regulatory respon-                         | parol evidence rule, 2:4   |
| ses, <b>21:11</b>  | risk minimization, 2:19, 26:2  |
| willfulness, 21:12   | workout strategies, 27:3   |
| Suspicious activity, reporting                             | Oral argument to lend, statute of  |
| generally, 21:25   | frauds, 2:3  |
| Suspicious activity, reporting of                          | Overview of liabilities, 1:2   |
| generally, 21:6, 21:24                                     | Parol evidence rule, 2:4   |
| threshold of reporting, 21:24                              | Personality conflicts, 27:7  |
| Threshold of reporting suspicious activities, <b>21:24</b> | Request for legal assistance, <b>27:10</b> Statute of frauds, <b>2:3</b> |
| USA Patriot Act, <b>21:28</b>                              | Troubled credit checklist, <b>27:9</b>                                   |
| Virtual currency, 21:5                                     | Workout Strategies (this index)  |
| Willfulness and structured transac-                        | Written communications, 27:6   |
| tions, 21:12   |  |
|  | BRIBERY  |
| BREACH OF CONTRACT   | Generally, 24:22, App 24B  |
| Generally, 2:2 et seq.                                     | Comprehensive Thrift and Bank  |
| Adhesion contracts, arbitrability, 26:21                   | Fraud Prosecution and<br>Taxpayer Recovery Act (this                     |
| Agreements, work out                                       | index)   |
| generally, 27:8  | Criminal Laws (this index)   |
| form, <b>27:12</b>   | RICO Claims (this index)   |
| <b>Arbitration</b> (this index)                            | BRIEFS, FORMS OF   |
| Care, Duty of (this index)                                 | Model Briefs (this index)  |
| Commitments, loan  | , , , , ,  |
| environmental concerns, 17:121                             | BROWNFIELDS  |
| securities laws applicable to, 20:8                        | See Environmental Claims (this   |
| Commitment to fund, 2:6                                    | index)   |
| Communication, 27:6  | BURDEN OF PROOF  |
| Course of dealing, 27:3                                    | See Litigation (this index)  |
| Covenants, loan, 26:7                                      | BUSINESS JUDGMENT RULE   |
| Default, events of   | Generally, 23:10   |
| form, <b>26:8</b>  | Criticisms of rule, 23:11  |
| materiality, 27:4  |  |
| Dismissal of good faith claim,                             | BUSINESS STARTUPS  |
| duplicative as, 2:24                                       | Jumpstart Our Business Startups Act                                      |
| FDIC liabilities, 2:5                                      | (JOBS Act), <b>20:21</b>   |
| Formation of contract, 2:2                                 | BUYOUTS  |
| Funding commitments, 2:6                                   | See Leveraged Buyouts (this index)                                       |
| Litigation (this index)                                    |  |
| Materiality of default, 27:4                               | CARE, DUTY OF  |
| Negotiation letter, 27:11                                  | Generally, 23:2  |
| Notice requirements, 27:5                                  | Compliance duties, 23:4  |

# CARE, DUTY OF—Cont'd Contributory negligence, 23:22 Director and Officer Liabilities (this index) Disclosure duties, 6:5 Equal Credit Opportunity Act (this index) Fiduciary Obligations (this index) Inquiry duties, 23:20 Inquiry statutes, 23:17

**Litigation** (this index) Model Business Corporation Act,

Laws, compliance with, 23:4

23:16
Notice statutes, 23:17

Personal business affair standard, 23:18

Proximate cause, **23:21**Regulations, compliance with, **23:4**Risk minimization considerations generally, **23:34** 

see also **Risk Minimization** (this index)

Statutory duties, 23:12 et seq.

## CEASE AND DESIST ORDERS

Generally, **24:3** et seq. Procedures, **24:6** Unsafe practices, **24:5** 

## CENTRAL BANK

Aiding and abetting liability, post-Central Bank liability for secondary parties, **20:46** 

# **CERTIFICATES OF DEPOSIT**

Securities laws applicable to, **20:10** 

# **CHAPTER 11 PLANS**

See Bankruptcy Laws (this index)

#### **CHARITIES**

Fraudulent transfers, charitable contributions, **10:7** 

# CIVIL ASSET FORFEITURE REFORM ACT OF 2000

Generally, 21:18

# **CLAYTON ACT**

**Antitrust Claims** (this index)

## **COMMITMENTS, LOAN**

See **Breach of Contract** (this index)

# **COMPLAINTS**

Antitrust claims, **App 15A**Bad faith, bank's petition for hearing on issue, **App 4A**Bondholders' claim for interference

with loan, **App 8A** 

Breach of contract to lend money, fraud allegations, **App 6A** 

Breach of directors' and officers' obligations, **App 23A** 

Directors and officers, action against, App 23A

Duress, allegations, **App 3A**Fiduciary obligations, breach of, **App 23A** 

Fraud allegations, **App 6A**Good faith contractual obligations,
claim of breach of, **App 2B** 

Interference, App 8A

Leveraged buyout, claim for interference with,  $\boldsymbol{App\;8A}$ 

# COMPREHENSIVE

ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

See **Environmental Claims** (this index)

# COMPREHENSIVE THRIFT AND BANK FRAUD PROSECUTION AND TAXPAYER RECOVERY ACT

Generally, **25:1 et seq.** 

See also **Bank Fraud** (this index)

Asset concealment, 25:3

Asset protection, 25:11

Attachment, 25:12, 25:13

Attorney General injunctions, 25:14

Bankruptcy dischargeability restrictions, **25:15** 

Concealment of assets, 25:3

Continuing enterprises, 25:10

Convicted criminals

control restrictions, 25:4

ownership restrictions, 25:18

# COMPREHENSIVE THRIFT AND BANK FRAUD PROSECUTION AND TAXPAYER RECOVERY ACT —Cont'd

-Cont'd Criminal penalties, 25:2 Enhanced criminal penalties, 25:2 Examinations, obstruction of, 25:5 Forfeitures, 25:17 Fraudulent transfers, 25:19 Golden parachute restrictions, 25:16 Increased penalties, 25:6 Indemnification restrictions, 25:16 Injunctions, 25:14 Limitations of actions, 25:7 Management restrictions, 25:4, 25:18 Money laundering, 25:8 Obstruction of examinations, 25:5 Ownership restrictions, 25:18 Penalty increases, 25:6 Prejudgment attachment, 25:13 Remedies, 25:11 et seq. Restitution, 25:9 Restrictions on management, 25:4, 25:18 RICO limitations of actions, 25:7 Subtitle A, 25:2 et seq.

# COMPROMISING CLAIMS

Subtitle B, 25:11 et seq.

See Bankruptcy Laws (this index)

# CONCEALMENT OF ASSETS

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, 25:3

#### **CONDOMINIUMS**

Securities laws applicable to sale and rentals of, **20:11** 

# **CONSENT ORDERS**

BSA/AML programs, **App 21C** Regulatory enforcement, **24:4** 

#### **CONSPIRACY**

Generally, 24:24 Criminal Laws (this index) Monopolistic, 15:3 RICO claims, 18:24

## CONSUMER PROTECTION ACTS

Anti-Tying Laws (this index)
Equal Credit Opportunity Act (this index)

# **CONTINUING ENTERPRISES**

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, **25:10** 

# CONTRACT CLAIMS

Generally, **2:1 et seq.**Adhesion contracts, arbitrability, **26:21** 

**Arbitration** (this index)

**Breach of Contract** (this index)

Care, Duty of (this index)

**Duress** (this index)

**Fiduciary Obligations** (this index)

Fraud in the inducement, 26:16

Good Faith Contractual Obligations (this index)

Inefficient breach of contract, **4:6** 

Interference With Contract (this index)

Litigation (this index)

Overview of liabilities, **1:2** 

Special relationships between contracting parties, **1:2** 

**Workout Strategies** (this index)

#### CONTRIBUTIONS

Fraudulent transfers, religious and charitable contributions, **10:7** 

## **CONTROL INDICIA**

Fiduciary obligations, 5:8

#### CONTROL PERSON STATUS

Generally, **9:7**Indicia of control, **9:8** 

**Securities Laws** (this index)

# **CORPORATIONS**

**Director and Officer Liabilities** 

(this index)

Successor corporate liability, 17:40

# **COST AWARDS**

Generally, **28:9** RICO claims, **18:33** 

#### COUNTERCLAIM

Debtor's, for negligence in administration of loan, **App 7A** 

#### CREDITORS' RIGHTS

**Equitable Subordination of Priorities** (this index)

Fraudulent Transfers (this index)
General obligations of creditors, 9:6
Preferential Transfers (this index)

# CRIMINAL LAWS

Generally, **24:20 et seq.**Bank Bribery Act, **24:22**Bank examiners, obstruction of, **24:26** 

Bank fraud, 24:21

Bank Secrecy Act (this index)

Bribery, 24:22, App 24B

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act (this index)

Conspiracy, RICO, 18:24

Conspiracy to defraud the government, **24:24** 

Criminal referral, securities law violations, **20:61** 

Directors' and officers' compliance duties, 23:4

Duty to comply, 23:4

Embezzlement

generally, 24:20

statutory provisions, App 24C

Examiners, obstruction of, 24:26

False entries, 24:23

Foreign exchange violations, 21:20 et seq.

# Fraud and Misrepresentation (this index)

Fraudulent transfers, 25:19

Gifts for procuring loans, App 24B

Government, conspiracy to defraud, 24:24

Intent, securities law violations, **20:60** 

Investigation, obstruction of, **24:25** Knowledge defense, securities law

**Litigation** (this index)

violations, 20:59

#### CRIMINAL LAWS—Cont'd

Misapplication of funds generally, **24:20** 

statutory provisions, App 24C

**Money Laundering** (this index)

Obstruction of bank examiners, 24:26

Obstruction of investigation, 24:25

RICO Claims (this index)

Risk minimization considerations

generally, 24:27

see also **Risk Minimization** (this index)

Securities law violations

generally, 20:57 et seq.

see also **Securities Laws** (this index)

Tactical considerations, 20:62

Withholding Tax Liabilities (this index)

#### **CURRENCY EXCHANGE**

See **Bank Secrecy Act** (this index)

# **CUSTOMER FRAUD**

Negligence claims against lender based on, **7:8** 

# **DAMAGES**

Bank Holding Company Act, **16:9** Home Owners' Loan Act, **16:9** RICO claims, **18:27** 

# DEEPENING INSOLVENCY

Generally, **7A:1** et seq.

Development of tort, 7A:3

Elements of offense, 7A:2

Introduction, 7A:1

#### **DEFAULT**

Acceleration, bad faith, 2:15

Bad faith acceleration and foreclosure, 2:15

Foreclosure, bad faith, 2:15

Insecurity positions, 2:17

Workout strategies, sample bank form, 27:13

# **DEFENSES**

Administrative exhaustion, exception, **24:16** 

| DEFENSES—Cont'd                                     | DIRECTOR AND OFFICER   |
|---|--|
| CERCLA, environmental claims,                       | LIABILITIES—Cont'd   |
| 17:54 et seq.                                       | CERCLA, 17:39  |
| Customer claims, account document defenses, 7:9     | Complaint alleging breach of fiduciary obligations, <b>App 23A</b> |
| Equal credit opportunity act, 22:12,                | Compliance duties, 23:4  |
| 22:14   | Contributory negligence, 23:22                                     |
| Interference with contract, 8:9                     | Control person status  |
| Knowledge, securities, <b>20:59</b>                 | generally, 9:7   |
| Knowledge defense, securities law violations, 20:59 | see also <b>Securities Laws</b> (this index)                       |
| Reasonable alternative, 3:7                         | indicia of control, 9:8  |
| Registration of securities, 20:18                   | Creditors, duties to, 23:32  |
| DEMAND INSTRUMENTS                                  | Disclosure duties, <b>6:5</b>                                      |
| Good faith contractual obligations,                 | Environmental claims, 17:39  |
| 2:13  | Executive officers, loans to, 23:29                                |
| DEMAND LETTERS                                      | Fiduciary duties   |
| Secured debt  | generally, 23:23 et seq.   |
| bank form, 27:15                                    | see also <b>Fiduciary Obligations</b>                              |
| counsel prepared, 27:16                             | (this index)<br>FIRREA   |
| Unsecured, bank form, 27:14                         |  |
| Workout strategies, sample forms                    | limitations of actions, 23:15 penalties, 23:33                     |
| secured debt, bank form, 27:15                      | preemption of state statutes, 23:14                                |
| secured debt, counsel prepared,                     | Fraud and Misrepresentation (this                                  |
| 27:16   | index)   |
| unsecured, bank form, 27:14                         | Functions, 23:2  |
| DEPOSITS  | Funds management, 23:7   |
| See Certificates of Deposit (this                   | Golden parachute restrictions, <b>25:16</b>                        |
| index)  | Indemnification restrictions, <b>25:16</b>                         |
| •   | Inquiry duties, 23:20  |
| DERIVATIVES   | Inquiry statutes, 23:17  |
| Securities laws applicable to, 20:12                | Inside directors, 23:9   |
| DIRECTOR AND OFFICER                                | Insider transactions   |
| LIABILITIES   | generally, 23:25   |
| Generally, 23:1 et seq.                             | affiliates, loans to, 23:30  |
| See also <b>Personal Liabilities</b> (this          | creditors, duties to, 23:32  |
| index)  | executive officers, loans to, 23:29                                |
| Affiliates, loans to, 23:30                         | FIRREA penalties, 23:33  |
| Antitrust Claims (this index)                       | judicial interpretation of term, 9:5                               |
| Anti-Tying Laws (this index)                        | loans, <b>23:26</b>  |
| <b>Arbitration</b> (this index)                     | overdraft privileges, 23:28  |
| Bank Secrecy Act (this index)                       | preferential loans, 23:27  |
| Business judgment rule, 23:10, 23:11                | savings and loan associations,                                     |
| Care duties   | 23:31  |
| generally, 23:2 et seq.                             | statutory definition of term, 9:4                                  |
| generally, 23:2 et seq.                             | Interlocking directorates and antitrust                            |
| statutory, 23:12 et seq.                            | claims, <b>15:21</b>   |

| DIRECTOR AND OFFICER                             | DISCLOSURE DUTIES—Cont'd                                  |
|--|---|
| LIABILITIES—Cont'd                               | <b>Environmental Claims</b> (this index)                  |
| Investment policies, 23:8                        | SEC disclosure requirements, 17:106                       |
| Laws, compliance with, 23:4                      | Securities Laws (this index)                              |
| Limitations of actions, 23:15                    | · · ·   |
| Limitations on liability, 23:19                  | DISCRIMINATION IN CREDIT                                  |
| Litigation (this index)                          | MARKETPLACE   |
| Loan portfolio management, <b>23:6</b>           | Equal Credit Opportunity Act,                             |
| Loyalty duties                                   | purchased loans, 22:9                                     |
| generally, 23:23 et seq.                         | DISMISSAL   |
| see also Fiduciary Obligations                   |   |
| (this index)                                     | Good faith claim, duplicative as breach of contract, 2:24 |
| Management, selection of, 23:3                   | Pretrial motions, 28:12                                   |
| Mandates, statutory, 23:13                       | rieurai mouons, 26.12                                     |
| Model Business Corporation Act                   | DOCUMENTATION PRACTICES                                   |
| duties of care, 23:16                            | See Risk Minimization (this index)                        |
| Negligence (this index)                          |   |
| Notice statutes, 23:17                           | DODD-FRANK ACT  |
| Outside directors, 23:9                          | Consumer arbitration, 26:2                                |
| Overview of liabilities, 1:6                     | DONATIONS   |
| Personal business affair standard of             | Fraudulent transfers, religious and                       |
| care, <b>23:18</b>                               | charitable contributions, <b>10:7</b>                     |
| Planning responsibilities, 23:5                  | ,   |
| Policy making, 23:5                              | DURESS  |
| Portfolio management, 23:6                       | Generally, <b>3:1 et seq.</b>                             |
| Proximate cause, 23:21                           | Complaint alleging duress, App 3A                         |
| Regulations, compliance with, 23:4               | Counsel, representation by, 3:8                           |
| <b>Regulatory Sanctions</b> (this index)         | Defense, reasonable alternative, 3:7                      |
| Review of operations, 23:3                       | Elements of claim, 3:3                                    |
| Risk minimization considerations                 | <b>Litigation</b> (this index)                            |
| generally, 23:34                                 | Origins of action, 3:2                                    |
| see also <b>Risk Minimization</b> (this          | Overview of liabilities, <b>1:2</b>                       |
| index)   | Petition, <b>App 3A</b>                                   |
| Savings and loan associations, 23:31             | Ratification, <b>3:9</b>                                  |
| Securities Laws (this index)                     | Reasonable alternative defense, <b>3:7</b>                |
| Selection of management, 23:3                    | Representation by counsel, <b>3:8</b>                     |
| Self-dealing                                     | Restatement of Contracts                                  |
| generally, 23:23 et seq.                         | generally, <b>3:4</b>                                     |
| see also Fiduciary Obligations                   | wrongful threat, <b>3:6</b>                               |
| (this index)                                     |   |
| Statutory duties of care, 23:12 et seq.          | Risk minimization considerations                          |
| Statutory limitations on liability, <b>23:19</b> | generally, 3:11   |
| Successor corporate liability, 17:40             | see also <b>Risk Minimization</b> (this                   |
| Workout Strategies (this index)                  | index)  |
| workout strategies (tills index)                 | Tort, generally, 3:10                                     |
| DISCLOSURE DUTIES                                | Wrongful threat   |
| Generally, <b>6:5</b>                            | generally, 3:5  |
| Bankruptcy Laws (this index)                     | Restatement of Contracts, 3:6                             |

#### **EARMARKING** ENVIRONMENTAL CLAIMS Preferential transfers, 11:9 —Cont'd Care, Duty of (this index) ECONOMIC LOSS DOCTRINE **CERCLA** Bad faith tort claims, 4:12 generally, 17:22 et seq. Fiduciary obligations, 5:11 abatement actions, App 17B Negligence, 7:12 civil penalties, App 17D **EMBEZZLEMENT** contingency plan, 17:31 contractual liability, 17:27 Generally, 24:20 defenses, 17:54 et seq. Statutory provisions, App 24C definitions, App 17A ENHANCEMENT OF PENALTY de minimis settlements with land-Comprehensive Thrift and Bank owners, 17:57 Fraud Prosecution and Taxpayer disposal, 17:29 Recovery Act, 25:2 EPA response actions, 17:32 **ENRON CASE** federal government liability, 17:41 Aiding and abetting liability of secfederal lender liability legislation, ondary parties, 20:46 17:49 et seq. federal liens, 17:60 ENVIRONMENTAL CLAIMS fiduciary protection legislation, Generally, 17:1 et seq. 17:49 et seq. Abandonment of contaminated propgovernmental liability, 17:41 erty, 17:95 indemnification, 17:28 Abatement actions, CERCLA, App injunctive relief, 17:24 17B joint and several liability, 17:38 Adjacent sites, 17:108 liability generally, App 17C Affidavits by owners, risk minimizalimitations of actions, 17:36 tion, 17:122 national contingency plan, 17:31 All appropriate inquiry rule of EPA, officer and directory liability, 17:114 17:39 Audits parties liable, 17:25 generally, **17:110** petroleum exclusion, 17:55, 17:56 access to premises for audits, private contractual liability, 17:27 17:111 private plaintiffs, 17:34 phase audits, 17:117 prospective purchaser agreements Bankruptcy laws with EPA, 17:58 generally, 17:92 et seq. remedial actions, 17:33 abandonment of contaminated property, 17:95 response costs, 17:30 automatic stays, 17:93, 17:94 responsible parties, 17:25 claims, environmental expenses as, retroactivity, 17:26 17:99 et seq. settlements, App 17E cleanup cost priorities, 17:98 shareholder liability, 17:39 contribution claims, 17:101 Small Business Liability Relief definition of claim, 17:100 and Brownfields Revitalization Act, 17:23 discharge of environmental claims, 17:102 state governments, liability, 17:41 secured creditor liability, 17:97 strict liability, 17:37 trustee liability, 17:96 successor corporate liability, 17:40

| ENVIRONMENTAL CLAIMS  | ENVIRONMENTAL CLAIMS   |
|---|--|
| —Cont'd   | —Cont'd  |
| CERCLA—Cont'd   | Fiduciaries  |
| trustee protection legislation, 17:49 et seq.                               | liabilities, <b>17:50</b>                                      |
| used oil, petroleum exclusion,  | protection, 17:51  |
| 17:56   | statutory guidance, 17:52                                      |
| Checklist, trust provisions, <b>17:53</b>                                   | trust provisions checklist, 17:53                              |
| Civil penalties, CERCLA, <b>App 17D</b>                                     | Financial institute liability, <b>17:43 et</b>                 |
| Commitment letters, risk minimiza-  | <b>seq.</b> Financial responsibility requirements              |
| tion, 17:121  | underground storage tanks,                                     |
| Contingency plan, 17:31   | 17:21  |
| Contractual liability, 17:27  | Fleet Factors case, 17:48                                      |
| Control liabilities of lender liability,                                    | Governmental liability, 17:41                                  |
| 17:45   | Hazardous waste, petroleum as,                                 |
| De minimis settlements with land-   | 17:16  |
| owners, <b>17:57</b>  | Indemnification  |
| Disclosure obligations of lenders,  | CERCLA, <b>17:28</b>   |
| 17:119  | underground storage tanks, 17:20,                              |
| Discovery of hazards, 17:118  | App 17F  |
| Disposal  | Industry familiarity, 17:109                                   |
| CERCLA, 17:29   | Injunctive relief, CERCLA, 17:24                               |
| lender liabilities, 17:50   | Insurance coverage   |
| Disposal decisions, ability to affect, 17:46                                | generally, 17:85 et seq.                                       |
| Documentation practices, 17:120 et  | comprehensive general liability policies, <b>17:86 et seq.</b> |
| seq.  | damages, interpretation of term,                               |
| Engineers, selection of, <b>17:116</b> EPA                                  | 17:88  |
| CERCLA response actions, 17:32  | environmental lien endorsements, <b>17:91</b>                  |
| de minimis settlements with land-   | exclusions, 17:89  |
| owners, 17:57   | lender coverage, 17:125  |
| Fleet Factors case, <b>17:48</b> lender liability rule, <b>17:47, 17:48</b> | lien endorsements, 17:91                                       |
| prospective purchaser agreements,   | occurrences, 17:87   |
| 17:58   | pollution exclusion clauses, 17:89                             |
| underground storage tank lender   | risk minimization, 17:125                                      |
| liability rule and safe harbor,   | title insurance, 17:90   |
| 17:11   | Joint and several liability, CERCLA,                           |
| FDIC guidelines for environmental   | 17:38  |
| risk program, 17:115  | Leaking tanks. Underground storage                             |
| Federal government liability, <b>17:41</b>                                  | tanks, below   |
| Federal Leaking Underground Stor-   | Liens  |
| age Tank Trust Fund, 17:19  | generally, 17:60 et seq.                                       |
| Federal lender liability legislation,                                       | Federal liens, above   |
| 17:49 et seq.   | State liens, below   |
| Federal liens   | Limitations of actions, CERCLA,                                |
| generally, <b>17:60</b>   | 17:36  |
| insurance coverage, 17:91   | <b>Litigation</b> (this index)                                 |

#### **ENVIRONMENTAL CLAIMS** ENVIRONMENTAL CLAIMS —Cont'd —Cont'd RCRA-Cont'd Loan agreement provision, risk minimization, 17:122 trust funds, 17:19 Minimization of risk.. Risk minimi-Underground storage tanks, below zation considerations, below Real estate notice provisions, 17:84 Mortgages, risk minimization, 17:122 **Regulatory Sanctions** (this index) National contingency plan, 17:31 Remedial actions, CERCLA, 17:33 Notice provisions, 17:84 Remediation decisions, lender Notice requirements, 17:60 et seq. liability for, 17:46 Officer and directory liability, 17:39 Response costs, 17:30 Ownership liability of lenders, 17:44 Responsible parties, 17:25 Parties liable, 17:9, 17:25 Retroactivity, CERCLA, 17:26 Petroleum contamination Risk minimization considerations CERCLA exclusion. 17:55, 17:56 generally, 17:103 lender options, 17:17 see also Risk Minimization (this RCRA, 17:16 index) Underground storage tanks, below EPA all appropriate inquiry rule, Preemption of public nuisance 17:114 petroleum contamination, lender recovery theories by private parties, 17:35 options, 17:17 SEC disclosure requirements, 17:106 Private contractual liability, 17:27 Private plaintiff CERCLA actions, Security agreements, risk minimiza-17:34 tion, 17:122 Property owned exclusion, 17:10 Selection of engineers, 17:116 Prospective purchaser agreements Selective foreclosures, 17:112, with EPA, 17:58 17:113 Ouestionnaires, risk minimization, Settlements, CERCLA, App 17E 17:123, 17:124 Shareholder liability, 17:39 **RCRA** Small Business Liability Relief and generally, 17:2 et seq. Brownfields Revitalization Act, closure orders for underground 17:23 tanks, 17:14 State governments, liability, 17:41 enforcement provisions, 17:3, 17:4 State laws EPA underground storage tank RCRA enforcement, 17:4 lender liability rule and safe trust funds, underground storage harbor, 17:11 tanks, 17:18 existing tank rules, 17:13 underground storage tanks, 17:8 et indemnification agreements, 17:20 seq. injunctions, 17:5 State liens new tank requirements, 17:12 generally, 17:61 et seq. notice to private plaintiffs, 17:6 Arkansas, 17:61 parties liable, 17:9 California, 17:62 petroleum as hazardous waste. Connecticut, 17:63 17:16 Georgia, 17:64 private plaintiff notice requirements, 17:6 Illinois, 17:65 insurance coverage, 17:91 responses to leaking tanks, 17:15 state provisions, enforcement, 17:4 Iowa, 17:66

| ENVIRONMENTAL CLAIMS                        | ENVIRONMENTAL CLAIMS                         |
|---|--|
| —Cont'd                                     | —Cont'd                                      |
| State liens—Cont'd                          | Underground storage tanks—Cont'd             |
| Kentucky, <b>17:67</b>                      | indemnification agreements, 17:20,           |
| Louisiana, 17:68                            | <b>App 17F</b>                               |
| Maine, 17:69                                | liabilities, 17:9                            |
| Maryland, <b>17:70</b>                      | new tank EPA requirements, 17:12             |
| Massachusetts, 17:71                        | parties liable, RCRA, 17:9                   |
| Michigan, 17:72                             | petroleum as hazardous waste,                |
| Minnesota, 17:73                            | 17:16, 17:17                                 |
| Montana, 17:74                              | response requirements, 17:15                 |
| New Hampshire, 17:75                        | risk minimization, 17:107                    |
| New Jersey, <b>17:76</b>                    | state regulation, 17:8 et seq.               |
| Ohio, 17:77                                 | state trust funds, 17:18                     |
| Oregon, <b>17:78</b>                        | Used oil, petroleum exclusion, 17:56         |
| Pennsylvania, <b>17:79</b>                  | Useful product doctrine, 17:42               |
| Tennessee, 17:80                            | ENVIRONMENTAL PROTECTION                     |
| Texas, <b>17:81</b>                         | AGENCY (EPA)                                 |
| Virginia, <b>17:82</b>                      | See Environmental Claims (this               |
| Strict liability under CERCLA, <b>17:37</b> | index)                                       |
| Superfund. CERCLA, above                    | EQUAL CREDIT OPPORTUNITY                     |
| Tanks. Underground storage tanks,           | EQUAL CREDIT OPPORTUNITY ACT                 |
| below                                       |  |
| Tax deductions for cleanup expenses,        | Generally, 22:1 et seq.                      |
| 17:59                                       | Adverse action notifications, 22:5           |
| Title insurance, 17:90                      | Application for credit, 22:4                 |
| Transfer restrictions, 17:60 et seq.,       | Credit application, 22:4                     |
| 17:83                                       | Damages, 22:11                               |
| Trustee liabilities                         | Defenses, 22:12, 22:14                       |
| generally, 17:50                            | ECOA violations, 22:14                       |
| bankruptcy laws, 17:96                      | Federal preemption, 22:6                     |
| checklist, 17:53                            | Guarantee rules, <b>22:13</b> , <b>22:14</b> |
| Trust funds                                 | Legislative history, 22:2                    |
| federal, 17:19                              | Limitation of actions, 22:10                 |
| state, 17:18                                | Litigation (this index)                      |
| Underground storage tanks                   | Notification of adverse action, 22:5         |
| generally, 17:7 et seq.                     | Overview, 22:3                               |
| closure requirements, EPA, 17:14            | Preemption of state laws, 22:6               |
| EPA UST lender liability rule and           | Purchased loans, 22:9                        |
| safe harbor, 17:11                          | Record retention requirements, 22:7          |
| existing tank EPA rule, 17:13               | Risk minimization considerations             |
| Federal Leaking Underground                 | generally, 22:15                             |
| Storage Tank Trust Fund,                    | see also Risk Minimization (this             |
| 17:19                                       | index)                                       |
| federal trust funds, 17:19                  | Special guarantee rules, 22:13               |
| financial responsibility require-           | Standing to sue, 22:8                        |
| ments, <b>17:21</b>                         | Troubled credit checklist, 27:9              |

#### **EQUITABLE SUBORDINATION** EQUITABLE SUBORDINATION OF PRIORITIES—Cont'd **OF PRIORITIES Workout Strategies** (this index) Generally, 9:1 et seq. Assignees, 9:18 **EOUITY** Automatic stay violations, 9:13 Regulatory enforcement, equitable Bankruptcy Code provisions, App powers of courts, 24:18 9A **EXAMINATION, OBSTRUCTION** Burden of proof, 9:19 Comprehensive Thrift and Bank Control person status Fraud Prosecution and Taxpayer generally, 9:7 Recovery Act, 25:5 indicia of control, 9:8 Criminal obstruction of examiner, Creditor fraud, 9:12 24:26 Creditors' general obligations, 9:6 Fraud and misrepresentation, 9:12 **EXCLUDER** Fraudulent transfers, 9:10 Good faith, 2:9 General obligations of creditors, 9:6 FAILED BANKS Heightened duties to debtor, parties FDIC liabilities, 2:5 owing, 9:3 Regulatory enforcement, filing Inequitable conduct claims, 24:17 generally, 9:9 et seq. automatic stay violations, 9:13 FAILED VENTURES creditor fraud, 9:12 Negligence claims against lenders, fraud and misrepresentation, 9:12 7:3 fraudulent transfers, 9:10 FAIR LABOR STANDARDS ACT undercapitalization of debtors, (FLSA) CLAIMS 9:11 Generally, 14:1 et seq. Injury requirements, 9:16 Accounts receivables, 14:3 Insiders Bankruptcy implications, 14:8 judicial interpretation of term, 9:5 **Director and Officer Liabilities** statutory definition of term, 9:4 (this index) **Litigation** (this index) Employees, 14:7 Model briefs Exemptions, 14:5 lender's reply brief, App 9C Hot goods penalties, 14:2 trustee's brief, App 9B Lenders, application to, 14:6 Obligations of creditors, 9:6 **Litigation** (this index) Origin of concept, 9:2 Machinery, 14:4 Overview, 1:4 Overview of liabilities, 1:5 Parties owing heightened duties to debtor, 9:3 Plant machinery, 14:4 Recharacterization alternative, 9:14 Receivables, 14:3 Risk minimization considerations **Regulatory Sanctions** (this index) generally, 9:20 Risk minimization considerations see also Risk Minimization (this generally, 14:9 index) see also Risk Minimization (this Standing, 9:17 index) Statutes, App 9A Salaried employees, 14:7 Tax penalties, 9:15 Scope of Act, 14:6 Undercapitalization of debtors, 9:11 Statute, App 14A

#### FAIR LABOR STANDARDS ACT FIDUCIARY OBLIGATIONS (FLSA) CLAIMS—Cont'd —Cont'd Inducement of third parties to breach, Transportation of hot goods, **14:2** 5:10 **FALSE ENTRIES** Insider transactions Generally, 24:23 generally, 23:25 FEDERAL ARBITRATION ACT affiliates, loans to, 23:30 creditors, duties to, 23:32 See **Arbitration** (this index) executives, loans to, 23:29 FEDERAL DEPOSIT INSURANCE FIRREA penalties, 23:33 **CORPORATION (FDIC)** loans to, 23:26 Breach of contract liabilities, 2:5 overdrafts by, 23:28 Civil penalties, App 24A preferential loans to, 23:27 Enforcement actions by, 24:14 Interest in transactions, 23:24 Environmental risk program Jury instructions, App 5A guidelines, 17:115 Lenders as fiduciaries, 5:5 Failed bank liabilities, 2:5 **Litigation** (this index) Regulatory sanctions by, 24:14 Loans to insiders, 23:26 FIDUCIARY OBLIGATIONS Origin of control theory, 5:6 Generally, 5:1 et seq., 23:23 et seq. Overdrafts by insiders, 23:28 Aiding and abetting liability, breach Overview of liabilities, 1:3 of fiduciary duty, **5:10** Preferential loans to insiders transac-Anti-Tying Laws (this index) tions, 23:27 California cases, 5:9 **Preferential Transfers** (this index) Care, Duty of (this index) Quasi-fiduciary standard, 5:9 Complaint alleging breach, App 23A **RICO Claims** (this index) Control indicia, 5:8 Risk minimization considerations Control person status generally, 5:12, 23:34 generally, 9:7 see also Risk Minimization (this indicia of control, 9:8 index) Control theory, origin of, **5:6** Savings and loan associations, 23:31 Creditor-debtor relationships, 5:3 Self-dealing, 23:23 Creditor in control Takeover transactions, 5:4 generally, 5:7 Third parties, inducement to breach, indicia of control, 5:8 5:10 Definition, 5:2 **Director and Officer Liabilities** (this index) Disclosure duties. 6:5

Disinterestedness, 23:24

ties (this index)

index)

Indicia of control. 5:8

Economic loss doctrine, 5:11

**Equitable Subordination of Priori-**

Fraud and Misrepresentation (this

**Fraudulent Transfers** (this index)

Hostile takeover transactions, 5:4

# FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND **ENFORCEMENT ACT** (FIRREA)

Penalties for violations, 23:33 Preemption of state statutes, 23:14, 23:15 Regulatory enforcement, 24:15, 24:19 Self-effecting misconduct, FIRREAbased actions, 24:19

Statutes of limitations, state, 23:15

Index-19

**Regulatory Sanctions** (this index)

Reliance on fraudulent representa-

tions, 6:8, 20:40

**RICO Claims** (this index)

#### **FORECLOSURE** FRAUD AND **MISREPRESENTATION** Generally, 2:16 Bad faith, 2:15 Generally, 6:1 et seq. Insecurity positions, 2:17 See also **Bank Fraud** (this index); Preferential transfers, 11:19 Fiduciary Obligations (this index) Sales, fraudulent transfer problems, 10:19 Actual and constructive fraud compared, 18:17 FOREIGN EXCHANGE Aiding and abetting liability. See See Bank Secrecy Act (this index) Securities Laws (this index) Arbitration provision and fraud in the **FORFEITURES** inducement claims, 26:16 Bank Secrecy Act, 21:17, 21:18 Complaint, allegations of fraud in, Civil Asset Forfeiture Reform Act of App 6A 2000, 21:18 Comprehensive Thrift and Bank Comprehensive Thrift and Bank Fraud Prosecution and Fraud Prosecution and Taxpayer Taxpayer Recovery Act (this Recovery Act, 25:17 index) **FORMS** Conspiracy to defraud the government, 24:24 Agreement, workout, 27:12 **Answers** (this index) Constructive and actual fraud compared, 18:17 Arbitration provision, 26:33 Creditors, intent to hinder, delay or Bankruptcy reorganization plan, App defraud, 10:8 12B Customer fraud, 7:8 Blank forms, risk minimization considerations, 2:23 **Director and Officer Liabilities** (this index) Commitment letters, 17:121 Disclosure duties, 6:5 **Complaints** (this index) Elements of tort, 6:2 Covenants, loan, 26:7 Equitable subordination, 9:12 Default, events of, 26:8 False statements, 6:6 Environmental liabilities, loan agreement provision, 17:122 Forward looking statements, 20:37 Indemnification agreement, App 17F Fraud in the factum, 6:3 Jury trial waiver, 26:10 Intent of fraudulent transferor, 10:8 Model Briefs (this index) Intent to defraud, RICO claims, 18:14, 18:15 Negotiation letter, 27:11 Ouestionnaires, environmental risks, Knowledge of false statements, 6:6 17:123, 17:124 **Litigation** (this index) Reorganization plan, bankruptcy, Materiality, 6:7 App 12B Materiality of fraud, RICO claims, Request for legal assistance, 27:10 18:12, 18:15 Risk minimization in use of standard Negligent misrepresentation, 6:9 forms, 2:23 Overview of liabilities, 1:3 Term sheet, sample, 26:4 Reasonable reliance, 6:8 Troubled credit checklist, 27:9

Index-20

Workout strategies

negotiation letter, 27:11

request for legal assistance, 27:10

| FRAUD AND   | FRAUDULENT TRANSFERS                                |
|---|---|
| MISREPRESENTATION                                 | —Cont'd   |
| —Cont'd   | Equivalent value. Reasonably equiva-                |
| Risk minimization considerations                  | lent value, below                                   |
| generally, <b>6:10</b>                            | Foreclosure sales                                   |
| see also Risk Minimization (this                  | generally, <b>10:19</b>                             |
| index)  | risk minimization, 10:28                            |
| Securities Laws (this index)                      | Good faith transferees for value,                   |
| Transfers. See <b>Fraudulent Transfers</b>        | 10:14   |
| (this index)                                      | Guarantees  |
| FRAUDULENT TRANSFERS                              | generally, 10:23                                    |
| Generally, 10:1 et seq.                           | risk minimization, 10:29                            |
| Anticipation of insolvency, <b>10:11</b>          | Hinder, intent to, 10:8                             |
| Bankruptcy Code                                   | Insolvency  |
| generally, <b>10:6 et seq.</b>                    | anticipation of, 10:11                              |
| benefit to insiders, transfer to,                 | proof of, <b>10:5</b>                               |
| 10:12   | statutory standards, 10:5                           |
| BFP case, <b>10:22</b>                            | Intent of transferor, 10:8                          |
| definitions, 10:6                                 | Leveraged buyouts                                   |
| foreclosure sales problems, <b>10:19</b>          | generally, 10:24 et seq.                            |
| et seq.   | applicable fraudulent conveyance                    |
| intent of transferor, 10:8                        | laws, <b>10:26, 10:27</b>                           |
| 1984 amendments, <b>10:20</b> , <b>10:21</b>      | reasonably equivalent value, 10:25                  |
| obligations of Code generally, <b>App</b>         | risk minimization, 10:30                            |
| 10A   | Limitations of actions, 10:18                       |
| recovery action against subsequent                | <b>Litigation</b> (this index)                      |
| transferees, 10:15                                | Overview, <b>1:4</b>                                |
| religious and charitable contribu-                | Partnership transfers, 10:13                        |
| tions, <b>10:7</b>                                | Proof of insolvency, <b>10:5</b>                    |
| Section 548, <b>10:6 et seq.</b>                  | Protection of good faith transferees                |
| transfer defined, 10:6                            | for value, <b>10:14</b>                             |
| Benefit to insiders, transfer to, 10:12           | Reasonably equivalent value                         |
| Burden of proof, 10:4                             | Bankruptcy Code, 10:9                               |
| Capital residue after transfer, 10:10             | capital residue, 10:10                              |
| Comprehensive Thrift and Bank                     | leveraged buyouts, 10:25                            |
| Fraud Prosecution and Taxpayer                    | Recovery action against subsequent                  |
| Recovery Act, 25:19                               | transferees, 10:15                                  |
| Conduit liability, 10:16                          | <b>Regulatory Sanctions</b> (this index)            |
| Consideration. Reasonably equivalent value, below | Religious and charitable contributions, <b>10:7</b> |
| Creditors, intent to hinder, delay or             | Risk minimization considerations                    |
| defraud, 10:8                                     | generally, 10:28                                    |
| Criminal prohibitions, 25:19                      | see also Risk Minimization (this                    |
| Debts incurred after transfer, 10:11              | index)  |
| Defraud creditors, intent to, 10:8                | foreclosure sales, <b>10:19</b> , <b>10:28</b>      |
| Delay, intent to, 10:8                            | leveraged buyouts, 10:30                            |
| Fauitable subordination 9.10                      | Standing 10.17                                      |

| FRAUDULENT TRANSFERS  | GOOD FAITH CONTRACTUAL   |
|---|--|
| —Cont'd   | OBLIGATIONS—Cont'd   |
| Statutory provisions  | Dismissal of good faith claim,   |
| generally, 10:2 et seq.   | duplicative as breach of   |
| Bankruptcy Code, 10:2   | contract, 2:24   |
| burden of proof, 10:4   | Excluder, 2:9  |
| proof of insolvency, 10:5                                       | Fiduciary Obligations (this index)                                     |
| uniform acts, 10:3  | Foreclosure  |
| Subsequent transferees, recovery                                | generally, 2:16  |
| action against, 10:15   | bad faith, 2:15  |
| Transfer defined, 10:6  | deemed insecure positions, <b>2:17</b>                                 |
| Uniform acts, 10:3  | Forms  |
| Value received  | answer to complaint alleging brief, <b>App 2</b> C                     |
| generally, 10:9 et seq.   | appellate brief, App 2A  |
| capital residue after transfer, 10:10                           | complaint alleging brief, <b>App 2B</b>                                |
| debts incurred after transfer, 10:11                            | loan, use of, 2:23   |
| good faith transferees for value,                               | Implied provisions, rejection of, <b>2:14</b>                          |
| 10:14   | Inefficient breach of contract, <b>4:6</b>                             |
| insolvency, anticipation of, 10:11                              | Insecurity positions, 2:17   |
| Reasonably equivalent value,                                    | <b>Litigation</b> (this index)   |
| above   | Negotiations, 2:8  |
| GARNISHMENTS  | Oral agreements  |
| Preferential transfers, 11:5                                    | forms, loan, use of, App 2A  |
| Tiererential transfers, 11.5                                    | risk minimization, 2:19  |
| GOING PRIVATE   | Overview of liabilities, 1:2   |
| See Leveraged Buyouts (this index)                              | Performance doctrine, 2:10   |
| COLDEN DADA CHUITE  | Preliminary agreements   |
| GOLDEN PARACHUTE<br>RESTRICTIONS                                | drafting considerations, 2:21  |
|   | language used, 2:21  |
| Comprehensive Thrift and Bank<br>Fraud Prosecution and Taxpayer | risk minimization, 2:20  |
| Recovery Act, 25:16   | Regulatory Sanctions (this index)                                      |
| 11000 (01) 1100, 20010  | Rejection of implied provisions, 2:14                                  |
| GOOD FAITH CONTRACTUAL  | Risk minimization  |
| OBLIGATIONS   | generally, <b>2:18 et seq.</b> see also <b>Risk Minimization</b> (this |
| Generally, 2:7 et seq.  | index)   |
| See also <b>Bad Faith</b> (this index)                          | documentation of loans, 2:22   |
| Acceleration, bad faith, 2:15                                   | forms, loan, use of, 2:23  |
| Answer to complaint alleging brief,                             | language of preliminary agree-   |
| App 2C  | ments, 2:21  |
| Bad faith compared, 1:3   | oral agreements, 2:19  |
| Care, Duty of (this index)                                      | preliminary agreements, 2:20   |
| Complaint alleging brief, App 2B                                | UCC requirements, 2:11   |
| Creditors' general obligations, 9:6                             | Workout Strategies (this index)  |
| Deemed insecure positions, 2:17                                 | GUARANTEES   |
| Demand instruments, 2:13  | Fraudulent transfers   |
| Disclosure duties, <b>6:5</b>                                   | generally, 10:23   |
|   |  |

#### **GUARANTEES—Cont'd**

Fraudulent transfers—Cont'd risk minimization, **10:29** 

Preferential transfers

Bankruptcy Code Section 550, 11:34

guarantor, transfer to, 11:12 risk minimization, 11:33

transferee recovery, 11:34 Risk minimization, 11:33

Securities laws applicable to, **20:9** 

#### **HEDGES AND DERIVATIVES**

Anti-tying provisions, interest rate swaps, **16:6** 

### HOME OWNERS' LOAN ACT

See **Anti-Tying Laws** (this index) Interest rate swaps, **16:6** 

#### IMPUTED LIABILITY

**Environmental Claims** (this index) **Statutory Claims** (this index)

#### **INDEMNIFICATION**

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, **25:16** Director and officer liabilities, **25:16** 

Director and officer liabilities, 25:16 Environmental claims, 17:20, 17:28, App 17F

# INJUNCTIVE RELIEF

Bankruptcy laws, **12:11**, **12:45** Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, **25:14** 

Environmental claims, 17:5, 17:24

# INSIDERS AND INSIDER TRANSACTIONS

See also **Preferential Transfers** (this index)

Affiliates, loans to, 23:30

Control person liability. See **Securities Laws** (this index)

Creditors, duties to, 23:32

Executive officers, loans to, 23:29

**Fiduciary Obligations** (this index)

FIRREA penalties, 23:33

Fraudulent transfers, transfer to benefit insiders, **10:12** 

#### INSIDERS AND INSIDER

TRANSACTIONS—Cont'd

**Fraudulent Transfers** (this index)

Judicial interpretation of term, 9:5

Loans to, 23:26

Overdraft privileges, 23:28

Preferential loans to, 23:27

Statutory definition of term, 9:4

# **INSOLVENCY**

 $\textbf{Deepening Insolvency} \; (this \; index)$ 

Fraudulent Transfers (this index)

**Preferential Transfers** (this index)

Presumptive, 11:15

Proof of, 10:5

# INSURANCE AND INSURERS

Bad faith litigation, 4:3

Environmental damage

generally, 17:85 et seq.

see also **Environmental Claims** (this index)

# INTENT

Environmental claims, useful product doctrine, 17:42

# INTEREST RATE SWAPS

Bank Holding Company Act, **16:6** Home Owners' Loan Act, **16:6** 

# INTERFERENCE WITH CONTRACT

Generally, 8:1 et seq.

See also **Fiduciary Obligations** (this index)

**Antitrust Claims** (this index)

Care, Duty of (this index)

Collection activities as, 8:6

Complaint form, App 8A

Corporate management, interference with, **8:8** 

Damages, 8:7

Defense, 8:9

# **Director and Officer Liabilities**

(this index)

Elements of tort, 8:2 et seq.

# Equitable Subordination of Priori-

ties (this index)

Existence of valid contract, requirement of, **8:3** 

# INTERFERENCE WITH CONTRACT—Cont'd

Fraudulent Transfers (this index)

Intent, 8:5

Justification, 8:9

Knowledge of valid contract, requirement of, **8:4** 

Leveraged buyout, claim for interference with, App 8A

**Litigation** (this index)

Loan collection activities as, 8:6

Overview of liabilities, 1:3

Risk minimization considerations

generally, **8:10** see also **Risk Minimization** (this

index)
Third parties, inducement to breach

Third parties, inducement to breach fiduciary duties, **5:10** 

#### **INTERNET**

Bank Secrecy Act, virtual currency, 21:5

#### INVOLUNTARY BANKRUPTCY

Generally, 13:1 et seq.

Abstention, 13:3

Adding claimants, 13:9

Bona fide dispute requirement, 13:6

Claimants, qualifying, 13:4

Commencement of case, 13:2

Contingent claims, exclusion of, 13:5

Damages, 13:12

De minimis claims, 13:8

Exclusion of contingent claims, 13:5

Failure to pay debts, 13:11

Federal preemption, 13:13

Interim trustees, 13:10

Preemption of state law, 13:13

Qualifying claimants, 13:4

Requisites, 13:11

Single creditor bankruptcies, 13:7

State law, preemption of, 13:13

Trustees, interim, 13:10

# JUMPSTART OUR BUSINESS STARTUPS ACT (JOBS ACT)

Securities laws, 20:21

# JURISDICTION

RICO claims, 18:29

# JURY TRIAL WAIVER

Generally, **26:9** Form, **26:10** 

#### LEAKING STORAGE TANKS

See **Environmental Claims** (this index)

#### LETTERS OF CREDIT

Preferential transfers, 11:8

# LEVERAGED BUYOUTS

Complaint for interference with, **App** 8A

Fraudulent transfers

generally, 10:24 et seq.

see also Fraudulent Transfers

(this index)

risk minimization, 10:30

Interference with, App 8A

Reasonably equivalent value, 10:25

Risk minimization, fraudulent

transfer, 10:30

#### LIENS

State environmental cleanup lien. See Environmental Claims (this index)

# LIMITATIONS OF ACTIONS

Anti-tying law, 16:11

CERCLA, 17:36

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, 25:7

Director and officer liability, 23:15

Environmental claims, 17:36

Equal Credit Opportunity Act, 22:10

FIRREA preemption of state statutes, 23:15

Fraudulent transfers, 10:18

Preferential transfers, 11:32

RICO claims, 18:28

# LITIGATION

Generally, 28:1 et seq.

Actual or potential claims, evaluation of, **28:2** 

Appeal of denial of motion to compel arbitration, **26:18** 

| LITIGATION—Cont'd   | LOYALTY DUTIES  |
|---|---|
| Arbitration   | See Fiduciary Obligations (this                           |
| see also <b>Arbitration</b> (this index)                              | index)  |
| appeal of denial of motion to   | MAIL FRAUD  |
| compel arbitration, 26:18   | Criminal Laws (this index)                                |
| compared, 26:12   | RICO Claims (this index)                                  |
| Burden of proof   | Securities laws, App 20B                                  |
| Collecting and evaluating evi-  | MATERIALITY   |
| dence, below  | Breach of contract, 27:4                                  |
| equitable subordination, <b>9:19</b> fraudulent transfer, <b>10:4</b> | Fraud and misrepresentation, <b>6:7</b>                   |
| RICO claims, 18:31  | RICO claims, materiality of fraud,                        |
| Claims, evaluation of, <b>28:2</b>                                    | 18:12, 18:15  |
|   | Risk minimization, 27:4                                   |
| Collecting and evaluating evidence                                    | Securities Laws (this index)                              |
| generally, <b>28:3</b>  | Workout strategies, 27:4                                  |
| Burden of proof, above  | MEDIATION   |
| client emotion, 28:7  | Generally, 26:34  |
| client interview, 28:6  | Arbitration compared, <b>26:12</b>                        |
| loan documents, 28:4  | Assignment of matter to, 26:38                            |
| loan file, 28:5   | Bankruptcy, 26:34   |
| plaintiff analysis, 28:8  | Panels, <b>26:37</b>                                      |
| Costs, 28:9   | Procedures, 26:39   |
| Dismissal motions, 28:12  | Programs, <b>26:36</b>                                    |
| Evaluation of actual or potential                                     | Register, mediation, 26:37                                |
| claims, 28:2  | Statutory basis, 26:35                                    |
| Evidence. Collecting and evaluating evidence, above                   | Workout Strategies (this index)                           |
| Jury trial waiver, <b>26:9</b>  | MINIMIZATION OF RISKS                                     |
| Mediation compared, 26:12   | See <b>Risk Minimization</b> (this index)                 |
| Motions, 28:11 et seq.  |   |
| Pleading securities law claims, <b>20:2</b>                           | MISREPRESENTATION   |
| Potential claims, evaluation of, <b>28:2</b>                          | See Fraud and Misrepresentation (this index)              |
| Pretrial motions  | (tills ilidex)  |
| generally, <b>28:11 et seq.</b>                                       | MODEL BRIEFS  |
| dismissal, 28:12  | Equitable subordination                                   |
| summary judgment, 28:13   | lender's reply brief, App 9C                              |
| Settlement considerations, 28:10                                      | trustee's brief, App 9B                                   |
| Standing to Sue (this index)  | Examiner with special powers, brief                       |
| Summary judgment motions, <b>28:13</b>                                | of official committee of unsecured creditors for appoint- |
| Trial strategy, <b>28:14</b>  | ment, <b>App 12A</b>                                      |
| 111ai strategy, <b>20.14</b>  | Oral agreement, brief arguing against                     |
| LOAN COMMITMENTS  | enforcement, App 2A                                       |
| <b>Breach of Contract</b> (this index)                                | Termination of debtor's exclusive                         |
| LOAN PARTICIPATIONS   | periods, supporting brief of                              |
|   | official committee of unsecured                           |
| Securities laws applicable to, <b>20:7</b>                            | creditors, App 12A  |

NEGLIGENCE—Cont'd

Consent Orders (this index)

#### Bank Secrecy Act **Litigation** (this index) anti-money laundering program, Loan processing liabilities generally, 21:29, App 21C 1:3 statutory provisions, App 21B Misrepresentation, negligent, 6:9 Processing of applications, 7:2 Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Proximate cause, 23:21 Recovery Act, 25:8 Refinancing, 7:5 Criminal provisions, generally, 21:20 Residential loan modification, 7:10 et seq. Risk minimization considerations generally, 7:11 **MONOPOLIES** see also Risk Minimization (this **Antitrust Claims** (this index) index) **MORTGAGES TARP, 7:7** Negligence in residential loan Training loan officers, 26:6 modification, 7:10 Troubled Asset Relief Program, 7:7 Risk minimization, environmental Unsuccessful ventures, loaning claims, 17:122 money for, 7:3 Withholding Tax Liabilities (this MOTIONS index) See **Litigation** (this index) Workout Strategies (this index) NEGLIGENCE **NEGOTIATIONS** Generally, 7:1 et seq. Form of negotiation letter, **27:11** Account document defenses, Good faith obligations, 2:8 customer claims, 7:9 Administration of loans NONDISCLOSURE generally, 7:4 See **Disclosures** (this index) pleading form, App 7A NUISANCE refinancing, 7:5 Environmental claims, preemption of Aiding and abetting terrorists acts, public nuisance recovery theo-7:6 ries by private parties, 17:35 Applications, treatment of, 7:2 Bad faith tort claims, 4:9 **OBSTRUCTION OF** Care, Duty of (this index) **EXAMINATION** Contributory negligence, 23:22 Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Customer claims, account document Recovery Act, 25:5 defenses, 7:9 Criminal obstruction of bank Customer fraud. 7:8 examiner, 24:26 **Director and Officer Liabilities** (this index) OFFICERS, CORPORATE Disclosure duties. 6:5 See Director and Officer Liabilities Documentation of loans, 2:22 (this index) Economic loss doctrine, 7:12 ORDERS, FORMS OF Equal Credit Opportunity Act (this index) Antitrust action, App 15B Cease and Desist Orders (this Failed ventures, loaning money for, index) 7:3

**Fiduciary Obligations** (this index)

MONEY LAUNDERING

#### ORDERS, FORMS OF-Cont'd

Environmental claims, closure orders for underground tanks under RCRA, 17:14

# ORIGINS OF LENDER LIABILITY THEORIES

Generally, 1:1 et seq.

# **OWNERSHIP**

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, **25:18** 

Environmental claims, statutory liability, property owned exclusion, **17:10** 

#### PAROL EVIDENCE RULE

Generally, 2:4

#### **PARTIES**

Aiding and abetting liability, post-Central Bank liability for secondary parties, **20:46** 

Compromising claims in bankruptcy, 12:3

Environmental claims, preemption of public nuisance recovery theories by private parties, 17:35

**Standing to Sue** (this index)

#### **PARTNERSHIPS**

Fraudulent transfers, 10:13

## PATRIOT ACT

Generally, 21:28

#### PAYROLL LENDERS

See Withholding Tax Liabilities (this index)

#### **PENALTIES**

Regulatory Sanctions (this index)

#### PERSONAL LIABILITIES

Aiding and abetting liability. See
Securities Laws (this index)
Antitrust Claims (this index)
Anti-Tying Laws (this index)

**Arbitration** (this index)

Bank Secrecy Act (this index)

Care, Duty of (this index)

#### PERSONAL LIABILITIES—Cont'd

CERCLA, joint and several liability, 17:38

Control person liability. See **Securities Laws** (this index)

# **Director and Officer Liabilities**

(this index)

Disclosure duties, 6:5

**Equal Credit Opportunity Act** (this index)

Fiduciary Obligations (this index)
Fraud and Misrepresentation (this index)

# Interference With Contract (this index)

**Litigation** (this index)

**Negligence** (this index)

Officers, corporate. See **Director and Officer Liabilities** (this index)

Overview of liabilities, 1:6

**Regulatory Sanctions** (this index)

Responsible person IRC liability

generally, **19:6** willfulness, **19:7** 

Securities Laws (this index)

Withholding Tax Liabilities (this index)

## **PETITIONS**

See also **Complaints** (this index)
Bad faith, bank's petition for hearing on issue, **App 4A**Duress, allegations, **App 3A** 

# PLEADING FORMS

**Answers** (this index)

**Complaints** (this index)

Counterclaim of debtor for negligence in administration of loan, **App 7A** 

Securities law claims, 20:2

## PREEMPTION OF STATE LAW

Arbitration, 26:14

Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), 23:14, 23:15 Involuntary bankruptcy, 13:13

# PREFERENTIAL TRANSFERS

Generally, 11:1 et seq.

| PREFERENTIAL TRANSFERS                        | PREFERENTIAL TRANSFERS                      |
|---|---|
| —Cont'd                                       | —Cont'd                                     |
| Advances, subsequent, 11:25                   | Guarantees—Cont'd                           |
| Antecedent debt, 11:13                        | Bankruptcy Code Section 550,                |
| Beneficiary of transfer, 11:10 et seq.        | 11:34                                       |
| Benefit to creditor, 11:18                    | risk minimization, 11:33                    |
| Checks, time of payment by, 11:17             | special problems, 11:33                     |
| Consumer debts, 11:28                         | transferee recovery, 11:34                  |
| Contemporaneous exchange for new              | Insiders                                    |
| value, <b>11:21</b>                           | judicial interpretation of term, 9:5        |
| Creditor, payments to or for, 11:10 et        | statutory definition of term, <b>9:4</b>    |
| seq.  | Insolvency                                  |
| Creditor received more than in                | generally, 11:14                            |
| liquidation, 11:18                            | presumptive, 11:15                          |
| Debt, antecedent, 11:13                       | Letters of credit, 11:8                     |
| Debtor property subject to, 11:4              | Liens                                       |
| Earmarking, 11:9                              | floating, <b>11:26</b>                      |
| Elements, 11:2 et seq.                        | statutory, 11:27                            |
| Enabling loans, 11:24                         | Limitations of actions, 11:32               |
| Exceptions                                    | Litigation (this index)                     |
| generally, 11:20 et seq.                      | Loans, enabling, 11:24                      |
| advances, subsequent, 11:25                   | New value contemporaneous                   |
| consumer debts, 11:28                         | exchange for, 11:21                         |
| contemporaneous exchange for new value, 11:21 | Ordinary course of business payments, 11:22 |
| enabling loans, 11:24                         | Overview, 1:4                               |
| floating liens, 11:26                         | Payments by third-parties, 11:7             |
| liens   | Ponzi schemes, 11:23                        |
| floating, 11:26                               | Presumptive insolvency, 11:15               |
| statutory, 11:27                              | Property elements, 11:3                     |
| loans, enabling, 11:24                        | <b>Regulatory Sanctions</b> (this index)    |
| new value contemporaneous                     | Risk minimization considerations            |
| exchange for, 11:21                           | generally, 11:35                            |
| ordinary course of business pay-              | see also <b>Risk Minimization</b> (this     |
| ments, 11:22                                  | index)                                      |
| Ponzi schemes, 11:23                          | guarantees, 11:33                           |
| settlement payment exceptions,                | Settlement payment exception, 11:30         |
| 11:30   | Small preference exception, 11:29           |
| small preference exception, 11:29             | Standing, <b>11:28</b>                      |
| statutory liens, 11:27                        | Statutory liens, 11:27                      |
| subsequent advances, 11:25                    | Subsequent advances, 11:25                  |
| Floating liens, 11:26, 11:27                  | Third-party payments, 11:7                  |
| Foreclosure sales, 11:19                      | Time periods                                |
| Garnishments, 11:5                            | generally, <b>11:16</b>                     |
| Governmental units, 11:11                     | checks, payment by, <b>11:17</b>            |
| Guarantees                                    | limitations of actions, 11:32               |
| generally, 11:12                              | Withholding taxes, 11:6                     |
|   |   |

#### PREJUDGMENT ATTACHMENT

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, **25:13** 

# PRETRIAL ORDERS

See **Orders**, **Forms** of (this index)

#### PREVENTIVE LAW

See **Risk Minimization** (this index)

#### PRIME BANK NOTES

Securities laws applicable to, 20:6

#### **PRIORITIES**

Equitable Subordination of Priorities (this index)

Fraudulent Transfers (this index)
Preferential Transfers (this index)

# PROCESSING OF LOANS

**Negligence** (this index)

#### PROMISSORY NOTES

Securities laws applicable to, 20:5

#### PROPERTY OWNED EXCLUSION

Environmental claims, statutory liability, **17:10** 

# **PUBLIC NUISANCE**

Environmental claims, preemption of public nuisance recovery theories by private parties, 17:35

# **PURCHASED LOANS**

Equal Credit Opportunity Act, 22:9

# QUASI-FIDUCIARY OBLIGATIONS

Generally, 5:9

See also **Fiduciary Obligations** (this index)

#### RATIFICATION

Duress claims, 3:9

# RECHARACTERIZATION ALTERNATIVE

Equitable subordination of priorities, **9:14** 

# REFINANCING

Negligence claims, 7:5

#### REGULATORY ENFORCEMENT

Affirmative defenses exception, administrative exhaustion, **24:16** 

Consent orders, 24:4

Directors' and officers' compliance duties, 23:4

Filing claims following failure of financial institution, **24:17** 

Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), 24:15, 24:19

Sanctions. **Regulatory Sanctions** (this index)

# REGULATORY SANCTIONS

Generally, 24:1 et seq.

See also Criminal Laws (this index)

**Anti-Tying Laws** (this index)

Bank charters revocations of, 24:10

Cease and desist orders

generally, 24:3 et seq.

procedures, 24:6

unsafe practices, 24:5

Civil penalties. Penalties, below

Conservatorships, 24:12

Equitable powers, removal from courts, **24:18** 

FDIC actions, 24:14

FIRREA actions, 24:15, 24:19

Informal agreements, 24:2

Insured status, termination of, 24:13

National bank charters revocations of, **24:10** 

Penalties

generally, 24:7

# Bank Secrecy Act (this index)

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, **25:2**, **25:6** 

# environmental claims, CERCLA, **App 17D**

equitable subordination of priorities, tax penalties, **9:15** 

# FDIC, App 24A

FLSA hot goods penalties, **14:2** insider transactions, FIRREA penalties, **23:33** 

Procedures, 24:6

# REGULATORY SANCTIONS

-Cont'd

Receiverships, 24:12

Remediation of unsafe practices, **24:8** Removal of equitable powers from

courts, 24:18

Removal powers, 24:9

Revocations of charters, 24:10

Revocations of trust powers, 24:11

Risk minimization considerations

generally, 24:27

see also **Risk Minimization** (this index)

Suspension powers, 24:9

Termination of insured status, 24:13

Trust powers, revocations of, 24:11

Unsafe practices

affirmative actions to correct, **24:8** cease and desist orders, **24:5** 

remediation of, 24:8

#### RELIGIOUS CONTRIBUTIONS

Fraudulent transfers. 10:7

# REMEDIES

**Regulatory Sanctions** (this index)

## REORGANIZATION

**Bankruptcy Laws** (this index) **Workout Strategies** (this index)

# REPORTING OF CURRENCY TRANSACTIONS

See Bank Secrecy Act (this index)

# RESIDENTIAL LOAN

Negligence in modification, 7:10 Risk minimization, environmental claims, 17:122

# **RES JUDICATA**

Lender liability claims in bankruptcy, 12:44

Third party claims in bankruptcy, 12:43

# RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

See **Environmental Claims** (this index)

#### RESTITUTION

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, **25:9** 

#### RESTRAINTS OF TRADE

**Antitrust Claims** (this index)

# **RETAIL REPO AGREEMENTS**

Generally, 20:63

Risk minimization, 20:68

#### RICO CLAIMS

Generally, 18:1 et seq., App 18A
See also Comprehensive Thrift and
Bank Fraud Prosecution and
Taxpayer Recovery Act (this index)

Actual and constructive fraud compared, 18:17

**Antitrust Claims** (this index)

Anti-Tving Laws (this index)

Arbitration, 18:32, 26:15

Artifice to defraud, 18:11

Attorney fee awards, 18:33

Burden of proof, 18:31

Collateral estoppel, 18:30

Collection of unlawful debt, 18:20

Common elements, 18:3 et seq.

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, limitations of actions, 25:7

Concurrent jurisdiction, 18:29

Conspiracy, 18:24

Constitutionality, 18:2

Constructive and actual fraud compared, 18:17

Control of enterprise acquired through racketeering, **18:22** 

Cost awards, 18:33

Damages, 18:27

Definitions, 18:3 et seq.

#### **Director and Officer Liabilities**

(this index)

Elements, 18:3 et seq.

Enterprise defined, 18:5

Equitable relief, 18:27

Foreign commerce connection, 18:7

Fraud. Mail and wire fraud, below

| RICO CLAIMS—Cont'd                                | RICO CLAIMS—Cont'd                         |
|---|--|
| Good faith, mail and wire fraud                   | Section 1962(d) claims, <b>18:24</b>       |
| claims, <b>18:16</b>                              | Securities fraud                           |
| Indirect injuries, standing to sue for,           | see also <b>Securities Laws</b> (this      |
| 18:26   | index)                                     |
| Intent to defraud, 18:14, 18:15                   | compared, 18:9                             |
| Interest in enterprise acquired                   | Standing to sue, 18:25                     |
| through racketeering, 18:22                       | Statute of limitations, 18:28              |
| Interstate commerce connection, <b>18:7</b>       | Statutory text, App 18A                    |
| Jurisdiction, 18:29                               | Unlawful debt, collection of, <b>18:20</b> |
| Limitations of actions, 18:28, 25:7               | Use of funds acquired through              |
| Litigation (this index)                           | racketeering, 18:21                        |
| Mail and wire fraud                               | Wire fraud. Mail and wire fraud,           |
| generally, 18:10                                  | above                                      |
| actual and constructive fraud                     | RISK MINIMIZATION                          |
| compared, 18:17 actual fraud, 18:17               | Generally, <b>26:1 et seq.</b>             |
| actual flaud, 18:17 artifice to defraud, 18:11    | See also Workout Strategies (this          |
| constructive and actual fraud                     | index)                                     |
| compared, <b>18:17</b>                            | Administrative practices, 7:11             |
| constructive fraud, <b>18:17</b>                  | Alternative dispute resolution,            |
| good faith, 18:16                                 | waiver, <b>26:19</b>                       |
| injuries covered, 18:18                           | Antitrust law violations, 15:22            |
| intent to defraud, <b>18:14</b> , <b>18:15</b>    | Anti-tying laws                            |
| materiality of fraud, <b>18:12</b> , <b>18:15</b> | generally, 16:17 et seq.                   |
| personal involvement, 18:13                       | forbearance agreements, 16:18              |
| scheme to defraud, <b>18:11</b>                   | loans and other services, 16:19            |
| Materiality of fraud, <b>18:12</b> , <b>18:15</b> | workout agreements, 16:18                  |
| Nexus between person and enterprise,              | Appeal of denial of motion to compel       |
| 18:6  | arbitration, 26:18                         |
| Overview of liabilities, 1:5                      | Arbitration strategies, 26:30              |
| Participation in enterprise acquired              | ASTM standard practices for                |
| through racketeering, 18:23                       | environmental assessments, 17:113          |
| Pattern of illegal activity                       | Bad faith claims, <b>4:13</b>              |
| generally, 18:19                                  | Bankruptcy, creditors' strategies in,      |
| Bank Secrecy Act, 21:22                           | 12:45                                      |
| Personal involvement, 18:13                       | Bank Secrecy Act, 21:30                    |
| Person defined, 18:4                              | Bribery charges, App 24B                   |
| Racketeering activities, 18:8                     | Care, duties of, 23:34                     |
| Remedies, 18:27                                   | Commissions for procuring loans,           |
| Risk minimization considerations                  | App 24B                                    |
| generally, 18:34                                  | Commitments to make loans                  |
| see also <b>Risk Minimization</b> (this           | environmental concerns, 17:121             |
| index)  | language of preliminary agree-             |
| Scheme to defraud, 18:11                          | ments, 2:21                                |
| Section 1962(a) claims, <b>18:21</b>              | oral agreements, 2:19                      |
| Section 1962(b) claims, <b>18:22</b>              | preliminary agreements, 2:20               |
| Section 1962(c) claims, <b>18:23</b>              | Communication, 27:6                        |
| × / /   | · · · · · · · · · · · · · · · · · · ·      |

| RISK MINIMIZATION—Cont'd                | RISK MINIMIZATION—Cont'd  |
|---|---|
| Contracts, good faith obligations,      | Environmental claims—Cont'd   |
| 2:18                                    | engineers, selection of, 17:116   |
| Control person liability, <b>20:67</b>  | EPA all appropriate inquiry rule,   |
| Covenants, loan, 26:7                   | 17:114  |
| Criminal laws, 24:27                    | FDIC guidelines for environmental   |
| Default, events of, 26:8                | risk program, 17:114  |
| Director and officer liabilities, 23:34 | industry familiarity, 17:109  |
| Disclosure duties, <b>6:5</b>           | insurance coverage, 17:125  |
| Dismissal of good faith claim,          | loan agreement provision, 17:122  |
| duplicative as breach of                | mortgages, 17:122   |
| contract, 2:24                          | petroleum contamination, lender   |
| Documentation practices                 | options, 17:17  |
| generally, 26:1                         | phase audits, 17:117  |
| administrative practices, 2:22, 7:11    | prospective purchaser agreements  |
| applications, <b>7:2</b> , <b>26:3</b>  | with EPA, 17:58   |
| covenants, loan, 26:7                   | questionnaires, 17:123, 17:124  |
| default, events of, 26:8                | regulatory review, 17:105   |
| environmental claims, 17:120 et         | SEC disclosure requirements,  |
| seq.                                    | 17:106  |
| evidence, evaluation for, 28:4          | security agreements, 17:122   |
| forms, loan, use of, 2:23               | selection of engineers, 17:116  |
| loan agreements, 26:5                   | selective foreclosures, 17:112, 17:113  |
| preliminary agreements, 26:3            |   |
| term sheet, sample, 26:4                | site history, <b>17:104</b> trust provisions checklist, <b>17:53</b>            |
| training loan officers, 26:6            | underground storage tanks, 17:107   |
| Duress claims, 3:11                     |   |
| Embezzlement, statutory provisions,     | Equal Credit Opportunity Act, <b>22:15</b> Equitable subordination, <b>9:20</b> |
| App 24C                                 | FDIC penalties, <b>App 24A</b>  |
| Environmental claims                    | Fiduciary breach claims, 5:12   |
| generally, <b>17:103</b>                | Fiduciary obligations, 23:34  |
| adjacent sites, 17:108                  | FLSA claims, 14:9   |
| affidavits by owners, 17:122            |   |
| ASTM standard practices for             | Forbearance agreements, 16:18   |
| environmental assessments,              | Foreclosure sales, fraudulent   |
| 17:113                                  | transfers, 10:19, 10:28   |
| audits                                  | Forms, loan, use of, 2:23   |
| generally, <b>17:110</b>                | Fraud claims against lenders, <b>6:10</b>                                       |
| access for, 17:111                      | Fraudulent transfers  |
| phase audits, 17:117                    | generally, 10:28, 10:28 et seq.   |
| commitment letter, 17:121               | foreclosure sales, <b>10:19</b> , <b>10:28</b>                                  |
| de minimis settlements with land-       | guarantees, 10:29   |
| owners, 17:57                           | leveraged buyouts, 10:30  |
| disclosure obligations of lenders,      | Gifts for procuring loans, App 24B  |
| 17:119                                  | Good faith contractual obligations,   |
| discovery of hazards, 17:118            | 2:18  |
| documentation practices, 17:120 et      | Guarantees  |
| seq.                                    | fraudulent transfers, 10:29   |

| RISK MINIMIZATION—Cont'd                                  | RISK MINIMIZATION—Cont'd                      |
|---|---|
| Guarantees—Cont'd   | Waiver of alternative dispute resolu-         |
| preferential transfers, 11:33                             | tion, <b>26:19</b>                            |
| Insurance coverage for environmental                      | Withholding tax liabilities, 19:8             |
| claims, 17:125  | Workout agreements, anti-tying law            |
| Interference torts, <b>8:10</b>                           | concerns, 16:18                               |
| Jury trial waiver, <b>26:9</b> , <b>26:10</b>             | Written communications, 27:6                  |
| Leveraged buyouts, 10:30                                  | SAVING AND LOAN                               |
| Loan loss reserves, 20:66                                 | ASSOCIATIONS                                  |
| Loan processing, 7:11                                     | <b>Thrift Associations</b> (this index)       |
| Loans and other services, 16:19                           | ,   |
| Materiality of defaults, 27:4                             | SAVINGS AND LOAN                              |
| Misapplication by bank officers or                        | ASSOCIATIONS                                  |
| employees, App 24C  | Director and officer liabilities, 23:31       |
| Misrepresentation claims against                          | FDIC enforcement action, 24:14                |
| lenders, 6:10   | SECONDARY PARTIES                             |
| Negligence claims against lenders,                        | Securities laws, aiding and abetting          |
| 7:11  | liability, <b>20:46</b>                       |
| Oral loan agreements, 2:19                                | SECURITIES LAWS                               |
| Overview, 1:7   | Generally, 20:1                               |
| Personality conflicts, <b>27:7</b> Preferential transfers | Aiding and abetting liability                 |
|   | generally, <b>20:44 et seq.</b>               |
| generally, 11:35  | Control person liability, below               |
| guarantees, 11:33   | elements, 20:44                               |
| Preliminary loan agreements, 2:20                         | Enron case, aiding and abetting               |
| Processing, 7:11  | liability of secondary parties.               |
| Questionnaires, environmental risk, 17:123, 17:124        | 20:46   |
| Receipt of commissions or gifts for                       | fraud and misrepresentation, 6:4              |
| procuring loans, App 24B                                  | post-Central Bank liability for sec           |
| Regulatory review of environmental                        | ondary parties, 20:46                         |
| claims, 17:105  | primary violation, 20:48                      |
| Regulatory sanctions, 24:27                               | scienter, <b>20:49</b>                        |
| RICO liabilities, 18:34                                   | SEC authority, 20:47                          |
| Securities laws   | substantial assistance, 20:50                 |
| generally, 20:64 et seq.                                  | Supreme Court rulings, 20:45                  |
| control person liability, <b>20:67</b>                    | Arbitration, 26:15                            |
| disseminations, reckless, 20:65                           | Bank notes as securities, 20:6                |
| loan loss reserves, 20:66                                 | Blue sky laws, App 20E                        |
| loans, <b>20:64</b>                                       | Care, Duty of (this index)                    |
| reckless disseminations, 20:65                            | Central Bank, aiding and abetting             |
| retail repo agreements, 20:68                             | liability, post-Central Bank                  |
| Settlement considerations, <b>28:10</b>                   | liability for secondary parties, <b>20:46</b> |
| Tax liabilities, <b>19:8</b>                              | Certificates of deposit as securities,        |
| Term sheet, sample, 26:4                                  | 20:10   |
| Theft, statutory provisions, <b>App 24C</b>               | Commitments, loan, as securities,             |
| Training loan officers, <b>26:6</b>                       | 20:8  |

| SECURITIES LAWS—Cont'd                                  |
|---|
| Financial institutions, exempt sales to, <b>20:25</b>   |
| Forward looking statements, 20:37                       |
| Fraudulent sales  |
| generally, 20:30 et seq.                                |
| see also Sales of unregistered secu-                    |
| rities, below   |
| contribution, 20:43                                     |
| damages, <b>20:42</b>                                   |
| deceptive practices, 20:35                              |
| forward looking statements, 20:37                       |
| in-connection-with requirement, <b>20:39</b>            |
| lender as seller, 20:31                                 |
| materiality, 20:36                                      |
| privity, <b>20:34</b>                                   |
| proportionate liability, 20:43                          |
| reliance, <b>20:40</b>                                  |
| Rule 10b-5, <b>20:32 et seq.</b>                        |
| safe harbor, 20:37                                      |
| scienter, <b>20:38</b>                                  |
| Section 10(b), <b>20:32 et seq.</b>                     |
| Section 12(2) requirements, <b>20:30</b>                |
| Guarantees as securities, 20:9                          |
| Insider trading, control person                         |
| liability, 20:53  |
| Interstate commerce requirements,                       |
| sales of unregistered securities, 20:22, 20:26, App 20B |
| JOBS (Jumpstart Our Business                            |
| Startups) Act, 20:21                                    |
| Lender nondisclosures                                   |
| generally, <b>20:54 et seq.</b>                         |
| loss disclosures, <b>20:56</b>                          |
| materiality, <b>20:54</b>                               |
| regulatory actions, disclosure                          |
| requirements, 20:55                                     |
| <b>Litigation</b> (this index)                          |
| Loan commitments as securities, 20:8                    |
| Loan loss reserves and risk minimiza                    |
| tion, <b>20:66</b>                                      |
| Loan participations as securities, 20:                  |
| Loans, risk minimization, 20:64                         |
| Mails, use of, App 20B, App 20C                         |
| Manipulative and deceptive devises                      |
| 1934 Act, <b>App 20C</b>                                |
| Rule 10b-5, <b>App 20D</b>                              |
|   |

| SECURITIES LAWS—Cont'd                                    | SECURITIES LAWS—Cont'd  |
|---|---|
| Materiality   | Reliance on fraudulent representa-                                  |
| deceptive sales practices, 20:36                          | tions, <b>20:40</b>   |
| lender nondisclosures, 20:54                              | Reliance on registration statements,                                |
| registration statement information,                       | 20:17   |
| 20:16   | Resales of unregistered securities,                                 |
| New product development, 20:63                            | 20:29   |
| 1933 Act  | Retail repo agreements  |
| definition of security, App 20A                           | generally, 20:63  |
| interstate commerce requirements,                         | risk minimization, 20:68  |
| App 20B   | RICO liabilities, 18:9  |
| Registration of securities, below                         | Risk minimization considerations                                    |
| 1934 Act, manipulative and deceptive                      | generally, 20:64  |
| devises, App 20C  | see also Risk Minimization (this                                    |
| Overview of liabilities, 1:5                              | index)  |
| Participations in loans as securities, 20:7               | Rule 10b-5  |
| Pleading claims, 20:2                                     | generally, 20:33  |
| Prime bank notes as securities, <b>20:6</b>               | Fraudulent sales, above   |
| Private offering exempt sales, <b>20:27</b>               | manipulative and deceptive  |
| Privity   | devises, App 20D  |
| fraudulent sales, <b>20:34</b>                            | Safe harbor for representations, 20:37                              |
| unregistered securities sales, 20:23                      | Sales of unregistered securities                                    |
| Promissory notes as securities, <b>20:5</b>               | generally, <b>20:20</b>   |
| Proportionate liability for fraudulent                    | see also Fraudulent sales, above                                    |
| sales, <b>20:43</b>                                       | exempt sales, 20:24 et seq.   |
| Reckless disseminations, 20:65                            | interstate commerce requirement,                                    |
| Registration of securities                                | 20:22, 20:26  |
| generally, 20:13  | JOBS (Jumpstart Our Business  |
| damages, 20:19  | Startups) Act, <b>20:21</b>   |
| defenses, 20:18   | privity requirement, 20:23  |
| interstate commerce prohibitions,                         | resales, <b>20:29</b>   |
| App 20B   | Section 12(1), generally, <b>20:20</b>                              |
| liable parties, 20:15                                     | small issues, 20:28   |
| mails, use of, App 20B                                    | Scienter  |
| materiality, 20:16  | aiding and abetting liability, 20:49                                |
| parties, <b>20:14, 20:15</b>                              | fraudulent sales, 20:38   |
| plaintiffs, 20:14   | Scope of laws   |
| purpose of laws, 20:13                                    | generally, 20:3 et seq.   |
| reliance, <b>20:17</b>                                    | Securities Act of 1933, App 20A                                     |
| Sales of unregistered securities,                         | SEC authority over aiding and abet-                                 |
| below   | ting liability, 20:47   |
| scope of laws, 20:13                                      | Securities Fraud Enforcement Act,                                   |
| Section 11, <b>20:13</b>                                  | 20:53   |
| standing to sue, 20:14                                    | Small issues, 20:28   |
| Regulatory actions, lender disclosure requirements, 20:55 | Standing to sue for registration statement violations, <b>20:14</b> |
| <b>Regulatory Sanctions</b> (this index)                  | State securities law claims, App 20E                                |

#### **SELF-DEALING**

**Director and Officer Liabilities** 

(this index)

Disclosure duties, 6:5

Fiduciary Obligations (this index)

#### SELF-EFFECTING MISCONDUCT

Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), actions based on, 24:19

#### **SETTLEMENTS**

Generally, 28:10

CERCLA, App 17E

Compromising claims. See Bankruptcy Laws (this index)

Preferential transfers, settlement payment exceptions, 11:30

#### SHAREHOLDER LIABILITY

Environmental claims, 17:39

## **SHERMAN ACT**

**Antitrust Claims** (this index)

# SMALL BUSINESS LIABILITY RELIEF AND BROWNFIELDS REVITALIZATION ACT

See Environmental Claims (this index)

# STANDING TO SUE

Antitrust claims, 15:20

Bank Holding Company Act, 16:8 et

Equal Credit Opportunity Act, 22:8 Equitable subordination, 9:17

Failure of financial institution, filing claims, 24:17

Fraudulent transfers, 10:17

Home Owners' Loan Act, 16:8 et

Indirect injuries under RICO, 18:26

Preferential transfers, 11:31

RICO violations, 18:25

Securities laws, registration statement violations, 20:14

# STATUTE OF FRAUDS

Breach of contract, 2:3

#### STATUTES OF LIMITATION

See Limitations of Actions (this index)

# STATUTORY CLAIMS

Generally, 14:1 et seq.

**Antitrust Claims** (this index)

Anti-Tying Laws (this index)

**Arbitration** (this index)

**Environmental Claims** (this index)

Equal Credit Opportunity Act (this index)

Fair Labor Standards Act (FLSA) **Claims** (this index)

**Litigation** (this index)

Overview of liabilities, 1:5

**Regulatory Sanctions** (this index)

RICO Claims (this index)

**Statutory Claims** (this index)

Withholding Tax Liabilities (this index)

Workout Strategies (this index)

# SUBORDINATION OF CLAIMS

**Equitable Subordination of Priori**ties (this index)

Fraudulent Transfers (this index)

**Preferential Transfers** (this index)

# SUBSTANTIAL PARTICIPATION

Aiding and abetting liability, post-Central Bank liability for secondary parties, 20:46

#### **SUPERFUND**

See Environmental Claims (this index)

## SUSPICIOUS ACTIVITY REPORTS

Bank Secrecy Act (this index)

# **SWAPPING INTEREST RATES**

Bank Holding Company Act and Home Owners' Loan Act, antitying provisions, 16:6

# TANKS, UNDERGROUND

See Environmental Claims (this index)

# **TARP**

Negligence claims, 7:7

#### TAX CONSIDERATIONS

Environmental cleanup expense deductions, **17:59** 

Equitable subordination of priorities, 9:15

Withholding Tax Liabilities (this index)

#### **TERRORISTS**

Negligence claims, aiding and abetting liability, **7:6** 

#### THRIFT ASSOCIATIONS

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act (this index)

Director and officer liabilities for insider transactions, 23:31

Restructuring act (TIRA). See **Anti- Tying Laws** (this index)

#### TORT CLAIMS

Generally, 4:1 et seq.

**Arbitration** (this index)

**Bad Faith** (this index)

**Deepening Insolvency** (this index)

**Duress** (this index)

Fiduciary obligations, **5:1** 

Fraud and Misrepresentation (this index)

**Interference With Contract** (this index)

 $\textbf{Negligence} \ (this \ index)$ 

Overview of liabilities, 1:3

## **TRAINING**

Loan officers, 26:6

# TRIAL STRATEGY

See Litigation (this index)

# TROUBLED ASSET RELIEF PROGRAM

Negligence claims, 7:7

# UNDERCAPITALIZATION OF DEBTORS

Equitable subordination, 9:11

# UNDERGROUND STORAGE TANKS

See **Environmental Claims** (this index)

#### UNIFORM COMMERCIAL CODE

Article 3 definitions, **2:12** Good faith requirements, **2:11** 

# UNITED STATES ARBITRATION ACT

See **Arbitration** (this index)

# UNSUCCESSFUL VENTURES

Negligence claims against lenders, 7:3

#### USA PATRIOT ACT

Generally, 21:28

# USEFUL PRODUCT DOCTRINE

Environmental claims, 17:42

# VICARIOUS LIABILITY

Statutory Claims (this index)

#### VIRTUAL CURRENCY

Bank Secrecy Act, 21:5

#### WAIVER

Alternative dispute resolution, minimizing risk of liability, **26:19** 

# WIRE FRAUD

**RICO Claims** (this index)

# WITHHOLDING TAX LIABILITIES

Generally, 19:1 et seq.

Employer liability, 19:2

IRC provisions, **App 19A** 

**Litigation** (this index)

Notice requirements, payroll lender liability, **19:5** 

Overview of liabilities, 1:5

Payroll lender liability

generally, 19:3

notice requirements, 19:5

working capital loan exception,

19:4

Preferential transfers, 11:6

Regulations, App 19B

# WITHHOLDING TAX LIABILITIES—Cont'd

**Regulatory Sanctions** (this index)

Responsible person liability generally, **19:6** willfulness, **19:7** 

Risk minimization considerations generally, **19:8** 

see also **Risk Minimization** (this index)

Statutory provisions, **App 19A** Treasury regulations, **App 19B** Willfulness, **19:7** 

Working capital loan exception to payroll lender liability, **19:4** 

# WORKOUT STRATEGIES

Generally, 27:1 et seq.
Agreements, workout
generally, 27:8, 27:12
forms, 27:12
Anti-tying law restrictions, 16:1
Communication, 27:6
Defaults, materiality of, 27:4
Demand letter, sample forms
secured debt, bank form, 27:15

## WORKOUT STRATEGIES—Cont'd

Demand letter, sample forms
—Cont'd
secured debt, counsel prepared,
27:16

unsecured debt, bank form, **27:14** Document review, **27:2** 

agreements, workout, 27:12

Forms

demand letter secured debt, bank form, **27:15** secured debt, counsel prepared, **27:16** 

27:16
unsecured, bank form, 27:14
negotiation letter, 27:11
notice of default, bank form, 27:11

notice of default, bank form, 27:13 request for legal assistance, 27:10 troubled credit checklist, 27:9

Materiality of defaults, **27:4**Notice of default, sample bank form,

27:13

Notice requirements, 27:5 Oral agreements, 27:3 Personality conflicts, 27:7 Request for legal assistance, 27:10 Written communications, 27:6