

Ruling Stirs Friends of Lender Liability Bill

By STEPHEN KLEEGER

NEW YORK — A recent court decision has stoked bankers' interest in a House hearing today in Washington on a proposal to amend the law on lender liability.

Bankers said language in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, known as the Superfund law, is too vague, leaving lenders at the mercy of courts. Judges can require lenders to cover the costs of environmental damages caused by defaulted borrowers.

Appeals Court as Catalyst

The issue came to a head last month when a federal appeals court in Atlanta ruled against a

bank-owned finance company seeking to limit its environmental liability.

"The situation is absurd," Rep. John LaFalce, D-N.Y., said in a May 8 letter to congressional colleagues seeking support for his proposal to amend the law. "A lender might make a secured loan for just \$25,000, but if it forecloses on a facility and then discovers it to be contaminated with hazardous waste, the lender may be liable for several million dollars."

Today's hearing before the House Small Business Committee is the second for a lender liability bill proposed by Mr. LaFalce, chairman of the small business panel and a member of the House Banking Committee.

The hearing takes on added significance in the wake of the recent ruling by the U.S. Court of Appeals for the 11th Circuit in Atlanta, which held Fleet Factors Corp. liable for an environmental cleanup merely because it could influence management of a contaminated site.

The factoring company's parent, Fleet/Norstar Financial Group, Providence, R.I., said this week that it will seek a rehearing by the appeals court and would consider going to the Supreme Court if it exhausts other appeals. Lower courts had held

that lenders should be liable for damages only when they are involved in day-to-day operation of a borrower's property.

The Fleet decision "sent everybody through the roof," said John Byrne, American Bankers Association general counsel.

Top ABA Priority

The ABA had made lender liability its top legislative priority even before the Fleet decision, Mr. Byrne said. Heavy lobbying by 140 members of the ABA's government relations council and by other business groups has

ABA Makes Bill Its Top Priority

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lined up at least 92 cosponsors for the LaFalce bill.

Bankers, arguing they have been targeted because they have "deep pockets," strongly support the LaFalce bill and a broader measure proposed by Sen. Jake Garn of Utah, the ranking Republican on the Senate Banking Committee, Mr. Byrne said.

The Garn bill, which would limit a lender's liability to the amount of its loan, has made little headway in the Senate.

Both bills would limit lenders' liability in cleanups of foreclosed properties. But legal experts said the Fleet decision makes it more important to address liabilities resulting from actions before foreclosure.

"Banks can very easily not foreclose, but where you have a troubled loan, the bank often acts as a kind of financial consultant," said Lawrence Schnapp, senior associate in the environmental group of the New York law firm of Lord Day & Lord, Barrett Smith.

A New Trial Is Possible

In the now-crucial Fleet case, "we do think there's a decent chance [the court] will grant a rehearing," said William Browner, the banking company's general counsel. □