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The Legal Giants that Propelled North Carolina Banks to National Prominence: Paul J. Polking, Marion A. Cowell, and Jerone C. Herring

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I. Introduction

Paul J. Polking, Marion A. Cowell, Jr. and Jerone C. Herring served distinguished careers as the general counsel of North Carolina's three largest banking corporations, Bank of America ("B of A"), First Union (now Wachovia), and BB&T. The combined assets of these banks and others located in North Carolina make North Carolina the second largest banking state behind New York. Polking retired in 2004, joining Cowell who retired in 1999 and Herring who retired in the fall of 2003. The Center for Banking and Finance is delighted to recognize and honor the distinguished careers of these exemplary lawyers at its eighth annual Banking Institute, by presenting each with the Center's Leadership Award.

I have been privileged to work with each of these three men since the spring of 1996, when the first planning meeting for the North Carolina Banking Institute was held. Marion Cowell, an alumnus of the UNC School of Law, agreed to lead and organize a board of advisors to help guide the School in its efforts to begin a top quality continuing legal education program focused on banking law and establish the North Carolina Banking Institute journal. The journal was founded to publish the manuscripts prepared by the Institute speakers as well as comments written by law students on cutting edge issues of banking law. Cowell's sphere of influence proved wide and he organized an energetic group of advisors that included Polking, Herring, general counsel of other...
banks, and leading banking law practitioners from the state and around the country. Thanks to the leadership and dedication of these three individuals, both the Banking Institute and its journal have thrived, leading the law school to create the Center for Banking and Finance in 2000. The Center oversees the Banking Institute, the *North Carolina Banking Institute* journal, and other activities designed to further the leadership role of North Carolina-based financial institutions in the continual evolution of the financial services industry.

After meeting with Polking, Cowell and Herring to talk about their extraordinary careers, which included breaking interstate banking barriers and building significant financial services companies, I was struck even more by the many characteristics they share. Each began his bank career at about the same time: Polking in 1970, Herring in 1971, and Cowell in 1972. Each remained with the same institution and did not career hop from bank-to-bank. Each enjoyed the enviable position of working for the larger bank in all of their combined acquisitions, but notably had proven their own worth so that they continued as general counsel when the target’s general counsel could have been designated to replace them. The resulting career longevity means that their combined service to their institutions is ninety-three years. Each worked for more than one CEO, but again, perhaps in contrast to recent trends regarding institutional loyalty and corporate leadership succession, all the CEOs were “home grown” and had spent most or all of their own banking careers at the bank they ultimately led.¹ Each “gentleman” is a gentleman in the true (and perhaps Southern) sense of the word. Polking, Herring and Cowell are low-key, mild-mannered, polite and serious. Notwithstanding the collegial and conservative veneer, each is a hard-charging, aggressive advocate for his bank. Each gentleman’s bank experienced tremendous growth during his tenure, most of it

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¹ Bank of America’s CEO, Ken Lewis joined the bank in 1969, a year before Polking. Ken Thompson, CEO of First Union (and now Wachovia) joined First Union in 1976, four years after Cowell. Thompson’s predecessor, Ed Crutchfield, joined the bank in 1965, was named President in 1972, the same year that Cowell joined the bank, and became CEO in 1984, two years after Cowell was named general counsel. John Allison joined BB&T in 1971, the same year that Herring came on board. Allison became BB&T’s CEO in 1989.
obtained through a series of acquisitions that began in-state and ultimately crossed state borders. Each bank, in its own way, helped to break down the barriers to interstate banking and branching. It is clear from talking to all three men that the excitement provided by many successful acquisitions accounts for their long-time service and the tremendous satisfaction justifiably felt from such a career. When asked to recount accomplishments, each was understated and self-effacing, but clearly reveled in his career. It was also interesting that often the first deal, rather than later, larger transactions, made the most lasting impression.

It is not likely that we will find many men or women who enjoy the same kind of legal careers as Polking, Cowell and Herring. They began as young lawyers in small legal departments (or in Herring's case, the only lawyer) and helped engineer the expansion of their companies in a way that is hard to imagine being repeated in any industry today. Thus, it is with great pleasure that we honor Paul Polking, Marion Cowell, and Jerone Herring for their contributions to banking law in general and to the success of North Carolina-based financial institutions in particular.
II. PAUL J. POLKING, BANK OF AMERICA CORPORATION
Paul Polking is from Iowa and received his undergraduate and law degrees from Notre Dame, where he remains an active alumnus. He joined the OCC upon his graduation from law school, always having had an interest in banking. He enjoyed working under Comptroller Jimmy Saxon, whom he described as an exciting and innovative leader, who did not necessarily worry about notice and comment rulemaking procedure under the Administrative Procedure Act.

Polking began his career at North Carolina National Bank ("NCNB") in 1970 after four years at the OCC, where, among other things, he reviewed bank mergers and acquisitions. When Addison Reece, then CEO of the bank, began to consider a more aggressive acquisition strategy, Polking was recommended to him. Polking was the second lawyer at the bank and reported to the bank's general counsel, James Kiser. During Polking's tenure, NCNB would take the name "NationsBank" upon its 1991 merger with C&S/Sovran, and then Bank of America in 1998 when NationsBank and the California-based BankAmerica Corporation merged. Thirty-four years after Polking was hired as the bank's second lawyer, B of A has over 240 attorneys in seventeen different offices, including over 80 in the company's headquarters in Charlotte. Polking is very proud of the legal department at B of A, and recognizes the challenges of retaining the best attorneys following a merger or acquisition. Given the increased attention to corporate governance and compliance in recent years and months, Polking expects the B of A legal staff to grow to keep pace with the heightened scrutiny and legal demands.

Polking enjoys working as part of a team and believes that B of A's management has appropriately acknowledged the importance of the legal team to the success of the company. Polking characterizes the stance of the bank on a variety of legal issues as aggressive and is proud that he and the bank have played a pivotal role in forcing many changes to federal and state laws. Although quiet and mild-mannered, Polking enjoys taking aggressive legal positions and finds his work for the bank to have

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2. The pending merger with Fleet Boston will likely add attorneys from Fleet's staff of 150 attorneys, 80 of whom are currently posted overseas.
been extremely exciting, especially while the bank was engaged in its many mergers and acquisitions. He views the role of lawyers in the bank as proactive and solution-oriented. He has had the pleasure of working under four different CEOs, with four very different styles, but each of them had the common trait of aggressively seeking to advance the bank's interests. Polking believes that each CEO's unique style was well suited to the particular challenges facing the bank during that CEO's tenure.

Polking's legal accomplishments are numerous. Those most significant to him include the role played by the bank in geographic expansion, its stance on issues related to federal preemption, and the push to expand beyond traditional banking products for banks and bank holding companies.

Four separate developments in the bank's push to expand its franchise geographically stand out for Polking as particularly significant: the first interstate acquisition (First National Bank of Lake City in Florida); the enactment of the Southeast Compact; the acquisition of First RepublicBank in Texas and expansion beyond the Southeast region; and the adoption of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. The sum total of this work is indeed a revolution from the operation of a banking franchise within a single state to nationwide banking.

The story of the Lake City acquisition has been recounted elsewhere, but it bears repeating here. In 1972, NCNB bought the Trust Company of Florida, a non-deposit trust company that CEO Addison Reece had learned was for sale. The company literally operated out of one room, managing about $35 million in assets for its founders and friends. Later in 1972, shortly after this little-noticed acquisition, the Florida legislature enacted a statute prohibiting the out-of-state ownership of banks located in Florida. Pursuant to a grandfather provision, however, NCNB, Northern Trust Company of Chicago and Royal Trust Company of Canada were permitted to continue their trust operations. In 1981, Polking, as part of a team organized in 1980 to find ways for NCNB to expand its business across state lines, reexamined the

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1972 Florida statute and determined that the language of the statute was broad enough to permit the three grandfathered banks to own Florida banks in addition to their existing Florida trust company operations. Polking convinced the regulators that his interpretation of the Florida statute was sound and the Federal Reserve Board approved NCNB's first bank purchase in Florida, the small First National Bank of Lake City. Polking was surprised that the acquisition was not judicially challenged, but no one could have foreseen that this was merely the first step in NCNB's assault on the Florida banking market through which it would double its size. In addition to finding and arguing the relevant legal support for the acquisition, Polking had a role in negotiating with the bank's major shareholders.

Polking was also involved in drafting the legislation that was adopted by the Southeastern states lifting the Douglas Amendment bar to permit out-of-state bank holding companies to buy in-state banks on a regional and reciprocal basis. Polking worked with John Douglas, an Atlanta attorney, Marion Cowell of First Union, Ralph Strayhorn of Wachovia, and others to make this legislation a reality. Once enacted, North Carolina banks proved to have a significant advantage. North Carolina had long permitted statewide branching, while many of the other Southeastern states did not. The result was that the North Carolina banks were larger than their competitors in Atlanta, Richmond, Miami and other Southeastern financial centers. Polking believes that many knew North Carolina banks would make significant acquisitions throughout the Southeast region, but viewed the Southeast Compact as necessary to create banks of sufficient size to stave off New York and Chicago banks whenever the Douglas Amendment was repealed. In addition to their size advantage, Polking notes that North Carolina banks through their statewide acquisitions and branching operations knew how to build a branch banking network and how to integrate two different institutions. Polking believes this experience at the state level in North Carolina was crucial to the success of the bank in its acquisitions in Florida and then throughout the Southeast. The acquisition binge by North Carolina banks began in earnest after the U.S. Supreme Court upheld, from constitutional challenge, the regional reciprocal banking statutes in the Northeast.
The multiple acquisitions during this period of time were immense fun for Polking and his team to consummate. The only dark cloud was the hostile and unsuccessful bid for Atlanta’s C&S Bank. Polking describes this as his most painful and difficult experience with the company, but recalls the special satisfaction when, the second time around, NCNB’s bid for C&S/Sovran was successful.

The role of competition among the North Carolina-based banks cannot be minimized in any account of their collective success, which resulted in North Carolina’s rank as the second largest banking state in the nation. The original competition was between Wachovia and NCNB for dominance within the state. This led to in-state mergers that gave each bank experience in mergers and acquisitions, integration of a purchased bank into an existing branch network, and running a far-flung enterprise. Later, after Wachovia was surpassed in size and seemed less interested in acquisitions outside of North Carolina, the competition shifted to one between NCNB and First Union, both headquartered in Charlotte. The friendly rivalry between Hugh McColl of NCNB and Ed Crutchfield of First Union prevented both banks and both CEOs from becoming self-satisfied or complacent with their already considerable success.

NCNB made a significant acquisition outside of the regional network, when it was permitted to acquire the failed First RepublicBank in Texas. This was the first step to NCNB becoming a truly national franchise, not just a regional powerhouse.

To make the national franchise efficient and more convenient for customers, interstate branching was the next step. The bank, along with others, exploited § 30 of the National Bank Act to retain interstate branches when a national bank’s home office was relocated within thirty miles, even if across a state line. But inevitably, this provision only permitted limited interstate branching. The bank took the lead role in lobbying Congress for the rollback of the geographic restrictions on bank expansion and was rewarded with the enactment of the Riegle-Neal Interstate

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Banking and Branching Efficiency Act of 1994.\(^5\) That Act repealed the Douglas Amendment and permitted a bank holding company to acquire a bank in another state regardless of any restrictions in the target state's law on such an acquisition. The Act also permitted, as of 1997, interstate branching. Another provision of Riegle-Neal was the nationwide deposit cap of 10% of deposits, which prohibits the Federal Reserve Board from approving a merger that would result in an institution controlling more than 10% of the nation's deposits. That deposit cap may be at issue in B of A's most recent acquisition of FleetBoston Financial Corporation.

A second critical issue for the bank, according to Polking, has been its stance on federal preemption of state laws. The bank, along with Wells Fargo, has spearheaded the pro-preemption charge, in part through its challenge of several municipal ordinances in California prohibiting banks from charging ATM access fees to non-customers. The Ninth Circuit found that the ordinances were preempted by the National Bank Act and its regulations.\(^6\) The OCC recently finalized regulations that would codify the ability of national banks to avoid the application of many state statutes.\(^7\)

In the product area, the bank has also been aggressive. The VALIC case is the seminal Supreme Court precedent on the evolving standard for national bank powers, giving an expansive interpretation to the "business of banking," and holding that the brokering of a broad array of financial instruments, including annuity products, is within the business of banking.\(^8\) Polking wistfully regrets that the case has become known as the VALIC case, rather than the NationsBank case. The bank also pushed on section 20 subsidiaries and the expansion into securities

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underwriting business, although Polking acknowledges that the leader in this area was Bankers Trust.\footnote{Section 20 of the Glass-Steagall Act of 1933, 12 U.S.C. § 377, prohibited the affiliation through common ownership of a bank and a company “engaged principally” in the issuance of securities. Although at first this was thought to bar the ownership of a bank and securities firm by a holding company, § 20 was ultimately interpreted to apply only to securities that a bank was not authorized to hold for its own account (“bank-ineligible” securities) and “principally engaged” was interpreted by the Federal Reserve Board to permit as much as 25% of a securities’ firms revenues to come from “bank-ineligible” activities. \textit{See} Securities Industry Ass’n v. Bd. of Governors of the Fed. Reserve Sys., 839 F.2d 47 (2d Cir.), \textit{cert. denied}, 486 U.S. 1059 (1988).}

The merger of BankAmerica and NationsBank in 1998 assured the bank a coast-to-coast presence, something its competitors could not claim. Although billed as a merger of equals, the headquarters remained in Charlotte rather than San Francisco and the CEO of NationsBank retained the helm. Former BankAmerica CEO, David Coulter, was named president of the new B of A, but soon left the company. The Bank of America name, however, was adopted for the combined company.

In Polking’s view B of A faces several challenges going forward. The biggest challenge will be ensuring compliance in an entity the size of the bank. A second challenge will be defending the large volume of complex litigation that is now common in the industry. A third challenge is modifying the company’s already sound corporate governance practices in the wake of Sarbanes-Oxley and heightened regulatory scrutiny. Polking is adamant in his belief that this increased emphasis on corporate governance issues is a good thing for the institution, even though the required processes are time consuming to put in place. To meet this challenge, the company established a disclosure committee that permits relevant company managers to engage in a healthy give and take about disclosure issues, rather than making judgments about disclosure without the benefit of consultation and discussion with others.

After announcing his intention to retire, but before a replacement was named, Polking fittingly had the opportunity to engineer one final significant acquisition for the bank, the acquisition of FleetBoston Financial Corporation. This deal will give the bank an immediate stronghold throughout the Northeast, thereby giving the bank a truly national franchise.
III. Marion A. Cowell, First Union Corporation
Marion Cowell grew up in Jacksonville, North Carolina, graduated from the University of North Carolina with a degree in business administration and received his law degree from the University of North Carolina School of Law. He practiced law in Durham for eight years.

Prior to the enactment of the Bank Holding Company Act ("BHCA"), First Union was involved in insurance as well as real estate development and was allowed to continue those activities after the passage of the BHCA pursuant to a grandfather provision. It continued to operate Cameron-Brown, a real estate investment and development firm. Cowell came to First Union through his contact with Cameron-Brown, which began when he was representing a developer in Durham who had borrowed money from Cameron-Brown to finance the construction of four apartment buildings. The developer experienced cost overruns on those projects. Observing Cowell work through these difficulties on behalf of his client, Cameron-Brown was apparently impressed with Cowell and his legal acumen and approached him about joining Cameron-Brown. Cowell accepted the invitation and began work at Cameron-Brown in June of 1972.

First Union had its own small legal department with Tom Grant serving as the general counsel. Grant was succeeded as general counsel by Robin Hinson. When Cowell joined Cameron-Brown in 1972, another attorney, Joe Johnston, was already on board, and was later elected to the North Carolina General Assembly. In the fall of 1973, there was a downturn in the real estate market and Tom Small, who would later become a bankruptcy judge, joined the company's legal team. Jerry Miller was soon added to help work out troubled real estate transactions. In the summer of 1978 when Robin Hinson returned to private practice with the firm of Robinson, Bradshaw and Hinson, Cowell was selected to replace him as general counsel of First Union, whose legal department then numbered about ten attorneys.

In 1980, First Union began a period of expansion by acquisitions of smaller banks. The first acquisition, in particular, stands out in Cowell's mind – the First National Bank of Catawba County in Hickory, North Carolina. The acquisition was the first in a string of over ninety acquisitions over the next eighteen years
while Cowell served as First Union’s general counsel, but it had special significance and memories for Cowell for several reasons.

Perhaps most significantly for the long-run success of First Union’s acquisition program, this was the first time First Union engaged the services of Rodgin Cohen at Sullivan & Cromwell for work on an acquisition. Although the acquisition itself seemed relatively straightforward, there was some concern that the Federal Reserve Board would not grant approval of it under the theory that the acquisition by First Union would eliminate it as a potential competitor in the market. In 1981, Cohen was a young partner at his firm and not yet recognized as one of the leading bank lawyers in the country, a reputation he later developed.

A second reason Cowell remembers that first acquisition with special fondness is because of the perseverance by many bank employees which helped to ensure that the acquisition was ultimately approved by the requisite two-thirds majority of the shareholders of First National Bank of Catawba County. The Catawba bank had previously merged with an Asheville bank. As a result, almost one-third of the Catawba bank’s stock was held outside the Hickory area. Cowell remembers bank personnel calling shareholders to solicit their votes in favor of the merger with First Union. Cowell learned that there were two sisters, who held a substantial amount of Catawba bank stock, living in a remote area near Asheville. Cowell found a bank officer from a First Union branch in the Asheville area who agreed to drive to the sisters’ home and try to obtain their proxy. His efforts were successful. With the 16,000 shares voted by the sisters, the merger was approved by 69% of the shareholders, just over the two-thirds required by statute.

The Catawba County acquisition proved fateful in beginning First Union’s tremendous growth via acquisitions. The acquisition was predicated on several coincidences, including finding the sisters holding the last votes needed to obtain approval by two-thirds of the shareholders, and finding the mergers and acquisitions lawyer who would not only lead this acquisition but

10. A two-thirds, rather than a majority, vote was required because First National Bank of Catawba County was not owned by a holding company.
prove to be an able partner in First Union’s subsequent acquisitions.

The acquisition scene got even more exciting when the Southeastern states enacted regional reciprocal banking statutes. As First Union’s general counsel, Cowell participated with Paul Polking of NCNB, Ralph Strayhorn, general counsel of Wachovia, John Douglas, a young Atlanta attorney, and others from around the region in a committee to help draft and get enacted the state interstate banking statutes. The statutes were enacted by most states in 1984. In June 1985 the constitutionality of such state statutory schemes was upheld by the U.S. Supreme Court in the *Northeast Bancorp* case.\(^{11}\) The first interstate merger pursuant to the Southeastern statutes was the Trust Company of Georgia and Florida’s Sun Banks merger. Cowell noted the irony that the combined firm, SunTrust, lost its battle for Wachovia in 2001 which, of course, was won by First Union (after Cowell’s retirement), leading to the creation of the new Wachovia Corporation.

Cowell has much to be proud of during his tenure at First Union. He is most proud, however, of the fact that the company was never challenged on its financial statements, notwithstanding the dynamic tension between accountants and investment professionals in preparing the financial statements. Cowell played an important role in fashioning the company’s disclosure language contained in the proxies and participated in the drafting of the annual and quarterly reports to shareholders. Cowell recalls the days and nights at the financial printers and described the last time that First Union printed in New York instead of Charlotte. He remembers it because N.C. State won the NCAA basketball championship against Houston while the printing was underway. There was a shift change of the unionized labor during the middle of the printing job that resulted in a number of problems. Cowell was able to convince all involved in the printing process that thereafter First Union’s financial printing could be accomplished more efficiently in Charlotte than in New York.

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Second, Cowell is proud of his role in helping to break down the barriers to the geographic expansion of banks, which he rightly views as critical to the evolution of the banking industry.

Third, Cowell is proud of his management of the legal function at First Union that includes creating an environment where in-house lawyers feel safe to do their jobs and deliver the needed message even if the message is not one that management wants to hear. He is also proud of his ability to find excellent legal services from outside counsel, Rodgin Cohen being perhaps the most dramatic example. Cowell is proud that First Union played an important role in urging its legal service providers to consider diversity in their firms since diversity was an important issue to First Union and to Cowell. Cowell is especially concerned about the diversity issue in the context of law firms, noting the problems created by a population that is 30% nonwhite (and increasing), receiving legal representation from a lawyer population that is more than 92% white. Cowell's attention to management of the legal function also included selecting and grooming his successor at general counsel, Mark Treanor. Treanor and his law firm had been employed by First Union as litigation counsel on various matters. When Cowell began to think about retirement, he decided that the area in which he felt most at sea was in making litigation decisions and having to rely exclusively on the judgments and advice of outside attorneys. Cowell believed Treanor's background in litigation would give him the ability to analyze and evaluate that outside advice at a time when banks were increasingly becoming defendants in lawsuits. Treanor worked in the legal department for a year prior to Cowell's retirement, ensuring a smooth transition when Cowell retired in 1999.
IV. Jerone C. Herring, BB&T Corporation
Jerone Herring hails from the small eastern North Carolina town of Snow Hill. He graduated from Davidson College in 1960 and received his law degree from Duke University Law School in 1963. After a two-year stint with the U.S. Army field artillery, Herring began practicing law in North Wilkesboro. He was engaged in a general practice, but found that he particularly enjoyed the corporate work he did for Lowe's Foods, Lowe's Home Improvement and Holly Farms. Herring was recruited to BB&T and was delighted to move to Wilson and return to his home turf in Eastern North Carolina and to escape some of the pressures of the private practice of law.

Herring started at BB&T in 1971 as the first and only lawyer. When he retired in September 2003, the legal department numbered sixteen, a small size for a $90 billion asset financial holding company. Given its relatively lean staffing, BB&T relies heavily on outside counsel. Local attorneys handle most of the loan transactions, Womble Carlyle handles the corporate work related to BB&T's many acquisitions, and Arnold & Porter has enjoyed long service as the bank's regulatory counsel.

When asked to reflect on his career at BB&T, the three things of which Herring is most proud are: BB&T's thrift acquisition strategy, particularly its reliance on merger-conversions; the expansion of the BB&T footprint through thrift and bank acquisitions in other Southeastern states; and the assemblage of a large array of insurance agencies under the BB&T Insurance subsidiary of the bank.

During his thirty-two year career at BB&T, the bank went from a $343 million asset stand-alone bank to a $90 billion asset financial holding company. Much of this growth came through acquisition. BB&T was an avid acquirer of thrift institutions, taking advantage of changes in the law in 198912 that permitted bank holding companies to acquire healthy thrift institutions. Herring speculates that BB&T found a market that larger institutions did not find worth entering, given the relatively small size of most thrifts. In general, thrift institutions cost less than

banks, although substantial effort was required to retrain thrift officers—who specialized in home mortgage lending—to evaluate credit risks and make loans in a more general lending practice. A special advantage for BB&T was the acquisition of thrifts that were still mutual in form through a “merger-conversion.” In many ways, for banks willing to grow incrementally through thrift acquisitions, the merger-conversion was an especially financially advantageous way to acquire a mutual thrift. At the time that regulations changed to halt this process, BB&T had acquired a number of thrifts in merger-conversions. BB&T, along with Centura and Southern National, were heavily involved in thrift acquisitions, including merger-conversions.

BB&T’s acquisition strategy was expanded from thrift institutions in North Carolina to multi-state acquisitions of thrifts and banks. Regional, reciprocal interstate banking statutes adopted by most of the Southeastern states enabled North Carolina banks to expand throughout the region. BB&T took advantage of this authority and expanded its footprint into South Carolina, Virginia and Georgia. By the time of the 1994 Riegle-Neal Act abolishing the Douglas Amendment to the BHCA, BB&T was well on its way to building a regional banking network. In 1997, when the Riegle-Neal Act permitted interstate branching, BB&T consolidated its bank network into three banks. The South Carolina bank, which is still a separate subsidiary of BB&T Corporation, was the holding company’s first out-of-state acquisition. BB&T continues to maintain separate bank subsidiaries in Georgia (for credit card issuance), and in Virginia.

Herring attributes much of the success of BB&T’s acquisitions to the business model developed by John Allison, BB&T’s CEO. This model empowers executives at each branch to make decisions and usually leaves the key managers in charge after an acquisition. Although the name on the front of the door changes, for most purposes BB&T permits the acquired bank to continue with its normal business, while adopting BB&T’s more aggressive sales culture. As a result, BB&T experienced less

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13. In a merger conversion, a mutual thrift was converted to stockholder status simultaneously with its merger with the acquiring bank.
customer defection after an acquisition than many of its competitors. In addition, BB&T has become highly skilled in handling the conversion process.

BB&T is one of the bank leaders in insurance agencies, holding the tenth largest bank or non-bank insurance agency in the nation. In the 1920s BB&T first established an insurance agency pursuant to the general powers of a state chartered bank. The insurance agency aspect of BB&T did not grow much until the 1990s when BB&T began an aggressive strategy of acquiring insurance agencies in the footprint of its bank branches and beyond. BB&T combined the back office operations of the insurance agencies for operating efficiencies, but continued to operate each agency under its prior name – now preceded by “BB&T Insurance.” This strategy has proved successful because of the benefits to both BB&T and the agencies. BB&T receives fee-related commission income by proven performers with established customers, while the insurance agencies not only rid themselves of the tedious, time consuming and expensive paperwork and processing but gain the highly liquid stock of BB&T in a tax free transaction. Moreover, BB&T has capitalized on the cross-selling opportunities of providing insurance services to bank customers and bank products to insurance customers. Approximately 10% of all holding company income is attributable to insurance.

A significant point in BB&T’s evolution during Herring’s career was the merger of equals with Southern National Bank in 1995. This merger of two $10 million banks resulted in the current BB&T. The BB&T name prevailed, but the corporate headquarters of the merged institutions was Winston-Salem, the home of Southern National. This meant that Herring, along with other senior BB&T officials, moved there from Wilson. John Allison joined BB&T in 1971, the same year as Herring, and became CEO in 1989 after the premature deaths of his two immediate predecessors. Based on his observation of the 1995 merger of equals with Southern National and other “mergers of

14. Thorn Gregory was in his early fifties when he died while jogging and Vincent Lowe died at a similarly young age while playing tennis.
equals” in North Carolina and elsewhere, Herring notes that the social issues are important. These include the name, headquarters city, and management. Boards of directors can truly be equal, but the other social issues, particularly management structure, are not as easily handled.

Another important event, according to Herring, was when BB&T exceeded $50 million in assets. This was the trigger point at which it was designated a large and complex banking organization by the various bank regulators, and received a full-time examiner.

Sarbanes-Oxley has, in Herring’s judgment, not impacted banks as much as other business organizations because of the intense regulatory scrutiny they already faced. However, he has noticed that there now seem to be more serious regulatory consequences for actions that would previously have been subject to a slap of the wrist. Moreover, Herring notes the tremendous amount of resources now devoted by corporations, including bank and financial holding companies, to corporate governance structures. No doubt the increased emphasis has benefits for the institutions, although Herring notes that Congress and the public may be misled into thinking that corporate governance policies or procedures alone can prevent fraud.

BB&T’s success would make it the number one banking organization in size in many states. In North Carolina, however, it is ranked third in size. What accounts for the striking success of North Carolina based financial institutions? Herring believes, as do others, that statewide branching permitted North Carolina banks to expand in size, and more importantly, gain experience in handling branches that allowed for more successful integration and operation of banks bought across state lines. Hal Lingerfelt, while Commissioner of Banks of North Carolina, helped engineer the interstate compact statute in North Carolina and was instrumental in the adoption of similar statutes in other Southeastern states. In recent years, North Carolina-based institutions have expanded well beyond North Carolina’s borders, and several out-of-state institutions have entered North Carolina.15

15. Such as SouthTrust (from Alabama); National Commerce Financial, the acquiror of CCB (from Tennessee); and RBC Financial, the acquiror of Centura Banks (from Ontario, Canada).
Herring believes that the dual banking system is alive and well and that North Carolina banks can continue to be highly successful. He points to the success of state-chartered banks in Alabama, and in Georgia (SunTrust). Herring does not view OCC or OTS preemption of state laws that hinder the operations of national banks or federally chartered thrifts as a threat to the continued success of state chartered banks. Indeed, he notes that in many cases, state chartered banks also benefit from preemption because there is often an explicit provision in the state statute to provide for equality of treatment of state and federal institutions. Even in the absence of such an explicit provision, Herring notes the pressure that state banks may exert on state authorities to level the playing field if a state statute has been preempted for national banks without relief for state banks. OCC preemption of the Georgia predatory lending statute was helpful to BB&T as a state-chartered bank as was preemption of portions of a West Virginia statute relating to the sale of insurance.

V. CONCLUSION

The Center for Banking and Finance has benefited enormously from the contributions and support provided by Cowell, Polking and Herring since 1996. When they picked up the telephone and asked someone to speak at our Banking Institute, very few bankers, lawyers or regulators said no. When members of our board knew the general counsels of B of A, First Union and BB&T would be in attendance at the meetings of our board of advisors or at our other programs, they attended also to show their support of our efforts. (It didn’t hurt, of course, that they would have a chance to spend time with the gentlemen who ultimately controlled a great deal of outside counsel work.) When called upon to provide an introduction of a speaker or to participate themselves in panel discussions, Herring, Cowell and Polking always gave freely of their time. As an alumnus of our law school, Cowell contributes in many other ways to our School’s success, including heading up the law school’s portion of the University’s Carolina First Campaign. Polking and Herring, who are not UNC alumni, have honored us by playing an active role in our activities
and continuing to provide us with sound counsel and guidance. We are forever grateful to all three. It is only fitting that they receive the first Leadership Awards bestowed by the Center for Banking and Finance.

As readers of this publication undoubtedly know, banking is a highly regulated industry, where the legal function plays perhaps a more critical role in a company's success than in some other industries. The contributions of the general counsel to the success of the banks for whom they work cannot be underestimated. Each of the gentlemen honored by the Center for Banking and Finance and profiled in this article may rightfully claim a critical place in the history of banking law. Congratulations!