

basic proposition on the miscellaneous claim is that the Banking Department asserted enough control over the NDIGC so as to make it effectively an instrumentality of the state and the evidences of that are strong. First of all, under the statutes the plan of organization for the NDIGC has to be approved by the State Banking Department and they submitted it to the State Banking Department and the State Banking Department approved a scheme that couldn't conceivably work. The membership of the NDIGC is effectively controlled by the Banking Department and it was the Banking Department that allowed Commonwealth effectively to become a member of that organization at a time when they knew that any losses on the...that the collapse of Commonwealth could not conceivably be supported by the fund. Furthermore, the approval of the guarantee amount was in the hands of the Banking Department. The NDIGC could do nothing with regard to the guaranteed amount without the approval of the Department of Banking. The Department of Banking approved the increase from \$10,000 to \$30,000 at a time when it well knew that that fund couldn't support \$10,000 of Commonwealth collapse much less \$30,000. Those are some of the evidences that the Banking Department did in effect effectively control NDIGC, that it was in effect an instrumentality of the state and, therefore, the state under contractual theory is liable.

PRESIDENT: One minute.

SENATOR BEUTLER: Now, I submit to you that the best evidence of whether they controlled or didn't control is perhaps in their own mind and here is what they thought about their relationship with the NDIGC. Here is what the Banking Department thought about it. Here is what John Foley said on August 7, 1979, to a depositor. "The institutions that have joined the NDIGC are all state charter and supervised institutions as is the NDIGC itself, a corporation supervised directly by this department." That's the Banking Department telling a depositor it's okay because we control the situation, right in print.

PRESIDENT: Senator Jacklyn...Senator Haberman, excuse me. Then the speaking order is Senator Smith, Vickers and Wesely. Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the body, I just passed out a sheet to you that I'd like to have you