No. 05-36

In the Supreme Court of the United States

GOLDEN PACIFIC BANCORP, PETITIONER

v.

FEDERAL DEPOSIT INSURANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Federal Deposit Insurance Corporation (FDIC) was entitled to summary judgment on a state-law unjust-enrichment claim that the FDIC, acting as the receiver of an insolvent bank, improperly paid interest to itself in its capacity as subrogee of the bank's insured depositors, when the FDIC was legally entitled to receive such interest.

2. Whether a shareholder of an insolvent bank lacked standing to pursue a state-law corporate-waste claim against the FDIC, on the ground that the Internal Revenue Service had a superior claim of greater value against the bank's estate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 375 F.3d 196. The opinion and order of the district court granting respondent's renewed motion for summary judgment (Pet. App. 19a-35a), and the earlier opinion and order of the district court partially granting respondent's initial motion for summary judgment (Pet. App. 36a-72a), are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 14, 2004. A petition for rehearing was denied on February 2, 2005 (Pet. App. 113a-114a). On April 25, 2005, Justice Ginsburg extended the time within which to file a petition for a writ of certiorari to and including July 5, 2005, and the petition was filed on that date. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner owned more than 90% of the stock of Golden Pacific National Bank (Golden Pacific), a bank based in the Chinatown neighborhood of New York. In June 1985, the Office of the Comptroller of the Currency (OCC), the primary regulator for federally chartered banks, learned from an informant that Golden Pacific was involved in money laundering. After a brief investigation, the OCC determined that Golden Pacific was insolvent and ordered it to be closed. Golden Pacific's depositors were insured by the Federal Deposit Insurance Corporation (FDIC). Pursuant to federal law, the OCC appointed the FDIC as Golden Pacific's receiver. Pet. App. 37a, 74a; FDIC C.A. Br. 8-9.

As the insurer of Golden Pacific's depositors, the FDIC was obliged to make insurance payments "as soon as possible." 12 U.S.C. 1821(f)(1). In order to help fund those payments, the FDIC solicited bids from financially healthy banks to enter into a Deposit Insurance Transfer and Asset Purchase Agreement (DITAPA). Under a DITAPA, a healthy bank purchases certain assets from the insolvent bank at a premium, in return for which the FDIC allows the healthy bank to serve as the agent for the FDIC's insurance payments to the insolvent bank's depositors. The FDIC eventually entered into a DITAPA with the Hong Kong and Shanghai Banking Corporation (HKSB). By 1986, the FDIC (in its corporate capacity as insurer) had paid out over $140 million of its own funds to satisfy the claims of the insured depositors, mostly through HKSB. Pet. App. 4a, 39a.

Beginning in 1986, the FDIC, acting in its capacity as receiver, began repaying Golden Pacific's creditors. Upon making payments to Golden Pacific's insured depositors, the FDIC (in its corporate capacity) was subrogated to the depositors' claims against the bank. The FDIC therefore became Golden Pacific's largest creditor. By 1990, the FDIC, acting as receiver, had recovered and repaid all of the principal owed to Golden Pacific's creditors, including itself. Pet. App. 4a.

The FDIC thereafter began making interest payments to Golden Pacific's creditors. Applying New York's statutory judgment rate of 9%, the FDIC calculated that it was itself owed (in its corporate capacity) approximately $23 million in interest, and that the other creditors were owed approximately $2.8 million. Because insufficient assets remained to satisfy those claims, the FDIC paid itself approximately $11.2 million, and paid the other creditors approximately $1.4 million, on a *pro rata* basis. In 1995, after making its partial interest payments (and exhausting the remaining assets), the FDIC inactivated the receivership. Pet. App. 5a, 39a; FDIC C.A. Br. 14-15.

While the FDIC's receivership was ongoing, the Internal Revenue Service (IRS) informed the FDIC, in its capacity as Golden Pacific's receiver, of alleged tax deficiencies of the bank (or the bank's estate) for tax years 1980 through 1988. Although the IRS could not assess tax on, or collect tax from, Golden Pacific while it was insolvent, see 26 U.S.C. 7507(a), it could assess tax once it appeared that such an assessment would not diminish assets necessary for the full payment of the bank's depositors, see 26 U.S.C. 7507(c). In 1993, the IRS and the FDIC entered into an agreement concerning the IRS's claims. Pet. App. 115a-118a. In the agreement, the

FDIC acknowledged deficiencies in the amount of approximately $11.7 million. *Id.* at 116a. In return, the IRS recognized that Golden Pacific was insolvent. *Ibid.* The FDIC agreed to notify the IRS if it appeared that an assessment would not diminish assets necessary for the full payment of the bank's creditors (thereby triggering the IRS's authority to make such an assessment). *Id.* at 116a-117a. Because Golden Pacific had no remaining assets, the FDIC apparently never provided notification to the IRS, and the IRS never assessed Golden Pacific's tax deficiencies.

2. In 1995, petitioner filed suit against the FDIC in its capacities as Golden Pacific's insurer and receiver, pursuing claims of unjust enrichment, breach of fiduciary duty, and corporate waste under New York law. Pet. App. 5a, 78a. Petitioner primarily contended that the FDIC had acted improperly by liquidating Golden Pacific, notwithstanding evidence that it was in fact solvent; by using the allegedly more costly DITAPA method to do so; by awarding itself interest on its insurance payments; and by charging certain expenses to the receivership. *Id.* at 5a-6a.

The district court denied the FDIC's motion to dismiss for lack of subject-matter jurisdiction. Pet. App. 105a-112a. In doing so, however, the court determined that petitioner was estopped (as a result of earlier litigation) from arguing that the bank was not insolvent at the time the FDIC became receiver. *Id.* at 110a. The district court then granted the FDIC's motion for summary judgment, holding that petitioner's claims were barred by a release and also by the applicable statute of limitations. *Id.* at 91a-104a. The court of appeals, however, vacated that decision and remanded for further proceedings. *Id.* at 73a-90a.

3. On remand, the FDIC filed a motion for summary judgment on various other grounds. The district court partially granted the FDIC's motion, Pet. App. 36a-72a, and later granted the FDIC's renewed motion for summary judgment on the remainder of petitioner's claims, *id.* at 19a-35a.

a. In its initial opinion, the district court granted summary judgment to the FDIC on petitioner's unjust-enrichment claim insofar as it was based on the theory that the FDIC "was not entitled to interest on its payments to depositors because it did not properly obtain subrogation rights from [Golden Pacific's] prior creditors." Pet. App. 42a. The court reasoned that the FDIC was required to make payments to Golden Pacific's insured depositors once Golden Pacific was declared insolvent, and that it was "clear" that, once the FDIC made insurance payments to those depositors, it was subrogated to their rights. *Id.* at 45a. The district court noted that this Court had recognized that the creditor of an insolvent bank was entitled to receive post-insolvency interest, and that other courts had specifically recognized that the FDIC was entitled to receive post-insolvency interest when it had acted to fulfill insurance obligations. *Id.* at 46a-48a. On that basis, the court concluded that petitioner could not pursue an unjust-enrichment claim predicated on the FDIC's decision to pay itself interest. *Id.* at 48a-49a.[1] The district court also granted summary judgment on petitioner's unjust-enrichment claim insofar as it was based on the theory that the *rate* of interest used by the FDIC was excessive. *Id.* at 51a-52a. The court, however, declined to grant sum-

[1] The district court also granted summary judgment on petitioner's breach-of-fiduciary-duty and corporate-waste claims insofar as they were predicated on the same theory. Pet. App. 53a-54a, 57a.

mary judgment as to certain aspects of petitioner's corporate-waste claim. *Id.* at 61a, 64a-65a.

b. In its subsequent opinion, the district court granted summary judgment on petitioner's remaining claims (including the remainder of petitioner's corporate-waste claim) on the ground that petitioner "would not be entitled to any recovery and thus lacks standing to sue." Pet. App. 24a. The court noted that, if petitioner prevailed on its remaining claims, it would recover no more than $7.9 million. *Ibid.* Before petitioner could recover any of that money in its capacity as a shareholder, however, that money would have to be used to pay off (1) the remaining interest claims of Golden Pacific's creditors and (2) the approximately $11.7 million in tax deficiencies that would come due once the claims of Golden Pacific's depositors were satisfied. *Id.* at 24a-25a. The court noted that "[t]he claim of the IRS clearly has priority over the shareholders, who are only entitled to the proceeds remaining after all claims have been fully paid." *Id.* at 26a. "Because these outstanding debts exceed the $7.9 million in possible damages for [petitioner]," the court explained, "any recovery by [petitioner] is precluded." *Id.* at 25a.

4. The court of appeals affirmed. Pet. App. 1a-18a.

a. As relevant here, the court of appeals first rejected petitioner's contention that the district court erred in granting summary judgment on petitioner's unjust-enrichment and breach-of-fiduciary-duty claims because "there [were] genuine issues of material fact as to whether the FDIC acted properly in awarding itself nine percent post-insolvency interest on the funds it had previously paid to cover its insurance obligations." Pet. App. 12a. The court noted that, under New York law, the elements of an unjust-enrichment claim are (1) that

the defendant was enriched at the plaintiff's expense and (2) that equity and good conscience required the plaintiff to recover the enrichment from the defendant. *Id.* at 13a n.8. The court of appeals observed that this Court has "long since recognized the general proposition that creditors to a liquidation are entitled to interest, just as any other judgment creditor, even absent specific statutory authorization." *Id.* at 13a. According to the court of appeals, "[i]t follows that the FDIC, as the depositors' subrogee, is entitled to post-insolvency interest." *Id.* at 14a.

The court of appeals then considered various other factors in determining that summary judgment on petitioner's claims relating to the FDIC's payment of interest was appropriate. The court first noted that "to hold otherwise would give [petitioner] the windfall of essentially an interest-free loan, and leave the FDIC with no compensation for the loss of the use of the funds it advanced." Pet. App. 14a. The court discounted the allegation that it was not the FDIC's ordinary practice to recover post-insolvency interest, noting that "internal agency practices do not create legal rights in third parties." *Id.* at 16a. Finally, the court also discounted the allegation that the FDIC's motive was to eliminate any excess funds that would otherwise be distributed to the IRS. *Id.* at 17a. Indeed, the court concluded that, insofar as petitioner had "acknowledged that none of the funds in question could have, under any scenario, been returned to it, no claim for unjust enrichment can lie." *Ibid.*

b. The court of appeals also agreed with the district court that petitioner lacked standing to pursue its corporate-waste claims. Pet. App. 17a-18a. The court noted that petitioner was seeking "approximately $8

million in claims of corporate waste (aside from its claims regarding the FDIC's interest)" and that petitioner "does not dispute that the receivership estate has senior outstanding credit obligations, including a tax liability of approximately $11.7 million." *Id.* at 17a. "Thus," the court reasoned, "even if [petitioner's] waste claims were meritorious, it would recover nothing," and petitioner lacked standing. *Ibid.*

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of another court of appeals. Further review is therefore not warranted.

1. Petitioner first contends (Pet. 9-14) that the court of appeals improperly created a "federal rule of decision" in order to reject petitioner's state-law claim that the FDIC was unjustly enriched by paying itself interest in its capacity as subrogee of Golden Pacific's insured depositors. That contention lacks merit.

a. As a preliminary matter, petitioner does not challenge the court of appeals' conclusion that the FDIC was legally entitled to award itself interest on the more than $140 million in insurance payments that it had made, out of its own funds, to Golden Pacific's depositors. Pet. App. 4a, 39a.[2] Upon making those payments, the FDIC was "subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption." 12 U.S.C. 1821(g)(1). As the court of appeals correctly noted (Pet. App. 13a), this Court has

[2] Petitioner errs in implying (Pet. 6, 7) that the FDIC did not advance its own funds in payment of the insurance claims. The district court determined that the FDIC "expended its own funds to fulfill its insurance obligation." Pet. App. 39a.

held that a depositor with a claim against an insolvent nationally chartered bank is entitled to collect interest on that claim in a liquidation under the National Bank Act. See *National Bank of the Commonwealth* v. *Mechanics' Nat'l Bank*, 94 U.S. 437, 439 (1877).[3] Consistent with that principle, lower courts have specifically held that the FDIC is entitled to receive interest on amounts it paid out in satisfaction of its statutory insurance obligations, in its capacity as subrogee of the insured depositors. See *FDIC* v. *Citizens State Bank*, 130 F.2d 102, 103-104 & n.6 (8th Cir. 1942); *FDIC* v. *Iowa Growthland Fin. Corp.*, 523 N.W.2d 591, 594-595 (Iowa 1994).

b. Petitioner contends (Pet. 12) that, even assuming that the FDIC was legally *entitled* to award itself interest on its insurance payments, petitioner could nevertheless pursue an unjust-enrichment claim against the

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[3] A depositor in a bank chartered under New York law is similarly entitled to receive interest from the receiver, provided that all of the creditors have recovered their principal. See *People* v. *American Loan & Trust Co.*, 65 N.E. 200, 201 (N.Y. 1902). The court of appeals did not specifically address the question whether the right of a depositor in Golden Pacific to receive post-insolvency interest was supplied by federal or state law. Since the events at issue in this litigation, Congress has expressly authorized the FDIC to promulgate rules enabling it "to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions" following satisfaction of the principal amounts of those claims (and to establish a uniform national rate for such interest payments), 12 U.S.C. 1821(d)(10)(C), and the FDIC has promulgated such rules, 12 C.F.R. 360.7. To the extent that the right to interest in this case was supplied by federal law, any state-law unjust-enrichment claim based on the FDIC's exercise of that right would arguably be preempted. The FDIC did not affirmatively argue below that petitioner's unjust-enrichment claim was preempted, however, and does not pursue that argument before this Court.

FDIC under New York law on the ground that it was "inequitable" for the FDIC to do so.[4] Petitioner claims that the court of appeals erred by adopting a "special federal rule of decision applicable to unjust enrichment claims against the FDIC," Pet. 14, under which "the FDIC's *legal* entitlement to certain payments operated to bar any *equitable* recovery by petitioner," Pet. 11. Petitioner is wrong in both respects.

In the first place, petitioner cites no authority for its assumption (Pet. 12) that, under New York law, a claimant's legal right to receive interest on its claims against a receivership estate would be trumped by a showing that "equity and good conscience" would lead to a different result. In New York, as elsewhere, "equity follows the law." 55 *New York Jurisprudence 2d* § 86, at 664 (2002). In particular, "[i]n the administration of assets equity does not interfere with absolute legal priority." *Id*. at 665. Thus, petitioner has not established that even the bright-line rule purportedly adopted by the court of appeals would have been inconsistent with New York law.

In any event, the court of appeals did not adopt any such bright-line federal rule of decision, but instead concluded only that, based on the circumstances of this

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[4] To the extent that petitioner contends (Pet. 11, 13-14) that the FDIC (in its capacity as receiver) breached its fiduciary duty by paying itself interest (in its corporate capacity as insurer), that claim lacks merit. The payment of interest did not constitute "self-dealing" (Pet. 14), because (as courts have consistently held) the FDIC is treated as two separate entities when it acts in its capacities as receiver and insurer. See, *e.g.*, *FDIC* v. *Roldan Fonseca*, 795 F.2d 1102, 1109 (1st Cir. 1986). The necessary (and perverse) consequence of petitioner's position would be to require the FDIC affirmatively to *prefer* claims by other creditors to claims by the FDIC itself in its capacity as subrogee of insured depositors.

case, there were no "genuine issues of material fact" that precluded the FDIC from obtaining summary judgment on petitioner's state-law unjust-enrichment claim. Pet. App. 12a. At the outset of its analysis, the court listed the elements of an unjust-enrichment claim under New York law, including the requirement that a plaintiff must show that "equity and good conscience required the plaintiff to recover the enrichment from the defendant." *Id.* at 13a n.8. And while the court noted that the FDIC was legally entitled to award itself interest on its insurance payments, *id.* at 13a, the court did not stop there—as one would naturally expect if the court had adopted the bright-line rule that petitioner suggests. Instead, the court of appeals proceeded to consider the equities of the FDIC's decision to award itself interest, first noting that the awarding of interest was necessary to make the FDIC whole (and thus to protect the integrity of the FDIC's insurance fund), *id.* at 14a, and then discounting the allegation that it was not the FDIC's ordinary practice to recover post-insolvency interest, *id.* at 16a. Although the court did not conclude in so many words that the equities favored the FDIC,[5] the court did so implicitly in holding that the FDIC was entitled to summary judgment on petitioner's state-law unjust-enrichment claim. That portion of the court of

[5] Petitioner chastises the court of appeals (Pet. 12 n.4) for failing expressly to find that the FDIC's decision to pay itself interest "comported with principles of equity." It is hardly surprising, however, that the court of appeals did not make such a "finding," because petitioner did not even list (much less rely on) the elements of an unjust-enrichment claim in the relevant portions of its briefs in that court. See Pet. C.A. Br. 24-43; Pet. C.A. Reply Br. 1-14.

appeals' opinion therefore presents no question of federal law that warrants this Court's review.[6]

c. Petitioner also contends (Pet. 14 & n.5) that the court of appeals' decision conflicts both with this Court's "admonition" in *O'Melveny & Myers* v. *FDIC*, 512 U.S. 79 (1994), that a court ordinarily may not adopt a federal rule of decision unless "there is a 'significant conflict between some federal policy or interest and the use of state law,'" *id.* at 87 (quoting *Wallis* v. *Pan Am. Petroleum Corp.*, 384 U.S. 63, 68 (1966)), and with various decisions by lower courts applying state law to claims involving the FDIC. The decision below is not inconsistent with the decisions on which petitioner relies, however, for the simple reason that the court of appeals did not adopt a federal rule of decision, but instead merely applied state law. Because the relevant portion of the court of appeals' opinion presents no question of federal law, it *a fortiori* presents no conflict on a question of federal law that merits further review.

2. Petitioner next contends (Pet. 15-19) that the court of appeals erred by upholding the district court's decision to grant summary judgment on its state-law claim that the FDIC engaged in corporate waste, on the ground that petitioner lacked standing because the IRS had a superior claim of greater value against the bank's estate. That contention also lacks merit.

a. As an initial matter, petitioner implicitly concedes that, if the IRS had a valid claim against Golden Pa-

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[6] Petitioner contends (Pet. 12 n.4) that the court of appeals could not have resolved its unjust-enrichment claim at the summary-judgment stage because "the equities of the FDIC's administration of the estate are the central disputed issue in the case." Petitioner, however, identifies no relevant dispute on a specific *factual* issue that would have precluded the court of appeals from entering summary judgment.

cific's estate, that claim would have had priority over any claim by petitioner in its capacity as shareholder. See, *e.g.*, 12 U.S.C. 194.[7] Petitioner likewise implicitly concedes that, if the IRS had a valid claim against the bank's estate whose value exceeded that of petitioner's corporate-waste claim, petitioner would lack constitutional standing because petitioner would be unable to demonstrate that it had suffered injury in fact from the alleged waste. See, *e.g.*, *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (defining an "injury in fact" as "a harm that is both concrete and actual or imminent, not conjectural or hypothetical" (internal quotation marks omitted)).

Petitioner instead makes the fact-bound contention (Pet. 16-17) that, notwithstanding the facts that the IRS had determined that Golden Pacific had tax deficiencies and that the FDIC, in its capacity as receiver, had acknowledged that those deficiencies amounted to approximately $11.7 million, the IRS did not have a valid claim for that amount—either because the IRS had not yet formally assessed those deficiencies (since it was precluded by statute from doing so until it appeared that there were remaining assets in the estate), or because the value of the IRS's claim would remain uncertain until the IRS made such an assessment. Even if it had been properly preserved, that fact-bound question would not warrant further review. But petitioner failed to challenge the validity or value of the IRS's claim against the bank's estate before the court of appeals, instead

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[7] In 1993, Congress enacted the national depositor preference statute, which gives priority to claims by the FDIC and depositors over other creditors but reaffirms the preexisting principle that all other claims have priority over claims by shareholders. See 12 U.S.C. 1821(d)(11)(A).

arguing only that the FDIC should be estopped from relying on the IRS's claim because the IRS had disagreed with the OCC's determination that Golden Pacific was *insolvent*. Pet. C.A. Br. 44 n.23; Pet. C.A. Reply Br. 15.[8] This Court's practice is not to consider questions that were neither pressed nor passed upon below. See, *e.g.*, *Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993); *Youakim* v. *Miller*, 425 U.S. 231, 234 (1976) (per curiam); *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

Petitioner also suggests (Pet. 15) that the court of appeals erred by "implicitly" treating the outstanding portion of the FDIC's claim for interest as superior to petitioner's corporate-waste claim, notwithstanding the fact that petitioner was separately contesting the validity of the FDIC's claim. The court of appeals, however, merely noted that "[petitioner] does not dispute that the receivership estate has senior outstanding credit obligations, *including* a tax liability of approximately $11.7 million." Pet. App. 17a (emphasis added). To the extent that the court of appeals suggested that the estate had other superior obligations besides the IRS's claim, that suggestion was indisputably correct insofar as *other* creditors besides the FDIC had outstanding interest

[8] Petitioner suggests (Pet. 18) that it had claimed that the FDIC's agreement with the IRS, in which it conceded the amount of the tax deficiencies, itself constituted a "fiduciary breach," and that the court of appeals, by holding that petitioner lacked standing on its corporate-waste claim, "essentially granted a default judgment to the FDIC on the principal point of contention." In its complaint, however, petitioner nowhere alleged that the FDIC breached its fiduciary duty by acknowledging that Golden Pacific had outstanding tax liabilities in the amount of approximately $11.7 million—nor, in fact, did petitioner so much as refer to the agreement between the FDIC and the IRS. See, *e.g.*, First Am. Compl. paras. 86-89 (breach-of-fiduciary-duty claim).

claims against the estate—claims whose validity petitioner does not contest. In any event, because the court of appeals determined that the value of the IRS's claim exceeds the value of petitioner's corporate-waste claim, the court of appeals would have concluded that petitioner lacked constitutional standing regardless of the existence of other superior claims.[9]

b. Petitioner asserts that the court of appeals' decision "cannot be reconciled * * * with the federal courts' 'virtually unflagging' obligation to adjudicate cases on their merits." Pet. 19 (quoting *New Orleans Pub. Serv. Inc.* v. *Council of the City of New Orleans*, 491 U.S. 350, 359 (1989) (*NOPSI*)). The court of appeals' decision, however, is entirely consistent with the settled principle (which *NOPSI* does not address) that federal courts lack jurisdiction to consider claims brought by plaintiffs who have failed to demonstrate injury in fact. And although petitioner makes the fact-bound contention that the IRS did not have a valid superior claim, it seemingly concedes that the court of appeals' decision is otherwise consistent with the Ninth Circuit's decision in *Herring* v. *FDIC*, 82 F.3d 282 (1995), cert. denied, 519

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[9] In a footnote, petitioner suggests (Pet. 18 n.9) that its corporate-waste claim against the FDIC was worth more than the $7.9 million suggested by the court of appeals, because it also included the approximately $11.2 million in post-insolvency interest that the FDIC paid to itself. Before the court of appeals, however, petitioner conceded that its corporate-waste claim was worth only $7.9 million. See, *e.g.*, Pet. C.A. Br. 45 (referring to "[petitioner's] claim for repayment of $7.9 million); Pet. C.A. Reply Br. 14 (referring to "[petitioner's] $7.9 million corporate waste claim"). Although petitioner originally asserted a corporate-waste claim based on the FDIC's decision to pay itself interest, petitioner apparently did not pursue that claim before the court of appeals, see Pet. App. 12a-13a, and does not pursue that claim before this Court, see Pet. 9-14.

U.S. 1027 (1996), which held that a plaintiff lacks standing to bring a state-law claim against the FDIC in its capacity as receiver if other creditors possess superior claims of greater value against the bank's estate. *Id.* at 285. As with petitioner's unjust-enrichment claim, therefore, petitioner identifies no conflict concerning its corporate-waste claim that merits further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2005