

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

EA#99-94

In the Matter of:)
JAMES E. HUGHES, SR., FORMER DIRECTOR, AND) **AA-EC-99-22**
ELRAY KING, FORMER PRESIDENT AND CHAIRMAN,)
FIRST NATIONAL BANK OF NEWTON,)
NEWTON, TEXAS)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (AComptroller@) has initiated prohibition and restitution proceedings against Elray King (ARespondent@) pursuant to 12 U.S.C. ' 1818, through the issuance of a Notice of Intention to Prohibit Further Participation and Notice of Charges and Hearing for Orders to Cease and Desist for Reimbursement and Other Affirmative Relief, dated October 15, 1999 (ANotices@), for certain actions, omissions, and violations of law of Respondent while serving as president and chairman of the board of the First National Bank of Newton, Newton, Texas (ABank@);

WHEREAS, in the interest of cooperation and to avoid the costs associated with administrative and judicial proceedings with respect to this matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order (AOrder@);

NOW, THEREFORE, the Comptroller, through his duly authorized representative, and Respondent, who neither admits nor denies the grounds for such proceedings but does expressly admit the statements and conclusions in Article I regarding jurisdiction, stipulate and agree to the following:

ARTICLE I
JURISDICTION

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. ' 1 *et seq.* Accordingly, the Bank is an insured depository institution as that term is defined in 12 U.S.C. ' 1813(c)(2).

(2) Respondent was president and chairman of the board of the Bank and is an institution-affiliated party of the Bank as that term is defined in 12 U.S.C. ' 1813(u), having served in such capacity within six (6) years from the date hereof, see 12 U.S.C. ' 1818(i)(3).

(3) Pursuant to 12 U.S.C. ' 1813(q), the Comptroller is the appropriate Federal banking agency to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain prohibition and cease and desist order proceedings against him pursuant to 12 U.S.C. ' ' 1818(e) and 1818(b)(6).

ARTICLE II
PROHIBITION FROM BANKING

(4) With respect to the institutions and agencies set forth in paragraph (5) of this Article, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the "appropriate

Federal banking agency," as defined in 12 U.S.C. ' 1813(q) (as amended); or

(d) vote for a director, or serve or act as an "institution-affiliated party," as defined in 12 U.S.C. ' 1813(u) (as amended).

(5) The prohibitions in paragraph (4) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. ' 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. ' 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. ' 1818(b)(9) (as amended);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Board and any Federal home loan bank.

(6) The prohibitions of paragraphs (4) and (5) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's "appropriate Federal financial institutions regulatory agency," as defined in 12 U.S.C. ' 1818(e)(7)(D) (as amended).

ARTICLE III

REIMBURSEMENT

(7) Respondent hereby consents to provide reimbursement, indemnification, and guarantee against loss to the Bank for any and all costs and expenses the Bank has incurred or

shall incur arising out of the lawsuit filed in the state courts of Louisiana against the Bank by the Commissioner of Insurance of the State of Louisiana, captioned *James H. AJim@Brown, as Commissioner of Insurance for the State of Louisiana v. James E. Hughes, Bill R. Henry, Sr., John B. LaCroix, John K. LaCroix, Charles T. Wickersham, Calcasieu Marine National Bank, James Morris, FNB Newton and/or Newton Bancshares, and Elray King*, docket no. 403,012F.

Such costs and expenses include, but are not limited to, all damages paid by the Bank as a result of any judgment and/or consent agreement and all attorneys fees resulting from the Bank's defense of the lawsuit.

(8) Respondent shall provide this reimbursement, indemnification, and guarantee against loss on terms and conditions acceptable to the Bank. In the event Respondent fails to meet the terms and conditions set by the Bank, the entire balance of any remaining obligation arising from this Article shall become immediately due and payable.

(9) Respondent shall provide proof of any payments made under this Article to the Director, Enforcement & Compliance Division (ADirector of E&C@), OCC, 250 E St. SW, Washington, DC 20219, or to any subsequent address the OCC may occupy.

(10) Within seven (7) days from the issuance of this Order, Respondent shall notify the Bank and the Director of E&C of his current address on the form attached hereto as Appendix A. Until the total obligation arising from this Article is paid in full or until the Bank certifies that there are no remaining costs and expenses arising from the lawsuit by the Commissioner of Insurance, Respondent shall, upon each and every subsequent change in address, if any, notify the Bank and the Director of E&C of his new address within seven (7) days of such change in address.

ARTICLE IV

RESPONDENT-S WAIVERS

- (11) By consenting to the execution of this Order, Respondent hereby waives:
- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. ' 1818(b) and (e), and 12 C.F.R. Part 19;
 - (b) all rights to seek judicial review of this Order;
 - (c) all rights in any way to contest the validity of this Order;
 - (d) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter and/or the Order, whether arising under common law or under the terms of any statute, including but not limited to, the Equal Access to Justice Act, 5 U.S.C. ' 504 and 28 U.S.C. ' 2412; and
 - (e) all rights to assert a double jeopardy claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.

(12) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of restitution or reimbursement under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order. In accordance with 12 C.F.R. ' 7.2014, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts.

ARTICLE V

BANKRUPTCY STIPULATION

(13) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to reimburse the Bank pursuant to this Order is subject to discharge, Respondent will in no manner contest the Comptroller's assertion, pursuant to 11 U.S.C. ' 523(a)(11) or otherwise, that the restitution obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

ARTICLE VI

RESPONDENT'S ACKNOWLEDGMENTS

(14) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made, by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order.

(15) Respondent understands and agrees that this Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. ' 1818 (b)(6) and (e) (as amended).

ARTICLE VII

RELEASE OF CLAIMS

(16) It is hereby agreed that the provisions of this Order constitute a settlement of the Prohibition and restitution actions initiated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations contained in the Notice, unless such acts, omissions, or violations reoccur.

(17) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(18) Respondent understands and agrees that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

Leann G. Britton
Senior Deputy Comptroller
for Bank Supervision Operations

Date December 1, 1999

Elray King

Date November 18, 1999
12:32 p.m. CST

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**APPENDIX A TO
STIPULATION AND CONSENT ORDER**

I, Elray King, certify to the Office of the Comptroller of the Currency (AOCC@) that my social security number is:

GGG-GG-GGGG

I, Elray King, certify to the OCC that my present address is:

I understand that I must file this form within seven (7) days of the execution of the Order and that, within seven (7) days of the date upon which I move to any new address, I must notify the Director, Enforcement & Compliance Division, 250 E. Street S.W., Washington, D.C. 20219 of each change.

I certify that the above information is true and correct. I acknowledge that the penalties for false statements provided by 18 U.S.C. ' 1001 (\$10,000 fine and/or five years= imprisonment) and acknowledge that this form is submitted by me to affect action by the Office of the Comptroller of the Currency.

Elray King

Date