

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
INGRAM, MATTHEWS & STROUD,)
PROFESSIONAL ASSOCIATION)
)
A Professional Association)
of Attorneys who represented)
and provided advice and)
counsel to:)
)
First Guaranty Bank for)
Savings,)
Hattiesburg, Mississippi)
_____)

Re: Resolution No. DAL-91-56

Dated: June 17, 1991

STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND
DESIST FOR REIMBURSEMENT AND OTHER AFFIRMATIVE RELIEF

The Office of Thrift Supervision ("OTS"), by and through its Regional Director, Midwest Regional Office of the OTS, and Ingram, Matthews & Stroud, Professional Association, of Hattiesburg, Mississippi ("IMS"), by and through its President, Carroll H. Ingram, hereby stipulate and agree as follows:

1 Consideration. The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against IMS, pursuant to Section 407(g) of the National Housing Act of 1934 ("HOLA"), 12 U.S.C. § 1730(e), and Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C.

§ 1818(b) (1988 and Supp. I 1989). IMS desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Without admitting, and specifically disputing the statements, conclusions or terms herein, IMS hereby stipulates and agrees to the following terms in consideration of: (1) the forbearance by the OTS from initiating such administrative cease and desist litigation; and (2) the agreement by the OTS to refrain from seeking the issuance of additional enforcement orders for reimbursement against IMS with respect to any matters (a) reported or otherwise addressed in the OTS Reports of Examination of the Institution for the examination performed as of June 19, 1989, or (b) discovered by the OTS as a result of its investigative proceeding, commenced pursuant to Federal Home Loan Bank Board Resolution No. ERC-90-24, dated January 31, 1990. IMS, without trial, presentation of any evidence, or findings of fact pursuant to an administrative judicial hearing, has consented to the terms of the Stipulation for the sole purpose of resolving the issues in this proceeding without significant legal cost and expense. The OTS has determined that it is appropriate, and in the best interest of the public to execute the Stipulation and the attached Order to Cease and Desist for Reimbursement and Other Affirmative Relief ("Order"). This Stipulation and the attached Order are issued solely to settle this proceeding, and are not the result of factual findings.

2. Jurisdiction. The OTS is of the opinion that:

(a) The Institution at all times relevant to the allegations set forth herein, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act of 1933, as amended by Section 301 of FIRREA, 12 U.S.C. § 1462(4). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(c).

(b) Until August 9, 1989, the accounts of the Institution were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") pursuant to Section 403(b) of the NHA, 12 U.S.C. § 1726(b), by reason of which it was an "insured institution" within the meaning of the NHA.

(c) As of August 9, 1989, pursuant to the provisions of FIRREA, the insurance of the accounts of the Institution was transferred to the Federal Deposit Insurance Corporation.

(d) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB"), as operating head of the FSLIC, was the regulatory agency with jurisdiction over the Institution and persons participating in the conduct of its affairs, including IMS, pursuant to Sections 403 and 407 of the NHA, 12 U.S.C. §§ 1726 and 1730.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of FIRREA, 12 U.S.C. § 1813(q), the OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations, and thus became the "appropriate Federal banking agency" with jurisdiction over the Institution and persons participating in the conduct of the affairs thereof.

(f) The Director of the OTS has the authority to bring administrative cease and desist proceedings directing reimbursement and other affirmative relief against persons participating in the conduct of the affairs of the Institution and institution-affiliated parties, pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Section 301 of the FIRREA, 12 U.S.C. § 1464(d)(1)(A), and Section 8(b) of the FDIA, as amended by the FIRREA, 12 U.S.C. § 1818(b).

(g) IMS is a professional association of attorneys operating pursuant to Mississippi state statutes. Partners and employees of IMS attended meetings of the Institution's board of directors and the Executive Committee thereof on a regular basis, and provided advice and counsel to the Institution relating to various aspects of its operations.

(h) As of March 31, 1989, and at all times thereafter, the Institution failed to meet the minimum regulatory capital requirements set forth in 12 C.F.R. § 563.13.

(i) At all times relevant hereto, 12 C.F.R. § 563.9-8 provided that an institution that was failing to meet the minimum regulatory capital requirements, as set forth in 12 C.F.R. § 563.13, was required to obtain the prior written approval of the OTS before engaging in any equity risk investment.

(j) Partners and employees of IMS provided legal advice and counsel to the Institution regarding various aspects of the Institution's indirect investment through its wholly-owned service corporation, Guaranty Service Corporation, in Unemployment Compensation Control Systems, Inc. ("UCCS"), including the issuance of an opinion by IMS, signed by a partner of IMS, dated May 17, 1989, which stated, inter alia, that, "Investor has the legal power and authority to execute and deliver the Acquisition Documents and to perform its obligations thereunder." IMS partners and employees did not advise the Institution that prior written approval of the OTS was required before engaging in the UCCS investment.

(k) On May 17, 1989, the Institution had neither obtained prior regulatory approval, nor filed an application with the OTS as required by 12 C.F.R. § 563.9-8. Partners and employees of IMS were present at meetings of the Institution's board of directors

and Executive Committee, where the UCCS investment was discussed, reviewed, considered and approved.

(l) On September 6, 1989, a partner of IMS recommended that the Board and management take immediate steps to move the \$2 million on deposit at the Institution in a UCCS account to another depository institution. On that date, the Executive Committee approved the transfer of the funds under joint control of both parties. Partners of IMS were present at this meeting. On September 7, 1989, partners and employees of IMS represented the Institution in transactions that resulted in the transfer of the \$2 million into a UCCS account that required the signatures of two directors of UCCS, including Sherwin Easterling, who also had been appointed Interim Chief Operating Officer of the Institution on May 8, 1989.

(m) On September 11, 1989, a partner of IMS reported to the Executive Committee of the board of directors of the Institution that the \$2 million had been transferred to Deposit Guaranty National Bank under the joint control of the Institution and UCCS.

(n) On September 19, 1989, upon the advice a partner of IMS, Easterling resigned from the board of directors of UCCS. UCCS thereafter withdrew the \$2 million, resulting in loss to the Institution of that amount.

(o) IMS is an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(u), and as such is subject to the authority of OTS to initiate and maintain the assessment of a civil money penalty pursuant to Section 8(i)(2) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i)(2).

3. Consent. Without admitting, and specifically disputing the need or basis therefor, IMS consents to the issuance by the OTS of the Order, a copy of which is attached hereto and incorporated as Exhibit A. IMS further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of 12 U.S.C. § 1818(b) and Section 407(e) of the NHA, 12 U.S.C. § 1730(e).

4. Finality. The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b). Upon its issuance, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i).

5. Waivers. IMS waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

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Re: Resolution No. DAL-91-56

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ORDER TO CEASE AND DESIST FOR
REIMBURSEMENT AND OTHER AFFIRMATIVE RELIEF

WHEREAS, Ingram, Matthews & Stroud, Professional Association, of Hattiesburg, Mississippi ("IMS"), by and through its President, Carroll H. Ingram, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist for Reimbursement and Other Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Regional Office; and

WHEREAS, without admitting, and specifically disputing that the grounds exist therefor, IMS has consented and agreed in the Stipulation to the issuance of this Order to Cease and Desist for

Reimbursement and Other Affirmative Relief ("Order"), pursuant to Section 8(b) of the Federal Deposit Insurance Act, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, ("FIRREA"), 12 U.S.C. § 1818(b) (1988 and Supp. I 1989);

NOW THEREFORE, IT IS ORDERED that IMS and its directors, officers, shareholders, partners, employees, agents, and subsidiaries shall comply with the following provisions:

1. IMS shall make reimbursement to First Guaranty Bank for Savings, Hattiesburg, Mississippi (the "Institution") in the amount of \$47,720.23, on or before forty-five (45) days from the issuance of this Order. This sum represents the amount of fees paid to IMS by the Institution for legal services related to the Institution's indirect investment, through its wholly-owned service corporation, Guaranty Service Corporation, in Unemployment Compensation Control Systems, Inc. ("UCCS").

2. IMS hereby cancels and forever waives any and all right to claim payment for outstanding bills to the Institution in the total amount of \$76,000.00, which bills were generated in connection with the Institution's investment in UCCS.

3. IMS shall comply with Paragraph 1 of this Order by sending a certified check to the Regional Director of the Midwest Regional Office, in the amount of \$47,720.23, payable to First Guaranty Bank

for Savings, Hattiesburg, Mississippi, on or before forty five (45) days from the issuance of this Order.

4. IMS shall comply with the following policies in connection with any representation of insured depository institutions:

(a) IMS shall define the nature of the work to be performed, and determine whether federal and/or state regulations apply to the proposed transaction; determine that there are no business or ethical conflicts of interest related to the prospective engagement, and that IMS has sufficient and properly qualified staff to handle the work.

(b) IMS shall determine that a partner qualified in the appropriate substantive area of the law supervises each client matter.

(c) IMS shall prohibit its lawyers from serving as an officer or director for any federally insured depository institution client, a holding company or subsidiary thereof, without the prior written approval of the appropriate regulatory agency.

5. When IMS has reasonable notice that an officer or director of an insured depository institution client appears to have improperly construed such person's fiduciary duties, IMS shall notify such person of the nature of the fiduciary duties he or she owes to the institution's shareholders and depositors and to the federal insurance fund.

