

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
JOLLY W. MATTHEWS, III)
)
Attorney who represented and)
provided advice and counsel)
to:)
)
First Guaranty Bank for)
Savings,)
Hattiesburg, Mississippi)
)

Re: Resolution No. DAL-91-58

Dated: June 17, 1991

STIPULATION AND CONSENT TO ISSUANCE OF
ORDER OF CIVIL MONEY PENALTY ASSESSMENT

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, and Jolly W. Matthews, III ("Matthews"), 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 civil money penalty assessment proceeding against Matthews pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), as amended by Section 907(a)(2)(A) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1818(i)(2) (1988 and Supp I. 1989). Matthews desires to cooperate with OTS and to avoid the time and expense of such administrative litigation. Without admitting, and

specifically disputing the statements, conclusions or terms herein, Matthews hereby stipulates and agrees to the following terms in consideration of: (1) the forbearance by the OTS from initiating such administrative civil money penalty assessment litigation; and (2) the agreement by the OTS to refrain from seeking the issuance of additional enforcement orders for assessment of civil money penalties against Matthews 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. Matthews, 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 of Civil Money Penalty Assessment ("Order"). This Stipulation and the attached Order are issued solely to settle this proceeding, and are not the result of factual findings. Matthews acknowledges that the imposition of the Civil Money Penalty in this administrative proceeding by the OTS, and the payment of such Civil Money Penalty, are for the purpose of resolving this administrative proceeding only.

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

(a) First Guaranty Bank for Savings, Hattiesburg, Mississippi ("the Institution"), at all times relevant hereto, 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 is 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 National Housing Act of 1934 ("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 Matthews, 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" to maintain civil money penalty assessment proceedings against the Institution and institution-affiliated parties of the Institution.

(f) The Director of the OTS has the authority to bring administrative proceedings to assess civil money penalties against institution-affiliated parties pursuant to Section 8(i)(2) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i)(2).

(g) Matthews was at all times relevant hereto an attorney and name partner of the law firm, Ingram, Matthews & Stroud, Professional Association, of Hattiesburg, Mississippi ("IMS"), a professional association of attorneys operating pursuant to Mississippi state statutes. Matthews 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 all 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 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." Matthews 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. Matthews was 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. Matthews, was 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. Matthews was present at this meeting.

(n) On September 19, 1989, upon the advice of 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) Matthews 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. Matthews consents to the issuance by OTS of the accompanying Order, a copy of which is attached hereto and incorporated as Exhibit A, and further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of 12 U.S.C. § 1818(i).

4. Finality. The Order is issued under Section 8(i)(2) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i)(2). Upon its issuance by the Regional Director for the Midwest Regional Office of OTS, it shall be a final order, effective and fully enforceable by OTS under the provisions of Section 8(i)(2) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i)(2).

5. Waivers

Matthews waives the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(i)(2) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i)(2), and the administrative hearing provided by Section 8(i)(2)(H) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(i)(2)(H), and further waives his 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 to otherwise challenge the validity of the Order. By

