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UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of MICHAEL S. LANG, a Former Officer and Director of Mississippi Savings Bank, Batesville, Mississippi and its subsidiaries; TOMMY M. PARKER, a Former Officer and Director of Mississippi Savings Bank and its subsidiaries; LELAND E. WHITTEN, a Former Officer and Director of Mississippi Savings Bank; DANIEL T. HOLLENBACH, a Former Officer of Mississippi Savings Bank and its subsidiaries; JUDY G. LOWE, a Former Officer of Mississippi Savings Bank and its subsidiaries; G. RICHARD MUNTON, a Former Officer and Director of Mississippi Savings Bank; THOMAS G. ESTES, JR., a Former Director of Mississippi Savings Bank; WILLIAM H. McKENZIE, III, a Former Director of Mississippi Savings Bank; JOHN R. HUTCHERSON, deceased, a Former Officer and Director of Mississippi Savings Bank and its subsidiaries, through Penelope Carr Hutcherson, the Administratrix of the Estate of John R. Hutcherson; RHONDA S. LANG, a Former Employee of or Person Participating in the Conduct of the Affairs of Mississippi Savings Bank.	Re: Order No. 90-2019 Dated: November 16, 1990

NOTICE OF CHARGES AND HEARING TO DIRECT RESTITUTION AND OTHER APPROPRIATE RELIEF, NOTICE OF INTENTION TO PROHIBIT RESPONDENTS FROM PARTICIPATING IN THE CONDUCT OF THE AFFAIRS OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS, AND NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES

In accordance with the provisions of Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, 450-464 ("FIRREA"), to be codified at 12 U.S.C. §§ 1818(b) and (e), and Sections 407(e) and (g) of the National Housing Act of 1934, as amended, 12 U.S.C. §§ 1730(e) and (g)(1982) ("NHA"), the Office of Thrift Supervision ("OTS"), acting on its own behalf and as successor in interest to the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, being of the opinion that, as set forth hereinafter, grounds exist to institute administrative cease and desist proceedings against John R. Hutcherson ("HUTCHERSON"), through Penelope Carr Hutcherson, the Administratrix of his Estate, and administrative cease and desist and prohibition proceedings against Michael S. Lang ("LANG"), Tommy M. Parker ("PARKER"), Leland E. Whitten ("WHITTEN"), Daniel T. Hollenbach ("HOLLENBACH"), Judy G. Lowe ("LOWE"), G. Richard Munton ("MUNTON"), Thomas G. Estes, Jr. ("ESTES"), William H. McKenzie, III ("McKENZIE"), and Rhonda S. Lang ("R. LANG"), hereby issues this Notice of Charges and Hearing to Direct Restitution and Other Appropriate Relief and Notice of Intention to Prohibit Respondents from Participating in the Conduct of the Affairs of Federally Insured Depository Institutions.

Further, pursuant to the provisions of Section 8(i) of the FDIA, as amended by FIRREA, to be codified at 12 U.S.C. § 1818(i), OTS, based upon its opinion that, as set forth hereinafter, grounds exist to institute administrative civil money penalty proceedings against LANG, PARKER, WHITTEN, HOLLENBACH, LOWE, MUNTON, ESTES, McKENZIE, R. LANG and HUTCHERSON, through his Estate, hereby issues this Notice of Assessment of Civil Money Penalties against LANG, PARKER, WHITTEN, HOLLENBACH, LOWE, MUNTON, ESTES, McKENZIE, R. LANG and HUTCHERSON, through his Estate.

I. JURISDICTION

A. The Institution and its Affiliates

1. Mississippi Savings Bank, Batesville, Mississippi ("MSB") was a state-chartered stock savings association with its purported principal place of business in Batesville, Mississippi.

2. MSB was a "savings association" as defined by Section 2(4) of the Home Owners' Loan Act of 1933 ("HOLA"), as amended by FIRREA, to be codified at 12 U.S.C. § 1813(b), and is an "insured depository institution" as defined by Section 3(C) of the FDIA, as amended by Section 204 of the FIRREA, to be codified at 12 U.S.C. § 1813(c).

(a) Until August 9, 1989, the accounts of MSB 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.

(b) As of August 9, 1989, pursuant to the provisions of

FIRREA, the insurance of the accounts of MSB was transferred to the Federal Deposit Insurance Corporation.

(c) Until August 9, 1989, the FSLIC was the regulatory agency with jurisdiction over MSB and its officials pursuant to Sections 403 and 407 of the NHA, 12 U.S.C. §§ 1726 and 1730.

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

(e) The Director of the OTS has the authority to bring administrative cease and desist and prohibition proceedings, and to make assessments of civil money penalties against any or all of the above-named individuals, pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Section 301 of the FIRREA, to be codified at 12 U.S.C. § 1464(d)(1)(A), and Section 8 of the FDIA, as amended by the FIRREA, to be codified at 12 U.S.C. § 1818.

3. On May 8, 1990, the OTS appointed the Resolution Trust Corporation ("RTC") as receiver for MSB.

4. Arlington Service Corporation ("Arlington") was at all times relevant hereto a service corporation that was a first-tier wholly owned subsidiary of MSB, incorporated in Mississippi and primarily operated in Dallas, Texas.

5. Beta Financial Corporation, Dallas, Texas ("Beta"), an investment and finance company, was at all times relevant hereto a

second-tier subsidiary of MSB, the stock of which was owned by Arlington.

6. C-Cor, Inc., Dallas, Texas ("C-Cor"), an investment and finance company, was at all times relevant hereto a second-tier subsidiary of MSB, the stock of which was owned by Arlington.

7. Texas Preferred General Agency ("TPGA"), a managing general insurance agency, is or was at various times relevant hereto a third-tier subsidiary of MSB, the stock of which was owned by Beta.

B. Institution-Affiliated Parties

8. LANG, at various times relevant hereto, was a director, officer, or person participating in the conduct of the affairs of MSB, and a principal shareholder of MSB who owned approximately 62% of the stock of MSB on May 8, 1990.

9. PARKER, at various times relevant hereto, was a director, officer or person participating in the conduct of the affairs of MSB, and a shareholder of MSB who owned approximately 3% of the stock of MSB on May 8, 1990.

10. WHITTEN, at various times relevant hereto, was a director, officer or person participating in the conduct of the affairs of MSB.

11. HOLLENBACH, at various times relevant hereto, was an officer or person participating in the conduct of the affairs of MSB.

12. LOWE, at various times relevant hereto, was an officer or person participating in the conduct of the affairs of MSB.

13. MUNTON, at various times relevant hereto, was a

director, officer or person participating in the conduct of the affairs of MSB.

14. ESTES, at various times relevant hereto, was a director or person participating in the conduct of the affairs of MSB.

15. McKENZIE, at various times relevant hereto, was a director or person participating in the conduct of the affairs of MSB.

16. HUTCHERSON, at various times relevant hereto, was a director, officer, or person participating in the conduct of the affairs of MSB, and a principal shareholder of MSB whose Estate owned approximately 35% of the stock of MSB on May 8, 1990.

17. R. LANG, at various times relevant hereto, was an employee or person participating in the conduct of the affairs of MSB. R. LANG and LANG are husband and wife.

18. Each of the following persons is an institution-affiliated party of MSB as defined in Section 3(u) of the FDIA, as amended, to be codified at 12 U.S.C. § 1813(u): LANG; PARKER; WHITTEN; HOLLENBACH; LOWE; MUNTON; ESTES; McKENZIE; HUTCHERSON; and R. LANG.

19. Each of the following persons is subject to OTS' authority to maintain cease and desist and/or prohibition proceedings, and proceedings to assess civil money penalties: LANG; PARKER; WHITTEN; HOLLENBACH; LOWE; MUNTON; ESTES; McKENZIE; HUTCHERSON, through his Estate, and R. LANG.

II. FACTS

A. MSB's FINANCIAL CONDITION

20. MSB was failing its regulatory capital requirement as of January 1990, pursuant to 12 C.F.R. § 567.2 and Section 5(t) of the HOLA, as amended, 12 U.S.C. § 1464(t). MSB was a "problem institution" at the time it was placed into receivership on May 8, 1990, pursuant to 12 C.F.R. § 567.1(s).

B. ALL-AMERICAN FINANCE, INC.

(i) Background

21. On July 28, 1989, without prior approval of MSB's Board of Directors, MSB's Loan Committee, including Respondents LANG, PARKER, MUNTON, HOLLENBACH, WHITTEN, HUTCHERSON, and LOWE, approved a $1.7 million revolving credit line and the purchase of at least $6.9 million of used car loans pursuant to a used car loan purchase and servicing agreement with All-American Finance, Inc. ("AAF") of Tucson, Arizona, an undercapitalized company with virtually no business history. AAF was a finance company which purchased high risk, high yield used car loans from auto dealers. Typically, the loans that AAF bought bore interest at between approximately twenty-one and thirty percent (21-30%); were originated at $7,000 or less; had an average term of twenty-two (22) months; and were secured by liens on used cars more than four (4) years old.

22. The agreement was approved by MSB's Board of Directors in or about September 1989. The agreement initially caused MSB

to: (1) buy $2,400,000 of used car loans underwritten by AAF that had been placed originally with Arizona Commerce Bank of Phoenix, Arizona; (2) extend AAF a $1,700,000 revolving line of credit to enable AAF to continue in the business of buying used car loans; and (3) commit to purchase at least an additional $4,454,000 of used car loans from AAF.

23. While already excessively risky to MSB, the AAF lending relationship was expanded in December 1989 when MSB's Board of Directors, including Respondents LANG, WHITTEN, MUNTON, ESTES, HUTCHERSON, and McKENZIE, approved the purchase of another $5,000,000 in automobile loans from AAF.

(ii) Terms of Credit Arrangements

24. On or about August 2, 1989, MSB, pursuant to the unanimous approval of its Loan Committee, including Respondents MUNTON, LANG, PARKER, HOLLENBACH, WHITTEN, HUTCHERSON, and LOWE, purportedly agreed to the following transactions with AAF: (1) the extension to AAF of a $1.7 million revolving line of credit priced at prime plus 3 1/2% with interest payable monthly and the principal due in June 30, 1990; (2) the purchase of $2.446 million worth of used car loans purportedly yielding 20%, generated by AAF and previously owned by Arizona Commerce Bank; (3) a commitment to purchase from AAF at least an additional $4.454 million of used car loans to yield MSB 17 1/2% per year; and (4) the option to purchase $15 million in additional used car loans from AAF.

25. Before approving the commitment of at least $8.6 million in credit to and loan purchases from AAF, MSB's Loan Committee was

aware that in many cases the loan amounts on the cars that MSB was buying were higher than each car's resale value and that AAF was a relatively new company that was thinly capitalized. According to AAF's May 31, 1989 financial statement: (1) AAF's net worth was only $596,558; (2) for the five month period between January 1, 1989 and May 31, 1989, AAF had a net operating loss; and (3) AAF had loans receivable from officers totaling $1,103,792 (39% of its assets), or twice its alleged net worth.

26. The quality of the loans acquired by MSB from AAF were high risk. Typically, the loans bought by MSB were originated from used car dealers, were for principal amounts of $7,000 or less, and had an average term of approximately 22 months. The cars on which the loans were made were usually more than 4 years old, and the loans were made to persons unable to qualify for more conventional financing. The loan yield purportedly ranged from approximately 21-30% to reflect the exceptionally high risk of the loans.

27. MSB deferred to AAF's underwriting on the used car loans. MSB did not perform underwriting functions on the loans, and did not even hire a loan officer to monitor the AAF credit until after it had committed more than $3.6 million in credit to AAF.

28. The loan underwriting by AAF was inadequate in other respects. Respondents permitted MSB to purchase AAF loans that were up to 90 days delinquent. AAF's underwriting standards provided that a prospective borrower's credit report show only one timely payment, and only a 90 day employment history. Loan

amounts of up to 160% of the wholesale value of used cars were permitted.

29. The loans purchased by MSB constituted outstanding loans within the meaning of 12 C.F.R. § 563.9-3. Loans with recourse purchased by a thrift are considered outstanding loans. Although these loans were with recourse to AAF, AAF was unlikely to be able to repurchase loans in default, as AAF depended upon continued growth and the sale of its assets to remain financially viable.

30. For loans or extensions of credit made prior to August 9, 1989, the loans to one borrower limitation ("LTOB") regulation, 12 C.F.R. § 563.9-3, limited the amount of aggregate outstanding loans that MSB could make to one borrower to ten percent (10%) of its withdrawable accounts or an amount equal to its regulatory capital, whichever was less.

31. As of the date MSB committed to extend AAF credit (on or about August 2, 1989), MSB's regulatory loan to one borrower ("LTOB") limitation was approximately $4,665,750. Between August 2, 1989 and December 1, 1989, MSB's LTOB limitation decreased to approximately $3,420,000.

32. Notwithstanding its then LTOB limitation, the amount of outstanding indebtedness of AAF to MSB amounted to $4,798,025. As of December 1, 1989, and subsequently, MSB exceeded its LTOB limitation and was in violation of 12 C.F.R. § 563.9-3 and its successor regulation, 12 C.F.R. § 563.93.

33. On December 1, 1989, at a time when MSB's lending relationship with AAF was already in violation of MSB's LTOB limitation, 12 C.F.R. § 563.9-3, MSB's Board of Directors

committed to purchase an additional $5 million in automobile loans from AAF.

34. As of January 31, 1990, payments on approximately $727,769 (or 16%) of the loans purchased by MSB from AAF were overdue 30 days or more, and payments on approximately $124,000 (or 2.73%) were delinquent by more than 120 days.

35. During the January 22, 1990 examination of MSB, the AAF loan was classified by OTS examiners as substandard.

36. As of April 25, 1990, the total outstanding amount of loans purchased by MSB from AAF was $6,953,433. The outstanding amount of the line of credit owed by AAF to MSB as of April 25, 1990 was $546,509.

37. As of April 25, 1990, an additional $3.7 million in loans was obligated to be bought from AAF by MSB, and an additional $1.2 million was obligated to be loaned to AAF by MSB.

38. Since April 11, 1990, AAF has not made any payments to MSB on its line of credit and has remitted only approximately $135,000 (or less than 4%) of the payments due MSB in connection with the car loans purchased by MSB.

39. Further, MSB has received no information relative to the status of the loans being serviced by AAF.

40. MSB will likely suffer losses of approximately $7.5 million with respect to its lending relationship with AAF.

C. QUANTERRA ALPHA LIMITED PARTNERSHIP

41. Without any prior experience, MSB entered the oil and gas lending business on October 3, 1988 when it agreed, through

its subsidiary C-Cor, to extend as much as $13,400,000 in credit to a newly formed and undercapitalized entity, Quanterra Alpha Limited Partnership ("QALP"), of Billings, Montana. QALP operated outside of MSB's primary lending area. MSB's line of credit through C-Cor was intended to provide QALP with working capital to produce oil and gas from properties that QALP represented to possibly contain petroleum reserves. MSB's extension of credit to QALP was to be collateralized by security interests in the properties acquired by QALP.

42. Before C-Cor made the loan to QALP, C-Cor's Loan Committee, including Respondents LANG, PARKER, HUTCHERSON, and LOWE, acted without regard for the high degree of risk related to lending to this type of oil and gas venture. Although C-Cor had hired a Dallas law firm specializing in oil and gas matters, John L. Roach, Inc. ("Roach"), to advise it during the underwriting process, C-Cor ignored the counsel Roach provided. Notwithstanding Roach's July 18, 1988 admonition that the kinds of properties that QALP was pledging initially as collateral for the loan would have a negative cash flow for three years and did not constitute appropriate security for the loan, C-Cor nevertheless accepted them as collateral. Further, Roach's warning to C-Cor that QALP's collateral was being overvalued was disregarded. In addition, C-Cor failed to obtain guarantees from either QALP's general partner, or the principals thereof, for QALP's indebtedness, as otherwise required by underwriting documents.

43. On October 3, 1988, MSB, through C-Cor, entered into a loan agreement with QALP, Quanterra Energy Corporation ("QEC"),

Robert L. Nance, and Mike T. Gustafson.

44. The credit line to QALP was approved by C-Cor's Loan Committee on August 4, 1988. The approving Loan Committee members were LANG, PARKER, HUTCHERSON and LOWE.

45. MSB's Board of Directors, including Respondents LANG, HUTCHERSON, and WHITTEN, approved the QALP loan on September 23, 1988.

46. The agreement provided for a $13,400,000 revolving line of credit for the purposes of acquiring oil and gas properties and interests, exploring and developing them for oil and gas, and producing oil and gas from them. The agreement provided for an interest rate of Citibank prime plus 2%.

47. QALP was capitalized solely by $1,000 in cash from QEC, the general partner, and oil and gas properties contributed by QALP limited partner, Intervest.

48. The Loan Agreement provided that QALP's "loan base amount" would be 75% of the appraised value of the oil and gas interests pledged as collateral.

49. Prior to approving the loan commitment to QALP, C-Cor obtained a questionable appraisal, as set forth below, of the initial pledged collateral establishing the "loan base amount" from a petroleum engineering consultant located in Billings, Montana. C-Cor's appraiser used QALP's "reserve" numbers in valuing the pledged collateral at $2.9 million, thereby creating an initial loan base amount of $2.18 million.

50. Roach reviewed this appraisal for C-Cor.

51. As a consequence of this review, Roach, as C-Cor's

counsel, noted that no producing properties were included in the properties pledged as collateral. Rather, the only reserves covered were classified as "proved behind pipe" and "proved undeveloped". Roach concluded as of July 18, 1988, that "because of the absence of cash flow, such reserves would not of themselves constitute security for a typical reserve based loan."

52. Further, Roach pointed out in a July 18, 1988 letter to C-Cor that, although the appraisal indicated some production on a negative cash flow basis during the remainder of 1988 and 1989, he pointed out to C-Cor that "positive cash flow really does not appear for three years." According to an audit of the balance sheet of QALP as of December 31, 1989, QALP had a net loss of $332,590 from September 11, 1988 to December 31, 1989.

53. It was Roach's opinion that the proper valuation of the collateral properties was $1,896,948.

54. Roach questioned whether the appraiser had proceeded in the manner intended by C-Cor, which was to make an independent determination of reserves.

55. The loan agreement provided an exculpation clause for the general partner of QALP, QEC, pursuant to which QEC would not be liable for the payment of any indebtedness of the Borrower, QALP.

56. Further, under the loan agreement, the principals of the general partner, Robert Nance and Mike Gustafson, were excused from general liabilities for the indebtedness of QALP. This was done even though the loan memorandum presenting the loan request from QALP to MSB stated that MSB would require the 100% joint and

several guarantee of Nance and Gustafson for loan proceeds advanced on mortgaged properties that had been classified as "proved behind pipe" and "proved undeveloped".

57. In an October 3, 1988 letter from PARKER, MSB purportedly guaranteed the $13.4 million line of credit to QALP.

58. Prior to entering into the Agreement, approving Loan Committee members LANG, PARKER, HUTCHERSON and LOWE had before them QEC's unaudited financial statement of QEC, QALP's general partner, dated September 12, 1988, that showed a stockholders' equity of $2,000.

59. On September 28, 1988, Respondent PARKER represented to the Board of Directors of MSB that MSB would have a first lien security interest on collateralizing oil and gas properties, and that the value of these assets, as QALP's initial contributed capital, was $2.9 million. PARKER did so notwithstanding QALP's valuing of these assets as initial contributed capital at $2.18 million and Roach's valuation of $1,896,945.

60. On or about June 21, 1989, at the request of QALP, Respondent PARKER, on behalf of C-Cor, agreed to extend the maturity dates of three loans to QALP made in or about October 1988 that totaled $1,045,501. These extensions were made without the approval of either C-Cor's or MSB's Board of Directors or the MSB Loan Committee.

61. Although MSB was the guarantor for any funds advanced by C-Cor, assignments of the mortgages transferring C-Cor's lien interests in QALP's collateral oil and gas properties were not prepared and recorded in a timely manner to protect MSB's

interests.

62. As of September 20, 1990, outstanding loans to QALP totaled approximately $6.79 million, of which OTS examiners had classified $5,185,791 as substandard and $1,606,609 as doubtful. Such classification indicates that the collectibility of at least $1,321,000 of the QALP loan is questionable and requires a valuation allowance.

63. Respondents LANG, PARKER, HUTCHERSON, and LOWE (as C-Cor's Loan Committee), LANG, HUTCHERSON, and PARKER (as C-Cor Directors), and LANG, HUTCHERSON, and WHITTEN (as MSB Directors) caused C-Cor and MSB to enter into agreements and make loans that were improperly underwritten to a highly leveraged and undercapitalized entity which was engaged in a speculative, high-risk enterprise out of MSB's and C-Cor's lending territory and expertise, without regard to explicit material concerns expressed by C-Cor's counsel, all the while insulating the principal owners of the borrowing partnership from liability.

D. FAILURE TO CLASSIFY LOANS

64. The regulatory provision that required the classification of assets, 12 C.F.R. § 563.16c, and its successor regulation, 12 C.F.R. § 563.160(c)(2), were intended to assure that a savings association's books and records accurately reflected its true financial condition, including its income and net worth.

65. The practice of MSB's Board of Directors, including Respondents LANG, WHITTEN, MUNTON, ESTES, HUTCHERSON, and

McKENZIE, and MSB's Loan Review Committee, including Respondents PARKER, HOLLENBACH, WHITTEN, and LOWE, of failing to classify assets properly, caused MSB to materially overstate its income and net worth. This facilitated the payment of substantial improper dividends to its shareholders, including Respondents LANG, HUTCHERSON, and PARKER.

66. Over a period of many years, MSB's Board of Directors, including Respondents LANG, MUNTON, WHITTEN, ESTES, HUTCHERSON, and McKENZIE, and Loan Review Committee, including Respondents PARKER, HOLLENBACH, WHITTEN, and LOWE, violated the regulations regarding the classification of assets, 12 C.F.R. § 563.16c in effect prior to December 7, 1989, and its successor regulation, 12 C.F.R. § 563.160(c)(2), effective December 7, 1989, by failing to classify certain assets and establish valuation allowances properly.

67. MSB granted a $5 million loan on or about April 22, 1987 to a subsidiary of InsurUSA Holding, Inc. ("InsurUSA"). MSB management was put on notice about the poor quality of this loan by Federal Home Loan Bank Board ("Bank Board") examiners in their August 25, 1987 examination report. MSB's Board of Directors, including Respondents LANG and WHITTEN, and the Loan Review Committee improperly failed to classify this loan at that time. Similarly, although MSB's accountants, Deloitte and Touche, identified $4.5 million of the InsurUSA loan as a loss and $500,000 of the loan as substandard in April 1988, MSB management failed to classify the loan as such before the end of MSB's fiscal year on June 30, 1988.

68. It was not until October 1988 that MSB established a valuation allowance for the InsurUSA loan. As reflected in MSB's June 30, 1988 audited financial statements, the $5 million in specific valuation allowances for the InsurUSA loan caused MSB to fail its minimum regulatory capital requirement for fiscal year 1988 by at least $2.587 million. By failing to classify the InsurUSA loan, MSB improperly avoided establishing valuation allowances that would have materially affected its reported financial condition in a negative fashion and the propriety of paying a $951,738 dividend to Respondents LANG and HUTCHERSON in December 1988 for MSB's fiscal year 1988.

69. MSB's Board of Directors and its Loan Review Committee routinely underclassified its assets or failed to classify such assets on a timely basis in violation of applicable regulations.

70. In or about December 1986, MSB purchased a 75% interest in a $3,571,000 commercial real estate loan to Williams & Jones, Co. Pursuant to an October 17, 1988 regular examination, Bank Board examiners reported the status of the loan as nonaccruing and delinquent since August 1, 1988. The examiners classified the loan as substandard. MSB failed to properly downgrade the loan until after June, 1989.

71. As of June 30, 1989, the closing date of the fiscal year and the date upon which dividend declarations were based, management of MSB had not established adequate valuation allowances in connection with this asset. Such failure improperly inflated MSB's net income for the fiscal year ending June 30, 1989. Had the proper valuation allowance been made, it would have

precluded the payment of at least $250,000 in dividends to MSB's shareholders, including Respondents LANG, HUTCHERSON, and PARKER in November 1989.

72. In September 1989, MSB acquired a 49.6% participation interest in a $10 million commercial real estate loan to Country Club West, Limited. During the January 22, 1990 examination by the OTS, the $5 million participation was classified substandard based on the inability of the project to pay off its loans and because of a 16% decline in the appraised value of the security property. No valuation allowance was ever established for this loan.

73. Between 1986 and 1989, MSB consistently failed to classify loans accurately. Such failures enabled management to cause MSB to appear in materially better financial condition than it actually was during each previous year. Further, such failures caused shareholders, including Respondents LANG, HUTCHERSON, and PARKER, to receive improper substantial dividends and other improper remuneration from MSB and its subsidiaries.

E. FAILURE TO COMPLY WITH NET WORTH MAINTENANCE AGREEMENT AND DIVIDEND LIMITATION AGREEMENTS

74. As a condition of approval of LANG's and HUTCHERSON's acquisition of stock ownership in the predecessor of MSB on June 21, 1985, Respondents LANG and HUTCHERSON executed Net Worth and Dividend Limitation Stipulations, and an Assistance Agreement with the FSLIC. The purpose of these agreements was to assure the financial viability of MSB as an ongoing entity. The agreements were part of the consideration obtained from LANG and HUTCHERSON

for assistance paid by the Federal government in connection with the acquisition of MSB. Another purpose of the agreements was to provide a good faith assurance and commitment by those entrusted with the management of federally insured funds. By failing to comply with either the Net Worth or Dividend Limitation Stipulations, and the Assistance Agreement, Respondents LANG and HUTCHERSON violated their agreements and breached the trust placed in them.

75. Upon the enactment of FIRREA, the OTS became the successor in interest to the Bank Board, and for purposes relevant hereto, the FSLIC. The Assistance Agreement and Net Worth Maintenance and Dividend Limitation Stipulations continued in effect at least until MSB was placed into receivership on May 8, 1990.

76. The Net Worth Stipulation and the Assistance Agreement require LANG, HUTCHERSON and others to maintain the minimum regulatory capital of MSB in accordance with regulatory requirements. The Agreement provides that if MSB's regulatory capital falls below the minimum, they must infuse sufficient capital necessary to comply with the applicable regulatory requirement.

77. The Dividend Limitation Stipulation and the Assistance Agreement prohibited LANG, HUTCHERSON, and others, for so long as each owned stock of MSB, from causing MSB to declare or pay dividends for any fiscal year if the dividends exceeded fifty percent (50%) of MSB's net income, or if the dividend payments would reduce MSB's net worth below the level required under the

applicable capital regulations.

78. Between at least June 30, 1988, and September 30, 1988 MSB was failing its regulatory capital requirement, 12 C.F.R. § 563.13, by at least $2.587 million. Respondents LANG and HUTCHERSON failed to comply with either the Net Worth Stipulation or the Assistance Agreement by failing to timely infuse capital into MSB to effect compliance with regulatory requirements.

79. MSB reported a risk based capital deficiency of $764,454 as of January 31, 1990. MSB continued to be in violation of the applicable capital requirements until May 8, 1990, when MSB was placed into receivership. As of May 8, 1990, the reported net worth deficiency of MSB was approximately $700,000, and the actual deficiency is likely to be substantially greater.

80. LANG and HUTCHERSON failed to comply with either the Net Worth Stipulation or the Assistance Agreement by failing to infuse capital into MSB to effect compliance with regulatory requirements.

F. DIVIDENDS

81. Respondents LANG and HUTCHERSON further violated the Dividend Limitation Stipulation and the Assistance Agreement and/or engaged in unsafe and unsound practices by permitting MSB to improperly distribute at least $5,124,614 in dividends to themselves between June 1986 and December 1989.

(i) Improper Dividend Payment for Fiscal Year 1986

82. For the fiscal year ended June 30, 1986, MSB improperly paid a cash dividend of $800,000 to its shareholders, including Respondents LANG, and HUTCHERSON, even though the aforementioned

Dividend Limitation Stipulation and Assistance Agreement with the Bank Board limited the dividend payment to a maximum of 50 percent of net income or $627,124.

(ii) Improper Dividend Payment for Fiscal Year 1988

83. In December 1988, MSB improperly paid a cash dividend of $951,738 to its shareholders, including Respondents LANG, HUTCHERSON and PARKER, with approval of the Board of Directors of MSB, including Respondents LANG, HUTCHERSON, and WHITTEN.

(iii) Improper November 1989 Dividend Payment For Fiscal Year 1989 - Texas Preferred General Agency ("TPGA")

84. On November 10, 1989, for the fiscal year ended June 30, 1989, the directors of MSB, including Respondents LANG, MUNTON, ESTES, HUTCHERSON and McKENZIE, improperly declared and directed the distribution of a non-cash dividend, including TPGA stock, with a market value of $ 4 million, to MSB shareholders, including Respondents LANG, HUTCHERSON, and PARKER. Respondent HOLLENBACH reviewed the dividend payment without objection. The distribution of the non-cash dividend constituted an unsafe and unsound practice. Distribution of the dividend violated the Dividend Stipulation and Assistance Agreement.

85. The property constituting the dividend was passed through to MSB from Arlington, MSB's first tier subsidiary, which had itself received the dividend on November 10, 1989 from Beta, MSB's second tier subsidiary and the owner of stock of TPGA. Respondents LANG, HUTCHERSON, and PARKER were directors of both Arlington and Beta.

86. The purported values of the dividend of Beta's

properties and interests that it passed through to MSB were: (1) $2,039,015 in high yield bonds; (2) $500,625 in interests in two joint ventures and a note secured by land in Texas; and (3) the common stock of TPGA carrying a book value of $251,400.

87. TPGA, which held the management contract for Commodore County Mutual Insurance Company ("CCM"), a Texas Insurance Company, was substantially undervalued by Beta. In or about August 1989, Beta and a potential purchaser of the TPGA stock had discussed a purchase price of approximately $4 million.

88. MSB, through Beta, had loaned $8 million to CCM pursuant to an unsecured, non-interest bearing surplus debenture on March 7, 1989. Through its management contract, TPGA, and indirectly Beta and MSB controlled the debtor CCM. By distributing the dividend of TPGA stock with a market value of $4 million, to MSB's shareholders, including Respondents LANG, HUTCHERSON, and PARKER, the Boards of Beta, Arlington and MSB caused Beta, and ultimately MSB, to lose control of the debtor, CCM.

G. VIOLATION OF SUPERVISORY AGREEMENT RESTRICTIONS AND IMPROPER CONSULTING CONTRACTS

(i) Supervisory Agreement

89. The OTS and MSB and its subsidiaries executed a Supervisory Agreement on October 25, 1989 that required MSB's operations to be directed from its home office in Batesville, Mississippi. The Supervisory Agreement further required that MSB's Managing Officer, Chief Operating Officer, Chief Lending Officer, and Chief Financial Officer (including all persons functioning in such capacities, regardless of their titles),

operate primarily from Batesville, Mississippi.

90. Prior to and after January 1, 1990, MSB's operations were, and in fact continued to be, directed from either Dallas, Texas through directing officers of its subsidiaries, including Beta and C-Cor, or Santa Fe, New Mexico, through Respondent LANG, in violation of the Supervisory Agreement.

91. Respondents LANG, PARKER, HOLLENBACH, and LOWE violated the Supervisory Agreement by continuing to direct MSB by functioning from either Dallas or Santa Fe in their capacities as directing officers of MSB or its subsidiaries after January 1, 1990.

92. By letter dated November 7, 1989, PARKER purportedly resigned from his position as Vice President of MSB effective January 1, 1990, and from his position on the Loan Review Committee of MSB. PARKER cited the "home office requirement" of the Supervisory Agreement as the reason for his resignation. Notwithstanding his purported resignation, and in violation of the Supervisory Agreement, PARKER stated that he would continue, and did continue, to operate in directing officer positions at Arlington, Beta, C-Cor, TPGA and other MSB subsidiaries located in Dallas, Texas after January 1, 1990.

93. By letter dated November 15, 1989, HOLLENBACH, Vice President and Treasurer of MSB, purportedly resigned from MSB effective January 1, 1990. Notwithstanding his purported resignation from MSB, and in violation of the Supervisory Agreement, HOLLENBACH continued to operate in his officer capacities at Arlington and other MSB subsidiaries located in

Dallas, Texas, and as trustee of MSB's Employee Stock Option Plan ("ESOP") after January 1, 1990.

94. By letter dated November 17, 1989, LOWE, Vice President and Chief Lending Officer of MSB, purportedly resigned effective January 1, 1990. Notwithstanding her purported resignation, and in violation of the Supervisory Agreement, LOWE stated that she would continue, and did continue, to operate in her officer capacities at Beta and other MSB subsidiaries, including loan underwriting, in Dallas, Texas after January 1, 1990.

(ii) Consulting Contract with LANG

95. The Supervisory Agreement was signed after LANG and his wife, R. LANG, had moved from Dallas, Texas to Santa Fe, New Mexico. LANG cited the "home office requirements" of the Supervisory Agreement as his reason for purportedly resigning, effective January 1, 1990, as MSB's Chief Executive Officer.

96. On January 1, 1990, MSB executed a contract with LANG for an initial two month term, with additional two month extensions upon notice by MSB, pursuant to which LANG was to be employed as an advisor and consultant. The contract was not specifically approved by MSB's Board of Directors but was signed by LANG for himself, and by Respondent HUTCHERSON. The consulting contract stated that LANG would be compensated at the rate of $18,000 per month ($216,000 on an annualized basis), an amount similar to LANG's 1989 salary of $227,000 as Chief Executive Officer of MSB. Under the contract, MSB was required to reimburse LANG for travel, lodging, entertainment, and similar expenses.

Notwithstanding his purported independent contractor status and the fact that LANG was permitted to engage in any business and perform services for his own account, LANG's rights as an employee were to continue during the term of his contract. The consulting contract specifically provided that if LANG were removed or prohibited permanently from participating in the conduct of MSB's affairs, his vested rights with MSB would be unaffected. This conduct violated the Supervisory Agreement and 12 C.F.R. § 563.39(a).

97. LANG's consulting contract stated that his duties would be those that the Board might from time to time assign to him, including the rendering of advice regarding MSB's investments, loans, capitalization, and liabilities. LANG was not required to render consulting or advisory services at any particular place, and the contract provided that LANG would be permitted to render such services, to the extent practicable, from his residence in Santa Fe, New Mexico.

98. LANG received approximately $63,000 from MSB pursuant to the contract between January 1, 1990, and April 13, 1990. The purported contract's extension after February 28, 1990 was not specifically approved by MSB's Board of Directors.

(iii) Consulting Contract With R. LANG

99. MSB's Board of Directors, on or about June 22, 1988, authorized R. LANG to perform investment consulting services and trade securities for MSB on an hourly compensation basis. This contract was not reduced to a written contract as required by 12

C.F.R. § 563.39(a).

100. On or about January 1, 1990, HUTCHERSON executed a contract with R. LANG for an initial six month term, pursuant to which R. LANG was to perform duties requested by MSB with respect to MSB's investments. There is no evidence that the contract was approved by MSB's Board of Directors. The contract stated that R. LANG would be compensated at the rate of $90 per hour. Under the contract, MSB was required to reimburse R. LANG for travel, lodging, entertainment, and similar expenses, and she was permitted to engage in any business and perform services for her own account. The purported contract stated that if R. LANG were removed or prohibited permanently from participation in the conduct of MSB's affairs, her vested rights would be unaffected.

H. IMPROPER BONUS TO R. LANG

101. LANG and PARKER, on December 8, 1988, as Directors of Beta, approved and ratified the March 15, 1989 payment of a special consulting fee of $10,000 to R. LANG in addition to her hourly fees.

102. Respondent LANG's conduct in voting to approve and ratify the payment of a $10,000 special consulting fee to his wife, R. LANG, constituted a conflict of interest.

103. Pursuant to the recommendation of PARKER and HOLLENBACH, for fiscal year ended June 30, 1989, R. LANG was paid a bonus of $52,000. The payment of this bonus, on or about September 15, 1989, was approved by Respondents MUNTON, PARKER, and HOLLENBACH, among others.

104. The bonus payments to R. LANG were unearned by her and were a waste of MSB's assets.

I. IMPROPER EXPENDITURES

105. In January 1988, Respondents LANG, PARKER, HUTCHERSON, HOLLENBACH, and two guests went to Belize, Central America under the guise of conducting "planning meetings" for MSB. Although little or no substantive business for or on behalf of MSB was conducted by LANG, PARKER, HUTCHERSON, and HOLLENBACH during this three day trip, MSB was charged $7,271.31 for the expenses incurred by LANG, PARKER, HUTCHERSON, HOLLENBACH and their guests, including the costs associated with traveling on MSB's corporate jet. On their running bar tab, showing a bill of at least $346.50, Respondents LANG, PARKER, HUTCHERSON, HOLLENBACH and their two guests ordered approximately 136 alcoholic beverages from January 21-23, 1988. There was no legitimate business reason to conduct this business meeting of MSB outside of Batesville, Mississippi.

106. On or about June 27, 1989, WHITTEN, MUNTON and HOLLENBACH participated in a fishing trip on a chartered boat at the expense of MSB. HOLLENBACH charged MSB more than $400 for this fishing trip.

107. On or about June 30, 1989, HOLLENBACH charged MSB $246 for the purchase of a bottle of Dom Perignon champagne. The champagne was sent to LANG and R. LANG as a gift while they were on vacation at the Hotel Riviera in Las Vegas, Nevada.

III. GROUNDS FOR ISSUANCE OF ORDERS TO CEASE AND DESIST, INCLUDING RESTITUTION, AND OF PROHIBITION

A. Based upon the foregoing, OTS is of the opinion that the following grounds exist for the issuance of orders to cease and desist, including restitution, against each of LANG, PARKER, WHITTEN, HOLLENBACH, LOWE, MUNTON, ESTES, McKENZIE, HUTCHERSON, through his Estate, and R. LANG:

1. The Respondent has engaged in unsafe and unsound practices in conducting the business of MSB; or

2. The Respondent has committed or engaged in acts, omissions or practices which constitute breaches of their fiduciary duties as directors, officers or institution-affiliated parties of MSB; or

3. The Respondent has violated a law, rule, or regulation; or

4. The Respondent has violated a written agreement(s) with the appropriate agency; and,

5. The Respondent was unjustly enriched in connection with violations of law, rule or regulation, or unsafe and unsound practices; or

6. The violations or unsafe or unsound practices involved reckless disregard for the law or applicable regulations.

B. Based upon the foregoing, OTS is of the opinion that the following grounds exist for the issuance of orders to cease and desist, including compliance with the terms of Section 13(a) of the Assistance Agreement and the Net Worth Maintenance Stipulation

against HUTCHERSON, through his Estate, and LANG:

HUTCHERSON and LANG violated written agreements entered into with the FSLIC and/or a condition imposed in writing by the agency in connection with the granting of any application or other request.

C. Based upon the foregoing, OTS is of the opinion that the following grounds exist for the issuance of orders of prohibition against each of LANG, PARKER, WHITTEN, HOLLENBACH, LOWE, MUNTON, ESTES, McKENZIE, and R. LANG because:

1. Each Respondent:

(a) violated a law, rule or regulation; or

(b) engaged or participated in unsafe and unsound practices in connection with MSB; or

(c) committed or engaged in acts, omissions or practices which constituted breaches of their respective fiduciary duties; and

2. By reason of such practices, violations or breaches by each Respondent:

(a) MSB has suffered or probably will suffer financial loss or other damage; or

(b) the interests of MSB's depositors have been or could be prejudiced; or

(c) such Respondent has received financial gain or other benefit by reason of such violations, practices, or breaches of fiduciary duties; and

3. Such violations, practices, or breaches by each Respondent:

(a) involve personal dishonesty on the part of such Respondent; or

(b) demonstrate willful or continuing disregard for the safety and soundness of MSB on the part of such Respondent.

IV. NOTICE OF HEARING FOR ORDERS TO CEASE AND DESIST, INCLUDING RESTITUTION, AND PROHIBITION

Notice is hereby given that pursuant to Sections 407(e) and (g) of the NHA, 12 U.S.C. § 1730(e) and (g), and Sections 8(b) and (e) of the FDIA, as amended by FIRREA, to be codified at 18 U.S.C. § 1818(b) and (e), an administrative hearing will be held to determine whether orders to cease and desist, including restitution, should be issued against LANG, PARKER, WHITTEN, HOLLENBACH, LOWE, MUNTON, ESTES, McKENZIE, HUTCHERSON, through his Estate, and R. LANG, and whether orders to prohibit should be issued against LANG, PARKER, WHITTEN, HOLLENBACH, LOWE, MUNTON, ESTES, McKENZIE, and R. LANG. The hearing also will include a determination as to whether the above-named parties shall be required to take affirmative action to correct the conditions resulting from the practices alleged herein, including restitution, reimbursement, indemnification, guarantees against loss, or such other action as is determined to be appropriate. The hearing will be held at a location within the Northern Federal Judicial District for the State of Mississippi, and will commence on or before sixty (60) days after the issuance of this Notice, the exact time of day and location to be announced at a later time. The hearing will be conducted by an Administrative Law

Judge in accordance with the adjudicatory provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557 (1982), and the Rules of Practice and Procedure of the Office of Thrift Supervision, 12 C.F.R. Part 509 et seq. (1990).

Each of the above-named Respondents is hereby directed to file an Answer to this Notice within twenty (20) days from the date of service. The requirements of the Answer, as well as the consequences of failure to file an Answer, are set forth in the Rules.

V. GROUNDS FOR ASSESSMENT OF CIVIL MONEY PENALTIES

A. Based upon the foregoing, OTS is of the opinion that LANG, HUTCHERSON, and PARKER:

1. knowingly violated the Rules and Regulations Applicable to All Savings Associations at 12 C.F.R. Part 563 et seq., including but not limited to, §§ 563.39, 563.160(c)(2) or 563.93(b)(2) or their respective predecessor regulations;

2. knowingly engaged in unsafe and unsound practices or breached their fiduciary duties in conducting the affairs of MSB; and

3. knowingly or recklessly caused a substantial loss to MSB or received a substantial pecuniary gain or other benefit by reason of such violations, unsafe and unsound practices and breaches of fiduciary duty.

B. Based on the foregoing, OTS is of the opinion that LANG, PARKER, WHITTEN, HOLLENBACH, MUNTON, LOWE, ESTES, McKENZIE,

HUTCHERSON, and R. LANG knowingly:

1. violated the Rules and Regulations Applicable to All Savings Associations set forth at 12 C.F.R. § 563 et seq., including but not limited to, 12 C.F.R. §§ 563.39, 563.160(c)(2) and 563.93(b)(2) or their respective predecessor regulations; or

2. recklessly engaged in an unsafe or unsound practice in conducting the affairs of MSB;

3. breached their fiduciary duties; and

4. Such violations and practices or breaches are:

(a) part of a pattern of misconduct; or

(b) caused or are likely to cause more than a minimal loss to MSB; or

(c) resulted in pecuniary gain or other benefit to such parties.

VI. NOTICE OF ASSESSMENT

NOW THEREFORE, the OTS hereby assesses a civil money penalty against LANG for $8,500,000; PARKER for $1,500,000; HUTCHERSON, through his Estate for $4,000,000; WHITTEN for $50,000; HOLLENBACH for $150,000; LOWE for $5,000; MUNTON for $150,000; ESTES for $50,000; McKENZIE for $5,000; and R. LANG for $200,000 pursuant to the provisions of Section 8(i) of the FDIA, as amended by FIRREA, to be codified at 12 U.S.C. § 1818(i).

These assessments are issued on the basis of the above-mentioned violations taking into account the losses to the FSLIC, the Savings Association Insurance Fund and the United States, the size of financial resources, and the presence or

absence of good faith of the above-named Respondents, the gravity of the violations, and the history of previous violations, as required by Section 8(i) of the FDIA, as amended by FIRREA, to be codified at 12 U.S.C. § 1818(i)(2)(G).

The above-named Respondents' remittances of these penalties should be payable to the Treasurer of the United States and delivered to:

Director of Enforcement
Office of Thrift Supervision
U.S. Treasury Department
1700 G Street, N.W.
Washington, D.C. 20552

Pursuant to Section 8(i) of the FDIA, as amended by FIRREA, to be codified at 12 U.S.C. § 1818(i)(2)(H), the Respondents are hereby afforded the opportunity for a hearing before the OTS concerning these assessments if requests for such hearings are made by the Respondents within twenty (20) days after the issuance and service of this Notice of Assessment. Any such hearings shall be conducted pursuant to 12 C.F.R. § 509 et seq. (1990), which requires, among other things, the filing by each party of an Answer to this Notice of Assessment. Upon receipt of a request for a hearing, the OTS shall stay further accrual of the penalty assessed herein pending the issuance by the OTS of final Orders of Assessment or the settlement or dismissal of these proceedings by the OTS.

If any Respondent named hereinabove fails to request such a hearing within the above twenty (20) day period, the assessment against such Respondent shall constitute a final and unappealable

order against him or her or it, pursuant to Section 8(i) of the FDIA, as amended by FIRREA, to be codified at 12 U.S.C. § 1818(i)(2)(E).

/S/

Timothy Ryan
Director