

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

In the Matter of:

JACK N. MERRITT, Former
Director and Institution-
Affiliated Party of:

Oak Tree Savings Bank, S.S.B.,
New Orleans, Louisiana

RE: Resolution No. DAL-96-13

Dated: June 28, 1996

STIPULATION AND CONSENT TO ENTRY OF
ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon the information derived from the exercise of its regulatory responsibilities, has informed Jack N. Merritt ("MERRITT"), former director and institution-affiliated party of Oak Tree Savings Bank, S.S.B., New Orleans, Louisiana, and its predecessor Landmark Savings Bank, New Orleans, Louisiana (collectively, "OAK TREE" or the "INSTITUTION") that OTS is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against MERRITT pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. 1818(b).¹

WHEREAS, MERRITT desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist or the OTS findings of fact contained in paragraph 2 below, but admitting the jurisdictional statements and conclusions in paragraph 1 below,

1. All references to the U.S.C. are as amended.

hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) OAK TREE 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 ("HOLA"), 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, 12 U.S.C. § 1813(c).

(b) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over OAK TREE and persons participating in the conduct of the affairs thereof, including MERRITT, pursuant to Section 5 of the HOLA, 12 U.S.C. § 1464.

(c) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1813(q), 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 affairs thereof.

(d) MERRITT, as a former director of OAK TREE, and as a person who additionally participated in the conduct of the affairs of OAK TREE, is deemed to be an "institution-affiliated party" of OAK TREE as that term is defined by Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within six years of the date of the execution of this Consent.

(e) Pursuant to Section 3 of the FDIA, as amended, the

OTS is the "appropriate Federal banking agency" to maintain cease and desist proceedings against institution-affiliated parties of OAK TREE. Therefore, MERRITT is subject to the authority of the OTS to initiate and maintain cease and desist proceedings against him, pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

2. OTS Findings of Fact. The OTS, based upon information derived from the exercise of its regulatory responsibilities, finds as follows:

(a) MERRITT was a member of the board of directors of OAK TREE from November 28, 1988 until August 14, 1990.

(b) From and after February 13, 1989, MERRITT was aware that the OTS and its predecessor agency, the FHLBB, had criticized numerous serious underwriting deficiencies on loans approved by OAK TREE's predecessor, Landmark Savings Bank, specifically with regard to large commercial real estate loans over one million dollars (\$1,000,000).

(c) On February 13, 1989, in response to these criticisms by the FHLBB, MERRITT executed certain correspondence to the FHLBB wherein members of the board of directors, including MERRITT, advised that corrective measures had been implemented to address the deficient underwriting and the deficiencies would not recur on new loans.

(d) As a director, from and after February 13, 1989, MERRITT failed to investigate or undertake any independent inquiry that the underwriting deficiencies as described above had in fact been addressed and resolved.

(e) From and after February 13, 1989, MERRITT approved three non-recourse loans totaling \$27 million to Inland Pacific

Real Estate Inc. ("Inland Pacific"). Each of these loans contained underwriting deficiencies identical to the deficiencies previously identified by the OTS and its predecessor agency, the FHLBB, with regard to Oak Tree's large commercial real estate loans. On or about March 1, 1990, Inland Pacific defaulted on these loans and the Institution has recognized a loss estimated at \$22 million.

3. Consent. MERRITT consents to the issuance by the OTS of the Order, a copy of which is attached hereto. MERRITT further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all the requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA, 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, 12 U.S.C. § 1818(i).

5. Waivers. MERRITT waives the following:

(a) the right to be served with a written notice of the OTS's charges against him as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);

(b) the right to an administrative hearing of the OTS's charges against him as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);

(c) the right to seek judicial review of the Order, including, without limitation, any right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise challenge the validity of the Order; and

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the

award of fees, costs or expenses arising under the common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

6. Agreement for Continuing Cooperation. MERRITT agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, he will provide discovery and testify at any deposition and at any judicial or administrative proceeding related to any investigation, litigation or other proceeding maintained by the OTS relating to OAK TREE, its holding company, its subsidiaries and its institution-affiliated parties.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Midwest Regional Director, and Jack N. Merritt execute this Stipulation and Consent to Entry of an Order to Cease and Desist.

OFFICE OF THRIFT SUPERVISION

By: FR Casteel
Frederick R. Casteel
Midwest Regional Director

Jack N. Merritt
Jack N. Merritt

Date: 6-28-96

Date: 6-19-96

* * *

ACKNOWLEDGMENT:

State of Oklahoma
County of Oklahoma

On this 19th day of JUNE, 1996, before me the undersigned notary public, personally appeared Jack N. Merritt and acknowledged his execution of the foregoing Stipulation and Consent to Order to Cease and Desist.

Judith A. Moore
Notary Public

My Commission expires:
OCT. 21, 1997

6
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JACK N. MERRITT, Former
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Affiliated Party of:
Oak Tree Savings Bank, S.S.B.,
New Orleans, Louisiana

RE: Resolution No. DAL-96-13
Dated: June 28, 1996

ORDER TO CEASE AND DESIST

WHEREAS, Jack N. Merritt ("MERRITT") has executed a Stipulation and Consent to Entry of an Order to Cease and Desist ("Consent"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting by and through its Midwest Regional Director ("Regional Director"); and

WHEREAS, MERRITT has consented and agreed in the Consent to the issuance of this Order to Cease and Desist ("Order");

NOW THEREFORE, THE OTS ORDERS AS FOLLOWS:

1. MERRITT shall cease and desist from any unsafe or unsound practice as an institution-affiliated party within the meaning of Section 3(u) 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.A. § 1818(u).

2. When, as a director, officer or controlling person of a federally insured depository institution, MERRITT has reason to know, by way of regulatory criticism or otherwise, of any unsafe and unsound practice or violation of law or regulation in which the institution has engaged or is about to engage, MERRITT shall:

(a) make independent inquiries and review pertinent documentation and regulations as appropriate, rather than relying solely on representations of others, to determine that alleged unsafe and unsound practices and/or regulatory violations by such institution are corrected; and

(b) submit for approval by the institution's board of directors, adequate policies and procedures to prevent recurrence of such practices and/or violations by the institution.

3. MERRITT shall cease and desist from any acts, omissions, or practices which constitute a breach of fiduciary duty to any federally insured depository institution.

4. As a director, officer or controlling person of a federally insured depository institution, or any holding company thereof, MERRITT shall obtain advice of competent counsel on his duties and responsibilities, both initially upon accepting such a position and when particular issues arise that may cause MERRITT to be uncertain about his responsibilities.

5. MERRITT shall promptly respond to any request from the OTS for documents that the OTS reasonably requires to determine compliance with this Order.

6. For the purpose of this Order, the terms used herein have the following meanings:

(a) "Insured depository institution" is defined to include savings and loan associations, commercial banks, credit unions and other similar entities that hold federally insured deposits, and their non-diversified holding companies.

(b) All words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act, FDIA and FIRREA.

7. This Order shall become effective on the date of its issuance by the Midwest Regional Director of the OTS, and shall remain in effect until modified or terminated by the OTS.

OFFICE OF THRIFT SUPERVISION

By: *F. Casteel*
Frederick R. Casteel
Midwest Regional Director

DATE: 6-28-96