X-4385

# R E C O R D

-of the-

JOINT CONFERENCE OF COUNSEL OF THE FEDERAL RESERVE BANKS

-and-

REPRESENTATIVES OF THE COMPTROLLER OF THE CURRENCY

IN CONNECTION WITH CLAIMS AGAINST INSOLVENT

NATIONAL BANKS, HELD IN WASHINGTON, D.C.

July 13, 1925.

X-4385

RECORD OF THE JOINT CONFERENCE OF COUNSEL OF THE FEDERAL RESERVE BANKS AND REPRESENTATIVES OF THE COMPTROLLER OF THE CURRENCY IN CONNECTION WITH CLAIMS AGAINST INSOLVENT NATIONAL BANKS, HELD IN WASHINGTON, D.C. JULY 13, 1925.

The conference convened on the morning of July 13 at 10 o'clock in the Board room of the Federal Reserve Board, Treasury Department, Washington, D.C. Those present were:

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| L. R. Mason, | Federal | Reserve | Bank | of | New York, |
| J. S. Sinclair, | " | " | " | " | Philadelphia, |
| Sterling B. Newell, | " | " | " | " | Cleveland, |
| M. G. Wallace, | " | " | " | " | Richmond, |
| R. S. Parker, | " | " | " | " | Atlanta, |
| C. L. Powell | " | " | " | " | Chicago, |
| Jas. G. McConkey, | " | " | " | " | St. Louis, |
| A. Ueland, | " | " | " | " | Minneapolis, |
| H. G. Leedy, | " | " | " | " | Kansas City, |
| E. B. Stroud, Jr., | " | " | " | " | Dallas, |
| A. C. Agnew, | " | " | " | " | San Francisco. |

Mr. Walter Wyatt and Mr. George B. Vest from the Federal Reserve Board.

In addition to the Counsel to the Federal reserve banks and the Federal Reserve Board, listed above, there were present from the Federal Reserve Bank of Atlanta, Mr. J. L. Campbell, from the Federal Reserve Bank of Kansas City, Mr. G. E. Barley, and from the Federal Reserve Bank of Dallas, Mr. R. B. Coleman. On the first day of the conference no representative from the office of the Comptroller was present.

Mr. Platt, Vice Governor of the Federal Reserve Board, made a short address of welcome to the Conference. Mr. Wyatt was elected Chairman of the Conference and Mr. Vest was elected Secretary.

As a preliminary to any formal action by the Conference, the following resolution prepared by Mr. Parker and offered by Mr. Mason, was adopted with Mr. Powell voting "no":

RESOLUTION NO. 1

RESOLVED that any resolutions passed or opinions voiced by this conference shall be taken as expressing merely the opinions of Counsel on the respective questions involved.

The conference first took up the question discussed in Mr. Wallace's letter of May 26, 1925, addressed to Governor Seay of the Federal Reserve Bank of Richmond.

On the subject of the necessity for filing separate claims for each rediscounted item, after discussion, Mr. Agnew offered a resolution, which with an addition thereto by Mr. Powell, was adopted as follows:

RESOLUTION NO. 2.

RESOLVED that it is the sense of this conference that the Federal reserve banks accede to the principle of the suggestion of the Comptroller that separate claims against insolvent national banks be predicated upon each note rediscounted by the Federal reserve bank and in its hands at the time of insolvency; and be it further

RESOLVED that it be the sense of this meeting that it is the right of the Federal reserve banks in filing claims against failed national banks on rediscounted paper to file one claim on all discounted paper, setting out all proper particulars, and this conference recommends the adoption by the Comptroller of the Currency of procedure consistent with this method.

Mr. Sinclair not voting.

Statement of Mr. Sinclair.

Mr. Sinclair requested to be recorded as not voting on the foregoing resolution after having made the statement that Mr. Williams was agreeable generally and in the ordinary case to conform to the consensus of opinion of the conference with respect to the matters therein contained, but that he did not wish to feel obligated to conform to such expression of opinion in a case where it should become material to the rights of the Federal Reserve Bank of Philadelphia to file one proof of claim for dividend purposes, based upon

the aggregate of all items rediscounted by the insolvent national bank. The qualification contained in this statement shall apply to subsequent resolutions in as far as proof of rediscount items as separate claims is concerned.

The conference next discussed the set off of reserve balances against claims due from insolvent national banks and adopted the following resolution, offered by Mr. Mason, without dissenting vote:

RESOLUTION NO. 3.

RESOLVED that this conference agree to the proposal of the Comptroller that reserve balances be treated as a set off to claims against failed national banks.

The right to treat Federal reserve bank stock as collateral rather than as set off was next taken up and the following resolution, offered by Mr. Mason, was adopted without dissenting vote:

RESOLUTION NO. 4.

RESOLVED that it is the sense of this conference that it is the lawful right of reserve banks to treat amounts realized on account of surrender of stock of failed national banks in the Federal reserve banks as collateral and not as an offset to claims against such banks.

The conference then discussed the manner of applying and crediting payments made on collateral, and the following resolution, offered by Mr. Wallace, was adopted without dissenting vote:

RESOLUTION NO. 5.

BE IT RESOLVED that it is the sense of this conference that collateral pledged for a specific note made or endorsed by a member bank should be credited in a separate account, until the net amount realized from such collateral and dividends paid upon such note is sufficient to pay the said note, adding interest on the note from the date of insolvency to the date of final payment, and giving credit allowance for interest on the amounts collected on collateral from the date of collection to the date of final payment. If the note or other agreement with the member bank provides that such collateral shall likewise be held for other debts, after such note

is paid collateral then remaining should be held as general collateral.

Collection made on general collateral should be credited in a collateral account until the time for final settlement. In no event should collections made from or on account of collateral affect the basis of dividends, until such net collections and dividends equal the amount due on the obligations for which the collateral was pledged.

Next discussed was the subject of interest on rediscounted items and the following resolution offered by Mr. Leedy was adopted without dissenting vote:

RESOLUTION NO. 6.

RESOLVED that it is the sense of the Conference that there is no legal liability on the part of the Federal reserve banks to account to the receivers of insolvent national banks for interest accrued on rediscounted notes after the failure of the bank rediscounting the same, and that the Federal reserve banks are entitled to such accrued interest according to the terms of such rediscounts, or if not provided for by their terms, then, at the legal rate.

The conference then proceeded to a consideration of the topics suggested for discussion in Mr. Stroud's memorandum, which accompanied his letter of June 6, 1925, addressed to the Federal Reserve Board. Some of these topics, it was found, had already been covered by resolution and upon others no action was taken. The remaining topics were disposed of by agreeing to the recommendations contained in the memorandum, except for the following changes:

The statement contained in Mr. Stroud's memorandum under Topic I B (2) was amended so as to read as follows:

It is our view that we are entitled to dividends upon the full amount of the claim as originally filed and allowed until such time as the dividends, plus collections on collateral and offsets, equal one hundred per cent of the indebtedness, together with interest thereon, and also until we have been fully reimbursed for the expense reasonably necessary in preserving, selling and collecting collateral to which we have been incident in the collection of the paper.

In considering Topic II B(1), Mr. Parker's letter of June 29 was endorsed by the Conference as an addition to the statement suggested in Mr. Stroud's memorandum.

The statement contained in Mr. Stroud's memorandum under Topic II C(2) was amended so as to read as follows:

> We are of the opinion that we are entitled to dividends upon each of the rediscounted notes for the full amount of claim as originally filed and allowed until such time as the dividends, plus collections made from parties liable upon the rediscounted note, equal one hundred per cent thereof with interest and expense reasonably necessary in preserving, selling and collecting collateral.

The statement contained in Mr. Stroud's memorandum under Topic II D(1) was amended so as to read as follows:

> It is our view that before any compromise or settlement is made upon a rediscounted note that the consent and acquiescence of the receiver should be obtained, if it is desired to continue the liability of the receivership and not desired to preserve the right of recourse as provided in the next paragraph. In the event the receiver refuses to give his consent or acquiescense to the settlement, then he should be given an opportunity to take the rediscounted note up for the amount offered in settlement, permitting the claim to stand and continuing to pay dividends on the amount as originally filed and allowed until such time as it is fully paid.
>
> If the receiver does not care to take the note up and the Federal reserve bank is still of the opinion that the settlement is a good one, we think it has the right to make such settlement with the parties prior to the insolvent bank, provided that when doing so recourse is expressly reserved on said note against the receiver of the insolvent bank.

The statement contained in Mr. Stroud's memorandum under Topic III A was amended so as to read as follows:

> It is our view that a Federal reserve bank has no right to settle or compromise notes held as collateral in the absence of contract to the contrary. However, they would be liable only for the value of such collateral notes, and if a settlement or compromise should be effected whereby the Federal

reserve bank obtained the full market value of the note, there would be no liability upon its part. Hence, we think that when such settlements are made without reserving right of recourse against party secondary liable, consent of receiver should be obtained.

The statement contained in Mr. Stroud's memorandum under Topic I A(2) had already been disposed of by Resolution No. 6; Topic I A by Resolution No.4; Topic II A by Resolution No.2; Topic II B(2) by Resolution No.6; and Topic III C by Resolution No.5. Upon the following topics, no action was taken: II B(3), IV B, IV D, IV E, V A, V B, V C, and V E.

Inasmuch as the views of the conference were agreed to in most cases by the representatives of the Comptroller on the second day of the conference, and are set out hereafter in the form agreed to by the joint conference, it is deemed unnecessary to set out in detail at this point the action of the conference on each topic considered.

After disposing of the topics suggested in Mr. Stroud's memorandum, there was placed before the conference for discussion the suggestion made in a letter dated June 26, 1925, from the Federal Reserve Agent of the Federal Reserve Bank of Dallas to the Governor of the Federal Reserve Board, that special counsel of national reputation and outstanding ability be employed on a special retainer to assist in par clearance cases and similar cases in which Federal reserve banks may be involved and to act as a sort of clearing house for legal departments of all Federal reserve banks. After a considerable discussion on this subject, the following resolution offered by Mr. Powell, with an addition by Mr. Mason, was adopted, Mr. Newell and Mr. Stroud voting "no":

RESOLUTION NO. 7.

RESOLVED that it is the sense of this conference that it is not essential to the proper administration of the Federal reserve banks to employ advisory counsel for general supervision of legal matters affecting the System.

BE IT FURTHER RESOLVED, however, that it is the sense of this meeting that the banks continue as heretofore to employ special counsel to assist in litigation of system wide interest when in the judgment of counsel concerned the occasion requires it and the banks are agreeable.

The conference then adjourned and met the next morning, July 14th, at 10 o'clock.

On the convening of the conference on the morning of July 14, on motion of Mr. Powell, Mr. Stroud was elected spokesman for the Counsel of the Federal Reserve Banks in the forthcoming joint conference with the representatives of the Comptroller of the Currency with the privilege reserved to other Counsel to make such suggestions or comments as they deemed appropriate.

The following representatives of the Comptroller of the Currency then entered the conference:

Deputy Comptroller Stearns,
Deputy Comptroller Collins,
Mr. Garrett,
Mr. Poage,
Mr. Fouts,
Mr. Slack.

The matters which had been discussed on the day previous by the Counsel for the Federal reserve banks were then taken up topic by topic, as indicated in Mr. Stroud's memorandum, with the representatives of the Comptroller. All matters taken up were finally agreed upon. There is recorded below the action of the joint conference on the various topics considered:

I.

CLAIMS EVIDENCED BY MEMBER BANK PROMISSORY NOTES.

A. Amount of Claim.

(1) Time of determining amount.

Representatives of the Comptroller and Counsel of the Federal Reserve Banks agreed as follows:

> It is our view that this question has been finally decided by the Supreme Court of the United States and that the claim should be filed for the amount of the indebtedness on the date of insolvency.

(2) Interest.

On the question how interest should be computed in determining the amount of claims it was agreed that:

> In determining the amount of the claim against an insolvent bank, unaccrued interest should be rebated at the discount rate at the time of discount, and past due interest should be included at the contractual rate specified in the note, and if no contractual rate is specified, then according to the legal rate in effect in the state in which the claim arises.
>
> Claims filed on member banks' promissory notes should bear interest at the contractual rate specified in the note, and if no contractual rate is specified in the note, then according to the legal rate in effect in the state in which the claim arises.

With reference to the interest to be charged an insolvent bank upon claim in final settlement, it was agreed that when the member bank note contains an express rate of interest to be paid after maturity, the rate of interest so expressed shall govern; and the question whether a failed bank should have the benefit of the rate of rediscount is a question of policy for determination by the officers of the Federal reserve banks.

(3) Attorney's fees.

Representatives of the Comptroller and the Counsel of the Federal Reserve Banks agreed as follows:

> Where a member bank's promissory note provides for payment of attorney's fees if placed in the hands of an attorney for collection, we are of the opinion that this item should be remitted except when it is necessary to actually institute suit in order to effect collection of the note.

(4) Offsets.

(a) Is the refund of capital stock and accrued dividends an item of offset?

Representatives of the Comptroller of the Currency and the Counsel of the Federal Reserve Banks agreed to the view expressed in Resolution No. 4, as follows:

> RESOLVED that it is the sense of this conference that it is the lawful right of reserve banks to treat amounts realized on account of surrender of stock of failed national banks in the Federal reserve banks as collateral and not as an offset to claims against such banks.

(b) Ledger balances.

Representatives of the Comptroller and the Counsel of the Federal Reserve Banks agreed as follows:

> We are of the opinion that ledger balance is an item of offset.

B. Dividends.

(1) Amount upon which dividend should be paid.

Representatives of the Comptroller and the Counsel of the Federal Reserve Banks agreed as follows:

> It is our view that every dividend paid by the receiver should be based upon the amount of the claim as originally filed and allowed, and that no deductions should be made for collection received upon collateral, or otherwise, between the payment of any two dividends.

(2) When Federal reserve bank no longer entitled to dividends.

Representatives of the Comptroller and the Counsel of the Federal Reserve Banks agreed as follows:

> It is our view that Federal Reserve Banks are entitled to dividends upon the full amount of the claim as originally filed and allowed until such time as the dividends, plus collection on collateral and offsets, equal one hundred per cent of the indebtedness, together with interest thereon, and also until they have been fully reimbursed for the expense reasonably necessary in preserving, selling and collecting collateral to which they have been incident in the collection of the paper.

II.

CLAIMS EVIDENCED BY REDISCOUNTED NOTES.

A. Whether proven collectively or singly.

The first paragraph of Resolution No. 2 adopted by Counsel for the Federal reserve banks was agreed upon; but the Federal Reserve Bank Counsel on motion of Mr. Stroud receded from their position as set forth in the 2nd paragraph of the said resolution, Mr. Ueland and Mr. Leedy voting "no".

That part of Resolution No. 2 which was agreed to is as follows:

> RESOLVED that it is the sense of this conference that the Federal reserve banks accede to the principle of the suggestion of the Comptroller that separate claims against insolvent national banks be predicated upon each note rediscounted by the Federal reserve bank and in its hands at the time of insolvency.

It was agreed, however, that the Comptroller of the Currency might require a separate claim to be filed on each note rediscounted by a Federal reserve bank and that no such claim should be predicated upon more than one rediscounted note.

B. Amount of Claim.

(1) Time of Determining Amount.

It was agreed that the amount of the claim should be determined as of the date of insolvency, for dividend purposes.

(2) Interest.

Representatives of the Comptroller's office and Counsel for the Federal Reserve Banks agreed to the view expressed in Resolution No. 6, which reads as follows:

> RESOLVED that it is the sense of this conference that there is no legal liability on the part of the Federal reserve banks to account to the receivers of insolvent national banks for interest accrued on rediscounted notes after the failure of the bank rediscounting the same, and that the Federal reserve banks are entitled to such accrued interest according to the terms of such rediscounts, or if not provided for by their terms, then, at the legal rate.

(3) Attorney's fees.

Not discussed.

(4) Offsets.

a. How applied.

The representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> It is our view that Federal reserve banks have the right to apply offsets as they deem advisable.

b. Capital stock and accrued dividends thereon.

This point had been discussed and decided by previous action.

c. Ledger balance.

This point had been discussed and decided by previous action.

C. Dividends.

(1) Amount upon which dividends should be paid.

This point had been discussed and decided by previous action.

(2) When no longer entitled to dividends.

The representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> We are of the opinion that Federal reserve banks are entitled to dividends upon each of the rediscounted notes for the full amount of claim as originally filed and allowed until such time as the dividends, plus collections made from parties liable upon the rediscounted note, equal one hundred per cent thereof with interest and expense reasonably necessary in preserving, selling and collecting collateral.

a. Do payments made subsequent to the maturity of the note or date of insolvency affect the amount of dividends?

The representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> It is our view that a claim once having been filed and allowed subsequent payments made by parties liable on the note should not be deducted from the amount of the claim when dividends are paid. In other words, the claim once having been filed and established, we think Federal Reserve Banks are entitled to dividends on the full amount of the claim until such time as those dividends plus payments equal to one hundred per cent of the note.

D. Compromises and Settlements.

(1) Right to make.

The representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> It is our view that before any compromise or settlement is made upon a rediscounted note that the consent and acquiescence of the receiver should be obtained, if it is desired to continue the liability of the receivership and not desired to preserve the right of recourse as provided in the next paragraph. In the event the receiver refuses to give his consent or acquiescence to the settlement, then he should be given an opportunity to take the rediscounted note up for the amount offered in settlement, permitting the claim to stand and continuing to pay dividends on the amount as originally filed and allowed until such time as it is fully paid.
>
> If the receiver does not care to take the note up and the Federal Reserve Bank is still of the opinion that the settlement is a good one, we think it has the right to make such settlement with the parties prior to the insolvent bank, provided that when doing so recourse is expressly reserved on said note against the receiver of the insolvent bank.

(2) In cases of compromises and settlements of rediscounted notes, what authority needed by the receiver?

The representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> It is our view that whenever a receiver consents to the settlement of a rediscounted note, he should obtain an order of a court of competent jurisdiction permitting same.

E. Expenses of Preservation and Collection of Rediscounted Notes.

The representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> It is our view that proper contractual agreement with member banks will make such expenses indebtednesses of the bank and, therefore, collectible from collateral which might be held.

III.

COLLATERAL.

A. Right of Compromise and Settlement.

The representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> It is our view that a Federal Reserve Bank has no right to settle or compromise notes held as collateral, in the absence of contract to the contrary. However, they would be liable only for the value of each collateral note, and if a settlement or compromise should be effected whereby the Federal Reserve Bank obtained the full market value of the note, there would be no liability upon its part. Hence, we think that when such settlements are made without reserving the right of recourse against party secondary liable, consent of receiver should be obtained.

B. Authority needed by Receiver to Compromise a Settlement of Collateral Note.

No action was taken on this subject.

C. How and When Applied.

(1) Collateral to member bank's promissory note.

Representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed upon the view expressed in

Resolution No. 5, with an addition thereto, drafted by Mr. Agnew and adopted by the Counsel of the Federal Reserve Banks, so that the entire resolution reads as follows:

> BE IT RESOLVED that it is the sense of this Conference that collateral pledged for a specific note made or endorsed by a member bank should be credited in a separate account, until the net amount realized from such collateral and dividends paid upon such note is sufficient to pay the said note, adding interest on the note from the date of insolvency to the date of final payment, and giving credit allowance for interest on the amounts collected on collateral from the date of collection to the date of final payment. If the note or other agreement with the member bank provides that such collateral shall likewise be held for other debts, after such note is paid collateral then remaining should be held as general collateral.
>
> Collection made on general collateral should be credited in a collateral account until the time for final settlement. In no event should collections made from or on account of collateral affect the basis of dividends, until such net collections and dividends equal the amount due on the obligations for which the collateral was pledged.
>
> Sums realized from collateral to a specific obligation shall be applied to the liquidation of such obligation until the amount so realized and dividends paid on such obligation are sufficient to retire it.

(2) Collateral to Rediscounts.

Representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> We are of the opinion that collections on collateral to rediscounts should not be applied until final settlement with the receiver.

(3) Where insolvent bank's indebtedness consists of both rediscounts and collateral.

This question had already been agreed upon as in Resolution No. 5 set out under III C(1) above.

(4) Expense of preservation and collection.

Representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> We are of the opinion that the legitimate expense incurred by Federal Reserve Banks in the preservation and collection of collateral notes is a recoverable expense and can best be handled upon final settlement rather than as each note is collected.

(5) Special advances necessary for collection of collateral notes.

This subject was not discussed.

## IV.

## CLAIMS ON ACCOUNT OF UNPAID CASH OR COLLECTION LETTERS.

A. Amount of Claims.

This subject not discussed.

B. Proof Required.

This subject not discussed.

C. Duplicate Claims.

This subject not discussed.

D. Offsets.

This subject not discussed.

E. Application of Collateral.

This subject not discussed.

F. Whether General or Preferred Claims.

This subject not discussed.

V.

MISCELLANEOUS CLAIMS.

A. Claims on account of Rediscounted or Collateral Notes Sent for Collection and Remittance which are Collected but not Remitted For.

This subject not discussed.

B. Claims on Behalf of Makers of Notes who Pay Amount Thereof to Insolvent Bank not Knowing the note has been Rediscounted or Pledged as Collateral.

This subject not discussed.

C. Claims on Behalf of the United States.

This subject not discussed.

D. Renewal Notes in Hands of Receiver Evidencing same Indebtedness as Notes held by Federal Reserve Bank under rediscount or as Collateral.

Representatives of the Comptroller's office and Counsel to the Federal Reserve Banks agreed as follows:

> It not infrequently happens that a bank, before its failure, takes a renewal note covering a certain indebtedness, telling the maker that his old note will be mailed him later. The bank fails before the old note has been obtained from the Federal reserve bank. In such cases, the receiver not infrequently takes the position that his note is a valid note and as a result much trouble is experienced. We think in such cases as these the receiver should be instructed that after he has satisfied himself that the note in his possession really evidences the same indebtedness as the note in the possession of the Federal reserve bank he should turn over to the Federal reserve bank the renewal note.

E. Claim for Forgeries.

This subject not discussed.

VI.

FINAL SETTLEMENTS WITH RECEIVERS.

This subject not discussed.

After agreement with the representatives of the Comptroller's office on the various topics as noted above, the conference adjourned at 2 p.m.

(Signed) George B. Vest,
Secretary.