

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY

<u>In the Matter of:</u>	)	
Johnny Bob Carruth	)	
Director	)	AA-EC-04-50
First National Bank	)	
Lubbock, Texas	)	

**STIPULATION AND CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate these prohibition and civil money penalty proceedings against Johnny Bob Carruth (“Respondent”) in connection with his activities as director of First National Bank, Lubbock, Texas (formerly Haskell, Texas) (“Bank”), pursuant to 12 U.S.C. § 1818(e) and (i) (as amended);

WHEREAS, the Comptroller is of the opinion that Respondent engaged in unsafe and unsound practices, violated the law, and breached his fiduciary duty, by: (a) allowing the Bank’s president to dominate the Bank’s decision-making process and (b) failing to ensure that the Bank took appropriate actions to correct the Bank’s deficient risk management practices and internal controls, and continuing violations of law, thereby causing substantial loss to the Bank;

WHEREAS, Respondent neither admits nor denies any wrongdoing; and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the

Comptroller and Respondent desire to enter into this Stipulation and Consent Order (“Order”);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

## ARTICLE I

### JURISDICTION

(1) First National Bank (“Bank”) is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a director of the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof (see 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, the Comptroller has the authority to initiate and maintain these prohibition and civil money penalty proceedings against Respondent pursuant to 12 U.S.C. § 1818(e) and (i).

## ARTICLE II

### ORDER FOR PROHIBITION

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, it is hereby ordered that Respondent shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q) (as amended);  
or
- (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u) (as amended).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9) (as amended);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Board and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's "appropriate Federal financial institutions regulatory agency," as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended).

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(e), (i), (j), and (h) (as amended).

### ARTICLE III

#### ORDER FOR CIVIL MONEY PENALTY

(1) It is further ordered that Respondent shall pay a civil money penalty in the amount of five thousand dollars (\$5,000), which shall be paid upon execution of this Order.

(2) Respondent shall make payment by check made payable to the Treasurer of the United States and shall deliver the payment to: Comptroller of the Currency, P.O. Box 73150, Chicago, IL 60673-7150. The case number (AA-EC-04-50) should be entered on all checks.

(3) If Respondent fails to make any payment as provided in this Article, the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) (as amended).

(5) Until the civil money penalty is paid in full, upon each and every subsequent change in address, if any, Respondent shall notify the Enforcement Director of his new address within seven (7) days of such change in address by sending the new information to Director, Enforcement & Compliance Division, OCC, 250 E Street, S.W., Washington, DC 20219.

#### ARTICLE IV

##### WAIVERS

- (1) By executing this Order, Respondent waives:
  - (a) the right to the issuance of Notices under 12 U.S.C. § 1818(e) and (i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(e) and (i) and 12 C.F.R. Part 19;
  - (c) all rights to seek judicial review of this Order;
  - (d) all rights in any way to contest the validity of this Order;
  - (e) any and all claims for fees, costs, or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement

matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

- (f) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.

## ARTICLE V

### CLOSING

(1) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order except in accordance with 12 C.F.R. § 7.2014 and Part 359; and Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts except in accordance with 12 C.F.R. § 7.2014 and Part 359.

(2) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents, or his employees to cause or induce the Respondent to agree to consent to the issuance of this Order or to execute this Order.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of these prohibition and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations contained in the letter from the OCC to Respondent dated January 14, 2004, unless such acts, omissions, or violations reoccur.

(4) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(5) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ John H. Quill, for  
Ronald G. Schneck  
Director  
Special Supervision Division

9/22/2004  
Date

/s/  
Johnny Bob Carruth

8/26/2004  
Date