

#2004-133

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

In the Matter of:

Rick D. Turner, President, CEO, Director)
First National Bank of St. Marys)
St. Marys, West Virginia)

Action No. _____

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate this civil money penalty proceeding against Rick D. Turner (“Respondent”) pursuant to 12 U.S.C. § 1818(i) (as amended); 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 of St. Marys, St. Marys, West Virginia (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 is President, CEO, and 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, Respondent is subject to the authority of the Comptroller to initiate and maintain this civil money penalty proceeding against him pursuant to 12 U.S.C. § 1818(i).

Article II -- FINDINGS OF FACT

(1) Respondent was hired by the Board of Directors of the Bank as its President and CEO in May, 2002, as a part of the Board’s commitment to ensure competent management of the Bank as required by the Consent Order dated April 23, 2002.

(2) During his tenure as President, CEO and Director of the Bank, Respondent caused non-compliance with the Consent Order.

(3) Respondent failed to ensure the Bank’s compliance with Article X (Overdraft Policy) and Article XX (Loan Portfolio Management) of the Consent Order.

(4) Respondent made the decision to keep dishonored checks in the cash items account, often for as long as 29 days. Had the dishonored checks been charged back to the

depositor's account, the chargeback would have created large overdrafts in violation of Article X. He overruled other bank officers who had recommended putting a hold on the account.

(5) Respondent caused the Bank to violate Article XX of the Consent Order by not following prudent floor plan administration practices for the high-risk St. Marys Ford account. Respondent's failure to employ prudent practices allowed the borrower to be substantially out-of-trust (i.e., to sell the Bank's collateral without making the required payments to the Bank), and posed a high risk of loss on the credit.

(6) The Bank avoided a loss on the St. Marys Ford account only because the borrower's father stepped in and paid the overdraft, which amounted to over \$200,000.

Article III -- **CIVIL MONEY PENALTY**

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of one thousand dollars (\$1,000.00), which shall be paid upon execution of this Order. Respondent shall make payment in full 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, Illinois 60673-7150.

(2) 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).

Article IV -- **WAIVERS**

(1) By executing this Order, Respondent waives:

(a) the right to the issuance of a notice under 12 U.S.C. § 1818(i);

- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(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.

(2) 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.

(3) 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 employees to cause or induce the Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of this civil money penalty proceeding contemplated by the Comptroller. The Comptroller agrees not to institute additional civil money penalty proceedings for the specific acts, omissions, or violations, unless such acts, omissions, or violations reoccur.

(5) 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.

(6) 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/ Jeri Gilland
Jeri Gilland
Deputy Comptroller
Southern District

11-5-2004
Date

/s/
Rick D. Turner

Nov. 1, 2004
Date