

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

In the Matter of: CLARK W. BIERSCHWALE, Former Director and President First National Bank of Goliad, Goliad, TX)))))	OCC-AA-EC-04-96
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STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate these prohibition and civil money penalty proceedings against Clark W. Bierschwale (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (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, Respondent desires 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 Goliad, Goliad, Texas (“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 and the President 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 these prohibition and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(e) and (i).

ARTICLE II OCC’S FINDINGS OF FACT

(4) For all the paragraphs in this Article, the Comptroller finds and Respondent neither admits nor denies.

(5) During the time period extending from in or about June 2003 until in or about September 2003, Respondent improperly:

- (a) extended credit to borrowers that created lending limit violations pursuant to 12 U.S.C. § 84, occasionally doing so without prior approval of the Bank’s Loan Committee and without entering said loans into the books and records of the Bank;

- (b) failed to accurately reflect the condition of loans and past due loans in reports to the Bank's Board of Directors;
- (c) failed to ensure periodic asset quality review to identify problem assets;
- (d) failed to conduct regular and comprehensive audits and maintain satisfactory control systems;
- (e) funded and/or advanced loan requests without adequate analysis, proper documentation and Board approval, and without complying with the Bank's loan policy;
- (f) failed to adequately supervise the Bank's management team and personnel;
- (g) failed to oversee the Bank's operations; and
- (h) charged personal expenses to the Bank's credit cards and failed to submit receipts or explanations to the Bank with respect to Bank expenses.

**ARTICLE III
PROHIBITION ORDER**

(6) With respect to the institutions and agencies set forth in paragraph (7) of this Article, and without admitting or denying any wrongdoing, Respondent hereby agrees that he 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).

(7) The prohibitions in paragraph (6) 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.

(8) The prohibitions of paragraphs (6) and (7) 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).

(9) 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 IV ORDER FOR CIVIL MONEY PENALTY

(10) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of five thousand dollars (\$5,000.00), which shall be paid as follows:

- (a) Respondent shall, immediately upon execution of this Order, submit twenty five hundred dollars (\$2500) in partial payment.
- (b) Beginning on May 1, 2005, and on the first day of each month thereafter, Respondent shall make minimum monthly payments of one hundred dollars (\$100) until the final \$2500 of this Civil Money Penalty is satisfied, with the further proviso that the full amount shall be paid by May 1, 2007.

(11) Respondent shall make the payments described in paragraph (10), above, by checks or money orders made payable to the Treasurer of the United States and shall deliver the payments to: Comptroller of the Currency, P.O. Box 9012, St. Louis, MO 63197-9012, or any subsequent address that the Comptroller may later direct Respondent

to send such payments. The docket number of this case should be entered on all checks or money orders.

(12) 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).

(13) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division (“Enforcement Director”) of his current address, by completing the form attached hereto as Appendix A.

(14) 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.

ARTICLE V BANKRUPTCY

(15) If Respondent files for bankruptcy protection, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(16) In any bankruptcy proceeding, Respondent agrees that he will in no manner contest the assertion of the Comptroller or any agent, officer or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty obligation in this Order arises out of acts or claims which result in claims not dischargeable in bankruptcy.

**ARTICLE VI
WAIVERS**

- (17) 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.

(18) 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.

(19) 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.

(20) 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, unless such acts, omissions, or violations reoccur.

(21) 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.

(22) 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/ Ronald G. Schneck

4/27/05

RONALD G. SCHNECK, Director
Special Supervision
Office of the Comptroller of the Currency
Washington, DC 20219

Date

/s/

CLARK W. BIERSCHWALE

4/19/05

Date