

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

**IN THE MATTER OF:** )  
**DALE BERLAU** )  
**FORMER DIRECTOR** )  
**HEARTLAND BANK, N.A.** )  
**JEWELL, KANSAS** )

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**STIPULATION AND CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America ( Comptroller ) intends to initiate a civil money penalty proceeding against Dale Berlau, ( Respondent ), pursuant to 12 U.S.C. § 1818(i)(2) (as amended) through the issuance of a Notice of Assessment of a Civil Money Penalty ( Notice ), for activities detailed in a letter sent to Respondent on or about October 1, 1998;

**WHEREAS**, Respondent would respond to and deny the allegations in the Notice; 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;

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

**ARTICLE I**

(1) Heartland Bank, N.A., Jewell, Kansas ( 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) and 1818(i).

(2) Respondent was an employee of the Bank and is an institution-affiliated party of the Bank as that term is defined in 12 U.S.C. §§ 1813(u) and 1818(i).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the appropriate Federal banking agency to maintain any enforcement proceeding against institution-affiliated parties of the Bank. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain a civil money penalty proceeding against him pursuant to 12 U.S.C. § 1818(i)(2).

## **ARTICLE II**

(1) Without admitting any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of three thousand five hundred dollars (\$3,500) in full settlement and release of the Comptroller's proposed civil money penalty action, which amount shall be paid on or before May 1, 1999. Respondent shall make the payment in certified funds made payable to the Treasurer of the United States and shall deliver the payments to:

Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. The charter number of the Bank, #22956, should be entered on the checks.

(2) This Stipulation and Consent 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 III

- (1) By executing this Stipulation and Consent Order, Respondent waives:
  - (a) the right to the issuance of a Notice of Assessment under 12 U.S.C. § 1818(i)(2) with respect to the Comptroller's civil money penalty action being settled and released by this Stipulation and Consent Order;
  - (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 with respect to the Comptroller's civil money penalty action being settled and released by this Stipulation and Consent Order;
  - (c) all rights to seek judicial review of this Stipulation and Consent Order;
  - (d) all rights in any way to contest the validity of this Stipulation and Consent Order; and
  - (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 and/or this Stipulation and Consent 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;
- (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 penalty under this Stipulation and Consent Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Stipulation and Consent Order; and, in

accordance with 12 C.F.R. § 7.2014, 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.

#### **ARTICLE IV**

(1) It is hereby agreed that the provisions of this Stipulation and Consent Order constitute a settlement of only the civil money penalty action contemplated by the Comptroller.

(2) It is further agreed that the provisions of this Stipulation and Consent 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 with respect to other activities 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.

(3) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Stipulation and Consent 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; provided, however, that Respondent's execution and delivery of this Stipulation and Consent Order shall not constitute an admission with respect to any other actions brought by the Comptroller or any other representative or agency of the United States, and Respondent hereby reserves all defenses with respect to any such actions.

