#N10-002

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

In the Matter of:	)	
James L. Klein Former Vice President/Commercial Lending	)	AA-EC-09-38
First National Bank of Platteville Platteville, Wisconsin	)	

NOTICE OF CHARGES FOR PROHIBITION
NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY

On a date as determined by the Administrative Law Judge, a hearing will commence in Platteville, Wisconsin, pursuant to 12 U.S.C. § 1818(e)(1) and (i), concerning the charges set forth herein to determine whether an Order should be issued against James L. Klein ("Respondent"), former Vice President/Commercial Lending officer of First National Bank of Platteville, Platteville, Wisconsin ("Bank"), prohibiting Respondent from participating in any manner in the conduct of the affairs of any federally insured depository institution or any other institution, credit union, agency or entity referred to in 12 U.S.C. § 1818(e) and requiring Respondent to pay civil money penalties.

The Office of the Comptroller of the Currency ("Comptroller" or "OCC") determined that Respondent should pay one hundred fifty thousand dollars ($150,000) in civil money penalties pursuant to 12 U.S.C. § 1818(i). However, after taking into account the size of the financial resources and good faith of the Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, as required by 12 U.S.C. § 1818(i)(2)(G), and after soliciting and giving full consideration to Respondent's view with

respect to these considerations, the Comptroller hereby assesses a civil money penalty in the amount of fifty thousand dollars ($50,000) against Respondent. This penalty is payable to the Treasurer of the United States.

The hearing afforded Respondent shall be open to the public unless the Comptroller, in his discretion, determines that holding an open hearing would be contrary to the public interest.

In support of this Notice of Charges for Prohibition and Notice of Assessment of a Civil Money Penalty ("Notice"), the Comptroller charges the following:

Article I

Jurisdiction

At all times relevant to the charges set forth below:

(1) The 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.

(2) The Bank is an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2) and within the meaning of 12 U.S.C. § 1818(i)(2).

(3) The Comptroller is the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q)(1) and for purposes of 12 U.S.C. § 1818(e), and (i) to initiate and maintain an enforcement proceeding against an institution-affiliated party.

(4) Respondent was a Vice President/Commercial Lending officer 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)). Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain an enforcement proceeding against Respondent pursuant to 12 U.S.C. § 1818.

Article II

Background

(5) Respondent was employed by the Bank during 2001 to on or about May 22, 2007. At all relevant times, Respondent was a Vice President/Commercial Lending officer of the Bank.

(6) As a Vice President/Commercial Lending officer, Respondent's duties and responsibilities included, but were not limited to: originating, processing, closing and servicing commercial loan products according to the Bank's loan policies and legal/regulatory requirements; approving loans up to and including $100,000; referring larger loan requests to the Bank's loan committee (and Board if appropriate) for approval; analyzing loan applicants' financial status, credit, payment history, and property values to approve or recommend approval of a loan request; ensuring proper documentation of the Bank's credit files. Respondent's duties and responsibilities also included administering the Bank's Accounts Receivable (A/R) Purchase Program with commercial customers.

(7) At all times relevant, the loan approval authority of the Bank's President Charles Runde and the directors' loan committee was $125,000 and $500,000, respectively, and the full board had loan approval authority up to the Bank's legal lending limit.

(8) At all times relevant before March 2006, the overdraft authority of Respondent and President Runde was $5,000 and $75,000, respectively; in March 2006 and all times relevant thereafter, their overdraft authority was increased to $50,000 and $125,000, respectively.

(9) Pursuant to 12 C.F.R. Part 32, a national bank may not make loans or extensions of credit to a single borrower in excess of the bank's legal lending limit ("LLL"). The LLL is generally calculated as 15 percent of the bank's capital. At all relevant times, the Bank's LLL ranged from $2,317,250 to $2,510,850.

Article III

Respondent Caused the Bank to Extend Credit to Cool Express in Excess of His Lending Authority and in Violation of the Bank's Legal Lending Limit

A. Initial Violation

(10) In November 2003, the Bank initiated a lending relationship with Cool Express, a trucking company. The relationship consisted of direct loans from the Bank to Cool Express, and the purchase of Cool Express' accounts receivables pursuant to the Bank's A/R Purchase Program up to a certain limit.

(11) Under the A/R Purchase Program, the Bank had a contractual right to collect the amount due to Cool Express directly from the customers of Cool Express. However, the A/R Purchase Agreement required Cool Express to: (i) repurchase from the Bank any A/Rs that were 90 days past due ("repurchase obligation"); and (ii) maintain a "dealer reserve" of funds on deposit at the Bank in a segregated reserve account to "provide for funding of" Cool Express' repurchase obligation.

(12) As administrator for the Bank's A/R program, Respondent signed an A/R Purchase Agreement with Cool Express on November 17, 2003 providing for purchase of A/Rs up to $500,000. He signed addendums increasing this amount to $700,000 on April 29, 2004, $1 million on September 2, 2004, and $3.5 million on June 17, 2005. Each of the agreements exceeded Respondent's loan authority. In addition, Respondent failed to obtain board approval for any of the agreements.

(13) As of June 16, 2005, the Bank's LLL was $2,417,250.

(14) As of June 16, 2005, the total outstanding credit balance attributed to Cool Express for LLL purposes -- direct loans of $590,628 plus A/Rs of $3,075,902 less $373,993 in dealer reserve -- was $3,292,537, which exceeded the Bank's LLL of $2,417,250.

(15) In addition, as of June 16, 2005, Respondent had already caused the Bank to purchase Cool Express A/Rs up to $3,075,902, which far exceeded the Bank's contractual obligation to make such A/R purchases of only $1 million in effect as of June 16, 2005.

(16) On or about June 27, 2005, the OCC notified Respondent that the Cool Express A/R balances must be included in the Bank's calculation of credit extension to Cool Express, and that therefore the Cool Express credit was in violation of the Bank's LLL.

(17) On June 29, 2005, Respondent sent an email to the OCC stating that the Bank concurred with the "stance that the OCC has established" and pledged to bring the Bank into compliance with 12 C.F.R. Part 32 and the Bank's LLL by selling a participation in the Cool Express credit to reduce the outstanding balance of the credit.

(18) Prior to June 27, 2005, Respondent had reason to know that the Bank should include the balance of Cool Express's A/Rs in the "loans or extensions of credit" to calculate the Bank's LLL to Cool Express under 12 C.F.R. Part 32.

(19) Prior to June 27, 2005, Respondent had a duty to escalate this issue to the President and then (if necessary) to the Board, but Respondent failed to escalate the issue to the Board.

(20) On or about August 15, 2005, the OCC issued a Report of Exam ("2005 ROE") to the Bank. The ROE cited an LLL violation based on the Cool Express credit and stated that Bank management's corrective action was (i) to sell a participation in the Cool Express credit and (ii) to ensure that any extensions of credit remain within the Bank's legal lending limit.

(21) As administrator of the Bank's A/R program, Respondent oversaw the Bank's purchase of Cool Express A/R in amounts that contributed directly to the Bank's LLL violation.

B. September 2005 Loan

(22) Following the OCC's notice on June 27, 2005 and on August 15, 2005 of the Bank's LLL violation due to its "loans or extensions of credit" to Cool Express, Respondent caused additional LLL violations.

(23) Respondent wrote a credit memo, dated July 28, 2005 ("July 2005 credit memo"), which sought approval from the director's loan committee and the full board to: (i) increase the Cool Express A/R maximum to $3.5 million; and (ii) provide a loan of $240,000 to help Cool Express maintain insurance on its fleet of semi-trailer trucks.

(24) Respondent also stated in his July 2005 credit memo that "Amcore Bank will need to participate with us for the amount of $2 million in order to make this work."

(25) On August 16, 2005 and August 17, 2005, the director's loan committee and the full board, respectively, approved the credit request described in Respondent's July 2005 credit memo *on condition* that $2 million of the Bank's "loans or extensions of credit" to Cool Express *first* be participated out to another financial institution.

(26) On or about September 1, 2005, without having any participation in place, Respondent signed a loan agreement with Cool Express causing the disbursement of $240,000 to Cool Express ("September 2005 loan").

(27) As a result of the $240,000 disbursement to Cool Express, the Bank's "loans or extensions of credit" to Cool Express totaled approximately $4.155 million, which exceeded the Bank's LLL of approximately $2.424 million applicable as of September 2005.

(28) Accordingly, Respondent acted without authority and in violation of the Bank's LLL when he made the September 2005 loan to Cool Express without having in place a $2 million participation in the Cool Express credit to another financial institution.

C. Purchase of Additional Cool Express Accounts Receivables (A/Rs)

(29) Following the OCC's notice on June 27, 2005 and on August 15, 2005 of the Bank's LLL violation due to its "loans or extensions of credit" to Cool Express, Respondent caused new extensions of credit in violation of the Bank's LLL in the form of the Bank's purchase of additional Cool Express A/Rs.

(30) During July 1, 2005 to early January 2006, without any participation in place, Respondent caused the Bank to increase the Cool Express A/R balance from approximately $3.069 million to a high of $4.156 million on November 17, 2005, at which time the Bank's "loans or extensions of credit" to Cool Express, including direct loans, was approximately $4.747 million. This sum exceeded the Bank's LLL of approximately $2.459 million applicable during the same period.

(31) In addition, by permitting the Cool Express A/R balance to reach $4.156 million on November 17, 2005, Respondent permitted the Bank to purchase Cool Express A/Rs in an amount *far exceeding* the Bank's contractual obligation of $3.5 million to do so.

(32) Accordingly, Respondent acted without authority and in violation of the Bank's LLL when he caused the Bank to increase the Cool Express A/R balance during July 2005 to January 2006.

D. Unauthorized Approval of Overdrafts in Cool Express Accounts

(33) During December 12, 2005, through March 22, 2006, Respondent colluded with President Runde to permit new extensions of credit to Cool Express in the form of overdrafts that further violated the Bank's LLL.

(34) By December 31, 2005, Respondent and President Runde had approved overdrafts for the Cool Express account that totaled an outstanding balance of approximately $260,000.

This sum exceeded their combined overdraft approval authority of $80,000 in effect as of December 2005.

(35) In addition, as of December 31, 2005, the Bank's "loans or extensions of credit" to Cool Express, including direct loans, the A/Rs balance and overdrafts, totaled approximately $4.225 million, which exceeded the Bank's LLL of approximately $2.511 million applicable on that date.

(36) During the first quarter of 2006, Respondent and President Runde approved additional overdrafts for the Cool Express' account that reached a balance of $789,880 by March 22, 2006. This sum exceeded their combined overdraft approval authority of $175,000 in effect as of March 2006.

(37) In addition, as of March 22, 2006, the Bank's "loans or extensions of credit" to Cool Express, including direct loans, the A/Rs balance and overdrafts, totaled approximately $3.659 million, which exceeded the Bank's LLL of approximately $2.511 million applicable on that date.

(38) Accordingly, Respondent acted without authority and in violation of the Bank's LLL when he approved overdrafts for the Cool Express account during December through March 22, 2006.

(39) By reason of the foregoing conduct described in this Article, Respondent violated and/or caused the Bank to violate 12 C.F.R. Part 32, engaged in unsafe or unsound practices in conducting the affairs of the Bank, and breached his fiduciary duty as an officer of the Bank.

Article IV

Respondent Misled the Board, Made Unauthorized Changes Payment Deferrals/Contract Modifications, and Overvalued Collateral (or Released it for Less than its Value)

A. False and Misleading Credit Memo Dated February 23, 2006

(40) Respondent wrote a credit memo, dated February 23, 2006 ("February 2006 credit memo"), requesting to consolidate all of Cool Express' outstanding credits, except for the September 2005 loan for $240,000 discussed above. The total amount of the credit request was approximately $3.438 million ("$3.438 million consolidation loan").

(41) Even though there was no participation in the Cool Express credit, Respondent listed a "$1.28 million participation" and subtracted the $1.28 million from the Bank's "total exposure" to Cool Express in his February 2006 credit memo.

(42) In addition, Respondent, who was present at the combined director's loan committee/board meeting on February 28, 2006, failed to inform board members that the Bank did not, in fact, have a loan participant in place and was continuing to violate the LLL.

(43) Although Respondent stated in his February 2006 credit memo stated that the $3.438 million consolidation loan "will have the required monthly payment of $42,621 … which should give this a fairly fast paydown," Respondent had *already* begun, in January 2006, unauthorized deferrals of both principal and interest on Cool Express loans (as described below).

(44) On or about March 28, 2006, Respondent signed the loan consolidation agreement and caused the Bank to originate the $3.438 million consolidation loan. On that date, the Bank's "loans or extensions of credit" to Cool Express was approximately $3.665 million versus the Bank's LLL of approximately $2.510 million.

(45) Accordingly, Respondent placed false and misleading information in the Bank's records and provided false and misleading information to the Board.

B. Unauthorized Payment Deferrals and Contract Modifications

(46) During January 2006 through March 2007, Respondent entered into 16 payment deferral agreements with Cool Express, which permitted Cool Express to defer principle and interest payments on its outstanding loans from the Bank, including the September 2005 loan for $240,000 and the $3.438 million consolidation loan.

(47) On May 15, 2007, Respondent entered into a "Loan Addendum" changing the interest rate on the September 2005 $240,000 loan from 7.75 percent to zero percent.

(48) On May 15, 2007, Respondent entered into a "Loan Addendum" changing the interest rate on the $3.438 million consolidation loan from 8.5 percent to zero percent.

(49) Respondent entered into these 16 "Payment Deferral Agreements" and "Loan Addendums" without first informing the Board or seeking its concurrence.

(50) Accordingly, Respondent acted without authority when he repeatedly deferred principle and interest payments and modified the terms of the Cool Express loans.

C. Collateral Listed on Loan Workout Report Dated February 28, 2007

(51) On or about November 30, 2006, Cool Express sent Respondent a note indicating that 19 trailers, which served as part of the Bank's collateral on the Cool Express credits, was valued at $18,500.

(52) On or about November 30, 2006, Cool Express requested Respondent to release the 19 trailers as collateral on payment of $18,500 and submitted a check to the Bank in that amount.

(53) Shortly thereafter, the Bank cashed the check and Respondent released some or all of the 19 trailers as collateral.

(54) Approximately three months later, as part of a Workout Plan dated February 28, 2007 ("February 2007 Workout Plan"), Respondent used a September 23, 2006 valuation date to report that the Bank still held collateral in the form of 19 trailers worth $178,000.

(55) Accordingly, Respondent's February 2007 Workout Plan was false or misleading and/or Respondent released collateral for less than it was worth.

(56) By reason of the foregoing conduct described in this Article, Respondent engaged in unsafe and unsound practices in conducting the affairs of the Bank, breached his fiduciary duty as an officer of the Bank, violated 18 U.S.C. 1001, 1005, and/or 1014, and caused the Bank to violate 12 C.F.R. Part 32.

Article V

Loss to the Bank on the Cool Express Credit

(57) In June 2007, Cool Express declared bankruptcy and the Bank wrote off the Cool Express loans and credit extensions, sustaining a loss of $3.676 million plus an additional $243,000 in interest accrual.

Article VI

Legal Basis for Requested Relief

(58) By reason of Respondent’s misconduct described in Articles III through V, the Comptroller seeks an Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent violated the law, engaged in unsafe or unsound practices in conducting the affairs of the Bank, and breached his fiduciary duty as an officer of the Bank.

(b) Respondent caused the Bank to suffer financial loss.

(c) Respondent's practices and/or breaches involved personal dishonesty and demonstrated a willful and/or continuing disregard for the Bank's safety and soundness.

(59) By reason of Respondent's misconduct described in Articles III through VI, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i) on the following grounds:

(a) Respondent violated the law.

(b) Respondent engaged in recklessly unsafe or unsound practices in conducting the affairs of the Bank and breached his fiduciary duty as an officer of the Bank.

(c) Respondent's violations, practices and/or breaches were part of a pattern of misconduct and caused (and were likely to cause) more than a minimal loss to the Bank.

Opportunity for Hearing

Respondent is directed to file a written answer to this Notice within twenty (20) days from the date of service of this Notice in accordance with 12 C.F.R. § 19.19(a) and (b). The original and one copy of any answer shall be filed with the Office of Financial Institution Adjudication, Federal Deposit Insurance Corporation, 3501 N. Fairfax Drive, Suite VS-D8113,

Arlington, Virginia 22226-3500. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any answer shall also be filed with the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219 and with the attorney whose name appears on the accompanying certificate of service. **Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the Comptroller's motion, cause the administrative law judge or the Comptroller to find the facts in this Notice to be as alleged, upon which an appropriate order may be issued.**

In addition, Respondent is directed to file a written request for a hearing before the Comptroller, along with the written answer, concerning the Civil Money Penalty assessment contained in this Notice within twenty (20) days after date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. §§ 19.19(a) and (b). The original and one copy of any request shall be filed, along with the written answer, with the Office of Financial Institution Adjudication, Federal Deposit Insurance Corporation, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, Virginia 22226-3500. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any request, along with the written answer, shall also be served on the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219 and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment to constitute a final and unappealable order for a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i).**

Prayer for Relief

The Comptroller prays for relief in the form of the issuance of a final Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) and an Order of Civil Money Penalty Assessment in the amount of fifty thousand dollars and zero cents ($50,000.00) against Respondent pursuant to 12 U.S.C. § 1818(i)(2).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 14th day of June 2010.

/s/ Henry Fleming

Henry Fleming
Director for Special Supervision