

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
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FIRST COMMERCIAL BANK, SSB)
Lawton, Oklahoma)
)
)

Resolution No.: TOP-91-07
Dated: July 19, 1991

STIPULATION AND CONSENT TO ISSUANCE OF
ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office, OTS, and First Commercial Bank, SSB, Lawton, Oklahoma, its subsidiaries, service corporations and affiliates ("First Commercial" or the "Institution"), hereby agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that First Commercial has violated certain provisions contained within the September 21, 1990 OTS supervisory directive which prohibited First Commercial from purchasing any loans or participation interests from an affiliate. This directive also required that all overdraft transactions comply with First Commercial's existing internal policies. OTS is further of the opinion that First Commercial failed to: (1) make proper notification to the OTS regarding a change of public accountants; and (2) submit to the OTS an appropriate engagement letter prior to the commencement of an audit.

Moreover, OTS is of the opinion that First Commercial has violated Section 11(b) of the Home Owners Loan Act, 12 U.S.C.S. § 1468(b) (Law. Co-op. Supp. 1990), Section 22(h)(3) of the Federal Reserve Act, 12 U.S.C.S. § 375b(3) (Law. Co-op. Supp. 1990), 12 C.F.R. Section 563.170(a)(2), 12 C.F.R. Section 563.170(c), and 12 C.F.R. Section 571.2(c), thereby providing grounds to initiate an administrative cease and desist proceeding against First Commercial pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub.L. No. 101-73, 103 Stat. 183 ("FIRREA") 12 U.S.C.S. §1818(b) (Law. Co-op. Supp. 1990).

First Commercial desires to cooperate with the OTS to avoid the time and expense of such administrative litigation, and without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against First Commercial with respect to the violations of the September 21, 1990 OTS supervisory directive, Section 11(b) of the Home Owners Loan Act, 12 U.S.C.S. § 1468(b) (Law. Co-op. Supp. 1990), Section 22(h)(3) of the Federal Reserve Act, 12 U.S.C.S. § 375b(3) (Law. Co-op. Supp. 1990), 12 C.F.R. Section 563.170(a)(2), 12 C.F.R. Section 563.170(c), and 12 C.F.R. Section 571.2(c), and all other matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) First Commercial is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owner's Loan Act of 1933, as amended by FIRREA. Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C.S. §1813(c) (Law. Co-op. Supp. 1990).

(b) Pursuant to Section 3 of the FDIA, as amended by FIRREA, the Director of OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, First Commercial is subject to the authority of the OTS to initiate and maintain a cease-and-desist proceeding against it pursuant to Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C.S. §1818(b) (Law. Co-op. Supp. 1990).

3. Consent. First Commercial consents to the issuance by the OTS of the Order. It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C.S. §1818(b) (Law. Co-op. Supp. 1990). Upon its issuance by the Regional Director for the Midwest Regional Office, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended by FIRREA, 12 U.S.C.S. 1818(i) (Law. Co-op. Supp. 1990).

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ORDER TO CEASE AND DESIST

WHEREAS, First Commercial Bank, SSB, Lawton, Oklahoma ("First Commercial" or the "Institution"), through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist ("Stipulation") that is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Regional Office; and is incorporated herein by reference; and

WHEREAS, First Commercial, in the Stipulation, has consented and without admitting or denying that grounds exist has agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to §8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by FIRREA, 12 U.S.C.S. §1818(b) (Law. Co-op. Supp. 1990);

NOW, THEREFORE, IT IS ORDERED that First Commercial and its directors, officers, employees, agents, subsidiaries and service corporations shall cease and desist from any violation of, or the aiding and abetting of any violation of:

- a. Section 563.170(a)(2) of the OTS Regulations, 12 C.F.R. Section 563.170(a)(2) (1990);
- b. Section 563.170(c) of the OTS Regulations, 12 C.F.R. Section 563.170(c) (1990);
- c. Section 571.2 of the OTS Regulations, 12 C.F.R. Section 571.2 (1990);
- d. Section 11(b) of the Home Owners Loan Act ("HOLA"), 12 U.S.C.S. § 1468(b) (Law. Co-op. 1990 Supp.);
- e. Section 22(h)(3) of the Federal Reserve Act, 12 U.S.C.S. § 375b(3) (Law. Co-op Supp. 1990); and
- f. Office of Thrift Supervision Bulletin PA-7a.

IT IS HEREBY FURTHER ORDERED that:

I. DEFINITIONS

1. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, FDIA, or the Home Owners' Loan Act ("HOLA"), or as such definition is amended after the execution of this Order, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, FDIA, or HOLA,

shall have meanings that accord with their best custom and usage in the savings and loan industry. However, for the purposes of this Order, except as otherwise indicated, the following definitions shall apply:

- a. a "set" is a group of loans, participations, investments, securities, or other assets related, by being sold or pledged to, purchased from, or exchanged with any persons, entities, or institutions acting together in a single transaction;
- b. "invest in" means to make, originate, purchase, acquire, guarantee, refinance, modify, extend, renew, or to commit to do any of these;
- c. "transfer" means to sell, assign, pledge, exchange, or to commit to do any of these;

II. OPERATING RESTRICTIONS

2. Without the prior written approval of the Regional Deputy Director for the Midwest Region or his designee ("Regional Deputy Director") the Institution shall not, and shall not allow any wholly-owned or partly-owned subsidiary of the Institution to purchase from an affiliate any loan, whether secured or unsecured, or participation therein.

3. The Institution and its subsidiaries shall comply in all respects with the requirements of Section 11(b) of the HOLA, Section 22(h) of the Federal Reserve Act and Section 563.43 of the OTS Regulations (12 C.F.R. Section 563.43). Furthermore, the Board of Directors shall immediately take any measures necessary to bring the Institution into full compliance with Section 11 of the HOLA, Section 22(h) of the Federal Reserve Act, and Section 563.43 of the OTS Regulations, including but not limited to:

- a. the Board of Directors shall immediately, unless payment of applicable charges shall have previously been made, demand and secure payment from G. Carl Gibson, Jr., for the greater of the standard insufficient funds charge (i.e. \$15 per occurrence) or eighteen (18) percent interest on an annualized basis on the balance of all overdraft amounts concerning Great Plains Research and Development's account numbers 431731 and 431749. Written verification of this payment shall be submitted to the Regional Deputy Director within ten (10) days after the effective date of this Order;
- b. within ten (10) days after the effective date of this Order, the Board of Directors shall establish a committee, which shall consist of at least one outside director, to review and identify all overdrafts, from and after September 21, 1990, concerning the

Institution's officers, directors, employees and affiliates. No later than twenty (20) days after the effective date of this Order, the committee shall prepare a written report of its findings and forward copies of this report to the Board of Directors and to the Regional Deputy Director; and

- c. if the report described in subparagraph (b) above, identifies an overdraft(s) concerning any officer or director, the Board of Directors shall immediately initiate proceedings to collect from the identified officer or director the greater of the standard insufficient funds charge (i.e. \$15 per occurrence), or eighteen (18) percent interest on an annualized basis on the balance of the overdraft amount(s).

4. Within thirty (30) days after the effective date of this Order, the Institution shall submit to the Regional Deputy Director a written policy concerning the purchase and sale of assets, including loans or participation therein, from or to other Federally-insured financial institutions. This policy, at a minimum, shall incorporate the applicable provisions of Section 563.170 of the OTS Regulations and Sections 23A and 23B of the Federal Reserve Act. Furthermore, this policy, before being implemented, shall be subject to the review and approval of the Regional Deputy Director.

5. The Institution and its subsidiaries shall comply in all respects with the requirements of Sections 563.170(a)(2) and 571.2 of the OTS Regulations and OTS Bulletin PA-7a ("Bulletin PA-7a"). Furthermore, the Board of Directors shall immediately take any measures necessary to bring the Institution into full compliance with Sections 563.170(a)(2) and 571.2(c) of the OTS Regulations and Bulletin PA-7a, including, but not limited to, the submission of a written policy to the Regional Deputy Director within thirty (30) days after the effective date of this Order which, at a minimum, addresses the Institution's selection, retention, utilization, termination, and replacement of its independent public accountants. This policy, before being implemented, shall be subject to the review and approval of the Regional Deputy Director.

III. UNDERWRITING STANDARDS

6. Within forty-five (45) days after the effective date of this Order, the Institution shall submit to the Regional Deputy Director for approval, revised loan and investment policies and procedures that shall govern all loans, other extensions of credit, and loan investments made or purchased by the Institution or its subsidiaries ("Underwriting Standards"). These Underwriting Standards, at a minimum, shall require that prior to making or purchasing (or committing to make or purchase) any loan, other extension of credit or loan investment, the Institution or its

subsidiaries must have obtained, as appropriate, each of the items listed in subsections (a) through (p) of paragraph 7 and subsections (a) through (c) of paragraph 8 of this Order, and in 12 C.F.R. Section 563.170(c).

7. Until it has received approval of the Underwriting Standards from the Regional Deputy Director, the Institution or any of its subsidiaries shall not make any loan, other extension of credit or investment, except loans secured by purchase money mortgages to acquire single family residential properties, without having first obtained, as appropriate, each of the following:

- a. a written application signed by the borrowers and guarantors stating the purpose of the loan, extension of credit or investment, and the identity of the security property;
- b. signed financial statements of the borrowers and guarantors;
- c. a signed statement disclosing the purchase price paid by the borrowers;
- d. current credit reports for each borrower and guarantor together with a written report signed by an employee of the Institution responsible for analyzing the loan, extension of credit or investment ("Underwriter") explaining all outstanding derogatory items in the report and reflecting compliance with the Equal Credit Opportunity Act;
- e. a written report, signed by the Underwriter, evidencing that material items in the borrowers' and guarantors' financial statements have been verified and analyzed to ensure that the

borrowers and guarantors have sufficient assets and cash flow to retire the loan under the terms of the note and/or guaranty;

f. in the case of a loan or extension of credit upon real property or real property interests, an appraisal report which complies with 12 C.F.R. Sections 563.170(c)(1)(iv) and 563.171 (1990) and conforms to generally-acceptable appraisal policy and practice guidelines;

g. in the case of a loan secured by property other than real estate, an appropriate statement of value of the security property prepared by a qualified person, a verification of the lien status of the security property current through the date of the loan or commitment decision and, where appropriate, documents verifying the existence of the proposed security property and that it is owned by and/or title is held by the proposed borrower;

h. written evidence, duly verified, that the borrower has invested cash or another form of equity, as appropriate, in the security property;

i. in the case of construction loans or multiple disbursement loans for improvements, written cost estimates and breakdowns prepared by a qualified engineer, architect, or other person qualified to prepare such an estimate;

j. written market feasibility studies prepared by a qualified professional for all acquisition, development, and construction loans;

- k. a written approval form showing when and by whom the loan, other extension of credit or investment was approved and the terms and conditions of such approval;
- l. title insurance commitment or acceptable attorney's opinion establishing the quality and validity of the Institution's lien on any real estate securing the extension of credit, and subsequent to closing of the loan, a title insurance policy or acceptable attorney's opinion reflecting the required quality and validity of the Institution's lien, and as supported by a current, signed survey reflecting all physical improvements above and below ground, encroachments, flood plain status, easements, and boundary line descriptions;
- m. written documentation showing that the Institution, upon the closing of the loan, or other extension of credit, furnished the borrowers or guarantors a statement setting forth in detail all charges and fees paid and obligated to be paid, including, but not limited to, the loan settlement statement;
- n. a written record showing the status of taxes, assessments, insurance premiums, and other charges on the security of the loan, other extensions of credit or investment;
- o. written documentation evidencing hazard insurance, in full force and effect, to protect the Institution from loss, as outlined in the policy statement at 12 C.F.R. Section 571.4; and
- p.. the file for each loan or loan commitment granted or purchased by the Institution shall include a written certification by an officer or other employee of the Institution that upon actual

review, knowledge, and belief the loan complies with all acceptable provisions of the OTS Regulations and this Order.

8. The Institution shall not disburse funds on existing participations, loans in process, investments or other extensions of credit (other than 1-4 family residential loans and investments eligible as assets qualifying for liquidity as defined in 12 C.F.R. Section 566.1) without first having obtained, as appropriate, each of the items listed in subsections (a) through (p) of paragraph 7 of this Order, unless denial of such disbursement would expose the Institution to civil liability as determined by legal counsel. Furthermore, the Institution shall not disburse funds for any loan, participation, or other extension of credit unless it has obtained the following:

- a. written documentation showing the date, amount, purpose, and recipient of every disbursement;
- b. written documentation evidencing all modifications to the original contract, including appropriate approval of each modification; and
- c. written documentation supporting all releases of any portion of the collateral supporting the loan or other extension of credit.

Every disbursement of funds, except as excluded above, of Twenty-five Thousand Dollars (\$25,000) or more shall be approved in advance by a committee established by the Board of Directors, which committee shall consist of at least one outside director. The minutes of each meeting of such committee shall reflect such approval and shall adequately describe the nature and purpose of the disbursement.

IV. PROHIBITION AGAINST REIMBURSEMENT OR INDEMNIFICATION

9. The Institution shall not reimburse, indemnify, compensate, or otherwise make whole any individual for any adverse financial or other consequence stemming from any transaction which is the subject matter of this Order, or any Order of Civil Money Penalty Assessment issued by the OTS.

V. REPORTING REQUIREMENTS

10. Within thirty (30) days after the effective date of this Order, the Institution shall develop written policies and procedures to ensure that the Board of Directors receives current, thorough and complete information from management prior to the deliberations of the Board of Directors at which substantive business of the Institution is discussed or voted upon; additionally, the Institution shall provide the Board of Directors with the appropriate board reports no later than three (3) days prior to the scheduled meeting. The written policies and procedures described in this paragraph ten, before being implemented, shall be subject to the review and approval of the Regional Deputy Director.

11. The Board of Directors shall require that the President of First Commercial, or any other designee of the Board of Directors, prepares a monthly compliance report for review by the

