

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of:

Muldoon, Murphy & Faucette,

Former Outside Counsel for
First Federal Lincoln Bank,
Lincoln, Nebraska (OTS No. 03309)

OTS Order No.: MWR-01-1

Date: February 28, 2001

STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed **Muldoon, Murphy & Faucette** (the "Firm"), former outside counsel representing First Federal Lincoln Bank, Lincoln, Nebraska ("Lincoln Bank" or the "Institution"), that grounds exist to initiate an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, the Firm has fully cooperated with the OTS's review of this matter and desires to avoid the time and expense of such administrative proceeding; and

WHEREAS, without any adjudication on the merits and solely for the purposes of settlement in accord with Federal Rule of Evidence 408 and, without admitting or denying that such grounds exist, and further without admitting or denying the Findings of Fact or opinions and conclusions of the OTS stated herein, except as to Jurisdiction, paragraph 1, below, which is

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

admitted, the Firm hereby stipulates to the following:

1. Jurisdiction.

(a) Lincoln Bank is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c);

(b) The Firm, which provided legal services to and on behalf of Lincoln Bank, is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within 6 years of the date hereof (see 12 U.S.C. § 1818(i)(3)); and

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association or its institution-affiliated parties. Therefore, for purposes of this Stipulation and Order and solely with respect to the matters set forth herein, the Firm is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the Midwest Region of the OTS or his designee ("Regional Director"), the authority to issue cease and desist orders where the respondent has consented to the issuance of the order.

2. OTS Findings of Fact. The OTS finds that:

(a) In 1997, Lincoln Bank retained the Firm to act as its outside counsel in its efforts to convert from mutual to stock form pursuant to 12 C.F.R. Part 563b ("Conversion Regulations"), which governs such conversions. Lincoln Bank, although a mutual itself, owned a stock subsidiary, First Federal Lincoln Bank-Iowa ("Lincoln Bank-Iowa"). At that time, and for a number of years previously, Lincoln Bank had failed to maintain a separate corporate existence between Lincoln Bank and Lincoln Bank-Iowa, in violation of 12 C.F.R. §559.10. Advertising and other materials failed to distinguish between the two institutions, in violation of 12 C.F.R. § 563.27. In

addition, in June 1995, deposits were transferred from Lincoln Bank to Lincoln Bank-Iowa, without informing the depositors, in violation of 12 C.F.R. § 563.22(e)(5)(ii). These violations pre-dated Lincoln Bank's retention of the **Firm**.

- (b) Although the **Firm** should have known of the violations detailed above, none of those violations were disclosed, discussed, or described in the conversion application for Lincoln Bank, which was prepared by the **Firm** and filed with the OTS in December 1997. Accordingly, the conversion application omitted material facts in violation of the Conversion Regulations. Lincoln Bank withdrew the conversion application in 1998.
- (c) The above-described actions of the **Firm** rendered the **Firm** an "institution-affiliated-party" as defined in 12 U.S.C. § 1813(u)(4) and justify issuance of the Order. These actions caused Lincoln Bank to incur more than minimal losses, including, but not limited to, the legal fees paid to the **Firm** by Lincoln Bank.

3. **Consent.** The **Firm** consents to the issuance by the OTS of the accompanying Order to Cease and Desist For Affirmative Relief ("Order"). The **Firm** 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 pursuant to 12 U.S.C. § 1818(b). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. **Waivers.** The **Firm** waives the following:

- (a) the right to be served with a written notice of the OTS's charges against the **Firm** as

provided by 12 U.S.C. § 1818(b);

- (b) the right to an administrative hearing of the OTS's charges against the Firm as provided by 12 U.S.C. § 1818(b);
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and
- (e) the right to assert this proceeding, its consent to the issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any governmental entity other than the OTS.
- (f) the Firm acknowledges and agrees that pursuant to 11 U.S.C. § 523(a)(11), its restitution obligation under the Order is not a dischargeable debt, and it waives any right to seek discharge of such obligation in any bankruptcy proceeding.

6. Indemnification. The Firm represents that it has not received, directly or indirectly, any sums from Lincoln Bank for the purpose of indemnifying or reimbursing it for any expense incurred by it in connection with the OTS investigation or the payment of restitution under the Order. The Firm shall neither cause nor permit Lincoln Bank (or any successor institution, holding company, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional services rendered to the Firm relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Lincoln Bank (or any successor institution, holding company, subsidiary or service

corporation thereof) with respect to such expenses. In the event that any such payments have been or are received by or on behalf of the **Firm** in connection with this action, the **Firm** agrees to promptly notify the OTS of the receipt of such payments and to return such payments without delay to Lincoln Bank (or the successor institution, holding company, subsidiary or service corporation thereof).

7. **Release; Other Governmental Actions Not Affected.** The Order constitutes the final disposition of all monetary and non-monetary claims for relief that have been or could be brought by the OTS against the **Firm**, its attorneys and employees, and any successor to the **Firm** in connection with the **Firm**'s representation of Lincoln Bank or its affiliates and subsidiaries. The **Firm** acknowledges and agrees that its consent to the Order does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the **Firm** that may be or have been brought by another governmental entity.

8. **Agreement for Continuing Cooperation.** The **Firm** agrees that, at the OTS's written request, on reasonable notice and without service of a subpoena, it will provide discovery and will provide a representative to testify truthfully at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to Lincoln Bank or its institution-affiliated parties, except that the **Firm** does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution or any attorney-client or other applicable privilege. If the **Firm** invokes its privilege against self-incrimination under the Fifth Amendment of the United States Constitution and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., the **Firm** agrees, consistent with any such grant of immunity, to provide discovery and to testify truthfully at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

9. **Practice Before the OTS.** Provided that the **Firm** complies with the Order, the Stipulation

and the Order do not restrict the Firm, or any attorney with or formerly with the Firm, from practice before the OTS.

10. Miscellaneous.

- (a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;
- (c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;
- (d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and
- (e) This Stipulation and the Order shall remain in effect for four (4) years unless terminated, modified, or suspended earlier in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, Muldoon, Murphy & Faucette, by its duly authorized representative, executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

MULDOON, MURPHY & FAUCETTE

/s/

By: Joseph A. Muldoon, Jr.

2/27/2001
Dated:

Accepted by:

OFFICE OF THRIFT SUPERVISION

/s/

By: Frederick R. Casteel
Regional Director
Midwest Region

2-28-01
Dated:

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of:

Muldoon, Murphy & Faucette,
Former Outside Counsel for
First Federal Lincoln Bank,
Lincoln, Nebraska (OTS No. 03309)

OTS Order No.: MWR-01-1

Date: February 28, 2001

CONSENT ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Muldoon, Murphy & Faucette (the "Firm"), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

WHEREAS, the Firm, by its execution of the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief ("Order") pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where the respondent has consented to the issuance of the Order.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Firm, in connection with its activities involving the conversion of any insured depository institution from mutual to stock form pursuant to 12 C.F.R. Part 563b, shall not engage in any breaches of fiduciary duty and shall comply with all applicable federal banking statutes and OTS regulations.

2. The Firm shall pay the sum of seven hundred thousand dollars (\$700,000) to First

¹ All references to the United States Code ("U.S.C") are as amended, unless otherwise indicated.

Federal Lincoln Bank, Lincoln, Nebraska, as follows: \$350,000 within ten (10) days of the issuance of this Order and \$350,000 in four equal installments on or before the following dates: \$87,500 on August 31, 2001, \$87,500 on February 28, 2002, \$87,500 on August 30, 2002 and \$87,500 on February 28, 2003. These payments shall be made by tendering certified checks or bank drafts payable to First Federal Lincoln Bank. These payments shall be delivered together with cover letters explaining that they pertain to the payments required by this Order, referencing the Order, to Joseph F. Griffin, Senior Attorney, Office of Thrift Supervision, Department of the Treasury, 1700 G Street, N.W., Washington, D.C. 20552.

3. The Firm shall require each lawyer of the Firm, at the time they are first assigned to perform professional services for an insured depository institution after the date of the Order, to read this Order and acknowledge in writing that they have done so.

4. For a period of four (4) years from the effective date of this Order, the Firm shall provide to OTS, on or before the first day of March in each year, a written report setting forth the manner and form in which it has complied with Paragraphs 2 and 3 of this Order during the previous calendar year.

5. 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, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, shall have meanings that accord with their best custom and usage in the savings and loan industry.

6. The Stipulation is made a part hereof and is incorporated herein by reference.

7. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

8. The Firm shall promptly respond to any request from the OTS for non-privileged documents in Firm's possession that the OTS reasonably requests to demonstrate compliance with this Order.

9. For purposes of this Order, the phrase "insured depository institution" shall mean any savings and loan association, savings bank, commercial bank, credit union, or any other depository institution that holds federally insured deposits, any non-diversified holding company

of such institution, and a diversified holding company of such institution to the extent that the services provided directly relate to a subsidiary federally insured institution.

10. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect for a period of four (4) years from the effective date of the Order unless the Stipulation and/or the Order are terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: /s/
Frederick R. Casteel
Regional Director
Midwest Region