

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**

**In the Matter of** )  
 )  
**BRUCE M. BORST** )  
 )  
**Former President, Chief Executive** )  
**Officer, Director, and** )  
**Institution-Affiliated Party of** )  
 )  
**AmericanTrust Federal Savings Bank** )  
**Peru, Indiana,** )  
**OTS No. 03859** )

**OTS Order No.: ATL-2002-14**

**Dated: October 17, 2002**

**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 Bruce M. Borst (**Borst**), a former president, chief executive officer and director of AmericanTrust Federal Savings Bank, Peru, Indiana, OTS Docket No. 03859 (AmericanTrust or the Institution), that OTS is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b).<sup>1</sup>

WHEREAS, **Borst** desires to cooperate with OTS to avoid the time and expense of such administrative enforcement proceeding and, without any adjudication on the merits and solely for

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<sup>1</sup> All references to the United States Code (U.S.C.) are as amended.

purposes of settlement in accord with Federal Rules of Evidence 408 and, without admitting or denying any wrongdoing, but admitting the jurisdiction of the OTS in this matter, and in consideration of the agreement of the OTS to forbear from initiating any other OTS civil or administrative enforcement actions against him arising out of **Borst's** actions that were known or discovered by the OTS prior to the issuance of the attached Order to Cease and Desist for Affirmative Relief (Order), **Borst** hereby stipulates and agrees to the following terms:

**1. Jurisdiction.**

(a) AmericanTrust, at all times relevant hereto, was a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, AmericanTrust was an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) **Borst**, as a former officer and director of AmericanTrust is deemed to be an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(c) Pursuant to 12 U.S.C. § 1813(q) and 12 U.S.C. § 1818(b)(9), the Director of OTS is the "appropriate Federal banking agency" with jurisdiction to maintain a cease and desist proceeding against an institution-affiliated party. Therefore, **Borst** is subject to the authority of OTS to initiate and maintain a cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b). The Deputy Director of OTS, pursuant to delegated authority from the Director of the OTS, has delegated to the Regional Director of the Southeast Region of OTS (Regional Director) the authority to issue orders where the individual subject to the order has consented to its issuance.

## **2. OTS Findings of Fact.**

a) OTS finds that Borst was at all relevant times an officer and director of AmericanTrust who routinely requested reimbursements for travel expenses. These reimbursement requests included instances of i) expenses claimed and reimbursed twice; (ii) travel advances not deducted from expense reports; (iii) expenses claimed that were credited back to Borst's credit cards but not passed onto AmericanTrust; (iv) expense claims paid without adequate documentation; and, (v) personal items including airline tickets for family members beyond Borst's spouse.

b) As a result of his actions, **Borst** breached his fiduciary duty to AmericanTrust.

## **3. Consent.**

By his execution of this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation) **Borst** consents to the issuance by OTS of the accompanying Order. He 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 by OTS under the authority of 12 U.S.C. § 1818(b). Upon its issuance on the date the Stipulation, executed by **Borst**, is signed by the Regional Director or his designee (Effective Date), the Order shall be a final Order, effective and fully enforceable by OTS or other appropriate Federal banking agency under the provisions of 12 U.S.C. § 1818(i).

## **5. Waivers.**

**Borst** waives the following:

(a) The right to be served with any written notice of OTS's charges against him as provided by 12 U.S.C. § 1818(b);

(b) The right to an administrative hearing of OTS's charges against him 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) The right to assert this proceeding, this consent to issuance of the Order, the issuance of the Order, and/or the payment of any monies, 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 other governmental entity; and

(e) Any and all claims against 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.

**6. Indemnification Limitations.**

In all respects, **Borst** shall comply with the procedures for indemnification set out in 12 C.F.R. Part 359 and 12 C.F.R. § 545.121. Any funds transferred by AmericanTrust (or any subsidiary, affiliate, or service corporation or successor thereof) for the benefit of **Borst** in violation thereof shall be returned by **Borst** to the disbursing entity.

**7. Other Government Actions Not Affected.**

(a) Upon OTS's issuance of the Order, OTS does release and discharge **Borst** from all potential claims and charges that have been or might have been asserted by OTS based on **Borst's** actions that were known or discovered by the OTS prior to the Effective Date of the Order. This release shall not preclude or affect any right of the OTS or other appropriate Federal

banking agency to determine and ensure compliance with the terms and provisions of this Stipulation and the accompanying Order.

(b) **Borst** acknowledges and agrees that his consent to the issuance of the accompanying Order is solely for the purpose of resolving certain potential OTS administrative enforcement charges as provided by Paragraph 7(a) above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, liability, or other administrative, civil, or criminal proceeding that arise pursuant to this action or otherwise, and that may be or have been brought by another governmental entity other than the OTS.

**8. Agreement for Continuing Cooperation.**

**Borst** agrees that, on reasonable notice and without service of a subpoena, he will promptly respond to any written request from OTS for documents that OTS reasonably requests to demonstrate compliance with the Order.

**9. Miscellaneous.**

(a) The construction and validity of the Stipulation and Order shall be governed by the laws of the United States of America.

(b) In case any provision of the Stipulation or Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

(c) All references to OTS and AmericanTrust in the Stipulation and Order shall also mean any of their predecessors, successors, and assigns.

(d) The section and paragraph headings in the Stipulation and Order are for convenience only, and such headings shall not affect the interpretation of the Stipulation or Order.

(e) The terms of the Stipulation and Order represent the final 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.

(f) The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

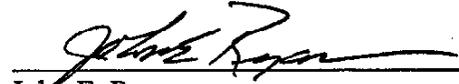
WHEREFORE, Borst executes this Stipulation intending to be legally bound

hereby.

By:

Accepted by:  
Office of Thrift Supervision

  
Bruce M. Borst

  
John E. Ryan  
Southeast Regional Director

Dated: 10/7/02

Dated: 10/17/02

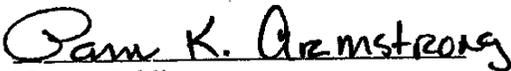
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ACKNOWLEDGMENT

State of Indiana

County of MIAMI

On this 9th day of October, 2002, before me, the undersigned notary public, personally appeared Bruce M. Borst, and acknowledged his execution of the foregoing Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief.

  
Notary Public

My Commission expires: Oct. 9, 2006



**WHEREAS**, the Director of OTS, has delegated to the Regional Director of the Southeast Region of OTS (Regional Director) the authority to issue orders to cease and desist on behalf of OTS where the institution-affiliated party, who is the subject of the order, has consented to the issuance of the order.

**NOW THEREFORE, IT IS ORDERED THAT:**

1. **Borst** shall pay reimbursement to AmericanTrust, within ten days of the Effective Date of the Order, in the amount of \$15,500.
2. **Borst** shall issue payment for the reimbursement amount by certified check or money order payable to AmericanTrust Federal Savings Bank and forwarded to the OTS Assistant Regional Director by overnight delivery to: Daniel T. McKee, Office of Thrift Supervision, One South Wacker Drive, Suite 2000, Chicago, Illinois, 60606.
3. **Borst** shall maintain documentation that satisfies the U.S. Internal Revenue Service regulations pertaining to adequacy of documentation for income tax purposes to support future expense reimbursement claims presented to any insured institution.

**IT IS FURTHER ORDERED THAT:**

4. **Borst** shall not participate in any manner in the conduct of the affairs of, act as consultant, or hold any office in any Entity (as defined in ¶ 5(b) below), except for his current position and duties as a consultant for Richmond Mutual Bancorporation, Inc., until he:
  - (a) Provides a copy of this Order to the prospective Entity; and

(b) Provides written notification to the appropriate Federal banking agency (as defined in 12 U.S.C. § 1813(q)) prior to accepting employment with or providing any services to the Entity. The notification shall describe the duties and responsibilities of the employment position or the services to be provided.

## MISCELLANEOUS PROVISIONS

### 5. Definitions.

(a) All technical words or terms used in this Order and Stipulation for which meanings are not specified or otherwise provided 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, the Home Owners' Loan Act (HOLA), the Federal Deposit Insurance Act (FDIA), or OTS Publications. Any such technical words or terms used in this Order and the Stipulation and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Publications shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

(b) For purposes of this Order and its enforcement, the phrase "Entity" shall mean any insured depository institution under 12 U.S.C. § 1813(c); any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (4); any institution treated as a savings association under 12 U.S.C. § 1818(b)(9); any insured credit union under the Federal Credit Union Act, 12 U.S.C. § 1781 et seq.; and any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. § 2001 et seq.

(c) For purposes of this Order and the enforcement thereof, the phrase "Effective Date" shall mean the date (as noted in the caption on page one) the Regional Director or his designee,

acting on behalf of the OTS, signs and thereby accepts the Stipulation, signed by **Borst**, and issues this Order.

**6. Successor Statutes, Regulations, Guidance, and Amendments.**

Reference in this Order and the Stipulation to provisions of statutes, regulations, and OTS Publications shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date of this Order, and references to successor provisions as they become applicable.

**7. Notices.**

(a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:

(i) OTS, by **Borst**, shall be sufficient for every purpose hereunder if in writing and mailed, ~~first class, postage prepaid~~ or sent via overnight delivery service or physically delivered, in each case addressed to the Assistant Regional Director, Office of Thrift Supervision, Department of the Treasury, One South Wacker Drive, Suite 2000, Chicago, Illinois, 60606 or telecopied to 312-917-5001 and confirmed by first class mail, postage prepaid, overnight delivery service, or physically delivered, in each case to the above address.

(ii) **Borst**, by OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to **Borst** at 1354 Tam-O-Shanter, Peru, Indiana, 46970.

(b) Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service, or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, then, in the event such notice was sent by the United States mail, there shall be a presumption that the notice was received two business days after the date of the postmark on the envelope in which the notice was enclosed.

**8. Construction of Order.**

(a) In case any provision in the Order and Stipulation is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

(b) Nothing in this Order and the Stipulation shall be construed as allowing **Borst** to violate any law, rule, regulation, or policy statement to which he is subject.

**9. Costs and Expenses.**

**Borst** shall comply with the procedures for indemnification set out in 12 C.F.R. Part 359 and 12 C.F.R. § 545.121. Any funds transferred by AmericanTrust (or any subsidiary, affiliate, or service corporation or successor thereof) for the benefit of **Borst** in violation thereof shall be returned by **Borst** to the disbursing entity within 30 days of the Effective Date or the date of transfer, whichever is later. This Order shall in no way prohibit **Borst** from pursuing any claims that he may have respecting AmericanTrust (or any subsidiary, affiliate, insurer, or service corporation thereof), provided that such payment(s) or any such claim does not result in a violation of 12 C.F.R. Part 359 or 12 C.F.R. § 545.121.

**10. Successors in Interest.**

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

**11. Incorporation.**

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

**12. Duration, Termination or Suspension of Order.**

This Order is and shall be issued and become effective on the Effective Date, as shown in the caption on page one. The Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

**THE OFFICE OF THRIFT SUPERVISION**

By:

  
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John E. Ryan  
Southeast Regional Director