

FILED  
U. S. DISTRICT COURT  
DISTRICT OF NEBRASKA

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
 )  
 V. )  
 )  
 DON A. LANGFORD, )  
 Defendant. )  
 \_\_\_\_\_ )

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CRIMINAL INFORMATION

Count 1 18 U.S.C. § 371  
Count 2 18 U.S.C. §§ 1001 and 2

THE UNITED STATES CHARGES THAT:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Information:

I. BACKGROUND

A. TierOne Bank

1. TierOne Bank was a commercial bank and financial institution owned by a holding company called TierOne Corporation (collectively "TierOne"). TierOne was headquartered in Lincoln, Nebraska with branch offices in Nebraska, Iowa, and Kansas. TierOne provided a full range of commercial and consumer banking products to businesses and individuals.

B. TierOne's Regulators

2. TierOne's stock was traded publicly on NASDAQ, a national securities exchange, and was registered with the United States Securities and Exchange Commission ("SEC") pursuant to Section 12(b) of the Securities Exchange Act of 1934. As a public

company, TierOne was required to comply with the SEC's rules and regulations, which are designed to protect the investing public. Under those rules and regulations, TierOne was required to (a) make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflected the transactions and disposition of the assets of TierOne; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that TierOne's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP"); and (c) file annual and quarterly reports with the SEC that contained audited financial statements that accurately and fairly presented the financial condition of TierOne, as well as other reports that contained information about TierOne's management, board of directors, business operations, and performance.

3. Through TierOne's annual reports ("SEC Forms 10-K") and quarterly reports ("SEC Forms 10-Q"), TierOne disclosed its financial information to the SEC, TierOne's shareholders, and the investing public. TierOne also disclosed its financial information to its shareholders and the investing public through other means, including through press releases and earnings announcements.

4. A public accounting firm acted as the independent auditor of TierOne's annual financial statements and reviewed TierOne's quarterly financial statements.

5. In addition to the SEC, TierOne was regulated by the Office of Thrift Supervision ("OTS"). TierOne was required to disclose its financial information to the OTS

through the quarterly filing of reports (“Thrift Financial Reports”). In 2008, TierOne submitted an application to the OTS seeking Troubled Asset Relief Program (“TARP”) funding. Ultimately, TierOne withdrew its application and did not receive TARP funds. In or about January 2009, the OTS executed a supervisory agreement with TierOne which required, among other things, that TierOne report additional information to the OTS about TierOne’s performance and financial condition, and that TierOne maintain a minimum capital position in relation to its loan portfolio and other assets (commonly reported as a “Core Capital Ratio”).

B. The Defendant

6. The Defendant, **DON A. LANGFORD**, was a resident of Lincoln, Nebraska. From in or around January 2008 to in or around April 2010, **LANGFORD** was a Senior Vice President and the Chief Credit Officer of TierOne.

C. TierOne’s Loan Loss Allowance

7. Beginning in 2004, TierOne began to expand its loan portfolio to geographical areas outside its traditional lending business in the Midwest, and opened loan production offices in Nevada, Florida, Arizona, and North Carolina, among other states. TierOne’s new loan production offices generated hundreds of new loans to residential real estate developers. However, by at least 2006, the real estate market began to decline, and falling real estate prices caused TierOne’s borrowers to begin defaulting on their loans in higher numbers than before.

8. TierOne was required to estimate losses on its loan portfolio caused by defaulting borrowers, and to include that estimate (commonly reported as an "Allowance for Loan and Lease Losses" or "Loan Loss Allowance") as part of the financial information it submitted to the SEC and to the OTS. Under the relevant accounting rules, if TierOne believed that it was not going to collect the entire loan balance from a borrower under the original terms of a loan, TierOne was required to evaluate the amount of the potential loss and to include that amount in TierOne's Loan Loss Allowance. In evaluating the amount of a potential loss on a loan, TierOne was required to take into account available information about the loan, including the value of the underlying collateral, which was typically the property under development, and the facts and circumstances surrounding the borrower's ability to make payments. TierOne also was required to keep accurate records of any decrease in the value of real estate that either served as collateral for a loan or that the bank acquired through foreclosures.

9. TierOne's estimates of losses in its loan portfolio and estimates of the value of its real estate portfolio were material to TierOne's regulators and the investing public in evaluating TierOne's financial condition. Any increase in TierOne's Allowance for Loan Losses indicated that the bank's loan portfolio was deteriorating and also adversely impacted TierOne's assets, Core Capital Ratio, revenue, and earnings. Similarly, any decrease in the value of TierOne's real estate portfolio also adversely impacted TierOne's assets, Core Capital Ratio, revenue, and earnings.

**Count One**  
[18 U.S.C. § 371]

Conspiracy to Commit Wire Fraud, Securities Fraud and to Make False Bank Entries

10. The allegations in paragraphs 1 through 9 are realleged and incorporated as if fully set forth here.

11. From in or around at least 2009 and continuing through in or around at least April 2010, in the District of Nebraska and elsewhere, the Defendant,

**DON A. LANGFORD,**

did knowingly and willfully conspire and agree with others, known and unknown, to commit certain offenses against the United States, namely:

a) wire fraud, that is, knowingly and with intent to defraud, devising and intending to devise a scheme and artifice to defraud affecting a financial institution, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted in interstate commerce, by means of wire communication, certain writings, signs, signals, pictures, and sounds, for the purpose of executing the scheme and artifice affecting a financial institution, in violation of Title 18, United States Code, Section 1343;

b) securities fraud, that is, knowingly and intentionally executing and attempting to execute a scheme and artifice to defraud persons in connection with securities issued by TierOne and to obtain by means of materially false and fraudulent pretenses, representations,

and promises, and by statements containing material omissions, money and property in connection with the purchase and sale of securities issued by TierOne, an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78j), in violation of Title 18, United States Code, Section 1348; and

c) making false entries in a bank's books, reports, or statements, that is, knowingly and willfully making false entries in TierOne's books, reports, or statements with the intent to deceive an agent or examiner appointed to examine the affairs of TierOne, in violation of Title 18, United States Code, Section 1005.

Purpose of the Conspiracy

12. The purpose of the conspiracy was to conceal TierOne's true financial condition from TierOne's shareholders, regulators, external auditors, and the investing public, including the value of the losses Defendant and his co-conspirators estimated TierOne would incur in its loan portfolio and its real estate portfolio, in order to: (a) forestall adverse regulatory action against TierOne; (b) maintain and increase the market price of TierOne's stock; and (c) enrich the Defendant and his co-conspirators through the receipt of compensation and other benefits from TierOne.

Manner and Means of the Conspiracy

13. The manner and means by which the Defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

14. First, **LANGFORD** and his co-conspirators purposefully misstated the value of TierOne's loan and real estate portfolio by (a) using outdated appraisals on collateral and real estate owned property; (b) understating the risk of certain loans; (c) delaying the seeking of new appraisals in order to conceal the current value of the loan collateral; (d) rejecting new appraisals of loan collateral when those appraisals would have caused TierOne to increase its Loan Loss Allowance; and (e) restructuring loan terms to disguise the borrower's inability to make timely interest and principal payments.

15. Second, **LANGFORD** and his co-conspirators made misrepresentations, and caused others to make misrepresentations, to TierOne's shareholders, regulators, external auditor, and the investing public about TierOne's financial condition, by (a) submitting and filing reports, records and memoranda that provided a materially false, misleading, and fraudulent description of the value of various bank loans and the collateral securing those loans; (b) concealing an internal analysis commissioned by **LANGFORD**'s co-conspirators and prepared by **LANGFORD** and his co-conspirators, which would have required TierOne to increase its Loan Loss Allowance; (c) concealing the existence of recent appraisals of

collateral; and (d) concealing material information relating to the value of TierOne's real estate portfolio.

Overt Acts

16. In furtherance of the conspiracy and to achieve its objects and purpose, at least one of the conspirators committed and caused to be committed, in the District of Nebraska and elsewhere, at least one of the following overt acts, among others:

17. On or about July 30, 2009, **LANGFORD** and others caused TierOne to file a Thrift Financial Report with the OTS that misrepresented TierOne's financial condition and performance.

18. On or about August 10, 2009, **LANGFORD** and others caused TierOne to file a SEC Form 10-Q for the quarter ending June 30, 2009 that misrepresented TierOne's financial condition and performance.

19. On or about September 2, 2009, **LANGFORD** and others caused a report to be submitted to the OTS that contained false and misleading statements about an approximately \$20 million loan TierOne had made to fund a residential development in Kansas.

All in violation of Title 18, United States Code, Section 371.



**Count Two**  
[18 U.S.C. §§ 1001 and 2]

False Statements

20. On or about August 10, 2009 in the District of Nebraska and elsewhere, the Defendant,

**DON A. LANGFORD,**

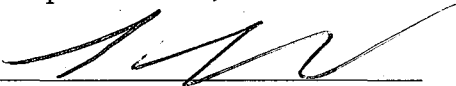
and others known and unknown caused TierOne to file a Form 10-Q for the quarter ending June 30, 2009 with the United States Securities and Exchange Commission that materially misrepresented TierOne's financial condition and performance.

All in violation of Title 18, United States Code, Sections 1001 and 2.

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