

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
(TOPEKA DOCKET)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CLINTON ODELL WEIDNER II, and)
 DAVID C. WITTIG)
)
 Defendants.)
 _____)

Case No. 02-40140-01/02-SAC

FIRST SUPERSEDING INDICTMENT

The Grand Jury Charges:

Introduction:

1. At all times material to this indictment, the defendant, **CLINTON ODELL WEIDNER II**, was the President, Chief Executive Officer and General Counsel of Capital City Bank, Topeka, Kansas (“Capital City Bank”), an institution the deposits of which are insured by the Federal Deposit Insurance Corporation, an agency of the United States of America.

WEIDNER also made loans for and on behalf of Capital City Bank.

2. At all times material to this indictment, the defendant, **DAVID C. WITTIG**, was Chairman of the Board, President, and Chief Executive Officer of Western Resources, Inc., later called Westar Energy of Topeka, Kansas, and a borrower from Capital City Bank. **WITTIG’s** loan officer at Capital City Bank was **CLINTON ODELL WEIDNER II**.

3. The Federal Deposit Insurance Corporation (“FDIC”) was created in 1933 to maintain the stability of and public confidence in the nation's financial system by insuring deposits and promoting safe and sound banking practices.

4. The FDIC, in conjunction with other federal and state regulatory agencies, examines financial institutions to ensure they are conducting business in a way that minimizes risk to their customers and to the deposit insurance funds. These periodic, on-premise FDIC examinations help assess an institution's financial condition, policies and procedures, and adherence to certain laws and regulations. Safety and soundness examinations are considered a vital tool in protecting the financial integrity of the deposit insurance funds and promoting public confidence in the banking system and individual banks.

5. Part of any FDIC examination includes a review of insider transactions to ensure that no conflicts of interest or preferential dealings by insiders of the institution take place. The FDIC relies upon the integrity of the books and records of the institution to identify the true nature of loan transactions, including, but not limited to: personal financial statements; loan files; and Officer’s Questionnaires, which require officers of federally insured institutions, under penalty of perjury, to disclose any extensions of credit made for the accommodation or direct benefit of anyone other than those whose names appear either on the note or on other related credit instruments, and which also require an officer to indicate if any executive officer, principal shareholder, director, or their related interest was involved in receiving the benefits of any loan proceeds.

6. As of April 30, 2001, **DAVID C. WITTIG** had a line of credit in the amount of \$3,500,000 at Capital City Bank.

7. On or about April 3, 2001, **WEIDNER** brought an investment opportunity to **WITTIG** known as the Eagle Ridge project in Scottsdale, Arizona, which required a \$1,500,000 down payment to be made on or before April 30, 2001. **WITTIG** declined the opportunity but agreed to make a loan to **WEIDNER** if **WEIDNER** would increase his line of credit at Capital City Bank by \$1,500,000 to provide the proceeds for the loan.

8. On or about April 26, 2001, **WEIDNER** contacted Capital City Bank customers Michael Earl and Tim Burns, who were negotiating to acquire the Eagle Ridge project, and agreed to provide the down payment of \$1,500,000 for the development. Michael Earl and Tim Burns assigned a 50% interest in the Scottsdale Sierra Development, LLC, to **WEIDNER**. Thereafter, the name of the project was changed to Scottsdale Sierra Eagle Ridge, LLC.

9. On or about April 30, 2001, **WEIDNER** prepared and caused to be prepared a Loan Proposal to increase **WITTIG**'s line of credit at Capital City Bank by \$1,500,000, that is, from \$3,500,000 to \$5,000,000. In the Loan Proposal, **WEIDNER** stated: "David is Pres and CEO of Western Resources, Inc. He utilizes the LOC to purchase stock and make business investments. He is also using the line to complete the final renovation costs of the Landon mansion as well as their personal funds."

10. On or about April 30, 2001, **WEIDNER** caused \$1,500,000 to be wire transferred from **WITTIG**'s account #2406522 at Capital City Bank to Firstar Bank Milwaukee, N.A., and then transmitted to account #600980101 at Firstar Metropolitan Bank and & Trust, Phoenix, Arizona, for credit to Security Title Agency, Escrow No. 96-96-05368-MS, to provide the down payment for the Eagle Ridge project, in which **WEIDNER** had a 50% interest.

11. On or about May 1, 2001, **WEIDNER** provided **WITTIG** a Promissory Note in the amount of \$1,500,000.

Count 1

CONSPIRACY,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

12. Paragraphs 1 through 11 are incorporated herein.

13. In the District of Kansas and elsewhere, from on or about April 3, 2001, the approximate date when the defendants, **CLINTON ODELL WEIDNER II**, and **DAVID C. WITTIG**, first discussed an investment in the “Eagle Ridge project” and continuing thereafter until on or about March 16, 2002, the date the true nature of the loan was discovered and **WEIDNER** was placed on administrative leave from Capital City Bank, the defendants,

CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,

knowingly and willfully conspired and agreed together and with each other, to:

- a) submit false entries, books, reports, and statements to a federally insured bank in violation of Title 18, United States Code, Section 1005; and,
- b) launder money, in violation of Title 18, United States Code, Section 1957.

14. In furtherance of the conspiracy and to effect the objects of the conspiracy, commencing on or about April 3, 2001, **WEIDNER** and **WITTIG** agreed to conceal the material fact that an extension of credit in the amount of \$1,500,000 made to **WITTIG** by **WEIDNER**, as an officer of Capital City Bank, was in fact going to be used by **WEIDNER** to make the down payment on a real estate development in Scottsdale, Arizona, in which **WEIDNER** would thus acquire a 50% interest.

15. In furtherance of the conspiracy and to effect the objects of the conspiracy, the defendants submitted and caused to be submitted deceptive personal financial statements to Capital City Bank to conceal the true beneficiary of the \$1,500,000 in loan proceeds.

16. In furtherance of the conspiracy and to effect the objects of the conspiracy, the defendants caused deceptive loan records to be submitted to and maintained by Capital City Bank.

17. In furtherance of the conspiracy and to effect the objects of the conspiracy, the defendants committed overt acts, including, but not limited to, the substantive crimes set forth in Counts 2 through 6.

Count 2

FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS, IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1005

18. On or about April 30, 2001, in the District of Kansas, the defendants,

CLINTON ODELL WEIDNER II, and DAVID C. WITTIG,

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books, reports, and statements of Capital City Bank, a federally insured institution, in that the defendants falsified and caused to be falsified a Loan Proposal to increase **WITTIG**'s line of credit by \$1,500,000, that is, from \$3,500,000 to \$5,000,000, stating that: "David is Pres and CEO of Western Resources, Inc. He utilizes the LOC to purchase stock and make business investments. He is also using the line to complete the final renovation costs of the Landon mansion as well as

their personal funds.” In truth and in fact, as the defendants well knew, the \$1,500,000 was going to be used to make the down payment on a real estate development in Scottsdale, Arizona, in which **WEIDNER** had a 50% interest.

Count 3

**FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1005**

19. On or about May 14, 2001, in District of Kansas, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books, reports, and statements of Capital City Bank, a federally insured institution, in that the defendant **WEIDNER**, under penalty of perjury, signed an Officer’s Questionnaire, in which he responded as follows:

Question 3: List all extensions of credit made for the accommodation or direct benefit of anyone other than those whose names appear either on the note or on other related credit instruments. Only include extensions of credit made since the previous FDIC examination. Indicate if any executive officer, principal shareholder, director, or their related interest (per Reg O definitions) is or was involved.

Answer: None

In truth and in fact, as the defendants well knew and believed, **WEIDNER** had received a direct benefit in the amount of \$1,500,000 from the \$1,500,000 line of credit increase for **WITTIG**, for which **WEIDNER** was the loan officer.

Count 4

FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS,

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1005

20. On or about May 31, 2001, in the District of Kansas, the defendants,

CLINTON ODELL WEIDNER II, and

DAVID C. WITTIG,

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books, reports, and statements of Capital City Bank, a federally insured institution, in that the defendants filed and caused to be filed a May 1, 2001, Personal Financial Statement of **CLINTON ODELL WEIDNER II**, that concealed the fact that **WEIDNER** had borrowed \$1,500,000 from **DAVID C. WITTIG**, the proceeds of which were obtained from a \$1,500,000 increase to **WITTIG's** line of credit at Capital City Bank, for which **WEIDNER** was the loan officer.

Count 5

**FALSE BANK ENTRIES, REPORTS, AND TRANSACTIONS
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1005**

21. On or about January 11, 2002, in District of Kansas, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

with the intent to deceive any officer of Capital City Bank, an institution the deposits of which are insured by the FDIC, and any agent and examiner of the FDIC appointed to examine the affairs of such bank, knowingly made and caused to be made a material false entry in the books, reports, and statements of Capital City Bank, a federally insured institution, in that the defendant **WITTIG** submitted and caused to be submitted a January 8, 2002, Balance Sheet which concealed the material fact that **WITTIG** had made a loan to defendant **WEIDNER** in the amount of \$1,500,000, which loan was funded by the \$1,500,000 increase in **WITTIG**'s line of credit at Capital City Bank, for which **WEIDNER** was the loan officer.

COUNT 6

**MONEY LAUNDERING,
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1957**

22. On or about April 30, 2001, in the District of Kansas and elsewhere, the defendants,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

knowingly engaged, attempted to engage, and caused each other to engage, in a monetary transaction, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the withdrawal and transfer of \$1,500,000 in funds from **WITTIG**'s Capital

City Bank account #2406522, such property having been derived from specified unlawful activity, that is, the submission of false statements to a federally insured bank, in violation of Title 18, United States Code, Section 1005, as alleged in Count 2, and conspiracy to submit false statements to a federally insured bank, in violation of Title 18, United States Code, Section 371, as alleged in Count 1.

COUNT 7

FORFEITURE ALLEGATIONS

23. The allegations of the foregoing counts of this indictment are realleged, and by this reference fully incorporated herein, for the purpose of alleging forfeitures to the United States of America, pursuant to the provisions of Title 18, United States Code, Section 982(b), and Title 21, United States Code, Section 853(p).

24. As a result of the offenses alleged in the foregoing counts,

**CLINTON ODELL WEIDNER II, and
DAVID C. WITTIG,**

shall forfeit to the United States:

- A) any property, real and personal, involved in violation of Title 18, United States Code, Section 1957, as alleged in Count 6, and all property traceable to such property; and
- B) any property, real and personal, constituting and derived from proceeds the defendants obtained directly and indirectly as the result of the violations of Title 18, United States Code, Sections 371 and 1005, as alleged in Counts 1 through 5, including, but not limited to:

- 1) \$1,500,000 in United States currency, and all interest and proceeds traceable thereto;
- 2) Real Property listed in Exhibit A, attached hereto and incorporated herein by reference.
- 3) If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants –
 - a) Cannot be located upon the exercise of due diligence;
 - b) Has been transferred or sold to, or deposited with, a third person;
 - c) Has been placed beyond the jurisdiction of the Court;
 - d) Has been substantially diminished in value; or
 - e) Has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants, up to the value of said property listed above, as being subject to forfeiture.

A TRUE BILL.

DATE

FOREMAN OF THE GRAND JURY

ASSISTANT UNITED STATES ATTORNEY

District of Kansas

[It is requested that trial be held in Topeka, Kansas]

Bond Set At: \$ _____
Clinton Odell Weidner II

Bond Set At: \$ _____
David C. Wittig