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UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

In the Matter of )  
 )  
CHARLES H. KEATING, JR. )  
 )  
Director of American Continental )  
Corporation, the Savings and Loan )  
Holding Company of Lincoln Savings )  
and Loan Association, )  
Irvine, California )  
 )

Re: Order No. 90-1465  
Dated: August 9, 1990

TEMPORARY ORDER TO CEASE AND DESIST

On August 9, 1990, the Office of Thrift Supervision of the United States Department of the Treasury ("OTS") issued a Notice of Charges and Hearing to Direct Restitution and Notice of Intention to Remove and Prohibit Respondents from participation in the Affairs of Federally-Insured Depository Institutions (the "Notice") as to, among others, Charles H. Keating, Jr., ("Keating") under the authority of Sections 8(b) and 8(e) 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. §§ 1818(b) and 1818(e).

Upon review of the Notice, and of the entire record herein, the OTS has determined that there is substantial evidence to support the charges that Keating was unjustly enriched through the violations or unsafe or unsound practices specified in the Notice,

and that Lincoln Savings and Loan Association of Irvine, California ("Lincoln") was injured as a result of these violations and practices. The condition of Lincoln is likely to be weakened and the interests of Lincoln and the depositors are likely to be prejudiced if Keating is allowed to dissipate or secrete his assets prior to the completion of the proceedings conducted pursuant to FDIA Section 8(b) as amended, 12 U.S.C. § 1818(b).

I.

BACKGROUND

1. The purpose of this Temporary Order to Cease and Desist is to prevent the weakening of the position of Lincoln or its depositors and the further dissipation of its assets prior to the completion of the proceedings conducted pursuant to FDIA Section 8(b) as amended, 12 U.S.C. 1818(b). The total amount of restitution called for by the proposed Cease-and-Desist Order to be issued following a hearing as set forth in the Notice is Forty Million Eight Hundred Eighty-Six Thousand Dollars (\$40,886,000).

2. \$24,186,000 of this sum represents the losses incurred by Lincoln resulting from the granting of a \$20 million line-of-credit by a wholly owned subsidiary of Lincoln to the Hotel Pontchartrain Limited Partnership, ("HPLP"). HPLP was a "tax shelter" in which Keating was a limited partner. Lincoln's records do not show any loan underwriting or financial analysis prior to granting the line-of-credit. It was unsecured and did not require repayment of principal and interest for five years.

Its interest rate was submarket. The line-of-credit was granted to support the continuing losses of the partnership's asset, the Hotel Pontchartrain in Detroit, Michigan ("Pontchartrain"). The transaction was an affiliated transaction and conflict of interest prohibited by law as well as an unsafe or unsound banking transaction and breach of fiduciary duty by Keating. In January, 1990 the Pontchartrain was taken by another savings association in foreclosure proceedings. HPLP had drawn \$19,473,000 on its line of credit, which has not been repaid and has accrued interest of \$4,713,000. Hence, Lincoln has lost \$24,186,000 for granting of the line-of-credit to HPLP. This transaction constitutes an unsafe and unsound practice and a reckless disregard for the law by Keating.

3. \$12,300,000 of this sum represents the loss incurred by Lincoln from its \$15 million guarantee and provision of collateral to Bankers Trust Company ("BT") for a \$20 million loan to the American Continental Corporation and Affiliates Employee Stock Ownership Plan ("ESOP"). The proceeds of this loan were used by the ESOP to purchase ACC stock from Keating and others in 1985. The transaction was an affiliated transaction and conflict of interest prohibited by law as well as an unsafe or unsound banking transaction and breach of fiduciary duty by Keating. Following ACC's bankruptcy the ESOP defaulted on this loan causing BT to seize the collateral. As a result Lincoln incurred losses \$11.2 million in collateral and an additional \$1.1 million in fees and interest payments made on the loan to ESOP. This transaction constitutes an unsafe and unsound practice and a reckless

disregard for the law by Keating.

4. \$4,400,000 of this sum presents the losses incurred by Lincoln from Lincoln's contrived real estate sale to Westcontinental Mortgage Corporation ("Westcontinental"). On or about March 31, 1987, Lincoln sold a parcel of its proposed Hidden Valley development project to Westcontinental for \$14 million, payable by \$3.5 million cash down payment and the \$10.5 million balance in a nonrecourse note. Westcontinental, however, had no intention or ability to pay for this property and in fact was acting as a "straw man" for another borrower. Lincoln did not do appropriate underwriting for this loan, and in fact loaned the down payment to Westcontinental through the other borrower. Hence, the sale did not meet the requirements under generally accepted accounting principles ("GAAP") for profit recognition. Notwithstanding this, Lincoln recorded a \$11 million profit on the transaction, and paid approximately \$4.4 million cash to its parent holding company, American Continental Corporation ("ACC"), through a tax-sharing agreement. Lincoln has therefore lost at least \$4.4 million from the Westcontinental transaction. Engaging in this transaction was an unsafe and unsound practice and a reckless disregard for the law by Keating.

5. The Notice and record are the product of extensive examinations of Lincoln. Lincoln, under the direction of Keating and others has frequently sought to frustrate these examination efforts.

6. OTS advised Lincoln and ACC about its concerns with their operations and have had an opportunity to respond. The

Notice and record also demonstrate that Keating has personally enriched himself at the expense of Lincoln and ultimately the United States. Keating has shown a willingness to violate law and regulation and his fiduciary duty of loyalty and care in order to enrich himself while causing Lincoln to fail.

7. Some might conclude that insider abuse and concealment of personal assets would occur concurrently, but it is OTS' experience that it is the actual filing of charges that prompts the insiders to dissipate or hide their assets. This is true even where OTS had already closed the institution and the insiders clearly knew that OTS might act.

8. Here Lincoln was the victim of as severe a case of insider abuse as has ever occurred in the experience of OTS. OTS concludes that the danger exists for further dissipation in this case. Because the abuses cited in the Notice constitute a continuing injury, the appropriate and necessary means to prevent further injury to Lincoln and the interest of depositors is through this Temporary Order to Cease and Desist. Moreover, under the relevant statutory provisions, 12 U.S.C. § 1818(b)(6)(B) and (c)(1) the OTS may correct the conditions resulting from the violations and practices found in the Notice. The Temporary Order to Cease and Desist is framed to correct precisely those conditions as well as to prevent further injury.

9. Keating is presently subject to a requirement that he provide periodic financial reports to certain of his creditors according to the terms of a Forbearance Agreement. Under that Agreement, Keating's creditors have agreed not to enforce their

rights as creditors or to seek to place him in bankruptcy in return for his agreement to make certain payments. The Agreement also indicates that Keating has given security interests in his real and personal property to his creditors and that at least one piece of real property has been sold and the proceeds irrevocably assigned. Financial documents filed by Keating's accountant in a December 11, 1989 affidavit in First Baptist Church of Santa Ana v. Keating, CV-89-6744-SVW (C.D. Cal.), indicate that Keating's net worth is dropping dramatically. In addition while Keating's accountant asserts in that affidavit that she was not aware that Keating had established any foreign financial accounts, Keating himself in a December 11, 1989 affidavit did not generally deny that he had established such accounts. These events as well as other information known to OTS, when viewed in light of the substantial charges contained in the Notice of Charges, creates a reasonable possibility that Keating may dissipate assets prior to the conclusion of the proceedings to be conducted pursuant to FDIA Section 8(b) as amended, 12 U.S.C. § 1818(b).

II.

CEASE AND DESIST ORDER

10. THEREFORE, by the authority under FDIA Section 8(c) as amended by FIRREA, 12 U.S.C. § 1818(c), Respondent Charles H. Keating, Jr., is hereby:

- a. ORDERED to submit to OTS within five (5) days following entry of this Order the following: (1) a sworn statement identifying all accounts or other assets located

outside the United States in which Keating or any member of his immediate family has any legal or beneficial interest; and (2) a financial statement prepared by a Certified Public Accountant in accordance with generally accepted accounting principles and certified by Keating as accurate showing his assets and liabilities as of a date no earlier than June 1, 1990. Each Keating shall file similar updated financial statements no less frequently than quarterly. Keating shall also file with OTS each financial statement that Keating provides to any of his creditors prior to completion of this proceeding at the same time the statement is provided to the creditor. Upon written request of Keating the financial statements submitted pursuant to this paragraph will not be made public; and

b. FURTHER ORDERED TO CEASE-AND-DESIST from, directly or indirectly, transferring or attempting to transfer funds or other assets from any account at any financial institution or brokerage firm, in which Keating or a member of his immediate families, have a legal or beneficial interest, to any account at any financial institution or brokerage firm located outside of the United States of America; and

c. FURTHER ORDERED TO CEASE-AND-DESIST from directly or indirectly, transferring, or attempting to transfer any assets to outside of the United States; and

d. FURTHER ORDERED TO CEASE AND DESIST FROM transferring, pledging or otherwise encumbering funds or other assets having a value in excess of \$5,000, other than

where OTS has received two full business days written notice;  
and

e. FURTHER ORDERED that the terms "directly or indirectly"; "transferring or attempting to transfer", "transferring, pledging, encumbering of assets" shall be construed in their broadest and most inclusive sense.

III.

COMPLIANCE PROCEDURES

11. Notice of all events required by this Order and notice of Keating's compliance with this Order shall be provided in writing to:

Director of Enforcement  
Office of Thrift Supervision  
U.S. Department of the Treasury  
1700 G Street, N.W.  
Washington, D.C. 20552  
Fax Number: (202) 898-0009 or  
(202) 906-7495

IV.

DEFINITIONS

12. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided by the provisions of this Order, shall, insofar as applicable, have meaning as defined in the Code of Federal Regulations, Title 12, Chapter V; or as defined in FIRREA, the FDIA, or the Home Owners Loan Act of 1933 ("HOLA") and any such words or terms undefined in the foregoing shall have meanings that accord with the best custom and usage in the savings association industry.

v.

EFFECTIVENESS

13. THIS ORDER shall be and is effective upon service on Keating and shall remain effective and enforceable until the completion of the administrative proceeding initiated by the Notice, incorporated by reference herein, served upon Keating or until such time as the OTS shall dismiss the charges specified in such Notice, or if a Cease and Desist Order is issued against Keating, until the effective date of such Order.

Issued: August , 1990

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Timothy Ryan  
Director  
Office of Thrift Supervision