

TO: John McCain
 FROM: Gwendolyn
 DATE: 14 April 1989
 RE: American Contin- tal

This memo is in answer to the question you asked me today regarding the implications of American Continental's decision to file Chapter 11. Specifically, you asked whether AC filed Chapter 11 to protect Lincoln, which was an inference in an article you read. In fact, it appears that AC filed Chapter 11 to protect its other subsidiaries.

The situation is complicated and vague because the case has sailed into uncharted waters. Typically, when a thrift is insolvent the FSLIC takes charge of it and either closes it, finds a buyer for it, or merges it with another institution. In this case, however, the parent company has filed Chapter 11 in anticipation of the regulators' impending seizure of Lincoln.

Chapter 11 proceedings are undertaken to hold creditors at bay so that, presumably, the company can come back stronger. This is what Eastern did. In AC's case, Chapter 11 probably prevents the regulators from selling other assets AC holds in Lincoln's affiliates. Moreover, it probably also brings the regulators in as managing agents under the trustee named by the Phoenix bankruptcy court to oversee AC's case. In theory, this means that the court might have jurisdiction over the regulators. If this is the case, the regulators might have to answer to the trustee for their actions, although it could very well be that the court will defer to the regulators.

At present, then, the FDIC has been named the managing agent by the FSLIC. You will recall that, under the Bush plan, the FDIC has taken on the role of conservator for the most insolvent thrifts -- three AS thrifts are under the FDIC now out of 215 nationwide. As the managing agent, the FDIC conserves assets and preserves banking services until Congress takes action in the bailout. After that, many of these thrifts will be closed with the new infusion into the insurance fund which the bailout plan will provide.

The FDIC has issued a five page press release that says F. Roger Clark, former CEO of Montfort Savings in Dallas, has been named as [redacted]'s CEO. He replaces John Rousselot, whose group, as you know, is trying to buy Lincoln from AC. The press release says that the FDIC took action because "Lincoln Savings and Loan had substantially dissipated its assets through violations of regulations and laws and was operating in an unsafe and unsound condition. Specifically, management appeared to operate Lincoln mainly for the benefit of AC at the expense of the institution, has repeatedly violated regulations relating to transactions with affiliates, used poor underwriting, and has refused to follow supervisory directives."

- 1) The FHLB meeting in April of 1987 was for us to find out what was going on. Ed Gray was being highly criticized in the press at the time for the operation of his office (use of official funds for personal travel), and ACC's accounting firm - Arthur Anderson (who had a solid reputation) was saying on the record that ACC was being unfairly treated. Normal examinations were 6 months. ACC's was well over a year.
- 2) The Senators were acting to bring a constituent's corroborated concerns about a federal agency to the attention of the responsible agency. That is a standard practice and it would have been inappropriate to deny ACC consideration because they had contributed to political campaigns.
- 3) We got advance advice from FHLB that the meeting was not inappropriate and McCain reemphasized his concern during the meeting that there should be no perceived intent to influence the outcome of the proceeding.
- 4) The briefing we got was professional and no one ever asked FHLB to transfer the investigation or to do anything differently. In fact, they revealed to us their confidential assessments of ACC's very serious difficulties, including a possible criminal investigation.
- 5) Senators left the meeting fully satisfied with the FHLB's good faith
- 6) Since that date, McCain has not communicated with FHLB or any other federal agency about ACC by letter, by phone, by staff or in any other way.
- 7) Since that date, McCain has had no communication with Keating about this issue. In fact he has seen Keating only once in that 2 year period and that was a chance encounter in the halls of the Senate office building, where this issue was not discussed