

UNITED STATES OF AMERICAN BEFORE THE
OFFICE OF THRIFT SUPERVISION

In the Matter of:
JAMES S. FLEISCHER

OTS AP No. 92-52

Date: May 21, 1992

OFFER OF AND CONSENT TO SETTLEMENT

The Office of Thrift Supervision ("OTS") and James S. Fleischer ("Fleischer") hereby stipulate and agree as follows:

1. Consideration. The OTS is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Fleischer pursuant to Section 8(b) 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. Section 1818(b), based upon a legal opinion given by Fleischer. Fleischer being of the view that the legal opinion was prepared in good faith and based upon a reasonable interpretation of applicable Federal Home Loan Bank Board ("FHLBB") Regulations, desires to cooperate with the OTS to avoid the time and expense of such administrative litigation, and without admitting or denying that such grounds exist, solely for the purposes of effecting this Offer and Consent, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against Fleischer with

respect to the matters covered in the accompanying Order to Cease and Desist for Affirmative Relief (the "Order").

2. Jurisdiction

(a) Fleischer, a lawyer who advised Lincoln Savings and Loan Association of Irvine, California ("Lincoln") about compliance with Federal Home Loan Bank Board ("FHLBB") regulations in connection with Lincoln's participation in financing for the Employee Stock Ownership Plan of American Continental Corporation, Lincoln's holding company, participated in the conduct of the affairs of Lincoln and was an "institution-affiliated party" with respect to Lincoln as that term is defined in Section 3(u)(3) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(u)(3).

(b) Lincoln was a "savings association" within the meaning of Section 2(4) of the Home Owners' Loan Act of 1933, as amended by FIRREA, 12 U.S.C. § 1813(b). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(c).

(c) Pursuant to Section 3(q) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1813(q), the Director of OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association or its institution-affiliated parties. Therefore, Fleischer is subject to the jurisdiction and authority of the OTS to initiate and maintain a cease-and-desist proceeding against

him pursuant to Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b).

3. Consent. Fleischer without admitting or denying that grounds exist for instituting a cease and desist proceeding consents to the issuance by the OTS of the Order and stipulates that the record basis for this proceeding consists of the Order and this Offer and Consent. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all applicable requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b). Upon its issuance by the Director of OTS, it shall be a final order, effective and fully enforceable by the OTS under the applicable provisions of the FDIA, as amended by FIRREA.

5. Waivers. Fleischer waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(b), and waives any right to seek judicial review of this Offer and Consent and the Order or to seek any post-hearing procedures, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA, 12 U.S.C. § 1818(h), and further waives any other right to otherwise challenge the validity of the Order.

6. Settled Claims. Fleischer agrees that he is entering into this Offer and Consent and the Order for the purposes of resolving any and all potential claims that might be asserted by the OTS arising out of the conclusions of the OTS set forth in

