The Delaware Bay Company

The Delaware
Bay Company, Inc.
One Rockefeller Plaza
New York 10020-2001 USA
212-332-1935
800-247-4223

Gary E. Hindes
Chairman and CEO

December 4, 1992

Mr. Alfred C. Hove
Chairman
Federal Deposit Insurance Corporation
550 Seventeenth Street NW
Washington, DC 20429

Dear Mr. Hove:

I am an investor in Meritor Savings Bank. On November 5, I wrote Harrison Young asking that the FDIC give an immediate answer to the question as to whether or not the FDIC intended to continue honoring its contractual commitment under which Meritor Savings Bank has been allowed to include supervisory goodwill in its regulatory capital computations. As you know, the FDIC has honored that commitment since it offered it to Meritor in 1982 as an inducement to take the troubled Western Savings Fund Society off the agency's hands. A copy of my letter to Mr. Young is enclosed.

To date I have not had the courtesy of a response from Mr. Young. In addition, Roger Hillas, the chairman of Meritor, has advised me that his calls and letters have also gone unanswered. Furthermore, reporters who were promised an answer from the FDIC by November 7 have also been ignored. This conduct is inexcusable, unprofessional and, frankly, would not be tolerated in any private-sector organization.

As a result of the agency's statement that it is thinking about reneging on its contract with Meritor, serious damage has been caused to the employees, shareholders and depositors of the bank. Already over $200 million in withdrawals have been made. Indeed, fully-insured depositors are even going so far as to suffer unnecessary principle haircuts in order to get their money out, solely because your organization will not give an honest and direct answer to Meritor's request for clarification, an answer which <u>simple</u> <u>fairness</u> demands and to which they are surely entitled. By announcing that you're not sure if you will continue to keep your word and honor a binding contract, you create negative publicity, which creates deposit runs, which creates a liquidity insolvency. As you know, the Federal Home Loan Bank Board, citing "FDIC concerns", has terminated Meritor's ability to borrow to meet the deposit drain which has been directly caused by your actions.

Unfortunately, history has proven that if a liquidity insolvency is forced at Meritor, it will not be the first time that the FDIC, in order to seize control of a bank in order to sell it to a competitor, has manufactured an insolvency by deliberately creating a liquidity crisis. Indeed, the courts have already ruled that the FDIC's "arranging" for the Dallas Fed to cut off M Bank Dallas' borrowing capability in March of 1989 created the "liquidity insolvency" which provided the grounds for the FDIC to "capture" twelve otherwise solvent banks which were then immediately sold to BancOne. I am sure that you are painfully aware that as a result, the taxpayers of this country stand a very good chance of paying between $74 million and $500 million in damages to the Mcorp estate. (Have you told OMB or the CBO about this yet?)

In business, we generally learn from our mistakes. However, what is now happening at Meritor gives one an ominous and eery sense of deja vu. I suggest that you review the minutes of your Board's October and November, 1988 meetings. Speaking at one such meeting in early November, 1988, Paul Fritts, then the Director of Bank Supervision, stated:

> "If in fact they (MCorp) had a liquidity squeeze . . . we would capture 16 of the banks . . ."

After discussing other ways to "capture" even more of MCorp's banks, he stated:

> "Makes it a pretty -- pretty good package, and all you really need to do -- and I hate to say it this way but -- is to -- to have a liquidity insolvency . . ."

The Dallas Fed then cut off Mcorp from further borrowings (just as the FHLB has just done to Meritor) resulting in a run on the bank which caused the liquidity insolvency which ended up killing the bank. As you also know, the courts later ruled that the FDIC had "manufactured" the insolvency and had "plotted" to close as many of the MCorp banks as possible so as to be able to sell them to BancOne. Have you learned nothing from that experience? Are you now trying to deliberately force a liquidity insolvency at Meritor in order to use it as the excuse to seize the bank without having to answer the supervisory goodwill question which you promised to answer within two weeks? The weight of the evidence would certainly lead one to that conclusion. On the other hand, perhaps this is just a case of post-election gridlock, or of deferring the decision until after the administration changes. However, it is no secret that at the suggestion of the FDIC, at least five institutions have been conducting due diligence reviews on Meritor's premises within the last month. As a matter of fact, I have been told that lawyers for First Fidelity are grumbling about having been allegedly ordered by top management to clear their personal calendars for the weekend just before Christmas.

At this writing, Meritor is a solvent institution with over $30 million in tangible capital, equity which belongs to its shareholders. With the closing yesterday on the sale of its Florida subsidiary, Meritor's leverage ratio now should be nearly six percent, considerably higher than the four percent required of most institutions, presuming, of course, that as the FDIC promised Meritor in 1982 -- and as has been the case since -- the supervisory goodwill connected with the WSFS transaction counts towards regulatory capital. Instead of reneging on a contract which it has honored for 10 years and allowing the bank to slowly bleed to death, I would think the FDIC should at the very least make a public statement and allow Meritor to submit a capital plan -- an opportunity afforded just about every other troubled institution that I can think of that was subsequently taken over.

So far, Meritor has not cost the taxpayers a dime. And despite what greedy competitors who wish to take advantage of the situation in order to "capture" the oldest S&L franchise in America for themselves may tell you, this bank <u>can</u> make it without the taxpayer having to expend even a penny. But it can do so only if the FDIC continues to keep its word -- as it has for the past 10 years. If the FDIC chooses instead to change the rules in the middle of the game, not only will the taxpayer suffer, but thousands of employees, stockholders, bondholders and other stakeholders will also be caused irreparable harm. The only ones to gain will be (in addition to whatever competitor manages to acquire this venerable, 176-year-old institution via taxpayer subsidy) the <u>lawyers</u> who, I assure you, will be collecting litigation fees well into both of our collective retirements. Until the FDIC makes a clear and unequivocal statement that it intends to honor its binding contract with Meritor, however, you will not be able to convince me or many other people that this is not just another example of regulators being the <u>cause</u> of the problem instead of the solution. Your spokesman told the press that Meritor would have an answer by November 7. <u>Where is it</u>? By your remaining silent, the bank is dying a slow death, bleeding every day. The franchise becomes less and less valuable with every passing minute. Pending transactions to sell assets to boost capital are being delayed. Employee morale is at rock bottom. <u>They deserve an answer</u>. <u>Simple fairness</u> demands a response.

The taxpayers of this country have been forced to pick up the tab not only for the S&L and commercial banking mess, but also for the mess caused by the regulators' wrongful actions in the takeovers of Empire, MCorp, FirstRepublic (Delaware), Bank of New England, etc. etc. In addition to the hundreds of millions in legal fees incurred by the FDIC to defend itself (at taxpayer expense, of course), the taxpayer will also be forced to pay an equal or greater amount in damages to shareholders and bondholders of these institutions. <u>Be on notice</u> that the same thing will happen with Meritor if they are, to use Paul Fritts' own word, "captured" via the same practices used in the past which various courts have found to be "deceptive", "disingenuous" and even "fraudulent". (Your lawyers can find the citations). It does not have to be, however. This situation need not cost the taxpayer a dime. The FDIC has a legal, moral and ethical obligation to immediately announce that it is standing by its word, that it will honor its commitments, that it will not breach a contract which it has honored for 10 years now. Anything less will be further evidence of regulatory bad faith.

To conclude, I want to make it crystal-clear that Meritor is not asking for a favor, for forbearance, for special treatment or for a relaxation of the rules. It is merely asking for that to which it is legally entitled: specific and continued performance of a long-standing, acknowledged obligation and contract of the United States government to deliver what it bargained for when it asked Meritor to assist it 10 years ago in the resolution of the Western Savings Fund Society failure. There are already, as you are well aware, 80 lawsuits pending against the government for breach of contract with regard to supervisory goodwill issues. You may rest assured that if Meritor is "captured" without fair and adequate compensation being paid to its shareholders, complaint number 81 will be immediately forthcoming.

Please let me or Roger Hillas hear from you immediately. My home number, should you need it, is 302-652-2555.

Yours very sincerely,

Gary E. Hindes

cc: Hon. Henry B. Gonzalez
  Chairman, House Banking Committee
Hon. Donald Riegle
  Chairman, Senate Banking Committee
Hon. Arlen Spector
Hon. Harris Wofford
Wilbur Ross
  Rothschild, Inc.

Enclosure