

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

§ MDL Docket No. 1446

§ Civil Action No. H-01-3624

§ **(Consolidated)**

§ CLASS ACTION

§ **NOTICE OF FILING DECLARATION**
§ **OF ANDREW S. FASTOW IN**
§ **SUPPORT OF LEAD PLAINTIFF'S**
§ **BRIEFS AT DOCKET NOS. 2032, 3820,**
§ **4806, 4915, 4976 IN CASE NO H-01-**
§ **3624; AND DOCKET NOS. 20, 57, 65,**
§ **72, 73, 77 IN CASE NO. H-03-5528**

[Caption continued on next page]

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

TORONTO-DOMINION BANK, et al.,

Defendants.

§ Civil Action No. H-03-5528

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§ CLASS ACTION

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THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

ROYAL BANK OF CANADA, et al.,

Defendants.

§ Civil Action No. H-04-0087

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§ CLASS ACTION

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DECLARATION OF ANDREW S. FASTOW

I, ANDREW S. FASTOW, do declare as follows:

I. INTRODUCTION

1. I attended Tufts University, graduating in 1984, and then Northwestern University in Chicago for a Masters of Management degree (specializing in Finance), graduating in 1986. I then worked primarily at Continental Bank in Chicago before moving to Houston in 1990 to join Enron, where I worked, through late October 2001, primarily in various financial jobs. From 1998 through October 2001, I was the Company's Chief Financial Officer, and I led the Global Finance department.

2. As a result of my work at Enron, I have personal knowledge of the matters stated here and will testify to them. Enron, a large public company, had its common stock listed on the New York Stock Exchange. The Company also had other publicly traded securities, including securities of related entities, the price and value of which sometimes depended upon Enron's common stock, financial condition or credit rating. Enron made periodic filings with the SEC, and interacted with the credit-rating agencies, including Moody's, S&P and Fitch, which rated Enron's and some of its affiliates' debt securities. Until third-quarter 2001, the Company's outside auditor, Arthur Andersen, audited Enron's financial statements and issued opinions that those financial statements fairly presented its financial condition and results from operations in accordance with Generally Accepted Accounting Principles ("GAAP").

3. While head of the Global Finance Group, and as CFO, I was involved with Enron's dealings with a number of financial institutions, including Citibank ("Citi"), J.P. Morgan Chase ("Chase"), Canadian Imperial Bank of Commerce ("CIBC"), Credit Suisse First Boston ("CSFB"), Barclays, Merrill Lynch ("Merrill"), Royal Bank of Scotland ("RBS"), Royal Bank of Canada ("RBC"), Toronto Dominion Bank ("TD"), and Deutsche Bank ("Deutsche"). Among these were some of our Tier-1 Banks, which included Citi, Chase, CSFB, CIBC, Deutsche, Barclays, and RBS.

I had frequent contact with some of their executives in connection with the transactions Enron did with them.

4. I pleaded guilty to criminal charges resulting from my actions while Enron's CFO, including [manipulating and falsifying] the Company's financial statements. As stated in my plea agreement, while CFO, I and other members of Enron's senior management fraudulently manipulated Enron's publicly reported financial results. Our purpose was to mislead investors and others about the true financial position of Enron and, consequently, to artificially inflate the price of Enron's stock and fraudulently maintain Enron's credit rating. I testified as a government witness in *United States v. Skilling and Lay*, No. H-04-25 (S.D. Tex.). I understand that several Enron officers with whom I worked closely have pleaded guilty to charges arising from their involvement in Enron's financial and business affairs.

5. I acknowledge my conduct for which I pleaded guilty. I will neither mitigate, justify, nor excuse what I did. In many instances, the financial transactions in which I engaged related to Enron, were done with the knowledge of senior management, some of Enron's banks, and others, and were done primarily to meet Enron's financial reporting and credit-rating targets.

6. I believe that my work made the Company look more healthy and profitable than it actually was. I worked with certain banks to accomplish this goal and I viewed certain banks as problem solvers. In many instances, the banks primarily devised the financial structures, which contributed to Enron achieving its financial reporting objectives. I believe that based on conversations with certain bankers, they knew that the prepays and some of the share-trust transactions created the false appearance of funds flow from operations and that some of the FAS 125 and 140 transactions and LJM partnerships' transactions created the false appearance of earnings and funds flow from operations, and reduced reported debt.

7. I am neither a lawyer nor a CPA. My views are based on my experience as an Enron executive and my personal interaction with bankers, accountants, lawyers, and others. I and others, including certain of Enron banks worked together, intentionally and knowingly, to engage in transactions that would affect Enron's financial statements. I believe that an investor would have had great difficulty understanding the true financial condition of Enron due to certain transaction structures and how they were disclosed, including the prepays. Some of the structured-finance transactions, which were structured and arranged by the banks and the Global Finance Group contributed to Enron's reported financial results. The structured-finance transactions were typically sized to compensate for the difference between Enron's actual financial performance and its goals, which included a 15% after-tax earnings-per-share growth rate, an approximate 40% debt to capitalization level, and an approximately 4.0 times funds flow from operations to interest expense ratio. Enron management discussed that they believed that the market would require these financial metrics, among others, in order to justify Enron's stock price or to continue to transact business on existing terms.

8. Certain Enron banks, particularly Merrill, CSFB, RBS and Barclays, worked to solve certain of our financial problems. We told certain banks of our financial objectives and they, in many instances, created solutions utilizing complex financial structures, including prepays, FAS 125/140 deals, share trusts, minority interests, and synthetic leases. I believe that the manner in which some of these deals were reflected in Enron's financial statements might make it difficult for an investor to understand Enron's true financial condition and was deceptive. I believe that the banks presented these structured-finance transactions in response to the problems we described to them. We paid a premium – in the aggregate, hundreds of millions of dollars – in order to engage in structured-finance transactions that contributed to causing Enron to report its financial statements in the desired manner.

9. My conversations with senior bankers led me to believe that certain banks understood that some of the transactions were done primarily for generating certain accounting benefits and financial-reporting objectives for Enron, including higher funds flow from operations, lower debt and increased (current period) income.

10. I was hired at Enron by Mr. Skilling in 1990 primarily to execute off-balance-sheet financings. In 1997, when I assumed responsibility for finance at Enron, I engaged in transactions, such as Nighthawk and Nahanni, with certain of Enron's banks that had a material impact on Enron's financial statements. Nighthawk, presented to me by Citi's Larry Nath before he moved to DLJ/CSFB, enabled Enron to report a healthier balance sheet than it otherwise would have. Mr. Nath explained to me that the purpose of Nighthawk was to convert debt into minority interest. Nahanni, also designed by Citi, was done primarily to generate funds flow from operations. I cannot think of another reason why, in practical business terms, a BBB+ rated firm like Enron would buy and monetize T-Bills, as Enron did in Nahanni other than to generate funds flow from operations. I can recall no real business purpose associated with Nahanni or Nighthawk.

11. Enron paid a premium – above what a bank would earn for an on-balance-sheet financing – for off-balance-sheet structures that created funds flow from operations and other financial reporting benefits. In some reporting periods, structured-finance transactions had a material impact for Enron in meeting its financial reporting objectives.

12. As the General Partner, I controlled LJM1 and LJM2, while at the same time I was Enron's CFO. I told investors in LJM that LJM would usually not manage or operate the assets it received from Enron. I emphasized that the assets would generally be held for a short term and that Enron would continue to manage them. I made presentations intending to convey to the bank investors in LJM that I believed that it was in Enron's best interest for Enron to find a way for LJM

to exit its investments without loss. Merrill and I made joint presentations to potential investors, which indicated that LJM2 would be used to manage Enron's balance sheet and income statement.

13. I am aware that I, or other Enron executives, provided Merrill, Barclays, CSFB, RBS, and other Enron banks with oral assurances or structural features that I believe would have assured them of the following in certain structured-finance transactions: (1) a return of their investment capital; (2) a return on capital at a specified rate; and (3) an exit from investments within a defined period of time. I believe that without these assurances or structural features, the banks would not have entered into all of these transactions. Based on conversations I had with certain bankers, I believe that they understood that the assurances and certain other features would have caused the accounting and financial-reporting to be different than if it were documented.

14. As Enron's CFO, I was responsible for the Company's funding and credit-agency relationships, among other things. I talked to rating agencies and analysts at times. On occasion, we engaged banks to help us with rating-agency presentations. I believe that Merrill and CSFB participated in some of our presentations to the rating agencies. I did not disclose any earnings manipulation to the rating agencies. I understand that people who worked for me intentionally understated the funds-flow effect of certain transactions at meetings with credit-rating agencies.

15. I believe that I received higher compensation because I engaged in structured-finance transactions that contributed to causing Enron to meet its financial reporting objectives. I do not believe that I would have received the same compensation had I not executed structured-finance transactions. Most of the other traditional CFO responsibilities were handled by people who did not report to me.

II. BARCLAYS BANK

16. Barclays, one of Enron's Tier-1 Banks, engaged in at least eight transactions during 1997 to 2001, including Chewco, J.T. Holdings, Nikita, Prepays, Metals and SO₂. These

transactions contributed to causing Enron to report lower balance sheet debt and created the false appearance of funds flow from operations.

17. Barclays required assurances or structural enhancements to certain transactions in order to minimize Barclays' financial risk. I intended those assurances to operate as guarantees, and I do not believe that Barclays would have entered into the transaction without them. In connection with the verbal assurances, I discussed with certain bankers at Barclays that it would not make sense for Enron to allow a bank to lose money on a relatively small equity investment because it would damage our relationship with that bank and would negatively impact Enron's ability to access capital from that bank, which was vital to Enron's growth. I believe that Barclays received fees on these eight transactions above what it would have earned for standard loans. I discussed the purpose of these transactions with the bankers involved and I believe that they understood they were being paid a premium because of the impact of these structures on Enron's public financial statements.

18. I discussed with certain Barclays bankers the 3% equity-at-risk requirements under SPE accounting necessary for a company to record a sale and to deconsolidate an asset. In doing these eight transactions, I or my staff met or spoke with Richard Williams, Eric Chilton, John Sullivan, George McKean, Bob Diamond and others at the bank.

19. I have seen a 2002 Barclays "post-mortem" document detailing the bank's conduct with Enron over the previous years.¹ This post mortem states that the Company had a history of protecting lenders to its SPEs through verbal assurances, which translated into "guarantees," and that "Enron was always willing to pay higher compensation" for this type of arrangement.² This memo indicates that Barclays understood that the purpose for its Enron transactions "was mostly to achieve

¹ Ex. 10156.

² *Id.* at BARC000472161.

an accounting objective rather than shed risk,” and that “[t]he driving force for each SPV transaction was to raise debt that was either (i) off the balance sheet entirely or (ii) if on the balance sheet, then disguised as an operating liability.”³ The bank characterized our verbal assurances as “near virtual guarantees,” in deals “transacted purely for accounting reasons.”⁴ I believe that, based on my interactions with Barclays’s executives, these are generally accurate descriptions.

A. JEDI/Chewco – December 1997

20. JEDI/Chewco accounted for a significant portion of Enron’s 1997 income. It also contributed to Enron’s reported earnings in 1998-2000. Chewco was an SPE set up at year-end 1997 in order to take the place of CalPERS in an existing joint venture known as JEDI. Chewco was formed to buy CalPERS’s 50% interest. I and Michael Kopper, who had a carried interest in Chewco, controlled the entity. I believe that Chewco should have been consolidated with Enron because it did not have at least 3% at-risk equity, which was required for SPE accounting of the entity. Chewco did not have 3% at-risk equity because of two structural features, including one in which Barclays required that its equity loan be partially secured by cash collateral.

21. The bank required that cash-reserve accounts be established at Barclays in order to provide security for its loan that funded the 3% equity. I discussed with senior Barclays executives how the cash-reserve account would become funded. The process is described in a side letter.

B. J.T. Holdings – December 2000

22. In late 2000, I understand that an existing off-balance-sheet synthetic-lease structure – J.T. Holdings – was set to expire, which would have caused millions of dollars of debt to be consolidated with Enron’s balance sheet. I recall that Enron had entered into a lease transaction in

³ Ex. 10156 at BARC000472161; *id.* at BARC000472163.

⁴ *Id.* at BARC000472160, BARC000472168.

1995 by which Enron/NGL Trust, an SPE, purchased assets from the Company, which then leased the assets back from Enron/NGL Trust for five years. When that lease was about to expire, Enron/NGL Trust had only two assets left – a methanol plant and a storage facility. I recall that Barclays worked with Enron to create a new structure to keep the lease off our balance sheet. It is my understanding, based upon my interactions with Barclays bankers and discussions with my staff, that Barclays believed that the leased assets were overvalued. I understand that Ben Glisan was told that the bank would participate only if it were to receive assurance from Enron that it would not lose its 3% equity and that certain structural features, intended to minimize its risk, were made part of the structure. I understand that Ben Glisan gave such an assurance.

23. I have seen bank documents that state:

- Barclays and Enron agreed that J.T. Holdings would be a “‘trust me’ deal.”⁵
- The J.T. Holdings synthetic lease “should not have given rise to market risk but Barclays accepted a de facto guarantee from Enron to cover a perceived deficiency in the methanol plant’s value.”⁶
- “[Barclays] would be relying on Enron’s strong verbal assurance that it [was] not the intention of Enron to shift the residual value risk to the banks.”⁷
- “[Barclays] agreed to go forward on the basis of explicit verbal support from the company’s Treasurer.”⁸
- “Specifically, Ben Glisan . . . [committed] to [Barclays that] under all circumstances Enron [would] exercise its purchase option at a price sufficient to repay Barclays”⁹

⁵ Ex. 10868.

⁶ Ex. 10156 at BARC000472165.

⁷ Ex. 52108 at BARC000171181.

⁸ Exs. 10142, 10451.

⁹ Ex. 10142.

This is all consistent with my understanding of the verbal assurances that Mr. Glisan provided to Barclays.

C. Nikita/Besson Trust – September 2001

24. This FAS 140 deal was structured by Barclays and Enron, in late September 2001, to look like a true sale of the Company's interest in EOTT. I understand that Barclays considered the value of the underlying assets to be insufficient to justify the value of the deal; as a result, Barclays required and received an oral assurance from Ben Glisan that the Company would repay the bank's 3% equity investment in the SPE.

25. I have seen bank documents that state:

- "The market risk, however, had been covered by verbal assurances."¹⁰
- Barclays was "relying on [Enron's] verbal understanding to make [the bank] whole."¹¹
- "Barclays would rely on assurances from Enron's Treasurer that Enron would make up any short fall in the equity return."¹²
- "Enron intended to account for the Nikita Transaction off balance sheet," which was the principle purpose of the transaction, and that Barclays understood Enron's objective in this deal "[was to] significantly [understate] the debt level . . . on [its] balance sheet."¹³

These bullet points are consistent with my understanding of the transaction.

D. Roosevelt, Nixon and CSFB Prepays

26. As I explained to the Finance Committee in a slide presentation, Enron viewed prepays as financings, rather than as commodities transactions. In essence, these three transactions

¹⁰ Ex. 10156 at BARC000472165.

¹¹ Ex. 50857.

¹² Ex. 10146 at DPOEX00000275; Ex. 10430.

¹³ Ex. 10334 at BARC000190601.

and similar prepays done by my staff with certain of Enron's banks, were done so that Enron could report funds flow from operations rather than funds flow from financings.

27. The effect of these prepays was set forth in the guilty plea of former Enron Assistant Treasurer Timothy DeSpain:

Another mechanism by which Enron achieved the artificial cash flow targets it set for itself was through transactions commonly referred to within the company as "prepays." The reporting of the cash received from these transactions was a means of demonstrating to the rating agencies Enron's ability to recognize cash from its mark-to-market trading book. Although the prepay transactions were accounted for as commodity transactions and reflected on Enron's books as a trading liability, the transactions in substance created debt-like obligations to the financial institutions that advanced funds to Enron through the transactions. I and others told the rating agencies that the cash generated from Enron's trading operations was from the sale or "monetization" of trading contracts or the future cash flow streams from those contracts. Fundamentally, the agencies were led to believe that Enron was generating cash by selling an asset, when in fact Enron was generating cash by incurring a future obligation that operated as debt. Over the course of my time as Assistant Treasurer, Enron's obligations under the "prepay" transactions grew to approximately \$5 billion. I was directed by Enron's Treasurers not to reveal to, or discuss with, the credit rating agencies, the nature and extent of the prepay transactions entered into by Enron, and I complied with this direction. I and the Treasurers recognized that if the rating agencies knew about the nature and extent of Enron's prepay transactions, such information would have had a materially negative effect on Enron's credit rating.¹⁴

In my view, this is a fair description of our prepays generally. I believe the primary purpose and effect of the conduct of Barclays and Enron, in structuring, funding, and executing the Roosevelt, Nixon, and the CSFB prepays, was to cause the Company to financially report cash flow from financing activities as funds flow from operations. In so doing, Enron presented a deceptively positive credit profile.

E. SO₂

28. Barclays and Enron engaged in two SO₂ transactions, one in September and another in October 2001, providing the Company with funds through a structure that was intended to appear

¹⁴ Ex. 21328.

to be a sale of Enron SO₂ credits. I understand that the transaction was executed via an entity called Colonnade, a vehicle that Barclays organized and controlled. I remember talking to Ben Glisan about whether he thought the bank could set up and execute the transaction. Mr. Glisan indicated to me that Barclays would control Colonnade.

29. I have seen a bank document that states: "These transactions have the effect of significantly under-stating the debt level and assets on the balance sheet."¹⁵ I believe this is a fair characterization.

F. Metals/Camelot I and II

30. I understand that Barclays and Enron engaged in two separate Metals transactions – Camelot I and II – in September and December 2000. I have seen a document that indicates Enron assured the Bank that it would exercise the option component in these transactions: "The first thing that needs to be established is that these are being priced on the understanding that the options are going to be exercised, *i.e.*, it is understood that the purpose of the option is to meet accounting requirements not to give a trading opportunity."¹⁶ I believe that the accounting for these transactions was wrong if there was a side agreement regarding the option exercise.

III. MERRILL LYNCH

31. At year end 1999, Merrill engaged in several transactions that had the effect of allowing Enron to report higher income at year-end than it would otherwise have been able to report: the Nigerian Barges transaction, the power trades transaction, and certain LJM2 transactions.

¹⁵ Ex. 10334 at BARC 000190601.

¹⁶ Ex. 50788 at ECTe003431430.

A. Nigerian Barges

32. In December 1999, Enron could not find a buyer at an acceptable price for its interest in the Nigerian Barges, so Enron requested that Merrill purchase them temporarily so that Enron could report the transaction in 1999.

33. I had at least one private conversation with Schuyler Tilney in December 1999 about Merrill buying the barges. In response to his query, I discussed with Mr. Tilney why Enron was asking Merrill, rather than LJM2, to purchase the Barges at that time, and I told him of the assurance Skilling had given to me with respect to the barges. After the terms of the transaction had been agreed upon, Mr. McMahon asked me, as Enron CFO, to call the head of Merrill's investment-banking group to give him certain assurances. On December 23, 1999, I participated in a conference call, during which I assured Merrill's Daniel Bayly that the bank's investment would be repaid within six months and that the bank would receive its pre-determined rate of return. I testified about this conversation in the Lay/Skilling trial and my testimony was truthful and accurate.

34. I believe that Merrill agreed to purchase the Nigerian Barges from Enron on a temporary basis only because I gave assurances that I intended as a guarantee that Merrill would receive three things: return of its investment, return on its investment, and an exit from ownership within six months. I understood from Mr. McMahon and Mr. Tilney that Merrill required each of these things. In my opinion, the guarantee from me reduced the risk to Merrill in a manner sufficient so that Arthur Andersen, had it known of the guarantee, would not have treated the transaction as a true sale. As a result of the true sale treatment, Enron recorded higher income and funds flow at year-end than it otherwise would have. Based upon my discussions with senior Merrill executives, I believe that Merrill understood the impact this transaction would have on Enron's financial statements, that the guarantee provided by me would likely change the accounting treatment of the

transaction, and that the only reason for the transaction was to receive the desired accounting and financial-reporting treatment.

35. As discussed on the conference call, I arranged for LJM2 to purchase the barges from Merrill in June 2000. Merrill received the pre-arranged compensation.

B. 1999 Power Trades

36. At year-end 1999, I understood that Enron entered into electricity-commodity contracts with Merrill that had the effect of increasing Enron's reported income by \$40 million or more and contributed to causing Enron to report higher income at year end than it would otherwise have been able to report. Based on my conversations with senior Enron and Merrill executives, I understood that, at the time the transaction closed in December 1999, there was a verbal agreement between Mr. Baxter and Mr. Tilney to unwind the transactions in 2000 in exchange for a predetermined fee to be paid by Enron to Merrill. Before the transaction closed I assured Mr. Tilney that Mr. Baxter's verbal agreement would be honored by Enron. I do not believe Merrill would have entered into these transactions absent the agreement to unwind the transactions and to pay the predetermined fee.

37. In December 1999 Cliff Baxter came to my office. He told me he had negotiated a set of power trades with Merrill that would generate about \$40 million in earnings at year-end 1999, but which would be unwound and reversed in 2000. Mr. Baxter told me he had dealt with Mr. Tilney (and perhaps others) on this transaction.

38. Also in December 1999, Mr. Tilney called me. The transaction had not yet closed. Mr. Tilney asked whether he could trust Mr. Baxter to honor the oral agreement to unwind the power-trade deal and to pay Merrill the prearranged compensation. I assured Mr. Tilney that the verbal agreement to reverse the transaction would be honored and that he could trust Mr. Baxter in that regard because he represented Enron. It was my impression from the conversations with Mr.

Tilney and Mr. Baxter that Merrill would not close the deal without this oral assurance to unwind the deal and to pay Merrill the fee.

39. In the first half of 2000 Mr. Tilney called me again about this transaction and told me that Mr. Baxter was trying to “re-trade” (*i.e.*, renege on) the oral agreement by cutting Merrill’s fee. He asked if I knew anything about it and if I could do anything. I told Mr. Tilney that I would talk to Mr. Skilling about it.

40. I talked to Mr. Skilling and told him that I understood from Merrill that Mr. Baxter was trying to renege on the deal. I voiced a general concern that renegeing on deals would not be well received by the bank market and that we needed to honor our agreements with the banks. Mr. Skilling said he would take care of it.

C. 1999 LJM2 Transactions

41. LJM2 was a private equity fund in which I was the general partner. Merrill, I and others structured LJM2, and Merrill and a number of its executives invested in the fund. Based on my conversations with its executives, Merrill understood that LJM2 would be used to manage Enron’s earnings and balance sheet, and that the transactions undertaken by LJM2 with Enron in December 1999 resulted in Enron reporting higher earnings than it would have otherwise absent those transactions with LJM2.

42. In August 1999, I prepared a sales presentation which I gave to Merrill, CSFB, Deutsche, and other banks who might invest in LJM2. This presentation described the “Opportunity” this way:

Companies sell assets with superior return potential to:

- Manage balance sheet
- Manage income statement

“Managing” was understood to mean making the numbers what Enron desired them to be. Managing its earnings and balance sheet allowed Enron to create the false appearance of earnings and funds flow, and lower debt, thereby obfuscating the true underlying economic performance and health of the Company.

43. The first closing of LJM2 took place on December 20, 1999. Before closing, each investor received a Supplement to the PPM, which described the year-end transactions with Enron: The Nowa Sarzyna power plant in Poland; investment in both equity and debt of ENA CLO 1 Trust also known as Project Merlin; purchase of an interest in an Enron SPV known as MEGS, LLC; and an investment in an Enron SPV known as Bob West Treasure LLC.

44. Merrill understood that in conjunction with some of the transactions, LJM2 received certain assurances from Enron management or structural features attendant to the transactions that caused the equity holders – LJM2 – to have less risk in their investment than a true arms-length third party would have had. These transactions helped Enron to meet its year-end financial-reporting objectives. Not all of these assurances and structural features were disclosed in Enron’s financial statements. As a result, I do not believe that investors reading Enron’s financial disclosures would have understood the true effect of those transactions and would have tended to be deceived about them.

45. Six year-end LJM2 deals were disclosed to the banks in the PPM Supplement. I discussed this with many Limited Partners.

46. I discussed the Raptor I concept and structure with Merrill. I explained to Merrill how the Raptor vehicle would be used by Enron to increase its current period earnings, and the fact that LJM2 would receive the return of and on its investment before any hedging would begin. LJM2 also provided a written description of the Raptor vehicle to these investors prior to the date on which they were to fund the transaction by responding to capital calls. As I stated in my plea agreement, I

and others knew that the Raptors were not sufficiently independent from Enron and should not have been deconsolidated. As a result of the Raptor vehicles, Enron overstated its earnings.

IV. CSFB

A. CSFB's Relationship with Enron

47. CSFB was a Tier-1 Bank for Enron, as was DLJ before their merger, because of its deal structuring, as well as other capabilities. I primarily dealt with CSFB executives, including Robert Furst, the primary banking relationship manager for CSFB before Osmar Abib took over; Bayo Ogunlesi; and Bob Jeffe. These CSFB executives aggressively solicited Enron's business when I was CFO. CSFB often advised Enron on purchases and sales of assets, as well as on structuring transactions, sometimes using these assets. Because the amount and type of business CSFB did for Enron, and based upon my conversations with Mr. Jeffe, it was my impression that CSFB was one of the banks most familiar with Enron's assets. I had conversations with senior CSFB executives regarding my belief that the market value of certain Enron assets was less than the book value of those assets.

B. Share Trusts

48. Mr. Nath was the co-head of CSFB's Structured Products Group. I attended several meetings in which Mr. Nath presented transaction structures to Enron. In my opinion, Mr. Nath's presentations were exemplary because they contained four elements: (1) an articulation of how the transaction would contribute to Enron meeting its financial reporting objectives; (2) an explanation that Mr. Nath had shown his structure to outside counsel and that the counsel had indicated the type of opinion it would render ("would," "could," "should"); (3) a description of the accounting for the transaction, based upon his discussions with his accountants; and (4) a description of how much "credit" that the rating agencies would give to the effect of the transaction when they evaluated

Enron's financial statements. I viewed Larry Nath as the person most responsible for developing and executing the following transaction structures: Marlin, Whitewing, Osprey, and Firefly.

49. The primary purpose that Enron entered into the share-trust structures was to lower its reported debt and, in some cases to increase reported funds flow from operations. In the aggregate, these transactions lowered Enron's reported debt by billions of dollars and increased reported funds flow from operations by billions of dollars.

50. Enron paid significant fees to CSFB related to these transactions. Based on my conversations with CSFB executives, both Enron and CSFB understood that: (a) these vehicles were a way to finance assets and were not true operating companies; (b) Enron effectively controlled the vehicles; and (c) the book value of the assets in the vehicle was, in some instances, in excess of the market value of the assets.

C. LJM1

51. CSFB and RBS were a Limited Partners in LJM1. I explained to CSFB and RBS bankers that their investment, in my opinion, did not have equity risk. Rather, we discussed that it had credit risk analogous to that of a Reg-U loan.

52. Mr. Ivers, a CSFB banker, helped structure the transaction so that it would be over-collateralized; this helped to reduce the equity risk for the Limited Partners.

53. I discussed with CSFB and RBS bankers that SwapSub, a subsidiary of LJM1, would likely have a material impact upon Enron's reported earnings. Based on my interactions with their bankers, I believe that CSFB and RBS understood that I was running LJM Cayman and that its primary purpose was to create the SwapSub subsidiary in order to hedge the Rhythms stock held by Enron.

54. I recall that CSFB structured, presented, and executed the SAILS transaction, which was designed to capture the appreciated value of Enron stock in LJM Cayman and to make available

additional capital for LJM to invest. As I recall, certain CSFB bankers explained their SAILS structure as a way to avoid certain Enron stock-related prohibitions in LJM Cayman. From my conversations with its bankers, I believe RBS understood this as well.

D. FAS 140 Deals

55. CSFB and Enron entered into several FAS 140 transactions, including Nile and Nikita. They had a similar impact on Enron's reported financial statements as the other FAS 140 deals that I have discussed in this declaration.

E. Prepays

56. The prepays that Enron did with CSFB, like those done with other Tier-1 banks, were structured in a manner so that Enron would report funds flow from operations, rather than funds flow from financing. In my view, as structured, they were reported on our financial statements as commodity trades when, in fact, they were financings. Based on my conversations with certain CSFB bankers, and bankers at certain other banks that did prepays with Enron, I believe that they understood that the primary purpose of these transactions was to cause Enron to report higher funds flow from operations.

V. DEUTSCHE BANK

57. Deutsche was one of Enron's Tier-1 Banks that designed and engaged in a number of transactions between 1997 and 2001 that had the effect of increasing Enron's reported earnings and funds flows from operations. I believe, based on the level of sophistication of its bankers and my conversations with them, that Deutsche understood the transaction structures would materially impact Enron's financial statements. Deutsche's Paul Cambridge, the bank's relationship manager for Enron, responded to my concern that Deutsche's fees were excessive, saying that the fees were cheap considering all the earnings we're generating for you.

58. Mike Jakubik, head of Deutsche's Finance Group, came to Enron from Bankers Trust. He worked at Enron for more than one year in the Global Finance Group. In that capacity, Mr. Jakubik attended finance meetings on a regular basis and discussed Enron's financial objectives. Before returning to BT/DB, he structured finance transactions that had a material impact upon Enron's reported financials and I discussed with him that Enron was not as healthy as the financial statements led investors to believe.

A. The Tax Transactions

59. Enron used certain Deutsche structured-tax transactions in order to increase its reported earnings. I believe that these transactions were not business transactions that happened to have a tax benefit. Rather, it is my understanding that the tax transactions were done to create tax and accounting benefits. I believe that Enron would not have done the transactions had it not been for the tax and accounting benefits that they created. The benefits were twofold: First, the transactions reduced taxable income, which had the effect of increasing after-tax earnings-per-share. Second, the transactions were structured in a manner that allowed Enron to report future anticipated tax deductions as current-period, pre-tax income.

60. Deutsche sold certain tax structures to Enron, which were handled through Mr. Causey's Accounting group. I recall the bank communicating to us that it only did these tax deals with a few companies and that it expected to get paid well for these structures because, to avoid attracting IRS attention, they could only do the transactions a few times. Mr. Causey reported on these deals at some of the management-committee meetings that I attended. I recall that there were several tax transactions, including some with Deutsche, that lowered our taxable income or that increased pre-tax earnings. The Accounting department was credited within Enron for increasing reported earnings for Enron.

61. I understood from Mr. Causey's presentations that the Deutsche tax structures required Enron to represent it was in certain businesses that it really was not in, including third-party real-estate management and investing in corporate bonds.

B. Sutton Bridge

62. Sutton Bridge was a structured financing that involved transfers of shares in an English power plant from Enron to an SPE. I recall Mr. Skilling joking that Enron sold the Sutton Bridge power plant three times and booked profit all three times. Jeff McMahon and Deutsche designed the structure so that Deutsche would have little, if any, ownership risk. I recall that we accounted for each of these transfers as a true sale, but that Mr. McMahon claimed the *de minimis* risk transfers as one of his largest accomplishments for the year.

C. LJM2

63. As I've stated in this declaration, Enron used LJM2 to manage its balance sheet and earnings. Deutsche was a member of the LJM2 Advisory Committee, which was created at the insistence of Andersen. The Auditors required that the Advisory Committee have certain significant powers to ensure that I did not fully control LJM2. For instance, Andersen insisted that the Committee members have the power to remove me as General Partner without cause. The Committee had to be informed 10 days in advance of transactions that LJM2 entered into with Enron. With the exception of the initial investments, I believe that LJM2 provided members of the LJM2 Advisory Committee with the necessary information as required by Andersen. The members of the Committee were informed that Andersen had insisted on its creation. I believe they understood their obligations.

VI. ROYAL BANK OF SCOTLAND

64. RBS engaged in several structured-finance transactions in which I, as CFO, was involved. I had a close working relationship with certain RBS bankers and communicated with them regarding some transactions. I viewed RBS, after its merger with NatWest, as a Tier-1 Bank.

65. I have seen RBS documents, in connection with approving its equity investments in SPEs – to which financial assets were transferred in FAS 125/140 transactions – that state that RBS relied on verbal assurances that it would be made whole and receive a return on its equity investment. For example, I saw such statements as “Enron have made an informal agreement to ensure that we achieve our required return and are made whole on the equity principal at transaction maturity,”¹⁷ “considerable reliance will still have to be placed on Enron’s verbal undertakings to see RBS whole on the equity tranche,”¹⁸ “here we are entirely reliant on Enron’s verbal assurances to make us ‘whole,’”¹⁹ “the whole thing hinges on an “understanding” with Enron [that] they will buy it all back,”²⁰ and “these transactions placed reliance on Enron through an informal arrangement to make the Bank whole for £3.26M in terms of return on equity and £6.3M of equity principal.”²¹ I also saw an RBS document that recites oral guarantees given by Enron’s Paul Chivers to Tom Hardy that Enron would ensure repayment of the bank’s equity investment plus a 13.5% return on such equity.²²

¹⁷ Ex. 33788 at RBS3141124.

¹⁸ Ex. 33790 at RBS3141117.

¹⁹ Ex. 33798 at RBS3141185.

²⁰ Ex. 33789 at RBS6074362.

²¹ Ex. 33796 at RBS3120874.

²² Ex. 44310.

66. The oral assurances, informal arrangements, undertakings, understandings, or however such communications are described by RBS, were made by Enron Corp. and Enron Europe personnel with my knowledge and authority. In addition, I have reviewed an RBS e-mail discussing equity risk with respect to an ETOL FAS 125 monetization, which states that the author has “no issue doing this type of deal in view of the verbal assurances we have been given consistently by senior Enron staff – most recently by Andy Fastow to ISR, JANC and other leading lights.”²³ I confirm that I gave and knew of verbal assurances to RBS that it could rely on in connection with approving its equity investment in certain Enron-sponsored SPEs, to which financial assets were transferred in FAS 125/140 transactions. I worked closely with NatWest and RBS executives on transactions that had the financial statement impact of lower debt, higher funds flow from operations and higher income. I believe that they understood the financial reporting problems that I wanted to solve, and that they structured transactions that contributed to causing Enron to report increased earnings and funds flow from operations and reduced debt.

VII. TORONTO DOMINION BANK

67. TD was a Tier-2 Bank with which I dealt. I am aware that, between 1998 and 2001, TD did six prepay transactions with Enron. The purpose of the six prepays were to create funds flow from operations at the end of the quarter. These prepays were similar to the other prepays discussed elsewhere in my declaration.

VIII. ROYAL BANK OF CANADA

68. Based on my conversations with RBC bankers, I believe they understood that certain structured-finance transactions would have had a material impact on Enron’s financial reporting.

²³ Ex. 44308.

69. Although RBC was viewed as a Tier-2 Bank, I treated it as a Tier-1 Bank after the group of bankers from NatWest (RBS), led by Mr. Mulgrew, moved to RBC in the fall of 2000. I had a close, personal relationship with Gary Mulgrew. I had worked closely with Mr. Mulgrew, Giles Darby and David Bermingham when they were at NatWest on transactions that had the financial-statement impact of lower debt, higher funds flow from operations and higher income. I believe that they understood the financial reporting problems that I wanted Tier-1 Banks to solve. I believe that they knew what I expected of RBC, and that they structured transactions at RBC that contributed to causing Enron to manage its balance sheet and generate funds flow from operations. I had worked with RBC on structuring off-balance-sheet transactions to help Enron meet its financial reporting objectives as far back as 1991 with the Cactus transaction, and in 1996 for the Caribou transaction.

IX. ENRON ENERGY SERVICES

70. I met with Lou Pai in his office on at least one occasion to discuss upcoming Performance Review Committee decisions. Mr. Pai was CEO and Chairman of EES at the time. I wanted to ensure his support for people in my Global Finance unit, which had approved transactions that helped EES report higher earnings. I confirmed with Mr. Pai that he understood, because of the assistance of my staff, that EES would not have met its quarterly earnings target without the inclusion of New Power warrants to inflate the EES numbers. EES was otherwise not meeting its earnings objectives from its core business.

71. I understand that losses attributable to the issues relating to the EES receivables problem from the California utilities were moved from EES to the books of ENA because ENA had very large reserves at the time. After David Delainey replaced Mr. Pai in early 2001, I learned that EES was suffering losses from other sources as well, which I understood were also moved to the books of ENA. As one example, I recall hearing from John Lavorato of ENA about a contract in

which EES, under Mr. Pai, had swapped the price of natural gas against the price of milk and booked \$10 or \$20 million from the transaction, which Mr. Lavorato said he would have to revise and absorb as a loss in ENA.

72. I recall a discussion with Mr. Pai and Mr. White, while they headed EES, about how EES was going to recognize the earnings associated with the New Power IPO. Enron had designed a way to recognize the increased value of its remaining New Power investment over several quarters by placing its interest in a FAS 125/140 SPE. As a result, these trickle-down earnings – recognized by EES over several quarters – were recorded as recurring earnings from operations, as opposed to a one-time gain. I do not believe that investors were told that a component of EES operating earnings was actually non-recurring investment income. LJM invested in SPEs that facilitated this treatment and in NPW stock.

73. Ultimately, Enron's position in the New Power Company was placed in Raptor III. When New Power's stock price declined, Raptor III allowed EES and Enron to avoid recognizing the losses associated with the decline in the asset value. When the value of NPW went up, Enron recognized it as recurring income at EES. When the value of NPW went down, Enron did not recognize any losses. I discussed this with Mr. Pai and Mr. White.

I, ANDREW S. FASTOW, under penalty of perjury, declare, state and testify as follows: I have personal knowledge of the facts set forth above and can and will competently testify to those facts. I declare, under penalty of perjury, under the laws of the United States, that the facts set forth above are true and correct. Executed on September 28, 2006, at Houston, Texas.



ANDREW S. FASTOW