United States Courts
Southern District of Texas
FILED
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Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, Plaintiff, v. ENRON CORP., et al., Defendants.	§ § § § § § § §	Consolidated Lead No. H-01-3624
AMERICAN NATIONAL INSURANCE COMPANY, et al., Plaintiffs, vs. J. P. MORGAN CHASE & COMPANY, Defendant.	§ § § § § § § §	Civil Action No. G-02-0299

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs, American National Insurance Company; American National Investment Accounts, Inc.; SM&R Investments, Inc.; American National Property And Casualty Company; Standard Life and Accident Insurance Company; Farm Family Life Insurance Company; Farm Family Casualty Insurance Company; and National Western Life Insurance Company file this their First Amended Complaint against Defendant J.P. Morgan Chase & Co., subject to and without waiving Plaintiffs' Motion for Reconsideration challenging this Court's jurisdictional decision entered August 9, 2002.

I.
Parties

1. American National Insurance Company is a Texas insurance company with its principal place of business at One Moody Plaza, Galveston, Galveston County, Texas 77550.

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2. American National Investment Accounts, Inc. is a Maryland corporation with its principal place of business at 2450 South Shore Blvd., Suite 400, League City, Galveston County, Texas 77573.

3. SM&R Investments, Inc. is a Maryland corporation with its principal place of business at 2450 South Shore Blvd., Suite 400, League City, Galveston County, Texas 77573.

4. American National Property And Casualty Company is a Missouri insurance company with its principal place of business at 1949 East Sunshine, Springfield, Missouri 65808

5. Standard Life and Accident Insurance Company is an Oklahoma insurance company with its principal place of business at 2450 South Shore Blvd., Suite 500, League City, Galveston County, Texas 77573.

6. Farm Family Life Insurance Company is a New York insurance company with its principal place of business at 344 Route 9W, Glenmont, New York 12077.

7. Farm Family Casualty Insurance Company is a New York insurance company with its principal place of business at 344 Route 9W, Glenmont, New York 12077.

8. National Western Life Insurance Company is a Colorado insurance company with its principal place of business at 850 East Anderson Lane, Austin, Travis County, Texas 78752.

9. J.P. Morgan Chase & Company, Inc. (hereinafter, "Morgan"), a national banking institution incorporated under the laws of the State of Delaware, has made an appearance in this case.

II.
Jurisdiction & Venue

10. Defendant does not challenge personal jurisdiction.

11. Venue is proper in Galveston County, Texas, because a substantial portion of the complained-of acts and omission occurred in Galveston County.

12. Subject matter jurisdiction is proper in state court because only state law claims are asserted and there is not basis for federal subject matter jurisdiction.

III.
Nature of the Case

13. This action is brought pursuant to Tex. Bus. & Comm. Code Ann. § 27.01, as amended ("Fraud in Real Estate and Stock Transactions"), Tex. Rev. Civ. Stat. Ann. art. 581-1 *et seq.*, as amended, known as the Texas Securities Act (also known as the Texas Blue Sky Laws), Tex. Rev. Civ. Stat. Ann. art. 581-33; as amended, the Texas common law of fraud, conspiracy, aiding and abetting, negligence, and all other applicable statutory and common law of the State of Texas.

14. Plaintiffs' suit seeks damages caused by Defendant Morgan's acts and omissions in their dealings with Enron through a company known as "Mahonia, Ltd." by which Morgan was purportedly trading oil and natural gas contracts. Defendant Morgan knew and/or should have known that these "trades" were not primarily used to deliver oil and gas, but were instead mechanisms by which Enron could limit and/or modify and/or misrepresent its financial condition. Specifically, Defendant Morgan knew or should have known that Enron was using the "trades" to manage Enron's tax liabilities by transferring losses from one financial reporting period to another, thereby misleading investors and/or shareholders about the true financial health of Enron. These misleading statements, made possible with the help of Defendant Morgan's company Mahonia Ltd., were relied upon by Plaintiffs in their purchase of Enron stock, bonds, preferred stock, commercial paper and other securities.

IV.
Factual Background

15. Enron was engaged in the natural gas, electricity and communications business. Although primarily an energy company focused on the natural gas industry, in 1997 Enron began a diversification program that included making acquisitions and entering into new areas. Over this period of transformation Enron stock prices began to rise. Some analysts attributed the price rise in part due to interest and expectations in Enron's Broadband Services Division. The Broadband Services Division was to trade bandwidth and "deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications." However, investors were unaware that the Broadband Services Division was not performing as the Defendants had led the market to believe. For instance, the Broadband Services Division was experiencing declining demand for bandwidth, and the company's efforts to create a trading market for bandwidth were not meeting with much success, as many of the market participants were not creditworthy.

16. Compounding the problems with the Broadband Services Division, Enron had also agreed to a series of complicated financial hedge transactions with limited partnerships. These transactions, which were not fully detailed to investors, involved hedging transactions in the broadband market and exposed the company to increased risk and uncertainty given the weakening market for bandwidth. In addition, Enron was not consolidating the results of these partnerships, nor of other subsidiaries, such that Enron's financial statements were materially misstated.

17. Defendant Morgan aided Enron in its deception by disguising loans as "Forward Sales Contracts" of natural gas made to Mahonia, Ltd. Defendant's conduct allowed Enron to hide almost $4 billion in debt.

18. Upon information and belief, while Defendant Morgan issued billions of dollars of loans to Enron, its institutional and retail brokerage divisions issued glowing reports of Enron's financial condition. In return for its aid, Defendant Morgan received tens of millions of dollars in underwriting and consulting fees, interest on loans and various management fees. Defendant Morgan's top level executives received opportunities to invest in Enron special purpose entities such as LJM2 through various corporate shields including, but not limited to, Chemical Investors, Inc., JPMorgan Partners and 60 Wall Street Fund L.P.

19. In one of their most comprehensive schemes, Enron and its key employees Lay, Skilling, Fastow, Causey and Buy upon information and belief, conspired with Defendant Morgan to obtain loans which were deceptively structured and represented as "Forward Sale Contracts" with a Morgan offshore entity known as Mahonia Limited.

20. Mahonia Limited, set up on the British Channel Island of Jersey in the early 1990's, conducted about 60% of its business with one company, Enron. Its trading with Enron was almost exclusively year-end transactions, with the deliveries sold back to those who delivered them through complex derivative transactions.

21. Numerous media reports concerning these transaction indicate that the purpose of these year-end transactions was not the delivery of oil or natural gas, but instead, to manage Enron's tax liabilities by transferring losses from one financial reporting period to another, thereby enabling Enron to use the loss to offset gains in the year(s) gains were recognized.

22. These same reports indicate that Defendant Morgan knew or should have known the intended purpose of these transactions and knew or should have known that were this information to be known to the shareholders and stock market community, Enron's stock price would plummet.

23. Despite it actual and/or constructive knowledge regarding Enron's highly dubious business practices, Defendant Morgan acted to further participate in, perpetuate and/or facilitate Enron's fraudulent transactions, while at the same time creating a market for Enron stock through its institutional and retail investment branches.

24. Typically, the transactions would commence with Defendant Morgan paying Enron between $150 million and $250 million, purportedly for the future delivery of natural gas or crude oil. This was structured as a trade, not as a loan.

25. When Enron "delivered" the oil or gas, usually in regular installments of $10 million to $20 million, it was sold back to Enron through complex derivative transactions. With each so-called "delivery," the losses began again to appear on Enron's ledger. These "deliveries," however, would resume the following year, allowing Enron to keep the losses in reserve to offset any profits in future years. In years that Enron chose not to hide profits, Enron would just roll the losses over again to the next fiscal year - by going back to Defendant Morgan's entity Mahonia and selling it another natural gas or crude oil contract.

26. Beginning in 1998, Enron business with Mahonia increased to include trades as large as $650 million (Summer 2000). At this point Defendant Morgan knew or should have known from the marked increase in trades that Enron no longer sought the funds solely for tax avoidance, but was actively using the arrangement to meet its financing needs.

27. Defendant Morgan's committed engaged in a course of conduct constituting fraud by failing to disclose material facts regarding its relationship with Mahonia which had the effect of misstating Enron's financial position while (2) at the same time recommending to Plaintiffs and other investors to buy Enron securities and portraying Enron was a well-managed, financially solid company.

28. Specifically, in each of the Forward Sale Contracts between Enron and Mahonia, Defendant Morgan misrepresented in documents that it was merely an agent for Mahonia. For example, in the "Advance Payment Supply Surety Bond" issued by Liberty Mutual Insurance Company, Bond No. 22-003-142, dated December 18, 1997, in the amount of $255,760,000.00, Defendant Morgan's only purported involvement is as an agent, "The Chase Manhattan Bank, for and on behalf of Obligee." The Bond requires payment to be made to The Chase Manhattan Bank and written notice to be sent to "Mahonia Limited, 22 Grenville Street, St. Helier, Jersey, Channel Islands JEA 8PX, attention Ian James with copy to The Chase Manhattan Bank, 270 Park Avenue, 8th Floor, New York, New York 10017, to the attention of Alex Mintcheff."

29. Defendant Morgan fraudulently failed to disclose that they were actually in position of control and authority over Mahonia. In particular, according to the "SECURITY AGREEMENT BETWEEN MAHONIA LIMITED AND THE CHASE MANHATTAN BANK," filed in *JPMorgan Chase Bank v. Liberty Mutual Ins. Co.* et al, 01 CIV 11523, in the United States District Court for the Southern District of New York, Defendant Morgan maintained a "lien and security interest in, the whole of the Company's [Mahonia] undertaking and assets, present and future." Thus, unlike traditional agents who merely

represent their principals in transactions, Defendant Morgan, by virtue of its security interest in the *entirety of Mahonia's past and present assets*, maintained control of Mahonia.

30. In fact, the Forward Sale Agreement which generated the majority of revenues for Mahonia was known as the "Chase Gas Agreement,"

> The Bank has entered into a Natural Gas Forward Sale Contract dated as of the date hereof with the Company pursuant to which the Bank has agreed to purchase certain volumes of natural gas from the Company for forward delivery in exchange for the payment therefore, on a discounted price basis, on June 29, 2000 in a principal amount not exceeding $650,000,000 (as amended, supplemented and modified and in effect from time to time, the "Chase Gas Agreement").

Security Agreement between Mahonia Limited and The Chase Manhattan Bank, para. 4(b).

31. In furtherance of their scheme, as a part of their fraudulent course of conduct, Enron and Defendant Morgan entered into six separate agreements (1998 through 2001), denominated as "forward sale contracts," purporting to provide for the delivery of crude oil and natural gas over a 4-5 year period (the "Forward Sale Contracts") with Mahonia as purchaser.

32. Under the terms of these Forward Sale Contracts, Enron agreed to provide Mahonia with agreed upon amounts of crude oil or natural gas in consideration for which Mahonia would prepay a fixed sum. Each of these Forward Sale Contracts between Enron and Mahonia contained precise terms for deliveries and replacement deliveries that created the impression that such contracts contemplated and provided for the actual deliveries of crude oil and natural gas.

33. Mahonia represented in the Forward Sale Contracts that it engaged in the business of reselling crude oil and natural gas and intended to take delivery of crude oil and natural gas in the ordinary course of its business.

34. Mahonia further represented in the Forward Sale Contracts that it had entered into such contracts in its capacity as a producer, processor, fabricator, refiner or merchandiser of natural gas, crude oil and/or petroleum products.

Based upon the title of the subject contracts and extensive terms set forth therein reflecting the specific terms, dates, locations and amounts of natural gas and crude oil to be delivered thereunder and based upon the foregoing representations, the guarantors were led to believe that the subject contracts were entered for the purpose of actually supplying natural gas and crude oil by Enron to Mahonia.

35. In reliance upon the terms of the Forward Sales Contracts, including the foregoing representations made by Mahonia, the guarantors issued four separate advance payment surety bonds, totaling approximately $1.4 billion in favor of Mahonia regarding performance of Enron under four of the Forward Sales Contracts.

36. In furtherance its fraudulent course of conduct, Morgan permitted Enron to act on Morgan's behalf to obtain these guarantees. Specifically, between June 29, 1998 and December 28, 2002, Enron turned to eleven insurance companies, including, among others, National Fire Insurance Co., Safeco Insurance Co., and St. Paul Fire & Marine Insurance Co. – to issue the surety bonds. Not only did Enron arrange these financial guarantees, Enron paid the insurance companies for the guarantees. These Enron-arranged guarantees were to render comfort to Morgan as the size of the Enron transactions grew. However, when Morgan had to call on them, the insurance companies refused payment.

37. As Enron's trades grew increasingly larger, financial accounting for these trades became a source of concern within Morgan. On August 5, 1999 Marc Shapiro (Vice Chairman of Defendant Morgan) and senior credit officer David Pflug (also an employee of Defendant

Morgan) met with additional members of Defendant Morgan's management to discuss the Enron situation, with Shapiro reviewing and approving the trades. After the Enron bankruptcy filing in December 2001, Morgan's insurers, due to make a payment of the surety bonds by a December 21 deadline, refused to pay. Morgan sued in New York federal court. The insurers filed a counterclaim, alleging that Mahonia was a fabrication meant to disguise loans in the forms of commodity trades and Mahonia was a "mechanism to obtain surety bonds to secure loans to be made to Enron in the guise" of trades.

38. Specifically, St. Paul stated in its Request for Declaratory Relief against Morgan, that:

> [T]he representations made by Mahonia in the Forward Sales Contracts were materially false, in that (a) Enron did not actually intend to deliver the subject crude oil and natural gas as evidenced by the fact that it did not enter into contracts with suppliers to "hedge" its obligations for delivery of the crude oil and natural gas required to be delivered under the terms of the Forward Supply Contracts, which it would have done in the ordinary course of business if actual deliveries of crude oil and natural gas had been contemplated, (b) Mahonia did not enter into contracts with third parties for the delivery of oil and gas to be supplied by Enron under the terms of the Forward Supply Contracts, which contracts were secured by the Surety Bonds, reflecting that it never in fact intended to take delivery of crude oil and natural gas from Enron; and (c) Mahonia was not listed as a firm transportation customer of any of the pipelines at which the natural gas deliveries were to have been made under the Forward Sales Contracts relating to the delivery of natural gas and therefore did not have the capacity to accept delivery of the natural gas...

39. Safeco Insurance Company explained in its Answer and Counterclaim (filed in *JPMorgan Chase v.* Liberty, 01 Civ. 11523 S.D.N.Y.) that "Enron failed to secure its contracts to "hedge" its obligation to supply oil and natural gas to Mahonia and Mahonia Gas and that Mahonia and Mahonia Gas had no supply contracts with third parties to supply the gas and oil that was the subject of the contracts."

40. Based on the foregoing, the contracts were not intended by the parties to be fulfilled as actual supply contracts but, instead, were intended to provide a mechanism to obtain surety bonds to secure loans to be made by Mahonia to Enron in the guise of forward supply contracts.

41. Additional, particular, details of the Morgan's fraudulent course of conduct have come to light in various media reports. The Houston Chronicle, for example reported that newly disclosed records indicate that hundreds of millions of dollars worth of trades would not have involved any delivery of gas: The records show that on December 28, 2000, Enron sold a contract to Mahonia agreeing to deliver gas with a total value $394 million from April 2001 to November 2005. Mahonia paid up front, rather than through a series of monthly payments, and apparently received a discount, making the total amount due to Enron $330 million. That day, Enron entered into another transaction, this time with Stoneville Aegean, to purchase the same amount of gas, at the exact same price, for delivery at the exact same time. Unlike in the Mahonia transaction, however, Enron did not prepay, and thus received no discount. The result is that it owed $394 million to Stonefield Aegean with the total amount due in 2005. Through the two deals, Enron took in $330 million from one entity at the end of 2000, and agreed to pay out $394 million to another entity by the end of 2005 – transactions with the same financial effect as a loan at about 7% interest. However, court and trading records, as well as government documents, indicate that Mahonia and Stoneville are related companies.

42. According to the express terms of the June 26, 1998 Natural Gas Inventory Forward Sale Contract (which Dellapina attests was "negotiated vigorously" with the active participation of Defendant Morgan's attorneys):

> Purchaser [Mahonia] has entered into this transaction for commercial purposes related to its business as a producer, processor, fabricator, or merchandiser of Natural Gas or natural gas liquids. Purchaser has the capacity, and intends, to take delivery of the Natural Gas to be delivered hereunder. Purchaser is acquiring the Natural Gas in the ordinary course of business.

43. The Honorable Justice Rakoff, in his March 5, 2002 order denying Defendant Morgan's Motion for Summary Judgment, examined this circumstances surrounding the June 26, 1998 agreement and found that (1) Mahonia agreed to pay Enron $330 million for gas at the same time Enron agreed to pay Stoneville $394 million *for the same quantity of gas* and (2) Mahonia and Stoneville *were controlled by the same director, Ian James* and thus, concluded that Defendant Morgan's Motion for Summary Judgment was improper because "taken together, these arrangements now appear to be nothing but a disguised loan." Opinion and Order, *JPMorgan Chase v. Liberty Mutual*, No. 01 Civ. 11523, (S.D.N.Y. March 5, 2002.)

44. All this evidence shows that Defendant Morgan acted in concert and in furtherance of a common scheme to utilize Forward Sales Contracts, derivative transactions and trades between related companies and/or subsidiaries to mislead, misrepresent and mischaracterize the financial condition of Enron Corporation.

45. Upon information and belief Defendant Morgan knew and/or should have known that Enron's earnings were grossly overstated and that Enron's liabilities and/or losses were grossly understated between 1995 and 2000.

46. The Honorable Justice Rakoff, denying Defendant Morgan's Motion for Summary Judgment, held that:

> Unbeknownst to the Sureties at the time they issued the Bonds, the Contracts between Mahonia and Enron by plaintiff's predecessor, the Chase Manhattan Bank ("Chase"), were disguised as sales of assets...The net effect was simply

> a series of loans from Chase to Enron; but by disguising them as sales of assets, Enron could book them as revenue…

Opinion and Order, *JPMorgan Chase v. Liberty Mutual*, No. 01 Civ. 11523, (S.D.N.Y. March 5, 2002).

47. Defendant Morgan attempted to create a market for and/or increase sales of Enron stock despite having actual and/or constructive knowledge that Enron was misrepresenting its financial condition. On numerous dates, including, but not limited to June 9, July 15, September 23, November 26, 1999; January 21, February 9, May 3, May 15, July 3, July 19, September 15, September 27, 2000; March 13, March 23, May 18, June 15, July 10, July 12, August 15, August 17, October 17, October 20, October 23 and November 2, 2001 Defendant Morgan's institutional and retail investment advisors issued positive "buy" ratings on Enron securities. Morgan thus portrayed Enron as a financially solid, well-managed company, with full knowledge that the representations were untrue.

48. According to David Welna of National Public Radio news, even as Enron was crumbling, "J.P. Morgan never did recommend that investors sell their stock."

49. Executives of Defendant Morgan even became personally involved, investing almost $25 million through Chemical Investors, Inc. in LJM2 while Defendant Morgan's lending teams earned fees by providing LJM2 a $65 million line of credit.

50. While actively selling Enron stock and/or creating a market for Enron stock, Defendant Morgan:

    a. failed to disclose and/or failed to accurately disclose the deceptive nature of the "forward sales contracts" between Mahonia Limited, Enron and Stoneville;

    b. knew or recklessly disregarded facts which indicated that Enron was misrepresenting its financial condition;

c. failed to disclose material facts and allowed and/or encouraged shareholders to purchase Enron stock based upon information which Defendant Morgan knew or should have known was false and/or deceptive to the investing public generally during the period in question and also took steps in furtherance of the conspiracy which aided and abetted Enron in the wrongdoing complained of herein.

51. Enron's stock was publicly offered and sold to the public and was listed and traded on the NASDAQ and New York Stock Exchange under the symbol ENE. Plaintiffs purchased common stock, preferred stock, bonds and commercial paper on reliance on the "buy" recommendations and other positive statements made by Morgan and directed to the investing public including Plaintiffs in Galveston County, Texas.

52. The total investment loss incurred by the Plaintiffs as a result of the actions and omissions of Defendant Morgan amounts to well over $20 million.

53. In the course of its dealings with Enron, Defendant Morgan knowingly and/or recklessly disregarding the true financial picture of the company, pursued a conspiracy and common course of conduct with Enron and aided and abetted in conducting false and misleading transactions complained of herein. Defendant Morgan was a direct, necessary and substantial participant in the conspiracy and common course of conduct complained of herein.

V.
Causes of Action

VIOLATIONS OF THE TEXAS SECURITIES ACT

54. Plaintiffs assert this cause of action for violations of the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 *et seq.*, and in particular Article 581-33 of the Texas Securities Act.

55. By reason of the foregoing, Defendant Morgan has violated, conspired to violate and/or aided and abetted violations of Article 581-33 by making untrue statements of material facts or

omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

56. Defendant Morgan's transactions (specifically the "Forward Sales Contracts" mentioned above) materially misrepresented or failed to disclose numerous material facts.

57. By reason of their conduct and omissions, Defendant violated, aided, abetted or controlled another who violated, Article 581-33 of the Texas Securities Act, and the Defendant is jointly and severally liable to Plaintiffs.

58. Plaintiffs have suffered substantial damages as a result.

STATUTORY FRAUD IN STOCK TRANSACTIONS

59. In addition, or in the alternative, Plaintiffs assert this cause of action for violations of Tex. Bus. & Comm. Code Ann. § 27.01.

60. By reason of the foregoing, Defendant Morgan has violated, conspired to violate, aided and/or abetted violations of § 27.01 by making false representations of past or existing material facts or omitting to state past or existing material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

61. Such false representations were made for the purpose of inducing Plaintiffs to enter into contracts for the purchase and sale of the Enron securities in question. Such false representations were relied upon by Plaintiffs in entering into such contracts.

62. Defendant Morgan:

    a. made such false representations knowingly and with actual awareness of the falsity thereof, and/or

b. (i) had actual awareness of the falsity of the representations made by one or more employees of Defendant Morgan acting the course and scope of their employment with Defendant Morgan,

(ii) yet failed to disclose the falsity of the representations, and

(iii) benefited from the false representations.

63. Plaintiffs have suffered substantial damages as a result.

COMMON LAW FRAUD

64. In addition or in the alternative, Plaintiffs assert this cause of action for common law fraud (including fraud in the inducement, fraud in the transaction, conspiracy to defraud, and aiding and abetting a fraud).

65. By reason of the foregoing, Defendant Morgan engaged in common law fraud by:

a. employing devices, schemes, conspiracies and artifices to defraud,

b. making untrue statements of material facts or omitting to state material facts necessary to make the statements made in light of the circumstances under which they were made, not misleading, and/or

c. engaging in acts, practices and a course of business which operated as a fraud or deceit upon Plaintiffs in connection with their purchases of Enron securities.

66. Defendant Morgan knew or recklessly disregarded the fact that the aforesaid acts and practices, misleading statements and omissions would adversely affect the integrity of the market for Enron stock and would artificially inflate or maintain the price of such securities. Had the adverse facts Defendant Morgan concealed been disclosed, the sale of and market for Enron's securities would not have been possible.

67. As a result of Defendant Morgan's fraudulent conduct as alleged herein, the sale of Enron securities was made possible and the market price of Enron securities was artificially inflated during the period in question.

68. Defendant Morgan actively participated in the creation and/or artificial hyperinflation of the market price of Enron securities to the detriment of Plaintiffs.

69. In ignorance of the false and misleading nature of the representations described above, Plaintiffs relied, to their damage, on the integrity of the regulatory process and/or the market both as to price and as to whether these securities were marketable in the first instance.

70. The price of Enron stock declined materially upon the final public disclosure of the true and material facts which had been misrepresented or concealed.

71. Plaintiffs have suffered substantial damages as a result.

VI.
Damages

72. As a result of Defendant Morgan's wrongful conduct, actions and omissions, Plaintiffs have suffered substantial actual and special damages, far in excess of the minimal jurisdictional limits of this Court.

73. The Plaintiffs have suffered actual damages and losses as measured by statute, including the greater of the difference between the amount or consideration paid for the Enron securities and:

    a. the true fair market value of such securities at the time of purchase (i.e, had there been no misrepresentation); or

    b. the net amount received upon their sale.

74. In addition or in the alternative, Plaintiffs have suffered actual damages and losses in the following respects:

a. Loss or diminution of principal invested;

b. Loss of investment opportunity;

c. Loss of earnings (including lawful interest); and,

d. Commissions or fees incurred by way of investment in Enron securities.

75. As part of their actual damages, Tex. Bus. & Comm. Code § 27.01 and Tex. Rev. Civ. Stat. Ann. art. 581-33 entitle Plaintiffs to recover reasonable and necessary attorneys' fees, expert witness fees, cost for copies of depositions, and court costs.

76. In addition to their actual damages, Tex. Rev. Civ. Stat. Ann. art. 581-33 and Tex. Bus. & Comm. Code § 27.01, and the common law of Texas entitle Plaintiffs to recover punitive damages. Defendant Morgan's tortious acts were done fraudulently, knowingly, with actual awareness, malice and intent, and/or with such an entire want of care as to indicate that the acts and omissions in question were the result of conscious indifference to the rights, welfare or safety of the persons affected by them, including Plaintiffs, such that Plaintiffs are entitled to an award of exemplary or punitive damages, to be determined by the jury commensurate with the facts of this case.

77. Defendant Morgan and its various corporate shelters and/or entities are jointly and severally liable for the damages sustained by Plaintiffs.

78. Plaintiffs are entitled to prejudgment interest on their damages as provided by law.

79. Nothing Plaintiffs did or failed to do contributed to the damages sustained.

80. Plaintiffs invoke the doctrines of agency, conspiracy, joint enterprise or venture, partnership, vicarious liability and estoppel, as among each of Defendant Morgan's employees, officers, directors, corporate shelters and/or various corporate entities.

81. Suit was timely instituted and all conditions precedent for the bringing of this suit or the recovery of damages have occurred or will have occurred prior to judgment.

82. Plaintiffs respectfully demand a trial by jury, for which proper fees have been tendered.

83. Plaintiffs respectfully reserve the right to amend and supplement this petition as discovery of facts require.

84. Pursuant to Tex. R. Civ. P. 194.3(a), Plaintiffs request Defendant Morgan to respond to Plaintiffs Request for Disclosure 50 within days of receipt of this request in compliance with the Texas Rules of Civil Procedure.

VII.
Prayer

Plaintiffs respectfully pray that Defendant Morgan be cited to appear and answer herein, and that upon trial of this cause judgment be rendered for Plaintiffs as follows:

a. All actual, consequential, and special damages;

b. Prejudgment interest as provided by law;

c. Punitive damages as provided by statutory and common law;

d. Attorneys fees and legal expenses (including expert fees);

e. Post judgment interest; and

f. Costs of court.

Plaintiffs pray for general relief and such other and further relief to which it may be entitled in equity or at law.

Respectfully submitted,

GREER, HERZ & ADAMS, L.L.P.

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CERTIFICATE OF SERVICE

I certify that a copy of this motion was served on all counsel via electronic means as specified in this Court's orders and also on counsel for J.P Morgan Chase & Company via U.S. mail on 30th of August, 2002.

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