

October 1, 2002 initiated a now-removed to federal court proceeding against certain former Enron officers and employees, to secure Rule 2004 discovery on issues related to that lawsuit, and (2) violate the stay pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §§ 78a *et seq.*, applicable to the *Newby* action. Both of these arguments rest in part on the suggestion that JPMorgan Chase, as a member of the Committee, is behind and/or will benefit from the Rule 2004 discovery being sought.

The Outside Directors’ arguments, as they relate to JPMorgan Chase, rest upon misperceptions regarding JPMorgan Chase’s involvement in the issuance of the subpoenas:

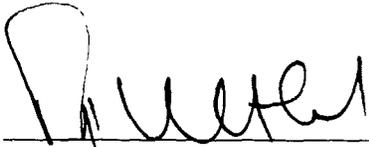
First, JPMorgan Chase did not serve the subpoenas in question. The Rule 2004 subpoenas complained of were filed by the Committee on behalf of the Committee and the Examiner in the bankruptcy matter pursuant to the authorization of the Bankruptcy Court. *See* Order Under 11 U.S.C. §§ 105(a), 1103(c) and 1109(b) Authorizing Official Committee of Unsecured Creditors to Commence Litigation, Case No. 01-16034 (Bankr. S.D.N.Y. October 1, 2002) (attached hereto as Exhibit 1). JPMorgan Chase is but one of 13 members of that Committee, whose deliberations are confidential. *See* Second Amended Appointment of Committee of Unsecured Creditors, Case No. 01-16034 (Bankr. S.D.N.Y. September 10, 2002) (attached hereto as Exhibit 2). Likewise, JPMorgan Chase does not have any power to the control the actions of the Examiner.

Second, there can be no credible assertion that the Rule 2004 subpoenas were issued to advance JPMorgan Chase’s interests in the litigations pending before this Court. The subpoenas were issued pursuant to the instructions of the Bankruptcy Court, and seek information to aid in the resolution of that matter, not the Enron-related securities cases now before this Court. Indeed, JPMorgan Chase, as well as many other defendants in this matter,

have been subpoenaed under the authority of the Bankruptcy Court and have begun to prepare responses. *See* Subpoena for Rule 2004 Examination, Case No. 01-16034 (Bankr. S.D.N.Y. September 16, 2002) (attached hereto as Exhibit 3). JPMorgan Chase had no input into the information requested of the Outside Directors or the breadth of any subpoena.

Third, any information gathered through the Rule 2004 subpoenas will not be available for use in this matter for any reason unless and until this Court rules upon the Motions to Dismiss in this case and/or modifies the PSLRA stay. While as a member of the Committee JPMorgan Chase would expect to have access to the results of Rule 2004 discovery (JPMorgan Chase would not, however, ordinarily expect to have access to the documents themselves), JPMorgan Chase would receive that information solely in its role as a member of the Committee and, indeed, would be precluded from sharing it with anyone not on the Committee. JPMorgan Chase is represented on the Committee by representatives of its Special Loan Group and in-house and outside counsel (Kelley Drye & Warren LLP) who are not involved in the litigations pending before this Court. Accordingly, the JPMorgan Chase personnel and lawyers involved in the cases pending before this Court will not have access to documents by virtue of their production in the Bankruptcy Rule 2004 process.

Dated: November 5, 2002

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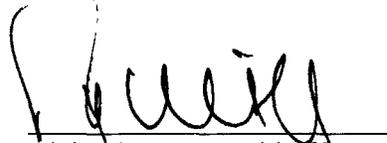
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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served upon all counsel via electronic mail to the website, on this 5th day of November, 2002.


Richard Warren Mithoff

The Exhibit(s) May
Be Viewed in the
Office of the Clerk