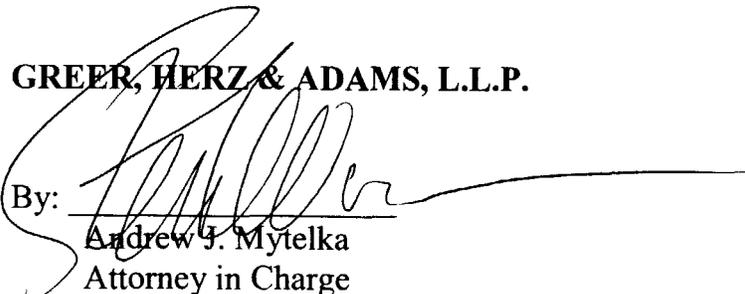




Plaintiffs respectfully request a hearing.

Respectfully submitted,

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

By: 

Andrew J. Mytelka

Attorney in Charge

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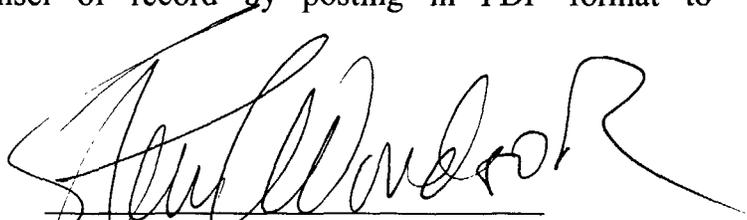
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 25<sup>th</sup> day of February, 2003, a copy of the forgoing document was served on all counsel of record by posting in PDF format to [www.es113624.com](http://www.es113624.com).

A handwritten signature in black ink, appearing to read "Steve Windsor", written over a horizontal line.

Steve Windsor

**EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

FILED 2/20/2003 5:00:24 PM, USDC, Southern District of Iowa

PRINCIPAL GLOBAL INVESTORS LLC;  
PRINCIPAL LIFE INSURANCE  
COMPANY; PRINCIPAL BALANCED  
FUND, INC.; PRINCIPAL BOND FUND,  
INC.; PRINCIPAL INVESTORS FUND,  
INC.; PRINCIPAL LIMITED TERM BOND,  
INC.; PRINCIPAL VARIABLE  
CONTRACTS FUND, INC.; NIPPON LIFE  
INSURANCE COMPANY OF AMERICA;  
OSPREY ASSOCIATES LLC;

Plaintiffs,

v.

CITIGROUP, INC.; CITICORP; CITIBANK,  
N.A.; CITICORP NORTH AMERICA, INC.;  
SALOMON SMITH BARNEY INC.;  
CREDIT SUISSE FIRST BOSTON, INC.;  
CREDIT SUISSE FIRST BOSTON (USA)  
INC.; CREDIT SUISSE FIRST BOSTON  
CORPORATION; DONALDSON, LUFKIN  
& JENRETTE SECURITIES  
CORPORATION; DEUTSCHE BANC  
ALEX. BROWN; DEUTSCHE BANC  
ALEX. BROWN INC.; DEUTSCHE BANK  
SECURITIES INC.; LEHMAN BROTHERS  
HOLDINGS, INC.; LEHMAN BROTHERS,  
INC.; THE BEAR STEARNS COMPANIES,  
INC.; BEAR, STEARNS & CO., INC.; UBS  
WARBURG LLC;

Defendants.

4:02-cv-90615

ORDER

Before the Court are Plaintiffs' motion for remand and abstention, and Defendants' motion to transfer venue. This case alleging violations of Iowa securities law was removed from the Iowa District

Court for Polk County on December 4, 2002. The Court heard oral argument on February 18, 2003.

The matter is fully submitted.

As a court of limited jurisdiction, the Court has a duty to assure itself that it has subject matter jurisdiction in every case. *Barclay Square Properties v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 893 F.2d 968, 969 (8th Cir. 1990); *Sanders v. Clemco Indus.*, 823 F.2d 214, 216 (8th Cir. 1987). Defendants premise removal and subject matter jurisdiction upon 28 U.S.C. § 1452 and 1334 respectively, which provide the district court with original but not exclusive jurisdiction to hear all civil proceedings arising under or related to title 11 bankruptcies. In determining whether a civil proceeding is related to bankruptcy, the Eighth Circuit follows the Third Circuit's test from *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984). *Specialty Mills, Inc. v. Citizens State Bank*, 51 F.3d 770, 774 (8th Cir. 1995). In *Pacor*, the court stated:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*. [citations omitted] Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Pacor*, 743 F.2d at 994.

Defendants urge the Court to find that the outcome of Plaintiffs' action could have an effect on the Enron bankruptcy proceedings, because Defendants have express contractual indemnity and contribution claims against Enron. At first glance, Defendants' argument appears convincing. In *Pacor*, however, the court also reasoned:

The mere fact that there may be common issues of fact between a civil proceeding and a

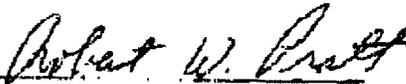
controversy involving the bankruptcy estate does not bring the matter within the scope of [28 U.S.C. § 1334 (b)]. Judicial economy itself does not justify federal jurisdiction. [Citation omitted] "Jurisdiction over nonbankruptcy controversies with third parties who are otherwise strangers to the civil proceeding and to the parent bankruptcy does not exist." *In re Houg*, 19 Bankr. 223, 224-25 (Bankr. D. Ore. 1982); *See also In re McConaghy*, 15 Bankr. 480, 481 (Bankr. E.D. Va. 1981) (Bankruptcy court lacks jurisdiction to decide disputes between third parties in which the estate of the debtor has no interest).

*Pacor*, 743 F.2d at 794.

Having so reasoned, the *Pacor* court went on to hold that the case was not related to the relevant bankruptcy proceeding, and that it was, at best, merely a precursor to a potential indemnification claim against the debtor. *Id.* The same holds true in the case at bar. Enron is neither a named party nor a necessary party in these proceedings. Plaintiffs' petition alleges violation of Iowa securities law by Defendants, not Enron. The outcome of this case has no effect on the Enron bankruptcy proceedings. As in *Pacor*, the case is, at best, a precursor to a later indemnification suit by Defendants. As such, the Court finds that the present case does not arise under, nor is it sufficiently related to the Enron title 11 bankruptcy proceedings, so as to confer subject matter jurisdiction upon the federal courts. Accordingly, Plaintiffs' motion is granted. Defendants' motion to transfer venue is denied. The case shall be remanded to the Iowa District Court for Polk County.

IT IS SO ORDERED.

Dated this 20th day of February, 2003.

  
ROBERT W. PRATT  
U.S. DISTRICT JUDGE

**EXHIBIT B**

ORIGINAL

LODGED

1 HENNIGAN, BENNETT & DORMAN LLP  
 J. Michael Hennigan (SBN 59491)  
 2 Robert L. Palmer (SBN 181462)  
 Donald F. Woods, Jr. (SBN 51854)  
 3 Bruce R. MacLeod (SBN 57674)  
 Shawna L. Ballard (SBN 155188)  
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 601 South Figueroa Street, Suite 8300  
 5 Los Angeles, California 90017  
 Telephone: (213) 694-1200  
 6 Facsimile: (213) 694-1234

COFFER - 6 PM 2:05

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ENTERED  
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FILED  
 FEB 20 2003

7 Attorneys for Plaintiffs

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 10 **IN THE UNITED STATES BANKRUPTCY COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
 12 **LOS ANGELES DIVISION**

13 In Re:  
 14 ENRON CORP., et al.,

Debtors.

15 OCM OPPORTUNITIES FUND III, L.P.; and OCM  
 16 OPPORTUNITIES FUND IV, L.P.;

Plaintiffs,

18 vs.

19 CITIGROUP, INC.; CITICORP; CITIBANK, N.A.;  
 20 CITICORP NORTH AMERICA, INC.; SALOMON  
 SMITH BARNEY INC.; CREDIT SUISSE FIRST  
 21 BOSTON, INC.; CREDIT SUISSE FIRST BOSTON  
 (USA), INC.; CREDIT SUISSE FIRST BOSTON  
 22 CORPORATION; DONALDSON, LUFKIN &  
 JENRETTE SECURITIES CORPORATION;  
 23 DEUTSCHE BANC ALEX. BROWN; DEUTSCHE  
 BANC ALEX. BROWN INC.; DEUTSCHE BANK  
 24 SECURITIES INC.; J.P. MORGAN CHASE & CO.;  
 J.P. MORGAN SECURITIES, INC.; J.P. MORGAN  
 25 CHASE BANK; LEHMAN BROTHERS  
 HOLDINGS, INC.; LEHMAN BROTHERS, INC.;  
 26 THE BEAR STEARNS COMPANIES, INC.; BEAR,  
 STEARNS & CO., INC.; UBS WARBURG LLC;  
 27 AND DOE DEFENDANTS 1 THROUGH 150;

Defendants.

Bk. No.: 01-16034 (AJG)

[Bankr. S.D.N.Y.]

Chapter 11

Case No.: LA02-99911XX

Adversary No.: AD02-02927AA

**[PROPOSED] FINDINGS OF FACT  
 AND CONCLUSIONS OF LAW  
 AND ORDER GRANTING  
 PLAINTIFFS' MOTION FOR  
 REMAND; DENYING  
 PLAINTIFFS' MOTION FOR  
 ABSTENTION; AND DENYING  
 DEFENDANTS' MOTION FOR  
 TRANSFER OF VENUE**

Hearing

Honorable Alan M. Ahart

Date: January 29, 2003

Time: 9:30 a.m.

Place: Courtroom 1375

578

28 [PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER GRANTING PLAINTIFFS' MOTION FOR  
 REMAND; DENYING PLAINTIFFS' MOTION FOR ABSTENTION; & DENYING DEFENDANTS' MOTION FOR TRANSFER

HENNIGAN, BENNETT & DORMAN LLP  
 LAWYERS  
 LOS ANGELES, CALIFORNIA



1           9.       Plaintiffs are entitled to a jury trial on their claims, but the United States Bankruptcy  
2 Court for the Southern District of New York cannot conduct a jury trial unless all twenty-two (22)  
3 parties to this action agreed to such a procedure.

4           10.       The Enron Bankruptcy is one of the largest bankruptcies ever filed in the United  
5 States. Denial of remand would increase the already extensive burden upon the United States  
6 Bankruptcy Court for the Southern District of New York, which is handling the Enron Bankruptcy.

7           11.       Having considered all the factors relevant to equitable remand under 28 U.S.C.  
8 §1452(b), thoroughly briefed and argued by the parties, such factors either support remand, or to the  
9 extent they may not, they are outweighed by the other factors that do.

10           **B.       CONCLUSIONS OF LAW**

11           12.       This Court hereby adopts as conclusions of law any of the above findings of fact with  
12 respect to the Motion to Remand which likewise constitute conclusions of law.

13           13.       The criteria for determining whether a proceeding relates to a pending bankruptcy  
14 derives from the standard first articulated in *Pacor v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984),  
15 which have been adopted by this Circuit. *See, e.g., In re Feitz*, 852 F.2d 455, 457 (9th Cir. 1988).  
16 Applying these standards, this Court concludes that jurisdiction is dubious at best.

17           14.       Courts consider numerous factors in determining whether to equitably remand under  
18 28 U.S.C. §1452(b), and I have considered all of these factors, including, among others: the effect or  
19 lack thereof that remand will have upon the efficient administration of the estate; the extent to which  
20 state law issues predominate over bankruptcy issues; the degree of relatedness or remoteness of  
21 proceeding to main bankruptcy case; the lack of any core proceeding; the burden of the bankruptcy  
22 court's docket; the existence of a right to a jury trial; the presence in the proceeding of nondebtor  
23 parties; comity; and the possibility of prejudice to other parties in the action.

24           15.       Based upon and weighing the above-mentioned factors, as well as all the evidence  
25 and arguments presented by both sides, and considering all of the factors relevant to equitable  
26 remand, this Court finds and concludes that, for the reasons set forth herein, and for the reasons set  
27 forth in the Plaintiffs' moving and reply papers, the balance of the equities favor remand of this  
28

1 action to the Superior Court of the State of California for the County of Los Angeles pursuant to 28  
2 U.S.C. § 1452(b).

3 **MOTION FOR ABSTENTION**

4 The Court having read and considered the papers and evidence filed by the parties, having  
5 considered those matters subject to judicial notice, and the Court having heard and considered the  
6 oral arguments of counsel, this COURT MAKES THE FOLLOWING FINDINGS OF FACT and  
7 CONCLUSIONS OF LAW with respect to the Plaintiffs' Motion to Abstain:

8 **A. FINDING OF FACT**

9 16. Because the Plaintiffs' action was removed from state court to this Court, there is no  
10 parallel state court action currently pending in state court.

11 **B. CONCLUSION OF LAW**

12 17. Under Ninth Circuit precedent, abstention is not an available doctrine absent a  
13 parallel state court proceeding.

14 **MOTION FOR TRANSFER OF VENUE**

15 The Court having read and considered the papers and evidence filed by the parties, having  
16 considered those matters subject to judicial notice, and the Court having heard and considered the  
17 oral arguments of counsel, this COURT MAKES THE FOLLOWING FINDINGS OF FACT and  
18 CONCLUSIONS OF LAW with respect to the Defendants' Motion for Transfer of Venue:

19 **C. FINDINGS OF FACT**

20 18. Plaintiffs' chose to file this action in the Superior Court of the State of California for  
21 the County of Los Angeles, and the Plaintiffs' choice of a California forum is entitled to deference.

22 19. The Plaintiffs' claims arise solely under state law. Hence, California has an interest  
23 in providing a forum for resolution of this dispute. The Southern District of New York would have  
24 less familiarity with the applicable laws than would a California court.

25 20. New York, on the other hand, does not have an interest in the state law claims  
26 asserted in this action.

27

28

1           21.     No debtor is a party to this action; the transfer of this action would do little if  
2 anything to promote the efficient administration of the Enron Bankruptcy and would do little if  
3 anything to promote judicial economies.

4           22.     Due to the minimal connection between the Enron Bankruptcy and Plaintiffs' state  
5 law claims against the Defendants, who are all non-debtors, this Court's jurisdiction over this action  
6 is dubious at best.

7           23.     More timely adjudication of this matter could be had in the Superior Court of the  
8 State of California for the County of Los Angeles where it was originally filed, and thus the interests  
9 of justice are best promoted by denying transfer.

10          24.     New York is not a superior forum from the standpoint of the convenience of the  
11 parties.

12          25.     Plaintiffs are entitled to a jury trial on their claims, but the United States Bankruptcy  
13 Court for the Southern District of New York cannot conduct a jury trial unless all twenty-two (22)  
14 parties to this action agreed to such a procedure.

15          26.     The Enron Bankruptcy is one of the largest bankruptcies ever filed in the United  
16 States. Transfer of this action would increase the already extensive burden upon the United States  
17 Bankruptcy Court for the Southern District of New York, which is handling the Enron Bankruptcy.

18          27.     This Court has already reviewed the papers and evidence submitted in support of the  
19 remand motion; the United States Bankruptcy Court for the Southern District of New York is not in  
20 a superior position to decide the issues pertinent to the remand motion.

21          28.     Defendants did not present sufficient or persuasive evidence to warrant a transfer of  
22 venue to the Southern District of New York.

23          29.     Having considered all relevant factors to transfer under both 28 U.S.C. §§ 1404 and  
24 1412, thoroughly briefed and argued by the parties, such factors either support denial of transfer, or  
25 to the extent they may not, they are outweighed by the other factors that do..

26           **D.     CONCLUSIONS OF LAW**

27          30.     This Court hereby adopts as conclusions of law any of the above findings of fact with  
28 respect to the Motion for Transfer of Venue which likewise constitute conclusions of law.



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Department 47  
Los Angeles, California 90012

B. PLAINTIFFS' MOTION FOR ABSTENTION IS DENIED; and

C. In the exercise of this Court's discretion, THE DEFENDANTS' MOTION FOR  
TRANSFER OF VENUE IS DENIED.

DATED: 2/20/03

*Alan M. Alan*  
Judge of the United States Bankruptcy Court

SUBMITTED BY:

HENNIGAN, BENNETT & DORMAN LLP

By *J. Michael Hennigan*  
J. Michael Hennigan  
Attorneys for Plaintiffs

HENNIGAN, BENNETT & DORMAN LLP  
LAWYERS  
LOS ANGELES, CALIFORNIA

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**PROOF OF SERVICE**

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Hennigan, Bennett & Dorman LLP, 601 S. Figueroa Street, Suite 3300, Los Angeles, California 90017.

On February 6, 2003, I served the foregoing document(s) described as: **[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR REMAND AND DENYING DEFENDANTS' MOTION FOR TRANSFER OF VENUE** on the interested party(ies) at the address(es) set forth below:

**SEE ATTACHED SERVICE LIST**

**(BY FIRST CLASS MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day as shown on this declaration with First Class postage thereon and fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

**(BY FEDERAL EXPRESS)** By Federal Express for next business day delivery.

**(BY PERSONAL SERVICE)** I served by hand-delivery copies of the aforementioned documents to the above-named addressee.

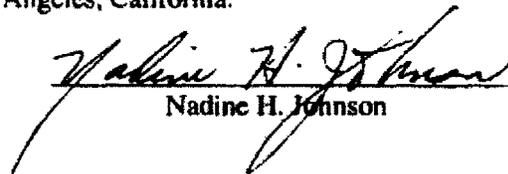
**(BY FACSIMILE)** I caused said document to be transmitted electronically to the parties on the attached facsimile coversheet at the numbers stated thereon.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Executed on February 6, 2003, at Los Angeles, California.

  
Nadine H. Johnson