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

United States Courts
Southern District of Texas
FILED
MAR 14 2003
Michael N. Milby, Clerk

Mark NEWBY, Plaintiff,	§ § §	
v.	§	Consolidated Lead No. H-01-3624
ENRON CORP., et al., Defendants.	§ § §	
AMERICAN NATIONAL INSURANCE COMPANY, et al., Plaintiffs,	§ § §	
vs.	§	Civil Action No. G-02-0585
ARTHUR ANDERSEN, L.L.P., et al. Defendants.	§ §	

PLAINTIFF AMERICAN NATIONAL INSURANCE COMPANY, ET AL.'S SECOND SUBMISSION OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION TO REMAND

Plaintiffs, American National Insurance Company, et al., respectfully tender, and ask the Court's consideration of the recent decision in *Basic Pension Plan, et al. v. Citigroup, Inc., et al.*, Bk. No. 01-16034 [Bankr. S.D.N.Y.], Case No. SA02-99911XX (C.D.Cal. March 4, 2003) (Findings of Fact and Conclusions of Law and Order Granting Motion for Remand and Denying Defendants' Motion for Transfer of Venue). A copy of the case is attached hereto as Exhibit A.

The issues of fact and legal issue of "related to" bankruptcy jurisdiction in this case are virtually identical to those raised in Plaintiffs' remand motion. Unlike the WorldCom decision recently tendered by certain of the Defendants, the *Basic Pension Plan* decision is based upon precisely the facts before this Court and the decision strongly supports Plaintiffs' request for remand of this action.

#1284

In *Basic Pension Play,* the district court determined that there was no "related to" bankruptcy jurisdiction. *Exhibit A* at ¶ 12. The court further found that "even if 'related to' jurisdiction exists, equitable remand is warranted." *Id.*

Plaintiffs pray that its action be remanded to state court. Plaintiffs also respectfully request a hearing.

Respectfully submitted,

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

By: _____

Andrew J. Mytelka
Attorney in Charge
State Bar No. 14767700
One Moody Plaza, 18th Floor
Galveston, Texas 77550
(409) 797-3200
(409) 766-6424 (telecopier)

ATTORNEY FOR PLAINTIFFS

OF COUNSEL:

John S. McEldowney
State Bar No. 13580000
Joe A.C. Fulcher
State Bar No. 07509320
M. David Le Blanc
State Bar No. 00791090
Steve Windsor
State Bar No. 21760650
Greer, Herz & Adams, L.L.P.
One Moody Plaza, 18th Floor
Galveston, Texas 77550
(409) 797-3200
(409) 766-6424 (FAX)
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of March, 2003, a copy of the forgoing document was served on all counsel of record by posting in PDF format to www.esl13624.com.

By: _____
Steve Windsor

HENNIGAN, BENNETT & DORMAN LLP
J. Michael Hennigan (SBN 59491)
Robert L. Palmer (SBN 181462)
Bruce R. MacLeod (SBN 57674)
Donald F. Woods, Jr. (SBN 51854)
Shawna L. Ballard (SBN 155188)
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Attorneys for Plaintiffs

MAR 4 2003

FILED
MAR - 3 2003
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

IN THE UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

In Re: ENRON CORP., et al., Debtors.	Bk. No.: 01-16034 (AJG) [Bankr. S.D.N.Y.] Chapter 11
PACIFIC INVESTMENT MANAGEMENT COMPANY, LLC; TOTAL RETURN FUND, a Series of PIMCO Funds, MARYLAND STATE RETIREMENT AND PENSION SYSTEMS; PITNEY BOWES INC. EMPLOYEES RETIREMENT PLAN; NEBRASKA INVESTMENT COUNCIL FOR THE SCHOOL RETIREMENT SYSTEM, THE STATE PATROL RETIREMENT SYSTEM AND THE JUDGE'S RETIREMENT SYSTEM; EMPLOYEES' RETIREMENT SYSTEM OF BALTIMORE COUNTY; OPPENHEIMER CAPITAL SECURITIES INVESTMENT TRUST TOTAL RETURN II TRUST; OPPENHEIMER CAPITAL SECURITIES INVESTMENT TRUST MODERATE DURATION TRUST; NIAGARA MOHAWK PENSION PLAN; LOUISIANA FIREFIGHTERS RETIREMENT SYSTEM; GROUP TRUST AGREEMENT PURSUANT TO THE HEWLETT-PACKARD COMPANY DEFERRED PROFIT-SHARING PLAN AND RETIREMENT PLAN AND THE AGILENT TECHNOLOGIES, INC. DEFERRED PROFIT SHARING PLAN AND RETIREMENT PLAN; SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM; KELLOGG COMPANY MASTER RETIREMENT TRUST; DIRECTORS GUILD OF AMERICA - PRODUCER SUPPLEMENTAL PENSION PLAN; DIRECTORS GUILD OF AMERICA - PRODUCER	Case No.: SA02-99911XX Adversary No. AD02-02084JB **[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR REMAND AND DENYING DEFENDANTS' MOTION FOR TRANSFER OF VENUE** Honorable James N. Barr Date: January 28, 2003 Time: 2:00 p.m. Place: Ctrm. 6D

PLAINTIFF'S EXHIBIT
A

BASIC PENSION PLAN; PLAN OF BENEFITS OF THE CENTRAL PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS PARTICIPATING EMPLOYERS; AND STOCKSPLUS SUB-FUND B, LLC;

Plaintiffs,

vs.

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.; THE BEAR STEARNS COMPANIES, INC.; BEAR, STEARNS & CO., INC.; AND DOE DEFENDANTS 1 THROUGH 150;

Defendants.

The Plaintiffs' Motion for Remand and Abstention and the Defendants Motion for Transfer of Venue came on for hearing before this Court on January 28, 2003. Appearances were noted on the record. At such hearing, upon the Court's request, Plaintiffs withdrew their Motion for Abstention.

MOTION FOR REMAND

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

A. FINDINGS OF FACT

1. Plaintiffs chose to file this action in the Superior Court of the State of California for the County of Orange, and the Plaintiffs' choice of a state forum is entitled to deference.

2. The claims asserted in this case arise exclusively under California law, and California has an interest in enforcing its own laws.

3. Upon remand, the Orange County Superior Court will have jurisdiction to resolve the claims asserted in this action.

4. Neither Enron Corp. nor any of its affiliates that are Chapter 11 debtors is a party to this action, which decreases any potential impact that this action would have on the efficient administration of any bankruptcy estate.

5. The Orange County Superior Court can resolve this case as expeditiously as the federal courts, meaning that remand of this action to state court will have little if any impact upon the administration of the *In re Enron Corp. et al.* bankruptcy case or any of the other jointly administered bankruptcy cases pending in the United States Bankruptcy Court for the Southern District New York (the "Enron Bankruptcy").

6. This Court does not have "core" jurisdiction over the removed state law causes of action (and neither Defendants nor Plaintiffs assert that "core" jurisdiction exists). The fact that the claims asserted by Plaintiffs do not raise "core" matters lessens the bankruptcy court's interests in the outcome of the Plaintiffs' action and lessens any potential for impact by this action on the administration of the Enron Bankruptcy.

7. The Court does not have diversity jurisdiction over this action. Accordingly, even if this were an action that is "related to" the Enron Bankruptcy, this Court has the equitable discretion to remand this action pursuant to 28 U.S.C. §1452(b).

8. The factors that Defendants argued in favor of denying remand were unsupported by either sufficient or persuasive evidence.

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

B. CONCLUSIONS OF LAW

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

12. The criteria for determining whether a proceeding relates to a pending bankruptcy derives from the standard first articulated in *Pacor v. Higgins,* 743 F.2d 984, 994 (3d Cir. 1984),

which have been adopted by this Circuit. *See, e.g., In re Feitz,* 852 F.2d 455, 457 (9th Cir. 1988). The Court does not find that "related to" jurisdiction exists. The Court concludes, however, that even if "related to" jurisdiction exists, equitable remand is warranted.

13. Courts consider numerous factors in determining whether to equitably remand under 28 U.S.C. §1452(b), and I have considered all of these factors, including, among others: the effect or lack thereof on the efficient administration of the estate if the Court remands; the extent to which state law issues predominate over bankruptcy issues; the jurisdictional basis, if any (*i.e.*, diversity jurisdiction) other than 28 U.S.C. § 1334; the degree of relatedness or remoteness of proceeding to main bankruptcy case; the lack of any core proceeding; the presence in the proceeding of nondebtor parties; comity and the possibility of prejudice to other parties to the action.

14. Based upon and weighing the above-mentioned factors, as well as all evidence and arguments presented by both sides, and considering all of the factors relevant to equitable remand, this Court finds that, for the reasons set forth herein, and for the reasons set forth in the Plaintiffs' moving and reply papers, the balance of the equities favor remand of this action to the Superior Court of the State of California for the County of Orange pursuant to 28 U.S.C. § 1452(b).

MOTION FOR TRANSFER OF VENUE

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

A. FINDINGS OF FACT

15. Plaintiffs' chose to file this action in the Superior Court of the State of California for the County of Orange, and the Plaintiffs' choice of a California forum is entitled to deference.

16. This case involves exclusively state law claims, meaning that there is a local California interest in this dispute and that the Southern District of New York would have less familiarity with the applicable laws.

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

18. The Orange County Superior Court has jurisdiction to resolve the claims asserted in this action, which arise exclusively under California law.

19. The Orange County Superior Court can resolve this case as expeditiously as the federal courts so that the interests of justice are best promoted by denying transfer.

20. This Court does not have "core" jurisdiction over the removed state law causes of action (and neither Defendants nor Plaintiffs assert that "core" jurisdiction exists). The fact that the causes of action asserted by Plaintiffs do not raise "core" matters decreases the significance of any connection between this action and the Enron Bankruptcy as well as any impact that the denial of transfer would have upon the administration of and/or participants in the Enron Bankruptcy.

21. Defendants did not present sufficient or persuasive evidence in support of transfer. For example, Defendants' contentions that the convenience of the parties and the interests of judicial economy and efficiency would be promoted by transfer to the Southern District of New York were not supported by persuasive evidence.

22. In the context of this action, in which a debtor is not a party, which is not a "core" proceeding, and which arises exclusively under California law, Plaintiffs' choice of a California state court venue is a significant and important factor in the Court's analysis of the transfer issues. Having considered all other relevant factors to transfer under both 28 U.S.C. §§ 1404 and 1412, thoroughly briefed and argued by the parties, such factors either support denial of transfer, or to the extent they may not, they are outweighed by other factors that do.

B. CONCLUSIONS OF LAW

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

24. Courts consider numerous factors in determining whether to transfer pursuant to 28 U.S.C. §1404, and I have considered all of these factors, including, among others: the convenience of parties and witnesses; the interests of justice, plaintiff's choice of forum; the ease of access to the

evidence; the familiarity of each forum with the applicable law; any local interest in the controversy; and the relative court congestion and time to trial in each forum.

25. Courts consider numerous factors in determining whether to transfer pursuant to 28 U.S.C. §1412, and I have considered all of these factors, including, among others: the interest of justice; the convenience of the parties; the location of the pending bankruptcy; whether the transfer would promote the economic and efficient administration of the bankruptcy estate; whether the interests of judicial economy would be served by the transfer; whether either forum has an interest in having the controversy decided within its borders; whether the plaintiff's original choice of forum should be disturbed; the ease of access to the necessary proof; and the convenience of the witnesses.

26. Based upon and weighing the above-mentioned factors, as well as all evidence and arguments presented by both sides, and considering all of the factors relevant to the Defendants' request for transfer of venue under both 28 U.S.C. §1404 and §1412, this Court finds that, for the reasons set forth herein, and for the reasons set forth in the Plaintiffs' opposition papers with respect to the transfer issues, sufficient persuasive evidence was not presented to warrant transfer of this action to the Southern District of New York.

ORDER

Based upon the foregoing findings and conclusions, all the arguments and evidence presented in the papers and at the hearing, and good cause appearing therefore, this Court ORDERS as follows:

A. In the exercise of this Court's equitable discretion pursuant to 28 U.S.C. §1452(b), PLAINTIFFS' MOTION FOR REMAND IS GRANTED, and this action shall be remanded forthwith to the Superior Court of the State of California for the County of Orange, Los Angeles Superior Court where it was pending as Case No. 02CC00300. The address for remand is:

Clerk of the Court
Orange County Superior Court
Complex Civil Center (CXC)
Department CX101
751 West Santa Ana Blvd
Santa Ana, CA 92701

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

DATED: MAR 3 2003

JAMES N. BARR

Judge of the United States Bankruptcy Court

SUBMITTED BY:

HENNIGAN, BENNETT & DORMAN LLP

By _____
Robert L. Palmer
Attorneys for Plaintiffs

256622\v5

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 5, 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 5, 2003, at Los Angeles, California.

Joanne Stern

Joanne Stern

Debtor:
Legal Department
Enron Corp.
1400 Smith Street
Houston, TX 77002

Counsel to the Committee:
Dennis F. Dunne
Luc A. Despins, Esq.
Wilbur F. Foster, Jr., Esq.
Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, NY 10005

Citibank, N.A:
Citibank, N.A.
Attn: Victor Menezes/CEO
Attn: Authorized Officer
399 Park Avenue
New York, NY 10022

Citigroup, Inc.:
Citigroup, Inc.
Attn: Sanford I. Weill/CEO
Attn: Authorized Officer
399 Park Avenue
New York, New York 10043

Credit Suisse First Boston (USA), Inc.:
Credit Suisse First Boston (USA), Inc.
Attn: John J. Mack, President/CEO
Attn: Authorized Officer
11 Madison Avenue
New York, NY 10010

Counsel to Credit Suisse:
Richard W. Clary, Esq.
Julie A. North, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475

Counsel to Deutsche Banc:
Bryan A. Merryman, Esq.
White & Case
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071

Debtor's Counsel:
Martin J. Bienstock, Esq.
Brian S. Rosen, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Debtor's Counsel:
Albert Togut, Esq.
Togut Segal & Segal
One Penn Plaza
New York, NY 10119

Citicorp:
Citicorp
Attn: John Reed, CEO
Attn: Authorized Officer
399 Park Avenue
New York, NY 10043

Credit Suisse First Boston Corporation:
Credit Suisse First Boston Corporation
Attn: John Mack/President & CEO
Attn: Authorized Officer
11 Madison Avenue
New York, NY 10010

Deutsche Bank Securities Inc.:
Deutsche Bank Securities Inc.
Attn: Robert B. Allardice/President
Attn: Authorized Officer
31 W. 52nd Street
New York, NY 10019

Counsel to Citicorp.:
Ronald J. Nessim, Esq.
John K. Rubiner, Esq.
Paul S. Chan, Esq.
Bird, Marella, Boxer & Wolpert
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067

Counsel to Deutsche Banc:
Lawrence Byrne, Esq.
Owen Pell, Esq.
Lance Croffoot-Suede, Esq.
White & Case
1155 Avenue of the Americas
New York, NY 10036

Office of the U.S. Trustee:
Mary Elizabeth Tom, Esq.
Greg M. Zipes, Esq.
33 Whitehall Street, 21st Floor
New York, NY 10004

Counsel to Credit Suisse, et al:
Jerry L. Marks, Esq.
Michael Cypers, Esq.
Heller Ehrman White & McAuliffe
601 S. Figueroa Street, 40th Floor
Los Angeles, CA 90017-5758

Citicorp North America, Inc.:
Citicorp North America, Inc.
Attn: Thomas F. Boland
Chairman-of-the-Board
Attn: Authorized Officer
450 Mamaroneck Avenue
Harrison, New York 10528

Credit Suisse First Boston, Inc.:
Credit Suisse First Boston, Inc.
Attn: John Mack/President & CEO
Attn: Authorized Officer
11 Madison Avenue
New York, NY 10010

Salomon Smith Barney Inc.:
Salomon Smith Barney Inc.
Attn: Michael A. Carpenter/CEO
Attn: Authorized Officer
388 Greenwich Street, 18th Floor
New York, NY 10013

Counsel to Citicorp.:
Brad S. Karp, Esq.
Michael E. Gertzman, Esq.
Jonathan Hurwitz, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

Counsel to Bear Stearns:
J. Stephen Young, Esq.
Stacey M. Garrett, Esq.
Keesal, Young & Logan
400 Oceangate/ Post Office Box 1780
Long Beach, CA 90801

NOTE TO USERS OF THIS FORM:
Physically attach this form as the last page of the proposed Order or Judgment.
Do not file this form as a separate document.

In re Enron Corp., Debtors.	CHAPTER: 11	Case No.: 01-16034 (AJG) [Bankr. S.D.N.Y.]
Pacific Investment Management Company, LLC; Total Return Fund, A Series Of Pimco Funds, Maryland State Retirement And Pension Systems; Pitney Bowes Inc. Employees Retirement Plan; Nebraska Investment Council For The School Retirement System, The State Patrol Retirement System And The Judge's Retirement System; Employees' Retirement System Of Baltimore County; Oppenheimer Capital Securities Investment Trust Total Return Ii Trust; Oppenheimer Capital Securities Investment Trust Moderate Duration Trust; Niagara Mohawk Pension Plan; Louisiana Firefighters Retirement System; Group Trust Agreement Pursuant To The Hewlett-Packard Company Deferred Profit-Sharing Plan And Retirement Plan And The Agilent Technologies, Inc. Deferred Profit Sharing Plan And Retirement Plan; San Diego City Employees' Retirement System; Kellogg Company Master Retirement Trust; Directors Guild Of America - Producer Supplemental Pension Plan; Directors Guild Of America - Producer Basic Pension Plan; Plan Of Benefits Of The Central Pension Fund Of The International Union Of Operating Engineers Participating Employers; And Stocksplus Sub-Fund B, LLC; Plaintiffs. vs. 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 Bank Securities Inc., The Bear Stearns Companies, Inc., Bear Stearns & Co., Inc.; and Doe Defendants 1 through 50		Case No.: SA02-99911XX Adversary No.: AD02-02084-JB

NOTICE OF ENTRY OF JUDGMENT OR ORDER AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(1)(a)(v), that a judgment or order entitled *(specify)*:

FINDING OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR REMAND AND DENYING DEFENDANT'S MOTION FOR TRANSFER OF VENUE

was entered on *(specify date)*: MAR 4 2003

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (specify date) MAR 4 2003

Dated: MAR 4 2003

JON D. CERETTO
Clerk of the Bankruptcy Court

By: Helen M. Rosas
Deputy Clerk

Debtor:
Legal Department
Enron Corp.
1400 Smith Street
Houston, TX 77002

Counsel to the Committee:
Dennis F. Dunne
Luc A. Despins, Esq.
Wilbur F. Foster, Jr., Esq.
Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, NY 10005

Citibank, N.A:
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Attn: Victor Menezes/CEO
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399 Park Avenue
New York, NY 10022

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Attn: John J. Mack, President/CEO
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11 Madison Avenue
New York, NY 10010

Counsel to Credit Suisse:
Richard W. Clary, Esq.
Julie A. North, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475

Counsel to Deutsche Banc.:
Bryan A. Merryman, Esq.
White & Case
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071

Counsel to PIMCO et al:
Hennigan, Bennett & Dorman LLP
Attn: Joanne B. Stern
601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017

Debtor's Counsel:
Martin J. Bienstock, Esq.
Brian S. Rosen, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Debtor's Counsel:
Albert Togut, Esq.
Togut Segal & Segal
One Penn Plaza
New York, NY 10119

Citicorp:
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Attn: John Reed, CEO
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399 Park Avenue
New York, NY 10043

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Attn: Authorized Officer
11 Madison Avenue
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31 W. 52nd Street
New York, NY 10019

Counsel to Citicorp.:
Ronald J. Nessim, Esq.
John K. Rubiner, Esq.
Paul S. Chan, Esq.
Bird, Marella, Boxer & Wolpert
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067

Counsel to Deutsche Banc:
Lawrence Byrne, Esq.
Owen Pell, Esq.
Lance Croffoot-Suede, Esq.
White & Case
1155 Avenue of the Americas
New York, NY 10036

Office of the U.S. Trustee:
Mary Elizabeth Tom, Esq.
Greg M. Zipes, Esq.
33 Whitehall Street, 21st Floor
New York, NY 10004

Counsel to Credit Suisse, et al:
Jerry L. Marks, Esq.
Michael Cypers, Esq.
Heller Ehrman White & McAuliffe
601 S. Figueroa Street, 40th Floor
Los Angeles, CA 90017-5758

Citicorp North America, Inc.:
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Attn: Thomas F. Boland
Chairman-of-the-Board
Attn: Authorized Officer
450 Mamaroneck Avenue
Harrison, New York 10528

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New York, NY 10010

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Attn: Michael A. Carpenter/CEO
Attn: Authorized Officer
388 Greenwich Street, 18th Floor
New York, NY 10013

Counsel to Citicorp.:
Brad S. Karp, Esq.
Michael E. Gertzman, Esq.
Jonathan Hurwitz, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

Counsel to Bear Stearns:
J. Stephen Young, Esq.
Stacey M. Garrett, Esq.
Keesal, Young & Logan
400 Oceangate/ Post Office Box 1780
Long Beach, CA 90801