UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

ENRON CORPORATION, et al.,

Defendants.

CIVIL ACTION NO. H-01-3624
(Securities Suits)

CLASS ACTION

MEMORANDUM OF THE STATE RETIREMENT SYSTEMS GROUP IN OPPOSITION TO THE FLORIDA GROUP'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF ITS SELECTION OF CO-LEAD AND LIAISON COUNSEL

153

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, individually and on behalf of all others similarly situated, Plaintiff,	)	CIVIL ACTION NO. H-01-3624 (Securities Suits)
vs.	)	CLASS ACTION
ENRON CORPORATION, et al., Defendants.	)	

MEMORANDUM OF THE STATE RETIREMENT SYSTEMS GROUP IN OPPOSITION TO THE FLORIDA GROUP'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF ITS SELECTION OF CO-LEAD AND LIAISON COUNSEL

PRELIMINARY STATEMENT

Before this Court are now twelve competing motions for the appointment as Lead Plaintiff in this litigation.[1] The State Retirement Systems Group (the "State Group"), comprised of the retirement systems of Georgia, Ohio, Washington, and Alabama,[2] is submitting two memoranda today: (1) this memorandum specifically addressing the Florida Group Motion, and (2) a separate memorandum addressing all the other competing lead plaintiff motions. The Florida Group is the only movant

[1] Initially, there were thirteen competing motions. However, the Florida State Board of Administration (the "Florida Board" or "Florida") and the New York City Pension Funds ("New York Funds") (collectively, the "Florida Group"), have now filed an Amended Motion for Appointment of Co-Lead Plaintiffs and Co-Lead Counsel (the "Florida Group Motion").

[2] Only Georgia, Ohio, and Washington seek appointment as lead plaintiff (i.e., only these three states will exercise voting power in the decision-making process). Alabama seeks appointment as an advisory plaintiff only. Although, Alabama is committed to the prosecution of the case, it will provide its expertise only when called upon.

claiming losses larger than the State Group. However, as set forth herein, the Florida Group is not qualified to serve as lead plaintiff in this litigation, and the State Group should be appointed.

The Court should deny the Florida Group Motion because:

1. The Florida Board is atypical and subject to unique defenses;

2. The Florida Board is overburdened by other litigation in which it serves as lead or co-lead plaintiff and will be unable to manage or monitor the instant litigation effectively; and

3. The Florida Group represents an impermissible and inappropriate aggregation of losses in that the members of the Florida Group are wholly unrelated and devoid of any connection or affiliation preceding the litigation.[3]

The State Group is not saddled with any of these infirmities. The State Group timely filed its motion to be appointed lead plaintiff, has a tremendous financial incentive to pursue this litigation and maximize the recovery for the Class, and otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.[4] Accordingly, the State Group should be appointed as Lead Plaintiff in these proceedings, and the Florida Group Motion should be denied.

[3] Once this impermissible aggregation is unraveled, Florida is not qualified to serve as lead plaintiff (for all the reasons set forth herein), and the New York Funds standing alone do not have large enough losses to qualify as the most adequate plaintiff under the Private Securities Litigation Reform Act of 1995 (the "PSLRA").

[4] See Memorandum of Law in Support of Motion of the State Retirement Systems Group for the Appointment of Lead Plaintiff and for Approval of its Selection of Counsel ("State Group's Initial Memorandum") at 7-12.

ARGUMENT

A. The Florida Group Is Not An Appropriate Lead Plaintiff Because It is Atypical and Subject to Unique Defenses

The Florida Group no doubt will argue that it is the presumptively most adequate plaintiff because its claimed losses are larger than those of any other lead plaintiff movant. However, even if the Florida Group's aggregated loss calculations are credited, a financial interest in the litigation is only one of the qualifications required of a prospective lead plaintiff.[5] Despite its financial interest, the Florida Group cannot "otherwise satisf[y] the requirements of Rule 23" because it is subject to unique defenses that render it incapable of adequately representing the Class as a whole.[6] As set forth

---

[5] The PSLRA provides that:

> . . .the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that–
>
> (aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(1);
>
> (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
>
> (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

Securities and Exchange Act of 1934 ("Exchange Act") § 21D(a)(3)(B)(iii)(I), 15 U.S.C. § 78u-4(a)(3)(B).

[6] Under the PSLRA, a member of the purported plaintiff class may challenge the appointment of the presumptively most adequate plaintiff upon proof that such plaintiff will not fairly and adequately represent the interests of the class or is subject to "unique defenses that render that plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). A plaintiff that is subject to unique defenses (as a result of individual issues that are not shared by the absent class members) is deemed atypical and/or inadequate and therefore unsuitable as a representative of the class. This is because the defendants can attack the plaintiff on individual issues and make them the focus of the litigation, thereby distracting the plaintiff's attention from serving the best interests of the class.

herein, because of its close relationship with Enron insiders, the Florida Group is not the most adequate plaintiff and therefore cannot serve as Lead Plaintiff in this complex litigation.

Under Rule 23 and the PSLRA, the Court is charged with fiduciary obligations to appoint the Lead Plaintiff which will best serve the interests of the Class. See In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. 42, 49 (S.D.N.Y. 1998); see also 15 U.S.C. § 78u-4 (a) (3)(B)(iii)(cc) (the Court should appoint a lead plaintiff who satisfies the requirements of Rule 23).[7] Rule 23(a) of the Federal Rules of Civil Procedure sets forth the prerequisites for maintaining a class action, two of which are applicable in making a lead plaintiff determination: (1) the lead plaintiff's claims must be typical of the class; and (2) the lead plaintiff must be able to "fairly and adequately represent the interests of the class." See Piven v. Sykes Enters., Inc., 137 F. Supp. 2d 1295, 1306 (M.D. Fla. 2000) (citing Fischler v. AmSouth Bancorporation, 1997 WL 118420, at *2 (M.D. Fla. Feb. 6, 1997)). Each of the Rule 23(a) requirements is designed to insure that class representatives act in the best interests of absent class members. For example, the rationale behind the requirement that a representative plaintiff be "typical" of absent class members is that if the claims are virtually the same, then a representative plaintiff with typical claims will continually advance the interests of the class by pursuing its own interests. 1 H. Newberg, Newberg on Class Actions §3.22 at 199 (2d ed. 1985); see also Welling v. Alexy, 155 F.R.D. 654, 657 (N.D. Cal. 1994) ("The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class.") (citations omitted).

[7] The reason to factor these Rule 23 considerations into a Lead Plaintiff appointment is simple: if the proposed Lead Plaintiff is inadequate or atypical because it is subject to unique defenses, or otherwise infirm under Rule 23, the Class runs the risk of never being certified. If the Court were to disregard its Rule 23 duty to protect the Class's interests and instead appoint an inadequate or atypical representative at the Lead Plaintiff stage of the litigation, Defendants would justifiably attack that Lead Plaintiff for those same infirmities at the class certification stage. Consequently, the entire proposed Class would suffer for the representative's infirmities.

Courts have long recognized that named plaintiffs who are subject to unique defenses are not proper class representatives:

> If the proposed representatives present claims or defenses that are personal to them and are likely to be a major focus of the litigation the named plaintiffs are not proper class representatives.... The defense to which the putative class representative is subject need not be a sure-fire winner. "The presence of even an arguable defense peculiar to the named plaintiff or a small subset of the plaintiff class may destroy the required typicality of the class as well as bring into question the adequacy of the named plaintiff's representation."

Williams v. Balcor Pension Investors, 150 F.R.D. 109, 112 (N.D. Ill. 1993) (quoting J.H. Cohn & Co. v. American Appraisal Assoc., 628 F.2d 994, 998-99 (7th Cir. 1980)).

1. The Florida Board's Relationship with Alliance Capital – and Alliance Capital's Relationship with Enron

The Florida Board has every right to be angry with Enron and the various other Defendants in this litigation. Florida's blame, however, will not stop with Enron. In Florida's case – unlike the other lead plaintiff movants and the vast majority of absent Class members – Alliance Capital Management Holding LP ("Alliance") may be an additional culpable party. This additional culprit raises the question of who really is at fault for the Florida Board's losses and threatens to compromise the best interests of the Class.

On its website, Alliance describes itself as a publicly traded company that provides diversified management services to institutional and individual investors. At all relevant times, Alliance was the Florida Board's portfolio manager and agent.[8] Alliance was also Enron's largest institutional shareholder, holding approximately 42.9 million Enron shares through September 30, 2001, or 5.7

[8] See, e.g., Annual Report on Form 10-K for the Fiscal Year Ended Dec. 31, 2000 for Alliance Capital Management Holding L.P. ("Alliance 2000 10-K") at Part I, Item 1, Business, Clients.

percent of all outstanding Enron shares.[9] Frank Savage ("Savage"), an executive officer and Director of Alliance, was also a Director of Enron.[10] Through Savage, Alliance had actual or constructive knowledge of the massive problems within Enron.[11] It was Alliance, while in possession of material non-public information concerning Enron's fraudulent activities that made the decision to purchase Enron shares for the Florida Board. As a result, Florida will be unable to establish that it was deceived – an element of the fraud claim – because its decision-maker, Alliance, could not have been deceived by the Enron fraud.

As a further indication of Alliance's intimate ties to Enron, representatives of the Company came to Alliance's offices for meetings approximately ten times in the past year.[12] Alliance also met

---

[9] See Leticia Williams, Alliance Capital Sued Over Enron Ties, CBS.MarketWatch.com, Dec. 13, 2001, at 1.

[10] Savage was Chairman of Alliance Capital Management International (see Alliance 2000 10-K at Part III, Item 10, Directors and Executive Officers of the Registrant, Directors and Executive Officers of the General Partner), a division of Alliance, and was elected to Enron's Board as of October 12, 1999, and he has continued as a director through the disclosures of Enron's fraud. See Enron Corp. Elects Paulo V. Ferraz Pereira and Frank Savage to Board of Directors, Press Release (Houston), Oct. 12, 1999. Savage left Alliance in early August 2001. See John Dorschner, Florida's Last-Minute Enron Stock Buys Probed, Miami Herald, Jan. 17, 2002, attached hereto as Ex. 1.

[11] Courts routinely impute to directors and officers knowledge about adverse developments affecting their company's core businesses, particularly when there are other facts consistent with such knowledge. See Cosmas v. Hassett, 886 F.2d 8, 12-13 (2d Cir. 1989)(directors rightfully imputed with knowledge of elimination of "a potentially significant source of income for the company"); In re World Access, Inc. Sec. Litig., 119 F. Supp. 2d 1348, 1355-56 (N.D. Ga. 2000)(directors' knowledge of severe problems with "flagship" product imputed). See also In re Unisys Corp. Sec. Litig., No. CIV.A.00-1849, 2000 U.S. Dist. LEXIS 13500, at *20 (E.D. Pa. Sept. 21, 2000); In re PeopleSoft Inc., Sec. Litig., No. C 99-00472 WAA 2000, U.S. Dist. LEXIS 10953, at *12 (N.D. Cal. May 25, 2000); In re AETNA, Inc. Sec. Litig., 34 F. Supp. 2d 935, 953 (E.D. Pa. 1999); Epstein v. Itron, Inc., 993 F. Supp. 1314, 1326 (E.D. Wash. 1998).

[12] See Letter from Alfred Harrison, Alliance Capital to Ken Menke, Fla. State Bd. of Admin. of 12/5/01, at 1, attached hereto as Ex. 2.

with Dynegy Inc. management as part of its due diligence in connection with the ill-fated proposed merger with Enron (see Ex. 2), apparently as a result of Dynegy management's belief that Alliance had information about Enron that was not publicly available.

2. The Florida Board's Investigation into Alliance

Perhaps most troubling is the fact that the Florida Board itself is well aware of the problems that are created by its relationship with Alliance. In fact, Florida is in the process of conducting investigations into the Alliance matter that could establish that the Florida Board is an inappropriate representative of the Class, per se. As reported by Time Magazine,[13] Florida state officials are currently investigating:

> Whether [Savage] inappropriately pushed Enron's stock on [the Florida Board] while the energy giant was failing. Alliance more than doubled the state's stake in Enron since last August, buying 5.6 million shares in three months, even as stock prices fell and analysts questioned the firm's management and accounting practices.

In addition, as reported by the Associated Press,[14] Coleman Stipanovich, deputy executive director of the Florida Board, has announced an investigation into whether Alliance "did anything improper or was unduly influenced by Savage," and stated that the Florida Board "could sue Alliance. . . ."[15]

Thus, Florida appears to believe that Alliance used the Florida Board's funds inappropriately (e.g., to artificially prop up the price of Enron shares to support the rapidly diminishing value of

---

[13] Michael Weisskopf, Democrats: Don't Gloat About Enron, Time, Jan. 14, 2002, at 14, attached hereto as Ex. 3.

[14] Firm That Bought Enron Shares Probed, Associated Press, Jan. 17, 2002, attached hereto as Ex. 4.

[15] Such considerations highlight an additional reason why Florida is not an adequate plaintiff: the investigation and possible litigation against Alliance will surely hinder Florida's prosecution of the Class's interests in this action. See Ex. 3.

Alliance's own significant Enron holdings) while in possession of information not available to the investing public. Indeed, at least two of Alliance's other clients have already filed lawsuits against Alliance making similar allegations.[16] If Florida's investigation reaches similar conclusions, it will at the same time establish the Florida Board's own atypicality and inadequacy to serve as a representative plaintiff in this litigation; the Florida Board will have thus established that it is subject to the unique defense of not having relied upon the integrity of the market.

A quick glance at the chart of the Florida Board's Enron transactions shows that Florida has good reason to be suspicious of Alliance.[17] Through Alliance, the Florida Board purchased approximately 1.5 million shares from October 22-30, 2001. Alliance used the Florida Board's funds to purchase large amounts of stock at a time after Enron had revealed that its assets were overstated by at least $1 billion and that it had set up off-balance sheet partnerships with its own executives, after the first suits were filed in this litigation on October 22, 2001, and after the U. S. Securities and Exchange Commission announced an investigation of Enron. Significantly, these purchases were before Dynegy Inc. had publicly announced a planned acquisition of Enron. See Lettera Aff. Thus, Alliance purchased these shares on the Florida Board's behalf with no good news in sight. Moreover, Alliance arranged for the Florida Board to buy an additional 1.27 million shares from November 13-16, 2001, even after Enron announced its shocking restatement. The purchases made after October 22, 2001

---

[16] See Benak v. Alliance Capital Management L.P. (D.N.J. Dec. 7, 2001)(attached hereto as Ex. 5); Roy v. Alliance Capital Management L.P., Civil Action No. 8:01-CV-2449-T-24MSS (M.D. Fla. Dec. 20, 2001)(attached hereto as Ex. 6).

[17] See Affidavit of Linda Lettera (hereafter "Lettera Aff.") (attached as Exhibit C to Affidavit of Glen DeValerio, filed on December 21, 2001 in support of the Florida Board's initial motion for appointment as Lead Plaintiff).

comprise approximately thirty percent (30%) of all of the Florida Board's Enron transactions during the Class Period.[18] Due to the precipitous decline in the price of Enron stock, it appears that Alliance was desperately attempting to support the value of its own significant Enron holdings at the expense of the Florida Board. Not surprisingly, the Florida Board, as of December 11 , 2001, terminated its retention of Alliance as portfolio manager, reportedly because it was troubled by Alliance's decision to continue buying Enron stock after the Company's executives admitted to misrepresenting Enron's financial condition. See Ex. 1.

3. The Alliance Relationship Precludes the Florida Board's Presumption of Reliance on the Integrity of the Market

The Florida Group seeks to be appointed lead plaintiff to prosecute, inter alia, fraud claims under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. It is settled law that plaintiffs who rely upon the integrity of the financial markets in making their decisions to purchase a publicly-traded security are entitled to a presumption of reliance, which is a necessary element in a 10b-5 action. See Basic v. Levinson, 485 U.S. 224, 243-44 (1988).

Because of Florida's relationship with Alliance — and Alliance's relationship with Enron — questions exist concerning whether the Florida Board relied on nonpublic information to purchase Enron stock, thereby subjecting it to a unique defense.[19] Indeed, as noted above, there is the question

[18] See Lettera Aff. In all, beginning at the time of the abrupt resignation of Enron's Chief Executive Officer Jeffrey Skilling in August 2001, Alliance had the Florida Board buy a total of approximately 4.9 million Enron shares. Id.

[19] Unlike the other members of the Class, Florida's purchases arguably were aided by insider information, rendering Florida atypical of the Class it seeks to represent because of its unique access to inside information. See, e.g., Landry v. Price Waterhouse Chartered Accountants, 123 F.R.D. 474, 476 (S.D.N.Y. 1989) (access to inside information renders plaintiff atypical); Grace v. Perception Tech. Corp., 128 F.R.D. 165, 169 (D. Mass. 1989) (personal contact with corporate officers renders plaintiff atypical).

whether the Florida Board was actually deceived by the alleged fraud. Under ordinary circumstances, where plaintiffs are relying on a fraud-on-the-market theory, reliance on the integrity of the market is presumed. Basic, 485 U.S. at 243-44. If, however, the representative plaintiff relied on information not available to the investing public (i.e., not available to absent class members), the presumption of reliance afforded by the fraud-on-the-market doctrine is rebutted, and proof of reliance could be required from each class member on an individual basis. At a minimum, Florida is subject to unique defenses that render it atypical of the Class it seeks to represent. See Zandman v. Joseph, 102 F.R.D. 924, 931 (N.D. Ind. 1984) (plaintiff who cannot demonstrate justifiable reliance on integrity of the market held to be atypical).[20]

Defendants would almost certainly attempt to exploit these defenses at the class certification stage and make the Florida Board's individual issues the focus of this litigation. Class certification would be jeopardized in the process, and the entire Class could suffer as a result of the Florida Board's individual issues. In this case, the unique defenses created by the relationship with Alliance and the other individual issues noted herein render the Florida Group an inadequate representative of the larger

[20] See O'Neil v. Appel, 165 F.R.D. 479, 492-93 (W.D. Mich. 1996) (proposed class representative not typical where he relied on information from corporate officers and non-public information); Cosmos v. DelGiorno, 1995 WL 62598, at *4 (E.D.N.Y. 1995) (proposed class representative who relied on information from officers of defendant Company and information from broker rather than on the integrity of the market price or misleading statements is not an appropriate class representative); Durbin v. Miller, 132 F.R.D. 269, 274 (D. Col. 1990) ("[n]on reliance on the integrity of the market is an affirmative defense to a fraud on the market theory"); Landry, 123 F.R.D. at 476 (absent class members would be prejudiced where class representative required to rebut claim that purchases were not based on integrity of the market); Markewich v. Ersek, 98 F.R.D. 9, 11 (S.D.N.Y. 1982) (class representative claims not typical where he relied on recommendation of his broker, who was privy to inside information).

Class. Selection of an inappropriate representative plaintiff could leave any judgment in a class action – whether achieved by settlement or after a trial – open to collateral attack.[21]

Although the unique defenses confronting the Florida Board appear to be meritorious, the ultimate success of such a defense is irrelevant. Landry, 123 F.R.D. at 476. The mere presence of a defense particular to the proposed class representative impacts the adequacy and typicality requirements of Rule 23. See J. H. Cohn, 628 F.2d at 999 (class representative not adequate where a defense exists particular to that representative; in such a circumstance, the representative would necessarily pay less attention to matters affecting the entire class); In re Harcourt Brace Jovanovich, Inc. Sec. Litig., 838 F. Supp. 109, 113 (S.D.N.Y. 1993) ("[a] named plaintiff who is subject to an arguable defense of non-reliance on the market has been held subject to a unique defense, and therefore, atypical of the class under Rule 23(a)(3)"); Wagner v. Lehman Bros. Kuhn Loeb, Inc. 656 F. Supp. 643, 660 (N.D. Ill. 1986) ("[i]t is enough to deny class treatment when a defense peculiar to the class representative is even arguably present"). The concern is that representation of the class may suffer when the representative is distracted responding to unique defenses. See Klein v. Wolf, 88 F.R.D. 696, 699 (S.D.N.Y. 1981).

By virtue of its relationship with Alliance, the Florida Board is subject to a unique defense precluding the presumption of reliance that is afforded other class members by the fraud-on-the-market doctrine. Accordingly, the Florida Board is not a typical or adequate class representative and should be precluded from serving as a Lead Plaintiff. See 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

[21] See, e.g., Hansberry v. Lee, 311 U.S. 32, 45 (1940) ("Such a selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that protection to absent parties which due process requires."); see also Burke v. Ruttenberg, 102 F. Supp. 2d 1280, 1309 n. 37 (N.D. Ala.

B. The Florida Board's Involvement In Numerous Class Actions Precludes It From Effectively Monitoring And Actively Participating In This Litigation

Congress sought, through the PSLRA, to "empower investors so that they, not their lawyers, control private securities litigation . . . ." In re Telxon Corp. Sec. Litig., 67 F. Supp. 2d 803, 815 (N.D. Ohio 1999). As a means of accomplishing this goal, the PSLRA presumptively bars plaintiffs from serving as lead plaintiff in more than five cases in a three-year period. 15 U.S.C.A. § 78u-4(a)(3)(B)(vi); see also Ezra Charitable Trust v. Rent-Way, Inc., 136 F. Supp. 2d 435, 439 (W.D. Pa. 2001); Aronson v. McKesson HBOC, Inc., 79 F. Supp. 2d 1146, 1156 (N.D. Cal. 1999) (rejecting Florida as lead plaintiff because "Congress also desired to increase client control over plaintiff's counsel, and allowing simultaneous prosecution of six securities actions is inconsistent with that goal."). As the McKesson HBOC court noted, this presumptive bar may appropriately be lifted "for instance, if Florida were the only [lead plaintiff] movant, or if the other movants had accrued an even longer record of participation in securities litigation . . . It might even make a difference if Florida were the only institutional investor moving to serve as lead plaintiff." 79 F. Supp. 2d 1146, 1156-57. However, where there is no shortage of qualified institutional investors seeking appointment as lead plaintiff, as is the case here, Florida should not "be excepted from the ban against frequent litigants." Id. at 1157.

Including the instant litigation, the Florida Board has moved to be a lead plaintiff in thirteen securities fraud class actions in just the last five years. See Lettera Aff. at ¶¶ 8-9. It is currently

2000) (noting a case before the Eleventh Circuit in which a settlement was being challenged on the grounds that the lead plaintiff and lead counsel appointment had been inappropriate).

serving as a lead plaintiff in nine such actions and has been unsuccessful in its motions to be lead plaintiff in three other matters. Id.[22]

Moreover, Linda Lettera, the new General Counsel for the Florida Board, has walked into a position where she must immediately assume control of the other nine securities fraud class actions in which the Florida Board has already committed to serve as lead plaintiff, all in addition to her other duties as the Florida Board's General Counsel. See Lettera Aff. at ¶ 8. Ms. Lettera simply does not have the time to fulfill the obligations the PSLRA requires of lead plaintiffs in this litigation.

In fact, Tom Herndon, the Executive Director of the Florida Board, has conceded that the downside to serving as lead plaintiff "is that it consumes staff time. The [Florida Board] employs one lawyer who devotes half time [sic] to supervising the agency's securities cases."[23] In light of the Florida Board's responsibilities for directing several other class actions, the Florida Board is wholly unable to manage a litigation of this magnitude effectively. Allowing the Florida Board to manage yet another class action at this time is inconsistent with Congress's objective of increasing investors' control over their counsel in securities class actions.

[22] See also Miami Daily Business Review, Vol 75, No. 142, Jan. 2, 2002, at A8, attached hereto as Ex. 7.

[23] See Randy Myers, State of Litigation, Plansponsor, Dec. 2001, at 20, attached hereto as Ex. 8. In contrast, Georgia, Ohio, and Washington are not acting as lead plaintiff in any other securities class actions, and each of these states has a legal staff that will devote its efforts to directing this litigation.

C. The Florida Group is an Ad Hoc Aggregation of Unrelated Plaintiffs

In addition to all the other issues noted herein, the Florida Group has attempted improperly to aggregate its losses.[24] Unlike the State Group, the members of the Florida "Group" have no relationship that pre-dates this litigation. See Decl. of Leslie A. Conason at ¶ 7, submitted with the Florida Group Motion (acknowledging that the Florida Board and New York spoke for the first time on or about December 20, 2001). Instead, the "group" represents nothing more than an artificial ad hoc combination arranged by the lawyers,[25] a practice that has been condemned by this Court and many others across the country. See, e.g., In re Waste Management, Inc. Sec. Litig., 128 F. Supp. 2d 401, 431 (S.D. Tex. 2000). As such, the Florida Group is unsuitable as a lead plaintiff, and its motion for appointment should be rejected.

CONCLUSION

The Court has broad discretion to appoint as Lead Plaintiff the Class members who will best represent the Class. The members of the State Group have an extensive relationship that pre-dates this litigation and are jointly committed to controlling the litigation and effectively prosecuting the interests of all Class members. See generally Declaration of Thurbert E. Baker in Support of the Motion of the State Retirement Systems Group for the Appointment of Lead Plaintiff and for Approval of its Selection of Counsel (hereafter "Baker Decl."), submitted herewith. Under Rule 23 and the PSLRA, the Court is charged with fiduciary obligations to make the Lead Plaintiff

[24] See Memorandum of The State Retirement Systems Group in Opposition to Competing Motions For Appointment as Lead Plaintiff at 14-18 for a more detailed explanation of the law on aggregation.

[25] The Florida Group is proposing that this Court approve the appointment of no fewer than six law firms to control this litigation. See (Proposed) Order Granting Amended Motion for Appointment of Co-Lead Plaintiffs and Approval of Co-Lead Counsel at ¶ 2.

Respectfully submitted,

CUNNINGHAM, DARLOW, ZOOK
& CHAPOTON, LLP

By: Tom Allen Cunningham

Tom A. Cunningham
State Bar No. 05244700
Richard J. Zook
State Bar No. 22285400
1700 Chase Tower, 600 Travis
Houston, Texas 77002
Telephone: (713) 255-5500
Telecopier: (713) 255-5555

Proposed Liaison Counsel

CHITWOOD & HARLEY
Martin D. Chitwood
Special Assistant Attorney General
2900 Promenade II
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 873-3900

Proposed Lead Counsel
OF COUNSEL:

THURBERT E. BAKER
Attorney General of Georgia

DANIEL M. FORMBY
Deputy Attorney General (GA)

JOHN B. BALLARD, JR.
Senior Assistant Attorney General (GA)
EMILY P. HITCHCOCK
Assistant Attorney General (GA)

BETTY D. MONTGOMERY
Attorney General of Ohio

ANDREW BOWERS
Director of Special Counsel (OH)

CALFEE, HALTER & GRISWOLD LLP
Robert N. Rapp
Mark I. Wallach
Albert J. Lucas
1650 Fifth Third Center
21 E. State Street
Columbus, OH 43215
(614) 621-1500

CHRISTINE O. GREGOIRE
Attorney General of Washington

DAVID E. WALSH
Deputy Attorney General (WA)

JEFFREY O.C. LANE
Senior Assistant Attorney General (WA)

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document has been served upon all counsel of record via facsimile on this 21st day of January, 2002.

See Fax Cover Sheet of All Counsel of Record

Tom Alan Cunningham

Tom Alan Cunningham

appointment that is in the best interests of the Class. See In re Oxford, 182 F.R.D. at 49. Here, appointment of the State Group as Lead Plaintiff, rather than the Florida Group or any of the other lead plaintiff movants, will promote the best interests of the Class. The State Group will prosecute this litigation efficiently and thoroughly, as its members have prosecuted other litigations so many times in the past. See Baker Decl., Ex. A. The State Group's demonstrated ability to control the litigation as a cohesive group clearly sets it apart from any other lead plaintiff movant.

One of the express purposes of the PSLRA is to "give control of the litigation to lead plaintiffs with substantial holdings in the securities of the issuer." See Greenberg v. Bear Stearn & Co., Inc., 80 F. Supp. 2d 65, 70 (E.D.N.Y. 2000) (quoting Conf. Rep. On Sec. Litig. Reform, H.R. Rep. No. 104-369, 104th Congress, 1st Sess.). To say that each of the members of the State Group had substantial holdings in Enron securities during the Class Period is an understatement. With losses of approximately $330.7 million,[26] the State Group has all the incentives to prosecute this case and none of the unique defense issues faced by the Florida Group. In light of the foregoing, the State Group respectfully requests that the Court: (i) appoint the State Group as Lead Plaintiff in these actions; and (ii) approve the State Group's selection of Co-Lead Counsel and Liaison Counsel for the Class; and (iii) deny the Florida Group's motion for appointment of Co-Lead Plaintiffs and Co-Lead Counsel.

Dated: January 21, 2002.

---

[26] This figure includes losses suffered by Alabama.

ANDREW BOWERS
Director of Special Counsel (OH)

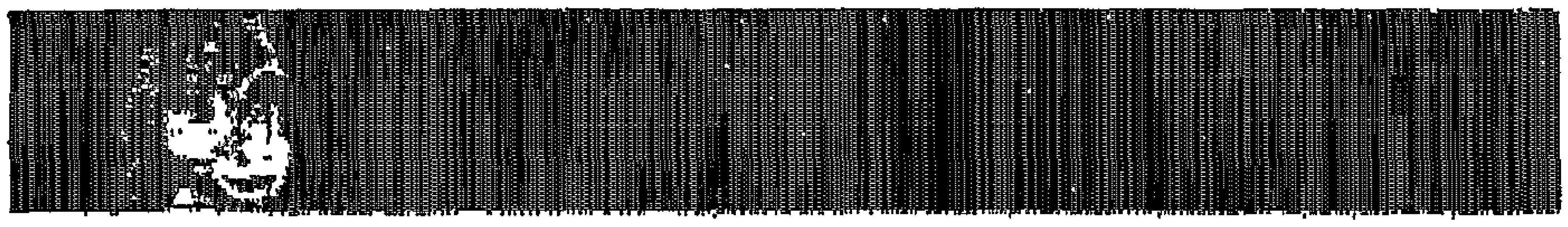
CALFEE, HALTER & GRISWOLD LLP
Robert N. Rapp
Mark I. Wallach
Albert J. Lucas
1650 Fifth Third Center
21 E. State Street
Columbus, OH 43215
(614) 621-1500

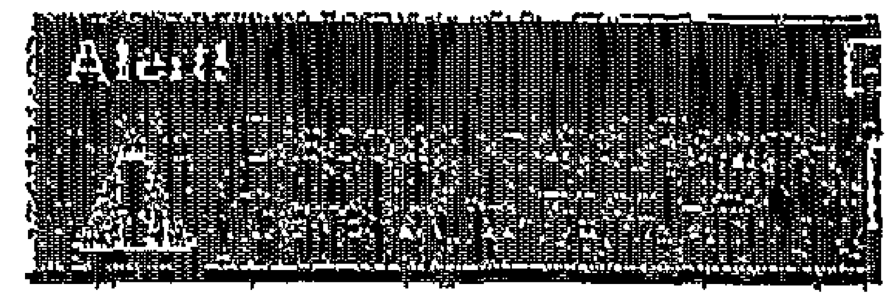
CHRISTINE O. GREGOIRE
Attorney General of Washington

DAVID E. WALSH
Deputy Attorney General (WA)

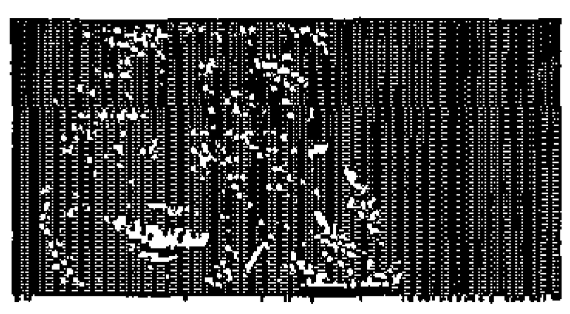
JEFFREY O.C. LANE
Senior Assistant Attorney General (WA)

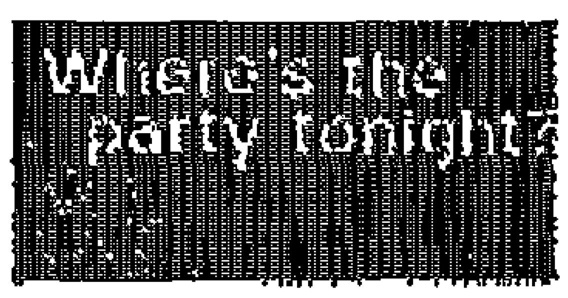
Exhibit 1





The Miami Herald





Published Thursday, January 17, 2002

Florida's last-minute Enron stock buys probed

BY JOHN DORSCHNER
jdorschner@herald.com

In the tangled web of suspicions resulting from the collapse of Enron, Florida officials are trying to determine whether an investment firm with links to Enron acted improperly when it made ill-timed purchases in the energy company's stock that resulted in a $306 million loss for the state pension fund

The concerns focus on Alliance Capital Management, a major New York financial firm. One of its executives was Frank Savage, who was also a board member of Enron and a major contributor to political campaigns.

Altogether, Alliance bought 7.6 million Enron shares for the Florida fund, including 2.7 million shares after Oct. 22, when it was announced that the U.S Securities and Exchange Commission was investigating the Houston company Alliance paid from $82 to $9 for the shares.

It sold all 7.6 million for 28 cents a share on Nov. 30, two days before Enron declared bankruptcy.

"We've been investigating," said Coleman Stipanovich, deputy executive director of the Florida State Board of Administration, which oversees the $96 billion pension fund.

"If Alliance did anything improper or was unduly influenced by Savage, we could sue Alliance, but we have made no decision on that."

- Real Estate & Home
- Shopping & Classifieds
- Sitios en español
- Sports & Recreation
- Travel & Visitors

The staff of the state board terminated Alliance in early December.

"It was a general performance issue. Enron was the straw that broke the camel's back," Stipanovich says. "Over the past several years, their performance had fallen off, and they had been on an informal watch list since mid-summer."

DENIALS

Alliance has repeatedly denied any wrongdoing. Savage did not return two phone calls seeking a response.

Whatever the underlying motivation, Alliance's purchases of Enron was clearly a bad investment for the Florida Retirement System, which serves 650,000 employees, including public school teachers and county employees

In November 2000, Alliance Capital started its string of purchases by paying $78 a share. As the stock value sank, Alliance's purchases increased. Altogether, it bought 4.9 million shares since August, when Enron Chief Executive Jeffrey Skilling abruptly resigned.

It kept buying after Oct. 17, when the company revealed that its assets were overstated by at least $1 billion and that it had set up obscure partnerships with its own executives.

On Oct. 22, the day that it was announced that the U.S. Securities and Exchange Commission would investigate Enron, Alliance purchased 311,000 shares at $22.82. On Oct. 24, the day that Enron's chief financial officer, Andrew Fastow, beneficiary of several partnerships, was fired, Alliance bought 302,500 shares at $16.30.

MORE SHARES

After that, as the bad news mounted, Alliance bought two million more shares for the Florida pension fund. Its last purchase was Nov. 16, two weeks before Enron filed for bankruptcy.

Alliance was also buying Enron for other major clients. At one point, it had purchased more than 40 million shares.

Stipanovich says that near the end of this odyssey state officials learned that an Alliance executive was on Enron's board

In early December, Alfred Harrison, vice chairman of the 4,440-employee Alliance, flew to Tallahassee to meet with the upset staff of the state board. "We wanted to give Al a chance to talk about his performance and Enron," says Stipanovich.

In a meeting that lasted well over an hour, Harrison said that Savage had no influence in purchasing the Enron stock, which was done for purely financial reasons.

On Dec. 5, Harrison wrote a letter to the Florida board, saying Alliance considered Enron a good investment because it held a ``dominant [45 percent] position in the newly deregulated area of the wholesale gas and electricity trading market."

Harrison pointed out that many stock analysts continued to recommend Enron well into October, when the company's problems began erupting in public.

FREQUENT VISITS

Enron representatives came to Alliance offices to promote the stock about 10 times in the past year, Harrison wrote. Enron never mentioned that it was using its officers' partnerships to keep billions of debt off its financial books.

``Analysts and portfolio managers must make the assumption that audited financial statements are not deficient through the nondisclosure of pertinent off balance sheet items and the details of private partnerships," Harrison wrote.

Harrison added that Alliance remained enthusiastic even in November, because Dynegy, a another Texas energy company, had offered to buy Enron.

Savage was not mentioned in the two-page letter.

A spokesman for Alliance Capital says the company can no longer speak on the record about its Enron dealings because several lawsuits have been filed against the company concerning the Savage connection. But in the past, Alliance has said that Savage was chairman of its international division, serving clients in the Middle East and Africa, and had no role in stock purchases.

LEFT THE COMPANY

Alliance has said that Savage left Alliance in early August -- before it started its rapid purchase of 4.9 million shares of Enron.

Savage, 62, now operates his own investment company, Savage Holdings, in New York. He has also served on the boards of Lockheed Martin, Qualcomm and Bloomberg LP. He is a trustee at Howard and Johns Hopkins universities.

Savage has long been a major contributor to Democratic candidates. During his three years on the Enron board, Savage has given at least $125,000 to politicians and the Democratic Party, according to the records of the Center for Responsive Politics, a nonpartisan watchdog group in

Washington.

Critics have pointed out that Enron's board was loaded with politically connected persons. Just for the 2000 election, Enron and its executives contributed $2.4 million to candidates and parties nationwide In recent years, Florida politicians have received $200,000 from Enron. The company gave Gov. Jeb Bush at least $5,000 for his 1998 gubernatorial campaign.

GOVERNOR'S ROLE

Bush is one of three members on the board of trustees that oversees the state pension fund, but Stipanovich says the governor was never involved in the selection of Alliance, the purchase of Enron stock or the decision to terminate its contract

Elizabeth Hirst, spokeswoman for the governor, said "there is no linkage" between Bush and Alliance's purchase of the stock.

Stipanovich emphasized that the $300 million lost in the Enron investment accounted for less than 1 percent of the state's $96 billion pension fund. No one receiving a pension will be affected because the fund provides defined benefits, guaranteed by the state. Alliance was one of 70 money managers the state uses for the fund.

Exhibit 2

December 5, 2001

AllianceCapital

Alliance Capital
Management Corporation
US Bank Place
601 Second Avenue South • Suite 5000
Minneapolis, Minnesota 55402-4322
Tel: (612) 392-1544
Fax: (612) 673-8253

Alfred Harrison
Vice Chairman

Mr. Ken Menke
Florida State Board of Administration
Assistant Chief of Domestic Equities
P.O. Box 13300
Tallahassee, Florida 32317-3300

Dear Ken:

Enron was a company with a dominant (45%) position in the newly deregulated area of the wholesale gas and electricity trading market. In many respects Enron pioneered the on-line facilitation of the movement of these products in the U.S. and Europe. Indeed, as recently as last week, many business professors still praised the company's innovative vision (e.g. Financial Times, December 4, 2001).

Over the last year we met with the company in Alliance offices about ten times. As we were buying the stock the fundamental growth rate (20-25%) always seemed attractive in relation to a market where many growth stocks, especially in the technology field, were declining as their earnings fell.

As is obvious, analysts and portfolio managers must make the assumption that audited financial statements are not deficient through the non-disclosure of pertinent off balance sheet items and the details of private partnerships.

In mid-August Jeff Skilling, who had been appointed to take over as CEO after Ken Lay, resigned. This resignation was stated to be for personal reasons, and the company did not offer additional information.

Unfortunately from approximately that time forward previously undisclosed information has come to light as to possible contingent liabilities. Earnings for previous years have also been restated. We understand from news accounts that the Securities and Exchange Commission, the Department of Justices and the United States Congress also have questions about Enron's apparent non-disclosure of information.

Mr. Ken Menke
December 5. 2001
Page Two

Over the past few months, even as the share price declined, the basic business appeared to be unaffected and standing alone could more than justify the lower price of the stock.

In the last several weeks we met with management on several occasions, from both a stock and fixed income vantage point. However, subsequent to our meetings. the company continued to newly disclose negative information.

Even so, with the stock in continued decline, Dynegy probably the second largest entity in the field, offered a merger proposition that valued the company at $10-$15, depending on the price of Dynegy stock. Dynegy management traveled the country, including meeting with Alliance, stressing the great advantage of such a merger, and a number of analysts on the Street forecast a more than 50% one-year appreciation in the price of the "new" Dynegy being so created. Accordingly given the 30% arbitrage discount offered by owning the "new" Dynegy, the purchase of the depressed Enron stock made sense.

Dynegy withdrew this offer, however, when the ratings agencies downgraded Enron debt to junk status. I sold the stock on Friday, November 30th. The company went into Chapter 11 bankruptcy that weekend.

Kind regards,

Yours truly,

Al

Alfred Harrison

AH/meh

Enclosure

FLORIDA ST BD OF ADMIN & ST TREAS - FRS
340020060

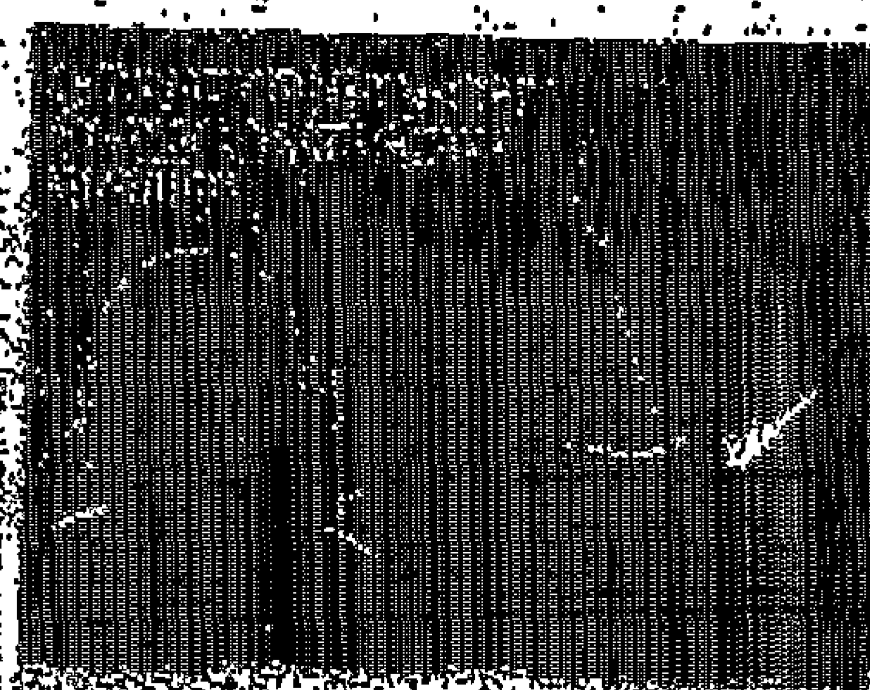
cusip	security_desc1	trans_code	trade_date	units	price	principal	net_amount	trans_sec_fee	commission
293561106	ENRON CORP	B	11/28/00	156,200	75.7448	$11,847,382.47	-$11,847,387.47 S	$0.00	$12,024.00
293561106	ENRON CORP	B	11/08/00	75,280	82.3305	$6,197,201.87	-$6,197,201.92 S	$0.00	$5,264.00
293561106	ENRON CORP	B	11/10/00	147,500	82.7062	$8,777,613.50	-$8,777,613.50 S	$0.00	$11,650.00
293561106	ENRON CORP	B	11/15/00	40,000	78.8092	$3,152,760.00	-$3,152,760.00 S	$0.00	$2,400.00
293561106	ENRON CORP	B	11/14/00	65,100	79.7056	$4,833,807.66	-$4,833,807.66 S	$0.00	$4,886.00
293561106	ENRON CORP	B	11/15/00	19,000	79.3478	$1,516,338.30	-$1,516,338.30 S	$0.00	$1,140.00
293561106	ENRON CORP	B	11/21/00	44,700	79.7588	$3,727,540.86	-$3,727,541.06 S	$0.00	$2,682.00
293561106	ENRON CORP	B	11/22/00	150,800	77.7805	$11,728,331.40	-$11,728,331.40 S	$0.00	$9,048.00
293561106	ENRON CORP	B	11/27/00	50,800	76.3356	$3,869,831.00	-$3,869,830.00 S	$0.00	$3,048.00
293561106	ENRON CORP	B	11/28/00	142,500	71.6657	$10,212,553.58	-$10,212,553.28 S	$0.00	$7,140.00
293561106	ENRON CORP	B	11/30/00	456,300	66.8607	$30,507,477.31	-$30,507,477.31 S	$0.00	$22,815.00
293561106	ENRON CORP	B	01/04/01	163,400	71.2282	$10,851,103.35	-$10,851,103.35 CHJ	$0.00	$8,204.00
293561106	ENRON CORP	B	01/05/01	82,300	71.8105	$5,858,529.32	-$5,858,529.32 CHJ	$0.00	$4,932.00
293561106	ENRON CORP	B	01/08/01	50,000	70.7500	$3,540,000.00	-$3,540,000.00 CHJ	$0.00	$2,500.00
293561106	ENRON CORP	B	01/09/01	127,500	68.8608	$8,802,702.00	-$8,802,702.00 CHJ	$0.00	$7,650.00
293561106	ENRON CORP	B	01/10/01	100,000	68.1227	$6,318,220.00	-$6,818,220.00 CHJ	$0.00	$6,000.00
293561106	ENRON CORP	B	01/17/01	114,400	67.9491	$7,780,653.04	-$7,780,653.04 CHJ	$0.00	$7,464.00
293561106	ENRON CORP	B	02/22/01	127,300	67.6436	$8,608,309.74	-$8,608,309.74 ML	$0.00	$12,744.00
293561106	ENRON CORP	B	04/17/01	111,800	62.0683	$6,714,886.22	-$6,714,886.22 MGH	$285.44	$6,608.00
293561106	ENRON CORP	B	05/05/01	180,000	53.7378	$9,610,946.00	-$9,610,946.00 ML	$0.00	$12,600.00
293561106	ENRON CORP	B	05/29/01	125,100	45.9200	$5,755,703.86	-$5,755,703.86 FBC	$0.00	$10,008.00
293561106	ENRON CORP	B	06/14/01	160,100	44.3866	$7,116,604.62	-$7,116,604.62 FBC	$0.00	$8,008.00
293561106	ENRON CORP	B	06/22/01	50,000	43.6000	$2,182,500.00	-$2,182,500.00 FBC	$0.00	$1,300.00
293561106	ENRON CORP	B	07/18/01	104,440	48.6600	$5,115,380.00	-$5,115,380.00 MGS	$0.00	$4,220.00
293561106	ENRON CORP	B	07/26/01	95,300	43.3414	$4,127,705.42	-$4,127,705.42 MGS	$0.00	$4,225.00
293561106	ENRON CORP	B	07/23/01	60,000	47.1878	$2,860,650.00	-$2,860,650.00 MGS	$0.00	$2,800.00
293561106	ENRON CORP	B	08/08/01	75,000	44.9119	$3,372,142.50	-$3,377,142.50 SMY	$0.00	$3,720.00
293561106	ENRON CORP	B	08/08/01	77,700	42.6867	$3,320,945.04	-$3,320,845.04 SMY	$0.00	$3,885.00
293561106	ENRON CORP	B	08/15/01	187,900	37.4804	$6,278,501.32	-$6,278,501.32 SBC	$0.00	$10,038.00
293561106	ENRON CORP	B	08/15/01	150,000	36.9926	$5,564,280.00	-$5,564,280.00 MLSY	$0.00	$5,600.00
293561106	ENRON CORP	B	08/21/01	75,000	36.6666	$2,765,780.00	-$2,765,780.00 MLSY	$0.00	$3,750.00
293561106	ENRON CORP	B	08/24/01	151,700	37.0000	$5,613,655.00	-$5,613,655.00 AGG	$0.00	$7,585.00
293561106	ENRON CORP	B	08/22/01	75,000	36.7380	$2,781,850.00	-$2,781,850.00 MLSY	$0.00	$4,500.00
293561106	ENRON CORP	B	08/24/01	30,000	34.8775	$1,101,825.00	-$1,101,825.00 MLSY	$0.00	$1,500.00
293561106	ENRON CORP	B	09/21/01	101,800	34.8525	$3,586,234.00	-$3,586,234.00 SS	$0.00	$5,090.00
293561106	ENRON CORP	B	10/05/01	135,700	32.8718	$4,463,990.03	-$4,463,990.03 MT	$0.00	$6,785.00
293561106	ENRON CORP	B	10/08/01	162,500	31.8888	$4,760,344.50	-$4,760,344.50 MT	$0.00	$7,825.00
293561106	ENRON CORP	B	10/17/01	78,000	30.4806	$2,373,031.20	-$2,373,831.20 MT	$0.00	$3,900.00
293561106	ENRON CORP	B	10/18/01	74,008	28.4246	$2,221,018.80	-$2,221,018.80 B	$0.00	$3,700.00
293561106	ENRON CORP	B	10/18/01	230,600	25.0650	$6,880,321.50	-$6,880,321.50 B	$0.00	$11,530.00
293561106	ENRON CORP	B	10/25/01	62,800	27.8820	$1,698,740.00	-$1,698,740.00 CHL	$0.00	$3,140.00
293561106	ENRON CORP	B	10/25/01	310,800	15.6046	$5,196,463.90	-$5,196,453.90 BRDG	$0.00	$11,975.00
293561106	ENRON CORP	B	10/27/01	157,200	24.9048	$3,922,604.56	-$3,922,604.56 GRDG	$0.00	$7,800.00
293561106	ENRON CORP	B	10/23/01	311,200	22.8210	$7,117,455.20	-$7,117,455.20 GS	$0.00	$15,520.00
293561106	ENRON CORP	B	10/24/01	302,500	16.0040	$4,847,085.00	-$4,847,085.00 MT	$0.00	$15,125.00
293561106	ENRON CORP	B	10/25/01	124,600	15.4756	$1,924,340.86	-$1,924,340.86 SSS	$0.50	$6,230.00
293561106	ENRON CORP	B	10/29/01	370,800	14.6144	$5,445,700.94	-$5,445,700.94 SSS	$0.00	$18,835.00
293561106	ENRON CORP	B	10/30/01	317,600	12.2276	$3,901,871.20	-$3,901,871.20 S	$0.00	$15,880.00
293561106	ENRON CORP	B	11/01/01	581,300	8.2704	$5,461,730.75	-$5,461,730.75 FBC	$0.00	$29,065.00
293561106	ENRON CORP	B	11/14/01	470,600	9.8456	$4,734,526.36	-$4,734,558.36 FBC	$0.00	$23,530.00
293561106	ENRON CORP	B	11/16/01	288,550	8.3224	$1,900,987.80	-$1,900,857.80 SSC	$0.00	$10,476.00
293561106	ENRON CORP	S	11/30/01	7,825,900	0.2800	$2,132,421.21	$1,152,421.71 S	$76.79	$0.00

cusip	security_desc1	trans_code	trade_date	units	price	principal	net_amount	trans_sec_fee	commission
293561106	ENRON CORP	DR	12/20/00	732,600	0.1250	$91,575.00	$91,575.00	$0.00	$0.00
293561106	ENRON CORP	DR	03/20/01	1,375,200	0.1250	$247,400.00	$247,400.00	$0.00	$0.00
293561106	ENRON CORP	DR	06/20/01	1,285,900	0.1250	$249,237.50	$249,237.50	$0.00	$0.00
293561106	ENRON CORP	DR	09/20/01	3,488,900	0.1250	$436,062.50	$436,062.50	$0.00	$0.00

Exhibit 3

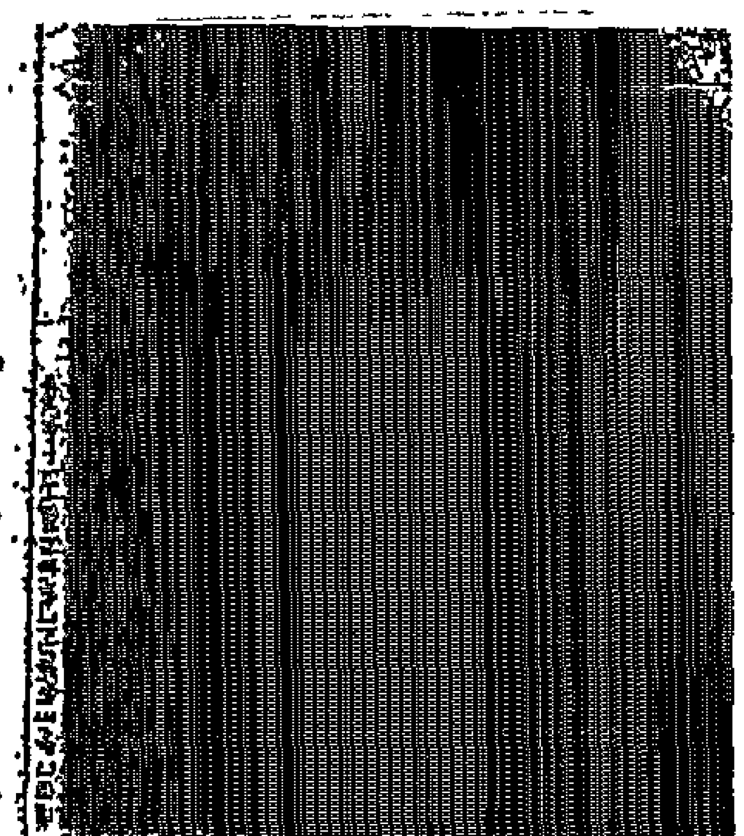
"I Know Bush!"

YOU KNOW WE'VE REACHED some kind of watershed in the stressful post–Sept. 11 world of airline security when the public has to decide who's telling the truth, the pilot or the Secret Service agent. That's what happened in the case of a member of President Bush's security detail who was thrown off an American Airlines plane on Christmas Day because of alleged problems with paperwork permitting him to carry a handgun. The pilot says the agent, identified in news reports as Walied Shater, got belligerent. Shater, through lawyers, says he was discriminated against because he's of Arab descent. [illegible] thing the airlines have pressed for since Sept. 11: the ability to identify just who is getting on their planes. "This case lends support to our calls for some kind of government-approved profiling," says Michael Wascom of the Air Transport Association. "If we had more information about this man, who was carrying a weapon, we could have avoided any problems." —*By Sally B. Donnelly*

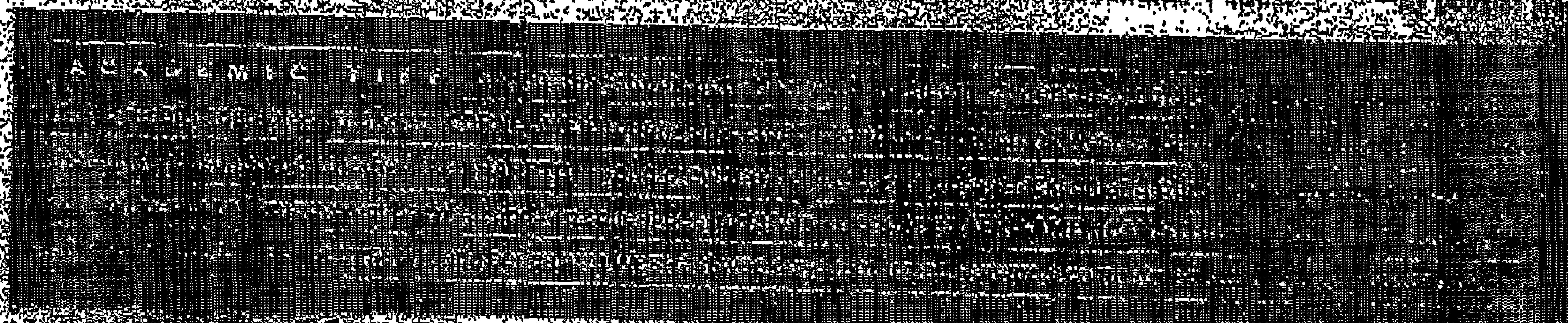


[illegible] Omar Reward

IS THERE A REWARD FOR THE capture of Taliban leader Mullah Mohammed Omar? No one seems quite sure. Defense Secretary Donald Rumsfeld announced on Dec. 18 that Washington planned to offer $10 million for Omar's capture, to go along with the $25 million dangled for nabbing Osama bin Laden. But Rumsfeld didn't consult ahead of time with the State Department—which runs the rewards program and decides which evildoers warrant a price tag on their head—and a reward had not been approved. It still hasn't. "You just can't create these rewards on your own," says a State Department aide. One problem: the rewards



are usually offered for terror[illegible] under U.S. indictment[illegible] Omar hasn't yet been [illegible] with a crime. The State Department could still [illegible] through with the reward, [illegible] a senior Administration aide insists that if someone turns [illegible] the Taliban chief, "we could probably pay some money." But do bounty hunters [illegible] —By Douglas W[illegible]

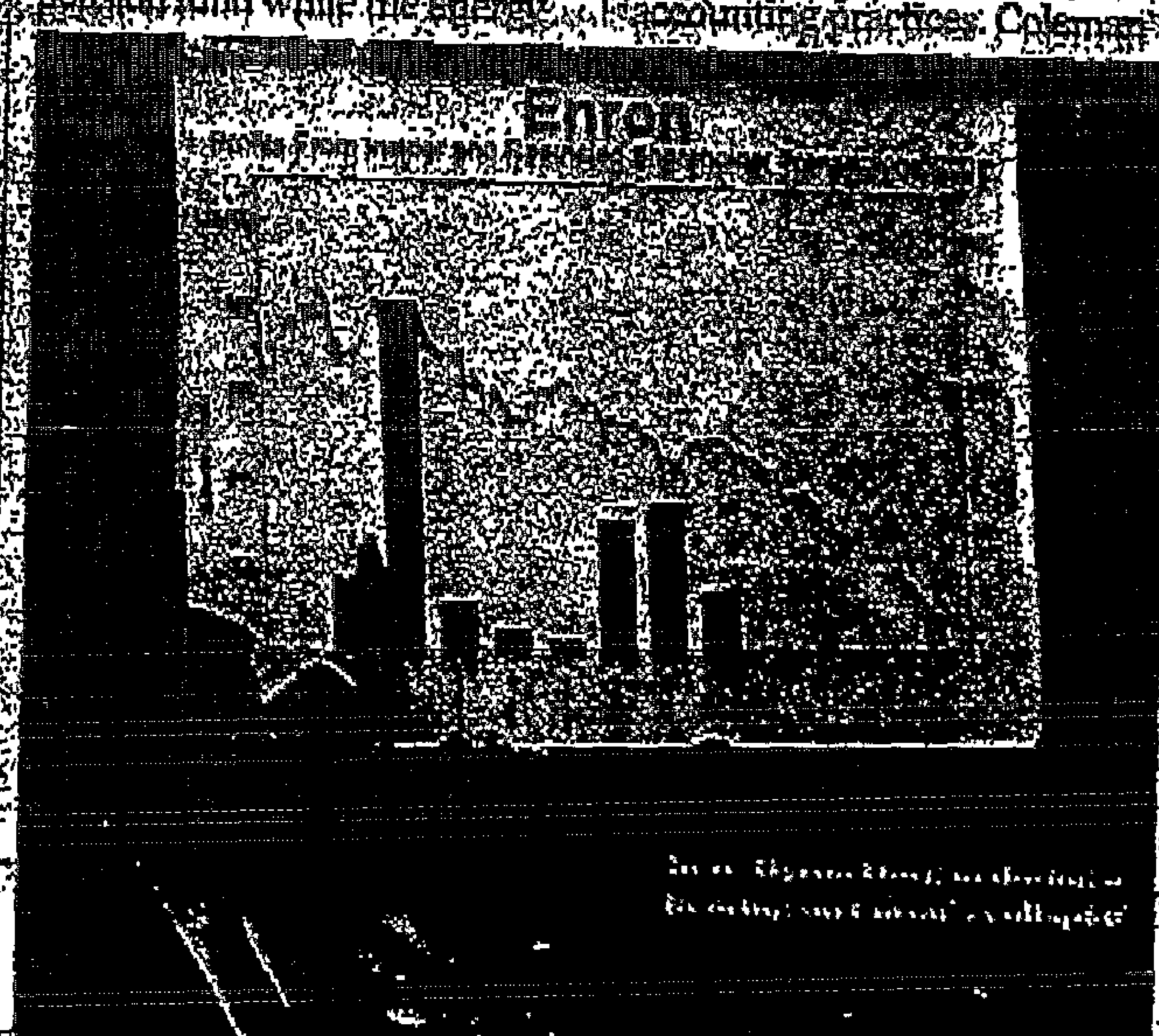


Democrats: Don't Gloat About Enron

HILL MONITOR

AS CONGRESS gears up for hearings on Enron's $60 billion collapse, some Democrats are savoring a chance to investigate links between the company and its many G.O.P. friends in the White House and Congress. But the scandal may wind up tainting Democrats as well. Florida's state pension fund, which lost $325 million on Enron, is examining, as part of a broader inquiry, what role Frank Savage, a major Democratic donor, may have played in the state's loss. The fund's investments were directed by Alliance Capital Management, where Savage was a senior executive and chairman at the same time he sat on Enron's board.

State officials want to know whether he inappropriately pushed Enron's stock on the pension fund while the energy giant was failing. Alliance more than doubled the state's stake in Enron since last August, buying 5.6 million shares in three months, even as stock prices fell and analysts questioned the firm's management and accounting practices. Coleman [illegible]



Su[illegible] adm[illegible] fund[illegible] lea[illegible] Enron[illegible] what[illegible] to find [illegible] Alliance. "We're going to want to be satisfied there was no undue influence," he told TIME.

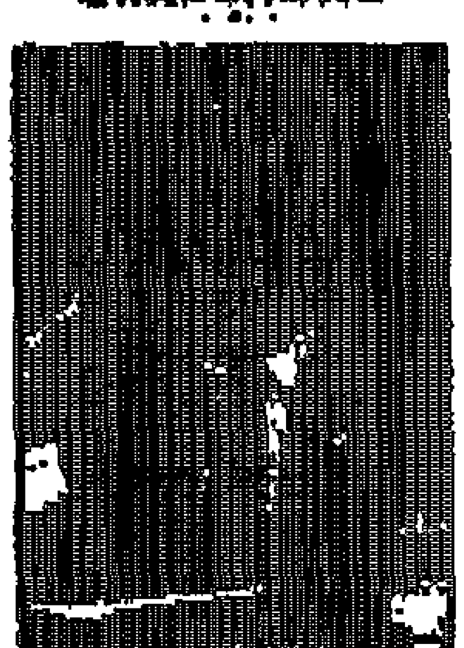
An Alliance spokesman said Savage, who headed an international subsidiary until leaving the firm in August, had no influence on Enron trading. Savage did not return calls for comment. Since [illegible] heavily Republican [illegible] 1999, he has [illegible] to Democrats [illegible] money for [illegible] torial candidate [illegible] Which [illegible] that Enron [illegible] debacle. —By Michael [illegible]

Exhibit 4

Thursday January 17 11:06 AM ET

Firm That Bought Enron Shares Probed

Slideshows



AP Photo

Enron

Audio/Video

White House Press Briefing: Waxman Says Energy Policy Benefitted Enron - (Yahoo! Finance Vision)

MIAMI (AP) - Florida officials are investigating whether a firm hired to make investments for the state's pension fund acted improperly when it made poorly timed purchases of Enron stock.

The $94 billion pension fund lost more than $300 million after it was forced to dump 7.5 million Enron shares in the aftermath of the company's Dec. 2 bankruptcy. State officials say no one receiving a pension will be affected because the fund provides defined benefits guaranteed by the state.

The state Board of Administration fired Alliance Capital Management Corp. last month, saying it was troubled by the New York financial adviser's decision to continue buying Enron shares for the fund last fall even after indications of the company's financial problems became public.

One of Alliance's executives, Frank Savage, was also a board member of Enron and a major contributor to political campaigns, The Miami Herald reported Thursday.

"We've been investigating," said Coleman Stipanovich, deputy executive director of the State Board of Administration, which oversees the pension fund. "If Alliance did anything improper or was unduly influenced by Savage, we could sue Alliance, but we have made no decision on that."

Stipanovich said state officials did not learn until late last year of Savage's tie to Enron. Alliance officials have said Savage left their company in early August. They said Savage had no influence in purchasing the shares.

State records show that on Oct. 22, the day the U.S. Securities and Exchange Commission (news - web sites) announced it would investigate Enron, Alliance purchased 311,000 shares for the state pension fund. Alliance bought an additional 2.4 million shares between Oct. 25 and Nov. 16. In all, between August and October, 4.9 million shares were bought for the fund.

Related Quotes

DJIA	9824.92	+112.65
NASDAQ	1972.40	+27.96
S&P 500	1137.31	+9.74
^IIX	145.56	+3.82
^PSE	688.29	+10.77

delayed 20 mins - disclaimer

Full Coverage

In-depth coverage about Enron Collapse

Related News Stories

- Andersen Memo Provides Smoking Gun on Enron Deals - Reuters (Jan 17, 2002)
- Ex-Enron Auditor Blames Firm Lawyers - AP (Jan 17, 2002)
- Larry Thompson Heading Enron Inquiry - AP (Jan 17, 2002)
- SEC's Pitt to Shake Up Accounting After Enron - Reuters (Jan 17, 2002)
- White House Dismisses Report It Favored Enron - Reuters (Jan 17, 2002)

More...

Opinion & Editorials

- Enron and the Gramms - NY Times (registration req'd) (Jan 17, 2002)
- Fall on your sword, Joe - Denver Post (Jan 17, 2002)
- After Enron, Bush Has Little Wiggle Room - Los Angeles Times (Jan 17, 2002)
- 'A Crooked Company' - Washington Post (Jan 17, 2002)

Enron filed for Chapter 11 bankruptcy protection on Dec. 2. Around the same time, the state board terminated Alliance.

"It was a general performance issue. Enron was the straw that broke the camel's back," Stipanovich said.

In a Dec. 5 letter to the board, Alliance vice chairman Alfred Harrison said the company had considered Enron a good investment because it held a dominant, 45 percent position in the newly deregulated area of the wholesale gas and electricity trading market.

An Alliance spokesman did not immediately return a phone call Thursday seeking further comment.

Alliance was one of 70 money managers the state uses for the fund.

Email this story - View most popular | Printer-friendly format

Archived Stories by Date: Jan 16

News Resources

Message Boards: Post/Read Msgs (39 msg Jan 17, 1:37 PM ET)

Conversations: Start a live discussion

News Alerts: enron | Securities and Exchange Commission
More Alerts: News Bulletins, News, Mobile, Stocks

- The Arrogance of the Executives . . . - Washington Post (Jan 17, 2002)

More...

Related Web Sites

- Enron - company site. Includes a FAQ on the bankruptcy filing, a look at the company's history, and press releases.
- Andersen - the auditor's site has a special section on Enron, which includes a statement on document destruction.
- House Committee on Government Reform - Minority Office - probing contacts between Enron executives and the White House energy task force. Site includes a facsimile of a Jan 3 letter from VP Cheney to Rep. Waxman, in pdf format.

More...

Magazine Articles

- Phil Gramm's Enron Favor - Village Voice (Jan 15, 2002)
- New Laws Won't Stop the Next Enron - Business Week (Jan 14, 2002)
- Lights Out: Enron's Failed Power Play - Newsweek (Jan 14, 2002)

More...

Audio

- VP Warned Enron of Looming Accounting Problems - NPR. (Jan 15, 2002)
- Enron Probes to Focus on Stock Sales - NPR (Jan 14, 2002)
- nron Scandal Sees New Revelations - NPR (Jan 14, 2002)

More...

Video

- White House Press Briefing on Enron and the Bush Administration - Yahoo! FinanceVision (Jan 16, 2002)
- Enron Furor Grows - ABCNEWS.com. (Jan 11, 2002)
- Enron Collapse Prompts Pension Review - AP (Jan 10, 2002)

Related Full Coverage

- Oil and Gas
- Utility Industry Deregulation

Search News

Exhibit 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

X

PATRICIA BENAK, on behalf of ALLIANCE PREMIER GROWTH FUND,

Plaintiff,

v.

ALLIANCE CAPITAL MANAGEMENT L.P.

Defendant,

-and-

ALLIANCE PREMIER GROWTH FUND,

Nominal Defendant.

X

COMPLAINT

Plaintiff, on behalf of the Alliance Premier Growth Fund, by her undersigned counsel, alleges the following upon personal knowledge as to her own acts, and upon information and belief based on the investigation conducted by her counsel as to all other allegations:

NATURE OF THE ACTION

Pursuant to Section 36(b) of the Investment Company Act of 1940, 15 U.S.C. § 80a-35(b), plaintiff brings this action on behalf of the Alliance Premier Growth Fund, "Series A," "Series B," "Series C," and the "Advisor Class Series," (collectively hereinafter the "Premier Growth Fund") to recover the investment advisory fees paid by the Premier Growth Fund to its investment adviser, Alliance Capital Management L.P., during the prior 12 month period immediately preceeding the institution of this action, in breach of the adviser's fiduciary duty in respect of such compensation.

JURISDICTION AND VENUE

1. This action arises under Section 36(b) of the Investment Company Act of 1940, 15 U.S.C. § 80a-35 (the "Investment Company Act").

2. The jurisdiction of this Court is based on Section 36(b) of the Investment Company Act and 28 U.S.C. § 1331 (federal question jurisdiction).

3. Venue is proper in this District as the Premier Growth Fund maintains its principal place of business at 500 Plaza Drive 3rd Floor, Seacaucus, New Jersey 07094 and many of the acts, transactions and wrongful conduct alleged herein occurred in substantial part in this District.

THE PARTIES

Plaintiff

4. Plaintiff Patricia Benak ("Benak") purchased approximately 250 shares of the Premier Growth Fund in June 2000 and continues to own such shares.

Defendant

5. Alliance Capital Management L.P., (hereinafter the "Adviser") at all times relevant hereto, was and continues to serve as, the investment adviser to the Alliance Premier Growth Fund. Acting in its capacity as investment adviser to the Alliance Premier Growth Fund, the Adviser provided investment advice to the Alliance Premier Growth Fund and was compensated therefore. Pursuant to 15 U.S.C. § 80a-35(b), as an investment adviser to the Alliance Premier Growth Fund, the Adviser owed a statutorily imposed fiduciary duty to the Premier Growth Fund with respect to the receipt of compensation for services. As set forth in

detail below, the Adviser breached this fiduciary duty and caused the Premier Growth Fund to incur hundreds of millions of dollars in damages as a result of such breach.

6. According to the Schedule 14A filed with the United States Securities and Exchange Commission ("SEC") by Enron Corp. (hereinafter "Enron") dated March 28, 2000, at all times relevant hereto, Mr. Frank Savage "Savage" served as a Director of the Adviser and thereby owed the Adviser a fiduciary duty of loyalty. In addition, according to the same proxy statement, during all times relevant hereto, Savage also served as a Director of Enron.

Nominal Defendant

7. Alliance Premier Growth Fund is a registered investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq. According to the Alliance Premier Growth Fund Semi-Annual Report dated May 31, 2001, "under the terms of an investment advisory agreement, the Fund pays [the Adviser] an advisory fee equal to the annualized rate of 1.00% of the Fund's average daily net assets up to $5 billion, .95% of the next $2.5 billion of the Fund's average daily net assets, .90% of the next $2.5 billion of the Fund's average daily net assets, and .85% of the Fund's average daily net assets over $10 billion. Such fee is accrued daily and paid monthly." The Alliance Premier Growth Fund paid the Adviser investment adviser fees of approximately $140 million during the twelve month period immediately preceding the filing of this action. By virtue of the Adviser's breach of fiduciary duty as specifically alleged below, the Premier Growth Fund incurred hundreds of millions of dollars in damages.

SUBSTANTIVE ALLEGATIONS

The Enron Fraud

8. Enron is a corporation organized and existing under the laws of the State of

Oregon with principal corporate offices located in Houston, Texas. Enron provides products and services related to natural gas, electricity and communications to wholesale and retail customers. Enron's operations are conducted through its subsidiaries and affiliates, which are principally engaged in the: (i) transportation of natural gas through pipelines to markets throughout the United States; (ii) generation, transmission and distribution of electricity to markets in the northwestern United States; (iii) marketing of natural gas, electricity and other commodities and related risk management and finance services worldwide; (iv) development, construction and operation of power plants, pipelines and other energy related assets worldwide; (v) delivery and management of energy commodities and capabilities to end-use retail customers in the industrial and commercial business sectors; and (vi) development of an intelligent network platform to provide bandwidth management services and the delivery of high bandwidth communication applications. Enron common stock is actively traded on the New York Stock Exchange under the symbol "ENE."

9. Frank Savage is, and has been, an Enron director since 1999. Mr. Savage has also simultaneously served as a Director of Alliance Capital Management L. P., the Adviser to the Premier Growth Fund. In addition, Savage has also served as Chairman of Alliance Capital Management International, a division of Alliance Capital Management L.P..

10. On October 16, 2001, Enron announced that it was taking a $1.01 billion charge mostly connected with write-downs of soured investments, producing a $618 million third-quarter loss.

11. On October 17, 2001, the Wall St. Journal reported that, while the mere size of the $1 billion plus dollar charge had raised questions on Wall Street, analysts were more concerned with the fact that $35 million of the charge stemmed from losses incurred by "a pair of limited

partnerships that until recently were run by Enron's chief financial officer." In making the announcement, Enron commented that "the charge connected with the partnerships is $35 million and involves the 'early termination . . . of certain structured finance arrangements."

> According to the Wall St. Journal, "two years ago, [Enron's] chief financial officer, Andrew S. Fastow, entered into the unusual arrangement with his employer. With the approval of the board of Enron, Mr. Fastow set up and ran the partnerships that stood to make him millions or more, according to partnership documents." (Emphasis added).

12. As reported, "the two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock."

13. Mr. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 Co-Investment, L.P. ("LJM2") partnership said that this dual role "should result in a steady flow of opportunities . . . to make investments at attractive prices."

14. Incredibly, the document went so far as to expressly acknowledge the glaring conflict of interest that existed under this agreement and the multi-million dollar incentive for Fastow to engage in self-dealing to the detriment, and at the expense of, Enron and its stockholders to whom he and Enron's Board of Directors owed a fiduciary duty and states that this dual role "should result in a steady flow of opportunities . . . to make investments at attractive prices and that Mr. Fastow would find his interests "aligned" with investors because the "economics of the partnership would have significant impact on the general partner's [Mr. Fastow's] wealth." (Emphasis added).

15. In late July, 2001, Mr. Fastow severed his relations with the partnerships, according

to an Enron SEC filing. Enron officials said that move was partly related to questions raised by analysts and large Enron shareholders. And it has recently been reported that the partnerships have been liquidated, or are in the process of being liquidated.

16. Little about the inner workings of the LJM partnerships has been disclosed to date. Private partnership documents indicate that Enron agreed to a partnership arrangement with potentially huge financial rewards for Mr. Fastow two years ago. The LJM Cayman partnership raised a relatively modest $16 million, according to the documents. The more ambitious LJM2 aimed to raise at least $200 million, the documents show.

17. According to the LJM2 offering document, and Enron's 2001 Proxy Statement, Fastow was the managing member of LJM2's general partner. Management fees paid to the general partner (which was equitably owned by Fastow and at least one other Enron employee) were as much as 2% annually of the total amounts invested. Additionally, the general partner was eligible for profit participation that could produce millions of dollars more if the partnership met its performance goals over its projected 10-year life. In exchange, the general partner was obliged to invest at least 1% of the aggregate capital commitments. The *Wall Street Journal* reported on October 19, 2001: "Mr. Fastow, and possibly a handful of partnership associates, realized more than $7 million last year in management fees and about $4 million in capital increases on an investment of nearly $3 million in the partnership, which was set up in December 1999 principally to do business with Enron." Thus, his involvement with the partnership was unusually lucrative for Fastow.

18. Despite statements designed to make the partnership deals seem innocuous, the positions Fastow held with the partnerships (and Enron) allowed Fastow to benefit from the illicit use of confidential, non-public information. An egregious example of this occurred in connection

with a $30 million LJM2 investment in a project known as "Raptor III" in September, 2000. This transaction involved writing put options committing LJM2 to buy Enron stock at a set price for six months. Writers of put options benefit from higher prices of the underlying stock, and are hurt by declining prices. As reported in the *Wall Street Journal* on October 19, 2001: "Only four months into this six month deal, LJM2 approached Enron to settle the investment early, 'causing LJM2 to receive its $30 million capital invested, plus $10.5 million in profit.'" The information quoted came from an internal report produced by defendant Fastow for the partnership investors, but withheld from the public. The article further reported that: "The renegotiation was before a decline in Enron's stock price, which could have forced LJM2 to buy Enron shares at a loss of as much as $8 each." Thus, Fastow and LJM2 took advantage of inside information to reap illicit insider trading profits, in the millions of dollars in this transaction alone.

19. Other Enron insiders, also privy to adverse non-public information about Enron's true financial condition, also bailed out of their Enron shares *at the same time*, reaping huge insider trading profits:

> Enron Chairman Kenneth Lay: sold 84,714 shares from Jan. 2 to Jan. 31, 2001 for $68.28 to $82 each, or more than $5.78 million; and sold 80,680 shares from Dec. 1 to Dec. 29 for $67.19 to $84.06 each, or more than $5.42 million. The sales total $11.2 million.
>
> Enron Former Chief Executive Officer Jeffrey Skilling: sold 50,000 shares from Jan. 3 to Jan 31 for $68.94 to $80.28 each, or more than $3.45 million; sold 20,000 shares from Dec. 20 to Dec. 27 for $79.03 to $83 each, or more than $1.58 million, and 20,000 shares from Dec. 6 to Dec. 13 for $68.91 to $77.06, or $1.38 million. The sales total $6.41 million.
>
> Mark Frevert, Enron Wholesale Services chairman and chief executive: sold 180,000 shares from Dec. 18 to Dec. 20 for $79 to $79.98 each, or more than $14.2 million. The sale brought his holdings to 223,771 shares.

Cliff Baxter, Enron vice chairman and chief strategy officer, who sold 174,215 shares from Jan. 2 to Jan. 31 for $69.44 to $81.31 each, or more than $12.10 million. The sale brought his holdings to 7,877 shares.

Ken Rice, chairman and chief executive of Enron Broadband Services Inc.; sold 32,000 shares from Jan. 3 to Jan. 31 for $68.19 to $82 each, or more than $12.10 million; sold 100,000 shares on Dec. 13 for $76.69 each, or $7.67 million. The sales total $9.185 million and brought Rice's holdings to 113,127 shares.

Steve Kean, Enron executive vice president and chief of staff: sold 77,822 shares on Jan. 31 for $79.84 to $80 each, or more than $6.21 million. The sale brought his holdings to 26,363 shares.

Stanley Horton, chairman and chief executive of Enron Gas Pipeline Group and EOTT Energy Partners-LP: sold 25,000 shares Jan. 29 for $80.51 each, or $2.01 million, and 25,000 shares Dec. 27 for $80.96 each, or $2.02 million. The sales total[ed] $4.04 million and brought his holdings to 144,217 shares.

Richard Buy, Enron executive vice president and chief risk officer: sold 47,724 shares from Jan. 2 to Jan. 26 for $81.90 to $82 each, or $3.91 million. The sale brought his holdings to 9,257 shares.

20. In total, the insider selling by defendants Enron insiders totals more than $73 million.

21. Had these insiders waited just a few more months to sell, the proceeds they would have received would have been substantially less. As revelations about Enron's declining business came out, the stock dropped preciptiously. By selling when they did, in tandem with Fastow's illicit maneuvers, the Enron insiders listed above reaped tens of millions in improperly obtained proceeds.

22. Finally, the fallout from the revelations about the partnership wrongdoing has had negative financial repercussions for Enron. These include a steep decline in its stock price, -- its stock now trades for a mere $.74 cents per share – down from a fifty-two week high of $84.875 per share, a loss of investor and Wall Street confidence, and increased costs of attracting and retaining employees. The Company's cover up of the Fastow agreement and other related transactions has

subjected Enron 0to strong criticism from investors and analysts alike and ultimately resulted in the filing of numerous securities fraud actions and the failure of Enron to continue to function as a viable entity without the protection of the bankruptcy court.

Enron Admits That Its Directors, Including Frank Savage, Had Actual Knowledge of the Massive Financial Fraud Conceived By Enron CFO Fastow, And That The Enron Board Expressly Authorized The Illicit Partnership Transactions And Acknowledges That The Fraud Required The Restatement of Five Years Of Financial Statements

23. In a Form 8-K filed by Enron with the SEC on November 8, 2000 Enron admitted in relevant part:

> LJM1 and LJM2 were described to the Enron Board of Directors as potential sources of capital to buy assets from Enron, potential equity partners for Enron, and counterparties to help mitigate risks associated with Enron investments. The Board was also informed that LJM1 and LJM2 intended to transact business with third parties. Prior to approving Mr. Fastow's affiliation with LJM1 and LJM2, the Board determined that Mr. Fastow's participation in the partnerships would not adversely affect the interests of Enron. The Board approved the initial transaction with LJM1 and recognized that Enron may (but was not required to) engage in additional transactions with LJM1. . . . The Board required review and approval of each transaction by the Office of the Chairman, the Chief Accounting Officer and the Chief Risk Officer. The Board also recognized the ability of the Chairman of the Board to require Mr. Fastow to resign from the partnerships at any time, and directed that the Audit and Compliance Committee conduct annual reviews of transactions between Enron and LJM1 and LJM2 completed during the prior year. Whether these control's and procedures were properly implemented is a subject of the Special Committee's investigation.

(Emphasis added).

24. The same Form 8-K also shed some initial light on the magnitude of the massive financial fraud that had been perpetrated by senior Enron executives – a fraud that was conducted with the knowledge of Enron's Board of Directors, including Frank Savage. In this vein, the Form 8-K stated in relevant part that: (i) Enron's prior period financial statements were required to be

restated in order to reflect a $1.2 billion reduction in shareholder's equity reported by Enron in the third quarter of 2001; (ii) "Enron intends to restate its financial statements for the years ended December 31, 1997 through 2000 and the quarters ended March 31 and June 30, 2001"; and that (iii) Enron's Board of Directors had appointed a Special Committee to review transactions between Enron and related parties.

25. On December 2, 2001 Enron finally collapsed under the weigh of its own financial fraud when it sought bankruptcy court protection and filed a petition under Chapter 11 of the Bankruptcy Code. Enron's bankruptcy filing has been heralded as the largest ever in United States history.

The Advisor Breaches Its § 36(b) Fiduciary Duty
To The Premier Growth Fund And The Fund Incurred
Hundreds Of Millions Of Dollars In Damages As A Result Thereof

26. Alliance Capital Management L.P., through at least one of its Directors, namely Frank Savage, has, for a substantial period of time, had knowledge of the fraudulent activities engaged in by Enron as alleged in detail above. Specifically, Alliance Capital Management L.P. directly acquired such knowledge because of Frank Savage's participation in, approval of, and knowledge of, the massive financial fraud perpetrated by Enron as set forth in detail above. In addition, Alliance Capital Management L.P., by and through Director Savage, and by other means including Form 4's filed by Enron insiders with the SEC, had knowledge that Enron insiders were engaged in selling hundreds of millions of dollars in Enron common stock while in possession of non-public material adverse information concerning Enron and the fraud detailed above.

27. Alliance Capital Management L.P. breached its fiduciary duty to the Premier

Growth Fund by, among other things, causing: (i) the Premier Growth Fund to purchase 4.766 million shares of Enron common stock at prices Alliance Capital Management L.P., knew to be materially artificially inflated in April and/or May of 2001. Enron shares traded at a high price of $ 63.66 and a low of $53.50 during the month of April 2001 and a high price of $ 62.41 and a low of $52.20 during the month of May 2001. Alliance Capital Management L.P. knew that these prices were materially artificially inflated because Alliance Capital Mangement L.P. Director Savage had knowledge of the fraud and had, along with Enron's other Board members approved of Fastow and Enron's fraudulent conduct; (ii) the Premier Growth Fund to purchase 4.766 million shares of Enron common stock at prices Alliance Capital Management L.P., knew to be materially artificially inflated in April and/or May of 2001 with knowledge that Enron insiders were engaged in illegal insider trading and were selling millions of shares of Enron common stock while they were in possession of non-public material adverse information concerning the fraud that had been perpetrated by Enron and the undisclosed true state of financial affairs at Enron, thereby effectively providing the Enron insiders who were illegally engaged in insider selling during the months of April and May 2001 with a ready, willing and able purchaser for the nearly 1.3 million Enron shares these Enron insiders sought to dump on unsuspecting victims at materially artificially inflated prices. Such misconduct was tantamount to Alliance Capital Management L.P., while acting as the Premier Growth Fund's investment Adviser, having permitted these Enron insiders to effectively loot the assets of the Premier Growth Fund – a fund to which Alliance Capital Management L.P. owed a statutory fiduciary duty.

28. Alliance Capital Management L.P. also further breached its fiduciary duties to the Premier Growth Fund when it failed to act to preserve the assets of the Premier Growth Fund, as

it was statutorily obligated to, beginning in at least October 2001 when the initial disclosures concerning Enron's wrongdoing first surfaced. As a statutory fiduciary Alliance Capital Management L.P. was required to preserve the assets of the Premier Growth Fund and could have acted to do so by causing the Premier Growth Fund to sell part or all of its 7.199 million share Enron common stock position when the news of Enron's fraud surfaced in October 2001. Rather than acting in furtherance of its fiduciary duty to the Premier Growth Fund, however, Alliance Capital Management L.P. caused the Premier Growth Fund to retain its 7.1 million Enron share position even as the price of Enron shares plummeted from nearly $30 per share to a mere $.74 cents per share. Alliance Capital Management L.P. was motivated to serve Enron's interest by causing the Premier Growth Fund to retain its multi-million share position because Alliance Capital Management L.P. and its Director Frank Savage, were well aware of the fact that, if Alliance Capital Management L.P. caused the Premier Growth Fund to quickly liquidate its multi-million Enron share position, Wall St. would view this act as a sign of severe lack of confidence by the Alliance mutual fund family and trouble at Enron, and that such an interpretation could result in massive sales of Enron stock by other large institutional investors. Such selling would have caused the price of Enron shares to decline rapidly and would have triggered covenants in certain of the partnerships that Enron had entered into, thereby requiring Enron to issue and/or pledge an increasing number of Enron shares in order to fulfill Enron's contractual partnership commitments, thereby resulting in a phenomenon known on Wall St. as a "death spiral." Thus, Alliance Capital Management L.P. and its Director Frank Savage, well aware of these facts, acted to aid Enron by causing the Premier Growth Fund to retain its multi-million Enron share position in violation of the statutory fiduciary duty that Alliance Capital Management L.P. owed to the Premier Growth Fund. As a direct, proximate and foreseeable result of not having acted to preserve the Premier Growth Fund's assets, Alliance Capital Management L.P. thereby caused the Premier Growth Fund to incur hundreds of millions of dollars in damages as the Premier Growth Fund's Enron position plummeted in value.

Count I

Against Alliance Capital Management L.P. For Violation of § 36(b) of the Investment Company Act of 1940, 15 U.S.C. § 80a-35(b)

29. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein. This Count is asserted against Alliance Capital Management L.P. as the investment Adviser to the Premier Growth Fund for having breached the fiduciary duty imposed on the Adviser by 15 U.S.C. § 80a-35(b).

30. As the Adviser to the Premier Growth Fund, the Adviser was statutorily required to act with the highest degree of loyalty and fidelity that it owed to the Premier Growth Fund.

31. As set forth above, the Adviser breached its fiduciary duty of loyalty because the Adviser, through one of its Directors, namely Frank Savage, had knowledge of the fraudulent activities engaged in by Enron as alleged in detail above. In addition to having knowledge of the fraud perpetrated by Enron, the Adviser also had knowledge, through Director Savage, that Enron insiders were engaged in selling hundreds of millions of dollars in Enron common stock while in possession of non-public material adverse information concerning the massive financial fraud that had been perpetrated by Enron and the true state of financial affairs that existed at Enron.

32. By reason of the conduct alleged herein, Alliance Capital Management L.P. violated Section 36(b) of the Investment Company Act.

33. As a direct, proximate and foreseeable result of such breach on the part of

Allinace Capital Management L.P. as the Adviser to the Premier Growth Fund, the Premier Growth Fund incurred hundreds of millions of dollars in damages, for which plaintiff, by this action seeks to recover on behalf of the Premier Growth Fund by seeking to recover the investment adviser fees paid to Alliance Capital Management L.P. by the Premier Growth fund while Alliance Capital Management L.P. was engaged in a breach of the fiduciary duties that it owed to the Premier Growth Fund pursuant to Section 36(b) of the Investment Company Act of 1940 during the twelve month period immediately preceeding the filing of this complaint.

Prayer for Relief

WHEREFORE, plaintiff, on behalf of the Alliance Premier Growth Fund, respectfully requests that this Court enter judgment in favor of the Alliance Premier Growth Fund and against defendant Alliance Capital Management L.P. as follows

a. Awarding the appropriate measure of damages;

b. Awarding prejudgment and post-judgment interest, as well as reasonable attorneys= fees, expert witness fees and other costs and expenses; and

c. Awarding such other relief as this Court may deem just and proper.

Jury Demand

Plaintiff demands a trial by jury.

DATED: December 7, 2001

LAW OFFICES OF JAMES V. BASHIAN, P.C.

James B. Bashian
Fairfield Commons
271 Route 46 West – Suite F207
Fairfield, New Jersey 07004
(973) 227-6330

Abbey Gardy, LLP

Paul O. Paradis
Mark C. Gardy
212 East 39th Street
New York, New York 10016
(212) 889-3700

Puls Taylor & Woodson
Kelly Puls
Brant Martin
2600 Airport Freeway
Fort Worth, Texas 76111
(817) 38-1717

Exhibit 6

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

SUSANNE ROY, on behalf of
ALLIANCE PREMIER GROWTH FUND,

Plaintiff,

v. 8:01-CV-2449-T-24MSS

ALLIANCE CAPITAL MANAGEMENT L.P.

Defendant,

and

ALLIANCE PREMIER GROWTH FUND,

Nominal Defendant.

COMPLAINT

Plaintiff, on behalf of the Alliance Premier Growth Fund, by her undersigned counsel, alleges the following upon personal knowledge as to her own acts, and upon information and belief based on the investigation conducted by her counsel as to all other allegations:

NATURE OF THE ACTION

Pursuant to Section 36(b) of the Investment Company Act of 1940, 15 U.S.C. § 80a-35, Plaintiff brings this action on behalf of the Alliance Premier Growth Fund, "Series A," "Series B," "Series C," and the "Advisor Class Series," (collectively hereinafter the "Premier Growth Fund") to recover the investment advisory fees paid by the Premier Growth Fund to its investment adviser, Alliance Capital Management L.P.,

T013438
$ 150.00

during the prior twelve-month period immediately preceding the institution of this action, in breach of the adviser's fiduciary duty in respect of such compensation.

JURISDICTION AND VENUE

1. This action arises under Section 36(b) of the Investment Company Act of 1940, 15 U.S.C. § 80a-35 (the "Investment Company Act").

2. The jurisdiction of this Court is based on Section 36(b) of the Investment Company Act and 28 U.S.C. § 1331 (federal question jurisdiction).

3. Venue is proper in this District as the Plaintiff resides at 9994 53rd Street in Seminole, Florida, and many of the acts, transactions, and wrongful conduct alleged herein occurred in substantial part in this District.

THE PARTIES

Plaintiff

4. Plaintiff Susanne Roy ("Roy") purchased approximately 160.31 shares of the Premier Growth Fund on October 14, 1999, and 55.772 shares on June 9, 2000, and continues to own such shares.

Defendant

5. Alliance Capital Management L.P., (hereinafter the "Adviser") at all times relevant hereto, was and continues to serve as, the investment adviser to the Alliance Premier Growth Fund. Acting in its capacity as investment adviser to the Alliance Premier Growth Fund, the Adviser provided investment advice to the Alliance Premier Growth Fund and was compensated therefore. Pursuant to 15 U.S.C. § 80a-35(b), as an

investment adviser to the Alliance Premier Growth Fund, the Adviser owed a statutorily imposed fiduciary duty to the Premier Growth Fund with respect to the receipt of compensation for services. As set forth in detail below, the Adviser breached this fiduciary duty and caused the Premier Growth Fund to incur hundreds of millions of dollars in damages as a result of such breach.

6. According to the Schedule 14A filed with the United States Securities and Exchange Commission ("SEC") by Enron Corp. (hereinafter "Enron") dated March 28, 2000, at all times relevant hereto, Mr. Frank Savage "Savage" served as a Director of the Adviser and thereby owed the Adviser a fiduciary duty of loyalty. In addition, according to the same proxy statement, during all times relevant hereto, Savage also served as a Director of Enron.

Nominal Defendant

7. Alliance Premier Growth Fund is a registered investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq. According to the Alliance Premier Growth Fund Semi-Annual Report dated May 31, 2001, "under the terms of an investment advisory agreement, the Fund pays [the Adviser] an advisory fee equal to the annualized rate of 1.00% of the Fund's average daily net assets up to $5 billion, .95% of the next $2.5 billion of the Fund's average daily net assets, .90% of the next $2.5 billion of the Fund's average daily net assets, and .85% of the Fund's average daily net assets over $10 billion. Such fee is accrued daily and paid monthly." The Alliance Premier Growth Fund paid the Adviser investment adviser fees of

approximately $140 million during the twelve-month period immediately preceding the filing of this action. By virtue of the Adviser's breach of fiduciary duty as specifically alleged below, the Premier Growth Fund incurred hundreds of millions of dollars in damages.

SUBSTANTIVE ALLEGATIONS

The Enron Fraud

8. Enron is a corporation organized and existing under the laws of the State of Oregon with principal corporate offices located in Houston, Texas. Enron provides products and services related to natural gas, electricity and communications to wholesale and retail customers. Enron's operations are conducted through its subsidiaries and affiliates, which are principally engaged in the: (i) transportation of natural gas through pipelines to markets throughout the United States; (ii) generation, transmission and distribution of electricity to markets in the northwestern United States; (iii) marketing of natural gas, electricity and other commodities and related risk management and finance services worldwide; (iv) development, construction and operation of power plants, pipelines and other energy related assets worldwide; (v) delivery and management of energy commodities and capabilities to end-use retail customers in the industrial and commercial business sectors; and (vi) development of an intelligent network platform to provide bandwidth management services and the delivery of high bandwidth communication applications. Enron common stock is actively traded on the New York Stock Exchange under the symbol "ENE."

9. Frank Savage is, and has been, an Enron director since 1999. Mr. Savage has also simultaneously served as a Director of Alliance Capital Management L.P., the Adviser to the Premier Growth Fund. In addition, Savage has also served as Chairman of Alliance Capital Management International, a division of Alliance Capital Management L.P.

10. On October 16, 2001, Enron announced that it was taking a $1.01 billion charge mostly connected with write-downs of soured investments, producing a $618 million third-quarter loss.

11. On October 17, 2001, the *Wall Street Journal* reported that, while the mere size of the $1 billion plus dollar charge had raised questions on Wall Street, analysts were more concerned with the fact that $35 million of the charge stemmed from losses incurred by "a pair of limited partnerships that until recently were run by Enron's chief financial officer." In making the announcement, Enron commented that "the charge connected with the partnerships is $35 million and involves the 'early termination . . . of certain structured finance arrangements.'"

> According to the Wall St. Journal, "two years ago, [Enron's] chief financial officer, Andrew S. Fastow, entered into the unusual arrangement with his employer. With the approval of the board of Enron, Mr. Fastow set up and ran the partnerships that stood to make him millions or more, according to partnership documents." (Emphasis added).

12. As reported, "the two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock."

13. Mr. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 Co-Investment, L.P. ("LJM2") partnership said that this dual role "should result in a steady flow of opportunities . . . to make investments at attractive prices."

14. Incredibly, the document went so far as to expressly acknowledge the glaring conflict of interest that existed under this agreement and the multi-million dollar incentive for Fastow to engage in self-dealing to the detriment, and at the expense of, Enron and its stockholders to whom he and Enron's Board of Directors owed a fiduciary duty and states that this dual role "should result in a steady flow of opportunities . . . to make investments at attractive prices and that Mr. Fastow would find his interests "aligned" with investors because the "economics of the partnership would have significant impact on the general partner's [Mr. Fastow's] wealth." (Emphasis added).

15. In late July, 2001, Mr. Fastow severed his relations with the partnerships, according to an Enron SEC filing. Enron officials said that move was partly related to questions raised by analysts and large Enron shareholders. And it has recently been reported that the partnerships have been liquidated, or are in the process of being liquidated.

16. Little about the inner workings of the LJM partnerships has been disclosed to date. Private partnership documents indicate that Enron agreed to a partnership arrangement with potentially huge financial rewards for Mr. Fastow two years ago. The LJM Cayman partnership raised a relatively modest $16 million, according to the documents. The more ambitious LJM2 aimed to raise at least $200 million, the documents show.

17. According to the LJM2 offering document, and Enron's 2001 Proxy Statement, Fastow was the managing member of LJM2's general partner. Management fees paid to the general partner (which was equitably owned by Fastow and at least one other Enron employee) were as much as 2% annually of the total amounts invested. Additionally, the general partner was eligible for profit participation that could produce millions of dollars more if the partnership met its performance goals over its projected 10-year life. In exchange, the general partner was obliged to invest at least 1% of the aggregate capital commitments. The *Wall Street Journal* reported on October 19, 2001: "Mr. Fastow, and possibly a handful of partnership associates, realized more than $7 million last year in management fees and about $4 million in capital increases on an investment of nearly $3 million in the partnership, which was set up in December 1999 principally to do business with Enron." Thus, his involvement with the partnership was unusually lucrative for Fastow.

18. Despite statements designed to make the partnership deals seem innocuous, the positions Fastow held with the partnerships (and Enron) allowed Fastow to benefit from the illicit use of confidential, non-public information. An egregious example of this occurred in connection with a $30 million LJM2 investment in a project known as "Raptor III" in September, 2000. This transaction involved writing put options committing LJM2 to buy Enron stock at a set price for six months. Writers of put options benefit from higher prices of the underlying stock, and are hurt by declining prices. As reported in the *Wall Street Journal* on October 19, 2001: "Only four months into this six month deal, LJM2

approached Enron to settle the investment early, 'causing LJM2 to receive its $30 million capital invested, plus $10.5 million in profit.'" The information quoted came from an internal report produced by defendant Fastow for the partnership investors, but withheld from the public. The article further reported that: "The renegotiation was before a decline in Enron's stock price, which could have forced LJM2 to buy Enron shares at a loss of as much as $8 each." Thus, Fastow and LJM2 took advantage of inside information to reap illicit insider trading profits, in the millions of dollars in this transaction alone.

19. Other Enron insiders, also privy to adverse non-public information about Enron's true financial condition, also bailed out of their Enron shares *at the same time*, reaping huge insider trading profits:

> Enron Chairman Kenneth Lay: sold 84,714 shares from Jan. 2 to Jan. 31, 2001 for $68.28 to $82 each, or more than $5.78 million; and sold 80,680 shares from Dec. 1 to Dec. 29 for $67.19 to $84.06 each, or more than $5.42 million. The sales total $11.2 million.

> Enron Former Chief Executive Officer Jeffrey Skilling: sold 50,000 shares from Jan. 3 to Jan 31 for $68.94 to $80.28 each, or more than $3.45 million; sold 20,000 shares from Dec. 20 to Dec. 27 for $79.03 to $83 each, or more than $1.58 million, and 20,000 shares from Dec. 6 to Dec. 13 for $68.91 to $77.06, or $1.38 million. The sales total $6.41 million.

> Mark Frevert, Enron Wholesale Services chairman and chief executive: sold 180,000 shares from Dec. 18 to Dec. 20 for $79 to $79.98 each, or more than $14.2 million. The sale brought his holdings to 223,771 shares.

> Cliff Baxter, Enron vice chairman and chief strategy officer, who sold 174,215 shares from Jan. 2 to Jan. 31 for $69.44 to $81.31 each, or more than $13.10 million. The sale brought his holdings to 7,877 shares.

> Ken Rice, chairman and chief executive of Enron Broadband Services Inc.; sold 32,000 shares from Jan. 3 to Jan. 31 for $68.19 to $82 each, or more than $12.10 million; sold 100,000 shares on Dec. 13 for $76.69 each, or

$7.67 million. The sales total $9.135 million and brought Rice's holdings to 113,127 shares.

Steve Kean, Enron executive vice president and chief of staff: sold 77,822 shares on Jan. 31 for $79.84 to $80 each, or more than $6.21 million. The sale brought his holdings to 26,363 shares.

Stanley Horton, chairman and chief executive of Enron Gas Pipeline Group and EOTT Energy Partners-LP: sold 25,000 shares Jan. 29 for $80.51 each, or $2.01 million, and 25,000 shares Dec. 27 for $80.96 each, or $2.02 million. The sales total[ed] $4.04 million and brought his holdings to 144,217 shares.

Richard Buy, Enron executive vice president and chief risk officer: sold 47,724 shares from Jan. 2 to Jan. 26 for $81.90 to $82 each, or $3.91 million. The sale brought his holdings to 9,257 shares.

20. In total, the insider selling by Enron insiders totals more than $73 million.

21. Had these insiders waited just a few more months to sell, the proceeds they would have received would have been substantially less. As revelations about Enron's declining business came out, the stock dropped precipitously. By selling when they did, in tandem with Fastow's illicit maneuvers, the Enron insiders listed above reaped tens of millions in improperly obtained proceeds.

22. Finally, the fallout from the revelations about the partnership wrongdoing has had negative financial repercussions for Enron. These include a steep decline in its stock price, -- its stock now trades for a mere $.74 cents per share – down from a fifty-two week high of $84.875 per share, a loss of investor and Wall Street confidence, and increased costs of attracting and retaining employees. The Company's cover-up of the Fastow agreement and other related transactions has subjected Enron to strong criticism from investors and analysts alike and ultimately resulted in the filing of numerous

securities fraud actions and the failure of Enron to continue to function as a viable entity without the protection of the bankruptcy court.

Enron Admits that Its Directors, Including Frank Savage, had Actual Knowledge of the Massive Financial Fraud Conceived by Enron CFO Fastow, and that the Enron Board Expressly Authorized the Illicit Partnership Transactions and Acknowledges that the Fraud Required the Restatement of Five Years of Financial Statements

23. In a Form 8-K filed by Enron with the SEC on November 8, 2000 Enron admitted in relevant part:

> LJM1 and LJM2 were described to the Enron Board of Directors as potential sources of capital to buy assets from Enron, potential equity partners for Enron, and counterparties to help mitigate risks associated with Enron investments. The Board was also informed that LJM1 and LJM2 intended to transact business with third parties. Prior to approving Mr. Fastow's affiliation with LJM1 and LJM2, the Board determined that Mr. Fastow's participation in the partnerships would not adversely affect the interests of Enron. The Board approved the initial transaction with LJM1 and recognized that Enron may (but was not required to) engage in additional transactions with LJM1. . . . The Board required review and approval of each transaction by the Office of the Chairman, the Chief Accounting Officer and the Chief Risk Officer. The Board also recognized the ability of the Chairman of the Board to require Mr. Fastow to resign from the partnerships at any time, and directed that the Audit and Compliance Committee conduct annual reviews of transactions between Enron and LJM1 and LJM2 completed during the prior year. Whether these control's and procedures were properly implemented is a subject of the Special Committee's investigation.
>
> (Emphasis added).

24. The same Form 8-K also shed some initial light on the magnitude of the massive financial fraud that had been perpetrated by senior Enron executives – a fraud

that was conducted with the knowledge of Enron's Board of Directors, including Frank Savage. In this vein, the Form 8-K stated in relevant part that: (i) Enron's prior period financial statements were required to be restated in order to reflect a $1.2 billion reduction in shareholder's equity reported by Enron in the third quarter of 2001; (ii) "Enron intends to restate its financial statements for the years ended December 31, 1997, through 2000 and the quarters ended March 31 and June 30, 2001"; and that (iii) Enron's Board of Directors had appointed a Special Committee to review transactions between Enron and related parties.

25. On December 2, 2001, Enron finally collapsed under the weigh of its own financial fraud when it sought bankruptcy court protection and filed a petition under Chapter 11 of the Bankruptcy Code. Enron's bankruptcy filing has been heralded as the largest ever in United States history.

The Advisor Breaches its § 36(b) Fiduciary Duty to the Premier Growth Fund and the Fund Incurred Hundreds of Millions of Dollars in Damages as a Result Thereof

26. Alliance Capital Management L.P., through at least one of its Directors, namely Frank Savage, has, for a substantial period of time, had knowledge of the fraudulent activities engaged in by Enron as alleged in detail above. Specifically, Alliance Capital Management L.P. directly acquired such knowledge because of Frank Savage's participation in, approval of, and knowledge of, the massive financial fraud perpetrated by Enron as set forth in detail above. In addition, Alliance Capital

Management L.P., by and through Director Savage, and by other means including Form 4's filed by Enron insiders with the SEC, had knowledge that Enron insiders were engaged in selling hundreds of millions of dollars in Enron common stock while in possession of non-public material adverse information concerning Enron and the fraud detailed above.

27. Alliance Capital Management L.P. breached its fiduciary duty to the Premier Growth Fund by, among other things, causing: (i) the Premier Growth Fund to purchase 4.766 million shares of Enron common stock at prices Alliance Capital Management L.P., knew to be materially artificially inflated in April and/or May of 2001. Enron shares traded at a high price of $ 63.66 and a low of $53.50 during the month of April 2001 and a high price of $ 62.41 and a low of $52.20 during the month of May 2001. Alliance Capital Management L.P. knew that these prices were materially artificially inflated because Alliance Capital Management L.P. Director Savage had knowledge of the fraud and had, along with Enron's other Board members approved of Fastow and Enron's fraudulent conduct; (ii) the Premier Growth Fund to purchase 4.766 million shares of Enron common stock at prices Alliance Capital Management L.P., knew to be materially artificially inflated in April and/or May of 2001 with knowledge that Enron insiders were engaged in illegal insider trading and were selling millions of shares of Enron common stock while they were in possession of non-public material adverse information concerning the fraud that had been perpetrated by Enron and the undisclosed true state of financial affairs at Enron, thereby effectively providing the Enron insiders

who were illegally engaged in insider selling during the months of April and May 2001 with a ready, willing and able purchaser for the nearly 1.3 million Enron shares these Enron insiders sought to dump on unsuspecting victims at materially artificially inflated prices. Such misconduct was tantamount to Alliance Capital Management L.P., while acting as the Premier Growth Fund's investment Adviser, having permitted these Enron insiders to effectively loot the assets of the Premier Growth Fund -- a fund to which Alliance Capital Management L.P. owed a statutory fiduciary duty.

28. Alliance Capital Management L.P. also further breached its fiduciary duties to the Premier Growth Fund when it failed to act to preserve the assets of the Premier Growth Fund, as it was statutorily obligated to, beginning in at least October 2001 when the initial disclosures concerning Enron's wrongdoing first surfaced. As a statutory fiduciary Alliance Capital Management L.P. was required to preserve the assets of the Premier Growth Fund and could have acted to do so by causing the Premier Growth Fund to sell part or all of its 7.199 million share Enron common stock position when the news of Enron's fraud surfaced in October 2001. Rather than acting in furtherance of its fiduciary duty to the Premier Growth Fund, however, Alliance Capital Management L.P. caused the Premier Growth Fund to retain its 7.1 million Enron share position even as the price of Enron shares plummeted from nearly $30 per share to a mere $.28 cents per share. Alliance Capital Management L.P. was motivated to serve Enron's interest by causing the Premier Growth Fund to retain its multi-million share position because Alliance Capital Management L.P. and its Director Frank Savage, were well

aware of the fact that, if Alliance Capital Management L.P. caused the Premier Growth Fund to quickly liquidate its multi-million Enron share position, Wall Street would view this act as a sign of severe lack of confidence by the Alliance mutual fund family and trouble at Enron, and that such an interpretation could result in massive sales of Enron stock by other large institutional investors. Such selling would have caused the price of Enron shares to decline rapidly and would have triggered covenants in certain of the partnerships that Enron had entered into, thereby requiring Enron to issue and/or pledge an increasing number of Enron shares in order to fulfill Enron's contractual partnership commitments, thereby resulting in a phenomenon known on Wall Street as a "death spiral." Thus, Alliance Capital Management L.P. and its Director Frank Savage, well aware of these facts, acted to aid Enron by causing the Premier Growth Fund to retain its multi-million Enron share position in violation of the statutory fiduciary duty that Alliance Capital Management L.P. owed to the Premier Growth Fund. As a direct, proximate and foreseeable result of not having acted to preserve the Premier Growth Fund's assets, Alliance Capital Management L.P. thereby caused the Premier Growth Fund to incur hundreds of millions of dollars in damages as the Premier Growth Fund's Enron position plummeted in value.

Count I

Against Alliance Capital Management L.P. for Violation of § 36(b) of the Investment Company Act of 1940, 15 U.S.C. § 80a-35

29. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein. This Count is asserted against Alliance Capital Management L.P. as the

investment Adviser to the Premier Growth Fund for having breached the fiduciary duty imposed on the Adviser by *15 U.S.C. § 80a-35*.

30. As the Adviser to the Premier Growth Fund, the Adviser was statutorily required to act with the highest degree of loyalty and fidelity that it owed to the Premier Growth Fund.

31. As set forth above, the Adviser breached its fiduciary duty of loyalty because the Adviser, through one of its Directors, namely Frank Savage, had knowledge of the fraudulent activities engaged in by Enron as alleged in detail above. In addition to having knowledge of the fraud perpetrated by Enron, the Adviser also had knowledge, through Director Savage, that Enron insiders were engaged in selling hundreds of millions of dollars in Enron common stock while in possession of non-public material adverse information concerning the massive financial fraud that had been perpetrated by Enron and the true state of financial affairs that existed at Enron.

32. By reason of the conduct alleged herein, Alliance Capital Management L.P. violated Section 36(b) of the Investment Company Act.

33. As a direct, proximate and foreseeable result of such breach on the part of Alliance Capital Management L.P. as the Adviser to the Premier Growth Fund, the Premier Growth Fund incurred hundreds of millions of dollars in damages, for which plaintiff, by this action seeks to recover on behalf of the Premier Growth Fund by seeking to recover the investment adviser fees paid to Alliance Capital Management L.P. by the Premier Growth fund while Alliance Capital Management L.P. was engaged in a breach

of the fiduciary duties that it owed to the Premier Growth Fund pursuant to Section 36(b) of the Investment Company Act of 1940 during the twelve-month period immediately preceding the filing of this complaint.

Prayer for Relief

WHEREFORE, Plaintiff, on behalf of the Alliance Premier Growth Fund, respectfully requests that this Court enter judgment in favor of the Alliance Premier Growth Fund and against defendant Alliance Capital Management L.P. as follows

a. Awarding the appropriate measure of damages;

b. Awarding prejudgment and post-judgment interest, as well as reasonable attorneys fees, expert witness fees and other costs and expenses; and

c. Awarding such other relief as this Court may deem just and proper.

Jury Demand

Plaintiff demands a trial by jury.

DATED: December 20th, 2001.

Peter Antonacci
Florida Bar No. 280690
Lori S. Rowe
Florida Bar No. 0120294
GRAY, HARRIS & ROBINSON, P.A.
301 South Bronough Street, Suite 600
Tallahassee, FL 32302
Telephone: 850/577-9090
Facsimile: 850/577-3311

Exhibit 7

[illegible]

ce: All Sources > News > News Group File, Most Recent 90 Days [illegible]
ms: "dollar general" (Edit Search)

Select for FOCUS™ or Delivery

Miami Daily Business Review January 2, 2002

Miami Daily Business Review

January 2, 2002

CTION: ATTYGEN; Vol. 76; No. 143; Pg. A8

NGTH: 3463 words

ADLINE: Private

LINE: By Dan Cordtz

ODY:
orney

neral

orida's public employee pension system, overseen by pro-tort reform Republicans, has become the most igious institutional investor in the country.

e Florida State Board of Administration (FSBA), which manages $88 billion in retirement funds, is rrently involved in nearly 300 securities fraud lawsuits against companies whose stock it has owned. pically, the agency claims that management deception or other misbehavior drove down the price of the nsion fund's shares and lowered the value of its investments.

it the agency also offers a moral rationale for its aggressive legal approach. "We have all seen an creasing number of corporate actions that border on criminal - and sometimes are criminal," says FSBA ecutive director John T. "Tom" Herndon, the architect of the legal strategy. "Someone has to question e ethics of these business practices." While there are no statistics ranking the most active plaintiffs in e shareholder fraud arena, experts say FSBA, a 317-employee agency that manages retirement funds r 750,000 state and county workers and retirees, leads the pack.

SBA currently serves as lead plaintiff or co-lead plaintiff in eight different actions, and has filed its own ivate lawsuits against 14 other companies. Just in the last two months, FSBA has won lead status in curities fraud class actions against Dollar General Corp. in U.S. District Court in Nashville, and against itical Path, Inc., in federal district court in San Francisco.

y comparison, CalPERS, the giant California public employees pension fund frequently cited as a model in e corporate governance monitoring arena, has acted as lead plaintiff in only one case and petitioned to ad one other.

SBA's legal approach has begun to draw criticism from judges, securities attorneys, and even insiders in e institutional investor community. Some question whether the time and effort invested in prosecuting l these cases has yielded a worthwhile return to beneficiaries.

am concerned with any frivolous litigation that in effect replaces productive employment and company ofits with legal defense costs," says Russell Bjorkman, a member of the FSBA's six-member Investment visory Council and a former trustee and chairman of the Miami-Dade County police and firefighters' nsion fund. He plans to call for a review of the agency's litigation policy.

veral federal judges also have taken disapproving notice of FSBA's activism. At least three times in the st two years, judges have turned down the agency's request to lead a suit on grounds that the FSBA ready had exceeded the limits set by the 1995 Private Securities Litigation Reform Act.

November 1999, Judge Ronald Whyte of the U.S. District Court in San Francisco rejected the FSBA's otion to serve as lead plaintiff in a securities fraud lawsuit against McKesson HBOC Inc. Whyte dubbed e FSBA a "professional plaintiff."

e FSBA's litigation spree is more than a bit ironic. Its governing board is made up of three elected epublican officials - Gov. Jeb Bush, state Treasurer Tom Gallagher and state Comptroller Bob Milligan. ne of their party's most cherished goals has been to reduce the amount of securities fraud litigation and ther suits directed at businesses. Early in his term, Gov. Bush pushed through strong tort reform gislation.

sked to comment, Bush issued a statement that it's "the fiduciary responsibility of the state to protect articipants of the Florida retirement system."

illigan admitted that he was not aware of how many legal actions FSBA had launched or participated in. ut if such aggressive litigation "is a necessary part of our whole fiduciary effort," he said, "I have to upport it."

allagher said that "when corporate governance doesn't do the right thing" and stock prices fall as a sult, FSBA has the right to take legal action. As a trustee, he said, he "will follow the recommendations f the executive director."

lan with a mission

erndon, 55, has had a long career as a Florida public official under Democratic elected leaders. He reviously served as chief of staff to Govs. Lawton Chiles and Bob Graham and as executive director of the tate Department of Revenue. Prior to his appointment by Chiles to run the FSBA in November 1996, he eaded his own governmental consulting firm.

erndon seems surprised that anyone would even ask questions about his agency's activist legal stance. hile "fiduciary responsibility" is FSBA's main rationale for its aggressive litigation, Herndon takes a more xpansive view of its duty. "We have to act in the best financial interest of our members," he says.

But we have other obligations that go beyond that. ... Is it OK to spend a million dollars to buy back the ouse of some CEO who leaves after a year? Who is going to ask these questions? Who stands in the plac f the shareholders who don't have the power to do it?"

This moralistic approach was in evidence in 1998, when FSBA took the lead in suing UCAR International, based in Nashville, for securities fraud - even though FSBA's losses were only $300,000 and the pension und already had sold all its stock in the company.

In its Annual Report on Corporate Governance for last year, the FSBA board of trustees declared that it had acted as a "private attorney general" in that case. UCAR, the report said, had conspired with its main competitor to fix the world price of carbon, and had made false statements in its annual report about how its business was highly price-competitive "when the opposite was true."

is suit, FSBA charged that UCAR officers committed securities fraud when they lowered their previous earnings reports because of the government fines the company has to pay for price-fixing. But Hernaon says that it was the officers' federal criminal antitrust conviction – more than the financial losses to FSBA beneficiaries – that prompted his agency to sue UCAR.

...ing other plaintiffs aside

...more typical FSBA fraud case is the one against Dollar General, in which FSBA is co-lead plaintiff.

...llar General operates 4,500 retail stores which sell very low-priced merchandise. Despite its less than ...morous business line, the company attracted a great deal of investor attention from May 1998 until last ...il by releasing a series of highly positive news announcements that claimed record sales and earnings. ...llar General CEO Cal Turner also boasted of his company's success in interviews on CNBC.

...e result of this media buzz, according to the lawsuit, was to drive up the price of Dollar General ...ares. That enabled the company to sell $200 million of notes at favorable interest rates, and allowed the ...rner family to unload a substantial share of its controlling interest at highly favorable prices.

...t on April 30 of this year, Dollar General issued a press release that was not so glowing. It admitted ...at profits for 1998 and 1999 were lower than previously reported. That news sent the stock into a nose...ve, plummeting 37 percent from its peak to $16.50 a share.

...at same day, the Pirelli Armstrong Tire retirees medical fund filed a suit accusing Dollar General ...ecutives of fraud for deliberately misleading shareholders about the firm's financial condition. FSBA ...dn't enter the case until June 29 – the filing deadline – when it moved to displace the original plaintiffs ...grounds that its financial losses of $10.4 million were larger than those of the Pirelli Armstrong fund.

...at sort of last-minute takeover by larger investors and law firms is a common practice in securities ...ud cases, says James Newman, executive director of the Securities Class Actions Services, a New York ...ty research group that tracks lawsuits for pension funds and other institutions.

...t surprisingly, attorneys who are shoved aside don't like it. One who faces that prospect is Jeffrey R. ...insk, a partner at Finkelstein & Krinsk in San Diego. He alleges that the FSBA makes a habit of showing ...p at the last minute and demanding lead plaintiff status in cases that have already been developed by ...her plaintiffs.

...insk filed a securities fraud complaint in May against Applied Micro Circuits Corp. of San Diego on behalf ...two private investors. Since then, FSBA has filed a petition to act as lead plaintiff. But Krinsk says ...arrack Rodos & Bacine of Philadelphia, which represents the FSBA, never even filed its own complaint on ...half of the pension agency.

...insk calls the repeated use of such piggybacking tactics "an abuse of [the FSBA's] institutional status." ...even Basser, a partner in Barrack Rodos' San Diego office, declined to comment.

...evertheless, Hernaon downplays his agency's legal activism. For a fund that owns shares of nearly 2,000 ...mpanies, he says, 300 lawsuits is a relatively modest number. In 90 percent of those cases, he notes, ...e FSBA takes only a passive role. Besides, he adds, suing companies is not a new policy for his agency.

...he board was active in corporate governance long before I became director – voting proxies, proposing ...idelines, even filing lawsuits," Hernaon says. But, he concedes, "Maybe there has been an increase in ...e degree of intensity since I came in."

...eform failure

irbing securities fraud suits was a key part of the GOP's "Contract with America" in the mid-90s. verriding President Clinton's veto, Congress passed the Private Securities Litigation Reform Act in 1995 rein in what many lawmakers described as a glut of frivolous suits brought by opportunistic plaintiff wyers who claimed fraud every time the stock market took a tumble.

mong its key provisions, the law compels plaintiffs to make a stronger showing of insider profiteering in der to initiate discovery proceedings, and it stays discovery until a judge rules on motions to dismiss the it. As a result, the number of cases that are summarily dismissed before discovery has risen from 13 ercent to 30 percent since the law was passed.

ut, to the surprise of the law's sponsors, the number of securities fraud suits filed has gone up since it as passed. According to the Stanford Law School Securities Class Action Clearinghouse, there were 188 ion suits filed in all of 1995. In the first six months of 2001, however, there already have been 261.

ne reason for the increase in suits, of course, is the sluggish performance of the stock market in recent onths, which has prompted some investors to search for villains. But another is the generally increased ggressiveness of institutional investors.

pically, Congress encouraged big institutions like pension funds to take the lead in class actions, on the eory that they would be more restrained and responsible in securities litigation. But critics contend that ome institutional investors, notably the FSBA, have taken the congressional encouragement too much to eart.

he trend is beginning to create controversy. "Corporate litigation is becoming a bigger topic across the ountry, especially as stock market losses have grown," Newman says. On the other hand, Newman's roup reported last month that many public and corporate pension plans are losing out on hundreds of illions of dollars in class-action settlements by failing simply to file claims.

nlike CalPERS, the FSBA has no official policy on when to undertake litigation. "We don't have any hard nd fast rules on selecting suits to file," Herndon says. "Our own staff suggests some cases. Others are rought to us by outside law firms, other institutions, corporate governance groups and by outside nvestment advisers."

n contrast, CalPERS has a written policy, with specific criteria for choosing when to participate in ecurities fraud litigation. For example, the potential damages must be more than $3 million, large nough to warrant the staff time devoted to the case. The written guidelines also pose the following uestion to guide decisions: "Would CalPERS' involvement add value to the settlement?"

till, the Florida pension agency is hardly alone in its legal assaults on public companies. Other activist nstitutional litigants include the State of Wisconsin Investment Board and the Louisiana School Employee etirement System - although neither is nearly as aggressive as FSBA.

he public pension fund lawsuits, scattered around the country, have taken place below the radar screen f all but the most attentive observers. One reason is that the lead plaintiff often doesn't emerge until ong after the suit is filed. As a result, even political leaders with oversight responsibility often are naware that public pension funds are involved.

SBA's attorneys repeatedly have argued that the 1995 reform law's limitation on "professional plaintiffs" oes not apply to institutional investors. That claim is based on a statement in the House of epresentatives' conference report: "Institutional investors seeking to serve as lead plaintiff may need to xceed this limitation and do not represent the type of professional plaintiff this legislation seeks to estrict. As a result, the Conference Committee grants courts discretion to avoid the unintended onsequences of disqualifying institutional investors from serving [as lead plaintiff] more than five times three years."

bert J. Giuffra, a partner at Sullivan & Cromwell in New York City, who was the Senate Banking mmittee's chief counsel when the law was passed, says FSBA's position on limitations is correct. ongress wanted to put these cases in the hands of the adults," he says, "and institutional investors are e adults." The judges who have ruled against FSBA on the issue, he adds, "are just wrong."

it this arguable exemption for institutional investors is something which plaintiff law firms can use to issen the reform law's intended restrictions on assembling groups of small shareholders. Newman says me firms take cases initiated by an individual plaintiff to a big institutional investor like FSBA, and push e institutional client to seek lead plaintiff status, which means bigger legal fees for the law firms.

erman, though, argues that it's good public policy for institutional investors like the FSBA to take the ad. He says FSBA's size and bargaining clout "could lead to a decrease in attorneys' fees and thus a gher return to beneficiaries."

r all of the talk about protecting the retirees' money, however, the returns from most securities fraud wsuits are not that large. Across the country and for all cases, settlements average about $13 million. ith legal fees and expenses eating up about a third of the total and the remainder of the spoils divided nong thousands of shareholders, according to National Economic Research Associates, a consulting and nalysis firm based in New York.

e FSBA's recoveries haven't been huge so far this year. From Jan. 1 through Aug. 15, the FSBA reports at it recovered about $3.5 million in settlements from participating in various class-action shareholder its – a tiny fraction of the value of its $95 billion investment portfolio.

ome observers inside the institutional investor community question the value of all this litigation. One teran pension fund official, who didn't want to be named, says his colleagues are increasingly critical of nvestors who seem to be so eager to go into court. A lot of us think it makes more sense to do what alPERS does and identify the companies that need to shape up before they become a problem, instead of ending so much time and energy suing the people who screw up."

ut FSBA's legal approach draws surprising praise from one of Florida's leading critics of plaintiff lawyers nd anti-business litigation. Jon Shebel, president of Associated Industries of Florida, a powerful business bbying group in Tallahassee, stoutly defends the FSBA, which is overseen by his strong tort reform ally, eb Bush.

or the FSBA to behave in any other way, Shebel insists, "would be an absolute dereliction of their duty."

ixed rulings by judges

evertheless, the FSBA's frequent requests to act as lead plaintiff have drawn mixed reviews from federal udges around the country.

n ruling on the FSBA's petition to serve as lead plaintiff in the McKesson HBOC Inc. case, Judge Whyte otes that, by the agency's own admission, it already was lead or co-lead plaintiff in six other shareholder aud class-action lawsuits. He rejected the argument that the public pension fund was exempt from the atutory limit on the number of times parties can serve as lead plaintiff.

The text of the statute," he wrote, "contains no flat exemption for institutional investors." Moreover, he dded, "Congress also desired to increase client control over plaintiff's counsel, and allowing simultaneous rosecution of six securities actions is inconsistent with that goal."

hree months earlier, a federal district judge in Cleveland also rejected FSBA's petition to serve as lead

intiff, in a class-action shareholder fraud suit against Tecumn Corp. He also said the FSBA had exceeded
: statutory limitations. The reform law, wrote the judge, "places the burden on the FSBA to demonstrate
iy the bar should not be applied in this case."

a last March, a federal district judge in Erie, Pa., turned down FSBA's bid to become lead plaintiff in a
it against Rent-Way Inc. Although the judge ruled that another plaintiff had a larger stake in the case,
also noted FSBA's heavy workload in shareholder fraud cases. "It appears that, in addition to serving as
id plaintiff in a number of cases, FSBA is also a frequent nonlead plaintiff in securities actions," he
ded.

it these results hardly discouraged Tom Herndon. "I make it a practice never to disagree in public with a
deral judge," Herndon says, noting that other judges have set aside the statutory limits under the
form law and supported FSBA's petitions to serve as lead plaintiff.

deed, on June 28, U.S. District Judge William H. Orrick in San Francisco selected FSBA as lead plaintiff
a suit against Critical Path Inc., a California Internet messaging company. He said judges have the
scretion to override the statute's limits.

iree weeks later, U.S. Magistrate Judge Joe B. Brown in Nashville approved FSBA's petition to serve as
i-lead plaintiff in the securities fraud suit against Dollar General. Judge Brown made his decision even
iough the FSBA's attorney acknowledged that during the previous three years, the agency had served as
ad plaintiff in securities fraud lawsuits against DaimlerChrysler, Vesta Insurance Group, Northrop
rumman, Sykes Enterprises Inc., Pediatrix Medical Group, Parametric Technology Corp., UCAR
iternational and Samsonite Securities.

egally overstretched?

ow FSBA faces bitter opposition to its request to act as lead plaintiff in a securities fraud suit against
pplied Micro Circuits. In papers filed with the U.S. District Court in San Diego, Jeffrey Krinsk wrote,
FSBA is the embodiment of the professional plaintiff which the [1995 reform law] sought to eliminate."

(rinsk also asked whether FSBA has the resources and ability to handle so many class-action cases
imultaneously and fully protect other shareholders' interests. "Can the FSBA possibly lend the oversight
nd involvement necessary to direct this [Applied Micro Circuits] action given its responsibility for
irecting dozens of other actions?"

hat seems a fair question. In addition to its other duties, FSBA's seven-lawyer general counsel's office
urrently is overseeing seven large law firms handling about two dozen shareholder fraud cases which the
gency is actively litigating. But Herndon does not see this as a problem. "We have to keep in mind the
est use of our resources and the time of our staff," he says, "but we have tried to do that in a
onscientious way."

Jp to now, Herndon says, he's received no criticism from his political bosses of the FSBA's litigiousness. In
esponse to Russell Bjorkman's statement that he would seek a review of the FSBA's litigation policies,
Herndon says. "If they want to discuss litigation, we'll be glad to do it."

But he expresses confidence that his legal approach would be upheld. "The trustees expect us to exercise
good judgment, and apparently so far they believe we have," he says. "We've had no indication that they
think we're too aggressive or not aggressive enough."

The board

was active

orporate

ormance long before

came

ctor," says Tom Hernden. "Maybe there has been an

ease in

degree of intensity since I came in."

LOAD-DATE: January 03, 2002

Source: All Sources > [illegible] > [illegible]
Terms: "dollar general" (Edit Search)
View: Full
Date/Time: Thursday, January 3, 2002 - 5:39 PM EST

Exhibit 8

State of litigation

Florida Board sues hundreds of investment targets

WHAT do Advanced Fiber Communications, Applied Micro Circuits, Bank of America/NationsBank, Broadcom, Cendant, Columbia/HCA Healthcare, CompuServe, Critical Path, DaimlerChrysler, Dollar General, Green Tree Financial, Honeywell International, Lucent Technologies, Northrop Grumman, Oxford Health Plans, Pediatrix Medical Group, Rent-Way, Rite-Aid, Schering-Plough, Sykes Enterprises, Telxon, Vesta Insurance Group, Waste Management Inc. II and Xerox all have in common?

All have been, or are being, sued by the Florida State Board of Administration over allegations of securities fraud.

The FSBA manages about $96 billion in defined benefit plans for approximately 750,000 Florida state and county employees and retirees. While public pension funds long have been viewed as generally docile investors worth wooing for their loyalty, a handful of those funds—led by Florida—are becoming surprisingly aggressive on the securities litigation front.

"We are seeing a very slow increase in involvement by our members, primarily the public pension funds, in securities litigation," confirms Ann Yerger, director of research at the Council of Institutional Investors in Washington. "Some are taking lead plaintiff roles or filing to be lead plaintiffs, and some are even working together as co-leads. For example, New York City, New York State and the California Public Employees' Retirement System were co-leads in the Cendant lawsuit, which was a very large class-action case with a very significant settlement. However, this trend is still limited to a number of the larger funds."

Keith Johnson, chief legal officer at the Wisconsin State Board of Investments, attributes the movement to a variety of factors, including the Private Securities Litigation Reform Act of 1995, which generally gives the law firm representing the largest claimant in a class-action case lead counsel status. That has prompted aggressive plaintiffs' attorneys to seek out institutional shareholders as clients. In addition, the Cendant case, which produced a $[illegible] billion settlement, opened the eyes of institutional investors in terms of how much money can be at stake in shareholder litigation.

The trend is not without its critics. Russell Bjorkman, who serves the six-member Investment Advisory Council of the FSBA, argues that, where legitimate securities fraud has occurred, those responsible should be brought to justice in criminal, not civil, courts. He plans to call for a review of the agency's litigation policy.

"Fraud in most jurisdictions is criminal, and that's where the power of institutional shareholders should be applied—to the governing entities that can prosecute criminally," Bjorkman says. He adds that he favors CalPERS' approach to encouraging good corporate governance. Although CalPERS occasionally participates in class-action shareholder lawsuits, and sometimes even assumes the role of lead plaintiff, its more typical approach to dealing with problem investments is to meet with the company to encourage different behaviors and, in some cases, to seek representation on the company's board.

"The opposite approach is used by Florida," Bjorkman says. "They have no interaction with companies. They buy stocks and, if they go down, they look for a scapegoat."

Tom Herndon, executive director of the FSBA, makes no apologies for his organization's litigious bent.

"Cooked" books

"There's no question that the Florida State Board does its duty for its members by taking action where we believe they have been wronged by companies that have cooked the books, or in which officers have been guilty of criminal acts that have deprived shareholders of the value of their shares," Herndon says. "We're not interested in putting companies out of business, and we're not trying to force them into bankruptcy, but we are interested when a company misstates its books for two or more quarters and the officers sell a couple of million shares two days before they restate their results. We go after those situations and try to recover a fair amount for our participants. We think it is our responsibility."

While CalPERS is known for its hands-on approach—sometimes even seeking board status—the FSBA has "no interaction with companies," claims Bjorkman. "They buy stocks and, if they go down, they look for a scapegoat"

Herndon also says that it can be misleading simply to note that the FSBA is involved in nearly 500 lawsuits, since the vast majority of those cases are class-action complaints in which FSBA is just one plaintiff among many. Since the agency employs indexing for about half of its equity holdings, it owns a stake in almost every public company of any significant size in the country.

Still, there is no denying that FSBA's policy is much more aggressive than that of peers like CalPERS and the Wisconsin State Board of Investment, both of which are known for their active interest in corporate governance issues. CalPERS has served as the lead plaintiff in two class-action securities lawsuits, one involving Cendant and the other involving Chubb Corp. Wisconsin has done so in four cases, two of which are current. As of early October, Florida was the lead or co-lead plaintiff in eight cases, was seeking the lead in a ninth, was pursuing 41 private cases and was planning three more. It also was a class member in more than 450 additional class-action lawsuits in which it was not an active plaintiff.

Standards for suing

CalPERS follows a strictly defined policy for deciding when to become involved in shareholder litigation. For example, it will not even consider pursuing a case if its losses have not reached at least $2 million. The FSBA has no similar litigation policy: Herndon makes the decision on whether or not to sue on the advice of the agency's general counsel and the various law firms that represent it.

Herndon says that neither he nor anyone else at FSBA set out to assume a leadership role in securities litigation. However, he says that, because of its size, the FSBA is often one of the investors to have suffered the biggest losses in securities fraud cases. Accordingly, he says, it makes sense for the agency to assume a lead-plaintiff role in those instances. "Beyond that, we are an organization that has the skill-set to prosecute these cases successfully," Herndon adds. "We have some experience at it, and we work with law firms that are talented and aggressive and have some reputation for success. We believe it is appropriate for our membership."

The down side to serving as lead plaintiff, Herndon concedes, is that it consumes staff time. The FSBA employs one lawyer who devotes half time to supervising the agency's securities cases. "We more than make up his salary in what we recover each year," Herndon says. From January 1 through August 15 of this year, the FSBA recovered about $3.6 million in settlements from various class-action shareholder lawsuits.

While critics argue that securities litigation merely takes money out of the pockets of current shareholders and puts it in the hands of past shareholders—minus a healthy cut for the lawyers—Herndon says that allowing companies that commit fraud to escape penalty-free would be worse. Besides, he notes, companies frequently settle their cases with insurance proceeds rather than from their own coffers and attorneys handle the cases on a contingency fee basis.

Perhaps, the most remarkable irony about the FSBA's passion for shareholder litigation is that Florida Governor Jeb Bush has been a vocal proponent of tort reform aimed at reducing the number of civil lawsuits. Bush, along with State Treasurer Tom Gallagher and State Comptroller Bob Milligan, sits on the FSBA's three-person Governing Board. All three are Republicans. Herndon's public service career has been associated largely with Democrats: he previously served as chief of staff to Democratic governors Lawton Chiles and Bob Graham, and was executive director of the state's Department of Revenue. He was running his own government consulting firm before being tapped by Chiles in 1996 to head up the FSBA.

Though he harbors different political allegiances, Milligan says he is content with Herndon's handling of the litigation issue.

At the CII, Yerger says the active participation in class-action lawsuits by institutional investors is in keeping with the intent of Congress when it passed the Private Securities Litigation Reform Act of 1995. Part of its goal, she notes, was to get larger investors involved in lawsuits and remove the impression that shareholder litigation was largely driven by law firms that recruited small, individual investors to serve as plaintiffs in cases that could yield huge fees. "The idea was that the folks with a bigger stake in the outcome—institutional investors—would work harder for a settlement for the whole class, and monitor the lawyers and the legal fees more carefully," Yerger says. She believes that institutional investors are doing a good job of weighing the merits of cases before deciding to proceed-with-litigation, and are not pursuing frivolous lawsuits.

"Just because Florida is pursuing more cases than others doesn't necessarily mean that it is an imprudent policy they are pursuing," adds Wisconsin's Johnson.

—*Randy Myers*

Coping with call-ups

Some employers go beyond the letter of the law to preserve benefits for their employees on military duty

Illustration by [illegible]

AT Wells Fargo & Company in San Francisco, an estimated 100 out of 120,000 employees are in either the military reserves or National Guard. "So far, there's been no material impact on staffing, and the employees called up haven't had critical skills that are in short supply," says Theodore De Rivera, senior vice president of corporate human resources.

CNA Financial Corporation in Chicago also has experienced only minimal impact: Only 24 out of 16,000 employees have been called up, says Kenneth Cook, vice president of total compensation management and consulting. In fact, the only problems CNA has encountered since the September 11 terrorist attacks has been when information services staffers are called to military duty, Cook says.

The September attacks triggered the largest deployment of US reserve forces since the Persian Gulf War, and sent many employers scrambling to figure out what impact the call-ups could have. The good news is that most employers are finding President Bush's deployment of reserves will probably have minimal impact on staffing. As for their other big concern—their legal obligations to reservists—many larger employers are going above and beyond what the law requires in providing pay and benefits.

"What we're finding now, given the magnitude of the call-up, is that large companies are more prone to go above and beyond the law, including making up pay differentials and providing health and other coverage," says Thomas Murphy, a principal with Unifi Network, a division of PricewaterhouseCoopers in Teaneck, New Jersey.

Under the Uniformed Services Employment and Reemployment Rights Act of 1994, all public and private employers must extend reemployment rights and certain benefits protections to reservists called to active duty as well as those who volunteer USERRA requires employers to provide their workers on military leave with the same benefits that employees on other types of leave receive, and COBRA-like coverage thereafter for any remaining time that they are still performing their military obligations

USERRA also requires employers to reemploy reservists returning from active duty at their former jobs or an equivalent position Employers must count the time of military service as accrued seniority for job-related and benefits purposes and make pension accruals and individual account allocations during the period of military leave, even though employees are not earning the pay upon which these benefit allocations are usually based. Returning reservists also get the chance to qualify for retroactive matching employer contributions by making up missed 401(k) deferrals.

While USERRA does not require it, many employers—including Wells Fargo, CNA, Coca-Cola, Fannie Mae, Verizon Communications, and Lockheed Martin—make up the differential between military pay and employees' salaries for at least a part of the time they are on duty Wells Fargo fills out the pay differential for up to 90 days, says De Rivera, and continues employee benefits at no charge for up to 90 days CNA makes up the pay differential for up to six months and provides health insurance and other benefits at the same rates as for active employees.

"We looked back at what we did in the Gulf War," says CNA's Cook, "and decided this situation was more severe and could last a lot longer, so we decided to continue the pay differential for much longer"

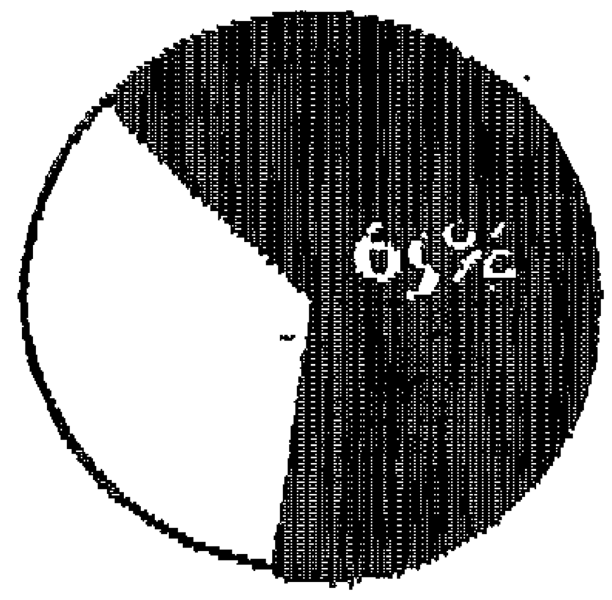
These companies appear to have decided to make up the pay differential as a way to support the government's efforts in the war against terrorism Some acknowledge that they believe this will be a long-term effort and that their reservists will be called up for longer periods of time than before. CNA did not make up the pay differential for as long during the Persian Gulf War, says Cook. "We looked back at what we did in the Gulf War," he says, "and decided this situation was more severe and could last a lot longer, so we decided to continue the pay differential for much longer"

Not all employers can or will continue employees' pay. Lutheran Health Network, which runs three hospitals in Fort Wayne, Indiana, and three additional hospitals in the region, has at least 30 employees out of 5,000 with reserve obligations and another 70 or so who may be reservists Under USERRA, if these employees are called up, they will continue to receive all benefits but LHN will not continue their pay. However, LHN will allow them to utilize any paid time off they have accrued during their period of military leave. LHN employees generally receive 152 to 288 hours of paid time off a year depending on length of service, says Michelle Waggoneer, director of human resources for St Joseph's Hospital in Fort Wayne, an LHN member.

For some employers, the call-up of any of their workers can have short-term effects While 100 out of 5,000 employees may not seem like a lot, staffing is always a huge consideration for health-care providers like LHN, says Waggoneer. It is still premature to speculate how staffing would be affected, she says, because no employees have been called up yet and the hospital has not nailed down which positions reservists fill. However, because reservists can be called up on very short notice, she says, the hospital may have to move fast to fill some shifts.

—Elayne Robertson Demby

[illegible] 401(k) Investment Options



Employers offering options from multiple investment managers in their companies' 401(k) plans

On average, nearly two-thirds of employers allow 401(k) participants to select their investment options from multiple investment managers, as opposed to 35% of employers who only offer funds from a single manager.

401(k) Pathfinder can help you look into providers who offer a variety of investment options for your plan participants. Contact Stewart Gooding at sgooding@plansponsor.com to find out how you can find a provider to suit your employees' investment needs

Source, *PLANSPONSOR* 2001 DC Survey