

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

United States Courts
Southern District of Texas
FILED

JAN 22 2002

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Michael A. Milby, Clerk

MARK NEWBY, §
§
Plaintiff, §
§
vs. §
§
ENRON CORP., ET AL., §
§
Defendants. §
§

Civil Action No.: H-01-3624
(Securities Suits)

2002 JAN 22 10:21 AM
U.S. COURTS
SOUTHERN DISTRICT OF TEXAS
HOUSTON

**RESPONSIVE BRIEF IN FURTHER SUPPORT OF
THE MOTION OF STARO ASSET MANAGEMENT LLC
TO SERVE AS LEAD PLAINTIFFS ON BEHALF OF
THE DEBT SECURITIES CLASS AND
IN OPPOSITION TO COMPETING MOTIONS**

The Debt Securities Class, consisting of purchasers of Enron's debt securities, must have independent representation at both the litigation and the settlement tables by its own lead plaintiff and lead counsel. Separate representation is essential to protect the interests of that class because in light of Enron's bankruptcy and the sheer magnitude of the losses here, there will be a limited fund available to allocate among all claims. In addition, debt and equity investors have different legal claims, and the evidence to be presented at trial on loss causation and damages will differ between debt and equity class members. Staro Asset Management LLC ("Staro") is the most adequate plaintiff to represent debt securities. It is an institutional investor with losses exceeding \$40 million, all in debt securities. See Declaration of Colin Lancaster (Exhibit 2). This is the

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largest loss of any unconflicted proposed lead plaintiff for debt securities. Staro has negotiated a very favorable fee agreement with its chosen Lead Counsel, and it will actively supervise all aspects of this litigation. Its Motion for Appointment as Lead Plaintiff and for Approval of its Choice of Lead Counsel should be granted.

I. **The Debt Securities Class Must Have Separate Lead Plaintiff Representation Because Bond Purchasers and Equity Purchasers Have Different and Sometimes Conflicting Interests**

Debt securities and equity securities need separate representation because they are fundamentally different types of investments, victimized by the alleged fraud in different ways, and have different, conflicting claims on whatever funds may be available after Enron's bankruptcy to satisfy judgments in these consolidated matters.

As explained in Model Associates, Inc. v. U.S. Steel, 88 F.R.D. 338 (S.D. Ohio 1980):

Ownership of common stock creates a relationship entirely different from the ownership of debentures. A shareholder is a[n] owner; a debenture holder is a creditor. Owners seek to borrow money at the lowest possible rate; creditors seek the highest rate. Plaintiff asserts in general that defendant violated Section 10(b) by understating its [liabilities]. ... The failure to disclose liabilities might improve the stated financial condition of defendant and enable it to borrow at lower interest rates. The Court expresses no opinion as to plaintiff's ability to prove misrepresentation; it does, however, hold that the interests of a stockholder under such circumstances are antagonistic to a debenture holder and since plaintiff owned only common stock, its claim is not typical of the class it seeks to represent. Such antagonism represents both a potential conflict of interest and a question of ability to render fair and adequate representation.

Id. at 339-40. Because of the inherent differences between stock and debentures, the court in Model Associates held that a plaintiff who purchased only common stock could not represent a

class defined as including both debt and equity purchasers. Id. at 341.

Similarly, the court in Simon v. Westinghouse, 73 F.R.D. 380 (E.D. Pa. 1977) noted that purchasers of common stock had different interests than purchasers of other securities issued by the company, explaining:

For example, the market price of debentures and preferred stock may be affected by factors unrelated to the issuing company, such as the general level of interest rates. [Citation omitted.]

Because of these differences, the claims of common stock purchasers are not necessarily typical of the claims of purchasers of other securities. To the extent the claims differ, purchasers of common stock will have little or no interest in presenting evidence to support the claims of purchasers of other securities. Especially in a case as large and complicated as this one promises to be, it is important that all parts of the class be represented fully and adequately, so that all parts of the class can be bound by any judgment. ...

Id. at 484. The Simon Court also refused to permit stock purchasers to represent debt purchasers in a Class Action. Id. at 485.

A conflict between the purchasers of Enron equity and debt securities is particularly significant under the specific facts of this case because the potential funds available for settlement or judgment are limited. It is likely that whatever recovery can be obtained for both shareholders and bondholders will be less than the losses suffered. Estimates are that shareholders, creditors and others have losses exceeding \$60 billion. Since the funds from which recovery can be made are limited, there will be a struggle over the allocation of the limited funds as between bondholders and stockholders. Thus, debt securities need separate, independent representation from stockholders.

Furthermore, on December 2, 2001, Enron filed a petition for Chapter 11

bankruptcy protection. This makes it necessary that the debt purchasers and equity purchasers be represented by separate Lead Plaintiffs and separate counsel in these proceedings, because the limited funds available to satisfy claims are a minuscule fraction of the claims. See e.g., Teichler v. DSC Communications Corp., 1998 U.S. Dist LEXIS 16448 at *10 (N.D. Tex. 1998) (noting that a potential conflict would arise between the stockholders and debenture holders in the event of bankruptcy). For this reason, courts have typically appointed separate representation for stock and debt securities plaintiff groups in class action securities litigation where the issuer has filed for bankruptcy. E.g., In re Livent, Inc. Noteholders Litig., 151 F.Supp. 2d 371 (S.D.N.Y. 2001); Muzinich, Inc. v. Safety-Kleen, C.A. 3:00 - 145 (D.S.C. 2000) (submitted as an attachment to Staro's opening brief).

The conflict between stock purchasers and bond purchasers is not theoretical in this case. It is actual, and will assert itself whether the action is litigated through trial, or settled. If the action is tried, the lead counsel will present expert testimony on loss causation and damages to the jury. The price of Enron common stock began to decline in March 2001. Counsel seeking to maximize the recovery of the stock class will present evidence supporting a theory that the fraud began to be revealed in March, causing the stock price to decline. By contrast, the bonds maintained substantially all value until October, 2001. Counsel for the debt securities class will present evidence that the defendants are responsible for the decline in bond prices that began in October, 2001. The different theories of loss causation and damages will require different presentations to the finder of fact. The vast difference between equity and debt securities and the factors affecting the prices of each can be seen graphically by the two contrasting charts of the price movement of the common stock and one of the debt securities in

the year 2001, attached as Exhibit 1. While common stock lost over half of its value between January and September, the zero coupon bonds fully maintained their value in that period, suffering a loss only in November and December. Both kinds of securities should be represented by counsel committed to the interests they are representing.

The importance of separate representation is even greater in settlement negotiations.¹ In settlement negotiations, both the lead counsel and the lead plaintiff are charged with representing the interests of the Class. The lead plaintiff seeks to maximize both its own recovery and that of the Class. To maximize its own recovery, it will set a formula allocating proceeds of a settlement which best serves its interest. Some allocation of proceeds among the equity and bond groups must be made. The allocation formula will be presented to the Court as part of a settlement package. The debt securities plaintiffs will have no opportunity to effectively shape the settlement through arms-length negotiations or to challenge the outcome unless they have a leadership position and a seat at the settlement table.

The Florida Board of Administration illustrates the problem that joint representation of stock and bond class members can cause. Florida lost \$320 million on stock investments, and \$9 million on bond investments. Thus, 97% of its claim relates to stock purchases. The combined claims of Florida and the New York City Pension Funds who have now joined forces, are also severely weighted, with 91% of the total interest in stock investments. In order to maximize their own recovery, Florida and New York are certain to weight the allocation so that the equity purchasers receive a greater amount or proportionally more

¹ A negotiated settlement of some kind, whether before or after trial, is very likely in an action of this nature.

favorable treatment than the bond purchasers. To put it plainly, the moving parties, and others in their position, will not be well-served by a lead plaintiff who can maximize its own recovery by minimizing the recovery of the debt securities class. A more equitable result will be achieved in this limited fund situation by separate, independent representation for debt as well as equity investors.

Separate representation is likely to increase the net recovery, after attorneys' fees are deducted, of debt investors. In this action, attorney fees will be set on the basis of a percentage of the recovery. Some percentage will be paid by the debt securities class to whichever counsel the court appoints to represent their interests. The percentage will not necessarily be higher if the debt securities class has separate Counsel. As is explained in the accompanying Affidavit of Colin Lancaster, Exhibit 2, Staro has negotiated a fee agreement with its chosen lead counsel that is exceptionally favorable to the debt securities class. More importantly, the debt securities class is likely to obtain a better total settlement if its Lead Plaintiff represents its interests alone. The debt securities class can reasonably expect to receive a better result if their Lead Counsel has undivided loyalty.

If debt purchasers do not have independent unconflicted counsel who represent debt purchasers alone, other large debt purchasers will be more likely to file independent actions and create obstacles to a broad class resolution. Large debt security investors will choose to opt out of a class action where they have no champion. They will file individual lawsuits instead. In fact, several debt securities investors are already pursuing this tactic. See Exhibit 3 (lawsuit filed by Silver Creek Management claiming losses on debt securities exceeding \$120 million). A multiplicity of individual lawsuits, some in this District, some in other Districts, and some in

state courts, will make global resolution of the claims pending in this Court much more difficult or impossible. Conversely, if debt securities investors are represented separately by a sophisticated representative such as Staro whose sole interest is in maximizing the recovery of purchasers of debt securities they are more likely to remain in the Class. Thus, having Staro as a lead plaintiff allows for more efficient overall case management.

Finally, there is an important distinction between the burden that must be satisfied by the debt securities class and the equity securities class. The debt securities class will assert claims under Sections 11 and 15 of the Securities Act of 1933 (15 U.S.C. §77k and o), as well as Section 10(b) Claims. Certain issues of bonds in the debt securities class were issued during the Class Period, which began in December, 1998. Section 11 allows purchasers of a registered security to sue when a materially false or misleading statement is included in a registration statement. Unlike a claim under Section 10(b), there is no need to plead or prove scienter to establish a Section 11 Claim. See Herman & MacLean v. Huddleston, 459 U.S. 375, 382 (1983) (“a §10(b) plaintiff carries a heavier burden than a §11 plaintiff. Most significantly, he must prove that the defendant acted with scienter, i.e., with intent to deceive, manipulate, or defraud”). Section 11 may also permit actions to be brought against defendants, such as signers of prospectuses, issued in connection with the claims. The debt purchaser class must have separate representation in order to pursue these claims. Since Section 11 Claims possessed by debt securities investors are easier to prove than Section 10(b) Claims (which are the bulk of the shareholder claims), independent debt securities counsel must be able to make this argument in an arms-length negotiation over allocation of settlement proceeds.

Recognizing the reality of conflicting interests, the Private Securities Litigation

Reform Act (“PSLRA”) plainly contemplates that a class representative or class representatives will represent a single class or related classes of securities.² Thus, statutorily mandated certifications require that the plaintiff set forth transactions “in the security that is the subject of the Complaint,” 15 U.S.C. § 78u-4(a)(2)(iv). There is no provision for filing a certification including different kinds of securities, and no discussion of the possibility of including multiple securities in a consolidated representation. See King v. Livent, Inc., 36 F. Supp.2d 187, 189 (S.D.N.Y. 1999) (“The class which the Kings seek to represent, the holders of the Notes, is not the same class as the previously filed actions involving holders of Livent common stock.”); Chill v. Green Tree Financial Corp., 181 F.R.D. 398, 403 (D. Minn. 1998);

II. Staro is the Proper Lead Plaintiff for the Debt Securities Class

Of all applicants for Lead Plaintiff, only Staro meets the two statutory criteria for representation of the debt securities class:

- (1) Its members have the greatest financial interest in the relief sought by the debt securities class, 15 U.S.C. §78u-4(3)(B)(iii)(1)(bb); and
- (2) It is not burdened with any conflict that precludes it from fairly and adequately protecting the interests of the debt securities class, 15 U.S.C. §78u-4(3)(B)(iii)(II)(aa).

A. Staro Has the Financial Interest in the Relief Sought by the Debt Securities Class

As is made clear from Staro’s certification and the Colin Lancaster

Declaration, attached hereto as Exhibit 2, Staro has lost over \$40 million on Enron debt securities

² In some instances, courts have considered two classes of securities, such as common stock and options to purchase common stock to be so closely linked that separate representation is unnecessary. Equity and debt securities in a bankrupt entity are not so closely linked and have interests adverse to each other in a limited fund context as this is.

investments. Its total financial interest is, therefore, substantially larger than the losses of the following applicants:

Local 710 Pension Fund
Archdiocese of Milwaukee
Pulsifer & Associates
Private Asset Management Group
Davidson Group
Preferred Shareholder Group
JMG/TQA Group

In addition, Staro's loss exclusively on purchases of debt securities investments is equal to or greater than the losses on debt security investments of the remaining proposed lead plaintiffs:

Florida/New York Group: (\$39 MM aggregated debt securities losses)

Amalgamated Bank Group (\$19.6 MM aggregate debt securities losses)

State Retirement Systems Group (\$42 MM debt securities loss by one of the Proposed Lead Plaintiffs)³

B. All of the Other Large Holders of Debt Securities Suffers From a Disabling Conflict

The Court must find that none of the substantial applicants can fairly and adequately represent the debt securities class. The problem can be expressed in simple mathematical terms. Each of the applicants for lead plaintiff has a much larger individual stake

³ The State of Alabama, also styling itself a member of the State Retirement Systems Group, also appears to have a significant financial interest in debt securities. However, Alabama does not seek appointment as Lead Plaintiff. Rather, it wishes to be named "Advisory Lead Plaintiff." There are no statutory provisions concerning "Advisory Lead Plaintiffs," and Alabama has not explained what it believes an "Advisory Lead Plaintiff" should do. It is clear, however, that only Lead Plaintiffs may appoint Lead Counsel. 15 U.S.C. §78u-4(a)(iii)(I)(aa), and (v). An "Advisory Lead Plaintiff", without authority to choose, or, implicitly, supervise, Lead Counsel, will not provide adequate representation for the debt securities class.

in their equity claim than in their debt securities claim:

	<u>Equity Claim</u>	<u>Debt Securities Claim</u>	<u>% in Debt Securities</u>
Florida/New York City	\$410 MM	\$ 39 MM	9%
Amalgamated Bank Group	\$220 MM	\$ 19.6 MM	8%
State Retirement Systems Group ⁴	\$214 MM	\$42 MM	17%
Staro	-0-	\$40 MM	100%

(All numbers in millions)

Thus, at each critical stage in the litigation - - trial and trial preparation and settlement - - conflicts will arise between the interests of equity and debt securities purchasers. All of the proposed lead plaintiff groups, other than Staro will maximize their recovery by taking the position less favorable to debt. Thus, they suffer from a disabling conflict precluding them from representing debt securities. The Court cannot accept their claim that they will pursue interests opposed to their own with the same vigor that they pursue claims in which they have a direct financial interest:

Though they publicly (and theatrically) pledged to the Court and gallery to pursue any and all viable claims against Merrill Lynch, logic and simple mathematics speak louder. The Court simply does not believe nor find that the CalPERS group can overcome this substantial conflict of interest and fully protect the interests of the Prides-holders.

In re: Cendant Corp. Secur. Litig., 182 F.R.D. 144, 149 (D.N.J. 1998).

⁴ Excluding Alabama, which claims to be a member of this group but does not seek appointment as lead plaintiff. Including Alabama's claim would not significantly affect the disparity between the equity and debt claims asserted by the State Retirement Systems Group.

In re: Cendant Corp. Secur. Litig., 182 F.R.D. 144, 149 (D.N.J. 1998).

It should be noted that one member of the State Retirement Systems Group, the State of Washington does not hold equity securities and has a \$42 million loss in bonds. Nonetheless, it cannot fairly represent the class because it chose to seek appointment of the same Lead Counsel as the other members of its group. Its rejection of unconflicted counsel leaves the debt securities class in a disadvantaged position were its counsel to represent the combined interests of equity and debt securities. Id. Counsel for the State Retirement Systems, while fully able to represent the equity interests, cannot adequately represent the bond purchasers' interests because 83% of the losses of its client group are in equities. In re: Whitman, 101 B.R. 37, 38 (Bankr. N.D. Ind. 1989) (Counsel whose principal client had both secured and unsecured claims cannot also represent unsecured creditors committee, due to conflict between interests).

III. Staro is an Adequate Lead Plaintiff

As Staro explained in its opening brief, Staro is well-qualified to serve as Lead Plaintiff. It is an institutional investor, the preferred candidates for lead plaintiff. In re: Waste Management, Inc. Secur. Litig., 128 F.R.D. 401, 431 (S.D. Tex. 2000) (Harmon, J.). It filed a timely application to serve as lead plaintiff and a Complaint. It is not unmanageable and will have no difficulty supervising its chosen Lead Counsel. It has submitted a certification, agreeing to testify at deposition and at trial. It has no claim, nor any losses, with respect to equity securities, so it faces no conflict in representation of the class of debt securities purchasers. As is explained in the attached Declaration of Colin Lancaster, General Counsel of Staro (Exhibit 2), Staro carefully negotiated a highly favorable, below market rate, fee agreement with its chosen

the Court in camera should the Court wish to see it. See Waste Management, Inc., 128 F.R.D. at 432 (noting importance of plaintiff negotiating a fee agreement).

Staro's general counsel, Colin Lancaster, will have substantial input into decision making, on Court filings, and will consult frequently with his chosen Lead Counsel. In addition, both Mr. Lancaster and the co-founders and principals of Staro, Brian Stark and Michael Roth, will actively participate in any settlement negotiations on behalf of bond purchasers interests.

See Exhibit 2.

IV. This Court Should Approve Staro's Selection of Lead Counsel

Staro Asset Management is seeking the appointment of Berger & Montague, P.C. as Lead Counsel. Berger & Montague has over 30 years of experience in securities fraud class action litigation. It has 55 lawyers and the resources necessary to litigate a major case like this one. In this action, it will represent only debt securities purchasers, so it has none of the conflicts some other candidates for Lead Counsel face. Muzinich & Co., Inc. v. Safety-Kleen, C.A. No. 3:00-145, at 4 (D.S.C. 2000); In re: Whitman, 101 B.R. at 38. Berger & Montague, P.C. has served as lead counsel in some of the largest and most prominent securities class action cases both before and since the advent of the PSLRA. Examples of such cases settled in the past two years are:

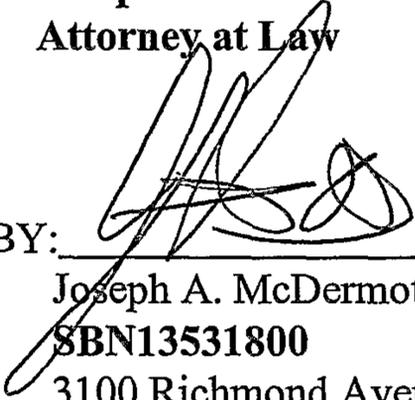
- In re: Waste Management Inc. Secur. Litig., N.D. Ill. 97 CV 7709 (\$220 million settlement finalized in 2000);
- In re: Rite Aid Inc. Secur. Litig., E.D. Pa., 99 CV 1349 (\$193 million partial settlements to date achieved in 2001);
- In re: Sunbeam Inc. Secur. Litig., S.D. Fla., 98 CV 8258 (\$135 million in settlements in 2001 and 2002);

- In re: Ikon Inc. Secur. Litig., E.D. Pa. M.D.L. 1318 (\$111million settlement in 2000); and
- In re: Alcatel Inc. Secur. Litig., E.D. Tex. M.D.L. (\$75 million settlement in 2000).

It submitted a firm resume in connection with Staro Asset Management's opening brief. As discussed above and explained in the Colin Lancaster Declaration (Exhibit 2), Staro negotiated an exceptionally favorable fee agreement to the class with Berger & Montague, P.C., at substantially below market rates, which will be made available to the Court upon request. Waste Mgmt., 128 F.R.D. at 432. Staro's choice of Lead Counsel is entitled to deference, 15 U.S.C. §78u-4(a)(iii)(v), and should be approved.

DATED: January 21, 2002

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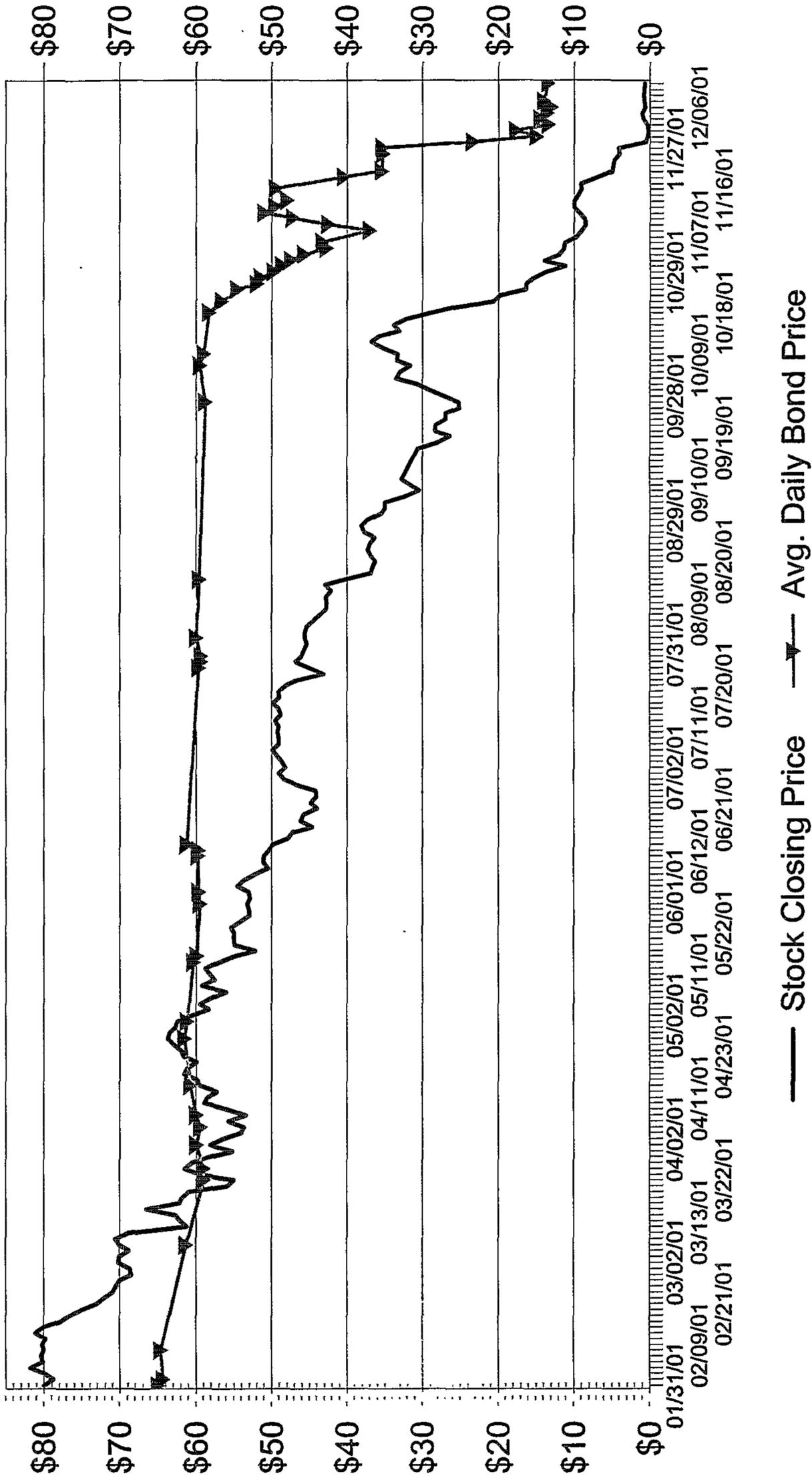
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Enron - Stock & Bond Price Comparison

(Jan. 31, 2001 - Dec. 12, 2001)



The "Average Daily Bond Price" represents the average price for the zero coupon bond transactions on a given day listed in the certifications by Staro and JMG. The "Stock Closing Price" represents the daily NYSE closing price as reported by Dow Jones.

3. Staro has complete discretionary authority over the investment decisions of all of the funds that it manages. In addition, Staro has authority to bring suit on behalf of all of its affiliates and the funds it manages. Staro stands in a fiduciary relation to investors in the affiliated funds, and is accustomed to exercising fiduciary duties.
4. The founders of Staro are Brian Stark and Michael Roth. I expect to work closely with these founders in the management of this litigation.
5. Mr. Stark has over 25 years of trading experience, in both domestic and international markets, and has written a book on the subject, Special Situation Investing: Hedging, Arbitrage and Liquidation (Dow Jones - Irwin, 1983). Prior to entering professional fund management, Mr. Stark was a partner at the commercial litigation firm of Coghill & Goodspeed, P.C. He earned his law degree, cum laude from Harvard Law School (1980) and his Bachelor of Arts, magna cum laude, from Brown University (1977).
6. Mr. Roth has been in the investment management business for over 13 years. Prior to joining Mr. Stark in 1988, he practiced law at Covington & Burling in Washington, D.C., where he specialized in antitrust litigation. Mr. Roth earned his law degree from Harvard Law School. He also holds a Bachelor of Arts, summa cum laude, from the University of Wisconsin-Madison.
7. Although Messrs. Stark and Roth are not licensed to practice law in the State of Wisconsin and are not practicing lawyers, they are very involved in the legal issues affecting our business and they are experienced fiduciaries -- and will vigorously advocate the interests of the Debt Securities Class.
8. If Staro is appointed lead plaintiff, I expect to devote a significant amount of my own time, and that of my staff, to the Enron litigation. Moreover, Staro will specifically appoint one other in-house attorney and paralegal to work on this matter and Staro will ensure that it dedicates significant analytical and trading resources as well. Staro believes that its investment experience and sophistication, in some of the same types of instruments and markets in which Enron traded, would prove to be very valuable in this litigation.
9. I will maintain an active role in this litigation. I expect to review and have substantial

input into all critical court filings, and to discuss progress frequently with Lead Counsel. I, and the principals of Staro, will personally participate in any settlement negotiations, and will assure that the Debt Securities Class receives the highest possible recovery in both absolute terms and in relationship to the recovery of the Equity Class.

10. Staro chose its proposed Lead Counsel only after extensive analysis of its situation and negotiation with the counsel(s) of its choice. Staro has been represented in other, non-class financial litigation by Berger & Montague, P.C. Before retaining Berger & Montague, P.C.,

Staro entered into lengthy arms' length negotiations to set an appropriate fee for litigating this matter which in our judgment will result in the maximum net recovery for the Debt Securities Class. The fee that we negotiated is significantly below the level typical in actions of this nature. We believe this will greatly benefit the Debt Securities Class. We will submit the fee agreement to this Court upon request.

11. I understand that some competing Lead Plaintiffs seek to represent both debt and equity securities together, and intend to appoint Lead Counsel to represent all interests together. Staro believes that the interests of debt and equity investors diverge at several critical points in this litigation. Because Enron has filed for bankruptcy and because of the massive magnitude of the losses experienced by debt and equity purchasers, only a limited fund will be available to satisfy all claims. Debt and equity unquestionably need separate representation to assure that in any settlement, an appropriate amount is allocated to debt securities. Outside of settlement, in pre-trial proceedings and at trial, debt investors will have to present different evidence of loss causation and damages.

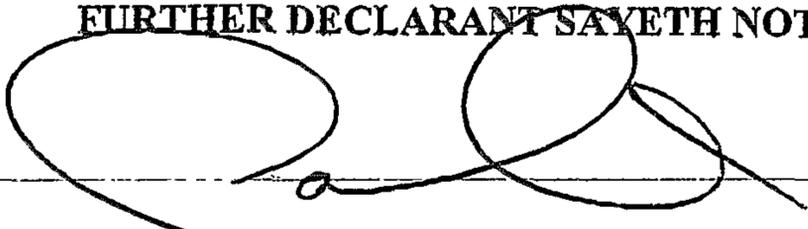
12. Accordingly, Staro believes that Lead Plaintiffs and Lead Counsel seeking to represent both debt and equity interests face a conflict, and that because each of the applicants for leadership in this case has a much greater financial interest in equity than in debt, the conflicts will be resolved unfavorably to debt investors. Staro does not consent to any such representation, and does not waive its right to object to conflicted representation.

13. Staro calculated its actual losses on its debt securities investments to be \$39 million at

time of initial petition. Its losses have increased since it filed its opening Motion on December 21, as the trading price of the bonds it continues to hold have continued to decline. We now estimate Staro's losses on its bond investments to exceed \$ 40 million.

DATED: January 21, 2002

FURTHER DECLARANT SAYETH NOT



Colin Lancaster
STARO ASSET MANAGEMENT, LLC

BN Enron Underwriters, Andersen Sued Over \$120 Mln Loss on Bonds
Jan 17 2002 17:18

Enron Underwriters, Andersen Sued Over \$120 Mln Loss on Bonds

New York, Jan. 17 (Bloomberg) -- Four hedge funds that lost more than \$120 million on Enron Corp. bonds sued Arthur Andersen LLP, the energy trader's auditor, and several underwriters, claiming they ignored evidence of Enron's crumbling finances.

The lawsuit, filed in Manhattan federal court, was brought by Silvercreek Management Inc., which runs the four Toronto-based funds. The suit says the plaintiffs -- which specialize in bonds of distressed companies -- bought more than \$175 million worth of Enron bonds between Oct. 18 and Oct. 26, just weeks before the energy trader admitted inflating more than four years of earnings by almost \$600 million.

Citigroup Inc.'s Salomon Smith Barney Inc., Goldman Sachs Group LP, and Banc of America Securities were also named as defendants. The companies were underwriters of the bonds bought by the hedge funds, the complaint says.

``Defendant Arthur Andersen's accounting judgments in certifying audits and reports which it knew were materially incorrect, and which it knew were erroneous as a result of intentional conduct by . . . defendants and others, were such that no reasonable accountant would have made the same decisions if confronted with the same facts,' ' the complaint says.

A spokesman for Andersen did not immediately return a call seeking comment. Kathleen Baum, a spokeswoman for Goldman Sachs, said, ``We never comment on legal matters.' '

Enron filed for Chapter 11 bankruptcy protection on December 2. As one of Enron's largest unsecured creditors, Silvercreek has a seat on the creditors' committee.

The suit contends that Andersen overlooked Enron's true financial picture ``in order to continue earning lucrative fees for the auditing, tax, financial, and other consulting services it had provided.' '

Scrutiny of Andersen

Andersen and the banks are accused of fraud and negligent misrepresentation. The suit seeks unspecified compensatory and punitive damages.

The Silvercreek complaint is similar to one filed yesterday by Tulsa, Oklahoma-based Samson Investment Co., an oil and natural gas exploration firm. Samson sued in state court in Oklahoma, alleging that it relied on Andersen's audits before entering into contracts with Enron to buy or sell natural gas.

On Tuesday, Andersen fired David Duncan, the partner who oversaw its Enron audits, for ordering the destruction of thousands of e-mails and documents relating to Enron. U.S. House

BN Enron Underwriters, Andersen Sued Over \$120 Mln Loss on Bonds
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investigators are interviewing Duncan about his role in the document destruction.

The Securities and Exchange Commission is also examining the fifth-largest accounting firm's role in the unraveling of Enron, which said on Nov. 8 that it inflated earnings by \$586 million over four years.

--Christopher Mumma in U.S. District Court in New York (212) 732-9245, or at cmumma@Bloomberg.net, through the New York newsroom (212) 893-3665. Editor: Pinsley

Story Illustration: for a graph of Enron's stock price, type {ENRNQ US <Equity> GPO <GO>}

Company news:

ENRNQ US <Equity> CN <GO>
23245Z US <Equity> CN <GO>
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News categories:

NI PIP
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NI NYC
NI USMA
NI ACC
NI SVC
NI JUS
NI GOV
NI SEC
NI SCR
NI FIN
NI CNG
NI CANADA
NI HEDGE

CERTIFICATE OF SERVICE

I, Arthur Stock, hereby certify that on this 21st day of January, 2001, I caused a true and correct copy of the: Responsive Brief in Further Support of The Motion of Staro Asset Management LLC To Serve as Lead Plaintiffs on Behalf of The Debt Securities Class and In Opposition to Competing Motions with attachments: Exhibits 1 - 3, to be served via facsimile on the following parties:

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Richard J. Zook, Esquire
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