United States Courts
Southern District of Texas
FILED

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Michael N. Milby, Clerk

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

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| MARK NEWBY,<br><br>Plaintiff,<br><br>v.<br><br>ENRON CORPORATION, ANDREW S. FASTOW, KENNETH L. LAY, and JEFFREY K. SKILLING,<br><br>Defendants. | C.A. No. H-01-3624<br><br>JURY TRIAL DEMANDED |
| HENRY H. STEINER, Individually and on Behalf of All Others Similarly Situated,<br><br>Plaintiff,<br><br>v.<br><br>ENRON CORP., KENNETH L. LAY, JEFFREY K. SKILLING, ANDREW S. FASTOW, and ARTHUR ANDERSEN LLP,<br><br>Defendants. | C.A. No. H-01-3717<br><br>JURY TRIAL DEMANDED<br><br><br><br>ORAL ARGUMENT REQUESTED |

**REPLY MEMORANDUM OF PLAINTIFFS STEINER ET AL. IN FURTHER SUPPORT OF THEIR MOTION FOR APPOINTMENT AS LEAD PLAINTIFFS FOR PURCHASERS OF ENRON PREFERRED STOCK AND APPROVAL OF THEIR SELECTION OF LEAD COUNSEL**

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## Introduction

Plaintiffs Henry H. Steiner, Christine L. Benoit, Daniel Kaminer, Michael and Jennifer Cerone, and Harold Karnes (hereinafter, the "Proposed Preferred Purchaser Lead Plaintiffs") respectfully submit this memorandum of law in further support of their motion for: (1) their appointment as Lead Plaintiffs for purchasers of Enron preferred stock; and (2) approval of their selection of lead counsel. The Proposed Preferred Purchaser Lead Plaintiffs also submit this memorandum in reply to the oppositions to their motion submitted by the other proposed lead plaintiffs.

The unprecedented collapse of Enron Corporation ("Enron" or the "Company") is unparalleled in the history of the financial markets. On October 16, 2001, Enron had a market capitalization of approximately $25 billion. By December 2, 2001, the day the Company filed for bankruptcy protection, the Company's common stock was trading at less than $1.00 per share and its total market capitalization had dropped to a mere $580 million. Enron's resulting bankruptcy filing, under Chapter 11, is an all-time high for a public company. The Company's implosion has spawned numerous investigations by regulatory agencies and Congress, and a criminal investigation by the Department of Justice. Recent disclosures also indicate that Arthur Andersen, LLP, Enron's auditor, destroyed documents relating to Enron.

The effect of the alleged financial fraud has been wide-ranging and has had a devastating impact on everyone involved with Enron. Common shareholders, preferred shareholders, debtholders, pension plans and Enron employees, lost billions of dollars in a matter of weeks. Dozens of lawsuits have been filed on behalf of various groups of investors, and currently pending before the Court are eight separate motions for lead plaintiff in the consolidated Newby securities action. The Proposed Preferred Purchaser Lead Plaintiffs' motion for lead plaintiff is the only motion pending exclusively on behalf of purchasers of Enron preferred stock.

There are ___ groups of institutional investors moving for appointment as lead plaintiff, and each claims billions of dollars of losses on purchases of Enron common stock. Each of those movants claim to be adequate representatives for all class period purchasers of Enron equity and

debt, and some further argue that even if this turns out not to be the case, the motions of the "niche plaintiffs" for separate representation are premature and more properly addressed at the class certification stage.

Given the unprecedented scope, complexity, and magnitude of this securities action, however, a sensible lead plaintiff structure needs to be instituted at the outset in order to protect the myriad of investor interests present in this case. In considering the unique issues presented in this action, as well as the separate and distinct interests of the common shareholders, preferred shareholders and debtholders of Enron, the Court should adopt a structure that provides fair representation for the various constituent groups. Undoubtedly this litigation is one of the largest securities fraud class actions in history. As has been the case in numerous extremely large and complex class actions, the Court should create a hybrid lead plaintiff structure of various lead plaintiffs -- including common shareholders, preferred shareholders and debtholders, and possible others, as the Court may deem appropriate. At the least, the Court should create a three-member Executive Committee with separate representation for common stockholders, preferred stockholders, and debtholders. This triad would act in concert and be chaired by the common shareholder lead plaintiff, but the respective representatives for preferred shareholders and debtholders would have actual decision-making authority for their respective groups when conflicts between the different groups arose.

The Proposed Preferred Purchaser Lead Plaintiffs are the only candidates who have purchased preferred stock,[1] and are the only candidates seeking to represent exclusively the interests of the preferred shareholders. Accordingly, the Proposed Preferred Purchaser Lead Plaintiffs should be appointed Lead Plaintiffs for purchasers of Enron's preferred stock, or at the least, should be

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[1] The State Retirement Systems Group, at page 20, n.22 and 21, of its "Memorandum In Opposition To Competitive Motions For Appointment As Lead Plaintiff," suggests that its members have purchased all types of Enron securities, lumping those securities together as "equity and debt." Exhibit A, p. 3 to that memorandum, however, acknowledges that the securities purchased by the State Retirement Systems Group consists of common stock and bonds, not preferred stock.

named to an executive committee with authority to decide issues on behalf of preferred shareholders when those interests conflict with either common shareholders or debtholders.

## STATEMENT OF FACTS

## I. ARGUMENT

### A. The Court Has the Authority and Responsibility to Appoint A Separate Lead Plaintiff and Counsel for the Preferred Shareholder Class at this Stage of Litigation

Each of the institutional investor movants self-servingly argues that it is premature to seek separate representation for preferred shareholders, and that a decision on that issue is more properly addressed at the class certification stage.[2] "[T]he plain language of the PSLRA, [however,] expressly contemplates the appointment of more than one lead plaintiff," see In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. 42, 47 (S.D.N.Y. 1998), and lead plaintiffs may be appointed for particular securities, claims, or parts of the Class Period.

The goal of the PSLRA -- to provide more effective representation on behalf of a class of persons injured by violations of the securities laws -- is best served by appointing separate lead plaintiffs and lead counsel for separate groups of plaintiffs with diverse interests. In determining the most adequate plaintiff, the PSLRA requires that the proposed lead plaintiff satisfy the requirements of Rule 23.[3] 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Accordingly, numerous courts evaluating lead plaintiff motions under the PSLRA have appointed separate lead plaintiffs in situations like this

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[2] **[LIST BRIEF, PAGE REFERENCES]**

[3] The creation of separate classes at this stage of the litigation is also appropriate under Rule 23 of the Federal Rules of Civil Procedure. See Ortiz v. Fibreboard Corp., 527 U.S. 815, 855 (1999) (Rule 23 requires protections under subdivisions (a) and (b) against inequity and potential inequity at the pre-certification stage); see also Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985) (due process requires that the named plaintiff at all times adequately represent the interests of absent class members). Moreover, recent decisions of the United States Supreme Court require the Court to address intra-class conflicts by assuring that independent classes have separate representation. Ortiz, 527 U.S. at 855. Amchem Prods. v. Windsor, 521 U.S. 591, 626-27 (1997). In Ortiz, the Supreme Court stated that although the class members shared common interests in securing contested insurance funds for payment of claims, such common interests did not obviate the need to provide structural protections and required that the subgroups be independently represented. Ortiz, 527 U.S. at 815.

where multiple classes of stock purchasers assert diverse claims arising out of a related set of events. See e.g., In re Cendant Corp. Litig., 182 F.R.D. 144, 149 (D.N.J. 1998) (inability to overcome conflict of interest and fully protect the interests of the PRIDEholders warrants appointment of separate Lead Plaintiff); Chill v. Greentree Fin. Corp., 181 F.R.D. 398, 402 (D. Minn. 1998) (separate lead plaintiffs and counsel appointed for class of options purchasers and securities purchasers).

In Miller v. Ventro Corp. et al., No. C 01-01287 SBA, slip op. at 18 (N.D. Cal. November 28, 2001), a very recent decision, the court created a lead plaintiff structure similar to the executive committee proposed by the Proposed Preferred Purchaser Lead Plaintiffs. In Ventro, the court appointed a lead plaintiff different lead plaintiffs for bondholders and stockholders to serve as a group of co-lead plaintiffs. The group is to make decisions by consensus except in those instances where the interests of the bondholders and shareholders are separate and independent. In those instances, the representative for each group will have the final decision-making authority for those issues.

In another suit with factual circumstances very similar to this one, a U.S. District Court required the establishment of independently represented subclasses. In Mark v. Fleming Cos., Inc., Case No. CIV-96-506-M, Order (W.D. Okla, March 26,1997), the court refused to consolidate a note case with a stockholder case and appointed a separate lead plaintiff and lead counsel for the Note class. Similarly, in Harbour Court LPI v. Nanophase Tech. Corp., et al., Case No. 98 C-7447 (N.D. Ill. September 27, 1999), slip. op. at 4, the court appointed separate lead plaintiffs and lead counsel for preferred shareholders asserting §10(b) claims with regard to the conversion of their stock to common shares and common shareholders asserting claims under sections 11, 12(2) and 15 of the Securities Act because of, among other reasons, the requirement that scienter be proved for §10(b) claims. Appointing separate lead plaintiffs and lead counsel for the preferred and common shareholders assures that the interests of all stockholders will be adequately represented in the prosecution of the action. In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. at 49.

Moreover, given the fact that Arthur Andersen admits that it destroyed Enron documents, the Court will likely give short-shift to any motion to dismiss made by defendants. Accordingly, it is likely that discovery will begin prior to determination of that motion, further necessitating that a representative be in place at the outset of this litigation to protect the interests of the preferred shareholders.

**B. <u>If Conflicts Aren't Addressed Now They Will Go Unaddressed</u>**

This court in <u>In re Waste Management</u>, 128 F. Supp. 2d 401 (S.D. Tex. 2000), declined to decide at the lead plaintiff stage whether conflicts were present which required separate representation for common shareholders and optionholders. We respectfully suggest that the Court follow a different course here because, given the complexity and magnitude of this litigation, if the existence of conflicts between common and preferred shareholders is not addressed now, it is virtually certain that it will go unaddressed in this litigation. The global common shareholder lead plaintiff will choose lead counsel, and his lead counsel will focus on issues that affect Enron common shareholders, the largest plaintiff group. Accordingly, lead counsel will fail to recognize those instances where the interests of the common and preferred shareholders conflict, and issues which the institutional investor movants argue should be brought up later will never be addressed at all. The Court might well be inclined to worry about conflicts later, but in order to do so there will need to be someone in place who is involved in the case, who knows what is going on, and who is able to recognize conflicts as they arise and bring them to the Court's attention. Thus, although it may not be necessary under average circumstances to decide whether subclasses are necessary at the lead plaintiff stage, the issue of certifying a class or subclass will be decided later at the class certification stage), given the complexity and magnitude of this litigation, it is imperative that separate lead plaintiff and lead counsel be appointed for preferred shareholders at this time in order that they recognize and act upon conflicts of interest from the inception of the action.[4]

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[4] The other lead plaintiff cases cited by the institutional investor movants in support of their argument that the Proposed Preferred Purchaser Lead Plaintiffs' motion is premature are

### C. Each of the Proposed Common Shareholder Lead Plaintiff Has Conflicts Which Render Him An Inadequate Representative For the Preferred Shareholders

"Adequacy, for purposes of the Lead Plaintiff determination, is contingent upon both the existence of common interests among the proposed lead plaintiffs and the class and a willingness on the part of the proposed lead plaintiff to vigorously prosecute the action." In re Lucent Technologies, Inc. Sec. Litig., 194 F.R.D. 137, 151 (D.N.J. 2000). "The adequacy of representation inquiry 'serves to uncover conflicts of interest between named parties and the class they seek to represent.' Amchem Products, 521 U.S. at 625." Id.

Given the nature of defendants' alleged fraud and the differences between Enron's common and preferred stock as investment vehicles, the fraud claims of Enron's preferred shareholders are clearly distinct from those of its common shareholders, rendering the presumptively most adequate common shareholder lead plaintiff an inadequate representative for preferred shareholders. The value of preferred stock is derived from stockholder equity and is based in part on the credit rating of the company,[5] while common stock, on the other hand, most often trades on the basis of a combination of present and expected future earnings and growth. From a business and financial point of view, preferred stock resembles a debt instrument, such as a bond, and mainly trades based on interest rate fluctuations. (Wolfe Decl. at ¶ 15.) Accordingly, unlike common stock, preferred shares do not share the full upside potential of the company nor do they reflect short term earnings fluctuations. Id.

Those differences create conflicts between the two claimant groups with regard to issues of materiality, presentation of proof, and calculation of damages and settlement, and necessitate the

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distinguishable on the same grounds. See Aronson v. McKesson HBOC, Inc., 79 F. Supp. 2d 1146, 1151 (N.D. Cal. 1999) (proposed lead plaintiffs merely "speculated" about possible conflicts); In re Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. 42, 51 (S.D.N.Y. 1998) (same); In re Orbital Sciences Corp. Sec. Litig., 188 F.R.D. 237, 238 (E.D. Va. 1999).

[5] See Declaration of Steven R. Wolfe submitted in Support of Proposed Preferred Purchaser Lead Plaintiffs' Motion to Appoint Separate Lead Plaintiffs and Lead Counsel For Purchasers of Enron Preferred Shares and in Support of Objection to the Order of Consolidation (the "Wolfe Decl.") at ¶ 12.

appointment of separate lead plaintiffs for the two claimant groups. For example, the undisclosed material information regarding defendant Fastow's limited partnerships had materially different effects on the risk profiles and values of these different classes of stock. Wolfe Decl. at ¶ 17. For example, preferred shareholders were more significantly injured by the defendants' failure to disclose that Enron's investment and hedging deals with defendant Fastow's limited partnerships involved forward commitments to deliver Enron stock. Those forward commitments ensured that Enron would not have to report earnings' losses on those deals, but instead could reduce shareholder equity and the liquidation value of the Company without affecting its income and earnings statements.[6] (¶ 110(a); Wolfe Decl. at ¶¶ 18-20.)

Enron's preferred shareholders claimants also suffered greater harm than did its common shareholder from defendant's failure to disclose the potential enormous write-downs in shareholder equity that Enron faced as a result of its structured finance arrangements with Mr. Fastow's limited partnerships. (¶ 110(d)). By putting the Company in the undisclosed position of having to repurchase 55 million shares in order to unwind a hedging transaction with Mr. Fastow's limited partnership, defendants materially increased the risk of impairing Enron's equity on its balance sheet. (¶ 110(j)).

Defendants further jeopardized the value of Enron's preferred shares by failing to disclose that the Company might be forced to borrow billions of dollars on its bank lines of credit, which would create debt with rights senior to that of the preferred shares. (¶ 110(e)). Defendants' undisclosed investment and hedging activities incurred a material risk of substantial deterioration of the Company's financial condition, making the preferred stock dividends less secure. (¶ 110(f) Wolfe Decl. ¶ 23). As Enron's preferred stock dividends were to be paid in full before any dividends were paid on its common stock, this affected the preferred shareholders more immediately. (Id.) Subsequent to the filing of the Steiner Action, Enron established another $1 billion - plus bank line

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[6] See ¶ 110(a) of the Amended Class Action Complaint (the "Complaint") filed in the Steiner Action. References to the Complaint will hereinafter be designated ¶ __.

of credit, which in the usual course would be debt senior to the preferred shares. Id.

The trading in Enron's common and preferred stock as the market learned of Enron's fraud illustrates the manner in which those two classes of stock were affected differently by it. (See Trading Chart attached as Exhibit A to the Wolfe Decl.) Those trading differences impact each claimant group's proof of liability and damages (Wolfe Decl. at ¶ 25).

The first major announcement by the Company, on October 16, 2001, of a $1.01 billion after-tax charge to earnings and a $1.2 billion hit to shareholder equity (digested by the financial media by October 18, 2001) caused Enron common stock to decline nearly 50% over the next five trading days, while Enron's 8 1/8 R Series Preferred Shares (the "Preferred R Shares") declined only about 8% during that period. (Wolfe Decl. at ¶ 29). This difference reflects the respective concerns of the two classes of shareholders: the common shareholders anticipated reduced earnings from the after-tax charge while the preferred shareholders did not believe the after-tax charge was large enough to affect their expected dividend payments. (Wolfe Decl. at ¶ 30).

On November 9th, Enron announced that it had agreed to be acquired by its rival, Dynegy Inc. (Compl. ¶ 103). The Dynegy acquisition was perceived by the market as being much more beneficial to the preferred shareholders than the common, as it promised to "better" Enron's credit and increase stockholder equity to support the dividend payments and claims of the preferred shareholders. (Wolfe Decl. at ¶ 31). The Dynegy acquisition promised to do less for future earnings and growth, the determinants of the common stock price. Id. Accordingly, Preferred R Shares increased in value by about 25% after the announcement while the common stock increased only 15%. (Wolfe Decl. ¶ 31).

Enron's preferred stock was more significantly affected than its common stock, however, when Standard and Poor's lowered Enron's credit rating to triple-B- minus on November 12, 2001. (¶ 105) Whereas the Preferred R Shares lost 8.5% of their value over the two days following that announcement, Enron's common stock closed up 8% over the same time period. (Wolfe Decl. ¶ 33).

The most dramatic, and dispositive difference in the trading between the common and

preferred shares concerns when each essentially lost its value (Wolfe Decl. ¶ 26). While as of November 21, 2001, Enron common stock had lost at least 90% of its value since October 16th, the price of the Preferred R Shares at that date was only approximately 44% lower than its year high on October 17th. (Wolfe Decl., Ex. A).

When, on November 28th Dynegy announced it was calling off the acquisition (¶ 106), the Preferred R Shares were devastated, declining in value that day by about 90%. The likelihood that Enron would be able to pay its dividend had become extremely dubious. Enron common stock declined only $3.00 that day, the prospects for future earnings and growth already having become remote. (Wolfe Decl. ¶ 32) .

A final distinction between Enron's common and preferred shareholders is the preferred shareholders state law claim for negligent misrepresentation based on Enron's November 8, 2001, announcement that it was restating its earnings back to January 1, 1997. (Compl. ¶ 101). The Steiner Action alleges a negligent misrepresentation claim, under Texas state law, with respect to the IPO trading in two classes of Enron preferred stock, based upon possible material misstatements or omissions concerning 1997 in the respective prospectuses. (Compl. ¶¶ 156-163). As there was no common stock IPO during this period, this claim is not available to Enron's common shareholders. (Wolfe Decl. ¶ 10).

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Given these circumstances, the Proposed Preferred Purchaser Lead Plaintiffs can more "fairly and adequately protect the interests of" preferred stockholders as they have a common interest in maximizing their recovery, while a common shareholder lead plaintiff does not. Thus, the Proposed Preferred Purchaser Lead Plaintiffs should be appointed as a separate Lead Plaintiff to represent the interests of the preferred stock purchasers. See Cendant, 182 F.R.D. at 149 (inability to overcome conflict of interest and fully protect the interests of the PRIDEholders warrants appointment of separate Lead Plaintiff).

None of the other lead plaintiff movants offer any real structural protections for the preferred shareholders or address the disparate interests raised by the Proposed Preferred Purchaser Lead Plaintiffs' motion. This is the exact problem addressed in the Supreme Court's Ortiz and Amchem cases. In Amchem Prods. v. Windsor, 521 U.S. 591, 626-7 (1997) and Ortiz v. Fibreboard Corp., 527 U.S. 815, 855 (1999), the Supreme Court concluded that the disparate interests of the plaintiff class could not be properly represented by one counsel. In Ortiz, the court held that the separate and disparate interests must be represented from the beginning to avoid any prejudice to the rights of separate classes. Ortiz, 527 U.S. at 855. Conflicts do exist between the common and preferred stock purchasers and should be resolved at this point by the separate appointment of a lead plaintiff and lead counsel on behalf of the preferred stockholders.

The FSBA/NYC Funds Group argues that regardless of these conflicts, they can represent all purchasers of Enron stock and debts (Mem. at p. __), and cites cases wherein defendants' challenges to class certification on the grounds that common shareholders couldn't represent debtholders (Endo v. Albertine, 147 F.R.D. 164 (N.D. Ill. 1993) or preferred shareholders. (In re Atlantic Financial Federal Sec. Litig., 1990 U.S. Dist. LEXIS 15965 (E.D. Pa. Nov. 28, 1990) were denied. But as the court and plaintiffs in Endo recognized, there were an equal number of cases where courts refused to certify a class comprised of both stock and debenture holders. Endo, 147 F.R.D. at 167, citing Simon v. Westinghouse Electric Corp., 73 F.R.D. 480 (E.D. Pa. 1977); Model Associates, Inc. v. U.S. Steel Corp., 88 F.R.D. 338, 3390-41 (S.D. Ohio 1980); Cohen v. Uniroyal, Inc., 77 F.R.D. 685, 693 (E.D. Pa. 1977); Herbst v. Able, 278 F. Supp. 664, 668 n.6 (S.D.N.Y. 1967); and Evans v. City of Chicago, 698 F.2d 1286, 1292 (1982). Accordingly, the determination of whether conflicts exist between common and preferred shareholders, or common shareholders and debtholders, which render global representation inadequate, is fact specific, and much less complicated cases cited by FSBA/NYC Funds Group have little bearing on the motion of the Proposed Preferred Purchaser Lead Plaintiffs.

## D. Enron's Bankruptcy Filing Necessitates Separate Representation In This Action

The FSBA/NYC Funds Group argues that any conflicts between common and preferred stock created by Enron's bankruptcy filing has no relevance to this motion, as "Enron will no longer be a party to this action," and the "relative priority of different Enron securities in making claims against the bankrupt Enron" will have "no bearing on the various securities purchasers' claims for violation of the federal securities laws in this litigation." (FSBA/NYC Funds Mem. at 29.)

In so arguing, the FSBA/NYC Funds Group fails to take into account that the bankruptcy action is likely to affect the positions the common shareholder is likely to take in this action, and that those positions could easily conflict with the best interests of the preferred shareholders. Moreover, the Preferred Shareholders' prior of claim in bankruptcy court could have some bearing on how a settlement fund in this action should be divided among the plaintiffs. A common shareholder lead plaintiff, acting as a global plaintiff, will have no incentive, in that circumstance, to protect the interests of the preferred shareholders. Accordingly, Enron's bankruptcy filing necessitates that a preferred shareholder representative be in place in this action to represent the divergent interests of the preferred shareholder group.

## E. The Court Should Approve The Proposed Preferred Purchaser Lead Plaintiffs' Choice of Counsel

The law firm chosen by the Proposed Preferred Purchaser Lead Plaintiffs to act as lead counsel -- Wolf Haldenstein Adler Freeman & Herz LLP -- has extensive experience both prosecuting securities fraud claims against the major certified public accounting firms, as will be required here against Arthur Andersen LLP, and with off balance sheet financing. Wolf Haldenstein was co-lead counsel in the In re Microstrategy, Inc. Securities Litigation, (See Decl. of Jack E. McGehee, Ex. C at 16, submitted with the Proposed Preferred Purchaser Lead Plaintiffs' initial moving papers) where PriceWaterhouse Coopers was also a defendant. Wolf Haldenstein secured a $55 million cash payment from PriceWaterhouse (as its share of the settlement fund, which, upon information and belief, is the third largest cash payment ever paid by a public auditor in a securities

fraud action.

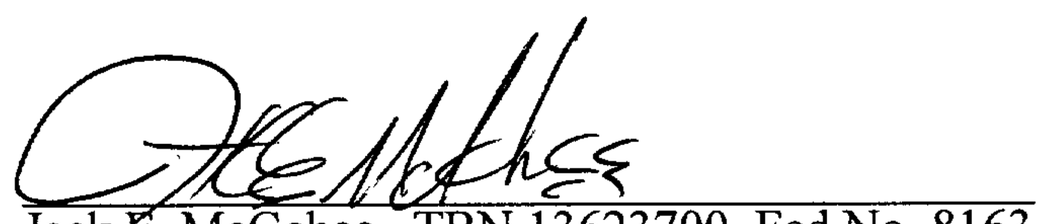
In addition, Wolf Haldenstein has expertise in off balance sheet financing, which will be a major component of plaintiffs' claims against defendants. See Saft, S., "The Risks of Financing With Synthetic Losses," The Real Estate Finance Journal/Spring 1998 at pp. 26-30. The firm has also sued Merrill Lynch with regard to derivative risks in Orange County's portfolios. See Decl. of Jack McGehee, Ex. C. at __.

Accordingly, Wolf Haldenstein is extremely well-suited to prosecute the claims of the preferred shareholders.

## CONCLUSION

For the reasons set forth herein and in our prior submissions, the Proposed Preferred Purchaser Lead Plaintiffs respectfully request that the Court: (1) appoint them as separate Lead Plaintiffs for purchasers of the preferred shares of Enron Corporation; and (2) approve their selection of lead counsel.

Dated: January __, 2002



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IN THE UNITED STATES DISTRICT COURT
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HOUSTON DIVISION

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| MARK NEWBY,<br><br>Plaintiff,<br><br>v.<br><br>ENRON CORPORATION, ANDREW S. FASTOW, KENNETH L. LAY, and JEFFREY K. SKILLING,<br><br>Defendants. | C.A. No. H-01-3624 |
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**[PROPOSED] AMENDED ORDER APPOINTING PREFERRED PURCHASER LEAD PLAINTIFFS, LEAD COUNSEL AND LOCAL COUNSEL**

The Court, having considered the Proposed Preferred Purchaser Lead Plaintiffs' motion for appointment as Lead Plaintiffs for the class of purchasers of all Enron preferred securities and approval of the Proposed Preferred Purchaser Lead Plaintiffs' selection of Lead Counsel and Local Counsel; the Memorandum of Law in support thereof; the Declarations of Steven R. Wolfe and Jack E. McGehee (each with exhibits) in support of the motion; and all other submissions made by the Proposed Preferred Purchaser Lead Plaintiffs and with good cause appearing, therefore,

THE COURT HEREBY FINDS THAT:

1. There are material differences between the claims of purchasers of Enron preferred stock and the claims of purchasers of Enron common stock.

2. Conflicts of interest do and may arise from those material differences between the purchasers of Enron preferred stock and the purchasers of Enron common stock concerning their respective claims against the defendants; and

IT IS HEREBY ORDERED THAT:

1. Henry H. Steiner, Daniel Kaminer, Christine Benoit, Michael and Jennifer Cerone, and Harold Karnes are appointed Lead Plaintiffs in the above-captioned consolidated action for the class of purchasers of all Enron preferred securities (collectively "Preferred Purchaser Lead Plaintiffs") pursuant to §21D(a)(3)(B) of the Securities Exchange Act of 1934.

2. The law firm of Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein") is appointed Lead Counsel and the law firm of McGehee and Pianelli L.L.P. is appointed Local Counsel for the purchasers of Enron preferred securities.

3. Wolf Haldenstein shall be a member of an Executive Committee also comprised of the lead counsel law firms representing the Enron common stock purchasers and the Enron debt purchasers. The chair of the Executive Committee shall be the Lead Counsel law firm representing the Enron common stock purchasers. No motion, request for discovery, or other pre-trial proceedings shall be initiated or filed by the Preferred Purchaser Lead Counsel without prior coordination with the Chair of the Executive Committee, so as to prevent duplicative pleadings or discovery; except that Wolf Haldenstein is authorized to contact the Court or make an appropriate motion when it believes there is a conflict that requires separate action on behalf of the Enron preferred stock purchasers. No counsel for any individual Enron preferred stock purchaser plaintiff shall take any action on behalf of the preferred purchaser plaintiffs without the authority and direction of Wolf Haldenstein.

4. No settlement negotiations with respect to the claims of the purchasers of Enron

preferred securities shall be conducted without the prior approval of Wolf Haldenstein and Wolf Haldenstein shall be in charge of the negotiations with respect to any settlement of the claims of purchasers of Enron preferred securities.

5. Wolf Haldenstein shall have complete and sole authority to accept or reject a proposed settlement of the claims of the purchasers of Enron preferred securities.

6. Defendants shall effect service of papers on the Preferred Purchaser Lead Plaintiffs by serving a copy of same on both Wolf Haldenstein and its Local Counsel.

IT IS SO ORDERED.

Dated this _____ day of _____, 2002

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U.S.D.J.

257644

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**STATUTES**

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