

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

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED  
MAY 02 2002

In Re ENRON CORP.  
SECURITIES LITIGATION

MICHAEL N. MILBY, CLERK OF COURT

MARK NEWBY,  
Plaintiff,

v.

Consolidated Lead No. H-01-3624

ENRON CORPORATION, et al.,  
Defendants.

HENRY P. BLASKIE, JR.,  
Individually and For All Other Persons  
Similarly Situated,  
Plaintiff,

v.

Civil Action No. H-02-1108

KENNETH L. LAY, et al.,  
Defendants.

**DECLARATION OF ANDREW RAMZEL IN SUPPORT  
OF DEFENDANT ARTHUR ANDERSEN LLP'S  
MEMORANDUM OF LAW IN OPPOSITION  
TO PLAINTIFFS' MOTION TO REMAND**

1. I, Andrew Ramzel, am an attorney representing Arthur Andersen LLP in the above-captioned action. I am an attorney licensed to practice law in the State of Texas and before this Court. I am competent to make this declaration, and it is based on my personal knowledge. I make this declaration in support of Andersen's Memorandum of Law in opposition to plaintiffs' motion to remand in Blaskie v. Lay, No. H-02-1108, consolidated with Newby v. Enron, No. 01-3624.

591

2. Submitted along with my declaration are the following true and correct copies of the documents listed below.

<u>Exhibit</u>	<u>Description</u>
A.	Notice of Bankruptcy Filing of Enron Corporation and Imposition of Automatic Stay, Cause No. 2002-04306, 281st Judicial District, Harris County, Texas.
B.	Motion of Debtors for a Global Order, Pursuant to Section 362(a) of the Bankruptcy Code, to Enforce the Automatic Stay and Prevent Plaintiffs from Prosecuting Derivative Claims in Violation Thereof, <u>In re Enron Corp.</u> , No. 01-16034 [AJG] (Bankr. S.D.N.Y. April 22, 2002).

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 2, 2002.

  
Andrew Ramzel

# Exhibit A

CAUSE NO. 2002-04306

**HENRY P. BLASKIE, JR., Individually  
and For All Other Persons Similarly  
Situated,**

**Plaintiff,**

v.

**KENNETH L. LAY, JEFFREY K.  
SKILLING, ANDREW S. FASTOW,  
RICHARD A. CAUSEY, JAMES V.  
DERRICK, JR., ESTATE OF CLIFFORD  
BAXTER, MARK A. FREVERT,  
STANLEY C. HORTON, KENNETH D.  
RICE, RICHARD B. BUY, ROBERT A  
BELFER, ROBERT P. BLAKE, JR.,  
RONNIE C. CHAN, JOHN H. DUNCAN,  
WENDY L. GRAMM, ROBERT K.  
JAEDICKE, CHARLES A. LeMAISTRE,  
JOHN MENDELSON, PAULO V.  
FERRAZ PEREIRA, FRANK SAVAGE,  
JOHN WAKEHAM, HERBERT S.  
WINOKUR, JR., JOE H. FOY, KEN L.  
HARRISON, JEROME J. MEYER,  
JOHN A. URQUHART, CHARLES E.  
WALKER, BRUCE G. WILLISON, AND  
ANDERSEN LLP,**

**Defendants.**

**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**281st JUDICIAL DISTRICT**

**NOTICE OF BANKRUPTCY FILING OF ENRON  
CORPORATION AND IMPOSITION OF AUTOMATIC STAY**

PLEASE TAKE NOTICE that on December 2, 2001, Enron Corp. filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York, Case No. 01-16034 (AJG). It is well established that "where an injury is suffered by a corporation and the shareholders suffer solely through depreciation in the value of their stock, only the corporation itself . . . or a stockholder suing derivatively in

the name of the corporation may maintain an action against the wrongdoer.” Vincel v. White Motor Corp., 521 F.2d 1113, 1118 (2d Cir. 1975). This rule applies equally to actions against non-debtor third parties. See, e.g., Seibu Corp. v. KPMG LLP, 2001 WL 1167317, at \*7 (N.D. Tex. Oct. 2, 2001).

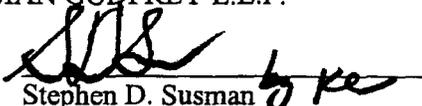
Pursuant to section 541(a)(1) of the Bankruptcy Code, property of the estate encompasses “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). All causes of action held by the debtor, including claims against non-debtor third parties, constitute property of the estate, and thus are subject to the automatic stay pursuant to section 362(a)(3) of the Bankruptcy Code. See, e.g., In re Keene Corp., 164 B.R. 844, 853-54 (Bankr. S.D.N.Y. 1994) (holding breach of fiduciary duty claims against third parties are property of the estate and thus non-debtors are barred by the automatic stay from asserting such claims). Further, the debtor has exclusive standing to assert such claims and the automatic stay prevents shareholders or creditors from asserting those claims derivatively. See, e.g., BRS Assocs., L.P. v. Dansker, 246 B.R. 755, 771-72 (S.D.N.Y. 2000). All actions taken in violation of the automatic stay are null and void.

Dated: February 21, 2002

Respectfully submitted,

SUSMAN GODFREY L.L.P.

By:

  
Stephen D. Susman  
State Bar No. 19521000  
S.D. Admissions No. 03257  
1000 Louisiana, Suite 5100  
Houston, Texas 77002-5096  
Telephone: (713) 651-9366  
Fax: (713) 654-6666

Attorneys for Enron Corp.

OF COUNSEL:

Kenneth S. Marks  
State Bar No. 12995500  
S.D. Admissions No. 02767  
Thomas W. Paterson  
State Bar No. 15571500  
S.D. Admissions No. 07078  
SUSMAN GODFREY L.L.P.  
1000 Louisiana, Suite 5100  
Houston, Texas 77002-5096  
Telephone: (713) 651-9366  
Facsimile: (713) 653-7897

WEIL, GOTSHAL & MANGES LLP  
Martin J. Bienenstock  
Greg A. Danilow  
Diane Harvey  
Timothy E. Hoeffner  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Fax: (212) 310-8007

**CERTIFICATE OF SERVICE**

I, Kenneth S. Marks, hereby certify that on the 27<sup>th</sup> day of February, 2002, the foregoing was served by first class mail on the attached service list.



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Kenneth S. Marks

**SERVICE LIST FOR BLASKIE LAWSUIT**

**Attorneys for Plaintiff**

John G. Emerson, Jr.  
The Emerson Firm  
830 Apollo Lane  
Houston, TX 77058  
Tele: (281) 488-8854  
Fax: (281) 488-8867

Steven E. Cauley  
Cauley Geller Bowman & Coates, LLP  
P.O. Box 25438  
Little Rock, AR 72223  
Phone: (501) 312-8500  
Fax: (501) 312-8505

**Attorneys for Lay**

James Coleman, Esq.  
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL L.L.P.  
200 Crescent Court, Suite 1500  
Dallas, Texas 75201-1848  
Telephone: (214) 855-3000  
Facsimile: (214) 855-1333

**Attorneys for Skilling**

Ronald G. Woods  
5300 Memorial  
Suite 1000  
Houston, Texas 77057

**Attorneys for Fastow**

Craig Smyser  
SMYSER KAPLAN & VESELKA, L.L.P.  
Bank of America Center  
700 Louisiana, Suite 2300  
Houston, Texas 77002  
Telephone: (713) 221-2330  
Facsimile: (713) 221-2320

**Attorneys for Causey, Baxter, Frevert, Horton, Rice, Buy**

Jacks C. Nickens  
NICKENS, LAWLESS & FLACK, P.C.  
1001 Louisiana, Suite 5360  
Houston, Texas 77002  
Telephone: (713) 571-9191  
Facsimile: (713) 571-9562

**Attorneys for Derrick**

J. Clifford Gunter, III  
BRACEWELL & PATTERSON, L.L.P.  
711 Louisiana, Suite 2900  
Houston, Texas 77002-2781  
Telephone: (713) 223-2900  
Facsimile: (713) 221-1212

**Attorneys for Belfer, Blake, Chan, Duncan, Gramm, Jaedicke,  
LeMaistre, Mendelsohn, Ferraz Pereira, Savage,  
Wakeham, Winokur, Foy, Meyer, Walker**

Robin Gibbs  
GIBBS & BRUNS, L.L.P.  
1100 Louisiana, Suite 5300  
Houston, TX 77002  
Telephone: (713) 650-8805  
Facsimile: (713) 750-0903

**Attorneys for Harrison**

William F. Martson, Jr.  
Tonkon Torp, LLP  
1600 Pioneer Tower, 888 S.W. Fifth Avenue  
Portland, Oregon 97204-2099  
Telephone: (503) 221-1440  
Facsimile: (503) 274-8779

**Attorneys for Urquhart**

Bruce Golden  
Golden & Owens  
1221 McKinney St., Suite 3600  
Houston, Texas 77010  
Telephone: (713) 223-2600  
Facsimile: (713) 223-5002

**Attorneys for Andersen**

Andy Ramzel  
Rusty Hardin & Associates, P.C.  
1201 Louisiana, Suite 3300  
Houston, Texas 77002  
713.652.9000 tele  
713.652.9800 fax

Bruce G. Willison  
Unknown

# Exhibit B

TOGUT, SEGAL & SEGAL, LLP  
Bankruptcy Co-Counsel for Enron Corp., et al.,  
Debtors and Debtors in Possession  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000  
Albert Togut (AT-9759)  
Frank A. Oswald (FAO-1223)  
Scott E. Ratner (SER-0015)

HEARING DATE: 5/30/02  
AT: 10:00 a.m.

OBJECTIONS DUE: 5/20/02  
AT: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re : Chapter 11  
ENRON CORP., et al., : Case No. 01-16034 [AJG]  
: Jointly Administered  
Debtors. :  
----- X

**MOTION OF DEBTORS FOR A GLOBAL ORDER, PURSUANT  
TO SECTION 362(a) OF THE BANKRUPTCY CODE, TO ENFORCE  
THE AUTOMATIC STAY AND PREVENT PLAINTIFFS FROM  
PROSECUTING DERIVATIVE CLAIMS IN VIOLATION THEREOF**

TO THE HONORABLE ARTHUR J. GONZALEZ,  
UNITED STATES BANKRUPTCY JUDGE:

Enron Corp. (“Enron” or the “Company”) and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), as and for their motion for a global order, pursuant to section 362(a) of title 11 of the United States Code (the “Bankruptcy Code”), to enforce the automatic stay and prevent the plaintiffs (collectively, the “Plaintiffs”) in the complaints contained in the Exhibit Supplement (the “Supplement”), as Exhibits “A” through “M” (collectively, the “Derivative Actions”), from further prosecuting derivative claims in violation thereof, respectfully shows this Honorable Court that:

## BACKGROUND

1. Commencing on December 2, 2001 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. As of the date hereof, the Debtors continue to operate their businesses and manage their properties as debtors in possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

2. In the months preceding the Petition Date and continuing through February 2002, Plaintiffs commenced in various state courts the Derivative Actions against certain current and/or former officers and directors of Enron (the "Enron Defendants"), as well as certain third-party entities, including Arthur Andersen LLP ("Andersen") and certain of Andersen's current and/or former employees and/or agents (collectively, the "Andersen Defendants") (collectively, with the Enron Defendants, the "Defendants"). The Derivative Actions set forth purported state law causes of action for inter alia, fraud, breach of fiduciary duty, aiding and abetting, negligence, negligent misrepresentation and civil conspiracy in connection with the Defendants' activities at Enron.<sup>1</sup>

3. In essence, Plaintiffs contend that mismanagement of the Company by certain current and former officers of Enron and the negligence of Enron's outside auditor, Andersen, caused a diminution in the value of Enron stock which Plaintiffs held during the relevant period (the "Mismanagement Claims"). In an effort to manufacture purported fraud claims, certain Plaintiffs also allege that Defendants

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<sup>1</sup> Most of the Derivative Actions have been removed by the Defendants to federal court. See Schedules A and B, annexed hereto as Exhibits 1 and 2, respectively. One of the Derivative Actions, Odam, et al. v. Arthur Andersen, L.L.P., H-01-3914 (S.D. Tex.) (the "Odam Action," annexed to the Supplement as Exh. "G"), was commenced in the United States District Court for the Southern District of Texas. In addition to alleging state law claims (Counts III & IV), the Odam Action contains federal securities law claims (Counts I & II) which are not at issue in this motion.

misrepresented the financial condition of Enron and disseminated and/or aided and abetted in disseminating misleading financial statements, which allegedly induced Plaintiffs to retain their Enron common stock as that stock decreased in value (the “Fraudulent Inducement Claims,” collectively, with the Mismanagement Claims, the “Holding Claims”). However, the relevant jurisdictions governing Plaintiffs’ Fraudulent Inducement Claims do not, as a matter of law, recognize an independent cause of action for fraud based on Plaintiffs’ theory that they were fraudulently induced to hold onto their Enron stock. At most, the Plaintiffs’ allegations in their Fraudulent Inducement Claims constitute thinly-veiled Mismanagement Claims.

4. Regardless of how Plaintiffs couch their claims in the Derivative Actions, it is well established that injury suffered by all shareholders in the form of a diminution in the value of stock is a loss that is recoverable only by the corporation in a direct action or by the shareholders on behalf of the corporation in a derivative action.

5. It also is well established that derivative claims are property of the debtor’s estate pursuant to section 541(a) of the Bankruptcy Code. Further, the automatic stay of section 362(a)(3) of the Bankruptcy Code expressly prohibits any act to exercise control over property of the estate, including derivative claims. As such, the commencement and continued prosecution of the Holding Claims -- which are derivative claims -- is barred by the automatic stay of section 362(a)(3) of the Bankruptcy Code. Despite receipt of notice of the stay, and in disregard of its terms, Plaintiffs have proceeded with the prosecution of the Holding Claims in direct violation of the automatic stay.

6. By filing the Derivative Actions, Plaintiffs are attempting to end-run the strictures of the Bankruptcy Code. Plaintiffs have been advised of their violation of the automatic stay, but nonetheless insist on the continued prosecution of

the Holding Claims. Accordingly, this Court should order Plaintiffs to dismiss the Holding Claims alleged in the Derivative Actions and enjoin Plaintiffs from further prosecuting any action in violation of the automatic stay.

7. Notably, to the extent shareholders of Enron have suffered an individual injury, they are not without a remedy. Indeed, Plaintiffs -- in addition to all other similarly situated shareholders of Enron -- may bring direct causes of action under the federal securities laws for false and misleading statements made by the Defendants in connection with Plaintiffs' "purchase" or "sale" of Enron securities. In fact, as the Court is aware, a consolidated shareholder class action, Newby, et al. v. Enron Corporation, et al., C.A. No. H-01-3624 (S.D. Tex), alleging, inter alia, violations of Section 10(b) of the 1934 Act, Rule 10b-5 promulgated thereunder, and Section 11 of the 1933 Act, already is proceeding expeditiously in front of Judge Harmon in the Southern District of Texas.

#### THE DERIVATIVE ACTIONS

8. To date, the Derivative Actions are comprised of thirteen cases pending in Texas, Oregon and Illinois state and federal courts. Certain of these Derivative Actions plead "pure" derivative causes of action which are undeniably property of the Debtors' estates. Other Derivative Actions contain claims which are "hybrid" in nature and contain both derivative and direct causes of action. These "hybrid" actions allege derivative claims belonging to the Debtors' estates to the extent such claims are based on the diminution in the value of Enron stock which Plaintiffs held during the relevant period. For simplicity, the relevant information about the "pure" Derivative Actions and the "hybrid" Derivative Actions is listed in Schedules A and B, annexed hereto as Exhibits 1 and 2, respectively.

### The “Pure” Derivative Actions

9. Many of the Derivative Actions allege solely Holding Claims, and thus, are purely derivative in nature and may be prosecuted only by the Debtors’ estates unless the automatic stay is lifted. Illustrative of these cases is the complaint in Blaskie, et al. v. Lay, et al., C.A. No. 02-1108 (S.D. Tex.) (formerly Cause No. 2002-04306 (Dist. Ct. Tex.)) (the “Blaskie Action,” annexed to the Supplement as Exh. “D”), which alleges claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. In the Blaskie Action, plaintiffs allege that the Defendants mismanaged the Company, and in so doing, breached and aided and abetted in breaching their fiduciary duty “to manage the business of the Company for the benefit of its shareholders.” Id. at ¶ 49. Plaintiffs further allege that they “held on to their Enron common stock because they relied on the false financial information knowingly disseminated by” Defendants, id. at ¶¶ 57, 1, 2, 6, 10, 52 (emphasis added), and as a result, “not only lost their original investment in Enron stock, but also the value of their holdings in Enron . . . .” Id. at ¶¶ 52, 57.

10. The other complaints which are “pure” Derivative Actions, and thus are property of the Debtors’ estates, are listed on Schedule A, annexed hereto as Exhibit 1.

### The “Hybrid” Derivative Actions

11. Many complaints in the Derivative Actions are artfully drafted to suggest that certain claims contained therein are direct in nature rather than derivative. These Derivative Actions which purport to assert a “hybrid” of derivative and direct claims are near carbon copies of each other and all were filed by the same lawyer, G. Sean Jez, Esq., of Fleming & Associates, L.L.P., Houston, Texas, on behalf of his clients

(the “Hybrid Actions”). A description of the Hybrid Actions is provided in Schedule B, annexed hereto as Exhibit 2.<sup>2</sup>

12. The Hybrid Actions allege, inter alia, fraud, breach of fiduciary duty, negligence, and civil conspiracy against the Defendants. It is clear that these Hybrid Actions include Holding Claims because a core allegation in each lawsuit is that the Defendants’ activities induced the Plaintiffs to “continue their ownership of Enron stock,” and to “retain Enron common stock at artificially inflated prices believing the price of their stock would increase.” See, e.g., Ahlich, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02-CV-347 (S.D. Tex.) (formerly Cause No. 02-000073-CV-272nd (Dist. Ct. Tex.)) (the “Ahlich Action,” annexed to the Supplement as Exh. “K”), at ¶¶ 81, 137, and see ¶¶ 133, 140-142, 149 (emphasis added). To the extent the plaintiffs in the Hybrid Actions purport to bring such Holding Claims (whether they be couched as Fraudulent Inducement Claims or Mismanagement Claims) for the diminution in the value of Enron stock which Plaintiffs held during the relevant period, such claims, as a matter of law, are derivative in nature and thus property of the Debtors’ estates. Accordingly, Plaintiffs should be enjoined from further prosecuting the derivative Holding Claims in violation of the automatic stay.

#### PROCEDURAL BACKGROUND

13. Despite the Debtors’ repeated efforts to persuade Plaintiffs to respect the automatic stay, the Debtors have been unable to prevent Plaintiffs from

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<sup>2</sup> The Hybrid Actions are comprised of the following seven lawsuits: Odam, et al. v. Arthur Andersen, L.L.P., C.A. No. H-01-3914 (S.D. Tex.); Pearson, et al. v. Fastow, et al., C.A. No. 02-CV-670 (formerly Cause No. 2002-00609 (Dist. Ct. Tex.)); Rosen, et al. v. Fastow, et al., C.A. No. H-02-0199 (S.D. Tex.) (formerly Cause No. 2001-57517 (Dist. Ct. Tex.)); Bullock, et al. v. Arthur Andersen, L.L.P., et al., Cause No. 32716 (Dist. Ct. Tex.); Ahlich, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02-CV-347 (S.D. Tex.) (formerly Cause No. 02-000073-CV-272nd (Dist. Ct. Tex.)); Delgado v. Fastow, et al., C.A. No. 02-673 (S.D. Tex.) (formerly Cause No. 2002-00569 (Dist. Ct. Tex.)); and Jose, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02CV187 (W.D. Tex.) (formerly Cause No. 2002CI01906 (Dist. Ct. Tex.)), annexed to the Supplement as Exhibits “G” through “M,” respectively.

continuing to prosecute the Derivative Actions in violation of the Bankruptcy Code. Specifically, in February and March 2002, Enron filed in the Derivative Actions notices of bankruptcy filing of Enron and imposition of the automatic stay, thereby providing notice to all parties that the Derivative Actions are derivative in nature and thus are property of the Debtors' estates. Copies of the Notice Of Bankruptcy Filing Of Enron Corporation And Imposition Of Automatic Stay filed in the Derivative Actions to date are annexed to the Supplement as Exhibit "N."

14. In March 2002, counsel for the Debtors, by letter, informed Plaintiffs' counsel that the Derivative Actions are property of the Debtors' estates and thus were commenced and/or are prosecuted in violation of the automatic stay. Copies of the Debtors' letters to Plaintiffs' counsel are annexed to the Supplement as Exhibit "O." In the letters, the Debtors demanded that Plaintiffs cease and desist from continuing the prosecution of all claims based on the diminution in value of Enron stock which Plaintiffs held during the relevant period. Plaintiffs' counsel responded in writing that Plaintiffs refused to discontinue the prosecution of the Derivative Actions and/or the Holding Claims therein, arguing that all of their purported claims were direct, not derivative. As a result of Plaintiffs' refusal to discontinue the prosecution of the Holding Claims in violation of the automatic stay, the Debtors have no choice but to seek in this Court a global order to enforce the automatic stay and prevent Plaintiffs from commencing and/or further prosecuting Holding Claims in violation thereof.

#### ARGUMENT

##### **I. THE COMMENCEMENT AND/OR CONTINUED PROSECUTION OF THE HOLDING CLAIMS ALLEGED IN THE DERIVATIVE ACTIONS VIOLATES THE AUTOMATIC STAY**

15. As demonstrated below, the Holding Claims alleged in the Derivative Actions are property of the Debtors' estates pursuant to section 541(a) of the

Bankruptcy Code. As a result, Plaintiffs' attempts to exercise control over such property through the continued prosecution of the Holding Claims constitute a willful violation of the automatic stay.

A. **The Holding Claims Are Derivative In Nature And Cannot Be Brought By The Plaintiff Shareholders As Direct Actions**

16. It is well established under the bankruptcy laws that derivative claims are the exclusive property of the debtor's estate and thus cannot be prosecuted by plaintiffs unless the automatic stay is lifted. See, e.g., In re Enron Corp., et al., Case No. 01-16034 [AJG] (Bankr. S.D.N.Y. Apr. 12, 2002), Transcript Opinion at 5 ("the Court finds that the [Pearl and Shapiro] Plaintiffs' actions are derivative and as such, belong to the estate"); Mitchell Excavators, Inc. v. Mitchell, 734 F.2d 129, 131 (2d Cir. 1984) (holding derivative action is property of the estate); In re Keene Corp., 164 B.R. 844, 853-54 (Bankr. S.D.N.Y. 1994) (holding claims against third parties are property of the estate and thus non-debtors are barred by the automatic stay from asserting such claims). Here, of course, the automatic stay remains in effect, and thus, Plaintiffs cannot pursue derivative claims which belong to the Debtors' estates.

17. In an effort to elevate form over substance, and to avoid the impact of the automatic stay, Plaintiffs purport to bring the Derivative Actions individually as "direct" actions. However, Plaintiffs' own classification of the Derivative Actions as "individual" or "direct" bears no relevance on the issue of whether such claims, as a matter of law, are derivative. "In determining whether a complaint states an individual or a derivative cause of action, the Court is not bound by the designation employed by the Plaintiff. Rather, the nature of the action is determined from the body of the complaint." In re Schepps Food Stores, Inc., 160 B.R. 792, 798 (Bankr. S.D. Tex. 1993) (citation omitted).

18. A shareholder derivative action is a lawsuit brought by shareholders on behalf of the corporation in order “to enforce a corporate cause of action against officers, directors, and third parties.” Kamen v. Kemper Fin. Servs., Inc., 500 U.S. 90, 95 (1991) (emphasis in original). Enron is an Oregon corporation and thus the issue of whether the Derivative Actions are derivative in nature is determined under Oregon law.<sup>3</sup>

19. Unlike an individual claim which a shareholder may bring on his or her own behalf, “the rights sought to be vindicated” in a derivative action are those of the corporation and “not those of the plaintiff suing derivatively on the corporation’s behalf.” Gall v. Exxon Corp., 418 F. Supp. 508, 514 (S.D.N.Y. 1976). Because the injury in a derivative action is to the corporation, any damages recovered are paid to the corporation, not the shareholders suing derivatively. See Smith v. Bramwell, 31 P.2d 647, 648 (Or. 1934) (“Any judgement obtained by reason of such wrongs is an asset of the corporation which inures first to the benefit of creditors and secondly to stockholders.”); Wilcox v. Stiles, 873 P.2d 1102, 1107 (Or. Ct. App. 1994).

20. Under Oregon law, it is well established that a claim for an injury shared equally by all shareholders is a derivative claim that belongs to the corporation. See Weiss v. N.W. Acceptance Corp., 546 P.2d 1065, 1070 (Or. 1976); Smith, 31 P.2d at

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<sup>3</sup> The choice-of-law rules of the forum state, here New York, apply when the issue to be resolved is a matter of state law and does not affect federal bankruptcy policy. See In re Gaston & Snow, 243 F.3d 599, 602, 605 (2d Cir.), cert. denied, 122 S. Ct. 618 (2001). Whether a claim is property of the estate or property of the shareholders or creditors implicates state law, not federal bankruptcy policy. See Kalb, Voorhis & Co. v. Am. Fin. Corp., 1993 WL 180368, at \*5 (S.D.N.Y. May 24, 1993) (“Under the Bankruptcy Code, the bankruptcy trustee may bring claims founded . . . on the rights of the debtor and on certain rights of the debtor’s creditors. Whether the rights belong to the debtor or the individual creditors is a question of state law.”) (citations omitted), aff’d, 8 F.3d 130 (2d Cir. 1993). Under New York law, courts look to the law of the state of incorporation -- here, Oregon -- when the substantive issue concern “the duties and obligations of directors and officers and their relation to the corporation.” Hart v. Gen. Motors Corp., 517 N.Y.S.2d 490, 492 (N.Y. App. Div.) (“The corporation and its shareholders rightfully expect that the laws under which they have chosen to do business will be applied.”), appeal denied, 70 N.Y.2d 608 (N.Y. 1987).

648; Kahn v. Sprouse, 842 F. Supp. 423, 427 (D. Or. 1993). Claims for corporate mismanagement, such as the Mismanagement Claims here, allege injuries to the corporation and thus are derivative. See, e.g., Sax v. World Wide Press, Inc., 809 F.2d 610, 614 (9th Cir. 1987). “A shareholder can bring a direct action only in limited circumstances: either when there is a special duty, such as a contractual duty, between the wrongdoer and the shareholder, or when the shareholder suffers injury separate and distinct from that suffered by other shareholders.” Kahn, 842 F. Supp. at 425 (emphasis added) (citing Sax, 809 F.2d at 614). Here, Plaintiffs do not allege any “special duty” owed to them as shareholders as a result of a contractual relationship with the Defendants, or that they have suffered special injury which is “separate and distinct” from that suffered by all other Enron shareholders.

21. Instead, Plaintiffs’ allege that they, like all other Enron shareholders, were injured by Defendants’ alleged mismanagement of the Company, which caused Plaintiffs to hold their Enron stock and resulted in the diminution in value of their Enron shares. For example, the complaint in Chinn v. Belfer, et al., Case No. CV 02-00131 ST (D. Or.) (formerly Case No. 0201-00262 (Cir. Ct. Or.)) (the “Chinn Action,” annexed to the Supplement as Exh. “C”), alleges, inter alia, that Defendants “owed the highest obligation of good faith, fair dealing, loyalty, and due care, including the duty to disclose the truth about the Company’s financial statements.” Id. at ¶ 143. The Chinn Action alleges that the Defendants breached those duties, causing plaintiffs “to continue to hold their Enron securities during the Class Period,” id. at ¶ 2 (emphasis added), and see ¶¶ 124, 138-140, 145, and to suffer the loss of “virtually the entire value of their investment in Enron.” ¶ 146, and see ¶¶ 135, 141. Similarly, in Coy, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. H-01-4248 (S.D. Tex.) (formerly Cause No. 2001-56992 (Dist. Ct. Tex.)) (the “Coy Action,” annexed to the Supplement as

Exh. "A"), the plaintiffs allege, inter alia, that the Andersen Defendants owed them "the fiduciary duty to act in the best interests of the Plaintiff Stockholders," and that the Andersen Defendants breached that duty in failing to disclose the "falsity, impropriety and illegality of . . . Andersen's accounting conclusions regarding Enron and the [partnership] transactions." Id. at ¶ 37. According to the Coy Action, as a result of the Andersen Defendants' breach of that duty, the plaintiffs suffered a "diminution in value" of their Enron stock. Id. at ¶ 37, and see ¶¶ 16, 27. These allegations are representative of the claims asserted in the Derivative Actions.

22. As a matter of law, the Holding Claims alleged in the Derivative Actions are derivative in nature, because "a stockholder has no personal right of action against a third party for a wrong to the corporation which lowers the value of the stock." Weiss, 546 P.2d at 1069; see also Loewen v. Galligan, 882 P.2d 104, 111-12 (Or. Ct. App. 1994) (holding shareholders may not assert direct claims for breach of fiduciary duty and negligence if the only alleged injury is a diminution of stock value); Crocker v. Fed. Deposit Ins. Corp., 826 F.2d 347, 349 (5th Cir. 1987) (holding no individual cause of action exists for a wrong which lowers the value of the corporation's stock); Lewis v. Chiles, 719 F.2d 1044, 1049 (9th Cir. 1983) ("Any decrease in the value of [the corporation's] shares allegedly caused by the breaches of fiduciary duty of the corporation's officers and directors would not give rise to a direct cause of action."); Wingate v. Hajdik, 795 S.W.2d 717, 719 (Tex. 1990). The same rule applies equally to actions against third parties who are not employees of the corporation, such as the Andersen Defendants here. See Weiss, 546 P.2d at 1069; Seibu Corp. v. KPMG LLP, 2001 WL 1167317, at \*6-7 (N.D. Tex. Oct. 2, 2001) (dismissing derivative claims against debtor's outside auditor).

23. In an effort to avoid this clear limitation imposed on Plaintiffs' Mismanagement Claims, Plaintiffs attempt to characterize many of their Holding Claims as purported "fraud" claims. These purported Fraudulent Inducement Claims allege that certain Plaintiffs were induced to hold their Enron stock as a result of material misrepresentations made by the Defendants concerning the financial condition of the Company. See, e.g., Ahlich Action at ¶¶ 136-45 ("Had Plaintiffs and the marketplace known of the true operating and financial results of Enron . . . they would have divested their holdings of Enron stock before its tumultuous decline."). But claims purportedly based on fraudulent inducement of inaction -- here, the "holding" of Enron stock -- are not cognizable as a matter of law.<sup>4</sup> See, e.g., W.R. Miller v. Bank of Commerce, 387 S.W.2d 691, 691-92 (Tex. Civ. App. 1965) (holding no recovery could be had for fraudulent representations inducing a creditor to refrain from taking steps to collect a debt); Weiss, 546 P.2d at 1067-68 (holding plaintiff's purported fraudulent inducement claim was derivative because alleged fraud occurred after the agreement was entered into and thus did not induce plaintiff to act; "Weiss' guaranties were in no way induced by or in consideration for any misrepresentations or broken promises by [defendant].").<sup>5</sup>

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<sup>4</sup> In determining whether a plaintiff has alleged a valid cause of action for fraud, courts first look to the choice-of-law rules of the forum state, here New York, to determine which state's substantive law applies to the fraud claim. See Carr v. Equistar Offshore, Ltd., 1995 WL 562178, at \*4 (S.D.N.Y. Sept. 21, 1995). Pursuant to New York choice-of-law principles, "[i]n a claim based on fraud, the primary consideration in choosing the appropriate law is the 'locus of the fraud,' which is considered the location of the injury as opposed to the location from which the fraud originated." Id. at \*5. Because the majority of Plaintiffs' Fraudulent Inducement Claims were brought in Texas state court on behalf of Texas residents, many of the alleged misstatements were made in Texas, and Enron is an Oregon corporation, either Texas or Oregon law should apply to the Fraudulent Inducement Claims. Since both Texas and Oregon law are substantially similar with respect to the law of fraud, reference is made to authorities from both states.

<sup>5</sup> In response to the Debtors' letters to Plaintiffs' counsel demanding that Plaintiffs respect the automatic stay, certain Plaintiffs responded by citing to cases which stand for the proposition that certain state law claims that do not arise from the "purchase or sale of a security," are not removable to federal court under the Securities Litigation Uniform Standards Act ("SLUSA"). See, e.g., Green v. Ameritrade, Inc., 279 F.3d 590 (8th Cir. 2002); Hardy v. Merrill Lynch, Pierce, Fenner & Smith,

24. In particular, the Debtors are unaware of any court in Texas or Oregon which has ever permitted a shareholder to bring an individual claim for fraudulent inducement where that shareholder did not purchase or sell his or her stock in connection with the alleged fraud. Indeed, the precise argument asserted by Plaintiffs -- that they may pursue claims for diminution in the value of their stock due to alleged misrepresentations made while they held such stock -- has been expressly rejected by the Fifth Circuit in Crocker v. Fed. Deposit Ins. Corp., 826 F.2d 347 (5th Cir. 1987).<sup>6</sup> In Crocker, shareholders of the debtor corporation commenced purported individual actions against the debtor's former directors and officers, alleging, inter alia, misrepresentation of the debtor's financial condition, breach of fiduciary duty and violations of RICO. See id. at 348. The plaintiffs in Crocker, as certain Plaintiffs do here, alleged that the defendants "pursued a scheme to defraud the minority shareholders by misrepresenting as sound the financial condition of the Bank." Id. at 350. The plaintiffs further alleged that the injury they incurred was not solely the diminished value of their stock, but the "lost profit opportunity" they allegedly suffered from the misrepresentations, which "artificially inflated the price per share of the [debtor's] stock and, at the same time, lulled the minority shareholders into not

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Inc., 2001 WL 1524471 (S.D.N.Y. Nov. 30, 2001). SLUSA authorizes the removal to federal court of all private state law actions that are actually traditional securities claims, and makes such claims subject to dismissal by the federal court. See e.g., Korsinsky v. Salomon Smith Barney Inc., 2002 WL 27775, at \*3 (S.D.N.Y. Jan. 10, 2002). The SLUSA cases cited by certain Plaintiffs, however, are inapposite because they do not discuss whether such state law claims are derivative or direct in nature, the key issue to be decided in this motion. Instead, the SLUSA cases cited by certain Plaintiffs simply state that those state law claims which do not allege misrepresentations or omissions "in connection with the purchase or sale" of a security are not removable and thus are to be adjudicated in state court -- either as derivative or direct actions depending on the nature of the allegations.

<sup>6</sup> Crocker was decided under Mississippi law, which is substantially similar to that of Oregon and Texas with respect to derivative claims for injury resulting from diminution in stock value. 826 F.2d at 349 & n.3 ("Mississippi courts have also recognized that injury to shareholders in the form of a diminution in the value of stock is a loss that is recoverable only by the corporation in a direct action or by the shareholders in a derivative action.") (citing Bruno v. S.E. Servs., Inc., 385 So.2d 620 (Miss. 1980)).

selling their stock.” Id. (emphasis in original). The court characterized the plaintiffs’ claim as “only that if [plaintiffs] had known that the [debtor] was failing, they would have made every effort to rid themselves of the stock.” Id. at 351 (emphasis in original).

25. In dismissing the lawsuit, the court in Crocker held that regardless of how plaintiffs couched their claims, the “end result was that all shareholders, as well as the [debtor], lost the entire value of the stock.” Id. at 350. “We find this claim too speculative to state any injury to the shareholders, apart from a diminution in the value of their stock. It is our view that the alleged ‘lost profit opportunity’ was, in reality, no profit opportunity at all.” Id. at 351. The court concluded that the plaintiffs “have failed to state a direct, personal injury distinct from that suffered by the corporation that would permit them to maintain an individual cause of action.” Id. at 352.

26. Similarly, in Weiss, the leading case in Oregon discussing holding claims, the plaintiff personally had guaranteed a financing arrangement with the defendant bank for the then-solvent debtor corporation. 546 P.2d at 1067-68. When the corporation began to experience financial difficulties and the bank repossessed its collateral, the plaintiff sued the bank for fraud, alleging that the bank made misrepresentations to plaintiff in obtaining his guaranty. See id. at 1068. The plaintiff claimed that he was damaged “individually” because the “value of his stock was destroyed” and he remained liable for the company’s debts. Id. at 1069. On appeal to the Oregon Supreme Court, the bank argued that the plaintiff could not bring an action against the bank, because, assuming there was a claim, the claim belonged to the debtor, and not the plaintiff as a shareholder. See id. The court agreed that any cause of action arising from the alleged misrepresentation belonged to the debtor, and thus, was derivative:

The general rule is that a stockholder has no personal right of action against a third party for a wrong to the corporation which lowers the value of the stock. . . . Conceptually, the rule is based upon the separateness of the corporate entity and its stockholders. Practically, it is based in part upon the rule that corporate creditors are entitled to be paid out of any recovery made to the corporation before the stockholders are entitled to payment.

Id. (emphasis added). The court found that the plaintiff was not “induced” by the bank’s allegedly fraudulent statement to enter into the guaranty agreement and that the plaintiff had entered into the agreement “long before any alleged fraud was perpetrated by [the defendant].” Id. at 1070. As a result, “any injury Weiss suffered was in no way separate and distinct from any loss suffered by [the debtor].” Id.

27. Further, in Seibu v. KPMG LLP, 2001 WL 1167317 (N.D. Tex. Oct. 2, 2001), the court rejected the plaintiff’s claims, as here, that the defendant, the debtor’s outside auditor, KPMG, fraudulently induced the plaintiff to hold the debtor’s stock when the price of such stock had been artificially inflated by the alleged fraud. See id. at \*6-7 (citing Crocker, 826 F.2d at 351). In Seibu, the plaintiff, a corporation that owned shares in the debtor, agreed to sell its subsidiary to the debtor pre-petition in an all-stock transaction based on representations made by KPMG. See id. at \*1. The plaintiff and the debtor consummated the sale transaction before the debtor filed for bankruptcy. See id. at \*7. A year after the subsidiary sale closed, the debtor’s stock price dropped precipitously, causing plaintiff to divest its holdings in the debtor and sustain a loss. See id. at \*2. The plaintiff, purportedly individually, thereafter sued KPMG under Texas law for, inter alia, fraud and negligent misrepresentation for KPMG’s alleged failure to detect or disclose improprieties in the debtor’s business and accounting practices. See id. The court held that the plaintiff lacked “standing” to bring the lawsuit with respect to any “claim for diminution in value of [the debtor’s]

stock resulting from KPMG's fraudulent conduct after the date of the Share Purchase Agreement." Id. at \*7 (emphasis added). The court explained:

'The individual shareholders have no separate and independent right of action for wrongs to the corporation which merely result in depreciation in the value of their stock. . . .' To the extent that [plaintiff] alleges that the timing of these stock sales was the result of irregular accounting practices and fraud committed by KPMG after the date of the [subsidiary sale] transaction, it lacks standing to recover damages under this theory. The duty KPMG owed to [plaintiff] in this regard was the same duty it owed to all shareholders of [the debtor's] stock.

Id. at \*6-7 (emphasis in original) (citations omitted).

28. Here, Plaintiffs' allegations in the Holding Claims are nearly identical to those advanced and flatly rejected by Crocker and Seibu. Those courts refused even to recognize as stating direct claims, claims alleging that shareholders were fraudulently induced to hold their stock. Instead, those courts held that the harm arising from misrepresentations made to the shareholders was solely a diminution in value which is shared by all shareholders equally. As a matter of law, this harm is not compensable in a direct action by shareholders. See Crocker, 826 F.2d at 351; Seibu, 2001 WL 1167317, at \*7. See generally Weiss, 546 P.2d at 350.

29. Furthermore, courts have recognized that a claim that plaintiffs held their stock as a result of fraudulent statements made by a defendant is actually a claim for mismanagement merely "dressed up" as a fraud claim. See, e.g., In re Sunrise Sec. Litig., 916 F.2d 874, 889 (3d Cir. 1990) ("After reviewing the complaint [alleging fraudulent inducement], we cannot agree with plaintiffs' characterizations of these allegations as a claim of direct injury from fraud, distinct from the injury sustained by [the debtor] and all other depositors as a result of defendants' mismanagement."). Thus, Plaintiffs' Fraudulent Inducement Claims, to the extent those claims even state a

cause of action, are derivative claims, which as explained below, constitute property of the Debtors' estates.

**B. The Holding Claims Sought To Be Prosecuted In The Derivative Actions Are The Exclusive Property Of The Debtors' Estates And Cannot Be Maintained By Plaintiffs**

30. Section 541(a)(1) of the Bankruptcy Code expressly provides that the commencement of a bankruptcy case creates an estate comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Included as property of the estate are all causes of action -- including derivative actions -- belonging to the debtor which accrued prior to the filing of the bankruptcy petition. See Seward v. Devine, 888 F.2d 957, 963 (2d Cir. 1989) (holding that "[t]he bankruptcy estate encompasses 'all legal or equitable interests of the debtor in property as of the commencement of the case,' including any causes of action possessed by the debtor") (citations omitted); In re Johns-Manville Corp., 837 F.2d 89, 92 (2d Cir. 1988) (holding that both plaintiff's and tort victims' rights were "derivative" of those of debtor; thus, claims were the exclusive property of the estate). It is well settled that a bankrupt entity becomes the owner of any derivative claims which may be asserted by stockholders on its behalf. It is equally well established that "[i]f the cause of action belongs to the estate, the trustee has exclusive standing to assert it . . . [and consequently] the automatic stay prevents creditors or shareholders from asserting the claim . . ." In re Granite Partners, L.P., 194 B.R. 318, 324-25 (Bankr. S.D.N.Y. 1996) (emphasis added).

31. All of Plaintiffs' allegations in the Holding Claims arise out of injury to Enron and damage to Enron caused by Defendants' alleged wrongful conduct, and seek to recover damages from a limited recovery pool. In that regard, the decision in In re Granite Partners, L.P., is highly instructive. In Granite, the debtors'

equity holders filed suit against the debtors' insiders and non-debtor third parties alleging, inter alia, breach of fiduciary duty, waste and mismanagement. See id. at 327. The court held that "[s]uch claims ordinarily belong to and can only be enforced by the corporation or through a shareholder's derivative action." Id. Further, the court held, "[o]nce bankruptcy ensues, these claims become property of the estate, and the trustee alone can assert them." Id. at 328 (citations omitted). The court concluded that the plaintiff had no standing to bring the claims against the insiders because "only the trustee has standing to sue insiders. . . for injuries to a corporation. . . arising from their waste, mismanagement or breach of fiduciary duty." Id. at 332; see also Mitchell Excavators v. Mitchell, 734 F.2d 129, 131 (2d Cir. 1984) (dismissing shareholder claims and explaining that "while normally the fiduciary obligation of officers, directors and shareholders 'is enforceable directly by the corporation or through stockholder's derivative action, it is, in the event of bankruptcy of the corporation, enforceable by the trustee'"). The same reasoning applies here, and thus the Holding Claims are property of the Debtors' estates.

32. Where the cause of action belongs to the estate -- as the Holding Claims do here -- the estate "has exclusive standing to assert it . . ." In re Granite Partners, L.P., 194 B.R. at 324-25; see also In re Sun Cho, 2001 WL 521322, at \*2 (9th Cir. May 15, 2001) (holding only the bankruptcy trustee has standing to pursue claims belonging to the estate). Moreover, if the estate has standing to assert the claim, "no individual creditor can assert the claim unless it has been abandoned or the creditor obtains relief from the automatic stay." In re Keene Corp., 164 B.R. 844, 852 (Bankr. S.D.N.Y. 1994); see also Mitchell Excavators, 734 F.2d at 131-32; BRS Assocs., L.P. v. Dansker, 246 B.R. 755, 772 (S.D.N.Y. 2002) (dismissing breach of fiduciary duty claims against non-debtor third parties, holding "[w]here the trustee has standing to sue, the

automatic stay prevents creditors or shareholders from asserting the claim . . .”). As a result, the Holding Claims cannot be maintained by Enron shareholders derivatively on behalf of Enron because any pursuit of such derivative claims on behalf of the Debtors would violate the automatic stay.

C. **Enforcement Of The Automatic Stay Is Needed To Prevent Plaintiffs’ Attempts To End-Run The Absolute Priority Rule And Potentially Diminish The Debtors’ Recovery From Third Parties**

33. The automatic stay should be enforced and Plaintiffs prevented from pursuing their Holding Claims in the Derivative Actions because any recovery by Plaintiffs would upset the absolute priority of payment rule and potentially diminish the Debtors’ potential recovery from the Defendants in future litigation. Enforcement of the automatic stay also is important to prevent the possibility of issue preclusion impairing the claim of the Debtors’ estates.

34. Under the absolute priority of payment rule, creditors of the estate are to be paid from estate proceeds before payment is made to the corporation’s shareholders. See 11 U.S.C. § 1129(b)(2)(B)(ii); In re Stirling Homex Corp., 579 F.2d 206, 211-12 (2d Cir. 1978) (holding that pursuant to absolute priority rule, stockholders were prohibited from asserting “claims in such a way as to achieve parity with ordinary unsecured tort and contract claimants”). Here, Plaintiffs’ interests in recovery from the Defendants in the Derivative Actions are “intertwined” with the Debtors’ interests in recovering from such parties in potential future litigation. In re Prudential Lines Inc., 928 F.2d 565, 574 (2d Cir. 1991) (“[W]here a non-debtor’s action with respect to an interest that is intertwined with that of a bankrupt debtor would have the legal effect of diminishing or eliminating property of the bankrupt estate, such an action is barred by the automatic stay.”).

35. It is clear that Plaintiffs here are attempting to end-run the priority of payment rule in order to obtain assets that otherwise would go to the Debtors as property of the estates, and thus be subject to the priority of payment rule. Clearly, prosecution of the Holding Claims in the Derivative Actions would have the “legal effect of diminishing or eliminating property of the bankrupt estate” because any recovery from the Defendants by the Plaintiffs in the Derivative Actions would diminish and deplete assets of the estates that otherwise would go to the Debtors as a result of the Debtors’ prospective claims against Defendants. *Id.*; see also In re Sunrise Sec. Litig., 916 F.2d at 889 (holding that “permitting plaintiffs to sue directly for claims emanating from injury to the institutions would circumvent the priority scheme by enabling depositors to recover the institution’s asset in advance of other general creditors and claimants with superior interest, such as secured creditors”).

36. Finally, were prosecution of the Holding Claims to proceed, and judgments were rendered thereunder, there is a risk that the Debtors would be collaterally estopped from relitigating similar or identical issues in subsequent litigation against Defendants. The collateral estoppel risk is underscored by the fact that collateral estoppel has been applied offensively against litigants who were not parties to prior litigation, see, e.g., Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979) (mutuality of parties is not required for the assertion of collateral estoppel), and that if the Defendants are found liable for wrongful conduct, the Debtors may be precluded from recovering from the Defendants in subsequent litigation.

37. Similarly, should liability be found in the Derivative Actions, and subsequently, claims by other plaintiffs were to proceed against the Debtors, such liability may expose the Debtors to “the risk of being collaterally estopped from denying liability for its [agents’] actions.” American Film Techs., Inc. v. Taritero, 175

B.R. 847, 850 (Bankr. D. Del. 1994) (staying action against debtor's former and present directors because continued prosecution of the action would have exposed the debtor to the risks of collateral estoppel and vicarious liability); see also In re Sudbury, Inc., 140 B.R. 461, 463 (Bankr. N.D. Ohio 1992) (staying fraud action against officers and directors because debtor's liability may be determined on collateral estoppel principles by fact determinations reached on same fact issues in plaintiffs' actions against non-debtors). The existence of a bona fide possibility of issue preclusion being asserted in the Debtors' potential future actions further manifests the Debtors' need for a global order enforcing the automatic stay and enjoining Plaintiffs from further prosecuting the Holding Claims alleged in the Derivative Actions. See In re Johns-Manville Corp., 26 B.R. 420, 426-29 (Bankr. S.D.N.Y. 1983) (enjoining actions where debtor "could be collaterally estopped in subsequent suits from relitigating issues determined against its [non-debtors]"), aff'd, 40 B.R. 219 (S.D.N.Y. 1984).

#### NOTICE

38. Notice of this Motion has been given to counsel for the Plaintiffs and the Defendants, as well as such other parties required to receive such notices pursuant to the Court's Amended Case Management Order Establishing Among Other Things, Noticing Electronic Procedures, Hearing Dates, Independent Website and Alternative Methods of Participating at Hearings, dated February 26, 2002. The Debtors submit that no other notice need be given.

39. Pursuant to Local Bankruptcy Rule 9013-1(b), because the statutory and judicial predicates relied upon by the Debtors are set forth herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a separate memorandum of law in support of this Motion. The Debtors, however, reserve the right to submit a reply memorandum of law if appropriate.

40. No previous application for the relief sought herein has been made to this or any other Court.

**[concluded on the following page]**

## CONCLUSION

As demonstrated above, the Debtors are entitled to entry of a global order, substantially in the form of the proposed order attached hereto as Exhibit "3":

(i) enforcing the automatic stay with respect to the Holding Claims alleged in the Derivative Actions, in addition to all such similar claims commenced by Plaintiffs in the future; (ii) ordering that Plaintiffs dismiss the Holding Claims alleged in the Derivative Actions; (iii) enjoining Plaintiffs from further prosecuting any action in violation of the automatic stay; and (iv) such other and further relief as is just.

Dated: New York, New York  
April 22, 2002

TOGUT, SEGAL & SEGAL LLP,  
Bankruptcy Co-Counsel for Enron Corp., *et al.*,  
the Debtors and Debtors in Possession,  
By:

/s/ Frank A. Oswald  
ALBERT TOGUT (AT-9759)  
FRANK A. OSWALD (FAO-1223)  
SCOTT E. RATNER (SER-0015)  
Members of the Firm  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000 (Telephone)  
(212) 967-4258 (Facsimile)

Exhibit "1"

SCHEDULE A  
THE "PURE" DERIVATIVE ACTIONS

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
<p><u>Coy, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. H-01-4248 (S.D. Tex.) (formerly Cause No. 2001-56992 (Dist. Ct. Tex.))</u></p>	<p>November 5, 2001</p>	<p>Andersen Defendants</p>	<p>Fraud, negligent misrepresentation, accounting misrepresentation, breach of fiduciary duty, and breach of implied and express warranties</p>	<p>Andersen Defendants owed plaintiffs as holders of Enron stock "the fiduciary duty to act in the best interests of the Plaintiff Stockholders . . . ." ¶ 37. The Andersen Defendants breached that duty in failing to disclose the "falsity, impropriety and illegality of . . . Andersen's accounting conclusions regarding Enron and the [partnership] transactions," which caused plaintiffs to suffer a "diminution in value" of their stock. ¶¶ 37, 16, 27.</p>
<p><u>McLaren, et al. v. Arthur Andersen, L.L.P., Cause No. 01CV1059 (Dist. Ct. Tex.)</u></p>	<p>November 12, 2001</p>	<p>Andersen Defendants</p>	<p>Misrepresentation, aiding and abetting of misrepresentation</p>	<p>"The Andersen Defendants aided and abetted and colluded with Enron to make, and did make and participated in the making of, material misrepresentations to the Plaintiffs and the investing public regarding the true state of Enron's financial condition and indebtedness." ¶ 17. Plaintiffs "<u>did not sell or otherwise dispose of said [Enron] shares prior to December 3, 2001 and have suffered a decline in value of the stock because of the actions of the Defendants.</u>" ¶¶ 13, 4 (emphasis added).</p>

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
Chinn v. Belfer, et al., Case No. CV 02-00131 ST (D. Or.) (formerly Case No. 0201-00262 (Cir. Ct. Or.))	January 9, 2002	Enron Defendants and Andersen Defendants	Negligent misrepresentation, fraud, and breach of fiduciary duty	Defendants "owed the highest obligation of good faith, fair dealing, loyalty, and due care, including the duty to disclose the truth about the Company's financial statements." ¶ 143. Defendants breached those duties, causing plaintiffs "to continue to hold their Enron securities during the Class Period," ¶¶ 2, 124, 138-140, 145 (emphasis added), and to lose "virtually the entire value of their investment in Enron." ¶¶ 146, 135, 141.
Blaskie, et al. v. Lay, et al., C.A. No. 02-1108 (S.D. Tex.) (formerly Cause No. 2002-04306 (Dist. Ct. Tex.))	January 25, 2002	Enron Defendants and Andersen Defendants	Breach of fiduciary duty and aiding and abetting of breach of fiduciary duty	Defendants breached and aided and abetted in breaching their fiduciary duty "to manage the business of the Company for the benefit of its shareholders." ¶ 49. As a result, plaintiffs "held on to their Enron common stock because they relied on the false financial information knowingly disseminated by" Defendants, ¶¶ 57, 1, 2, 6, 10, 52, 57 (emphasis added), and "not only lost their original investment in Enron stock, but also the value of their holdings in Enron stock." ¶¶ 52, 57.

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
<p><u>Spector v. Lay, et al.</u>, C.A. No. 02-394-HA (D. Or.) (formerly Case No. 0202-009944 (Cir. Ct. Or.))</p>	<p>February 1, 2002</p>	<p>Enron Defendants and Andersen Defendants</p>	<p>Negligent misrepresentation, fraud, breach of fiduciary duty and aiding and abetting breach of fiduciary duty</p>	<p>Defendants "owed a fiduciary duty to plaintiff and the class to accurately and truthfully report the financial condition of Enron" and "breach[ed] their fiduciary duties of disclosure." ¶¶ 154, 161. Defendants "inflated the value of Enron's securities and induced plaintiff and the class to <u>hold</u> their securities . . ." ¶¶ 1, 2, 25, 140, 142 (emphasis added). As a result, plaintiffs "lost the value of what was represented to them versus the actual value of their Enron stock once the truth was known." ¶ 2.</p>
<p><u>Young v. Andersen L.L.P.</u>, C.A. No. 02CH3325 (Cir. Ct. Ill.)</p>	<p>February 13, 2002</p>	<p>Andersen</p>	<p>Conspired and/or aided and assisted Enron directors in breaching their fiduciary duties</p>	<p>Plaintiffs "<u>held</u> shares through November 8, 2001" and "were damaged thereby as a result of the Directors' breach of their fiduciary duty of full disclosure." ¶¶ 5, 26 (emphasis added). "Plaintiffs and the Class saw their shares fall from a high of over \$90.00 per share in August 2000 to as low as \$8.19 on November 8, 2001." ¶ 4.</p>

Exhibit "2"

SCHEDULE B  
THE "HYBRID" DERIVATIVE ACTIONS

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
<p><u>Odam, et al. v. Enron Corp., et al., H-01-3914 (S.D. Tex.)</u></p>	<p>November 13, 2001</p>	<p>Andersen Defendants (Enron Defendants ordered voluntarily dismissed 2/15/02)</p>	<p>Section 10(b), Rule 10b-5, Section 20(a) of the Securities Exchange Act of 1934; breach of fiduciary duty and negligence</p>	<p>"Defendants owe a duty of loyalty to Plaintiffs as shareholders," ¶ 100, and "breached their duty of loyalty to Enron because they allowed and approved the structure of the financial transactions with" the partnerships. ¶ 101. "Plaintiffs relied to their detriment on the financial statements prepared by [Andersen] in either purchasing their shares or retaining them," which "resulted in damages to Plaintiffs because of the loss of value of their shares." ¶¶ 109-110 (emphasis added).</p>
<p><u>Pearson, et al. v. Fastow, et al., C.A. No. 02-CV-670 (S.D. Tex.) (formerly Cause No. 2002-00609 (Dist. Ct. Tex.))</u></p>	<p>January 7, 2002</p>	<p>Enron Defendants and Andersen Defendants</p>	<p>Fraud, negligence, civil conspiracy</p>	<p>Defendants' activities induced Plaintiffs "to purchase and/or retain Enron common stock at artificially inflated prices." ¶¶ 97, 41, 101, 102 (emphasis added). "The decline in the price of Enron's [stock] was caused by the public dissemination of the true facts, which were previously concealed or hidden." ¶¶ 103, 75, 84, 104, 113. "Had Plaintiffs and the market-place</p>

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
<p><u>Rosen, et al. v. Fastow, et al.</u>, C.A. No. 02-0199 (S.D. Tex.) (formerly Cause No. 2001-57517 (Dist. Ct. Tex.))</p>	<p>January 16, 2002</p>	<p>Enron Defendants and Andersen Defendants</p>	<p>Fraud, negligence, civil conspiracy, business and commerce code violations, spoliation of evidence, TRO</p>	<p>known of the true operating and financial results of Enron . . . they would have divested their holdings of Enron stock." ¶ 102.</p> <p>Defendants' activities induced Plaintiffs "to purchase and/or retain Enron common stock at artificially inflated prices." ¶¶ 117, 62, 121-22, 129, 142 (emphasis added). "The decline in the price of Enron's stock was caused by the public dissemination of the true facts, which were previously concealed or hidden." ¶¶ 123, 77, 124, 134, 156, 157. "Had Plaintiffs and the marketplace known of the true operating and financial results of Enron . . . they would have divested their holdings of Enron stock before its tumultuous decline." ¶ 122.</p>
<p><u>Bullock, et al. v. Arthur Andersen, L.L.P., et al.</u>, Cause No. 32716 (Dist. Ct. Tex.)</p>	<p>January 24, 2002</p>	<p>Enron Defendants and Andersen Defendants</p>	<p>Fraud, negligence, civil conspiracy, spoliation of evidence, TRO</p>	<p>Defendants' activities induced Plaintiffs "to purchase and/or retain Enron common stock at artificially inflated prices." ¶¶ 77, 21, 24, 81, 82, 89 (emphasis added). "The decline in the price of Enron's [stock] was caused by the public dissemination of the true facts, which were</p>

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
<p><u>Ahlich, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02-CV-347 (S.D. Tex.) (formerly Cause No. 02-000073-CV272nd (Dist. Ct. Tex.))</u></p>	<p>January 29, 2002</p>	<p>Enron Defendants and Andersen Defendants</p>	<p>Fraud, negligence, civil conspiracy, spoliation of evidence, TRO</p>	<p>previously concealed or hidden." ¶¶ 83, 37, 66, 84, 95. "Had Plaintiffs and the marketplace known of the true operating and financial results of Enron . . . they would have divested their holdings of Enron stock before its tumultuous decline." ¶ 82.</p> <p>Defendants' activities "caused Plaintiffs to continue their ownership of Enron stock," ¶ 81, and "induce[d] Plaintiffs to purchase and/or retain Enron common stock at artificially inflated prices believing the price of their stock would increase." ¶¶ 137, 133, 140-42, 149 (emphasis added). "The decline in the price of Enron's [stock] was caused by the public dissemination of the true facts, which were previously concealed or hidden." ¶¶ 143, 94, 96, 142, 144, 155. "Had Plaintiffs and the marketplace known of the true operating and financial results of Enron . . . they would have divested their holdings of Enron stock before its tumultuous decline." ¶ 142.</p>

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
<p><u>Delgado v. Fastow, et al., C.A. No. 02-673 (S.D. Tex.) (formerly Cause No. 2002-00569 (Dist. Ct. Tex.))</u></p>	<p>January 29, 2002</p>	<p>Enron Defendants and Andersen Defendants</p>	<p>Fraud, negligence, civil conspiracy</p>	<p>Defendants' activities induced Plaintiffs "to purchase and/or retain Enron common stock at artificially inflated prices." ¶¶ 97, 41, 101-02, 109 (emphasis added). "The decline in the price of Enron's [stock] was caused by the public dissemination of the true facts, which were previously concealed or hidden." ¶¶ 103, 84, 104, 113. "Had Plaintiffs and the marketplace known of the true operating and financial results of Enron . . . they would have divested their holdings of Enron stock." ¶ 102.</p>
<p><u>Iose, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02CV187 (W.D. Tex.) (formerly Cause No. 2002C101906 (Dist. Ct. Tex.))</u></p>	<p>February 7, 2002</p>	<p>Enron Defendants and Andersen Defendants</p>	<p>Fraud, negligence, civil conspiracy, spoliation of evidence, TRO</p>	<p>Defendants' activities induced Plaintiffs "to purchase and/or retain Enron common stock at artificially inflated prices believing the price of their stock would increase." ¶¶ 108, 52, 111-13, 120 (emphasis added). "The decline in the price of Enron's [stock] was caused by the public dissemination of the true facts, which were previously concealed or hidden." ¶¶ 114, 65, 67, 96, 115, 126, 139-40. "Had Plaintiffs and the marketplace known of the true</p>

CAPTION	FILING DATE	DEFENDANTS	CAUSES OF ACTION	CORE ALLEGATION
				operating and financial results of Enron . . . they would have divested their holdings of Enron stock before its tumultuous decline." ¶ 113.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In re : Chapter 11  
ENRON CORP., *et al.*, : Case No. 01-16034 [AJG]  
: Jointly Administered  
Debtors. :  
----- x

**GLOBAL ORDER REGARDING MOTION OF  
DEBTORS FOR A GLOBAL ORDER, PURSUANT TO SECTION  
362(a) OF THE BANKRUPTCY CODE, TO ENFORCE THE  
AUTOMATIC STAY AND PREVENT PLAINTIFFS FROM  
PROSECUTING DERIVATIVE CLAIMS IN VIOLATION THEREOF**

Upon consideration of the motion, dated April 22, 2002 (the "Motion"), by Enron Corp. ("Enron") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), for a global order, pursuant to section 362(a) of title 11 of the United States Code (the "Bankruptcy Code"), to enforce the automatic stay and prevent plaintiffs (collectively, the "Plaintiffs") in the actions bearing the captions Coy, et al. v. Arthur Andersen, L.L.P., et al., No. H-01-4248 (S.D. Tex.) (formerly Cause No. 2001-56992 (Dist. Ct. Tex.)); McLaren, et al. v. Arthur Andersen, L.L.P., et al., Cause No. 01CV1059 (Dist. Ct. Tex.); Chinn, et al. v. Belfer, et al., Case No. CV 02-00131 ST (D. Or.) (formerly Case No. 0201-00262 (Cir. Ct. Or.)); Blaskie, et al. v. Lay, et al., C.A. No. 02-1108 (S.D. Tex.) (formerly Cause No. 2002-04306 (Dist. Ct. Tex.)); Spector, et al. v. Lay, et al., C.A. No. 02-394-HA (D. Or.) (formerly Case No. 0202-00994 (Cir. Ct. Or.)); Young, et al. v. Andersen LLP, C.A. No. 02CH3325 (Cir. Ct. Ill.); Odam, et al. v. Enron Corp., et al., H-01-3914 (S.D. Tex.); Pearson, et al. v.

Fastow, et al., C.A. No. 02-CV-670 (formerly Cause No. 2002-00609 (Dist. Ct. Tex.)); Rosen, et al. v. Fastow, et al., C.A. No. 02-0199 (S.D. Tex.) (formerly Cause No. 2001-57517 (Dist. Ct. Tex.)); Bullock, et al. v. Arthur Andersen, L.L.P., et al., Cause No. 32716 (Dist. Ct. Tex.); Ahlich, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02-CV-347 (S.D. Tex.) (formerly Cause No. 02-000073-CV272nd (Dist. Ct. Tex.)); Delgado v. Fastow, et al., C.A. No. 02-673 (S.D. Tex.) (formerly Cause No. 2002-00569 (Dist. Ct. Tex.)); and Jose, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02CV187 (W.D. Tex.) (formerly Cause No. 2002CI01906 (Dist. Ct. Tex.)) (collectively, the “Derivative Actions”) from further prosecuting derivative claims in violation thereof; and the Motion having been considered at a hearing conducted by the Court on May 30, 2002 (the “Hearing”); and the Court having heard from the parties in interest appearing at the Hearing; and good and sufficient notice of the Motion having been given; and upon the record made at the Hearing and for the reasons stated thereon, it is hereby

**ORDERED**, that the Debtors’ Motion to enforce the automatic stay with respect to the derivative claims alleged in the Derivative Actions, in addition to all such similar claims commenced by Plaintiffs in the future, is granted; and it is further

**ORDERED**, that Plaintiffs immediately dismiss the derivative claims alleged in the Derivative Actions; and it is further

**ORDERED**, that Plaintiffs are enjoined from prosecuting any action in violation of the automatic stay.

DATED: New York, New York  
May \_\_, 2002

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ARTHUR J. GONZALEZ  
UNITED STATES BANKRUPTCY JUDGE

TOGUT, SEGAL & SEGAL LLP  
Bankruptcy Co-Counsel  
Debtors and Debtors in Possession  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000  
Albert Togut (AT-9759)  
Frank A. Oswald (FAO-1223)  
Scott E. Ratner (SER-0015)

HEARING DATE: 5/30/02  
AT: 10:00 a.m.

OBJECTIONS DUE: 5/20/02  
AT: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re : Chapter 11  
ENRON CORP., ET AL., :  
 : Case No. 01-16034 (AJG)  
 :  
 : Jointly Administered  
Debtors. :  
-----x

**NOTICE OF DEBTORS' MOTION FOR A GLOBAL ORDER,  
PURSUANT TO SECTION 362(a) OF THE BANKRUPTCY CODE,  
TO ENFORCE THE AUTOMATIC STAY AND PREVENT PLAINTIFFS  
FROM PROSECUTING DERIVATIVE CLAIMS IN VIOLATION THEREOF**

PLEASE TAKE NOTICE that on April 22, 2002, Enron Corp. ("Enron") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), filed the annexed Motion (the "Motion") with this Court for a global order, pursuant to section 362(a) of title 11 of the United States Code (the "Bankruptcy Code"), to enforce the automatic stay and prevent plaintiffs in the actions captioned, Coy, et al. v. Arthur Andersen, L.L.P., et al., No. H-01-4248 (S.D. Tex.) (formerly Cause No. 2001-56992 (Dist. Ct. Tex.)); McLaren, et al. v. Arthur Andersen, L.L.P., et al., Cause No. 01CV1059 (Dist. Ct. Tex.); Chinn, et al. v. Belfer, et al., Case No. CV 02-00131 ST (D. Or.) (formerly Case No. 0201-00262 (Cir. Ct. Or.)); Blaskie, et al. v. Lay, et al., C.A. No. 02-1108 (S.D. Tex.) (formerly Cause No. 2002-04306 (Dist. Ct. Tex.));

Spector, et al. v. Lay, et al., C.A. No. 02-394-HA (D. Or.) (formerly Case No. 0202-00994 (Cir. Ct. Or.)); Young, et al. v. Andersen LLP, C.A. No. 02CH3325 (Cir. Ct. Ill.); Odam, et al. v. Enron Corp., et al., H-01-3914 (S.D. Tex.); Pearson, et al. v. Fastow, et al., C.A. No. 02-CV-670 (formerly Cause No. 2002-00609 (Dist. Ct. Tex.)); Rosen, et al. v. Fastow, et al., C.A. No. 02-0199 (S.D. Tex.) (formerly Cause No. 2001-57517 (Dist. Ct. Tex.)); Bullock, et al. v. Arthur Andersen, L.L.P., et al., Cause No. 32716 (Dist. Ct. Tex.); Ahlich, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02-CV-347 (S.D. Tex.) (formerly Cause No. 02-000073-CV272nd (Dist. Ct. Tex.)); Delgado v. Fastow, et al., C.A. No. 02-673 (S.D. Tex.) (formerly Cause No. 2002-00569 (Dist. Ct. Tex.)); and Jose, et al. v. Arthur Andersen, L.L.P., et al., C.A. No. 02CV187 (W.D. Tex.) (formerly Cause No. 2002CI01906 (Dist. Ct. Tex.)) (collectively, the "Derivative Actions"), from further prosecuting derivative claims in violation thereof.

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider the Motion and any further relief will be held on May 30, 2002 at 10:00 a.m., or as soon thereafter as counsel may be heard (the "Hearing"), before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, in Room 523 of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 ("the "Court").

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion shall be made in writing, state with particularity the grounds therefor and be filed with the Court, with a courtesy copy delivered to the chambers of Bankruptcy Judge Gonzalez, and served on (i) Togut, Segal & Segal LLP, One Penn Plaza, New York, New York 10119, Attn: Albert Togut, Esq. (Facsimile 212-967-4258), bankruptcy co-counsel to the Debtors; (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York,

New York 10153, Attn: Brian S. Rosen, Esq. (Facsimile 212-310-8007), co-counsel to the Debtors; (iii) Milbank Tweed Hadley & McCloy, One Chase Manhattan Plaza, New York, New York 10005, Attn: Luc A. Despins, Esq. (Facsimile 212-530-5219), counsel to the Official Committee of Unsecured Creditors; (vi) Carolyn Schwartz, Esq., the United States Trustee, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004, Attn: Mary Tom, Esq. (Facsimile 212-663-2255); (iv) Davis, Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attn: Donald S. Bernstein, Esq. (Facsimile 212-450-3800), counsel to JP Morgan Chase Bank, as agent; and (v) Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022, Attn: Frederic Sosnick, Esq. (Facsimile 212-848-7179), counsel to Citicorp, as agent, so as to be received by all such parties no later than 4:00 p.m. (New York Time) on May 20, 2002. Only those objections which have been timely filed and served may be considered by the Court at the Hearing.

**PLEASE TAKE FURTHER NOTICE** that if you fail to respond in accordance with this notice, the Court may grant the relief requested by the Motion without further notice or hearing.

DATED: New York, New York  
April 22, 2002

TOGUT, SEGAL & SEGAL LLP,  
Co-Counsel for Debtors and  
Debtors in Possession,  
By:

/s/ Frank A. Oswald  
ALBERT TOGUT (AT-9759)  
FRANK A. OSWALD (FAO-1223)  
Members of the Firm  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000 (Telephone)  
(212) 967-4258 (Facsimile)