

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

United States Courts
Southern District of Texas
FILED

MAY 08 2002 LF

Michael N. Milby, Clerk

**MARK NEWBY, et al., Individually and
On Behalf Of All Others Similarly
Situated,** §
§
§
§
Plaintiffs, §
§
v. §
§
ENRON CORP., et al., §
§
Defendants. §

**CIVIL ACTION NO. H-01-3624
(Consolidated)**

DEFENDANT MARK E. KOENIG'S MOTION TO DISMISS

Plaintiffs have failed to plead a securities fraud action against Mark E. Koenig.¹ The deficiencies in the few allegations against Mr. Koenig are obvious under the standards established by this Court and others under Rule 9(b) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act (the "PSLRA").

Introductory Statement

Plaintiffs do not specifically accuse Mr. Koenig of any false statements or self-dealing. It is not alleged that he was involved in preparing any financial reports or Registration Statements on behalf of Enron. Except for boilerplate (such as the listing of defendants), Mr. Koenig is mentioned only 21 times in the entire Complaint. As discussed below, these references to Mr. Koenig – both individually and in the aggregate – do not state a claim against him for securities fraud.

As to Mr. Koenig, Plaintiffs' allegations of scienter are altogether lacking. Plaintiffs do not allege (1) what Mr. Koenig specifically knew at any point in time, (2) what material undisclosed

¹Mr. Koenig joins in and incorporates by reference the arguments in both the Defendants' Joint Brief Relating to Enron's Disclosures and the Joint Brief of Officer Defendants.

658

information Mr. Koenig may have known, (3) when or how Mr. Koenig became aware of any such undisclosed material information, or (4) any facts giving rise to an inference that Mr. Koenig acted with the required state of mind. Plaintiffs' allegations of insider trading are also inadequate. Plaintiffs have failed to identify what material inside information Mr. Koenig was aware of when he traded or anything suspicious or unusual about Mr. Koenig's several sales of Enron stock. Finally, they have not alleged any particularized facts as to how Mr. Koenig participated in any scheme to defraud.

In short, Plaintiffs have not met the particularity requirement, the basis requirement, or the strong inference requirement under the PSLRA or Rule 9(b) for pleading an action as to Mr. Koenig.

I. THE APPLICABLE PLEADING REQUIREMENTS

The standards applicable to pleading this securities fraud case against Mr. Koenig are set forth in the Joint Brief of Officer Defendants, which is incorporated herein by reference. Among the pertinent requirements, as stated by this Court, is "Plaintiffs must allege what actions each Defendant took in furtherance of the alleged scheme and specifically plead what he learned, when he learned it, and how Plaintiffs know what he learned." *In re Securities Litigation BMC Software, Inc.*, 183 F. Supp. 2d 860, 886 (S.D. Tex. 2001). As regards alleged misstatements, Plaintiffs must "specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent." *Id.* at 865 n.14 (quoting *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 177 (5th Cir.), *cert. denied*, 522 U.S. 966 (1997)). It is therefore necessary to examine the "specific" allegations that have been made against Mr. Koenig.

II. THE ALLEGATIONS SPECIFICALLY REFERENCING KOENIG DO NOT MEET RULE 9(b) OR PSLRA PLEADING REQUIREMENTS.

"Specific" allegations concerning Mr. Koenig in the Complaint fall into five categories: (a)

his position with Enron; (b) his bonuses; (c) references to statements made (but not attributed specifically to Mr. Koenig) during presentations to analysts; (d) an interview by Vinson & Elkins; and (e) Mr. Koenig's several sales of Enron stock.

A. Mr. Koenig's Position with Enron

In paragraphs 83(s) and 88, Plaintiffs identify Mr. Koenig as either Executive Vice President or Senior Vice President, in charge of Investor Relations for Enron, and they assert that he was on the Management Committee or Executive Committee for the years 1997, 1998, and 1999.² These allegations are not sufficient to state a claim against Mr. Koenig for securities fraud. *See* Section II.A, Joint Brief of Officer Defendants.

B. Bonuses

In paragraph 83(s) Plaintiffs assert that Mr. Koenig "received bonus payments of over \$1 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets." (However, there are no allegations that Mr. Koenig had responsibility for or participated in the preparation of the allegedly false financial reports.) This solitary, conclusory allegation concerning Mr. Koenig's receipt of bonuses is not sufficient to raise a strong inference of scienter or otherwise state a securities fraud claim against him. *See* Section II.B, Joint Brief of Officer Defendants.

C. Statements Made During Presentations to Analysts

In thirteen paragraphs,³ Plaintiffs assert that Mr. Koenig was one of a group of four to seven

² Plaintiffs allege that "virtually all of Enron's top insiders have been kicked out of the Company" (Complaint ¶ 4). Perhaps Plaintiffs do not view Mr. Koenig as a "top" insider, but as of the filing of the Consolidated Complaint and this Motion to Dismiss, he is still employed by Enron.

³ Complaint ¶¶ 119, 145, 157, 179, 197, 224, 247, 263, 282, 309, 317, 329, and 366.

Enron officers who participated in discussions with analysts and investors (none of whom are identified by name) about Enron's businesses and financial performance. In each of these paragraphs plaintiffs allege that the Enron representatives "stated" various matters set forth in bold, italicized, bullet points. As alleged, most of the presentations to investors and analysts stretched over two or more days, and included both conference calls as well as "follow-up conversations" and "formal presentations and break-out sessions"; as alleged, some of the presentations occurred in multiple locations or cities. Thus, it is impossible to pinpoint precisely what allegedly was said when, where, in what circumstances, and to which analysts and/or investors. But what is even more problematic – and what is absolutely fatal to plaintiffs' claims – is the failure of plaintiffs in each of the thirteen paragraphs to attribute any specific statement(s) to Mr. Koenig (or any other speaker, for that matter).⁴ In the end, then, there are *no* allegations as to what statements *Mr. Koenig* made, *if any*.

Accordingly, Plaintiffs have not pled any actionable misrepresentations or omissions as to Mr. Koenig. *See Schiller v. Physicians Resource Group, Inc.*, 2002 WL 318441 (N.D. Tex. 2001):

The PSLRA and Rule 9(b) require Plaintiffs to identify the particular individual who made the misstatement or omission. Plaintiffs cannot avoid the bar on group pleading by simply identifying the constituents of a group of defendants in rote and conclusory fashion. Plaintiffs cannot satisfy Rule 9(b) by attributing statements or omissions to the corporation without any identification of the officer or director responsible for making the statement.

Id. at *6.

⁴ This failure apparently is the result of deliberate choice. Transcripts of the analysts conference calls are available at one or more Internet sites for most (and perhaps all) of the fifteen analyst conference calls Plaintiffs refer to in the *Newby* Complaint. Indeed, it appears that Plaintiffs availed themselves of those transcripts in pleading those fifteen paragraphs, but instead of quoting directly from the transcripts and attributing a statement to a specific speaker, they paraphrased selected statements, set them off in bold italicized type, and then attributed them to a group of speakers. Had they truly desired to, they could have attributed most of the alleged misstatements to a specific speaker. The "group" approach appears to be an effort to tar someone like Mr. Koenig against whom Plaintiffs would otherwise have nothing at all.

D. Vinson & Elkins Interview

In paragraph 855, plaintiffs quote extensively from the letter of Vinson & Elkins to Enron that reported on V&E's investigation of Sherron Watkins's charges of improprieties. Among the points included from the V&E letter is that it had interviewed eleven people, among them Mr. Koenig. However, there is no mention of Mr. Koenig in connection with the V&E letter, much less any statement attributed to him or any finding reportedly based on V&E's interview of Mr. Koenig. The only statement from the V&E letter that can even remotely be associated with Mr. Koenig is the following: "In summary, none of the individuals interviewed could identify any transaction between Enron and LJM that was not reasonable from Enron's standpoint or that was contrary to Enron's best interests." As to Mr. Koenig, this is, at best, a prohibited group pleading. Even if it could be attributed to Mr. Koenig, it would fail as a fraud allegation under the PSLRA because it does not allege what he said, when he said it, how it was false, how he could have known it was false, or how it was material. Further, there is no indication that Mr. Koenig had any control over the V&E report.

E. Plaintiffs Do Not Allege Actionable "Insider Trading" by Koenig.

In Paragraphs 83(s), 84 and 401, Plaintiffs cite trading history of Mr. Koenig showing only four sales of shares in a three-year period in an effort to assert an insider trading claim against him. As they do with all "Enron defendants," Plaintiffs attempt to support their "insider trading" claim with the conclusion of their "expert" (Scott D. Hakala) that it was statistically likely that Mr. Koenig's limited stock trades were made with "the possession and use of material adverse non-public information." (Complaint ¶ 415) This "expert analysis" is clearly statistically lacking and does not take into account other material information such as portfolio concentration, vesting dates, and other material individualized trading information. The Hakala Declaration should not even be considered by this Court. *See* Joint Brief of Officer Defendants at section III.A.3. Plaintiffs' effort

to allege insider trading against Mr. Koenig fails, and the insider trading claims against him should be dismissed.

Plaintiffs have altogether failed to plead anything “unusual” or “suspicious” about Mr. Koenig’s stock sales, or otherwise meet the requirements of Rule 9(b) and the PSLRA for pleading illegal insider trading, as reviewed in section III.A of the Joint Brief of Officer Defendants. None of the insider trading paragraphs identifies any specific material, publicly undisclosed information known to Mr. Koenig when he made the limited stock sales about which Plaintiffs complain. Plaintiffs only generally allege that Mr. Koenig was in possession of some unspecified “adverse undisclosed information.” (Complaint ¶ 83(s).) They do not plead that Mr. Koenig was aware of any specific non-disclosure; nor do they allege that Mr. Koenig was aware of any public misstatement. It is well settled that simply being a member of management — *i.e.*, in a position to know inside information — does not equate to scienter or knowledge of false statements. *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 412 (5th Cir. 2001) (allegations of motive and opportunity alone are almost always insufficient to establish scienter). This is the kind of generalized, non-specific allegations the PSLRA outlawed. Paragraph 83(s) is further flawed by the absence of any allegation that the undisclosed information (itself unidentified) was material. The Complaint is devoid of (1) any specific allegations concerning nonpublic information (2) of which Mr. Koenig was aware or (3) how he knew the undisclosed information was material or nonpublic. *See In re Securities Litigation BMC Software*, 183 F. Supp. 2d at 916.

Plaintiffs also make no specific allegations regarding how Mr. Koenig’s sales are improper, unusual, or suspicious. The closest Plaintiffs come is to allege that “[t]hese defendants’ illegal insider selling escalated massively as Enron’s stock moved to more inflated levels during the Class Period and also when internally they knew the scheme was unraveling.” This is yet another instance

of group pleading, now prohibited by the PSLRA, and is clearly inaccurate in Mr. Koenig's case. According to Plaintiffs' figures, well over half the shares sold by Mr. Koenig were sold in the first quarter of 2000, before most of the alleged wrongdoing, well before the market peak, and twenty months before the end of the Class Period.

Beyond that defect, Plaintiffs' asserted insider trading claim against Mr. Koenig fails — and must be dismissed — for the following reasons. First, Plaintiffs do not — and cannot — allege a “pattern” of trading by Mr. Koenig. Plaintiffs point to four sales during the three-year Class Period by Mr. Koenig — thin material from which to weave a pattern. Further, Plaintiffs point to no sales history outside the Class Period against which the relevant sales could be measured. *See In re Securities Litigation BMC Software, Inc.*, 183 F. Supp. 2d at 901-02 (citing *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 987 (9th Cir.), *reh 'g and reh 'g en banc denied*, 195 F.3d 521 (9th Cir. 1999), for proposition that “stock sales cannot be viewed as ‘unusual’ where defendant “ha[s] no significant trading history for purposes of comparison”).

Second, Mr. Koenig's insider trades or “pattern” (such as it is) are inconsistent with Plaintiffs' allegations concerning the trading “pattern” of other Defendants who, according to the Complaint, were also “aware” of some undisclosed information. Indeed, according to the Complaint, one or more (but not all) of the Defendants collectively sold in almost every month of the Class Period. Plaintiffs then claim that each Defendant's sales “pattern” — although different from the others — somehow supports the same statistically certain inference. If, however, there truly is a specific “pattern” that demonstrates the use of inside information and other Defendants' sales match or establish that pattern, then Mr. Koenig's four sales cannot possibly match that purported pattern. For example, it is patent nonsense for Plaintiffs to allege that Mr. Koenig's “pattern” matches the “pattern” of Mr. Lay's trades (which number in the hundreds), and that both are recognized patterns

of trading on inside information. Any trading “matches” this “pattern.” Indeed, according to Plaintiffs, every sale by every insider in the three-year Class Period was suspect. Like all “one size fits all” garments, Plaintiffs’ droops here and pinches there.

Third, the timing of Mr. Koenig’s sales are neither suspicious nor unusual. His sales of shares, at various dates after the options vested, are exactly the type of activity that one would expect from a rational investor seeking to diversify his portfolio.⁵ To establish “suspicious timing,” Plaintiffs must show that Mr. Koenig’s trades were “at times calculated to maximize personal benefit” to him. *In re Apple Computer Litigation*, 886 F.2d 1109, 1117 (9th Cir. 1989). A recognized example would be the sale of a significant percentage of his shares “immediately before a negative earnings announcement.” *See, e.g., Wenger v. Lumisys*, 2 F. Supp. 2d 1231, 1251 (N.D. Cal. 1998). Conversely, sales made before the market peak, after its fall, or at other times not maximizing seller’s proceeds, give rise to no inference of scienter. *See Nathenson*, 267 F.3d at 420-21 (sales made when stock well below “class period high” were “so inauspiciously timed” they “d[id] not meet this test.”); *Greebel v. FTP Software*, 194 F.3d 185, 206 (1st Cir. 1999) (“timing does not appear very suspicious” where stock not “sold at the high points of the stock price.”). “When insiders miss the boat [by selling well off the market peak], their sales do not support an inference” of scienter. *Ronconi v. Larkin*, 253 F. 3d 423, 435 (9th Cir. 2001). Mr. Koenig’s challenged sales, most at prices \$15 to \$20 below market peak, do not support an inference of scienter.

Fourth, analysis of the alleged percentages of stock sales by Mr. Koenig must be placed in the context of the extraordinarily long class period selected by Plaintiffs – 37 months. *See Joint*

⁵Under Plaintiffs’ model, however, an Officer Defendant who sold everything as it vested (a not irrational diversification strategy), or simply sold enough to cover taxes on the exercise of options, would automatically be assumed to have traded on illegal inside information, *even if he had no inside information*.

Brief of Officer Defendants, Section III.A.1. It is obvious that more sales would occur in a three-year class period than in a shorter, more reasonable timeframe. A number of courts have found nothing suspicious or alarming in sales of stock by insiders in percentages that, if adjusted to reflect a three-year “window,” would dwarf Mr.Koenig’s sales. *See, e.g., Silicon Graphics*, 183 F.3d at 985-86, 987 (sales by some individuals ranging up to 75 percent insufficient to infer scienter even in a fifteen week class period); *Ronconi*, 253 F.3d at 435 (sale of 17 percent of holdings in a seven-month period clearly “not suspicious in amount.”); *In re Waste Management*, at *16 & *131 (no basis for strong inference of scienter when individuals sold as much as 39.6 percent in a five-month class period).

In sum, Plaintiffs have not pleaded adequate specific facts to support a claim for insider trading against Mr. Koenig.

III. PLAINTIFFS’ SECTION 20(a) AND 20A CLAIMS AGAINST MR. KOENIG SHOULD BE DISMISSED.

For the reasons set forth in Section III of the Joint Brief of Officer Defendants, Plaintiffs have failed to plead an actionable claim against Mr. Koenig under either Sections 20(a) or 20A of the Exchange Act.

Respectfully submitted,



Jacks C. Nickens
State Bar No. 15013800
1000 Louisiana Street, Suite 5360
Houston, Texas 77002
(713) 571-9191
(713) 571-9652 (Fax)

ATTORNEY-IN-CHARGE FOR DEFENDANT
MARK E. KOENIG

OF COUNSEL:

Paul D. Flack
State Bar No. 00786930
NICKENS, LAWLESS & FLACK, L.L.P.
1000 Louisiana Street, Suite 5360
Houston, Texas 77002
(713) 571-9191
(713) 571-9652 (Fax)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to all counsel listed on the attached Exhibit A Service List by e-mail or facsimile on this 8th day of May, 2002.



Paul D. Flack

SERVICE LIST

<p>Lead Counsel for <i>Newby</i> Plaintiffs:</p> <p>William S. Lerach Helen J. Hodges Byron S. Georgiou Milberg Weiss Bershad Hynes & Lerach LLP 401 B Street, Suite 1700 San Diego, CA 92101-5050 (619) 231-1058 (619) 231-7423 (fax)</p> <p>Melvyn I. Weiss Steven G. Schulman Samuel H. Rudman Milberg Weiss Bershad Hynes & Lerach, LLP One Pennsylvania Plaza New York, NY 10119-0165 (212) 594-5300 (212) 868-1229 (fax)</p> <p>Service by e-mail: enron@milberg.com</p>	<p>Local Counsel for <i>Newby</i> Plaintiffs:</p> <p>Roger B. Greenberg Schwartz, Junell, Campbell & Oathout LLP Two Houston Center 909 Fannin, Suite 2000 Houston, TX 77010 (713) 752-0017 (713) 752-0327 (fax)</p> <p>Service by e-mail: rgreenberg@schwartz-junell.com</p>
<p>Co-Lead Counsel for <i>Tittle</i> Plaintiffs:</p> <p>Lynn Lincoln Sarko Keller, Rohrback, LLP 1201 Third Avenue, Suite 3200 Seattle, WA 98101-3052 (206) 623-1900 (206) 623-3384 (fax)</p> <p>Service by e-mail: lsarko@kellerrohrback.com</p>	<p>Co-Lead Counsel for <i>Tittle</i> Plaintiffs:</p> <p>Steve W. Berman Clyde A. Platt, Jr. Hagens Berman, LLP 1301 Fifth Avenue, Suite 2900 Seattle, WA 98101 (206) 623-7292 (206) 623-0594 (fax)</p> <p>Service by e-mail: steve@hagens-berman.com</p>

<p>Local Counsel for <i>Newby</i> Plaintiffs:</p> <p>Thomas E. Bilek Hoeffner & Bilek LLP 440 Louisiana, Suite 720 Houston, TX 77002 (713) 227-7720 (713) 227-9404 (fax)</p> <p>Service by e-mail: tbilek722@aol.com</p>	<p>Liaison Counsel for <i>Tittle</i> Plaintiffs:</p> <p>Robin Harrison Justin M. Campbell, III Campbell Harrison & Dagley LLP 4000 Two Houston Center 909 Fannin Street Houston, TX 77010 (713) 752-2332 (713) 752-2330 (fax)</p> <p>Service by e-mail: rharrison@chd-law.com</p>
<p>Attorneys for Defendant Jeffrey Skilling:</p> <p>Robert M. Stern O'Melveny & Myers, LLP 555 13th Street, N.W., Suite 500W Washington, DC 20004-1109 (202) 383-5300 (202) 383-5414 (fax)</p> <p>Service by e-mail: rstern@omm.com</p>	<p>Attorneys for Defendant Enron:</p> <p>Kenneth S. Marks Stephen D. Susman Karen A. Oshman Susman Godfrey L.L.P. 1000 Louisiana, Suite 5100 Houston, TX 77002-5096 (713) 651-9366 (713) 654-6666 (fax)</p> <p>Service by e-mail: kmarks@susmangodfrey.com</p>
<p>Attorneys for Defendants Michael J. Kopper, Chewco Investments, LP, LJM Cayman, LP:</p> <p>Eric Nichols Beck, Redden & Secrest, L.L.P. One Houston Center 1221 McKinney, Suite 4500 Houston, TX 77010 (713) 951-3700 (713) 951-3720 (fax)</p> <p>Service by e-mail: enichols@brsfirm.com</p>	<p>Attorneys for Defendants The Northern Trust Company, Northern Trust Retirement Consulting LLC:</p> <p>Linda L. Allison Fulbright & Jaworski, LLP 1301 McKinney, Suite 5100 Houston, TX 77010 (713) 651-5628 (713) 651-5246 (fax)</p> <p>Service by e-mail: laddison@fulbright.com</p>

<p>Attorneys for Defendants David Stephen Goddard, Jr., Debra A. Cash, Michael M. Lowther:</p> <p>Billy Shepherd Cruse, Scott, Henderson & Allen, L.L.P. 600 Travis, Suite 3900 Houston, TX 77002-2910 (713) 650-6600 (713) 650-1720 (fax)</p> <p>Service by e-mail: bshepherd@crusescott.com</p>	<p>Attorneys for Defendants Philip J. Bazelides, Mary K. Joyce, James S. Prentice:</p> <p>Anthony C. Epstein Steptoe & Johnson, LLP 1330 Connecticut Ave., N.W. Washington, DC 20036 (202) 429-3000 (202) 429-3902 (fax)</p> <p>Service by e-mail: aepstein@steptoe.com</p>
<p>Attorneys for Defendant James V. Derrick, Jr.:</p> <p>Abigail K. Sullivan Bracewell & Patterson, L.L.P. South Tower Pennzoil Place 711 Louisiana, Suite 2900 Houston, TX 77002-2781 (713) 223-2900 (713) 221-1212 (fax)</p> <p>Service by e-mail: asullivan@bracepatt.com</p>	<p>Attorneys for Defendant Rebecca Mark-Jusbasche:</p> <p>John J. McKetta III Graves, Dougherty, Hearon & Moody, P.C. 515 Congress Avenue, Suite 2300 P.O. Box 98 78767 Austin, TX 78701 (512) 480-5600 (512) 478-1976 (fax)</p> <p>Service by e-mail: mmcketta@gdhm.com</p>
<p>Attorneys for Defendant Kenneth Lay:</p> <p>James E. Coleman, Jr. Diane Sumoski Carrington, Coleman, Sloman & Blumenthal, LLP 200 Crescent Court, Suite 1500 Dallas, TX 75201 (214) 855-3000 (214) 855-1333 (fax)</p> <p>Service by e-mail: deakin@ccsb.com</p>	<p>Attorneys for Defendants Bank of America Corp., Banc of America Securities LLC:</p> <p>Charles G. King King & Pennington, L.L.P. 711 Louisiana Street, Suite 3100 Houston, TX 77002-2734 (713) 225-8400 (713) 225-8488 (fax)</p> <p>Service by e-mail: cking@kandplaw.com</p>

<p>Attorneys for Defendants Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe H. Foy, Charles A. LeMaistre, Wendy L. Gramm, Robert K. Jaedicke, Charles E. Walker, John Wakeham, John Mendelsohn, Paulo V. Ferraz Pereira, Frank Savage, Herbert S. Winokur, Jr., Jerome J. Meyer:</p> <p>Jeremy L. Doyle Robin C. Gibbs rgibbs@gibbs-bruns.com Kathy D. Patrick kpatrick@gibbs-bruns.com Gibbs & Bruns, L.L.P. 1100 Louisiana, Suite 5300 Houston, TX 77002 (713) 650-8805 (713) 750-0903 (fax) jdoyle@gibbs-bruns.com</p>	<p>Attorneys for Defendant John A. Urquhart:</p> <p>H. Bruce Golden Golden & Owens, L.L.P. 1221 McKinney, Suite 3600 Houston, TX 77010 (713) 223-2600 (713) 223-5002 (fax)</p> <p>Service by e-mail: golden@goldenowens.com</p>
<p>Pro se:</p> <p>Dr. Bonnee Linden Linden Collins Associates 1226 West Broadway P.O. Box 114 Hewlett, NY 11557 (516) 295-7906</p> <p>Service by Federal Express</p>	<p>Attorneys for Defendant Ken L. Harrison:</p> <p>William F. Martson, Jr. Tonkon Torp, LLP 888 S.W. Fifth Ave., Suite 1600 Portland, OR 97204-2099 (503) 802-2005 (503) 972-7407 (fax)</p> <p>Service by e-mail: enronservice@tonkon.com</p>
<p>Carolyn S. Schwartz United States Trustee, Region 2 33 Whitehall St., 21st Floor New York, NY 10004 (212) 510-0500 (212) 668-2255 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Andrew Fastow:</p> <p>Craig Smyser Smyser Kaplan & Veselka, L.L.P. 700 Louisiana, Suite 2300 Houston, TX 77002 (713) 221-2300 (713) 221-2320 (fax)</p> <p>Service by e-mail: enronservice@skv.com</p>

<p>Attorneys for Defendants Arthur Anderson LLP, C.E. Andrews, Dorsey L. Baskin, Michael L. Bennett, Joseph F. Berardino, Donald Dreyfus, James A. Friedlieb, Gary B. Goolsby, Gregory W. Hale, Gregory J. Jonas, Robert G. Kutsenda, Benjamin S. Neuhausen, Richard R. Petersen, Danny D. Rudloff, Steve M. Samek, John E. Sorrells, John E. Stewart, and William E. Swanson</p> <p>Russell (Rusty) Hardin, Jr. Andrew Ramzel Rusty Hardin & Associates, P.C. 1201 Louisiana, Suite 3300 Houston, TX 77002 (713) 652-9000 (713) 652-9800 (fax)</p> <p>Service by e-mail: aramzel@rustyhardin.com</p>	<p>Attorneys for Defendants Arthur Andersen LLP, Dorsey L. Baskin, Michael L. Bennett, Joseph F. Berardino, Donald Dreyfus, James A. Friedlieb, Gary B. Goolsby, Gregory W. Hale, Gregory J. Jonas, Robert G. Kutsenda, Benjamin S. Neuhausen, Richard R. Petersen, Danny D. Rudloff, Steve M. Samek, John E. Sorrells, John E. Stewart, and William E. Swanson</p> <p>Sharon Katz sharon.katz@dpw.com Daniel F. Kolb Michael P. Carroll Timothy P. Harkness Davis, Polk & Wardwell 450 Lexington Avenue New York, NY 10017 (212) 450-4000 (212) 450-5649 (fax) (212) 450-3633 (fax for service of papers)</p> <p>Service by e-mail: andersen.courtpapers@dpw.com</p>
<p>Attorneys for Defendants Banc of America Securities LLC and Salomon Smith Barney Inc.:</p> <p>Paul Vizcarrondo, Jr. Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 (212) 403-1000 (212) 403-2000 (fax)</p> <p>Service by e-mail: pvizcarrondo@wlrk.com</p>	<p>Attorneys for Defendant Andersen Worldwide, S.C.:</p> <p>William Edward Matthews Gardere Wynne Sewell LLP 1000 Louisiana, Suite 3400 Houston, TX 77002 (713) 276-5500 (713) 276-5555 (fax)</p> <p>Service by fax</p>

<p>Attorneys for Defendants Vinson & Elkins, L.L.P., Ronald T. Astin, Joseph Dilg, Michael P. Finch, Max Hendrick, III:</p> <p>John K. Villa Williams & Connolly, LLP 725 Twelfth Street, N.W. Washington, DC 20005 (202) 434-5000 (202) 434-5029 (fax)</p> <p>Service by e-mail: jvilla@wc.com</p>	<p>Attorneys for Defendant Citigroup, Inc. and Salomon Smith Barney, Inc.:</p> <p>Jacalyn D. Scott Wilshire Scott & Dyer P.C. 3000 One Houston Center 1221 McKinney Houston, TX 77010 (713) 651-1221 (713) 651-0020 (fax)</p> <p>Service by e-mail: jscott@wsd-law.com</p>
<p>Attorneys for Defendant David B. Duncan:</p> <p>Barry G. Flynn Law Offices of Barry G. Flynn, PC 1300 Post Oak Blvd., Suite 750 Houston, TX 77056 (713) 840-7474 (713) 840-0311 (fax)</p> <p>Service by e-mail: bgflaw@mywavenet.com</p>	<p>Attorneys for Defendant LJM2 Coinvestments, LP:</p> <p>Mark A. Glasser Reginald R. Smith King & Spalding 1100 Louisiana, Suite 4000 Houston, TX 77002-5213 (713) 751-3200 (713) 751-3290 (fax)</p> <p>Service by e-mail: mkglasser@kslaw.com</p>
<p>Attorneys for Defendant Ben F. Glisan, Jr.:</p> <p>Tom P. Allen McDaniel & Allen, APC 1001 McKinney Street, 21st Floor Houston, TX 77002 (713) 227-5001 (713) 227-8750 (fax)</p> <p>Service by e-mail: tallen@mcdanielallen.com</p>	<p>Attorneys for Defendant Kristina Mordaunt:</p> <p>Robert Hayden Burns Burns Wooley & Marseglia 1415 Louisiana, Suite 3300 Houston, TX 77002 (713) 651-0422 (713) 651-0817 (fax)</p> <p>Service by e-mail: hburns@bwmzlaw.com</p>

<p>Attorneys for Defendant Michael C. Odom:</p> <p>Bernard V. Preziosi, Jr. Curtis, Mallet-Prevost, Colt & Mosle, L.L.P. 101 Park Avenue New York, NY 10178-0061 (212) 696-6000 (212) 697-1559 (fax)</p> <p>Service by e-mail: bpreziosi@cm-p.com</p>	<p>Attorneys for Defendant Kirkland & Ellis:</p> <p>Kevin S. Allred Kelly M. Klaus Munger, Tolles & Olson 355 South Grand Avenue, 35th Floor Los Angeles, CA 90071 (213) 683-9100 (213) 687-3702 (fax)</p> <p>Service by e-mail: allredks@mto.com</p>
<p>Attorneys for Defendant D. Stephen Goddard, Jr.:</p> <p>Michael D. Warden Sidley Austin Brown & Wood, LLP 1501 K Street, N.W. Washington, DC 20005 (202) 736-8000 (202) 736-8711 (fax)</p> <p>Service by e-mail: mwarden@sidley.com</p>	<p>Roman W. McAlindan The Sharrow 34 Lickey Square Barnt Green, Rednal, Birmingham, B45 8HB Great Britain</p> <p>Service by Federal Express</p>
<p>Attorneys for Defendant Thomas H. Bauer:</p> <p>Scott B. Schreiber Arnold & Porter 555 Twelfth Street, N.W. Washington, DC 20004-1206 (202) 942-5000 (202) 942-5999 (fax)</p> <p>Service by e-mail: enroncourtpapers@aporter.com</p>	<p>Attorneys for Defendant Nancy Temple:</p> <p>Mark C. Hansen Reid M. Figel Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. 1615 M Street, N.W., Suite 400 Washington, DC 20036 (202) 326-7900 (202) 326-7999 (fax)</p> <p>Service by e-mail: mhansen@khte.com rfigel@khte.com</p>

<p>Attorneys for Defendant Alliance Capital Management:</p> <p>Ronald E. Cook Cook & Roach, LLP Chevron Texaco Heritage Plaza 1111 Bagby, Suite 2650 Houston, TX 77002 (713) 652-2031 (713) 652-2029 (fax)</p> <p>Service by e-mail: rcook@cookroach.com</p>	<p>Attorneys for American National Plaintiffs:</p> <p>Andrew J. Mytelka David Le Blanc Greer, Herz & Adams, L.L.P. One Moody Plaza, 18th Floor Galveston, TX 77550 (409) 797-3200 (409) 766-6424 (fax)</p> <p>Service by e-mail: amytelka@greerherz.com dleblanc@greerherz.com bnew@greerherz.com swindsor@greerherz.com</p>
<p>Attorneys for Defendant Lou L. Pai:</p> <p>Murray Fogler McDade Fogler Maines, L.L.P. Two Houston Center 909 Fannin Suite 1200 Houston, Texas 77010-1006 (713) 654-4300 (713) 654-4343 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Lou L. Pai:</p> <p>Roger E. Zuckerman Steven M. Salky Deborah J. Jeffrey 1201 Connecticut Avenue, N.W. Washington, D.C. 20036-2638 (202) 778-1800 (202) 822-8106 (fax)</p> <p>Service by e-mail: djeffrey@zuckerman.com</p>
<p>Philip A. Randall Andersen United Kingdom 180 Strand London WC2R 1BL England 44 20 7438 3000 44 20 7831 1133 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Deutsche Bank AG:</p> <p>Lawrence Byrne Owen C. Pell Lance Croffoot-Suede White & Case, LLP 1155 Avenue of the Americas New York, New York 10036-2787 (212) 819-8200</p> <p>Service by e-mail lbyrne@whitecase.com</p>

<p>Attorneys for Defendant Bank of America Corporation:</p> <p>Paul Bessette Brobeck, Phleger & Harrison, LLP 4801 Plaza on the Lake Austin, Texas 78746 (512) 330-4000 (512) 330-4001 (fax)</p> <p>Service by e-mail: pbessette@brobeck.com</p>	<p>Attorneys for Defendant Bank of America Corp.:</p> <p>Gregory A. Markel Ronit Setton Nancy Ruskin Brobeck, Phleger & Harrison LLP 1633 Broadway, 47th Floor New York, NY 10019 (212) 581-1600 (212) 586-7878 (fax)</p> <p>Service by e-mail: gmarkel@brobeck.com rsetton@brobeck.com nruskin@brobeck.com</p>
<p>Michael D. Jones Andersen United Kingdom 180 Strand London WC2R 1BL England 44 20 7438 3000 44 20 7831 1133 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Alliance Capital Management:</p> <p>Mark A. Kirsch James F. Moyle James N. Benedict Clifford Chance Rogers & Wells 200 Park Avenue, Suite 5200 New York, NY 10166 (212) 878-8000 (212) 878-8375 (fax)</p> <p>Service by e-mail: james.moyle@cliffordchance.com james.benedict@cliffordchance.com mark.kirsch@cliffordchance.com</p>

<p>Attorneys for Defendant J.P. Morgan Chase & Co.:</p> <p>Richard Mithoff Mithoff & Jacks One Allen Center, Penthouse 500 Dallas Houston, TX 77002 (713) 654-1122 (713) 739-8085 (fax)</p> <p>Service by e-mail: enronlitigation@mithoff-jacks.com</p>	<p>Attorneys for Defendant J.P. Morgan Case & Co.:</p> <p>Bruce D. Angiolillo Thomas C. Rice Jonathan K. Youngwood Simpson Thacher & Bartlett 425 Lexington Avenue New York, NY 10017-3954 (212) 455-2000 (212) 455-2502 (fax)</p> <p>Service by e-mail: bangiolillo@stlaw.com trice@stblaw.com jyoungwood@stblaw.com</p>
<p>Attorneys for Defendant Credit Suisse First Boston Corp.:</p> <p>Lawrence D. Finder Haynes and Boone, LLP 1000 Louisiana Street, Suite 4300 Houston, TX 77002-5012 (713) 547-2006 (713) 547-2600 (fax)</p> <p>Service by e-mail: finderl@haynesboone.com</p>	<p>Attorneys for Defendant Barclays Bank PLC:</p> <p>David H. Braff Sullivan & Cromwell 125 Broad Street New York, NY 10004-2498 (212) 558-4000 (212) 558-3588 (fax)</p> <p>Service by e-mail: braffd@sullcrom.com candidoa@sullcrom.com brebnera@sullcrom.com</p>
<p>Attorneys for Defendant J.P. Morgan Chase & Co.:</p> <p>Chuck A. Gall James W. Bowen Jenkins & Gilchrist 1445 Ross Avenue, Suite 3200 Dallas, TX 75202-2799 (214) 855-4338 (214) 855-4300 (fax)</p> <p>Service by e-mail: cgall@jenkens.com jbowen@jenkens.com</p>	<p>Attorneys for Defendant Credit Suisse First Boston Corp.:</p> <p>Richard W. Clary Julie A. North Cravath, Swaine & Moore 825 Eighth Avenue New York, NY 10019 (212) 474-1000 (212) 474-3700 (fax) rclary@cravath.com</p>

<p>Attorneys for Defendant Merrill Lynch & Co., Inc.:</p> <p>Taylor M. Hicks Hicks Thomas & Lilienstern, LLP 700 Louisiana, Suite 1700 Houston, TX 77002 (713) 547-9100 (713) 547-9150 (fax)</p> <p>Service by e-mail: thicks@hicks-thomas.com</p>	<p>Attorneys for Defendant Barclays Bank PLC:</p> <p>Barry Abrams Abrams Scott & Bickley, LLP JP Morgan Chase Tower 600 Travis, Suite 6601 Houston, TX 77002 (713) 228-6601 (713) 228-6605 (fax)</p> <p>Service by e-mail: babrams@asbtexas.com</p>
<p>John L. Murchison, Jr. Vinson & Elkins, L.L.P. 2300 First City Tower 1001 Fannin Houston, TX 77002 (713) 758-2222 (713) 758-2346 (fax)</p> <p>Service by e-mail: jmurchison@velaw.com</p>	<p>Attorneys for Defendant Citigroup:</p> <p>Brad S. Karp Mark F. Pomerantz Richard A. Rosen Michael E. Gertzman Claudia L. Hammerman Paul, Weiss, Rifkind, Wharton & Garrison 1285 Avenue of the Americas New York, NY 10019-6064 (212) 373-3000 (212) 757-3990 (fax)</p> <p>Service by e-mail: grp-citi-service@paulweiss.com</p>
<p>Andersen LLP (Andersen-Cayman Islands) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Arthur Andersen (Andersen-United Kingdom) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>
<p>Andersen Co. (Andersen-India) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Lehman Brothers Holding, Inc. c/o Thomas A. Russo 745 Seventh Avenue New York, NY 10019 (212) 526-7000 (212) 526-2628 (fax)</p> <p>Service by fax</p>

<p>Attorneys for Defendant Canadian Imperial Bank of Commerce:</p> <p>Alan N. Salpeter Michele Odorizzi T. Mark McLaughlin Andrew D. Campbell Mayer, Brown, Rowe & Maw 190 South LaSalle St. Chicago, IL 60603 (312) 782-0600 (312) 706-8680 (fax)</p> <p>William H. Knull, III Mayer, Brown, Rowe & Maw 700 Louisiana Street, Suite 3600 Houston, Texas 77002-2730 (713) 221-1651 (713) 224-6410 (fax)</p> <p>Service by e-mail: cibc-newby@mayerbrownrowe.com</p>	<p>Arthur Andersen-Puerto Rico (Andersen-Puerto Rico) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>
<p>Arthur Andersen-Brazil 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Attorney for Joseph Sutton:</p> <p>Jack O'Neill Clements, O'Neill, Pierce, Wilson & Peterson 1000 Louisiana, Suite 1800 Houston, Texas 77002 (713) 654-7600 (713) 654-7690</p> <p>Service by e-mail: oneilljack@copwf.com</p>

<p>Roger D. Willard 3723 Maroneal Street Houston, TX 77025</p> <p>Service by Federal Express</p>	<p>Additional Counsel for Defendant Joseph Hirko:</p> <p>Barnes H. Ellis David H. Angeli STOEL RIVES LLP 900 SW 5th Avenue, Suite 2600 Portland, Oregon 97204 (503) 224-3380 (phone) (503) 220-2480 (fax)</p> <p>Service by e-mail: dhangeli@stoel.com</p>
<p>Additional Counsel for Kevin Hannon:</p> <p>Stephen J. Crimmins PEPPER HAMILTON LLP Hamilton Square 600 Fourteenth Street, N.W. Washington, D.C. 20005 (202) 220-1200 (202) 220-1665 (Fax)</p> <p>Elizabeth T. Parker PEPPER HAMILTON LLP 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103 (215) 981-4000 (215) 981-4756 (Fax)</p> <p>Service by e-mail: crimminss@pepperlaw.com parkere@pepperlaw.com</p>	<p>Attorneys for Defendants Richard B. Buy, Richard A. Causey, Mark A. Frevert, Stanley C. Horton, Kevin Hannon, Joseph Hirko, Steven Kean, Mark E. Koenig, Michael S. McConnell, Jeffrey McMahon, Cindy K. Olson, Kenneth D. Rice, Paula Rieker, and Lawrence Greg Whalley</p> <p>Jacks C. Nickens Paul D. Flack Nickens, Lawless & Flack 1000 Louisiana, Suite 5360 Houston, Texas 77002 (713) 571-9191 (713) 571-9652 (fax)</p> <p>Service by e-mail trichardson@nlf-law.com</p>

