

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

United States Courts  
Southern District of Texas  
FILED  
MAY 08 2002

Michael N. Milby, Clerk

MARK NEWBY, ET AL.,

*Plaintiffs,*

v.

ENRON CORPORATION, ET AL.,

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO: H-01-3624  
AND CONSOLIDATED CASES

**DEFENDANT KENNETH L. LAY'S MOTION TO STRIKE  
DECLARATION OF SCOTT D. HAKALA AND SUPPORTING BRIEF**

TO THE HONORABLE MELINDA HARMON:

Defendant Kenneth L. Lay moves that the Court strike the Declaration of Scott D. Hakala from Plaintiffs' Consolidated Complaint pursuant to FED. R. CIV. P. 12(f), and would show the Court the following:

1. In tacit recognition that plaintiffs cannot plead particular facts that raise a strong inference of scienter, they have attached to their Consolidated Complaint the Declaration of Scott D. Hakala, an economist who claims he performed certain statistical studies of Enron's stock price movements and of the defendants' exercises of employee stock options and sales of Enron stock. Based on these studies, Hakala opines that the defendants traded on inside information. Hakala Decl. ¶ 27. Lead plaintiff's counsel in this case recently tried without success to use an expert affidavit to avoid dismissal in another case. In *Demarco v. Depotech Corp.*, 149 F. Supp. 2d 1212, 1220-22 (S.D. Cal. 2001), the district court granted a motion to strike an expert's affidavit attached to a complaint on three grounds equally applicable here.

730

2. First, the court held that the expert's affidavit is not a "written instrument" pursuant to FED. R. CIV. P. 10(c), which provides that "a copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes." *Demarco*, 149 F. Supp. 2d at 1220. A "written instrument" under Rule 10(c) is "a document evidencing legal rights or duties or giving formal expression to a legal act or agreement, such as a deed, will, bond, lease, insurance policy or security agreement." *Id.* at 1220 (citations omitted). An expert's affidavit does not resemble any of these classes of documents. *Id.*

3. Second, the court explained that consideration of an expert's affidavit would compel the court to confront a myriad of complex evidentiary and procedural issues not capable of resolution at the pleading stage. *Id.* at 1221. For example, a thorough evaluation of the proffered testimony would require a deposition of the expert and a subsequent *Daubert* hearing to determine the admissibility of the expert's opinions. "These additional proceedings would be improper at the pleading stage of any civil case, and would likely run afoul of the discovery stay imposed by the Reform Act." *Id.*

4. Third, even assuming that these procedural and evidentiary hurdles could be cleared, the *Demarco* court questioned the fundamental usefulness of an expert's affidavit in judging the adequacy of a securities fraud complaint. *Id.* at 1221-22. The inclusion of an expert's affidavit does not relieve the plaintiffs of their burden to comply with the Private Securities Litigation Reform Act of 1995 ("PSLRA") and FED. R. CIV. P. 9(b), both of which require plaintiffs to support their legal claims with *factual* specificity. *Id.* "Conclusory allegations and speculation carry no additional weight merely because a plaintiff placed them within the affidavit of a retained expert." *Id.* at 1222.

5. The Fifth Circuit, in *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 407 (5th Cir. 2001), emphasized that the district court must examine carefully the specific *facts* pled in the complaint to determine whether they give rise to a strong inference of scienter. Plaintiffs cannot side-step their responsibility to plead specific facts by substituting an expert opinion that carries no weight at this stage of the proceeding, before the court is in a position to fulfill its gatekeeping role under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to admit only reliable and relevant expert testimony. The mere fact that Plaintiffs have been able to hire an expert who may be willing to render opinions favorable to their side of the case is of no moment. Under *Nathenson*, the Court must examine the Consolidated Complaint to discern the specific, substantive facts pled, and then determine whether they raise a strong inference of scienter. Moreover, credentials alone do not qualify an expert opinion for consideration; otherwise, a court's gatekeeping function under *Daubert* would be meaningless. See *Olinger v. United States Golf Ass'n*, 52 F. Supp. 2d 947, 949-50 (N.D. Indiana 1999).

6. Even if this Court were to examine the declaration to determine whether Plaintiffs have fulfilled their burden under *Daubert* to establish the admissibility of expert testimony, it would find the declaration woefully lacking. See *Tanner v. Westbrook*, 174 F.3d 542, 545 n. 1 (5th Cir. 1999) (noting that it is plaintiff's burden to establish admissibility of expert testimony).

7. The United States Supreme Court has identified five, non-exclusive factors that a court may consider in exercising its gatekeeping role. They include: (1) whether the expert's theory can be or has been tested; (2) whether the theory has been subject to peer review and publication; (3) the known or potential rate of error of a technique or theory when applied; (4) the existence and maintenance of standards and control; and (5) the degree to which the technique or theory has been

generally accepted in the relevant economist community. *See Daubert*, 509 U.S. at 593-595 (1993); *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999).

8. As to the first factor, it is readily apparent upon review of Hakala's declaration that he does not furnish sufficient source data, code and formulae, statistical tests, and other information used by him in formulating his conclusions in order to understand and replicate the methodologies, tests, and calculations used by him. This firm sent to the lead plaintiff's attorneys a letter on April 19, 2002, requesting such information. In response, on April 22, 2002, lead plaintiff's counsel advised that it would not make the information available. Copies of the April 19 and April 22 letters are attached hereto as Exhibits A and B, respectively. Without this information, Hakala is asking this Court to accept on faith that he has used accurate source data, developed reliable methodologies, and has applied those methodologies reliably in arriving at his conclusions. It is not the role of a gatekeeper to accept such assertions on faith. *See, e.g., Michaels v. Avitech, Inc.*, 202 F.3d 746, 753 (5th Cir. 2000) (an important factor under *Daubert* is the testability of an expert's conclusions and theory). For example, Hakala states that he used an event study and that event studies are a well-known method. However, there are many different methods for constructing event studies, and many are wholly unreliable. Hakala also asserts that he has conducted a statistical test to correlate trading by insiders with the results of his event study, but nowhere in his affidavit does he describe just what that test is or what the results of the test were. He simply states that he did a test and that as a result of the test he can conclude with various degrees of confidence as high as 99.9% that various individuals engaged in improper insider trading.

9. Turning to the second factor, it is also impossible to determine from Hakala's description of his work whether it has been subjected to peer review or publication. None of the

publications referred to by him describe the use of the methodologies employed by him to arrive at conclusions about improper insider trading. While some event studies and option valuation techniques have been subjected to peer review and publication, it is impossible to determine from the affidavit whether the specific event study and option valuation technique used by Hakala has been subjected to peer review and publication. Moreover, it is critical for a court in its gatekeeping function to determine whether the methodology used by the expert is reliable as applied in that particular case. See *General Elec. Co. v. Joiner*, 522 U.S. 136, 144-45 (1997); *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1055 (8th Cir. 2000). Hakala fails to provide enough information about his application of event study and of option valuation methodologies to this case for the Court to determine whether those particular applications have been subjected to peer review or publication. In the absence of this information, his opinion rests on nothing more than "subjective belief or unsupported speculation." See *Daubert*, 509 U.S. at 590; *Brumley v. Pfizer, Inc.*, 200 F.R.D. 596, 600 (S.D. Tex. 2001) (Jack, J.) (noting that an expert opinion "must be based on facts that enable the expert 'to express a reasonably accurate conclusion as opposed to conjecture or speculation'" (quoting *Kieffer v. Weston Land, Inc.*, 90 F.3d 1496, 1499 (10th Cir. 1996))).

10. While the particular methodology employed by Hakala is unknown, a number of publications referred to by him cast doubt on his overall approach, by which he tries to correlate premature employee stock option exercises with trading on inside information. For example, one publication cited by Hakala in footnotes 14 and 20, Huddart, "Patterns of Stock Option Exercise in the United States," Chapter 8 in *Executive Compensation and Shareholder Value*, (Carpenter & Yermack, eds.) pp. 115-142 (1999) recognizes that early exercise of stock options by employees is "a pervasive phenomenon." *Id.* at p. 131. This author also points out that: "If factors like risk

aversion and liquidity needs influence exercise behavior, exercise is likely to vary based on the personal circumstances of the employee." *Id.* at 130. He also observes: "Since an employee's total personal wealth (*e.g.* options, stock, salary, and human capital) typically is concentrated in assets that are highly correlated with the employer's stock price, we may expect employees to exercise options in order to hold diversified, less risky portfolios." *Id.* at 119. In Heath, Huddart, & Lang, "Psychological Factors and Stock Option Exercise," *Quarterly Journal of Economics*, May 1999, at 601-627, cited by Hakala in footnotes 14, 16, and 20, the authors observe that "[u]nlike stock, however, an employee typically sacrifices much of the expected value of the option by exercising before expiration." *Id.* at 602. The authors conclude that psychological factors often influence decisions by employees to exercise options. "Employees sacrifice significant economic value when they exercise in response to economically irrelevant factors." *Id.* at 625. Copies of these publications are included in the appendix submitted with Kenneth L. Lay's motion to dismiss at Tabs 5 and 6.

11. Hakala has not observed or measured or taken into account any aspects of Mr. Lay's personal circumstances aside from some of his transactions in Enron shares and options. It is, therefore, premature for him to reach any conclusions whatsoever about Mr. Lay and the causes of his stock option exercises. He claims that Mr. Lay's behavior is "inconsistent with rational behavior" despite the very literature he cites having clearly demonstrated that early exercise is the norm, that executives regularly give up option value, that risk aversion is crucial, and that the need for diversification and liquidity are very real and meaningful.

12. As to the third and fourth factors, it is impossible to determine the error rate in Hakala's work and the extent to which he has established and maintained standards and controls,

because he does not disclose what he did or how he did it. At least one glaring error is readily detectible, however, raising serious doubts about the care with which Hakala proceeded. Hakala makes the exercise of options to acquire 25,000 Enron shares on August 20, 2001, the centerpiece of his analysis that Mr. Lay supposedly engaged in insider trading. Hakala Dec. at ¶ 34. He concludes that, since the options were exercised early with a relatively low dollar amount in the money, Lay's behavior was economically irrational, revealing that he was engaged in improper insider trading. The critical problem with this analysis, however, is that Hakala assumes that Lay exercised the options to immediately sell the shares. Since Lay instead exercised the options to hold the stock, it would have been economically irrational for him to do so if he had known that the company was about to make an announcement that would cause the stock to decline in value. Instead, his decision to acquire additional Enron shares to hold for potential appreciation in value was consistent with a lack of foreknowledge that the stock was about to decline in value.

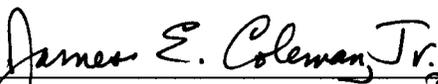
13. Finally, turning to the fifth factor, it is also impossible to determine whether Hakala's methods are generally accepted by economists because he omits critical information about his work. It is apparent, nevertheless, that Hakala has violated at least one fundamental principle of statistical analysis. He confuses statistical correlation with causation. *See Munoz v. Orr*, 200 F.3d 291, 301 (5th Cir.) (affirming exclusion of expert testimony where expert failed to consider other variables and where expert originally testified that discrimination was the cause of certain disparities and later recanted, admitting that statistics can show only correlation, not causation), *cert. denied*, 531 U.S. 812 (2000). Hakala concludes that Lay engaged in improper insider trading without taking into consideration the myriad factors unrelated to the anticipated movement of Enron stock that could have motivated Mr. Lay's decision to sell stock. *See Ronconi v. Larkin*, 253 F.3d 423, 435 (9th Cir.

2001). For example, Mr. Lay could have been under pressure to meet margin or cash calls, or to otherwise pay down debt. He may have sold stock to pay taxes. He may have sold stock to fund gifts or contributions. In light of these myriad factors, Hakala cannot have possibly formed any reliable conclusions at this stage of the proceedings about the cause of his trades, much less that they were motivated by possession of non-public, material adverse information. *See Michaels*, 202 F.3d at 752 (expert's opinion would be inadmissible because expert failed to address and exclude alternative causes).

14. It is entirely premature at this stage of the proceedings to consider expert witness testimony. Nor can plaintiffs shirk their responsibility to plead specific facts raising a strong inference of scienter by substituting the opinion of an expert. Even if the Court were inclined to consider Hakala's declaration, it can only reasonably conclude based on the record before it that his opinions rest on nothing more than "subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590.

WHEREFORE, Defendant Kenneth L. Lay requests that the Court strike the Declaration of Scott D. Hakala.

Respectfully submitted,

  
James E. Coleman, Jr. *BC*  
State Bar No. 0457400  
Southern District ID No. 04574000  
CARRINGTON, COLEMAN, SLOMAN  
& BLUMENTHAL, L.L.P.  
200 Crescent Court, Suite 1500  
Dallas, Texas 75201  
(214) 855-3000 (telephone)  
(214) 855-1333 (telecopy)

ATTORNEY IN CHARGE FOR  
DEFENDANT KENNETH L. LAY

OF COUNSEL:

Bruce W. Collins  
State Bar No. 04604700  
Southern District ID No. 20110  
Sharon J. Shumway  
State Bar No. 00791660  
Southern District ID No. 30561  
Carrington, Coleman, Sloman & Blumenthal, L.L.P.  
200 Crescent Court, Suite 1500  
Dallas, Texas 75201  
(214) 855-3000 (telephone)  
(214) 855-1333 (telecopy)

**CERTIFICATE OF CONFERENCE**

On May 8, 2002, the undersigned counsel for Defendant Lay contacted counsel for Lead Plaintiff in an attempt to confer on the merits of the foregoing motion, who stated that plaintiffs oppose the motion.

  
Bruce W. Collins

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties as per the attached Exhibit A in accordance with the Court's Order of April 4, 2002, and Rule 5, Federal Rules of Civil Procedure, on this 8th day of May, 2002.

A handwritten signature in cursive script that reads "Bruce Collins". The signature is written in black ink and is positioned above a horizontal line.

Bruce W. Collins

CARRINGTON

COLEMAN

SLOMAN &

BLUMENTHAL L.L.P. 200 CRESCENT COURT • SUITE 1500 • DALLAS, TEXAS 75201-1848 • TEL 214.355.3000 • FAX 214.355.1333

ATTORNEYS AT LAW

BRUCE W. COLLINS

TEL: 214.355.3018

FAX: 214.758.3718

E-MAIL: BCOLLINS@CCSB.COM

April 19, 2002

**VIA FACSIMILE AND  
CERTIFIED MAIL, RRR**

William S. Lerach, Esq.

MILBERG WEISS BERSHAD HYNES & LERACH, LLP

401 B Street, Suite 1700

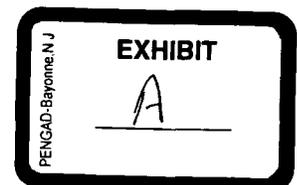
San Diego, CA 92101

Re: *Mark Newby, et al. v. Enron Corp., et al.*, No. H-01-3624

Dear Mr. Lerach:

We represent Defendant Kenneth L. Lay. The consolidated complaint filed in the above action by you on behalf of the plaintiffs on April 8, 2002, includes in the appendix a Declaration of Scott B. Hakala in which he reaches certain conclusions about alleged insider trading by various defendants, including Kenneth L. Lay. Unfortunately, the declaration does not contain sufficient information about the formulas, methodology, calculations, and data used by Mr. Hakala in reaching his conclusions for someone to replicate and evaluate the analysis. Please provide as soon as possible, in electronic form if available, all source data, code and formulas, statistical tests, and other information used by Hakala in formulating the conclusions reported in his declaration about alleged insider trading. The information we seek includes, but is not limited to, the following:

- The formula used in “backcasting predicted price per share” (Exhibit C);
- The option pricing models used in each aspect of his analysis, including but not limited to the “two-period model” cited in footnote 32 (page 29);
- The formula for the “log-normal distribution . . . with a correction for risk aversion” cited in footnote 32;
- The formula for “expected intrinsic value” cited in footnote 32;



William S. Lerach, Esq.  
April 19, 2002  
Page 2

- The definition and/or formula for risk aversion and a specification of utility function chosen for the definition;
- The method used to infer risk aversion from option exercises;
- The model, formula, and/or definition of a “non-systematic risk premium” cited in footnote 32;
- The formulas and/or definitions for the “expected annual return on any option” (paragraph 34);
- The statistical test used to assert:
  - “Statistically, even after controlling for the rise in share prices, the relative value of Enron’s shares was highly significant (paragraph 27, page 25); and
- The underlying statistical methodology used to assert:
  - “The probability that this behavior was due to mere chance or could be explained by wealth diversification and normal shareholding behavior can be rejected with a 99% degree of confidence” (end of paragraph 9-c (page 9)).

If we are not provided with the requested information in time to evaluate it before Defendant Lay’s motion to dismiss is due to be filed, in addition to any other objection we may have, we will object on the ground that the declaration lacks sufficient information to evaluate the reliability of the data, methodology, formulas, tests, calculations, and conclusions stated in the declaration.

We look forward to your prompt response.

Sincerely,



Bruce W. Collins

# Milberg Weiss Bershad Hynes & Lerach LLP

401 B Street, Suite 1700, San Diego, CA 92101-4297  
(619) 231-1058 Fax: (619) 231-7423

www.milberg.com

New York  
San Francisco  
Los Angeles  
Boca Raton  
Seattle

April 22, 2002

VIA FACSIMILE

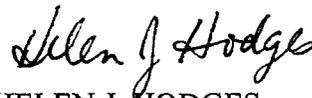
Bruce W. Collins  
CARRINGTON COLEMAN SLOMAN  
& BLUMENTHAL LLP  
200 Crescent Court, Suite 1500  
Dallas, TX 75201-1848

Re: *In re Enron Corporation Securities Litigation*

Dear Mr. Collins:

This is in response to your letter of April 19 to Mr. Lerach, requesting all source data, code and formulas, statistical tests, and other information used by Scott Hakala in formulating the conclusions reported in his declaration about alleged insider trading, which was part of the appendix to the Consolidated Complaint, the purpose of which is for you to be able to replicate and evaluate the analysis. At this stage, however, the complaint's allegations must be taken as true on a motion to dismiss and your request for Dr. Hakala's backup data appears to be an attempt to take discovery when formal discovery is stayed under the Private Securities Litigation Reform Act. As your letter makes clear, if the information is not provided, you will note your objection when you file your motion to dismiss, and you will then have an opportunity to test Dr. Hakala's calculations during discovery once the complaint is sustained.

Very truly yours,

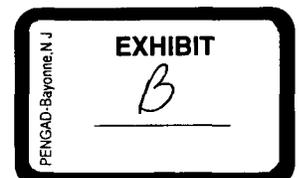


HELEN J. HODGES

HJH:mmm

cc: William S. Lerach  
G. Paul Howes  
James I. Jaconette

N:\secy\mom\Enron Correspondence\collins.ltr



**EXHIBIT A**  
**AGREED SERVICE LIST**

Linda L. Addison  
FULBRIGHT & JAWORSKI, LLP  
1301 McKinney, Suite 5100  
Houston, TX 77010  
Phone: 713-651-5621  
Fax: 713-651-5246  
E-mail: [laddison@fulbright.com](mailto:laddison@fulbright.com)  
**Attorney for The Northern Trust Company and  
Northern Trust Retirement Consulting, L.L.C.**

Steve W. Berman  
Clyde A. Platt, Jr.  
HAGENS BERMAN, LLP  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
Phone: 206-623-7292  
Fax: 206-623-0594  
E-mail: [steve@hagens-berman.com](mailto:steve@hagens-berman.com)  
**Co-Lead counsel for the *Title* Plaintiffs**

Robert Hayden Burns  
BURNS, WOOLEY & MARSEGLIA  
1111 Bagby, Suite 4900  
Houston, Texas 77002  
Phone: 713-651-0422  
Fax: 713-751-0817  
Email: [hburns@bwmzlaw.com](mailto:hburns@bwmzlaw.com)  
**Attorney for Defendant Kristina Mordaunt**

Jeremy L. Doyle  
GIBBS & BRUNS, L.L.P.  
1100 Louisiana, Suite 5300  
Houston, TX 77002  
Phone: 713-650-8805  
Fax: 713-750-0903  
Email: [jdoyle@gibbs-bruns.com](mailto:jdoyle@gibbs-bruns.com)  
**Attorney for Defendants Robert A. Belfer, Norman P.  
Blake, Ronnie C. Chan, John H. Duncan, Joe Foy,  
Wendy L. Gramm, Robert K. Jaedicke, Charles A.  
LeMaistre, John Mendelsohn, Jerome Meyer, Paulo  
V. Ferraz Pereira, Frank Savage, Charls E. Walker,  
John Wakeham, Herbert Winokur**

Anthony C. Epstein  
Paul J. Ondrasik, Jr.  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Phone: (202) 429-8065  
Fax: (202) 261-7507  
Email: [aepstein@steptoe.com](mailto:aepstein@steptoe.com)  
**Attorney for Philip J. Bazelides, Mary Joyce, and  
James S. Prentice**

Sean G. Jez  
FLEMING & ASSOCIATES, L.L.P.  
1330 Post Oak Blvd., Suite 3030  
Houston, TX 77056  
Phone: 713-621-7944  
Fax: 713-621-9638  
Email: [enron@flaming-law.com](mailto:enron@flaming-law.com)  
**Attorney for Individual Plaintiffs**

Barry Flynn  
LAW OFFICE OF BARRY G. FLYNN, P.C.  
1300 Post Oak Blvd., Suite 750  
Houston, TX 77056  
Phone: 713-840-7474  
Fax: 713-840-0311  
Email: [bgflaw@mywavcnet.com](mailto:bgflaw@mywavcnet.com)  
**Attorney for David Duncan**

Mark K. Glasser  
KING & SPALDING  
1100 Louisiana, Suite 4000  
Houston, TX 77002  
Phone: 713-751-3200  
Fax: 713-751-3290  
Email: [mkglasser@kslaw.com](mailto:mkglasser@kslaw.com)  
**Attorney for LJM2 Co-Investment, L.P.**

H. Bruce Golden  
GOLDEN & OWENS LLP  
1221 McKinney St., Suite 3600  
Houston, TX 77010-20101  
Phone: 713-223-2600  
Fax: 713-223-5002  
Email: [golden@goldenowens.com](mailto:golden@goldenowens.com)  
**Attorney for John A. Urquhart**

Roger B. Greenberg  
SCHWARTZ JUNELL CAMPBELL & OATHOUT, LLP  
909 Fannin, Suite 2000  
Houston, TX 77010  
Phone: 713-752-0017  
Fax: 713-752-0327  
Email: [rgreenberg@schwartz-junell.com](mailto:rgreenberg@schwartz-junell.com)  
**Attorney for The Regents of the University of California**

Mark C. Hansen  
Reid M. Figel  
KELLOGG, HUBER HANSEN, TODD & EVANS PLLC  
1615 M. Street, N.W., Suite 400  
Washington, D.C. 20036  
Phone: 202-326-7900  
Fax: 202-326-7999  
Email: [mhansen@khhte.com](mailto:mhansen@khhte.com)  
[rfigel@khhte.com](mailto:rfigel@khhte.com)  
**Attorney for Defendant Nancy Temple**

Rusty Hardin  
RUSTY HARDIN & ASSOCIATES, P.C.  
1201 Louisiana, Suite 3300  
Houston, Texas 77002  
Phone: 713-652-9000  
Fax: 713-652-9800  
Email: [rhardin@rustyhardin.com](mailto:rhardin@rustyhardin.com)  
**Attorney for Arthur Andersen, LLP**

Robin L. Harrison  
Justin M. Campbell III  
CAMPBELL HARRISON & DAGLEY, LLP  
4000 Two Houton Center  
909 Fannin Street  
Houston, TX 77010  
Phone: 713-752-2332  
Fax: 713-752-2330  
Email: [rharrison@chd-law.com](mailto:rharrison@chd-law.com)  
**Liaison counsel for the *Title* Plaintiffs**

Sharon Katz  
DAVIS POLK & WARDWELL  
450 Lexington Avenue  
New York, NY 10017  
Phone: 212-450-4000  
Fax: 212-450-3633  
Email: [andersen.courtpapers@dpw.com](mailto:andersen.courtpapers@dpw.com)  
**Attorney for Arthur Andersen LLP**

Charles G. King  
KING & PENNINGTON, L.L.P.  
711 Louisiana Street, Suite 3100  
Houston, TX 77002  
Phone: 713-225-8404  
Fax: 713-225-8488 (fax)  
Email: [cking@kandplaw.com](mailto:cking@kandplaw.com)  
**Attorney for Goldman Sachs, Salomon Smith Barney, and Banc of America Securities**

Jeffrey C. King  
HUGHES & LUCE, L.L.P.  
1717 Main Street, Suite 2800  
Dallas, Texas 75201  
Phone: 214-939-5900  
Fax: 214-939-6100  
Email: [kingj@hughesluce.com](mailto:kingj@hughesluce.com)  
**Attorney for Bruce G. Willison**

Bernard V. Preziosi, Jr.  
CURTIS, MALLET-PREVOST, COLT & MOSLE LLP  
101 Park Avenue  
New York, NY 10178-0061  
Phone: 212-696-6000  
Fax: 212-697-1559  
Email: [bpreziosi@cm-p.com](mailto:bpreziosi@cm-p.com)  
**Attorney for Michael C. Odom**

William S. Lerach  
G. Ppaul Howes  
Helen J. Hodges  
MILBERG WEISS BERSHAD HYNES & LERACH, LLP  
401 B Street, Suite 1700  
San Diego, CA 92101  
Phone: 619-231-1058  
Fax: 619-231-7423  
Email: [enron@milberg.com](mailto:enron@milberg.com)  
**Attorney for The Regents of the University of California and Lead Counsel for the *Newby* Plaintiffs**

Dr. Bonnee Linden, Pro Se  
LINDEN COLLINS ASSOCIATES  
1226 West Broadway  
P. O. Box 114  
Hewlett, NY 11557  
Phone: 516-295-7906  
[SEND VIA MAIL PER DR. LINDEN]

Kenneth S. Marks  
SUSMAN GODFREY, L.L.P.  
1000 Louisiana, Suite 5100  
Houston, TX 77002-5096  
Phone: 713-651-9366  
Fax: 713-654-6666  
Email: [kmarks@susmangodfrey.com](mailto:kmarks@susmangodfrey.com)  
**Attorney for Defendant Enron Corporation**

James F. Marshall  
JUDICIAL WATCH, INC.  
2540 Huntington Drive, Suite 201  
San Marino, CA 91008-2601  
Phone: 626-287-4540  
Fax: 626-237-2003  
Email: [marsall@attglobal.net](mailto:marsall@attglobal.net)  
**Attorney for *Will* Plaintiffs**

William F. Martson, Jr.  
TONKON TORP, L.L.P.  
1600 Pioneer Tower  
888 S.W. Fifth Avenue  
Portland, OR 97204-2099  
Phone: 503-803-2005  
Fax: 503-972-74073705  
Email: [enronservice@tonkon.com](mailto:enronservice@tonkon.com)  
**Attorney for Ken L. Harrison**

John J. McKetta, III  
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.  
515 Congress Ave., Suite 2300  
Austin, TX 78701  
Phone: 512-480-5600  
Fax: 512-478-1976  
Email: [mmcketta@gdhm.com](mailto:mmcketta@gdhm.com)  
**Attorneys for Rebecca Mark-Jusbasche**

Andrew J. Mytelka  
M. David Le Blanc  
GREER, HERZ & ADAMS, L.L.P.  
One Moody Plaza, 18th Floor  
Galveston, TX 77550  
Phone: 409-797-3200  
Fax: 409-766-6424  
Email: [dleblanc@greerherz.com](mailto:dleblanc@greerherz.com)  
[bnew@greerherz.com](mailto:bnew@greerherz.com)  
[amytelka@greerherz.com](mailto:amytelka@greerherz.com)  
[swindsor@greerherz.com](mailto:swindsor@greerherz.com)  
**Attorney for *American National* Plaintiffs**

John L. Murchison, Jr.  
VINSON & ELKINS, L.L.P.  
2300 First City Tower  
1001 Fannin  
Houston, TX 77002  
Phone: 713-758-2222  
Fax: 713-758-2346  
Email: [jmurchison@velaw.com](mailto:jmurchison@velaw.com)

Eric J. R. Nichols  
Beck, REDDEN & SECREST  
1221 McKinney Street, Suite 4500  
Houston, TX 77010  
Phone: 713-951-3700  
Fax: 713-951-3720

Email: [enichols@brsfirm.com](mailto:enichols@brsfirm.com)  
**Attorney for Michael J. Kopper, Chewco Investments, L.P., and LJM Cayman, L.P.**

Jack C. Nickens  
NICKENS, LAWLESS & FLACK, L.L.P.  
1000 Louisiana Street, Suite 5360  
Houston, TX 77002  
Phone: 713-571-9191  
Fax: 713-571-9652  
Email: [trichardson@nlf.law.com](mailto:trichardson@nlf.law.com)  
**Attorney for The Estate of J. Clifford Baxter, Deceased, Richard B. Buy, Richard A. Causey, Mark A. Frevert, Joseph M. Hirko, Stanley C. Horton, Mark E. Koenig, Jeffrey McMahon, Michael S. McConnell, J. Mark Metts, Cindy K. Olson, Kenneth D. Rice, Joseph W. Sutton, and Paula Rieker**

Gary A. Orseck  
ROBBINS, RUSSELL, ENGLERT, ORSECK & UNTEREINER, LLP  
1801 K Street, N.W., Suite 411  
Washington, D.C. 20006  
Phone: 202-775-4500  
Fax: 202-775-4510  
Email: [gorsek@robbinsrussell.com](mailto:gorsek@robbinsrussell.com)  
**Attorney for Michael Lowther**

Lynn Lincoln Sarko  
KELLER ROHRBACK LLP  
1201 Third Ave., Suite 3200  
Seattle, WA 98101-3052  
Phone: 206-623-1900  
Fax: 206-623-3384  
Email: [lsarko@kellerrohrback.com](mailto:lsarko@kellerrohrback.com)  
**Co-Lead Counsel for the *Tittle* Plaintiffs**

Scott B. Schreiber  
ARNOLD & PORTER  
255 Twelfth Street, NW  
Washington, DC 20004-1206  
Phone: 202-942-5000  
Fax: 202-942-5999  
Email: [enroncourtpapers@aporter.com](mailto:enroncourtpapers@aporter.com)  
**Attorney for Tom Bauer**

Henry F. Schuelke, III  
Robert Sutton  
JANIS, SCHUELKE & WECHSLER  
1728 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
Phone: 202-861-0600  
Fax: 202-223-7230  
Email: [hsschuelke@janisschuelke.com](mailto:hsschuelke@janisschuelke.com)  
[rsutton@janisschuelke.com](mailto:rsutton@janisschuelke.com)  
**Attorney for Ben Glisan**

Billy Shepherd  
CRUSE, SCOTT, HENDERSON & ALLEN, L.L.P.  
600 Travis Street, Suite 3900  
Houston, TX 77002-2910  
Phone: 713-650-6600  
Fax: 713-650-1720  
Email: [bshepherd@crusescott.com](mailto:bshepherd@crusescott.com)  
**Attorney for D. Stephen Goddard, Jr.**

Craig Smyser, Esq.  
SMYSER KAPLAN & VESELKA LLP  
700 Louisiana, Suite 2300  
Houston, TX 77002  
Phone: 713-221-2300  
Fax: 713-221-2320  
Email: [enronservice@skv.com](mailto:enronservice@skv.com)  
**Attorney for Andrew S. Fastow**

Robert M. Stern  
O'MELVENY & MYERS LLP  
555 13<sup>th</sup> Street, N.W., Suite 500W  
Washington, DC 20004-1109  
Phone: 202-383-5328  
Fax: 202-383-5414  
Email: [rstern@omm.com](mailto:rstern@omm.com)  
**Attorney for Jeffrey K. Skilling**

Abigail K. Sullivan  
BRACEWELL & PATTERSON, L.L.P.  
711 Louisiana Street, Suite 2900  
Houston, TX 77002-2781  
Phone: 713-221-1205  
Fax: 713-221-2149  
Email: [asullivan@bracepatt.com](mailto:asullivan@bracepatt.com)  
**Attorney for James V. Derrick**

John K. Villa  
WILLIAMS & CONNOLLY L.L.P.  
725 Twelfth Street, N.W.  
Washington, D.C. 20005-5901  
Phone: 202-434-5000  
Fax: 202-434-5705  
Email: [jvilla@wc.com](mailto:jvilla@wc.com)  
**Attorney for Vinson & Elkins, L.L.P., Ronald T. Astin,  
Joseph Dilg, Michael P. Finch and Max Hendrick III**

Carolyn S. Schwartz  
United States Trustee, Region 2  
33 Whitehall St., 21st Floor  
New York, NY 10004  
Phone: 212-510-0500  
Fax: 212-668-2255  
**Trustee for Enron, Debtor**

Paul Vizcarrondo, Jr.  
WACHTELL, LIPTON, ROSEN & KATZ  
51 West 52nd Street  
New York, NY 10019-6150  
Phone: 212-403-1000  
Fax: 212-403-2000 (fax)  
Email: [pvizcarrondo@wlrk.com](mailto:pvizcarrondo@wlrk.com)  
**Attorney for Banc of Goldman Sachs, Salomon Smith  
Barney, and Banc of America Securities, LLC**

Richard Mithoff  
MITHOFF & JACKS  
500 Dallas, Penthouse  
Houston, TX 77002  
Phone: 713-654-1122  
Fax: 713-739-8085  
Email: [enronlitigation@mithoff-jacks.com](mailto:enronlitigation@mithoff-jacks.com)  
[cgal@jenkens.com](mailto:cgal@jenkens.com)  
[l\\_rice@stblaw.com](mailto:l_rice@stblaw.com)  
**Attorneys for J.P. Morgan Chase & Co.**

Taylor M. Hicks  
HICKS THOMAS & LILIENSTERN, LLP  
700 Louisiana, Suite 1700  
Houston, TX 77002  
Phone: 713-547-9100  
Fax: 713-547-9150  
Email: [thicks@hicks-thomas.com](mailto:thicks@hicks-thomas.com)  
**Attorney for Merrill Lynch & Co., Inc.**

Paul J. Ondrasik, Jr.  
F. Michael Kail  
Anthony C. Epstein  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Phone: (202) 429-3000  
General Fax: (202) 429-3902  
Email: [pondrasik@steptoe.com](mailto:pondrasik@steptoe.com)  
**Attorneys for James G. Barnhart, Keith Crane,  
William Gulyassy, Roderick Hayslett, Sheila Knudsen,  
Tod A. Lindholm, Mikie Rath, and David Shields**

William Edward Matthews  
GARDERE WYNN SEWELL, LLP  
1000 Louisiana, Suite 3400  
Houston, TX 77002  
Phone: 713-276-5500  
Fax: 713-308-5555  
Email: [wmatthews@gardere.com](mailto:wmatthews@gardere.com)  
**Attorneys for Defendant Andersen Worldwide, S.C.**

Jacalyn D. Scott  
WILSHIRE SCOTT & DYER, PC  
1221 McKinney, Suite 3000  
Houston, TX 77001  
Phone: 713-651-1221  
Fax: 713-651-0020

Email: [jscott@wsd-law.com](mailto:jscott@wsd-law.com)  
**Attorneys for Defendants CitiGroup, Inc. and Salomon  
Smith Barney, Inc.**

Michael Connelly  
CONNELLY, BAKER, WOTRING & JACKSON  
700 Louisiana Street, Suite 1850  
Houston, TX 77002  
Phone: 713-980-1711  
Fax: 713-980-1701  
Email: [mconnelly@connellybaker.com](mailto:mconnelly@connellybaker.com)  
**Attorney for Kirkland and Ellis**

Alan N. Salpeter  
Michele Odorizzi  
T. Mark McLaughlin  
MAYER, BROWN, ROWE & MAY  
190 South LaSalle Street  
Chicago, IL 60603  
Phone: 312-782-0600  
Fax: 312-706-8680  
Email: [asalpeter@mayerbrownrowe.com](mailto:asalpeter@mayerbrownrowe.com)  
[modorizzi@mayerbrownrowe.com](mailto:modorizzi@mayerbrownrowe.com)  
[mmclaughlin@mayerbrownrowe.com](mailto:mmclaughlin@mayerbrownrowe.com)  
**Attorneys for Defendant Canadian Imperial Bank of  
Commerce**

James N. Benedict  
Mark A. Kirsch  
James F. Moyle  
CLIFFORD CHANCE ROGERS & WELLS, L.L.P.  
200 Park Ave., Suite 5200  
New York, NY 10166  
Phone: 212-878-8000  
Fax: 212-878-8375  
Email: [james.benedict@cliffordchance.com](mailto:james.benedict@cliffordchance.com)  
[mark.kirsch@cliffordchance.com](mailto:mark.kirsch@cliffordchance.com)  
[james.moyle@cliffordchance.com](mailto:james.moyle@cliffordchance.com)  
**Attorneys for Defendant Alliance Capital Management**

Ronald E. Cook  
COOK & ROACH, LLP  
1111 Bagby Street, Suite 2650  
Houston, TX 77002  
Phone: 713-652-2031  
Fax: 713-652-2029  
Email: [rcook@cookroach.com](mailto:rcook@cookroach.com)  
**Attorney for Defendant Alliance Capital Management  
L.P.**

Brad S. Karp  
Mark F. Pomerantz  
Richard Rosen  
PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
1285 Avenue of the Americas  
New York, NY 10019  
Phone: 212-373-3000  
Fax: 212-575-3990

Email: [grp-citi-service@paulweiss.com](mailto:grp-citi-service@paulweiss.com)  
**Attorneys for Defendant CitiGroup, Inc.**

Lawrence Byrne  
Owen C. Pell  
Lance Croffoot-Suede  
WHITE & CASE, L.L.P.  
1155 Avenue of the Americas  
New York, NY 10036  
Phone: 212-819-8200  
Fax: 212-354-8113  
Email: [lbyrne@whitecase.com](mailto:lbyrne@whitecase.com)  
[opell@whitecase.com](mailto:opell@whitecase.com)  
[lcroffoot-suede@whitecase.com](mailto:lcroffoot-suede@whitecase.com)  
**Attorneys for Defendant Deutsche Bank AG**

Richard W. Clary  
Julie A. North  
CRAVATH, SWAINE & MOORE  
813 Eight Avenue  
New York, NY 10019  
Phone: 212-474-1000  
Fax: 212-474-3700  
Email: [rclary@cravath.com](mailto:rclary@cravath.com)  
[jnorth@cravath.com](mailto:jnorth@cravath.com)  
**Attorneys for Defendant Credit Suisse First Boston  
Corp.**

Lawrence D. Finder  
HAYNES & BOONE, L.L.P.  
1000 Louisiana, Suite 4300  
Houston, TX 77002  
Phone: 713-547-2006  
Fax: 713-547-2600  
Email: [finderl@haynesboone.com](mailto:finderl@haynesboone.com)  
**Attorneys for Defendant Credit Suisse First Boston  
Corp.**

David H. Braff  
SULLIVAN & CROMWELL  
125 Broad Street  
New York, NY 10004-2498  
Phone: 212-558-4000  
Fax: 212-558-3588  
Email: [braffd@sullcrom.com](mailto:braffd@sullcrom.com)  
[candidoa@sullcrom.com](mailto:candidoa@sullcrom.com)  
[brebnera@sullcrom.com](mailto:brebnera@sullcrom.com)  
**Attorneys for Defendant Barclays Bank**

Gregory A. Markel  
Ronit Setton  
Nancy Ruskin  
BROBECK, PHLEGER & HARRISON, LLP  
1633 Broadway, 47th Floor  
New York, NY 10019  
Phone: 212-581-1600  
Fax: 212-586-7878  
Email: [gmarkel@brobeck.com](mailto:gmarkel@brobeck.com)  
[rsetton@brobeck.com](mailto:rsetton@brobeck.com)  
[nruskin@brobeck.com](mailto:nruskin@brobeck.com)  
**Attorneys for Defendant Bank of America Corp.**

Paul R. Bessette  
Michael J. Biles  
BROBECK, PHLEGER & HARRISON, LLP  
401 Plaza on the Lake  
Austin, TX 78746  
Phone: 512-330-4000  
Fax: 512-330-4001  
Email: [pbessette@brobeck.com](mailto:pbessette@brobeck.com)  
[mbiles@brobeck.com](mailto:mbiles@brobeck.com)  
**Attorneys for Defendant Bank of America Corp.**

Dennis H. Tracey, III  
David F. Wertheimer  
Hogan & Hartson, L.L.P.  
875 Third Avenue  
New York, NY 10022  
Phone: 212-918-3000  
Fax: 212-918-3100  
Email: [dhtracey@hhlaw.com](mailto:dhtracey@hhlaw.com)  
[dfwertheimer@hhlaw.com](mailto:dfwertheimer@hhlaw.com)  
**Attorneys for Defendant Debra Cash**

Murry Fogler  
McDade Fogler Maines, L.L.P.  
909 Fannin, Suite 1200  
Houston, TX 77010-1006  
Phone: 713-654-4300  
Fax: 713-654-4343  
Email: [mfogler@mfml.com](mailto:mfogler@mfml.com)  
**Attorneys for Lou L. Pai**

Roger E. Zuckerman  
Steven M. Salky  
Deborah J. Jeffrey  
ZUCKERMAN SPAEDER LLP  
1201 Connecticut Avenut, N.W.  
Washington, D.C. 20036-2638  
Phone: 202-778-1800  
Fax: 202-822-8106  
Email: [djeffrey@zuckerman.com](mailto:djeffrey@zuckerman.com)  
**Attorneys for Lou L. Pai**

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

**MARK NEWBY, ET AL.,**

*Plaintiffs,*

v.

**ENRON CORPORATION, ET AL.,**

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§

**CIVIL ACTION NO: H-01-3624  
AND CONSOLIDATED CASES**

**ORDER GRANTING DEFENDANT KENNETH L. LAY'S MOTION TO STRIKE  
DECLARATION OF SCOTT D. HAKALA**

The Court, having considered Defendant Kenneth L. Lay's Motion to Strike Declaration of Scott D. Hakala, the responses thereto, and other pleadings and briefs filed by the parties relating to this matter, and being of the opinion that said motion should be granted, it is therefore

ORDERED, ADJUDGED AND DECREED that the Declaration of Scott D. Hakala filed with Plaintiffs' Consolidated Complaint shall not be considered by the Court in connection with Defendant Lay's Motion to Dismiss and shall be stricken from the record as an exhibit to Plaintiffs' Consolidated Complaint.

SIGNED in Houston, Texas, this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
MELINDA HARMON  
UNITED STATES DISTRICT JUDGE