14. Defendant Andrew S. Fastow was Executive Vice President and Chief Financial Officer of Enron from January 1999 until he was placed on leave on October 24, 2001. Prior to that time, he was senior Vice President and Chief Financial Officer. In addition, he has been the general partner of two limited partnerships, LJM Cayman LP and LJM2 Co-Investment LP, which entered into substantial business relationship with Enron. Fastow purportedly terminated his relationship with these and other companies doing business with Enron in July, 2001.

15. Based on filings with the Texas secretary of state, Fastow has been involved as director, officer or managing member in 17 other companies and partnerships that appear to have ties to Enron. These 17 entities have directors, officers or managers whose address is listed as 1400 Smith Street in Houston, which is also Enron's corporate address, according to Texas records. At least one of the entities bought and sold Enron assets, including foreign power plants. Whitewing Management, which lists Fastow as its managing member, received $807 million from the sale of Enron debt last year. Under the terms of the debt sale, Whitewing is allowed to use the proceeds to buy power plants from Enron or make other "permitted investments." Since 1999, Whitewing has bought 14 Enron plants or affiliated companies and has sold four.

CONTROLLING PERSONS

16. Lay, Skilling, and Fastow (the "Individual Defendants"), by reason of their executive and Board positions, were controlling persons of Enron during the Class Period and had the power and influence, and exercised the same, to cause Enron to engage in the conduct alleged in this Complaint.

17. During the Class Period, each Individual Defendant occupied a position that made him privy to non-public information concerning Enron. Because of this access, each of these defendants knew the adverse material facts specified herein and that such material adverse facts were either being concealed or expressly misrepresented.

18. Each of the defendants is liable for making false and misleading statements, and/or for willfully participating in a scheme and course of business that operated as a fraud on purchasers of Enron bonds and damaged Class members in violation of the federal securities laws. All of the defendants pursued a common goal, i.e., inflating the price of Enron securities and maintaining the ratings of Enron bonds by making false and misleading statements and concealing material adverse information. The scheme and course of business was designed to and did: (i) deceive the investing public, including plaintiff and other Class members; (ii) artificially inflate the price of bonds during the Class Period; and (iii) cause plaintiff and the other members of the Class to purchase Enron bonds at inflated prices. Such actions caused Plaintiff and the members of the Class to sustain damages.

19. Each defendant had the opportunity to commit and participate in the violations of laws described herein. The Individual Defendants were top officers and directors of Enron and they controlled Enron's press releases, corporate reports, SEC filings, its communications with analysts and its other relevant mediums of communication. Thus, the defendants controlled the public dissemination of, and could and did misrepresent, the information about Enron's business, products and current and future business prospects, which information reached the public and caused the inflation in the price of Enron's bonds.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of the Class, consisting of all persons or entities who purchased Enron bonds, or interests in Enron bonds during the Class Period, December 22, 1998 through November 30, 2001, inclusive. Excluded from the Class are defendants, the partners, officers and directors of Enron and of Andersen at all relevant times, their affiliates, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

21. Because Enron had $8.5 billion of debt outstanding during the Class Period from over 30 bond issues,, more than $1 billion of which were debt securities issued during the Class Period, the members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are at least hundreds of members of the Class and that such Class members are geographically dispersed.

22. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law as described in this Complaint.

23. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

24. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) Whether defendants participated in and pursued the common course of conduct complained of herein;

(c) Whether the defendants' publicly disseminated releases and statements during the Class Period misrepresented and/or omitted from disclosure material facts which were necessary to have been included in order to make the representations made therein not misleading;

(d) Whether the defendants acted willfully and/or recklessly in omitting and/or misrepresenting material facts;

(e) Whether the market price of Enron bonds were artificially inflated during the Class Period due to the material misrepresentations and omissions complained of herein; and

(f) To what extent the members of the Class have sustained damages and the proper measure of such damages.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by certain of the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them by the Defendants. There will be no difficulty in the management of this class action.

SUBSTANTIVE ALLEGATIONS

Background

26. In a concerted effort to artificially inflate Enron's reported net assets, income, and liabilities, beginning in 1997 Defendants caused Enron to omit the financial results of Chewco Investments, L.P. ("Chewco"), a company in which Enron was a significant investor, and Joint Energy Development Investments Limited Partnership ("JEDI"), a company in which Chewco was a principal investor, from Enron's consolidated financial statements, although GAAP required consolidation of those results because those entities did not have the independent equity investment required for exclusion of their financial results from Enron's financial statements.

27. At or near the end of the Class Period, a series of articles published in the financial press revealed information not previously available to the investing public concerning Enron's assets, capital structure, liquidity, and off-balance sheet financing.

28. In June 1999, Enron entered into a series of transactions involving a third party and LJM Cayman, L.P. ("LJM1"). LJM1 is a private investment company which engages in acquiring or investing primarily in energy-related investments. Defendant Fastow was the managing member of LJM1's general partner. The effect of these transactions was (i) Enron and the third party amended certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase Enron common shares at the market price on that day, (ii) LJM1 received 6.8 million shares of Enron common stock subject to certain restrictions and (iii) Enron received a note receivable and certain financial instruments hedging an investment held by Enron. Enron recorded the assets received and equity issued at estimated fair value. In connection with the transactions, LJM1 agreed that Fastow would have no

pecuniary interest in such Enron common shares and would be restricted from voting on matters related to such shares. LJM1 repaid the note receivable in December 2000.

29. As with Chewco and JEDI, GAAP required Enron to consolidate the financial activities of LJM1 with those of Enron, beginning with 1999. Defendants caused Enron to exclude LJM1 from Enron's consolidated financial statements.

30. LJM2 Co-Investment, L.P. ("LJM2") was formed in December 1999 as a private investment company that engages in acquiring or investing in primarily energy-related or communications-related businesses. In the fourth quarter of 1999, LJM2, which has the same general partner as LJM1, acquired, directly or indirectly, approximately $360 million of merchant assets and investments from Enron, on which Enron recognized pre-tax gains of approximately $16 million. In December 1999, LJM2 entered into an agreement to acquire Enron's interests in an unconsolidated equity affiliate for approximately $34 million. Additionally, LJM1 acquired other assets from Enron for $11 million.

31. During 2000, Enron entered into a number of transactions with LJM2 primarily involving either assets Enron had decided to sell or risk management activities intended to limit Enron's exposure to price and value fluctuations with respect to various assets. Defendant Fastow is the managing member of LJM2's general partner. The general partner of LJM2 is entitled to receive a percentage of the profits of LJM2 in excess of the general partner's portion of the total capital contributed to LJM2, depending upon the performance of the investments made by LJM2. In ten of these transactions, LJM2 acquired various debt and equity securities from certain Enron subsidiaries and affiliates that were directly or indirectly engaged in the domestic and/or international energy or communications business. In one transaction LJM2

acquired fiber optic cable from an Enron subsidiary. The aggregate consideration agreed to be paid to Enron pursuant to these eleven transactions was approximately $144.5 million. Also during 2000, LJM2 sold to Enron certain merchant investment interests for a total consideration of approximately $76 million.

32. During 2000, Enron engaged in derivative transactions with LJM2, including swap agreements, puts, and other option contracts. As part of such risk management transactions, LJM2 purchased equity interests in four structured financing vehicles for a total of approximately $127 million. Enron, in turn, contributed a combination of assets, Enron notes payable, restricted shares of outstanding Enron stock (and the restricted right to receive additional Enron shares) in exchange for interests in the vehicles. Enron and LJM2 subsequently entered into derivative transactions through these four vehicles with a combined notional amount of approximately $2.1 billion.

33. LMJ1 and LMJ2 have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and liabilities and millions of shares of Enron stock. It is unclear from Enron filings with the SEC what consideration, if any, Enron received in return for transferring these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities. Mr. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering document for one of the partnerships stated that this dual role "should result in a steady flow of opportunities ... to make investments at attractive prices." Mr. Fastow would find his interests "aligned" with investors because the "economics of the partnership would have significant impact on the general partner's wealth," according to this offering document. The LJM2 offering document states that the responsibilities

of Mr. Fastow and other partnership officials to Enron could "from time to time conflict with fiduciary responsibilities owed to the Partnership and its partners." Importantly, the use of these entities in this manner allowed Enron to conceal its use of leverage and to hide the true nature of its financial condition. These entities allowed Enron to realize attractive gains, but to conceal losses in a manner that was false and misleading to investors.

34. The LJM1 partnership raised a relatively modest $16 million, according to the documents. The more ambitious LJM2 aimed to raise $200 million, the documents show. Among investors were Credit Suisse Group's Credit Suisse First Boston, Wachovia Corp. and General Electric Co.'s General Electrical Capital Corp. The Arkansas Teachers Fund committed $30 million, of which $7.4 million had been tapped by the end of November 2001. Bill Shirron, a fund manager at the Arkansas Teachers Fund, said the LJM1 arrangement had "already returned $6 million to us." It's been "a home run so far," Mr. Shirron added.

35. According to the LJM2 offering document, the general partner, made up of Mr. Fastow and at least one other Enron employee, received an annual management fee of as much as 2% annually of the total amounts invested. Additionally, the general partner was eligible for profit participation that could produce millions of dollars more if the partnership met its performance goals over its projected 10-year life. In exchange, the general partner was obliged to invest at least 1% of the aggregate capital commitments.

36. LJM2 in some instances, benefitted from renegotiating the terms of existing deals with Enron in ways that improved the partnership's financial positions or reduced its risks of losses. Mr. Fastow, and possibly a handful of partnership associates, realized more than $7 million last year in management fees and about $4 million in capital increases on an investment

of only $3 million in the partnership, which was established in December 1999 principally to do business with Enron.

37. The profits from the LJM2 deals with Enron were described in a financial report to investors in the partnership, that was signed by Mr. Fastow as the general partner and dated April 30. In one case, the report indicates the partnership was able to improve profits by terminating a transaction with Enron early. This information was not available to the investing public.

38. In September 2000, LJM2 invested $30 million in "Raptor III," which involved writing put options committing LJM2 to buy Enron stock at a set price for six months. Four months into this deal, LJM2 approached Enron to settle the investment early, "causing LJM2 to receive its $30 million capital invested plus $10.5 million in profit," the report said. The renegotiation was before a decline in Enron's stock price, which could have forced LJM2 to buy Enron shares at a loss of as much as $8 each, the document indicated.

39. In his April 30, 2001 report, Mr. Fastow said the partnership, which raised $394 million, had invested in several Enron-related deals involving power plants and other assets as well as Enron stock. The document said LJM2 sought a 29% internal rate of return. Such rate of return was down from a 48% targeted rate of return at the end of 2000, which the document said was due in part to a decline in the value of LJM2's investment in New Power Co., an Enron-related energy retailer. In some transactions, LJM2 did much better than the 29% target, though this sometimes involved renegotiating individual deals with Enron and generally to the detriment of Enron.

40. Enron's investment in Azurix Corp. also was significantly overvalued. Formed in January 1998, Azurix Corp. is a global water company engaged in the business of owning, operating and managing water and wastewater assets, providing water and wastewater related services, and developing and managing water resources. Enron owns a 50% voting interest in Atlantic Water Trust, which currently owns approximately 67% of Azurix common stock, with public stockholders owning the remainder. Azurix's largest asset is Wessex Water Ltd. a water and wastewater company based in southwestern England. Other assets include: a 30-year water and wastewater concession in the Province of Buenos Aires, Argentina; interests in long-term water and wastewater concessions in the Province of Mendoza, Argentina and in Cancun, Mexico; and Azurix North America, a water and wastewater services company, formerly the businesses of Philip Utilities Management Corporation, with operations in nine U.S. states and five Canadian provinces, which has been expanded by subsequent acquisitions and contract awards.

41. In 2000, Enron issued common stock to four entities known as Raptor I-IV ("Raptor") in exchange for notes receivable. Under GAAP, the note receivable should have been accounted for as a reduction of Enron's shareholders' equity. In order to inflate Enron's reported equity, Defendants caused Enron to account for the Notes Receivables as Assets. This treatment caused Enron to overstate its reported equity by $172 million in its year-end 2000 financial statements, and by $1 billion in the financial statements for the first and second quarters of 2001.

The False Statements

42. Enron's 1997 Annual Report on Form 10-K, which was filed with the SEC on March 30, 1998, reported net income of $105 million, and diluted earnings of $0.16 per share. It

also reported the Company's total debt to be \$6.254 billion, and shareholder equity to be \$5.618 billion.

43. The 1997 Form 10-K was signed by each of the Individual Defendants. It contained an audit representation letter signed by defendant Andersen, which stated without qualification that Andersen had completed an audit conducted in conformity with generally accepted auditing standards, and that the financial statements of Enron were in conformity with generally accepted accounting principles.

44. The 1997 financial statements were false. Because, inter alia, of Enron's failure to consolidate JEDI and Chewco, net income was overstated by \$113 million; earnings were overstated by \$.16 per share, so that Enron actually lost 0.01 per share in 1997; debt was understated by \$711 million; and equity was overstated by \$313 million.

45. Enron's 1998 Annual Report on Form 10-K, which was filed with the SEC on March 30, 1999, reported net income of \$703 million, and diluted earnings of \$1.01 per share. It also reported the Company's total debt to be \$7.357 billion, and shareholder equity to be \$7.048 billion.

46. The 1998 Form 10-K was signed by each of the Individual Defendants. It contained an audit representation letter signed by defendant Andersen, which stated without qualification that Andersen had completed an audit conducted in conformity with generally accepted auditing standards, and that the financial statements of Enron were in conformity with generally accepted accounting principles.

47. The 1998 financial statements were false. Because, inter alia, of Enron's failure to consolidate JEDI and Chewco, net income was overstated by \$113 million; earnings were

overstated by $0.15 per share; debt was understated by $561 million; and equity was overstated by $442 million.

48. Enron's 1999 Annual Report on Form 10-K, which was filed with the SEC on March 30, 2000, reported 1999 net income in 1998, and 1999 diluted earnings of $1.10 per share, which included $0.45 per share from gains on sales of subsidiary stock and charges of $0.36 per shares to reflect impairment of assets, compared to $1.01 per share in 1998.

49. Enron's 1999 Form 10-K also reported sharp declines in cash flow from operating activities in 1999, offset by cash provided by financing activities, as follows:

> Net cash provided by operating activities decreased $214 million in 1999, primarily reflecting increases in working capital and net assets from price risk management activities, partially offset by increased earnings and higher proceeds from sales of merchant assets and investments. The increase of $1,429 million in 1998 reflects positive operating cash flow from Enron's major business segments, proceeds from sales of interests in energy-related merchant assets and cash from timing and other changes related to Enron's commodity portfolio, partially offset by new investments in merchant assets and investments. Cash provided by financing activities in 1999 included $1,504 million from the net issuance of short and long term debt, $852 million from the issuance of common stock and $568 million from the formation of majority-owned limited partnerships, partially offset by payments of $467 million for dividends.

50. Enron's Form 10-K contained the following statements about working capital:

> At December 31, 1999, Enron had working capital of $496 million. If a working capital deficit should occur, Enron has credit facilities in place to fund working capital requirements. At December 31, 1999, those credit lines provided for up to $3.0 billion in committed and uncommitted credit, of which $125 million was outstanding. Certain of the credit agreements contain prefunding covenants. However, such covenants are not expected to restrict Enron's access to funds under these agreements. In addition, Enron sells commercial paper and has agreements to sell trade accounts receivable, thus providing financing to meet seasonal working

> capital needs. Management believes that the sources of funding described above are sufficient to meet short and long term liquidity needs not met by cash flows from operations.

51. The financial statement in Enron's 1999 Form 10-K reported assets at December 31, 1999 of $33.4 billion, including $2.8 billion goodwill, $5 billion in investments and advances to unconsolidated equity affiliates and $4.7 billion "Other." Debt was reported to be $8.52 billion. Reported shareholders' equity was $9.6 billion.

52. The 1999 Form 10-K included the following description of Enron's investments and obligations to various limited partnership:

> Enron formed separate limited partnerships with third-party investors for various purposes... During 1999, third-party investors contributed cash and merchant investments totaling $1.0 billion to Enron-sponsored entities to invest in highly liquid investment grade securities (including Enron notes) and short-term receivables. The merchant investments, totaling $500 million, were sold prior to December 31, 1999. In 1998, Enron formed a wholly-owned limited partnership for the purpose of holding $1.6 billion of assets contributed by Enron. That partnership contributed $850 million of assets to a second newly-formed limited partnership in exchange for a 53% interest; a third-party investor contributed $750 million in exchange for a 47% interest. The assets held by the wholly-owned limited partnership represent collateral for a $750 million note receivable held by the second limited partnership. In 1999, the wholly-owned and second limited partnerships sold assets valued at approximately $460 million and invested the proceeds in Enron notes. Absent certain defaults or other specified events, Enron has the option to acquire the minority holder's interests in these partnerships. If Enron does not acquire the minority holders' interests before December 2004 through May 2009, or earlier upon certain specified events, the entities will liquidate their assets and dissolve.

53. The 1999 Form 10-K was signed by each of the Individual Defendants. It contained an audit representation letter signed by defendant Andersen, which stated, without qualification, that Andersen had completed an audit conducted in conformity with generally

accepted auditing standards, and that the financial statements of Enron were in conformity with generally accepted accounting principles.

54. The 1999 financial statements were false. Because, inter alia, of the failure to consolidate JEDI, Chewco, and LJM1, net income was overstated by $250 million, earnings were overstated by $0.31 per share; debt was understated by $685 million; and equity was overstated by $836 million.

55. Enron's quarterly report on Form 10-Q for the quarter ending March 31, 2000, which was filed with the SEC on May 15, 2000 reported net income of $318 million for the quarter and diluted earnings per share of $0.40. Reported assets at March 31, 2000 was $37.5 billion, including $6 billion of investments in and advances to unconsolidated equity affiliates, $2.9 billion goodwill, and $5 billion "Other." Reported shareholders' equity at March 31, 2000 was $10.1 billion. Reported cash from operating activities was negative $457 million (i.e., operating activities used $457 million in excess of cash produced by operating activities, while $1.5 billion was used in investing activities in the quarter. The shortfalls resulted in net debt issuances in the quarter, and reported debt as a percentage of total capitalization increased to 43.7%, as compared to 38.5% at December 31, 1999. The first quarter 2000 Form 10-Q further stated that:

> Enron is able to fund its normal working capital requirements mainly through operations or, when necessary through the utilization of credit facilities and its ability to sell commercial paper and accounts receivable.

56. Enron's quarterly report on Form 10-Q for the quarter ending June 30, 2000, which was filed with the SEC on August 14, 2000, reported net income of $289 million for the quarter and $0.34 diluted earnings per share, up from reported net income of $222 million and

$0.29 earnings per share in the second quarter of 1999. Reported assets at June 30, 2000 were $45.5 billion, including $3.4 billion goodwill, $5.6 billion of investments in and advances to unconsolidated equity affiliates and $5.7 billion "Other." The second quarter 2000 Form 10-Q further reported that cash used in operating activities in the first half of 2000 was $547 million, while $2.3 billion cash was used in investing activities in the same period. As a result, the Company had net assets of $3.35 billion in the same period.

57. The second quarter 2000 Form 10-Q revealed that debt as a percentage of total capitalization was 46.3% at the end of the quarter, up from 38.5% at the end of 1999. That Form 10-Q reported the following "Related Party Transactions":

> During the first quarter of 2000, Enron and the Related Party entered into an agreement to terminate certain financial instruments that had been entered into during 1999. In connection with this agreement, Enron received approximately 3.1 million shares of Enron common stock held by the Related Party. A put option, which was originally entered into in the first quarter of 2000 and gave the Related Party the right to sell shares of Enron common stock to Enron at a strike price of $71.31 per share, was terminated under this agreement. In return, Enron paid approximately $26.8 million to the Related Party. The agreement closed in April 2000. Additionally, in the first quarter of 2000, Enron advanced to the Related Party $10 million, at a market rate of interest, which was repaid in April 2000.
>
> In the second quarter of 2000, Enron entered into transactions with the Related Party to hedge certain merchant investments. As part of the transactions, Enron contributed to newly-formed entities (the Entities) assets valued at approximately $800 million, including 3.7 million restricted shares of outstanding Enron common stock, $100 million in Enron notes payable and the right to receive up to 11.7 million shares of outstanding Enron common stock in March 2003 (subject to certain conditions). In return, Enron received non-voting interests in the Entities and a special distribution from the Entities in the form of $800 million in notes receivable, convertible into derivative instruments. In addition, Enron paid

$82 million to purchase share-settled options from the Entities on 14.6 million shares of Enron common stock.

> In June 2000 Enron sold a portion of its excess dark fiber inventory to the Related Party in exchange for $30 million cash and a $70 million note receivable that matures the seven years and bears a market rate of interest. Enron recognized gross margin of $53 million on the sale.

58. Enron's quarterly report on Form 10-Q for the quarter ending September 30, 2000, which was filed with the SEC on November 14, 2000, reported net income of $292 million, a $2 million increase from reported income for the third quarter of 1999. Diluted reported earnings were $0.34 per share for the quarter, down from reported $0.35 earnings per share for the third quarter of 1999. Reported assets were $53 billion at September 30, 2000, including $3.7 billion goodwill, $5.4 billion of investments in and advances to unconsolidated subsidiaries and $6.3 billion "Other." Reported shareholders' equity at September 30, 2000 was $11.3 billion. Reported debt as a percentage of total capitalization increased to 49.5% at September 30, 2000 from 38.5% at December 31, 1999. Operating cash flow for the quarter was $100 million.

59. Enron's third quarter 2000 Form 10-Q disclosed related party transactions as follows:

> In the second and third quarters of 2000, Enron entered into transactions with the Related Party to hedge certain merchant investments and other assets. As part of the transactions, Enron (i) contributed to newly-formed entities (the Entities) assets valued at approximately $1.2 billion including 3.7 million restricted shares of outstanding Enron common stock, $150 million in Enron notes payable, the right to receive up to 18.0 million in Enron notes payable, the right to receive up to 18.0 million shares of outstanding Enron common stock in March 2003 (subject to certain conditions) and (ii) transferred to the entities assets valued at approximately $309 million, including a $50 million note payable and an investment in an entity that indirectly holds warrants convertible into common stock of an Enron equity method

investee. In return, Enron received economic interests in the Entities, $309 million in notes receivable and a special distribution from the Entities in the form of $1.2 billion in notes receivable, a subject to changes in the principal for amounts payable by Enron in connection with the execution of additional derivative instruments. In addition, Enron paid $123 million to purchase share-settled options from the Entities on 21.7 million shares of Enron common stock. The Entities paid share-settled options on 14.6 million shares of Enron common stock outstanding at June 30, 2000.

In the third quarter of 2000, Enron entered into derivative transactions with the Entities with a combined notional value of approximately $1.2 billion to hedge certain merchant investments and other assets. Enron's notes receivable balance was reduced by $36 million as a result of premiums owed on derivative transactions. Enron recognized revenues of approximately $60 million related to the derivative transactions, which offset market value changes of certain merchant investments. In addition, Enron recognized $10.2 million and $1.5 million of interest income and interest expense, respectively, on the notes receivable from and payable to the Entities.

60. On April 2, 2001, Enron filed with the SEC its 2000 Annual Report on Form 10-K (the "2001 10-K").

61. Enron's 2000 Form 10-K reported net income of $979 million, and $1.12 diluted earnings per share, up from 1999 earnings of $1.10 per share. However, 1999 diluted earnings per share were $1.27, before the cumulative effect of accounting changes. Reported 2000 net income included a charge of $326 million representing impairment of the assets of Azurix Corp. Reported assets were $65.5 billion, of which $3.6 billion was reported goodwill, $5.3 billion of investments and advances to unconsolidated equity affiliates of $5.3 billion, and $5.5 billion "Other." Debt was reported to be $10.2 billion, and equity was reported to be $11.7 billion.

62. The Company's 2000 Form 10-K disclosed that Enron recognized revenues of $510 million from transactions with unconsolidated subsidiaries, and sold $632 million of assets

to a related entity. In addition, the 2000 Form 10-K contained the following information about related party transactions:

> In 2000 and 1999, Enron entered into transactions with limited partnerships (the Related Party) whose general partner's managing member is a senior officer of Enron, to hedge certain merchant investments and other assets. As part of the transactions, Enron (i) contributed to newly-formed entities (the Entities) assets valued at approximately $1.2 billion, including $150 million in Enron notes payable, 3.7 million restricted shares of outstanding Enron common stock and the right to receive up to 18.0 million shares of outstanding Enron common stock in March 2003 (subject to certain conditions) and (ii) transferred to the Entities assets valued at approximately $309 million, including a $50 million note payable and an investment in an entity that indirectly holds warrants convertible into common stock of an Enron equity method investment. In return, Enron received economic interests in the Entities, $309 million in notes receivable, of which $259 million is recorded at Enron's carryover basis of zero, and a special distribution from the Entities in the form of $1.2 billion in notes receivable, subject to change in the principal for amounts payable by Enron in connection with the execution of additional derivative instruments. Cash in these Entities of $172.6 million is invested in Enron demand notes. In addition, Enron paid $123 million to purchase sharer-settled options from the Entities on 21.7 million shares of Enron common stock. The Entities paid Enron $10.7 million to terminate the share-settled options on 14.6 million shares of Enron common stock outstanding. In late 2000, Enron entered into share-settled collar arrangements with the Entities on 15.4 million share of Enron common stock. Such arrangements will be accounted for as equity transactions when settled.
>
> In 2000, Enron entered into derivative transactions with the Entities with a combined notional amount of approximately $2.1 billion to hedge certain merchant investments and other assets. Enron's notes receivable balance was reduced by $36 million as a result of premiums owed on derivative transactions. Enron recognized revenues of approximately $500 million related to the subsequent change in the market value of these derivatives, which offset market value changes of certain merchant investments and price risk management activities. In addition, Enron recognized $44.5 million and $14.1 million of interest income and interest

expense, respectively, on the notes receivable from and payable to the Entities.

63. The 2000 Form 10-K was signed by each of the Individual Defendants. It contained an audit representation letter signed by defendant Andersen, which stated without qualification that Andersen had completed an audit conducted in conformity with generally accepted auditing standards, and that the financial statements of Enron were in conformity with generally accepted accounting principles.

64. The 2000 financial statements were false. Because, inter alia, of the failure to consolidate JEDI, Chewco, and LJM1, and the improper accounting for the notes receivable from Raptor, net income was overstated by $132 million; earnings were overstated by $0.15 per share; debt was understated by $628 million; and equity was overstated by $1,064 million.

65. Enron's quarterly report on Form 10-Q for the quarter ending March 31, 2001, which was filed with the SEC on May 15, 2001, reported net income and diluted earnings per share for the quarter of $425 million and $0.49, respectively. Reported assets at March 31, 2001 were $67 billion, including $3.6 billion goodwill, $5.7 billion investments in and advances to unconsolidated subsidiaries, and $7.2 billion "Other." The first quarter 2001, Form 10-Q further reported that cash flow from operating activities were negative $464 million in the quarter and that cash flows from investing activities in that period were negative $1.1 billion.

66. The first quarter 2001 Form 10-Q revealed that debt as a percentage of total capitalization was 44.2% at March 31, 2001, reflecting increased debt, including the issuance of $1.2 billion of notes payable in the quarter. The first quarter 2001 Form 10-Q included the following statements concerning related party transactions:

> During the first quarter of 2001, Enron entered into transactions with limited partnerships (the Related Party), whose general partner is a senior officer of Enron.
>
> * * *
>
> Enron entered into transactions with the Related Party to hedge certain merchant investments and other assets. As part of these transactions, Enron has entered into agreements with entities formed in 2000 (the Entities), which included the obligation to deliver 12 million shares of Enron common stock in March 2005 (the Commitment) and entered into derivative instruments which eliminated the contingent nature of existing restricted forward contracts executed in 2000. The Commitment and the shares to be delivered under the derivative instruments are restricted through March 2005. In exchange, Enron received note receivables from the Entities totaling approximately $827.6 million. In addition, Enron entered into share settled costless collar arrangements with the Entities on the 12 million shares of Enron common stock. Such transactions will be accounted for as equity transactions when settled. Enron received a $6.5 million note receivable from the Entities to terminate share-settled options on 7.1 million shares of Enron common stock. The transactions resulted in non-cash increases to non-current assets and equity.

67. In its second quarter 2001, Form 10-Q Enron reported information about related partly transactions, as follows:

> In the first half of 2001, Enron recognized net revenues of approximately $241.1 million (of which $5.0 million related to the second quarter), primarily related to the change in the market value of derivatives instruments entered into with the Entities in 2000 to hedge certain merchant investments and other assets. Revenues recognized on the derivative instruments offset market value changes of certain merchant investments and price risk management activities. In addition, Enron and the Entities terminated certain derivative instruments (originally entered into in 2000) with a combined notional value of approximately $727.2 million. Enron received note receivables from the Entities for approximately $133.3 million related to such terminations. At June 30, 2001, cash in the Entities of $156 million was invested in Enron demand notes. Enron recognized $63 million and $10 million of interest income and interest expense, respectively, on

> notes receivable from and notes payable to the Entities. In the second quarter of 2001, Enron acquired investments from the Partnerships for approximately $36.6 million.
>
> In the first half of 2001, Enron received approximately $241.8 million from Whitewing Associates, LP (Whitewing), an unconsolidated equity affiliate, related to securitizations. In the second quarter of 2001, Enron acquired investments from Whitewing for approximately $28.8 million. No gains were recorded by Enron in connection with these transactions. Management believes that these transactions are reasonable compared to those which could have been negotiated with third parties.

ADDITIONAL REASONS THE ABOVE-LISTED STATEMENTS WERE MATERIALLY MISLEADING

68. In addition to the misrepresentations stemming from Enron's improper consolidation techniques and improper accounting for Raptor. The above-listed statements were materially misleading for the following reasons:

(a) Enron had overvalued the assets and equity associated with its investments in Azurix Corp., by $600 million as evidenced by charges of $326 million in the fourth quarter of 2000, relating to impairment of Azurix's Argentina assets, and a second write down of an $274 million announced at the close of the Class Period;

(b) Enron had overvalued its equity investment in The New Power Co. by $274 million, as evidenced by a write down it announced at the close of the Class Period. In fact, the value of New Power Co. declined in the fall of 2000, almost a year before Enron recognized this impairment on its financial statements.

(c) Enron deceived investors concerning the true amount of the company's purported assets that consisted of good-will, by failing to disclose that in addition to the $3.4 billion of goodwill listed on its balance sheet, up to $2.6 billion attributed to the value of unconsolidated subsidiaries consisted of goodwill. Thus, goodwill represented well over half of reported shareholders' equity. At the end of the Class Period, the Company admitted that a $200 million goodwill adjustment (writedown) was likely. This deceived investors as to the amount of the Company's tangible assets.

(d) In 2001, Enron significantly overvalued the assets it held in a money-losing broadband communications business segment. At the end of the Class Period, the Company had a $600 million investment in the business segment, which was losing money at the rate of $80 million per quarter.

(e) Enron significantly overvalued assets associated with its power plant business on the West Coast of India, which after having represented that it would charge less than competitors experienced such dramatic cost overruns that it charged three times as much for electricity as existing suppliers in the same region. In fact, according to the Company, the Company's $600 billion overall global assets were unprofitable and produced only "modest" earnings before interest and taxes.

(f) As a consequence of the above, the true facts regarding Enron's liquidity and capital resources were hidden from the public. On October 24, 2001, The Wall Street Journal reported that according to an Enron executive, the Company might have to come up with several hundred million dollars to cover potential shortfalls associated with its investment vehicles. Covering such shortfalls could require issuing additional Enron shares.

THE TRUTH EMERGES

69. On October 16, 2001, Enron announced that it had lost $1.2 billion in equity in connection with the recall of 55 million shares. The 55 million shares had been repurchased by

Enron, as the company "unwound" its participation in the LJM2 transactions. These shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments. Subsequently, both the value of Enron's stock and the value of the broadband investments hedged by the entity dropped sharply. As a result, Enron decided essentially to dissolve the financing vehicle and reacquire the shares. When Enron reacquired the shares, it also canceled the note it had received from the entity.

70. On October 24, 2000, The New York Times, reported the statements by a securities analyst that an Enron owed almost $1 billion on debt that was guaranteed by Enron but had no assets other than one-third of Azurix Corp. Noting that Enron had paid about $300 million to buy a third of Azurix stock from public shareholders and had since taken write downs on its investment in Azurix, the analyst asked why the company was not setting up reserves to cover its exposure on that debt, which under a complicated arrangement could end up being satisfied through the issuance of Enron shares. On October 24, 2001, the Company announced that defendant Fastow was taking a "leave of absence" and had been replaced. Moreover, an SEC inquiry into the related party transactions has been announced.

71. On November 8, 2001, Enron announced that its financial statements for the previous four years had not been prepared in conformity with GAAP, due to the improper consolidation and equity accounting discussed above. On the same date, Enron and Dynegy, Inc. announced a proposed Merger, through which Dynegy would purchase Enron. However, the

merger was contingent on Enron's maintaining existing ratings from bond rating agencies on its outstanding debt.

72. On November 19, 2001, Enron filed a From 10-Q with the Securities Exchange Commission for the third quarter of 2001. On this filing, Enron disclosed that it had only $1 billion in cash, and that it was required to repay a $690 million note within days.

73. As Enron continued to face a liquidity crisis, several ratings agencies downgraded its bonds to junk status. This effectively precluded Enron from refinancing its existing debt as it came close to maturity. However, through the month of November, 2001, Enron's debt maintained most of its value due to the expectation that the healthier Dynegy would be assuming Enron's debts.

74. On November 28, 2001, Dynegy announced that it was withdrawing from its agreement to merge with Enron. Dynegy's chairman, Chuck Watson, publicly attributed the withdrawal to revelation of Enron's financial condition that appeared in the third quarter Form 10-Q, and to bond ratings downgrades by Moody's and other bond rating organizations. He also stated that Dynegy had been misled as to Enron's true financial condition.

75. On Sunday, December 2, Enron filed for bankruptcy protection in the Southern District of New York. Enron's bonds have lost approximately 80% of their value since October 23, with most of the loss occurring after Dynegy withdrew from the Proposed Merger. For example, Enron's zero coupon bonds had traded at 59 in early October, in the same range as throughout 2001. On October 24, after the initial revelations, they fell only to 55. On November 12, after Enron published its Restatement, the same bonds traded at 51. As late as November 28,

shortly before Dynegy announced its withdrawal, the bonds traded at 36. By December 3, following Enron's bankruptcy filing, they had fallen to 13.

MOTIVATIONS OF EACH OF THE DEFENDANTS

76. During the Class Period, while in possession of material inside information concerning all of the facts alleged above, each of the defendants enriched himself to an extraordinary extent by selling personal holdings of Enron common stock at artificially inflated prices:

(a) Defendant Lay's proceeds from his personal Enron common stock sales exceeded $199 million;

(b) Defendant Skilling's proceeds from his personal Enron common stock sales exceeded $183 million;

(c) Defendant Fastow's proceeds from his personal Enron common stock sales exceeded $29 million. In addition, Fastow enjoyed additional millions in profits from his association with the partnerships doing business with Enron discussed above.

77. Defendant Andersen, purportedly Enron's "independent auditor", was motivated to participate in the fraudulent scheme by the enormous fees that it received from Enron. In the year 2000, Andersen received $25 million in auditing fees, and an additional $27 million for "business processing and risk management consulting, tax compliance and consulting, due diligence procedures related to acquisitions or other activities, work performed in connection with registration statements and various statutory or other audits," according to Enron's 2001 proxy statement. If Andersen had refused to certify Enron's financial statements, it would have lost this source of revenue.

COUNT I
AGAINST ALL DEFENDANTS FOR VIOLATIONS
OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5

78. Plaintiff repeats and realleges each and every preceding allegation as if fully set forth herein.

79. Each of the defendants: (a) knew or had access to the material adverse non-public information about Enron's financial transactions; and (b) participated in drafting, reviewing and/or approving the misleading statements, releases, reports and other public representations of and about Enron.

80. During the Class Period, defendants, with knowledge of or reckless disregard for the truth, disseminated or approved the false statements specified above, which were misleading in that they contained material misrepresentations or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

81. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

(a) Employed devices, schemes and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Enron common stock during the Class Period.

82. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices to acquire Enron bonds. Plaintiff and the Class would not have purchased interests in Enron bonds at the prices they paid, or at all, if they had been aware that the market prices had been artificially inflated by defendants' materially misleading statements.

COUNT II
AGAINST THE INDIVIDUAL DEFENDANTS FOR
VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT

83. Plaintiff repeats and realleges each and every preceding allegation as if fully set forth herein.

84. The Individual Defendants were controlling persons of Enron during the Class Period within the meaning of §20(a) of the Exchange Act. By reason of their positions as officers and directors of Enron, the Individual Defendants had the power and authority to cause Enron to engage in the wrongful conduct complained of herein.

85. By reason of such wrongful conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of the Enron common stock during the Class Period.

BASIS OF THE ALLEGATIONS

86. Plaintiff has made the foregoing allegations, other than those concerning the named plaintiff, based upon the investigation of plaintiff's counsel, which included a review of Enron's SEC filings, securities analysts' reports and advisories about the Company, press releases issued by the Company and press conferences at which corporate representatives spoke, media

reports about the Company including extensive reports in The New York Times, The Wall Street Journal, The Street.com and Bloomberg's Wire Service published in the past two months. It is believed that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

WHEREFORE, plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, certifying plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and their counsel as class counsel;

(b) Awarding compensatory damages in favor of plaintiff and other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Ordering that the Individual Defendants disgorge their profits from their personal sales of Enron securities at artificially inflated prices;

(d) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(e) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: December 21, 2001

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complaint.wpd

ENRON CORPORATION
CERTIFICATION PURSUANT TO THE FEDERAL SECURITIES LAWS

I, Colin M. Lancaster, on behalf of Plaintiff Staro Asset Management, L.L.C., duly swears and says, as to the claims asserted under the federal securities laws, that:

1. I am duly authorized to act on behalf of Plaintiffs. I am General Counsel of Staro Asset Management, L.L.C.

2. I have reviewed the complaint to be filed on behalf of Plaintiff. I approve of the contents, and I authorize that it be filed.

3. Plaintiff did not purchase the security that is the subject of this action at the direction of my counsel or in order to participate in this private action.

4. Plaintiff is willing to serve as a representative plaintiff on behalf of the class, including providing testimony at deposition and trial, if necessary.

5. Plaintiff's transactions in the bond securities of Enron Corp, between and including December 21, 1998 through November 30, 2001 (the "Class Period") are listed on the attached pages.

6. Plaintiff has sought to serve as a class representative in one other action filed under the United States federal securities laws in the past three (3) years preceding the date on which this certification is signed; In re: IBP/Tysons Secur. Litig. (D. Del. 2001).

7. Plaintiff has not and will not accept any payment for serving as representative plaintiffs on behalf of the class beyond my pro rata share of any recovery, except for any award for reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered by the court.

8. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of December, 2001, at 1500 West Market Street, Mequon, Wisconsin.

STARO ASSET MANAGEMENT, L.L.C.

By: ______________________

Colin M. Lancaster
General Counsel

STARO ASSET MANAGEMENT, LLC affiliates' Enron bond Investements

ENRON 0.0 BOND TRADES

DATE	Type	144A OR REG	Quantity	Price	Shepard	Stark	SWAP Deutschebank Shepard	Stark	FIRST UNION Shepard	Stark	NATIONS Shepard	Stark
03/22/01	B	ENE0.0A	25,000,000	58.956	12,500,000	12,500,000						
03/26/01	S	ENE0.0A	25,000,000	59	(12,500,000)	(12,500,000)						
03/26/01	B	ENE0.0A	25,000,000	59			12,500,000	12,500,000				
04/04/01	B	ENE0.0A	15,000,000	59.25			7,500,000	7,500,000				
04/04/01	S	ENE0.0A	15,000,000	59.25	(7,500,000)	(7,500,000)						
04/04/01	S	ENE0.0A	28,600,000	59.5			(14,300,000)	(14,300,000)				
04/04/01	B	ENE0.0A	15,000,000	59.82	7,500,000	7,500,000						
05/30/01	B	ENE0.0A	10,000,000	59.53	5,000,000	5,000,000						
05/30/01	S	ENE0.0A	10,000,000	59.53	(5,000,000)	(5,000,000)						
06/01/01	B	ENE0.0A	20,000,000	59.7057	10,000,000	10,000,000						
6/1/01	S	ENE0.0A	20,000,000	59.7057	(10,000,000)	(10,000,000)						
6/12/01	B	ENE0.0A	15,000,000	59.703	7,500,000	7,500,000						
6/13/01	S	ENE0.0A	15,000,000	61.25	(7,500,000)	(7,500,000)						
6/13/01	B	ENE0.0A	15,000,000	61.25					7,500,000	7,500,000		
7/26/01	B	ENE0.0A	10,000,000	59.375	5,000,000	5,000,000						
7/27/01	S	ENE0.0A	10,000,000	59.375	(5,000,000)	(5,000,000)						
10/31/01	S	ENE0.0	1,000,000	47					-	(1,000,000)		
12/4/01	B	ENE0.0A	4,400,000	14	2,200,000	2,200,000						
12/5/01	B	ENE0.0A	5,500,000	15	-	5,500,000						
12/5/01	S	ENE0.0A	5,500,000	11	-	(5,500,000)						
12/5/01	B	ENE0.0A	10,000,000	13	5,000,000	5,000,000						
12/5/01	CONVERSION	ENE0.0A	4,250,000				(250,000)	(4,000,000)				
12/6/01	S	ENE0.0A	10,000,000	13	(5,000,000)	(5,000,000)						
12/6/01	B	ENE0.0A	10,000,000	13					5,000,000	5,000,000		
144A POSITION AS OF 12/20/01					2,200,000	2,200,000	5,450,000	1,700,000	12,500,000	11,500,000		
9/27/01	B	ENE0.0	5,000,000	58.75	2,500,000	2,500,000						
10/5/01	B	ENE0.0	10,000,000	59.5	5,000,000	5,000,000						
10/9/01	B	ENE0.0	15,000,000	59							7,500,000	7,500,000
10/9/01	S	ENE0.0	15,000,000	59	(7,500,000)	(7,500,000)						
10/10/01	B	ENE0.0	5,000,000	58.25	2,500,000	2,500,000						
10/22/01	S	ENE0.0	2,500,000	57.5	-	(2,500,000)						
10/22/01	B	ENE0.0	2,500,000	55.75	1,250,000	1,250,000						
10/22/01	B	ENE0.0	2,500,000	57.5					-	2,500,000		
10/22/01	B	ENE0.0	5,000,000	55.75	2,500,000	2,500,000						
10/24/01	S	ENE0.0	3,750,000	55.5	-	(3,750,000)						
10/24/01	B	ENE0.0	3,750,000	56.5			-	3,750,000				
10/24/01	B	ENE0.0	10,000,000	52.75	5,000,000	5,000,000						
10/25/01	S	ENE0.0	5,000,000	52.5	-	(5,000,000)						
10/25/01	B	ENE0.0	5,000,000	52.5			-	5,000,000				
10/25/01	B	ENE0.0	5,000,000	51.625	2,500,000	2,500,000						
10/25/01	B	ENE0.0	5,000,000	51.875	2,500,000	2,500,000						

10/25/01	S	ENE0.D	5,000,000	51.625	(2,500,000)	(2,500,000)		
10/26/01	B	ENE0.D	2,500,000	52			-	2,500,000
10/26/01	S	ENE0.D	2,500,000	52	-	(2,500,000)		
10/26/01	B	ENE0.D	10,000,000	50.5	5,000,000	5,000,000		
10/28/01	S	ENE0.D	10,000,000	51.5	(5,000,000)	(5,000,000)		
10/29/01	B	ENE0.D	9,000,000	49.75	1,500,000	1,500,000		
10/30/01	S	ENE0.D	1,500,000	49.5	-	(1,500,000)		
10/30/01	B	ENE0.D	1,500,000	49.5			-	1,500,000
10/30/01	S	ENE0.D	1,000,000	46.9375	(1,000,000)	(1,000,000)		
10/31/01	B	ENE0.D	1,000,000	47	-	1,000,000		
10/31/01	B	ENE0.D	2,200,000	48	1,100,000	1,100,000		
10/31/01	S	ENE0.D	1,000,000	47.9375	(500,000)	(500,000)		
11/1/01	B	ENE0.D	10,000,000	45.75	5,000,000	5,000,000		
11/2/01	B	ENE0.D	1,500,000	42.75	750,000	750,000		
11/5/01	B	ENE0.D	750,000	43.25			-	750,000
11/5/01	S	ENE0.D	750,000	43.25	-	(750,000)		
11/5/01	B	ENE0.D	5,600,000	43.25			-	5,600,000
11/5/01	S	ENE0.D	5,600,000	43.25	-	(5,600,000)		
11/7/01	B	ENE0.D	2,500,000	37	1,250,000	1,250,000		
11/8/01	S	ENE0.D	1,250,000	42.5	-	(1,250,000)		
11/8/01	B	ENE0.D	1,250,000	42.5			-	1,250,000
11/9/01	B	ENE0.D	2,000,000	50	1,000,000	1,000,000		
11/9/01	B	ENE0.D	2,000,000	42	1,000,000	1,000,000		
11/9/01	S	ENE0.D	2,000,000	50	(1,000,000)	(1,000,000)		
11/9/01	S	ENE0.D	2,000,000	47	(1,000,000)	(1,000,000)		
11/12/01	S	ENE0.D	1,250,000	51	(1,250,000)			
11/12/01	S	ENE0.D	1,250,000	51	-	(1,250,000)		
11/13/01	B	ENE0.D	1,250,000	46	-	1,250,000		
11/13/01	S	ENE0.D	500,000	50.5	-	(500,000)		
11/13/01	S	ENE0.D	1,000,000	50.25	-	(1,000,000)		
11/13/01	S	ENE0.D	500,000	50	(500,000)	-		
11/13/01	S	ENE0.D	500,000	50	-	(500,000)		
11/13/01	S	ENE0.D	1,000,000	50.25	(1,000,000)	-		
11/13/01	S	ENE0.D	500,000	50.5	(500,000)	-		
11/14/01	S	ENE0.D	1,250,000	46			-	(1,250,000)
11/14/01	B	ENE0.D	500,000	49	-	500,000		
11/14/01	S	ENE0.D	500,000	49			-	(500,000)
11/16/01	B	ENE0.D	1,500,000	49.5	-	1,500,000		
11/16/01	S	ENE0.D	1,500,000	49.5			-	(1,500,000)
11/20/01	B	ENE0.D	5,000,000	39	2,500,000	2,500,000		
11/20/01	B	ENE0.D	6,000,000	36.9375	3,000,000	3,000,000		
11/20/01	S	ENE0.D	1,000,000	45.5	(500,000)	(500,000)		
11/21/01	S	ENE0.D	5,000,000	37	-	(5,000,000)		
11/21/01	B	ENE0.D	5,000,000	37			-	5,000,000
11/21/01	B	ENE0.D	2,000,000	36	1,000,000	1,000,000		
11/21/01	B	ENE0.D	4,000,000	35.1875	2,000,000	2,000,000		
11/21/01	B	ENE0.D	1,000,000	33.5	500,000	500,000		
11/21/01	B	ENE0.D	9,000,000	35.25	1,500,000	1,500,000		
11/21/01	B	ENE0.D	2,000,000	34.5	1,000,000	1,000,000		
11/26/01	S	ENE0.D	6,000,000	35.25	-	(6,000,000)		
11/26/01	B	ENE0.D	6,000,000	35.25			-	6,000,000
11/27/01	B	ENE0.D	500,000	36.0625	250,000	250,000		
11/27/01	S	ENE0.D	2,500,000	35	(2,500,000)	-		
11/27/01	S	ENE0.D	2,500,000	35	-	(2,500,000)		

11/28/01	S	ENE0.0	2,250,000	36			-	(2,250,000)				
11/28/01	B	ENE0.0	2,250,000	36	-	2,250,000						
11/28/01	B	ENE0.0	3,000,000	30	1,500,000	1,500,000						
11/28/01	B	ENE0.0	2,500,000	15	1,250,000	1,250,000						
11/28/01	B	ENE0.0	1,000,000	29	500,000	500,000						
11/28/01	S	ENE0.0	6,250,000	15.98	(6,250,000)	-						
11/28/01	S	ENE0.0	2,000,000	17	(1,000,000)	(1,000,000)						
11/28/01	S	ENE0.0	3,000,000	15.5	(1,500,000)	(1,500,000)						
11/28/01	S	ENE0.0	6,250,000	15.98	-	(6,250,000)						
11/29/01	B	ENE0.0	5,500,000	15	-	5,500,000						
11/30/01	B	ENE0.0	15,000,000	13	7,500,000	7,500,000						
11/30/01	S	ENE0.0	15,000,000	13							(7,500,000)	(7,500,000)
11/30/01	B	ENE0.0	2,500,000	29	1,250,000	1,250,000						
11/30/01	S	ENE0.0	3,500,000	16	(1,750,000)	(1,750,000)						
12/3/01	S	ENE0.0	2,000,000	13.4375	(1,000,000)	(1,000,000)						
12/4/01	S	ENE0.0	2,500,000	15.1	(2,500,000)	-						
12/4/01	S	ENE0.0	2,500,000	15.1	-	(2,500,000)						
12/5/01	S	ENE0.0	5,500,000	15	-	(5,500,000)						
12/5/01	S	ENE0.0	6,000,000	11			-	(6,000,000)				
12/5/01	B	ENE0.0	6,000,000	11	-	6,000,000						
12/5/01	B	ENE0.0	4,000,000	15	2,000,000	2,000,000						
12/5/01	B	ENE0.0	2,000,000	15.5	1,000,000	1,000,000						
12/5/01	S	ENE0.0	1,000,000	15.4375	(500,000)	(500,000)						
12/5/01	CONVERSION	ENE0.0	4,250,000				250,000	4,000,000				
12/7/01	S	ENE0.0	1,000,000	14	(500,000)	(500,000)						
12/12/01	S	ENE0.0	7,000,000	13.4375	(3,500,000)	(3,500,000)						
	REGISTERED POSITION AS OF 12/20/01				23,850,000	2,500,000	250,000	23,950,000	-	2,500,000	-	-
10/30/01	S	ENE6.75	2,000,000	75.5	(1,000,000)	(1,000,000)						

LIFE-TO-DATE ENRON P/L–BONDS
A/O 12/17/01

INVESTMENT	DESCRIPTION	REMAINING QUANTITY	REMAINING COST BASIS	REMAINING MARKET VALUE	PROFIT/LOSS AMOUNTS REALIZED	UNREALIZED	TOTAL
ENE0.0	ENRON COPR 0.0% CV BOND	52,950,000	11,035,906	5,824,500	(31,275,531)	(5,211,406)	(36,486,938)
ENE0.0A	ENRON CORP 0.0% CV BOND 144A	35,550,000	6,922,000	3,377,250	100,050	(3,544,750)	(3,444,700)
ENE6.75	ENRON CORP 6.75% BOND	(2,000,000)	(1,510,000)	(370,000)	-	1,140,000	1,140,000
			16,447,906	8,831,750	(31,175,481)	(7,616,156)	(38,791,638)

BERGER & MONTAGUE, P.C.

EXHIBIT 3

BERGER & MONTAGUE, P.C.

THE FIRM:

Berger & Montague, P.C. has been engaged in the practice of complex and class action litigation for 30 years. The firm has developed both a national practice and reputation for its expertise and has been recognized by courts throughout the country for its ability and experience in handling major litigation, particularly in the fields of securities, antitrust, and mass tort litigation. In many of these actions, the Berger firm has played a principal or lead role. The firm is rated "av" in Martindale-Hubbell. Currently, the firm consists of approximately 50 lawyers, 16 paralegals and an experienced support staff. The firm's successes are due to the committed efforts of its more than 100 creative and dedicated employees.

Berger & Montague was founded in 1970 by David Berger (initially as David Berger, P.A.), to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger pioneered the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas including securities, employment discrimination, civil rights and mass torts. Since the firm's inception, its complement of nationally recognized lawyers has represented both plaintiffs and defendants in antitrust, securities fraud, environmental matters, mass tort, employment (ERISA) and other areas. The firm has recovered billions of dollars for its clients in litigation in these areas. In complex litigation, particularly in areas of class action litigation, Berger & Montague, P.C., has established new law and forged the path for recovery for victims of fraud and other wrongdoing.

The firm has also been involved in a series of notable cases among the most important in the history of civil litigation over the last 30 years. For example, the firm was one of the principal counsel for plaintiffs in the Drexel Burnham Lambert - Michael Milken securities and bankruptcy litigation where claimants recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of Drexel in the late 1980's. In the area of environmental litigation, the firm was also among the principal trial counsel in the Exxon Valdez Oil Spill case in Anchorage, Alaska which resulted in a record punitive damages award of $5 billion against Exxon. The case is currently pending on appeal. Berger & Montague was also lead counsel in the School Asbestos Litigation where a national class of secondary and elementary schools recovered in excess of $300 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis.

In the area of securities litigation, the firm represents institutional investors such as the City of Philadelphia and the Teachers' Retirement System of Louisiana as well as numerous individual investors with relatively small damages. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon where $88.2 million and $240 million verdicts were obtained. Other major class and derivative securities cases in which significant recoveries were obtained and where Berger & Montague served as a lead counsel were cases involving the following companies: BankAmerica (derivative settlement of $39.25 million); Bristol-Myers Squibb (class settlement of $20 million); Crocker Bank (class settlement of $35 million); Raychem (class settlement of $19.5 million); Genentech (class settlement of $29 million); Home Shopping Network (class settlement of $18.2 million); Ikon Office Solutions, Inc. (partial class settlement of $111 million); Long Island Lighting Company ("LILCO") (class settlement of $48.5 million); Medaphis (class settlement of $72.5 million); Deloitte & Touche (arising out of the Medaphis audit) (class settlement of $24 million); Motorola (class settlement of $15 million); Oak Industries (class settlement in excess of $35 million); Philadelphia Electric ($34 million derivative settlement); Policy Management (class settlement of $32 million); Public Service Company of New Mexico (class and derivative settlements of $33 million); Revco (settlements totaling $36 million); Rite Aid (class settlement of $193 million); SmithKline Beecham (class settlement of $22 million); Sotheby's Holdings (class settlement of $70 million); Southmark (several settlements totaling $73 million); Storage Technology ($55 million settlement); Sunrise Medical (class settlement of $20 million); Subaru (class settlement of $70 million); Synergen (class settlement of $28 million); Tucson Electric Power (class and derivative settlements of $30 million); U.S. Bioscience (class settlement valued at $15.25 million); United Telecommunications (class settlement of $28 million); and Waste Management (class settlement valued at $220).

In the area of antitrust litigation, Berger & Montague, P.C. has served as lead or co-lead counsel in many of the major civil antitrust cases over the last 25 years including *In re Corrugated Container Antitrust Litigation* in which the firm recovered in excess of $366 million; the Infant Formula case (recovery of $125 million); and the Retail Drug price fixing case (partial settlements of $700 million). As sole lead counsel for a national class of more than 100,000 gasoline dealers against 13 major oil companies in the Bogosian versus Gulf Oil matter, the firm achieved settlements on the eve of trial yielding more than $35 million plus equitable relief.

In the area of employee and retirement benefits, Berger & Montague has earned a nationwide reputation for its experience. This experience has included leading roles in precedent-setting cases relating to reduction or elimination of retiree medical benefits; mismanagement of retirement plan and ESOP assets; and benefits reductions in connection with corporate mergers, acquisitions, and divestitures. The firm's employee benefits and ERISA practice concentrates on representation of employees and retirees.

The firm's case load involves many high profile cases. The firm filed one of three currently pending class actions brought on behalf of Holocaust survivors against the three largest Swiss banks. This important and historic case, which has recently been settled for $1.25 billion, will recover assets deposited in the banks which have not been returned as well as assets looted by the Nazis and which were knowingly laundered through the banks. The firm is also one of the lead counsel in World War II "slave labor" and "forced labor" cases. The settlement of these cases, just reached in December, 1999, is 10 billion deutschemarks (approximately $5.2 billion).

We are proud of the firm's practice and the firm's personnel.

Sherrie R. Savett

Sherrie R. Savett is a graduate of the University of Pennsylvania (B.A. 1970 *summa cum laude with distinction in English*; J.D. 1973) and a member of Phi Beta Kappa. She is a managing principal and shareholder of Berger & Montague as well as Chair of the firm's Securities Litigation Department. Ms. Savett is admitted to practice law in the Commonwealth of Pennsylvania and in numerous federal courts throughout the country.

Ms. Savett has lectured at the Wharton School of the University of Pennsylvania and at the Stanford Law School on prosecuting shareholder class actions. Ms. Savett has frequently been a panelist on various American Bar Association, Practicing Law Institute ("PLI"), and Pennsylvania and Philadelphia Bar Associations panels concerning securities class action litigation and the use of class actions in consumer litigation. She is the author of several papers on various aspects of securities and complex litigation. Her writings include: "The Merits Matter Most and Observations on a Changing Landscape Under the Private Securities Litigation Reform Act of 1995," 39 Arizona Law Review 525 (1997); "Everything David Needs to Know to Battle Goliath," American Bar Association, The Brief, Tort & Insurance Practice Section, Spring 1991, Vol. 20, No. 3; "Prosecution of Derivative Actions: A Plaintiff's Perspective"; "THE DERIVATIVE ACTION: An Important Shareholder Vehicle for Insuring Corporate Accountability in Jeopardy"; "Preventing Financial Fraud"; "Shareholder Class Actions in the Post-Reform Act Era"; and "Securities Class Actions Since the 1995 Reform Act: A Plaintiff's Perspective." (Published either by the Practising Law Institute or American Bar Association).

In the March 1999 issue of Philadelphia Magazine, Ms. Savett was named as one of the best lawyers in the Philadelphia region based on a 4,000 lawyer survey.

Ms. Savett has served as lead counsel or as a member of the Executive Committee in a large number of important securities and consumer class actions in federal and state courts throughout the country, including actions against the following companies:

Advanced Micro Devices (class settlement of $11.5 million);
BankAmerica (derivative settlement of $39.25 million);
Bristol-Myers Squibb (class settlement of $20 million);
Cephalon (class settlement of $17 million);
Coastal Physician Group (class settlement of $8.15 million);
Crocker Bank (class settlement of $35 million);
Employee Solutions (class settlement valued at $15 million);
Fidelity/Micron (class settlement of $10 million);
Genentech (class settlement of $29 million);
Home Shopping Network (class settlement of $18.2 million);
Long Island Lighting Company ("LILCO") (class settlement of $48.5 million);
Medaphis Corporation (class settlement of $72.5 million);
Deloitte & Touche (arising out of the Medaphis audit)(class settlement of $24 million);
MicroWarehouse (class settlement valued at $30 million);
Motorola (class settlement of $15 million);

Oak Industries (class settlement in excess of $35 million);
Policy Management (class settlement of $32 million);
Public Service Company of New Mexico (class and derivative settlements of $33 million);
Raychem (class settlement of $19.5 million);
Rite Aid (class settlement of $193 million);
SmithKline Beckman (class settlement of $22 million);
Sotheby's Holdings (class settlement of $70 million);
Sunrise Medical (class settlement of $20 million);
Subaru (class settlement of $70 million);
Synergen (class settlement of $28 million);
U.S. Bioscience (class settlement valued at $15.25 million);
United Telecommunications (class settlement of $28 million);
Valujet (class settlement of $5 million);
W.R. Grace & Co. (derivative settlement of $8.5 million); and
Waste Management (class settlement of $220 million).

Ms. Savett has established several significant precedents in her 25 years of practice. Among them is the holding (the first ever in a federal appellate court) that municipalities are subject to the antifraud provisions, specifically Rule 10b, of the Securities Act of 1934, and that municipalities who issue bonds are not acting as an arm of the state and therefore are not subject to 11th Amendment immunity. (*Sonnenfeld v. City & County of Denver*, 100 F.3d 744 (10th Cir. 1996). In the U.S. Bioscience securities class action, a biotechnology case where critical discovery was needed from the federal Food and Drug Administration, the court ruled that the FDA may not automatically assert its administrative privilege to block a subpoena and it may be subject to discovery depending on the facts of the case. (*In re U.S. Bioscience Securities Litigation*, 150 F.R.D. 80 (E.D. Pa. 1993)). She litigated a seminal consumer class action in New Jersey state court where she obtained an appellate court decision in *Delgozzo v. Kenny*, 266 N.J. Super. 169, 628 A.2d 1080 (1993), setting forth the standard for establishing a consumer class action in New Jersey.

Ms. Savett has been active in community affairs. She has served as a member of the Board of Trustees for the Jewish Federation for more than a decade, is a member of the Board of Directors of the Philadelphia Chapter of the Weizman Institute and the American Jewish Committee and is a member of the Board of Trustees of the Philadelphia Bar Foundation.

Carole A. Broderick

Carole A. Broderick is a 1952 graduate of Cornell University where she received a Bachelor of Arts degree. She is a 1957 graduate of the University of Pennsylvania Law School, where she was awarded an L.L.B. and was a member of the Law Review. She has practiced before the Securities and Exchange Commission and actively participated in the prosecution and trial of complex securities and antitrust litigation. She is admitted to practice law in the Commonwealth of Pennsylvania.

Arthur Stock

Arthur Stock is a graduate of Yale University (B.A. with distinction in economics 1984) and the Duke University School of Law (J.D. with high honors 1991), where he served as Articles Editor of the *Duke Law Journal* and published, "Justice Scalia's Use of Sources in Statutory and Constitutional Interpretation: How Congress Always Loses," 1990 Duke L.J. 160. He was also a member of the Order of the Coif. From 1990 to 1991, he served as a law clerk to the Honorable Jackson L. Kiser in the United States District Court for the Western District of Virginia. Since joining the Berger firm in 1991, Mr. Stock has concentrated in securities class action and derivative litigation. Mr. Stock is admitted to practice law in the Commonwealth of Pennsylvania.

JUDICIAL COMMENDATIONS:

The standing of Berger & Montague, P.C. in successfully conducting major securities and antitrust litigation has been recognized by numerous courts. Examples are as follows:

In *In re AM International Securities Litigation,* approving an approximate $20 million settlement in cash and warrants, Judge Sprizzo addressed lead counsel, including members of the firm, as follows:

> [O]bviously you are all able lawyers. And I think the case was handled -- and I will say it for the record so you can put it in your next set of papers -- at least in my view, competently and expertly...

In *In re American Integrity Securities Litigation*, CCH Fed. Sec. L. Rep. ¶94,738 at p. 93,989 (E.D. Pa. 1989), where Berger & Montague was sole lead counsel, Judge Shapiro cited "the excellent results obtained" and awarded lead counsel an additional multiplier "warranted by the high quality of work including the management and coordination to avoid duplication of effort and ensure a prompt and efficient resolution of the litigation."

In *In re Art Materials Antitrust Litigation,* 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983), where the firm and Merrill Davidoff were co-lead counsel, Judge Krupansky, who had been elevated to the Sixth Circuit Court of Appeals, commented at p. 67,417:

> Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in the prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of a highly favorable result.

In *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27 (E.D. Pa. 1985), a nationwide antitrust class action wherein Berger & Montague was lead counsel, Judge Van Artsdalen recognized the efforts of class counsel in negotiating settlements including injunctive relief on the eve of trial in the face of severe obstacles:

> As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure. 621 F. Supp. at 31.

In *Charal v. Andes,* 88 F.R.D. 265, 267 (E.D. Pa. 1980), Judge Bechtle noted:

> ...Counsel in this case are highly experienced in securities litigation and have enjoyed nationwide respect in this area....

In *In re Coleco Securities Litigation,* Master File No. 83 Civ. 9199 (S.D.N.Y.), where the firm was the lead counsel, the court in approving the settlement stated in its opinion at pp. 28-29:

> ... I just want to comment on one thing and that is the point that has been made that the litigation has been conducted without unnecessary frills or consumption of time. And I must say that apart from my own observations of the progress of this case, I have consulted with the magistrate who shares the same view.
>
> * * *
>
> I am satisfied that able and sophisticated counsel on both sides have pursued the case on the merits and the fact that they are being generously compensated for their efforts is entirely as it should be.

In *Gross, et al. v. National Liquid Reserves, Inc., et al.,* CCH Fed. Sec. L. Rep. ¶ 99,618, at p. 97,424, the court found that:

> Counsel...are highly respected members of the bar and have substantial experience in shareholder class and derivative actions. Furthermore, the court

stated that "the actions were resolved with great efficiency..." at p. 97,426.

At the June 5, 1987 hearing in *In re E.F. Hutton Banking Practices Litigation,* where the firm was lead counsel, Judge Knapp stated in his opinion at pp. 35-36:

> [I] will say without question that I think the work was highly competent.... I will state unequivocally, I think the work has been extraordinarily competent.

In *In re Master Key Antitrust Litigation,* [1978-1] Trade Cases (CCH) ¶61,887 at pp. 73,725-73,726 (D. Conn. 1977), where Berger & Montague (Mr. Montague) was co-lead counsel and co-lead trial counsel, Judge Blumenfeld expressly found:

> ... The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions.

This firm was one of the lead counsel in *In re Oak Industries Securities Litigation.* In approving a $33 million cash settlement, the Honorable Harry R. McCue stated in his opinion at pp. 24-30:

> [T]his is an outstanding achievement, and it has been rarely achieved or equaled anywhere in the United States in similar class action securities litigation.
>
> * * *
>
> There can be no doubt that the public good was fully served by the attorneys for the plaintiffs in this case, because they invested their own time, their own money, they invested their special skills and knowledge to vindicate the rights and interests of the thousands of investors who invested their money and placed their trust in the integrity of the securities market.
>
> * * *
>
> I conclude that the achievement of plaintiffs' counsel under any of those tests was superior.
>
> * * *
>
> I think that the manner in which this case was handled and litigated by counsel for each of the defendants and counsel for the plaintiffs, this litigation, the way this was conducted, should serve as a textbook

example of how these cases should be conducted.

* * *

I think this is an example of how, with the combined skill, wisdom and experience of attorneys representing the plaintiffs and attorneys who are similarly skilled and experienced and wise representing the defendants, they sat down and resolved a very difficult situation; and if this case was in the hands of less-experienced, less-skilled, less-wise attorneys, I predict that this could have turned into a disaster.

Judge Joseph F. Anderson, Jr., at the final settlement hearing in *In re Policy Management Systems Corporation*, Civil Action No. 3:93-0807-17 (D. S.C.), approved a $32 million cash settlement plus accrued interest awarding 30% of the fund and expenses and interest on both sums, where Sherrie R. Savett served as co-lead counsel. He stated on May 25, 1995:

> I don't have a problem at all approving the settlement. In light of what you've said today and your submission to the Court and I am familiar with the case . . . it was a sharply litigated case, with good lawyers on both sides and I think it's an ideal case for settlement. It's the largest settlement I've been called upon to approve in my eight years as a judge.

In *Ratner v. Bennett*, Case No. 92-4701 (E.D. Pa., Memorandum of May 8, 1996), a case brought on behalf of bank stock purchasers in which Todd S. Collins was lead counsel, Judge Broderick wrote in his opinion approving the settlement and awarding attorney's fees and costs:

> The Court's review reveals that the class members were well served by attorneys who are highly experienced and nationally recognized in class action litigation generally and securities litigation in particular.

In re Revco Securities Litigation, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993), reported at, *inter alia*, 1993 Fed. Sec. L. Rep. (CCH) ¶97,809 (N.D. Ohio 1993), where the Honorable William K. Thomas, Senior District Judge for the United States District Court for the Northern District of Ohio, made the following observations:

> In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff and Martin I. Twersky, Esq. of Berger & Montague...

* * *

> ... Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich.

In *In re Sequoia Systems, Inc. Securities Litigation*, Civ. 93-11331-WD (D. Mass., Order of September 10, 1993), where Todd S. Collins was lead counsel, Judge Woodlock granted plaintiffs' counsel fee request on the basis of:

> ... the evaluation that I've made of this case and the quality of the counsel involved in this case and the speed with which relatively complex litigation has been resolved. I think that is a function of the quality of the counsel involved, their ability to get to the core of the case, the jugular of the case promptly, and effect a prompt resolution. That prompt resolution is a time value to the members of the class themselves.

In *Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.*, Civil Action No. PJM-92-3624 (D. Md.), an antitrust price-fixing case, in approving the settlement and attorneys' fees, on October 28, 1994, the Honorable Peter J. Messitte described plaintiffs' lead counsel (Merrill G. Davidoff of Berger & Montague, P.C.) as follows:

> .... although we will visit this again at the time of attorneys' fees, the counsel have been of the highest ability, frankly on both sides, which seems to me to mean not only does one reward able plaintiffs' counsel but they get rewarded because they deal with able defense counsel, more so.

Transcript of Settlement Approval Hearing, October 28, 1994 at p. 104. The court further noted:

> Obviously, high skill was required to perform the services here, and I'll revisit the issue of experience and ability in a moment, but this was not the kind of case that an average lawyer without special skill in the class action anti-trust field, it seems to me, could handle.
>
> * * *
>
> The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt,

> the plaintiffs' counsel are at the top of the profession in this favorable settlement for their clients, and to that extent they deserve to be rewarded.

Transcript of Settlement Approval Hearing, October 28, 1994 at pp. 112-114.

In Re: Subaru of America, Inc. Shareholder Litigation, where Sherrie R. Savett served as co-lead counsel, Judge Lowengrub stated:

> I think that the settlement achieved through the very skillful and diligent work of counsel on behalf of the shareholders was excellent. I cannot just say that it was -- it is fair and reasonable. It's an excellent result.

* * *

> It was done without the intervention of the Court. The Court was not burdened with a multiplicity of motions, management conferences, et cetera, that generally raise their head in this type of litigation or in any complex litigation.

Judge Stewart Dalzell, at the final settlement hearing of *In re U.S. Bioscience Securities Litigation*, Civil Action No. 92-0678, (E.D. Pa.) approved a $15.25 million settlement of a heavily litigated biotechnology securities class action, where Sherrie R. Savett served as co-lead counsel. He stated on April 4, 1994:

> The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett . . . , and the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come. Transcript pp. 39-40.

Judge Dalzell went on to describe the services of Mrs. Savett as "superb". (Transcript p. 46)

In *In re Warner Communications Securities Litigation,* 618 F. Supp. 735 (S.D.N.Y. 1985), where the firm was one of the lead counsel, the court stated in its opinion at pp. 748-49:

> ...The quality of the work of plaintiffs' counsel on this case is also demonstrated by the efficient manner of prosecution. Rather than engaging in long months of extensive motion practice... plaintiff's

FILED
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LARRY W. PROPES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MUZINICH & CO., INC., Individually and on behalf of all others similarly situated Plaintiff, SAFETY-KLEEN CORP., v. KENNETH W. WINGER, PAUL R. HUMPHREYS and MICHAEL BRAGAGNOLO Defendants.	C/A: 3:00-1145-17 ORDER No. ____ ON STATE STREET RESEARCH AND MANAGEMENT COMPANY'S MOTION TO INTERVENE

This action is one of over twenty cases filed against Safety-Kleen Corporation and some of its former officers and directors alleging violations of federal securities laws. Plaintiff Muzinich & Co., Inc., an institutional investor, purchased Safety-Kleen bonds that allegedly suffered a loss as a result of alleged misstatements made by various defendants in this case. Following a hearing on May 31, 2000, the court announced its tentative decision to appoint Muzinich co-lead plaintiff along with other investors (including owners of common stock) in a consolidated securities lawsuit. At the same time, the court announced its tentative decision to appoint Kirby McInerney & Squire as co-lead counsel for the plaintiff class.

Shortly after the court announced its tentative decision, but before an appropriate order could be entered, State Street Research & Management Co., another institutional investor who owns Safety-Kleen bonds, filed a motion to intervene and to oppose the appointment of Muzinich as lead plaintiff for the bond-holders.

After full briefing, the court conducted a hearing on August 2, 2000. In its brief and during oral argument, State Street argued that Muzinich, and its law firm, failed to properly comply with the provisions of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4, *et seq*. Specifically, State Street contends that the notice published in the first civil action against

EXHIBIT 4

Safety-Kleen and its officers and directors (*Forrest et al. v. Safety-Kleen et al.*, C/A No.: 3:00-736-17) did not indicate that the purported class action represented bond-holders as well as stock-holders. Although notices in some of the subsequently filed actions did refer to Safety-Kleen "securities," there were technical defects in some of the notices and, most importantly for purposes of State Street's motion, the notice filed by Muzinich preceded the complaint by approximately three weeks. The court agrees with State Street.

The PSLRA clearly requires that the complaint should precede the notice. Specifically, 15 U.S.C. § 78u-4(a)(3)(A)(i) provides, in pertinent part:

> *Not later than 20 days after the date on which the complaint is filed*, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class . . . of the pendency of the action . . . .

(emphasis added). Moreover, sub-section (II) of the same provision requires that the notice advise members of the purported plaintiff class "that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class." Muzinich's notice fails to include this important element.[1]

For the reasons stated in open court at the conclusion of the August 2, 2000 hearing, and because there has not been full compliance with the relevant provisions of the PSLRA, the court hereby orders Muzinich to file a new complaint (which may include claims and parties in addition

[1] Muzinich argues that only the first filed notice (*i.e.*, *Forrest*, C/A No.: 3:00-736-17) needed to have complied with the requirements of 78u-4(a)(3)(A)(i). The court disagrees. Section 78u-4(a)(3)(A)(ii) states:

> If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with the clause (i).

The court finds that because Muzinich's claim involved bonds, and not stocks, it was not asserting "substantially the same claim or claims." Therefore, Muzinich could not rely on the earlier filed notices related to the stock claims.

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to those presently involved in this case) within twenty days. Pursuant to the PSLRA provision quoted above, Muzinich shall file an appropriate notice. No sooner than sixty days and no later than ninety days after the filing of this notice, the court will conduct a hearing for the purpose of considering appointment of lead plaintiff and lead plaintiffs' counsel in this action.

In addition, because of potential conflicts, the court has reconsidered its earlier decision to combine this case with the *Forrest* case, which involves claims by owners of common stock. This case shall proceed as an independent case, although the court encourages the parties to coordinate discovery so that duplication and overlap may be avoided. In particular, the parties are strongly urged to conduct depositions in the stock-holder class action and this action together.

Finally, in light of the concerns expressed at the hearing regarding potential conflicts of interest between the share-holders and the bond-holders, the parties are invited to consider the question of whether the law firm of Ness Motley Loadholt Richardson & Poole should continue to act as Liaison Counsel in the consolidated stock-holder class action and this action.

IT IS SO ORDERED.

Joseph F. Anderson, Jr.
United States District Judge

August 3, 2000
Columbia, South Carolina