

Hearing Date: June 14, 2007 at 2 p.m.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

ENRON CORP, et al.,

Case No. 01-16034 (AJG)

Debtors.

Jointly Administered

ENRON CORP.,

Plaintiff,

Adversary Proceeding

No. 03-92677 (AJG)

v.

J.P. MORGAN SECURITIES, INC., et al.,

Defendants.

**REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

The Moving Defendants¹ submit this reply memorandum of law in support of their Motion to Compel Production of Documents (the "Motion to Compel") by Goldman, Sachs & Co. ("Goldman") concerning Goldman's involvement, role and/or participation in Project Truman between August and December 2001.

INTRODUCTION

On May 1, at a pre-motion conference, this Court found that the discovery sought by the Moving Defendants is relevant and appropriate and that Goldman's efforts to limit that

¹ Kelly Properties, Inc. ("Kelly"), Veritas Software Investment Corp. ("Veritas") and the UBS Defendants ("UBS") (collectively, the "Moving Defendants").

discovery were not appropriate. Transcript of Proceedings (May 1, 2007) (“May 1 Tr.”), at 4 (Opening Brief (“Br.”), Ex. A). Consistent with its pattern of tactical delay, Goldman ignored the Court’s guidance and continued to refuse to produce the requested documents, prompting the instant motion.

More than a month has passed since the Court advised Goldman that the Project Truman documents should be produced. Yet, in its Opposition Memorandum (the “Opposition Brief”), Goldman sets forth no new facts or arguments, relying instead on the same points it previously presented with respect to the pre-motion conference. These arguments failed then and fail now to justify Goldman’s refusal to produce the information sought, and this Court should grant the Motion to Compel and order Goldman to produce immediately all documents relating to Project Truman.

ARGUMENT

I. THE REQUESTED DOCUMENTS ARE RELEVANT TO GOLDMAN’S ALLEGED AGENCY RELATIONSHIP WITH ENRON

In this litigation, Goldman has asserted the affirmative defense that it acted solely as an agent and conduit in the commercial paper (“CP”) transactions such that it is not an initial transferee of Enron. This defense is relevant vis-à-vis Goldman’s position to Enron and to Goldman’s position relative to other defendants, including the Moving Defendants. The complete picture of the Enron CP buybacks, including whether Goldman actually was acting as Enron’s agent, cannot be understood without knowing the extent of Goldman’s role in Enron’s decision-making and the reasons that Goldman demanded an agency agreement from Enron that

only appears to have been signed after the CP buybacks began. The Project Truman documents are central to this inquiry.²

Goldman's claim that it has produced all Project Truman documents relevant to agency is nothing new, see April 17, 2007 letter of Goldman Sachs at 4; nor is Goldman's claim that Project Truman documents it has chosen not to produce have "nothing to do with the agency agreement between Enron and Goldman Sachs" (Opp. Br. at 20; see also May 25, 2007 letter of Goldman Sachs at 2; Transcript of Proceedings (April 19, 2007) ("April 19 Tr.") at 17, 38-39 (Attached hereto as Exhibit 1)).³ As before, the problem with Goldman's argument is that under the Federal Rules, other parties do not have to take Goldman's word on these issues.

Evidence on the timing of the agency agreement's negotiation and execution raises questions about the nature of Goldman's relationship with Enron in the period leading up to the CP transactions. As the Moving Defendants demonstrated in their opening brief, there is evidence to suggest that high level executives of Goldman and Enron discussed the concept, terms and conditions of the alleged agency agreement in a Project Truman meeting on the same day that the CP prepayments commenced. Deposition Exhibit 30,482 at 1; Deposition Exhibit 30,487 at 1 (Br. Ex. J, K). The Moving Defendants are entitled to the full range of Project Truman documents to investigate this and other connections between Project Truman and Goldman's alleged agency.

Despite Goldman's simplistic assertions to the contrary (i.e., there is an agreement, therefore Goldman is an agent), the question of whether Goldman acted as Enron's

² As the Court ruled at the May 1 pre-trial conference, documents regarding Project Truman limited to the one week time period before the CP buyback commenced are not sufficient. (May 1 Tr. at 4).

³ The fact that Goldman has offered nothing new underscores the tactical nature of its actions. Goldman sought the full 20 days to respond even though it had nothing to add to its prior arguments.

agent in the CP transactions is very much an open issue in this litigation. Goldman's lengthy but incomplete recitation of the discovery to date does not account for record evidence that suggests Goldman did not perform at least some of the transactions as agent. The record shows, for example, that Goldman and Enron executed the agency agreement on October 28, 2001, two full days after the CP prepayments began, and after many defendants, including some of the Moving Defendants had already sold CP back to Goldman. See Dep. Ex. 40,126 (Opp. Br. Ex. 6); UBS01185-86 (Attached hereto as Exhibit 2). Goldman also has pointed to no evidence suggesting that the Moving Defendants in any way knew about Goldman's alleged special status when they agreed to sell CP back to Goldman on October 26, 2001, or that Goldman had negotiated that special status at a time when it was undertaking a project to save Enron from the dire financial straits that enveloped it. To the contrary, the evidence suggests that the Moving Defendants were not informed of any alleged agency status when they sold their CP to Goldman. See Federica Colombi Dep. Tr. at 68:17 – 69:20, 128:7-11; Sandra Galac Dep. Tr. at 155:18-156:10; Mary May Dep. Tr. at 119:8-120:17; Michael Markowitz Dep. Tr. at 79:3-9 (Attached collectively hereto as Exhibit 3). Under these circumstances, it is by no means a foregone conclusion that Goldman's alleged agency is valid or enforceable. See, e.g., Restatement (Third) of Agency § 2.03 cmt. f (2006) (“[A]pparent authority is not present when a third party believes that an interaction is with an actor who is a principal.”). Thus, Goldman's assertion that there “is not a single piece of evidence in the record” to suggest that Goldman did not perform the transactions as agent (Opp. Br. at 7), begs the question since Goldman has studiously withheld relevant discovery concerning Project Truman.

II. THE REQUESTED DOCUMENTS ARE RELEVANT TO WHETHER GOLDMAN BENEFITED FROM THE CP TRANSACTIONS

The Project Truman documents are relevant to whether Goldman benefited from the CP transactions, as the Moving Defendants demonstrated in their opening brief. (Br. at 6-7). This Court has already acknowledged that discovery is appropriate about whether a defendant is liable as a beneficiary of the transfers at issue. In re Enron Corp., 2005 WL 3873891, at *2 (Bankr. S.D.N.Y. June 29, 2005). If Enron had defaulted on its CP, Goldman faced potential liability from its customers, such as the Moving Defendants. See, e.g., Franklin Savings Bank v. Levy, 406 F. Supp. 40 (S.D.N.Y. 1975) (finding Goldman liable to its customers for the value of defaulted Penn Central commercial paper). The Court cited this authority in finding the Project Truman documents relevant. May 1 Tr. at 3-4.

Goldman's Opposition Brief offers nothing new on this issue. Compare Opp. Br. at 20-28 with April 19 Tr. at 20-22, 39; May 23, 2007 letter of Goldman Sachs at 2. In its misplaced attempt to re-argue the merits of a benefit theory, Goldman ignores this Court's prior rulings and that this is not a summary judgment motion.

Goldman argues that: (i) it did not receive any tangible benefit that it could disgorge; (ii) no one at Goldman believed there was a possibility of liability based on a potential CP default by Enron; and (iii) Enron did not intend to benefit Goldman in any respect when it transferred buyback funds to investors. (Opp. Br. at 22-27). Each of these factual arguments is based on an incomplete record. There are at least three more deposition cycles during which the parties can discover what Goldman employees believed or knew, including based on information in the Project Truman documents. More importantly, the factual record on this issue is incomplete because Goldman has not produced Project Truman documents regarding its

relationship with Enron in the months before the CP transactions. Goldman's arguments on the merits are therefore premature and have no bearing on this discovery motion.

In addition, even on the incomplete record that exists, there is a sufficient predicate for the Moving Defendants' requests for all the Project Truman documents. The record suggests that funds that flowed through Goldman's accounts were used to retire CP for which Goldman might otherwise have been liable. See Gredd v. Bear, Stearns Secs. Corp., 359 B.R. 510 (Bankr. S.D.N.Y. 2007) (finding Bear Stearns benefited from funds that flowed through the firm and allowed it to cover positions for which it otherwise would have been liable). In order to determine whether Goldman would have had such liability, it is critical to discover what Goldman knew about Enron's creditworthiness and when Goldman knew it.

The record also raises relevant questions that Project Truman documents reasonably may be expected to answer. Goldman points out, for example, that it "did not receive any compensation of any kind from Enron or any other entity in exchange for its services as Enron's agent in the buyback transactions." (Opp. Br. at 23). Since Goldman is not a charitable organization, why then did it provide these services? If Goldman performed the CP transactions for free because of an anticipated benefit related to Project Truman, then the Moving Defendants are entitled to discover that. Similarly, Goldman argues that its CP desk was "walled off" from its investment banking area and that no confidential information would have passed between the two. (Opp. Br. at 18). As the Moving Defendants demonstrated in their opening brief, there is already record evidence that such confidential information may have passed through Goldman's Chinese Wall. See Br. at 4-5; GS ENRON-CP08030 (Br. Ex. I); Deposition Exhibit 30,482 at 1; Deposition Exhibit 30,487 at 1. Whether Goldman's knowledge of Enron's dire straits reached the CP trading desk itself, may or may not be relevant to why, at very senior levels, Goldman

decided to hurriedly procure an agency agreement from Enron, but, in any event, is a factual question that must be determined on the evidence rather than on Goldman's unsworn and unsupported statements in a brief.⁴

III. CONCLUSION

For the reasons discussed above and in the Moving Defendants' opening brief, the Moving Defendants respectfully request that the Court grant the Motion to Compel and order Goldman to produce immediately all documents relating to Project Truman.

Dated: June 12, 2007

Respectfully submitted,

HANDLER & GOODMAN LLP

/s/ Arthur M. Handler

Arthur M. Handler (AH 0693)
805 Third Avenue
New York, New York 10022
(646) 282-1900

Attorneys for the UBS Defendants

BIALSON BERGEN & SCHWAB

/s/ Michael Klingler

Michael Klingler (*pro hac vice*)
2600 El Camino Real, Suite 300
Palo Alto, CA 94306
(650) 857-9500

*Attorneys for Defendant Veritas Software
Investment Corp.*

PEPPER HAMILTON LLP

/s/ Deborah Kovsky-Apap

David Murphy (*pro hac vice*)
Deborah Kovsky-Apap (*pro hac vice*)
Suite 3600
100 Renaissance Center
Detroit, MI 48243-1157
(313) 259-7100

Attorneys for Defendant Kelly Properties, Inc.

⁴ Given that there is no claim that the Project Truman documents are uniformly subject to some privilege, Goldman's suggestion that they be reviewed *in camera* makes no sense. (Opp. Br. at 2). Moreover, Goldman's request appears to indicate that it already knows the universe of documents to be produced, which runs counter to its argument that producing the documents presents a burden. (Opp. Br. at 5). Similarly, Goldman's admission that Project Truman was "brief" and a "discrete process" belies the suggestion that the requested discovery is "expansive." (Opp. Br. at 1-2).

EXHIBIT 1

1 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
In re

3 ENRON CREDITORS RECOVERY CORP.,
4 et al,

5 Reorganized Debtors.
-----x

Case Nos.

01-16034(AJG)

(03-02677)(03-92682)

New York, New York

April 19, 2007

2:09 p.m.

6 DIGITALLY RECORDED PROCEEDINGS

(Proceedings -- J.P. Morgan/Mass Mutual)

7 2:00 (03-92677) Enron Corp. v. J.P. Morgan Securities Inc., et
al.: Discovery Conference.

8 (03-92682) Enron Corp. v. Mass Mutual Life Insurance Co., et
al.: Discovery Conference.

9 B E F O R E:

10 THE HONORABLE ARTHUR J. GONZALEZ
United States Bankruptcy Judge

11 A P P E A R A N C E S:

12 VENABLE LLP

Special Litigation Counsel for Reorganized Debtors
13 Two Hopkins Plaza, Suite 1800
Baltimore, Maryland 21201

14 BY: MICHAEL SCHATZOW, ESQ.

15 -and-

COLLEEN MARGARET MALLON, ESQ.

16 CLEARY GOTTlieb STEEN & HAMILTON LLP

17 Attorneys for Goldman Sachs & Co.

One Liberty Plaza

18 New York, New York 10006

19 BY: THOMAS J. MOLONEY, ESQ.

20 -and-

LINDSEE P. GRANFIELD, ESQ.

21 (appearances continued on page 2)

22 DEBORAH HUNTSMAN, Court Reporter

23 (212) 608-9053 (718) 774-2551 (917) 723-9898

24 Proceedings Recorded by Electronic Sound Recording,

25 Transcript Produced by Court Reporter

A P P E A R A N C E S: (continued)

PEPPER HAMILTON LLP
Attorneys for Kelly Properties, Inc.
100 Renaissance Center, Suite 3600
Detroit, Michigan 48243

BY: DEBORAH KOVSKY-APAP, ESQ.

PEITZMAN WEG & KEMPINSKY LLP
Attorneys for Cascade
10100 Santa Monica Blvd., Suite 1450
Los Angeles, California 90067

BY: LOUIS E. KEMPINSKY, ESQ.

BIALSON, BERGEN & SCHWAB
Attorneys for Veritas Software Investment Corp.
2600 El Camino Real, Suite 300
Palo Alto, California 94306

BY: KENNETH T. LAW, ESQ. (via telephone)
-and-
MICHAEL KLINGER, ESQ. (via telephone)

WHITE & CASE LLP
Attorneys for UBS AG, UBS Global Management
(Americas) Inc., et al.
1155 Avenue of the Americas
New York, New York 10036

BY: OWEN PELL, ESQ. (via telephone)
JOHN CHUNG, ESQ. (via telephone)
-and-
EVAN BENANTI, ESQ. (via telephone)

(Whereupon, the following is an excerpt from the proceedings taken on 4/19/2007 in In re Enron Corp., et al, Case No. 01-16034.)

JUDGE GONZALEZ: Please be seated.

Where is counsel for Kelly, UBS, and Veritas?

MS. KOVSKY-APAP: Your Honor, Deborah Kovsky-Apap of Pepper Hamilton on behalf of Kelly Properties, Inc.

MR. LAW: Your Honor, Kenneth Law of Bialson, Bergen & Schwab on behalf of Veritas Software Investment Corp.

MR. PELL: Your Honor, Owen Pell from White & Case on behalf of the UBS Defendants.

JUDGE GONZALEZ: All right. We will proceed with counsel for Pepper Hamilton. Go ahead.

MS. KOVSKY-APAP: Your Honor, we are sort of surprised that we have to be here on yet another discovery dispute. The rules of the Deposition Protocol Order seem very clear, and especially after the last conference about Mr. McGee, it just seems clear that Goldman Sachs is flouting the rules in refusing to provide dates for Mr. Hurst. Additionally, document discovery is very clear as well. It really doesn't matter what Goldman Sachs alleges the facts are. What matters is that the moving parties in this case have clearly demonstrated that the discovery that we are seeking is relevant to claims and defenses in this litigation. Goldman Sachs' refusal to comply with our discovery requests is simply

1 inexcusable.

2 Goldman Sachs' letter to the Court is remarkable. In
3 that letter they have essentially made an argument on the
4 merits. They are arguing that since in their version of the
5 facts they are completely innocent of everything and they
6 don't need to produce documents. According to Goldman Sachs,
7 these documents must be irrelevant to the facts in the case,
8 because they are telling us what those facts actually are. We
9 feel that the point of discovery is that we don't need to take
10 their word for that. We are entitled to discover that for
11 ourselves.

12 For the reasons that were stated in the moving
13 parties' letter, as well as in the letter submitted to this
14 Court by Enron yesterday, it really appears that the Project
15 Truman documents are relevant to this litigation. They are
16 relevant to Goldman Sachs' claim of agency. They are relevant
17 to the defenses available to Goldman Sachs. They are relevant
18 to what Goldman Sachs knew prior to Enron's drawing on its
19 bank lines and to the buyback transactions. We are entitled
20 to understand the context of those events and what was going
21 on. These documents and this discovery that we are seeking
22 are relevant, because we believe that Goldman Sachs is
23 concerned based on the Penn Central case that if Enron
24 defaulted on its commercial paper, Goldman Sachs was going to
25 be liable to its customers. We want to understand what

1 Goldman Sachs' motivation was in that week of October 22nd
2 through the 26th when they stopped trading Enron commercial
3 paper, when they demanded to act solely as agent. We tried
4 asking these questions in the deposition of Robert Wall.

5 We believe that Goldman made a decision to trade what
6 they perceived as high litigation risk for a low preference
7 risk, and then tried to avoid that preference risk altogether
8 by acting as agent and basically dumping on their customers.

9 We believe that we are entitled to discovery on this
10 issue, because it goes to Goldman Sachs' potential liability
11 in this case. Additionally the documents and witnesses that
12 we are seeking may be our only or our best source of
13 information regarding what was going on at Enron during this
14 time period. Most of the high-level Enron witnesses that we
15 would otherwise be able to speak to are in prison, pleading
16 the Fifth, or dead. That is another reason why we are
17 entitled to this discovery and why we need it.

18 I want to address a few of the points that Goldman
19 Sachs brought up in its letter to this Court. Goldman Sachs
20 argued that certain of the moving parties failed to meet and
21 confer with Goldman Sachs as required. But Kelly Properties
22 met and conferred with Goldman Sachs on several occasions on
23 this very issue -- whether Goldman Sachs would produce all
24 Project Truman related documents -- and Goldman Sachs simply
25 stonewalled. It would have been redundant --

1 JUDGE GONZALEZ: Goldman Sachs also said, I thought,
2 that you had never formally requested the documents?

3 MS. KOVSKY-APAP: Kelly Properties requested certain
4 documents related to Project Truman, and in our meet and
5 confer we asked very broadly whether they intended to produce
6 all documents related to Project Truman such as those that had
7 been requested by Enron.

8 Goldman Sachs has previously objected to other
9 parties' document requests on the basis that they are
10 duplicative of other parties' requests. Under the discovery
11 procedures in this case, we didn't believe it was incumbent on
12 us to submit duplicative requests, but rather could rely on
13 requests submitted by other parties, particularly since that
14 is the position that Goldman Sachs itself has taken.

15 JUDGE GONZALEZ: But the problem that may arise or the
16 problem I think could have arisen is you don't request them.
17 You sit down with Goldman and you say, "Are you going to
18 produce the records or documents, et cetera, that Enron
19 requested"; and they say, "No." Goldman has raised the issue
20 of your standing to attempt to enforce that request.
21 Effectively that is what is going on. You didn't ask for them
22 in your formal request, and you decided that you wouldn't
23 duplicate Enron's formal request. Thus, it then falls to
24 Enron to enforce the request and not to you, unless you have
25 made the request yourself.

1 MS. KOVSKY-APAP: Your Honor, I would argue that it
2 does not fall to us. Goldman Sachs can't have it both ways.
3 They can't object to document requests submitted by parties on
4 the basis that they are duplicative of other parties'
5 requests, and then refuse to produce documents because we
6 didn't submit a duplicative request. It simply doesn't make
7 sense.

8 JUDGE GONZALEZ: All right. Go ahead.

9 MS. KOVSKY-APAP: Regarding the issue of the meet and
10 confer, I just wanted to say that it would have been redundant
11 and futile for every moving party to line up and have the same
12 pointless conversation with Goldman Sachs after it had been
13 made clear that they were not going to be responsive to any
14 requests that we were making relating to Project Truman.

15 Goldman Sachs also tried to argue that Deutsche Bank
16 and UBS apparently are not entitled to the discovery that the
17 UBS Defendants are seeking, because they are Defendants in the
18 Newby Securities Litigation Case. But Goldman Sachs failed to
19 note to the Court that Deutsche Bank and UBS have been
20 dismissed out of that case, while Goldman Sachs --

21 JUDGE GONZALEZ: Speak slower. Go ahead.

22 MS. KOVSKY-APAP: Goldman Sachs seems to be making an
23 argument to the Court that the UBS Defendants are not entitled
24 to this type of discovery, because the UBS Defendants are
25 defendants in the Newby Securities Litigation Case. Goldman

1 Sachs failed to note to the Court that UBS has been dismissed
2 out of that case, while Goldman Sachs is still in it. I would
3 further submit that it is completely irrelevant whether the
4 UBS Defendants are also defendants in another case. That has
5 nothing to do with the relevance of Project Truman-related
6 discovery to this litigation, relevance that has been aptly
7 established both by the moving Defendants and by Enron itself.
8 I think it is telling that even the Debtor in this case
9 believes that this is discovery that is necessary.

10 Goldman Sachs argues that it has already produced
11 Project Truman-related documents. First, it has only produced
12 a mere handful of documents, some of which are not even
13 clearly related to Project Truman. The production is
14 obviously incomplete, and Goldman Sachs itself limited its
15 production to what I believe is has characterized as Project
16 Truman documents relating to the CP Transactions from
17 October 22nd onward. That is not what has been requested and
18 that is not sufficient.

19 Now, there aren't a whole lot of complicated issues
20 here. It seems very straightforward. The discovery that we
21 are seeking is relevant. The parties are entitled to this
22 discovery. Even the Debtor has joined us in seeking the
23 documents and the depositions. We are not required to take
24 Goldman Sachs' word for it that their version of the facts is
25 the correct one, and we respectfully ask the Court's

1 assistance in this matter.

2 JUDGE GONZALEZ: All right. Thank you.

3 Is there anyone else with respect to either UBS or
4 Veritas, and then I will hear from Enron.

5 MR. LAW: No, Your Honor. On behalf of Veritas this
6 is Kenneth law. I believe our position has been aptly
7 presented to the Court by counsel.

8 JUDGE GONZALEZ: All right. Thank you.

9 MR. PELL: I would agree with that for UBS, Your
10 Honor. This is Owen Pell.

11 JUDGE GONZALEZ: All right. Thank you.

12 Enron?

13 MR. SCHATZOW: Your Honor, Michael Schatzow of Venable
14 LLP on behalf of Enron. We will be very brief, Your Honor.

15 We did ask for the documents specifically, and we have
16 been discussing them in meet and confers with Goldman that
17 began in January of 2006. We did ask for deposition dates.
18 We nominated both of these people, Mr. Gieselman and
19 Mr. Hurst, on October 6, 2006. We don't come to this Court,
20 Your Honor, as soon we have a disagreement. We try to work
21 things out. I am sure we are here on discovery disputes more
22 than we would like to be and more than the Court would like us
23 to be here, but given the number of Defendants in this case
24 and the number of discovery disputes, we haven't been here all
25 that often. We did ask for this. We asked for it a long time

1 ago, and the fact that we haven't been able to resolve it
2 brings us here now.

3 In terms of the deposition dates, you resolved a
4 remarkably similar dispute with Lehman just about a month or
5 so ago. Counsel for Goldman were here in the courtroom when
6 that was argued. We think the same result should apply. I
7 think we have been offered dates for Mr. Gieselman. They
8 should give us dates for Mr. Hurst. After Mr. Gieselman's
9 testimony, if they want to file a motion for a protective
10 order, they can file a motion for a protective order, if they
11 have some basis to think that we are not entitled to his
12 testimony. We are happy to deal with that on the merits.

13 We are now in the seventh of eleven plan cycles, Your
14 Honor, for depositions. Given the lead time for scheduling,
15 if we wait until Mr. Gieselman testifies; then we have to
16 first request dates from Mr. Hurst, and we have no assurance
17 that we are going to get a date, because, after all, we asked
18 for a date for Mr. Hurst in October of 2006, all that does is
19 force us into a position to come back to the Court to extend
20 the discovery deadlines, which nobody wants to do, if we can
21 avoid doing it.

22 So while we are not the ones who brought this, Your
23 Honor, we do have the grievance, we do have the standing, we
24 have done the asking, and we would urge Your Honor to allow
25 Kelly and the others who have made the request to file a

1 formal motion, if Goldman is not willing to produce the
2 documents. The relevance of the documents is spelled forth in
3 not only the papers that have been submitted to Your Honor,
4 but in the argument today. It goes to many, many different
5 issues in the case, including agency status, beneficiary
6 status, commercial paper, and insider knowledge. There are a
7 host of issues that these documents go to, and we don't really
8 think that we can advance the ball without the Court's help at
9 this stage, Your Honor. Thank you.

10 JUDGE GONZALEZ: All right. Thank you.

11 Goldman?

12 MR. MOLONEY: For the record, Tom Moloney on behalf of
13 Goldman Sachs & Co. I am with Cleary Gottlieb Steen &
14 Hamilton LLP.

15 Your Honor, I am glad we were able to come down here.
16 We did conclude Mr. Wall's deposition, who was the head of
17 commercial paper trading at Goldman Sachs. It was two and a
18 half days of deposition that concluded today. We have so far
19 concluded six Goldman witnesses, 11 additional ones have been
20 scheduled, and five are in the process of being scheduled to
21 give you some context of what type of discovery we have
22 voluntarily provided. There is no issue about that
23 whatsoever.

24 Fortunately, Your Honor, there is a record for some of
25 this, because if there wasn't it would be hard for you to

1 figure out that most of what you have been told is rubbish.
2 If you look at our letter -- I don't know if you have it in
3 front of you, Your Honor. If you look an Exhibit A -- we were
4 down in Dallas on February 5th and 6th and also 7th and 8th
5 disposing Mr. Newgard, the primary witness for Enron. While
6 we were down there, we talked -- Mr. Schatzow and I -- about
7 the issue of the Project Truman discovery and also Mr. Murphy,
8 Ms. Kovsky-Apap's partner, was there, and she may have been
9 participating by phone or she got the information secondhand
10 about the discussion. So she wrote an e-mail to me and said,
11 "Please write down exactly what you have proposed to do."
12 This was on February 6th. We said, "We will make
13 Mr. Gieselman available for deposition, which we have done,
14 and we also said Mr. Hurst is very senior, and so we would
15 like you to take Mr. Gieselman first. But if you want
16 Mr. Hurst after Mr. Gieselman, we will give you a date for
17 him."

18 This is unlike the Lehman situation, where Lehman says
19 they don't want to ever produce the person. This was before
20 Your Honor's ruling, but it is basically following the spirit
21 of Your Honor's ruling, which is, please start with a less
22 senior person and, if, after you finish it, we will make
23 Mr. Hurst available. We never said we would not. We also
24 said, in terms of what we would make available in terms of
25 documents, is all documents created by the so-called Project

1 Truman team related to commercial paper or to buyback, and
2 that includes all documents related to the drawdown of the
3 revolver.

4 When I proposed that to Mr. Schatzow, he said, "Well,
5 in the last week Goldman had people down in Houston talking to
6 Enron. There were investment bankers talking to Enron in the
7 week of October 22nd through October 26th, and that may be our
8 only source of information." I said, "Okay. I will produce
9 all documents reflecting any communications with Enron on
10 matters wherever it deals with commercial paper and anything
11 else for the period of October 22nd to October 26th."

12 Now, what Mr. Schatzow didn't tell you, Your Honor, is
13 that after I sent this e-mail out, we, in fact, did this. We
14 produced all these documents. We gave them a day for
15 Mr. Gieselman, and until the letter was written by his partner
16 Mr. Wilkins last night, which wasn't even sent to me until I
17 asked for it, I did not hear the word boo from Enron that this
18 wasn't fine. I didn't get a phone call saying, "Sorry, Tom.
19 What we worked out in Houston is no longer operative. Sorry,
20 Tom. We want a date for Mr. Hurst." We have had endless
21 meetings with scheduling committees. Not once did they raise
22 this question. They are not going to be able to point to a
23 single e-mail and they are not going to be able to point to a
24 single letter. They are not going to be able to point to a
25 single conversation where they let us know that what we

1 suggested to them was not appropriate and fine.

2 Now, they have jumped on the bandwagon when Kelly
3 Properties raised this issue, but Kelly Properties doesn't
4 have standing to raise this issue. We are not asking it for
5 both ways. What we are saying is, "Look, if somebody served a
6 document request on us and we are producing the documents,
7 then we shouldn't have to produce them again pursuant to a
8 second document request, because this is a central source of
9 documents and you are going to get them anyway. We are not
10 saying that, if we object to someone's producing a document,
11 you can't serve a request and then move to compel. That is
12 your prerogative.

13 But it can't be that every time I work out an issue
14 with one of the Defendants in their case regarding their
15 document production or at least think I have worked it out in
16 good faith or believe that I have worked it out, that then any
17 single Defendant can second guess what I have worked out with
18 the other Defendant.

19 JUDGE GONZALEZ: One second. But they could under
20 your structure, had they put in a formal request?

21 MR. MOLONEY: Certainly. That would put me on notice
22 to hold on, and people have done that. It is not like they
23 haven't served two formal requests on us. UBS has served a
24 formal request on us and Veritas has served a formal request.
25 It is not like they are just relying on Enron. So I can't

1 negotiate with them their requests, and then if Enron for some
2 reason doesn't like what I work out with Veritas, I have got
3 to back to Enron. I have 50 Defendants. We would never get
4 to ground zero. I would never know when I have worked
5 something out, if I can't figure it out that, when I have
6 worked out something or at least think in good faith I have
7 worked something out with the party who has served the
8 request, it is resolved.

9 Now, the other thing is she referred to the Newby
10 case. First of all, we never said UBS was a Defendant in
11 Newby and we never said Deutsche Bank was a Defendant in
12 Newby. We said UBS is actually a Defendant in the swap case
13 and Your Honor knows that, because that is before you. We
14 said UBS is a Defendant in a companion securities cases to the
15 Newby case, which it is in point of fact; and we said Deutsche
16 Bank was a Defendant in the MegaCase, but she missed the point
17 of the letter. The point of view is that -- and I will get to
18 this when I get to the main argument -- if we are going to
19 conduct collateral state of mind discovery on the issues of
20 what people's state of mind is, whether Goldman Sachs as an
21 institution has more knowledge about Enron than UBS did, than
22 Deutsche Bank did, and than Citibank did, then we are off and
23 recreating the Newby case here in the case where we already
24 have in seven cycles 85 deposition through today. The idea of
25 morphing the case in essence so that we are recreating Newby

1 means that we are never finishing this case. This case is
2 already preposterous. The idea that they are deposing 22
3 Goldman witnesses already under the preference fraudulent case
4 that we are really litigating here, rather than litigate
5 something that is totally irrelevant, I think that is our
6 point and that is the point we are trying to make there.

7 Putting aside whether we were sandbagged by Enron in
8 terms of not going through a reasonable meet and confer
9 process once we thought we had reached an agreement on
10 February 6th in terms of our production, leave that aside and
11 just look at the merits of what they have asked for, and I
12 think the first point is Hurst is not an issue. If they want
13 a date for Hurst, we will give them a date for Hurst. They
14 have never asked for it before. It is inappropriate for them
15 to come to this Court without having actually asked us for a
16 date. I don't think it is actually that practical to give
17 them a date. He is not going anywhere. After we finish
18 Gieselman, we will sit down and we will work out a real date.

19 What happens is we come up with hypothetical dates and
20 then circumstances change, and they want to take someone
21 else's deposition. For the Vice Chairman of Goldman, I cannot
22 give them a hypothetical date. If they really think they need
23 that deposition, he is going to have to clear out his schedule
24 and I am going to have to find a time that is really
25 reasonable to do that in hopefully a very short period of

1 time, given the fact that Gieselman was at the exact same
2 meeting that Hurst was. Gieselman himself was a managing
3 director of Goldman and a partner of Goldman. So it's not
4 like they are not getting a senior person. But Hurst we can
5 work out.

6 Why do they need Project Truman documents beyond the
7 ones that we have offered to give them, given what this case
8 is really about? This is a preference case which Your Honor
9 has recognized is basically mechanical. We would get money
10 within 90 days. Was there a settlement payment so that we
11 have a protection there? Did we act as agent as to that?
12 There is an agency agreement they signed. I don't understand
13 why they keep on saying "so-called agency agreement" or why
14 they keep on saying "so-called agency defense." We have a
15 signed agreement. We know from the discovery that has taken
16 place so far that Enron's principal officers acknowledged that
17 Goldman was acting as agent for Enron. We know from the
18 discovery taken so far that it wasn't Goldman's idea to act as
19 agent or do this transaction. Enron did ask us to do this,
20 because they wanted to accomplish this transaction. That we
21 know already.

22 So this idea that they want to go looking for Project
23 Truman information is not based on agency. There is nothing
24 about agency that would come about as a result of looking
25 through Project Truman.

1 They say that we misrepresented that there was a
2 signed agreement, but if you actually look at their letter,
3 Exhibit D, Your Honor, in their letter, you will see something
4 that says "Goldman Sachs," dated September 21st. It is a
5 letter, Exhibit D.

6 JUDGE GONZALEZ: You are saying D or B?

7 MR. MOLONEY: D as in dog.

8 JUDGE GONZALEZ: It is Exhibit D to?

9 MR. MOLONEY: To Enron's letter, the Venable firm's
10 letter.

11 JUDGE GONZALEZ: September 21st?

12 MR. MOLONEY: Right. If you read the first paragraph
13 of that letter, Your Honor, it says: "I am prepared to
14 furnish you with certain confidential proprietary information
15 in connection with the potential engagement of Goldman Sachs &
16 Co. in connection with the [Enron's] consideration." This is
17 not an engagement letter, Your Honor. If you go on and look
18 through the next couple of pages, this is not an engagement
19 letter. This was a letter given to Goldman Sachs for
20 discussions they would have preliminary to an engagement, and
21 they would keep that information confidential. There is a
22 draft engagement letter, if I could approach the bench, Your
23 Honor?

24 JUDGE GONZALEZ: Go ahead.

25 MR. MOLONEY: There is a draft engagement letter which

1 Enron produced.

2 JUDGE GONZALEZ: I may be incorrect with this, but
3 doesn't this letter state that Goldman would receive --
4 whether they did or not is a separate issue -- confidential
5 information along with the engagement letter before the
6 engagement actually may be executed? It is to consider
7 whether or not the parties will reach some agreement and there
8 will be an engagement. But prior to the actual execution of
9 the engagement letter, it seems to me that this letter
10 anticipates Goldman's receiving confidential information
11 during those preliminary discussions?

12 MR. MOLONEY: I agree with that, Your Honor. The
13 letter basically protects the possibility of Goldman's getting
14 confidential information before the engagement letter is
15 signed. In fact, the letter you have before you, which was a
16 draft engagement letter, provides for a fee of \$250,000 per
17 quarter and then various potential success fees for deals, and
18 it provides for a scope of services and to expect that an
19 engagement letter would and it has an indemnity agreement. If
20 you look at the signature page, this letter did not get
21 signed. As a factual matter, the reason why it didn't get
22 signed is that as the discussions went forward as to whether
23 or not Goldman was to receive confidential information,
24 Goldman said that we need to be able to share this with other
25 business units and Enron said, no, you are a competitor.

1 So they never reached an agreement on a modified
2 version or reiteration of this confidentiality agreement. As
3 Mr. Fastow testified for the United States Government in the
4 trial of Kenneth Lay, we never got negative confidential
5 information about Enron. This was not me testifying. The
6 government of the United States put Mr. Fastow on the witness,
7 and that is what he said and that is what is in the
8 transcript. That "we never did open our kimono to Goldman
9 Sachs. We never signed their engagement letter. We never
10 gave them confidential non-public information."

11 Now, it so happens that in the very last week for our
12 purposes, which is the week before October 26th, Enron did
13 approach Goldman Sachs again -- and you can read about this in
14 books, it is in the books about Enron -- and they wanted
15 Goldman to be one of the advisors along with Citibank and I
16 think J.P. Morgan Chase to provide financing for them and also
17 the service advisor for a potential Dynegy merger, and Goldman
18 Sachs said no and was kicked out of Enron's office on
19 Saturday, October 27th. Goldman said, "We don't want to
20 provide this financing. Goodbye." That is public knowledge.
21 They are not going to dispute that. That was in the "Wall
22 Street Journal" on the following Monday. So we never got
23 retained by these people.

24 Now, do we want to take a lot of discovery about what
25 Goldman might have learned from a bunch of investment bankers

1 during a potential engagement where they did not get
 2 confidential information that did not actually result in the
 3 assignment that has nothing to do with this case whatsoever?
 4 And what is the reason to do that? If we were to do that, it
 5 is under the most wacky legal theory as I have ever heard in
 6 my life. The theory is somehow, because we could have been
 7 potentially liable under the securities laws for selling Enron
 8 commercial paper -- now, it is Enron who is saying that.
 9 Enron is not saying that they actually violated the Federal
 10 Securities Laws when they violated the commercial paper, which
 11 implicitly this would be saying, but they are saying that
 12 because Goldman could somehow be liable under the securities
 13 laws, they might have gotten benefit by the fact that we paid
 14 off the commercial paper. Well, there are two problems with
 15 that from a logical point of view.

16 Number one, how do we figure that out? Do you conduct
 17 a securities law trial to see whether or not Goldman would
 18 have been liable under the securities laws to these various
 19 investors to figure out whether we got a benefit? This is
 20 clearly as a legal matter not what Congress had in mind when
 21 they enacted 547 and 550. The benefit they had in mind was
 22 not a potential speculative relief from a legal liability.
 23 Obviously a guarantor in the contract or if you sold
 24 receivables with recourse, you could look at that and you
 25 could say, "Okay. I can decide that question. It is a clear,

1 legal finite obligation that has been relieved by the party
 2 getting the benefit." But the idea that somebody might have
 3 sued us under the securities laws, if this paper didn't get
 4 paid back, and that we would be concerned 30 years after Penn
 5 Central. To tell you the truth, we tried to find files about
 6 this crazy Penn Central case, which was one of their requests,
 7 and the answer to us was there was an old Sullivan & Cromwell
 8 partner who is retired, maybe he can find it somewhere. But
 9 nobody else even knows where they are. The idea of 30 years
 10 later that we are worried about that and we did this
 11 transaction because of that, this is fantasy land. They are
 12 relying on a situation that occurred in 1974 in a different
 13 world, in a different market, in a different set of Federal
 14 Securities Laws than exist today. They don't have a scintilla
 15 of evidence that any such concern motivated Goldman Sachs at
 16 all. But we are not saying block the discovery. They deposed
 17 Mr. Wall.

18 JUDGE GONZALEZ: Let me just ask you this. I assume
 19 this Penn Central issue, at least in part, was raised by
 20 Enron, and they cite in their letter on page 3, in the third
 21 paragraph that starts on that page: Indeed, a policy manual
 22 produced by Goldman mentions the Penn Central default, the
 23 subsequent settlement between Goldman and the SEC, as well as
 24 the resulting affirmative obligations that were placed on
 25 Goldman to investigate the creditworthiness of an issuer of

1 commercial paper.

2 MR. MOLONEY: Right. That policy manual was dated
3 1996. No witness in this case has ever said they used it. It
4 was inoperative at the time of the events in question here,
5 and it was never updated. Their policy manual provides that
6 the old commercial paper is going to be issued pursuant to
7 this consent decree by an entity that no longer exists,
8 Goldman Sachs Commercial Paper. It stopped existing
9 five years before.

10 So the "policy manual" they are relying on they know
11 is ridiculous and has no relevance whatsoever and it was not
12 motivating what anybody was doing in 2001. In that policy
13 manual, just for historical purposes, said basically there was
14 a consent decree entered into in 1974 with the Securities &
15 Exchange Commission as a result of the Penn Central
16 bankruptcy, which I think occurred in late 1972 or so, and
17 that as a result of that, there was a consent agreement that
18 actually remained in place at Goldman until 1995, when it was
19 dissolved by the SEC. But even 1995 is six years before the
20 events at issue here, and that consent decree has really no
21 relevance to this lawsuit whatsoever nor does this beneficiary
22 theory that they are arguing have any resonance.

23 That is why I raised the issue about Deutsche Bank and
24 UBS. If we are really going to take securities law type
25 litigation discovery, "we knew more than they knew," to figure

1 out whether we got some benefit from Enron's paying them off
2 by buying back their commercial paper, this case is going
3 sideways. We are not going forward anymore. We are going
4 backwards. We might as well say we just started the case from
5 ground zero. Forget about the fact that we have now spent
6 tens of millions of dollars in discovery and have gotten this
7 far along.

8 Your Honor, I think it is more reasonable, frankly, if
9 you want to have briefing on this beneficiary issue, we are
10 happy to move for partial summary judgment. If they feel that
11 they need the deposition of Ms. Huffman, who was the lawyer
12 that negotiated the contract, that is scheduled May 9th and
13 10th, as soon as that is over, we will move for partial
14 summary judgment and we can see. Your Honor can see briefing
15 as to whether this theory has any legs whatsoever. If it
16 doesn't, it will greatly simplify this case; if Your Honor
17 agrees with them, then we can do all this extra crazy
18 discovery.

19 JUDGE GONZALEZ: If I were to agree with them, it
20 wouldn't be crazy discovery; right?

21 MR. MOLONEY: No. I concur, Your Honor; correct. We
22 will do all this discovery. I am editorializing based on my
23 own view. It is very ironic, Your Honor, because they
24 consulted with my partner Lindsee Granfield at the time of
25 these events in question. We were involved in drafting this

1 agency agreement, and they did it because they knew if they
2 did this deal they would be sued and they didn't want to.
3 That is what the record is. They did not want to get involved
4 in this transaction at all. They wanted the people to do it
5 on their own. Enron couldn't in this mechanical manner clear
6 the trades. So they said, "How can we be protected, so we are
7 not going to get sued?" We said, "You can never figure out
8 what a bankruptcy estate might do. We will enter into an
9 agency agreement and therefore there will be no transfer. You
10 will not be the beneficiary. There is no way that they argue
11 that this was for your benefit." Fine. We did that. We have
12 a written agreement that says that. It hasn't stopped this
13 lawsuit so far, but to say that we somehow did this in order
14 to avoid litigation is just ridiculous.

15 JUDGE GONZALEZ: In terms of the deposition, you have
16 stated that you will give a date or you will work with Enron
17 on a date and the parties for the deposition of Hurst?

18 MR. MOLONEY: If that is what they want, yes, Your
19 Honor.

20 JUDGE GONZALEZ: All right. In terms of the
21 documents, the primary argument is that the party who sought
22 this conference really doesn't have standing to make the
23 arguments they are making today anyway, and as far as you were
24 concerned with Enron you had reached at least some
25 understanding about the documents and you haven't heard to the

1 contrary until you saw the letter from Enron joining in the
2 request for the conference?

3 MR. MOLONEY: The one thing I would add to that is our
4 position is on the merits. What we have produced is all of
5 the documents that would be relevant and we have agreed to
6 produce all the witnesses who would be relevant without
7 getting cast off to a sideshow that was going to prevent the
8 orderly administration of this case.

9 JUDGE GONZALEZ: That raises then I guess the next
10 issue that comes to my mind. As a practical matter is there
11 any use in talking to Enron any more, because if your position
12 is you have produced what is relevant for the case before me
13 and everything else, in your view, as a matter of law is it
14 irrelevant to the issues before me, whether it was announced
15 or not you were really then at odds with Enron if Enron wants
16 more?

17 MR. MOLONEY: I think that is a fair conclusion, Your
18 Honor, based on where we sit right now. Assuming Mr. Schatzow
19 doesn't change his mind again, that is where we are.

20 JUDGE GONZALEZ: All right. Thank you.

21 MS. KOVSKY-APAP: Your Honor, may I respond to a few
22 points that Mr. Moloney raised?

23 JUDGE GONZALEZ: All right. Go ahead.

24 MS. KOVSKY-APAP: First, I guess I would characterize
25 it as procedural. With respect to Exhibit A to Goldman's

1 letter, the e-mail exchange between me and Mr. Moloney, I
2 would like to clarify that the reason that the moving parties
3 didn't bring this up is that we were concerned about the
4 dressing down that Mr. Moloney's colleague, counsel for
5 Lehman, had given to counsel for Enron for disclosing to the
6 Court discussions that Lehman characterized as being in the
7 course of settlement negotiations. That is the only reason
8 that we did not bring it to the Court's attention.

9 Additionally, I would also like to point out that I
10 had promptly responded to Mr. Moloney's e-mail indicating that
11 the proposal was completely insufficient. Goldman Sachs is
12 absolutely on notice that we were interested in all of the
13 Project Truman documents, because I had that discussion with
14 counsel for Goldman in several meet and confers.
15 Additionally, Veritas Software, which is one of the moving
16 parties here, did, in fact, submit formal document requests
17 similar to those that Enron had submitted. Veritas did this
18 in the event that it was not enough for us to be able to rely
19 on document requests submitted by other parties in this
20 litigation. If one of the moving parties needed to formally
21 make the request that had been made informally in the course
22 of meet and confers, we were going to dot every "I" and cross
23 every "T."

24 Regarding the substance of the issue, I am pleased
25 that Mr. Moloney concedes that he is editorializing his own

1 view here. This is really the main issue. Mr. Moloney
2 continually states that Project Truman is not relevant here,
3 and that is really the only issue at stake here. We have
4 demonstrated that the documents are relevant and that the
5 witnesses are relevant. Mr. Moloney may wish to argue the
6 merits of Goldman's agency defense here, but those arguments
7 are misplaced. Mr. Moloney keeps telling us the "factual
8 background of the matter," but this is Goldman Sachs' version
9 of the facts, something that we are entitled to test for
10 discovery.

11 JUDGE GONZALEZ: In essence or at least in part, you
12 want to test the accuracy of the statement made by Mr. Fastow,
13 assuming that it was not taken out of context, which I have no
14 reason to believe that it was. If Mr. Fastow stated that no
15 confidential information was provided during that particular
16 meeting or period, you want an opportunity to test that by
17 asking people at Goldman about what they may have received?

18 MS. KOVSKY-APAP: We believe that confidential
19 information was provided. Perhaps, not at that initial
20 meeting with Mr. Fastow, but, if I could approach, Your Honor,
21 I would like to show you some pages from the deposition
22 transcript of Greg Caudell, who is an employee of Enron.

23 JUDGE GONZALEZ: Is it in the papers that I have?

24 MS. KOVSKY-APAP: It is not, but I have brought
25 copies.

1 JUDGE GONZALEZ: All right.

2 MS. KOVSKY-APAP: (Handing.)

3 Your Honor, looking at pages 186 through 188 of the
4 Caudell deposition transcript, it appears that Goldman Sachs
5 was literally in the building at Enron in Houston sometime in
6 the fall of 2001. According to Greg Caudell: There was a lot
7 of stuff going on. Goldman Sachs was occupying a large
8 conference room. People were feeding them documents. Some
9 very high-level Enron executives were there, Tim DeSpain, Jeff
10 McMahon. The doors in the conference room were specifically
11 always kept closed. They closed the doors when they walked in
12 and when they walked out.

13 Although Mr. Caudell was not able to speak directly to
14 whether or not anything confidential was going on, it
15 certainly sounds like it and we should be permitted to find
16 out.

17 I would like to turn Your Honor's attention to one
18 additional document from Mitch Taylor's desk file. This is a
19 document produced by Enron. It wasn't in the papers that we
20 submitted, but I brought copies.

21 JUDGE GONZALEZ: All right.

22 MS. KOVSKY-APAP: If I may approach?

23 JUDGE GONZALEZ: Go ahead.

24 MS. KOVSKY-APAP: (Handing.) These appear to be notes
25 from Mitch Taylor, who was an employee of Enron. On

1 September 26th, I met with ASF, which I believe is Andy
2 Fastow, this morning and outlined my concern with showing
3 everything to GS. I believe "GS" means Goldman Sachs. He was
4 okay with it, and said we would not get meaningful answers
5 unless we shared everything.

6 I want to know what they shared. I believe we are
7 entitled to know that.

8 JUDGE GONZALEZ: All right. Thank you.

9 MR. MOLONEY: Your Honor, if I could say something
10 about these two documents?

11 JUDGE GONZALEZ: I will give you an opportunity.

12 Is there anyone else? Either Enron or --

13 MR. SCHATZOW: Judge, I guess I rise primarily to
14 answer Mr. Moloney's question of "I never know when I have
15 worked something out." Mr. Moloney will know when he has
16 worked something out with me, when I tell him that we have
17 worked it out. But when he makes a proposal, and I don't
18 respond, when I tell him, as I told him during the Newgard
19 deposition, that there are other people that I have to talk
20 to; and, if I never get back to him and say "I accept your
21 proposal," I haven't accepted it.

22 This exhibit, I was dumbfounded when this was the
23 evidence of our agreement that they cite to in their letter.
24 If you look at their Exhibit A, he is specifically asked by
25 Ms. Kovsky-Apap: Yesterday Tom made a proposal regarding

1 Project Truman witnesses and documents. Could one of you
2 please send us an e-mail with the details of that proposal so
3 that we can discuss it without error or mischaracterization?
4 Then Mr. Moloney replies shortly thereafter, and he says: We
5 propose to do this. Our hope is that this will not be
6 necessary in terms of documents I proposed making available.
7 I also agreed that we would treat all other Project Truman
8 docs as subject to a litigation freeze.

9 There is no indication in there that anybody,
10 including me, agreed to anything. It is a proposal. He was
11 asked what proposal he made, and he said what proposal he
12 made. Now, prior to this document we specifically wrote to
13 Goldman on January 10th and we told them that we were at an
14 impasse with regard to these Project Truman documents. After
15 this day, in March, we wrote to them, and while we didn't
16 refer to Project Truman specifically, we said that we reserve
17 the right to go to the Court with regard to all of the
18 document requests that they had not been responsive to.

19 There is never a time when I have said to Mr. Moloney,
20 "We have got a deal. I agree to your proposal." We didn't,
21 because we knew that there were non-dealer Defendants who were
22 taking the lead on this issue. We don't think it is necessary
23 that we take the lead on every single discovery dispute, when
24 others have the same discovery dispute. It is not as though
25 we ever said to him, "Fine, Tom. This is it." So when he

1 says, "assuming Mr. Schatzow doesn't change his mind again,"
 2 nobody, including me, ever communicated to Mr. Moloney that I
 3 had made up my mind to accept his proposal, because I hadn't.
 4 All he shows you in support of that is this Exhibit A, in
 5 which he was asked what proposal was made and he said what
 6 proposal was made, and he never said that anybody accepted his
 7 proposal and he couldn't.

8 So to the extent that Mr. Moloney is confused about
 9 that, the answer is when a proposal is made to me, you will
 10 know that I accept it when I say I accept it. Not when I say
 11 I have got to talk to other people and I never have another
 12 conversation with him on that subject.

13 With regard to Penn Central I really don't understand
 14 how it is that Goldman is trying to make that a red herring in
 15 this case. The Penn Central case, Goldman's sale of Penn
 16 Central commercial paper to its investor clients was the
 17 subject of litigation, it was the subject of settlements,
 18 payments by Goldman Sachs, the subject of a consent order with
 19 the SEC. When Mr. Moloney keeps saying the "out of date
 20 manual," it makes me think of some of the depositions that we
 21 have been to where Mr. Moloney has said that the manual was
 22 out of date and Mr. Moloney has said that nobody pays
 23 attention to the manual. But this was a manual produced by
 24 Goldman Sachs. Enron didn't make this up. We didn't find it
 25 in the street. It was produced to us by Goldman Sachs in

1 response to our request for manuals that govern the operation
2 of people who were involved in commercial paper trading. It
3 gets produced. It has got a reference in it. It has got a
4 date of July 1996. It is true that no Goldman Sachs witness
5 has admitted yet to ever having seen that document, but we did
6 not make up the document. It was produced by Goldman Sachs to
7 us, and it makes specific reference to Penn Central. At the
8 end of it, it tells you exactly why the Penn Central case is
9 relevant. I am reading from the manual. This is Bates
10 stamped, produced by Goldman Sachs, 0269 and it continues to
11 0270.

12 MS. MALLON: It is attached to our letter.

13 MR. SCHATZOW: It says the Penn Central bankruptcy
14 affected the commercial paper market generally, and the
15 Federal Reserve Board had to intervene to restore confidence
16 in that market. The injunction contained an undertaking by GS
17 & Co. to implement a statement of policy concerning its
18 activities as a commercial paper broker or dealer. This is
19 the key sentence, Judge. These policies imposed upon
20 employees of GSMM LP and GS & Co. certain affirmative
21 obligations to investigate the creditworthiness of an issuer
22 of commercial paper.

23 Mr. Moloney can say and, perhaps, there will be
24 witnesses at Goldman Sachs who will say the same thing, that
25 they did not care about what happened in the Penn Central

1 case. That that was not a standard by which they were
2 trying -- they were concerned about their risk as a commercial
3 paper dealer who had put their clients into Enron commercial
4 paper. Maybe nobody cared about that, and if the witnesses
5 will say that, then the witnesses will say that. But we think
6 it is a pretty amazing and bold statement for someone to say,
7 "We didn't care about the fact that we had liability in the
8 Penn Central case. We didn't care about the fact that we had
9 to undergo a consent decree with the SEC, which changed the
10 way we operated. Once that consent decree vanished, we have
11 no more concerns. It doesn't matter. Nobody is going to ever
12 sue us. Nobody could sue us, because the Penn Central case is
13 30 years old." It doesn't sound logical to me, Judge. It
14 doesn't make any sense to me at all.

15 Our beneficiary theory, he thinks it is farfetched,
16 and I have no doubt that his preference would be to file a
17 motion for partial summary judgment before we have completed
18 discovery. If I were him, I would like to do the same thing.
19 I would like to have you resolve this on an incomplete record.
20 That is what I would like, if I were Goldman Sachs. But that
21 is a silly way to proceed in this case.

22 To say that there is no relevance to Project Truman
23 documents, when the Project Truman documents that have already
24 been produced, limited as they are -- as I understand it,
25 documents during the week of October 22nd, and documents that

1 reference commercial paper, and documents that reference
 2 comments by Enron employees during that period of time -- to
 3 say that that can't have anything to do with the terms and
 4 circumstances under which the so-called agency agreement was
 5 entered into, when Mr. Hurst was down meeting with Mr. Lay the
 6 same weekend that the agreement was entered into, when we have
 7 Mr. Hickerson, who they know from the deposition of
 8 Mr. Newgard, was the Enron employee who was charged with the
 9 responsibility for these commercial paper prepayments, is on
 10 tape talking to a J.P. Morgan employee about Hurst meeting
 11 with Lay and its impact on commercial paper and how things are
 12 going to be done, it is not the way discovery works, Judge.
 13 It may turn out at the end of the day, Mr. Moloney -- I would
 14 be very surprised -- may be completely right about everything
 15 he said.

16 JUDGE GONZALEZ: You turned away from the microphone
 17 when you said that.

18 MR. SCHATZOW: Mr. Moloney may be completely right
 19 about everything he said, Judge. I doubt it, but he may be.
 20 But the point is it is discovery that will tell. It is not
 21 what Mr. Moloney says or what I say. It is what the witnesses
 22 say and what the documents say, and we are entitled to get at
 23 the documents and get at the witnesses so that we can know
 24 what they say, particularly when the minimal amount of
 25 documents produced so far indicate that there were

1 conversations about commercial paper, there were conversations
2 about public information and private information as it applied
3 to Enron commercial paper, and where we know from the
4 testimony that Enron was in distress and wanted to prepay its
5 commercial paper and it couldn't do it without its dealers.

6 All we are saying is we want to be able to look at it,
7 and we think that we are entitled to look at it. We think you
8 are right, Judge. We are at the point now, at least in terms
9 of Enron, I don't really think that there is anything to talk
10 about in terms of further meet and confers and compromise.
11 Their position is we are not entitled to it. We put a date on
12 our request of August of 2001 for the end of the Project
13 Truman materials. We think it is reasonable and we think for
14 all of the reasons that have been articulated thus far, we
15 ought to be able to get at that.

16 JUDGE GONZALEZ: All right. Thank you.

17 Mr. Moloney?

18 MR. MOLONEY: Yes, Your Honor. I think where we are
19 is that Your Honor is going to have to decide whether what we
20 have agreed to do so far is sufficient or whether we are
21 required to do somebody else.

22 The document which you saw which was the transcript of
23 Mr. Caudell and the closed door meetings that he is referring
24 to that took place in Houston on pages 186 and 187, if you
25 look at page 187, he says: I think at this point Andrew

1 Fastow was gone. I am looking at page 187, lines 2 to 4. It
 2 says, Jeff McMahon was probably involved in these
 3 conversations. We can date this. Andrew Fastow -- it is a
 4 matter of record, and I am sure they will confirm this -- that
 5 Mr. Fastow was gone on October 24th, so Enron announces his
 6 public resignation. This is exactly the discussion that I had
 7 with Mr. Schatzow. He said the same thing to me. He said,
 8 "Look, in that last week of October Goldman was down there and
 9 they were having discussions with Enron." So I said, "Okay.
 10 I will produce all communications that the Project Truman team
 11 has with Enron during that last week, and I will let you
 12 depose Mr. Gieselman, who was the person who was there. If
 13 after you finish Mr. Gieselman's deposition you feel you need
 14 to depose the Vice Chairman of Goldman Sachs, Mr. Hurst, I
 15 will let you depose him too."

16 So it is not a question that we are stonewalling him.
 17 We didn't say, "Okay. Just accept our view of the facts."
 18 Based on what they say, there is discovery they want to find
 19 out. We have produced the documents already. Exhibit E,
 20 which they attached to their letter, are some of the Project
 21 Truman documents. We have given a date for Mr. Gieselman. It
 22 is scheduled for May 20th-something of May 21st or 22nd or
 23 something like that. So it is happening in the next month or
 24 so.

25 So we are not stonewalling them when it comes to this

1 discovery. Now, the question is: why should they get
 2 anything more? Why should they be able to go back to
 3 Goldman's Sachs' relationship at the outset of Project Truman
 4 and start deposing lots of analysts who may have been talking
 5 about -- perhaps, it started, just as a history lesson, it
 6 involved a call from Hurst to Kenneth Lay, which they will
 7 find out about or which they already know about, because it is
 8 in the newspapers -- where he said I think Enron is vulnerable
 9 to a takeover, and so Goldman was giving advice on an
 10 anti-takeover strategy and poison pills and things like that.
 11 They had no idea that this company, which was the seventh
 12 largest company in the United States, was about to go through
 13 the hellish nightmare that resulted in them ending up in this
 14 court and this case going on like this.

15 They will depose Gieselman and Hurst. If, based on
 16 those depositions, they think that they need more discovery,
 17 we will either give it to them or, if necessary, we will come
 18 back to this Court. We have not been here every day. I
 19 haven't been here since I joined the case in September. After
 20 that one group with that one dispute, I haven't been back here
 21 for a discovery dispute since. So I am not going to fool
 22 around with discovery. I would like to get this case over.
 23 As he said, I would like to move for summary judgment
 24 relatively soon. I understand there are certain witnesses
 25 they have to take, but on the agency agreement -- Your Honor,

1 if you look at Exhibit G to our letter, which is the agency
2 agreement -- this is dated October 28th, which is the day
3 before any of the trades settled on the 29th that are at issue
4 through November 2nd, and it is basically saying that we are
5 going to have a ministerial job and that they are going to
6 front us the payments and we are going to make the payments on
7 their behalf. Now, why do they need to take lots of discovery
8 regarding the circumstances of this? They signed it. Their
9 witnesses acknowledged they signed it. Why do we need to go
10 off into this frolic and detour to figure out what the meaning
11 of this letter is?

12 Now, if it is their beneficiary theory, I am saying as
13 a matter of law that theory has no legs. Because if you look
14 at 550, a speculative benefit will never satisfy 550; and the
15 fact that we may have eliminated some securities law liability
16 is at best expecting a benefit. So I am saying, as a matter
17 of law, that discovery is never going to be appropriate versus
18 spending lots of time and money going after discovery that as
19 a matter of law is irrelevant is what I think is
20 inappropriate.

21 We are happy to brief that question, and I think the
22 most appropriate forum to brief that question would be in a
23 motion for summary judgment. I will brief it in another
24 forum, if that is more helpful to the Court.

25 We think we have given them the discovery that they

1 legitimately need, and we think they have shown no basis
2 whatsoever for getting more discovery than what we have asked
3 for. The theory that they are espousing as a basis for
4 alternative discovery is not only flawed as a matter of law,
5 but will take us off in a crazy direction in this case.
6 Because if that discovery is relevant, we are suddenly
7 litigating a securities lawsuit where we are entitled to
8 discovery going the other way. We are entitled to discovery
9 from Enron. All of these relationships with all these other
10 parties who we sold these securities to, we are entitled to
11 discovery from all of those parties as to what they might
12 independently know about Enron. Instead of there being 150
13 depositions, we will have 600 depositions in this case. That
14 can't be good for a bankruptcy case. It just doesn't make any
15 sense.

16 JUDGE GONZALEZ: All right. Thank you.

17 We will leave today with the following. Work through
18 the schedule as the parties have said they will with respect
19 to Mr. Hurst. I think I will rule on what is before me today
20 on Tuesday, which I believe is April 24th at 2:00 p.m. No
21 party has to appear in person. Just set up the conference
22 call coming in and it will be on the record. If someone cares
23 to appear, they are more than welcome to appear at 2:00 on
24 Tuesday. I will leave it up to Enron to communicate to
25 everyone if there is a change in that schedule.

1 MR. SCHATZOW: Very well, Your Honor.

2 JUDGE GONZALEZ: All right. Thank you.

3 MR. PELL: Thank you, Judge.

4 MS. KOVSKY-APAP: Thank you, Your Honor.

5 JUDGE GONZALEZ: We are going to take a five-minute
6 recess. There is another matter scheduled for 3:00. I will
7 be out in a few minutes for that.

8 (Whereupon, from 3:07 p.m. to 3:17 p.m. a recess was
9 taken.)

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C E R T I F I C A T E

STATE OF NEW YORK)
 : SS:
COUNTY OF NEW YORK)

I, DEBORAH HUNTSMAN, a Shorthand Reporter and
Notary Public within and for the State of New York, do hereby
certify:

That the within is a true and accurate
transcript from the official electronic sound recording of the
proceedings held on the 19th day of April, 2007.

I further certify that I am not related by blood
or marriage to any of the parties and that I am not interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 24th day of April, 2007.

DEBORAH HUNTSMAN
DEBORAH HUNTSMAN

PROOFREAD BY HALLIE CANTOR

ROUGH DRAFT SENT ON 4/20/2007 AT APPROXIMATELY 9:00 A.M.
PRELIMINARY TRANSCRIPT SENT ON 4/20/2007

\$	21st [3] - 18:4, 18:11, 37:22	7	administration [1] - 26:8	25:23
\$250,000 [1] - 19:16	22 [1] - 16:2	718 [1] - 1:23	admitted [1] - 33:5	APAP [15] - 2:4, 3:6, 3:14, 6:3, 7:1, 7:9, 7:22, 26:21, 26:24, 28:18, 28:24, 29:2, 29:22, 29:24, 41:4
0	22nd [6] - 5:1, 8:17, 13:7, 13:11, 34:25, 37:22	723-9898 [1] - 1:23	advance [1] - 11:8	Apap [2] - 3:6, 30:25
01-16034 [1] - 3:3	24th [3] - 37:5, 40:20, 42:15	774-2551 [1] - 1:23	advice [1] - 38:9	Apap's [1] - 12:8
01-16034(AJG) [1] - 1:2	2600 [1] - 2:10	7th [1] - 12:4	advisor [1] - 20:17	appear [4] - 29:24, 40:21, 40:23
0269 [1] - 33:10	26th [5] - 5:2, 13:7, 13:11, 20:12, 30:1	8	advisors [1] - 20:15	appearances [1] - 1:21
0270 [1] - 33:11	27th [1] - 20:19	85 [1] - 15:24	affected [1] - 33:14	applied [1] - 36:2
03-02677(03-92682) [1] - 1:3	28th [1] - 39:2	8th [1] - 12:4	AG [1] - 2:14	apply [1] - 10:6
03-92677 [1] - 1:7	29th [1] - 39:3	9	agency [13] - 4:16, 11:5, 17:12, 17:13, 17:14, 17:23, 17:24, 25:1, 25:9, 28:6, 35:4, 38:25, 39:1	approach [4] - 18:22, 20:13, 28:20, 29:22
03-92682 [1] - 1:8	2:00 [3] - 1:7, 40:20, 40:23	90 [1] - 17:10	agent [5] - 5:3, 5:8, 17:11, 17:17, 17:19	appropriate [3] - 14:1, 39:17, 39:22
1	2:09 [1] - 1:5	90067 [1] - 2:7	ago [2] - 10:1, 10:5	APPROXIMATELY [1] - 42:21
100 [1] - 2:3	2nd [1] - 39:4	917 [1] - 1:23	agree [4] - 9:9, 19:12, 24:19, 31:20	April [4] - 1:4, 40:20, 42:10, 42:15
10006 [1] - 1:18	3	94306 [1] - 2:10	agreed [4] - 26:5, 31:7, 31:10, 36:20	aptly [2] - 8:6, 9:6
10036 [1] - 2:15	3 [1] - 22:20	9:00 [1] - 42:21	agreement [18] - 16:9, 17:12, 17:13, 17:15, 18:2, 19:7, 19:19, 20:1, 20:2, 23:17, 25:1, 25:9, 25:12, 30:23, 35:4, 35:6, 38:25, 39:2	argue [4] - 7:1, 7:15, 25:10, 28:5
10036 [1] - 2:6	30 [3] - 22:4, 22:9, 34:13	9th [1] - 24:12	agrees [1] - 24:17	argued [2] - 5:20, 10:6
10100 [1] - 2:6	300 [1] - 2:10	A	ahead [6] - 3:13, 7:8, 7:21, 18:24, 26:23, 29:23	argues [1] - 8:10
10th [2] - 24:13, 31:13	3600 [1] - 2:3	A.M [1] - 42:21	al [5] - 1:4, 1:7, 1:8, 2:14, 3:2	arguing [2] - 4:4, 23:22
11 [1] - 11:19	3:00 [1] - 41:6	able [12] - 5:15, 10:1, 11:15, 13:22, 13:23, 13:24, 19:24, 27:18, 29:13, 36:6, 36:15, 38:2	alleges [1] - 3:21	argument [5] - 4:3, 7:23, 11:4, 15:18, 25:21
1155 [1] - 2:15	3:07 [1] - 41:8	absolutely [1] - 27:12	allow [1] - 10:24	arguments [2] - 25:23, 28:6
1450 [1] - 2:6	3:17 [1] - 41:8	accept [5] - 30:20, 32:3, 32:10, 37:17	alternative [1] - 40:4	arise [1] - 6:15
150 [1] - 40:12	4	accepted [2] - 30:21, 32:6	Alto [1] - 2:10	arisen [1] - 6:16
1800 [1] - 1:13	4 [1] - 37:1	accomplish [1] - 17:20	altogether [1] - 5:7	ARTHUR [1] - 1:10
186 [2] - 29:3, 36:24	4/19/2007 [1] - 3:2	According [2] - 4:6, 29:6	amazing [1] - 34:6	articulated [1] - 36:14
187 [3] - 36:24, 36:25, 37:1	4/20/2007 [2] - 42:21, 42:21	accuracy [1] - 28:12	Americas [2] - 2:14, 2:15	ASF [1] - 30:1
188 [1] - 29:3	48243 [1] - 2:3	accurate [1] - 42:8	amount [1] - 35:24	aside [2] - 16:7, 16:10
19 [1] - 1:4	5	acknowledged [2] - 17:16, 39:9	analysts [1] - 38:4	assignment [1] - 21:3
1972 [1] - 23:16	50 [1] - 15:3	act [3] - 5:3, 17:11, 17:18	Andrew [2] - 36:25, 37:3	assistance [1] - 9:1
1974 [2] - 22:12, 23:14	547 [1] - 21:21	acting [2] - 5:8, 17:17	Andy [1] - 30:1	assume [1] - 22:18
1995 [2] - 23:18, 23:19	550 [3] - 21:21, 39:14	activities [1] - 33:18	Angeles [1] - 2:7	Assuming [1] - 26:18
1996 [2] - 23:3, 33:4	5th [1] - 12:4	actual [1] - 19:8	announced [1] - 26:14	assuming [2] - 28:13, 32:1
19th [1] - 42:10	6	add [1] - 26:3	announces [1] - 37:5	assurance [1] - 10:16
2	6 [1] - 9:19	additional [2] - 11:19, 29:18	answer [3] - 22:7, 30:14, 32:9	AT [1] - 42:21
2 [2] - 1:21, 37:1	600 [1] - 40:13	Additionally [4] - 3:19, 5:11, 27:9, 27:15	answers [1] - 30:4	attached [2] - 33:12, 37:20
2001 [3] - 23:12, 29:6, 36:12	608-9053 [1] - 1:23	address [1] - 5:18	anti [1] - 38:10	attempt [1] - 6:20
2006 [3] - 9:17, 9:19, 10:18	6th [3] - 12:4, 12:12, 16:10		anti-takeover [1] - 38:10	attention [3] - 27:8, 29:17, 32:23
2007 [3] - 1:4, 42:10, 42:15			anticipates [1] - 19:10	Attorneys [5] - 1:17, 25:23
20th [1] - 37:22			anyway [2] - 14:9,	
20th-something [1] - 37:22				
212 [1] - 1:23				
21201 [1] - 1:13				

2:2, 2:6, 2:9, 2:14 August [1] - 36:12 available [5] - 4:17, 12:13, 12:23, 12:24, 31:6 Avenue [1] - 2:15 avoid [3] - 5:7, 10:21, 25:14	Bialson [1] - 3:8 block [1] - 22:16 blood [1] - 42:11 Blvd [1] - 2:6 Board [1] - 33:15 bold [1] - 34:6 boo [1] - 13:17 books [2] - 20:14 brief [4] - 9:14, 39:21, 39:22, 39:23 briefing [2] - 24:9, 24:14 bring [2] - 27:3, 27:8 brings [1] - 10:2 broadly [1] - 6:5 broker [1] - 33:18 brought [4] - 5:19, 10:22, 28:24, 29:20 building [1] - 29:5 bunch [1] - 20:25 business [1] - 19:25 buyback [2] - 4:19, 13:1 buying [1] - 24:2 BY [7] - 1:14, 1:19, 2:4, 2:8, 2:11, 2:16, 42:20	29:4, 29:6, 29:13, 36:23 Center [1] - 2:3 central [1] - 14:8 Central [15] - 4:23, 22:5, 22:6, 22:19, 22:22, 23:15, 32:13, 32:15, 32:16, 33:7, 33:8, 33:13, 33:25, 34:8, 34:12 certain [5] - 5:20, 6:3, 18:14, 33:20, 38:24 Certainly [1] - 14:21 certainly [1] - 29:15 certify [2] - 42:7, 42:11 cetera [1] - 6:18 Chairman [2] - 16:21, 37:14 change [3] - 16:20, 32:1, 40:25 changed [1] - 34:9 characterize [1] - 26:24 characterized [2] - 8:15, 27:6 charge [1] - 26:19 charged [1] - 35:8 Chase [1] - 20:16 CHUNG [1] - 2:17 circumstances [3] - 16:20, 35:4, 39:8 cite [2] - 22:20, 30:23 Citibank [2] - 15:22, 20:15 claim [1] - 4:16 claims [1] - 3:24 clarify [1] - 27:2 clear [7] - 3:16, 3:18, 3:20, 7:13, 16:23, 21:25, 25:5 clearly [3] - 3:22, 8:13, 21:20 Cleary [1] - 11:13 CLEARY [1] - 1:16 clients [2] - 32:16, 34:3 closed [3] - 29:11, 36:23 Co [6] - 1:8, 1:17, 11:13, 18:16, 33:17, 33:20 collateral [1] - 15:19 colleague [1] - 27:4 COLLEEN [1] - 1:15 coming [1] - 40:22 comments [1] - 35:2 commercial [25] - 4:24, 5:2, 11:6, 11:17,	13:1, 13:10, 21:8, 21:10, 21:14, 23:1, 23:6, 24:2, 32:16, 33:2, 33:14, 33:18, 33:22, 34:2, 34:3, 35:1, 35:9, 35:11, 36:1, 36:3, 36:5 Commercial [1] - 23:8 Commission [1] - 23:15 committees [1] - 13:21 communicate [1] - 40:24 communicated [1] - 32:2 communications [2] - 13:9, 37:10 companion [1] - 15:14 company [2] - 38:11, 38:12 compel [1] - 14:11 competitor [1] - 19:25 completed [1] - 34:17 completely [5] - 4:5, 8:3, 27:11, 35:14, 35:18 complicated [1] - 8:19 comply [1] - 3:25 compromise [1] - 36:10 concedes [1] - 27:25 concern [2] - 22:15, 30:2 concerned [5] - 4:23, 22:4, 25:24, 27:3, 34:2 concerning [1] - 33:17 concerns [1] - 34:11 conclude [1] - 11:16 concluded [2] - 11:18, 11:19 conclusion [1] - 26:17 concur [1] - 24:21 conduct [2] - 15:19, 21:16 confer [4] - 5:21, 6:5, 7:10, 16:8 Conference [2] - 1:7, 1:8 conference [6] - 3:17, 25:22, 26:2, 29:8, 29:10, 40:21	conferred [1] - 5:22 confers [4] - 9:16, 27:14, 27:22, 36:10 confidence [1] - 33:15 confidential [12] - 18:14, 18:21, 19:4, 19:10, 19:14, 19:23, 20:4, 20:10, 21:2, 28:15, 28:18, 29:14 confidentiality [1] - 20:2 confirm [1] - 37:4 confused [1] - 32:8 Congress [1] - 21:20 connection [2] - 18:15, 18:16 consent [7] - 23:7, 23:14, 23:17, 23:20, 32:18, 34:9, 34:10 consider [1] - 19:6 consideration [1] - 18:16 consulted [1] - 24:24 contained [1] - 33:16 context [3] - 4:20, 11:21, 28:13 continually [1] - 28:2 continued [2] - 1:21, 2:1 continues [1] - 33:10 contract [2] - 21:23, 24:12 contrary [1] - 26:1 conversation [3] - 7:12, 13:25, 32:12 conversations [3] - 36:1, 37:3 copies [2] - 28:25, 29:20 CORP [1] - 1:3 Corp [5] - 1:7, 1:8, 2:9, 3:2, 3:9 correct [2] - 8:25, 24:21 counsel [6] - 3:5, 3:13, 9:7, 27:4, 27:5, 27:14 Counsel [2] - 1:12, 10:5 COUNTY [1] - 42:3 couple [1] - 18:18 course [2] - 27:7, 27:21 Court [17] - 1:22, 1:24, 4:2, 4:14, 5:19, 7:19, 7:23, 8:1, 9:7, 9:19, 9:22, 10:19, 16:15, 27:6, 31:17, 38:18, 39:24
B	C			
background [1] - 28:8 backwards [1] - 24:4 ball [1] - 11:8 Baltimore [1] - 1:13 bandwagon [1] - 14:2 bank [1] - 4:19 Bank [6] - 7:15, 7:19, 15:11, 15:16, 15:22, 23:23 bankers [2] - 13:6, 20:25 bankruptcy [4] - 23:16, 25:8, 33:13, 40:14 BANKRUPTCY [1] - 1:1 Bankruptcy [1] - 1:10 Based [1] - 37:18 based [5] - 4:23, 17:23, 24:22, 26:18, 38:15 basis [5] - 6:9, 7:4, 10:11, 40:1, 40:3 Bates [1] - 33:9 began [1] - 9:17 behalf [7] - 3:7, 3:9, 3:11, 9:5, 9:14, 11:12, 39:7 believes [1] - 8:9 BENANTI [1] - 2:18 bench [1] - 18:22 beneficiary [6] - 11:5, 23:21, 24:9, 25:10, 34:15, 39:12 benefit [8] - 21:13, 21:19, 21:21, 22:2, 24:1, 25:11, 39:14, 39:16 Bergen [1] - 3:8 BERGEN [1] - 2:9 best [2] - 5:12, 39:16 between [2] - 22:23, 27:1 beyond [1] - 17:6 BIALSON [1] - 2:9	California [2] - 2:7, 2:10 Camino [1] - 2:10 cannot [1] - 16:21 CANTOR [1] - 42:20 care [3] - 33:25, 34:7, 34:8 cared [1] - 34:4 cares [1] - 40:22 Cascade [1] - 2:6 Case [5] - 1:2, 3:3, 3:10, 7:18, 7:25 CASE [1] - 2:13 case [44] - 3:22, 4:7, 4:23, 5:11, 6:11, 7:20, 8:2, 8:4, 8:8, 9:23, 11:5, 14:14, 15:10, 15:12, 15:15, 15:23, 15:25, 16:1, 16:3, 17:7, 17:8, 21:3, 22:6, 23:3, 24:2, 24:4, 24:16, 26:8, 26:12, 32:15, 33:8, 34:1, 34:8, 34:12, 34:21, 38:14, 38:19, 38:22, 40:5, 40:13, 40:14 cases [1] - 15:14 cast [1] - 26:7 Caudell [5] - 28:22,			

<p>court ^[1] - 38:14 COURT ^[1] - 1:1 Court's ^[3] - 8:25, 11:8, 27:8 courtroom ^[1] - 10:5 CP ^[1] - 8:16 crazy ^[4] - 22:6, 24:17, 24:20, 40:5 created ^[1] - 12:25 CREDITORS ^[1] - 1:3 creditworthiness ^[2] - 22:25, 33:21 Cromwell ^[1] - 22:7 cross ^[1] - 27:22 customers ^[2] - 4:25, 5:8 cycles ^[2] - 10:13, 15:24</p>	<p>default ^[1] - 22:22 defaulted ^[1] - 4:24 Defendant ^[7] - 14:17, 14:18, 15:10, 15:11, 15:12, 15:14, 15:16 Defendants ^[11] - 3:11, 7:17, 7:23, 7:24, 8:4, 8:7, 9:23, 14:14, 15:3, 31:21 defendants ^[2] - 7:25, 8:4 defense ^[2] - 17:14, 28:6 defenses ^[2] - 3:24, 4:17 demand ^[1] - 5:3 demonstrated ^[2] - 3:23, 28:4 depose ^[4] - 37:12, 37:14, 37:15, 38:15 deposed ^[1] - 22:16 deposing ^[2] - 16:2, 38:4 deposition ^[17] - 5:4, 9:17, 10:3, 11:16, 11:18, 12:13, 15:24, 16:21, 16:23, 24:11, 25:15, 25:17, 28:21, 29:4, 30:19, 35:7, 37:13 Deposition ^[1] - 3:16 depositions ^[6] - 8:23, 10:14, 32:20, 38:16, 40:13 desk ^[1] - 29:18 DeSpain ^[1] - 29:9 details ^[1] - 31:2 detour ^[1] - 39:10 Detroit ^[1] - 2:3 Deutsche ^[6] - 7:15, 7:19, 15:11, 15:15, 15:22, 23:23 different ^[4] - 11:4, 22:12, 22:13 DIGITALLY ^[1] - 1:6 direction ^[1] - 40:5 directly ^[1] - 29:13 director ^[1] - 17:3 disagreement ^[1] - 9:20 disclosing ^[1] - 27:5 discover ^[1] - 4:10 discovery ^[51] - 3:15, 3:20, 3:23, 3:25, 4:9, 4:21, 5:9, 5:17, 6:10, 7:16, 7:24, 8:6, 8:9, 8:20, 8:22, 9:21, 9:24, 10:20, 11:21, 12:7, 15:19, 17:15, 17:18,</p>	<p>20:24, 22:16, 23:25, 24:6, 24:18, 24:20, 24:22, 28:10, 31:23, 31:24, 34:18, 35:12, 35:20, 37:18, 38:1, 38:16, 38:21, 38:22, 39:7, 39:17, 39:18, 39:25, 40:2, 40:4, 40:6, 40:8, 40:11 Discovery ^[2] - 1:7, 1:8 discuss ^[1] - 31:3 discussing ^[1] - 9:16 discussion ^[3] - 12:10, 27:13, 37:6 discussions ^[5] - 18:20, 19:11, 19:22, 27:6, 37:9 dismissed ^[2] - 7:20, 8:1 disposing ^[1] - 12:5 dispute ^[7] - 3:15, 10:4, 20:21, 31:23, 31:24, 38:20, 38:21 disputes ^[2] - 9:21, 9:24 dissolved ^[1] - 23:19 distress ^[1] - 36:4 DISTRICT ^[1] - 1:1 docs ^[1] - 31:8 document ^[16] - 3:20, 6:9, 7:3, 14:6, 14:8, 14:10, 14:15, 27:16, 27:19, 29:18, 29:19, 31:12, 31:18, 33:5, 33:6, 36:22 documents ^[47] - 4:6, 4:7, 4:15, 4:21, 5:11, 5:24, 6:2, 6:4, 6:6, 6:18, 7:5, 8:11, 8:12, 8:16, 8:23, 9:15, 11:2, 11:7, 12:25, 13:2, 13:9, 13:14, 14:6, 14:9, 17:6, 25:21, 25:25, 26:5, 27:13, 28:4, 29:8, 30:10, 31:1, 31:6, 31:14, 34:23, 34:25, 35:1, 35:22, 35:23, 35:25, 37:19, 37:21 dog ^[1] - 18:7 dollars ^[1] - 24:6 done ^[4] - 10:24, 12:13, 14:22, 35:12 door ^[1] - 36:23 doors ^[2] - 29:10, 29:11 dot ^[1] - 27:22 doubt ^[2] - 34:16, 35:19</p>	<p>down ^[10] - 6:17, 11:15, 12:4, 12:6, 12:11, 13:5, 16:18, 27:4, 35:5, 37:8 draft ^[3] - 18:22, 18:25, 19:16 DRAFT ^[1] - 42:21 drafting ^[1] - 24:25 drawdown ^[1] - 13:2 drawing ^[1] - 4:18 dress ^[1] - 27:4 dumbfounded ^[1] - 30:22 dumping ^[1] - 5:8 duplicate ^[1] - 6:23 uplicative ^[4] - 6:10, 6:12, 7:4, 7:6 during ^[8] - 5:13, 19:11, 21:1, 28:15, 30:18, 34:25, 35:2, 37:11 Dynegy ^[1] - 20:17</p>	<p>3:2, 4:14, 4:23, 5:2, 5:13, 5:14, 6:7, 6:18, 6:24, 8:7, 9:4, 9:12, 9:14, 12:5, 13:6, 13:9, 13:17, 14:25, 15:1, 15:3, 15:21, 16:7, 17:17, 17:19, 19:1, 19:25, 20:5, 20:12, 20:14, 21:7, 21:8, 21:9, 22:20, 25:5, 25:16, 25:24, 26:1, 26:11, 26:15, 27:5, 27:17, 28:22, 29:5, 29:9, 29:19, 29:25, 30:12, 32:24, 34:3, 35:2, 35:8, 36:3, 36:4, 36:9, 37:5, 37:9, 37:11, 38:8, 40:9, 40:12, 40:24 Enron's ^[7] - 4:18, 6:23, 17:16, 18:9, 18:16, 20:18, 24:1 enter ^[1] - 25:8 entered ^[3] - 23:14, 35:5, 35:6 entitled ^[16] - 4:10, 4:19, 5:9, 5:17, 7:16, 7:23, 8:21, 10:11, 28:9, 30:7, 35:22, 36:7, 36:11, 40:7, 40:8, 40:10 entity ^[1] - 23:7 error ^[1] - 31:3 especially ^[1] - 3:17 espousing ^[1] - 40:3 ESQ ^[11] - 1:14, 1:15, 1:19, 1:20, 2:4, 2:8, 2:11, 2:12, 2:16, 2:17, 2:18 essence ^[2] - 15:25, 28:11 essentially ^[1] - 4:3 established ^[1] - 8:7 estate ^[1] - 25:8 et ^[6] - 1:4, 1:7, 1:8, 2:14, 3:2, 6:18 EVAN ^[1] - 2:18 event ^[1] - 27:18 events ^[4] - 4:20, 23:4, 23:20, 24:25 evidence ^[2] - 22:15, 30:23 exact ^[1] - 17:1 exactly ^[3] - 12:11, 33:8, 37:6 excerpt ^[1] - 3:1 exchange ^[1] - 27:1 Exchange ^[1] - 23:15 executed ^[1] - 19:6 execution ^[1] - 19:8</p>
D				
<p>Dallas ^[1] - 12:4 date ^[18] - 10:17, 10:18, 12:16, 13:20, 16:13, 16:16, 16:17, 16:18, 16:22, 25:16, 25:17, 32:19, 32:22, 33:4, 36:11, 37:3, 37:21 dated ^[3] - 18:4, 23:2, 39:2 dates ^[7] - 3:19, 9:17, 10:3, 10:7, 10:8, 10:16, 16:19 days ^[2] - 11:18, 17:10 dead ^[1] - 5:16 deadlines ^[1] - 10:20 deal ^[3] - 10:12, 25:2, 31:20 dealer ^[3] - 31:21, 33:18, 34:3 dealers ^[1] - 36:5 deals ^[2] - 13:10, 19:17 Deborah ^[1] - 3:6 DEBORAH ^[5] - 1:22, 2:4, 42:5, 42:18, 42:19 Debtor ^[2] - 8:8, 8:22 Debtors ^[2] - 1:5, 1:12 decide ^[2] - 21:25, 36:19 decided ^[1] - 6:22 decision ^[1] - 5:5 decree ^[5] - 23:7, 23:14, 23:20, 34:9, 34:10</p>				
E				
<p>e-mail ^[6] - 12:10, 13:13, 13:23, 27:1, 27:10, 31:2 editorializing ^[2] - 24:22, 27:25 Effectively ^[1] - 6:21 either ^[2] - 9:3, 38:17 Either ^[1] - 30:12 EI ^[1] - 2:10 Electronic ^[1] - 1:23 electronic ^[1] - 42:9 eleven ^[1] - 10:13 eliminated ^[1] - 39:15 employee ^[4] - 28:22, 29:25, 35:8, 35:10 employees ^[2] - 33:20, 35:2 enacted ^[1] - 21:21 end ^[3] - 33:8, 35:13, 36:12 ending ^[1] - 38:13 endless ^[1] - 13:20 enforce ^[2] - 6:20, 6:24 engagement ^[15] - 18:15, 18:17, 18:18, 18:20, 18:22, 18:25, 19:5, 19:6, 19:8, 19:9, 19:14, 19:16, 19:19, 20:9, 21:1 ENRON ^[1] - 1:3 Enron ^[65] - 1:7, 1:8,</p>				

<p>executives [1] - 29:9</p> <p>exhibit [1] - 30:22</p> <p>Exhibit [9] - 12:3, 18:3, 18:5, 18:8, 26:25, 30:24, 32:4, 37:19, 39:1</p> <p>exist [1] - 22:14</p> <p>existing [1] - 23:8</p> <p>exists [1] - 23:7</p> <p>expect [1] - 19:18</p> <p>expecting [1] - 39:16</p> <p>extend [1] - 10:19</p> <p>extent [1] - 32:8</p> <p>extra [1] - 24:17</p>	<p>files [1] - 22:5</p> <p>financing [2] - 20:16, 20:20</p> <p>Fine [2] - 25:11, 31:25</p> <p>fine [2] - 13:18, 14:1</p> <p>finish [3] - 12:22, 16:17, 37:13</p> <p>finishing [1] - 16:1</p> <p>finite [1] - 22:1</p> <p>firm's [1] - 18:9</p> <p>First [3] - 8:11, 15:10, 26:24</p> <p>first [4] - 10:16, 12:15, 16:12, 18:12</p> <p>five [3] - 11:20, 23:9, 41:5</p> <p>five-minute [1] - 41:5</p> <p>flawed [1] - 40:4</p> <p>flouting [1] - 3:18</p> <p>following [4] - 3:1, 12:20, 20:22, 40:17</p> <p>fool [1] - 38:21</p> <p>force [1] - 10:19</p> <p>Forget [1] - 24:5</p> <p>formal [8] - 6:22, 6:23, 11:1, 14:20, 14:23, 14:24, 27:16</p> <p>formally [2] - 6:2, 27:20</p> <p>forth [1] - 11:2</p> <p>Fortunately [1] - 11:24</p> <p>forum [2] - 39:22, 39:24</p> <p>forward [2] - 19:22, 24:3</p> <p>frankly [1] - 24:8</p> <p>fraudulent [1] - 16:3</p> <p>freeze [1] - 31:8</p> <p>frolic [1] - 39:10</p> <p>front [2] - 12:3, 39:6</p> <p>furnish [1] - 18:14</p> <p>futile [1] - 7:11</p>	<p>Given [1] - 10:14</p> <p>glad [1] - 11:15</p> <p>Global [1] - 2:14</p> <p>Goldman [90] - 1:17, 3:18, 3:21, 3:24, 4:2, 4:6, 4:16, 4:17, 4:18, 4:22, 4:24, 5:1, 5:5, 5:10, 5:18, 5:19, 5:21, 5:22, 5:23, 5:24, 6:1, 6:8, 6:14, 6:17, 6:19, 7:2, 7:12, 7:15, 7:18, 7:20, 7:22, 7:25, 8:2, 8:10, 8:14, 8:24, 9:16, 10:5, 11:1, 11:11, 11:13, 11:17, 11:19, 13:5, 15:20, 16:3, 16:21, 17:3, 17:17, 18:4, 18:15, 18:19, 19:3, 19:23, 19:24, 20:8, 20:13, 20:15, 20:17, 20:19, 20:25, 21:12, 21:17, 22:15, 22:22, 22:23, 22:25, 23:8, 23:18, 27:11, 27:14, 28:8, 28:17, 29:4, 29:7, 30:3, 31:13, 32:14, 32:18, 32:24, 32:25, 33:4, 33:6, 33:10, 33:24, 34:20, 37:8, 37:14, 38:9</p> <p>Goldman's [7] - 17:18, 19:10, 19:13, 26:25, 28:6, 32:15, 38:3</p> <p>GONZALEZ [36] - 1:10, 3:4, 3:12, 6:1, 6:15, 7:8, 7:21, 9:2, 9:8, 9:11, 11:10, 14:19, 18:6, 18:8, 18:11, 18:24, 19:2, 22:18, 24:19, 25:15, 25:20, 26:9, 26:20, 26:23, 28:11, 28:23, 29:1, 29:21, 29:23, 30:8, 30:11, 35:16, 36:16, 40:16, 41:2, 41:5</p> <p>Goodbye [1] - 20:20</p> <p>GOTTLIEB [1] - 1:16</p> <p>Gottlieb [1] - 11:13</p> <p>govern [1] - 33:1</p> <p>Government [1] - 20:3</p> <p>government [1] - 20:6</p> <p>GRANFIELD [1] - 1:20</p> <p>Granfield [1] - 24:24</p> <p>greatly [1] - 24:16</p>	<p>Greg [2] - 28:22, 29:6</p> <p>grievance [1] - 10:23</p> <p>ground [2] - 15:4, 24:5</p> <p>group [1] - 38:20</p> <p>GS [4] - 30:3, 33:16, 33:20</p> <p>GSMM [1] - 33:20</p> <p>guarantor [1] - 21:23</p> <p>guess [4] - 14:17, 26:9, 26:24, 30:13</p>	<p>28:20, 29:3, 30:9, 36:18, 36:19, 38:25, 41:1, 41:4</p> <p>Honor's [3] - 12:20, 12:21, 29:17</p> <p>HONORABLE [1] - 1:10</p> <p>hope [1] - 31:5</p> <p>hopefully [1] - 16:25</p> <p>Hopkins [1] - 1:13</p> <p>host [1] - 11:7</p> <p>Houston [4] - 13:5, 13:19, 29:5, 36:24</p> <p>Huffman [1] - 24:11</p> <p>HUNTSMAN [4] - 1:22, 42:5, 42:18, 42:19</p> <p>Hurst [21] - 3:19, 9:19, 10:8, 10:16, 10:18, 12:14, 12:16, 12:23, 13:20, 16:12, 16:13, 17:2, 17:4, 25:17, 35:5, 35:10, 37:14, 38:6, 38:15, 40:19</p> <p>hypothetical [2] - 16:19, 16:22</p>
<p>F</p>				<p>I</p>
<p>fact [11] - 10:1, 13:13, 15:15, 17:1, 19:15, 21:13, 24:5, 27:16, 34:7, 34:8, 39:15</p> <p>facts [7] - 3:21, 4:5, 4:7, 4:8, 8:24, 28:9, 37:17</p> <p>factual [2] - 19:21, 28:7</p> <p>failed [3] - 5:20, 7:18, 8:1</p> <p>fair [1] - 26:17</p> <p>faith [2] - 14:16, 15:6</p> <p>fall [2] - 7:2, 29:6</p> <p>falls [1] - 6:23</p> <p>fantasy [1] - 22:11</p> <p>far [9] - 11:18, 17:16, 17:18, 24:7, 25:13, 25:23, 35:25, 36:14, 36:20</p> <p>farfetched [1] - 34:15</p> <p>Fastow [9] - 20:3, 20:6, 28:12, 28:14, 28:20, 30:2, 37:1, 37:3, 37:5</p> <p>February [3] - 12:4, 12:12, 16:10</p> <p>Federal [3] - 21:9, 22:13, 33:15</p> <p>fee [1] - 19:16</p> <p>feeding [1] - 29:8</p> <p>fees [1] - 19:17</p> <p>few [3] - 5:18, 26:21, 41:7</p> <p>Fifth [1] - 5:16</p> <p>figure [7] - 12:1, 15:5, 21:16, 21:19, 23:25, 25:7, 39:10</p> <p>file [5] - 10:9, 10:10, 10:25, 29:18, 34:16</p>	<p>G</p>	<p>generally [1] - 33:14</p> <p>Gieselman [13] - 9:18, 10:7, 10:15, 12:13, 12:15, 12:16, 13:15, 16:18, 17:1, 17:2, 37:12, 37:21, 38:15</p> <p>Gieselman's [2] - 10:8, 37:13</p> <p>given [7] - 9:23, 17:1, 17:7, 18:19, 27:5, 37:21, 39:25</p>		<p>idea [7] - 15:24, 16:2, 17:18, 17:22, 22:2, 22:9, 38:11</p> <p>impact [1] - 35:11</p> <p>impasse [1] - 31:14</p> <p>implement [1] - 33:17</p> <p>implicitly [1] - 21:11</p> <p>imposed [1] - 33:19</p> <p>IN [1] - 42:14</p> <p>inappropriate [2] - 16:14, 39:20</p> <p>Inc [4] - 1:7, 2:2, 2:14, 3:7</p> <p>includes [1] - 13:2</p> <p>including [3] - 11:5, 31:10, 32:2</p> <p>incomplete [2] - 8:14, 34:19</p> <p>incorrect [1] - 19:2</p> <p>incumbent [1] - 6:11</p> <p>Indeed [1] - 22:21</p> <p>indemnity [1] - 19:19</p> <p>independently [1] - 40:12</p> <p>indicate [1] - 35:25</p> <p>indicating [1] - 27:10</p> <p>indication [1] - 31:9</p> <p>inexcusable [1] - 4:1</p>

<p>informally ^[1] - 27:21</p> <p>information ^[17] - 5:13, 12:9, 13:8, 17:23, 18:14, 18:21, 19:5, 19:10, 19:14, 19:23, 20:5, 20:10, 21:2, 28:15, 28:19, 36:2</p> <p>initial ^[1] - 28:19</p> <p>injunction ^[1] - 33:16</p> <p>innocent ^[1] - 4:5</p> <p>inoperative ^[1] - 23:4</p> <p>insider ^[1] - 11:6</p> <p>Instead ^[1] - 40:12</p> <p>institution ^[1] - 15:21</p> <p>insufficient ^[1] - 27:11</p> <p>Insurance ^[1] - 1:8</p> <p>intended ^[1] - 6:5</p> <p>interested ^[2] - 27:12, 42:12</p> <p>intervene ^[1] - 33:15</p> <p>investigate ^[2] - 22:25, 33:21</p> <p>Investment ^[2] - 2:9, 3:9</p> <p>investment ^[2] - 13:6, 20:25</p> <p>investor ^[1] - 32:16</p> <p>investors ^[1] - 21:19</p> <p>involved ^[5] - 24:25, 25:3, 33:2, 37:2, 38:6</p> <p>ironic ^[1] - 24:23</p> <p>irrelevant ^[5] - 4:7, 8:3, 16:5, 26:14, 39:19</p> <p>issue ^[21] - 5:10, 5:23, 6:19, 7:9, 11:22, 12:7, 14:3, 14:4, 14:13, 16:12, 19:4, 22:19, 23:20, 23:23, 24:9, 26:10, 27:24, 28:1, 28:3, 31:22, 39:3</p> <p>issued ^[1] - 23:6</p> <p>issuer ^[2] - 22:25, 33:21</p> <p>issues ^[5] - 8:19, 11:5, 11:7, 15:19, 26:14</p> <p>itself ^[3] - 6:14, 8:7, 8:14</p>	<p>31:13</p> <p>Jeff ^[2] - 29:9, 37:2</p> <p>job ^[1] - 39:5</p> <p>JOHN ^[1] - 2:17</p> <p>joined ^[2] - 8:22, 38:19</p> <p>joining ^[1] - 26:1</p> <p>Journal ^[1] - 20:22</p> <p>JUDGE ^[35] - 3:4, 3:12, 6:1, 6:15, 7:8, 7:21, 9:2, 9:8, 9:11, 11:10, 14:19, 18:6, 18:8, 18:11, 18:24, 19:2, 22:18, 24:19, 25:15, 25:20, 26:9, 26:20, 26:23, 28:11, 28:23, 29:1, 29:21, 29:23, 30:8, 30:11, 35:16, 36:16, 40:16, 41:2, 41:5</p> <p>Judge ^[8] - 1:10, 30:13, 33:19, 34:13, 35:12, 35:19, 36:8, 41:3</p> <p>judgment ^[5] - 24:10, 24:14, 34:17, 38:23, 39:23</p> <p>July ^[1] - 33:4</p> <p>jumped ^[1] - 14:2</p>	<p>Kovsky ^[3] - 3:6, 12:8, 30:25</p> <p>KOVSKY-APAP ^[15] - 2:4, 3:6, 3:14, 6:3, 7:1, 7:9, 7:22, 26:21, 26:24, 28:18, 28:24, 29:2, 29:22, 29:24, 41:4</p> <p>Kovsky-Apap ^[2] - 3:6, 30:25</p> <p>Kovsky-Apap's ^[1] - 12:8</p>	<p>L</p> <p>land ^[1] - 22:11</p> <p>large ^[1] - 29:7</p> <p>largest ^[1] - 38:12</p> <p>last ^[6] - 3:17, 13:5, 13:16, 20:11, 37:8, 37:11</p> <p>late ^[1] - 23:16</p> <p>LAW ^[3] - 2:11, 3:8, 9:5</p> <p>Law ^[1] - 3:8</p> <p>law ^[9] - 9:6, 21:17, 23:24, 26:13, 39:13, 39:15, 39:17, 39:19, 40:4</p> <p>laws ^[4] - 21:7, 21:13, 21:18, 22:3</p> <p>Laws ^[2] - 21:10, 22:14</p> <p>lawsuit ^[3] - 23:21, 25:13, 40:7</p> <p>lawyer ^[1] - 24:11</p> <p>Lay ^[4] - 20:4, 35:5, 35:11, 38:6</p> <p>lead ^[3] - 10:14, 31:22, 31:23</p> <p>learned ^[1] - 20:25</p> <p>least ^[6] - 14:15, 15:6, 22:19, 25:24, 28:11, 36:8</p> <p>leave ^[3] - 16:10, 40:17, 40:24</p> <p>legal ^[4] - 21:5, 21:20, 21:22, 22:1</p> <p>legitimately ^[1] - 40:1</p> <p>legs ^[2] - 24:15, 39:13</p> <p>Lehman ^[5] - 10:4, 12:18, 27:5, 27:6</p> <p>less ^[1] - 12:21</p> <p>lesson ^[1] - 38:5</p> <p>letter ^[39] - 4:2, 4:3, 4:13, 5:19, 12:2, 13:15, 13:24, 15:17,</p>	<p>18:2, 18:3, 18:5, 18:9, 18:10, 18:13, 18:17, 18:19, 18:22, 18:25, 19:3, 19:5, 19:9, 19:13, 19:14, 19:15, 19:16, 19:19, 19:20, 20:9, 22:20, 26:1, 27:1, 30:23, 33:12, 37:20, 39:1, 39:11</p> <p>level ^[2] - 5:14, 29:9</p> <p>liability ^[4] - 5:10, 21:22, 34:7, 39:15</p> <p>liable ^[4] - 4:25, 21:7, 21:12, 21:18</p> <p>Liberty ^[1] - 1:17</p> <p>life ^[1] - 21:6</p> <p>Life ^[1] - 1:8</p> <p>limited ^[2] - 8:14, 34:24</p> <p>LINDSEE ^[1] - 1:20</p> <p>Lindsee ^[1] - 24:24</p> <p>line ^[1] - 7:11</p> <p>lines ^[2] - 4:19, 37:1</p> <p>literally ^[1] - 29:5</p> <p>litigate ^[1] - 16:4</p> <p>litigating ^[2] - 16:4, 40:7</p> <p>litigation ^[9] - 3:24, 4:15, 5:6, 8:6, 23:25, 25:14, 27:20, 31:8, 32:17</p> <p>Litigation ^[3] - 1:12, 7:18, 7:25</p> <p>LLP ^[7] - 1:12, 1:16, 2:2, 2:5, 2:13, 9:14, 11:14</p> <p>logical ^[2] - 21:15, 34:13</p> <p>look ^[13] - 12:2, 12:3, 16:11, 18:2, 18:17, 19:20, 21:24, 30:24, 36:6, 36:7, 36:25, 39:1, 39:13</p> <p>Look ^[2] - 14:5, 37:8</p> <p>looking ^[4] - 17:22, 17:24, 29:3, 37:1</p> <p>Los ^[1] - 2:7</p> <p>LOUIS ^[1] - 2:8</p> <p>low ^[1] - 5:6</p> <p>LP ^[1] - 33:20</p>	<p>33:12</p> <p>Management ^[1] - 2:14</p> <p>managing ^[1] - 17:2</p> <p>manner ^[1] - 25:5</p> <p>manual ^[10] - 22:21, 23:2, 23:5, 23:10, 23:13, 32:20, 32:21, 32:23, 33:9</p> <p>manuals ^[1] - 33:1</p> <p>March ^[1] - 31:15</p> <p>MARGARET ^[1] - 1:15</p> <p>market ^[3] - 22:13, 33:14, 33:16</p> <p>marriage ^[1] - 42:12</p> <p>Maryland ^[1] - 1:13</p> <p>Mass ^[1] - 1:8</p> <p>materials ^[1] - 36:13</p> <p>matter ^[15] - 3:21, 9:1, 19:21, 21:20, 26:10, 26:13, 28:8, 34:11, 37:4, 39:13, 39:16, 39:19, 40:4, 41:6, 42:13</p> <p>matters ^[2] - 3:21, 13:10</p> <p>McGee ^[1] - 3:17</p> <p>McMahon ^[2] - 29:10, 37:2</p> <p>meaning ^[1] - 39:10</p> <p>meaningful ^[1] - 30:4</p> <p>means ^[2] - 16:1, 30:3</p> <p>mechanical ^[2] - 17:9, 25:5</p> <p>meet ^[8] - 5:20, 6:4, 7:9, 9:16, 16:8, 27:14, 27:22, 36:10</p> <p>meeting ^[5] - 17:2, 28:16, 28:20, 35:5, 35:10</p> <p>meetings ^[2] - 13:21, 36:23</p> <p>MegaCase ^[1] - 15:16</p> <p>mentions ^[1] - 22:22</p> <p>mere ^[1] - 8:12</p> <p>merger ^[1] - 20:17</p> <p>merits ^[5] - 4:4, 10:12, 16:11, 26:4, 28:6</p> <p>met ^[2] - 5:22, 30:1</p> <p>Michael ^[1] - 9:13</p> <p>MICHAEL ^[2] - 1:14, 2:12</p> <p>Michigan ^[1] - 2:3</p> <p>microphone ^[1] - 35:16</p> <p>might ^[6] - 20:25,</p>
<p>J</p>					
<p>J.P ^[4] - 1:6, 1:7, 20:16, 35:10</p> <p>January ^[2] - 9:17,</p>					

21:13, 22:2, 24:4, 25:8, 40:11 millions [1] - 24:6 mind [8] - 15:19, 15:20, 21:20, 21:21, 26:10, 26:19, 32:1, 32:3 minimal [1] - 35:24 ministerial [1] - 39:5 minute [1] - 41:5 minutes [1] - 41:7 mischaracterization [1] - 31:3 misplaced [1] - 28:7 misrepresented [1] - 18:1 missed [1] - 15:16 Mitch [2] - 29:18, 29:25 modified [1] - 20:1 MOLONEY [15] - 1:19, 11:12, 14:21, 18:7, 18:9, 18:12, 18:25, 19:12, 23:2, 24:21, 25:18, 26:3, 26:17, 30:9, 36:18 Moloney [20] - 11:12, 26:22, 27:1, 27:25, 28:1, 28:5, 28:7, 30:15, 31:4, 31:19, 32:2, 32:8, 32:19, 32:21, 32:22, 33:23, 35:13, 35:18, 35:21, 36:17 Moloney's [3] - 27:4, 27:10, 30:14 Monday [1] - 20:22 money [2] - 17:9, 39:18 Monica [1] - 2:6 month [2] - 10:4, 37:23 Morgan [3] - 1:7, 20:16, 35:10 Morgan/Mass [1] - 1:6 morning [1] - 30:2 morphing [1] - 15:25 Most [1] - 5:14 most [3] - 12:1, 21:5, 39:22 motion [5] - 10:9, 10:10, 11:1, 34:17, 39:23 motivated [1] - 22:15 motivating [1] - 23:12 motivation [1] - 5:1 move [4] - 14:11, 24:10, 24:13, 38:23	moving [8] - 3:22, 4:12, 5:20, 7:11, 8:7, 27:2, 27:15, 27:20 MR [24] - 3:8, 3:10, 9:5, 9:9, 9:13, 11:12, 14:21, 18:7, 18:9, 18:12, 18:25, 19:12, 23:2, 24:21, 25:18, 26:3, 26:17, 30:9, 30:13, 33:13, 35:18, 36:18, 41:1, 41:3 MS [15] - 3:6, 3:14, 6:3, 7:1, 7:9, 7:22, 26:21, 26:24, 28:18, 28:24, 29:2, 29:22, 29:24, 33:12, 41:4 Murphy [1] - 12:7 must [1] - 4:7 Mutual [2] - 1:6, 1:8	nightmare [1] - 38:13 Nobody [2] - 34:11, 34:12 nobody [5] - 10:20, 22:9, 32:2, 32:22, 34:4 nominated [1] - 9:18 non [2] - 20:10, 31:21 non-dealer [1] - 31:21 non-public [1] - 20:10 Nos [1] - 1:2 Notary [1] - 42:6 note [2] - 7:19, 8:1 notes [1] - 29:24 nothing [3] - 8:5, 17:23, 21:3 notice [2] - 14:21, 27:12 November [1] - 39:4 number [2] - 9:23, 9:24 Number [1] - 21:16	once [2] - 13:21, 16:9 Once [1] - 34:10 one [12] - 8:25, 14:14, 20:15, 21:16, 22:6, 26:3, 27:15, 27:20, 29:17, 31:1, 38:20 One [2] - 1:17, 14:19 ones [3] - 10:22, 11:19, 17:7 onward [1] - 8:17 open [1] - 20:8 operated [1] - 34:10 operation [1] - 33:1 operative [1] - 13:19 opportunity [2] - 28:16, 30:11 order [4] - 10:10, 25:13, 32:18 Order [1] - 3:16 orderly [1] - 26:8 otherwise [1] - 5:15 ought [1] - 36:15 ourselves [1] - 4:11 outcome [1] - 42:13 outlined [1] - 30:2 outset [1] - 38:3 OWEN [1] - 2:16 Owen [2] - 3:10, 9:10 own [3] - 24:23, 25:5, 27:25	28:11 partial [3] - 24:10, 24:13, 34:17 participating [1] - 12:9 particular [1] - 28:15 particularly [2] - 6:13, 35:24 parties [15] - 3:22, 5:20, 6:13, 7:3, 8:21, 19:7, 25:17, 27:2, 27:16, 27:19, 27:20, 40:10, 40:11, 40:18, 42:12 parties' [4] - 4:13, 6:9, 6:10, 7:4 partner [5] - 12:8, 13:15, 17:3, 22:8, 24:24 party [5] - 7:11, 15:7, 22:1, 25:21, 40:21 paying [1] - 24:1 payment [1] - 17:10 payments [3] - 32:18, 39:6 pays [1] - 32:22 PEITZMAN [1] - 2:5 Pell [2] - 3:10, 9:10 PELL [4] - 2:16, 3:10, 9:9, 41:3 Penn [15] - 4:23, 22:4, 22:6, 22:19, 22:22, 23:15, 32:13, 32:15, 33:7, 33:8, 33:13, 33:25, 34:8, 34:12 people [9] - 9:18, 13:5, 14:22, 20:23, 25:4, 28:17, 30:19, 32:11, 33:2 People [1] - 29:8 people's [1] - 15:20 Pepper [2] - 3:7, 3:13 PEPPER [1] - 2:2 per [1] - 19:16 perceived [1] - 5:6 Perhaps [1] - 28:19 perhaps [2] - 33:23, 38:5 period [5] - 5:14, 13:11, 16:25, 28:16, 35:2 permitted [1] - 29:15 person [5] - 12:19, 12:22, 17:4, 37:12, 40:21 phone [2] - 12:9, 13:18 pills [1] - 38:10 place [3] - 17:16,
N				
necessary [4] - 8:9, 31:6, 31:22, 38:17 need [12] - 4:6, 4:9, 5:17, 16:22, 17:6, 19:24, 24:11, 37:13, 38:16, 39:7, 39:9, 40:1 needed [1] - 27:20 negative [1] - 20:4 negotiate [1] - 15:1 negotiated [1] - 24:12 negotiations [1] - 27:7 never [23] - 6:2, 12:23, 15:3, 15:4, 15:10, 15:11, 16:1, 16:14, 20:1, 20:4, 20:8, 20:9, 20:22, 23:5, 25:7, 30:14, 30:20, 31:19, 32:6, 32:11, 39:14, 39:17 NEW [3] - 1:1, 42:2, 42:3 New [7] - 1:4, 1:18, 2:15, 42:6 Newby [8] - 7:18, 7:25, 15:9, 15:11, 15:12, 15:15, 15:23, 15:25 Newgard [3] - 12:5, 30:18, 35:8 newspapers [1] - 38:8 next [3] - 18:18, 26:9, 37:23 night [1] - 13:16				
O				
object [2] - 7:3, 14:10 objected [1] - 6:8 obligation [1] - 22:1 obligations [2] - 22:24, 33:21 Obviously [1] - 21:23 obviously [1] - 8:14 occasions [1] - 5:22 occupying [1] - 29:7 occurred [2] - 22:12, 23:16 October [14] - 5:1, 8:17, 9:19, 10:18, 13:7, 13:11, 20:12, 20:19, 34:25, 37:5, 37:8, 39:2 odds [1] - 26:15 OF [3] - 1:1, 42:2, 42:3 offered [2] - 10:7, 17:7 office [1] - 20:18 officers [1] - 17:16 official [1] - 42:9 often [1] - 9:25 old [3] - 22:7, 23:6, 34:13 ON [2] - 42:21, 42:21				
P				
p.m [4] - 1:5, 40:20, 41:8 page [6] - 1:21, 19:20, 22:20, 22:21, 36:25, 37:1 pages [4] - 18:18, 28:21, 29:3, 36:24 paid [2] - 21:13, 22:4 Palo [1] - 2:10 paper [26] - 4:24, 5:3, 11:6, 11:17, 13:1, 13:10, 21:8, 21:10, 21:14, 22:3, 23:1, 23:6, 24:2, 32:16, 33:2, 33:14, 33:18, 33:22, 34:3, 34:4, 35:1, 35:9, 35:11, 36:1, 36:3, 36:5 Paper [1] - 23:8 papers [3] - 11:3, 28:23, 29:19 paragraph [2] - 18:12, 22:21 part [2] - 22:19,				

<p>23:18, 36:24 placed [1] - 22:24 plan [1] - 10:13 Plaza [2] - 1:13, 1:17 pleading [1] - 5:15 pleased [1] - 27:24 point [15] - 4:9, 13:22, 13:23, 13:24, 15:15, 15:16, 15:17, 16:6, 16:12, 21:15, 27:9, 35:20, 36:8, 36:25 pointless [1] - 7:12 points [2] - 5:18, 26:22 poison [1] - 38:10 policies [1] - 33:19 policy [6] - 22:21, 23:2, 23:5, 23:10, 23:12, 33:17 position [6] - 6:14, 9:6, 10:19, 26:4, 26:11, 36:11 possibility [1] - 19:13 potential [6] - 5:10, 18:15, 19:17, 20:17, 21:1, 21:22 potentially [1] - 21:7 practical [2] - 16:16, 26:10 preference [5] - 5:6, 5:7, 16:3, 17:8, 34:16 preliminary [2] - 18:20, 19:11 PRELIMINARY [1] - 42:21 prepared [1] - 18:13 prepay [1] - 36:4 prepayments [1] - 35:9 preposterous [1] - 16:2 prerogative [1] - 14:12 presented [1] - 9:7 pretty [1] - 34:6 prevent [1] - 26:7 previously [1] - 6:8 primarily [1] - 30:13 primary [2] - 12:5, 25:21 principal [1] - 17:16 prison [1] - 5:15 private [1] - 36:2 problem [2] - 6:15, 6:16 problems [1] - 21:14 procedural [1] - 26:25</p>	<p>procedures [1] - 6:11 proceed [2] - 3:12, 34:21 proceedings [2] - 3:2, 42:10 PROCEEDINGS [1] - 1:6 Proceedings [2] - 1:6, 1:23 process [2] - 11:20, 16:9 produce [11] - 4:6, 5:23, 6:5, 6:18, 7:5, 11:1, 12:19, 13:8, 14:7, 26:6, 37:10 produced [16] - 8:10, 8:11, 13:14, 19:1, 22:22, 26:4, 26:12, 29:19, 32:23, 32:25, 33:3, 33:6, 33:10, 34:24, 35:25, 37:19 Produced [1] - 1:24 producing [2] - 14:6, 14:10 production [4] - 8:13, 8:15, 14:15, 16:10 Project [26] - 4:14, 5:24, 6:4, 6:6, 7:14, 8:5, 8:11, 8:13, 8:15, 12:7, 12:25, 17:6, 17:22, 17:25, 27:13, 28:2, 31:1, 31:7, 31:14, 31:16, 34:22, 34:23, 36:12, 37:10, 37:20, 38:3 promptly [1] - 27:10 PROOFREAD [1] - 42:20 Properties [6] - 2:2, 3:7, 5:21, 6:3, 14:3 proposal [14] - 27:11, 30:17, 30:21, 30:25, 31:2, 31:10, 31:11, 31:20, 32:3, 32:5, 32:6, 32:7, 32:9 propose [1] - 31:5 proposed [3] - 12:11, 13:4, 31:6 proprietary [1] - 18:14 protected [1] - 25:6 protection [1] - 17:11 protective [2] - 10:9, 10:10 protects [1] - 19:13 Protocol [1] - 3:16 provide [3] - 3:19,</p>	<p>20:16, 20:20 provided [3] - 11:22, 28:15, 28:19 provides [3] - 19:16, 19:18, 23:5 Public [1] - 42:6 public [4] - 20:10, 20:20, 36:2, 37:6 purposes [2] - 20:12, 23:13 pursuant [2] - 14:7, 23:6 put [5] - 14:20, 14:21, 20:6, 34:3, 36:11 Putting [1] - 16:7</p> <p style="text-align: center;">Q</p> <p>quarter [1] - 19:17 questions [1] - 5:4</p> <p style="text-align: center;">R</p> <p>raise [2] - 13:21, 14:4 raised [5] - 6:19, 14:3, 22:19, 23:23, 26:22 raises [1] - 26:9 rather [2] - 6:12, 16:4 re [2] - 1:2, 3:2 reach [1] - 19:7 reached [3] - 16:9, 20:1, 25:24 read [2] - 18:12, 20:13 reading [1] - 33:9 real [1] - 16:18 Real [1] - 2:10 really [15] - 3:20, 4:14, 11:7, 16:4, 16:22, 16:24, 17:8, 23:20, 23:24, 25:22, 26:15, 28:1, 28:3, 32:13, 36:9 reason [7] - 5:16, 15:2, 19:21, 21:4, 27:2, 27:7, 28:14 reasonable [4] - 16:8, 16:25, 24:8, 36:13 reasons [2] - 4:12, 36:14 receivables [1] - 21:24 receive [2] - 19:3, 19:23</p>	<p>received [1] - 28:17 receiving [1] - 19:10 recess [2] - 41:6, 41:8 recognized [1] - 17:9 record [6] - 11:12, 11:24, 25:3, 34:19, 37:4, 40:22 Recorded [1] - 1:23 RECORDED [1] - 1:6 recording [1] - 42:9 Recording [1] - 1:23 records [1] - 6:18 recourse [1] - 21:24 RECOVERY [1] - 1:3 recreating [2] - 15:23, 15:25 red [1] - 32:14 redundant [2] - 5:25, 7:10 refer [1] - 31:16 reference [4] - 33:3, 33:7, 35:1 referred [1] - 15:9 referring [1] - 36:23 reflecting [1] - 13:9 refusal [1] - 3:25 refuse [1] - 7:5 refusing [1] - 3:19 regard [3] - 31:14, 31:17, 32:13 Regarding [2] - 7:9, 27:24 regarding [4] - 5:13, 14:14, 30:25, 39:8 reiteration [1] - 20:2 related [9] - 5:24, 6:4, 6:6, 8:5, 8:11, 8:13, 13:1, 13:2, 42:11 relating [2] - 7:14, 8:16 relationship [1] - 38:3 relationships [1] - 40:9 relatively [1] - 38:24 relevance [6] - 8:5, 8:6, 11:2, 23:11, 23:21, 34:22 relevant [15] - 3:24, 4:15, 4:16, 4:17, 4:22, 8:21, 26:5, 26:6, 26:12, 28:2, 28:4, 28:5, 33:9, 40:6 relief [1] - 21:22 relieved [1] - 22:1 rely [2] - 6:12, 27:18 relying [3] - 14:25, 22:12, 23:10</p>	<p>remained [1] - 23:18 remarkable [1] - 4:2 remarkably [1] - 10:4 Renaissance [1] - 2:3 Reorganized [2] - 1:5, 1:12 replies [1] - 31:4 Reporter [3] - 1:22, 1:24, 42:5 request [20] - 6:16, 6:20, 6:22, 6:23, 6:24, 6:25, 7:6, 10:16, 10:25, 14:6, 14:8, 14:11, 14:20, 14:24, 15:8, 26:2, 27:21, 33:1, 36:12 requested [5] - 6:2, 6:3, 6:7, 6:19, 8:17 requests [14] - 3:25, 6:9, 6:10, 6:12, 6:13, 7:3, 7:5, 7:14, 14:23, 15:1, 22:6, 27:16, 27:19, 31:18 required [3] - 5:21, 8:23, 36:21 reserve [1] - 31:16 Reserve [1] - 33:15 resignation [1] - 37:6 resolve [2] - 10:1, 34:19 resolved [2] - 10:3, 15:8 resonance [1] - 23:22 respect [3] - 9:3, 26:25, 40:18 respectfully [1] - 8:25 respond [2] - 26:21, 30:18 responded [1] - 27:10 response [1] - 33:1 responsibility [1] - 35:9 responsive [2] - 7:13, 31:18 restore [1] - 33:15 result [5] - 10:6, 17:24, 21:2, 23:15, 23:17 resulted [1] - 38:13 resulting [1] - 22:24 retained [1] - 20:23 retired [1] - 22:8 revolver [1] - 13:3 ridiculous [2] - 23:11, 25:14</p>
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<p>rise [1] - 30:13 risk [4] - 5:6, 5:7, 34:2 Robert [1] - 5:4 room [2] - 29:8, 29:10 ROUGH [1] - 42:21 rubbish [1] - 12:1 rule [1] - 40:19 rules [2] - 3:16, 3:18 ruling [2] - 12:20, 12:21</p>	<p>SEC [4] - 22:23, 23:19, 32:19, 34:9 second [3] - 14:8, 14:17, 14:19 secondhand [1] - 12:9 securities [10] - 15:14, 21:7, 21:12, 21:17, 21:18, 22:3, 23:24, 39:15, 40:7, 40:10 Securities [6] - 1:7, 7:18, 7:25, 21:10, 22:14, 23:14 see [4] - 18:3, 21:17, 24:14 seeking [6] - 3:23, 4:21, 5:12, 7:17, 8:21, 8:22 seem [1] - 3:16 selling [1] - 21:7 send [1] - 31:2 senior [3] - 12:14, 12:22, 17:4 sense [3] - 7:7, 34:14, 40:15 SENT [2] - 42:21, 42:21 sent [2] - 13:13, 13:16 sentence [1] - 33:19 separate [1] - 19:4 September [4] - 18:4, 18:11, 30:1, 38:19 serve [1] - 14:11 served [5] - 14:5, 14:23, 14:24, 15:7 service [1] - 20:17 services [1] - 19:18 set [3] - 22:13, 40:21, 42:14 settled [1] - 39:3 settlement [3] - 17:10, 22:23, 27:7 settlements [1] - 32:17 seven [1] - 15:24 seventh [2] - 10:13, 38:11 several [2] - 5:22, 27:14 share [1] - 19:24 shared [2] - 30:5, 30:6 short [1] - 16:25 Shorthand [1] - 42:5 shortly [1] - 31:4 show [1] - 28:21 showing [1] - 30:2</p>	<p>shown [1] - 40:1 shows [1] - 32:4 sideshow [1] - 26:7 sideways [1] - 24:3 signature [1] - 19:20 signed [9] - 17:12, 17:15, 18:2, 19:15, 19:21, 19:22, 20:9, 39:8, 39:9 silly [1] - 34:21 similar [2] - 10:4, 27:17 simplify [1] - 24:16 simply [3] - 3:25, 5:24, 7:6 single [5] - 13:23, 13:24, 13:25, 14:17, 31:23 sit [3] - 6:17, 16:18, 26:18 situation [2] - 12:18, 22:12 six [2] - 11:19, 23:19 slower [1] - 7:21 so-called [4] - 12:25, 17:13, 17:14, 35:4 Software [3] - 2:9, 3:9, 27:15 sold [2] - 21:23, 40:10 solely [1] - 5:3 someone [3] - 16:20, 34:6, 40:22 sometime [1] - 29:5 somewhere [1] - 22:8 soon [3] - 9:20, 24:13, 38:24 Sorry [2] - 13:18, 13:19 sort [1] - 3:14 sought [1] - 25:21 Sound [1] - 1:23 sound [2] - 34:13, 42:9 sounds [1] - 29:15 source [3] - 5:12, 13:8, 14:8 SOUTHERN [1] - 1:1 Special [1] - 1:12 specific [1] - 33:7 specifically [5] - 9:15, 29:10, 30:24, 31:12, 31:16 speculative [2] - 21:22, 39:14 spelled [1] - 11:2 spending [1] - 39:18 spent [1] - 24:5 spirit [1] - 12:20</p>	<p>SS [1] - 42:2 stage [1] - 11:9 stake [1] - 28:3 stamped [1] - 33:10 standard [1] - 34:1 standing [4] - 6:20, 10:23, 14:4, 25:22 start [2] - 12:21, 38:4 started [2] - 24:4, 38:5 starts [1] - 22:21 state [3] - 15:19, 15:20, 19:3 STATE [1] - 42:2 State [1] - 42:6 statement [3] - 28:12, 33:17, 34:6 STATES [1] - 1:1 states [1] - 28:2 States [4] - 1:10, 20:3, 20:6, 38:12 status [2] - 11:5, 11:6 STEEN [1] - 1:16 Steen [1] - 11:13 still [1] - 8:2 stonewalled [1] - 5:25 stonewalling [2] - 37:16, 37:25 stopped [3] - 5:2, 23:8, 25:12 straightforward [1] - 8:20 strategy [1] - 38:10 street [1] - 32:25 Street [1] - 20:22 structure [1] - 14:20 stuff [1] - 29:7 subject [5] - 31:8, 32:12, 32:17, 32:18 submit [4] - 6:12, 7:6, 8:3, 27:16 submitted [7] - 4:13, 6:13, 7:3, 11:3, 27:17, 27:19, 29:20 subsequent [1] - 22:23 substance [1] - 27:24 success [1] - 19:17 suddenly [1] - 40:6 sue [2] - 34:12 sued [3] - 22:3, 25:2, 25:7 sufficient [2] - 8:18, 36:20 suggested [1] - 14:1 Suite [4] - 1:13, 2:3,</p>	<p>2:6, 2:10 Sullivan [1] - 22:7 summary [5] - 24:10, 24:14, 34:17, 38:23, 39:23 support [1] - 32:4 surprised [2] - 3:14, 35:14 swap [1] - 15:12</p>
T				
<p>Sachs [50] - 1:17, 3:18, 3:21, 4:6, 4:17, 4:18, 4:24, 5:19, 5:21, 5:22, 5:23, 5:24, 6:1, 6:8, 6:14, 7:2, 7:12, 7:15, 7:18, 7:20, 7:22, 8:1, 8:2, 8:10, 8:14, 11:13, 11:17, 15:20, 18:4, 18:15, 18:19, 20:9, 20:13, 20:18, 22:15, 23:8, 27:11, 29:4, 29:7, 30:3, 32:18, 32:24, 32:25, 33:4, 33:6, 33:10, 33:24, 34:20, 37:14 Sachs' [8] - 3:25, 4:2, 4:16, 5:1, 5:10, 8:24, 28:8, 38:3 Sacks [1] - 4:22 sale [1] - 32:15 sandbagged [1] - 16:7 Santa [1] - 2:6 satisfy [1] - 39:14 Saturday [1] - 20:19 saw [2] - 26:1, 36:22 Schatzow [7] - 9:13, 12:6, 13:4, 13:12, 26:18, 32:1, 37:7 SCHATZOW [6] - 1:14, 9:13, 30:13, 33:13, 35:18, 41:1 schedule [3] - 16:23, 40:18, 40:25 scheduled [5] - 11:20, 24:12, 37:22, 41:6 scheduling [2] - 10:14, 13:21 Schwab [1] - 3:9 SCHWAB [1] - 2:9 scintilla [1] - 22:14 scope [1] - 19:18 seated [1] - 3:4</p>	<p>takeover [2] - 38:9, 38:10 tape [1] - 35:10 Taylor [1] - 29:25 Taylor's [1] - 29:18 team [2] - 13:1, 37:10 telephone [5] - 2:11, 2:12, 2:16, 2:17, 2:18 tens [1] - 24:6 terms [11] - 10:3, 12:24, 16:8, 16:10, 25:15, 25:20, 31:6, 35:3, 36:8, 36:10 test [3] - 28:9, 28:12, 28:16 testified [1] - 20:3 testifies [1] - 10:15 testifying [1] - 20:5 testimony [3] - 10:9, 10:12, 36:4 THE [1] - 1:10 theory [8] - 21:5, 21:6, 23:22, 24:15, 34:15, 39:12, 39:13, 40:3 thereafter [1] - 31:4 therefore [1] - 25:9 thinks [1] - 34:15 third [1] - 22:20 THOMAS [1] - 1:19 Tim [1] - 29:9 today [7] - 11:4, 11:18, 15:24, 22:14, 25:23, 40:17, 40:19 Tom [5] - 11:12, 13:18, 13:20, 30:25, 31:25 took [1] - 36:24 totally [1] - 16:5 trade [1] - 5:5 trades [2] - 25:6, 39:3 trading [3] - 5:2, 11:17, 33:2 transaction [4] - 17:19, 17:20, 22:11,</p>			

<p>25:4 transactions [1] - 4:19 Transactions [1] - 8:16 transcript [5] - 20:8, 28:22, 29:4, 36:22, 42:9 Transcript [1] - 1:24 TRANSCRIPT [1] - 42:21 transfer [1] - 25:9 treat [1] - 31:7 trial [2] - 20:4, 21:17 tried [4] - 5:3, 5:7, 7:15, 22:5 true [2] - 33:4, 42:8 Truman [26] - 4:15, 5:24, 6:4, 6:6, 7:14, 8:5, 8:11, 8:13, 8:16, 12:7, 13:1, 17:6, 17:23, 17:25, 27:13, 28:2, 31:1, 31:7, 31:14, 31:16, 34:22, 34:23, 36:13, 37:10, 37:21, 38:3 Truman-related [2] - 8:5, 8:11 truth [1] - 22:5 try [1] - 9:20 trying [3] - 16:6, 32:14, 34:2 Tuesday [2] - 40:20, 40:24 turn [2] - 29:17, 35:13 turned [1] - 35:16 two [4] - 11:17, 14:23, 21:14, 30:10 Two [1] - 1:13 type [3] - 7:24, 11:21, 23:24</p>	<p>UNITED [1] - 1:1 United [4] - 1:10, 20:3, 20:6, 38:12 units [1] - 19:25 unless [2] - 6:24, 30:5 unlike [1] - 12:18 up [10] - 5:19, 7:11, 16:19, 27:3, 32:3, 32:24, 33:6, 38:13, 40:21, 40:24 updated [1] - 23:5 urge [1] - 10:24</p>	<p>welcome [1] - 40:23 whatsoever [6] - 11:23, 21:3, 23:11, 23:21, 24:15, 40:2 WHEREOF [1] - 42:14 WHITE [1] - 2:13 White [1] - 3:10 whole [1] - 8:19 Wilkins [1] - 13:16 willing [1] - 11:1 wish [1] - 28:5 WITNESS [1] - 42:14 witness [4] - 12:5, 20:6, 23:3, 33:4 witnesses [14] - 5:11, 5:14, 11:19, 16:3, 26:6, 28:5, 31:1, 33:24, 34:4, 34:5, 35:21, 35:23, 38:24, 39:9 word [3] - 4:10, 8:24, 13:17 works [1] - 35:12 world [1] - 22:13 worried [1] - 22:10 write [1] - 12:11 written [2] - 13:15, 25:12 wrote [3] - 12:10, 31:12, 31:15</p>
<p>U</p>	<p>V</p>	<p>Y</p>
	<p>vanished [1] - 34:10 various [2] - 19:17, 21:18 Venable [2] - 9:13, 18:9 VENABLE [1] - 1:12 Veritas [9] - 2:9, 3:5, 3:9, 9:4, 9:5, 14:24, 15:2, 27:15, 27:17 version [4] - 4:4, 8:24, 20:2, 28:8 versus [1] - 39:17 via [5] - 2:11, 2:12, 2:16, 2:17, 2:18 Vice [2] - 16:21, 37:14 view [6] - 15:17, 21:15, 24:23, 26:13, 28:1, 37:17 violated [2] - 21:9, 21:10 voluntarily [1] - 11:22 vulnerable [1] - 38:8</p>	<p>years [5] - 22:4, 22:9, 23:9, 23:19, 34:13 Yesterday [1] - 30:25 yesterday [1] - 4:14 YORK [3] - 1:1, 42:2, 42:3 York [7] - 1:4, 1:18, 2:15, 42:6 yourself [1] - 6:25</p>
	<p>W</p>	<p>Z</p>
<p>UBS [19] - 2:14, 3:5, 3:11, 7:16, 7:17, 7:19, 7:23, 7:24, 8:1, 8:4, 9:3, 9:9, 14:23, 15:10, 15:12, 15:14, 15:21, 23:24 Under [1] - 6:10 under [8] - 14:19, 16:3, 21:5, 21:7, 21:12, 21:18, 22:3, 35:4 undergo [1] - 34:9 undertaking [1] - 33:16</p>	<p>wacky [1] - 21:5 wait [1] - 10:15 walked [2] - 29:11, 29:12 Wall [3] - 5:4, 20:21, 22:17 Wall's [1] - 11:16 wants [2] - 10:20, 26:15 ways [2] - 7:2, 14:5 week [8] - 5:1, 13:5, 13:7, 20:11, 20:12, 34:25, 37:8, 37:11 weekend [1] - 35:6 WEG [1] - 2:5</p>	<p>zero [2] - 15:4, 24:5</p>

EXHIBIT 2

Redacted

CONFIRM FOR #148620 CABEI A

Control: 071863561 Eligible: N Time Frame: SAME DAY

To: 65386
From: 06647
CLR Broker: 0000

B/D	INT	ACCT	AGT	INT	ACCT	AGT	ID	ROLE	MKT	ACCT	TYPE	SIDE	SEC	TYPE
671-12602-7			4945317			10419		P	PRN	CASH		SL		3

CUSIP/Desc: 29356AYF7 Trade Date: 10/26/2001 Settlement Date: 10/30/2001
PENRON CORP. *3**DIS**D092401M111501BE+\$

Status: R Date Confirm Received: 10/31/2001
Cancel: N Affirmation Date :

Conf #	:	103000275412		
Qty	:	3,000,000.0000		
Price	:	2.80000000	Currency : USD	
Net Price	:	0.00000000	Int Pty 1: 71080	Acct:
Princ	:	3,000,000.00		
SEC Fees	:	0.00	Instr 1:	
Interest	:	3,733.33	Instr 2:	
Taxes	:	0.00	Int Pty 2: 00000	Acct:
Comm	:	0.00		
Other	:	0.00	Instr 1:	
Net Amt	:	2,996,266.67	Instr 2:	
Control	:	071863561	148620 CABEI A	

C/O BRINSON PARTNERS 209 S LASALLE ST STE 107
ATTN FIXED INCOME OPERATIONS

CONFIRM FOR #148520-BANCO GUATEMALA

Control: 071863562 Eligible: N Time Frame: SAME DAY
 To: 65386
 From: 06647
 CLR Broker: 0000

B/D INT ACCT	AGT INT ACCT	AGT ID	ROLE	MKT	ACCT TYPE	SIDE	SEC TYPE
671-12604-3	4945317	10419	P	PRN	CASH	SL	3

CUSIP/Desc: 29356AYF7 Trade Date: 10/26/2001 Settlement Date: 10/30/2001
 PENRON CORP. *3**DIS**D092401M111501BE+\$

Status: R Date Confirm Received: 10/31/2001
 Cancel: N Affirmation Date :

Conf #	103000275512		
Qty	15,000,000.0000		
Price	2.80000000	Currency : USD	
Net Price:	0.00000000	Int Pty 1: 71080	Acct:
Princ	15,000,000.00		
SEC Fees	0.00	Instr 1:	
Interest	18,666.67	Instr 2:	
Taxes	0.00	Int Pty 2: 00000	Acct:
Comm	0.00		
Other	0.00	Instr 1:	
Net Amt	14,981,333.33	Instr 2:	
Control	071863562	148520 BANCO GUATEMALA	

C/O BRINSON PARTNERS #148520 209 S. LASALLE ST. STE 107
 ATTN FIXED INCOME OPERATIONS

Shelley J. Aron
 Associate Director
 US Fixed Income Operations
 UBS Global Asset Management
 Phone 312-525-7255
 Fax 312-525-7060

UBS Tower
 One North Wacker Drive
 Chicago, IL 60606

EXHIBIT 3

VIDEOTAPED DEPOSITION OF FEDERICA COLOMBI
CONDUCTED ON MONDAY, SEPTEMBER 18, 2006

Page 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In Re Enron : Chapter 11
ENRON CORP., et al., : Case No. 01-16034 (AJG)
Reorganized Debtors. : Jointly Administered
----- x
ENRON CORP., :
Plaintiff, :
v. : Adv. No. 03-92677 (AJG)
J.P. MORGAN SECURITIES :
INC., et al., :
Defendants :
----- X
(Caption continued on page two)

Videotaped Deposition of FEDERICA COLOMBI
New York, New York
September 18, 2006
9:49 a.m.

Job No.: 1-86305
Pages 1 through 207
Reported by: Patricia Mulligan Carruthers, CSR

Page 3

1 APPEARANCES
2
3 ON BEHALF OF ENRON CORP.:
4 ROBERT L. WILKINS, ESQUIRE
5 VENABLE LLP
6 575 7th Street, Northwest
7 Washington, D.C. 20004
8 (202) 344-4000
9 -and-
10 BRIAN MADDOX, ESQUIRE
11 VENABLE LLP
12 405 Lexington Avenue, 56th Floor
13 New York, New York 10174
14 (212) 307-5500
15
16 ON BEHALF OF CITIBANK, N.A.; CITI INSTITUTIONAL
17 CORPORATE & MORTGAGE BOND FUND; AND BANCO NACIONAL
18 DE MEXICO:
19 AMANDA L. WOLFE, ESQUIRE
20 PAUL WEISS RIFKIND WHARTON & GARRISON LLP
21 1285 Avenue of the Americas
22 New York, New York 10019
23 (212) 373-3000
24
25

Page 2

1 (Caption continued from previous page)
2 ----- x
3 ENRON CORP., :
4 Plaintiff, :
5 v. :
6 MASS MUTUAL LIFE INSURANCE : Adv. No. 03-92682 (AJG)
7 CO., et al., :
8 Defendants. :
9 ----- x
10
11 Deposition of FEDERICA COLOMBI, held at the
12 offices of:
13
14 FULBRIGHT & JAWORSKI LLP
15 666 Fifth Avenue
16 New York, New York 10103-3198
17 (212) 318-3000
18
19
20
21 Pursuant to agreement, before Patricia Mulligan
22 Carruthers, Certified Shorthand Reporter and Notary
23 Public of the State of New Jersey and Notary Public of
24 the State of New York.
25

Page 4

1 APPEARANCES CONTINUED
2
3 ON BEHALF OF DELL COMPUTER PRODUCTS:
4 SABRINA L. STREUSAND, ESQUIRE
5 HUGHES & LUCE LLP
6 111 Congress Avenue, Suite 900
7 Austin, Texas 78701
8 (512) 482-6800
9 (Present via Telephone)
10
11
12 ON BEHALF OF GOLDMAN, SACHS & CO. AND LEHMAN
13 COMMERCIAL PAPER, INC.:
14 MICHELE KENNEY, ESQUIRE
15 MICHAEL ROSENSAFT, ESQUIRE
16 BOAZ A. WEINSTEIN, ESQUIRE
17 CLEARY GOTTLIEB STEEN & HAMILTON
18 One Liberty Plaza
19 New York, New York 10006
20 (212) 225-2000
21
22
23
24
25

1 (Pages 1 to 4)

VIDEOTAPED DEPOSITION OF FEDERICA COLOMBI
CONDUCTED ON MONDAY, SEPTEMBER 18, 2006

Page 65		Page 67	
1	F. COLOMBI	1	F. COLOMBI
12:08:00 2	Q And what's noted here as a trade date of	12:12:14 2	Q I would like for you to take a look at the
12:08:04 3	October 12, 2001, is the same. Correct?	12:12:18 3	first page of Exhibit 10,012, which is -- has a stamp
12:08:08 4	A Yes.	12:12:24 4	of Kelly 000060 in the bottom right-hand corner.
12:08:08 5	MR. MURPHY: Object to the form of the	12:12:31 5	Do you see that document?
12:08:09 6	question. The same as what?	12:12:32 6	A Yes.
12:08:11 7	Q The same as on the preceding page. Correct?	12:12:35 7	Q Now, actually, I would like for you to
12:08:14 8	A Yes.	12:12:37 8	compare that document with the Goldman confirm that
12:08:15 9	Q Now, the discount price on the confirmation	12:12:41 9	you just had, maybe two exhibits ago. What was that
12:08:23 10	is 2.8000 percent. Do you see that?	12:12:47 10	exhibit number?
12:08:27 11	A Yes.	12:12:50 11	A Exhibit 10,010.
12:08:29 12	Q And on the preceding page the rate is noted	12:12:53 12	Q Okay. Now, the Exhibit 10,012 is dated
12:08:33 13	at 2.81 percent. Do you see that?	12:13:02 13	October 29th, 2001. Do you see that?
12:08:36 14	A Yes.	12:13:06 14	A Yes.
12:08:36 15	Q Can you explain that difference?	12:13:07 15	Q And it refers to commercial paper with a
12:08:40 16	A Probably the calculation in the sell.	12:13:13 16	maturity date of December 12th of 2001. Right?
12:08:47 17	Q So, despite that difference in rate between	12:13:18 17	A Yes.
12:08:53 18	what's on Page 105 and 106, you still believe that the	12:13:18 18	Q And so this corresponds to the commercial
12:08:59 19	confirmation and the investment voucher are describing	12:13:23 19	paper that you bought from Goldman on October the 10th
12:09:07 20	the same transaction?	12:13:27 20	of 2001. Right?
12:09:08 21	A Yes.	12:13:29 21	MR. MURPHY: Object to the form of the
12:09:08 22	Q And would these funds have come from the Bank	12:13:30 22	question. Misquotes the witness.
12:09:11 23	One account that you described earlier to go to Lehman	12:13:34 23	A Yes.
12:09:14 24	for this commercial paper purchase?	12:13:34 24	Q Now, you see there a reference to 273 to the
12:09:17 25	A Yes.	12:13:51 25	right of the maturity date. Do you see that?
Page 66		Page 68	
1	F. COLOMBI	1	F. COLOMBI
12:09:17 2	Q And would you have expected, based on your	12:13:54 2	A Yes.
12:09:21 3	prior arrangements with Lehman at maturity, for the	12:13:54 3	Q Is it your understanding that that was the
12:09:25 4	funds at maturity to go back into that same Bank One	12:14:01 4	interest rate on the commercial paper when you --
12:09:29 5	account?	12:14:07 5	MR. WILKINS: Well, strike that.
12:09:30 6	MR. WEINSTEIN: Object to the form.	12:14:11 6	Q The -- At the top of this document it says
12:09:32 7	A Yes.	12:14:18 7	"notification of secondary purchase."
12:09:40 8	Q Now, there's a fax indication of a fax in the	12:14:21 8	Do you see that?
12:09:46 9	top of Page 106. There's a date and a time and a fax	12:14:21 9	A Yes.
12:09:51 10	number. Does that fax number look familiar to you?	12:14:22 10	Q What does that mean to you?
12:09:58 11	A No.	12:14:23 11	A I don't know.
12:09:59 12	Q It's a (312) number. Is that a Chicago	12:14:25 12	Q Well, was it your understanding at the time
12:10:07 13	number, to the best of your knowledge?	12:14:28 13	of this that you were -- that Goldman was purchasing
12:10:09 14	A To the best of my knowledge, but I'm not	12:14:35 14	the Enron commercial paper from Kelly Properties?
12:10:11 15	sure.	12:14:41 15	MR. ROSENSAFT: Objection, form.
12:10:11 16	Q Mark Frommer, where was he based?	12:14:43 16	A Can you repeat the question?
12:10:16 17	A I think in Chicago.	12:14:44 17	Q Was it your understanding on October 29th,
12:10:18 18	Q Where was Kim Schaffer of Goldman based?	12:14:46 18	2001, that Goldman, Sachs was purchasing the Enron
12:10:25 19	A I don't remember.	12:14:51 19	commercial paper from Kelly Properties?
12:10:41 20	MR. WILKINS: I would like to have marked as	12:14:54 20	MR. ROSENSAFT: Same objection.
12:10:44 21	the next exhibit, it's Kelly 60 and 61, which is -- I	12:14:55 21	A From Kelly Properties. Yes.
12:10:49 22	think Number 14 down on your chart towards the bottom	12:15:00 22	Q The confirm in the top right says "We bought
12:10:54 23	of the first page.	12:15:05 23	the following commercial paper."
12:10:54 24	(Whereupon, Exhibit 10,012 is marked for	12:15:06 24	Do you see that?
12:12:14 25	identification by the reporter.)	12:15:07 25	A Yes.

17 (Pages 65 to 68)

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800-292-4789

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VIDEOTAPED DEPOSITION OF FEDERICA COLOMBI
CONDUCTED ON MONDAY, SEPTEMBER 18, 2006

<p style="text-align: right;">Page 69</p> <p>1 F. COLOMBI</p> <p>12:15:08 2 Q Is that consistent with your understanding of</p> <p>12:15:13 3 the terms of the transaction?</p> <p>12:15:15 4 A Yes.</p> <p>12:15:15 5 Q Now, in the bottom right you see the phrase</p> <p>12:15:28 6 written "Goldman, Sachs & Co. acted as agent for Enron</p> <p>12:15:33 7 Corp."</p> <p>12:15:34 8 Do you see that?</p> <p>12:15:35 9 A Yes.</p> <p>12:15:35 10 Q Did you have any conversations with anyone</p> <p>12:15:38 11 from Goldman, Sachs about acting as an agent for Enron</p> <p>12:15:43 12 Corp.?</p> <p>12:15:43 13 A Not that I recall.</p> <p>12:15:47 14 Q Did you see a copy of any agreement between</p> <p>12:15:54 15 Goldman, Sachs and Enron referring to an agency?</p> <p>12:15:59 16 A No.</p> <p>12:16:01 17 Q To your knowledge did anyone else at Kelly</p> <p>12:16:05 18 Properties speak to anyone from Goldman, Sachs about</p> <p>12:16:08 19 Goldman, Sachs serving as an agent for Enron Corp.?</p> <p>12:16:12 20 A Not to my knowledge. No.</p> <p>12:16:16 21 Q Now, the rate on this confirm that's Exhibit</p> <p>12:16:27 22 10,012 appears to say 273. Do you see that?</p> <p>12:16:32 23 A I see the 273. I didn't know that was the</p> <p>12:16:36 24 rate.</p> <p>12:16:36 25 Q Well, on your investment -- I'm sorry. On</p>	<p style="text-align: right;">Page 71</p> <p>1 F. COLOMBI</p> <p>12:18:04 2 fax, E mail, regular US mail?</p> <p>12:18:07 3 A I don't know.</p> <p>12:18:09 4 Q Well, tell me what this document is.</p> <p>12:18:17 5 A The funds transferred advice.</p> <p>12:18:21 6 Q And when -- What purpose does this document</p> <p>12:18:27 7 serve?</p> <p>12:18:28 8 MR. MURPHY: Object to the form of the</p> <p>12:18:29 9 question.</p> <p>12:18:31 10 A I don't know. I can assume it's to tell us</p> <p>12:18:34 11 of a funds transfer.</p> <p>12:18:36 12 Q Okay. Well, let me just ask a different</p> <p>12:18:41 13 question.</p> <p>12:18:45 14 What was your use for a document like this?</p> <p>12:18:50 15 A I don't remember. I don't remember seeing it</p> <p>12:18:52 16 then, so --</p> <p>12:18:53 17 Q I'm sorry?</p> <p>12:18:54 18 A I don't remember seeing it then, so I don't</p> <p>12:18:57 19 remember what we used this for.</p> <p>12:18:58 20 Q Okay. I thought you just testified that you</p> <p>12:19:01 21 would have seen this on or around October 29th.</p> <p>12:19:04 22 A No. No. I said I don't remember when I saw</p> <p>12:19:06 23 it. I've seen it before, but I don't know when it</p> <p>12:19:09 24 was.</p> <p>12:19:09 25 Q And the information on here about today,</p>
<p style="text-align: right;">Page 70</p> <p>1 F. COLOMBI</p> <p>12:16:40 2 the confirm at the time that you bought this</p> <p>12:16:43 3 commercial paper from Goldman, the rate was 278.</p> <p>12:16:48 4 Correct?</p> <p>12:16:59 5 MR. MURPHY: Would you like her to look at an</p> <p>12:17:01 6 exhibit, Mr. Wilkins?</p> <p>12:17:03 7 Q If you would look at Exhibit 10,010, is that</p> <p>12:17:07 8 correct?</p> <p>12:17:07 9 A Yes.</p> <p>12:17:07 10 Q So that when you bought it from Goldman the</p> <p>12:17:10 11 rate was 278. Right?</p> <p>12:17:12 12 A Yes.</p> <p>12:17:13 13 Q And when you sold it back to Goldman was it</p> <p>12:17:16 14 sold back at 278 or 273?</p> <p>12:17:21 15 A I don't recall.</p> <p>12:17:22 16 Q Look at the second page. Have you seen this</p> <p>12:17:44 17 document before?</p> <p>12:17:44 18 A Yes.</p> <p>12:17:44 19 Q The document is dated October 29, 2001.</p> <p>12:17:50 20 Correct?</p> <p>12:17:51 21 A Yes.</p> <p>12:17:51 22 Q Would you have seen it on or around October</p> <p>12:17:57 23 29, 2001?</p> <p>12:17:58 24 A I don't recall if I saw it back then.</p> <p>12:18:00 25 Q How would you have received this document; by</p>	<p style="text-align: right;">Page 72</p> <p>1 F. COLOMBI</p> <p>12:19:21 2 October 29, 2001, we have charged your account, and it</p> <p>12:19:25 3 gives an account number as indicated, does that</p> <p>12:19:29 4 account number mean anything to you?</p> <p>12:19:32 5 A No.</p> <p>12:19:36 6 Q And it says "Transferred the funds from our</p> <p>12:19:39 7 account at Chase Manhattan Bank to" -- and then</p> <p>12:19:42 8 there's some information there. Does that represent</p> <p>12:19:45 9 the Bank One account that you testified about</p> <p>12:19:49 10 previously?</p> <p>12:19:49 11 A I believe so.</p> <p>12:20:17 12 Q The next document I would like you to take a</p> <p>12:20:19 13 look at is -- I guess it would be the next-to-the-last</p> <p>12:20:25 14 one on the first page, Kelly 102.</p> <p>12:20:31 15 MR. MADDIX: It should be the 16th one down.</p> <p>12:21:04 16 (Whereupon, Exhibit 10,013 is marked for</p> <p>12:21:25 17 identification by the reporter.)</p> <p>12:21:25 18 Q You have in front of you Exhibit 10,013. Do</p> <p>12:21:29 19 you recognize this document, Miss Colombi?</p> <p>12:21:32 20 A Yes.</p> <p>12:21:32 21 Q What is it?</p> <p>12:21:34 22 A It's a printout from our -- the statement for</p> <p>12:21:39 23 a bank account that we balance daily.</p> <p>12:21:42 24 Q And who would have generated this printout?</p> <p>12:21:45 25 A The computer.</p>

18 (Pages 69 to 72)

DOCUMENT SEPARATOR SHEET

VIDEOTAPED DEPOSITION OF FEDERICA COLOMBI
CONDUCTED ON MONDAY, SEPTEMBER 18, 2006

Page 125		Page 127	
1	F. COLOMBI	1	F. COLOMBI
14:55:31 2	A Probably because Sandi was at a meeting.	14:58:26 2	from Kelly Properties or Kelly Services about
14:55:35 3	Q Why didn't you wait until she was out of the	14:58:30 3	preferential treatment between October 26 of 2001 and
14:55:38 4	meeting?	14:58:35 4	when you sent this E mail on January 16, 2002?
14:55:39 5	A I don't know. It was just a judgement call	14:58:40 5	A I don't remember.
14:55:43 6	that day, I guess.	14:58:42 6	Q Is it possible that you had?
14:55:44 7	Q Was it your practice to send her E mails	14:58:45 7	MR. MURPHY: Objection to the form of the
14:55:50 8	about conversations that you had with your dealers at	14:58:46 8	question.
14:55:57 9	Goldman and Lehman?	14:58:47 9	A I don't remember.
14:55:58 10	A I would send her E mails about anything that	14:58:56 10	Q If you had such conversations, who would have
14:56:01 11	I needed her to know about if I couldn't find her that	14:59:01 11	been the most likely person for you to have spoken to
14:56:04 12	day if she was in meetings.	14:59:04 12	about it?
14:56:05 13	Q The -- Why did you copy Greg Radke?	14:59:04 13	MR. MURPHY: Objection. Calls for
14:56:10 14	A Because he's the manager.	14:59:08 14	speculation.
14:56:16 15	Q Well, after -- This is now over two months	14:59:10 15	A The people in treasury.
14:56:30 16	after you had sold back or redeemed the Enron	14:59:13 16	Q When you say "the people in treasury," who
14:56:36 17	commercial paper. So, why did you believe Greg Radke	14:59:15 17	are you referring to?
14:56:40 18	was still interested in this information two months	14:59:16 18	A Sandi, Greg, and Chanel.
14:56:43 19	later?	14:59:29 19	MR. WILKINS: Can we take a break at this
14:56:43 20	MR. MURPHY: Object to the form of the	14:59:30 20	time?
14:56:44 21	question. No foundation.	14:59:32 21	THE VIDEOGRAPHER: Going off the record. The
14:56:47 22	A Because he's my boss as well, so I usually	14:59:33 22	time is 2:59 p.m.
14:56:50 23	let them both know on any issue that I have.	14:59:36 23	(Whereupon, a recess is taken.)
14:56:55 24	Q So, every time you wrote an E mail to Sandi	15:08:04 24	THE VIDEOGRAPHER: Back on the record. The
14:57:00 25	Galac you also copied Greg Radke?	15:09:32 25	time is 3:09 p.m.
Page 126		Page 128	
1	F. COLOMBI	1	F. COLOMBI
14:57:02 2	MR. MURPHY: Objection. I don't think that's	15:09:38 2	Q Miss Colombi, on October -- Friday, October
14:57:03 3	a question.	15:09:43 3	26, 2001, in your conversations with Mark Frommer of
14:57:07 4	Q There's a question mark at the end.	15:09:50 4	Lehman did you discuss at all the issue of whether or
14:57:09 5	MR. MURPHY: Objection to the form of the	15:09:56 5	not Lehman was acting as an agent for Enron Corp.?
14:57:10 6	question.	15:10:01 6	A No.
14:57:12 7	A I guess it would depend on what the issue	15:10:01 7	Q In your conversation with Kim Schaffer on
14:57:15 8	was. There wasn't a regular practice to copy both of	15:10:07 8	October 26, 2001, did you discuss the issue at all of
14:57:18 9	them or to send it just to one.	15:10:12 9	whether Goldman was acting as an agent for Enron
14:57:20 10	Q Well, why did you send this one to both?	15:10:16 10	Corp.?
14:57:23 11	MR. MURPHY: Objection. Asked and answered.	15:10:16 11	A No.
14:57:25 12	A I don't know. I guess I felt they should	15:10:25 12	MR. WILKINS: I'm not sure if you've marked
14:57:30 13	both know.	15:10:27 13	these already. I believe that they were handed to the
14:57:32 14	Q Did you consider this to be important	15:10:32 14	court reporter prior to the lunch break. It's Kelly
14:57:35 15	information at the time?	15:10:40 15	00001 through --
14:57:36 16	A Yes.	15:10:45 16	MR. MADDOX: I don't know if she did get a
14:57:37 17	Q Why?	15:10:48 17	copy of it. I know everybody else did, but I don't
14:57:44 18	A Because I was -- It was about the investments	15:10:49 18	know if we actually gave a copy to the court reporter.
14:57:48 19	that we did.	15:11:12 19	(Whereupon, Exhibit 10,019 is marked for
14:57:54 20	Q Now, did you have any conversations with	15:12:08 20	identification by the reporter.)
14:58:07 21	anyone else within Kelly Property or Kelly Services	15:12:08 21	Q You have in front of you Exhibit 10,019.
14:58:15 22	about preferential treatment after sending this	15:12:13 22	Have you seen this exhibit before today?
14:58:20 23	E mail?	15:12:18 23	A Yes.
14:58:21 24	A Not that I remember.	15:12:19 24	Q When did you see it?
14:58:22 25	Q Did you have any conversations with anyone	15:12:29 25	A I don't remember. I might have seen it when

32 (Pages 125 to 128)

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DOCUMENT SEPARATOR SHEET

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
-----x
In Re Enron

ENRON CORP., et al.,

Reorganized Debtors.
Chapter 11 Case No: 01-16034 (AJG)
-----x
ENRON CORP.,
Plaintiff,
-against-
J.P. MORGAN SECURITIES, INC, et al.,
Defendants,
Adv No.: 03-92677 (AJG)
-----x
ENRON CORP.,
Plaintiff,
-against-
MASS MUTUAL LIFE INSURANCE CO., et al
Defendants.
Adv. No: 03-92682 (AJG)
-----x
100 Renaissance Center, Suite 3600
Detroit, Michigan

June 11, 2007
9:52 a.m.

Videotaped Deposition of SANDRA WARREN
GALAC, pursuant to Order, before Kathryn L.
Janes, a Notary Public of the State of Michigan.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 84315

1 APPEARANCES: (Cont'd)
2
3 CLEARY, GOTTlieb, STEEN & HAMILTON, LLP
4 Attorneys for Goldman Sachs & Company, Inc.
5 One Liberty Plaza
6 New York, New York 10006-1470
7 BY: AVRAM E. LUFT, ESQ.
8 PHONE 212-225-2432
9 FAX 212-225-3999
10 E-MAIL aluft@cgsh.com
11
12 PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
13 Attorneys for Citigroup and Banco Nacional De Mexico
14 1285 Avenue of the Americas
15 New York, New York 10019-6064
16 BY: BENJAMIN PARK, ESQ.
17 (Via teleconference)
18 PHONE 212-373-2102
19 FAX 212-757-3990
20 E-MAIL bpark@paulweiss.com
21
22
23
24
25

1 APPEARANCES:
2
3 VENABLE, LLP
4 Attorneys for Enron Corp.
5 575 7th Street, NW
6 Washington, DC 20004-1601
7 BY: MOXILA A. UPADHYAYA, ESQ.
8 ROBERT L. WILKINS, ESQ.
9 PHONE 202-344-4319
10 FAX 202-344-8300
11 E-MAIL maupadhyaya@venable.com
12
13 CLEARY, GOTTlieb, STEEN & HAMILTON, LLP
14 Attorneys for Lehman Commercial Paper, Inc.
15 One Liberty Plaza
16 New York, New York 10006-1470
17 BY: MICHELLE KENNEY, ESQ.
18 (Via Teleconference)
19 PHONE 212-225-2436
20 FAX 212-225-3999
21 E-MAIL mkenney@cgsh.com
22
23
24
25

1 APPEARANCES: (Cont'd)
2
3 PEPPER HAMILTON, LLP
4 Attorneys for Kelly Properties
5 100 Renaissance Center, Suite 3600
6 Detroit, Michigan 48243
7 BY: DEBORAH KOVSKY-APAP, ESQ.
8 DAVID MURPHY, ESQ.
9 PHONE 313-259-1157
10 FAX 313-259-7926
11 E-MAIL murphyd@pepperlaw.com
12
13 ALSO PRESENT:
14 MATT McKINLEY, Legal Videographer
15
16
17
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Page 153		Page 155	
1	GALAC	1	GALAC
02:21:45 2	A. No.	02:24:10 2	A. Do I see it?
02:21:46 3	Q. Now, if you compare -- would you agree with me that	02:24:12 3	BY MS. UPADHYAYA:
02:21:56 4	the -- strike that.	02:24:12 4	Q. Yes.
02:21:57 5	Do you see at the top of the document it	02:24:12 5	A. Yeah.
02:21:59 6	has -- it says: Goldman Sachs & Co. notification of	02:24:12 6	Q. Do you understand what that means?
02:22:09 7	secondary purchase; do you see that?	02:24:14 7	A. No.
02:22:11 8	A. Yes.	02:24:15 8	Q. In October of 2001, did you have an understanding of
02:22:11 9	Q. And the date on this document is October 29, 2001,	02:24:18 9	what it meant for a dealer to act as agent for an
02:22:15 10	correct?	02:24:20 10	issuer?
02:22:15 11	A. Yes.	02:24:21 11	A. No.
02:22:16 12	Q. And under the date, do you see where it says: We	02:24:21 12	Q. Do you have an understanding today of what it means to
02:22:22 13	bought the following commercial paper, on the top	02:24:24 13	act as agent?
02:22:28 14	right-hand corner?	02:24:25 14	A. No.
02:22:29 15	A. Yes, yes.	02:24:25 15	MS. KOVSKY-APAP: Objection, asked and
02:22:31 16	Q. That this appears to be a purchase by Goldman Sachs &	02:24:27 16	answered.
02:22:37 17	Co. of Enron commercial paper. At the bottom, it says	02:24:34 17	BY MS. UPADHYAYA:
02:22:41 18	it's bought from Kelly Properties, Inc.; is that	02:24:41 18	Q. Ms. Galac, did anyone at Goldman Sachs & Company ever
02:22:47 19	correct?	02:24:46 19	inform you it was acting as agent for Enron in 2001?
02:22:47 20	MR. LUFT: Objection, form and foundation.	02:24:50 20	MR. LUFT: Objection, lack of foundation.
02:22:48 21	The document speaks for itself.	02:24:52 21	A. Since I didn't talk to Goldman.
02:22:50 22	A. I could only say that's what the document looks like,	02:24:56 22	BY MS. UPADHYAYA:
02:22:52 23	right.	02:24:56 23	Q. So the answer is?
02:23:05 24	BY MS. UPADHYAYA:	02:24:57 24	A. It would be no, right.
02:23:05 25	Q. Now, if you compare Exhibit 10,010 to Exhibit 10,012,	02:24:58 25	Q. Do you know whether anyone at Goldman Sachs & Company
Page 154		Page 156	
1	GALAC	1	GALAC
02:23:12 2	do you see on Exhibit 10,010 there is listed a CUSIP	02:25:02 2	informed Ms. Colombi that it was acting as agent for
02:23:17 3	number under the words Enron Corp.?	02:25:05 3	Enron Corp.?
02:23:19 4	A. Yes.	02:25:06 4	MR. LUFT: Objection, lack of foundation.
02:23:20 5	Q. And that CUSIP number is 29356AZ3C?	02:25:08 5	A. She certainly never told me anything like that.
02:23:26 6	A. Yes.	02:25:17 6	BY MS. UPADHYAYA:
02:23:27 7	Q. Do you see that same CUSIP number on Exhibit 10,012?	02:25:17 7	Q. Did you have any understanding in October of 2001
02:23:32 8	A. Yes, the A is a little hard to read, but I think it's	02:25:20 8	whether Goldman was acting as agent or principal with
02:23:35 9	the same, yeah.	02:25:23 9	respect to Enron commercial paper?
02:23:36 10	Q. So it appears that Exhibit 10,012 is reflecting	02:25:25 10	A. No.
02:23:42 11	Goldman's purchase of the same Enron commercial paper	02:25:31 11	MS. KOVSKY-APAP: Counsel on the phone, can
02:23:44 12	that Kelly had bought from Goldman on October 10th?	02:25:33 12	you please mute?
02:23:50 13	A. Yes.	02:25:44 13	BY MS. UPADHYAYA:
02:23:50 14	MR. LUFT: Objection, form and foundation.	02:25:55 14	Q. Okay. This is Enron Tab 25. Ms. Galac, I'm showing
02:23:52 15	Misstates the record and the documents.	02:26:02 15	you a document that's been previously marked in this
02:23:54 16	BY MS. UPADHYAYA:	02:26:04 16	litigation as Exhibit 10,013; do you see that
02:23:54 17	Q. Now, do you see on the bottom right-hand corner,	02:26:07 17	document?
02:23:56 18	Ms. Galac, where it says: Goldman Sachs & Co. acted	02:26:08 18	A. Yes.
02:24:04 19	as agent for Enron Corp.?	02:26:08 19	Q. You have that document in front of you? It bears
02:24:06 20	MS. KOVSKY-APAP: We are looking at Exhibit	02:26:10 20	Bates label Kelly 000102, can you tell me what this
02:24:09 21	10,012 now?	02:26:15 21	document is?
02:24:09 22	MS. UPADHYAYA: 10,012.	02:26:21 22	A. This is something -- this is actually from Bank One,
02:24:09 23	COURT REPORTER: I'm sorry, did you say	02:26:35 23	if I'm reading this correctly, and it's an account
02:24:09 24	Goldman acted as?	02:26:38 24	statement for Kelly Properties. This is actually --
02:24:10 25	MS. UPADHYAYA: Agent for Enron Corp.	02:26:53 25	it's a bank statement, as it says.

DOCUMENT SEPARATOR SHEET

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In Re: Enron

ENRON CORP., et al.,

Reorganizing Debtors.
Chapter 11 Case No. 01-16034 (AJG)

----- x
ENRON CORP.,

Plaintiff,

-against-

J.P. MORGAN SECURITIES INC., et al.,
Defendants.

Adv. No. 03-92677 (AJG)

-----x
ENRON CORP.,

Plaintiff,

-against-

MASS MUTUAL LIFE INSURANCE CO., et al.,
Defendants.

Adv No.: 03-92682 (AJG)

-----x

1155 Avenue of the
Americas
New York, New York

January 22, 2007
9:35 a.m.

VIDEOTAPED DEPOSITION OF MARY MAY before
Fran Insley, a Notary Public of the States of New
York and New Jersey.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 83037

1 A P P E A R A N C E S (Continued):

2
3 WHITE & CASE, LLP

Attorneys for UBS Defendants
and the Witness

1155 Avenue of the Americas
New York, New York 10036-2787

5 BY: JOHN H. CHUNG, ESQ.

Phone: (212) 819-8591

7 E-mail: Jchung@whitecase.com

-and-

8 SARAH NYE CAMPBELL, ESQ.

-and-

9 YARIV PIERCE, Paralegal

10
11
12
13 VENABLE LLP

Attorneys for ENRON CORP.

405 Lexington Avenue
56th Floor

15 New York, New York 10174

16 BY: EDMUND M. O'TOOLE, ESQ.

Phone: (212) 307-5500

17 Fax: (212) 307-5598

E-mail: Emotoole@venable.com

1 A P P E A R A N C E S:

2
3 CLEARY GOTTlieb STEEN &
HAMILTON, ESQS.

Attorneys for LEHMAN COMMERCIAL
PAPER, INC.

One Liberty Plaza

New York, New York 10006-1470

6 BY: RAJA RAGHUNATH, ESQ.

7 Phone: (212) 225-2328

8 Fax: (212) 225-3999

9 E-mail: Rraghunath@cgsh.com

10
11 CLEARY GOTTlieb STEEN &
HAMILTON, ESQS.

Attorneys for Goldman Sachs
& Co.

One Liberty Plaza

New York, New York 10006-1470

14 BY: MARIA OSTROVSKY, ESQ.

15 Phone: (212) 225-2363

16 Fax: (212) 225-3999

17 E-mail: Mostrovsky@cgsh.com

1 A P P E A R A N C E S (Continued):

2
3 VENABLE LLP

Attorneys for Enron Corp.

Two Hopkins Plaza

Baltimore, Maryland 21201-2978

5 BY: DANNETTE R. EDWARDS, ESQ.

6 Phone: (410) 244-7642

7 E-mail: Dredwards@venable.com

10 ALSO PRESENT:

11 SEYFARTH & SHAW, LLP

12 BY: CHRISTOL PAETSCH, ESQ.

13 (Via telephone)

17 ALSO PRESENT:

18 DAMIEN BARTELS

19 Videographer

20
21
22
23
24
25
xxxxx

<p style="text-align: right;">Page 117</p> <p>1 MAY</p> <p>12:40:25 2 specifics of this transaction with anybody</p> <p>12:40:27 3 within the short-term unit on or about this</p> <p>12:40:30 4 date?</p> <p>12:40:31 5 A No, not specifically.</p> <p>12:40:34 6 Q Do you recall any general</p> <p>12:40:36 7 conversations you had with Mr. Markowitz about</p> <p>12:40:39 8 deciding to sell the Enron commercial paper</p> <p>12:40:41 9 that you managed on this particular date?</p> <p>12:40:43 10 A I don't specifically remember</p> <p>12:40:45 11 talking to him, but sort of the normal protocol</p> <p>12:40:48 12 would have been to discuss it with him,</p> <p>12:40:51 13 although I wouldn't have to but it's likely</p> <p>12:40:55 14 that I did, but I can't specifically recall</p> <p>12:40:57 15 doing so.</p> <p>12:41:00 16 Q To the right of underneath the</p> <p>12:41:02 17 left-hand block it says, "Trade executed." It</p> <p>12:41:06 18 says 10/26/01, and then it says 31245.</p> <p>12:41:12 19 Do you know what that sort of time</p> <p>12:41:14 20 stamp signifies, to the best of your knowledge?</p> <p>12:41:20 21 A I'm not sure if that refers to when</p> <p>12:41:21 22 the trade ticket is actually generated and sent</p> <p>12:41:24 23 over to the operations group or if it's the</p> <p>12:41:26 24 trade -- on our trade tickets we do put in what</p> <p>12:41:31 25 time the trade was actually executed. The fact</p>	<p style="text-align: right;">Page 119</p> <p>1 MAY</p> <p>12:42:45 2 A To the best of my recollection, I</p> <p>12:42:47 3 remember it being the afternoon.</p> <p>12:42:48 4 Q Again, I believe you mentioned</p> <p>12:42:53 5 earlier that you didn't need authorization from</p> <p>12:42:55 6 anyone to do that trade; is that correct?</p> <p>12:42:57 7 A Correct.</p> <p>12:43:02 8 Q Let's skip a couple of pages ahead</p> <p>12:43:06 9 still, and it bears, "Goldman Sachs & Company,"</p> <p>12:43:12 10 in the upper left-hand corner, and then a</p> <p>12:43:19 11 couple of lines below on the left side it says,</p> <p>12:43:20 12 "Notification of secondary purchase."</p> <p>12:43:24 13 Do you recall ever seeing this</p> <p>12:43:26 14 document before?</p> <p>12:43:26 15 A No, I don't.</p> <p>12:43:27 16 Q Do you recall ever seeing a document</p> <p>12:43:30 17 like this before?</p> <p>12:43:34 18 A It is similar to the one we looked</p> <p>12:43:36 19 at a few minutes ago, but it is not something I</p> <p>12:43:37 20 regularly look at.</p> <p>12:43:39 21 Q At the very bottom on the right-hand</p> <p>12:43:41 22 corner it says, "Goldman Sachs & Company acted</p> <p>12:43:43 23 as agent for Enron Corporation.</p> <p>12:43:47 24 Do you remember discussing with</p> <p>12:43:47 25 anyone at UBS whether or not Goldman Sachs was</p>
<p style="text-align: right;">Page 118</p> <p>1 MAY</p> <p>12:41:35 2 that this goes out to more decimals is making</p> <p>12:41:39 3 me think it's referring to when the ticket was</p> <p>12:41:41 4 generated, not the trade, but I'm not positive.</p> <p>12:41:43 5 Q Do you typically have to physically</p> <p>12:41:46 6 input the time a trade is made from your</p> <p>12:41:49 7 standpoint, or is it done automatically?</p> <p>12:41:55 8 A I don't know if we did then. I</p> <p>12:41:58 9 think we did. I know that we do now. We have</p> <p>12:42:00 10 to put the time the trade was executed into our</p> <p>12:42:10 11 FIST system. I'm not positive that we did</p> <p>12:42:10 12 that, but I'm pretty sure we did.</p> <p>12:42:12 13 Q We just now looked at four different</p> <p>12:42:15 14 commercial, Enron commercial paper sales</p> <p>12:42:20 15 transactions on the 26th. Do you recall</p> <p>12:42:23 16 whether those trades were done at different</p> <p>12:42:25 17 times on the 26th?</p> <p>12:42:26 18 MS. OSTROVSKY: Objection. Lack of</p> <p>12:42:29 19 foundation.</p> <p>12:42:30 20 A I don't remember. I know that I</p> <p>12:42:32 21 certainly did my trade after Debbie's trade</p> <p>12:42:36 22 because she received word first, but other than</p> <p>12:42:36 23 that, I can't tell you for sure.</p> <p>12:42:40 24 Q Do you recall whether you did the</p> <p>12:42:42 25 trade in the afternoon or the morning?</p>	<p style="text-align: right;">Page 120</p> <p>1 MAY</p> <p>12:43:51 2 acting as an agent for Enron in repurchasing</p> <p>12:43:56 3 commercial paper of Enron that you managed?</p> <p>12:43:59 4 MR. RAGHUNATH: Objection to form.</p> <p>12:44:01 5 A I don't know of any discussion like</p> <p>12:44:03 6 that.</p> <p>12:44:03 7 Q Do you recall the term being used in</p> <p>12:44:05 8 the context of the Enron paper transaction of</p> <p>12:44:09 9 October 26, 2001?</p> <p>12:44:10 10 A No, I don't.</p> <p>12:44:11 11 Q You don't recall discussing it with</p> <p>12:44:13 12 anyone at Goldman Sachs; is that correct, the</p> <p>12:44:17 13 term "agent"?</p> <p>12:44:21 14 A I have no recollection of discussing</p> <p>12:44:24 15 the term "agent," no.</p> <p>12:44:25 16 Q With anyone from Goldman Sachs?</p> <p>12:44:27 17 A No.</p> <p>12:44:40 18 MR. O'TOOLE: Let's go to tab 21.</p> <p>12:44:57 19 This will become Exhibit 20567. Again,</p> <p>12:45:11 20 it appears to be an e-mail from Mike</p> <p>12:45:12 21 Graham at Chase. Then there are some</p> <p>12:45:25 22 documents behind it, but I'm really just</p> <p>12:45:28 23 concerned with the first page.</p> <p>13:36:40 24 (Whereupon an e-mail from Mike</p> <p>13:36:40 25 Graham to Kevin Fiori at Chase was marked</p>

DOCUMENT SEPARATOR SHEET

VIDEOTAPED DEPOSITION OF MICHAEL MARKOWITZ
CONDUCTED ON THURSDAY, NOVEMBER 30, 2006

Page 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In Re Enron : Chapter 11
ENRON CORP., et al., : Case No. 01-16034(AJG)
Reorganized Debtors. : Jointly Administered
----- X
ENRON CORP., :
Plaintiff, :
v. : Adv. No. 03-92677 (AJG)
J.P. MORGAN SECURITIES :
INC., et al., :
Defendants :
----- X
(Caption continued on page two)

Videotaped Deposition of MICHAEL MARKOWITZ
New York, New York
Thursday, November 30, 2006
9:38 a.m.

Job No.: 1-90891
Pages 1 through 186
Reported by: Patricia Mulligan Carruthers, CSR

Page 3

1 APPEARANCES
2
3 ON BEHALF OF ENRON CORP.:
4 EDMUND M. O'TOOLE, ESQUIRE
5 VENABLE LLP
6 405 Lexington Avenue, 56th Floor
7 New York, New York 10174
8 (212) 307-5500
9 -and-
10 DANETTE RAE EDWARDS, ESQUIRE
11 VENABLE LLP
12 1800 Mercantile Bank & Trust Building
13 2 Hopkins Plaza
14 Baltimore, Maryland 21201
15 (410) 244-7400
16
17
18 ON BEHALF OF CITIBANK, N.A.; CITI INSTITUTIONAL
19 CORPORATE & MORTGAGE BOND FUND; AND BANCO NACIONAL
20 DE MEXICO:
21 MICHAEL A. ECKER, ESQUIRE
22 PAUL WEISS RIFKIND WHARTON & GARRISON LLP
23 1285 Avenue of the Americas
24 New York, New York 10019
25 (212) 373-3000

Page 2

1 (Caption continued from previous page)
2 ----- X
3 ENRON CORP., :
4 Plaintiff, :
5 v. :
6 MASS MUTUAL LIFE INSURANCE : Adv. No. 03-92682(AJG)
7 CO., et al., :
8 Defendants. :
9 ----- X

10
11 Videotaped Deposition of MICHAEL MARKOWITZ,
12 held at the offices of:

13
14 WHITE & CASE LLP
15 1155 Avenue of the Americas
16 New York, New York 10036
17 (212) 819-8200
18
19
20

21 Pursuant to agreement, before Patricia Mulligan
22 Carruthers, Certified Shorthand Reporter and Notary
23 Public of the State of New Jersey and Notary Public of
24 the State of New York.
25

Page 4

1 APPEARANCES CONTINUED
2
3 ON BEHALF OF GOLDMAN, SACHS & CO.; LEHMAN
4 COMMERCIAL PAPER, INC., and BRAHMS
5 FUNDING CORPORATION:
6 STUART MAST, ESQUIRE
7 MARIA OSTROVSKY, ESQUIRE
8 CLEARY GOTTlieb STEEN & HAMILTON
9 One Liberty Plaza
10 New York, New York 10006
11 (212) 225-2000
12
13
14 ON BEHALF OF THE NORTHERN BANKING CUSTOMERS:
15 CHRISTOPHER E. PAETSCH, ESQUIRE
16 SEYFARTH SHAW LLP
17 55 E. Monroe Street, Suite 4200
18 Chicago, Illinois 60603
19 (312) 346-8000
20 (Present via Telephone)
21
22
23
24
25

1 (Pages 1 to 4)

VIDEOTAPED DEPOSITION OF MICHAEL MARKOWITZ
CONDUCTED ON THURSDAY, NOVEMBER 30, 2006

Page 77		Page 79	
1	M. MARKOWITZ	1	M. MARKOWITZ
11:39:50 2	A I remember a time when we sold commercial	11:43:20 2	commercial paper, will have a CUSIP.
11:39:53 3	paper and Goldman, Sachs purchased commercial paper.	11:43:33 3	Q Do you recall during this time frame, again,
11:39:56 4	Q And that time was at the end of October?	11:43:37 4	end of October, 2001, whether anyone from Goldman,
11:39:58 5	A I would assume so.	11:43:42 5	Sachs ever indicated to anyone in your group that it
11:40:05 6	Q Okay. How would UBS reflect the transaction	11:43:46 6	was acting as an agent for Enron Corporation in
11:40:10 7	whereby it had sold commercial paper to Goldman in the	11:43:49 7	repurchasing commercial paper from UBS?
11:40:15 8	time frame October, 2001?	11:43:53 8	MR. PELL: Objection.
11:40:18 9	MS. OSTROVSKY: Objection to form.	11:43:56 9	A I don't know that. I don't recall.
11:40:20 10	A Reflected in what way?	11:44:07 10	Q Do you know who, if anyone, at UBS at the end
11:40:21 11	Q What type of documentation would generate on	11:44:14 11	of October had a particular conversation with anyone
11:40:25 12	UBS's end when a sale like that occurred?	11:44:20 12	from Goldman, Sachs about Goldman, Sachs's decision to
11:40:29 13	MS. OSTROVSKY: Objection. Foundation.	11:44:25 13	repurchase Enron commercial paper from UBS?
11:40:30 14	A We would typically put in a sales ticket	11:44:28 14	MR. PELL: Objection.
11:40:35 15	which would go to our operational area. They would --	11:44:30 15	MS. OSTROVSKY: Objection.
11:40:41 16	They would talk with the counterparty.	11:44:31 16	MR. MAST: Objection to form and foundation.
11:40:45 17	Q The operations area would typically do that?	11:44:34 17	A I believe it was Mary Wilson.
11:40:47 18	A Well, after the sale is made between	11:44:39 18	Q Do you know if UBS tapes its telephone
11:40:51 19	ourselves and our counterparty either vocally or	11:44:52 19	communications with broker/dealers?
11:40:59 20	electronically, we would then put in a ticket which	11:44:56 20	A I don't believe we do.
11:41:02 21	would go to our operations area. Our operations area	11:44:56 21	MR. O'TOOLE: Trying to move ahead a little
11:41:08 22	will then confirm the trade.	11:45:24 22	bit. We're going to go to what's predesignated Tab
11:41:11 23	Q How would it confirm the trade, if you know?	11:45:29 23	25.
11:41:13 24	A They would call the similar back office of a	11:45:29 24	MR. PELL: Does he need to change the tape?
11:41:16 25	broker/dealer and confirm the sale or the purchase as	11:45:33 25	MR. O'TOOLE: Yes.
Page 78		Page 80	
1	M. MARKOWITZ	1	M. MARKOWITZ
11:41:22 2	far as dollars and such.	11:45:33 2	THE VIDEOGRAPHER: This marks the end of Tape
11:41:30 3	Q During the normal course of your	11:45:36 3	Number 1 in the deposition of Mr. Mike Markowitz.
11:41:32 4	responsibilities in this time frame, October, 2001,	11:45:39 4	We're going off the record. The time is 11:45 a.m.
11:41:36 5	did you typically review sales tickets as they were	11:45:45 5	(Whereupon, a recess is taken.)
11:41:42 6	generated?	11:58:46 6	THE VIDEOGRAPHER: Here begins Tape Number 2
11:41:43 7	A No. I would -- I would receive an end-of-day	11:58:58 7	in the deposition of Mr. Mike Markowitz. We're back
11:41:47 8	trade blotter.	11:59:01 8	on the record. The time is 11:59 a.m.
11:41:50 9	Q Did you receive any other documentation	11:59:05 9	Q Mr. Markowitz, I'm going to show you some
11:41:54 10	besides the blotter regarding a particular individual	11:59:08 10	additional transactional documents relating to Enron
11:41:58 11	transaction in commercial paper in the normal course	11:59:10 11	commercial paper from the October time frame. I'm
11:42:01 12	during this time frame?	11:59:13 12	going to try to do it in a quick way so we don't get
11:42:02 13	A Not unless the dollars were wrong.	11:59:17 13	stuck in the mud here with respect to these, because
11:42:05 14	Q And when the dollars are wrong what would you	11:59:19 14	they're very similar documents.
11:42:08 15	receive?	11:59:21 15	So, the first one I would like to show you
11:42:08 16	A If the ticket was put in incorrectly I would	11:59:25 16	has been premarked as Tab 25. It bears the Bates
11:42:15 17	give an approval for them to open up the ticket and	11:59:28 17	Label LCPI0007 and 8, and it becomes 20,154.
11:42:18 18	redo the ticket.	11:59:38 18	(Whereupon, Exhibit 20,154 is marked for
11:42:27 19	Q Just to conclude on this document, it says	12:00:19 19	identification by the reporter.)
11:42:50 20	CUSIP Number 29356 AYP7. Do you know, what is a CUSIP	12:00:19 20	Q Mr. Markowitz, I've just handed you what has
11:42:58 21	number?	12:00:22 21	been now marked as Exhibit 20,154. It purports to be
11:42:59 22	A A CUSIP is assigned to most securities out	12:00:27 22	a Lehman Brothers Commercial Paper document.
11:43:06 23	there that will identify it to its origin. So, a	12:00:31 23	Have you ever seen a document like this
11:43:12 24	treasury security will have a CUSIP. An agency	12:00:33 24	before?
11:43:16 25	security will have a CUSIP. A corporate note,	12:00:33 25	A No.

20 (Pages 77 to 80)