

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

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In re:	:	Chapter 11
	:	
Enron Corp., <u>et al.</u> ,	:	Case Nos. 01-16034 (AJG)
	:	
Reorganized Debtor.	:	Jointly Administered
	:	
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**AFFIDAVIT OF STEPHEN F. COOPER IN SUPPORT OF THE MOTION OF  
STEPHEN FORBES COOPER, LLC FOR ENTRY OF AN ORDER  
AUTHORIZING AND APPROVING THE PAYMENT OF SUCCESS FEE**

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF NEW YORK                )

I, STEPHEN F. COOPER, being duly sworn, hereby depose and state as follows:

1. I am the managing member of Stephen Forbes Cooper, LLC. I am also the Acting Chief Executive Officer, President, Chief Restructuring Officer, and Reorganized Debtor Plan Administrator of Enron Corp. ("Enron" or the "Debtors"), the Reorganized Debtor herein. I make this Affidavit in support of the Motion of Stephen Forbes Cooper, LLC for Entry of Order Authorizing and Approving the Payment of Success Fee ("Motion"), and am authorized to make these statements in support of the Motion.

## RETENTION OF STEPHEN FORBES COOPER, LLC

2. On or about February 15, 2002, Enron Corp. filed the Motion Pursuant to 11 U.S.C. § 363 for Entry of an Order Authorizing the Debtors to Enter Into an Agreement to Employ Stephen Forbes Cooper, LLC as an Independent Contractor to Provide Management Services for the Debtors *Nunc Pro Tunc* to January 30, 2002, together with Exhibit A containing the original retention agreement (the "Original Retention Agreement"), Exhibit B containing the Affidavit of Stephen F. Cooper, attached thereto and the proposed form of Order, copies of which are annexed hereto as Exhibit A (collectively, the "Original Retention Pleadings"), seeking to retain Stephen Forbes Cooper, LLC ("SFC, LLC") to provide management services to Enron. The Original Retention Pleadings further sought to retain Stephen Forbes Cooper as the Acting Chief Executive Officer and Chief Restructuring Officer for Enron.

3. The Original Retention Agreement provided at paragraph 4(c) as follows:

4. *Compensation. SFCooper, LLC's compensation hereunder shall consist of the following:*

c) *a fee in an amount to be mutually agreed between the Debtors and SFCooper, LLC in the event that Enron succeeds in obtaining: (i) a consensual non-liquidating restructuring of a significant portion of Enron's business or (ii) a final judicial order approving a plan of reorganization under chapter 11 (other than a liquidation plan); provided however that such fee shall be in a minimum amount of \$5,000,000 (any amounts in excess of \$5,000,000 are subject to approval of the Debtors' creditors' committee). In the event Debtors fail to succeed in obtaining the results described in clause (i) or (ii) above, Debtors and SFCooper, LLC shall mutually agree on an appropriate fee under this Section 4(c) (subject to approval of the Debtors' creditors' committee).*

4.       Thereafter, on or about March 6, 2002, SFC, LLC had separate conversations with Carolyn Schwarz, the former United States Trustee for Region 2 (the "US Trustee"), and Neil Jacobson of the Securities and Exchange Commission ("SEC"), regarding their comments to the Original Retention Pleadings. (On March 8, 2002, the SEC also filed a formal objection to the Original Retention Pleadings.) The US Trustee and the SEC each requested the same change to Section 4(c) of the Original Retention Pleadings: that any success fee must be subject to Bankruptcy Court approval, and should not contain any pre-approved minimum success fee.

5.       SFC, LLC and the Debtor agreed to modify the Original Retention Agreement. Therefore, on or about March 8, 2002, SFC, LLC, filed with the Court a Notice of (A) Filing or Revised Agreement and (b) Hearing in Connection with the Debtors' Order Pursuant to 11 U.S.C. § 363 Authorizing the Debtors to Enter Into an Agreement to Employ Stephen Forbes Cooper, LLC as an Independent Contractor to Provide Management Services for the Debtor *Nunc Pro Tunc* to January 30, 2002, with the revised Agreement dated as of January 28, 2002 ("Revised Agreement"), attached thereto as Exhibit A, all of which is attached hereto as Exhibit B. Among other changes, paragraph 4(c) of the Original Retention Agreement was revised, specifically in consideration of the comments raised by the US Trustee and the SEC, as follows:

*4.   Compensation. Cooper and SFCooper, LLC's compensation hereunder shall consist of the following:*

*(c)   a fee to be requested by Cooper and SFCooper, LLC, subject to Bankruptcy Court approval for reasonableness under all the circumstances, to be fixed and paid promptly after the earlier of either (i) termination of this Agreement, (ii) disposition of substantially all Enron's material assets or (iii) confirmation of a Chapter 11 plan for Enron or separate plans or a joint plan for*

*two or more of Enron major subsidiaries, in an amount to take into account, among other things, Cooper's dedication of himself and SF Cooper, LLC to Enron, on short notice, to the exclusion of other business, comparable fees, results achieved, value maximization, and diligent progress and efforts.*

6. Thereafter, the final form of Order Pursuant to 11 U.S.C. § 363 Authorizing the Debtors to Enter Into an Agreement to Employ Stephen Forbes Cooper, LLC as an Independent Contractor to Provide Management Services for the Debtors *Nunc Pro Tunc* to January 28, 2002, together with the final form of Agreement ("Final Agreement"), a copy of which is attached hereto as Exhibit C, was issued by the Court on April 4, 2002, and entered on the Court's docket on April 5, 2002. The Final Agreement retained the language from paragraph 4(c) of the Revised Agreement.

#### COMPARABLES

7. Attached hereto as Exhibit D is a Restructuring Success Fee Analysis ("Analysis"), which was prepared under my direction and control. The Analysis looked at certain, recently filed cases with \$1 billion or more in pre-petition liabilities (from SEC filings). The Analysis excludes investment banking or transaction fees, but includes restructuring fees. On the Analysis, the column labeled Total Enterprise Value is the indicated recovery to creditors. In summary, SFC, LLC is requesting a success fee which is approximately 20 basis points as compared with a median of 54 basis points for the comparable cases (shown in the shaded box in the Summary of Comparable Chapter 11 Bankruptcies.)

#### COMMITTEE NEGOTIATIONS

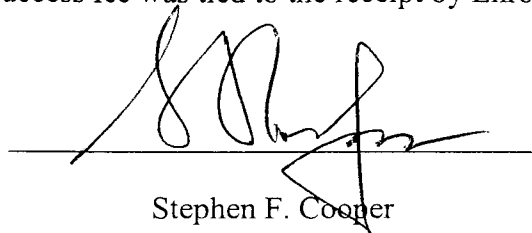
8. During the summer of 2004, prior to the filing of the Motion, SFC, LLC engaged in a series of conversations with members of the Official Committee of

Unsecured Creditors (the "Committee"), as well as certain large non-Committee creditors regarding the Motion. Those conversations resulted in SFC, LLC and Mr. Cooper making a full presentation to the Committee and its counsel where SFC, LLC's accomplishments and results achieved were reviewed in detail. Additionally, at that time the Analysis was shared with the Committee.

9. At the meeting, SFC, LLC discussed with the Committee a payment structure whereby SFC, LLC's success fee would be paid in four installments of twenty-five percent (25%) in accordance with a schedule that ties payment of SFC, LLC's success fee to creditor recoveries, as follows:

- 25% or \$6.25 million on the Plan Effective Date (as defined in the Plan);
- 25% or \$6.25 million on the date on which the Disbursing Agent makes the Initial Distribution of Cash (as defined in the Plan);
- 25% or \$6.25 million at the time that the cumulative total amount of \$1 billion in value has been distributed to Unsecured Creditors; and
- 25% or \$6.25 million at the time that a cumulative total amount of \$2 billion in the aggregate in value has been distributed to Unsecured Creditors.

10. This structure was developed and agreed upon with the Committee to insure that the payment of SFC, LLC's success fee was tied to the receipt by Enron creditors of their distributions.



Stephen F. Cooper

Sworn and subscribed before me  
this 14<sup>th</sup> day of  
November, 2005

Maria E. D'Elia  
Notary Public, State of NY  
No. 01PA8061899  
Qualified in Queens County  
Commission Expires  
July 23, 2009

