

Hearing Date: To be Determined
Objection Deadline: To be Determined

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re:	:	
	:	Chapter 11
ENRON CREDITORS RECOVERY CORP., <i>et al.</i> ,	:	Case No. 01-16034 (AJG)
	:	Jointly Administered
Reorganized Debtors.	:	
-----X	:	
ENRON CREDITORS RECOVERY CORP.,	:	
	:	
Plaintiff,	:	Adversary Proceeding
v.	:	No. 03-92677 (AJG)
	:	
GOLDMAN, SACHS & CO., <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X	:	
ENRON CREDITORS RECOVERY CORP.,	:	
	:	
Plaintiff,	:	Adversary Proceeding
v.	:	No. 03-92682 (AJG)
	:	
MASS MUTUAL LIFE INSURANCE CO., <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X	:	

**ENRON CREDITORS RECOVERY CORP.'S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND JOINDER IN MOTION TO COMPEL PRODUCTION OF
DOCUMENTS FILED BY KELLY PROPERTIES, INC., VERITAS SOFTWARE
INVESTMENT CORP., AND THE UBS DEFENDANTS**

Plaintiff Enron Creditors Recovery Corp. (the "Plaintiff" or "Enron"), by its undersigned
counsel and pursuant to Fed. R. Civ. P. 37 and Fed. R. Bankr. P. 7037, hereby moves to compel

the production of documents from Goldman, Sachs & Co. (the “Motion to Compel”) and joins in the Motion to Compel Production of Documents filed by Kelly Properties, Inc., Veritas Software Investment Corp., and the UBS Defendants (the “Moving Defendants’ Motion”), stating as follows:

1. Enron moves to compel the production by Goldman, Sachs & Co. (“Goldman”) of all documents concerning Goldman’s involvement, role and/or participation in Project Truman that occurred between August 2001 and December 2001.

2. In further support of its Motion to Compel, Enron hereby joins in, and fully adopts and incorporates as its own by reference all of the legal arguments and stated facts (to the extent such facts apply to Enron) of the Moving Defendants’ Motion.

3. In further support of its Motion to Compel, Enron notes that Goldman has asserted in its Answer, (Dkt. 567) as its eleventh affirmative defense that, “Enron’s claims are barred because Goldman Sachs bought and sold Enron commercial paper for value, in good faith and without knowledge of the voidability of the payments.” The Project Truman documents are plainly relevant to Goldman’s good faith defense because the documents would show Goldman’s knowledge of Enron’s financial condition and shed light on Goldman’s knowledge of the voidability of the transfers. See 5 Alan N. Resnick, Henry S. Sommer, Lawrence P. King, Collier on Bankruptcy, ¶ 550.03[2] at 550-23 (15th ed. rev. 2002).

4. In further support of its Motion to Compel, Enron notes that Goldman has asserted in its Answer, as its fifth affirmative defense that, Goldman “was acting as an agent of Enron for those payments,” and Goldman has previously submitted to the Court executed copies of a purported agency agreement in support of its defense. While certainly probative, the presence of a written agency agreement is “not dispositive of the issue” under New York law, because a full

examination of the relationships, duties and responsibilities of the parties is required to determine the validity and scope of a purported agency agreement. See Am. Centennial Ins. v. Seguros La Republica, S.A., No. 90 CIV. 2370(JFK), 1995 WL 731630, at *4 (S.D.N.Y. Dec. 11, 1995). Accord, S. Friend, Inc. v. PriceCostCo., No. 94 Civ. 8486(HB), 1997 WL 73713 (S.D.N.Y. Feb. 20, 1997). As noted in the Moving Defendants' Motion, there is ample reason to believe that Robert Hurst, who lead the Project Truman team for Goldman, participated in critical discussions and/or negotiations regarding the formation and scope of the purported agency agreement. Thus, because the Project Truman documents will certainly shed light on the relationships between the parties, they are relevant and necessary to the analysis of the validity and scope of the purported agency agreement.

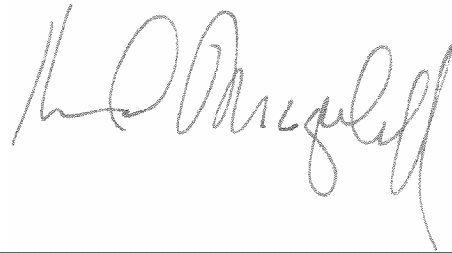
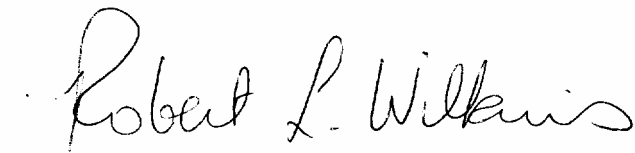
5. In further support of its Motion to Compel, Enron notes that the presence of "business compulsion" (also referred to as "economic duress") by Goldman would invalidate the purported agency agreement and thus, Goldman's agency defense. See, e.g. First Nat'l Bank of Cincinnati v. Pepper, 454 F.2d 626, 630 (2d Cir. 1972); Nordic Bank v. Trend Group, Ltd., 619 F.Supp. 542, 560 (S.D.N.Y. 1985). One way for Enron to establish business compulsion would be to establish that Goldman threatened to refuse to perform some act that Goldman had a legal or contractual obligation to perform in exchange for Enron entering into a purported agency agreement. Id. Thus, the Project Truman documents are relevant and necessary to Enron's efforts to establish what, if any, legal and contractual obligations existed between Enron and Goldman at the time of the purported agreement. In addition, the Project Truman documents are relevant to whether, because of Goldman's relationship with Enron and knowledge of Enron's financial condition, Goldman should be held to a higher standard of care with respect to its dealings with Enron in the business compulsion analysis.

CONCLUSION

Wherefore, for the forgoing reasons, and any such other reasons that may appear to the Court, Enron respectfully requests that the Court grant the Motion to Compel.

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Recovery Corp.,
Reorganized Debtor

Special Litigation Counsel for Enron
Creditors Recovery Corp.,
Reorganized Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 24th day of May, 2007, a copy of the foregoing Motion to Compel Production of Documents and Joinder in Motion to Compel Production of Documents Filed By Kelly Properties, Inc., Veritas Software Investment Corp., and the UBS Defendants was served via electronic mail on all of the defendants in Enron Creditors Recovery Corp. v. Mass Mutual Life Insurance Company, et al., No. 03-92682.

/s/ Howard P. Magaliff
Howard P. Magaliff

I HEREBY CERTIFY THAT on this 24th day of May, a copy of the foregoing Motion to Compel Production of Documents and Joinder in Motion to Compel Production of Documents Filed By Kelly Properties, Inc., Veritas Software Investment Corp., and the UBS Defendants was served via electronic mail on all of the defendants in Enron Creditors Recovery Corp. v. Goldman, Sachs & Co., No. 03-92677.

/s/ Colleen Mallon
Colleen Mallon