EXHIBIT A

06-20885

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JEFFREY K. SKILLING,
Defendant-Appellant.

SUPPLEMENTAL BRIEF OF DEFENDANT-APPELLANT JEFFREY K. SKILLING REGARDING ANDREW FASTOW INTERVIEW NOTES

[FILED UNDER SEAL]

On Appeal From The United States District Court
For The Southern District Of Texas, Houston Division
Crim. No. H-04-25 (Lake, J.)

O'MELVENY & MYERS LLP
WALTER DELLINGER
JONATHAN D. HACKER
MEAGHAN MCLAINE
1625 Eye Street, N.W.
Washington, D.C. 20006

RONALD G. WOODS
5300 Memorial, Suite 1000
Houston, Texas 77007

O'MELVENY & MYERS LLP
DANIEL M. PETROCELLI
M. RANDALL OPPENHEIMER
MATTHEW T. KLINE
DAVID MARROSO
1999 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Telephone: (310) 553-6700
Facsimile: (310) 246-6779

ATTORNEYS FOR DEFENDANT-APPELLANT JEFFREY K. SKILLING

3. Nigerian Barges. The Nigerian Barges transaction, which is the basis of a separate prosecution by the Task Force, *U.S. v. Brown*, 459 F.3d 509 (5th Cir. 2006), was also the subject of another secret side-deal claim against Skilling. Fastow testified that Skilling asked him if the LJM investment fund would buy an interest in the Barges. According to Fastow, Skilling gave him a "bear hug" that LJM would not lose money. Interpreting this as a "guarantee," Fastow said he then promised Merrill Lynch that if Merrill bought an interest in the barges, Enron would either sell Merrill's interest to a third party or buy the interest back at a profit to Merrill. The Task Force argued that Skilling's bear hug and Fastow's ensuing promise to Merrill were both illegal. R:2306-07; Op.Br.22-24; U.S.Br.46-47.

The raw notes gut these allegations. Not a single note from the 420 handwritten pages reflects that Fastow told the Task Force Skilling guaranteed LJM against loss on the Barges. To the contrary, the notes reveal that Fastow told the Task Force he "did not obligate" and "did not intend to bind" Enron to buy back Merrill's interest. This evidence demonstrates that, at most, Fastow committed Enron to use its "best efforts" to *remarket* the barges, an arrangement the Task Force *conceded* was legitimate. *Compare* AE-20-271, *with* JKS-19:45 (Task Force Prosecutor: "If all it is was a re-marketing agreement, that would not have caused a problem. We don't dispute that."). Having never been told of these

critical admissions, Skilling could not confront Fastow with his prior inconsistent statements and otherwise present them to the jury.

The raw notes also disclose that Fastow admitted to the Task Force that he told his "subordinates" Enron was obligated to buy Merrill's interest—even though that was not true—in order to "light a fire" and really "motivate" them to remarket the barges. AE-25-357. Not only did the Task Force suppress this key fact, it introduced testimony and documents of the deceived "subordinates" to *corroborate* Fastow's testimony that Enron was obligated to repurchase Merrill's interest in the barges. This manufacturing of proof is unthinkable, yet is precisely what happened.

4. Cuiaba. Like Barges, the Task Force alleged that the Cuiaba transaction was the product of another alleged secret side deal. Once again, it was Fastow's word against Skilling's about a single one-on-one conversation in September 1999. Fastow testified that Skilling told him LJM would not lose money if it acquired an interest in a power plant located in Cuiaba, Brazil. Having no documents or other evidence to corroborate Fastow's account of the conversation, the Task Force resorted to co-conspirator hearsay, having Fastow tell the jury about a conversation his confederate Michael Kopper allegedly had with Skilling some two years later. Op.Br.27-29; U.S.Br.42-44. Fastow testified Kopper had told him he met with Skilling in mid-2001 and Skilling promised Kopper that Enron "would buy the Cuiaba plant back as originally planned." R:21295.

notes and dismissed his claims of a "due process violation," telling the district court that the 302s "are comprehensive, well-organized road maps of information totaling roughly 240 of single-spaced typescript." R:11927. At a hearing on the matter, the Task Force went so far as to say "the notes … will necessarily be *much more sparse* … than the 302's will be." R:14076. The hundreds of pages of detailed notes instantly expose this falsehood.

In our post-conviction papers filed with the district court before judgment was entered, Skilling again complained mightily of *Brady* violations in this case. As before, our complaints were met with broad denials and representations that no material information had been withheld. R:37996-38050. And again, the raw notes now prove these assertions were false.

In November 2007, the Task Force filed its principal brief on appeal and argued that Skilling's *Brady* claims were "without foundation" because there was "no evidence" to suggest the Task Force withheld any favorable information. U.S.Br.192. Later that month, pursuant to our motion, this Court ordered the Task Force to disclose the raw notes to Skilling. In a last-ditch effort to prevent disclosure, the Task Force sought reconsideration representing, yet again, that the agents' "notes d[o] not contain *Brady* or *Giglio* information that had not been otherwise disclosed to Skilling." U.S. Mot. for Reconsideration by a Three-Judge Panel 8-9 (Nov. 28, 2007).

On review of the notes, we immediately saw material discrepancies between the notes and the 302s. Focusing on the Barges issue, as one example, we wrote to senior leadership at the Department of Justice about the suppression of critical evidence. AE-35. In response, the Department rejected our *Brady* concerns, saying any differences between the Fastow raw notes and 302s were "minor discrepancies" and "not materially inconsistent" with "documents that were produced to [us] in pretrial discovery." AE-36. Aware of no such pretrial discovery, we wrote back and challenged the Task Force to identify the documents "by Bates number (or other identifying information) and date of production." AE-37. Last Friday, the Task Force responded. Unsurprisingly, it was unable to identify a *single* email, note, letter, memo, or other document conveying the information found in the raw notes. Instead, the Task Force merely reverted to its blanket assertion that "the notes are 'not materially inconsistent' with information already in your possession." AE-40.

The time has come to hold the Task Force accountable for its systematic suppression of substantial, crucial, and exculpatory evidence. It misled Skilling and the district court in repeatedly representing it would "honor" Skilling's *Brady* rights. Rather than disclose the raw notes of Fastow's interviews or "comprehensive" and "accurate" 302s, the Task Force carefully and cleverly

interview notes obtained *after* the trial revealed that Ditzel had initially denied bid rigging and, when confronted with contradictory statements, said he "had a stroke which affected his memory." *Id.* at 942-44.

The court reversed Service Deli's convictions—if the raw notes had been disclosed, Service Deli could have impeached Ditzel. Here, if the raw notes had been disclosed, Skilling could have impeached Fastow about his selective memory and shown that he never told the Task Force that Skilling guaranteed LJM2 against a loss. *Id.* As here, the only evidence of a crime was Ditzel's word about a one-on-one conversations; thus, "Ditzel's credibility"—like Fastow's—"was not just a major issue; it essentially was the only issue that mattered." *Id.* at 944. In such situations, the disclosure of exculpatory statements made by such a witness is essential to a fair trial. *Id.*; *Conley v. U.S.*, 415 F.3d 183, 188 (1st Cir. 2005); *Boyette v. Lefevre*, 246 F.3d 76, 92-93 (2d Cir. 2001).

2. Suppression No. 2: The Alleged Guarantee to Merrill Lynch

After LJM2 declined to acquire the barges at the end of 1999, Enron sold an interest in the barges to Merrill Lynch. According to the Task Force, Merrill Lynch agreed to "purchase" the interest only because during a December 23, 1999 telephone call, Fastow "promise[d]" that if Enron were not able to find a third-party buyer for the barges within six months, it would buy back Merrill Lynch's interest at an agreed-upon profit. R:856. This alleged secret side-deal is the basis

of the Task Force's ongoing prosecution in *U.S. v. Brown*, 459 F.3d 509 (5th Cir. 2006).

Once again, the proof of this alleged side deal at Skilling's trial came down to Fastow. No Merrill Lynch or other Enron employee on the call testified.[11] Skilling was not on the call with Merrill and denied knowing of or making any guarantee to Merrill. R:28701. Fastow testified about the call and was shown two documents the Task Force argued corroborated the guarantee:

(1) *GX1225*: Government trial exhibit GX1225 is a May 11, 2000 email from Glisan to employees in Enron's accounting department. It says: "To be clear, Enron is obligated to get Merrill out of the deal on or before June 30. We have no ability to roll the structure" and "as we have discussed, should a strategic buyer not materialize by June 30, 2000, APACHI [Enron] will have to take out Merrill Lynch, and the investment in the barges will be placed on the balance sheet."

(2) *GX1354*: Government trial exhibit GX1354 is an internal LJM document—titled "Benefits to Enron Summary"—concerning the barges transaction. It includes the statement: "Enron sold barges to

[11] Glisan admitted he was not present when Fastow spoke to Merrill but heard from Fastow and others that Merrill "would be taken out at six months with no risk of loss and at a stated yield." R:24326-27. Loehr conceded that any information he knew about Barges derived from Fastow and others. R:22627-28.

> Merrill Lynch in December 1999, promising that Merrill would be taken out by sale to another investor by June 2000."

Fastow testified both documents "reflected" his "guarantee to Merrill Lynch that they would be out of the—that Enron would take them out of the transaction by June 30." R:22451-52.

However, before trial, when Task Force agents showed Fastow the same two documents, he said they were "not consistent" with what he said to Merrill because he did not remember using the "word 'promise.'" AE-20-271. Moreover, Fastow explained he "did not obligate [Enron] to buy out" Merrill and he "did not intend to bind [Enron]." *Id.* In this interview, Fastow also drew an important distinction between guarantees to repurchase an asset from a buyer (Merrill) and assurances that the seller (Enron) would use its "best efforts" to help remarket the asset to a third-party buyer (*e.g.*, LJM). As Fastow and the Task Force conceded—and as the SEC and accounting rules and Skilling's proposed jury instructions on side-deals confirm—formal, risk-eliminating guarantees might affect the accounting for a sales transaction, Op.Br.105-18; Reply 72-82, but general assurances and best-efforts agreements to remarket a purchased asset *do not*. *Id.*; JKS-19:45 19-20 (Task Force in *Brown* case: "If all it is was a re-marketing agreement, that would not have caused a problem. We don't dispute that.")

The Task Force's raw notes of its interviews with Fastow make clear that any promise Fastow made to Merrill was a "best efforts" agreement to remarket the barges:

> 3) It was EN's obligation to use *"best efforts" to get third party takeout* + went on to say there would be 3rd party b/c AF is manager of 3rd party.
>
> > a) B/c of ENE's course of action over years would have taken ML out.
> >
> > b) *Phone call did not obligate ENE to buy out. Did not intend to bind ENE. Was binding LJM to do something.* LJM was 3rd party and was already found.
>
> 4) "Best efforts"—must do everything possible that a reasonable businessman would do to achieve result.
>
> a) *Best efforts different from guarantee b/c still obligated to perform. Best efforts would be to find 3rd party to accomplish buyout.*
>
> 5) Could have said "promise to use best efforts" but don't recall saying that.

AE-20-271; AE-35, 36, 37. The Task Force disclosed none of this evidence to Skilling even though it directly impeached Fastow's testimony, corroborated Skilling's theory of the case, and confirmed the propriety of the side-deal jury instruction the district court refused to give.[12]

---

[12] Nor has the Task Force ever disclosed this evidence to the defendants in the *Brown* case, who are preparing for re-trial on the Barges transaction. Because of this Court's order regarding disclosure of the raw notes, we have not shared the notes with any other party or counsel.

3. Suppression No. 3: The Alleged Corroboration of Guarantee to Merrill Lynch

At trial, the Task Force sought to corroborate that Fastow made a secret side deal with Merrill, presenting the testimony and documents (*e.g.*, GX1225 and GX1354) of Fastow's subordinates, Ben Glisan and Chris Loehr. R:22451-52. In yet another undisclosed interview session, Fastow explained to the Task Force that he *lied* to "subordinates" by "tell[ing] Enron people this was a guarantee" in order to "motivate" and "light a fire" within Enron to remarket the barges to a third-party. AE-25-357.

Had the Task Force disclosed its notes reporting that Fastow "did not obligate Enron" to repurchase Merrill's interest in the barges, Skilling could have impeached Fastow's testimony to the contrary. Had the Task Force disclosed Fastow's admission that he lied to "subordinates" about Enron's "guarantee" to "motivate" them to do something perfectly legal (remarket the barges to a third party), Skilling could have severely undermined the effect of Loehr's testimony—a young subordinate of Fastow whose testimony was singled out by a Task Force prosecutor as essential to convicting Skilling. Hueston, 44 AM. CRIM. L. REV. at 217-18 ("[W]e believed that, if a witness could crisply and quickly corroborate key aspects of Fastow's testimony regarding frauds committed for the purpose of achieving Enron's earnings objections—regardless of a direct tie-in to either

Skilling or Lay—the jury would not discard Fastow's testimony.... That witness, whom we deemed the 'remora' to Fastow's shark, was Christopher Loehr.").

III. THE EVIDENCE THE TASK FORCE SUPPRESSED WAS MATERIAL.

In assessing "materiality," the essential question asked by the courts is whether the defendant received a fair trial. Although phrased in terms of whether a "reasonable probability [exists] that, had the evidence been disclosed to the defense, the result of the proceeding would have been different," *U.S. v. Bagley*, 473 U.S. 667, 682 (1985), the materiality "question is *not* whether the defendant would more likely than not have received a different verdict with the evidence, *but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence*." *U.S. v. Brown*, 303 F.3d 582, 593 (5th Cir. 2002); *Kyles*, 514 U.S. at 434.

In making this determination, courts consider the "totality of circumstances," *U.S. v. Kelly*, 35 F.3d 929, 936 (4th Cir. 1994), including (1) the "importance of the witness," (2) the "the significance of the evidence," and (3) the existence, if any, of government bad faith in failing to disclose the favorable information. *Perez v. Cain*, 2008 U.S. Dist. LEXIS 1660, at *60 (Jan. 8, 2008 E.D. La.); *U.S. v. Jackson*, 780 F.2d 1305, 1311 (7th Cir. 1986) ("The fact that the government seeks in bad faith to suppress certain evidence indicates that such evidence may indeed be material."). Where, as here, Op.Br.16-21, "the government's case is tenuous or

On virtually every meaningful aspect of the Nigerian Barges, the Task and cleverly and wrongly misrepresented Fastow's statements in the composite 302s:

Raw Notes	Composite 302
[Shown GX1354] "2) Summary *not consistent* w/ AF's memory b/c not word 'promise'… *Phone call did not obligate ENE to buy out. Did not intend to bind ENE.* Was binding LJM to do something. LJM was 3rd party and was already found. (AE-20-271)	[Shown GX1354] "*Fastow agreed that these written descriptions are a fair description of the BargeCo deal.* It is consistent for the people listening on the telephone to believe that Enron had made that promise. Fastow does not disagree with the word promise used in the summary." AF-3500-7 at 40-41
[Shown GX1225] Did not see email b/4 today. *Object to word obligated.* Not bothered that it is ENE w/ obligation. (AE-20-272)	[Shown GX1225] "Fastow had never seen the Email before but was not bothered that Glisan said Enron was obligated." AF-3500-7 at 42
"*W/ Subordinates* 1) Probably used a shorthand word like promise or guarantee 2) *Internally at Enron. AF, JM + BG would tell Enron people this was a guarantee so to light a fire with Int'l people* - so it should be in paperwork. 3) *On phone call, didn't say EN would buy-back* - Rep of 3rd party. Explicit. *Internally said Enron would buy back.* *Unit less motivated if know of LJM.* (AE-25-357)	None

APPENDIX 2

SUPPLEMENTAL BRIEF OF DEFENDANT-APPELLANT JEFFREY K. SKILLING REGARDING ANDREW FASTOW INTERVIEW NOTES

This appendix catalogs exculpatory information contained in the Task Force's raw notes underlying their interviews of Andrew Fastow that was never before disclosed to Skilling. The examples herein are in addition to those identified in Skilling's Supplemental Brief.

For convenience, we separated the information into subjects and provide a comparison table for each. The left-hand column of the table contains exact quotes from the agents' notes; the right-hand column contains exact quotes from Fastow's composite 302s. The bolded text in the left column represents the exculpatory information omitted from or misrepresented in the composite 302s.

3. **LJM -** The Task Force argued that LJM was one of the "levers" and devices co-conspirators used to mislead the public about Enron's financial health. R:855-59. During one of his first interviews with the Task Force, Fastow said he is *now* ashamed of LJM and its transactions but "at the time, [he] thought [it] was ingenious and successful." This admission is omitted from the Fastow 302. The word "ingenious" appears nowhere in the 302s and the word "successful" is not part of any section describing LJM.

Notes	*Composite 302*
"AF know [*sic* / now] ashamed of LJM + its transactions **but @ time thought that was ingenious + successful**" (AE-3-12)	NONE

4. **LJM -** A disputed issue at trial and on appeal is whether Enron fairly disclosed the conflict of interest that arose from Fastow, who was Enron's CFO, also acting as general partner for LJM, an investment fund that entered into transactions with Enron. During one interview, Fastow conceded he had "no recollection of trying to minimize that [conflict] issue." Fastow was comfortable with the structure because there were two levels of "safeguards": Enron approval and "accounting integrity." The Fastow 302 omits Fastow's key admission that he did not recall trying to "minimize" the conflict and mischaracterizes and waters down the "integrity" safeguard by saying only "approval from AA [Arthur Anderson]."

Notes	*Composite 302*
"In discussion w/JS -- No specific recollection of discussion of conflict of interest but always discussed that issue. **No recollection of trying to minimize that issue.** Two levels of safeguards -- a) Enron approval + b) **Acctg integrity**" (AE-8-139)	"Fastow and Skilling discussed Fastow's conflict of interest in working for Enron and managing LJM. They established two levels of safeguards to overcome the conflict of interest, Board of Director approval and accounting approval from AA." (AF-3500-9 at 25)

EXHIBIT B

VENABLE LLP

8010 Towers Crescent Drive, Suite 300
Vienna, Virginia 22182-2707

Telephone 703-760-1600
Facsimile 703-821-8949

www.venable.com

William D. Dolan, III
(703) 760-1684
wddolan@venable.com

April 25, 2005

VIA FACSIMILE (202) 514-6034
AND HAND-DELIVERY

Subject to F.R.E. Rule 410;
F.R. Crim. Proc. 11(f)

Joseph F. Bianco, Esquire
Deputy Assistant Attorney General
Criminal Division
Department of Justice
950 Constitution Avenue, N.W.
Room 2212
Washington, D.C. 20530

Dear Mr. Bianco:

We are aware that the Enron Task Force has determined to proceed with the prosecution of our client, Jeffrey McMahon, in the Nigerian barges case. We write to appeal this determination and request that you reverse this decision with respect to Mr. McMahon. We set forth below some of the reasons why the United States Government should not indict Mr. McMahon. This letter, however, should not be construed to constitute a comprehensive treatment of all defenses in this case.[1]

I. The Function of the Treasurer's Office within Enron Corporation

A. Overall Responsibilities

In order to properly place Mr. McMahon's limited involvement in the Nigerian barge transaction in context, it is fundamental for the government to understand the role of the Treasurer within Enron Corporation ("Enron") during the time of the events in question. The Enron Treasurer was responsible for managing Enron's liquidity, as explained further below, managing its capital structure, and coordinating Enron's relationships with its banks and credit rating agencies.

Enron consummated over $20 billion per year in financings, or over 100 deals per year, and utilized a group of over 120 banks around the world. In order to ensure that the banks could not selectively pick and choose amongst those deals of interest to them (with the end result that lower-value deals would be ignored), all financings were coordinated through the Treasurer's office.

[1] This memorandum is being offered subject to Federal Rules of Evidence 410 and Federal Rules of Criminal Procedure 11(f) and may not be used for any purpose beyond the appeal of the Enron Task Force's decision to indict Mr. McMahon.

To fulfill this function, Mr. McMahon would place an "introductory" telephone call to an available bank identified by his staff and inform the bank that Enron wanted the bank to review a certain proposed transaction to determine its level of interest. An "available bank" was one of the 120 banks that: (1) were not currently working on another Enron financing; and (2) had the capability to lead and close the transaction. Mr. McMahon would then instruct the bank to communicate directly with the division finance employee responsible for the transaction for additional detail. On some occasions, Mr. McMahon was provided with a cursory overview of the proposed deal from the division finance employee at the outset, which he would communicate to the bank. Unless the deal was sponsored by the Corporate group, Mr. McMahon lacked authority to dictate or negotiate terms of the deal or to bind Enron, as these functions were within the division's responsibility and authority.

To further fulfill this role, Mr. McMahon was also responsible for centrally managing the overall bank relationships at a corporate level.

It was within this context that in mid-December 1999, Mr. McMahon was asked, by APACHI division personnel, to contact a bank or other financial institution with respect to a potential investment in the proposed Nigerian barge transaction.

B. Emphasis on Liquidity

One of Mr. McMahon's principal roles, and one on which he placed the highest priority, was increasing Enron's liquidity. As part of this goal, in 1999, Mr. McMahon established a policy with respect to any transaction which contained continuing obligations and risks.

Specifically, any transaction structure that required Enron to repurchase any portion or portions of any assets, directly and negatively affected Enron's balance sheet and liquidity. Thus, it became well-known throughout the company that Mr. McMahon would not approve any transactions in which Enron, and its related entities, were committed to repurchase assets it sold because of the effect on the company's liquidity and balance sheet.

Consistent with this mandate, Kelly Boots, one of Mr. McMahon's subordinates, circulated an inquiry seeking a list of outstanding FASB 125 deals, which was widely forwarded throughout the company. *See Email from Kelly H. Boots to Mike Jakubik, et al. dated October 20, 1999, attached as Exhibit A; Email from Barry Schnapper to James A. Hughes dated October 26, 1999, attached as Exhibit B.*

The purpose of a FASB 125 transaction is to remove financial assets, including cash, ownership in an unconsolidated entity, or a contract that conveys the contractual right to receive cash or to exchange an asset on potentially favorable terms, from the balance sheet and recognize the corresponding gain or loss when the control of the assets are surrendered and proceeds are received. FASB 125 transactions include sales and securitizations of financial assets, extinguishments of liabilities, and related issues, including securities lending transactions and servicings of financial assets. Enron engaged in numerous FASB 125 transactions in order to monetize a variety of its assets.

A FASB 125 transaction has an expiration, or "unwind," date at which time the asset is sold off at auction. Prior to Mr. McMahon's installation as Treasurer, the divisions who had previously disposed of an asset through a FASB 125 structure frequently requested approval to repurchase the asset at the auction. Mr. McMahon, beginning in late 1999, indicated that it was unacceptable for Enron to repurchase such assets at auction because of its effect on the company's liquidity and balance sheet.

In contrast, certain assets, such as real estate, could not be sold through FASB 125 structures, and thus, the division would seek approval to dispose of the asset through transactions with Special Purpose Vehicles ("SPVs"). As part of the latter transaction, the division permanently surrendered control of the asset, and therefore, unlike with a FASB 125 transaction, there could not be a repurchase. Although the Nigerian barge transaction originally was slated as a FASB 125 transaction, the deal team ultimately changed the structure to one utilizing an SPV. Thus, pursuant to accounting rules, the seller could not incur any significant obligations for future performance which would bring about a repurchase of the asset.

Mr. McMahon demonstrated his disapproval of several proposed FASB 125 repurchases in which the division proposed continuing Enron's obligations and risks with the associated asset, thus affecting Enron's financial statement and liquidity. For example, in January 2000, Mr. McMahon disapproved of the division's plan to repurchase shares for the EcoElectrica interest. The division had monetized 37.5% of EcoElectrica's interest in a FASB 125 transaction in 1998, which was scheduled to unwind in March 2000. The division requested advice from Mr. Fastow, Mr. Causey, Mr. McMahon and others concerning a potential purchaser of the transaction. Mr. McMahon responded that "I do not believe we should buy back the shares and I will not recommend we roll the 125." *See Email from Jeffrey McMahon to Daniel Castagnola, et al. dated January 10, 2000, attached as Exhibit C.* He further stated that Enron must refinance the deal because of the cash impact. *See id.*

In addition, in February 2000, Mr. McMahon objected to a division's proposal to repurchase an interest in a Guam-based asset. In early 1999, Enron International had sold a portion of its investment in Enron Development Piti, LLC, an entity which owned a power plant in Guam. The transaction was accounted for as a sale for financial reporting purposes, pursuant to FASB 125, and was scheduled to unwind on March 1, 2000. In response to inquiries from division personnel, Mr. McMahon clearly indicated that "Enron is NOT to repurchase Guam." He further stated: "I cannot overstate the need to make sure this asset is not put back on the balance sheet." *See Email from Jeffrey McMahon to Jeremy Thirsk dated February 3, 2000, attached as Exhibit D.*

Thus, Mr. McMahon established a pattern of objecting to transactions in which Enron would incur ongoing obligations or risks, as this would affect Enron's capital structure and future liquidity. Notably, this position was one of many that Mr. McMahon held contrary to Mr. Fastow's position. Mr. McMahon was constantly preoccupied about Enron's liquidity position, while Mr. Fastow consistently believed there was no reason for concern about liquidity because there was always sufficient cash available.

C. December 15, 1999 DeSpain Email

It was within this framework, and with this history, that Mr. DeSpain wrote the attached email concerning the proposed repurchase of the Nigerian barges.

When the division first conceptualized of the Nigerian barge transaction, it was presented as a FASB 125 deal. Thus, in December 1999, when the division requested Mr. McMahon to make the initial contact with a bank or other financial institution in his role as Treasurer, Mr. McMahon and his staff believed it was a FASB 125 deal structure. Because of Mr. McMahon's long-standing policy regarding financings which incurred an ongoing obligation or risk, Mr. DeSpain, Assistant Treasurer, wrote to Mr. Boyle, a division finance employee, regarding Mr. McMahon's edict.

As set forth in the email, Mr. DeSpain, consistent with Mr. McMahon's policy, stated that Mr. McMahon "is emphatic that if you choose to stick it in a 125 deal that you commit to sell it off before the end of 2000. **Buying it back next year is not an acceptable answer**." *See Email from Tim DeSpain to Dan Boyle dated December 15, 1999, attached as Exhibit E (emphasis in original).* Mr. DeSpain copied Mr. McMahon on the email. This email was, in turn, forwarded by Mr. Boyle to Mr. Boyt, a division accounting employee working on the Nigerian barge transaction. *See Email from Dan Boyle to Eric Boyt dated 12/15/99, attached as Exhibit F.* The email was further circulated to other employees working on the transaction,

prompting one employee to comment that "[b]ased on the attached, it appears that Enron will have NO ownership control after selldown." *See Email from Ed Giblin to Larry Reynolds, et al. dated December 16, 1999, attached as Exhibit G (emphasis in original); see also Email from Fred L. Kelly to Mark Kiddle, et al. dated December 27, 1999, attached as Exhibit H.*

Thus, the December 15, 1999 DeSpain email is consistent with the policy instituted and the position taken by Mr. McMahon with respect to sales which incurred ongoing obligations and risks in late 1999 and the first quarter of 2000, as demonstrated through the above examples.

II. The Nigerian Barge Deal

A. Overview

In June 1999, Enron purchased nine power barges for $56.6 million from the Philippine government. Each of the barges, three of which were located in Nigeria ("the Nigerian barges"), operated as floating electricity generators. Enron contributed the Nigerian barges to Enron Nigeria Barge Limited ("ENBL") in exchange for 100% of the company's stock.

The projected cash flow from the barges was to emanate from a contract with the Nigerian government to provide electricity to the country. Enron anticipated a cash flow of $39 million in the first three years of operation. In order to monetize the projected income, APACHI division personnel, which had responsibility for the Nigerian barge assets, sought to sell an equity stake in ENBL before December 31, 1999.

In September 1999, James Hughes, a senior executive in the APACHI division, directed his personnel to determine whether and how the division could monetize and recognize a gain on the barge transaction. Pursuant to this directive, the APACHI division attempted to execute a deal with Marubeni whereby Marubeni would purchase all of the equity in ENBL.

In early December 1999, it was determined that a transaction with Marubeni could not be completed by year-end. Mr. Hughes again directed APACHI division personnel to investigate an alternative to ensure the monetization of the Nigerian barges for fourth quarter 1999.

APACHI finance employees approached Mr. McMahon in mid-December 1999, in his role as the central coordinator of Enron's relationships with banking institutions, to contact a bank or other financial institution that might be capable of closing the division transaction for year-end 1999. Several banks with whom Enron traditionally worked were already progressing on other Enron-related transactions. Merrill Lynch, however, had been seeking an increased

relationship with Enron and was not currently working on an Enron transaction, and thus, the Treasurer's office directed that the contact for the Nigerian barge deal be made with Merrill Lynch. Other financial institutions may have been contacted to explore their interest in this transaction.

Mr. McMahon was informed by the APACHI finance personnel that the commercial risks associated with the Nigerian barge transaction had been mitigated by virtue of a letter of credit from Citibank, purchasing political risk insurance, and the existence of casualty loss insurance for the barges themselves. This representation was also made to Michael Kopper who was simultaneously reviewing the deal for LJM2. Mr. Kopper testified in the Nigerian barge trial that, "[h]e [Fastow] described the deal to me as a transaction that was not going to be taking Nigerian political risks or actually Nigerian credit risk, that there was a letter of credit in place from Citibank." *See Trial Testimony of Michael Kopper dated September 27, 2004, attached as Exhibit I.* Based on the various financial protections put in place, Mr. McMahon concluded the Nigerian barge transaction would be appropriate for a bank to review for investment.

Mr. McMahon, acting on the representations made about the Nigerian barge deal by the APACHI personnel, contacted Merrill Lynch to introduce the transaction and request that it contact the APACHI division finance personnel directly to negotiate the terms and conditions of the deal. Mr. McMahon did not make any commitment to Merrill Lynch or to any other organization that Enron or any of its affiliated entities would repurchase Merrill Lynch's equity position within six months.[2] Any language used by Mr. McMahon would have been designed to encourage interest in the transaction but never intended to convey a proposal which would conflict with his clearly established position against repurchases.

Pursuant to his role as Treasurer, as contrasted with that of a division finance employee, Mr. McMahon did not negotiate the terms and conditions of the transaction with Merrill Lynch. Mr. McMahon recalls discussing the proposed structure with Mr. DeSpain and reiterating that there could be no ongoing financial obligation or risk associated with the transaction, and that a sale must be a sale. After his initial telephone contact, Mr. McMahon did not have any further involvement with the transaction until December 23, 1999.

Mr. McMahon was on vacation from Saturday, December 18, 1999 through Monday, January 3, 2000. *See Payroll Records for Periods Ending 1/15/00 and 1/31/00, attached as*

[2] Neither is Robert Furst's internal Merrill Lynch memorandum, dated December 21, 1999, inconsistent with Mr. McMahon's representation. That memorandum states only that Enron "believe[s] our hold will be for less than six months." It certainly does not rise to the level of a guarantee.

VENABLE LLP

Exhibit J;[3] *see also Email from Debra Korkmas to Katrina Jackiewicz dated December 20, 1999, attached as Exhibit K.* Mr. McMahon was informed during his vacation that Mr. McMahon was required to participate in the December 23, 1999 telephone conference with Merrill Lynch because he had made the initial contact with Merrill Lynch. [4]

Mr. McMahon was not involved in negotiating any terms and conditions for the Nigerian barge transaction. Moreover, none of the emails among the Nigerian barge transaction team describing the changing structure of the transaction were copied to Mr. McMahon. Mr. McMahon never reviewed the draft letter agreement from Merrill Lynch addressed to Mr. McMahon. In short, Mr. McMahon had no involvement or role in the negotiation or structuring of the transaction, and did not review any documentation related to such.

As discussed further below, the telephone conference to discuss the Nigerian barge transaction was held at 9:30 a.m. CST on December 23, 1999.

B. Mr. Fastow's Relationship with Merrill Lynch

In late 1999, Mr. Fastow, on his own initiative and without Mr. McMahon's participation, began encouraging banks to invest in LJM2. As a result, Mr. McMahon began receiving complaints from banks with whom Mr. McMahon maintained relationships on behalf of Enron that Mr. Fastow had requested the banks to invest in LJM2. Several of these banks expressed concern that their failure to invest in LJM2 would result in a loss of Enron's business. Mr. McMahon's subordinates also reported receiving similar telephone calls from banks regarding this issue. Several banks informed Mr. McMahon that they had an express commitment from Mr. Fastow that if they invested in LJM2 they would receive certain future Enron fee-generating business.

Mr. McMahon approached Mr. Fastow on multiple occasions to express his opinion that Mr. Fastow's involvement with these banks in this manner was improper. Mr. Fastow denied that he was coercing banks to invest in LJM2. As Mr. McMahon indicated to Mr. Fastow, however, the problem was not if Mr. Fastow requested the banks directly to invest, but that Mr. Fastow's contact with banks understandably created a presumption that if they failed to invest, they would correspondingly lose Enron's business. Mr. McMahon thus reiterated that Mr. Fastow's requests created a conflict, and that they were improper.

---

[3] The attached payroll records, for periods ending January 15, 2000 and January 31, 2000 reflect the holiday and vacation pay for the pay periods ending December 31, 1999 and January 15, 2000, respectively.

[4] Mr. McMahon certainly did not inform Mr. Fastow that the conversation with Merrill Lynch needed to occur, nor did he prepare him for the call.

It was within this framework that Merrill Lynch, beginning in late 1999, began serving as a private placement agent for Mr. Fastow's LJM2. Merrill Lynch was very interested in continuing its relationship with Enron, and in particular, with Mr. Fastow. On December 4, 1999, Schuyler Tilney, a Merrill Lynch managing director, indicated to Dan Bayly, the Merrill Lynch head of investment banking, that "Andy [Fastow] is a very important relationship for the firm and is principally responsible for Merrill Lynch's participation in this project. As you know, Merrill Lynch was nearly excluded from Enron's $750 million common stock offering earlier this year, so this mandate is critical to re-igniting our relationship with Enron." *See Memorandum from Schuyler Tilney to Dan Bayly dated December 3, 1998, attached as Exhibit L.*

In its role as the private placement agent for LJM2, Merrill Lynch raised money on behalf of LJM2, and received fees for services rendered. Specifically, Merrill Lynch raised approximately $265 million on behalf of LJM2, and received more than $3 million in fees. Ultimately, approximately 100 Merrill Lynch employees personally invested roughly $16 million in LJM2.

On December 21, 1999, Mr. Fastow wrote to Mr. Tilney at Merrill Lynch and indicated to him that LJM2 had closed, and thanked Mr. Tilney for "bringing in the Merrill Lynch investment." Mr. Fastow further indicated that it was due to the latter's "efforts and assurances." *See Email from Andrew S. Fastow to Schuyler Tilney dated December 21, 1999, attached as Exhibit M.*

Although Mr. McMahon knew generally about Merrill Lynch's role as a private placement agent, he did not know that many Merrill Lynch employees had invested in LJM2 at the time of the December 23, 1999 telephone conference call regarding the Nigerian barge transaction.

C. December 23, 1999 Conference Call

The scheduled 9:30 a.m. conference call included individuals from both Merrill Lynch and Enron, including Mr. McMahon. Because Mr. McMahon was on vacation, Mr. McMahon participated in the conference call from his home. Mr. McMahon did not have any responsibility for, or involvement in, setting up the conference call or agenda. *See Email from Dan Boyle to Jeffrey McMahon dated December 22, 1999, attached as Exhibit N.* Mr. McMahon did not prepare Andrew Fastow for the conference call. Mr. McMahon did not speak on the conference call other than to acknowledge he was indeed on the conference call.

Any language used by Mr. Fastow in the 9:30 a.m. conference with Merrill Lynch was, of course, directed to his fund's private placement agent and his investors in LJM2. None of this language, by which Mr. Fastow communicated anything with respect to Enron's position regarding the Nigerian barge equity, translated to Mr. McMahon as a commitment for Enron or any of its affiliated entities to repurchase Merrill Lynch's interests. Indeed, Mr. McMahon's position on any sales with ongoing obligations or risks was well-known throughout the company, as demonstrated by the fact that he objected to such arrangements both prior and subsequent to the December 23, 1999 conference call. Mr. McMahon would not have concurred with a transaction in which Enron committed to ongoing obligations or risks, as this would have affected the balance sheet and the company's liquidity position with which he was concerned.

In sum, any language used prior to or during the conference call, directly or indirectly, was not understood by Mr. McMahon to entail a commitment by Enron and its affiliated companies to repurchase Merrill Lynch's interest. Quite simply, Mr. McMahon did not make any commitment to Merrill Lynch or to any other entity, at any time, that Enron or any of its affiliated entities would purchase Merrill Lynch's equity position within six months, nor was he part of, directly or indirectly, anyone else making such a commitment.

Mr. McMahon did not have any role with respect to the transaction after the conference call, contrary to Mr. Kopper's testimony that Mr. McMahon was responsible for closing the deal. There are no documents to support such an allegation, and because Mr. McMahon did not return to Enron during his vacation, he could not have "closed the deal."

III. Mr. McMahon's Removal as Treasurer

Mr. McMahon objected to LJM2 from its formation, and, as noted above, specifically objected to Mr. Fastow's attempt to approach banks to request that they invest in LJM2. Mr. McMahon further objected to Mr. Fastow, Mr. Skilling, and others regarding the conflict of interest presented by LJM2's organization and Mr. Fastow's role as its General Partner.

In general, Mr. McMahon believed that Mr. Fastow's role in LJM2 created a conflict of interest within Enron. The conflict arose because employees under Mr. McMahon's supervision negotiated on Enron's behalf with other Enron employees representing LJM2 on the value of assets to be sold. Enron employees under Mr. McMahon's supervision were instructed to obtain the most advantageous deal for Enron, and Mr. McMahon believed that Enron employees under Mr. Fastow's supervision were instructed the same vis-à-vis LJM2. Since Mr. Fastow made decisions regarding salary and bonuses for employees supervised by Mr. McMahon,

Mr. McMahon was concerned that employees under his supervision would not negotiate as vigorously with those employees representing LJM2 because of Mr. Fastow's involvement.

On March 10, 2000, Mr. McMahon spoke to Rob Furst, managing director at Merrill Lynch, regarding Merrill Lynch's relationship with LJM2. Mr. Furst, who one of the former Merrill Lynch employees identified as Enron's "yes" man, queried whether Mr. McMahon believed that it was a conflict of interest for Merrill employees to invest in LJM2. Mr. McMahon firmly indicated his opinion that such an investment clearly constituted an inherent, and irreparable, conflict of interest.

Mr. Fastow then approached Mr. McMahon and indicated that it was improper for Mr. McMahon to convey to Merrill Lynch that it was a conflict of interest for Merrill Lynch employees to invest in LJM2. On March 15, 2000, Mr. McMahon confronted Mr. Fastow one final time with respect to the conflicts of interest between LJM2 and Enron. On March 16, 2000, Mr. McMahon met with Mr. Skilling to address his concerns regarding Mr. Fastow and the conflict of interest presented by Mr. Fastow's involvement in, and the organization of, LJM2. Mr. Fastow subsequently confronted Mr. McMahon about the fact that Mr. McMahon had relayed his concerns to Mr. Fastow's superior. Mr. Fastow indicated that they could no longer work together.

Shortly after these confrontations, Mr. McMahon was offered a position as the Chief Commercial Officer at a start-up business within Enron, Enron Networks. Mr. McMahon received identical compensation. In this new position, Mr. McMahon reported to Greg Whalley, the Chief Executive Officer. Ben Glisan,[5] Mr. Fastow's limited partner in the Southampton transaction and a principal of LJM2, who had previously been selected to transfer to a position in London, was appointed to replace Mr. McMahon in his role as Treasurer and Senior Vice President, despite the fact that Mr. McMahon had recommended three highly qualified individuals for the position: William Brown, Ray Bowen, and Mike Jakubik. Mr. Glisan would later approve of the purchase of Merrill Lynch's equity in the Nigerian barges in June 2000.

It is undisputed that Mr. McMahon was not part of the Fastow "group." He was not an investor in LJM1 or LJM2 or a partner in the Southampton transaction. His dispute with Mr. Fastow was well-known throughout the organization.

---

[5] Mr. McMahon does not have any recollection of the alleged conversation as testified to by Mr. Glisan during the trial of *United States v. Daniel Bayly, et al.* In fact, if Mr. Glisan is to be believed, the alleged conversation occurred when Mr. McMahon was on vacation. It should be noted that Mr. Glisan was not part of the December 23, 1999 telephone conversation, nor did he assume the role of Treasurer until well after the transaction was completed.

VENABLE LLP

IV. Conclusion

As noted at the outset of this letter, this document should not be interpreted as constituting the entirety of the defenses Mr. McMahon would present at a trial of this matter, but is directed to addressing partial reasoning behind why Mr. McMahon should not be indicted with respect to the Nigerian barges issue. As such, the summary below does not constitute a summary of all of Mr. McMahon's arguments.

- Mr. McMahon was not part of the Fastow "group." He was not an investor in any of Mr. Fastow's partnerships, and was removed by Mr. Fastow as Treasurer when he questioned their legitimacy. His adversarial relationship with Mr. Fastow was well-known throughout the company.

- Mr. McMahon, in his role as Treasurer, was interested in the liquidity of the company, and had made it an express policy that the divisions could not obligate Enron to repurchases that would affect the cash flow of the company.

- Because of Mr. McMahon's policy concerning liquidity, Mr. DeSpain informed Mr. Boyle, with a copy to Mr. McMahon that "buying [the equity] back next year is not an option." This email, in light of all these facts, can have only one reasonable meaning and, in fact, its recipients clearly understood that meaning: "[b]ased on the attached, it appears that Enron will have NO ownership control after selldown."

- Mr. McMahon was uniquely out-of-the-loop on the Nigerian barges transaction. He was only responsible for the initial contact with Merrill Lynch, and did not further participate in any negotiations with Merrill Lynch, nor was he involved in any discussions with other Enron personnel regarding the strategy or implementation of the transaction.

- Mr. McMahon was on vacation and out of the office from December 18, 1999 through January 3, 2000, and did not review any documents concerning the transaction. Mr. McMahon's last involvement on the Nigerian barge issue was the telephone conference call, which he participated in from his home while on vacation.

- It is undisputed that Mr. McMahon did not speak on the conference call, other than to introduce himself. Any language used by Mr. Fastow to Merrill Lynch by which he communicated anything with respect to Enron's position regarding the equity did not

VENABLE LLP

translate to Mr. McMahon as a commitment for Enron or any of its affiliated entities to repurchase Merrill Lynch's interests.

- Mr. McMahon did not make any commitment to Merrill Lynch, at any time, that Enron or any of its affiliated entities would repurchase Merrill Lynch's equity position within six months, nor was he part of, directly or indirectly, anyone else making such a commitment.

For these, and other reasons, Mr. McMahon should not be indicted.

Sincerely,

William D. Dolan, III

Attachments
cc: Andrew Weissman, Esquire
Sean Berkowitz, Esquire

MC1DOCS1\181935.2

Kelly H Boots

10/20/1999 08:44 AM

To: Mike Jakubik/HOU/ECT@ECT, bgathma@ei.enron.com, Barry Schnapper/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Larry Lawye Communications@Enron Communications, Bill W Brown/HOU/ECT@ECT, Pat Chivers/LON/ECT@ECT

cc: Jeffrey McMahon/HOU/ECT@ECT, Sarah Heineman/HOU/ECT@ECT

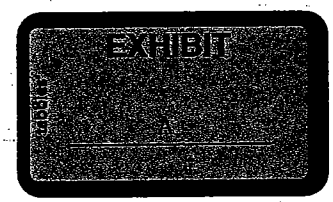
Subject: URGENT- F 125 deals

Jeff McMahon has asked for as soon as possible a complete list of all outstanding FASB 125 deals, their amounts, maturity dates, and their respective refinancing plans. The attached chart details the ones we know about. Please review, fill in the details, or include deals we may have missed.

Thanks for your assistance,

Kelly

FASB125.xls



FASB 125 Deals

Name	Amount (US$)	Maturity	Refinancing Plan
MacArthur	US$ 23 MM	6/8/00	
Leftover	US$ 102 MM	10/28/99	
Riverside 10	GBP 61 MM	3/31/00	
Trailblazer	US$ 49 MM		
Sutton Bridge 3	US$ 80MM		
Sutton Bridge 4	US$ 75MM		
Sutton Bridge ? (GNW)	GBP 43 MM	12/8/99	
Pilgrim	US$ 445 MM	9/30/99	Condor/Margaux
Riverside 4	GBP 60 MM	9/30/99	Condor/Margaux
Riverside 5	GBP 2 MM	9/30/99	Condor/Margaux
Riverside 6	GBP 80 MM	1/14/02	

FASB125.xls

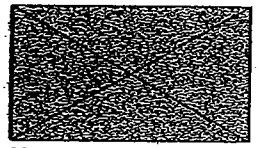
Barry Schnapper

10/26/1999 02:58 PM

To: James A Hughes/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:
Subject: URGENT- F 125 deals

Jim, when you have a moment I would like to get your views on the take out of MacArthur which was a FASB 125 for Guam done earlier this year. There is not an immediate urgency on this particular transaction since it does not mature until June of 2000, but in a reasonable time frame I would like to respond to Kelly Boots and Jeff McMahon.

---------- Forwarded by Barry Schnapper/ENRON_DEVELOPMENT on 10/26/99 04:57 PM ----------



Kelly H Boots@ECT
10/20/99 10:44 AM

To: Mike Jakubik/HOU/ECT@ECT, bgathma@ei.enron.com, Barry Schnapper/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Larry Lawyer/Enron Communications@Enron Communications, Bill W Brown/HOU/ECT@ECT, Paul Chivers/LON/ECT@ECT
cc: Jeffrey McMahon/HOU/ECT@ECT, Sarah Heineman/HOU/ECT@ECT

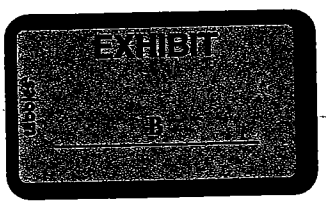
Subject: URGENT- FASB 125 deals

Jeff McMahon has asked for as soon as possible a complete list of all outstanding FASB 125 deals, their amounts, maturity dates, and their respective refinancing plans. The attached chart details the ones we know about. Please review, fill in the details, or include deals we may have missed.

Thanks for your assistance,

Kelly

FASB125.xls



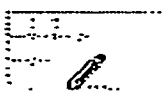
Enron Global Finance

From: Jeffrey McMahon 01/10/2000 06:08 AM

To: Daniel Castagnola/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc: Andrew S Fastow/HOU/ECT@ECT, Richard Causey@ENRON@ENRON_DEVELOPMENT, Michael Kopper/HOU/ECT@ECT, Bob Butts@ENRON@ENRON_DEVELOPMENT, Mike Jakubik/HOU/ECT@ECT
Subject: Re: Monetization of EcoElectrica Interest

Dan

With respect to the original shares, I suggest that you speak to Jakubik ASAP to determine if this would qualify for Margaux. I do not believe we should buy back the shares and I will not recommend we roll the FAS 125. We must refinance this deal due to the cash impact ($220m).

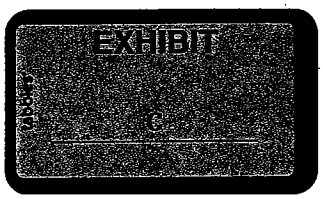


Daniel Castagnola@ENRON_DEVELOPMENT
01/09/2000 05:36 PM

To: Andrew S Fastow@ECT, Richard Causey@ENRON, Michael Kopper@ECT, Jeffrey McMahon@ECT, Bob Butts@ENRON
cc:
Subject: Monetization of EcoElectrica Interest

During the past few weeks we have been working on selling a $35 million preferred equity position to GE Capital from one of the Enron holding companies owning the 12.5% interest in EcoElectrica. 37.5% of EcoElectrica's interest was monetized under a FAS 125 transaction in 1998 and the remaining 50% is owned by our partners. GE will purchase the preferred equity from a new company ("Newco") which will hold our current 12.5% interest in EcoElectrica. The motive for this transaction is to generate net income in the first quarter and to take advantage of the low cost of funds from GE. The preferred equity return will be 7.43% and it will be cummulative-non voting.

We currently have a $12 million book basis on this equity. In order to generate a gain, we need to achieve two things: 1) issue the preferred equity to GE and distribute the cash upstream and 2) deconsolidate the Newco. By distributing the proceeds upstream, we will have a negative basis in the Newco thus deconsolidation is necessary in order to realize the gain. Since Enron will own 100% of the common shares in Newco and GE will own 100% of the preferred shares, the simplest way to deconsolidate is for Enron to lose control of Newco by selling common shares. Fifty percent of the



common share are valued at approximately $22 million. After the above two steps are achieved, we will realize a gain in excess of **$20 million** (still working with tax dept. on final tax accrual).

Because the original FAS 125 transaction ("Churchill") is due to unwind on 31 March 2000, it is critical that we do something with the existing shares prior to that date, otherwise, we may be required to blend the basis of the existing shares with the others shares which may have a basis of $200 million.

We are scheduled to speak with Cheryl Lipshutz this week about the possibilities of LJM purchasing enough common shares to deconsolidate. I would greatly appreciate any input you may have or if you know of any potential purchaser for this transaction.

Dan

FooElectrica t

Jeffrey McMahon
02/03/2000 12:52 AM

To: Jeremy Thirsk/SIN/ECT
cc:
Subject: Re: FASB 125 unwind. Guam (MacArthur)

As discussed earlier, Enron is NOT to repurchase Guam. Jeff Skilling and Joe Sutton have agreed that risk transfer of this asset is to occur. I assume you are handling this or someone in APACHI is. Pls call me to discuss if your understanding is different. I cannot overstate the need to make sure this asset is not put back on the balance sheet.

As far as Dan goes, he has been briefed by Barry Schnapper regarding new reporting lines. I think it would be helpfu for you to speak to him as well.

Thanks.

Jeremy Thirsk
01/30/2000 11:02 PM

To: Jeffrey McMahon/HOU/ECT@ECT
cc:
Subject: FASB 125 unwind. Guam (MacArthur)

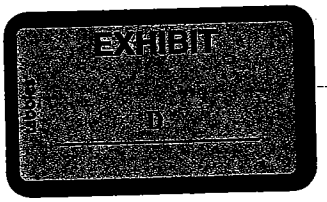
Jeff:

* Auction went as predicted. Dialogue with Tomen to purchase Enron's 37.5% stake initiated. Obligation for ENE to fund absent any sale by March 1st.

* Separately, do I need to brief Dan Boyle on changes to the Structuring Group / reporting lines, similar to Rob Gay's comments re: Carl Tricoli Thursday morning? I wasn't able to catch up with you to discuss before heading out to Singapore Friday morning. Regards - Jeremy

---------- Forwarded by Jeremy Thirsk/SIN/ECT on 01/31/2000 12:56 PM ----------

Jeremy Thirsk
01/27/2000 07:06 AM



To: Jeffrey McMahon/HOU/ECT@ECT
cc:

Subject: FASB 125 unwind. Guam (MacArthur)

Jeff: Update on this following yesterday's Operating Committee call, and yesterday's Auction process.

* Enron yesterday bid USD 23mm to re-acquire the 37.5% interest in the project off BTCo. (PF loan doc's required us to hold min 12.5 %. Tomen hold 50%)

* Assuming we're highest bidder (!) obligation to fund as at 1st March 2000, with possible deferral by up to 28 days. Total return swap unwound.

* Business unit's objective is to initiate sale to Tomen (with or without ENE's O&M contract) and book a gain, within next 1-2 months. Contact initiated with Tomen.

* Sale into Condor a backstop option, but confidentiality issues with Tomen need addressing for any on-sale by Condor.

Let me know if you need to discuss further. I'll update as information becomes available. Jeremy

Tim DeSpain

12/15/1999 02:20 PM

To: Dan Boyle/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT

cc: Jeffrey McMahon/HOU/ECT@ECT

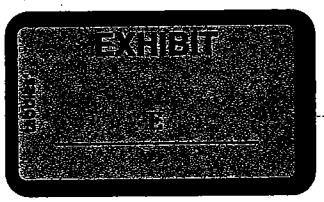
Subject: Nigeria

Dan,

McMahon said if the barges are not real estate a gain may be achievable. He is emphatic that if you choose to stick it in a 125 deal that you commit to sell it off before the end of 2000. **Buying it back next year is not an acceptable answer.** He suggested you explore the viability of adding it to a 125 deal Brian Kerrigan is doing called First World. Before you run this trap though, I would make sure that the deal team understands that they are selling their interest and will not control the deal any longer. I will prep Brian after you have cleared the control question.

By the way, your phone does ring to your line. Let me know what your new extension is.

Tim



Dan Boyle

12/15/1999 02:30 PM

To: Eric Boyt/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:
Subject: Nigeria

---------- Forwarded by Dan Boyle/ENRON_DEVELOPMENT on 12/15/99 03:31 PM ----------

From: Tim DeSpain@ECT on 12/15/99 03:20 PM
To: Dan Boyle/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc: Jeffrey McMahon/HOU/ECT@ECT

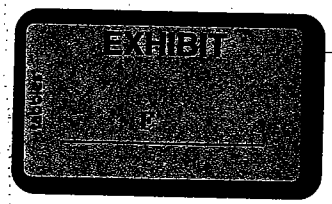
Subject: Nigeria

Dan,

McMahon said if the barges are not real estate a gain may be achievable. He is emphatic that if you choose to stick it in a 125 deal that you commit to sell it off before the end of 2000. **Buying it back next year is not an acceptable answer.** He suggested you explore the viability of adding it to a 125 deal Brian Kerrigan is doing called First World. Before you run this trap though, I would make sure that the deal team understands that they are selling their interest and will not control the deal any longer. I will prep Brian after you have cleared the control question.

By the way, your phone does ring to your line. Let me know what your new extension is.

Tim



Ed Giblin

12/16/1999 10:38 AM

To: Larry Reynolds/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Fred L Kelly/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc: Keith Marlow/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Larry L Izzo/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Eddie Clay/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, John Schwartzenburg/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Donald Solomon/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, John Normand/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Mark Kiddle/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
Subject: Nigeria-Barges

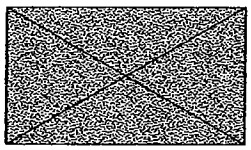
Based on the attached ,it appears that Enron will have NO ownership control after selldown.
Assuming this is the Lagos Reimbursable deal I have the following concerns:

Larry- This is contrary to our discusion yesterday that this was an Enron to Enron contract. Accordingly , we may NOT get an Enron Parent guarantee for Enron Nigeria Ltd and may be dealing with a true third party Owner.
If this is the case, the current draft needs the changes we discussed, especially those changes designed to minimize working capital exposures and non payment risk. Since this is Nigeria we will also need quicker off ramps for Owner defaults for nonpayment, force majeure(war ,coups),,etc. to get out of town.
I also confirmed with John Schwartzenburg that EECC should NOT be the contracting entity.

Fred - As we discussed ,please forward me a copy of your deal summary.

Regards,,Ed

---------- Forwarded by Ed Giblin/ENRON_DEVELOPMENT on 12/16/99 11:18 AM ----------



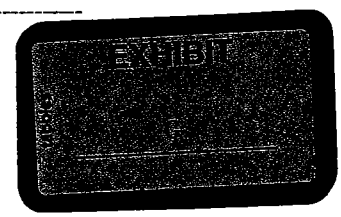
John Garrison
12/15/99 03:39 PM

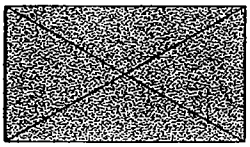
To: Ed Giblin/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:

Subject: Nigeria

Ed,
I got this e - mail today, and don't know if you have any action which contracts needs to take or not. But I thought I would pass this on anyway.
John G.

---------- Forwarded by John Garrison/ENRON_DEVELOPMENT on 12/15/99 03:38 PM ----------





Eric Boyt
12/15/99 03:34 PM

Sent by: Eric D Boyt

To: John Garrison/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Sheila Kahanek/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Steve Hirsh/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:

Subject: Nigeria

---------- Forwarded by Eric D Boyt/ENRON_DEVELOPMENT on 12/15/99 03:34 PM ----------

Dan Boyle

12/15/99 03:30 PM

To: Eric Boyt/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:

Subject: Nigeria

---------- Forwarded by Dan Boyle/ENRON_DEVELOPMENT on 12/15/99 03:31 PM ----------

From: Tim DeSpain@ECT on 12/15/99 03:20 PM

To: Dan Boyle/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc: Jeffrey McMahon/HOU/ECT@ECT

Subject: Nigeria

Dan,

McMahon said if the barges are not real estate a gain may be achievable. He is emphatic that if you choose to stick it in a 125 deal that you commit to sell it off before the end of 2000. **Buying it back next year is not an acceptable answer.** He suggested you explore the viability of adding it to a 125 deal Brian Kerrigan is doing called First World. Before you run this trap though, I would make sure that the deal team understands that they are selling their interest and will not control the deal any longer. I will prep Brian after you have cleared the control question.

By the way, your phone does ring to your line. Let me know what your new extension is.

Tim

Fred L Kelly

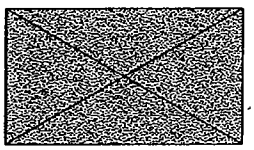
12/27/1999 09:01 AM

To: Mark Kiddle/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc: Keith Marlow/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, John Schwartzenburg/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Donald Solomon/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, John Normand/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
Subject: Nigeria-Barges

Mark - are we sure we addressed all of Ed's concerns?

Fred

---------- Forwarded by Fred L Kelly/ENRON_DEVELOPMENT on 12/27/99 10:01 AM ----------



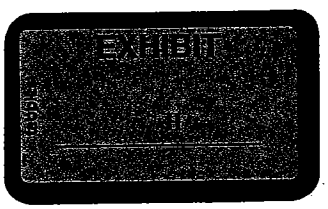
Ed Giblin
12/16/99 11:38 AM

To: Larry Reynolds/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Fred L Kelly/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc: Keith Marlow/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Larry L Izzo/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Eddie Clay/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, John Schwartzenburg/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Donald Solomon/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, John Normand/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Mark Kiddle/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT

Subject: Nigeria- Barges

Based on the attached ,it appears that Enron will have NO ownership control after selldown.
Assuming this is the Lagos Reimbursable deal I have the following concerns:

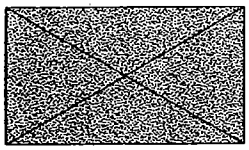
Larry- This is contrary to our discusion yesterday that this was an Enron to Enron contract. Accordingly , we may NOT get an Enron Parent guarantee for Enron Nigeria Ltd and may be dealing with a true third party Owner.
If this is the case, the current draft needs the changes we discussed, especially those changes designed to minimize working capital exposures and non payment risk. Since this is Nigeria we will also need quicker off ramps for Owner defaults for nonpayment, force majeure(war ,coups),,etc. to get out of town.
I also confirmed with John Schwartzenburg that EECC should NOT be the contracting entity.



Fred - As we discussed ,please forward me a copy of your deal summary.

Regards,,Ed

---------- Forwarded by Ed Giblin/ENRON_DEVELOPMENT on 12/16/99 11:18 AM ----------



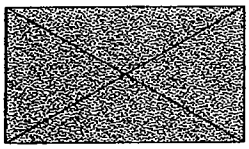
John Garrison
12/15/99 03:39 PM

To: Ed Giblin/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:

Subject: Nigeria

Ed,
I got this e-mail today, and don't know if you have any action which contracts needs to take or not. But I thought I would pass this on anyway.
John G.

---------- Forwarded by John Garrison/ENRON_DEVELOPMENT on 12/15/99 03:38 PM ----------



Eric Boyt
12/15/99 03:34 PM

Sent by: Eric D Boyt

To: John Garrison/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Sheila Kahanek/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT, Steve Hirsh/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:

Subject: Nigeria

---------- Forwarded by Eric D Boyt/ENRON_DEVELOPMENT on 12/15/99 03:34 PM ----------

Dan Boyle

12/15/99 03:30 PM

To: Eric Boyt/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc:

Subject: Nigeria

---------- Forwarded by Dan Boyle/ENRON_DEVELOPMENT on 12/15/99 03:31 PM ----------

From: Tim DeSpain@ECT on 12/15/99 03:20 PM

To: Dan Boyle/ENRON_DEVELOPMENT@ENRON_DEVELOPMENT
cc: Jeffrey McMahon/HOU/ECT@ECT

Subject: Nigeria

Dan,

McMahon said if the barges are not real estate a gain may be achievable. He is emphatic that if you choose to stick it in a 125 deal that you commit to sell it off before the end of 2000. **Buying it back next year is not an acceptable answer.** He suggested you explore the viability of adding it to a 125 deal Brian Kerrigan is doing called First World. Before you run this trap though, I would make sure that the deal team understands that they are selling their interest and will not control the deal any longer. I will prep Brian after you have cleared the control question.

By the way, your phone does ring to your line. Let me know what your new extension is.

Tim

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	*	H-CR-03-363
	*	Houston, Texas
VS.	*	
	*	September 27, 2004
DANIEL BAYLY, JAMES A. BROWN, ROBERT S. FURST, DANIEL O. BOYLE, WILLIAM R. FUHS and SHEILA K. KAHANEK	*	8:29 a.m.

Volume 5

BEFORE THE HONORABLE EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

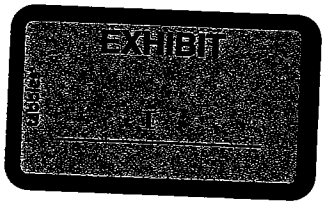
FOR THE GOVERNMENT:
Matthew Friedrich, Kathryn Ruemmler and John Hemann
UNITED STATES DEPARTMENT OF JUSTICE
1400 NY Ave.
10th Floor
Washington, DC 20530

FOR DEFEENDANT DANIEL BAYLY:
Thomas A. Hagemann
GARDERE, WYNNE & SEWELL, L.L.P.
1000 Louisiana
33rd Floor
Houston, Texas 77002-5007

And

Richard J. Schaeffer
DORNBUSG, MENSCH, MENDELSTAM & SCHAEFFER
747 Third Avenue
New York, New York 10022
212.832.3160

FOR DEFENDANT JAMES A. BROWN:
Lawrence Zweifach and Holly K. Kulka
HELLER, EHRMAN, WHITE & McULIFEE, L.L.P.



120 West 45th St.
21st Floor
New York, New York 10036-4041
212.832.8300

FOR DEFENDANT ROBERT S. FURST:
Ira Lee Sorkin and Daniel J. Horwitz
CARTER, LEDYARD & MILBURN, L.L.P.
2 Wall Street
New York, New York 10005
212.732.3200

FOR DEFENDANT DANIEL O. BOYLE:
William G. Rosch
ROSCH & ROSS
707 Travis
Suite 2100
Houston, Texas 77002
713.222.9595

FOR DEFENDANT WILLIAM R. FUHS:
David Spears and Christopher Dysard
RICHARDS, SPEARS, KIBBE & ORBE, L.L.P.
One World Financial Center
29th Floor
New York, New York 10281
202.530.1800

FOR DEFENDANT SHEILA K. KAHANEK:
Dan Cogdell
COGDELL & GOODLING
402 Main St.
Suite 6 S
Houston, Texas 77002
713.426.2255

Court Reporter:

Johnny C. Sanchez, RPR, RMR, CRR
515 Rusk, #8016
Houston, Texas 77002

Proceedings recorded by mechanical stenography. Transcript produced by computer-assisted transcription.

I N D E X

1315

Government Exhibit Number 905 was admitted

1264

(The following was had before the jury)

THE COURT: Please be seated. Morning, jury. Very well, you may call your next witness, Mr. Hemann.

MR. HEMANN: Good morning, Your Honor. The United States calls Michael Kopper.

THE COURT: If you'll raise your right hand to be sworn.

MICHAEL KOPPER,

having been first cautioned and duly sworn, testified as follows:

DIRECT EXAMINATION

THE COURT: You may be seated, sir.

BY MR. HEMANN:

Q. Good morning. Could you please state your name.

A. Michael J. Kopper.

Q. And could you please spell your last name for the court reporter.

A. K-O-P-P-E-R.

Q. Did he describe the deal to you, the proposed deal, in any way?
A. He described the deal to me as a transaction that was not going to be taking Nigerian political risks or actually Nigerian credit risk, that there was a letter of credit in place from Citibank.
This letter of credit would protect LJM from having to take the Nigerian credit risk and that essentially the purchase of this deal would be looking at Citibank credit risk and would LJM be interested in doing that.
Q. Did Mr. Fastow tell you how much he was suggesting LJM might invest in this -- what LJM's investment would be?
A. He said it would be a few million dollars, that it was not a large deal.
Q. And did he talk about what benefit this would have to Enron?
A. Well, Andy said that this would really help out Enron Africa -- the Enron Africa group meet its goals; but that he was concerned that, if LJM could do this deal, he would look like a hero to Jeff Skilling because he would be

coming in at the last minute and helping one of the business units meet its year-end financial goals.
Q. Did Mr. Fastow tell you who had asked him to do this deal?
A. Yes, he did.
Q. Who did he tell you?
A. Jeff Skilling -- excuse me. He had talked to Rick

09/26/03 10:38 FAX 7138399324 MCMAHON 002

ENRON CORP
P.O. BOX 1188
HOUSTON, TEXAS 77251-1188

Respect
Integrity
Communication
Excellence

2004231 01 SO 7505 263 DEPT: 01948

JEFFREY MCMAHON
EB 2761
HOUSTON TX 77002

EMPLOYEE NAME			TAX WITHHOLDING INFORMATION			
JEFFREY MCMAHON			PAYROLL LOCATION	MARITAL STATUS	FEDERAL EXEMPT.	STATE TAXED
SOC. SEC. #	SEQUENCE NO.	PERIOD ENDING	01948-000	M	04	TX
6666456	316230	09/28/03				

EARNINGS TYPE	HOURS	EARNINGS AMT
REGULAR PAY	16.00	1846.73
CASH FLXPERQ		345.76
LEXMOD		
HOLIDAY PAY	24.00	2464.68
VACATION	66.00	6664.63
TOTALS	66.00	11602.09

TAXES/DEDUCTIONS	CURRENT AMT	YTD TOTAL
FIT	3033.26	3033.26
SS	722.76	722.76
MEDICARE	169.04	169.04
ACCDTH	0.86	0.86
DENENRON	36.04	36.04
DISABILITY	26.76	26.76
ECSP DEFER	666.60	666.60
FLEXCREDIT	-220.33	-220.33
FSAMED	20.63	20.63
FSAPARKING	67.50	67.50
LIFE OPT CH	0.42	0.42
LIFE OPT EE	40.00	40.00
MEDUNCNET	247.36	247.36
PARKING_2	82.50	82.50
OTHER DED	467.00	467.00
TOTALS	6273.04	6273.04

GROSS PAY	11602.09
TOTAL DEF	756.25
TOTAL NOT SUBJECT TO INCOME TAX	756.25
PAY SUBJECT TO INCOME TAX	11043.84
DEDUCTIONS	3514.79
NET PAY	8529.05

YOUR CURRENT PERIOD AND YEAR TO DATE TAX WITHHOLDINGS (WHERE APPLICABLE, FEDERAL, FICA AND STATE) HAVE BEEN ADJUSTED FOR THE FOLLOWING IMPUTED TAXABLE INCOME ITEMS:

TAX LIFE	47.50	DEPND LIFE	0.09

YEAR TO DATE TOTALS INCLUDES IMPUTED INCOME

GROSS PAY	NOT SUBJECT TO INCOME TAX	PAY SUBJECT TO INCOME TAX
11,849.68	758.25	11,091.43

EXHIBIT

09/26/03 10:38 FAX 7138399324 MCMAHON 003

ENRON CORP
P.O. BOX 1188
HOUSTON, TEXAS 77251-1188

Respect
Integrity
Communication
Excellence

2006462 01 80 7515 263
DEPT: 01948

JEFFREY MCMAHON
EB 2761
HOUSTON TX 77002

EMPLOYEE NAME		
JEFFREY MCMAHON		
SOC. SEC. #	SEQUENCE NO.	PERIOD ENDING
076505855	338084	01/31/00

TAX WITHHOLDING INFORMATION			
PAYROLL LOCATION	MARITAL STATUS	FEDERAL EXEMPT	STATE TAXED
01948-000	M	04	TX

EARNINGS TYPE	HOURS	EARNINGS AMT
REGULAR PAY	72.00	10312.81
CASH FLXPERQ		343.75
FLEXADD		
HOLIDAY PAY	8.00	1146.03
TOTALS	80.00	11802.09

TAXES/DEDUCTIONS	CURRENT AMT	YTD TOTAL
FIT	3033.26	6066.61
SS	722.79	1445.58
MEDICARE	168.04	336.06
ACCDTH	0.36	0.72
DENENRON	36.03	72.07
DIGABILITY	28.79	56.56
ECSP DEFER	566.50	1133.00
ENERGIZER	14.48	14.48
FLEXCREDIT	-220.33	-440.66
FSAMED	20.83	41.66
FSAPARKING	67.50	135.00
LIFE OPT CH	0.41	0.83
LIFE OPT EE	40.00	80.00
MEDUNCRET	247.35	494.71
OTHER DED	559.60	1119.00
TOTALS	6287.51	10560.65

GROSS PAY	11802.09
TOTAL DEF	758.23
TOTAL NOT SUBJECT TO INCOME TAX	758.23
PAY SUBJECT TO INCOME TAX	11043.86
DEDUCTIONS	4529.26
NET PAY	6514.58

YOUR CURRENT PERIOD AND YEAR TO DATE TAX WITHHOLDINGS (WHERE APPLICABLE, FEDERAL, FICA AND STATE) HAVE BEEN ADJUSTED FOR THE FOLLOWING IMPUTED TAXABLE INCOME ITEMS.

TAX LIFE	47.50	DEPND LIFE	0.09

YEAR TO DATE TOTALS INCLUDES IMPUTED INCOME

GROSS PAY	NOT SUBJECT TO INCOME TAX	PAY SUBJECT TO INCOME TAX
23,699.34	1,516.46	22,182.88

Deb Korkmas

12/20/1999 12:40 PM

To: "Jackiewicz, Katrina (New York)" <kjackiewicz@velaw.com>

cc:

Subject: RE: Project Monte

Katrina, please do not insert specific names of officers. Mr. McMahon is on vacation through the end of the year so I'll have to have someone else sign. It would be a good idea to get as many signature pages signed up this week as next week a lot of people will be out of the office. Thanks, Deb

[redacted]

"Jackiewicz, Katrina (New York)" <kjackiewicz@velaw.com> on 12/20/99 01:15:34 PM

To: Deb Korkmas/HOU/ECT@ECT
cc: "Yates, Terry A." <TYates@velaw.com>, "Theofanidis, Paris" <ptheofanidis@velaw.com>, Dan Lyons/HOU/ECT@ECT, "'Peter.del.Vecchio@enron.com'" <Peter.del.Vecchio@enron.com>
Subject: RE: Project Monte

Deb,

Just to let you know, I am:

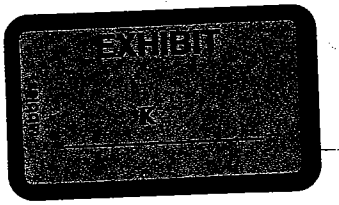
1. amending the Certificates of the Assistant Secretary you have prepared for both Enron and EFC (to be signed by Geneva K. Holland) and

2. revising the Officer's Certificate for both companies (drafts were distributed to all parties on 12/7 but need to be amended to reflect some recent changes to the documentation).

Who will be signing the Officer's certificate on behalf of EFC? Will Jeffrey McMahon (as Senior Vice President, Finance and Treasurer)be signing on behalf of Enron?

Thanks

Katrina



-----Original Message-----
From: Deb Korkmas [mailto:dkorkma@ect.enron.com]
Sent: Monday, December 20, 1999 1:53 PM
To: Jackiewicz, Katrina (New York)
Subject: RE: Project Monte

Katrina, do you want the Enron Corp. charter documents to be certified by the
Secretary of State of Oregon or would a Certificate of Secretary of Enron Corp.
suffice? Please let me know. Thanks, Deb

"Jackiewicz, Katrina (New York)" <kjackiewicz@velaw.com> on 12/20/99 12:35:00 PM

To: Deb Korkmas/HOU/ECT@ECT
cc: "Theofanidis, Paris" <ptheofanidis@velaw.com>, "Yates, Terry A." <TYates@velaw.com>, "'Peter.del.Vecchio@enron.com'" <Peter.del.Vecchio@enron.com>
Subject: RE: Project Monte

Deb,

Can you please arrange:

1. Certificate of good standing in relation to Enron;

2. Certified copies of Enron Charter documents;

3. Certified copy of Bylaws of Enron.

As soon as the Amended and Restated Certificate of Incorporation has been filed in Delaware can you please arrange the same documents for EFC.

Please provide those documents to me as soon as you have them.

Kind regards

Katrina

-----Original Message-----
From: Deb Korkmas [mailto:dkorkma@ect.enron.com]

Sent: Monday, December 20, 1999 1:01 PM
To: Jackiewicz, Katrina (New York)
Cc: Peter del Vecchio
Subject: Re: Project Monte

Katrina, the independent director is Vincent H. Buckley. Call me if you have
any further questions. I'll have the Amended Cert of Inc filed through our Corporate Secretary's office. Thanks for your assistance. Deb

"Jackiewicz, Katrina (New York)" <kjackiewicz@velaw.com> on 12/20/99 10:02:37 AM

To: Deb Korkmas/HOU/ECT@ECT
cc: Peter del Vecchio/HOU/ECT@ECT
Subject: Project Monte

Deb,

Can you please let me name of the independent director to be appointed to the Board of Enron Funding Corp. The Rating Agencies have signed off on the Amended Certificate of Incorporation so we can proceed to have the certificates and resolutions signed and filed.

Once I have the name of the independent director I will amend the various documents and provide them to you for signing and filing. Let me know if I should be providing them to someone else.

Many thanks

Katrina

Interoffice Memorandum

Merrill Lynch

To: Dan Boyle
At: ISK - New York

From: Schuyler Tilney, Rosser Newton, Ben Parker
At: Global Energy & Power - Houston
Tel: 713-759-2530 2548 2547
Date: December 3, 1998

Subject: Andy Fastow (SVP & CFO of Enron) visit on December 4th

Overview

Thank you for visiting with Andy Fastow at 10:00 a.m. on Friday, December 4th. Andy is in New York to meet with our team regarding the $1 billion equity fund Merrill Lynch is raising for Enron. Enron will contribute $500 million to the fund, of which a portion may be in the form of Enron common stock, and institutions and Enron managers will contribute the balance. Ben Sullivan, David Sullivan, Schuyler Tilney and Rosser Newton form the balance of the team on this project.

Background

Andy is a very important relationship for the firm and is principally responsible for Merrill Lynch's participation in the project. As you know, Merrill Lynch was nearly excluded from Enron's $750 million common stock offering earlier this year, so this mandate is critical to re-igniting our relationship with Enron.

Merrill Lynch recently lead-managed an Enron debt offering as well as a STEERS offering.

The Company

Enron is among the largest energy companies and has a market capitalization of approximately $20 billion. Enron has recently announced a number of transactions, including the acquisition of Wessex Water and of Cogen Technologies. Merrill Lynch represented the minority stockholders of Cogen in the sale to Enron.

As you know, Enron is one of the most critical relationships in the Houston office and the largest company based in Houston. We have had a close relationship with them for many years and it would be helpful if you could acknowledge our appreciation for this longstanding relationship during the course of the conversation.

EXHIBIT

Permanent Subcommittee on Investigations
EXHIBIT #242

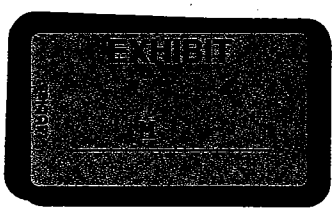
From: Andrew S Fastow 12/21/1999 07:18 PM

To: schuyler_tilney@ml.com
cc:
Subject: LJM2 Initial Close

Schuyler:

You have probably already heard from your team that we had the initial close for LJM2 yesterday and today. I would characterize it as very successful at $102 - $107 million (as of this point, I don't know if the last investor made it in). I'll talk to you in more detail on the Thursday call, but I think this type of close gives us great momentum going into the first quarter. Many thanks for bringing in the Merrill Lynch investment. I know that it was due to your efforts and assurances; I greatly appreciate it.

Andy



Dan Boyle

12/22/1999 04:02 PM

H Boots@ECT

To: Jeffrey McMahon@E

cc:

Subject: ML Confere

The call with ML is at 9:30 am CST on Thursday 12-23-99.

Dial In 1-800-238-0210

ID 864211

Merrill Attendees:	Dan Baily	Head of Investment Banking
	Kathy Zrike	Investment Banking Genral Counsel
	Kevin Cox	Global Credit and Markets
	Schuyler Tilney	Managing Director
	Rob Furst	Managing Director
Enron Attendees:	Andy Fastow	
	Jeff McMahon	
	Dan Boyle	
	Kelly Boots	

Thanks

Dan

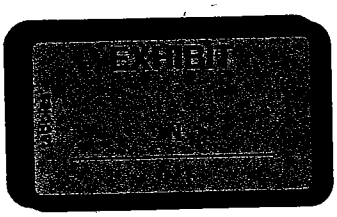


EXHIBIT C

Jeffrey McMahon Extensive Memorandum to the SEC, via counsel, [FILED SEPARATELY UNDER SEAL]