

EXHIBIT D

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/08/2002

KATHERINE ZRIKE, General Counsel for Corporate Law for Merrill Lynch (MERRILL):

_____, was interviewed at her place of employment, Merrill Lynch, 222 Broadway, New York, New York. Also present were Assistant United States Attorney ("AUSA") Andrew Weissmann, Kevin Loftus, Senior Attorney, United States Securities and Exchange Commission ("SEC"), Richard D. Weinberg, First Vice President and Assistant General Counsel, Regulatory Affairs, MERRILL, Charles Stillman and Marjorie Pierce, Outside Counsel for MERRILL, and Felicia Gross, Attorney, Clifford Chance.

AUSA Weissmann informed ZRIKE that her appearance was voluntary and that she could leave at anytime, warned her that lying to federal officials could subject her to prosecution under federal law, and informed her that she was considered a witness at this time but that her status could change in the future. Mr. Loftus informed ZRIKE of the standard SEC warnings. ZRIKE was informed of the identity of the interviewing agent and provided the following information:

ZRIKE has been employed by MERRILL since 1994. She graduated from Georgetown University in 1981 from the School of Foreign Service. She attended law school at Vanderbilt University and graduated in 1984.

ZRIKE worked for eight years at Sherman Sterling in the area of corporate securities and mergers and acquisitions. She then moved to Warren Ambert (phonetic) as corporate counsel where she mainly worked on parent/company issues and transactional law.

In 1994 or 1995, ZRIKE began working at MERRILL. She started in the corporate law department as a Vice President. She reported to CARLOS MORALES. She worked on mergers and acquisitions, "34 act" filings and corporate governance. In 1998, ZRIKE became International Banking ("IBK") Counsel, formerly Corporate Law. From 1998 to March of 2001, she was head of IBK's counsel group. From March of 2001 to December of 2001, she was in charge of the Private Equity Group's counsel's office. She reported to TOM DAVIS, Executive Vice President. ZRIKE was asked

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by SA Charles Pavelites

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to take this position. She thought it provided new growth and an exciting opportunity. GEORGE SHARON reported to her. After December of 2001, ZRIKE was promoted to General Counsel for Corporate Law. ZRIKE worked for ROSEMARY BERKERY in legal.

As IBK Counsel, she had thirty lawyers reporting to her globally with twelve to fifteen of the attorneys based in New York. She also had twelve professionals which included five research/compliance employees and three paralegals. DAN BAYLY was the head of IBK at the time ZRIKE was there. IBK's purpose was to deal with debt capital markets and equity transactions. ZRIKE worked on issues such as debt transactions, due diligence, monitoring deals, compliance with Chinese wall requirements, insider trading and banking issues.

A typical transaction would consist of a MERRILL investment of equity. IBK was looking at new investment opportunities for company funds and private equity funds. A banking team was assigned to a company, private placement group or financial sponsors group. The banking team brings up the transaction and contacts ZRIKE with a document to allow her or another attorney to review the transaction.

ZRIKE had a list of all deals with the name of the attorney assigned to each deal. For private equity deals, she kept the list in her head because there were only one to four attorneys working on them. FRANK MARINARO (phonetic) worked on merger and acquisition deals and GARY DOLAN worked on securities.

There were two funds - one for MERRILL's proprietary money and one for other people's money. MERRILL would invest five to ten million dollars in good faith money when it was placing a fund. MERRILL invested its own money in a fund because it was placing/underwriting the fund and because it considered the fund to be a good investment. Five to ten million dollars was not considered a large amount of money at MERRILL.

The MERRILL banker would obtain documents regarding the deal, look at the timing and nature of the investment and who needed to be involved to vet the deal.

For a five to ten million dollar investment of MERRILL money, there was a financial commitment policy and acquisitions divestitures policy that might require a meeting on the investment.

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A five to ten million dollar investment did not require corporate action.

The appropriation request (APR) policy required a memorandum with signatures from the sponsoring group. In this case, it would have been the banker, DAN BAYLY, and Executive Vice President DAVIS. The transaction would need the approvals of other groups such as tax, human resources, corporate reporting, technology, risk, treasury, and operations. IBK legal department would have to provide a technical concurrence.

The banker explains the deal in a memorandum. The memorandum is then distributed to obtain concurrences and signatures. The departments whose concurrences are required usually receive a hard copy of the memorandum.

If there is a dissent, the dissenter calls the project sponsor and talks about the problem. If the problem cannot be fixed, that group does not concur. The project can then be restructured or pulled back. If the project sponsor wants to restructure the project, the memorandum is amended.

The project team and management or the legal team have a pre-memorandum vetting of the project if the project team discusses the project with other teams.

The amount of due diligence depends on the project. For the Nigerian barges, MERRILL would look at the nature of the deal and length of time MERRILL had to hold the deal. There was not much due diligence if there was a blind pool. The bankers perform the main due diligence for the deals.

The approval process for a project usually takes one or two weeks. The process can take up to a month but it can also be done more quickly. There is a difference in the front end of approval process for a blind pool versus an investment.

ZRIKE said that the Nigerian barge deal was unusual because it came in at Christmas time of 1999 with an end of year deadline. ZRIKE was concerned about the year end angle because the deal was not proprietary and MERRILL was not going to stay in the deal for the whole length of the project. MERRILL was expecting to be an equity bridge and to invest in the deal to help ENRON. MERRILL did not want to be in the barge business. ZRIKE was also concerned that the deal was being done for "earnings management

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gain." She had questions about whether MERRILL was helping ENRON hit an earnings target, would there be improper accounting treatment, was MERRILL entering into a sham transaction, or was this the parking of an asset. ZRIKE was also concerned because the deal involved barges in Nigeria and was small in size.

ZRIKE heard about the barge deal orally from GARY DOLAN, a lawyer in her group. She thought that DOLAN may have come to her before a weekend and told her that ENRON wanted a transaction completed by year end. Her sense was that DOLAN had received the deal that day. DOLAN got the information from JIM BROWN who worked in structured finance. ZRIKE had a problem in that she thought the transaction was complicated. She spoke with BROWN and then the bankers separately with DOLAN in her office. She did not recall having any paperwork on the deal at that time.

ZRIKE and DOLAN had a discussion of the issues. They tried to lay out the transaction and figure out who the players were. MERRILL was to buy the equity of the project but ZRIKE did not understand the deal. It did not make much sense to her. She also could not believe that the deal request came so close to Christmas. She was annoyed at the request and skeptical of the deal.

ZRIKE called BROWN first. BROWN may have come up to her office then or the next morning. When BROWN did meet with ZRIKE, she received papers on the deal. The following Thursday or Friday, MERRILL started obtaining the approvals for the deal.

ZRIKE wanted BROWN to explain the deal because he was a banker even though he was not barge deal's banker. ZRIKE explained her concerns regarding the timing of the deal, the accounting and having an investment in Nigeria to BROWN. She wanted to know what the banking team knew about the project. Her recollection was that she brought up the year end timing issue but she could not recall if she brought up the earnings issues.

ZRIKE wanted to know if ENRON's accountants knew about the temporary nature of the deal and that ENRON was going to sell the project to another party, Marubeni. ROB FURST, BRAD BYNUM or a junior member of the banking team may have mentioned Marubeni to ZRIKE.

ZRIKE knew that ENRON wanted to book a sale and MERRILL was to buy into the project but would not keep its investment for

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long. ZRIKE wanted to know if this is okay. MERRILL's money would be at-risk but not for long.

It was reported to ZRIKE that ENRON wanted to book a gain on the Nigerian barge transaction. She focused on whether ENRON could record a sale and whether it would be a true sale. ZRIKE did not focus on whether ENRON could book a gain.

ZRIKE thought the deal was a "pain in the butt." She also questioned whether MERRILL had to do this deal. The bankers thought the barge transaction was important.

When asked if it was typical for her to ask if a transaction is fraudulent, ZRIKE replied that it was at the end of the year. ZRIKE did not ask about the possibility of fraud on all transactions brought to her. She did not know ENRON but she had no reason to disbelieve SCHUYLER TILNEY's information. The bankers gave her answers to her questions and discussed the risks of the deal.

The bankers had been approached by ENRON about investing in the Nigerian barges. The MERRILL bankers were the Houston deal team consisting of ROB FURST and a more junior person.

The background that ZRIKE received was that ENRON had been in an auction process with the barges for some period of time. The prospective buyer was Japanese. The deal appeared as if it would be completed in January.

ZRIKE believed that MERRILL was chosen by ENRON because MERRILL was an investment bank for ENRON. MERRILL had turned down other off-balance sheet deals with ENRON and did not take part in those deals. This deal was small and short-lived and MERRILL thought of the deal as a relationship builder. ZRIKE was not told that there would be consequences if MERRILL did not become involved in the transaction. The barge transaction was supposed to show that MERRILL was nimble as a partner.

ZRIKE thought that MERRILL was to hold its position in the barge project for three weeks. When ZRIKE was asked by interviewers why ENRON did not complete the transaction in three weeks with Marubeni, she replied that the bankers, possibly FURST, told her that this deal was to be the culmination of work done by ENRON in 1999 and ENRON wanted to book it in 1999.

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ZRIKE's general approach to a deal was to get answers on the deal from the lead person such as FURST. She has no reason to believe that she did not follow that approach here. She did not think that she would go to TILNEY, the Houston office manager.

ZRIKE's impression was that it was not the economics for MERRILL that were driving this transaction. The risks made the deal uneconomical for MERRILL.

Some due diligence was done. MERRILL looked at the papers it was given. There was a private auction and "dog and pony" show. MERRILL also thought that Marubeni was going to buy the project from ENRON. ZRIKE thought the due diligence was sufficient for the size of the deal. MERRILL employees were asking themselves, are we willing to lose seven million dollars. If MERRILL was buying the barges for the life of the project, it would have done more due diligence. In this transaction, MERRILL was only a bridge. ZRIKE thought that maybe the bankers did more due diligence.

ZRIKE was concerned about limited liability for MERRILL. MERRILL did not want to buy the barges. MERRILL was to be an equity holder in a company that owned the barges.

ZRIKE asked the banker about the worst case scenario for the transaction. She asked what would happen if Marubeni did not close a deal with ENRON. She was told that there would be other buyers. ZRIKE was concerned that the project may not be sold or may be delayed. The bankers told her that ENRON would get involved if there was a problem. FURST told her that we help people in oil and gas and we know our people. ZRIKE thought he meant that ENRON would not let MERRILL down.

ZRIKE was thought that, at the end of the day, MERRILL might still have to liquidate its position. She expressed concerns about oil leaks and contamination and these were discussed at MERRILL. ZRIKE wanted to know if there was a real buyer or if the buyer was a sham.

ZRIKE claimed that ENRON's auction was verified by speaking with MERRILL's bankers. MERRILL's bankers told ZRIKE that the auction was public knowledge and that they had an offering memorandum.

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Regarding written documentation of the barge deal, ZRIKE received a memorandum with an outline of the deal from FURST. She also received the draft APR around that time.

In checking for documentation of the deal, ZRIKE checked her files and emails but Richard Weinberg checked her employee's files. She has a calendar function on her computer but there was nothing in the calendar.

ZRIKE was shown a document bates stamped MD 037390. She did not know JOHN DUCOH. The writing on the document was not hers. The document was copied to Penny who ZRIKE stated is PENNY MICHELEIS, a paralegal who kept the Debt Markets Commitment Committee (DMCC) and Equity Committee approvals. MICHELEIS placed documents in the ENRON barge file and ZRIKE would be informed by a secretary that MICHELEIS had filed the document.

On document bates stamped MD 037394 part of the writing was obscured. ZRIKE stated that the writing was obscured on the original.

ZRIKE was shown the draft APR, ML 037396 - 037402. The handwriting is hers but the initials on the chart are not hers.

On document MD 037391, there was reference to JEFF MCMAHON. ZRIKE was told that MCMAHON, ENRON's treasurer, was involved by BROWN or a banker. She knew from the deal memorandum that ENRON's treasurer was MCMAHON. No one else from ENRON was mentioned by name or title.

ZRIKE knew the number for ENRON's earnings but not how ENRON determined what its earnings would be.

ZRIKE stated that the team did not discuss how ENRON would record ten million dollars in earnings if MERRILL only put in seven million dollars. MERRILL looked at the question of the effect of ENRON booking ten million dollars on the deal.

BROWN was skeptical of the barge deal but he did not say that he did not want to do it. He was looking for a legitimate way to get out of the deal. When asked why MERRILL did not just tell ENRON that it did not want the deal, ZRIKE replied that the deal may have been inconvenient but just saying "no" might not be legitimate.

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The Nigerian barge deal was a small investment. ZRIKE was satisfied with the banker's answers regarding the deal and that the deal was short term so there was no need to see the barges.

ZRIKE did point out risks to the DMCC, DAVIS and BAYLY. There was no contractual obligation to get MERRILL out of the deal. ZRIKE believed that there was a buyer for the project and MERRILL's money may have been at risk.

The deal went to the DMCC because the deal was short-term and an exception. ZRIKE wanted the more experienced group of MERRILL employees of the DMCC to review it. The APR process was not designed for this kind of deal. The barge deal was not a proprietary investment. The timing was also bad for an APR because they would need to obtain technical concurrences. The APR was not as good of a review for the deal. ZRIKE thought that the DMCC would allow the deal to be fully vetted.

The APR process was a slower process and ZRIKE believed that it was more like a rubber stamp. She wanted the deal looked at it in detail. ZRIKE made the decision to take the deal to the DMCC. The DMCC also looked at structured transactions. She respected the members of the DMCC. She talked to her boss about the STRCC but he said the DMCC was okay. She also discussed the DMCC with MARINARO and DOLAN. ZRIKE told the bankers that DMCC would review the deal. She did not discuss with the bankers the fact that the DMCC would be quicker.

The ECC looked at offerings and private placements where MERRILL was underwriting the deal but ZRIKE did not think the ECC was the appropriate committee.

A memorandum had to be put together and circulated to the DMCC. This was done. ZRIKE looked at the draft of the memorandum to check if the deal had problems.

She told BROWN, who was not a member of the DMCC, to attend the DMCC. She talked to BROWN, MARINARO and DOLAN about the DMCC meeting.

KEVIN COX and JOHN SWABDA discussed earlier in the year what to do with odd transactions.

Someone on the DMCC, perhaps MARK DEVITO, knew about the deal from the deal documents. BAYLY had the deal memorandum.

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BROWN told ZRIKE that debt capital markets wanted this deal done.

Going to the DMCC, ZRIKE believed that she needed some answers regarding the deal. She wanted the deal explained to the business people who would challenge the deal. She wanted to know if the deal had an economic value and that it was not a sham. She wanted the reaction of the DMCC team especially regarding ENRON's earnings management and the materiality of the deal to ENRON. The DMCC did not think the deal was material to ENRON.

ZRIKE knew this deal would add one cent to ENRON's earning per share (eps) for the year.

ZRIKE was told by a banker that Arthur Andersen had looked at the deal and knew of MERRILL's role. Arthur Andersen wanted the deal to be a true sale and risk to transfer. The period of time that MERRILL remained in the deal was not relevant to MERRILL. These issues were discussed in the DMCC.

Before the deal went to the DMCC, ZRIKE understood that there would be a buyer for MERRILL's position in January. She did not know of a limit on the length of time MERRILL would hold its position. She did not recall any discussion of the time limit for MERRILL's involvement with regard to true sale treatment for the deal.

The Secretary of the Chair of the DMCC notifies the attendees of the meeting and a memorandum is distributed. BROWN, MARK MCANDREWS, the Chief Operating Officer (COO), ZRIKE, KEVIN COX, and JOHN SWABDA would be notified. Certain individuals had to be present to create a quorum. The banking team was on the telephone. SCHUYLER TILNEY, ROB FURST, and maybe other bankers participated in the call.

ZRIKE took the lead in the meeting because it was an equity deal in the DMCC and she had to present the deal to TOM DAVIS. ZRIKE and BROWN discussed the deal issues. ZRIKE talked about the earnings impact and ENRON's need to meet Wall Street estimates. The bankers said that they knew ENRON and the Wall Street estimates. The bankers also said that they knew that ENRON would book the deal at ten to twelve million dollars. They also said that they knew ENRON's eps numbers. The discussion was that the deal was too small to have a material effect on ENRON.

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When asked if anyone asked why ENRON did not wait three weeks until the other buyer closed the deal, ZRIKE answered that MERRILL was helping ENRON. The fact that the deal was an inconvenience was no reason to kill the deal. It was important for MERRILL to be viewed favorably by ENRON.

One of ZRIKE's concerns was whether MERRILL was being used by ENRON. She did not think so. She also was concerned that MERRILL was helping ENRON to deceive someone.

No accountants were brought into the DMCC but the bankers have some accounting training. No one suggested getting an accountant. No one suggested contacting Arthur Andersen or obtaining a letter from Arthur Andersen or ENRON.

There was no discussion in the meeting of an agreement that was not put in writing but it was ZRIKE's impression that there was a verbal businessman's agreement that ENRON would do what it took to get MERRILL out of the barge deal. ZRIKE thought it was JEFF MCMAHON who made the agreement but she knew it was one of the senior employees at ENRON. One of the bankers, maybe BROWN, but definitely a banker, said that everyone knew that MERRILL had to buy into the barge project as a bridge with no recourse but that ENRON would work to sell the deal and get MERRILL out.

The DMCC decided that if this is the way that MERRILL wanted to spend its money, DAVIS could decide if the deal was closed.

ZRIKE was shown a document bates stamped MD 037399, an appendix to the APR. The document contained notes written by ZRIKE. She stated that some of her notes were written before the DMCC meeting and others were written during the DMCC meeting. The bullet points at the far right of page were written before the meeting. The arrows indicate information from other people.

During the DMCC meeting, there was an agreement to re-market MERRILL's position. The agreement was not put in writing because that would have been "overkill." MERRILL tried to put the re-marketing agreement in the written agreement but ENRON said it was inappropriate and it could not commit to it. The "best efforts" agreement for selling MERRILL's position looked like ENRON had to buy back MERRILL's interest in the barges. MERRILL was putting in real equity with only ENRON to re-market its position.

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ZRIKE also wanted a "hold harmless" clause for MERRILL but ENRON rejected that because MERRILL had to be at risk.

MARINARO or DOLAN may have told ZRIKE that a "best efforts" clause, such as requiring ENRON to buy back MERRILL's position, is viewed by courts as too open ended. ENRON buying back MERRILL's position was not the deal with ENRON. All of the terms of the deal between the parties were not in the documents and this happens all the time. MERRILL and ENRON had a businessman's agreement for ENRON to get MERRILL out of the deal.

ZRIKE could not say that anyone told her that the barge deal and the businessman's agreement were run by Arthur Andersen. She was told that Arthur Andersen was familiar with MERRILL's role in the barge deal and was okay with it. MERRILL's role was to be a bridge and MERRILL was going to sell out of the deal. MERRILL had to be at risk in the deal.

ZRIKE was shown a document bates stamped MD 037402 which contained handwritten notes. Before the meeting, ZRIKE had written notes that MERRILL would put \$7 million in a special purpose entity (SPE) and take a nonrecourse loan of \$21 million. The deal was going to allow ENRON to recognize earnings in the millions of dollars. The notation, "verbal assurances that we will be outside of this", was what was ZRIKE was told about the deal. The "we" referred to MERRILL.

ZRIKE wondered if she could wedge the deal in the STRCC. STAN O'NEAL, Chief Financial Officer, asked TOM DAVIS if O'NEAL should get a heads up if the Nigerian Barge deal was approved. ZRIKE wanted DAVIS to get the benefit of the DMCC.

On the left side of MD 037402, the notes may apply to the deal including information ZRIKE wanted to know about the deal and statements made to her about the deal.

ZRIKE stated that the Nigerian Barge deal was not structured as a loan. When asked why it looks like a loan, she replied that it was like a bridge loan off of the balance sheet until ENRON could locate a real owner and complete the deal.

ZRIKE state that she had the document which bates stamped ML037396 before the DMCC meeting. The document bates stamped ML037391 contained a statement that BAYLY was to confirm ENRON's commitment to get MERRILL out of the barge deal in six months. She

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stated that the DMCC did not focus on this particular document. She has no reason to believe the document did not come from a banker.

The DMCC did discuss ENRON re-marketing MERRILL's position. ZRIKE focused on the paragraph regarding a guaranty after the DMCC meeting and talking with DAVIS. She noticed the guaranty paragraph and thought the MERRILL did not use the document containing the guaranty. She also talked to MARINARO regarding MERRILL not getting a guaranty.

FURST indirectly told ZRIKE that ENRON did not give MERRILL a guaranty when he indicated that ENRON had "no obligation" to get MERRILL out of the deal. FURST told her that MERRILL could end up owning the barges.

The DMCC asked questions and then the committee chair or SWABDA or COX decided that Nigerian Barge deal was not in the DMCC's jurisdiction. The deal was not formally approved by the DMCC. ZRIKE took this as a sign that there was no reason not to enter into the deal.

ZRIKE had a sense that the members of the DMCC were thinking that they were the debt committee not the equity committee and they would not approve the Nigerian Barge deal because it was not in the DMCC's jurisdiction. The DMCC decided that BAYLY and DAVIS would have to approve the deal at their level because it was an equity deal. It did not appear to her that the DMCC members were relieved simply because they did not have to make a decision.

A DMCC delegation consisting of ZRIKE, BROWN, the banking team, MCANDREWS and maybe others were to discuss the issues surrounding the Nigerian Barge deal with DAVIS. They were to ensure that DAVIS understood the deal.

ZRIKE did not know if anyone ran economic models on the deal but the MERRILL banking team is expected to run the models. The rate of return for the deal was discussed in the context of the structure and the economics of the deal. The question asked at MERRILL was does it make sense that ENRON would sell for this price.

Document MD 037392 mentions the rate of return for the deal. ZRIKE stated that the document was received from ENRON. The rate of return for the deal was calculated over years. MERRILL did

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look at the reasonableness of ENRON's projections. ZRIKE asked DMCC to look at ENRON's projections.

ZRIKE was asked how MERRILL calculated the rate of return for a period that was supposed to be shorter than three weeks. ZRIKE replied that MERRILL did not enter into the Nigerian Barge deal for the rate of return. The deal was supposed to be a short term deal to help ENRON. MERRILL's compensation was secondary to helping ENRON.

MERRILL's advisory fee came up at the DMCC meeting. The advisory fee was discussed as a way that MERRILL was receiving compensation. MERRILL did not advise ENRON and ZRIKE did not want to advise ENRON. The \$250,000 was compensation for doing the deal in a short period of time. "Advisory fee" is an inaccurate term according to ZRIKE because MERRILL had no advisory function and MERRILL's services to ENRON were as a purchaser. ZRIKE would not have characterized MERRILL as an advisor. She was not aware that MERRILL's receipt of the fee was put off until January of 2000.

ZRIKE could not say that TILNEY told her that assurances were not made that MERRILL would be bought out.

Her understanding was that MERRILL's return on the deal including the fee would equal 22%. There was no discussion that MERRILL would not lose money on the deal. The rate of return discussed was not a cap for MERRILL's return. ZRIKE recalled that Marubeni was willing to pay the return MERRILL was projecting.

A document bates stamped MD 037396 was shown to ZRIKE. ZRIKE stated that the fee shown was correct but did not know if the rate of return was correct. ZRIKE's focus was whether the agreement containing the loan and fee was reasonable.

The engagement letter for the transaction was drafted by the banking team and was used to document the \$250,000 fee paid to MERRILL. ZRIKE did not recall seeing the draft engagement letter. If she saw a letter with a 15% rate of return, she would have thought that it did not fit in with the deal because MERRILL would not dictate terms such as rate of return.

The bankers and other employees made ZRIKE feel that the price MERRILL was to receive was sufficient.

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The MERRILL employees did discuss the materiality of the barge transaction with regard to how it would affect ENRON's numbers. ZRIKE got comfortable that the barge transaction was not a gains ploy for ENRON. The auction for an investor and related documents led ZRIKE to believe that MERRILL's investment was at risk.

The re-marketing of MERRILL's position was not discussed at the DMCC meeting. ZRIKE was asked about the six month time frame that appeared in her documents and she replied that the six month time frame may have come up at the DMCC but there was nothing specific discussed about it.

BROWN's comment about aiding and abetting income statement manipulation was brought up by ZRIKE at the DMCC. She asked if senior ENRON officers and Arthur Andersen knew about the barge deal and was MERRILL facilitating inappropriate earnings management. MERRILL looked at ENRON's earning per share and whether analyst expectations would be affected.

ZRIKE was shown a document bates stamped MD 037403. ZRIKE had written the first notes on the document. She also stated that the information on page two was not related to the barges. ZRIKE did not know about the comment regarding the need for a letter of credit. ZRIKE was asked if this deal was an "undocumented handshake loan" from MERRILL to ENRON and she replied that she did not know if that was her comment or GARY DOLAN's comment. Regarding the "call to TOM DAVIS" notation, ZRIKE did not think that she had a conversation with DAVIS before the members of the DMCC went to meet with DAVIS.

Within a day of the DMCC meeting, ZRIKE, the deal bankers, and BAYLY met with DAVIS and told him about the DMCC review. ZRIKE told DAVIS about the risks of the deal and the fact there was no due diligence on the barges themselves. ZRIKE said that it was concluded that analysts and the market would not believe that the barge deal was material to ENRON. She discussed the length of time that MERRILL would hold the barge position with DAVIS.

ZRIKE stated that she had been told that ENRON was on target for its earnings and the deal was not used by ENRON in a way that was manipulative.

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The MERRILL bankers, maybe FURST or TILNEY, told DAVIS that MERRILL would be bought out of the barge transaction and that buyers were out there for the project. There was no mention of the rate of return.

DAVIS was not happy with the way that the transaction came up at the last minute. DAVIS wanted BAYLY to approach someone at ENRON more senior than ENRON's Treasurer to make it known to ENRON that MERRILL did not normally make this kind of deal, MERRILL had accommodated ENRON and MERRILL was relying on ENRON to follow through on its assurances. BAYLY agreed to do this. ZRIKE was not sure how it was decided who was going to be approached at ENRON.

Right after Christmas, GARY CARLIN told ZRIKE that BAYLY made the call to ENRON. BAYLY made the call, along with the MERRILL bankers for the deal, to ENRON's Chief Financial Officer (CFO).

DOLAN was the day-to-day monitor of the Nigerian barge transaction but ZRIKE asked MARINARO to stay in the loop. ZRIKE stated that ENRON made the decision to retain outside counsel to assist with the deal because it was Christmas and not all of MERRILL's employees were available.

DAVIS approved seven million dollars and no more for the transaction. The risks of the deal were discussed. The loan for the deal was discussed generally. The special purpose entity (SPE) held the loan and thus the loan obligation was not MERRILL's. MERRILL owned the SPE, Ebarge.

ZRIKE reviewed the purchase agreement for the deal. The draft document had no indemnification clause for MERRILL. ZRIKE tried to add one. She discussed with the attorneys the environmental risks with the deal and that MERRILL wanted to mitigate those risks. ENRON sent the agreement back and told MERRILL that there could not be any indemnification clause or "hold harmless" provisions. ZRIKE tried to insert a "best efforts" clause but ENRON said that it was too much of an obligation and that they could not have this clause in the agreement.

ZRIKE was asked about the identity of GEOFF WILSON. She stated that she did not know WILSON.

The language in the draft demand letter did not appear in the purchase and sale documents. ZRIKE stated that she would not

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be surprised if some back office person at MERRILL sent out the letter to ENRON. ZRIKE did not know how the price in the letter was developed.

Shown a document bates stamped MD 037407, ZRIKE stated that she did see the engagement letter between MERRILL and ENRON. Her concern with the letter was that she did not want it to appear the MERRILL was advising ENRON.

Hours after the DMCC meeting, ZRIKE had a meeting with BAYLY before she met with DAVIS. MARK Last Name Unknown (LNU), TILNEY, FURST and BROWN discussed the deal and its risks. No one said that MERRILL should not enter into the transaction. They discussed how ENRON was an important client to MERRILL. BAYLY suggested that they approach DAVIS. She went to BAYLY because BAYLY would have to tell DAVIS that he (BAYLY) wanted to enter into the transaction. ZRIKE did not ask anyone which employee at ENRON was making representations about the deal to MERRILL.

No notes were taken by the DMCC because they took no action on the barge transaction. Normally the lawyer writes up the minutes including attendance and actions taken by the committee. There is no set person who takes the minutes for the DMCC. There were no notes taken for her meetings with BAYLY and DAVIS.

ZRIKE had no conversations about the Nigerian barge transaction with anyone outside of MERRILL before the close of the deal.

DOLAN and MARINARO talked with ALAN HOFFMAN about the deal. She was informed by DOLAN and MARINARO that MERRILL could not obtain an indemnity clause from ENRON. HOFFMAN was negotiating on behalf of MERRILL with Vinson and Elkins.

ZRIKE had not heard of the energy swap deal.

The barge deal closed on the first quarter of 2000. The finance department had a question regarding whether or not MERRILL was going to complete an APR. ZRIKE told finance that they were not going to complete an APR in retrospect.

ZRIKE asked CARLIN in March of 2000 about the barges. CARLIN told her that the barges had not been sold to Marubeni but he thought the deal would be taken off of MERRILL's books.

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At the end of June 2000, ZRIKE talked to CARLIN and asked about the barges again. CARLIN told ZRIKE that MERRILL had just been taken out of the deal. LJM bought MERRILL's position in the Nigerian barge deal. ZRIKE knew what the LJM partnership was. She was concerned that LJM was involved and she asked CARLIN how the buyout happened. CARLIN told her that no buyer materialized and LJM stepped in to purchase MERRILL's stake.

ZRIKE told CARLIN that she wished that she had been involved with the decision regarding the sale of MERRILL's position in the barges. ZRIKE may have mentioned to CARLIN that LJM was involved with ENRON and that a sale to LJM may have given people the impression that the barges were parked with MERRILL. ZRIKE knew that ENRON's CFO worked with the LJM fund. She could not recall if CARLIN said anything else. She recalled that LJM bought MERRILL's position in the barge deal at the price MERRILL had predicted it would receive if the outside buyer, Marubeni, had purchased the position.

ZRIKE did not know if LJM was paid a fee by ENRON because she did not ask this question. She did not know about any negotiations between MERRILL and LJM on the price to purchase MERRILL's portion of the barge deal. She did not know of any due diligence performed by MERRILL on the value of its position. CARLIN monitored the barge deal to track whether the deal was still on MERRILL's books.

ZRIKE talked to MARINARO to ascertain what he knew about MERRILL's sale to LJM. MARINARO knew of the sale to LJM. ZRIKE discussed MARINARO's area of responsibility with him. ZRIKE wondered if she should take any action regarding the sale to LJM because LJM was not as independent of a purchaser as she had been hoping for. At MERRILL, the discussion had been that its position would be auctioned off. ZRIKE stated that she did not think about LJM being related to the ENRON CFO who BAYLY had talked to about the barge deal. She did not ask for the terms of the sale to LJM. She did not think that the Nigerian barge transaction was outside of the realm of LJM's objectives.

ZRIKE did not talk to anyone else or obtain the terms of the LJM deal. She could not recall anything that arose at the time of the sale that made the barges a better or worse investment for LJM. She did not know that the Nigerian government had repudiated the power purchase agreement (PPA). She did not check with ENRON regarding the status of the barges.

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ZRIKE could not recall if she knew that the ENRON project was to last longer than MERRILL's three year deal. She knew that ENRON maintained an interest in the barges but she did not know that ENRON was going to sell its portion of the deal. She thought that MARUBENI wanted to buy MERRILL's piece of the transaction not necessarily the entire project.

ZRIKE was concerned that LJM was so closely tied to ENRON or appeared to be sponsored by ENRON such that LJM's purchase of the MERRILL portion of the barges would look like an ENRON buyback of the barges. She knew that an ENRON buyback of the barges was a problem because it might make the barge transaction appear to be asset parking or a sham transaction.

ZRIKE knew BILL FUHS' name but did not know who he was.

It was clear to ZRIKE in December of 1999 that ENRON could not buyback MERRILL's stake in the barges because the buyback would create issues regarding whether or not the sale to MERRILL was a true sale.

ZRIKE may have spoken with JOE VALENTI but she did not remember talking to him about the barges.

ZRIKE stated that she had nothing to do with an electricity trade with ENRON before or after December of 1999.

ZRIKE would have liked to have had a put option to protect MERRILL in the barge transaction. She did not discuss a put with ENRON. She considered obtaining a put to be wishful thinking on her part.

In March of 2000, the tax jurisdiction of the MERRILL entity was probably changed to the Cayman Islands. The change was made at ENRON's request to take advantage of a more efficient tax structure. ZRIKE wanted to ensure that the change was checked with MERRILL's tax people.

ZRIKE did not check on MERRILL's liquidation rights. She relied on the memorandum regarding the transaction for her information.

She did not recall that MERRILL did not have a majority of the voting rights in the entity set up for the Nigerian barge transaction. She did not recall being concerned about this issue.

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ZRIKE stated that she was not asked by anyone at MERRILL to give any legal opinions, either oral or written, on the Nigerian barge transaction. She did give her input, views and nonlegal advice about the deal. She also ensured that employees' concerns about the barge transaction were aired.

ZRIKE did not believe that anyone at the meeting with DAVIS opposed the Nigerian barge transaction. Employees did air their issues with the deal. ZRIKE's job was to advise MERRILL on anything improper or illegal. She did not see anything improper or illegal in the barge deal. She could not recall anyone asking if anything about the transaction was illegal.

ZRIKE used the information given to her to make her decisions. FURST and TILNEY represented that they had received assurances from ENRON regarding the transaction and they believed that the worst case scenario was that MERRILL would have to sell its portion of the deal on its own.

If ZRIKE had told MERRILL employees that the deal was illegal, the Nigerian barge transaction would have been canceled. She did not tell the MERRILL employees that the transaction was illegal.

There were no topics that she thought she was going to be asked about in this interview that she was not asked about.

EXHIBIT E

1

2

UNITED STATES GRAND JURY

3

SOUTHERN DISTRICT OF TEXAS

4

HOUSTON DIVISION

5

6

7

RE: INVESTIGATION OF ENRON

8

9

BE IT REMEMBERED that on the 15th day of

10 April, 2003, beginning at 9:42 a.m., in the Federal

11 Building, 515 Rusk Avenue, Houston, Texas, the United

12 States Grand Jury convened, at which time the following

13 proceedings were had and testimony adduced as

14 hereinafter set forth.

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TESTIMONY OF KATHERINE ZRIKE

21

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24

25

1 Q. And you think that the group that you work
2 with are good lawyers, correct?

3 A. Yes, I do.

4 Q. And you had outside counsel in connection with
5 the barge transaction?

6 A. We did.

7 Q. And you like them?

8 A. Yes.

9 Q. Or else, I take it, if you didn't --

10 A. We paid their bills.

11 Q. -- you're the kind of person who would say,
12 "We'll take our business elsewhere"?

13 A. Absolutely.

14 Q. And you understood Enron was a major financial
15 institution which also, like Merrill Lynch, had outside
16 counsel and good inside counsel as well?

17 A. That's right.

18 Q. So can you explain why Merrill Lynch would --
19 doesn't have a provision in this agreement for these
20 scenarios; in other words, that Marubeni would buy
21 something from Merrill Lynch or that there would be some
22 provision about what would happen if that doesn't go
23 forward?

24 And I guess the first place to start --

25 and I'm sorry for a long question -- is: Did Merrill

1 ask Enron for such a provision?

2 A. Merrill -- the Merrill Lynch lawyers in my
3 group and myself did ask that we include a provision
4 that -- two types of provisions that we thought would be
5 helpful to us.

6 One would be to indemnify us or hold us
7 harmless if there was any sort of liability like a barge
8 explosion or an environmental spill, loss of life, or
9 something that was, you know, a disaster scenario; and
10 that was the first thing we talked to them about.

11 The second, it may have been around the
12 same time. You know, we marked the agreement up one
13 time and sent it back to them.

14 The other thing that we marked up and we
15 wanted to add was a best efforts clause, what's called a
16 best efforts clause that they would use their best
17 ~~efforts to find a purchaser to conclude the purchase~~
18 with the -- another third-party purchaser besides
19 ourselves and that -- realizing that from our
20 perspective as Merrill Lynch lawyers that this was
21 not -- this was still a -- was not a guarantee, it was
22 not an absolute, but that at least would give us an
23 angle, it would give us a legal angle to get them to
24 focus on that obligation if, in fact, we saw them not
25 paying attention to what was the business deal.

1 In the context of working through the
2 draft of the agreement, you know, our counsel -- it's
3 gone through a merger. I think it was Whitman, Breed &
4 Abbott. Is that right?

5 Q. I cannot answer questions.

6 A. Okay. But it was an outside law firm, outside
7 lawyer that was doing a lot of the negotiations with a
8 couple of guys on our staff; and the response from the
9 Enron legal team was that that -- both of those
10 provisions would be a problem or could be viewed by the
11 accountants as undermining the true sales tax because,
12 first of all, with the indemnity, it was a bit of a
13 stretch but we tried. It would -- it would insulate
14 Merrill from any risk of loss, which was the whole point
15 of there being a true sale. And so, it would negate
16 that treatment; and it certainly made sense that the
17 response would be that.

18 Now, you know, we tested what if we put
19 the damages in caps. You know, we tried to keep it --
20 we were trying to be creative to protect Merrill, but
21 they kept coming back to the fact that it really had to
22 be a true passage of risk and that -- any risk
23 whatsoever.

24 On the other side of -- the other part of
25 this was the best efforts clause, the concern that that

1 could be used again to require them to buy it back; and
2 that would not be -- was not the deal, that was not
3 the -- and that would not be consistent with the
4 business deal that's being a true sale.

5 Q. And in terms of your knowledge on this --

6 MR. WEISSMANN: And I'll end on this.

7 We'll take a break.

8 Q. (By Mr. Weissmann) In terms of your knowledge
9 of when you say this was not the deal, was your
10 knowledge of what Enron was proposing to Merrill coming
11 from the business people?

12 A. Yes. My knowledge of what the business -- the
13 underlying business terms was coming from our Houston
14 banking team.

15 Q. So if the Houston banking team were telling
16 you something and they had said something different to
17 Enron, would you know it?

18 A. No.

19 Q. Okay.

20 MR. WEISSMANN: Let's take a ten-minute
21 break. And if you could, in ten minutes just go back to
22 the room where your counsel is. We'll come get you.

23 THE WITNESS: You'll come get me.

24 (Off the record from 11:09 until 11:24.)

25 Q. (By Mr. Weissmann) Ms. Zrike, you understand

1 that you're still under oath, right?

2 A. Yes.

3 Q. When we broke, we were talking about a best

4 efforts provision, among other things, and discussions

5 that you were having with counsel regarding that.

6 Were there people on your staff who were

7 working on the legal aspects of that deal?

8 A. Were there people?

9 Q. Yes.

10 A. Yes.

11 Q. Who?

12 A. There were two lawyers that were involved sort

13 of alternating because it was during the Christmas week.

14 One was Frank Marinaro, and the other was a lawyer named

15 Kerry Dolan.

16 Q. And when were you dealing with Alan Hoffman as

17 your outside counsel?

18 A. Alan Hoffman was our outside counsel that they

19 dealt with. I don't believe I ever talked to Alan

20 directly.

21 Q. Now, in terms of the best efforts provision,

22 did you have any conversation either directly or

23 indirectly with your staff or outside counsel regarding

24 whether there would be any accounting problem in having

25 a re-marketing agreement?

1 A. With the discussions we had with my staff, who
2 I believe were reflecting Alan's discussions with the
3 other law firm and Alan's, you know, acquiescence in
4 that position or at least understanding where they were
5 coming from, in that a re-marketing agreement or
6 approach to use best efforts to find another purchaser
7 could be problematic for the accounting, there couldn't
8 be any contractual obligations in that regard.

9 Q. So was it -- I'm just making sure I -- make
10 sure I've covered this, which is: Was there a
11 discussion that you were aware of, whether you
12 participated in it directly or not, regarding whether
13 Merrill Lynch could, consistent with accounting rules,
14 have an agreement whereby Enron would be obligated to
15 try to re-market Merrill's position in the barges?

16 A. The discussion was on the context of the --
17 the answer is no. There was not a discussion that a
18 re-marketing, per se, of our agreement of our equity
19 interest would lead there to be a problem under the true
20 sale rules. The discussions that were had with the
21 lawyer, our lawyer and my staff, were that any
22 contractual obligations that would require Enron to use
23 their best efforts to take action to sale -- to sell the
24 equity interest on our behalf could be viewed as then
25 being obligated to buy it back.

1 Q. Well, what if that was just in the contract,
2 that it's not an obligation to buy it back, it's an
3 obligation to re-market it to a third party?

4 A. I think, you know, their perspective is they
5 didn't want any risk that --

6 Q. Did that come up? Did that come up?

7 A. I think we -- we tried a lot of different, you
8 know, ideas to try to get some -- something, you know,
9 contractual that we could go to court, as they say, and
10 get enforced; and the answer was that anything that
11 could be used that could be taken to require them to buy
12 it in the event that they were unable to find a third
13 party would not be acceptable and that's --

14 Q. Okay. So --

15 A. -- why the language was not put into the
16 agreement.

17 Q. Okay. I'm not that smart. So let me -- this
18 can't be something that I've come up with.

19 How about an agreement that obligates them
20 to try to re-market but it doesn't require them, as a
21 worst-case scenario, to buy it back?

22 In other words, you have to help us as if
23 you were -- you were getting a real estate broker to
24 help you find a place, but it doesn't mean your real
25 estate broker is going to have to buy your apartment.

1 It's just somebody who's going to be required
2 contractually to assist you to re-market but not to
3 actually buy it back. Why not put that in the
4 provisions?

5 That's the sticking point, the -- that
6 Enron buying it back as opposed to assisting and going
7 and finding a third-party buyer.

8 Why isn't the solution to a lot of bright
9 people, "Well, fine. Just put that in the agreement"?

10 A. I think that was our approach in that we were
11 trying to do what we could to get -- consistent with
12 what the business deal was to get some protection, and
13 we were not successful in negotiating that end with
14 Vincent & Elkins.

15 You'll have to talk to Alan and others who
16 were directly involved in their -- that dialogue.

17 I'm hearing the reports back and trying,
18 then, to -- telling them to go back and try it this way
19 and that way and not engage in the dialogue.

20 Q. Okay.

21 A. So I can't really answer your question
22 specifically --

23 Q. Okay.

24 A. -- more specifically.

25 Q. Let me break it down, then. Do you have a

1 recollection of any discussions regarding what I'll call
2 "the Weissmann Proposal," which is the re-marketing
3 agreement with a provision that says it doesn't require
4 Enron to buy it back?

5 A. You know, I cannot -- I can't tell you that
6 that was not a thought. The only part that I'm
7 hesitating on -- the re-marketing idea, I'm not
8 brilliant on either; but I did focus on that.

9 Whether I would actually go -- is the tail
10 end that's bothering me, without any agreement from
11 Enron to buy it back. I don't know if I combined those
12 two concepts.

13 Q. Okay.

14 A. The focus --

15 Q. Do you remember --

16 A. The focus I remember is that they will use
17 their best efforts to find a purchaser to close the
18 transaction with a third party, to finish, for a period
19 of time. I don't remember specifically, you know,
20 cutting off -- adding that last piece that you
21 mentioned.

22 Q. To solve the problem?

23 A. To solve the problem, yeah.

24 Q. Now, did you get any advice directly or
25 indirectly, whether you sought it out yourself versus

1 someone else did, reported it to you from an accountant,
2 whether it's Deloitte & Touche, whether it's an in-house
3 person, whether there really is an issue with
4 re-marketing agreements?

5 A. No. There was no -- I say no, but we did not
6 seek out any separate accounting advice from Deloitte.
7 They are our Merrill Lynch accountants, but they don't
8 do all of our accounting advice. We didn't seek any out
9 from either Deloitte or any other person.

10 The -- my focus on this was relying on the
11 banking team and Mr. Brown, who had experience in
12 working in these types of transactions; and everyone was
13 aware that was involved in the transaction that was the
14 basis for the -- our involvement was that there was
15 going to be a sale to a third party and that that sale
16 would have to be done with Enron's involvement and
17 participation.

18 We just held the stock, you know,
19 basically for the period of time that we did. We didn't
20 run the asset. We didn't know the buyers. We didn't
21 prepare the materials and that -- you know, none -- in
22 all of our discussions that we had, that was not raised
23 as an issue that would jeopardize or destroy the
24 accounting treatment.

25 Q. I'm sorry. When you say in the last part

1 "that was not raised as an issue," what are you

2 referring to?

3 A. The fact that they are assisting in

4 re-marketing their business -- they're agreeing to sell

5 and close the deal with Marubeni, to take action to

6 participate to re-market if the Marubeni sale did not go

7 forward and go out and find another buyer. That was all

8 discussed. It was never raised as being a problem.

9 Q. Now, that's -- so to your recollection, the

10 requirements of sort of using best efforts or closing

11 with Marubeni, using best efforts to find another buyer,

12 to your recollection, that's not in the purchase

13 agreement between Enron and Merrill?

14 A. Correct.

15 Q. And did you understand that there was any oral

16 commitment by Enron to close the deal with Marubeni and

17 ~~if that doesn't happen, to do what~~ it could to take

18 Merrill Lynch out of its investment?

19 A. Yes and no. Yes, that was -- the business

20 ~~understanding~~ was that the sale process to Marubeni

21 would continue; that the documents that needed to be

22 provided to Marubeni that they needed for their own

23 business would be continued; the sale process would go

24 forward; and that if that sale did not occur, that they

25 would have to go back and try to find us another

1 purchaser. But you said it a little broader than that
2 in your question.

3 Q. So what's the "no" part? You said there was a
4 yes and no.

5 A. The "no" part is that they could do whatever
6 it took to get us out of the investment. That was --
7 they were not committing to do whatever it took. They
8 were committing to take -- and the business ended up
9 being a, you know, oral business understanding as,
10 "Look. We understand you're not only going to hold this
11 and that we have to find another buyer if Marubeni does
12 come through, does not happen."

13 That was the extent of my understanding.

14 It was more than an understanding. It was
15 representations that were made to me about what they
16 were willing to do.

17 Q. And who made those representations to you?

18 A. You know, these were made in the context of
19 various discussions about the deal; but they came from
20 the banking team, Mr. Tilney and Mr. Furst, at various
21 points in time of our discussion.

22 Q. Let me ask you -- this may be a tough
23 question. It may not. And I don't mean it to be rude,
24 but if there are issues going on in this transaction
25 that to your mind -- and I understand from our interview

1 several months ago that these were going on in your mind
2 about, you know, "I don't want people to think this is a
3 sham transaction. I want to make sure that this is
4 complete and that there's nothing nefarious going on
5 here. And this is Merrill Lynch. It's a major
6 financial institution. We're not going to do anything
7 close to the line."

8 If all of that is going on as, I take it,
9 the senior sort of lawyer on the deal, why wasn't
10 something like this -- "there are going to be no oral
11 understandings, oral commitments. Nothing is going to
12 exist between the parties that isn't in writing in the
13 signed purchase agreement because I'm not going to have
14 anyone coming back and saying that there's some other
15 part of this deal. We don't like the deal. So I don't
16 want anyone coming back and questioning what's going on.
17 So there is going to be nothing that is not in writing"?

18 A. There was some of that discussion when we were
19 trying to negotiate the terms of the purchase agreement
20 itself; and I was looking at it from the perspective of
21 I don't want anyone at Merrill Lynch coming to me and
22 saying, "Why can't we get rid of this barge?"

23 This is -- was our -- this was our
24 business deal. This was our basis for us going forward
25 and doing a short-term investment.

1 The fact that they would not put in
2 writing an obligation to buy it back, to indemnify us,
3 all those things were consistent with the business deal
4 and were not things that I felt were nefarious and were
5 problematic.

6 My focus was more on the fact that our
7 management and -- understand that we are owners of this
8 and could be owners of this for longer than the period
9 of time that they thought --

10 Q. But --

11 A. -- because there was no obligation for them to
12 buy it back.

13 Q. Wasn't it clear --

14 A. That was made clear from Day 1.

15 Q. Wasn't it clear to Merrill Lynch and to you
16 that Enron was agreeing that Merrill Lynch would only
17 hold this for a certain period of time, not that Enron
18 would necessarily be the one that's going to buy it
19 back? I mean, there are other ways of disposing of the
20 Merrill Lynch interest. But wasn't it clear that
21 Merrill was only committing on a short-term basis?
22 Wasn't that something that Merrill made clear to Enron?

23 A. That was the basis of having -- that we bought
24 the investment, yes.

25 Q. And that provision, all I'm trying to focus on

1 Exhibit 1 of today's date. I believe you looked at

2 Tab 43? Do you --

3 A. Okay.

4 Q. Do you recognize that document?

5 A. Yes, I recognize this.

6 Q. And what do you recognize it to be?

7 A. This is what's called an "Appropriation

8 Request Cover Page," which is a form that Merrill

9 Lynch -- you need to complete if you're looking to

10 get -- do certain types of financial commitments and get

11 approval for them.

12 Q. And did you see this in connection with your

13 review of the Nigerian barge transaction?

14 A. I saw this during that period. It was not the

15 first -- it was not the first document that related to

16 its approval and -- but it was -- it was faxed to me

17 during that time.....

18 Q. Okay. And you -- so you saw it?

19 A. I saw a draft, yes.

20 Q. Okay...Did you see this?

21 A. It looks like the draft.

22 Q. Okay. You call it a draft; but, I mean, I'm

23 trying to figure out why it's a draft. Did you mean

24 "draft" in the sense it's not finalized?

25 A. It's never finalized.

1 Q. It was never finalized?

2 A. As far as I am aware, it wasn't finalized.

3 Q. Okay. So it's just this? This is what we

4 have. There's no other -- there shouldn't be, you're

5 saying, another version of this that's finalized?

6 A. Not that I'm aware of.

7 Q. And what makes this a draft and not finalized?

8 A. Well, if you look at the next page, the part

9 of the appropriations request is -- consists of this

10 page and the approval signature line pages, and these

11 are not signed.

12 Q. Why weren't they signed?

13 A. Because I informed the deal team that this was

14 not a necessary document to get approval, that we had

15 already gone through an approval process; and they had

16 drafted this and then prepared this to be ready to get

17 through the -- what people call the bureaucracy of

18 Merrill Lynch in getting things done, and I told them

19 this wasn't necessary.

20 Q. Okay. So they had done what was necessary.

21 They didn't need to go through the rigmarole of getting

22 this signed?

23 A. Signed and vetted. We had already made that

24 decision another way.

25 Q. Now, on the third page, the one bearing Bates

1 Stamp MD 037398, there's some handwriting there?

2 A. Yes.

3 Q. Do you recognize that handwriting?

4 A. That's my handwriting.

5 Q. Okay. And if you'll notice, it's sort of

6 sequential in the way it's produced. Do you know if

7 these notes were taken on the appropriation request?

8 A. I believe they were on the back page of one of

9 the pages that were originally handed out as explaining

10 the document, explaining the transaction.

11 Q. And at the top right, it says Rob Furst and a

12 telephone number?

13 A. Yes.

14 Q. Do you know if you took any notes in

15 connection with your conversation with Mr. Furst?

16 A. The -- this was not -- my recollection of this

17 is being -- sort of getting ready to start taking notes

18 or putting down different things and questions and

19 things that I needed to -- telephone numbers that I

20 needed to jot down and jot them down and things but

21 there are other pages that have notes and if you turn to

22 page -- it's not here. Yeah, it is. I'm sorry --

23 037402.

24 Q. Those are also your notes?

25 A. Those are my notes that were also on the back

1 debt; and then there's another committee called the
2 equity commitment committee, which is for underwritings
3 where Merrill Lynch has its underwriting.

4 And then the STRC, which was set up to
5 look at derivative transactions and -- even though it's
6 called "special transaction" and it kind of seems to
7 fit, I wanted to check with the person whose most -- I
8 never had done any deals that went to the STRC. I
9 wanted to make sure it would be in a good place to have
10 it vetted; and so, I checked in with my boss to talk
11 about what the STRC would consider or should consider.

12 Q. Okay. Who is your boss?

13 A. And that's why I have a question mark there.

14 Carlos Morales.

15 Q. And did you vet any other issues with
16 Mr. Morales?

17 A. Well, only in the sense that I told him what
18 the deal was and what we were looking at and how I was
19 thinking of handling it. I mean, I asked him about
20 whether this would be appropriate for the STRC. He
21 happens to be sort of the keeper of that committee, the
22 one that's the most involved with it; and he informed me
23 that he didn't believe it should go there.

24 So, then, you know, I talked to him about
25 the -- the choice between the equity commitment

1 I meant carrying out Mr. Davis'

2 instructions.

3 A. No, I did -- I did have that reaction. I

4 didn't like the way it looked. As I said, I did not --

5 if -- and I got comfortable, I'm not sure I could have

6 put myself in front of any train because I think they

7 had already left the station when it happened.

8 But from sort of two aspects, one was

9 that -- while it looks the way your question intimates,

10 it's certainly not as clean a third-party purchaser that

11 anyone would have wanted. This was a vehicle that had

12 been set up, started -- work had started on it later

13 before the barge; but certainly our involvement in it

14 and the placement of the equity through the spring, this

15 was -- had been in motion before, and it was not just

16 done to set up a new SPD to buy the -- to buy this.

17 So, it was an entity that had some, you

18 know, history; and it was specifically set up to act in

19 this way with Enron properties for whatever, good or

20 bad, after the fact people want to put them in.

21 It was very openly disclosed as to what

22 they were doing vis-a-vis Enron properties and other oil

23 and gas properties.

24 The other thing that was important to me

25 in sort of getting my arms around it was that this was

1 an entity -- Mr. Fastow's the GP and the CFO, had gone
2 all the way up to the board level.

3 There were pens of counsel that I had
4 access to in the context of LJM2 that talked about that
5 while he would be both a GP of LJM2 and CFO, that there
6 were all of these safeguards built in that were going to
7 distance himself from Enron and he didn't report to
8 Enron on LJM2 business and, in fact, he had another
9 shareholder base which were all of his investors which
10 he had fiduciary duties to as a GP.

11 So it's not -- it was not the cleanest;
12 and as I said, I wish I had had the chance to weigh in
13 on it earlier and get some comfort from -- that would
14 have papered this better. Maybe it looked like I got an
15 opinion from somebody here that said this was okay
16 because I do think it was -- was not the optimal
17 purchaser, from my perspective. I didn't like it.

18 Q. If you could step outside, I'm going to see if
19 the grand jurors have additional questions for you.

20 A. Okay.

21 (Witness steps outside the grand jury
22 room.)

23 MR. WEISSMANN: As you've seen in this
24 case, one of the things about the Nigerian barge
25 transaction is it reminds me in many ways of the