EXHIBIT T

In the Matter of:

In the Matter of: The Role of the Financial Institutions in Enron's Collapse

---

Deposition of Daniel H. Bayly
July 30, 2002
CONFIDENTIAL

Miller Reporting Company, Inc.
735 Eighth Street, S.E.
Washington, DC 20003
(202) 546-6666

Original File 0730BAYLASC, 185 Pages
Min-U-Script® File ID: 2072318848

Word Index included with this Min-U-Script®

customarily do. So, you know, I considered it, the transaction was booked within investment banking. It was listed as an, I think—it's a fact, so we can go back and look—but I think it was listed as an equity investment within Investment Banking. So I considered it a risky investment, and I wanted it off our books.

Q: What was that Mr. Fastow said to you that provided you with the comfort that that would occur?

A: You know, I don't recall the exact dialogue in that conversation. It's three years old, and I don't remember exactly what he said, but he gave me the equivalent of what I think of as a best-efforts statement; that they were going to get us out of this deal. We do best-efforts deals in our business, and we do farm underwritings, and I considered his statements the equivalent of a best-efforts statement that they were going to facilitate our exit.

Q: When you say "best efforts," what do you mean by that? What is the obligation to the party

who makes a best efforts?

A: No enforceable position here. We were not able to force Enron to do anything. When I left that conversation, I did not enter that conversation with the intention of getting a guarantee, and I didn't leave that conversation feeling that I had a guarantee.

Q: Did you represent to anyone that you felt you either had Enron's assurances or Enron's guarantee that they would take you out of the deal or facilitate Merrill Lynch's exit from the deal?

A: No, again, I don't recall everything perfectly here. However, I considered this transaction approved. This was approved the day before or the day before that by Tom Davis. If I had never made this call, in my opinion, this transaction would have proceeded regardless of whether I made that call or not.

Q: You were not instructed or there was no request for you to make this call?

A: People understood at Merrill Lynch that I was going to have a call with Mr. Fastow, yes.

People understood that there was going to be a call, and we wanted Enron's statements, however you want to characterize that, that they were going to help us get out of this deal.

But I didn't enter the conversation with the intention of getting a guarantee, and I didn't leave the conversation with the belief that I had a guarantee, which I considered to be a clear, absolute, unassailable, enforceable obligation, and I didn't feel I had that. If this barge had sunk, nobody in Enron, LJM2 or anybody would have taken us out of it, and I didn't feel, when I left the conversation, that I had an enforceable position.

Q: What did you believe about it then? On the one hand, it sounds like not just you, but Merrill wanted some response from Enron that it would facilitate Merrill's exit; is that right?

A: We wanted them to facilitate our exit, absolutely.

Q: But if you left the conversation without getting that assurance, how was it that Merrill was still comfortable going on with the deal?

A: Well, we had approved the deal the day before. The deal was done. Davis had legal people, the credit people, the professional people that helped evaluate the transaction in his office, and he asked very specifically for their recommendation, and after that, he approved this transaction.

So whether I had made this call or not, in my opinion, in my opinion, everybody at Merrill Lynch wanted Enron to facilitate our exist, and people understood that I was going to talk to Mr. Fastow and get his best comments that I could get from him with respect to they were going to help get us out of this.

We didn't want to be in it long term, but if I had never made that call, in my opinion, it was too late to exit the transaction at that point. Everybody would have been mad. You know if I had said, oop, Fastow didn't say what we wanted him to say, Enron would have been mad, everybody at Merrill Lynch that was proposing the transaction would have been mad.

Page 66

Q: What's incorrect?
A: I don't think, you know, I mean, I assume this refers to the conference call that we discussed earlier, and when I left that conference call I do not believe that I had a commitment to guarantee Merrill Lynch's take-out.
Q: Do you believe that Merrill Lynch proceeded under the assumption that it did not have a guarantee from Enron?
A: Merrill Lynch approved this transaction before the conference call. So we proceeded, it was in motion. I think people knew I was going to have the conference call, but the deal, in my opinion, was not contingent on that conference call. The deal had been approved by Davis before I ever made the conference call. If it was contingent, I would have made the conference call or, you know, if it was—I would have made the conference call before Davis had approved it.
Q: I understand that, but I think you also represented earlier that it was logical that Davis's approval was based on some expectation or

Page 67

understanding that there was going to be some—
A: Yes, I agree with that. Davis's approval was—I think Davis had, I'm sure, some expectation that Enron was going to facilitate our exit.
Q: Now another thing I'd like to ask about is with respect to the call that you had with Enron. What do you think confirming a "best efforts" by a company really does to protect Merrill Lynch in this situation?
A: I think it's definitely helpful. I mean, best efforts is a little bit of a term of art in our business. We have best efforts, and we have firm commitments, and the difference between the two is a contract, basically. Best-efforts transactions, we engage in best-efforts transactions frequently, and we have conversations with the company, and we have conversations with the company, and we proceed with the transaction based upon those conversations with the company, but there's no, you know, we don't book any transactions, there's nothing on our books, no asset, no liability, no nothing.

Page 68

Best-efforts transaction after a conversation with a company, that's very different than a firm commitment. Firm commitment is done pursuant to a contract, and these are—I viewed my conversation with Mr. Fastow the equivalent of it's kind of the reverse. Enron is coming to us asking us to do this transaction, and they are saying they'll make their best efforts to take us out, and that's the way I perceive the difference.
Q: But what does best efforts mean?
A: It means that they're going to do the best they can, but it doesn't mean that they have an enforceable obligation, and I didn't think, when I left the call, that I had an enforceable position with Enron. I didn't.
Q: I'm not sure how you reconcile the acceptance of a best-efforts guarantee with Merrill's position that it did not want this to be a long-term investment and that it wanted some assurances by Enron that it would not be a long-term investment.
MR. LAWLER: I'll object to the form of

Page 69

the question because I don't understand it. Also, you said a best-efforts guarantee. I don't know what that is.

BY MR. ROACH:

Q: They were guaranteeing their best effort. That's my understanding of what you represented.
A: No, that's not what I said.
Q: Okay.
A: That's not what I said.
Q: All right. Let me understand what you said.
A: I said that it was my understanding from that conversation that they were going to use their best efforts to facilitate our exit.
Q: Right.
A: I did not, I did not say that they had—that they were guaranteeing anything.
Q: They did not guarantee to you that they would make their best efforts to take you out.
A: You know, I think that that is a confusing way to put it.
Q: Well, I'm just trying to understand

EXHIBIT U

U.S. Department of Justice

Enron Task Force

1400 New York Avenue
Washington, D.C. 20530

April 22, 2004

BY FACSIMILE

Lawrence J. Zweifach, Esq.
Holly Kulka, Esq.
Heller Ehrman White & McAuliffe LLP
120 West 45th Street, 21st Floor
NY, NY 10036-4041
(counsel for James Brown)
fax. 212/763-7600

William G. Rosch, III, Esq.
Rosch & Ross
2100 Chase Bank Building
707 Travis
Houston, Texas 77002
(counsel for Daniel Boyle)
fax. 713/222-0906

David Spears, Esq.
Richards Spears Kibbe & Orbe LLP
One World Financial Center
NY, NY 10281-1003
(counsel for William Fuhs)
fax. 212/530-1801

Dan Cogdell, Esq.
Cogdell & Goodling
402 Main St., Suite 6 South
Houston, Texas 77002
(counsel for Shiela Kahanek)
fax. 713/426-2255

Thomas Hagemann, Esq.
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston TX 77002-5007
(counsel for Daniel Bayly)
fax. 713/276-6064

Richard Schaeffer, Esq.
Dornbush Mensch Mandelstam Schaeffer
747 Third Avenue, 27th Floor
NY, NY 10017
(counsel for Daniel Bayly)
fax. 212/753-7673

Ira Lee Sorkin, Esq.
Daniel Horwitz, Esq.
Carter Ledyard & Milburn LLP
2 Wall St.
New York, NY 10005
(counsel for Robert Furst)
fax. 212/732-3232

Re: United States v. Daniel Bayly, et al. Criminal Docket No. H-03-363 (Werlein, J.)

Dear Counsel:

With regard to Count One of the above captioned matter, the following is a list of unindicted co-conspirators, of which the government is aware:

Eduardo Andrade
Eric Boyt
Richard Causey
Kevin Cox
Mike DeBellis
Mark Devito
Gary Dolan
Rodney Faldyn
Andrew Fastow
John Garrett
Steve Hirsch
Alan Hoffman
James Hughes
Ben Glisan
Michael Kopper
Sean Long
Mark McAndrews
Rebecca McDonald
Jeff McMahon
Alan Quaintance
Ace Roman
Barry Schnapper
Cassandra Schultz
Jeffrey Skilling
Keith Sparks
Schuyler Tilney
Paul Wood
Joseph Valenti
Kathy Zrike

We believe that most of the defendants are aware of the identity of most if not all of these individuals, and their role as co-conspirators. As you know, the government is not legally required to provide the identities of unindicted co-conspirators, but is doing so voluntarily because the defense has claimed that it needs such information to prepare its case. Accordingly, this list is furnished to you to assist you in case preparation. This list is not a basis upon which to exclude any evidence. This list itself is not evidence. We reserve the right to supplement this list.

Very truly yours,

ANDREW WEISSMANN
Director, Enron Task Force

By: _____
Matthew W. Friedrich
David H. Hennessy
Kathryn H. Ruemmler
Enron Task Force

EXHIBIT V

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . H-04-025SS
vs. . HOUSTON, TEXAS
. MARCH 23, 2006
. 8:30 A.M.
JEFFREY K. SKILLING, and .
KENNETH L. LAY .
. . . . . .

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE SIM LAKE
UNITED STATES DISTRICT JUDGE
VOLUME 30

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

FOR THE GOVERNMENT:

Kathryn H. Ruemmler
John Hueston
Sean Berkowitz
Cliff Stricklin
John Drennan
US Department of Justice
Enron Task Force
1400 New York Avenue, NW
10th Floor
Washington, DC 20530
202.353.7225

FOR THE DEFENDANT JEFFREY K. SKILLING:

Daniel M. Petrocelli
M. Randall Oppenheimer
Matt Kline
O'Melveny and Myers LLP
1999 Avenue of the Stars, Suite 700
Los Angeles, California 90067-6035
310.246.6750

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

- - - - -

$50

testimony?
A. Yeah, I --
10:19 **Q. Didn't you say, "Get me out of here. Get me to the camp"?**
A. I don't recall the first time that we asked to -- for assistance to be transferred to the camp, whether it was before or after the Nigerian barge trial. I just don't remember that. I -- I was not transferred to a camp until much later.
10:19 **Q. Can you take a look at Defense Exhibit 21587 at tab 15? This is a letter concerning your request for a --**
A. I think I may have a different binder. So --
Q. Tab 15, sir. No. This is it.
A. No. I don't -- well --
10:19 **Q. Yeah, this is it.**
MR. PETROCELLI: Your Honor, this --
BY MR. PETROCELLI:
Q. You see the reference to you here in the discussions about your prison request?
10:20 A. Yes.
Q. Okay.
MR. PETROCELLI: Your Honor --
BY MR. PETROCELLI:
Q. What this letter is is a letter from the Task Force to
10:20 **counsel in the barge case, dated June 1, 2004. Okay?**
A. Okay.
MR. PETROCELLI: And I'd like to introduce this. Now,

I'm happy to redact out the other stuff that doesn't involve Mr. Glisan. There are references to other witnesses, and it's kind of a Brady disclosure letter. And I'm happy to just put in the part that relates to Mr. Glisan, and that's the only part I want to ask him about and the only part I want to project.

THE COURT: How long -- how --

MS. RUEMMLER: Your Honor --

MR. PETROCELLI: It's one -- can I show you the letter?

THE COURT: Sure.

MR. PETROCELLI: Okay.

MS. RUEMMLER: And my suggestion would be, your Honor, an easier way to do this is to ask whether the witness' recollection is refreshed as to the specific question about when he made a request.

MR. PETROCELLI: Well, I want to --

THE COURT: All right. Just a minute. I can't hear both of you and read at the same time.

MR. PETROCELLI: There should be a page that says -- maybe it's on the next page, Judge. It has Ben Glisan's name on the bottom.

THE COURT: Oh, okay.

Does the Government object to the jury seeing that portion of the exhibit?

MS. RUEMMLER: Your Honor, I do object on hearsay. We're now introducing letters from government counsel to counsel in a whole other criminal trial. I think that the witness should just be asked whether he recalls this request being made.

THE COURT: All right. Let's try it that way. See if it refreshes his recollection.

BY MR. PETROCELLI:

Q. You see -- in May of 2004, right after this sequence of visits --

A. Right.

Q. -- did you not, through your counsel, direct a communication to the Government that you wanted to be transferred to a minimum security camp in Beaumont, Texas?

A. I certainly recall the request being made. I don't recall whether it was in May or not, but I wouldn't dispute this date.

Q. Okay. And do you recall that the Government declined to do that?

And by "the Government" I mean the Enron Task Force.

A. Yes, certainly. We were not -- I did not initially get transferred. That did not happen until later.

Q. And do you recall that what -- the position that the Government said and that was communicated to you through your counsel was that they would, if asked, tell the Bureau of

Prisons of their assessment of your truthfulness, correct?
A. I don't remember the message communicated back to me. As I re -- as to this. I recall initially a reluctance by the Task Force to weigh in affirmatively but they would answer questions of the BOP, or something along those lines.
Q. And the questions they said they would answer had to do with their assessment of whether or not and to what extent you were being truthful, correct?
A. Yeah. I -- I don't remember that phrase.
Q. Does this refresh your recollection, looking at that statement in the letter?
A. No. I've not seen this letter before. I don't recall that phrase.
Q. And you do realize -- you do acknowledge, sir, that the conversations are going back between counsel. It's not you speaking to them; but it's through your attorney, right?
A. Yes.
Q. And that's how this process works; it's all done through lawyers, right?
A. As I understand it.
Q. Now -- so, you're back in -- in Bastrop?
A. Yes.
Q. And, again, not in the minimum security -- and there is a minimum security facility there, right?
A. There is, yes.

Q. But they sent you back not to the security -- minimum security camp but to the prison again, right?

A. Yes.

MS. RUEMMLER: Objection as to the vagueness of "they," your Honor.

BY MR. PETROCELLI:

Q. Whoever, somebody did, right?

A. US Marshals and the Bureau of Prisons, yes.

Q. Okay. Now, you then said to them, again through counsel, "I don't want to be here. I'll meet with you voluntarily. Get me out."

A. No. That's not correct.

Q. Did you not thereafter -- when your request to be moved was declined, did you not thereafter start meeting with them on a regular and totally voluntary basis?

A. I did meet with them. I'm not certain it could be characterized on a regular basis, but I answered questions with regard to the Nigerian barge trial and ultimately was subpoenaed back to Houston to testify at that trial.

Q. Okay. Now, the Nigerian barge trial was the first trial that was coming up, right?

A. Yes, that's correct.

Q. And you understood that this was important to the Task Force, right?

A. Any trial is an important trial for those involved.

Q. Well, I wasn't asking you about any trial; and I'm -- I'm sure you don't know them well enough to speak for them about any trial, right?

A. It was -- it was an important trial, certainly.

Q. Okay. And you then met with them on a number of occasions, right? Now you're not in front of the grand jury. Now you're in an office, right?

A. Yeah. There -- there were.

Q. Or in your facility? Where did you meet?

A. As I recall, we met limited times in Bastrop. Maybe before the Nigerian barge trial, it may have only been -- it may have only been once. I'd have to think through that. There were a couple of meetings in Bastrop, but I think one or two were after the Nigerian barge trial.

The others were in Houston. I had been subpoenaed and again it was in the federal detention center here in Houston and met with the Government in that detention center.

Q. Well, let's see how many meetings you had prior to the trial. Okay?

Can we go to the -- this is the Nigerian barge trial which took place in the fall of 2004, right?

A. That sounds right, yes.

Q. Okay. And, again, this is based on the 302 records that we have in the proffer agreements. So, you have May, June,

August, September, and October, right? All these are voluntary meetings, right?

A. I'll trust you on the date; but certainly each meeting was voluntary, yes.

Q. And then what happens is you give your trial testimony, right?

A. Yes.

Q. For two days.

MR. PETROCELLI: Can we put those up?

BY MR. PETROCELLI:

Q. October 6 and October 7, 2004, right?

A. Yes.

Q. Now, is it fair to say that you heard back from the Government, either directly or through counsel, that you had done an excellent job as a witness for them in the Nigerian barge trial?

A. The Government never made that statement to me.

Q. Well, did you hear back that they were very pleased with your performance in that trial?

A. The Government never made that statement to me, either.

Q. You heard that from others, right?

A. I heard that assessment; but I did not hear that assessment from the Government --

Q. In fact --

A. -- directly or indirectly.

Q. In fact, you heard the assessment that you were a star.

A. No.

10:27 **Q. You were a star witness, right?**

A. That's -- no, I was not told that.

Q. Did you read that in the newspapers?

A. The newspapers -- the newspaper article at the time, that I recall, did not say that.

10:27 **Q. Now, after the -- after the barge trial and after your testimony in that trial, you then again asked to be transferred to a camp, right?**

A. Yes, I did.

Q. Okay.

10:27 A. My --

Q. And you felt that you had -- you had helped them and they should help you, correct? It's a fair assessment, isn't it?

A. In a sense, yes. I was concerned about my physical well being. I thought it would be a -- a wrong to testify in that

10:28 trial and increase my physical risk and stay at a level of security that was noted to be inappropriate.

Q. Yeah. You mentioned that on direct, and I'm glad you brought that up.

In the prison environment, I guess you've come to

10:28 **learn regrettably --**

A. Yes.

Q. -- regrettably that snitches, as they call them, snitches

are -- are not well liked, right?
A. Yes, that's right.
10:28 Q. And, in fact, it's dangerous to be a snitch, right?
A. It is.
Q. And you know this from talking to people and in the prison environment and sort of learning the rules of the road, right?
A. Yes.
10:28 Q. And you have to learn the rules of the road to survive, quite frankly.
A. That's right.
Q. The -- one of the -- one of the rules of the road and one of the reasons why snitches are not well liked in the prison
10:28 environment is because snitches are known to work for the government, right?
A. That's what that term means in a prison, yes.
Q. Right. And not only are snitches known to work for the government -- well, they do so to try to get out of jail and
10:29 reduce a sentence or to gain some benefit, right?
A. For whatever reason.
Q. Right. And, in particular, snitches are known to lie for the government to get out of jail, correct?
A. There are some that have done that, I'm sure.
10:29 Q. Well, I'm not asking whether some snitches in the universe of all snitches have ever, ever told a lie.
A. Yeah.

Q. I'm asking something quite different, sir, which is that, generally speaking, snitches are unpopular because they are known to lie for the government to help themselves.

A. I don't think that's a completely accurate representation. It is true, I'm sure, that some do lie. The anger that I've heard expressed is that somebody told on them, not necessarily that they lied, but that they alerted the federal authorities of something that they were doing that they, in fact, were doing and, but for the cooperation of that person, it would not have been found out.

Q. And you were starting to get some heat yourself for working with the Enron Task Force, right?

A. I was concerned about that. I thought I had it managed.

Q. And, by the way, did you make any friends in the -- in the prison environment?

A. You have some social contact, yes. Certainly, I tried to do a little bit of that, not a lot.

Q. When the Government -- when you made your request to be transferred out after your testimony in the barge case, this time the Government agreed, right?

A. Shortly thereafter they agreed to help, yes.

Q. And you understood when they agreed to put you into a camp for the first time now that you were going to be sitting on this witness stand, testifying against Jeff Skilling and Ken Lay. I mean, you understood that that day was going to come,

right?

A. I understood that it was likely, yes.

Q. And you understood that if they were going to call you you would have to be testifying in a way that was damaging to their interests, right?

A. I understood that I would have to be testifying truthfully.

Q. Right. And your version of the truth at this point corresponded to the Task Force's version of the truth, correct?

A. It was the truth.

Q. They both matched, right?

A. Yes.

Q. Pretty much for the first time, right?

A. Again, I think I had begun to take responsibility earlier but was not asked in a broader way until the beginning of the grand jury testimony.

Q. And you -- you left the Bastrop facility in -- when was it? April or May of 2005?

A. That sounds about right, yes.

Q. Okay. And then you went to a camp in Beaumont, right?

A. Yes. I went to Oklahoma City for a couple of weeks, which is miserable, and then, from there, to the Beaumont camp.

Q. And how does -- what is the camp setting like versus the low security setting?

A. One, it was a different type of inmate there. Most have a much shorter term to go before they're going home. Most have

committed far less serious crimes. There's not a fence around the institution. Nobody, at least as long as I've been there, has walked off. People stay there, effectively, voluntarily because they know that they're coming to the end of their term. And it is a much less physically threatening environment.

Q. And during this period of time, not only were you allowed to now serve the rest of your term in a camp but you had also asked them to actually reduce your sentence, right?

A. After the Nigerian barge trial, my lawyer made that request, yes.

Q. To reduce your sentence?

A. Yes.

Q. And the Government, at that point, said "no," right?

A. Yes, they did.

Q. And one of the reasons that you understood the Government said "no" is they weren't finished with you yet, right?

A. They did not articulate that as the reason.

Q. Well, but that's the idea, right?

A. I can't speak on their behalf.

Q. I mean, you --

A. They said "no."

Q. They said "no," right?

A. They said "no."

Q. And then you and the Task Force started to have a lot of meetings together, right, at that point?

A. We -- we met frequently after I went to the camp, yes.
Q. So, you're in a camp. You're meeting on a regular basis with them. And you're also being allowed to go home on furloughs, right?
A. Yes.
Q. A number of furloughs, right?
A. About half a dozen, yes.
Q. And how long is each furlough?
A. Most were about four days, I would think.
Q. So, almost a month of furloughs through the end of 2005, right?
A. I would have to look at the dates, but that sounds about right.
Q. And then you've had more furloughs this year, right?
A. Well, the half a dozen is in total. Yes.
Q. Now, can we go back to our time line and look at the meetings that you had month by month after the transfer to the camp?
July, July, July, August, August, August, August, August, August, September, September, August -- October -- excuse me -- October, October, October.
Now, that's -- the last record that we have is October 7; but you have been meeting with the Enron Task Force after October 7, right?
A. There were a couple of more furloughs, yes.

Q. And you -- so, you -- so, and all these meetings, these are not about the Nigerian barge case now. This is about this case.

A. No. That -- there was --

Q. It was this case, right?

A. Yeah. There were a broad range of topics in those meetings, many of which related to this case. That's fair.

Q. And when you were first put into solitary confinement -- you got out of solitary confinement on September 23, 2003, right?

A. That sounds right.

Q. And there was no drug interview required of you because, as you had told the judge in taking your plea, you didn't have a drug or alcohol problem, right?

A. I don't recall -- I don't recall that discussion with the judge. I recall in -- there was a -- although not a PSI, there was an interview done by the Court in which I admitted to having a social drinking problem. Or I was a social drinker, rather. I later had the interview while I was in Bastrop.

Q. You told me you had, you know, one or two drinks at night with -- I don't want to tell you about my drinking habits. Okay? But if you got a drinking problem, then I'm in serious trouble.

A. Well, you'll get a year off.

Q. I need more than a year off. Okay?

Anyway, the point of this is that you're not an alcoholic or a drug addict, right? I mean, that's a fair statement?

A. I don't have alcohol addiction. I have alcohol dependency, yes.

Q. And, look, if I were in jail, I'd do everything I could to get into one of these programs. And the upshot of it is that you got into a program, with the Government's assistance, that allowed you to take a year off your sentence, correct?

A. I can assure you that's not true. I can assure you the Task Force was surprised when they learned I was in the program.

Q. Well, in any event, they didn't object or oppose or take any actions --

A. No.

Q. -- to interfere with that, right?

A. They -- once they learned I was in the program, as far as I know, they did not take any actions to stop it.

Q. And you're not suggesting, sir, that they would not support your getting into a -- why did you assure me of that?

I would think that that would be one of the first things they would do, is help you get into the program.

A. Well, again, their initial reaction wasn't, "I'm glad he's in the program." It was surprise that I was in the program and surprise that I would be out as quickly as I would.

Q. So -- and the way this works is that you're -- you end up leaving the camp -- because of this year off and when you add up all the other stuff, you leave this camp in September.

A. Yes, I go home in September.

Q. Now --

A. So -- so long as I'm truthful.

Q. Right.

A. Yeah.

Q. So long as you're truthful, right.

Now, Ms. Ruemmler said in her direct examination of you yesterday that you -- or the date she put out to you and to the jury was January, 2007, as being, quote, released from BOP custody, right?

A. And that's right. That's a correct statement.

Q. But you didn't make clear yesterday that when you said "released from custody," you're actually going home, not in January of 2007, but you're going home in September of this year.

A. Yes.

Q. In a few months.

A. In six months --

Q. Six months.

A. -- I will go home to home confinement for four months --

Q. Okay.

A. -- and be released from custody in January. That's

correct.

Q. And, so, after this trial is over, you're -- you're almost there, almost have this behind you, right?

A. And that's a huge blessing.

Q. I'm sure it is. And, in fact, such a huge blessing that you've told friends and family members that after this trial is over, after the Lay/Skilling trial is over, the Task Force cuts you loose.

A. No.

Q. You deny that?

A. I don't recall making that statement. I've told my family that I'm expecting to be home on September the 22nd -- somewhere between the -- September the 20th and the 22nd.

Q. Did you ever hear of a fellow named Darrell McCormick?

A. Yes, I do know Darrell McCormick.

Q. Darrell McCormick is a fellow that you befriended in prison, right?

A. He is somebody I spoke to, yes.

Q. Right. And isn't it true that you told Darrell McCormick that you had struck a deal with the Government: "yes" or "no"?

A. I don't recall making that statement, but I had -- you know, I don't recall making that statement.

Q. Isn't it true that you told Darrell McCormick that after you testified in the Lay/Skilling trial the Government is cutting you loose?

A. No.

Q. You're going home?

10:39 A. I don't recall saying that.

Q. You deny that?

A. I don't recall saying that.

Q. Do you deny it?

A. Yes.

10:39 **Q. Do you know for a fact you didn't say it?**

A. I can't say with certainty that I didn't say that I hoped to go home, but I do not remember ever saying that I had cut a deal. And, indeed, I have not cut a deal. There is -- no such promise has been made, period.

10:40 **Q. How about -- how about a secret side deal?**

A. There is no secret side deal.

Q. How about -- how about a bear hug? Did you get a bear hug?

A. I have yet received no bear hug. I have received --

Q. No bear hugs. Okay.

10:40 A. And, indeed, the date at which I'm going home would seem to make it improbable that such a thing could happen.

Q. Well, I'll tell you this much. We're going to be through with this trial before September.

A. I sure hope so.

10:40 **Q. Okay.**

MR. PETROCELLI: Long before September, Judge.

BY MR. PETROCELLI:

EXHIBIT W

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
v.		Cr. No. H-03-363 (Werlein, J.)
	:	
DANIEL BAYLY, JAMES A. BROWN and ROBERT S. FURST,	:	
	:	
Defendants.	:	

AFFIDAVIT OF IRA LEE SORKIN

IRA LEE SORKIN, being first duly sworn on oath, deposes and states as follows:

1. I am over twenty-one (21) years of age.

2. I have personal knowledge of, and am competent to testify, to each of the matters set forth herein.

3. I was lead counsel for Robert Furst during the first Nigerian Barge trial.

4. Believing that the Enron Task Force was in possession of extensive exculpatory information which related to Andrew Fastow and other evidence that was material to the defense, as it related also to Andrew Fastow, I and other defense counsel made multiple attempts, formal and informal, to have the government produce the 302s and notes underlying the government's interviews of Andrew Fastow, so that the defense could ascertain Fastow's knowledge of the Barge transaction and the representations he made in the phone conversation with Bayly, Furst and others which the Task Force had indicted was part of the alleged criminal conspiracy. Without the underlying 302s and/or original notes of the Fastow interviews, the defense had no usable exculpatory evidence of Fastow, and nothing from which it could evaluate his potential testimony or determine whether to call Fastow as a witness, or use the material to impeach Fastow.

5. No reasonably competent and prudent defense attorney would call a witness on whom the government's indictment depended and who was cooperating fully with the government by the time of trial without being in possession of the 302s of that witness's interviews with the government, particularly so since the government produced only a summary of Fastow's 302s.

6. In an attempt to gain access to Fastow before the first Barge trial, I contacted the Enron Task Force and requested that I and other Defense counsel be allowed to interview

Fastow. The Task Force informed me and other Defense counsel that I was free to contact Fastow's counsel to request an interview, but that I and other Defense counsel would not be able to interview Fastow unless a Task Force attorney was also present at the interview.

Further, Affiant sayeth not.

I hereby affirm under penalty of perjury, that the forgoing statements are true and correct.

IRA LEE SORKIN

Executed on February 25, 2008

EXHIBIT X

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

- - - - - - - - - - - - - - - - - - - -x

In Re Enron Corporation Securities Litigation :

Plaintiff, : MDL Docket No. 1446

- v. - : No. H-01-CV-3624

Enron Corp., et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

MEMORANDUM OF LAW IN SUPPORT OF GOVERNMENT'S APPLICATION TO MAINTAIN THE STAY AS TO CERTAIN CRIMINAL TRIAL WITNESSES

The Government respectfully submits this memorandum in support of its application to maintain the limited stay as to discovery of certain criminal trial witnesses.

PRELIMINARY STATEMENT

The Government seeks this relief to avoid prejudice to the pending criminal cases against eight senior Enron executives -- including the former Chairman, CEO, CAO and senior executives at Enron - and to its ongoing investigation. Lifting the stay would seriously prejudice the government, while providing these Enron criminal defendants with one-sided discovery in the criminal action, far in excess of anything remotely allowable under the Federal criminal rules. Such a lop-sided result would play directly into the hands of the criminal defendants, to the

detriment of victims of the fraud at Enron, the public, and the government. It is worth noting that both defendants Lay and Hirko have opposed the government's motion to even have access to the depositions already taken in the civil case, further skewing the playing field.

Equally important, the position advocated by the government would not prejudice any party. The government proposes that this issue be revisited down the road, but before the November 2005 civil discovery cut off. At that juncture, many things may have come to pass. First, the civil case could have settled in whole or in part thus eliminating or narrowing the need for deposing the limited number of criminal trial witnesses. Second, the government may direct some of these witnesses to testify in the civil case pursuant to their cooperation agreements, thus avoiding the witnesses asserting their Fifth Amendment rights which would otherwise be likely to occur. Third, the result of any criminal prosecution may diminish the need for or scope of any deposition of the criminal trial witnesses, who have testified. Finally, to the extent that any part needed an adverse presumption from the assertion of the Fifth Amendment (apart from the criminal defendant's guilty plea), any criminal trial witness who at that juncture indicated that he would assert his Fifth Amendment rights could be quickly and readily be "deposed" before the civil discovery cut off.

In short, leaving the limited stay intact, harms no one and avoids severe prejudice to victims and the public. For that reason, courts have routinely granted not just the limited relief sought here, but full stays of discovery. See In re WorldCom, Inc. Securities Litigation, 2004 WL 802414 (S.D.N.Y. April 15, 2004) (granting stay of discovery of criminal trial witnesses).

ARGUMENT

A. Applicable Legal Principles

Cases are legion that permit the Court to enter a permanent stay of the civil case. We do not seek such relief, however. We have not done so out of concern that the victims of fraud at Enron be allowed to have their day in court. Rather, we seek the far more limited relief of maintaining the current stay as to certain criminal trial witnesses. The law clearly supports this relief.

This Court has the inherent power to stay discovery in the interests of justice. Landis v. North American Co., 299 U.S. 248, 255 (1936); In re Ramu Corporation v. 6600 North Mesa, El Paso, Texas, 903 F.2d 312, 318 (stay of pending matter within trial court's wide discretion to control scope and pace of discovery); Kashi v. Gratsos, 790 F.2d 1050, 1057 (2d Cir. 1986). Courts in this Circuit and elsewhere routinely recognize the power to stay parallel civil proceedings in order to protect a pending criminal prosecution or investigation. See, e.g., SEC v.

First Financial Group of Texas, Inc., 659 F.2d 660, 668 (5th Cir. 1981)(district court may stay a civil proceeding during the pendency of a parallel criminal proceeding); United States v. Little Al, et al., 712 F.2d 133, 136 (5th Cir. 1983)(same); Downe, 1993 WL 22126, *14 (granting stay of SEC enforcement action pending federal grand jury investigation); Board of Governors of Fed. Reserve Sys. v. Pharaon, 140 F.R.D. 634, 641 (S.D.N.Y. 1991) (granting stay of Federal Reserve enforcement action pending state grand jury investigation); United States v. Hugo Key and Son, Inc., 672 F. Supp. 656, 658-59 (D.R.I. 1987) (granting stay of civil action while Department of Justice considered bringing criminal proceeding based on certain allegations that were the subject matter of the civil action); Founding Church of Scientology of Washington, D.C. v. Kelley, 77 F.R.D. 378, 381 (D.D.C. 1977) (hereinafter "Kelley") (refusing to compel federal officials to answer interrogatories during pendency of federal grand jury investigation); SEC v. Control Metals Corp., 57 F.R.D. 56, 58 (S.D.N.Y. 1972) (granting stay of SEC enforcement action pending District of Columbia grand jury investigation); United States v. One 1964 Cadillac Coupe DeVille, 41 F.R.D. 352, 353 (S.D.N.Y. 1966) ("where both civil and criminal proceedings arise out of the same or related transactions the government is ordinarily entitled to a stay of

all discovery in the civil case until disposition of the criminal matter").

The need for a stay of parallel civil proceedings arises from the fundamental differences between civil and criminal proceedings and the compelling public interest in facilitating enforcement of the criminal laws. As the Fifth Circuit explained in Campbell v. Eastland, 307 F.2d 478 (5th Cir. 1962) (Wisdom, J.), cert. denied, 371 U.S. 955 (1963):

> The very fact that there is a clear distinction between civil and criminal actions requires a government policy determination of priority: which case should be tried first. Administrative policy gives priority to the public interest in law enforcement. This seems so necessary and wise that a trial judge should give substantial weight to it in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims or liabilities.

Id. at 487; see also In re Ivan F. Boesky Securities Litig., 128 F.R.D. 47, 49 (S.D.N.Y. 1989) ("the public interest in the criminal case is entitled to precedence over the civil litigant") (emphasis in original).

In evaluating applications by the Government to stay civil proceedings, courts balance the competing interests implicated on a case-by-case basis. See Downe, 1993 WL 22126, *12; Volmar Dist., Inc. v. New York Post Co., Inc., 152 F.R.D. 36, 39 (S.D.N.Y. 1993) (hereinafter "Volmar"); First Merchants, 1989 WL 25214, *2. Among the factors that have been identified

as relevant to this balancing are: (1) prejudice to the Government's interest in connection with ongoing criminal prosecutions; (2) prejudice to the interests of the civil parties in prompt resolution of their disputes; (3) the interests of parties not represented in the civil proceedings; (4) the courts' interests in judicial economy and the efficient use of resources; and (5) the public interests involved in both criminal and civil proceedings. See, e.g., Trustees of Plumbers and Pipefitters National Pension Fund v. Transworld Mechanical, Inc., 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995) (hereinafter "Plumbers Fund") (listing factors); Heller Healthcare Finance, Inc. v. Boyes, 2002 WL 1558337, * 2 (N.D. Tex. 2002)(listing factors); Librado v. M.S. Carriers, Inc., 2002 WL 31495988, * 2 (N.D. Tex. 2002) (listing factors).

With respect to the first factor, prejudice to the Government, the principal concern articulated by the courts is the danger that criminal defendants may abuse the mechanisms of civil discovery to circumvent the limitations on discovery in criminal prosecutions. Courts have emphasized repeatedly that such abuse of the civil discovery process should not be permitted. For example, as one court has stated,

> a stay of discovery is often necessary where liberal discovery rules will allow a litigant to undermine, or gain an unfair advantage in, a potential criminal prosecution which parallels the subject matter of the civil action.

Downe, 1993 WL 22126, *12; see also Thornhill, 1994 WL 382655, at * 1 (court cannot sanction use of civil discovery to obtain discovery that is not authorized in a criminal case); Kelley, 77 F.R.D. at 380 ("a litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit to avoid the restrictions on criminal discovery and, thereby, obtain documents [and testimony] he might otherwise not be entitled to for use in his criminal suit").[2]

The Federal Rules of Civil Procedure authorize broad discovery of both parties and non-parties. See, e.g., Fed. R. Civ. P. 26(b) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."). In contrast, discovery under the Federal Rules of Criminal Procedure is circumscribed. Fed. R. Crim. P. 16 generally limits discovery to certain statements of the defendant, the defendant's prior criminal record, and other information that is "material to the preparation of the defendant's defense or . . . intended for use by the government as evidence in chief at the trial, or were obtained from or

---

[2] Conversely, as here, criminal defendants often seek to stay parallel civil proceedings, arguing that they face the "dilemma either of having to testify in a pre-trial deposition or, by invoking the privilege against self-incrimination, subjecting [themselves] to a permissible adverse inference in the civil case." SEC v. Oakford Corp., 181 F.R.D. 269, 270 (S.D.N.Y. 1998).

belong to the defendant." (Fed. R. Crim. P. 16(a)(1)(A), 16(a)(1)(B), 16(a)(1)(C)).

Moreover, Fed. R. Crim. P. 16(a)(2) expressly precludes discovery of "reports, memoranda or other internal government documents [and] statements made by government witnesses or prospective government witnesses, except as provided in 18 U.S.C. § 3500." (Fed. R. Crim. P. 16(a)(2)). In turn, Section 3500 (the Jencks Act) provides that in criminal cases, the statements of Government witnesses shall not be "the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case."[3] (18 U.S.C. § 3500(a)). Absent "exceptional circumstances" and a court order, a criminal defendant may not conduct depositions in a criminal case. Fed. R. Crim. P. 15(a). The defendant's obligation to provide discovery to the Government is similarly limited, see Fed. R. Crim. P. 16(b), and in practice is rarely complied with or enforced.

The narrow scope of federal criminal discovery is based on concerns that broad disclosure of the details of the prosecution's case will result, inter alia, in perjury and

---

[3] Although the district court has no authority to order early production of such witness statements, United States v. Percevault, 490 F.2d 126, 132 (2d Cir. 1974), it is the regular practice of the Enron Task Force to provide defendants with Jencks material and other discovery reasonably in advance of trial.

manufactured evidence; that revelation of the identity of prospective Government witnesses will create opportunities for intimidation of those witnesses and subornation of perjury; and that criminal defendants will unfairly surprise the prosecution at trial with information gained through discovery, while relying on the privilege against self-incrimination to shield against any attempt by the Government to obtain relevant evidence from the defendants themselves. See Campbell v. Eastland, 307 F.2d at 487 n.12; Nakash v. U.S. Department of Justice, 708 F. Supp. 1354, 1365-66 (S.D.N.Y. 1988); Kelley, 77 F.R.D. at 381.[4]

Furthermore, as noted above, the civil defendants as to whom a stay has been granted herein are cooperating with the Government. Their usefulness as potential government witnesses in any future criminal proceedings would be impaired substantially if they are subjected to discovery and/or required to file verified pleadings in this case. In re WorldCom, Inc. Securities Litigation,2004 WL 802414 (S.D.N.Y. April 15, 2004) (relying on such prejudice to grant stay).

---

[4] Such concerns have been recognized frequently in the analogous context of a criminal defendant's demand for identification of Government witnesses prior to trial. Such demands are routinely denied. See, e.g., United States v. Cannone, 528 F.2d 296 (2d Cir. 1975) (reversing district court's order for government to identify witnesses before trial); United States v. Percevault, 490 F.2d at 131 ("[f]ear of intimidation of witnesses and concern over efforts to suborn perjury were not flights of fantasy by those who drafted Rule 16").

In addition to the foregoing concerns, considerations of judicial economy and the efficient resolution of civil disputes typically support applications by the Government for a stay of parallel civil proceedings. Often, common issues of law and fact are resolved in the criminal proceeding, narrowing the issues in dispute in the civil action. See United States v. Mellon Bank, N.A., 545 F.2d 869, 873 (3d Cir. 1976) ("resolution of the criminal case may moot, clarify, or otherwise affect various contentions in the civil case"); Brock v. Tolkow, 109 F.R.D. 116, 120 (E.D.N.Y. 1985) ("resolution of the criminal case might reduce the scope of discovery in the civil case and otherwise simplify the issues"). Moreover, "due to the overlapping issues in the criminal and civil trials, the criminal justice system will help safeguard the evidence, and any resulting incarceration could only serve to insure the availability of all the parties." Volmar, 152 F.R.D. at 40.

Finally, "resolution of the criminal case may increase the possibility of settlement in the civil case due to the high standard of proof required in a criminal prosecution." Plumbers Fund, 886 F. Supp. at 1140.

Thus, the public interest in effective law enforcement and the efficient use of judicial resources all weigh in favor of maintaining the limited stay currently in place herein. As one district court has aptly observed:

> There is an unnamed party in every lawsuit -- the public. Public resources are squandered if judicial proceedings are allowed to proliferate beyond reasonable bounds. The public's right to a 'just, speedy, inexpensive determination of every action' . . . is infringed, if a court allows a case . . . to preempt more than its reasonable share of the Court's time.

United States v. Reaves, 636 F. Supp. 1575, 1578 (E.D. Ky. 1986) (citations omitted).

Indeed, in In re WorldCom, Inc. Securities Litigation, 2004 WL 802414 (S.D.N.Y. April 15, 2004), in a decision directly on point, the district court granted relief analogous to that sort here, namely, embargoing discovery as to certain criminal trial witnesses at least until after one of the pending criminal cases.

The decision of Magistrate Judge Joyner in In re CFS-Related Securities Fraud Litigation, 256 F.Supp.2d 1227 (N.D. Okl. 2003), is not to the contrary. That case involved the application of the defendant, opposed by all parties and without the support of the government, to stay discovery against him because of a pending criminal case against him. There was no prejudice cited to the court by the government (or anyone else) to the public or to victims. The court therein was not confronted with the defendant in a criminal case seeking to depose the witnesses in important criminal trials, let alone key witnesses. There was thus also no issue concerning the criminal defendant having access to discovery far beyond that in the criminal case and

being uniquely positioned to depose government witnesses without having to subject defense witnesses to reciprocal discovery.[5] In short, the decision lends no support for lifting the stay in the circumstances here.

B. Discussion

In this case, the serious risk of prejudice to the criminal prosecution of eight Enron defendants and the Grand Jury's ongoing investigation, the public interest in effective enforcement of the criminal laws, the interests of parties who are not represented in the civil action, and the interests of judicial economy weigh heavily in favor of the continued limited stay. Indeed, it is likely that the parties will benefit from the resolution of the criminal case, through the development and preservation of evidence and the narrowing of factual and legal issues. In any event, there will be no harm to the parties from leaving the limited stay in place.

---

[5] The court did not address the issue of whether it could enter a protective order and require a deposition of the defendant if the defendant sought to assert the Fifth Amendment. That issue would of course raise serious concerns since it is the province of the executive branch absent governmental abuse to decide whether to confer immunity. Autry v. Estelle, 706 F.2d 1394, 1401-02 (5th Cir. 1983). see also United States v. Follin, 979 F.2d 369, 374 (5th Cir. 1992) ("A district court may not grant immunity simply because a witness has essential exculpatory evidence unavailable from other sources."); United States v. Whittington, 783 F.2d 1210, 1219-20 (5th Cir. 1986) (same); United States v. Thevis, 665 F.2d 616, 639-40 & n. 28 (5th Cir. 1982) ("we caution that a trial is not a "symmetrical proceeding" which requires a court to grant the defendant's witnesses immunity because the government uses immunized witnesses.).

1. Prejudice to the Government

As noted above, the criminal trial defendants, such as Andrew Fastow, Michael Kopper and Kenneth Rice, have entered into cooperation agreements with the Government which obligate them, among other things, to provide truthful and complete testimony and information to the investigating authorities. Such testimony may be requested at a trial, before the Grand Jury, or at sentencing hearings. If these defendants comply with their obligations under the cooperation agreements, and if they render substantial assistance in the prosecution of others, at the time of sentencing the Government will move for a downward departure from the applicable Sentencing Guidelines range pursuant to U.S.S.G § 5K1.1.

The usefulness of such government witnesses in future criminal proceedings will be seriously impaired if they are required to comply with deposition notices, interrogatories or requests for admission in this civil action. Such statements likely would constitute Jencks material that could be used to cross-examine them at any future criminal proceedings.

Furthermore, disclosure of the substance of potential testimony in advance of the criminal trial would facilitate efforts by the Enron criminal defendants to manufacture evidence and tailor defenses to the Government's proof. For example, Skilling or Lay, armed with deposition testimony, witness

statements, and other discovery could coordinate his defense in an attempt to explain away the Government's proof. Similarly, they or any other putative defendant could attempt to destroy documentary or other physical evidence that corroborates such deposition testimony.

We note that the government herein has not taken the more drastic measure of seeking to stay the entire civil proceeding. By not seeking such relief the government has already been prejudiced by the fact that the Enron criminal defendants have enjoyed discovery rights that are clearly far beyond that allowed under criminal rules, and have actively deposed potential government witnesses.

We support maintaining this limited stay because the balancing analysis would dramatically shift if the stay were lifted as to the government's criminal trial witnesses. Lifting the stay would enable the criminal defendants to have complete pretrial access to and depositions of all government witnesses without any ability of the government to have reciprocal discovery.

2. Lack of Prejudice to Civil Parties

Plaintiffs will not be prejudiced by the stay remaining in place. Indeed, we propose that this issue be re-visited after the next criminal case - which is scheduled for March 1, 2005, before Judge Vanessa Gilmore - is concluded by plea (which could

occur of course prior to March 1) or verdict. At that juncture, the government may direct the defendants herein as to whom a stay has been granted to testify in the civil case pursuant to their cooperation agreements. It may also be the case that at that juncture, the civil case will have settled in whole or in part thus obviating the need for some or all of the depositions. Finally, if toward the end of the civil deposition period, the parties still seek to depose these people, the stay can be lifted for that purpose: in all likelihood, the deponents will assert the Fifth Amendment (if not directed by the government to testify).[6] There is no reason, however, to waste the time and resources of the parties now in going through that exercise. Indeed, it is these various future permutations that animated the court in the WorldCom litigation to delay the depositions of certain witnesses in the government's criminal case. In re WorldCom, Inc. Securities Litigation, 2004 WL 802414 (S.D.N.Y. April 15, 2004).

3. Interests of Unrepresented Parties

The fraudulent scheme involved in these proceedings resulted in harm to a large number of victim investors who are not parties to this civil action. Any convictions in the

---

[6] Further, the pending criminal proceedings will develop an evidentiary record and preserve that record for use in the civil action. Plumbers Fund, 886 F. Supp. at 1140 ("evidence gathered during the criminal prosecution can later be used in the civil action").

criminal cases pending in this District likely will result in orders of restitution, to be made for the benefit all of the victims of the scheme. See 18 U.S.C. §§ 3663, 3663A. Thus, the interests of all parties as a whole would be better served by a stay that avoids prejudice to the criminal cases and ongoing investigation.

4. Judicial Interests

Continuing the stay, and thus protecting the government's criminal case from the lopsided discovery that would otherwise occur, will likely result in a narrowing of the factual and legal issues before this Court. Volmar, 152 F.R.D. at 40; Brock v. Tolkow, 109 F.R.D. at 120. In addition, a criminal conviction of the eight Enron defendants would increase the likelihood of settlement in this action. Plumbers Fund, 886 F. Supp. at 1140. The criminal process may create an evidentiary record that will limit the scope of discovery in the civil case, thus conserving the resources of both the parties and the Court in completing the civil discovery process and resolving any disputes that may arise out of that process. Volmar, 152 F.R.D. at 41 ("the availability of transcripts and other evidence from the criminal trial may eliminate altogether the need for certain depositions").

More importantly, by keeping the stay in place, the Court would conserve time and energy of the parties that may

never need to be expended. There is simply no harm in leaving the stay in place and it may likely result in the conservation of resources to all parties while also not severely prejudicing the government and victims.

Accordingly, the interests of judicial economy are better served by the leaving the stay in place.

5. Public Interest

The overriding public interest in enforcement of the criminal laws also weighs heavily in favor of the limited stay. The Indictments charge eight Enron defendants - including the former Chairman, CEO, Chief Accounting Officer, and senior executives of a leading business unit -- with participating in a brazen scheme to defraud investors and the public regarding the true financial condition and operating performance of Enron.

Continuing the stay will vindicate not only the public's interest in compliance with the securities laws implicated by the civil action, but also other interests implicated by the additional criminal charges. United States v. Napoli, 179 F.3d 1, 7 (2d Cir. 1999) ("the 'victims' of fraud counts are those persons who have lost money or property as a direct result of the fraud. . . . The 'victim' of money laundering is, by contrast, ordinarily society at large.") (citations omitted); Volmar, 152 F.R.D. at 40 ("The public certainly has an interest in the preservation of the integrity of

competitive markets. However, the pending criminal prosecution serves to advance those same interests."); Plumbers Fund, 886 F. Supp. at 1140 ("Because of the overlapping issues in the criminal and civil cases, the criminal prosecution will serve to advance the public interests at stake here."). Moreover, the limited stay of civil discovery will not involve any continuing harm to the public. Cf. SEC v. Dresser Indus., 628 F.2d 1368, 1377 (D.C. Cir.), cert. denied, 449 U.S. 993 (1980) (denying stay on ground that it might permit "[d]issemination of false or misleading information by companies to members of the investing public").

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court leave the stay in place.

Dated: Houston, Texas
November 2, 2004

Respectfully submitted,

ANDREW WEISSMANN
Director
ENRON TASK FORCE

By: 

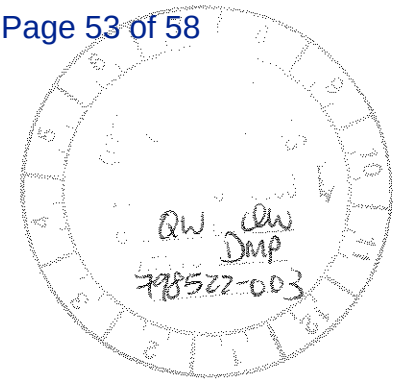
Certificate of Service

I hereby certify that a copy of the foregoing Memorandum was served electronically to counsel pursuant to the MDL protocol this 2nd day of November, 2004.

By: Lisa O. Monaco

Lisa Monaco
A.U.S.A.
Enron Task Force

EXHIBIT Y



IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENRON CREDITORS RECOVERY CORP.	§	
	§	
vs.	§	Case No: 4:06-CV-03905
	§	
ST. PAUL FIRE AND MARINE INSURANCE	§	J. Kenneth M. Hoyt
COMPANY, FEDERAL INSURANCE COMPANY, and	§	
THE GREAT AMERICAN INSURANCE COMPANY	§	

STIPULATION AS TO LIMITATION ON SUBJECT MATTER
OF EXAMINATION OF ANDREW S. FASTOW

WHEREAS the United States, in an effort to avoid prejudice in the pending criminal prosecution of *United States v. Bayly, Brown, and Furst,* Cr. No, H-03-363, United States District Court, Southern District of Texas, before the Honorable Ewing Werlein *("U.S. v. Bayly, et al."),* which is currently stayed pending the outcome of an interlocutory appeal filed in late January 2008, has sought to secure an agreement with and among the parties to the above-captioned litigation including all consolidated and coordinated cases (collectively, "Parties" and "Litigation") regarding limitation on the deposition testimony of Andrew S. Fastow about a series of transactions related to two separate 1999 year-end deals (the "Subject Transactions"), one being the transactions related to the sale by Enron Corp. ("Enron") of an interest in Nigerian power barges to Merrill Lynch & Co. ("Merrill Lynch") and subsequently LJM2, and the other being the transactions related to offsetting energy trades entered into between Enron and Merrill Lynch. The Subject Transactions are further described as follows:

a. Nigerian Barge Transactions: Beginning in the fall of 1999, Enron began seeking to monetize part of its interest in Nigerian power barges, and it approached a number of potential customers about purchasing the barges. Enron employees also discussed the possibility

of selling part of its interest in the barges to LJM2. In approximately December 1999, Enron and Merrill Lynch entered into negotiations whereby Enron would sell a portion of the cash flows in three Nigerian barges to Merrill Lynch by the close of 1999. Enron and Merrill Lynch consummated the "sale" of a partial interest in the barges' cash flows by the end of December 1999. Subsequent to this transaction, Enron and Merrill Lynch continued to have discussions regarding the sale of Merrill Lynch's interest in the barges to a third party. In June 2000, Enron facilitated the sale of Merrill Lynch's interest in the barges to LJM2. Thereafter, LJM2 sold its interest in the barges to an unrelated third-party buyer in stages between June 2000 and January 2001.

b. Energy Transactions: At year's end in 1999, Enron and Merrill Lynch allegedly engaged in offsetting energy trades that allowed Enron to book certain profits while canceling out any risk to Merrill Lynch. In connection with these transactions, Enron sold to Merrill Lynch a physically settled call option, and Merrill Lynch sold Enron an offsetting financially settled call option. After consummating these transactions in December 1999, Enron and Merrill Lynch agreed to "unwind" the trades, and by the end of May 2000, the Enron and Merrill Lynch had completed the unwinding of the trades in connection with a substantial fee paid by Enron to Merrill Lynch.

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that:

1. The Parties shall not question Andrew S. Fastow or otherwise elicit testimony (either oral or written) from him about the Subject Transactions, or the effects of the Subject Transactions on Enron's financial condition in 1999 or thereafter, either in his deposition in the

Litigation (currently scheduled to begin on September 8, 2008), in other discovery in the Litigation, or at any hearing or trial in the Litigation, or use or submit to the court in the Litigation any affidavits, declarations or other written statements of Andrew S. Fastow about the Subject Transactions, until after the conclusion of presentation of all evidence in the trial or, if earlier, the entry of guilty pleas or other disposition of the charges, in *U.S. v. Bayly, et al.;*

2. The Parties shall not question Andrew S. Fastow on documents related to the Subject Transactions, or the effects of the Subject Transactions on Enron's financial condition in 1999 or thereafter, either at his deposition in the Litigation (scheduled to commence on September 8, 2008), in other discovery in the Litigation, or at any hearing or trial in the Litigation, or use or submit to the court in the Litigation any affidavits, declarations or other written statements of Andrew S. Fastow concerning documents related to the Subject Transactions, until after the conclusion of presentation of all evidence in the trial or, if earlier, the entry of guilty pleas or other disposition of the charges, in *U.S. v. Bayly, et al.;*

3. Except as relates specifically to the Subject Transactions, this stipulation shall in no respect limit the Parties in questioning Andrew S. Fastow about the superseding indictment in Cr. No. H-02-0665; his plea agreement (including Exhibit A thereto) in Cr. No. H-02-0665, dated January 14, 2004; his rearraignment and entry of pleas of guilty in Cr. No. H-02-0665 on January 14, 2004, as reflected in the transcript of proceedings of that date; his testimony in *United States v. Skilling,* Cr. No. H-04-25, United States District Court, Southern District of Texas; his testimony in *Newby, et al., v. Enron Corp, et al.*, Civ. No. H-01-3624, United States District Court, Southern District of Texas; or any other event, matter, or circumstance, except as it relates to the Subject Transactions; and

4. Notwithstanding the foregoing, following the conclusion of presentation of all evidence in *U.S. v. Bayly, et al.*, or, if earlier, the entry of guilty pleas or other disposition of the charges in *U.S. v. Bayly, et al.*:

a. the Parties shall have the right to move the Court to reopen the deposition of Andrew S. Fastow for the limited purpose of examining Andrew S. Fastow fully and fairly in advance of trial concerning the Subject Transactions, including, without limitation, as to documents related to the Subject Transactions and or to question him at trial concerning the Subject Transactions, including, without limitation, as to documents related to the Subject Transactions; and

b. in the event the Parties move to re-open the deposition of Andrew S. Fastow, and/or to question him at trial, the United States reserves the right to move for a protective order or seek other relief in order to avoid prejudice in *U.S. v. Bayly, et al.*

5. Nothing contained herein, including without limitation the agreement to limit the scope of examination at Fastow's deposition, shall be used by any of the Parties as a basis for seeking modification of the October 22, 2007, Amended Scheduling Order or postponement of the trial in this case, provided that the parties agree that the Fact Discovery deadline may be modified for the limited purpose of completing the deposition of Fastow, but only to the extent that the deposition can be scheduled no later than two weeks in advance of the scheduled September 8, 2008, docket call.

SO ORDERED

Dated: March 11, 2008
Houston, TX

Hon. Kenneth M. Hoyt
United States District Judge

For: The United States

STEVEN A. TYRRELL,
Acting United States Attorney and Chief, Fraud Section
Criminal Division
United States Department of Justice

By: /s/ Dated: February 20, 2008
Patrick F. Stokes
Maryland State Bar
Fraud Section, Criminal Division
United States Department of Justice
1400 New York Ave, N.W.
Bond Building, Room 3208
Washington, DC 20530
Phone: 202-305-4232
Fax: 202-514-6118
patrick.stokes2@usdoj.gov

For: Enron Creditors Recovery Corp.

By: /s/ Dated: February 20, 2008
Steven L. Hoard
Mullin Hoard, et al.
P O Box 31656
Amarillo, TX 79120
806-372-5050
806-372-5086 (fax)
shoard@mhba.com

For: St. Paul Fire and Marine Insurance Company

By: /s/ Dated: February 20, 2008

John R. Riddle
Texas Bar No. 16690200
Southern District No. 20460
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202
Phone: 214-651-4672
Fax: 214-659-4038
john.riddle@strasburger.com

For: Federal Insurance Company

By: /s/ Dated: February 20, 2008

Matt J. Farley
Louisiana Bar No. 5447
Southern District No. 432676
Krebs Farley et al
400 Poydras St
Ste 2500
New Orleans, LA 70130
Phone: 504-299-3570
Fax: 504-299-3582 fax (fax)
mfarley@kfplaw.com

For: The Great American Insurance Company

By: /s/ Dated: February 20, 2008

Gary J. Valeriano
Bar No. 8964
Southern District Bar No. 718965
Anderson McPharlin and Conners
444 South Flower St
31st Floor
Los Angeles, CA 90274
Phone: 213-236-1658
Fax: 213-622-7594
gjv@amclaw.com