

MEMORANDUM

TO: Enron Files

FROM: Reed M. Brodsky

DATE: December 2, 2001 (revised December 3-4, 6-7, 2001)

RE: Interview of Richard Causey

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On November 30, 2001, Joe Brenner and Reed Brodsky of Wilmer, Cutler & Pickering ("WCP") and John Sullivan of Deloitte & Touche (an accounting firm retained by WCP), spoke with Richard Causey, Enron's Executive Vice-President and Chief Accounting Officer, at Enron's Houston headquarters to gather information from him in order to allow WCP to provide legal advice to the Special Committee of Enron's Board of Directors. Jacks C. Nickens of Clements, O'Neill, Pierce, Nickens & Wilson, L.L.P., was present and represented Causey.

This memorandum has been prepared by counsel in anticipation of possible litigation arising from a Securities and Exchange Commission ("SEC") investigation and any parallel or related proceedings. This memorandum incorporates the mental impressions, analyses and opinions of counsel. As such, this memorandum is intended solely to assist counsel in providing legal representation and advice to the Special Committee of Enron's Board of Directors, and is not intended to provide a substantially verbatim recital of Causey's statements. The interview was based on WCP's understanding of the facts and review of documents as of the date of the interview. Furthermore, Causey has not reviewed this memorandum. Therefore, this memorandum may contain inaccuracies and the following discussion of certain events may be incomplete or lack context.

At the outset, Brenner explained that WCP represented the Special Committee appointed by the Board to investigate certain transactions between Enron and related parties, and we were speaking to him as part of that investigation. Brenner stated that we did not represent Enron's officers or employees, including him, that, in our view, the conversation was privileged but it was the Special Committee's (or Enron's) privilege, and that the Special Committee or Enron could decide what to do with the privilege, not him. Brenner stated that Causey should anticipate that anything he told us would be conveyed to the Special Committee, and that the information could be communicated to others, such as the Board, others associated with Enron, and the Government.

Brenner stated that, as Causey knew, there was an SEC investigation, that the company was cooperating fully with the SEC, and that there was a reasonable possibility that information he provided will be conveyed to them. Brenner informed Causey that we did not know whether the information will be communicated to others in addition to the SEC and that two or three United States Attorney's Offices ("USAO") have expressed at least preliminary interest in the

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matter. They included the USAO from the Southern District of New York, the Central District of California (Los Angeles), and Houston.

### **Introduction**

Brenner stated that we were going to discuss two principal subjects with Causey today. First, we were going to discuss the development of LJM, the development of the process and procedure for reviewing and approving transactions between Enron and LJM, and what information was reported to the Board. Second, we were going to discuss the company's approach to public disclosure of LJM transactions in the company's public filings. At some later point, we would discuss the specific transactions with him.

### **Causey's Background**

*Pre-Enron.* Causey graduated from the University of Texas in the Spring of 1982. From June 1982 until February 1991, he worked at Arthur Andersen, rising to the manager level. Beginning in 1986, while at Arthur Andersen, he spent about eighty percent of his time auditing Enron. He had a couple of opportunities to join Enron during that time, but did not take them.

*Enron.* In 1991, George Posey, who started Enron Gas Services ("EGS"), approached Causey and offered him a position as assistant controller at EGS. Causey accepted and started at Enron in March 1991.

In approximately 1992, Causey became vice-president of EGS reporting to Posey, who reported to Jeff Skilling. Causey set up the accounting organization and back office, which consisted of trading support and operations.

In 1996, after EGS had become ECT, Skilling asked Causey to run the ECT treasury group. Causey replaced Andrew Fastow, who went to run the retail business. Six months later, Skilling asked Fastow to run the ECT treasury group again, and Causey ran the retail business and set up the EES retail assessment and control group.

In December 1996, Rich Kinder left Enron, and Skilling was promoted to assume Kinder's role. Skilling asked Causey to be the Senior Vice-President and Chief Accounting Officer ("CAO"), and Causey accepted. Causey reported to Ed Segner for about one year, and then he reported to Skilling, Ken Lay, and, at times, Joe Sutton. Causey had replaced Jack Thompkins, who had left. For about one year after Thompkins left and until Causey assumed the role of CAO, there was no CAO, and Segner covered the position.

*Arthur Andersen.* There were a number of Arthur Andersen audit partners when Causey became CAO. Steve Goddard was just finishing up his final year. Goddard remained the advisory partner, and Dave Duncan became the engagement partner.

## LJM1

*LJM1's Purpose.* Causey first became aware of LJM or the idea of LJM when Fastow approached him about three months before LJM1 was formed (June 1999). Fastow approached Causey about the idea of Fastow forming a private equity fund. Causey did not remember the specifics of their conversation. The concept was that LJM1 would be a source of available capital. Enron would not be required to use LJM1's capital. No special arrangements were made to transact with LJM1. Causey thought the idea of LJM1 was ok, that it was doable, that it was probably unusual, but from an accounting standpoint it worked. Causey's concern and role was whether it worked from an accounting point of view.

*Enron Participants.* Causey did not remember everyone at Enron who was involved with the initial LJM1 proposal. Ben Glisan was in the accounting organization and may have been involved. Causey was sure that he, Causey, had worked with accounting people on the concept; it was not a hard accounting question. There were related-party disclosure issues, and Fastow raised those issues. Causey could not recall whether he, Causey, had discussed the issues with Skilling. At some point, Fastow discussed LJM1 with Skilling. LJM1 was raised with the Board, explained to the Board, and Arthur Andersen was involved.

*Accounting.* Causey said that the accounting issue was control. Because Fastow was a related party, Causey relied on Arthur Andersen. Although it is not clear to this day that they had to do it this way, for purposes of analyzing the control issue, Arthur Andersen advised them to assume that everywhere Fastow was in the deal it would be the same as if Enron played that role, and based on that assumption make sure the structure worked. That was what Causey understood Andersen to recommend. Causey was concerned about control in terms of consolidation, and it was the only accounting issue that Causey was concerned about. Causey made sure that Arthur Andersen was satisfied, and he reported to the Finance Committee that LJM1 could meet structure and accounting requirements for deconsolidation.

*Disclosure.* The disclosure of the transactions was discussed. Setting up LJM1 was not considered a disclosure issue. Causey had in mind disclosure of transactions, not establishing the entity. The Rhythms NetConnections hedge was contemplated to be the first transaction with LJM1. Causey thought that LJM1 and the Rhythms NetConnections hedge were presented to the Board simultaneously. There was no discussion at that point about disclosure in connection with the initiation of the transaction; if there was, the discussion would have been in terms of disclosing the gains or losses to Enron.

*Presentations to the Board.* Causey gave a presentation to the Finance Committee about LJM1. Fastow also gave a presentation, but Causey was not present during that presentation. Causey did not remember when the full Board learned about LJM1. Causey was not selling it to the Board; he was just reporting on accounting issues. Arthur Andersen was not present during Causey's presentation. Causey communicated Arthur Andersen's views to the Finance Committee. Causey told the Finance Committee that Arthur Andersen had looked at the deal, that Arthur Andersen found that the transaction satisfied the accounting requirements, and that Arthur Andersen found that it would require disclosure but that it worked.

### June 28, 1999 Project LJM Board Presentation

Brenner showed Causey a ten-page document entitled Project LJM Board Presentation and dated June 28, 1999. Brenner showed each page of the document to Causey listing the various topics discussed during the presentation: the economics of the Enron stock positions, the current Enron stock positions of little value to Enron, a summary of the transaction, the direct value of the transaction to Enron, the benefits to Enron, a description of Fastow's involvement, a list of key elements of the transaction to be approved, the transaction structure, and the eight steps to complete the transaction.

*GP Commits \$1 Million.* Causey did not remember what he thought the first bullet-point, "General Partner commits \$1 million," under the heading "A. Fastow Involvement" meant in June 1999. As he looked at it today, it looked like the General Partner was Fastow. Causey did not remember any reaction by the Board to this bullet-point.

*Benefit to Fastow.* Brenner directed Causey's attention to the second bullet-point in bold and underlined under the heading "A. Fastow Involvement," stating that the "General Partner will not receive any current or future (appreciated) value of ENE stock." Causey said that Fastow repeated over and over again and told the committee that he was not going to benefit from any upside on Enron stock. The point of Fastow not benefiting from Enron stock was important to Causey, but Causey did not look at every angle of it. Causey could or could not have a personal view as to what this statement meant, but he did not get into it at the time. It was communicated to the Board that Fastow would not obtain any "pecuniary interest" in Enron stock, which Causey interpreted to mean that Fastow would not benefit from any appreciation in Enron stock. He did not know whether this item was discussed more than any other item. Causey's understanding was that Fastow would not gain any benefit from Enron stock transferred to LJM1. Causey speculated that if LJM made money on the Rhythms puts (as opposed to making money from appreciation in Enron stock) then perhaps Fastow personally would be able to make money on the transaction. Causey repeated that his concern was not with respect to whether Fastow was making money; rather, he was concerned about accounting issues once the transaction was structured. He did not remember whether there was any focus on Fastow's compensation or what Fastow might earn from his participation in LJM, but he speculated that there must have been some. Causey did not know whether the reference to Fastow not receiving any appreciated value of Enron stock was intended as a general statement or applied only to the Rhythms transaction. He acknowledged that the statement (if intended to be general) would be relevant to the Raptor transactions.

*LJM1 Transactions.* Causey did not remember anything regarding the presentation to the Finance Committee or any Board concerns. The Finance Committee received the information about all Enron investments. He would characterize the LJM1 investments as "pretty standard." While the investments were not standard because of the related-party aspect, the Board approached it like any other transaction. The Board made sure that the company wanted to enter into these transactions, and the Board took the accounting and legal issues into consideration like

any other transaction. It was fair to say that no special scrutiny was given to the LJM1 transactions.

*Skilling.* Causey said that Skilling would have been present during the LJM1 presentation. Skilling often commented on the deals. Causey did not remember any comments from Skilling on the Rhythms NetConnections deal or any communications with Skilling at this point in the history of LJM.

#### **Post-June 1999 LJM1 Transactions**

Causey did not remember whether any special practices or procedures were implemented for dealing with LJM1. After reviewing the June 28, 1999 LJM1 Board presentation, Causey did not remember whether the LJM1 Rhythms transaction was thought of as a "one-off" deal or not. Clearly it did not become a "one-off" deal, because LJM2 came into existence. However, Causey said that LJM2 was also "murky" in his mind.

Causey did not remember the purchase by LJM1 of the Osprey certificates, and he did not know whether he knew about it at the time. It was not typical for him to be aware of an Osprey purchase. Osprey was a SPE that held Whitewing. Glisan and Duncan were the two people that worked most on the deal, and they focused on structuring the deal. Glisan would have been the "accounting structuring" person from the finance group, and he reported indirectly to Causey. Causey monitored the process.

Causey said that the LJM1/Cuiaba deal was a sale by Enron. Typically, DASHs were used with related-party transactions where Enron was buying capital. Causey was not sure whether a review process was created using DASHs for sales. He recalled that, in regard to Cuiaba, a South American business unit wanted to sell a piece of the plant. Causey did not remember whether he knew LJM wanted to buy it, and he did not remember being asked to play a role in the purchase. He also did not remember if the South American business unit came to him with respect to selling to Fastow, and he did not recall whether the Finance Committee was told about the Osprey and Cuiaba purchases.

#### **LJM2**

Causey did not remember any specifics with respect to the proposal for LJM2. He recalled that LJM1 seemed to work so Fastow initiated the idea of LJM2. Structuring the partnership agreement was relatively routine. Arthur Andersen had some improvements with respect to the control question, such as an LJM2 investment committee and the percentage of outside limited partners that had to approve things. Duncan communicated directly with Fastow, and they worked a lot together directly on that, but structuring LJM2 was "not a big event."

Fastow was going to have a broader group of partners and raise capital. However, Fastow never said why he wanted to create LJM2. LJM1 was structured as one transaction while LJM2 was structured because there could be things in the future that Enron needed capital for. LJM2 was more open-ended.

No differences stood out between the presentations of LJM1 and LJM2 to the Board. Causey was sure that there were differences, but he would characterize LJM2 as another typical finance transaction.

### **LJM2 October 11, 1999 Presentation to the Board**

Brenner showed Causey a four-page document that was presented to the Finance Committee on October 11, 1999. Brenner showed Causey each page of the document discussing an update of LJM1, Enron's private equity strategy, the rationale for the LJM2 structure, and a summary of LJM2.

*No Forward Contracts to LJM2.* Brenner directed Causey's attention to the third-bullet point on page four under the heading "LJM2 Summary," which listed four major differences from LJM1, including "[n]o forward contracts / value from Enron contributed." Causey said that the statement that no forward contracts were contributed from Enron tied into the fact that Enron shares had been transferred to LJM1, but there was no first transaction with LJM2 yet. Causey did not focus at that time on whether the prohibition on forward contracts was the rule with regard to LJM2, and he would read it now as a reference to the fact that there was no proposed transaction at the time that would involve contributing such contracts. Causey did not recall any discussion of the issue. It was obvious during the LJM1 transaction that Enron contributed Enron shares, but at this point there was no deal with LJM2.

*No Business Relationships with LJM2 at Close.* Brenner directed Causey's attention to the second difference listed under the third bullet-point regarding major differences between LJM1 and LJM2, stating that there are "[n]o business relationships between Enron and LJM2 at close." Reading that today, Causey would interpret that to mean that there were no proposed deals at the time of closing LJM2.

*Causey to Approve Transactions.* Brenner directed Causey's attention to the fourth bullet-point concerning controls, which stated "R. Causey to approve all transactions between Enron and LJM1/LJM2." Causey stated that the only thing he knows is that there was never a lot of direction or assistance about what Causey should do with respect to approvals. He did not recall anything said to the Board about the control process or any questions from the Board, but there could have been.

*No Compensation From Enron to Fastow.* Brenner directed Causey's attention to the fifth bullet-point concerning compensation and disclosure. The bullet-point lists three points: "No compensation from Enron to A. Fastow"; "LJM2 has typical private equity fund fees and promote"; and "No related party disclosure expected at close. Related party disclosures specific to asset sales probably required." Causey said that, reading it today, the intent was to prevent Enron from compensating Fastow for his LJM2 activities. The statements do not suggest that Fastow would not receive compensation from LJM2 as a result of the transactions. Causey did not think that anyone in the room thought that Fastow would not earn anything. It was just that Fastow would not get any additional benefit from Enron because of the LJM2 partnership. Causey did not know whether the Finance Committee was told any additional information.

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*Arthur Andersen.* Brenner directed Causey's attention to the handwritten remark at the bottom of page four, which stated "Blake Has AA reviewed Causey yes, they're fine w/ it." Causey stated that he told Blake that Andersen believed LJM2 worked structurally. Only the concept of LJM2, and not any transaction, was discussed. He did not recall any particular transaction "teed up to go."

#### **Audit and Compliance Committee**

The Audit Committee clearly decided at some point that they would take a periodic look back at the LJM transactions. Brenner directed Causey's attention to the October 11-12, 1999 Board minutes stating that "the Audit and Compliance Committee would, on an annual basis, review all transactions completed within the past year and make any recommendations they deemed appropriate." Causey said there was no discussion of what the review would entail, just the idea was mentioned.

#### **Causey's Role in Approval Process re LJM2**

*Causey's General Role.* Causey was not sure how his role in the approval process came about. He did not think he received much direction from anybody. He described his view of his role. Someone would bring him the transaction, and there was a negotiation. No one forced Enron to use LJM2. Causey told people who asked that the toughest negotiations involved the internal ones at Enron. It was usually evident that there were strenuous negotiations, and he looked generally to see that that occurred. He also looked generally at the accounting and sometimes had a direct role in the negotiations, as with Raptor.

*Negotiations.* Causey would watch people's behavior to determine whether the negotiations were real and make sure that it did not appear that Fastow was "stepping on" a low-level employee. While that could have happened without coming to his attention, he looked to see if it happened. He obtained information about the negotiations by generally talking to those involved, and typically there was an accounting person involved. There was no standard way that things came to his attention. Causey said that the "completeness" of his review of the negotiations is probably an issue. Sometimes Causey talked to the lawyers, the finance people, and/or Fastow about the deals. There was no consistent method. Causey could not say that he knew about every LJM deal. Sometimes he learned about LJM deals before they closed, because someone would tell him about them. In addition, some people assumed that small LJM transactions did not require Causey's attention, which might account for why he did not know about all LJM deals.

Causey did not go out and seek to find LJM deals that were not presented to him. When LJM deals came to his attention, he might have done something affirmatively, but in general the information came to him, he would process it, and then follow-up where necessary. In most cases, it was "pretty easy" to determine that the negotiations were real. The business units were not excited that Fastow was in LJM, the business units had their own goals, and the deals that they did would affect how they were viewed by the company. Causey relied on this general concept - that the business units had their own interests to make sure the deals were real - as opposed to looking at individual deals. He was in touch generally with the accounting

transaction support people on LJM deals, and he relied on their reports. Some of the accounting people reported to Rodney Faldyn, and others reported to an accounting person in a business unit that reported indirectly to Causey. Causey did not remember any problems relating to whether the negotiations were real or someone was "stepped on" that came to his attention. Causey stated that accounting people and lawyers were involved in the LJM deals.

*Fastow During Negotiations.* Causey did not remember any specifics about whether Fastow injected himself into the LJM deals and pressured Enron people. Fastow was generally known for that kind of behavior when dealing with banks on behalf of Enron, but Causey did not recall any reports to him that Fastow was pressuring people on any LJM deal. Issues may have floated up to him, and Causey may have had to speak to Fastow about them. Such issues were probably raised around Raptor when Causey discussed with Fastow what Fastow was thinking, because Causey was negotiating to some extent with Fastow on Raptor. The issues that generally came to Causey's attention were about the process, such as Fastow not getting back to the Enron staff about certain matters.

Causey did not remember any specific instances of Fastow putting pressure on Enron employees, pushing too hard, or making it difficult on Enron employees. Causey did not think that he had heard of any general discussions that Fastow had pressured people or caused people problems, but Causey said that he had a hard time separating Fastow's known conduct for working with banks and Fastow's conduct relating to LJM deals. Causey did not think that Kopper had negotiated any LJM deals for Enron, and Causey did not remember any instances of whether Kopper pressured or pushed Enron employees or had others do that for Kopper. While he did not remember any specifics, Causey said that Enron people would call and say that the LJM people were bogging down or not moving fast enough on the deal, but these complaints had to do with logistics. Causey repeated that he could not recall anyone coming to him to complain about Fastow pressuring or pushing them, and Causey did not think it happened.

### **Approval Process**

*Buy's Role.* Causey did not recall specifically what Rick Buy's role was in the approval process other than to review the transactions. Causey said that he and Buy had communicated generally about the transactions, but he did not remember them dividing up the approval responsibilities. It was "somewhat ad hoc." Buy looked at risk while Causey focused on accounting. Causey did not remember Buy or anyone else expressing any concerns regarding the process.

*Skilling's Role.* Causey was not aware of whether Skilling reviewed or signed off on the LJM transactions. By default, Causey was on the Enron side of Raptor. Skilling was aware of the Raptor transactions, but Causey did not know if Skilling was aware of other transactions.

*Causey's Role.* Causey was not aware of any LJM deal being rejected during the approval process. Causey had accounting questions on deals, but he did not remember any that were negated and does not believe there were any negated. Causey did not make an assessment of the fairness of the deals as part of his role. Either Buy or the business units made that

assessment. Causey and others viewed it as a naturally occurring process that the business units would make sure that the deals were fair because they would be interested in fairness.

*Approval Sheets.* Causey said that eventually as a matter of routine he would receive LJM approval sheets for every transaction. The approval sheets would either precede or follow transactions. Causey generally gave them to Faldyn to review and made sure that Faldyn and Faldyn's team approved of the transactions before he, Causey, signed them. Faldyn may have initialed some of the forms. The approval sheets memorialized the transactions, but were not the driving force behind Causey's review. Causey sometimes reviewed a deal while it was occurring but did not sign an approval sheet until later. He also could not say that he looked at all the deals. Sefton and Mintz played roles in bringing LJM deals to his attention. Mintz did a better job than Sefton creating a process to make that work; Mintz was more meticulous than Sefton in getting the process done. Causey repeated that lawyers and accounting people were involved in the LJM deals.

*Causey's Awareness of Deals.* Causey was sure that there were LJM deals that he did not know about at the time that they occurred, but he could not identify them specifically. Causey believes this is true based on his review of the transactions described in the 8-K, particularly the many repurchases from LJM. He knew about the repurchase relating to Cuiaba, and he was aware of the SPE purchase of dark fiber, but believed Enron was not going to have an economic interest in the latter transaction. Those were the two deals that he knows he was aware of, but he would not say that there are others that he is not aware of. Causey would have wanted repurchases brought to his attention. Anyone who asked knew that Causey was not fond of repurchases. Causey said that he has no reason to believe today that deals were not brought to his attention intentionally. The deals could be pretty fast moving, and Enron is a pretty independent place. People could have moved forward without realizing that Causey wanted to know about LJM deals.

#### **Causey's February 2000 Presentation to the Audit and Compliance Committee**

Causey did not recall the specifics of his presentation to the Audit Committee in 2000. He never discussed with Dr. Bob Jaedicke what the Audit Committee wanted from him. Causey endeavored, and certainly did in the 2001 presentation, to list the transactions as they were presented to the Finance Committee. Brenner showed Causey an excerpt from the minutes of the February 7, 2000 Audit and Compliance Committee, stating that Dr. Jaedicke "called upon Mr. Causey for the report" and "Mr. Causey outlined the transactions that had been completed during the year including a description and the total amount of each transaction." Causey said that the report would have been something that Causey presented himself. He did not remember where the information came from. His staff would often help him prepare, and he assumed that is what happened here. The minutes, however, did not refresh his recollection. Brenner showed Causey the list of LJM transactions in 1999 that was presented to the Audit Committee. Causey did not know why some 1999 Enron transactions with LJM1 were not on the list, such as Cuiaba, the Osprey note repurchase, and a \$38 million loan from a Whitewing subsidiary to LJM. Causey would have endeavored to be complete, but obviously (looking at it today) the list was not. Causey did not remember the \$38 million loan to LJM, but thought he became aware of it later. There were a number of transactions that Whitewing was trying to do. It was not an "overly big

deal” – the principal and interest were repaid. In preparing his presentation to the Audit Committee, Causey relied on what he saw to become comfortable that the transactions were negotiated at arms-length

### **Changes in Approval Process**

When Mintz became involved, the process became better organized, and Causey felt better about it. Even then the process was not formal, but the biggest single thing was that Mintz tried to do a better job. He tightened up the approval sheet process, and, with his help, there were better reports to the Audit and Finance Committees.

*Sefton's June 19, 2000 LJM Approval Sheet Memo.* Brenner showed Causey a June 19, 2000 memorandum from Sefton to a group of thirty-three Enron employees, including Causey, reminding everyone of the approval process for transactions between Enron and LJM and attaching a copy of the approval form. Causey stated that it was fair to infer from this memo that Sefton was sending out this reminder, because the process was not going as well as it should have been. This was probably Sefton's attempt to do a better job. Fastow or Sefton came up with the concept of approval sheets, and it seemed like a good idea to Causey.

*Arthur Andersen.* Arthur Andersen generally made its views known in quarterly Audit and Compliance Committee meetings. Often, if the related-party transactions during the prior quarter were significant, Causey and Arthur Andersen would give kind of a joint report. Brenner directed Causey's attention to the minutes of the August 7, 2000 Audit and Compliance Committee meeting, stating that "Mr. Duncan discussed AA's selected observations regarding . . . the Company's transactions with the LJM investment vehicles . . ." Causey said that, if we went back and looked, we would see more references to Arthur Andersen's observations. Duncan "made a pass" at the transactions and then Causey commented on it. Typically Duncan might say to the Audit Committee that Duncan looked at the transactions, the Committee might ask him whether he was happy with them, and Duncan would say yes.

Duncan and Causey made it clear routinely that they were in gray areas on some of the accounting issues, and that other people might have different views. Beyond that cautionary statement, they did not say anything negative. Causey was certain that the cautionary statement was made regarding the Raptor transactions, because there were many difficult accounting questions, and Raptor would have warranted the cautionary statement. Conceptually, not from an accounting viewpoint but from a disclosure and public relations viewpoint, Duncan asked Causey privately whether the Board really wanted to do the LJM transactions. Duncan had not and was not expressing concern about the accounting or the adequacy of the disclosure. Instead, Duncan was concerned about what others might think of these transactions.

### **Fastow's Compensation From LJM**

*McMahon.* Causey said that McMahon expressed some frustration about Fastow's compensation from LJM. Once, maybe twice, McMahon went to Causey and asked whether Causey had done the math on what Fastow was making. Causey would let McMahon vent and then let it go. Fastow's compensation was not Causey's concern, and Causey viewed it as

something that Fastow would have to work out with Fastow's LJM partners. McMahon communicated his concerns that Fastow would be making a lot of money, but McMahon did not say whether he was concerned about fairness or something else.

*Skilling.* Besides McMahon, no one else expressed concerns to Causey about Fastow's compensation, other than one occasion when Causey reviewed with Skilling the Raptors and the way the transactions were going to work. During that conversation, Skilling told Causey "let's be sure that there wasn't too much money made" or some off-hand comment along those lines. No one else asked Causey about Fastow's compensation, and Causey had not heard that anyone else asked about it. The closest thing to questions about Fastow's compensation was the discussion by Mintz, Fastow, and Causey of the compensation that LJM made in general at an Audit Committee meeting in 2001. Winokur may have asked Fastow a question about it. Neither Causey, Duncan, nor Arthur Andersen raised the issue with the Audit Committee, and neither Duncan nor Arthur Andersen raised it with Causey.

#### **October 6, 2000 Finance Committee Meeting**

*LJM3.* Causey recalled that Fastow had pitched LJM3, but that it never happened. Causey remembered hearing Fastow describe it at a Finance Committee meeting, and Fastow may have discussed it with Causey before that meeting. Causey thought LJM3 was approved, and that it was needed for more capital, but that no transactions ever took place.

*October 6, 2000 Finance Committee Meeting.* Brenner showed Causey a six-page presentation on LJM3 at the October 6, 2000 Finance Committee meeting. Brenner reviewed each page with Causey describing the topics on private equity strategy, the rationale for the LJM structure, a summary of LJM1 and LJM2, a discussion of the conflicts of interest, and LJM3.

*Conflicts of Interest.* Brenner directed Causey's attention to page five and the discussion of the conflicts of interest. With respect to the first bullet-point concerning "LJM creat[ing] a conflict of interest for EVP/CFO of Enron" and the statement that Fastow "[n]egotiates investments in Enron transactions/business for LJM," Causey said that Fastow negotiated for LJM from time to time. Sometimes, as in Raptor, issues would surface from Glisan and Fastow's people at LJM and would be raised at Causey's and Fastow's level. Fastow also negotiated the Rhythms deal. With respect to the other deals, Fastow could have been involved, but Causey could not think of another deal where Fastow was involved. Causey did not know if he would have known that Fastow was involved in the negotiations.

*Approval of Transactions.* Brenner directed Causey's attention to the second bullet-point containing the statement that "R. Causey/R. Buy/J. Skilling approve all Enron-LJM transactions." Causey did not know why it was stated that Skilling would also approve all Enron-LJM transactions, but Causey did not believe that Skilling approved all the transactions. Mintz endeavored to get Skilling to sign off on all the transactions. Causey could not recall Skilling ever saying that he was not going to approve of a transaction.

*Fastow's Economic Interest.* Brenner directed Causey's attention to another statement under the second-bullet point stating that the conflict was largely mitigated: "Review

of A. Fastow's economic interest in Enron and LJM presented to J. Skilling." Causey did not know anything about the review of Fastow's economic interest, and he did not know whether it occurred. Causey did not recall whether anyone reported to the Finance Committee about Fastow's economic interest. Causey did not remember any discussion by Skilling that involved what Fastow might or might not have received from LJM. His only recollection is the off-hand remark that Skilling made, suggesting that Fastow should not make too much money.

*Compensation Committee.* Brenner directed Causey's attention to the references in the minutes of the October 6, 2000 Finance Committee meeting that "Mr. Fastow discussed the other investors in the LJM funds," that "Mr. Blake proposed that the Finance Committee also review transactions between the Company and the LJM funds on a quarterly basis," and that "Mr. Winokur proposed that the Compensation and Management Development Committee review the compensation received by Mr. Fastow from the LJM funds and the Company." Causey stated that he never prepared anything for the Compensation Committee about Fastow's compensation from LJM funds or the company. There was a time when Causey was in charge of the Human Relations department and thus attended Compensation Committee meetings, but Causey believes that he had this role prior to the period when LJM entered into transactions with Enron.

#### **February 12, 2001 Audit and Compliance Committee Meeting**

Brenner showed Causey the agenda for the February 12, 2001 Audit and Compliance Committee Meeting and the first page of a three-page attachment entitled "Related Party Transactions - LJM 2000 Internal Policies and Procedures." The fourth item on the agenda states: "Review of LJM procedures and transactions completed in 2000 - Mr. Causey."

Causey thought that Mintz prepared the summary of LJM policies and procedures. Causey looked at them at the time to make sure that he was comfortable with them.

Causey stated that the handwritten note at the top of "Related Party Transactions" attachment, stating "Causey Will discuss specific financial terms w/ Finance Comm," refers to the list of transactions that he had discussed previously.

Brenner directed Causey's attention to the checklist of additional controls developed with respect to the related-party transactions under the heading "Supplemental Efforts." The reference to the statement that "LJM senior professionals do not ever negotiate on behalf of Enron" would refer to the people working with Fastow, such as Kopper or perhaps Yaeger, although Causey was not sure she was senior enough to be included. These people did not negotiate on behalf of Enron. Causey did not know whether the second bullet-point, stating that "Enron professionals negotiating with LJM report to senior Enron professionals apart from Andrew Fastow," meant that anyone negotiating on behalf of Enron did not report to Fastow. A finance person who might be involved in negotiations on behalf of Enron might report to Ken Rice who reported indirectly to Fastow. Asked whether anyone directly reported to Fastow but also negotiated on behalf of Enron, Causey responded that, with respect to Raptor, Fastow was careful about not having any person reporting directly to him negotiating on behalf of Enron. Although the Board was told that no one reporting to Fastow would negotiate on behalf of Enron

even though Glisan had participated in negotiations for Enron. Causey stated that he, Causey, and not Glisan had negotiated the key points in the Raptor transactions. Moreover, Glisan had presented a detailed review of the Raptor transactions to the Finance Committee, and it should have been obvious to anyone on the Finance Committee from this review that Glisan was involved in the negotiations. Causey did not think that it would come as a surprise to anyone who was present for Glisan's review that Glisan was involved in Raptor. Causey did not know the extent of Glisan's participation in the negotiations on behalf of Enron in other LJM deals.

Brenner showed Causey the LJM approval sheet for Fishtail that showed that Barry Schnapper, who reported to Fastow, negotiated the transaction on behalf of Enron. Causey said this was an interesting deal. Fishtail involved Pulp and Paper, a separate business unit. Bill Brown was a finance person who reported to Mintz. There was an understanding that a corporate finance person would help out here and there on deals. In that context, Schnapper must have helped on the Fishtail deal. Schnapper's involvement did not necessarily surprise him. The finance group worked with lots of people on lots of deals. Their involvement in the LJM deals did not totally contravene what Causey presented to the Committee. Causey did not go back through all of the LJM deals and review the LJM approval sheets. Mintz created the format, and Causey thought and still does think that they are a fair representation of what was going on. Causey did not see the involvement of the corporate finance people as a key point. The whole process involved other people and business units that did not think the corporate finance function was a key factor in making the deal work. Causey was sure that there were discussions with the Finance Committee about the supplemental controls, but he did not remember what was discussed.

Causey and Mintz prepared a list of LJM transactions for the Audit and Finance Committee meetings. Causey did not recall the list that was sent out and whether it included the economics of the transactions, such as a broad description of the investment amounts. Causey obtained descriptions from people who generally helped him pull information together. Fastow was also looking at these issues and was aware of the presentation, and Fastow helped Causey pull together the information to some degree. But, Causey relied principally on his staff (most likely Faldyn) and Mintz.

Brenner directed Causey's attention to the second page of the attachment to the February 12, 2001 Audit and Compliance Committee agenda. This page listed the LJM investment 2000 activity with Enron. Causey acknowledged that this was the list of transactions that he pulled together with the help of Mintz and Fastow. The Audit Committee was not informed of any information other than what appears on the attachment. Causey probably did not go through each investment one by one, but instead presented them collectively to the Audit Committee.

Brenner directed Causey's attention to a document with the same title, "LJM Investment 2000 Activity With Enron," but with more detail and handwritten notes. Causey said that he probably used this document while giving the Audit Committee presentation and a parallel presentation to the Finance Committee. The handwritten notes are Causey's. The presentation was coordinated by Causey and Fastow's team. Fastow had a hand in preparing the presentation. More questions were directed to Fastow than Causey. In the Finance Committee presentation, either Causey or Fastow discussed the return to LJM, which Causey described as somewhat of a

joint effort. Causey did not remember whether any person on the Audit Committee or Finance Committee came out against LJM's investment activities or asked Fastow how much Fastow was making. Causey speculated that perhaps the Compensation Committee minutes referenced how much Fastow was making or that Fastow's compensation was reviewed at the October 2001 Audit Committee meeting. With regard to Causey's handwritten note in reference to Rhythms, stating "Andy got no interest in this," Causey said that it would surprise him if Fastow received any interest in the Rhythms transaction, and Causey may well have told the committee that Fastow had no interest in the transaction. Fastow told Causey privately that he did not get anything out of the deal. Fastow may have said it in a way that Causey interpreted more broadly than Fastow intended, but, of all things, Fastow receiving interest from Rhythms would surprise him the most thus far. Fastow was present for the Finance Committee meeting. Causey did not remember whether Skilling was present, but Skilling was typically there.

#### **Mintz' March 8, 2001 Memo to Buy and Causey**

Brenner showed Causey Mintz' March 8, 2001 memorandum to Buy and Causey regarding the LJM approval process. Causey said that he recalled the memorandum generally, and stated that it was part of Mintz' effort to try to improve the process. Nothing in particular triggered Mintz' memo, but two things probably coincided with the memo. First, Mintz was working on the 2001 proxy statement. Second, Mintz and Causey had a couple of discussions when Mintz first became involved about LJM and Mintz' desire to improve the process.

Mintz may have approached Causey in the fall 2000 about the process. They had a couple of conversations. Causey did not remember any specifics. In general, Mintz said that he wanted to do certain things, and Causey was supportive and had no reason not to be supportive.

#### **Communications Between Enron and SEC Staff Regarding SPEs**

Causey did not recall any discussions with the SEC Staff regarding SPEs. There was one telephone conversation with the Staff about a Marlin repurchase. The Staff called – Scott Blakely or Bleakly – and asked whether the transaction should be consolidated. Causey thought about it and told the Staff that the transaction should not be consolidated and explained why. The Staff said that they would get back to Causey, but they never did. Arthur Andersen advised Causey not to circle back to the Staff and, instead, to wait for the Staff to get back to him. Causey did not prepare any documents memorializing his conversation with the Staff. Duncan talked to John Stewart about it, and they said that the Staff would contact Causey again if they disagreed with Causey's conclusion.

#### **The Matrix**

Causey said that there are no documents that explain Enron's "matrix" organization very well. Causey has lists of accounting people who report directly or indirectly to him. Fastow probably tried to put something together to show the matrix. Except for Global Accounting, the organization charts are not good.

### Accounting Meetings

Enron's accountants meet quarterly. Approximately 150 accounting people from the manager level and above hold an annual meeting, and approximately 80 accounting people from the director level and above also hold meetings. In addition, about one year ago, there was a meeting at a Houston hotel for everyone in accounting. Finally, Faldyn had regular meetings with his transaction team and open meetings on a variety of topics, such as FASB 133.

Causey did not know whether Fastow held any meetings. Fastow was invited as a guest speaker to an accounting meeting, and Fastow attended a tax meeting.

There were two or three meetings offsite that involved detailed discussions of technical issues, and they talked about Whitewing and other SPEs. Presentations of these meetings might exist, and we should ask Faldyn for them.

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MEMORANDUM

TO: Enron Files

FROM: Reed M. Brodsky

DATE: December 13, 2001

RE: Second Interview of Richard Causey

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On December 12, 2001, Joe Brenner and Reed Brodsky of Wilmer, Cutler & Pickering ("WCP") and John Sullivan of Deloitte & Touche (an accounting firm retained by WCP), spoke with Richard Causey, Enron's Executive Vice-President and Chief Accounting Officer, at Enron's Houston headquarters to gather information from him in order to allow WCP to provide legal advice to the Special Committee of Enron's Board of Directors. Jacks C. Nickens of Clements, O'Neill, Pierce, Nickens & Wilson, L.L.P., was present and represented Causey.

This memorandum has been prepared by counsel in anticipation of possible litigation arising from a Securities and Exchange Commission ("SEC") investigation and any parallel or related proceedings. This memorandum incorporates the mental impressions, analyses and opinions of counsel. As such, this memorandum is intended solely to assist counsel in providing legal representation and advice to the Special Committee of Enron's Board of Directors, and is not intended to provide a substantially verbatim recital of Causey's statements. The interview was based on WCP's understanding of the facts and review of documents as of the date of the interview. Furthermore, Causey has not reviewed this memorandum. Therefore, this memorandum may contain inaccuracies and the following discussion of certain events may be incomplete or lack context.

**Overview of Disclosure Process**

Causey stated that he was generally responsible for the preparation and drafting of the financial statements in the 10-Q's and 10-K's. Legal personnel were primarily responsible for the preparation and drafting of the proxy statements.

*Drafters.* Bob Butts was in charge of preparing the drafts for the 10-Q's and 10-K's. Jan Johnson, and later Gary Peng, was the head of the financial group that prepared the drafts, including the financial statements, the footnotes to the statements, and the management discussion and analysis. Johnson and Peng reported directly to Butts. Shortly after each quarter ended, Butts, Johnson, and Peng started the drafting process. Butts, Johnson, and Peng, and their staff, gathered together the relevant detailed information from accounting personnel at various business units. After gathering the information, they would prepare a draft of the 10-Q or 10-K and distribute it to a large group of people. Before the drafts were distributed widely, Causey would normally receive a first draft of the 10-Q and a first draft of the 10-K (except for the front section of the 10-K, which Rex Rogers and legal personnel would review). Butts and Peng lead

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the team that drafted the footnotes regarding related-party transactions, and legal personnel helped.

*Causey.* Causey did not receive the draft 10-Q's and 10-K's piecemeal, but rather he received the draft in one document. Typically, Causey would not focus on the very early drafts that he received, because it was too early in the process and Causey knew that changes would be made. Eventually, Butts would tell Causey that the draft was in good shape, and Causey would then review it. After Butts felt that he had a good draft, he distributed the draft 10-Q's and 10-K's to a broad group of people, which included the heads of business units, accounting people, and legal personnel, who would then give the drafts different levels of attention.

In general, Causey read two drafts of the 10-Q's. Early in the process, Causey would review a draft after Butts told him that it was in good shape. At this stage, the draft was incomplete. After reviewing it, Causey would meet with Butts and discuss any changes. Butts might give a revised draft back to Causey so that Causey could check changes that were made. Causey did not keep copies of any of the initial drafts or marked-up drafts that Butts returned to him; Causey did not know whether Butts kept any of Causey's marked-up drafts. Causey would review the draft fully again for a second time much later in the process.

In general, Causey estimated that he read, on average, three drafts of the 10-K's. As with the 10-Q, Causey would not generally review the first draft of the 10-K that came to his attention. Causey would wait until Butts let him know early on in the process that the draft was in good shape and ready for his review.

*Skilling.* Jeff Skilling provided his comments on the draft 10-Q's and 10-K's to Causey. Causey would highlight parts of the drafts that, in Causey's view, warranted Skilling's attention. Causey would typically leave Skilling a voicemail message about his comments or sometimes meet with Skilling. Sometimes nothing would warrant Skilling's attention. In general, Skilling's comments were very straightforward. No other senior managers provided their comments on the draft 10-Q's and 10-K's directly to Causey. Others, such as the investor relations group, headed by Mark Koenig, would provide comments to Butts directly.

*Arthur Andersen.* Arthur Andersen would receive drafts at least as regularly as Causey would. Andersen would review and then comment on the drafts. Peng would know more about Andersen's role in the drafting process. In general, Butts and Peng would work with Andersen on the footnotes to the financial statements and, if there were any issues that needed to be discussed, Causey would meet with Butts and Dave Duncan (the Andersen engagement partner) to discuss them.

*Vinson & Elkins.* Vinson & Elkins' role in the drafting process was largely coordinated through Enron's legal department. Rex Rogers would know more about Vinson & Elkins' role in the process.

*Non-officer directors.* Typically, the Audit Committee would not review drafts of the 10-Q's. Instead, the Audit Committee was provided with feedback on a quarterly basis by Causey and Duncan. Causey noted that the last 10-Q (for the third quarter of 2001) was an exception to

the rule, and the Audit Committee was provided with a draft of the 10-Q before it was filed. Everyone on the Audit Committee would receive a draft of the 10-K before the Audit Committee meeting. Causey's practice was to attend the Audit Committee meetings, focus the Committee on a few highlights in the 10-K, and answer any questions. Other than the Audit Committee, no other non-management directors would receive a copy of draft 10-Q's or 10-K's.

*Related-party disclosures.* Causey had the impression that Butts, Johnson, Peng, and legal personnel participated significantly in preparing the disclosure regarding related-party transactions. Causey did not know which people drafted the specific parts of the disclosure. Causey knew that related-party transactions were going to be disclosed, and he focused on it to some extent because he knew that it was a sensitive matter. However, he did not focus on the disclosure about related-party transactions any more than he would any other sensitive matter.

Causey brought the disclosure of related-party transactions to Skilling's attention, because he wanted Skilling to know about the disclosure. He specifically raised the disclosure about the Raptor transactions with Skilling. When Skilling asked whether the disclosure was required, Causey told Skilling that it was. Causey did not remember Skilling's specific comments about disclosure of related-party transactions. In general, Skilling commented on the clarity of the disclosure and whether it was easily readable and understandable.

Causey did not recall any particular meetings or discussions of disclosures regarding related-party transactions or LJM. People in general commented on related-party transactions. Causey told the Finance Committee and the full Board that specific disclosure about related-parties was required. Causey stated that the same standard of disclosure – FAS 57 – applied to the LJM transactions as it did to all other related-party disclosures. Causey was not aware of any other guidelines that were applied to the related-party disclosure. Andersen never gave Causey materials on FAS 57 or other disclosure obligations, but Andersen may have provided such information to Butts or Peng.

Causey did not recall anyone raising any issues or concerns internally about disclosure regarding related-party transactions or LJM. There were no special meetings or training sessions regarding disclosure of related-party transactions. Andersen would have raised general comments about the disclosure, but Andersen's comments would have been no different than with respect to any other part of the financial statements. Causey did not recall any broad, generally positive or negative comments from Andersen about disclosure regarding related-party transactions or LJM. Causey did not remember asking Andersen specifically to focus on disclosure of related-party transactions. It was clear to Causey that Andersen was focused more on the footnotes about related-party transactions than other parts of the public filings. Related-party transactions may have been raised during Rodney Faldyn's weekly meetings about transactions, but they would not have come up in the context of disclosure in public filings. With respect to legal personnel and Vinson & Elkins, the only thing that Causey remembered was that Jordan Mintz had worked hard on the disclosure regarding related-party transactions and LJM in the proxy statements. If issues about the disclosure in the 10-Q's and 10-K's came up at all, they came up in discussions and comments about specific related-party transactions.

### 10-Q for the Second Quarter 1999

Brenner showed Causey footnote 8 to the financial statements of Enron's 10-Q for the quarterly period that ended June 30, 1999, entitled "Related Party Transactions." Causey did not remember whether there was a particular focus on the LJM related-party transactions when they were disclosed for the first time in the 10-Q for the second quarter. He also did not have any particular recollection regarding this footnote. He was not aware of the information sources used by the drafters of this footnote. Causey did not remember whether LJM's stated purpose at that time was engaging "in acquiring or investing primarily in energy related investments" as stated in the second sentence of footnote 8. However, Causey did not believe that LJM had engaged in acquiring or investing in any energy related investments at the time that this disclosure was made. Causey did not know who drafted the third sentence stating that "[a] senior officer of Enron is managing member of LJM's general partner," and Causey did not know and did not remember any discussion of why Fastow was not identified specifically as the "senior officer." Causey did not believe that there was any discussion about disclosing the compensation that Fastow would receive from LJM. Causey understood that the nature of what Fastow was making was outside what was required to be disclosed under FAS 57. Causey thought that FAS 57 only required disclosure of transactions and the impact of those transactions.

Causey did not recall why the footnote did not disclose specific transaction terms and dollar amounts. He did not recall why it did not specify the amount of the "note receivable" referred to in the fourth sentence. His basic understanding of FAS 57 is that disclosure of the note is required, but disclosure of the amount is not. Causey did not participate in making the decision not to disclose the amount of the note. Causey stated that, looking at it today, the disclosure was written correctly and the transaction was described. Causey speculated that the amount of the note may not have been critical and obviously was not thought to be at the time if it was not disclosed.

Causey did not know who had drafted the last statement in the footnote stating that "[m]anagement believes that the terms of the transactions were reasonable and no less favorable than the terms of similar arrangements with unrelated third parties." Causey must have read and believed it at the time. Causey did not remember whether Price Waterhouse's opinion that the transaction was done at arms-length was important to management's decision to state that the terms of the transaction were reasonable.

Causey did not remember any conversations or discussions about the disclosure of the related-party transactions. A draft of the disclosure was given to him, and he reviewed it. Causey focused on the arms-length nature of the transaction and determined that the disclosure was a fair representation of what had happened. Causey did not know of any record of the discussions that Enron had with Andersen about disclosing related-party transactions and speculated that such discussion might be reflected in any marked-up drafts that were retained.

### 10-Q for the Third Quarter 1999

Brenner showed Causey footnote 10 to the financial statements of Enron's 10-Q for the quarterly period that ended September 30, 1999, entitled "Related Party Transactions." Causey

did not remember any affirmative decision that derivative transactions between Enron and LJM Swap Sub during the third quarter did not need to be disclosed. Causey stated that there were a series of options that were entered into with LJM Swap Sub that were being perfected for the first time. He speculated that it was not viewed as important to change the disclosure regarding Rhythms NetConnections from what had appeared in the 10-Q for the second quarter.

Causey did not remember any discussion whether LJM's purchase of an interest in Cuiaba or LJM's purchase of Osprey certificates had to be disclosed in footnote 10. Causey speculated that LJM's purchase of Osprey certificates were not disclosed, because they were not direct transactions with Enron, Whitewing had not been consolidated on to Enron's financial statements, and there was no impact on Enron's gains or losses.

Causey did not know if Butts, Johnson, Peng or others preparing the draft 10-Q's and 10-K's had set up a process to identify and learn about Enron's transactions with LJM for purposes of determining what should be disclosed. Causey speculated that legal personnel might have kept the drafters informed and stated that Butts would probably be the best person to talk to about how and what the drafters learned concerning LJM transactions.

Regarding whether the disclosure of transactions, such as LJM's purchase of Cuiaba, turned on whether they had an impact on Enron's income, Causey believed that the gain or loss on specific transactions was considered. Causey would think about disclosure in terms of the impact of a specific transaction on Enron. With respect to related-party transactions, Causey looked at whether the transaction in question was with Enron or another entity, and, if it was with another entity, Causey did not consider it a related-party transaction that required disclosure.

#### 10-K for 1999

Brenner showed Causey footnote 15 to the financial statements in the 10-K for the period that ended December 31, 1999, entitled "Related Party Transactions." With respect to the second sentence in the second paragraph stating that LJM2 had "acquired, directly or indirectly, approximately \$360 million of merchant assets and investments from Enron, on which Enron recognized pre-tax gains of approximately \$16 million," Causey would have to check what specific transactions were involved. Causey did not recall any discussion about whether related-party transactions should be aggregated or identified separately, and he did not remember any draft sent to him identifying transactions separately. Causey explained that, in general, similar matters, such as leases, were aggregated for purposes of disclosure, and he believed that the same approach was followed with LJM2 transactions. If Enron had engaged in transactions with different related-parties, the transactions would have been disclosed separately. Causey cautioned, however, that he did not remember his thought process at the time concerning LJM2.

Brenner directed Causey's attention to the third sentence in the second paragraph, stating that "LJM2 entered into an agreement to acquire Enron's interests in an unconsolidated equity affiliate for approximately \$34 million." Causey stated that this statement must be referring to Osprey. Causey did not think it could be referring to Yosemite, because Enron did not have an economic interest in Yosemite and, typically, Enron has an economic interest in unconsolidated

equity affiliates. Causey did not believe it was important to identify the entity for disclosure purposes. Causey explained that his approach with respect to the public filings was to review the drafted disclosure and determine whether the disclosure was factual and accurate. He was not sure that the "who" and "why" mattered as much as the fact that accurate information was disclosed.

Brenner directed Causey's attention to the last sentence of the second paragraph in footnote 16, stating "LJM acquired other assets from Enron for \$11 million." Causey did not remember why this information (which apparently refers to the Cuiaba interest) was disclosed in the 10-K but not in an earlier 10-Q. He speculated that, by the time the 10-K was filed, there was either a better process in place enabling them to gather more information about LJM transactions or more transactions had to be disclosed because over time they had become more significant when considered in the aggregate. Causey was aware that, in connection with the Cuiaba transaction, mark-to-market income was recorded on a gas contract, but he did not recall whether mark-to-market income was recognized in both the third and fourth quarters of 1999, and he did not recall the amount of mark-to-market income that was recognized.

Brenner directed Causey's attention to the last sentence of the third paragraph in footnote 16, stating that "an officer of Enron has invested in the limited partner of JEDI and from time to time acts as agent on behalf of the limited partner's management." Causey was surprised to see this disclosure; he did not recall it and did not remember where this information came from. It was possible that the information was a late addition to the 10-K and did not capture his attention. Causey did not know the underlying facts at the time that this information was disclosed. Causey did not recall discussing this information until the 10-K was filed for the period that ended December 31, 2000.

Brenner directed Causey's attention to the final paragraph in footnote 16, stating that "[m]anagement believes that the terms of the transactions with related parties are representative of terms that would be negotiated with unrelated third parties." Causey did not remember drawing any distinction between the disclosure in the 10-K that the transactions were "representative of terms" that would be negotiated with unrelated parties and the disclosure in the 10-Q's that, by contrast, stated that the terms of the transactions were "reasonable" and "no less favorable than the terms" that would be arranged with unrelated parties. Causey did not remember whether a conscious decision was made to use language in the 10-K that was different from the 10-Q's. Causey also did not remember any discussion or decisions made regarding whether the terms of LJM transactions were "representative" or "reasonable." Finally, Causey did not recall whether the change in terminology came from Enron personnel or outside advisors. He speculated that perhaps the change was made by Enron's legal personnel.

At this point, Nickens stepped out of the interview to make a telephone call, but told us to continue with the interview.

#### **10-Q for the First Quarter 2000**

Brenner showed Causey footnote 7 to the financial statements in the 10-Q for the quarterly period that ended March 31, 2000, entitled "Related Party Transactions." Causey

confirmed that the put option discussed in sentence four was given to LJM for free, and he stated that the disclosure in the 10-Q was consistent with what happened. Causey did not remember whether there was any consideration given to disclosing that the put option was given to LJM for free. From his perspective today, Causey stated that he would have to go back and study the issue in its proper context. He recalls that Enron entered into the put option with LJM as part of a negotiation that was taking place and to eliminate the market price risk during what was going to be a short window. In contrast to the full transaction, the existence of the put option was a detail that was not necessarily important and did not necessarily have to be disclosed.

Nickens returned to the interview.

Brenner directed Causey's attention to the last sentence in the first paragraph of footnote 7, stating that "Enron advanced to LJM \$10 million, at a market rate of interest, which was repaid in April 2000." Causey recalled that the purpose of the loan was for LJM to buy out LJM's limited partners. LJM had two limited partners that were banks, and they were bought out. Causey understood at the time that these limited partners were not replaced. When Causey recently learned the identities of the replacement limited partners, he was surprised. He had never conceived that there were other limited partners or that they would be Enron employees.

Causey did not know why the Cortez transaction was not disclosed in the first quarter 10-Q when the transaction was completed before March 31, 2000. Causey did not know whether he was aware of Cortez at the time. Causey would read the disclosure about related-party transactions and rely on the drafters to disclose all the transactions. Causey did not keep a list of transactions and check that each one was disclosed; he relied on his memory. Causey thought that Scott Sefton kept track of the ongoing transactions with LJM. He did not know whether Butts or Peng had access to Sefton's information about the transactions.

#### 10-Q for the Second Quarter 2000

Brenner showed Causey footnote 7 to the financial statements in the 10-Q for the quarterly period that ended June 30, 2000, entitled "Related Party Transactions." Causey did not remember whether there was any rationale for dropping the specific reference to LJM and, instead, referring to an unidentified limited partnership that was a related party. Someone must have thought it was important to add the second sentence in the first paragraph, stating that "[t]he limited partners of the Related Party are unrelated to Enron." Causey did not know why the statement was added or what was done to verify the statement's veracity.

With respect to the third paragraph in footnote 7, Causey thought that this disclosure about the Raptor transactions was the product of the same disclosure process. The Raptor transactions were fairly complicated to describe. Causey remembered working with Butts and Peng to make sure that these transactions were disclosed.

Causey did not remember any discussion of disclosing LJM's purchase of GE Turbines. Causey did not recall any details regarding Enron's involvement in this transaction.

### 10-Q for the Third Quarter 2000

Brenner showed Causey footnote 7 to the financial statements in the 10-Q for the quarterly period that ended September 30, 2000, entitled "Related Party Transactions." Brenner directed Causey's attention to the fourth paragraph stating that Enron had entered into derivative transactions with newly-formed entities to hedge certain merchant investments and assets and the fifth paragraph stating that management believed the terms were reasonable and representative of terms that would be negotiated with unrelated third parties. Causey did not recall any discussion or consideration about whether the derivative transactions with the Raptor entities were representative of terms that would be negotiated with unrelated third parties. Causey reviewed these statements in footnote 7, but probably did not think about it for a long time.

Causey did not recall any discussion about why the Margaux transactions with LJM2's purchase of the Osprey certificates, and transactions with LJM relating to TNPC should not or did not have to be included in footnote 7. Causey did not recall any discussions at the time about leaving out some transactions or the general disclosure in footnote 7. Causey stated that he had reviewed the footnote and, if he had been aware of something that should have been disclosed but was not, he would have said something about it.

### 10-K for 2000

Brenner showed Causey footnotes 9 and 16 to the financial statements in the 10-K for the period that ended December 31, 2000, entitled "Unconsolidated Equity Affiliates" and "Related Party Transactions" respectively. Brenner directed Causey's attention to the seventh sentence in the first paragraph below the table on page F-23 in footnote 9, stating that "Whitewing contributed \$7.1 million to a partnership formed by Enron, Whitewing and a third party," and the second paragraph below the table on page F-23 referring to The New Power Company selling stock to the related party. Causey did not know why Whitewing's contribution to the partnership and The New Power Company's sale of stock were not mentioned in Enron's 10-Q for the third quarter even though these transactions took place before the third quarter ended. Causey speculated that more likely than not the transactions were simply missed, and there was no conscious decision to omit mention of these transactions from the 10-Q for the third quarter. Causey further speculated that the drafters of the 10-K may have had more information than at the time the 10-Q for the third quarter was filed, because they had more time to gather the information, and the presentations made to the Audit Committee about LJM transactions meant that there was more information available.

Brenner directed Causey's attention to the second to last sentence in the sixth paragraph of footnote 16, stating "Enron contributed a put option to a trust in which the Related Party and Whitewing hold equity and debt interests." Causey stated that the statement must relate to a put option with Whitewing, and the trust probably refers to Osprey. Causey would guess that that is what this statement is about. Causey believed that Butts would know what this statement relates to specifically, and he speculated that Butts might keep files that would contain the basis for this statement. Causey added that the answer may also be found in Andersen's work papers, but sometimes certain disclosures do not lend themselves to supporting documentation.

## Proxy Statements

*Causey.* Causey did not have a detailed understanding of the process for preparing the proxy statements. Legal personnel – perhaps Rex Rogers – managed the process and coordinated with the people responsible for collecting information about compensation. Causey was one of many that received drafts. He received drafts in the early stages, and he did a cursory review of the draft late in the process to determine if anything stated had raised any issues. Causey did not focus on any particular aspect of the proxy statement. In the last proxy statement, for example, Causey took ownership of the description of the auditor's fees (because it was a new requirement) and worked with David Duncan on this matter. Causey was not aware of the roles played by people on his staff in the preparation of the proxy, and he speculated that Butts only conducted a cursory review of draft proxy statements.

*Comparison of public filings.* With respect to any overlap with the disclosures in the 10-Q's, 10-K's, and the proxy statements, Causey recalled clearly that there was a process in place to consider the overlap this year, because Jordan Mintz was involved in disclosures for all three public filings. Causey was not aware of whether a comparison was made between the related-party disclosures in the 10-Q's, 10-K's, and the proxy statements. Causey speculated that no comparison was made because there are different requirements for disclosure in 10-Q's, 10-K's, and proxy statements. Causey expected legal personnel to compare the 10-Q's, 10-K's, and proxy statements for consistency. Causey did not have a good understanding of what was required to be disclosed in the proxy statements and relied on legal personnel. He did not remember reviewing the proxy statements to determine whether some of the information should appear in the financial statements of the 10-Q's and 10-K's. If Causey had noticed that more information was disclosed in the proxy statement than the 10-Q's and 10-K's, Causey would not have asked why, because he understood proxy statements had different disclosure requirements. For example, disclosure of the contract between Ken Lay's sister's travel agency and Enron was required in the proxy statements but not in the 10-Q's and 10-K's. Causey reviewed draft proxy statements for inconsistencies and items that did not look right to him.

*Related-party disclosure.* Causey recalled being very generally aware of the existence of meetings and discussions about the disclosures of related-party transactions and LJM in the proxy statements. Causey was not involved in such meetings and discussions. Mintz and Rogers were involved. Causey did not remember anything specifically, but he recalled that the attorneys were being as careful as they could be.

Causey did not know one way or the other whether the disclosure of Fastow's compensation from LJM was an issue that was raised or discussed. There was definitely no discussion of proxy disclosure of Fastow's compensation from LJM at the Audit Committee meetings. Causey did not think that he ever talked to Fastow regarding disclosures in the proxy statements.

Causey did not recall any questions that were raised regarding the disclosure of LJM in the proxy statements. Based on Mintz' comments to Causey, Causey understood that Mintz had worked very hard on the disclosure relating to related-party transactions in the last proxy.

*Skilling.* Causey did not know whether Skilling was involved in the preparation or review of the proxy statements.

*Andersen.* Andersen played a limited role, if any, in preparing and reviewing draft proxy statements. Causey assumed that Andersen received draft proxy statements late in the process. If Andersen had any input into the preparation of the proxy statements, Andersen would have sent its comments to either Causey or Butts. Causey did not remember Andersen coming to him regarding any disclosure in the proxy statements. Duncan also had a direct relationship with Rogers.

*SPEs.* Causey did not believe that there was any discussion of disclosing in the management discussion and analysis section Enron's use of Special Purpose Entities ("SPEs") and the role SPEs played in the financial statements. Andersen never raised general disclosure relating to SPEs as an issue. Causey never considered or thought about disclosing this information. The issue never came up in Causey's discussions with Koenig or the investor relations group.

Causey did not remember hearing from Koenig or Steve Kean regarding the purpose or use of SPEs. From time to time, Enron was criticized for having complicated filings, but Causey never heard anything about SPEs from Koenig or Kean.

*Unconsolidated affiliates.* There was a fairly lengthy footnote about unconsolidated equity affiliates in Enron's public filings. Causey felt that the disclosure about such affiliates was complete. There was no discussion with Andersen about disclosing more information about the affiliates than what was disclosed.

#### **Analyst Calls**

Causey only participated in the regularly scheduled earnings release calls, not the regularly scheduled quarterly calls. Causey did not remember any mention of related-party transactions during the earnings release calls. Other than during the regularly scheduled earnings release calls and approximately three times when Koenig would introduce an analyst to Causey and Causey would answer the analyst's questions, Koenig would handle any questions from analysts. Koenig did not contact Causey about these analyst questions. Causey was certain that Koenig had asked for an explanation of the related-party transactions and that they had discussed such transactions. However, Causey did not remember any specific discussions with Koenig about Raptor.

#### **Comments From SEC**

The only comments that Causey recalled from the SEC about Enron's public filings were from about two to three years ago. Causey was almost certain that the SEC comments had nothing to do with disclosure about related-parties.

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MEMORANDUM

TO: Enron Files  
FROM: Reed M. Brodsky  
DATE: December 22, 2001  
RE: Third Interview of Richard Causey

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On December 21, 2001, Chuck Davidow, Joe Brenner and Reed Brodsky of Wilmer, Cutler & Pickering ("WCP") and John Sullivan and Jim Johnson of Deloitte & Touche (an accounting firm retained by WCP), spoke with Richard Causey, Enron's Executive Vice-President and Chief Accounting Officer, at Enron's Houston headquarters to gather information from him in order to allow WCP to provide legal advice to the Special Committee of Enron's Board of Directors. Jacks C. Nickens of Clements, O'Neill, Pierce, Nickens & Wilson, L.L.P., and Michael Levy and Amy Carpenter-Holmes of Swidler Berlin Shereff Friedman were present and represented Causey.

This memorandum has been prepared by counsel in anticipation of possible litigation arising from a Securities and Exchange Commission ("SEC") investigation and any parallel or related proceedings. This memorandum incorporates the mental impressions, analyses and opinions of counsel. As such, this memorandum is intended solely to assist counsel in providing legal representation and advice to the Special Committee of Enron's Board of Directors, and is not intended to provide a substantially verbatim recital of Causey's statements. The interview was based on WCP's understanding of the facts and review of documents as of the date of the interview. Furthermore, Causey has not reviewed this memorandum. Therefore, this memorandum may contain inaccuracies and the following discussion of certain events may be incomplete or lack context.

Davidow explained that, during our third interview with Causey, we would focus on LJM-related transactions, that we would ask open-ended questions, and that we were interested in Causey's recollection based on what he knew at the time of the events as opposed to what he has learned recently. Davidow further explained that, as during our prior interviews with Causey, the conversation was privileged but it was Enron's privilege, not his, and Enron alone has the ability to waive the privilege. Davidow stated that we were communicating with the SEC and other Government organizations seeking information.

**Chewco**

Causey did not recall having any role in the Chewco transaction. He was aware of the transaction at the time. He was aware that Chewco was a special purpose entity ("SPE"), Chewco was going to buy out CalPERS' interest in JEDI, and the transaction would create an unconsolidated subsidiary. Other than that, he had no further recollection of the transaction. He

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did not know how the transaction came to his attention; at the time, it was not raised as a significant transaction from an accounting perspective. Causey did not recall any accounting issues relating to Chewco coming to his attention this year before Chewco was consolidated retroactively as part of the November 2001 restatement. Causey recalled seeing the Chewbacca "head" that commemorated the transaction for the first time approximately one year ago.

Causey knew about Chewco's buyout of CalPERS' interest at the time it occurred. Andrew Fastow started talking about a potential buyout during the year prior to when it happened. Fastow was in charge of finance matters, and Causey had no objection to the transaction if Fastow wanted to do it. Causey did not recollect assisting on any accounting issues related to the transaction. By that time, structured finance groups were dispersed across business units and reported to Rodney Faldyn. Someone on Faldyn's team would have had responsibility for any accounting issues.

Causey was not certain whether Chewco was the first time that Enron used a SPE to deconsolidate something. Causey knew about Enron's use of SPEs previously in leasing transactions. He had spent time on a 1992 leasing transaction that involved a SPE. Causey also had some knowledge of SPEs before joining Enron. As a result, Causey was familiar indirectly with the 3% requirement. Chewco was handled by the finance, accounting, and legal groups in Enron's North America organization, which Enron called ECT at the time. ECT's then-CEO, John Nichols, would know about Chewco and probably had worked on the transaction.

Causey did not recall Michael Kopper's role in the Chewco transaction, Chewco's capital structure, or any other facts at the time. He did not remember hearing about the transaction at a Board or Board committee meeting. He understood that Ben Glisan and Jeremy Blachman, whose name appears on documents relating to Chewco, worked on the accounting side of the transaction. Causey would have expected Blachman to understand the significance of the loan-related papers.

When Chewco was consolidated recently, Causey had Arthur Andersen review the transaction. However, Causey repeated that he did not recall being involved in any accounting review of the transaction at the time it was structured. The accounting department in the business unit that oversaw the transaction would have reviewed it. Enron is a decentralized organization. Each business unit has an accounting group, a legal group, and a finance group. Each accounting group reports to its respective business unit and to Causey indirectly. In general, Causey worked with Nichols discussing issues that either he or Nichols had raised.

Causey typically signed the 10-Q's and 10-K's. He did not determine specifically that all transactions met SPE requirements. He addressed issues when they came up. He did not have a formal sign-off procedure. However, Causey made two points clear to his staff: (1) he expected full cooperation and openness with Andersen – Causey described this approach "open kimono" – and Andersen could look at whatever they wanted no matter who, what, when, or where; and (2) any auditing adjustment would be viewed as a failure and was unacceptable. Different accounting people in each business unit had the freedom to contact Andersen, and Causey encouraged them to contact Andersen directly. Causey did not know of any specific incidents of someone in a business unit being told not to contact Andersen. From a cost perspective, it was

better and the preferred approach to have an accounting person communicate with Andersen. If a non-accounting person had the impression that he or she could not contact Andersen, it would surprise him, because it happened with some degree of regularity. It would be unusual if Andersen had been told that it could review the Chewco transaction documents only if Tom Bauer was the only person to review them and Bauer could not take any copies of documents back to Andersen with him. Such conditions would not be in keeping with the spirit of the open relationship that Causey had instructed his people to have with Andersen.

Enron does not have any list of Andersen contacts. Andersen had approximately 100 to 200 auditors on the scene in Houston at all times, and they became known to Enron people. The only Andersen people that consulted outside Houston directly with Enron (other than consultations with the national office) were in Calgary talking to the Canadian ECT. Enron does not have any list of topics that Andersen consulted on. Some of Andersen's bills itemized the matters subject to consultation, but others did not.

Causey did not receive a written document from each business unit explaining transactions. From time to time, he would have formal communications and one-on-one discussions of any important transaction that he was interested in hearing about.

Chewco came to Causey's attention again in or about October 2001 when he read in a Wall Street Journal article on a Thursday or Friday that Kopper had been involved in the transaction. There had been some "noise" internally about a related-party transaction involving Kopper. After reading the article, the Board requested an update on the transaction, and Glisan was charged with giving the Board the update. Causey did not know who had charged Glisan with this task. Faldyn, Christina Mordaunt, and others briefed Glisan on the transaction. Faldyn heard some things at these meetings that concerned him, and Faldyn brought them to Causey's attention. Causey and Faldyn reviewed the structure and were surprised by what they learned. Causey did not recall the details of what Faldyn reported to him, but it was obvious that the structure did not meet SPE requirements. It appeared that the structure did not have adequate equity. At that point, Causey alerted Dave Duncan at Andersen and then Ken Lay and Jim Derrick that he was concerned by the deal's structure. Causey told Lay and Derrick that he would monitor the situation.

Causey and Faldyn decided to get more people involved in the analysis, and Glisan suggested bringing in Bill Brown. Subsequent meetings were attended by, among others, Jeff McMahon, Glisan, Brown, Faldyn, Causey, and perhaps Mordaunt or another attorney. The structure was analyzed and discussed. Causey was told by someone, possibly Brown, that the structure was used temporarily to buy out CalPERS' interest, but another, normal SPE was to have been put in its place before the quarter ended. Someone, possibly Glisan, put this second structure on a blackboard, and it looked better.

Causey recalled analyzing the second structure and hoping that it would answer pending questions about the transaction. Causey was in a conference room on the twentieth floor with members of the finance team, Julia Murray, and Carol St. Clair. Causey and the finance team reviewed the structure, and attorneys reviewed documents. They were analyzing whether the equity was in proper form given that Kopper was part of the equity. Causey was troubled

because the equity was exactly 3% and they might miss the 3% requirement by a small amount. The collateral arrangement came to the forefront. Duncan, Bauer, and possibly Deb Cash from Andersen were in the same room reviewing documents. Bauer was in charge of Enron's North America activity for the past five years. Causey, his team, and Andersen reviewed the collateral arrangement and concluded that it created a problem. Someone tracked down the relevant wire transfers to confirm the monetary amounts involved. During these meetings, they concentrated on determining what the structure was as opposed to why such a complicated structure was put together in the first place. Of those reviewing the documents and analyzing the structure, Glisan and Brown were trying to recollect what had happened while everyone else was trying to learn the facts for the first time.

Causey reported what he had learned to Lay and McMahon. Causey may have also reported to Derrick. Based on Causey's report, Lay understood that the new development with respect to the Chewco transaction could have an impact on Enron's earnings and debt. Causey did not believe that, prior to this time, Lay was familiar with SPE requirements; Causey did not believe that he had had a conversation with Lay previously about SPEs. When Causey learned about the reserve accounts and collateral arrangement, Causey did not question Glisan. Glisan had indicated that he was not aware of the collateral arrangement. Shortly thereafter, the Special Committee started its investigation, and Greg Whalley and Jeff McMahon instructed people to let the Special Committee conduct its investigation and not rush to judgment. As a result, Causey did not question Glisan more about what he knew and when he knew it. For the same reason, Causey did not question Blachman. Under different circumstances, Causey would have questioned Glisan and Blachman. Although Enron concluded that it had to restate its financial statements, Causey did not have a conversation with Blachman before the restatement. Causey did not talk with Duncan or Bauer about Chewco and what had happened. Andersen acted surprised by the revelations. Causey did not have a relationship with anyone at Barclays, and thus he did not speak with anyone there about the collateral arrangement. Causey did not know why the problem occurred with Chewco. He speculated that it was either a mistake or something more.

While the Special Committee was investigating, Causey formed a team headed by Faldyn and Chris Sherman to learn as much as possible about other SPEs and any other pending, related issues prior to the 10-Q for the third quarter. Their review was limited, because all relevant records were not immediately available. Faldyn and Sherman reported to Causey that they had not found any additional problems.

JEDI's earnings had an impact on Enron's earnings. The GAAP basis for allocating non-Enron stock prices to Enron changed over time. At some point, an idea was raised in favor of a special allocation to Enron of any non-Enron stock earnings out of the JEDI partnership. Causey did not remember whether this idea was memorialized. The allocation method was discussed, developed, and used in consultation with Arthur Andersen. Causey did not recall whether anyone raised any concern. Causey was involved with JEDI in or around 1992 and 1993, but over time he stopped working on it. From the beginning, there was an issue of how to deal with profits from Enron's stock.

## LJM Governance

Fastow said that he had two equity partners in LJM1. Andersen audited the capital that was being invested in the partnership to verify that there was outside equity. Andersen asked Causey about LJM1's equity partners, and Causey directed Andersen to Fastow. Cash was charged with the responsibility of looking at LJM2's equity partners. Causey did not look into LJM's capitalization, and he did not know whether others looked into it. He relied on Andersen to analyze LJM's capitalization. Causey had a general understanding at the time that Andersen had looked at LJM's capital structure and, since Andersen never went back to Causey with any problems, Causey assumed that Andersen was satisfied with what it found. Andersen did not prepare a detailed audit report in writing, and there is no documentation regarding Andersen's review of LJM. Causey did not discuss LJM's capital structure with Fastow. Causey speculated that LJM could have used borrowed money in making investments so long as the loans were backed by firm equity commitments.

Causey agreed with Fastow that it would not be appropriate if Enron had unfettered access to LJM's financial statements. Causey attributed Fastow's sensitivity about disclosure of LJM's financial statements to the fact that LJM was a third-party and an independent entity. Andersen requested access to information about LJM and Fastow told Causey that Fastow had given Andersen all the information that Andersen requested.

Duncan shared his thoughts about procedures relating to LJM transactions with Causey, and they were adopted. Duncan's views related to Fastow's ability to control LJM and the ability of other LJM partners to remove Fastow. Causey saw the LJM1 partnership agreement, either in draft or final form, at some point, and he recalled that LJM partners had the ability to remove Fastow as the general partner or managing partner. This power was consistent with Causey's understanding of how Enron would approach the control issue as the general partner of JEDI. Causey did not recall what percentage of the partnership's capitalization had to be involved to trigger the limited partners' ability to remove Fastow. Causey recalled the concept of an advisory committee that would determine any LJM investments, but he did not remember when he learned this or whether it related to LJM1 or LJM2.

Causey discussed the concept of LJM1 with Fastow. He did not remember whether anyone else participated in these conversations. Causey did not recall whether Lay was involved in setting up LJM1. Skilling was involved in the concept of LJM1 and obtaining approval from the Board, but Causey did not remember any specifics about Skilling's role. Causey did not remember whether he knew that Andersen was pushing to give LJM's limited partners more power and authority after Enron started entering into transactions with LJM1. LJM2 was styled after LJM1. Causey did not recall any discussions about implementing procedures for LJM1 that had been adopted with respect to LJM2. Andersen provided front-end consultation and real-time auditing work at the time that LJM1 and LJM2 were established.

Causey did not recall discussing the potential conflict of interest in conducting transactions with LJM1 before the concept was presented to the Board. The Finance Committee

considered the conflict of interest. Causey speculated that Skilling, legal, or someone else worked with Fastow on the conflict of interest issue before the concept was presented to the Board. Causey did not recall any discussion among Enron's personnel or at the Board level about whether it was a good or bad idea to have the Company's CFO involved in a private equity partnership that did business with the Company. There were discussions about whether the concept of LJM1 was acceptable, and Fastow addressed questions from Board members about that. The Board asked Causey whether Andersen had looked at LJM1 and whether it was acceptable from an accounting perspective. Causey told the Board that there were no particular accounting issues but there were disclosure requirements. Causey did not recall anyone on the Board or the Finance Committee expressing negative views about Fastow's role.

Fastow explained the idea of LJM1 to the Board. Causey did not recall specifically what Fastow said at the time, but Fastow explained LJM1 was going to be another source of capital. Causey did not get the sense that LJM1 was useful because it enabled Enron to transact deals that unrelated third-parties would not do. However, there was the idea that LJM1 would be more efficient than unrelated third-parties, although Causey was not sure whether his knowledge in this regard was based on his recollection at the time or things he learned in connection with preparing the November 2001 8-K.

Cash was responsible for performing whatever audit work was necessary. From an accounting viewpoint, LJM1 was acceptable, and LJM2 was viewed as routine. Fastow thought LJM2 was necessary because it would be another source of capital. The outside equity in LJM2 was much larger. Causey did not recall any issues regarding LJM2's governance or the partnership's structure.

Causey was aware that Kopper was buying out Fastow's interest. Fastow told Causey that he was going to sell his interest in LJM to Kopper. It sounded good to Causey. Enron was getting a few more questions than it wanted to have about the related-party nature of transactions with LJM2. Kopper's buyout would eliminate the related-party nature of the transactions. The resulting disclosure would be different and have an impact. Causey did not recall the reason given for Kopper buying out Fastow's interest, but the Company wanted the related-party issue to go away. Causey did not know if non-disclosure was the motivation behind this buyout. However, Causey liked the fact that he would no longer have to deal with these related-party disclosure issues. Causey was involved in the accounting for the buyout, but he was not involved in the decisions about whether it should occur or how it should take place.

Kopper's buyout was not related to Raptor's capitalization problems, and the Company's problems with Raptor did not drive the desire to have less disclosure – the Company wanted to put to rest concerns raised by McMahon and others about related-party transactions. To Causey's knowledge, there was no thought given to selling Fastow's interest to someone who was not associated with Enron; no one presented this as an alternative to Causey. Fastow could do whatever he wanted with his interest. Enron made no promises to Fastow or Kopper. The buyout was going to be a transfer of Fastow's interest to Kopper with no strings attached. There was no accounting for Enron to do with respect to the transfer. Kopper and Fastow made written representations regarding the transfer, and Causey believed that they represented that Fastow would not finance Kopper's acquisition. If Fastow had financed Kopper's purchase, Fastow's

conduct would be inconsistent with Fastow's representations. Causey limited his review to Fastow's and Kopper's representations. Causey had received a signed draft of their representations, but Skilling left Enron before Causey could show it to Skilling. The draft document should still be around.

Causey did not communicate with analysts, but instead referred any analyst calls to Koenig.

## LJMI Transactions

### Rhythms Net

RhythmsNet was LJMI's first transaction with Enron. The purpose was to hedge Enron's interest in Rhythms. Enron had in-the-money forwards of Enron stock. Some of these shares were delivered to LJMI and, in return, Enron received compensation in the form of a derivative on Rhythms. This transaction gave birth to LJMI. After a put was in place for a short period of time, accounting rules for derivatives were utilized. The put was not perfect from a hedging perspective, and the put had to be improved through a series of other derivative transactions. LJMI's credit capacity to support the derivative transactions was based on restricted Enron shares that were contributed to LJMI and LJMI's equity.

Causey did not recall whether Enron wrote some puts to LJMI. LJMI wrote some puts to Enron, but some might have gone the other way. Enron attempted to hedge its overall exposure to Rhythms with derivatives on Rhythms, not Enron stock. Causey did not recall who, besides Fastow, had contemplated these derivative transactions and speculated that Glisan may have contemplated them.

Fastow discussed the concept of LJMI and the Rhythms transaction with Causey. During this conversation, Fastow raised the concept of using Enron stock to hedge Enron's positions. Skilling was concerned about the volatility of Rhythms and was also interested in hedging Rhythms. Enron viewed itself as a risk management company, and Skilling viewed Rhythms as a risk that he did not want. Skilling had more of an oversight role and a greater participation in the transaction with Fastow than Causey. Causey did not know whether Lay had any role in the Rhythms transaction.

Glisan, Mike Deville, and Bob Butts worked with Causey's valuation people on pricing the puts. PricewaterhouseCoopers ("PwC") also did some work on valuation, but Causey was not sure whether PwC's work was related to the initial transaction or all the puts. Causey did not work with Vince Kaminski's valuation group directly. Causey did not hear anything about making the put transaction as expensive to Enron as possible, nor could he imagine a reason why any Enron person would want to make the put as expensive to Enron as possible.

Causey did not know whether Enron's Rhythms transaction with LJMI would have been available commercially. He recalled that the issue for Enron was whether it could do anything to hedge Rhythms. Causey recognized a unique aspect was that LJMI was not going to cover the position. Causey agreed that conceptually it would have been difficult to hedge Rhythms

commercially. He did not think that anyone pursued the possibility and would not expect anyone to have pursued it, but he did not know for sure. Causey could not say that there were no third-parties that would enter into the Rhythms transaction with Enron, but he understood that there was a restriction (i.e. a lock-up period) precluding Enron from hedging Rhythm shares with investment banks. Someone in the legal department had concluded that the transaction with LJM1 would not be a problem.

Glisan and perhaps Kevin Garland were involved in the Rhythms transaction. Others were involved, but Causey was not certain who they were. Causey did not recall any discussions about how the puts would become useless if both Enron and Rhythms stock declined in value, but the risk was obvious. Causey assumed that Enron's valuation people and PwC evaluated this risk.

Causey recalled generally in early 2000 that, because of the volatility, the structure's credit capacity was tight. Glisan, Deville, and Butts were involved in unwinding the transaction. Causey did not recall whether there were discussions about the potential credit risk and that a credit reserve might be needed, but he remembered considering the possibility. He did not recall anyone quantifying by percentage the chance of failure specifically, but different scenarios were analyzed. There were discussions about which valuation analysis would be used – the probabilistic or deterministic analysis – and Enron and Andersen debated about which analysis to use. Causey attended a meeting with Andersen in Chicago where John Stewart, Rick Petersen, and the Andersen team argued in favor of using a deterministic analysis while he argued in favor of the probabilistic method. The purpose of the meeting was not to discuss this transaction specifically, but to enter into an ongoing dialogue with Andersen so that they would understand Enron's business better and they could discuss emerging issues. At the end of the day, Enron went with Andersen's approach. Causey speculated that Duncan, Butts, Wes Colwell, Faldyn, and/or Ryan Siurek attended. Causey did not recall whether Enron had booked reserves. He recalled Deville working on the mechanics to have the Rhythms stock registered and then sold. Enron felt it could be paid for its hedge and that there was no reason not to unwind the Rhythms hedge.

Causey was charged with the responsibility of making sure that the unwind happened. He did not recall who had charged him with this responsibility. Deville and Butts assisted Causey. Causey and Fastow discussed how to make the unwind happen. Fastow made it clear to Causey and the Board that Fastow had no interest in the Enron stock, which Causey had interpreted to mean that Fastow had no residual interest in the Rhythms unwind. Fastow negotiated with his partners in LJM, provided the numbers to Causey, and Causey compared and eventually accepted them. Causey and Fastow discussed the terms that Fastow's limited partners would agree to. Their communications were verbal, and there are no written records memorializing them. Causey did not remember whether Skilling played any role in the Rhythms unwind, and he did not believe that Lay had any role. Lay would have known about Rhythms, the hedge, and the initial transaction with LJM1 from Board meetings, but Causey did not know whether Lay knew about the unwind. Sutton was Vice Chairman at the time and took a fairly active role in managing the Company, and Causey went to Sutton for approvals. To Causey's knowledge, neither the Board nor any Board committee was told about the unwind. Rhythms had already been hedged, and it would have been routine to close out the transaction.

Causey described the unwind based, in part, on his refreshed recollection during the past two months. The derivative transactions were cancelled and Enron received shares and cash. Causey did not know why Enron gave LJM a put on ENE at \$71 for no consideration when ENE was trading at \$67. Causey only recalled that Fastow worked with two partners on the buyout. Causey understood that CSFB had agreed to the buyout before NatWest. The values of Enron and Rhythms stock were moving, and Enron gave the put to LJM to freeze things so that negotiations could continue and the unwind would occur.

Causey did not know whether Enron had paid full unrestricted value for Enron shares even though there had been a discount on the shares when they were given to LJM at the beginning. He was focused on settling the derivatives on Rhythms, which did not involve Enron stock. He did not think the restriction on Enron shares was a pertinent fact relative to the settlement of four to five derivatives. Causey would have to speculate why Enron paid full value for restricted Enron shares. However, he, Butts, and Deville attempted to settle the transaction on terms favorable to Enron. Causey speculated that Enron lifted the restrictions on Enron stock during the unwind, because the restrictions may not have been important to Enron. They might have been more focused on the value that Enron was receiving. Butts, Deville, and Glisan would know more about why the restrictions might have been lifted. Causey did not remember whether Enron's valuation people were involved in the unwind.

CSFB was bought out first for \$10 million, and NatWest was bought out second for \$20 million. NatWest was going through some kind of change. Enron lent \$10 million in connection with the first buyout but played no role in the second buyout. Causey assumed that LJM bought out the first partner's interest. Causey did not hear anything at that time about Enron people investing in the partnership interests. Causey signed a lot of documents relating to the unwind, but he did not remember whether those concerned the buyouts.

#### Cuiaba

In or around September 1999 when Enron sold an interest in Cuiaba to LJM1, Causey was not overly involved in the transaction. Cuiaba, a power plant in Brazil, was under construction at that time. Enron had a South American business unit, which wanted to sell an interest in Cuiaba. Causey did not know how LJM1 came to be the counterparty. Enron's business units considered LJM1 a potential party with whom to transact business; how these business units approached LJM1 was their decision. LJM1 was not set up for the Rhythms deal alone, but rather Enron contemplated doing other deals with LJM1.

Enron's South American business unit was selling gas with the Cuiaba entity. There was value in the contract, but some of that value had not been recognized because Enron owned greater than fifty percent of Cuiaba. The South American business unit wanted to reduce Enron's ownership interest in Cuiaba and, as a result, some of the resulting non-affiliated value could be recognized. Causey was aware of this impact and a general interest in minimizing Enron's interest in these types of plants and international assets. Causey did not recall the magnitude of the sale's impact on Enron's finances. He remembered that the sale of Enron's

interest in Cuiaba did not result in much gain or loss and speculated that it probably had a minimal impact.

Causey did not remember whether he included the sale of the Cuiaba interest to LJM1 in his presentation to the Board committee regarding LJM transactions. He was aware of this transaction from an accounting perspective, and he addressed at that time the issue of the impact of the deal on Enron's gas contract. He was responsible for informing the Board whether the accounting for the LJM transactions was appropriate. In carrying out this responsibility, he spoke to the accounting people involved and monitored whether there were willing participants on both sides of the transaction. There was no reason for the business unit not to negotiate well on behalf of Enron with LJM. He did not know whether he spoke to those negotiating on behalf of Enron about the substance of the transaction. He spoke once or twice with Kent Castleman, who was stationed in Sao Paulo at the time, but Causey did not recall any specifics about their conversations. Causey did not remember whether Cheryl Lipshutz was involved in the Cuiaba transaction, and it would surprise him if she was. He was not sure which side she would have been negotiating for. It was common for people who reported indirectly to Fastow, to negotiate with LJM on behalf of Enron. Under Enron's matrix organization, it was not unusual for finance people in various business units to be involved in these transactions.

Causey did not remember any assurance by Enron at the time of the sale that LJM1 would not lose any money. There was some noise later coming from Fastow at some point that, if Enron did not market LJM1's interest within a certain period, LJM1 would be taken out of the transaction or receive a rate of return. Causey told Fastow that he did not understand why LJM1 would be allowed a higher rate of return. He recalled Fastow pushed this point in 2000. Causey did not challenge Fastow's understanding. Causey interpreted Fastow's statement as Fastow's expectation that LJM1 was not going to be stuck with a plant and not as an Enron guarantee to LJM1. Causey did not recall whether Fastow had identified the Enron person with whom he had this understanding. The transaction was not successful, Cuiaba was not remarketed, and LJM1 was bought out. Causey assumed that LJM1's rate of return was determined by the sale agreement, and he assumed that LJM1 was not taken out at a higher rate of return. If Fastow had received assurances that LJM1 would not lose money, Causey speculated that it would have had a very minimal impact on Enron's gain or losses, but he would have to think through its impact on Enron's accounting of the transaction.

Causey did not recall any other buyouts contemplated or suggested by Fastow. He did not remember any guarantee involved with the CLO transaction, Nowa Sarzyna, Bob West, or MEGS.

## LJM2

### Raptors I, II, and IV

Enron could hedge \$1 billion with an entity that only had \$30 million of capital, because LJM2 had rights to more than \$30 million. LJM2 had \$41 million in proceeds from a put that it wrote to Enron and rights to shares that could have increased in value.

There was significant work done on the Raptor structure to determine that it was acceptable from an accounting standpoint. Work was done to obtain reasonable valuations. Both Skilling and the Board wanted to do the transactions. Causey was not generating the ideas; he was doing the accounting for them. There was a question of whether the structure had the wherewithal to perform. In addition to Skilling, Glisan, and Fastow, both Siurek and Faldyn would be familiar with the accounting issues; Siurek facilitated getting the valuations.

From an accounting perspective, the hard issues were compliance with the SPE rules, applying the SPE rules once LJM received its initial return, the initial put on Enron stock, and the contribution or sale of equity from Whitewing, if available, to Raptor and receipt in value from Enron. With respect to the SPE rules, the issue was basically the 3% test. Once capital was put in, the question was whether it was a substantial enough investment to meet the 3% test. The equity test was based on the value of the assets placed in the venture plus the notional value of the total derivatives. The \$30 million plus derivatives on merchant investments entered into over time amounted to more than 3% at some point. The 3% was calculated in a conservative manner, because the notional value of the derivatives was considered. Causey did not remember thinking that they needed more than 3% equity to set up a workable structure.

Causey could not think of an independent, commercial reason for Enron to purchase a put on its own stock, as it did in the Raptor I, II and IV transactions. The purchase should be considered part of the whole transaction, and Causey did not evaluate this purchase. Causey's view at the time was that the put was in place, and there was risk given that the price of the stock could decrease. In the context of the whole deal, Skilling was willing to do it. Causey did not know if Skilling had a business purpose in mind for buying a put on Enron's stock. There was no discussion of accounting for the \$41 million paid to LJM. There was more of a discussion about the real risk that was transferred and an earnings event involving a return "on" capital to LJM2, as opposed to "of" capital. From Enron's perspective, it was a return "on" capital. Causey did not hear at the time that LJM2 was telling its investors that it was a return "of" capital.

Causey did not recall any discussion of the consequences of purchasing a put on some 7 million shares of Enron stock from an entity that had only \$30 million equity plus \$41 million from a payout by Enron, and whether such an entity would have the capacity to pay if the stock dropped more than \$10 per share. He recalled PwC's valuation opinion on Raptor I, but he did not remember any specific details. Siurek worked with Enron's valuation people, including Stinson Gibner, on the valuation of the put.

There was some concept of paying LJM2 a fee to cover certain expenses, but Causey did not recall any specific discussion or negotiation about the \$250,000 annual fee to LJM2 for Raptor. Enron did not cover LJM2's actual expenses but paid LJM2 the fee directly. Causey did not recall whether Enron paid any of LJM2's expenses directly. He also did not remember any discussion of what impact Enron's payment of an annual fee would have on the 3% rule or any consideration of whether Enron should be reimbursing LJM2 for expenses as opposed to making direct payments to providers of services.

Enron did not think about whether Raptor would last when the discount on the shares of stock would be consumed over its life by the interest accruing on the notes. From Enron's perspective, Enron evaluated Raptor's capacity to pay based on the restriction discount, the note receivable, and the potential exposure on derivative transactions. This evaluation was known as the Raptor Position Report. It was not inevitable that Raptor's capacity would be consumed over time as the interest on the notes accrued and Raptor's liabilities increased. There were exposures from derivative transactions that could go in a different direction. Causey tried to keep an eye on whether any problems arose.

LJM2 had the right to put back its interest in Enron stock at fair market value. If the stock were to drop or LJM2 did not get its return, Enron would pay LJM2 the fair value for its equity interest, which could still result in a loss to them. Causey was not aware of any calculation done on the risk of loss to LJM2. There was a calculation done on the value of the put. Siurek worked with Gibner on the valuation. Causey did not know what Siurek and Gibner did, but Siurek understood the limits of the transaction better than anyone.

Enron's investment in Raptor was based on the cost, not equity, method. Causey did not remember details about the consideration of which methodology to use. He raised the issue and it was an important question; the equity method would have created volatility. Causey worked with Andersen on it. Carl Bass communicated to Andersen that the cost method was appropriate. As far as Causey knows, Andersen was aware of everything regarding the Raptor transactions. The basis for asserting the cost method was that Enron had rights to appreciated equity beyond the amount allocated to LJM2. Enron's lack of significant influence was a factor in determining that the equity method was not appropriate. If Enron had received distributions from derivative transactions and accounted for them under the cost method, they were advised that the distributions would be recognized as earnings. Causey observed a contrast between Andersen's position in the Raptor transactions and its position in JEDI, but he did not raise it with Andersen at the time.

Causey did not remember any Enron employee who disagreed with the Raptor transactions at the time.

The investments that Enron hedged in Raptor were volatile. Causey was not involved in the selection of these investments. Different business units wanted to hedge different investments to a point where the desire to hedge outstripped the capacity. Different people approached Causey requesting capacity, and Causey was planning to have Skilling select which investments to hedge. However, Causey never had to go to Skilling because they did not run out of capacity.

Causey had not heard that any investments in Raptor were backdated. Sometimes trades were made and then documented one week or one month later. Causey did not remember whether all transactions relating to Raptor I were documented on August 3. One or two technical investments were made and then a number of North American investments were made soon thereafter.

Casey did not remember that Raptor was thought of as a means by which Enron would be able to avoid disclosing investments that lost a lot of money so long as the market price of Enron's stock remained high. It was not the way that Casey viewed Raptor. It was not some big plan to enter into bad investments. Looking at it today, Casey could understand how others view Raptor as a means by which companies avoid disclosing losses to the investment community. However, Raptor was not designed to avoid disclosing losses.

### **Raptor III**

The New Power Company ("TNPC") shares were valued at \$10.75 before the IPO. The shares were transferred into a SPE at \$10.75, and a few days later there was an initial public offering that raised the shares to a higher value, and that increased the value in the SPE. Between the time that the shares entered the SPE and the IPO, it was unclear what the price of the shares would be. Casey did not remember how the value of TNPC's shares was calculated before the IPO or whether Enron had obtained a valuation opinion.

Raptor's credit capacity was based on its long position in TNPC stock. Enron hedged by having Raptor write hedges to Enron. If TNPC's value went down, Raptor III also lost value. No valuation was necessary for this transaction. Whether this transaction was an effective hedging technique is another question, but it was one that Skilling was aware of and decided to go forward with. Fastow, Skilling, Siurek, Casey, and possibly Glisan and Jimmie Williams were involved with Raptor III.

### **Raptor Restructure and Unwind**

Raptor III started to run into a series of credit problems because TNPC's value dropped. In August 2000, there was a costless collar placed on Enron's stock to minimize volatility. Enron would underwrite the derivative if it fell out of the zone of the collar. It was a costless collar with no premium. Siurek and the valuation group facilitated the work on valuing the costless collar. Casey did not know how the costless collar could have an \$81 floor when Enron's stock was trading at \$81 at the time. Casey did not recall any consideration of the economics of letting LJM benefit from a discount and having a costless collar. He did not know and did not remember whether there was a waiver of the restriction on hedging.

The Raptor restructuring took place in the first quarter. Siurek developed the restructuring to solve a credit capacity problem. Enron recognized that it might have a credit capacity issue and have to recognize an impairment if a solution was not developed. Casey did not remember the amount at stake, and he did not recall whether the impairment occurred before a solution was put in place. Cross-collateralization within the vehicles, otherwise known as "topping off," was implemented to deal with the problem. Whitewing shares were unavailable to give to Raptor. As a result, Enron transferred in 12 million shares that had come in from the consolidation of JEDI and, in return, Enron received a note receivable. Casey did not recall whether these were restricted shares. Casey did not remember consideration of the basis for discounting the value of the shares when a collar was placed on the shares simultaneously. Looking at it today, Casey believed that the restriction on the sales was appropriate because it

precluded the shares from being sold on the market. However, he recognized that the amount Enron charged for the shares could have been higher.

If a structure was created that could not lose money, there would be no equity at risk. Although discounted shares were put in place that were also collared, there were other things at risk such as derivative transactions. It was not a riskless transaction.

With regard to Raptor IV not having any derivative transactions at the time of the restructuring, Causey was not part of any discussions about the risk that was involved. He was aware of the requirements regarding the final \$35 million payment, but he was not involved in determining that price.

Causey believed that cross-collateralization among the Raptors did not transfer LJM2's equity at risk from one Raptor vehicle to another. LJM2 had value in two of the entities of roughly \$30 million each, and the negotiated windup payment in the aggregate was \$35 million. Siurek and other finance people were involved in these transactions. Because Fastow no longer had an interest in LJM, Fastow was the lead negotiator on behalf of Enron and Causey kept apprised of the negotiations, which were acceptable from his perspective.

#### Miscellaneous

Davidow showed Causey a two-page e-mail from Vince Kaminski to Andersen dated October 2, 2001. Causey responded that he had heard that Kaminski had an issue with Raptor. Causey did not talk to Kaminski about it. The Raptors were going away, and there did not seem to be any point speaking with Kaminski. Causey had a vague recollection that Duncan referred to Kaminski's e-mail during one of their conversations and said that they must make sure they were comfortable with the valuation. Through subsequent valuation exercises, Causey heard about Kaminski's e-mail from Siurek, but by that time the issue was moot. Causey was not aware of any effort to prevent Kaminski from speaking directly with Andersen after sending that e-mail. Kaminski raised the issue during a recent meeting of managing directors, and Causey indicated to Kaminski that they might work together on this, but that never happened.

MEMORANDUM

TO: Enron Files  
FROM: Paul W. Connell  
DATE: December 17, 2001  
RE: Interview of Ryan Siurek, Senior Director, Transaction Support

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On December 11, 2001, Chuck Davidow, David Cohen and Paul Connell of Wilmer, Cutler & Pickering ("WCP") and Tom Omberg and Leslie Knowlton of Deloitte & Touche (an accounting firm retained by WCP), spoke with Ryan Siurek, Senior Director, Transaction Support, at Enron's Houston headquarters to gather information from him in order to allow WCP to provide legal advice to the Special Committee of Enron's Board of Directors. The purpose of the interview was to explore Siurek's knowledge of certain related-party transactions.

This memorandum has been prepared by counsel in anticipation of possible litigation arising from a Securities and Exchange Commission ("SEC") investigation and any parallel or related proceedings. This memorandum incorporates the mental impressions, analyses and opinions of counsel. As such, this memorandum is intended solely to assist counsel in providing legal representation and advice to the Special Committee of Enron's Board of Directors, and is not intended to provide a substantially verbatim recital of Siurek's statements. The interview was based on WCP's understanding of the facts and review of documents as of the date of the interview. Furthermore, Siurek has not reviewed this memorandum. Therefore, this memorandum may contain inaccuracies and the following discussion of certain events may be incomplete or lack context.

At the outset, Cohen explained that WCP represented the Special Committee appointed by the Board to investigate certain transactions between Enron and related parties, and we were speaking to him as part of that investigation. Cohen stated that we did not represent Enron's officers or employees, including him, that, in our view, the conversation was privileged but it was the Special Committee's (or Enron's) privilege, and that the Special Committee or Enron could decide what to do with the privilege, not him. Cohen stated that Siurek should anticipate that anything he told us would be conveyed to the Special Committee, and that the information could be communicated to others, such as the Board, others associated with Enron, and the Government.

Cohen stated that there was an SEC investigation, that the company was cooperating fully with the SEC, and that there was a reasonable possibility that information he provided will be conveyed to them. Siurek was represented by J. C. Nickens during the interview.

### **Background/Education**

Siurek graduated from Texas A&M with a B.A. in accounting in 1993 and an M.A. in 1994. After graduation, Siurek worked for one year as an intern for the FASB on a special accounting and derivatives project.<sup>1</sup> Siurek joined Arthur Andersen in June 1995 and worked in the audit group for approximately one year. During this time, Siurek worked on the Enron engagement. Siurek then moved to AA's energy trading and risk management consulting group. In this role, he worked for clients such as Enron, Dynegy and Aquila. In 1999, Siurek followed Wes Cowell, an AA partner, to Enron. Siurek was officially hired by Bob Butts and was assigned to the transaction support group.

As an employee in transaction support, Siurek reported to Butts and was generally responsible for helping anyone who needed advice with accounting issues. Ben Glisan and Bill Brown often brought him projects to work on.

### **Raptor**

Siurek first became aware of Raptor in December 1999 when Glisan began talking to him about it. He worked on Raptor almost exclusively from January until April 2000, but did some consulting on the RythmsNet wind-up during that time as well. His work on Raptor was much more difficult conceptually than RythmsNet, and Siurek spent most of his time on Raptor.

Siurek understood that the Raptor idea came into being through discussions among Andy Fastow, Glisan and others who were trying to find a way to use the embedded value of Enron stock in the Whitewing structure. At first, they considered setting up a charitable trust so Enron could assign the excess value to a charity and take the tax deductions. These discussions ultimately led to the idea of using the excess value of the Enron stock in Whitewing to hedge volatility of other assets held by Enron. At the time, they were primarily discussing technology investments.

The Raptor structure was worked out over time as people brainstormed in a room using a white-board to sketch out ideas and address roadblocks as the discussion went on.

Siurek explained that Raptor was essentially a way to use unrealized appreciated Enron stock so the company could enter into derivative transactions and thereby hedge its exposure to some of its more volatile assets. Raptor was designed to hedge against this

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<sup>1</sup>None of Siurek's work on derivatives at the FASB related to his later work on the Raptor vehicles.

volatility in two ways. First, because the team believed that the tech investments would go up in value, Enron wanted to find a way to capture the upside profit. Second, Enron wanted to hedge against any downside exposure if the investment declined in value. The team was particularly concerned about the publicly traded tech investments because it is very difficult to know what they would be worth at the end of each quarter or what their impact would be on the company's income statement.

Enron decided not to use investment banks to hedge the investments because the banks did not like the exposure they would have faced. Siurek said that they had thought that possibly the originators in the finance group had discussions with investment banks but he said that he had no specific knowledge on this issue.

LJM became a possible source of third party equity approximately three months into the development of the Raptor structure. To Siurek, this was an ancillary issue. He was far more concerned with the structural accounting issues for Raptor. He did not deal directly with Fastow or speak with him about LJM until many months after the Raptor structure was in operation. He did not spend much time with the LJM component of any Raptor deal.

The main people involved in setting up Raptor in addition to Siurek were Ben Glisan, Trushar Patel, Ann Marie Tiller and Scott Sefton. In addition, many attorneys from Vinson & Elkins were involved. The primary contacts at V&E were Ron Astin and Mark Spradling.

Siurek's role in Raptor was largely the same as any other deal. He would be told of a concept, consult with the business units, make sure the accounting worked, consult with AA to make sure they were comfortable, and speak with Rodney Faldyn and/or Rick Causey. He would try to develop solutions if there were problems with the structural details.

AA's involvement in significant deals (including Raptor) was "real time." They were presented with the concepts and drafts early in the development of the vehicle and were provided documents throughout. Enron usually would not go forward without first getting comments from AA. Siurek said that he talked to AA about the Raptor structure beginning in January 2000 and they were included in all document draft distributions. Siurek wanted AA involved early because Raptor had many accounting issues due to its complexity, particularly as it related to the Whitewing structure and the Peregrine forwards. AA provided input on many issues that were unrelated to the LJM components of Raptor deals.

### **LJM2 Governance Issues**

As Raptor was being set up, issues came up with regard to Fastow's role in LJM. Siurek recalled that an Advisory Committee was set up to address the extent of Fastow's control of LJM2. From Siurek's perspective, LJM was largely irrelevant because Raptor

was set up to work with any third party and the capital for the vehicle did not necessarily even have to be split 97%-3%.

*Memo re: LJMII/Talon Governance.* Siurek was shown a memo that bears a December 10, 2001 date stamp<sup>2</sup>, which he prepared regarding LJM2 Governance issues. The memo describes a series of LJM governance concerns raised by AA. The issues raised in the memo were resolved prior to the Raptor I closing.

With respect to issue #1 in the memo dealing with the information the Advisory Committee should receive regarding LJM transactions, AA ultimately changed its opinion and, instead of requiring that general partner (Fastow) provide the Advisory Committee with information relating to any transaction between LJM2 and Enron or any Enron subsidiary, accepted a structure that limited Fastow's ability to engage in derivative transactions without consulting the Advisory Committee so long as the value of the derivatives did not exceed \$1 billion in notional value. With respect to issue #2 and #3 dealing with the election or appointment of Advisory Committee members and how the General Partner could be removed, AA did not require a "breakdown of the LP investors and their committed capital amounts" but allowed LJM to give it and Enron a list of investors by category, e.g., investment funds, individuals, etc.

*Memo re: Project Raptor.* Siurek also was shown a memo he drafted in April 2000 summarizing the Raptor transaction. The memo had been an ongoing draft and was finalized when the transaction was completed. Siurek was asked about an entry on page four which stated "we have discussed this issue with the senior officer and have committed to making the aforementioned changes by June 30, 2000, in order to avoid consolidation of Talon. We have discussed these issues with AA and determined that those changes will cure all remaining outstanding governance issues related to LJM2." Siurek explained that AA discussed the governance issues with LJM and that AA Partner Dave Duncan personally met with Fastow. According to Siurek, Fastow showed Duncan documents reflecting changes in the governance structure and this led to AA's approval. As far as Siurek knew, no copies of these documents were given to Duncan and Enron was not provided copies. However, AA told Siurek that they got comfortable with the governance issues.

Another entry on the bottom of page four of the same memo stated that the Advisory Committee must "acknowledge the execution of the purchase of 100% of the voting equity in Talon. The Advisory Committee should further acknowledge that the general partner of LJM will negotiate derivative transactions entered into with Harrier up to and including a maximum notional amount of \$1 billion." Siurek did not think Enron ever received these acknowledgements.

Page nine of the memo refers to LJM being able to demand cash to settle the put option. According to Siurek, this is an error in the memo. He said that LJM could not

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<sup>2</sup> The memo was prepared well before December 10, 2001. It is dated as such because that is the date that WCP printed it out. Siurek could not recall the actual date it was completed but was sure that it was done prior to the closing on Raptor I.

demand cash to settle the put. He noted that Enron usually paid cash to settle these options anyway.

### **Initial Put Option**

The initial put option in Raptor was Glisan's way of providing a means to create GAAP earnings within the Raptor vehicles (but not guarantee it) so that LJM could get a return on its investment in a short time frame. If the transaction did not work (i.e., if Enron stock declined in value), Enron would be entitled to keep LJM's \$30 million investment and also get up to an additional \$41 million from the option. Siurek did not know if anyone did an analysis to figure out how much Enron would receive should its stock decline in price, however, and he was not a party to the negotiations over LJM's rate of return for its investment. He said that the negotiated return and the stock price drove the number of shares under the put options.

Enron did not consider doing a call option because it felt that its stock was likely to appreciate and that this would be a bad bet. Enron considered the public perception of how it would look when it disclosed that it was buying a put option on its own stock. Siurek noted that the put was disclosed in Enron's filings.

*Project Raptor presentation.* Siurek was shown a document that is labeled Project Raptor and dated October 2001. Siurek first began drafting this historical memo on Raptor in June 2001 and updated it through October. Page nine of the document refers to the Share Settled Puts between Enron and LJM. Siurek included this page at Glisan's specific request.

The price for the premium per share for Raptor I, II and IV was based on information on Bloomberg as of the closing date for each deal. Trushar Patei would have been the person who got this data. Siurek did not know who negotiated the strike price, whether it was a negotiated item, or if LJM even was paying attention to it. Enron consulted AA to make sure the strike price for the option was appropriate, however.

All of these puts terminated early. Siurek said that Fastow and Causey were typically the ones negotiating and would have made the decision to terminate the puts. The termination price paid by Enron was based on the Bloomberg screen price as of that day. Enron treated the \$41 million paid to LJM as a return on capital after consulting with AA. At this time, he did not know how LJM viewed the \$41 million.

### **Fees Paid to LJM**

Enron was required to reimburse LJM for its expenses such as legal and accounting fees. This led to some concern within Enron that these payments could be viewed as a return of capital which would bring LJM below the 3% threshold. Enron consulted AA for an opinion. After consulting with its National Office and other Big 5

accounting firms. AA's consensus was that if Enron paid LJM's vendors directly rather than reimbursing LJM, the minimum required equity necessary to substantiate Talon as an unconsolidated SPE would be grossed up by 3% of the amount of such fees. Siurek did not know of any other management fees paid to LJM after the Raptor vehicles were in place but believed that Causey may have some information with respect to this issue.

Davidow asked Siurek whether he knew anything about a \$250,000 management fee paid to LJM. Siurek replied that he was aware of a management fee agreement entered into after setting up all of the Raptor vehicles, but had no specific knowledge of the terms. He suggested asking Causey about this agreement.

### **Additional LJM Capital Contributions**

LJM made additional capital contributions of \$6 million to Raptor I and \$1.1 million to Raptor II. These contributions were used to create additional derivative notional capacity within the vehicles. Siurek said that he thought the amounts were negotiated.

After LJM received its initial distribution, its return was decreased to 12.5% on the additional \$6 million capital contribution. Omberg asked Siurek whether LJM maintained sufficient rewards associated with its equity investments after the initial distribution was received. Siurek didn't think that AA really looked at this issue, and said that AA was generally more focused on the risk side of the substantive equity requirements.

### **Investment Bank Pitches**

Siurek did not know if an investment bank came up with the Raptor structure and pitched it to Enron. At one point, Glisan told Siurek that Solomon Smith Barney had pitched a similar hedging vehicle, and Credit Suisse First Boston also pitched an off balance sheet structure backed by equity. Investment banks were always presenting different hedging vehicles to Enron.

### **LJM's Fair Value Put**

LJM had the right to put its LLC interest back to Enron at fair value within six months of the creation of each Raptor vehicle. Siurek did not know how the LJM fair value puts were to be valued but believed that there was a process in place to do it. This became a moot point anyway because the these options were never exercised.

### **Collar Transactions - March 2001**

PriceWaterhouseCoopers ("PWC") issued a fairness opinion on May 24, 2000, regarding the transaction between LJM and Enron. The fairness opinion addressed the discount on Enron's stock as a result of the restrictions placed on the stock. The restrictions prevented LJM from selling, pledging or hedging the stock. Share collar transactions covering the original number of shares of Enron stock were entered into with each of the Raptor vehicles subsequent to formation. In addition, when the Raptor vehicles were restructured in March 2001 by contributing contracts on 12 million additional shares of restricted Enron stock, Enron simultaneously entered into share collar transactions with LJM with a floor of \$61. Enron lifted the restrictions to allow for these collar transactions. The fairness opinion from PWC was not updated subsequent to May 24, 2000, even though no collars on the restricted Enron stock were contemplated at the time PWC issued its fairness opinion. Siurek noted that AA did not ask Enron for an update to the fairness opinion.

Omberg asked if the company considered whether using the discounted value for the 12 million shares was appropriate in light of the collar transactions. Siurek said that the new contracts for additional shares of Enron stock in combination with the collar transactions were done to get additional credit capacity of approximately \$13 per share times 12 million shares. Both AA's and Enron's research groups looked at using a discount, even though the restriction that created the discount was lifted to enter into the collar transactions. Enron's research group also made changes to the terms of the March 2001 restructure to make sure that the discount could be used.

A number of documents demonstrate that AA knew about the collars and the restrictions on the stock: Siurek's memos, documents sent to AA by Siurek, emails between AA and Siurek, and AA's very large invoices to Enron.

The discount on Enron's stock in the collar was determined in part by someone in Enron's research group (quantitative analysis). Vince Kaminsky, Head of Research, or one of his subordinates has the most information about the discount. According to Siurek, Kaminsky had issues with the Raptor vehicles because he was not comfortable with the related-party issues.

### **Assets Hedged**

Siurek did not have any role in selecting the assets Enron would put into the Raptor vehicles. He was involved only to the extent that ancillary questions or issues came up. Generally, each business unit would pick the assets, but Gordon McKillup played a key role in this aspect of the business. McKillup also performed the credit capacity tests for the vehicles based upon the formula provided to him by AA and Siurek. He noted that AA performed a detailed audit of McKillup's daily position reports and credit capacity calculation at the time of the March 2001 restructure.

LJM had complete discretion to accept or reject proposed derivative transactions. Siurek did not know who, if anyone at Enron, monitored the \$1 billion notional limit on the amount of the derivatives for LJM, but he did not see this as an issue because it would not have been possible for LJM to exceed the limit because the initial credit capacity and 3% equity test did not allow for more than that.

The assets put into the Raptor vehicles did not perform well but there was no way of knowing before hand that they would do as poorly as they did. Siurek was not privy to any conversations to the effect that the assets in Raptor were "dogs." The fact that the asset's values declined was not a surprise to him because many of the assets were dot-coms. Raptor was designed to protect against this downside risk but the problems with the vehicles developed when the Enron stock also began to decline.

All of the assets were put into Raptor I at one time as of August 3, 2000, because AA required that Enron perform the 3% equity test every time it wanted to enter into a derivative transaction. Thus, all of the assets were put in at the same time to avoid having to perform this test repeatedly.

#### **Cost Basis Investment**

Siurek explained that AA determined that the cost method for reporting Enron's investment in the Raptor vehicles was appropriate because Enron had less than a 5% investment and had no voting rights. They looked at EITF Topic D-46 and APB Opinion No. 18. They made sure that the loan documents only allowed for Enron to have normal creditor rights in order to maintain the cost basis treatment.

#### **Raptor III**

Siurek did not play a very big role in the creation of Raptor III. He consulted on some issues and found it to be an odd structure compared to the other Raptors. Raptor III was put together on a very short time frame so Enron could hedge the total return swaps on monetizations of The New Power Company's ("TNPC") warrants immediately upon TNPC's IPO. Although Raptor III did poorly, Enron never contemplated that TNPC shares would fall all the way to \$1.00 per share.

The \$259 million note was reduced to approximately \$50 million at the time of the unwind of the Raptor vehicles in September 2001. Siurek explained that Enron had no basis in the note because the transaction did not meet the FAS 125 monetization/sale requirements. Although Siurek had no specific knowledge, he was told that the monetization failed because they were unable to obtain the required legal opinion. He noted that the transaction also could have failed to meet the monetization/sale requirements because they did not receive cash.

### **Cross-Collateralization in First Quarter 2001**

Enron restructured several of the Raptor vehicles during the first quarter of 2001 so Enron could maximize its credit capacity. Gordon McKillup developed a spreadsheet to calculate the number of Enron shares that need to be put into each Raptor vehicle for this purpose. AA also was very involved in this process. From Enron's perspective, the restructuring was a way to use the Raptors that still had equity to soak up the losses in the poorly performing ones and had the effect of creating one consolidated Raptor vehicle.

At first, AA approved the cross-collateralizations, but subsequently changed its opinion. Siurek was not a party to the discussions with AA but he believed that AA failed to fully consult with its Chicago office about the restructuring. Enron assumed the proposed cross-collateralization had been thoroughly reviewed by the Chicago office due to the size of the bills received from AA around that time.

To maintain deconsolidation of the vehicles, LJM had to maintain equity at risk even after the cross-collateralization. Enron ran sensitivities to determine whether, after the restructure, LJM would still have a sufficient chance to lose its equity. Siurek explained that they used AA's test, which he believed required a 20% chance of loss. The results showed that if Enron's stock declined to \$23 or below after the cross-collateralization, LJM would have lost its equity in all four of the Raptor vehicles.

Siurek referred to two graphs from his October 2001 memo, titled "Pre-Restructuring Credit Capacity" and "Post-Restructuring Credit Capacity," which showed the net benefit of the restructure transaction in March 2001. The graphs showed that the credit capacity of the Raptor vehicles (combined) had a \$366 million impairment at the date of the restructure transaction. This is the amount that would have been recorded if they had not been restructured. Siurek explained that AA was aware of this amount and was consulted about the restructure transaction. They determined that the restructure effectively removed the \$366 million impairment. They did not view the restructure transaction as prospective only, which would have required that the \$366 million loss be recorded.

### **Disclosure of Raptor Transactions**

The responsibility for Enron 10-K's and 10-Q's falls on the financial reporting group, led by Bob Butts. This group does all of the drafting but requests comments from the appropriate business group for footnotes or related-party transactions. Siurek reviewed descriptions of transactions for accuracy, but was not responsible for determining what should be disclosed. Siurek said that the final determination for disclosure issues fell to AA.

## CHEWCO

Siurek had no knowledge of LJM's transfer of Osprey certificates to CHEWCO and had no knowledge if AA had a problem with it. He was not involved with CHEWCO being brought back onto the books.

MEMORANDUM

TO: Enron File

FROM: Lowry A. Crook

DATE: January 31, 2002

RE: Interview of Richard Causey (by telephone)

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On January 31, 2002, Reed Brodsky and Lowry Crook of Wilmer, Cutler & Pickering ("WCP") spoke with Richard Causey, Enron's Executive Vice-President and Chief Accounting Officer, by telephone conference call, to gather information from him in order to allow WCP to provide legal advice to the Special Investigative Committee of Enron's Board of Directors. J.C. Nickens and Amy Carpenter-Holmes participated on the call and represented Causey.

This memorandum has been prepared by counsel in anticipation of possible litigation arising from a Securities and Exchange Commission ("SEC") investigation and any parallel or related proceedings. This memorandum incorporates the mental impressions, analyses, and opinions of counsel. As such, this memorandum is intended solely to assist counsel in providing legal representation and advice to the Special Investigative Committee, and is not intended to provide a substantially verbatim recital of Causey's statements. The interview is based on WCP's understanding of the facts and review of documents as of the date of the interview. Furthermore, Causey has not reviewed this memorandum. Therefore, this memorandum may contain inaccuracies and the following discussion of certain events may be incomplete or lack context.

**I. Causey's Role in Disclosure Process**

By signing the public filings, Causey had ultimate responsibility for them. However, Causey relied on the financial reporting group, the transaction support groups, and the lawyers (both in-house and outside counsel) for the disclosures. Many participants in the disclosure process offered their comments, and decisions had to be made regarding any differences. Under Enron's normal process, Causey received each draft 10-Q or 10-K in its entirety. From time-to-time, Causey would receive disclosures with particular issues broken out separately. While Causey did not have any specific recollection, he stated that he may have received a related-party footnote or a problematic litigation risk footnote separately. Causey was involved in any residual accounting or financial disclosure issues, and he would meet with David Duncan to discuss and negotiate them. Causey did not recall and was not aware of any disputes among different groups over disclosures relating to the Raptors. He only recalled commenting on the disclosures to make them more readable and understandable.

## II. Disclosure Policies

Enron did not have a policy or practice of disclosing as little as possible, or as little as the law permitted, about the related-party transactions. Enron and Causey endeavored to disclose what was required by law. Causey tried to be succinct, but he tried to describe the transactions accurately.

Enron did not have a general policy of not disclosing transactions between LJM and unconsolidated affiliates in their 10-Qs. Causey did not recall any specific discussions regarding this issue. Causey was not sure he would make any distinction between 10-Qs and 10-Ks when deciding whether to disclose LJM-related transactions. Causey could not think of any reason why a transaction between LJM and an unconsolidated affiliate would not be disclosed in Enron's quarterly or annual filings.

Enron had a policy of not disclosing names of counter-parties in transactions. Causey believed it was not necessary or appropriate to disclose their names. Causey believed that Enron's customers or counter-parties would not want to see their names in Enron's filings. Causey believed that most companies did not disclose counter-party names.

Causey did not recall any policies or discussions regarding the disclosure of Enron's repurchases of interests that had been sold previously to LJM1 or LJM2. Causey could not think of any reason why Enron's repurchases from LJM1 or LJM2 would not be disclosed in quarterly or annual filings.

## III. Arthur Andersen

Issues regarding the related-party disclosures were typically resolved between Enron and Andersen employees without Causey's knowledge. At the end of the process, if there were any residual issues between Enron and Andersen, Causey would resolve them in discussions with Duncan. Before meeting with Duncan, however, Gary Peng and Bob Butts would usually give Causey a "heads up" regarding those unresolved issues. Causey did not recall Andersen expressing any concern regarding the related-party transactions. Causey was sure that Andersen had comments on the disclosures, but he could not recall any of them. Andersen ultimately certified all the disclosures. Andersen always had the option of refusing to sign a financial statement if Andersen disagreed with a disclosure.

## IV. 2000 10-K (March 30, 2000)

### 1. Disclosure of \$500 Million Revenue Recognition from Raptor Derivative Trades

No one raised concerns to Causey about disclosing the \$500 million revenue recognition from Raptor derivatives. Causey knew it was a large number, and he felt certain he pointed the disclosure out to Jeff Skilling. Causey's normal practice was to point out to Skilling disclosures that would receive focused attention, including related-party disclosures. Causey did not recall any specific reaction from Skilling to this disclosure. Skilling typically would ask Causey if the disclosure was required, to which Causey would say yes, and then Skilling would agree on the disclosures.

## **2. Management Representation**

Causey may have tinkered with the management representation language, but Causey did not recall making any specific changes. Causey did not recall any proposed language, discussions, or issues concerning a representation that the related-party transactions allow Enron to execute on a more timely basis.

### **V. 1st Quarter 2001 10-Q (May 14, 2001)**

#### **1. Raptor Restructuring**

Causey did not recall any discussions about disclosing the purpose or significance of the Raptor restructuring that occurred in the first quarter of 2001. Causey also did not recall any discussions about disclosing the potential losses if the restructuring had not occurred.

#### **2. "Senior Risk Officers"**

Causey's attention was directed to footnote 8 regarding related-party transactions in the 10-Q for the first quarter of 2001, and the statement in the first paragraph that "[a]ll transactions with the Related-party are approved by Enron's senior risk officers as well as reviewed annually by the Board of Directors." Causey had no specific recollection of that statement; it was likely written before Causey saw the draft. Causey had no recollection of seeing or having an opinion on this statement. Based on his reading of the words "senior risk officers" on the day of the interview, Causey said that this statement was referring to Rick Buy. Causey found it unusual that it referred to "officers" in the plural, but he did not recall thinking about or considering the meaning of these terms when he reviewed the 10-Q before it was filed. Causey did not think that he was considered or would have been considered a "senior risk officer" within the meaning of the disclosure based on Enron's nomenclature. Causey checked for risk as part of his job, but he would not have thought that this term referred to him.

### **VI. 2d Quarter 2001 10-Q (August 14, 2001)**

#### **1. ENA CLO Repurchase**

Causey's attention was directed to the last sentence in the fourth paragraph of footnote 8 regarding related-party transactions in the 10-Q for the second quarter of 2001, stating "Enron acquired investments from the Partnerships for approximately \$36.6 million." Causey stated that this statement referred to the ENA CLO Trust transaction. Causey did not recall any discussion of or consideration given to disclosing that this transaction was a repurchase by Enron of an interest that it had previously sold to LJM2.

#### **2. Sale of Fastow's Interest in LJM1 and LJM2 to Kopper**

Causey's attention was directed to the second sentence in the first paragraph of footnote 8, stating that "the senior officer . . . sold all of his financial interest as of July 31, 2001, and no longer has any management responsibilities for these entities. Accordingly, such partnerships are no longer related parties to Enron." Causey stated that there were no discussions regarding

whether to disclose that the sale was to a former Enron employee. Moreover, Causey today is not sure whether disclosure of that fact is necessary. From an accounting standpoint, Kopper's status as a former employee is not important.