



U.S. Department of Justice

Enron Task Force

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BY FEDERAL EXPRESS

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

Dear Counsel:

This letter provides you with a copy of the government's exhibit list in the above-referenced case. A copy of the government's exhibits are being deposited on June 1, 2004 at Merrill Corp. You should contact the Merrill Corp. to arrange for copying and delivery of these

[This document is in the Appendix To Defendant-Appellant Daniel Bayly's Motion For Release On Conditions Pending Appeal at Ann. 8 (Exhibit B) (filed April 27, 2005).]

exhibits.

This letter also provides you Jencks Act material for some witnesses the government expects to call in this case, and with information pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), United States v. Agurs, 427 U.S. 97 (1976) and United States v. Bagley, 473 U.S. 667 (1985).

Kira Toone-Meertens

Enclosed is an FBI 302 report memorializing the substance of statements made by Toone-Meertens, as recorded by an FBI special agent. It is marked 3500-KTM-1. We have redacted Toone-Meertens' date of birth, social security number and home address and telephone number. Also enclosed is a photocopy of Toone-Meertens grand jury testimony. It is marked 3500-KTM-2.

Also enclosed are photocopies of the exhibits which may be shown to Toone-Meertens at her deposition, and which the government will introduce, in the absence of a stipulation, by declaration of a custodian, pursuant to Fed. R. Evid. 902(11) or through Toone-Meertens. The exhibits are marked as follows: 203, 212, 215, 217 through 225, 227, 229, 232, 234, 237, 243 through 246. Please advise the government the day before the deposition if you have any objection to the authentication of these exhibits or their admission into evidence.

Michael Kopper

Based on our expectation that counsel will agree to a proposed protective order regarding the dissemination and use of Section 3500 material provided by the government in this case - we have received a response to our telephone messages from counsel for Mr. Furst only at this point - we are depositing this morning at Merrill Corp. the following for Michael Kopper, whom the government expects to call during its case in chief:

1. Photocopies of 20 redacted and unredacted FBI 302 reports memorializing the relevant portions of the substance of statements Kopper made, as recorded by an FBI special agent. They are identified by date of transcription in the upper right-hand corner of the document and by page number. They are as follows:

07/26/02	40 pages
08/16/02	15 pages
08/25/02	05 pages (no redactions)
09/24/02	01 pages
09/25/02	03 pages
10/21/02	15 pages
10/26/02	21 pages
11/06/02	03 pages

11/27/02	07 pages
12/02/02	03 pages
12/17/02	22 pages
01/17/03	01 pages
03/25/03	06 pages
05/20/03	08 pages
11/26/03	03 pages
11/28/03	05 pages
12/22/03	10 pages
02/10/04	02 pages
02/25/04	07 pages
04/05/04	06 pages

2. Photocopies of 3 unredacted memoranda of interviews memorializing the relevant portions of the substance of statements Kopper made, as recorded by an IRS special agent. They are identified by date of interview as follows:

11/06/02	04 pages
02/26/03	09 pages
04/14/03	04 pages

In addition, enclosed are copies of the following: an information charging Kopper with crimes, a cooperation agreement, the transcript of Kopper's guilty plea, an affidavit executed by Kopper and one email and three electronic appointments ostensibly relating to LJM2's purchase of Merrill's interest in the Nigerian Barge.

Andrew Fastow

Fastow was interviewed by special agents of the FBI and others. According to an FBI 302 report prepared by an agent and memorializing the substance of the interview, Fastow stated in relevant part:

The reason Merrill Lynch (hereinafter, "Merrill") invested in the Nigerian Barge deal was the extraordinarily high level of assurance Fastow provided to Merrill that Merrill would be taken out of the deal within six months with their stated rate of return.

In Fastow's discussion with Merrill, Fastow alluded to his position as general partner of LJM, and his ability to use LJM to take Merrill out of the Barge deal, if necessary. Fastow spoke with Rebecca McDonald, the head of APACHI, regarding LJM's buyout of Merrill. She said that APACHI had a buyer lined up to buy the Barges but the buyer was not yet ready. Fastow may have told McDonald that Enron had to get Merrill out of the Barge deal.

Merrill believed that Merrill would be taken out of the Barge deal because Fastow gave

Merrill verbal assurances that Merrill would be taken out in six months. Fastow does not recall using the word "promise" in his telephone call to Merrill, but he cannot say that with certainty. Fastow thought that he was being clever during the telephone call with Merrill by using euphemisms in order to convey to Merrill a promise to take Merrill out of the barges. Fastow stated to Merrill that Fastow had an extremely high level of confidence that Merrill would not lose money in the Barge deal. Fastow talked about how he was the General Partner of LJM, and that LJM was interested in buying an interest in the Barges, but not at the end of the last quarter of 1999.

The only purpose of selling an interest to Merrill was for the Enron business unit. Fastow knew that the barge deal was not huge, but Enron had to be close to making its numbers and needed the deal to do so.

Fastow must have discussed with Shulyer Tilney the Barges, including why LJM2 could not buy the Barges in 1999, so that Tilney would know what to tell his boss.

Either McMahon or Boyle asked Fastow to call Merrill to provide assurance that Merrill would not be stuck with the barges. Boyle was a Vice President in Fastow's unit and performed at an average to above-average level.

Fastow does not recall anyone effectively scripting-out what Fastow should say. But Fastow described his statements as consistent with the statement Merrill sought, as described in an email Furst sent to Boyle on December 23, 1999. Dan Boyle or Jeff McMahon would have asked for Fastow to make the Merrill call and would have briefed Fastow on what needed to be said. McMahon probably prepared Fastow for the call.

Fastow's primary audience on the call was Dan Bayly. Fastow does not recall what Bayly said during the call nor does Fastow recall Kathy Zrike being on the call. Fastow does not recall Jim Hughes, Barry Schnapper or Glisan on the call, but they could have been. On the call, Fastow told Merrill that it could have a high level of confidence that an entity was interested in the barges and that entity, LJM2, would buy the barges after six months. Fastow repeatedly mentioned that Merrill would be out by June 30, 2000.

As to words used on the call: Fastow could have used the phrase "I give you my word;" but that would have been in addition to saying "highly confident" or "extremely confident." Fastow viewed using these latter terms as making a commitment. Fastow referred to LJM2 and his position in LJM2 and made it clear that Merrill should have no doubt that Merrill will be taken out of the deal in six months. Merrill did not need to hear the word "guarantee," but the participants in the call knew what Fastow meant. Fastow deliberately avoided the word "guarantee" and knew that he could not give a verbal or written guarantee on the deal without jeopardizing the accounting treatment Enron needed. Fastow spoke as the CFO of Enron and never indicated otherwise on the call. Fastow cannot recall using the word "bridge" or the phrase "I can't say guarantee." However, Fastow generally uses the phrase "I can't say

guarantee," and Fastow intends his use of the phrase to convey "guarantee." Fastow did not say Enron would buy back the barges, but represented instead that a third party would. Fastow did say that Enron will take the necessary steps to make sure Merrill is out of the deal by June 30, 2000. It was reasonable for anyone listening to the call to think that it was Enron that was going to buy them out.

If the telephone call had been transcribed, it would have sounded like a guarantee and blown the accounting treatment of the deal. Anyone listening to the call would have believed that Fastow promised that Enron would make sure Merrill would be taken out by sale to another investor by June 2000. Fastow's statement on the call was consistent with language Merrill memorialized in a draft engagement letter, to wit: "The SPE will receive a yield of approximately 15.00 percent per annum on \$7 million of its equity investment. The SPE or its equity interest in ENB will be subsequently sold to third party equity investors or purchased by Enron or an affiliate."

Fastow believed that LJM2 would buyout Merrill and Enron's obligation to re-purchase would never materialize because of LJM2. Fastow thought LJM2 was technically a third party and so their purchase would not cause accounting problems. LJM2 had contemplated warehousing deals, but Bayly did not mention any concern about LJM2 buying Merrill's interest.

The Merrill call was a "bear hug" in which Fastow was trying to make Merrill warm and comfortable about the idea of owning the barges and that Merrill would not be stuck with them. Fastow's role was to make Merrill comfortable with the deal.

Enron was the marketing agent, but could not make anyone buy at a specified time, price or return.

Fastow had not previously seen Glisan's email dated May 11, 2000 which stated, in part, that Enron was obligated to get Merrill out of the deal on or before June 30, 2000. Fastow was not bothered by Glisan's use of the word "obligated" to describe Fastow's representation of Enron's agreement to get Merrill out of the barge deal.

Glisan's May 12, 2000 email to Hughes stating, in part, that Enron should be working on a "back-stop" should the barges be non-performing by June 30, 2000, was intended to ensure that the deal team was trying its best to find a buyer for Merrill's position in the barges, before Enron had to resort to bringing in LJM2.

Fastow was asked during the interview to the Summary of the Transaction, Bates stamp E176542, point 3. It stated: "Andersen felt that if the structure of the loan to Ebarge changed in favor of LJM2, it would appear as though Enron induced LJM2 to come into the transaction and therefore creates the appearance that Enron, in December 99, planned on taking Merrill Lynch out after six months." In Fastow's view, this passage suggests that Enron discussed the barge deal with Andersen and Anderson told Enron not to change the transaction because there would

be a problem. Andersen was advising Enron how to pay for the deal and avoid creating the appearance of an accounting problem. Fastow does not know if Andersen always knew the plan because Enron could have misled Andersen. Fastow does not know what Enron told Andersen. Fastow stated that an email from Alan Quaintance to Sean Long dated June 1, 2000 (bates stamp EC04519A0121285) indicates that it is more likely that Andersen was deceived than complicit.

LJM2 was to hold the barges for seven months. This period was chosen because it was long enough to bring Enron over its 2000 year-end issues if LJM2's interest was not sold and Enron had to repurchase it. Fastow had a conversation with someone about a seven-month date being set to prevent a reversal of earnings in 2000. This conversation may have been with McMahon, Causey, Glisan, Kopper or someone else. Fastow believes Enron paid the fee to LJM2 to buyout Merrill, even though the barges were bought from Merrill and not Enron.

Rebecca McDonald said that the barges were good projects and that Enron would get buyers for them. Fastow told McDonald that LJM2 did not want them. The barges were different than many other assets and when they were finally sold to AES they showed a profit and were not that bad an asset.

The importance of the June 30 buyout date was well-known in Enron. It was discussed at weekly senior management meetings. Fastow cannot recall if Hughes or Schnapper knew of the June 30 date, but believes that they did.

Fastow did not recall that Boyle was on the barge deal and had always associated the barges with McMahon.

Ramon Rodriguez

When interviewed by special agents of the FBI in September 2003, Ramon Rodriguez indicated that he did not remember an argument between Colpean and Kahanek. Rodriguez did not know if Kahanek or others were trying to keep information from Arthur Andersen. Rodriguez never heard of Kahanek asking anyone to delete documents. Rodriguez did not hear of an oral guarantee from Enron to get Merrill out of the barge deal.

Ben Glisan

When testifying before the Grand Jury in March 2004, Glisan stated that he misled banks about the volume of prepay transactions in which Enron was engaging. Glisan acknowledged that he violated Enron's code of conduct by his involvement in Southampton, that the Nahanni transaction was improper, and that he knew that the accounting rules were violated in connection with Hawaii 125-0.

When interviewed by special agents of the FBI and representatives of other government agencies in December 2001, Glisan stated that he was not involved in the Merrill Lynch energy

swap transaction, known as "Project Moose." Glisan stated that it was Enron's policy to have open disclosure with Arthur Andersen. Glisan stated that he did not recall ever making a misrepresentation to a financial institution, nor did he recall being part of a meeting in which someone lied. Glisan said that he did not believe that he was involved in making a false statement, lied, or involved in a crime while employed at Enron.

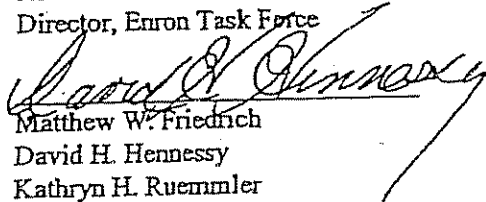
When interviewed by special agents of the FBI in August 2002, Glisan stated that he assumed the solution of giving CIBC additional business to fulfill an oral side agreement was appropriate for accounting purposes. Glisan stated that many of the transactions at Enron were inappropriate only in hindsight. Glisan further stated that he was unaware of any side agreements involving LJM.

In May 2004, Glisan, through his counsel, requested that the government support his request to be transferred to a minimum security camp in Beaumont, Texas. The government responded to Glisan's attorney as follows: the government will not weigh in on BOP's decision to designate Glisan to a particular facility; that is a matter for BOP. However, if BOP inquired, the government would advise BOP of the government's assessment of Glisan's truthfulness in this matter.

Very truly yours,

ANDREW WEISSMANN
Director, Enron Task Force

By:


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Enron Task Force

Enclosures