

May 28, 2003

U.S. BUSINESS NEWS

Enron Weighs Suing Its Banks For Bad Advice They Provided

Strategy to Settle All Litigation Deepens
A Quagmire for Citigroup, J.P. Morgan

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The welter of claims and counterclaims swirling around Enron Corp. and its bankers is about to get even more complicated.

The Houston energy company, itself the target of a slew of investigations into alleged financial chicanery, is now considering bringing legal action against its own bankers for giving the company bad financial advice that helped lead to its downfall. The saber rattling is part of a new push under Enron's chief executive officer Stephen F. Cooper to settle all the litigation involving Enron and its bankers, shareholders and creditors.

The latest twist, laid out in a pair of little-noticed motions filed in federal bankruptcy court in Manhattan in April, underscores how tough it has become for Enron's principal bankers, including J.P. Morgan Chase & Co. and Citigroup Inc., to extricate themselves from the debacle of Enron's collapse.

Both banks, along with numerous other Enron advisers, already have been sued by the company's shareholders for allegedly helping the company hide debt, and they face investigations from regulators over their involvement.

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Stephen Cooper

The Enron mess is part of a rising tide of legal problems for the banking industry in the wake of the many scandals that have shaken the corporate world in the past year. On Friday, investors in asset-backed securities sold by National Century Financial Enterprises Inc. sued **Bank One Corp., J.P. Morgan Chase, Credit Suisse Group's Credit Suisse First Boston** and others in connection with the sale of the securities by the Dublin, Ohio, health-care financier, which collapsed last year. On the same day, **Allied Irish Banks PLC** sued **Bank of America Corp. and Citigroup** over their dealings with a former trader who notched \$691 million of losses for Allfirst Financial Inc., formerly an Allied unit.

And earlier this month, a federal judge in New York refused to dismiss a lawsuit brought by former shareholders of WorldCom Inc., now known as MCI, against Citigroup, J.P. Morgan, and other underwriters of WorldCom bonds.

Spokesmen for the banks have either declined to comment or disputed the claims. But bankruptcy experts say it isn't surprising that the banks would find themselves targets. When it comes to litigation involving companies in bankruptcy, accounting firms and banks -- particularly financial-services giants such as J.P. Morgan and Citigroup -- often have the deepest pockets around.

Enron's consideration of potential claims against its bankers is part of its broad effort by to orchestrate a settlement to the miasma of lawsuits and potential lawsuits involving the bankers. Enron has requested court approval to involve Mr. Cooper in the negotiations, and to hire a high-profile Houston trial lawyer to do battle with the bankers.

In a recent filing, Enron said the lawyer, H. Lee Godfrey of Susman Godfrey LLP, had agreed to represent the company "in connection with the evaluation, investigation, assertion and negotiation of claims, causes of action, demands and other obligations against" 16 financial institutions.

Besides J.P. Morgan and Citigroup, those firms include Bank of America, CSFB, **Merrill Lynch & Co., UBS AG, Deutsche Bank AG, Goldman Sachs Group Inc., Lehman Brothers Holdings Inc., ABN Amro, Barclays PLC, Canadian Imperial Bank of Commerce, WestLB AG** and National Westminster Bank PLC, now part of **Royal Bank of Scotland PLC.**

Imputed or Actual Knowledge

In requesting the appointment of Mr. Godfrey, Enron said in the filing that it believes the financial institutions "may have participated in transactions and structures despite having knowledge (imputed or actual) of the debtors' shaky financial situation and the effect such deals could have on the debtors' affairs."

While it might seem strange for a company accused of fraud to blame its advisers for its losses, the duty of a company in Chapter 11 is to recoup as much money as possible for its creditors. Federal bankruptcy law allows companies to try to reclaim money paid out in the months prior to a bankruptcy filing that benefited one set of creditors at the expense of another. Enron's court filings suggest that it is weighing such claims, along with broader claims related to Enron's controversial financings.

Many of the financial institutions that worked for Enron already are at the center of investigations and

litigation over the controversial financial transactions they helped arrange for the company, and the special-purpose entities they were involved in setting up. Enron shareholders, who are represented by William S. Lerach, have sued many of them. Enron's creditors currently are weighing similar actions. Meanwhile, Citigroup and J.P. Morgan are attempting to negotiate settlements with the Securities and Exchange Commission over Enron.

Mr. Lerach said Tuesday that he would look askance at any effort by Enron to assert claims against its bankers for their financial advice. "In our view, that's not a legitimate effort," he said. "It's an effort by a primary wrongdoer to divert money away from the true victims of the wrongdoing to itself."

Lawyers who are involved in the bankruptcy case view Mr. Cooper's initiative as an effort to take control of the lawsuit settlement process, and to attempt to stake a claim to a portion of any settlement money that Enron shareholders can wring out of the banks. Hiring a Texas litigator to represent Enron, these people say, could help on that front.

"We believe a settlement is always preferable to litigation," a spokesman for Enron said Tuesday.

'Global Peace'

"At the end of the day, there's an issue between Lerach and the estate and the creditors as to who gets what," explained one person involved in the matter. "What Cooper is doing is hiring a Lerach-type guy to represent the estate. No bank is going to settle with only Lerach, or only the estate. This has everything to do with getting global peace and getting this behind you."

Martin Bienenstock, lead bankruptcy lawyer for Enron, didn't elaborate on the potential claims against the banks, but explained the theory under which the banks might have caused harm to Enron.

"In some instances, the people at the company and its board of directors thought the transactions they were entering into were appropriate because they were recommended by some of the financial institutions that were serving as both lenders and advisers to the company," he said.

Spokesmen for the 16 financial institutions either declined to comment or didn't return calls seeking comment.

Late last week, New York federal bankruptcy Judge Arthur J. Gonzalez, who is handling Enron's bankruptcy, and Houston federal District Judge Melinda Harmon, who presides over the shareholders' class-action suit, ordered the lawyers involved to attend an unusual "joint status conference" on the cases today. In their order, the two judges said only that the hearing "would be beneficial to the resolution of these cases."

Last week, a court hearing on the request to involve Mr. Cooper was postponed because Enron and its committee of creditors couldn't reach agreement on the initiative.

If the court authorizes Mr. Cooper's involvement, he would be acting on behalf of a "joint task force" of Enron and its official creditors committee.

Any proposed settlement would have to be approved by "a majority of the non-conflicted members of the

creditors' committee," the court filing says. In addition, the court-appointed examiner who is investigating the disputed transactions would have standing to be heard on any settlement, the filing says.

-- Erik Portanger contributed to this article.

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Updated May 28, 2003

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