

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Cr. No. H-02-0560
	§	Violations: 18 U.S.C. §§ 1956(h), 1957 and
	§	§371 (Money Laundering Conspiracy;
	§	Conspiracy to Commit Wire Fraud)
MICHAEL J. KOPPER	§	

INFORMATION

The Acting United States Attorney charges:

1. At all times relevant to this Information, Enron Corp. (“Enron”) was a publicly-traded Oregon corporation with its headquarters in Houston, Texas. Among other businesses, Enron was engaged in the purchase and sale of natural gas, construction and ownership of pipelines and power facilities, provision of telecommunication services, and trading in contracts to buy and sell various commodities. Before December 2, 2001, Enron was the seventh largest corporation in the United States.

2. The defendant MICHAEL J. KOPPER was a resident of Houston, Texas and held various positions at Enron from approximately 1994 through July 2001. For much of that time, KOPPER reported to Enron’s Chief Financial Officer (“Enron’s CFO”). Between January 2000 and July 2001, KOPPER also was a managing director of LJM2 Capital Management. In late July 2001, KOPPER left Enron to run LJM2 Co-Investments LP, an affiliate of entities that KOPPER purchased from Enron’s CFO for approximately \$16.5 million.

THE SCHEME TO DEFRAUD

A. Enron's Use of Off-Balance-Sheet Special Purpose Entities

3. Starting in at least the early 1990's, Enron funded certain of its investments by entering into arrangements with outside third parties. These joint investments typically were structured as separate entities to which Enron and other investors contributed assets or other consideration. Enron's treatment of the entities for financial statement purposes was subject to accounting rules that governed whether an entity should be consolidated in its entirety (including its assets and liabilities) onto Enron's balance sheet, or should be treated as an investment by Enron in a separate entity not under Enron's control. Enron management preferred the latter result – known as “off-balance-sheet” – because it enabled Enron to present itself more attractively as measured by criteria favored by Wall Street investment analysts and credit rating agencies.

4. Enron engaged in myriad transactions that were structured to achieve off-balance-sheet treatment. Many of those transactions were structured using “special purpose entities” (“SPEs”). Under applicable accounting rules, an SPE could receive off-balance-sheet treatment only if independent third-party investors contributed at least 3-percent of the SPE's capital, and the third-party investment is genuinely at risk, among other things. If the third party was not truly independent, or its investment was not truly at risk, consolidation of the SPE onto Enron's balance sheet would be required.

5. Starting in at least early 1997, Enron's CFO, KOPPER, and others devised a scheme to defraud Enron and its shareholders by enriching themselves through the use of certain Enron SPEs. Some of these SPEs were not eligible for off-balance-sheet treatment because the

supposedly independent third party investors were controlled by the CFO, KOPPER, and others and because the third party “investment” was not at risk, since Enron, the CFO, KOPPER, or others provided the funds to be invested or guaranteed the investment against risk of loss. Thus, these SPEs should have been consolidated onto Enron’s balance sheet.

6. Enron nevertheless engaged in various transactions with these SPEs that were designed to improve its apparent financial results, or to circumvent regulatory requirements by having an SPE do what Enron itself could not. Meanwhile, Enron’s CFO, KOPPER, and others used their simultaneous influence over Enron’s business operations and the SPEs as a means to secretly and unlawfully generate millions of dollars for themselves and others.

B. RADR

7. In early 1997, Enron’s holdings included a number of California wind farms that were partly owned by an Enron subsidiary named ZOND. At the time, California and federal energy regulations granted substantial economic benefits to alternative energy facilities that met certain requirements and were not owned by public utilities (“qualifying facilities”, or “QFs”). Because Enron was in the process of purchasing a public utility, Portland General Electric, its wind farms would become ineligible for QF status unless ZOND’s interests were sold.

8. In approximately May 1997, Enron’s CFO, KOPPER, and others devised a scheme to enrich themselves and enable Enron to retain secret control over the California wind farms while appearing to maintain eligibility for QF status. Enron’s CFO and KOPPER caused the creation of SPEs known as “RADR ZWS, LLC,” and “RADR ZWS MM, LLC” (collectively, “RADR”) which purchased ZOND’s interest in the wind farms. RADR was funded mainly with a \$16.4 million loan from an Enron subsidiary. Rather than seek independent third party equity

investors, and to ensure that Enron effectively maintained control over the wind farms, Enron's CFO and KOPPER contacted several of their personal friends, including a friend of the Enron CFO's wife, KOPPER's domestic partner, and a Houston real estate broker.

9. As part of their scheme to enrich themselves through the use of Enron SPEs, Enron's CFO arranged to fund some of the friends' "investments" by making an unsecured personal loan to KOPPER, who in turn made unsecured loans to the friends so that they could "invest" in RADR. It was understood that the friends would repay KOPPER with distributions from their RADR "investments," and KOPPER would in turn repay Enron's CFO. It was further understood that, at some time in the future, Enron would repurchase the RADR entities. The repurchase price would increase over time, so that the longer it took Enron to repurchase RADR, the higher the price it would have to pay. The RADR transaction was a model for later transactions, which came to be known within Enron as "Friends of Enron" deals.

10. Between August 1997 and July 2000, RADR generated approximately \$2.7 million in distributions to the investors. In July 2000, Enron repurchased the RADR entities, resulting in an additional gain of approximately \$1.8 million to the investors. Two of the investors were directed by KOPPER to transfer portions of their proceeds to various individuals. Among those who received money were Enron's CFO, KOPPER, several of their family members, and various Enron employees and their family members.

C. Chewco

11. In 1993, Enron and the California Public Employees' Retirement System ("CALPERS") entered into a joint venture investment partnership called Joint Energy Development Limited Partnership ("JEDI"). Enron was the general partner of JEDI and

contributed \$250 million in Enron stock; CALPERS was the limited partner and contributed \$250 million in cash. Enron did not consolidate JEDI onto its balance sheet and did not include JEDI's debt in its financial statements.

12. In the summer of 1997, Enron began to seek a buyer for CALPERS' share of the JEDI partnership so that CALPERS would agree to invest additional funds in an even larger partnership to be called JEDI II. CALPERS imposed a deadline of November 6, 1997 for the buyout.

13. In November 1997, Enron formed Chewco, an SPE, to buy out CALPERS' JEDI interest. Enron's CFO initially sought to become Chewco's general partner, but substituted KOPPER when it became clear that Enron otherwise would have to disclose publicly the CFO's participation.

14. After failing to find investors willing to provide the required 3-percent outside equity for Chewco before the November 6, 1997 deadline, Enron arranged to fund the buyout temporarily through "bridge" loans from Barclays Bank PLC ("Barclays") and Chase Manhattan Bank ("Chase"). Each bank loaned \$191.5 million to Chewco, with repayment guaranteed by Enron, and Chewco used those loan proceeds to buy CALPERS' interest in JEDI.

15. Because Chewco had no genuine outside equity investment, and because Enron guaranteed Barclays and Chase against risk of loss, Chewco did not comply with SPE rules. Enron thus planned, for financial reporting purposes, to replace the bridge financing before year end with another structure that would qualify Chewco as an SPE with sufficient outside equity.

16. Chewco's structure at year-end again failed to meet SPE requirements. Its permanent financing structure consisted of a \$240 million loan from Barclays guaranteed by

Enron, a \$132 million advance from JEDI to Chewco under a revolving credit agreement, and approximately \$11.49 million as an apparent equity investment from Chewco's general and limited partners. However, Enron structured the transaction so that \$11.03 million of the supposed outside equity was actually borrowed from Barclays by various entities controlled by KOPPER. The loan was secured by approximately \$6.58 million in cash that was generated by JEDI's sale of an asset. Those funds were held in accounts that were fully pledged to Barclays, meaning that Barclays' was partly protected against risk of loss. The remaining "outside equity" consisted of \$125,138 provided by KOPPER and his domestic partner.

17. From December 1997 through December 2000, KOPPER received various payments relating to Chewco, which he secretly shared with Enron's CFO. KOPPER received a total of approximately \$1.5 million in "management fees" relating to Chewco, which he shared with Enron's CFO mainly through checks payable to members of the CFO's family. In December 1998, Enron's CFO caused Enron to pay a \$400,000 "nuisance fee" to Chewco as compensation for agreeing to amend JEDI's partnership agreement. KOPPER transferred approximately \$67,224 of the nuisance fee back to Enron's CFO, again through checks written to the CFO or members of his family. In addition, KOPPER paid the CFO's wife approximately \$54,000 for acting as a Chewco administrative assistant.

18. In March 2001, Enron bought Chewco's limited partnership interest in JEDI and consolidated JEDI onto its financial statements. Enron's CFO approved a purchase price of \$35 million, of which KOPPER and his domestic partner received approximately \$3 million. In September 2001, Enron's CFO authorized a further \$2.6 million "tax indemnity payment" to Chewco, which KOPPER subsequently transferred to an account under his control.

D. Southampton

19. Still another SPE formed by Enron was a partnership called LJM Cayman, L.P. (“LJM Cayman”). Enron’s CFO invested \$1 million in LJM Cayman and was granted by Enron a limited waiver of Enron’s conflict of interest rules so he could run LJM Cayman as its general partner. LJM Cayman had two limited partners, an entity owned by Credit Suisse First Boston (“CSFB”) and an entity owned by National Westminster Bank (“NatWest”). Each invested \$7.5 million.

20. In June 1999, Enron entered into a transaction in which a third party assigned more than three million Enron shares to LJM Cayman. In return, Enron received promissory notes and a “put” option on shares Enron owned in Rhythms NetConnections, Inc. (“Rhythms”). The Rhythms put option was issued by LJM Cayman’s subsidiary, LJM Swap Sub, L.P. (“Swap Sub”), and purported to give Enron the right to sell, or put, its Rhythms shares to Swap Sub for a set price on certain future dates. Because Swap Sub was capitalized primarily with Enron shares, it would be unable to afford to pay Enron for the put option if its Enron shares fell below a certain price.

21. During the first quarter of 2000, both Enron and Rhythms shares increased in price, making Swap Sub’s main asset (its Enron shares) more valuable while substantially decreasing its potential liability on the Rhythms put option. Thus, Swap Sub had far more value than previously. In approximately February 2000, Enron’s CFO, KOPPER and three NatWest bankers devised and later executed a scheme to defraud Enron and others by: (i) causing Enron to pay \$30 million to buy out, or “unwind”, the banks’ interests in Swap Sub; (ii) causing NatWest to accept only \$1 million for its interest in Swap Sub while representing to Enron that NatWest

was getting \$20 million; and (iii) splitting the \$19 million balance among themselves and certain Enron and LJM employees.

22. To carry out the scheme, KOPPER, Enron's CFO, and others caused Enron to pay \$30 million to unwind Swap Sub. That purchase price was based on Enron's CFO's false representation to Enron that NatWest and CSFB had agreed to sell their interests in Swap Sub for \$20 million and \$10 million, respectively. In fact, NatWest received only \$1 million and had agreed to receive this sum based on misrepresentations and fraudulent conduct of its own employees, who sought to skim profits that should have gone to NatWest.

23. As a result, the three NatWest bankers who participated in the scheme received approximately \$7.3 million. The balance of the funds went to investors in an entity called Southampton LP ("Southampton"), which KOPPER created. The Southampton "investors" were KOPPER, who contributed \$25,000 and caused Chewco to loan another \$750,000, and received approximately \$4.5 million; a purported charitable foundation in the name of the CFO's family, which contributed \$25,000 and received approximately \$4.5 million; and five Enron and LJM employees chosen by KOPPER and the CFO, who contributed a total of less than \$20,000 and received a total of approximately \$3.3 million.

COUNT ONE—Conspiracy to Commit Wire Fraud

24. Paragraphs Three through Twenty-Three of this Information are repeated and realleged as if fully set forth here.

25. In or about and between at least May 1997 and July 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, the defendant

MICHAEL J. KOPPER

and others, conspired to and did devise a scheme and artifice and to obtain money by false and fraudulent pretenses and to deprive Enron and its shareholders of their intangible right to a corporate employee's honest services, and for the purpose of executing such scheme and artifice transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds, all in violation of Title 18, United States Code, Sections 1343 and 1346.

MEANS AND METHODS

26. Among the means and methods by which the defendant MICHAEL J. KOPPER and his co-conspirators would and did carry out the conspiracy were those described in paragraphs Three through Twenty-Three of this Information, as well as others.

OVERT ACTS

27. In furtherance of the conspiracy and to effect the objects thereof, within the Southern District of Texas and elsewhere, the defendant MICHAEL J. KOPPER and others did commit and cause to be committed the following overt acts, among others:

RADR

- a. In or about May 1997, Enron's CFO wired \$419,000 to KOPPER.
- b. In or about May 1997, KOPPER wired \$224,600 to his domestic partner, and \$204,400 to a Houston real estate broker.
- c. In or about August 1997, KOPPER wired \$481,850 to Enron's CFO.
- d. In or about July 2000, KOPPER's domestic partner and the Houston real estate broker received wire transfers in the amounts of \$865,260 and \$827,640, respectively.
- e. In or about August 1997, KOPPER and Enron's CFO agreed to pay a portion of

their RADR profits to an Enron employee who assisted them with the RADR transaction.

Chewco

f. On or about December 23, 1998, KOPPER directed a wire transfer in the amount of \$400,000 from Chewco to an account controlled by KOPPER, representing proceeds of a “nuisance fee” paid by Enron to Chewco.

g. On or about December 31, 1998, KOPPER wrote checks totaling \$39,724 payable to Enron’s CFO’s wife and children.

h. On or about August 14, 2000, KOPPER received a wire transfer from Chewco in the amount of \$1,045,000.

i. On or about May 6, 2001, KOPPER received a wire transfer from Chewco in the amount of \$2,582,064.39.

j. On or about May 6, 2001, KOPPER’s domestic partner received a wire transfer from Chewco in the amount of \$486,887.22.

k. On or about September 19, 2001, KOPPER received a wire transfer from Chewco in the amount of \$2,625,000, representing proceeds of a “tax indemnity” payment made by Enron to Chewco.

Southampton

l. On or about March 4, 2000 Enron’s CFO met with a NatWest banker in the Cayman Islands.

m. On or about March 10, 2000, a NatWest banker faxed a letter from London, England to KOPPER in Houston, Texas stating that NatWest would sell its interest in SwapSub to a company controlled by KOPPER for \$1 million.

- n. On or about March 16, 2000, KOPPER met with a NatWest banker in New York.
- o. On or about April 25, 2000, a NatWest banker caused a wire transfer of \$251,993 from an account in England to an account controlled by KOPPER in Houston, Texas.
- p. On or about May 1, 2000, KOPPER caused a wire transfer of \$7,352,626 from Houston, Texas to an account in the Cayman Islands controlled by one of the NatWest bankers.
- q. On or about May 1, 2000, KOPPER caused a wire transfer of \$1,040,744 to an account controlled by an Enron employee.
- r. On or about May 1, 2000, KOPPER caused a wire transfer of \$4,466,189 to an account in the name of Enron's CFO's purported charitable foundation.
- s. On or about May 1, 2000, KOPPER caused a wire transfer of \$4,466,189 into an account that he controlled.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO—Money Laundering Conspiracy

28. The allegations in paragraphs Three through Twenty-Three of this Information are realleged as if fully set forth here.

29. In or about and between at least May 1997 and July 2001, within the Southern District of Texas and elsewhere, the defendant

MICHAEL J. KOPPER

and others, conspired to knowingly engage in monetary transactions, namely, deposits, withdrawals, transfers and exchanges in and affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, said property being derived from a specified unlawful activity, namely, wire fraud, in violation of Title 18, United States Code,

Section 1957.

30. It was part of the conspiracy that, in or about and between July 1997 and September 2001, KOPPER and others engaged in monetary transactions involving criminally derived property from the RADR transaction that totaled approximately \$4.4 million.

31. It was further part of the conspiracy that, in or about and between November 1997 and September 2001, KOPPER and others engaged in monetary transactions involving criminally derived property relating to the Chewco transaction that totaled approximately \$13.5 million.

32. It was further part of the conspiracy that, in or about May 2000, KOPPER and others engaged in monetary transactions involving criminally derived property relating to the Southampton transaction that totaled approximately \$19.6 million.

All in violation of Title 18, United States Code, Sections 1956(h) and 1957.

FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461 -- Criminal Forfeiture)

33. The allegations contained in Count One of this Information are hereby realleged and incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

34. As a result of the offense alleged in Count One, the defendant

MICHAEL J. KOPPER

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes and is derived from proceeds traceable to the commission of said offense, including but not limited to the following:

A. BANK ACCOUNTS

<u>Bank Name</u>	<u>Account #</u>	<u>Amount to Restrain</u>	<u>Account Holder</u>
JPMorgan/Chase	Q65183-00-8	\$4,610,208.91	Fastow Family Foundation
Paine Webber	HS-75406-EJ	\$1,374,744.00	Kristina Mordaunt
Sunlife Assurance Co. of Canada	0212524146-01	\$300,000	Kristina Mordaunt
Fidelity Spartan Municipal Money Market FSI	Acct.#UNK	\$218,326.60	Kathy Lynn
Charles Schwab	1320-9323	\$45,000	Anne Yeager
Charles Schwab	11042180	\$500,000	Peter Fastow
1st Union Security	001-H01-3839-6161	\$916,137.00	Ben Glisan Jr.
Chase Bank S. Fastow	054-05023866	\$7,699,838.13	Lea W & Andrew
JP Morgan	340160	\$7,699,838.13	Lea W & Andrew S. Fastow
Chase Bank	Q62603-00-8	\$1,420,00	Lea W & Andrew S. Fastow
Sterling	159006885	\$6,370,000	Capital Growth Holding
Sterling	159006893	\$130,000	Capital GP Holding

B. REAL PROPERTY

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at the following:

<u>Property</u>	<u>Owner</u>
3005 Del Monte Houston, Texas 77019 Lt 3, Blk 31, River Oaks Sec1, Harris County, Texas	Andrew and Lea Fastow
4531 W. Alabama St. Houston, Texas 77027 Lt 3 Blk 4 Afton Oaks Sec 1 Harris County, Texas Chase Bank	Kristina Mary Mordaunt and Robert V. Ulsh Jr.

C. PERSONAL PROPERTY

<u>Property</u>	<u>Owner</u>
2000 Lexus VIN JT6G/f10U5Y0078539	R. Vance Ulsh Jr.

35. If any of the property described herein as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

then any and all interest MICHAEL J. KOPPER has in other property shall be vested in the United States and forfeited to the United States pursuant to Title 18, United States Code, Section 982(b)(1), including \$4 million from Charles Schwab account number 3962-3986 in the name of LJM2 Capital Management, LP, which represents substitute assets for criminally derived property.

All in violation of United States Code, Sections 1343 and 371.

FORFEITURE ALLEGATION:

(18 U.S.C. § 982(a)(1)-- Criminal Forfeiture)

36. The allegations contained in Count Two of this Information are hereby realleged and incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982(a)(1).

37. As a result of the offense alleged in Count Two, the defendant

MICHAEL J. KOPPER

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in such offense, or any property traceable to such property, including but not limited to the following:

A. BANK ACCOUNTS

<u>Bank Name</u>	<u>Account #</u>	<u>Amount to Restrain</u>	<u>Account Holder</u>
JPMorgan/Chase	Q65183-00-8	\$4,610,208.91	Fastow Family Foundation
Paine Webber	HS-75406-EJ	\$1,374,744.00	Kristina Mordaunt
Sunlife Assurance Co. of Canada	0212524146-01	\$300,000	Kristina Mordaunt
Fidelity Spartan Municipal Money Market FSI	Acct.#UNK	\$218,326.60	Kathy Lynn
Charles Schwab	1320-9323	\$45,000	Anne Yeager
Charles Schwab	11042180	\$500,000	Peter Fastow
1st Union Security	001-H01-3839-6161	\$916,137.00	Ben Glisan Jr.
Chase Bank S. Fastow	054-05023866	\$7,699,838.13	Lea W & Andrew
JP Morgan	340160	\$7,699,838.13	Lea W & Andrew S. Fastow
Chase Bank	Q62603-00-8	\$1,420,00	Lea W & Andrew S. Fastow
Sterling	159006885	\$6,370,000	Capital Growth Holding
Sterling	159006893	\$130,000	Capital GP Holding

B. REAL PROPERTY

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at the following:

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3005 Del Monte Houston, Texas 77019 Lt 3, Blk 31, River Oaks Sec1, Harris County, Texas	Andrew and Lea Fastow
4531 W. Alabama St. Houston, Texas 77027 Lt 3 Blk 4 Afton Oaks Sec 1 Harris County, Texas Chase Bank	Kristina Mary Mordaunt and Robert V. Ulsh Jr.

C. PERSONAL PROPERTY

<u>Property</u>	<u>Owner</u>
2000 Lexus VIN JT6G/f10U5Y0078539	R. Vance Ulsh Jr.

38. If any of the property described herein as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

then any and all interest MICHAEL J. KOPPER has in other property shall be vested in the

United States and forfeited to the United States pursuant to Title 18, United States Code, Section 982(b)(1), including \$4 million from Charles Schwab account number 3962-3986 in the name of LJM2 Capital Management, LP, which represents substitute assets for criminally derived property.

All in violation of Title 18, United States Code, Sections 1956(h) and 1957.

DATED: Houston, Texas
August 20, 2002

JOSHUA HOCHBERG
Acting United States Attorney
Southern District of Texas

By: _____
LESLIE R. CALDWELL
Director, Enron Task Force

By: _____
THOMAS A. HANUSIK
Trial Attorney, Enron Task Force

