

# Filing argues a duty to tell

## ■ Shareholder suit says 3 banks should have aired Enron dealings

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Three banks that haven't settled with Enron shareholders were so active in both Enron deals and selling its securities that they had a duty to disclose deceptions, according to a shareholder court filing made on Friday.

And that should keep the lawsuit against them alive, the filing said.

The University of California, the lead plaintiff in the shareholder class-action lawsuit, filed a 63-page argument with U.S. District Judge Melinda Harmon late Friday, asking that she not dismiss the case against Merrill Lynch & Co., Credit Suisse, Barclays and a few individual defendants.

"It is clear the banks undertook a massive effort to sell Enron to the market. Thus, they had a duty to tell the market at least what they knew from their own deceptive conduct," said Trey Davis, spokesman for the university. "We continue to pursue Merrill Lynch, CSFB and Barclays as defendants in this case on behalf of investors. Today's filing lays out the evidence of their wrongdoing."

The three banks have asked Harmon to toss what's left of the lawsuit, now that the U.S. Supreme Court has both refused to hear an appeal from the Enron shareholders and ruled in the case of Stoneridge Investment Partners.

In the Stoneridge case, the court ruled to greatly limit the ability of shareholders to hold vendors, banks, accountants, law firms and others legally responsible for the securities

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fraud of another party.

"We think the U.S. Supreme Court was very clear in its decision and disagree with the latest theory from the plaintiffs' attorneys," Merrill Lynch said in a statement released late Friday.

Credit Suisse had no comment.

This fight is over what remains of a lawsuit filed in 2001 against banks, officers, directors and others. Most defendants have settled without acknowledging guilt and \$7.2 billion has been collected, largely from banks.

A plan to mete that money out to shareholders is in the works and awaiting Harmon's final nod.

To keep these remaining three banks on the hook, the plaintiffs must persuade Harmon that this case can be sufficiently distinguished from the high court's ruling in Stoneridge, though most experts have said it's a long shot.

"Because of their market actions, the shareholders expected candor from them," plaintiffs' lawyers Patrick Coughlin said of the banks. "The markets looked to them. The markets had a right to rely on them. And that created a duty to disclose."

The basic argument is that the three banks helped Enron design its deception and then helped sell it to the securities market. The plaintiffs also argue that these banks are very different from the equipment vendors who won the Stoneridge case.

"The point is that these investment Banks stood in very different positions than did the supplier/customer defendants in Stoneridge," the filing said. "The Stoneridge defendants had little if any contact with the marketplace in which Charter Communications securities were traded; in contrast, these investment Banks sought out and nurtured extensive and ongoing contacts and relationships with the marketplace in which Enron securities were traded. Having done so and then remained silent about the impact of their conduct on Enron's reported financials is to have omitted material information."

The Coughlin Stoia Geller Rudman & Robbins lawyers noted that the banks traded Enron stock, underwrote new issuances of Enron securities, marketed Enron securities and issued analyst reports on Enron securities, all while also participating as lenders and creators of some of the fraudulent deals.

Since the Stoneridge decision, some pro-plaintiffs' groups have argued that there is room in the high court decision for shareholders to still hold parties like banks culpable in securities fraud cases. If the University of California prevails and this lawsuit is not tossed out by Harmon, it will no doubt be closely followed by lawyers around the nation.

"Everybody in the country will be watching what we do," Coughlin said. "This case will set the tone for many others."

This filing came the same week the Coughlin law firm is sponsoring Houston Enron shareholder meetings to help people file their claim on the \$7.2 billion already collected in the lawsuit.

This Enron suit originally sought \$40 billion from banks, law firms, auditors and individuals for allegedly participating in fraud to hide debt, falsify financial statements and inflate reported income. The \$7.2 billion settlement is the highest ever in securities litigation, beating the \$6.1 billion in the WorldCom case.

More than \$6 billion of this Enron settlement came from banks JPMorgan Chase, Citigroup and the Canadian Imperial Bank of Commerce.

The remainder came from other banks, auditors, a law firm, a partnership and the company's directors. Several individual defendants still remain in the lawsuit, though the banks' motion to have the case tossed will decide it for all.

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