

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Cr. No. H-02-0665
)
BEN F. GLISAN, JR.,)
)
Defendant.)
)

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States Department of Justice by the Enron Task Force (“the Department”) and Ben F. Glisan, Jr. (“Defendant”) agree to the following (the “Agreement”):

1. Defendant will plead guilty to count five of the above-captioned Superseding Indictment, charging a violation of 18 U.S.C. § 371, conspiracy to commit wire and securities fraud. The Defendant agrees that the recitation of facts contained in Exhibit I (attached) is true and supplies a factual basis for his plea. Count five carries the following statutory penalties:

- a. Maximum term of imprisonment: 5 years
(18 U.S.C. § 371)
- b. Minimum term of imprisonment: 0 years
(18 U.S.C. § 371)
- c. Maximum supervised release term: 3 years, to follow any term of imprisonment; if a condition of release is violated, Defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision

(18 U.S.C. §§ 3583 (b) & (e))

- d. Maximum fine: \$250,000 or twice the gain/loss
(18 U.S.C. § 3571(b)(3))
- e. Restitution: As determined by the Court pursuant to statute.
(18 U.S.C. §§ 3663 and 3663A)
- f. Special Assessment: \$100
(18 U.S.C. § 3013)

2. The Department and the Defendant jointly submit that this Plea Agreement, together with the record that will be created by the Department and the Defendant at sentencing, provides sufficient information concerning the Defendant, the offense charged in this case, and the Defendant's role in the offense to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. §3553. The Department and the Defendant will jointly request that the Court accept the Defendant's guilty plea, waive the presentence investigation and immediately impose sentence on the day the guilty plea is entered pursuant to Fed. R. Crim. P. 32(c)(1)(A)(ii), USSG §6A1.1 and Local Rule 32.1. The Court's denial of the request to impose sentence immediately will not void this Agreement.

3. Based on information known to the Department and the Defendant at this time, the applicable Criminal History Category is I and the Department and the Defendant agree the likely adjusted offense level under the Sentencing Guidelines¹ to be 31 with a guideline range of 108 - 135 months in prison. The Department and Defendant agree that the applicable Sentencing Guideline range exceeds the maximum statutory term of imprisonment of five years and that the Guidelines require the imposition of that sentence. USSG § 5G1.1(a). The Defendant further agrees that he will not move for a

¹ Defendant agrees that the 2000 Sentencing Guideline Manual applies to count five.

downward departure on any grounds and that there are no such grounds. The parties further agree and recommend to the Court that the Defendant's agreement to forfeit \$938,000 (the "Forfeiture Amount") and his agreement not to seek a refund from the United States Treasury of approximately \$412,000 (see *infra*, ¶¶ 9 & 11) should fully satisfy the forfeiture, fine and restitution provisions of the sentencing laws and Guidelines. 18 U.S.C. §§ 3663(a)(3) & 3663A; USSG § 5E1.2(d)(4&5) & (e).

4. Defendant agrees to pay the special assessment of \$100 by check payable to the Clerk of the Court at or before sentencing. 18 U.S.C. § 3013(a)(2)(A); USSG §5E1.3.

5. Defendant agrees to surrender to the United States Marshal, or to the Bureau of Prisons if he is designated to an institution by the time of his plea, on the date he pleads guilty, which shall occur on or before September 10, 2003 or the Agreement is void. Defendant further agrees that he will not thereafter seek release or bail pursuant to 18 U.S.C. § 3141, *et seq.*

6. The Guidelines estimate set forth in paragraph 3 is not binding on the Probation Department or the Court. If the Guidelines offense level determined by the Probation Department or the Court is different from the estimate, Defendant will not be entitled to withdraw his plea.

7. Defendant will not file an appeal or otherwise challenge his conviction or sentence in the event that the Court imposes a term of imprisonment of 60 months or below. This waiver is binding on Defendant even if the Court employs a Guidelines analysis different than that set forth above.

8. Defendant waives all defenses based on the statute of limitations and venue with respect to any prosecution that is not time-barred on the date that this Agreement is signed in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn. The Defendant understands that by pleading guilty he is waiving important

rights including : (a) the right to persist in his previously entered plea of not guilty; (b) the right to a jury trial; (c) the right to be represented by counsel - and if necessary to have the court appoint counsel to represent him - at trial and at every other stage of the proceeding; (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and (e) the right to additional discovery and disclosures from the Department. The Defendant acknowledges that he has received sufficient discovery and disclosures from the Department to make an informed decision to enter into this Agreement and to plead guilty.

9. Defendant agrees that he will not contest forfeiture of the Forfeiture Amount in proceeds from the Southampton transaction as described in paragraphs 68 through 77 of Attachment A to the Verified Complaint for Forfeitures in Rem in United States v. Contents of Charles Schwab Account Number 1104-2180, et al., Civ. Case No. H-02-3974 (S.D.Tex. Houston Div.). Defendant agrees to forfeit his interest in the contents of First Union Security account number 001-H01-3839-6161, up to and including the Forfeiture Amount, which is subject to civil forfeiture in Civ. No. H-02-3974, United States v. Contents of Charles Schwab account no. 1104-2180, and prior to sentencing he will withdraw his claim therein; in turn, the Government will promptly withdraw and release its claim to the balance remaining in First Union Security account number 001-H01-3839-6161 and will promptly make every reasonable effort to obtain the order(s) necessary so that the Defendant or his wife, Barbara Glisan, will have full access to the funds remaining in that account after they withdraw their claims to the Forfeiture Amount. Defendant agrees to enter into the stipulation of settlement regarding forfeiture annexed hereto and fully assist the government in effectuating the forfeiture of the Forfeiture Amount. Defendant agrees not to file a claim or assist others to file a claim to

any of the Forfeiture Amount in any administrative or judicial proceeding.² Defendant knowingly and voluntarily waives any right to a jury trial on the forfeiture of the Forfeiture Amount, and waives all constitutional, legal, and equitable defenses to the forfeiture of the Forfeiture Amount.

10. Defendant agrees not to accept remuneration or compensation of any sort for the dissemination, directly or indirectly, by him of information concerning his work at Enron Corporation or Arthur Andersen LLP, or concerning the transactions alleged in the Superseding Indictment, including but not limited to books, articles, speeches, and interviews.

11. Defendant agrees not to avoid or attempt to avoid paying any fine or restitution imposed by the Court in this proceeding through any proceeding pursuant to the United States Bankruptcy Code. Defendant waives all rights, if any, to obtain discharge or to delay payment of any fine or restitution obligation arising from this proceeding or alter the time for payment by filing a petition pursuant to the Bankruptcy Code. Defendant stipulates that enforcement of any fine or restitution obligation arising from this proceeding by the Department is not barred or affected by the automatic stay provisions of the United States Bankruptcy Code and that enforcement of any fine or restitution obligation arising from this proceeding by the Department is a valid exercise of its police or regulatory power within the meaning of Title 11, United States Code, Section 362(b). Defendant stipulates and agrees not to institute or participate in any proceeding to interfere with, alter, or bar enforcement of any fine or restitution obligation arising from this proceeding pursuant to the automatic stay or other provision of the

² Defendant's wife, Barbara Glisan, also agrees to sign a stipulation of settlement, waiving her right, title, and interest in the First Union Security account up to and including the Forfeiture Amount. Her entering into the stipulation of settlement is a condition of the defendant's plea agreement.

Bankruptcy Code in any case filed by Defendant or his creditors. Upon request of the Department, Defendant will execute a stipulation granting the Department relief from the automatic stay or other Bankruptcy Code provisions in order to enforce any fine or restitution obligation arising from this proceeding. Defendant stipulates that any fine or restitution obligation imposed by the Court in this proceeding is not dischargeable pursuant to Title 11 United States Code, Section 523 in any case commenced by Defendant or his creditors pursuant to the Bankruptcy Code. Defendant agrees not to seek a refund from the United States Treasury of the amount that he paid in taxes, approximately \$412,000, in connection with the receipt of the \$1,040,744 in proceeds from the Southampton transaction, and waives his right, title, and interest to the taxes paid on that amount. Defendant agrees that the Forfeiture Amount, which is contained in First Union Security account number 001-H01-3839-6161, will not be set off by the amount of any taxes previously paid on the \$1,040,744. Defendant stipulates that the Forfeiture Amount that is contained in First Union Account number 001-H01-3839-6161 is not exempt under any state or federal exemption, whether arising under 11 U.S.C. §524(b)(1) - (2), or under any applicable state law. Nothing in this Agreement shall constitute a modification or waiver of Defendant's state or federal exemptions with respect to property other than the Forfeiture Amount. Defendant's waivers, stipulations, and agreements set forth in this Agreement are made in exchange for the Department's entering into this Agreement.

12. The Department agrees that no further criminal charges will be brought against Defendant for any act or offense in which he engaged in his capacity as an officer and/or employee of Enron Corporation or arising out of such employment, or any statement made by Defendant to the Department, Securities and Exchange Commission or Internal Revenue Service, and the Department will move after sentencing to dismiss the remaining counts of the Superseding Indictment with prejudice.

13. Should it be judged by the Department that Defendant has violated any provision of this Agreement, Defendant will not be released from his plea of guilty but the Department will be released from its obligations under this Agreement, including but not limited to its agreements set forth in the previous paragraph.

14. This Agreement does not bind any federal, state, or local prosecuting authority other than the Department, and does not prohibit the Department or any other department, agency, or commission of the United States from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving Defendant.

15. Apart from the written proffer agreement dated December 12, 2001, no promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement and none will be entered into unless memorialized in writing and signed by all parties. This Agreement supersedes all prior promises, agreements or conditions between the parties, including the written proffer agreement. To become effective, this Agreement must be signed by all signatories listed below.

Dated: Houston, Texas
September , 2003

LESLIE R. CALDWELL
Director, Enron Task Force

By:

ANDREW WEISSMANN
Deputy Director, Enron Task Force

LAUREL LOOMIS
Senior Trial Attorney

JOHN H. HEMANN
Assistant United States Attorney

LINDA LACEWELL
Assistant United States Attorney

ADDENDUM FOR
DEFENDANT GLISAN

I have consulted with my attorney and fully understand all my rights with respect to the Superseding Indictment pending against me. I have consulted with my attorney and fully understand all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read this Agreement and carefully reviewed every part of it with my attorney. I understand this Agreement and I voluntarily agree to it.

Ben F. Glisan, Jr.
Defendant

Date

ADDENDUM FOR DEFENSE COUNSEL

I have fully explained to Defendant Glisan his rights with respect to the pending Superseding Indictment. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and I have fully explained to Defendant Glisan the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this Agreement with Defendant Glisan. To my knowledge, Defendant Glisan's decision to enter into this Agreement is an informed and voluntary one.

Henry F. Schuelke, III, Esq.
Attorney for Defendant Glisan

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cr. No. H-02-665
)
 BEN F. GLISAN, JR.,)
)
 Defendant.)
)
)

SENTENCE DATA SHEET

DEFENDANT: BEN F. GLISAN, JR.

CRIMINAL NO: H-02-665

GUILTY PLEA: Count Five (Conspiracy to Commit Wire and Securities Fraud)

SUBSTANCE OF AGREEMENT: Pursuant to Fed. R. Crim. P. 11(c)(1)(B), Defendant will plead to count five of the Superseding Indictment (conspiracy to commit wire and securities fraud).

COUNT FIVE: Conspiracy (18 U.S.C. § 371)

ELEMENTS: 1) An agreement between two or more persons,
2) to commit a crime against the United States, and
3) an overt act committed by one of the conspirators in furtherance of the agreement.

PENALTY: Imprisonment not to exceed 5 years and a fine not to exceed \$250,000 or twice gain/loss. 18 U.S.C. §§ 371 and 3571(b)(3). Supervised release after imprisonment of not more than 3 years. 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2).

SENTENCING
GUIDELINES: Applicable.
SPECIAL
ASSESSMENT: \$100. 18 U.S.C. § 3013(a)(2)(A).

ATTACHMENT: Plea Agreement

DEFENDANT
WAIVED HIS
RIGHT TO
APPEAL: Yes

EXHIBIT I

GLISAN STATEMENT - COUNT FIVE

I was the Treasurer of Enron Corporation from the spring of 2000 until October 2001. Beginning in the spring of 2000, I and others at Enron engaged in a conspiracy to manipulate artificially Enron's financial statements. LJM enabled Enron to falsify its financial picture to the public; in return, LJM received a prearranged profit. Specifically, I and others caused the creation and use of a Special Purpose Entity (SPE) known as Talon to engage in illegal transactions, including the use of Talon as an off-balance-sheet vehicle that I knew in fact did not qualify for such treatment and should have been included on Enron's books.

Talon, which was created in April 2000, was designed by me and others to protect Enron's balance sheet from decreases in value of certain investments. Talon was funded mainly by Enron through a promissory note and Enron's own stock. The remainder of Talon's funding came from a \$30 million "investment" from LJM. This alleged third party funding served as the supposed 3% outside equity that I knew was required for Talon not to be reflected in Enron's financial statements, which I knew were publicly filed with the Securities and Exchange Commission and relied on by the public.

As I knew, this transaction violated existing accounting principles in that its form was misleading and was accounted in a manner inconsistent with its economic substance. As I also knew, Talon was not properly off-balance-sheet. I and others arranged for Enron to pay \$41 million to LJM before Talon would engage in the hedging transactions for which it was created. Enron and Talon entered into a "put", that is, a transaction that purportedly served to hedge Enron against a decline in its own stock value. Although there was no true business purpose, the "put" option was purchased by Enron for \$41 million. The put was designed by me and others as an ostensible reason to make a distribution of \$41 million to LJM, economically providing a return of and return on capital. Since the put failed to have a true business purpose, Talon failed to meet the minimum equity test as required by applicable accounting rules. As a result of this failure, LJM lacked substantive control of Talon. This failure, in turn, led to the substantive control of Talon by Enron.

As part of the scheme, I understood that the use of the interstate wires would be made in the form of, among other things, payments and filings by Enron with regulators of misleading financial statements.