



CASE STUDY

ENRON LITIGATION

Facing one of the largest and most complex civil fraud trials in U.S. history, the Enron Creditors Recovery Corporation (“ECRC”) changed law firms after more than four years of proceedings, and hired Crowell & Moring to take its case against two leading international financial institutions – Citigroup and Deutsche Bank – out of the discovery thicket and into trial.

ECRC, suing on behalf of creditors of the bankrupt Enron estate, alleged that the banks aided and abetted the fraud and breach of fiduciary duty by Enron’s corrupt insiders, through sham transactions that masked Enron’s true financial condition. These transactions were some of the most complex and sophisticated structured finance transactions ever executed. The C&M trial team – paired with bankruptcy specialists from Klee, Tuchin, Bogdanoff & Stern LLP – parachuted into the case with one year to go before trial, mastered the extraordinarily large and complex factual record involving hundreds of depositions and millions of documents, and quickly structured a three-pronged strategy: (1) refocus and refine the expert case, (2) switch out of “discovery-mode” and prepare the case for what was expected to be a four-month trial, and (3) prepare for the anticipated summary judgment motions on several tough legal issues.

Ultimately, the banks backed down rather than face trial. Citigroup’s \$2 billion-plus settlement alone is recognized as the largest settlement in the history of the United States bankruptcy court, and was the front page story for nearly every major financial publication, including *The Wall Street Journal*.

The Enron case exemplifies C&M’s “big case” litigation skills, grasp of complex financial issues, and trial readiness. If you’d like to learn more about what C&M did in this case, please contact **Cliff Elgarten**, **Kathy Kirmayer** or **Jeff Poston**.

Highlights

Expert Case: Expert discovery was already well underway, with expert reports due in less than a month, when C&M took over the case. ECRC had retained 12 testifying experts in disciplines ranging from nuanced accounting principles to the operations of commodities futures markets, corporate governance, and the practices of credit rating agencies. For their part, Citigroup and Deutsche Bank had retained 17 testifying experts. Within weeks of being retained, the C&M team:

- o Mastered the multiple expert issues, including the econometric measurement of damages attributable to the defendants’ fraud;
- o Refined and refocused the ECRC expert analyses and assisted the ECRC experts with finalizing their reports;
- o Located and retained additional experts in certain key disciplines; and
- o Began to prepare the ECRC experts for deposition.

Ultimately, over the next six months, the C&M team submitted 12 expert reports, defended 12 expert depositions, and deposed the 17 testifying experts proffered by Citigroup and Deutsche Bank. Shortly after the C&M trial team deposed Deutsche Bank's damages expert, Deutsche Bank agreed to a settlement valued at over \$400 million to the Enron creditors.

Trial Readiness: At the same time, C&M faced the task of taking an immense factual record developed over four years of discovery – 400 depositions amounting to over 3,500 hours of testimony, thousands of deposition exhibits, and several million documents produced – and converting it into a compelling trial presentation.

Further complicating the matter, the question of whether certain claims would be tried to the bench or to a jury remained unresolved, and was not expected to be resolved until shortly before trial. With both possibilities in mind, the C&M team:

- o Developed, tested and selected key trial themes to synthesize and simplify the multitude of issues in the case;
- o Located and interviewed fact witnesses needed for trial (including several high-profile former Enron executives who had previously refused to testify);
- o Sifted through the massive record of videotaped depositions to identify and designate key testimony;
- o Distilled the set of documents into a core set of almost 10,000 trial-worthy exhibits; and
- o Created dozens of demonstrative exhibits required in a case of this complexity.

ECRC was fully ready to go to trial.

Summary Judgment: Three months before the trial was scheduled to begin, Citigroup served four summary judgment motions. These motions comprised over 400 pages of argument on cutting-edge legal issues such as *in pari delicto*, equitable subordination, and the standing of ECRC to recover for the deficiency of the bankrupt estate. Within six weeks, C&M prepared oppositions that neatly illustrated the shortcomings in Citigroup's summary judgment motions. Copies of our briefs are available upon request.

One day before the scheduled oral argument on the summary judgment motions, Citigroup agreed to settle ECRC's claims in a deal valued at over \$2 billion to the innocent Enron creditors.

