Lessons From Enron: A Symposium on Corporate Governance

Foreword

by Patrick Emery Longan*

The first time most people ever heard of the Enron Corporation was long after the company had become well known in business circles. Throughout the 1990s, the Enron Corporation had grown rapidly from a small traditional natural gas pipeline company to a huge and innovative presence in national and international markets for energy. In business circles, Enron made a name for itself. Yet despite its size and (by the measures of the time) incredible success, Enron was not a household name. The company, however, found a way to change that. In April 2000 the Houston Astros played their first game in their new stadium. Enron had agreed to pay more than $100 million over thirty years for the right to name that stadium "Enron Field." Every fan of major league baseball learned the name "Enron."

Now we know that Enron need not have gone to such lengths and expense to raise its visibility. After October and November 2001, most Americans knew a great deal more about Enron than its name, and what they knew had nothing to do with baseball. They knew that the company had surprised investors and employees with an announcement of a third quarter loss in excess of $600 million. They knew that Enron

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stock had gone from $80 a share to 61 cents per share in less than twelve months.[1] It also became well known that corporate insiders had sold millions of dollars worth of stock before the collapse but that employees, whose retirement funds were over-loaded with Enron stock, had been unable to sell during one crucial period. Most people also learned that Enron's stock price had been kept artificially high by the aggressive use of sophisticated accounting techniques approved by Arthur Anderson, LLP, which in turn had admitted to the wholesale destruction of documents related to Enron. People knew more about Enron, perhaps, than they wanted to know.

Today, "Enron" has gone beyond name recognition. It has become a part of the language. The name has become synonymous with corporate greed, deceit, and failure. The collapse of the Enron Corporation has already become a milestone in the history of American business, and events are described as "pre-Enron" and "post-Enron." Like the Watergate scandal for an earlier generation, the Enron failure is destined to be the standard against which later debacles are measured. Also like Watergate, it has spawned a series of reforms intended to prevent similar failures in the future.

On October 16-17, 2002, the Mercer Law Review, the Walter F. George School of Law, the Mercer Center for Legal Ethics and Professionalism, and the Eugene W. Stetson School of Business of Mercer University sponsored a one-day symposium on "Lessons From Enron."[2] The Symposium included a keynote address by A.P. Carlton Jr.,[3] President of the American Bar Association, a luncheon address by Kenneth Lawson, Assistant Secretary of the Treasury for Enforcement,[4] and panel discussions with a distinguished cast of participants.[5] The panels'

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1. LOREN FOX, ENRON: THE RISE AND FALL 285 (2002).

2. Mercer was not the only institution to hold such a symposium. Others included "Lessons from Enron: How Did Corporate and Securities Law Fail," Villanova University School of Law on October 5, 2002 and "Ethics After Enron: Protecting Your Firm or Corporate Law Department," Practising Law Institute, October 24, 2002.

3. Alfred P. Carlton Jr., 21st Century Corporate Responsibility—"Evolution, Revolution, or Back to the Future?," Dinner Speech at Lessons from Enron: A Symposium on Corporate Governance (Oct. 16, 2002), *in* 54 MERCER L. REV. 671 (2003).

4. Kenneth E. Lawson, Luncheon Speech at Lessons from Enron: A Symposium on Corporate Governance (Oct. 17, 2002), *in* 54 MERCER L. REV. 783 (2003).

5. In addition to A.P. Carlton Jr., the panelists included R. William Ide III, a distinguished practitioner in Atlanta and a former President of the American Bar Association; Solomon B. Watson IV, General Counsel for the New York Times Company; The Honorable Ben Tennille, Judge of the North Carolina Business Court; and Michael Rosenzweig, a practitioner in Atlanta and a former professor at the University of Michigan Law School. The panel of accountants was chaired by Professor Walter Austin of Mercer University's Stetson School of Business and included Basil H. Pflumm of the Institute of

discussions focused in part on the interim recommendations contained in the Preliminary Report of the American Bar Association Task Force on Corporate Responsibility, which is reprinted in this volume by permission of the ABA.[6] The panels also discussed other reform efforts such as the Sarbanes-Oxley legislation[7] passed by Congress in the summer of 2002 and various proposals for the reform of the accounting industry.

The purpose of the Symposium was to provide a forum for discussion of the lessons that could be learned from Enron and the reforms that might build upon those lessons. The dedicated efforts of the participants in the Symposium made this discussion possible, and it is our hope that this event helped them in their tasks. If good is to come from the ashes of Enron, it will be in the form of renewed debate and reform of the way in which corporations are governed and how lawyers, accountants, executives, and regulators should participate in that governance. After all, it was easy for the Astros to change the name of their stadium from "Enron Field" to "Minute Maid Park," but it will be a longer and more arduous task to learn and apply the real-world lessons of Enron.

Internal Auditors, Susan S. Jones of the American Institute of Certified Public Accountants, and J. Edward Ketz, a Professor of Accounting at Pennsylvania State University.

6. *Preliminary Report of the American Bar Association Task Force on Corporate Responsibility*, 54 MERCER L. REV. 789 (2003). The web site of the ABA Task Force on Corporate Responsibility contains a substantial amount of related information. That site is: http://www.abanet.org/buslaw/corporateresponsibility/home.html.

7. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28, and 29 U.S.C.).