

RETURN DATE: AUGUST 27, 2002 : SUPERIOR COURT  
: :  
CONNECTICUT RESOURCES : JUDICIAL DISTRICT OF  
RECOVERY AUTHORITY : HARTFORD  
: :  
v. : AT HARTFORD  
: :  
MURTHA CULLINA, LLP and :  
HAWKINS DELAFIELD & WOOD : AUGUST 7, 2002

## **COMPLAINT**

### **I. INTRODUCTION**

1. Richard Blumenthal, Attorney General of the State of Connecticut, acting on behalf of the Connecticut Resources Recovery Authority (“CRRA”), brings this action to recover approximately \$200 million in public funds that were lost when Enron Corporation, and its subsidiary, Enron Power Marketing, Inc. (collectively, “Enron”), stopped making payments owed to CRRA and filed for protection under the bankruptcy laws on December 2, 2001. This action is brought against Murtha Cullina LLP, and Hawkins, Delafield & Wood, CRRA’s outside general counsel and bond counsel, respectively.

### **II. PARTIES**

2. Plaintiff, CRRA, is a body politic and corporate, constituting a public instrumentality and political subdivision of the state of Connecticut pursuant to Conn. Gen.

Stat. § 22a-257 et seq. (the Solid Waste Management Services Act). CRRA maintains an office and principal place of business at 100 Constitution Plaza, 17<sup>th</sup> Floor, Hartford, Connecticut.

3. Defendant, Murtha Cullina LLP (“Murtha”) is a Connecticut limited liability partnership, organized under the laws of the State of Connecticut, with an office and principal place of business located at CityPlace, 185 Asylum Street, 27<sup>th</sup> Floor, Hartford, Connecticut. Murtha is in the business of providing legal and governmental relations’ services in the State of Connecticut. For the past 29 years, including all times pertinent to this Complaint, Murtha was CRRA’s primary outside counsel.

4. Defendant, Hawkins Delafield & Wood (“Hawkins”) is a general partnership with an office and principal place of business at 67 Wall Street, New York, New York. Hawkins is in the business of providing legal services and specializes in the field of bond financing by governmental entities, including the area of municipal, resources recovery and tax-exempt bonds. Hawkins has done and is doing business in the State of Connecticut and has partners who reside in the State of Connecticut. For many years, including all times pertinent to this Complaint, Hawkins was CRRA’s primary bond counsel.

### **III. STRUCTURE AND PURPOSE OF CRRA**

5. Established in 1973 by the Connecticut legislature, CRRA was created with limited powers, specified by statute, to undertake the planning, design, construction, financing, management, ownership, operation and maintenance of solid waste disposal in the state of Connecticut.

6. CRRA was formed to serve Connecticut municipalities in managing, recycling and disposing of solid waste. Most of Connecticut's 169 towns have voluntarily signed exclusive solid waste management services contracts with CRRA. Under these contracts, the towns are obligated to pay CRRA's operating expenses, and provide minimum annual tonnages of waste and recyclables to CRRA. CRRA runs several plants that burn solid waste and use the resulting waste heat to generate steam or electricity. Revenues from the sale of steam or electricity are used to defray the per-ton garbage hauling fees ("tipping fees") that CRRA charges its towns.

7. CRRA has divided its solid waste management functions into four regional "Projects." (The Bridgeport Project, the Southeast Connecticut Project, the Wallingford Project, and the Mid-Connecticut Project.) Each member town is served by one of the four Projects. Each Project is a financially independent entity distinct from CRRA and the

other Projects. The Mid-Connecticut Project, the only Project pertinent to this complaint, serves 70 towns in central and northwest Connecticut.

8. CRRA is authorized by statute, Conn. Gen. Stat. § 22a-269, to issue tax-exempt bonds to construct, operate and maintain the Projects, including the Mid-Connecticut Project. These bonds are secured by the contracts that CRRA has entered into with its member towns, as well as certain other assets owned by CRRA.

9. Using funds derived from the issuance of bonds, CRRA has created several “trash-to-energy” plants where trash collected from member towns is burned to create steam. CRRA’s operating expenses with respect to a particular project, as well as the principal and interest payments due on CRRA’s bonds, are paid out of: (a) the proceeds from the sale of CRRA’s electric or steam energy under certain energy purchase agreements; and (b) the per-ton trash tipping fee that is charged to the towns of the particular project under contracts entered into between CRRA and each individual town.

10. Before the energy deregulation law was passed, CRRA, as part of its Mid-Connecticut Project, owned a trash burning plant that generated steam at South Meadow in Hartford, Connecticut. The steam was provided to an adjacent electric generating facility owned and operated by the Connecticut Light & Power Company (“CL&P”), where it was converted to electricity. In 1985, CL&P and CRRA entered into a long-term energy

purchase agreement (the “1985 EPA”) with a term running to May 2012, for the production and sale of steam from the Mid-Connecticut Project. The 1985 EPA required that: (a) CRRA sell the steam produced by the Mid-Connecticut Project to CL&P, and CL&P convert the steam to electricity; and (b) CL&P pay CRRA for the steam at a rate equivalent to 8.5 cents per kilowatt-hour of electricity produced. At all times pertinent to this complaint, 8.5 cents per kilowatt-hour was an above-market price compared to the prevailing New England regional wholesale electricity market price. Revenues generated under the 1985 EPA were required by statute to be used to reduce the “tipping fees” paid by municipalities to support the net cost of operations of the Mid-Connecticut Project.

#### **IV. ENERGY DEREGULATION**

11. In 1998, the Connecticut General Assembly passed an energy deregulation law, P.A. 98-28 (the “Deregulation Act”). Under this law, regulated electric companies (utilities), such as CL&P, that had previously owned and operated electric generation, transmission, and distribution plants were required to focus on distribution and transmission rather than the generation of power. As a result, CL&P was required to divest itself of power generation facilities, and to make good faith efforts to divest itself of contracts to purchase power, including the above-market 1985 EPA, through buyouts, buydowns, or other restructuring of contractual obligations.

12. In addition to the 1985 EPA that is the subject of this complaint, CL&P also had a number of other energy purchase agreements that CL&P was required to attempt to divest itself of, including several other contracts with other CRRA projects. Energy suppliers such as CRRA were not required to agree to buy-downs, and in fact CL&P and CRRA were able to reach terms only on the buy-down of the Mid-Connecticut Project contract, while the pre-de-regulation CRRA-CL&P energy purchase agreements at the other CRRA projects remain in effect today.

13. As contemplated by the Deregulation Act, the buy-down of an above-market power purchase contract would entail an up-front lump-sum payment by CL&P to the energy supplier such as CRRA to compensate the supplier for the above-market value of the energy purchase agreement that it was losing.

14. In order to facilitate CL&P's buy-downs and to cover the associated cost to CL&P, the Deregulation Act provided for the issuance of state-tax exempt Rate Reduction Bonds to supply the capital needed by CL&P to accomplish the buy-downs. The Rate Reduction Bonds were issued by CL&P Funding LLC, an entity established by CL&P for this purpose, and were funded by a line item charge on the monthly bills of all CL&P electric customers.

15. The Connecticut Department of Public Utility Control (“DPUC”) approved an issue of more than \$1.4 billion in Rate Reduction Bonds for use by CL&P in buying down over a dozen above-market power purchase obligations in Connecticut. Approximately \$290 million of this amount was earmarked to buy down the 1985 EPA. (The \$290 million amount was decreased to approximately \$280 million because of a delay in the transaction closing date.) .

**V. STATUTORY LIMITATIONS ON CRRA’S AUTHORITY TO INVEST AND MAKE LOANS**

16. CRRA has limited authority to make loans only for the acquisition, construction, or reconstruction of waste management projects, and any such loans must be secured. Conn. Gen. Stat. § 22a-267. CRRA also has limited authority to make loans to municipal or regional solid waste management authorities to establish waste management projects. Conn. Gen. Stat. § 22a-275.

17. CRRA does not have statutory authority to make loans other than the above-described limited-purpose loans.

18. The legislative restrictions on CRRA’s investment authority limit CRRA to investments generally considered to be safe and conservative. Specifically, Conn. Gen. Stat. § 22a-265(14) limits CRRA’s investment of “funds not needed for immediate use” to

“obligations issued or guaranteed by the United States of America or the State of Connecticut and in obligations that are legal investments for savings banks in the state.” Connecticut savings banks may only invest in government obligations and in marketable securities, including stocks, bonds, and mutual funds. Conn. Gen. Stat. §§ 36a-275 to 276. For investments other than government obligations, portfolio diversification requirements limit the amount that savings banks may invest in such securities or with any one company. Conn. Gen. Stat. §§ 36a-262, 36a-275 to 277.

19. In addition, CRRA’s internal procedures regarding the issuance of loans provide that CRRA can make loans to private entities “only as part of comprehensive financial agreements related to solid waste facility financings” and such loans require approval by CRRA’s Board of Directors or by committees or individuals delegated approval authority by CRRA’s Board of Directors.

## **VI. THE ENRON TRANSACTION**

20. On or about March 31, 1999, CRRA and CL&P entered into a memorandum of understanding (MOU) preliminarily establishing the elements of the buy-down transactions finally entered into, subject to the execution of final contracts. To satisfy its obligations under the 1985 EPA and complete the buy-down, the MOU contemplated that CL&P would pay approximately \$280 million to CRRA to end CL&P’s

obligation to buy steam from CRRA at the above-market rate of 8.5 cents/kilowatt-hour until 2012. Murtha, CRRA's long-time general counsel, represented CRRA in its negotiations with CL&P in this regard.

21. At the same time that Murtha was representing CRRA with respect to the Mid-Connecticut Project buy-down, Murtha's lobbying arm, a practice group dedicated to government relations and political consulting, was representing Enron in connection with government relations work and to develop business opportunities in Connecticut. Murtha's lobbying representation of Enron continued during the time Enron and CRRA negotiated the Mid-Connecticut Project restructuring agreements that are the subject of this Complaint.

22. Enron was a Houston, Texas-based growth company engaged in the business of providing and trading wholesale energy resources and services, operating power plants and water supply facilities, providing retail energy and management services to companies, providing financial and other deal-making services, and building a large broadband fiber optic communication network.

23. In 2000, before CRRA and CL&P finalized the definitive agreements contemplated by the MOU, Enron became involved in the transaction. As a result, the 1985 EPA was replaced with a three-way package of transactions involving CRRA, Enron,

and CL&P (the “Enron Transaction”). Enron was to have no substantive role in this transaction of benefit to CRRA other than to repay a loan and make the deal look like an energy transaction rather than a loan. From Enron’s standpoint, however, it would receive a substantial cash infusion, which it could then show on its financial statements. These agreements were dated as of December 22, 2000, and were executed on December 28, 2000. While the five main contracts embodying the key elements of the Enron Transaction covered 164 pages, the main effect of the contracts for purposes of this complaint was a loan of \$220 million by CRRA to Enron.

24. CRRA did not procure any collateral, surety bond, or other risk-management instrument to secure the transaction with Enron, other than a contractual guarantee by the Enron parent corporation of these payment obligations.

25. CL&P paid \$280 million to end its obligation to buy steam from CRRA at an above-market rate until 2012. Pursuant to the new contracts, CRRA used a portion -- \$60 million -- of the \$280 million in buy-down proceeds to buy all the CL&P-owned land and facilities at South Meadow. CRRA was obligated to operate all parts of the facility to process trash and make electricity. CL&P, for its part, was removed from all operational responsibilities at South Meadow. Though CL&P continued its obligation to purchase effectively all of the South Meadow electricity until May 2012, it did so at a new, lower

price. Enron received the remaining \$220 million in buy-down proceeds and agreed to make fixed monthly payments to CRRRA of \$2.375 million per month until May 2012.

26. Enron had no operational responsibilities related to the production or delivery of power to CL&P. Enron made no profit on its ostensible purchase and resale of the power from CRRRA to CL&P, had no physical control or custody of the power, and assumed no risk related to the production of the power by CRRRA or its delivery to CL&P. Enron also was in no way involved in the disposition, transfer, or operation of the physical assets at South Meadow. Enron's only obligation was to repay CRRRA the \$220 million over more than 11 years at an effective interest rate of approximately seven percent.

27. As stated above, Enron received \$220 million of the \$280 million in Rate Reduction Bond proceeds, and the balance of approximately \$60 million went directly to CRRRA. CRRRA used \$10 million of this \$60 million payment to purchase the CL&P-owned parts of the trash-to-energy plant at South Meadow, the CL&P land on which the plant was situated, and other unrelated CL&P-owned electric generating equipment on the South Meadow site. CRRRA paid another \$27 million of the direct payment to a company that agreed to clean up and insure the substantial environmental contamination at the South Meadow site for that price. The remaining direct payment money, approximately \$23 million, was kept by CRRRA. The \$60 million retained by CRRRA, and the property

acquired by CRRA with that money, was diverted out of the Mid-Connecticut project pursuant to the structure developed by Murtha and Hawkins.

28. CRRA instructed CL&P to pay the remaining \$220 million directly to Enron, rather than pay this money directly to CRRA. For its part, Enron agreed to make two separate monthly payments for over 11 years to CRRA. One of these monthly payments was for \$2.2 million, and the other monthly payment was for \$175,000, for a total monthly payment from Enron to CRRA of \$2.375 million. As discussed further below, the \$2.2 million portion of the combined monthly payment stayed within the Mid-Connecticut Project, thereby remaining available to pay down the Mid-Connecticut Project's bonds. On the other hand, despite the fact that the smaller \$175,000 monthly payment was the direct result of the buy-down of CRRA's Mid-Connecticut power contract with CL&P, on advice of Murtha and Hawkins, the \$175,000 monthly payment did not remain in the Mid-Connecticut Project or its bond structure. The \$175,000 payment rather was paid into a newly-created CRRA Non-Project Ventures Fund.

29. The only property received by the Mid-Connecticut Project from the \$280 million buy-down of the 1985 EPA was the unsecured promise of a \$2.2 million monthly payment from Enron for 11-plus years until May 2012.

30. The Enron payment obligations were embedded in a series of contracts, styled as the purchase and sale of energy, but which in fact were transactions that entailed no material performance risks by Enron, other than the repayment of money. The new contractual structure in reality required Enron to do no more than repay the \$220 million as an unsecured loan.

31. Enron's role in the transaction was only as a borrower paying back the \$220 million loan to CRRA with interest. Enron had no energy production or other operational obligations of any substance. With respect to the energy (both steam and electricity) Enron was a nominal entity--a pure pass-through--and Enron made no profit on any energy transfer, and did not even handle its own billing or payment for the power delivered by CRRA to CL&P.

32. As a result of the Enron Transaction, CL&P in effect agreed to continue to buy all the power produced by the South Meadow trash-to-energy facility at a new, lower price that started at 3.0 cents per kilowatt-hour, and then increased annually by 0.1 cents until it reached 3.3 cents per kilowatt-hour, where it remained for the rest of the 11-plus year contract. During every new contract year, CRRA sold to Enron the first 250 million kilowatt-hours produced at South Meadow at a price of 3.0-3.3 cents per kilowatt-hour. This sale to Enron was a wash, however, because as each kilowatt-hour of electricity was

generated by CRRA, Enron, without making any profit, would directly and instantaneously pass the power to CL&P for the identical price of 3.0-3.3 cents per kilowatt-hour, and Enron never physically held, acquired, received, or handled any electricity (or any steam). As to any electricity produced by the South Meadow trash-to-energy plant during a given contract year in excess of the first 250 million kilowatt-hours, the Enron pass-through was not in place. As to such excess electricity, CL&P was obligated every year to buy this electricity (up to an additional 250 million kilowatt-hours) directly from CRRA, at the same price of 3.0-3.3 cents per kilowatt-hour that it was nominally paying for the Enron pass-through power.

33. Under the Enron Transaction, steam produced by CRRA never passed from CRRA's custody or control, and CRRA at all times bore the risk of loss of the steam. The contracts composing the Enron Transaction transferred steam for an instant to Enron, and then immediately back to CRRA, with no actual sale of the steam by or to either party and no profit to Enron or CRRA on the steam transfer.

34. Enron assumed no actual risk in these transactions. The contracts contain a number of cure and offset provisions that create the appearance of some financial exposure for Enron if power were not delivered to CL&P, but such exposure is in reality merely illusory and belied by other contractual provisions.

35. In fact, the Hawkins firm opined in a December 28, 2000 memo that under the Enron Transaction CRRA was “almost certain to” receive \$26.4 million per year -- \$2.2 million per month -- whether CRRA produced energy in that contract year or not.

36. Virtually unbeknownst to the elected leaders and residents of the 70 towns that depended on and financially backed the Mid-Connecticut Project, the plans and agreements drafted and developed by or upon the advice of Murtha and Hawkins diverted Mid-Connecticut Project monies to fund an entirely new CRRA venture into alternative energy technologies such as fuel cells. The plan developed by Murtha and Hawkins served to fund what for CRRA was an unprecedented entrepreneurial enterprise using money derived from the Mid-Connecticut Project, but diverted out of the financially independent Mid-Connecticut Project and into CRRA’s own accounts. As such, the structure developed by Murtha and Hawkins risked undermining the Mid-Connecticut Project’s own financial stability, with potentially serious consequences to CRRA’s Mid-Connecticut bondholders, as well as to the towns that were required to back the Mid-Connecticut Project.

37. Enron began making its monthly payments to CRRA under the Enron Transaction in April 2001. These payments continued until Enron Corporation and Enron

Power Marketing, Inc. filed for protection under the bankruptcy laws on December 2, 2001. No further payments have been made.

## **VII. FAILURES, BAD ACTS OR OMISSIONS BY MURTHA AND HAWKINS**

38. The Enron Transaction as developed and documented by Murtha and Hawkins was an illegal and unauthorized contract, which CRRA had no statutory power to make, and which violated CRRA's own internal loan guidelines. The Enron Transaction put at risk the financial stability of CRRA and the Mid-Connecticut Project, and exposed the 70 municipalities to markedly increased costs in the form of tipping fees or other costs to the towns. Both Murtha and Hawkins had represented CRRA for decades, and were familiar with all the organization's legal aspects, including its enabling legislation.

39. After extensive search by Plaintiff, the only due diligence-type work that is known to have been performed on CRRA's behalf regarding Enron was done by Hawkins, notably in parts of a 14-page memorandum dated December 28, 2000 and entitled "MID-CONNECTICUT SYSTEM ENERGY CONTRACT RESTRUCTURING." That memorandum devoted only four paragraphs and a brief table to the subject of Enron's creditworthiness. Hawkins and Murtha failed to advise CRRA to retain appropriate financial advisers, such as an investment banking house or other financial institution to examine the merits of the proposed transaction and opine as to the risks of doing business

with Enron, including an examination of Enron's financial viability. CRRA had an accounting firm during this period, but Murtha and Hawkins never advised CRRA to ask that firm or any other to perform any type of due diligence work regarding the merits of this transaction or the financial viability of Enron.

40. Hawkins, in several opinions and memoranda evaluating the CRRA-Enron-CL&P transactions, also wrongly opined that CRRA's business risk related to its production and sale of power to CL&P decreased under the new arrangement with Enron. Hawkins also wrongly concluded that the consent of CRRA's bondholders to the deal was not required, that the Mid-Connecticut Project revenues would not decrease in amount or credit quality and reliability, and that the transaction would not adversely affect the tax exempt status of the Mid-Connecticut Project bonds.

41. Hawkins also provided inappropriate and misleading reassurances to CRRA and the CRRA board of directors that the CRRA-Enron transaction did not have federal tax arbitrage implications. Under the federal tax laws referred to as the tax arbitrage provisions (26 U.S.C. §148; 26 C.F.R. § 1.148), tax-exempt entities are not allowed to profit from their tax-exempt status. Specifically, entities such as CRRA are not allowed to use capital raised by issuing tax-exempt bonds to make net profits on financial investments. Any net profits from financial investments traceable to such tax-exempt bond

capital must be rebated to the IRS. Failure to comply with these arbitrage rebate provisions can endanger the tax-exempt status of bonds issued by a tax-exempt entity. In this case, CRRA was paying its Mid-Connecticut Project bondholders about 5½ percent, and therefore was required to rebate to the IRS any profit over 5½ percent that CRRA earned on any Mid-Connecticut Project investments made using the proceeds of the bond sale. Under the transaction drafted and developed for CRRA by Murtha and Hawkins, Enron agreed to pay CRRA an effective interest rate of 7 percent, creating a substantial tax arbitrage risk. Two steps taken by Murtha and Hawkins had the effect of concealing this risk. First, the contract language drafted and developed by Murtha and Hawkins used supposed energy transfers to make the monthly repayment of the Enron-CRRA loan appear to be an ongoing energy sale, which would arguably not be covered by the arbitrage laws. Second, under the structure drafted by Murtha and Hawkins, \$175,000 of the monthly \$2.375 million payments from Enron were diverted, and would not be booked as Mid-Connecticut Project proceeds potentially subject to being rebated to the federal government as the proceeds of improper tax arbitrage.

42. At the November 16, 2000 CRRA board meeting attended by partners from both Murtha and Hawkins, a Hawkins partner wrongly stated that the Enron Transaction presented no tax arbitrage implications or risk.

43. Murtha represented CRRA in the Enron Transaction despite the fact that a conflict of interest existed because Murtha at the same time was representing Enron in Enron's attempt to win approval of a publicly-funded fuel cell project in Connecticut, a project which, like the Enron Transaction, involved CRRA. Murtha failed to secure waivers of this obvious conflict from both of its clients until after Murtha had worked actively on the Enron Transaction for at least two months, by which time Murtha had already helped put in place the essential framework of the Enron Transaction.

44. The 70 Connecticut municipalities served by the Mid-Connecticut Project had each signed contracts guaranteeing to pay all the expenses of the Mid-Connecticut Project. Under Section 7.15(A) of the Mid-Connecticut Project bond resolution, CRRA is required to inform the towns of circumstances that could increase Mid-Connecticut Project expenses, and hence tipping fees.

45. In the CRRA-Enron-CL&P transaction, the Mid-Connecticut Project's largest asset by far – its energy purchase contract with CL&P – was being bought down by CL&P for \$280 million. The energy purchase contract was the linchpin of the Mid-Connecticut Project's finances, and the \$220 million loan to Enron represented 44 percent of the Mid-Connecticut Project's assets and 85 percent of the Project's equity. Moreover, the Mid-Connecticut Project is by far the largest part of CRRA. That Project in 2001

composed 75 percent of CRRA's entire asset base. Thus, the Murtha-Hawkins plan violated CRRA's statutory diversification requirements by placing such a huge loan investment with Enron.

46. The bottom line for the Mid- Connecticut Project and the 70 Connecticut municipalities that had pledged to financially back and guarantee the Project was that, of the \$280 million in buy-down cash earmarked for CRRA, the Mid-Connecticut Project received only a promise of an unsecured 11-year stream (134 months) of \$2.2 million monthly payments from Enron. Under the advice and guidance of Murtha and Hawkins, the Mid-Connecticut Project and the 70 municipalities exchanged \$280 million of cash in hand for a promise of \$294.8 million to be paid out over 11 years from Enron, a corporation with a low investment-grade credit rating and misleading corporate financial information. As borne out by events, including the current and scheduled tipping fee increases, the proposed Enron Transaction posed a substantial risk of higher operating expenses for the Mid-Connecticut Project and tipping fees for the towns, compared with low-risk options such as holding CL&P to the 1985 EPA or investing the \$280 million in government securities. These events took place virtually unbeknownst to the people of the 70 affected Connecticut towns because Hawkins and Murtha advised CRRA that this transaction would not risk increasing the expenses of the Mid-Connecticut Project or the

towns, and that CRRA therefore was not required to inform the towns of the transaction or to seek the towns' approval for the transaction.

47. Murtha and Hawkins failed to advise CRRA of the need to inform the 70 affected Connecticut municipalities, the bondholders, and the bond trustee that CRRA could have sought other financially viable investments for the money, or that CRRA was free to stand pat by requiring CL&P to honor the 1985 EPA, thereby continuing to enjoy the tremendous financial stability of selling steam to CL&P at the above-market rate of 8.5 cents per kilowatt-hour until May 2012. Likewise, Murtha and Hawkins failed to advise CRRA of the need to inform the municipalities, the bondholders, and the bond trustee that the assets being shifted out of the Mid-Connecticut Project would be unavailable to repay bond holders and would now be earmarked for unprecedented entrepreneurial activities by CRRA far afield from its statutory mission of solid waste management and disposal, including fuel cell ventures CRRA wanted to enter into with Enron.

48. The diversion of this money both weakened the Mid-Connecticut Project's financial health, and imperiled the tax-exempt status of the Project's bonds, making it critical for Murtha and Hawkins to advise CRRA to inform the bond trustee and bondholders properly. Instead, Hawkins issued an incorrect written opinion stating that CRRA was authorized to enter into the transaction, that bondholder consent was not

required, and that the transaction did not adversely affect the tax-exempt status of the bonds.

49. After extensive search by Plaintiff, Plaintiff is unaware of any record showing that Murtha or Hawkins raised, or engaged in a substantive examination of, the critical issue of whether the Enron Transaction was a loan or whether CRRA had the authority to enter into such a transaction.

50. Murtha and Hawkins worked extensively on CRRA's negotiations with CL&P before Enron came into the transaction without adequately investigating CRRA's authority to make a loan. During that period, Murtha and Hawkins were working on a transaction whereby CRRA would loan most of the up-front buy-down payment back to a CL&P subsidiary. Murtha and Hawkins, both before and after Enron entered the transaction, worked to help CRRA create a transaction with the economic substance of a loan, in violation of CRRA's legal authority.

51. Although the Enron Transaction as developed and documented by Murtha and Hawkins was an illegal and unauthorized loan, Murtha and Hawkins incorrectly advised CRRA that the Enron Transaction was legal and within CRRA's authority.

## VIII. CAUSES OF ACTION

### FIRST COUNT (BREACH OF CONTRACT AS TO MURTHA)

1-51. Paragraphs 1 through 51 are incorporated as though fully set forth in this First Count.

52. On or about July 1, 1998, CRRA entered into a Legal Services Agreement with Murtha, Cullina, Richter & Pinney, LLP, the predecessor firm to Murtha (the “Murtha Contract”) pursuant to which Murtha promised to provide, *inter alia*, certain independent legal services to CRRA, including, but not limited to, “General Counsel” services, “Complex commercial contract preparation,” “Commercial Taxation,” and “Compliance with enabling legislation, internal organizational regulations, bylaws, etc.” Murtha agreed to perform all legal services consistent with:

(i) any and all instructions, guidance and directions provided by CRRA to [Murtha]; (ii) the terms and conditions of this Agreement; (iii) sound legal practices; (iv) the highest prevailing applicable professional and industry standards; (v) any and all Laws and Regulations; and (vi) any Request (as hereafter defined) pursuant to which such Services are rendered (hereinafter collectively referred to as the “Standards”).

53. The Murtha Contract was renewed on July 1, 2001.

54. Murtha breached the Murtha Contract in one or more of the following ways:

- a. It failed to provide sound legal advice, and to render such advice in accordance with sound legal practices and the highest prevailing applicable professional and industry standards as the Murtha Contract required;
- b. It failed to advise CRRA that the Enron Transaction was illegal, unauthorized, and exceeded CRRA's statutory authority;
- c. It allowed CRRA to enter into a transaction that was illegal, unauthorized, and exceeded CRRA's statutory authority;
- d. It failed to advise CRRA that the Enron Transaction was, in substance, an illegal loan;
- e. It allowed CRRA to enter into a transaction that was, in substance, an illegal loan;
- f. It failed to research and analyze the statutes governing CRRA's authority to enter into the Enron Transaction, and to advise CRRA with respect to the effect and meaning of those laws;
- g. It failed to advise CRRA of the insufficiency of the protections afforded CRRA by the Enron Transaction;
- h. It failed to ensure that CRRA's interests in the Enron Transaction were properly collateralized or otherwise secured;
- i. It failed to advise CRRA of the risks it assumed in the Enron Transaction, under which Enron assumed no obligations or risks other than to repay the money advanced to it;
- j. It failed to advise CRRA of viable alternate transactions to achieve liquidity while maintaining security;
- k. It failed to conduct sufficient due diligence regarding the financial viability of Enron and to advise CRRA of the same;

- l. It prepared the Enron Transaction documents and allowed CRRA to execute the agreements comprising the Enron Transaction, even though they had the effect of circumventing and violating the statutory and regulatory laws governing CRRA;
- m. It failed to advise CRRA to retain appropriate financial professionals such as an appropriate accounting firm, investment banker, or financial advisor to analyze the merits of the Enron Transaction;
- n. It failed to advise CRRA to obtain appropriate financial professionals such as an appropriate accounting firm, investment banker, or financial advisor to analyze the financial viability of Enron;
- o. It failed to properly advise CRRA that tax exempt entities may not use the proceeds from tax exempt bonds or the revenues pledged for the repayment of such bonds to earn a return in excess of the interest rate payable on the issued tax exempt bonds;
- p. It failed to advise CRRA that the Enron Transaction may have violated the tax arbitrage rules of the Internal Revenue Code;
- q. It failed to inform CRRA of its conflicting representation of Enron until after the overall structure of the Enron Transaction was developed;
- r. It failed to inform CRRA of the risks attendant to CRRA's informed consent to representation by Murtha notwithstanding Murtha's conflict of interest;
- s. It failed to require CRRA Board of Directors approval of CRRA's informed consent to representation by Murtha notwithstanding Murtha's conflict of interest;
- t. It failed to advise CRRA to inform or seek the approval of either the Mid-Connecticut municipalities, or the Mid-Connecticut bondholders, or the bond trustee, or all of them; and

- u. It failed to represent CRRA independent of any conflicting interests.
55. CRRA has been damaged as a result thereof.

**SECOND COUNT (NEGLIGENCE AS TO MURTHA)**

1-51. Paragraphs 1 through 51 are incorporated as though fully set forth in this Second Count.

52. Murtha owed a duty of care to CRRA to exercise that degree of skill, competence, and independence normally expected of law firms performing legal services.

53. Murtha breached its duty of care to CRRA in one or more of the following ways:

- a. It negligently failed to provide sound legal advice, and to render such advice in accordance with sound legal practices and the prevailing applicable professional and industry standards;
- b. It negligently failed to provide its legal services under the Murtha Contract in accordance with that degree of care, skill and diligence normally expected of attorneys performing legal services for clients under similar circumstances;
- c. It negligently failed to advise CRRA that the Enron Transaction was illegal, unauthorized, and exceeded CRRA's statutory authority;
- d. It negligently allowed CRRA to enter into a transaction that was illegal, unauthorized, and exceeded CRRA's statutory authority;
- e. It negligently failed to advise CRRA that the Enron Transaction was, in substance, an illegal loan;

- f. It negligently allowed CRRA to enter into a transaction that was, in substance, an illegal loan;
- g. It negligently failed to research and analyze the statutes governing CRRA's authority to enter into the Enron Transaction, and to advise CRRA with respect to the effect and meaning of those laws;
- h. It negligently failed to advise CRRA of the insufficiency of the protections afforded CRRA by the Enron Transaction;
- i. It negligently failed to ensure that CRRA's interests in the Enron Transaction were properly collateralized or otherwise secured;
- j. It negligently failed to advise CRRA of the risks it assumed in the Enron Transaction, under which Enron assumed no obligations or risks other than to repay the money advanced to it;
- k. It negligently failed to advise CRRA of viable alternate transactions to achieve liquidity while maintaining security;
- l. It negligently failed to conduct sufficient due diligence regarding the financial viability of Enron and to advise CRRA of the same;
- m. It negligently prepared the Enron Transaction documents and allowed CRRA to execute the agreements comprising the Enron Transaction, even though they had the effect of circumventing and violating the statutory and regulatory laws governing CRRA;
- n. It negligently failed to advise CRRA to retain appropriate financial professionals such as an appropriate accounting firm, investment banker, or financial advisor to analyze the merits of the Enron Transaction;
- o. It negligently failed to advise CRRA to obtain appropriate financial professionals such as an appropriate accounting firm, investment banker, or financial advisor to analyze the financial viability of Enron;

- p. It negligently failed to advise CRRA that tax exempt entities may not use the proceeds from tax exempt bonds or the revenues pledged for the repayment of such bonds to earn a return in excess of the interest rate payable on the issued tax exempt bonds;
- q. It negligently failed to advise CRRA that the Enron Transaction may have violated the tax arbitrage rules of the Internal Revenue Code;
- r. It negligently failed to inform CRRA of its conflicting representation of Enron until after the overall structure of the Enron Transaction was developed;
- s. It negligently failed to inform CRRA of the risks attendant to CRRA's informed consent to representation by Murtha notwithstanding Murtha's conflict of interest;
- t. It negligently failed to require CRRA Board of Directors approval of CRRA's informed consent to representation by Murtha notwithstanding Murtha's conflict of interest;
- u. It negligently failed to advise CRRA to inform or seek the approval of either the Mid-Connecticut municipalities, or the Mid-Connecticut bondholders, or the bond trustee, or all of them; and
- v. It negligently failed to represent CRRA independent of any conflicting interests.

54. CRRA has been damaged as a result thereof.

**THIRD COUNT (INDEMNIFICATION AS TO MURTHA)**

1-51. Paragraphs 1 through 51 are incorporated as though fully set forth in this Third Count.

52. In addition, the Murtha Contract provided as follows:

[Murtha] shall at all times protect, defend, indemnify and hold harmless CRRA and its board of directors, officers, agents and employees from and against any all (sic) liabilities, actions, claims, damages losses (sic), judgments . . . costs and expenses (including but not limited to attorneys' fees) arising out of . . . damages alleged to have been sustained by: (a) CRRA or any of its directors, officers, employees, agents or subconsultants' . . . to the extent any such injuries, damages or damages (sic) are caused or alleged to have been caused in whole or in part by the acts, omissions or negligence of [Murtha] or any of its directors, officers, employees, agents or subconsultants.

53. CRRA has been damaged as a result of the acts, omissions and negligence of Murtha and its partners.

54. Murtha owes CRRA a contractual duty of indemnification.

**FOURTH COUNT (BREACH OF CONTRACT AS TO HAWKINS)**

1-51. Paragraphs 1 through 51 are incorporated as though fully set forth in this Fourth Count.

52. On or about July 1, 1998, CRRA entered into a Legal Services Agreement with Hawkins (the "Hawkins Contract") pursuant to which Hawkins agreed to provide independent legal services including, but not limited to, "bond counsel," and counsel on "tax exempt and taxable financings, resource recovery facility, recycling project and related financings." Hawkins agreed to perform all legal services consistent with:

(i) any and all instructions, guidance and directions provided by CRRA to [Hawkins]; (ii) the terms and conditions of this Agreement; (iii) sound legal practices; (iv) the highest prevailing applicable professional and industry standards; (v) any and all Laws and Regulations; and (vi) any Request (as hereafter defined) pursuant to which such Services are rendered (hereinafter collectively referred to as the “Standards”).

53. The Hawkins Contract was renewed on July 1, 2001.

54. Hawkins breached the Hawkins Contract in one or more of the following

ways:

- a. It failed to provide sound legal advice, and to render such advice in accordance with sound legal practices and the highest prevailing applicable professional and industry standards as the Hawkins Contract required;
- b. It failed to advise CRRA that the Enron Transaction was illegal, unauthorized, and exceeded CRRA’s statutory authority;
- c. It allowed CRRA to enter into a transaction that was illegal, unauthorized, and exceeded CRRA’s statutory authority;
- d. It failed to advise CRRA that the Enron Transaction was, in substance, an illegal loan;
- e. It allowed CRRA to enter into a transaction that was, in substance, an illegal loan;
- f. It failed to research and analyze the statutes governing CRRA’s authority to enter into the Enron Transaction, and to advise CRRA with respect to the effect and meaning of those laws;

- g. It failed to advise CRRA of the insufficiency of the protections afforded CRRA by the Enron Transaction;
- h. It failed to ensure that CRRA's interests in the Enron Transaction were properly collateralized or otherwise secured;
- i. It failed to advise CRRA of the risks it assumed in the Enron Transaction, under which Enron assumed no obligations or risks other than to repay the money advanced to it;
- j. It failed to advise CRRA of viable alternate transactions to achieve liquidity while maintaining security;
- k. It failed to conduct sufficient due diligence regarding the financial viability of Enron and to advise CRRA of the same;
- l. It failed to examine the financial risks to CRRA of entering into the Enron Transaction in a reasonable and thorough way, even though it took on this task and responsibility;
- m. It prepared, or advised in the preparation of, the Enron Transaction documents and allowed CRRA to execute the agreements comprising the Enron Transaction, even though they had the effect of circumventing and violating the statutory and regulatory laws governing CRRA;
- n. It failed to advise CRRA to retain appropriate financial professionals such as an appropriate accounting firm, investment banker, or financial advisor to analyze the merits of the Enron Transaction;
- o. It failed to advise CRRA to obtain appropriate financial professionals such as an appropriate accounting firm, investment banker, or financial advisor to analyze the financial viability of Enron;
- p. It failed to properly advise CRRA that tax exempt entities may not use the proceeds from tax exempt bonds or the revenues pledged for

the repayment of such bonds to earn a return in excess of the interest rate payable on the issued tax exempt bonds;

- q. It failed to advise CRRA to inform or seek the approval of either the Mid-Connecticut municipalities, or the Mid-Connecticut bondholders, or the bond trustee, or all of them; and
  - r. It failed to advise CRRA that the Enron Transaction may have violated the tax arbitrage rules of the Internal Revenue Code.
55. CRRA has been damaged as a result thereof.

**FIFTH COUNT (NEGLIGENCE AS TO HAWKINS)**

1-51. Paragraphs 1 through 51 are incorporated as though fully set forth in this Fifth Count.

52. Hawkins owed a duty of care to CRRA to exercise that degree of skill, competence, and independence normally expected of law firms performing legal services.

53. Hawkins breached its duty of care to CRRA in one or more of the following ways:

- a. It negligently failed to provide sound legal advice, and to render such advice in accordance with sound legal practices and the prevailing applicable professional and industry standards;
- b. It negligently failed to provide its legal services under the Hawkins Contract in accordance with that degree of care, skill and diligence normally expected of attorneys performing legal services for clients under similar circumstances;

- c. It negligently failed to advise CRRA that the Enron Transaction was illegal, unauthorized, and exceeded CRRA's statutory authority;
- d. It negligently allowed CRRA to enter into a transaction that was illegal, unauthorized, and exceeded CRRA's statutory authority;
- e. It negligently failed to advise CRRA that the Enron Transaction was, in substance, an illegal loan;
- f. It negligently allowed CRRA to enter into a transaction that was, in substance, an illegal loan;
- g. It negligently failed to research and analyze the statutes governing CRRA's authority to enter into the Enron Transaction, and to advise CRRA with respect to the effect and meaning of those laws;
- h. It negligently failed to advise CRRA of the insufficiency of the protections afforded CRRA by the Enron Transaction;
- i. It negligently failed to ensure that CRRA's interests in the Enron Transaction were properly collateralized or otherwise secured;
- j. It negligently failed to advise CRRA of the risks it assumed in the Enron Transaction, under which Enron assumed no obligations or risks other than to repay the money advanced to it;
- k. It negligently failed to advise CRRA of viable alternate transactions to achieve liquidity while maintaining security;
- l. It negligently failed to conduct sufficient due diligence regarding the financial viability of Enron and to advise CRRA of the same;
- m. It negligently failed to examine the financial risks to CRRA of entering into the Enron Transaction in a reasonable and thorough way, even though it took on this task and responsibility;

- n. It negligently prepared, or advised in the preparation of, the Enron Transaction documents and allowed CRRA to execute the agreements comprising the Enron Transaction, even though they had the effect of circumventing and violating the statutory and regulatory laws governing CRRA;
  - o. It negligently failed to advise CRRA to retain appropriate financial professionals such as an accountant, investment banker, or financial advisor to analyze the merits of the Enron Transaction;
  - p. It negligently failed to advise CRRA to obtain appropriate financial professionals such as an accountant, investment banker, or financial advisor to analyze the financial viability of Enron;
  - q. It negligently failed to advise CRRA that tax exempt entities may not use the proceeds from tax exempt bonds or the revenues pledged for the repayment of such bonds to earn a return in excess of the interest rate payable on the issued tax exempt bonds;
  - r. It negligently failed to advise CRRA to inform or seek the approval of either the Mid-Connecticut municipalities, or the Mid-Connecticut bondholders, or the bond trustee, or all of them; and
  - s. It negligently failed to advise CRRA that the Enron Transaction may have violated the tax arbitrage rules of the Internal Revenue Code.
54. CRRA has been damaged as a result thereof.

**SIXTH COUNT (INDEMNIFICATION AS TO HAWKINS)**

1-51. Paragraphs 1 through 51 are incorporated as though fully set forth in this Sixth Count.

52. In addition, the Hawkins Contract provided as follows:

[Hawkins] shall at all times protect, defend, indemnify and hold harmless CRRA and its board of directors, officers, agents and employees from and against any all (sic) liabilities, actions, claims, damages losses (sic), judgments . . . costs and expenses (including but not limited to attorneys' fees) arising out of . . . damages alleged to have been sustained by: (a) CRRA or any of its directors, officers, employees, agents or subconsultants' . . . to the extent any such injuries, damages or damages (sic) are caused or alleged to have been caused in whole or in part by the acts, omissions or negligence of [Hawkins] or any of its directors, officers, employees, agents or subconsultants.

53. CRRA has been damaged as a result of the acts, omissions and negligence of Hawkins and its partners.

54. Hawkins owes CRRA a contractual duty of indemnification.

**IX. PRAYER FOR RELIEF**

**WHEREFORE**, The Connecticut Resources Recovery Authority prays as follows:

1. On all Counts, compensatory damages in excess of \$15,000, exclusive of interest and costs;
2. On the Third and Sixth Counts, attorneys' fees, costs and expenses;
3. On all Counts, post judgment interest and costs; and
4. On all Counts, such other and further relief as the Court deems proper in law or equity.

Plaintiff, Connecticut Resources Recovery Authority, hereby demands a trial by jury of all claims so triable.

Dated at Hartford, Connecticut this 7th day of August, 2002.

AUTHORITY

THE PLAINTIFF  
CONNECTICUT RESOURCES RECOVERY

By:

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