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## Enron Prosecution Rests After Evidence on Share Sales (Update3)

March 28 (Bloomberg) -- The U.S. government rested its case against Kenneth Lay and Jeffrey Skilling, the former Enron Corp. executives charged with conspiring in the fraud that destroyed the company.

"The United States does rest its case against the defendants," prosecutor Sean Berkowitz said today in Houston federal court after the last of the government's 22 witnesses, former Enron employee Joanna Cortez, concluded her testimony.

The case is recessed and the jury, which began hearing the case Jan. 30, is excused until April 3, U.S. District Judge Sim Lake said. That's when defense lawyers will begin their presentation.

"By the authority vested in me by the U.S. Constitution, I now declare Spring Break," Lake told the jury.

Former Chairman Lay, 63, and former Chief Executive Officer Skilling, 52, face at least 25 years in prison if convicted on charges that they conspired to defraud investors by hiding billions in debts and losses while they themselves sold Enron shares at inflated prices. Skilling and Lay will take the stand toward the end of the second week of the defense case, their lawyers told the court today.

Prosecutors today dropped three counts against Skilling, including filing a false statement with the Securities and Exchange Commission and misleading analysts. Prosecutors also dismissed one count against Lay of misleading analysts. Skilling still faces 28 counts and Lay faces six. The government dropped the charges "for the purpose of economy," according to Samantha Martin, a spokeswoman for the prosecution.

### Acquittal Motion Denied

Lake denied the defense's motions for acquittal on the remaining counts against Lay and Skilling.

Enron had more than \$68 billion in market value before it sought bankruptcy protection in December 2001, wiping out thousands of jobs and at least \$1 billion in retirement funds almost overnight. Investors suing over the company's collapse claim accounting fraud led to at least \$25 billion in losses.

In testimony today, Cortez offered evidence that Lay used Enron stock to repay company loans in late 2001 while encouraging employees to buy more shares.

Lay sold \$20 million in shares back to the company in August and September 2001 even as he told employees the stock was an "incredible bargain," said Cortez, a senior specialist at Enron whose

responsibilities included tracking Lay's line of credit.

## Something Going On

Lay repaid company loans in August and September 2001 with \$20 million in shares, Cortez said. He didn't have to report the transaction to regulators. At a Sept. 26, 2001, employee forum, Lay, who reported purchasing \$2 million in shares at the same time, said he had been buying Enron shares and asking other senior executives to do the same.

``The public was unaware of him selling stock back to the company," said Cortez. She said she was troubled by Lay's actions. ``It was a clear indication that something was going on for the CEO to be selling so much stock," she said. She didn't sell her own Enron shares.

Lay sold stock to meet margin calls in the wake of steep share price declines, his lawyer Michael Ramsey said.

``Everything was done according to the book," Ramsey told reporters outside the courthouse. ``Ken Lay never sold one share of stock that wasn't a forced sale."

## ATM Machine

Former Enron employee Paula Rieker testified earlier in the trial that on Nov. 27, 2001, Enron's board received a report detailing Lay's stock sales and the drawdowns on his lines of credit. One board member, John Duncan, ``exclaimed that Mr. Lay was using Enron like a damn ATM machine," she said.

By August 2001, Cortez said today, she was already concerned because Lay was repaying the company with shares and talking out new loans on the same day.

``It made me wonder, question why it was being used as somewhat of a tool to sell shares," she testified. Cortez told the court that she created a separate schedule to record Lay's credit drawdowns in October 2001 after Lay extended his credit line to \$7.5 million from \$4 million.

``I was upset, I cried," she said. ``The company was in so much trouble at the time." In late October, Enron's 401(k) went into ``lockdown" and employees were unable to sell shares from those accounts.

## Maxed Out

By year's end, according to Cortez's schedule, Lay had ``maxed out" his credit line, borrowing \$77.5 million and paying back \$70 million in shares. When she saw a company proxy didn't reflect what was recorded in Lay's credit schedule, she contacted a lawyer and the Federal Bureau of Investigation.

Before Cortez took the stand, FBI Special Agent Robert Martin testified that Lay used \$1.5 million in company loans to pay off a mortgage. The defense says Lay was encouraged by his lawyers to pay the mortgage because he was a defendant in a shareholder class action.

``He would not have been able to pay off the mortgage without that money," Martin said, citing a review of Lay's bank account. Lay paid off the mortgage five days after Enron filed for bankruptcy protection.

Legal experts have partially blamed partnerships and hedging vehicles created by former Chief Financial Officer Andrew Fastow for Enron's meltdown.

They contend the former CFO, who already has pleaded guilty to fraud charges stemming from Enron's demise, stole at least \$25 million from the company in connection with partnership-related deals.

``We're looking forward to getting on the stand and getting our case out there, getting the positive case out there," Lay told reporters outside court.

The case is U.S. v. Skilling, 04-cr-25, U.S. District Court, Southern District of Texas (Houston).

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