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Front page

Richard Causey, who pleaded guilty to securities fraud, is to be sentenced Wednesday. He could end up serving more prison time than Andrew Fastow, his former peer and ex-Enron financial chief.

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Time up for last major Enron exec

Because of deal, Causey's sentence Wednesday could exceed Fastow's

By KRISTEN HAYS

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The last of Enron's felonious uppermost echelon is slated to learn his punishment this week for helping perpetuate one of the biggest corporate frauds ever.

And Richard Causey, Enron's former chief accounting officer, could end up serving more prison time than Andrew Fastow, his former peer and ex-Enron financial chief. That's because Causey's plea deal doesn't allow the kind of sentencing wiggle room that was available to Fastow's judge.

"His deal, in hindsight, is not as generous as the ultimate resolution that Fastow received," said Kirby Behre, a former federal prosecutor and an expert in sentencing.

Causey is to be sentenced Wednesday. Then on Friday former Enron investor relations chief Mark Koenig and Michael Kopper, Fastow's former right-hand man, are to be sentenced.

Causey, Koenig and Kopper are among 16 ex-Enron executives who pleaded guilty to crimes. Kopper was the first to cut a deal in August 2002, less than a year after Enron crumbled in December 2001.

Causey was the last. He was bound for trial alongside former Enron Chairman Ken Lay and former CEO Jeff Skilling until he broke ranks with their unified defense in late December and pleaded guilty to securities fraud about a month before jury selection.

Lay and Skilling were convicted of multiple counts including fraud and conspiracy, and last month Lake sentenced Skilling to more than 24 years in prison — by far the most severe punishment stemming from the Enron scandal. Lay died in July.

Causey, 46, had faced more than 30 counts, much like those against Skilling, which accused him of helping perpetuate fraud while selling inflated stock. He wasn't accused of self-dealing.

By contrast, Fastow, who originally faced 98 criminal counts, admitted to orchestrating schemes to manipulate the company's books while skimming millions of dollars on the side. His wife, Lea, also served a year in prison after admitting to helping him hide from the government some of his kickbacks.

Deserving of mercy

Fastow agreed up front to serve the 10-year maximum prison term when he pleaded guilty to two counts of conspiracy. U.S. District Judge Kenneth Hoyt had discretion to impose less time, and he did — six years — upon declaring Fastow deserving of mercy. Fastow's lawyers asked for five years, and ex-Enron prosecutor John Hueston — now in private practice — did not object.

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Causey's deal eliminates such sentencing discretion for U.S. District Judge Sim Lake beyond shaving his agreed-upon sentence of seven years to five, and that's only if prosecutors recommend such a reduction. The maximum sentence for securities fraud is 10 years in prison.

"It is a binding plea, and the parties negotiated and hedged their bets," said Philip Hilder, a former federal prosecutor who represents several Enron defendants and witnesses. "It capped the upside of what Mr. Causey could get, but it put a bottom on it, too."

So if prosecutors don't recommend a reduction, "it's conceivable that he ends up with a greater sentence than Mr. Fastow," Hilder said.

Lake agreed to the terms of Causey's deal when he accepted it. The judge would have to reverse himself — or allow Causey to withdraw the plea — to allow for more flexibility. And if Causey sought to withdraw his plea, prosecutors could go to trial rather than forge another deal.

Unlike Fastow and Koenig, Causey didn't testify against his former bosses or in any other trials. Kopper testified in the 2004 trial of four former Merrill Lynch & Co. executives and two former Enron executives.

But his plea agreement says prosecutors can recommend cutting his seven years to five if he provided the government with truthful information.

"Cooperation does come in all stripes, shapes and colors," Hilder said. "Because a person doesn't necessarily end up testifying doesn't mean they're not entitled to cooperation, although it is a leap of faith because it's always negotiated that it's in the government's sole discretion to (recommend leniency) based on cooperation."

Koenig, 51, pleaded guilty in August 2004 to aiding and abetting securities fraud for helping mislead investors about Enron's finances. He was Enron's chief liaison with Wall Street, and was the first witness to testify in the Lay-Skilling trial.

"I was frankly afraid these things would come back to me for years," Koenig testified.

Kopper, 41, pleaded guilty in August 2002 to two counts of conspiracy. He told a 2004 jury in a case regarding Enron's sham sale of Nigerian power barges to Merrill Lynch that he hoped his cooperation with prosecutors would spare him from prison.

"That's the result I would like to achieve," he said.

Establishing benchmarks

But U.S. District Judge Ewing Werlein, who presided over the barge trial, hinted when sentencing some of the barge defendants last year that criminals he considered more culpable likely won't get that wish .

Werlein said the 10-year term awaiting Fastow at the time and the five-year term that former Enron Treasurer Ben Glisan Jr. was serving for conspiracy "established some benchmarks" for the barge defendants, who participated in a fraud the judge described as "rather small and relatively benign in the constellation of Enron's frauds and misdeeds."

Kopper told the barge jury that he skimmed \$16 million by colluding with Fastow in various schemes. He said he enticed his domestic partner to invest in some of Fastow's deals, and his plea deal ensured his partner avoided prosecution.


Glisan pocketed \$1 million from investing in a Fastow scheme. He pleaded guilty to crafting fraudulent financial structures to hide poor Enron assets and investments.

Koenig wasn't accused of participating in any of those frauds — just repeating the company line that all was well.

"The plain principle here is that those with similar records whose criminal conduct is similar should have similar sentences," Werlein said last year.

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