United States Courts
Southern District of Texas
FILED
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Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§	Civil Action No. H-01-3624 **(Consolidated)**
	§	CLASS ACTION
This Document Relates To:	§	
MARK NEWBY, et al, Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated ,	§	
Plaintiffs,	§	
vs.	§	
KENNETH L. LAY, et al.,	§	
Defendants.	§	

ENRON CORP.'S RESPONSE TO LEAD PLAINTIFF'S MOTION
TO LIFT DISCOVERY STAY FOR LIMITED PRODUCTION OF DOCUMENTS

By motion dated September 23, 2002, Lead Plaintiff seeks an order lifting the discovery stay imposed by the PSLRA for the purpose of requiring Enron Corp. to produce documents it has

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produced in response to subpoenas issued in the Surety Litigation[1], as well as transcripts of depositions given by Enron witnesses in the Surety Litigation.

For the reasons stated in Enron's Opposition to the Regents of the University of California's Motion for a Limited Production of Enron Documents filed on June 17, 2002, Enron opposes the production of documents and deposition transcripts to Lead Plaintiff prior to the Court's determination of the pending motions to dismiss the complaint in this case. Recognizing, however, the Court's disposition of the Regent's prior motion, to the extent that the Court is inclined to grant this motion, Enron requests that its production of documents and deposition transcripts from the Surety Litigation be subject to the following:

1. That all documents and deposition transcripts Enron produces from the Surety Litigation be governed by and handled in accordance with the Document Depository Order to be entered by this Court;

2. That all documents and deposition transcripts Enron produces from the Surety Litigation be governed by a Protective Order entered in this case. Pending entry of a Protective Order in this case, we request that the documents and depositions from the Surety Litigation be governed by the restrictions on the scope of use required by Judge Gonzalez in his order lifting the bankruptcy stay to allow document production from and deposition testimony by Enron in the Surety Litigation as well as by the restrictions on the scope of use required by Judge Rakoff in the Surety Litigation; and

3. The parties to the Surety litigation should be allowed to object to the production of

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[1] *J.P. Morgan Chase Bank v. Liberty Mutual Insurance Company,* No. 01-Civ-11523, in the United States District Court for the Southern District of New York. Enron is not a party to this case.

any transcripts of depositions of Enron witnesses by Enron and propose whatever redactive measures they deem necessary to protect their interests.

Each of these is briefly discussed below.

1. The Surety Litigation Documents and Transcripts Should be Produced in Accordance with the Document Depository Order.

Pending before the Court is a proposed Document Depository Order establishing uniform practices and procedures for the production of documents in this case. The Surety Litigation documents and transcripts are encompassed by that proposed order and should be produced in accordance with its terms and procedures.

2. The Surety Litigation Documents and Transcripts Should be Governed by a Protective Order.

Concurrent with filing this Response, Enron separately is filing its Opposition to Plaintiffs' Motion to Preclude the Filing of Production of Documents Subject to a Protective Order. In its Opposition, Enron submits a proposed Protective Order to be entered in this case. The Surety Litigation documents and transcripts are encompassed by that proposed order and should be governed by its terms.

Pending the entry of a Protective Order for this case, Enron requests that the Surety Litigation documents and transcripts be governed by the restrictions on their use ordered by Judges Gonzalez and Rakoff. In order to obtain documents and deposition testimony from Enron in the Surety Litigation, the parties to that case had to lift the automatic stay imposed under the Bankruptcy Code. A motion seeking to lift the bankruptcy stay was filed on April 8, 2002, and a hearing was held before Judge Gonzalez on May 2, 2002. On May 15, 2002, Judge Gonzalez entered an Order

Modifying Automatic Stay to Permit Certain Third-Party Discovery to be Obtained From Debtors, a true and correct copy of which is attached hereto as Exhibit "A."

While permitting discovery of certain documents and testimony from Enron, Judge Gonzalez ordered that the information obtained be used only for limited purposes. Paragraph E of the May 15, 2002 Order provided:

> **E. Scope of Use**
>
> The Surety Group and Chase agree that the information provided to them by Debtors and their employees pursuant to this third-party discovery shall be used (a) solely in connection with (i) the pending Surety Litigation in the United States District Court for the Southern District of New York, (ii) other litigation or proceedings not against the Debtors, and (iii) the submission to the [Creditors] Committee and the Examiner for Enron Corp. (either directly by the Debtors or by the Surety Group or Chase, at the option and expense of the Committee and the Examiner), provided that the Committee and Examiner agree to be bound by this scope of use provision, although nothing contained in this Order shall limit the Committee's or Examiner's right to use this third-party discovery to investigate any matters as permitted by law or order of this Court and provided that the scope of use of any information, document or deposition transcript properly designated as Confidential or Highly Confidential under the terms of the Protective Order entered in the Surety Litigation shall be governed by the terms of that Protective Order; and (b) provided, further, however that upon receipt of a subpoena or request of a government agency the Surety Group and Chase shall be permitted to turn over to such agency documents obtained hereunder.

As applied in this case, Judge Gonzalez's order would restrict use of the documents and deposition transcripts from the Surety Litigation to use solely in connection with this case. The documents and deposition transcripts should not be used for purposes other than this case, should not be placed into the public domain, and should be not disseminated beyond the named parties to this case.

In addition, the protective order entered by Judge Rakoff in the Surety Litigation itself is

attached as Exhibit B. The restrictions on use of discovery material marked confidential or highly confidential is similar to the scope of use restrictions ordered by Judge Gonzalez, and should govern any production of documents and transcripts in this case.

3. The Parties To the Surety Litigation May Object to the Production by Enron of Transcripts

To the extent that Enron has transcripts of any depositions in the Surety Litigation, the proper parties to present objections to the production of those transcripts are the parties to the Surety Litigation. This Court should allow those parties to make objections to Enron's production of these transcripts and propose whatever redactive measures that they deem necessary to protect their interests.

For the foregoing reasons, Enron respectfully requests that Lead Plaintiff's Motion to Lift Discovery Stay for Limited Production of Documents be denied. Alternatively, to the extent that the Court grants the motion, Enron requests that the Court order that such documents and transcripts should be produced in accordance with the Document Depository Order and that such documents and transcripts should be governed by a Protective Order.

Respectfully submitted,

SUSMAN GODFREY L.L.P.

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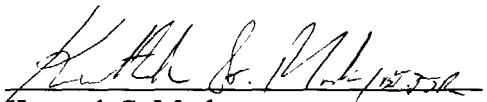
CERTIFICATE OF SERVICE

I, Kenneth S. Marks, hereby certify that on the 14th day of October, 2002, the foregoing was served by e-mail or facsimile on the attached service list.



Kenneth S. Marks

The Service List

May be Viewed in

the Office of the Clerk

The Exhibit(s) May

Be Viewed in the

Office of the Clerk