United States Courts
Southern District of Texas
FILED

JAN 1 0 2003

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES, DERIVATIVE & "ERISA" LITIGATION	§ § §	**MDL 1446**
MARK NEWBY, et al., ***Plaintiffs,*** **v.** **ENRON CORPORATION, et al.,** ***Defendants.***	§ § § § § § § § §	**CIVIL ACTION NO: H–01–3624 AND CONSOLIDATED CASES**
PAMELA M. TITTLE, on behalf of herself and a class of persons similarly situated, et al., ***Plaintiffs,*** **v.** **ENRON CORP., an Oregon Corporation, et al.,** ***Defendants.***	§ § § § § § § § § §	**CIVIL ACTION NO: H–01–3913 AND CONSOLIDATED CASES**

RESPONSE OF KENNETH L. LAY
TO ENRON'S MOTION FOR CONFIDENTIALITY ORDER

TO THE HONORABLE COURT:

Kenneth L. Lay, a defendant in the above-styled actions, respectfully submits his response to Enron's Motion for a Confidentiality Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. Like Certain Committee Defendants -- who have contemporaneously filed their Response in *Tittle* -- Mr. Lay requests that his confidential personnel files and documents be

#1215

accorded the same protection as the personnel files and documents of other current and former Enron employees, including the Plaintiffs and the *Tittle* Committee Defendants.

As discussed in more detail in the brief submitted by the *Tittle* Committee Defendants,[1] "there is no justification for putting in the public domain private personal information of *any* current or former employee 'such as salary, social security numbers, unlisted addresses and telephone numbers, marital status, medical backgrounds, credit histories and performance evaluations.'" *See* Certain Committee Defendants' Brief at 3 (emphasis in original). Enron does not provide any basis for excluding the "defendants in this litigation [and] otherwise known targets of various investigations"[2] from the protection of the Confidentiality Order, and indeed no valid basis exists. To require Enron to produce confidential personnel information of the Defendants without any protections would violate the Defendants' privacy rights and would expose them to "annoyance, embarrassment, [and] oppression," the very things Rule 26(c) is designed to prevent.

The Committee Defendants point out in their brief that none of them is a defendant in *Newby*, none of them is alleged to have engaged in insider trading, and none of them is a "known target of various investigations." *Id.* at 4 n. 4. Mr. Lay files this brief only to emphasize that such distinctions should not make a difference in deciding whose personal information should be protected. As stated

---

[1]The arguments made by the Committee Defendants concerning the appropriateness of extending the protections of Enron's proposed Confidentiality Order to the Defendants in this litigation apply equally to Mr. Lay, but for the sake of brevity, Mr. Lay will not reiterate all of those arguments here.

[2]The latter simply is an unworkable category of persons to segregate out in the Confidentiality Order. Who constitutes a "target" -- not to mention a "known target" -- of any particular investigation is a difficult as well as a fluid determination. One may be a focus of a particular investigation at a particular point in time and then not at another. These decisions by agencies not parties to this litigation should not have any bearing on a defendant's privacy rights to the documents produced in this litigation.

by the Committee Defendants, the mere fact that the *Tittle* plaintiffs chose to *accuse* the Defendants of wrongdoing does not deprive them of the protection to which they would otherwise be legally entitled. That is no less true simply because the accusations or the accusers are different.

The Committee Defendants also point out that Plaintiffs have made no showing that any of the information in the personnel files, including such information as Defendants' social security numbers, relates to Plaintiffs' allegations that the Committee Defendants breached their fiduciary duties. While the same is true of the allegations against Mr. Lay, this should not be a determining factor. This Court has a duty to protect Defendants' confidential and personal information regardless of its alleged relevance to any issue in the case. In *Scott v. Edinburg*, 101 F.Supp.2d 1017 (N.D. Ill. 2000), cited by the Committee Defendants, the court first held that the "personal and sensitive information" at issue was discoverable in the case. *Id.* at 1022. The court went on to point out, however, that to say that the documents at issue were discoverable: "is not to say that plaintiffs are entitled to disseminate them to the world." *Id.* (requiring a protective order that prohibited the documents' use for any purpose other than the prosecution of the lawsuit); *see also, Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 605 (C.D. Cal. 1995) (determining that personnel files were "relevant to the subject matter of the pending action" but holding that the parties could designate any sensitive or personal documents as confidential); *Soto v. City of Concord*, 162 F.R.D. 603, 617 (N.D. Cal. 1995) (acknowledging that "Plaintiff's need for the requested personnel files is great" but nevertheless ordering the files produced under "tightly drawn" protective order). Therefore, the personnel files and other personal information of the Defendants are subject to protection regardless of any alleged relevance they may have to the subject matter of this litigation.

The initiation of a private lawsuit, or a government investigation for that matter, does not strip the named defendants of their rights to privacy. Accordingly, Kenneth L. Lay respectfully requests that the Confidentiality Order entered regarding the documents to be produced by Enron provide the same protection to his personnel files and documents as to the personnel files and documents of other current and former Enron employees.

Respectfully submitted,

James E. Coleman, Jr. by permission Shelli Bamhouse

James E. Coleman, Jr.
State Bar No. 0457400
Southern District ID No. 04574000
CARRINGTON, COLEMAN, SLOMAN
& BLUMENTHAL, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201
(214) 855-3000
(214) 855-1333 (fax)
ATTORNEY IN CHARGE FOR
DEFENDANT KENNETH L. LAY

OF COUNSEL:

Bruce W. Collins
State Bar No. 04604700
Southern District ID No. 20110
Diane M. Sumoski
State Bar No. 19511000
Southern District ID No. 14847
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201
(214) 855-3000
(214) 855-1333 (fax)

CERTIFICATE OF SERVICE

Pursuant to the Court's Orders of June 6, 2002 and August 7, 2002, the foregoing document was served electronically to counsel of record on January 10, 2003.

Shelbi Barnhouse