

Southern District of Texas
APR 03 2003
Michael N. Miloy, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

**MOTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA FOR
AUTHORITY TO ACCESS DOCUMENTS ALREADY PRODUCED BY
LJM2 IN ENRON CORPORATION'S CHAPTER 11 BANKRUPTCY CASE**

1316

Lead Plaintiff The Regents of the University of California ("The Regents") moves for entry of an order granting it access to documents produced by LJM2 Co-Investment, LP ("LJM2") to the Official Committee of Unsecured Creditors (the "Committee") in Enron Corporation's Chapter 11 proceedings before Bankruptcy Judge Arthur J. Gonzalez ("Enron's bankruptcy case").

In Enron's bankruptcy case the Committee has served subpoenas relating to Enron's off-balance sheet assets and liabilities on more than 60 entities. Numerous parties filed pleadings in the bankruptcy court seeking access to documents subpoenaed by the Committee. Concurrently, counsel for the Committee and counsel for numerous parties including the Debtors, Jeffrey Skilling, J.P. Morgan/Chase, Canadian Imperial Bank, and The Regents conferred and eventually agreed to the entry of an order permitting certain parties to access documents produced to the Committee (the "Website Protocol Order"). Attached hereto as Exhibit A is a copy of the Website Protocol Order entered by Judge Gonzalez on March 15, 2002. In accordance with the Website Protocol Order, the Committee created a Web site to allow third parties in Enron's bankruptcy case access to the documents under certain circumstances.

The Committee hired a vendor to scan the documents and host the Web site. To date, over one million pages of documents have been produced and scanned into the Web site. Pursuant to the Website Protocol Order, producing parties have a right to object to the request of parties to obtain access to documents. The Regents filed a request to obtain the documents that were produced by LJM2. LJM2 objected to The Regents' request contending that the documents should not be produced because of the discovery stay in the *Newby* litigation. See August 9, 2002 letter to Craig Rieders from Susan DiCicco attached hereto as Exhibit B.

Subsequently, LJM2 filed for Chapter 11 protection in Dallas, Texas. The Regents filed a motion in LJM2's Chapter 11 case seeking authority to lift the automatic stay provisions of Bankruptcy Code §362 to allow The Regents to file a motion before this Court to obtain the documents produced by LJM2 in Enron's bankruptcy case. Recognizing the merits of The Regents' position, Bankruptcy Judge Felsenthal granted The Regents' motion and entered an Order (Exhibit C hereto) lifting the stay and allowing The Regents the opportunity to request this Court to authorize access to the documents that LJM2 produced in Enron's bankruptcy case.

LJM2. The documents LJM2 has produced in Enron's bankruptcy case are directly related to these bogus transactions and the conduct of certain defendants concerning LJM2 and those transactions.

The documents provided by LJM2 should not be kept secret from The Regents; the documents have been requested by the Committee in the Enron bankruptcy case and made available to others in that case. Accordingly, The Regents hereby move the Court for an order lifting the discovery stay in this action to permit the production of documents consistent with Judge Felsenthal's Order dated December 20, 2002, and this Court's Scheduling Order.

DATED: April 3, 2003

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DECLARATION OF SERVICE BY WEBSITE AND UPS

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on April 3, 2003, declarant served the following Motion of the Regents of the University of California For Authority to Access Documents Already Produced by Ljm2 in Enron Corporation's Chapter 11 Bankruptcy Case by posting to the website or UPS overnight to the parties as indicated on the attached Service List, pursuant to the Court's August 7, 2002 Order Regarding Service of Papers and Notice of Hearings.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of April, 2003, at San Diego, California.



Mo Maloney

SERVICE LIST
April 3, 2003

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<p>Elizabeth T. Parker VIA WEBSITE PEPPER HAMILTON LLP 3000 Two Logan Square, 18th & Arch Sts. Philadelphia, PA 19103 215/981-4000 215/981-4756 (fax) e-mail: parkere@pepperlaw.com</p> <p>Attorneys for Defendant Kevin P. Hannon</p>	<p>Mitchell A. Karlan VIA WEBSITE GIBSON DUNN & CRUTCHER, L.L.P. 200 Park Avenue New York, NY 10166-0193 212/351-4000 212/351-4035 (fax) e-mail: enronlitigation@gibsondunn.com</p> <p>Attorneys for Defendant Merrill Lynch & Co., Inc.</p>
<p>Herbert S. Washer VIA WEBSITE James Miller Ignatius Grande CLIFFORD CHANCE ROGERS & WELLS 200 Park Avenue, Suite 5200 New York, NY 10166 212/878-8000 212/878-8375 (fax) e-mail: herbert.washer@cliffordchance.com james.miller@cliffordchance.com ignatius.grande@cliffordchance.com</p> <p>Attorneys for Defendant Merrill Lynch & Co., Inc.</p>	<p>Michael G. Davies VIA WEBSITE HOGUET NEWMAN & REGAL, LLP 10 East 40th Street New York, NY 10016 212/689-8808 212/689-5101 (fax) e-mail: mdavies@hnrlaw.com</p> <p>Attorneys for Defendant Andersen Co. (Andersen-India)</p>
<p>Mark J. Rochon VIA WEBSITE Emmett B. Lewis MILLER & CHEVALIER 655 Fifteenth Street, N.W., Suite 900 Washington, D.C. 20005-5701 202-626-5819 202-628-0858 (fax) e-mail: mrochon@milchev.com</p> <p>Attorneys for Paulo V. Ferraz Pereira</p>	

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re: :
 : Chapter 11
ENRON CORP., ET AL., :
 : Case Nos. 01-16034 (AJG)
 :
 Debtors. : Jointly Administered
 :
-----x

**ORDER REGARDING ACCESS BY THIRD PARTIES TO
BANKRUPTCY RULE 2004 MATERIAL OBTAINED BY THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

WHEREAS, the Official Committee of Unsecured Creditors in the above-captioned bankruptcy cases ("Committee") has begun an investigation into, among other things, Enron Corp.'s and its affiliated debtors' and debtors in possession's (collectively, "Debtors") off-balance sheet assets and liabilities and potential claims against third parties; and

WHEREAS, on February 5, 22 and 28, 2002, the Court entered Orders granting the Committee's Bankruptcy Rule 2004 motions that were filed in furtherance of the Committee's investigation; and

WHEREAS, the Committee has sought and will continue to seek discovery from various entities ("Producing Party") pursuant to Bankruptcy Rule 2004; and

WHEREAS, certain parties in interest in these bankruptcy cases ("Requesting Party") have requested or may request access to discovery material that has been or will be provided to the Committee pursuant to Bankruptcy Rule 2004 during the course of its investigation, including documents, deposition transcripts, deposition exhibits and deposition videotapes ("Rule 2004 Material"); and

WHEREAS, the Committee seeks to undertake its investigation in the most efficient and economical means possible, and further seeks to minimize the burden on Producing Parties from whom it seeks discovery; and

WHEREAS, the Committee recognizes that Requesting Parties may, under certain circumstances, have a legitimate need for access to Rule 2004 Material in connection with these chapter 11 cases;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. After its receipt of Rule 2004 Material from a Producing Party, the Committee shall in a timely manner make available to parties in interest a) the fact and date of production by a Producing Party, and (b) the name of the attorney(s) and/or contact person(s) for the Producing Party.

2. At any time after the Committee provides the notice described in paragraph 1 of this Order, upon written

request by a Requesting Party to a Producing Party, substantially in the form annexed hereto as Exhibit A ("Request Form"), with simultaneous notice to (a) the Committee, attention Mathew B. West, Esq., Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York, 10005, Facsimile No. 212-822-5156, and David S. Cohen, Esq., Milbank, Tweed, Hadley & McCloy LLP, 1825 Eye Street, NW, Washington, DC, 20006, Facsimile No. 202-835-7586, and (b) the Debtors, attention Brian S. Rosen, Esq., Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153, Facsimile No. 212-310-8007, and Angela C. Wennihan, Esq., Weil, Gotshal & Manges LLP, 100 Crescent Ct # 1300 Dallas Texas 75201, Facsimile No 214-746-7777, the Committee shall allow the Requesting Party access to the Rule 2004 Material produced by that Producing Party in the manner and subject to the terms and conditions set forth below.

3. A Requesting Party shall submit a separate Request Form in the manner set forth in paragraph 2 of this Order for each request for Rule 2004 Material produced by a Producing Party.

4. Each Request Form shall include a representation and agreement by the Requesting Party that

the Rule 2004 Material is sought and shall be used by the Requesting Party in connection with the investigation of claims that relate to the acts, conduct, or property or to the liabilities and financial condition of the Debtors, or to any matter which may affect the administration of the Debtors' estate.

5. The Request Form, and any representations therein, shall be in compliance with and subject to Federal Rule of Civil Procedure 11 and Bankruptcy Rule 9011.

6. The Committee's obligation to provide access to the Rule 2004 Material, as set forth in paragraph 2 of this Order, is expressly subject to the following additional conditions:

a. If the Committee, the Debtors or the Producing Party notifies the Requesting Party, the Committee, the Debtors and the Producing Party in writing, in the form annexed hereto as Exhibit B ("Objection Form"), that it objects on any basis whatsoever, including issues concerning the confidential treatment of the Rule 2004 Material, to such request (the "Objecting Party"), the Committee shall not comply with the Requesting Party's request unless and until any such objection has been withdrawn in writing or has been resolved by Order of the

Court. The Objection Form, and any objections therein, shall be in compliance with and subject to Federal Rule of Civil Procedure 11 and Bankruptcy Rule 9011. It shall be the sole responsibility of the Requesting Party to resolve the objections set forth in the Objection Form with Objecting Party, including those concerning the confidential treatment of the Rule 2004 Material. In the event the Requesting Party and the Objecting Party cannot resolve the objection(s) between themselves, either may seek the assistance of the Court to resolve the dispute.

b. The Committee shall have no obligation to resolve any confidentiality issues or any other objections as between a Requesting Party and a Producing Party or the Debtors.

c. If neither the Committee, the Debtors, nor a Producing Party notifies the Requesting Party of any objection within ten (10) business days of its receipt of a Request Form, the Committee, the Debtors and Producing Party will be deemed to have waived any objection to production of the Rule 2004 Material to that Requesting Party and acquiesced to the Committee's compliance with that Requesting Party's request. The Committee shall not

produce any requested Rule 2004 Material until the expiration of this ten (10) business day period.

d. The costs and expenses for access to or copies of any Rule 2004 Material by a Requesting Party shall be the sole responsibility of the Requesting Party. Provided, however, that the costs of creating the document depository, database or website referred to in paragraph 8 hereof shall not be borne by either the Requesting Parties or the Producing Parties.

7. The fact that a Request Form has been submitted by a Requesting Party shall not be a basis upon which a Producing Party may delay or withhold production of Rule 2004 Material to the Committee.

8. The Committee, in its reasonable discretion, shall determine how access to Rule 2004 Material shall be provided to Requesting Parties; e.g., by means of a document depository or an electronically accessible document and transcript database or website, in a manner not inconsistent with the other provisions of this Order. Access by Requesting Parties to any such document depository or database shall be subject to the terms of this Order. At the request of any Producing Party, any Rule 2004 Material initially produced by such Producing

Party pursuant to a confidentiality agreement with the Committee or a protective order shall, instead of the Committee, be produced by such Producing Party to the Requesting Party entitled thereto.

9. As part of its investigation, the Committee may take depositions of individuals pursuant to Bankruptcy Rule 2004. Not sooner than 45 days after providing notice of receipt of documents from a Producing Party, the Committee will file a notice with the Bankruptcy Court for each deposition that it intends to take, identifying the date, place and time of such depositions. The Committee, the Debtors and the deponent have no obligation to coordinate the date, place or time of such depositions with any Requesting Party. The Committee retains the right to change the date, place or time of any deposition at any time without seeking or obtaining approval of any Requesting Party. In the event the Committee does change the date, place or time of any previously noticed deposition, the Committee shall file an amended notice of the deposition with the Bankruptcy Court. Such amended notices shall be filed promptly by the Committee after a rescheduled date, time or place of a deposition becomes known to the Committee.

10. Requesting Parties who wish to attend a deposition noticed by the Committee shall provide notice in the manner prescribed in paragraph 2 of this Order. It may not be feasible or practical for all Requesting Parties who seek to attend a particular deposition, e.g., if the number of Requesting Parties cannot reasonably be accommodated at the deposition. Should the Committee reasonably determine that it will not be feasible or practical for all Requesting Parties to attend a deposition, the Committee shall advise all Requesting Parties of that determination by electronic mail. In such situations, the Requesting Parties shall first among themselves negotiate and attempt to resolve who will attend the deposition and then inform the Committee and the Debtors of the outcome of those negotiations. In the event the Requesting Parties cannot resolve among themselves who will attend the deposition, they may seek the assistance of the Court to resolve the dispute among them. However, it is expressly understood that any dispute over who among the Requesting Parties shall attend a deposition shall not be a basis for adjourning the deposition, or for changing the location of the deposition.

11. Only after the Committee has completed its examination of a deponent within the time limits prescribed

by the Federal Rules of Civil Procedure and the Bankruptcy Rules, or by consent between the deponent and the Committee, may Requesting Parties who attend a deposition examine a deponent. In such situations, the Requesting Parties shall determine among themselves the order and length of such additional examinations.

12. Requests for deposition transcripts that constitute Rule 2004 Material (as defined herein) shall be governed by the terms of this Order applicable to other requests for Rule 2004 Material; provided, however, that a Request Form that requests access to a copy of a deposition transcript shall be presumptively valid and shall not be objectionable unless the entire transcript (if the objection to such request pertains to the entire transcript) or the applicable portion of such transcript (if the objection pertains only to such portion of the transcript) shall have been designated as confidential at the time of the deposition.

13. This Order shall be effective immediately and shall remain in effect until modified by further Order of this Court.

14. A Requesting Party who receives Rule 2004 Material shall not share or discuss the Rule 2004 Material,

or its contents or information, with any other person or party unless such other party has also received such Rule 2004 Material as a Requesting Party pursuant to this Order.

15. Nothing herein shall prevent or preclude the Committee from sharing any Rule 2004 Material with the Debtors.

16. Parties in interest may seek relief from the provisions of this Order at any time, upon reasonable notice to the Committee and the Debtors.

17. Nothing contained in this Order shall prevent any party in interest from seeking discovery from the Debtors' or any other Producing Parties pursuant to applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and/or order(s) of the Court.

New York, New York
March 15, 2002

/s/Arthur J. Gonzalez
Arthur J. Gonzalez
United States Bankruptcy Judge

EXHIBIT A

Exhibit A

Date: _____

By Facsimile & U.S. Mail

Facsimile No.: _____

_____ (Producing Party)

_____ (Representative)

_____ (Representative Firm)

_____ (Address)

Re: In re Enron Corp., et al. Nos. 01-16034 (AJG)

Dear _____ (Producing Party):

We represent _____ (Requesting Party), a party in interest in these chapter 11 cases. Pursuant to the Order Regarding Access by Third Parties to Bankruptcy Rule 2004 Materials Obtained by the Official Committee of Unsecured Creditors, dated March __, 2002 ("Order"), _____ (Requesting Party) requests [insert either (i), (ii) or (iii)] (i) access to the Rule 2004 Material that _____ (Producing Party) produced to the Official Committee of Unsecured Creditors on _____, (ii) the right to attend the deposition of _____ (deponent) to take place on _____ (iii) access to a copy of the deposition transcript and exhibits thereto of the deposition of _____ (deponent) taken on _____.

_____ (Requesting Party) represents and agrees that the Rule 2004 Material requested herein is sought and shall be used only by _____ (Requesting Party) and in connection with the investigation of claims that relate to the acts, conduct, or property or to the liabilities and financial condition of the Debtors, or to any matter which may affect the administration of the Debtors' estates. _____ (Requesting Party) understands and affirms that the representations contained in this Request Form are subject to and in compliance with the Order, Federal Rule of Civil Procedure 11 and Bankruptcy Rule 9011.

By:

Exhibit A

Copies by facsimile to:

Mathew B. West, Esq. (212) 822-5156

David S. Cohen, Esq. (212) 835-7586

Brian S. Rosen, Esq. (212) 310-8007

Angela C. Wennihan, Esq. (214) 746-7777

Exhibit B

Date: _____

By Facsimile & U.S. Mail

Facsimile No.: _____

_____ (Requesting Party)

_____ (Representative)

_____ (Representative Firm)

_____ (Address)

Re: *In re Enron Corp., et al.* Nos. 01-16034 (AJG)

Dear _____ (Requesting Party):

We represent _____ (Producing Party), in connection with Rule 2004 Material that was provided to the Official Committee of Unsecured Creditors ("Committee"). Pursuant to the Order Regarding Access by Third Parties to Bankruptcy Rule 2004 Materials Obtained by the Official Committee of Unsecured Creditor, dated March __, 2002 ("Order"), _____ (Objecting Party) objects to _____ (Requesting Party) request, dated _____, [insert either (i), (ii) or (iii)] for (i) access to the Rule 2004 Material that _____ (Producing Party) produced to the Committee on _____, (ii) the right to attend the deposition of _____ (deponent) to take place on _____, (iii) for a copy of the deposition transcript and exhibits thereto of the deposition of _____ (deponent) taken on _____. The basis of the objection(s) is as follows:

_____ (Objecting Party) understands and affirms that the representations contained in this Objection Form are subject to and in compliance with the Order, Federal Rule of Civil Procedure 11 and Bankruptcy Rule 9011. An objection based on a correct assertion that Rule 2004 Material was produced to the Committee pursuant to a confidentiality agreement or protective order shall not be a basis for sanctions under Federal Rule of Civil Procedure 11 or Bankruptcy Rule 9011.

By:

Exhibit B

Copies by facsimile to:

Mathew B. West, Esq. (212) 822-5156

David S. Cohen, Esq. (212) 835-7586

Brian S. Rosen, Esq. (212) 310-8007

Angela C. Wennihan, Esq. (214) 746-7777

KING & SPALDING

1185 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-4008
TELEPHONE: 212/556-2100
FACSIMILE: 212/556-2222

DIRECT DIAL:

212/556-2263

EMAIL:

sdicocco@kslw.com
www.kslw.com

August 9, 2002

Craig P. Rieders, Esq.
Genovese, Joblove & Battista
Bank of America Tower
108 Southeast Second St.
36th Floor
Miami, FL 33131

Re: In re Enron Corporation

Dear Craig:

I have reviewed the transcript of the July 11, 2001 hearing on the Regents Motion to obtain the Rule 2004 materials produced by Arthur Andersen, Vinson & Elkins and McKinsey (the "Transcript"). In light of that Transcript, I see no basis for you to continue to pursue the motion for the same relief as against LJM2 Co-Investment, L.P. ("LJM2"). As we have discussed many times, LJM2's primary objection to the Regents' request for LJM2's Rule 2004 production centers on the existence of the PSLRA stay in the Newby litigation. Although you apparently hoped that Judge Gonzalez would resolve the objection concerning the PSLRA stay, it is quite clear that will not happen. See Transcript at 35 (The Court on the PSLRA stay issue: "I have no intention of deciding that issue").

Moreover, your own statements to the Court indicate that you fully understand that only Judge Harmon has authority to modify the PSLRA stay. See Transcript at 15 ("The PSLRA stay is in effect."); at 44 (The Court: "I think that argument [on the PSLRA stay] needs to be made before Judge Harmon." Mr. Rieders: "I think you are right"); see also Tr. at 45.

In fact, Judge Harmon has already made it clear that the PSLRA stay remains in effect. Specifically, in an Order entered August 5, 2002 (the "Order"), Judge Harmon expressly states:

ORDERS that all discovery is STAYED, pursuant to the PSLRA, until the Court has ruled on the pending motions to dismiss.

100 PEACHTREE CENTER
ATLANTA, GA 30308-1767

1700 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20006-5700

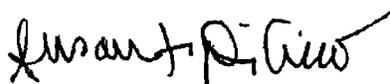
1,001 LOUISIANA STREET, SUITE 5000
HOUSTON, TX 77002-5219

Craig P. Rieders, Esq.
August 9, 2002
Page 2

Order at 4 (emphasis in original). A copy of the Order is annexed hereto. See also Order at n.2 ("The parties have not demonstrated that either of the two exceptions [to the PSLRA stay] has been met here....").

If I do not receive confirmation from you that the motion has been withdrawn by August 16, 2002, I will write to Judge Gonzalez seeking that the motion be dismissed and that sanctions be awarded.

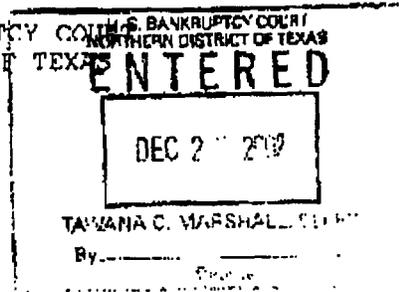
Very truly yours,

A handwritten signature in black ink, appearing to read "Susan F. DiCicco". The signature is written in a cursive style with a long, sweeping underline.

Susan F. DiCicco

Enclosure

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



IN RE: §
LJM2 CO-INVESTMENT, L.P., § CASE NO. 02-38335-SAF-11
DEBTOR. §

ORDER

The Regents of the University of California, as lead plaintiff in the Nexby v. Enron; Regents v. Lay, et al., Civil Action No. H-01-3624 (Consolidated Class Action) class action, in the United States District Court for the Southern District of Texas, move the court for relief from the automatic stay to permit the Regents to pursue access to documents previously produced by LJM2 Co-Investment, L.P., the debtor, in In re Enron Corp., pending in the United States Bankruptcy Court for the Southern District of New York. LJM2 opposes the motion. The court conducted a hearing on the motion on December 10, 2002.

The court may modify the automatic stay for cause. 11 U.S.C. § 362(d)(1). The Regents have established cause to modify the stay for the relief requested.

LJM2 has previously produced thousands of pages of documents to the Committee of Unsecured Creditors in the Enron case. The

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Regents seek relief from the stay in this case to pursue access to those documents.

By an order entered March 15, 2002, the Enron court authorized a mechanism for parties in interest in the Enron case to obtain access to materials discovered by the committee as part of the Bankruptcy Rule 2004 process in that case. In re Enron Corp., 281 B.R. 835, 839 (Bankr. S.D.N.Y. 2002). The committee has organized and assembled the discovered material for electronic access through a website. The Enron court has established a procedure to access the website. However, the Enron court has denied the Regents access to the website to obtain documents produced by other persons, reasoning that the request was outside the scope of Rule 2004 in the Enron case. 281 B.R. at 844.

Meanwhile, discovery in the Newby class action has been stayed pending determination of motions to dismiss that litigation. The Regents recognize that relief from that stay must be obtained from the United States District Court for the Southern District of Texas, where Judge Harmon is presiding over the Newby class action. The Regents seek stay relief in this case to enable the Regents to file a motion before Judge Harmon, when appropriate. By order entered August 16, 2002, Judge Harmon has held that where documents had previously been found, reviewed and organized, the Newby stay of discovery would be modified to

allow limited production.

Although conceding that it has already produced the documents in the Enron case, LJM2 opposes the motion for three reasons. First, LJM2 is concerned that granting stay relief would encourage other discovery motions in this case. Second, LJM2 believes that the requested discovery is a prelude to the commencement of litigation against the debtor. Third, LJM2 asserts it would incur unnecessary expenses in resisting the discovery in the Newby and Enron courts. None of these reasons is well founded.

LJM2 has already produced the documents. It has no basis to oppose access to already produced documents. The Regents' access to those documents will neither result in any burden on the debtor or its estate, nor will it have an effect on the efforts of the debtor to timely propose a plan of reorganization in this case or on the administration of this estate. Modifying the stay to permit access to already produced documents can have no adverse precedential effect.

The possibility that discovery could lead to a claim against the bankruptcy estate is no basis to oppose access to the documents. The determination of claims against the bankruptcy estate is one of the functions of the Chapter 11 case.

Granting the relief requested by the Regents will not impose expenses on LJM2. LJM2 has no basis to contest access to the

produced documents in either the Newby court or the Enron court. It would therefore be an unnecessary expenditure of LJM2 bankruptcy estate assets for LJM2 to contest access to the documents.

To paraphrase Judge Harmon in her order entered August 16, 2002, in a sense, the discovery has already been made. LJM2 has produced the documents to the Enron committee. The committee has reviewed and organized the documents. The documents are available by electronic access through a website.

The Regents recognize that upon obtaining relief from this court, the Regents must seek relief from Judge Harmon in the Newby class action.

Based on the foregoing, the court finds cause to grant the motion.

LJM2 argues, nevertheless, that the Regents must comply with the Enron website access procedure, even after obtaining relief from Judge Harmon. LJM2 asserts that based on the Enron court's order entered August 15, 2002, if the Regents' request to access the website generates an objection, the court would likely find the request outside the Rule 2004 scope in the Enron case.

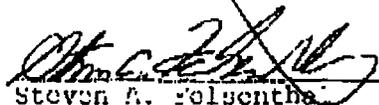
This court has no occasion to assess how any such request would be handled in the Enron case. This court focuses only on this estate and this case. LJM2 has produced the documents and the documents are accessible electronically. If the United

States District Court grants relief from the discovery stay in the Newby class action, this court can perceive no basis for the Regents to chase to New York for access to electronically available documents for litigation in Houston. If access is denied to the documents on the website following the granting of relief by the District Court, the Regents may seek further relief from this court for LJM2 to reproduce the documents.

Accordingly,

IT IS ORDERED that the motion of the Regents of the University of California for relief from the automatic stay is **GRANTED**.

Signed this 20th day of December, 2002.


Steven A. Folsentha
United States Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

FEB 28 2002

Michael N. Milby, Clerk of Court

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

MARK NEWBY, ET AL.,

Plaintiffs

VS.

ENRON CORPORATION, ET AL.,

Defendants

CIVIL ACTION NO. H-01-3624
AND CONSOLIDATED CASES

PIRELLI ARMSTRONG TIRE CORPORATION
RETIREE MEDICAL BENEFITS TRUST,
Derivatively On Behalf of ENRON CORPORATION,
ET. AL.,

Plaintiffs

VS.

KENNETH LAY, ET AL.,

Defendants

CIVIL ACTION NO. H-01-3645
AND CONSOLIDATED CASES

PAMELA M. TITTLE, on behalf of herself and
a class of persons similarly situated, ET AL.,

Plaintiffs

VS.

ENRON CORP., an Oregon Corporation, ET AL.,

Defendants.

CIVIL ACTION NO. H-01-3913
AND CONSOLIDATED CASES

SCHEDULING ORDER

On February 25, 2002 this Court held a scheduling conference participated
in by the consolidated *Title* parties and the consolidated *Newby* parties. The Court heard

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from plaintiffs and defendants in each case and has considered the arguments of all sides. The consolidated *Pirrelli* case has been automatically stayed by the Enron bankruptcy proceeding and remains so.¹ That stay of claims against Enron Corporation in the *Tittle* consolidated action was lifted by The Hon. Arthur J. Gonzalez, United States Bankruptcy Judge, Southern District of New York, for the limited purpose of allowing, *inter alia*, Enron to participate in the scheduling of the *Tittle* case.

The Court is mindful that the eyes of the nation are on this Court and the civil justice system to see if we are up to the challenge of giving to all parties in these suits their day in court. It is the nation's impression that the justice system grinds slowly in a Dickensian fashion, and it is the hope of this Court that that impression can be changed by an efficient resolution of these cases. To that end, the Court finds that the agreed to and proposed schedules submitted by the plaintiffs and defendants are each deficient in some respect. The Court has taken into account the positions and arguments of each group of parties and has fashioned what the Court believes to be a workable schedule, one that will require the expenditure of a great deal of time and energy by the lawyers and parties, but one that will bring this case to resolution in as short a time frame as humanly possible, while serving the interests of justice. The scheduled dates are considered by this Court to be FIRM DATES. These are not floating dates subject to change without sufficient reason. By separate order the Court will establish a monthly conference call so that counsel and the Court may confer. Accordingly, it is hereby

¹At this time, because the Detective Endowment Association Annuity Fund has moved in the Bankruptcy Court to lift the stay as to the shareholder derivative suits, the Court chooses not to administratively close the *Pirrelli* action.

ORDERED that the *Newby* and *Tittle* plaintiffs and defendants shall confer within the next ten days and as promptly as possible take the steps necessary to set up and fund in Houston, Texas, a document depository for the receipt and maintenance of discovery in all of these consolidated cases. The depository shall be accessible to the attorneys for all parties. The logistics of setting up the depository and protocols for access and copying will be left to the professionalism of experienced counsel. It is further

ORDERED that, pursuant to the order of the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge for the Southern District of New York, partially lifting the bankruptcy stay, Enron Corporation will produce, subject to attorney client privilege or work product protection:

- (1) a copy of all documents and materials Enron has produced since filing for bankruptcy in connection with any inquiry(ies) or investigation(s) into the Company's handling of its ERISA-governed pension plans, that were provided, or that may be provided, pursuant to subpoena
 - (a) by any committee of the Legislative branch of the United States Government, or
 - (b) by the Executive branch of the United States Government, including, but not limited to, the Department of Labor, and
- (2) copies of all transcripts of witness interviews or depositions in Enron's possession, custody or control, given or taken in connection with said inquiry(ies) or investigation(s).

These copies of documents, transcripts and depositions shall be deposited in the document depository in Houston, Texas by April 1, 2002 and made available to all lawyers in both the consolidated *Tittle* and *Newby* cases. The automatic stay of discovery

mandated by the PSLRA was designed to prevent fishing expeditions in frivolous securities lawsuits. It was not designed to keep secret from counsel in securities cases documents that have ~~become available for review by means other than discovery~~ in the securities case. Furthermore, as pointed out during the hearing, the *Tittle* plaintiffs are included within the putative class of the *Newby* case. Any materials withheld because of privilege or work product shall be documented in a privileged log. It is further

ORDERED that interrogatories, requests for admissions, and document requests that plaintiffs in the *Newby* or *Tittle* case wish to propound to defendants, including Enron, be proposed as soon as possible so that, should any claims survive the motions to dismiss, the *Newby* and *Tittle* defendants will have had an opportunity to review the discovery requests during the pendency of the motions to dismiss and can respond within a reasonable time frame after a ruling on the motions, should a response be necessary. In no event shall Enron's answer, objection, or other response to the discovery be required until the bankruptcy stay is lifted for all purposes on June 21, 2002, pursuant to Judge Gonzalez's Order. It is further

ORDERED that the plaintiffs in the *Tittle* case, inasmuch as they are not subject to the PSLRA stay of discovery, may immediately begin any discovery unique to their case that has not been stayed in the *Newby* case by the PSLRA. All discovery shall be placed in the document depository in Houston, Texas. It is further

ORDERED that expert witnesses, whether on the class issues or on the merits of the case, shall be designated by a party and shall file at that time a comprehensive expert report. The counter expert must then be designated and provide his or her comprehensive report. Waiting to depose the counter expert until after a first

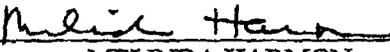
designated expert has been deposed will unnecessarily prolong the discovery process.

Accordingly, it is hereby

ORDERED that the Pretrial Scheduling Order, which shall apply to the consolidated *Titte* and *Newby* cases shall be as follows:

Consolidated Complaints filed by	April 1, 2002	/
Motions to dismiss due	May 1, 2002	/
Opposition to Motions to dismiss	June 3, 2001	
Replies to Opposition to Motions to dismiss	June 17, 2002	
Class discovery begins	July 1, 2002	/
Class discovery ends	September 2, 2002	
Plaintiffs' Motions for Class Certification	October 1, 2002	
Defendants' Opposition	November 1, 2002	
Plaintiffs' Replies	December 2, 2002	
Deadline to join new parties or to file third party complaints or cross complaints/claims:	January 2, 2003	/
All fact discovery completed by	April 1, 2003	
Plaintiffs' expert witnesses named and a comprehensive report of the experts' opinions furnished by	April 15, 2003	/
Defendants' expert witnesses named and a comprehensive report of the experts' opinions furnished by	May 15, 2003	/
Expert Discovery completed by	July 2, 2003	
Motions for Summary Judgment and all other dispositive motions filed and served by	August 15, 2003	/
Joint Pretrial Order filed by	October 15, 2003	/
Plaintiffs are responsible for filing the Pretrial Order on time.		
Docket Call is set for 1:30 pm	November 14, 2003	/
Trial is set for 9:00 am	December 1, 2003	/

SIGNED at Houston, Texas, this 27th day of February, 2002.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

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

AUG 16 2002

Michael N. Milby, Clerk

In Re Enron Corporation
Securities, Derivative &
"ERISA Litigation

MDL-1446

THIS DOCUMENT RELATES TO:

All Cases

MARK NEWBY, ET AL.,

Plaintiffs

VS.

CIVIL ACTION NO. H-01-3624
CONSOLIDATED CASES

ENRON CORPORATION, ET AL.,

Defendants

ORDER

Pending before the Court is Lead Plaintiff the Regents of the University of California's motion for a limited production of Enron documents (instrument #802).

Lead Plaintiff explains that in the New York bankruptcy court it moved for a limited modification of the automatic stay as to Debtor Enron Corporation to obtain copies of all documents and materials produced by the Debtor related to any inquiry or investigation by any legislative branch committee, the executive branch, including the Department of Justice and the Securities and Exchange Commission, and all transcripts of witness interviews or depositions related to those inquiries. After review of the briefing and oral argument, on May 22, 2002 Judge Arthur Gonzalez lifted the automatic stay, provided that this Court determines that the PSLRA's discovery stay should be lifted, to require Enron to produce such documents, subject to any attorney-client privilege or work product protection asserted by Enron and a reasonable time for review. Ex. to Motion. Because these materials have already been made available to and reviewed by numerous governmental entities and others, Lead Plaintiff asks the Court to order the PSLRA's discovery stay to be lifted for the same reasons it did in its February 27, 2002 scheduling order,

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when it lifted the stay as to certain ERISA documents and made them available to both Tittle and Newby Plaintiffs because the PSLRA's discovery stay "was designed to prevent fishing expeditions in frivolous securities lawsuits" and "was not designed to keep secret from counsel in securities cases documents that have already become available for review by means other than discovery in the securities case." Feb. 27, 2002 Order (#326) at 3-4.

Opposition has been filed by Enron Corporation (#883), joined by Defendant Kenneth Lay (#884) and Certain Officer Defendants (Richard Buy, Richard Causey, Kenneth Rice, Joseph M. Hirko, Stanley C. Horton, Steven Kean, Kevin Hannon, Mark Frevert, Mark Koenig, Jeff McMahon, Lawrence Whalley and Cindy K. Olson)(#890). Emphasizing the unambiguous text of 15 U.S.C. § 78u-4(b)(3)(B),¹ which allows only two exceptions to the PSLRA's ban on discovery during pendency of motions to discuss, Defendants note that Lead Plaintiff does not claim that it can show that particularized discovery is essential to preserve evidence or to prevent prejudice to Lead Plaintiff. They complain, "Plaintiff offers no authority or rationale for expanding the Court's Scheduling Order's accommodation of the ERISA claims to order wholesale production of hundreds of thousands of pages of documents in the securities case." Defendants insist that the PSLRA prohibits discovery requests, whether a "fishing expedition" or a "surgical strike." They argue that until the Court rules on the motions to dismiss challenging the legal sufficiency of the amended consolidated complaint, the securities action "should stand or fall based on the actual knowledge of the plaintiffs rather than information produced by the defendants after the action has been filed," as Congress intended. SG Cowan Securities Corp. v. U.S.D.C. of the N.D. Cal., 189 F.3d 909, 912 (9th Cir. 1999).

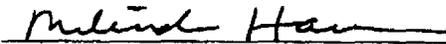
¹ Section 78u-4(b)(3)(B) provides,

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon motion of any party that particularized discovery is necessary to preserve evidence or to prevent prejudice to that party.

In reply, Lead Plaintiff underlines the point that this request does not "pose . . . a threat of the abusive litigation threatened by the PSLRA" and that "Defendants therefore should not be allowed to hide behind the statute." While recognizing that the PSLRA's discovery stay protected Defendants from unnecessary discovery costs, Lead Plaintiff argues that here the burden would be slight because Enron has already found, reviewed, and organized the documents. The Court agrees. In a sense this discovery has already been made, and it is merely a question of keeping it from a party because of the strictures of a statute designed to prevent discovery abuse. Accordingly, the Court

ORDERS that the motion for limited production is **GRANTED**.

SIGNED at Houston, Texas, this 15th day of August, 2002.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE

OCT 24 2002

Michael N. Milby, Clerk

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

In re ENRON CORPORATION SECURITIES
LITIGATION

Civil Action No. H-01-3624
(Consolidated)

This Document Relates To:

CLASS ACTION

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.

**ORDER LIFTING DISCOVERY STAY TO PERMIT
LIMITED PRODUCTION OF DISCOVERY CONSISTENT
WITH SEPTEMBER 13, 2002 ORDER OF THE BANKRUPTCY COURT**

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Upon consideration of Lead Plaintiffs motion to lift the discovery stay for the limited production of discovery made available in *In re Enron Corp.*, No. 01-16034(AJG), Order (Bankr. S.D.N.Y. Sept. 13, 2002), IT IS HEREBY ORDERED:

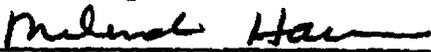
1. The discovery stay is lifted for the limited production of discovery to Lead Plaintiff, consistent with the Order of Judge Gonzalez, dated September 13, 2002, as follows, (i) the production of all documents produced and that may be produced by the Debtors pursuant to the Order entitled Order Modifying Automatic Stay to Permit Certain Third Party Discovery to Be Obtained From Debtors dated May 15, 2002; and (ii) transcripts of depositions, including the exhibits marked in depositions, that may be taken in the litigation styled *J.P. Morgan Chase Bank v. Liberty Mutual Insurance Co.*, No. 01-CIV-15523 (JSR).

2. Debtors in the bankruptcy action, *In re Enron Corp.*, No. 01-16034 (AJG) (S.D.N.Y.), JP Morgan Chase Bank, Mahonia Ltd., Mahonia Gas Ltd., and the Surety Group in *J.P. Morgan Chase Bank v. Liberty Mutual Insurance Co.*, No. 01-CIV-15523 (JSR), may assert applicable privileges or objections before this Court.

3. Copies of these documents and transcripts of depositions shall be maintained by Lead Counsel, Milberg Weiss Bershad Hynes & Lerach LLP, and made available to counsel in the *Tittle* and *Newby* cases, and will be deposited in the document depository in Houston, Texas.

IT IS SO ORDERED.

DATED: October 23, 2002



THE HONORABLE MELINDA HARMON
UNITED STATES DISTRICT JUDGE