

AR APR 25 2003

Michael N. Milby, Clerk

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

IN Re: ENRON CORPORATION	)	
SECURITIES, DERIVATIVE &	)	MDL 1446
ERISA LITIGATION	)	
_____	)	_____
MARK NEWBY, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO. H-01-3624 ✓
	)	AND CONSOLIDATED CASES
vs.	)	
	)	
ENRON CORPORATION, et al.,	)	
	)	
Defendants.	)	
_____	)	_____
DAVID A. HUETTNER, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO. H-02-2984
	)	
-vs-	)	
	)	
EOTT ENERGY PARTNERS, L.P., et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM IN OPPOSITION TO REQUEST OF CERTAIN  
INDIVIDUAL DEFENDANTS FOR RULING ON THEIR MOTION TO DISMISS FOR  
FAILURE TO STATE A CLAIM**

Defendants Gibbs, Coombe, Hultsman, Maddox, Menchaca, Sample, Ralph and Whitty  
("Certain Individual Defendants") have requested that this Court rule on Defendants' Motion to

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Dismiss. In response to such Request, Plaintiffs state as follows:

1. On September 22, 2002, Certain Individual Defendants, with EOTT Energy Partners, L.P., filed their Motion to Dismiss for Failure to State a Claim and Renewed Motion to Transfer Venue, which was supplemented on September 23, 2002 with the exhibits that inadvertently had not been attached to the original Motion to Dismiss.

2. On October 22, 2002, EOTT Energy Partners, L.P. filed its Notice of Bankruptcy. Thereafter, on November 20, 2002, this Court ordered the instant proceedings stayed and directed that Plaintiffs file a status report by February 7, 2003. Plaintiffs' Status Report advised the Court that Plaintiffs had filed a motion for relief from the automatic stay in the EOTT bankruptcy case, and that a hearing had been requested with respect to such motion.

3. Subsequently, the Plaintiffs' Motion for Relief from the Automatic Stay was denied, without prejudice, by the U.S. Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, Judge Richard S. Schmidt, presiding. The denial of the motion was without prejudice to the Bankruptcy Court's reconsideration of the motion at a future date pending the Bankruptcy Court's rulings on the Debtors' objections to the proofs of claim Plaintiffs filed in the bankruptcy proceedings.

4. On February 18, 2003, the Bankruptcy Court confirmed the Joint Chapter 11 Plan of the Debtors. However, the Bankruptcy Court has yet to rule on the Debtors' objections to the proofs of claim. At a hearing conducted on April 8, 2003, the Bankruptcy Court granted the Debtors an additional 90 days in order to conduct discovery with respect to its objections.

5. Hence, the Certain Individual Defendants' claim that the confirmation of the Plan somehow "permanently enjoined" Plaintiffs from continuing the current action against EOTT

Energy Partners, L.P. or EOTT Energy Corp. is false. The claims objections process continues in that case, and Judge Schmidt has left open the possibility that he will reconsider Plaintiffs' lift stay motion filed in the Bankruptcy Court pending the outcome of the claims objection process. Presumably, that process will conclude at the conclusion of the ninety day period ordered by the Bankruptcy Court on April 8, 2003.

6. Moreover, the instant litigation has been stayed by order of this Court dated November 20, 2002. As a result, Plaintiffs, who had obtained leave to respond to the Motion to Dismiss as of the date the instant action was stayed, have yet to respond to Defendants' Motion to Dismiss.

Accordingly, Plaintiffs respectfully request that this Honorable Court either deny the Certain Individual Defendants' Request for ruling on the Motion to Dismiss or, in the alternative, lift the stay of this case with respect to the Certain Individual Defendants and afford Plaintiffs a reasonable time within which to respond to the Motion to Dismiss before issuing its ruling.

Respectfully submitted,

A handwritten signature in black ink that reads "John A. Huetner". The signature is written in a cursive, flowing style.

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Memorandum has been served by ordinary mail

this 22nd day of April, 2003, upon the following:

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