United States Courts
Southern District of Texas
FILED

MAY 1 9 2003

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.	§	

AFFIDAVIT OF HELEN J. HODGES PURSUANT TO RULE 56(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE IN SUPPORT OF LEAD PLAINTIFF'S OPPOSITION TO DEFENDANT CANADIAN BANK OF COMMERCE'S SUMMARY JUDGMENT MOTION

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I, HELEN J, HODGES, being duly sworn deposes and states as follows:

1. I am a member of the law firm Milberg Weiss Bershad Hynes & Lerach LLP, lead counsel for Lead Plaintiff The Regents of the University of California. I make this affidavit on personal knowledge pursuant to Rule 56(f) of the Federal Rules of Civil Procedure to set forth the discovery plaintiffs need to respond to defendant Canadian Imperial Bank of Commerce's (hereinafter "CIBC") motion for summary judgment and in conjunction with Lead Plaintiff's Opposition to Defendant CIBC's Summary Judgment Motion and Request for Continuance Pursuant to Rule 56(f) to Conduct Discovery.

2. I have personal knowledge of the categories of additional discovery plaintiffs in this litigation require in order to fully respond to CIBC's summary judgment motion as well as the reasons, as elaborated in lead plaintiff's motion, as to why this discovery is necessary.

3. Specifically, plaintiffs require CIBC's full compliance with discovery obligations in connection with this pending summary judgment motion. CIBC filed its summary judgment motion six days after the Court lifted the discovery stay and no discovery has yet been received.

4. On July 2, 2002 plaintiffs sent to defendant CIBC plaintiffs' First Request for Production of Documents (Ex. A hereto). The request for production of documents defined CIBC to mean, "Canadian Imperial Bank of Commerce and its predecessors, successors, divisions, direct or indirect subsidiaries, partnerships, limited partnerships, related parties, joint ventures, affiliates, officers, directors, employees, partners, agents, assigns, attorneys, any CIBC-Controlled Entity, or anyone acting or purporting to act on its behalf." The request for production of documents included:

(a) minutes of meetings of CIBC's Board of Directors or Board of Trustees where Enron or any of the SPEs, Trusts, or LJM Partnerships was discussed;

(b) all documents concerning communications concerning Enron or any of the SPEs, Trusts, or LJM Partnerships;

(c) all documents and all communications identifying each internal or external audit, compliance or regulatory review cycle projected, planned or executed in each desk, area, division, group, or subsidiary of CIBC that transacted with Enron;

(d) all documents concerning organizational charts of each desk, area, division, group, or subsidiary that transacted with Enron or conducted research on Enron, including, but not limited to, such documents identifying the name, title, salary grade, signing authority, direct reporting relationship and each indirect reporting relationship, each individual with direct or indirect

responsibilities concerning any Enron or Enron-related transaction(s), and including the chain of command up through the Chairman and CEO of CIBC;

(e) all documents concerning each policy and procedures manual for each CIBC desk, area, division, group, subsidiary, department, line of business, or entity which transacted with Enron; and each list or index of policies and procedures in effect, including any last modified date, date for review or renewal and recipient;

(f) all documents concerning the organizational decision process charts that explain the internal decision making process for each CIBC desk, area, division, group, subsidiary, department, line of business, or entity that transacted with Enron;

(g) all communications discussing the application, non-application, waiver or enforcement of CIBC's management policies and procedures to Enron or Enron-related transactions for each CIBC desk, area, division, group, subsidiary, department, line of business, or entity which transacted with Enron;

(h) all documents and all communications listing or identifying all employees of CIBC who were on the distribution list for internal credit ratings, including, but not limited to, individual ratings, groups of ratings, or the full credit ratings list concerning Enron;

(i) all documents and all communications that list, reflect or detail any excesses, breaches, variances or violations of approved limits, terms or conditions of transactions with Enron, including, but not limited to, all such documents and communications concerning lending or borrowing of credit limits between instrument classes or business units;

(j) all documents concerning any business relationship (including, without limitation, any management agreement, partnership agreement, consulting agreement, or any other agreement) between CIBC and (1) Enron, (2) any SPE, (3) any Trust, (4) any of the LJM Partnerships, (5) any of the Individual Defendants, (6) Andersen Defendants, (7) V&E, or (8) K&E;

(k) all documents identifying any business affiliation (including, without limitation, common board memberships or common membership in any business organization) between CIBC or any of CIBC's employees and Enron, or any of the Individual Defendants, Investment Banks, Andersen Defendants, V & E or K & E;

(l) all documents and all communications concerning all transactions that any department, line of business, or division of CIBC discussed or executed with, or on behalf of, Enron;

(m) all documents and communications purporting to memorialize any meeting or discussion between any employee, manager, executive, officer or director of CIBC and any employee, manager, executive, officer or director of Enron;

(n) all electronic mail to or from CIBC's research analysts who covered Enron;

(o) all documents and all communication concerning the investment into Enron or any of the SPEs, Trusts or LJM Partnerships, of any CIBC Fund or other CIBC investment vehicle, any CIBC executive or employee, or any financial institution, partnership, trust, fund, corporation or individual investor who was or is a client of CIBC; and

(p) all documents and all communications concerning any purported relationship or linkage between the investment in any of the LJM Partnerships and obtaining Enron business, including all such documents and communications concerning any Enron-related transaction purportedly denied CIBC as a result of failure to invest in any of the LJM Partnerships.

5. The above-referenced discovery sets forth several of those document categories in CIBC's possession, custody or control that plaintiffs need to formulate their summary judgment response. In addition to the document requests listed above, plaintiffs would need other documents regarding the relationship between CIBC and its subsidiaries and affiliates.

6. Six days after the discovery stay was lifted an associate at Milberg Weiss, James Hail, sent a letter to CIBC's counsel stating that the discovery stay had been lifted and CIBC's response to plaintiffs' First Request for Production of Documents was now due. Attached as Exhibit B is a copy of the April 29, 2003 Hail letter.

7. On May 16, 2003, plaintiffs sent to defendant CIBC plaintiffs' First Set of Interrogatories (Ex. C hereto). The interrogatories seek a wide range of information which is required before plaintiffs can respond to CIBC's motion.

8. The interrogatories demand the following:

(a) the identity of CIBC's businesses, operating units, direct or indirect subsidiaries, divisions, affiliates, predecessors, successors, partners, special purpose entities or vehicles, parent companies, holding companies, limited liability companies or any other entity that had or has a business relationship or business affiliation with Enron or any of its SPEs, Trusts, LJM partnerships, subsidiaries, affiliates, partners, any Enron-sponsored entity or the Individual Defendants;

(b) for each entity identified above, describe in detail: (i) the business relationship or business affiliation between CIBC and each entity; (ii) the business relationship or business affiliation between each entity and Enron or its SPEs, Trusts, LJM partnerships, subsidiaries, affiliates, partners, any Enron-sponsored entity or the Individual Defendants; and (iii) the name and substance of any transaction involving each entity identified above;

(c) the identity of all services (*e.g.*, consulting, advisory, underwriting, research, etc.) provided by CIBC or provided by CIBC's businesses, operating units, direct or indirect subsidiaries, divisions, affiliates, predecessors, successors, partners, special purpose entities or vehicles, parent companies, holding companies, limited liability companies or any other entity, to Enron or any of its SPEs, Trusts, LJM partnerships, subsidiaries, affiliates, partners, any Enron-sponsored entity or the Individual Defendants;

(d) the identity of each current or former employee, officer, director, partner, manager or executive who had or has primary responsibility for the relationship, transaction or service; the identity of the Enron entity involved; and state all fees, compensation, or any other remuneration received by the employee, officer, director, partner, manager or executive or CIBC, CIBC's subsidiary, parent or affiliate concerning such relationship, transaction or service;

(e) the identity of each current or former employee, officer, director, partner, manager or executive who provided information in any anticipated or actual civil, criminal, regulatory or governmental inquiry, investigation or proceeding concerning CIBC's research coverage of Enron or CIBC's transactions with Enron or any of its SPEs, Trusts, LJM partnerships, subsidiaries, affiliates, partners, any Enron-sponsored entity or the Individual Defendants, including,

without limitation, any civil or criminal inquiry, proceeding or investigation by the SEC, DOJ, FBI, Powers Committee, Examiner Batson, NYSE, NASD, FRB, OCC, any Congressional committee or subcommittee, or any other federal or state inquiry, proceeding or investigation.

9. To date plaintiffs have yet to receive any documents or other discovery from CIBC.

10. Based on the fact that lead plaintiff has received no discovery to date, I believe that substantial discovery is needed before plaintiffs are able to fully respond to the assertions raised by CIBC in its summary judgment motion.

11. Moreover, after documents have been produced and interrogatories answered, plaintiffs will need to take the depositions of employees from CIBC and other individuals involved regarding these issues.

12. Depositions of others with knowledge of the facts alleged must also take place. This includes depositions of the unnamed CIBC bankers involved in the Hawaii 125-0 transactions detailed in the SEC criminal complaint, and Enron executives Kenneth Howard and Michael Krautz.

13. In addition, CIBC has submitted the affidavits of Valerie K. Pettipas, Lucia Martinez, Patricia Bourdon, Gary W. Brown, David Austin and Bruce Renihan to support its motion. These persons must also be deposed so that Lead Plaintiff can test the veracity of the statements made in the self-serving affidavits.

14. Furthermore, Lead Plaintiff will need to take the depositions of at least the following individuals:

(a) William W. Brown, Vice President of Enron Global Finance (in an interview, Mr. Brown stated that several banks, including CIBC, made it generally well-known that they invested in LJM2);

(b) James A. Hecker, Arthur Andersen (in a memo, Hecker noted Sherron Watkins informed him "most, if not all" of LJM's "equity" had been distributed to its shareholders, including CIBC);

(c) Jimmie Williams, Vice President, New Business Ventures, EES (in an interview, Williams provided information concerning CIBC's monetization of New Power warrants through the Hawaii project);

(d) David J. Kassie, Vice Chair of CIBC and Chairman and CEO of CIBC World Markets (sits on the board of both CIBC and CIBC World Markets); and

(e) Richard E. Venn, Senior Executive Vice-President, Corporate Development at CIBC and Managing Director and Deputy Chairman at CIBC World Markets Inc.

15. Notably, the banks, including CIBC, do not want plaintiffs to commence fact depositions until January 2004.

16. Because there has been no discovery in this action, it is impossible at this early stage for Lead Plaintiff to identify all of the discovery which will be necessary to prove its claims. Furthermore, as document productions and interrogatory responses progress, additional discovery needs will unfold.

17. I believe the discovery identified in this affidavit and Lead Plaintiff's accompanying motion pursuant to Rule 56(f) will create a genuine issue of material fact as to CIBC's summary judgment motion.

Further Affiant sayeth not:

Dated this 16th day of May, 2003

HELEN J. HODGES

Subscribed to and Sworn
before me this 16th day of
May, 2003

NOTARY PUBLIC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing AFFIDAVIT OF HELEN J. HODGES PURSUANT TO RULE 56(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE IN SUPPORT OF LEAD PLAINTIFF'S OPPOSITION TO DEFENDANT CANADIAN BANK OF COMMERCE'S SUMMARY JUDGMENT MOTION has been served by sending a copy via electronic mail to serve@ESL3624.com on this 19th day of May, 2003.

I further certify that a copy of the foregoing AFFIDAVIT OF HELEN J. HODGES PURSUANT TO RULE 56(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE IN SUPPORT OF LEAD PLAINTIFF'S OPPOSITION TO DEFENDANT CANADIAN BANK OF COMMERCE'S SUMMARY JUDGMENT MOTION has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 19th day of May, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004

Mo Maloney

The Exhibit(s) May

Be Viewed in the

Office of the Clerk