

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 § Civil Action No. H-01-3624
LITIGATION § (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.

**LEAD PLAINTIFF'S MOTION TO SUPPLEMENT THE FIRST
AMENDED CONSOLIDATED COMPLAINT AS TO DEFENDANT BUY**

1569

Lead Counsel, due to an oversight, neglected to amend/supplement the First Amended Consolidated Complaint as to defendant Buy. The attached proposed amendment corrects the omission. Lead Plaintiff requests the Court allow Lead Counsel to add this supplement to the First Amended Consolidated Complaint.

DATED: July 17, 2003

Respectfully submitted,

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PROPOSED ADDITIONS TO PARAGRAPH 83

(i.1) In addition to serving on Enron's Management Committee and as Chief Risk Officer, Buy was present at Board meetings when Enron's business condition and SPE transactions were reviewed and approved. According to the Powers Report, members of management, including Buy, told the Board management was implementing an ever-increasing set of procedures and controls over certain related-party transactions. These included review and approval of all LJM transactions by Buy, Causey, and Skilling. *See Powers Report at 10.* Buy was charged by the Board of Directors with a "substantial role in the oversight of Enron's relationship with the LJM partnerships. He was to review and approve all transactions between them." *Id. at 22.* According to the Powers Report, Buy "apparently saw his role as more narrow than the Board had reason to believe, and did not act affirmatively to carry out (or ensure that others carried out) a careful review of the economic terms of all transactions between Enron and LJM." *Id. at 22.* But when Fastow's conflict of interest was waived, Board members and Finance Committee members were told at meetings on 10/11/99 and 10/6/00, that one of the major safeguards checking Fastow's power would be that all transactions involving Fastow, Enron and the LJM partnerships would be reviewed and approved by Buy and Causey.

(i.2) Buy was advised by the head of Enron's research group, which handled sophisticated option pricing and modeling issues, that the Rhythms NetConnection put-options strategy was questionable because: a) the transaction involved an obvious conflict of interest because of Fastow's personal involvement in LJM1; b) the pay-out was skewed against Enron because LJM1 would receive its benefit much earlier in the transactions; and c) the structure was unstable from a credit capacity standpoint because the SPE was capitalized largely with Enron stock. Powers Report at 84-

85.

(i.3) Additional evidence of Buy's participation in the fraudulent scheme is Buy's approval of Raptor I, as evidenced by an LJM2 Approval Sheet that he signed and an Enron Deal Summary, both of which were executed long after the Raptor I transaction had closed. Powers Report at 105. The approval sheet reported that Fastow protégé and Enron managing director, Michael Kopper, negotiated on behalf of LJM2. Buy also attended the 8/7/00 Finance Committee meeting when the Raptor IV transaction was presented to and approved by the Board. He also knew, but failed to inform the Board at the 2/01 review, that the Raptor vehicle then owed Enron approximately \$175 million more than it had the capacity to pay. *Id.* at 160.

(i.4) Buy knew that this figure grew to approximately \$500 million one month later and would have resulted in a charge against Enron's earnings in that quarter if not addressed. In response, Buy and others "restructured" the Raptor vehicles on 3/26/01 and transferred approximately \$800 million of Enron stock contracts. This was yet another act in which Buy participated to conceal Enron's disastrous financial state. In this instance, the massive charge to Enron's earnings that evolved from the "restructuring" precipitated Enron's final meltdown.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S MOTION TO SUPPLEMENT THE FIRST AMENDED CONSOLIDATED COMPLAINT AS TO DEFENDANT BUY has been served by sending a copy via electronic mail to serve@ESL3624.com on this 17th day of July, 2003.

I further certify that a copy of the foregoing LEAD PLAINTIFF'S MOTION TO SUPPLEMENT THE FIRST AMENDED CONSOLIDATED COMPLAINT AS TO DEFENDANT BUY has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 17th day of July, 2003.

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

/s/ Mo Maloney

Mo Maloney