

MH

SEP 24 2003

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
AND ERISA LITIGATIONS

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

This Document Relates To:

MARK NEWBY, *et al.*,

Plaintiffs,

v.

ENRON CORP., *et al.*,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, *et al.*,

Plaintiffs,

v.

KENNETH LAY, *et al.*,

Defendants.

WASHINGTON STATE INVESTMENT BOARD
and EMPLOYER-TEAMSTERS LOCAL NOS.
175 and 505 PENSION TRUST FUND, *et al.*,

Plaintiffs,

v.

KENNETH LAY, *et al.*,

Defendants.

PAMELA M. TITTLE, *et al.*,

Plaintiffs,

v.

ENRON CORP.,

Defendant.

MEMORANDUM OF LAW IN SUPPORT
OF MOTION BY JAMES H. ALLEN, JR.,
BURTON W. CARLSON, JR., MICHAEL
T. DE FREECE, MARCIA A. DE FREECE,
ANDREW E. KRINOCK, PHYLLIS A.
KRINOCK, PARTCOM LIMITED
PARTNERSHIP, REED PARTNERS, L.P.,
FORMERLY KNOWN AS REED FAMILY
LTD. PARTNERSHIP, F. WALKER
TUCEI, JUNE P. TUCEI, ROMAN H.
UHING, ALVERA A. UHING and
VIETS FAMILY ASSOCIATES, LLP
FOR PERMISSION TO INTERVENE
FOR THE PURPOSE OF OBJECTING
TO THE PROPOSED
PARTIAL SETTLEMENT

1687

I.

PRELIMINARY STATEMENT

Settlement Class Members James H. Allen, Jr., Burton W. Carlson, Jr., Michael T. DeFreece, Marcia A. De Freece, Andrew E. Krinock, Phyllis A. Krinock, Partcom Limited Partnership, Reed Partners, L.P., formerly known as Reed Family Ltd. Partnership, F. Walker Tucei, June P. Tucei, Roman H. Uhing, Alvera A. Uhing, and Viets Family Associates, LLP (hereinafter “the Objecting Class Members”), submit this Memorandum of Law in Support of their Motion to Intervene in this action for the purposes of objecting to the proposed partial settlement granted preliminary approval by the Court on July 24, 2003, and preserving their rights, including their right to appeal any adverse decision by this Court on the merits of their Objections and Memorandum in Support of Objections (“Objections and Memorandum”).

II.

ARGUMENT

The Objecting Class Members seek to intervene since their interests are not adequately represented by the Representative Plaintiff parties, as demonstrated by the fact that the Representative Plaintiffs have proposed and supported the Stipulation of Partial Settlement. *See* Fed. R. Civ. P. 24(a). Moreover, the Objecting Class Members have presented this motion to intervene simultaneously with the filing of their Objections and Memorandum in accordance with the procedure set forth in in this Court’s Order Preliminarily Approving Settlement dated July 24, 2003, and will thus not unduly delay or prejudice the adjudication of the rights of the original parties. *See* Fed. R. Civ. P. 24(b).

In addition, the Objecting Class Members' motion to intervene is necessary because the Court of Appeals of the Fifth Circuit has repeatedly held that it lacks jurisdiction to consider an appeal by a non-named class member who objects to a class-action settlement but who fails to attempt to intervene in the action as a party. *See, e.g., Loran v. Furr's/Bishop's Inc.* 988 F.2d 554 (5th Cir. 1993) ("we have no jurisdiction to consider an appeal by a class member who has not attempted to intervene as a named party"). For this reason alone, the motion to intervene should be granted. *See, e.g., Crawford v. Equifax Payment Services, Inc.*, 201 F.3d 877, 881 (7th Cir. 2000) ("[b]ecause only parties may appeal, it is vital that district courts freely allow the intervention of unnamed class members who object to proposed settlements and want an option to appeal an adverse decision"). While the *Loran* holding appears to have been overruled by the U.S. Supreme Court in *Devlin v. Scardelletti*, 536 U.S. 1 (2002) ("[w]e hold that nonnamed class members like petitioner who have objected in a timely manner to approval of the settlement at the fairness hearing have the power to bring an appeal without first intervening"), the ruling in *Devlin* relied in part upon the mandatory character of the class action before the Court. 536 U.S. at 10-11. Neither the U.S. Supreme Court nor the Fifth Circuit have yet confirmed that the holding of *Devlin* applies to opt-out class actions, such as this case. Therefore, the Objecting Class Members should be permitted to intervene.

III.

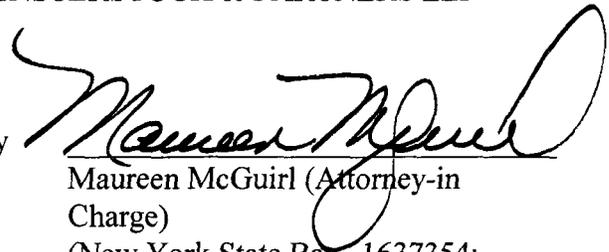
CONCLUSION

For the above reasons, and for the reasons stated in the Objecting Class Members' Objections and Memorandum in Support of Objections, the Objecting Class Members respectfully request leave to intervene as parties in this action.

Dated: September 23, 2003

FENSTERSTOCK & PARTNERS LLP

By



Maureen McGuirl (Attorney-in
Charge)
(New York State Bar - 1637354;
California State Bar - 104071;
S.D. Texas - *Pro Hac Vice Pending*)

Of Counsel:

Blair C. Fensterstock
(New York State Bar - 112110;
S.D. Texas - *Pro Hac Vice Pending*)

Roy B. Oser (New York State Bar - 2264273;
S.D. Texas - *Pro Hac Vice Pending*)

30 Wall Street, 9th Floor
New York, NY 10005
Tel: (212) 785-4100
Fax: (212) 785-4040

Attorneys for James H. Allen, Jr., Burton W. Carlson, Jr., Michael T. DeFreece, Marcia A. De Freece, Andrew E. Krinock, Phyllis A. Krinock, Partcom Limited Partnership, Reed Partners, L.P., formerly known as Reed Family Ltd. Partnership, F. Walker Tucei, June P. Tucei, Roman H. Uhing, Alvera A. Uhing, and Viets Family Associates, LLP