United States Courts
Southern District of Texas
FILED
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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)**
	§	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.	§	

UNOPPOSED MOTION OF ENRON CORP.
FOR RELIEF FROM AUGUST 2002 DISCOVERY ORDER

Enron Corp. ("Enron") files this Unopposed Motion for Relief from this Court's August 16, 2002 Order Granting Lead Plaintiff the Regents of the University of California's Motion for a Limited Production of Enron Documents (#1008) (the "August Order"). In support of this Motion, Enron respectfully shows as follows:

I. PRELIMINARY STATEMENT

Both Enron and the *Newby* plaintiffs believe that the relief sought in this motion is necessary because of the potentially overwhelming costs and unmanageable volume of documents that continuing compliance with the August Order would implicate. Although the August Order was understood at the time it was entered to impose a relatively low discovery burden on Enron – it required that Enron "only" produce to the Depository documents previously produced to government entities – it turns out that the volume of documents subsequently sought

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by government sources is so enormous that full compliance with the August Order could paralyze this litigation. Thus, after conferring extensively with the *Newby* plaintiffs, Enron files this unopposed motion for relief from the August Order.

As background, and as the Court is well aware, chapter 11 debtor Enron is not currently a party to the *Newby* case. Notwithstanding its non-party status, pursuant to the August Order (and in compliance with the strict terms of the separate Order Establishing Document Depository (#1116) (the "Depository Order")), Enron has produced far more documents than any party – over 20 million pages to date. The cost of such production has been substantial, and Enron's commitment of resources to the production effort significant.

Despite the expenditure of such resources, Enron has not been able to complete the production of all materials called for under the August Order because of the ongoing nature of the government productions. At this point, if the Court does not provide relief from further compliance with the August Order, Enron conceivably will be required to produce into the Depository hundreds of millions of pages of government productions at a shockingly high expense notwithstanding Enron's limited financial resources at this stage of its existence. Specifically, Enron estimates that the cost to complete such a production, in accordance with the requirements of the Depository Order, will exceed $100 million.[1] Indeed, because of the costs involved and the almost useless nature of a production that large, the *Newby* plaintiffs, who originally requested that Enron produce the information covered by the August Order, have asked Enron to stop producing its government production.

Relieving Enron of its obligation to further comply with the August Order will save millions of dollars for Enron, and ultimately its creditors. The relief requested will not prejudice

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[1] *See* Affidavit of Bonnie J. White, attached hereto as Exhibit "1," at ¶ 9 ("White Affidavit").

the *Newby* plaintiffs' ability to obtain information from Enron through a reasonable discovery process.

II. FACTS AND ARGUMENT

A. *The August Order And Enron's Government Productions*

The August Order requires Enron to produce "*all documents and materials produced by the Debtor related to any inquiry or investigation by any legislative branch committee, [or] the executive branch, including the Department of Justice and the Securities and Exchange Commission, ...*" *See* August Order.

Enron has produced huge volumes of documents to both Congress and many executive branch departments and agencies. In fact, Enron is continuing to receive and respond to formal requests for information. (A compilation of the government subpoenas/document demands served on Enron and the corresponding cover letters enclosing the requested documents, is attached as Exhibit "A" to the White Affidavit).

The language of the August Order, however, arguably requires Enron to produce to the Depository not only documents provided to the government in response to formal requests and subpoenas, but also documents obtained by the government from Enron through various less formal processes including consensual searches, seizures, and oral requests.

Enron estimates that it has produced well over 800 million pages of documents to various government entities to date and that currently outstanding requests for information may require the production of millions of additional pages.

B. *Enron's Past Efforts To Comply With The August Order And Estimated Future Costs*

To date, the estimated direct costs associated with Enron's production to the Depository, pursuant to the August Order and the Depository Order, total over $3 million.[2] However, in spite of the tremendous costs incurred and effort expended by Enron, a substantial amount of information produced to the government in response to its continuing formal and informal requests for information has not yet been produced to the Depository. Completing such a production has become cost-prohibitive. For example, in one particular government production, data housed in certain Enron trading databases, totaling over eight terabytes (or approximately 800 million pages) of information, was provided to the Federal Energy Regulatory Commission ("FERC").[3] The estimated cost to produce this data alone to the Depository - in excess of $100 million[4] – would be crippling for most financially healthy corporations. To allocate such an exorbitant cost to a chapter 11 debtor like Enron, in the midst of a reorganization effort, is contrary to the basic tenets of bankruptcy protection.[5] Additionally, Enron believes that the vast majority of information contained in the FERC production has no relevance to any legitimate issue in *Newby* or the related cases, and no party has indicated to Enron that it seeks the entire FERC production in the discovery in this case.[6]

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[2] *See* White Affidavit at ¶ 5.

[3] *Id.* at ¶ 7.

[4] *Id.* at ¶¶ 7, 9.

[5] In similar situations involving debtors, courts have not hesitated to limit discovery and enforce the automatic stay to protect the chapter 11 reorganization process. *See, e.g., In re Penn-Dixie Industries, Inc.*, 6 B.R. 832, 837 (Bankr. S.D.N.Y. 1980); *see also In re Chateaugay Corp.*, 76 B.R. 945, 948.

[6] Additionally, the Depository is likely to be unable, from a technology standpoint, to support the volume of information that would be required to complete the production.

Moreover, there could be costs dictated by further compliance with the August Order that Enron has not even contemplated because the August Order does not provide finality to the document production Enron is required to make to the Depository. Under the August Order, as long as the government continues to request information and Enron continues to comply, Enron must make corresponding productions to the Depository. Thus, without relief from the August Order, Enron's costs not only will mount at a staggering pace, but they will continue indefinitely.

C. *The Newby Plaintiffs Have Instructed Enron To Stop Producing Under The August Order*

The *Newby* plaintiffs have acknowledged the steep costs to Enron associated with discovery under the current regime, and they also recognize that they, too, will be forced to bear costs beyond what is reasonable under the circumstances if production continues pursuant to the August Order. In fact, apparently because of such cost concerns, the *Newby* plaintiffs instructed Enron in writing not to make any further productions to the Depository under the August Order.[7]

III. CONCLUSION

The parties agree that the August Order has become unworkable because of the never-contemplated extent of the government production, and that Enron should be relieved of further discovery obligations under the August Order. Therefore, for the reasons set forth in this motion, Enron respectfully asks that the Court relieve Enron from any and all past or future obligations under the August Order.

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[7] *See* Letter from Paul Howes dated May 27, 2003, attached as Exhibit "B" to the White Affidavit.

Dated: September 30, 2003

Respectfully submitted,

By: _____

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SDID 775
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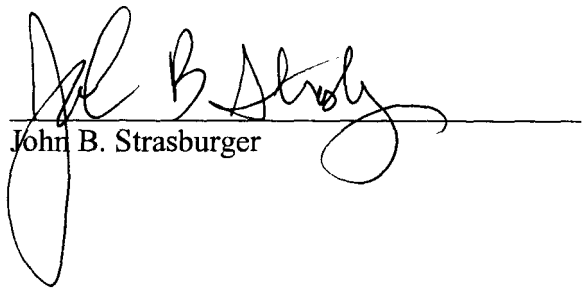
CERTIFICATE OF CONFERENCE

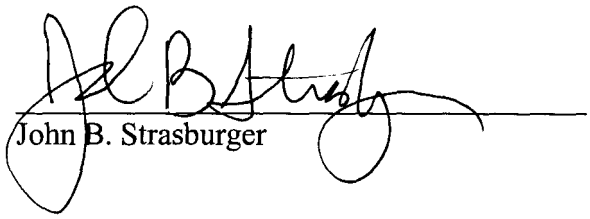
I certify that on September 17, 2003, I conferred with Ms. Helen Hodges, counsel for Lead Plaintiffs in the captioned case, regarding the substance of this motion for relief from the Court's August 16, 2002 Order. Ms. Hodges advised me that she does not oppose the motion for relief from the August 16, 2002 Order as presented.



John B. Strasburger

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Unopposed Motion of Enron Corp. for Relief from August 2002 Discovery Order has been served upon all known counsel of record by sending a copy via electronic mail to serve@ESL3624.com, pursuant to the Court's Order dated August 7, 2002 (Docket No. 984), on this 30th day of September 2003.



John B. Strasburger

Exhibit 1

Affidavit of Bonnie J. White

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
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Plaintiffs,	§	
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	

AFFIDAVIT OF BONNIE J. WHITE IN SUPPORT OF THE UNOPPOSED MOTION OF ENRON CORP. FOR RELIEF FROM AUGUST 2002 DISCOVERY ORDER

BONNIE J. WHITE, being duly sworn, states as follows:

1. My name is Bonnie J. White. I am over the age of 18 years, and I am competent to make this affidavit.

2. I am Vice President & General Counsel, Litigation for Enron Corp. ("Enron"). My job responsibilities include, among others, oversight of Enron's internal efforts to gather, review, and produce documents in the subject litigation.

3. I have read and generally am familiar with Judge Harmon's August 16, 2002 Order (the "August Order"), and I have been involved in the document production process pursuant to the August Order. Likewise, I have read and generally am familiar with Judge Harmon's October 31, 2002 Order Establishing Document Depository (the "Depository Order"). I also have knowledge of the costs incurred by Enron in complying with the terms of the August Order and the Depository Order.

4. To-date, Enron has produced over 20 million pages of documents to the Depository. To my knowledge, all such documents had been produced previously to the government in the course of government investigations relating to Enron,

although not all of the documents produced to the government to-date have yet been produced to the Depository.

5. The estimated direct costs associated with Enron's production to the Depository, pursuant to the August Order and the Depository Order total over three million dollars, and this does not include Enron employee time or associated legal costs.

6. True and correct copies of the government subpoenas served on Enron pursuant to which Enron had made productions to the government, as well as corresponding cover letters responding to the respective subpoena requests, are attached hereto as Exhibit "A." In addition, Enron has made substantial productions pursuant to F.B.I. seizure, oral requests from certain agencies, and consensual searches.

7. As noted above, the approximately 20 million pages of Enron productions currently residing in the Depository do not represent a complete set of the materials Enron has produced to the government. For example, over 8 terabytes (or approximately 800 million images) of Enron information from trading databases have been produced to the Federal Energy Regulatory Commission ("FERC"), but this information has not yet been produced to the Depository.

8. On or about May 27, 2003, Enron received a letter, attached hereto as Exhibit "B", from counsel for the Lead Plaintiffs directing Enron to stop producing documents to the Depository pursuant to the dictates of the August Order.

9. I understand that the cost to produce to the Depository the information the government has obtained from Enron that has not yet been produced to the Depository would total well over $100 million. This calculation is based on the fact that each electronic document produced to the Depository costs on average, $.15 per image. (Indeed, the 800 million images obtained by FERC alone would cost over $100 million to produce at $.15 per image.)

10. Enron's production to the government continues to date, and Enron cannot predict when all such productions to government entities will be completed.

Dated: Houston, Texas
September 26, 2003

Bonnie J. White

Sworn to before me this 30th day
of September, 2003

Notary Public

KEEGAN FARRELL
NOTARY PUBLIC
STATE OF TEXAS
My Commission Expires
OCTOBER 23, 2005

Exhibit A

A compilation of the government subpoenas/document demands
served on Enron and the corresponding cover letters
enclosing the requested documents

Because this Exhibit is large, it is not being filed on the www.esl3624.com website. It has been filed with the Court. You may also request a copy from the undersigned counsel, John B. Strasburger.

Exhibit B

Letter from Paul Howes dated May 27, 2003

MILBERG WEISS BERSHAD HYNES & LERACH LLP
401B Street, Suite 1700
San Diego, California 92101-3356
(619) 231-1058
Fax: (619) 231-7423

ESL Trial Office
1111 Bagby, Suite 4850
Houston, Texas 77002
(713) 571-0911
Fax: (713) 571-0912

May 27, 2003

VIA FACSIMILE
(713) 224-9511

John Strasberger, Esq.
WEIL, GOTSHAL & MANGES
700 Louisiana Street, Suite 1600
Houston, TX 77002

Re: Enron Securities Litigation

Dear John:

I understand from our conversations in the last couple of days that Enron is continuing to produce to the depository documents which are being requested from the government on an ongoing basis. We were not aware of the ongoing requests by the government, nor of Enron's production to the depository of documents provided to the government after Judge Harmon's August 16, 2002 Order. To the extent that Enron is providing to the depository documents which it provided to the government after the August 16, 2002 Order, please cease immediately. As we discussed, we will serve document requests to obtain additional documents that we want. In the meantime, Enron can respond to the outstanding requests from the outside directors.

Very truly yours,

G. Paul Howes with permission

G. PAUL HOWES

MILBERG WEISS BERSHAD HYNES & LERACH LLP
Houston Office
1111 Bagby, Suite 4850
Houston, Texas 77002
(713) 571-0911
Fax: (713) 571-0912

TELECOPIER COVER SHEET

DATE: 3/27/03 **CLIENT NAME:** ESL

FROM: Paul Howes **Matter No:** 201-392

TOTAL NUMBER OF PAGES (including cover letter): 2

RE: ENRON Securities Litigation

To: John Strasbergen
Weil Gotshal

The information contained in this facsimile message is privileged and confidential and is intended only for the use of the addressee. If the reader of this message is not the addressee or the person responsible for delivery to the addressee, you are hereby notified that any dissemination, distribution, or copying of the message is strictly prohibited. If you have received this message in error, please notify us immediately by telephone and return the original message to us at the above address. – Thank you.

PLEASE DELIVER IMMEDIATELY! THANK YOU.

The Exhibit(s) May

Be Viewed in the

Office of the Clerk