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ited States District Court
Southern District of Texas
FILED

4 Attorney for Plaintiff Class
5 Member Brian Dabrowski

OCT 23 2003

Michael N. Milby, Clerk

6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF TEXAS
8 HOUSTON DIVISION

9 In re ENRON CORPORATION SECURITIES) Class Action
10 LITIGATION)

) MDL No. 1446

11 This Document Relates To:)

) Civil No.: H-01-3624
) and Consolidated Cases

12 MARK NEWBY, et al.,)
13 Plaintiffs,)

14 vs.)

15 ENRON CORP., et al.,)
16 Defendants.)

17 And related Actions.)

18 ARIC (A1 RAJHI INVESTMENT)
19 CORPORATION) BV,)

) Civil No. H-03-3947
) (Coordinated Case)

20 Plaintiffs,)

21 vs.)

22 THE MAN GROUP PLC, et al.,)

23 Defendants.)

24 Date: Oct. 23, 2003
25 Time: 10:00 a.m.
26 Dept: Hon. Melinda Harmon

27 MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR INTERVENION
28 OF PLAINTIFF CLASS MEMBER/OBJECTOR BRIAN DABROWSKI

1 I.

2 INTRODUCTION

3 Plaintiff class member/objector Brian Dabrowski submits
4 this Memorandum of Law in support of his motion to intervene in
5 this action for the purposes of objecting to the proposed
6 partial settlement and preserving his right to appeal any
7 adverse decision by this Court with regard to said Objection
8 and Notice of Intention to Appear.

9 II.

10 ARGUMENT

11 Plaintiff class member/objector Brian Dabrowski seeks to
12 intervene since, at this stage of the proceeding, his rights
13 and interests are not being adequately represented by the
14 representative plaintiff parties, as reflected in his objection
15 to the proposed Stipulation of Partial Settlement. See
16 Fed.R.Civ.P. 24(a). Objecting class member has presented his
17 motion to intervene in connection with the filing of his
18 objection and will thus not unduly delay or prejudice the
19 adjudication of the rights of the original parties at this
20 stage of the proceedings. See Fed.R.Civ.P. 24(b).

23 Objector's motion to intervene is necessary because the
24 Court of Appeals for the Fifth Circuit has repeatedly held that
25 it lacks jurisdiction to consider an appeal by an unnamed class
26 member who objects to a class action settlement but who fails
27 to attempt to intervene in the action as a party. See, e.g.,
28 *Loran v. Furr's/Bishop's Inc.*, 988 F.2d 554 (5th Cir. 1993)

1 ("we have no jurisdiction to consider an appeal by a class
2 member who has not attempted to intervene as a named party").
3 For this reason alone, the motion to intervene should be
4 granted. See, e.g., *Crawford v. Equifax Payment Svcs., Inc.*,
5 201 F.3d 877, 881 (7th Cir. 2000) ("[b]ecause only parties may
6 appeal, it is vital that district courts freely allow the
7 intervention of unnamed class members who object to proposed
8 settlements and want an option to appeal an adverse decision").
9 While the *Loran, supra*, holding appears to have been overruled
10 by the U.S. Supreme Court in *Devlin v. Scardelletti*, 536 U.S. 1
11 (2002) ("[w]e hold that nonnamed class members like petitioner
12 who have objected in a timely manner to approval of the
13 settlement at the fairness hearing have the power to bring an
14 appeal without first intervening"), the ruling in *Devlin* relied
15 in part upon the mandatory character of the class action before
16 the Court. 536 U.S. at 10-11. Neither the U.S. Supreme Court
17 nor the Fifth Circuit have yet confirmed that the holding of
18 *Devlin* applies to opt-out class actions, such as this case.
19 Therefore, this objecting class member should be permitted to
20 intervene.
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III.

CONCLUSION

For the above-referenced reasons, plaintiff class member/objector respectfully requests leave to intervene in this action.

Dated: October 21, 2003

Respectfully submitted,



Lawrence W. Schonbrun
Lawrence W. Schonbrun
Attorney for Plaintiff Class
Member/Objector Brian Dabrowski