United States Courts
Southern District of Texas
FILED
OCT 2 3 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)
This Document Relates To:	§	
	§	
MARK NEWBY, et al.,	§	CLASS ACTION
Plaintiffs,	§	
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	
	§	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,	§	
Plaintiffs,	§	
vs.	§	
KENNETH L. LAY., et al.,	§	
Defendants.	§	
	§	
WASHINGTON STATE INVESTMENT BOARD and EMPLOYER-TEAMSTERS LOCAL NOS. 175 and 505 PENSION TRUST FUND, et al.,	§	
Plaintiffs,	§	
vs.	§	
KENNETH L. LAY., et al.,	§	
Defendants.	§	
	§	
PAMELA M. TITTLE, et al.,	§	
Plaintiffs,	§	
vs.	§	
ENRON CORP., an Oregon corporation., et al.,	§	
Defendants.	§	
	§	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE BY SETTLEMENT CLASS MEMBERS RINIS TRAVEL SERVICE, INC. PROFIT SHARING TRUST U.A. 6-1-1989 and MICHAEL J. RINIS, IRRA FOR THE PURPOSE OF OBJECTING TO THE PROPOSED PARTIAL SETTLEMENT

I.
PRELIMINARY STATEMENT

Settlement Class Members RINIS TRAVEL SERVICE, INC. PROFIT SHARING TRUST U.A. 6-1-1989 and MICHAEL J. RINIS, IRRA, (hereinafter "RINIS,") by and through their

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undersigned counsel of record, 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 this Court on July 24, 2003, and preserving their rights, including their right to appeal any adverse decision by this Court on the merits of the RINIS Objections.

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 subsequently with the filing of their Objections which will not unduly delay or prejudice the adjudication of the rights of the original parties. See Fed.R.Civ.P. 24(b).

Objecting Class Members' motion to intervene is necessary because prior to *Devlin v. Scardelletti*, 536 U.S. 1 (2002) the Court of Appeals of the Fifth Circuit had 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"). And, while *Loran* may have been overruled by the U.S.

Supreme Court in *Devlin v. Scardelletti*, 536 U.S. 1 (2002) which states: "[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", it is also true that the ruling in *Devlin* relied in part upon the mandatory character of the class action before the Court. 536 U.S. at 10-11. To date, neither the U.S. Supreme Court nor the Fifth Circuit have confirmed that the holding of *Devlin* applies to opt-out class actions, such as this matter. Therefore, in an abundance of caution, the Objecting Class Members should be permitted to intervene.

The Objecting Class Members are filing their Motion to Intervene pursuant to the Court's Order directing that all objectors do so.

DATED this 21st day of October, 2003.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing document was served by Federal Express Delivery this 22 day of October, 2003 to:

Clerk of the United States District Court
Southern District of Texas, Houston Division
Bob Casey United States Courthouse
515 Rusk Avenue
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and copies of the same were sent this 22 day of October, 2003 via U.S. Mail to:

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