

United States Court
Southern District of Texas
FILED
DEC 04 2003
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
AND ERISA LITIGATIONS § (Consolidated)

This Document Relates To:

CLASS ACTION

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 RESPONSE TO THE OPPOSITION OF BRIAN DABROWSKI TO
LEAD COUNSEL'S APPLICATION FOR PARTIAL REIMBRUSEMENT OF
EXPENSES**

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I. INTRODUCTION

Lead Counsel to the Court appointed Lead Plaintiff, the Regents of the University of California ("Regents"), submit this response to the Opposition ("Opposition") of Brian Dabrowski (represented by repeat objector attorney Lawrence W. Schonbrun) to Lead Counsel's Application for Partial Reimbursement of Expenses incurred in prosecuting this action. The Opposition to the application for reimbursement has no merit and should be rejected by this Court. Worse yet, the Opposition appears to attempt to mislead the Court regarding a key decision purportedly supporting the objector's position, when, in fact, that decision implicitly supports Lead Counsel's and the Lead Plaintiff's actions regarding this application. The requested expense reimbursement is reasonable and should be granted by the Court.

II. THE OPPOSITION IS WITHOUT MERIT AND SHOULD BE REJECTED

In connection with the final approval of the settlement with Andersen Worldwide Societe Cooperative (which created the settlement fund from which the expense reimbursement is sought), Mr. Schonbrun argued that the Court should "appoint someone with the knowledge, background and experience to oversee payments from this fund to ensure that said payments are necessary and reasonable." Notice of Objection and of Intention to Appear Through Counsel at Fairness Hearing on Proposed Partial Settlement (Sept. 23, 2003), at ¶2. As he frequently does in making these sorts of objections, Mr. Schonbrun apparently made no investigation into the leadership structure of this case. When Lead Counsel pointed out that the Lead Plaintiff, the Regents, was comprised of precisely the sort of experienced, sophisticated individuals he sought, Mr. Schonbrun apparently abandoned this position.

Now, in his current opposition, Mr. Schonbrun argues that the Court cannot discharge its "quasi-fiduciary" obligations in allowing the partial reimbursement unless it embroils itself in a review of "invoices, bills, or and (sic) cancelled checks." Opposition, at 3. Yet none of the cases he

cites require such involvement. For example, *In re Fidelity/Micron Sec. Litig.*, 167 F.3d. 735 (1st Cir. 1999) simply states that: "In the course of that exercise, the trial court *may* insist on examining particulars, such as receipts and logs" *Id.* at 738 (emphasis added). The detailed inquiry Mr. Schonbrun insists on is simply not mandated and the extent of the review is left to the discretion of the Court. The cases cited by Mr. Schonbrun say so. *See, e.g., Fidelity/Micron*, 167 F.3d at 737 ("Administration of the rule [regarding expense reimbursement] is subject to the trial court's informed discretion.") Here, the Finance Committee of the Regents has reviewed the expenses and supports their reimbursement. *See* Declaration of Helen J. Hodges in Support of Partial Reimbursement of Expenses (Nov. 19, 2003), at ¶1. That review and support falls well within the role of a Court-appointed Lead Plaintiff under the Private Securities Litigation Reform Act of 1995 and there is no reason articulated by Mr. Schonbrun why the Court cannot rely on that review and recommendation. After all, the Regents have a court-mandated duty to oversee the litigation and ensure that proceeds obtained for the benefit of the class are properly utilized and this Court has previously noted that the Regents have "demonstrated highly professional administration of the litigation" Memorandum, Findings of Fact, and Conclusions of Law (Nov. 5, 2003), at 24.

Moreover, the application does break down the expenses by category and states the reasons they were incurred. There is a very practical and important reason why the expenses sought are described the way they are. This is a partial settlement. The litigation is on-going. To submit invoices from, for example, experts, investigators and consultants or for travel could reveal to the remaining defendants a great deal about the identities and activities of those individuals or firms, and our litigation efforts and strategies. The Lead Plaintiff should not be required to potentially jeopardize the effective prosecution of this litigation by making this information available to the remaining defendants just to satisfy the doctrinaire demands of Mr. Schonbrun.

Finally, and most troubling, is the way Mr. Schonbrun cites *Bowling v. Pfizer, Inc.*, 132 F.3d 1147 (6th Cir. 1998) in support of his view of the level of involvement by the Court in the review of expenses he contends is required. Mr. Schonbrun quotes the case as follows:

[I]t does not appear that [the court] made any particularized inspection of class and special counsel's expense request.

Opposition, at 2. The bracketed language "[the court]" is Mr. Schonbrun's, not the court's. In *Pfizer*, the District Court appointed special masters or trustees to oversee the settlement fund and make recommendations to the court on fee and expense applications. 132 F.3d at 1149. With respect to the application for expenses, what the Court of Appeals actually said is as follows:

Fees aside, it does not appear that Judge Spiegel *or the trustees* made any particularized inspection of class and special counsel's expense request.

Id. at 1151 (emphasis added). We believe that here, where the Court has appointed a sophisticated, institutional Lead Plaintiff with an oversight role and that Lead Plaintiff has reviewed and supports the requested reimbursement of expenses, the better practice would have been for Mr. Schonbrun to quote what the Court of Appeals actually said and not what Mr. Schonbrun wished the court had said.

For the foregoing reasons, the opposition should be overruled and the partial expense reimbursement granted.

DATED: December 4, 2003

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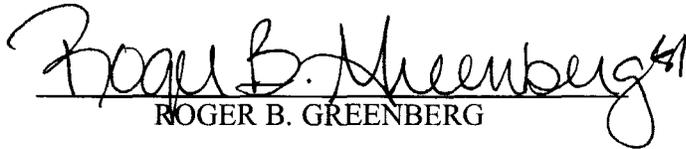

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document entitled, LEAD PLAINTIFF'S RESPONSE TO THE OPPOSITION OF BRIAN D. DABROWSKI TO LEAD COUNSEL'S APPLICATION FOR PARTIAL REIMBURSEMENT OF EXPENSES has been served by sending a copy via electronic mail to serve@ESL3624.com on this 4th day of December, 2003.

I further certify that a copy of the above-mentioned document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 4th day of December, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
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I also certify that a copy of the above-mentioned document has been served via overnight mail on the parties listed on the attached "Objector Service List" on December 4, 2003.

Deborah S. Granger

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OBJECTOR SERVICE LIST

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