UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
MAY 28 2004
Michael N. Milby, Clerk

In re ENRON CORPORATION SECURITIES LITIGATION	§	MDL-1446
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated Plaintiffs, - v. - ENRON CORP., et al., Defendants.	§	Civil Action No. H-01-3624 (Consolidated, Coordinated and Related Cases)

AFFIRMATION IN SUPPORT OF GOVERNMENT'S MOTION TO INTERVENE AND FOR A LIMITED STAY OF SELECTED DEPOSITIONS

BENTON J. CAMPBELL, being duly licensed to practice law, affirms as follows:

1. I am an attorney admitted to practice in the State of Illinois and the District of Columbia. I am employed by the United States Department of Justice as an Assistant United States Attorney with the United States Attorney's Office for the Eastern District of New York. Since February 2003, I have been assigned to a Department task force formed to investigate criminal activity associated with the demise and operations of the Enron Corporation (the "Enron Task Force").

2. I submit this Declaration, which is based on my knowledge as part of the Enron

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Task Force, in support of the United States' Motion to Intervene and for a Limited Stay of Selected Depositions.

3. The legal bases for the Government's motion are set forth in the Memorandum of Law accompanying this motion and will not repeated here. I submit this declaration to advise the Court that I have conferred regarding this motion with G. Paul Howes, counsel for the California Board of Regents, lead plaintiff in the Newby class action. Mr. Howes has advised that the United States' request for a limited stay was discussed by the Discovery Steering Committee in the above-captioned multi-district litigation and that the committee, which is composed of representatives of plaintiffs and defendants named in this case, did not reach a consensus on the United States' request. Accordingly, Mr. Howes was asked by the committee to request that the United States submit its motion for consideration and opposition.

4. The Department of Justice, through the Enron Task Force, is investigating all criminal matters associated with the demise of Enron Corporation ("Enron"), including the conduct of financial institutions and their employees to aid Enron in any criminal conduct. On March 27, 2002, a special grand jury was impaneled in the Southern District of Texas as part of the United States' investigation into the collapse of Enron. The Enron Grand Jury has returned several indictments charging over twenty persons with a wide variety of crimes. Those cases include United States v. Daniel Bayly, et al., Cr. No. H-03-363, assigned to the Hon. Ewing Werlein, Jr., United States v. Kenneth Rice, et al., Cr. H-03-93, and United States v. Jeffrey Skilling, et al., Cr. No. H-04-25, assigned to the Hon. Sim Lake (hereafter, the "Criminal Cases"). The Bayly matter, which was indicted in September 2003, is scheduled for trial on June 7, 2004, while the Rice case, which was indicted in May 2003, is expected to start trial on

October 4, 2004. The United States also expects that the Skilling case, which was indicted in February 2004, will proceed to trial early in 2005 although no trial date has yet been set. In addition to these pending matters, the grand jury has also returned indictments in United States v. David Bermingham, et al., H-02-0597 and in United States v. Andrew Fastow, et al., H-02-665. The grand jury's investigation is ongoing, and it continues to hear testimony from witnesses with knowledge of possible criminal violations that took place at Enron. The grand jury's term was recently extended to September 27, 2004.

5. Orders granting stays of all litigation and discovery have already been entered in civil enforcement cases filed by the Securities and Exchange Commission ("SEC") that parallel the Criminal Cases brought during the United States' investigation. See SEC v. Fastow, Civ. No. H-02-3666, November 21, 2002 (Hoyt, J.) ; SEC v. Merrill Lynch & Co. et al., , Civ. No. H-03-0946 (Hoyt, J.); SEC v. Kevin Howard, et al., Civ. No. H-03-0905 (Harmon, J.); SEC v. Jeffrey Skilling, et al., Civ. No. H-04-0284 (Harmon, J.). Two of those cases, SEC v. Howard and SEC v. Skilling, are pending before this Court.

6. The above-captioned Class Action was filed, according to the docket sheet, on October 22, 2001. Given the vast impact of the collapse of Enron, the Class Action was designated a multi-district litigation, thereby consolidating several separate lawsuits concerning the same subject matter. The allegations of the Class Action concern the same pattern of conduct charged in the Criminal Cases and the underlying factual allegations are substantially similar. As a result, many of the witnesses and documents the United States intends to present in the Criminal Cases also support the Class Action and will be subject to discovery and deposition in this case.

7. The Class Action is also related to the Enron Grand Jury's continuing investigation. Currently, the Enron Task Force is proceeding expeditiously with steps to determine, among other things, whether others besides those who have been indicted were involved in criminal conduct leading to Enron's collapse and whether those defendants already charged, including those named in the actions noted above, may have engaged in additional crimes. These matters are directly related to the subject matter of the Class Action. The scale of the Enron Task Force's investigation is massive: to date, hundred of witnesses have been interviewed, and many more interviews are anticipated. Dozens of witnesses have given testimony before the grand jury, and it is anticipated that more will do so in the future. In addition, the Enron Task Force and the local U.S. Attorney's Office in the Northern District of California has accumulated and is continuing to accumulate evidence relating to energy trading practices in the Western United States.

8. On May 25, 2004, the United States received a copy of the proposed schedule of upcoming depositions in the Class Action, as well as a list of other proposed depositions that had not yet been scheduled. The scheduled depositions included plans to take testimony from Ron Hulme on June 3, 4 and 7, 2004, Claudia Johnson on June 22, 23 and 24, 2004, and Roger Willard on July 19, 20 and 21. Each of these witnesses has testified before the Enron Grand Jury in connection with its ongoing investigation. All three witnesses are expected to testify in the Rice criminal case. At least one, if not more, is also expected to testify in the Skilling matter. Similarly, the list of possible depositions that were yet to be scheduled included Margaret Ceconi, Wanda Curry, Jim Fallon, John Griebling, and Gary Peng. Curry, Fallon, and Griebling have all testified before the grand jury and are expected to be witnesses in the Rice and – with the

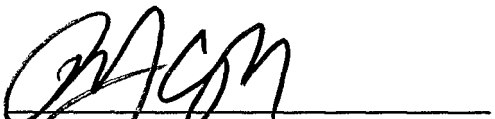
exception of Griebling – the Skilling prosecutions. Likewise, Ceconi and Peng have been interviewed by government investigators and are being considered for testimony before the grand jury and in trials of the Criminal Cases.

9. If the depositions of these witnesses are permitted to take place before they testify in the Criminal Cases, it will undermine the Government's position in the criminal case, as well as the criminal discovery process, because (1) prosecution witnesses also will be subject to civil depositions, which the defendants and other targets and subjects of the criminal investigation could not obtain through the criminal discovery process; (2) existing FBI reports of witness interviews and testimony before the grand jury may be prematurely disclosed; and (3) the defendants and other targets and subjects of the criminal investigation may obtain documents and other evidence that they could not obtain through the more narrow criminal discovery process. Such discovery would permit these criminal defendants, and other targets and subjects not yet charged, to obtain information that is unavailable to them in the Criminal Cases, thereby expanding the rights of criminal discovery beyond the limits of Rule 16 of the Federal Rules of Criminal Procedure. Such discovery could seriously impede, impair, and prejudice the criminal prosecution and related investigation.

10. The United States does not seek a complete stay of all discovery but rather is requesting that specific depositions be rescheduled for later in the class action discovery process. In particular, the United States is respectfully requesting that the depositions of the witnesses Hulme, Johnson and Willard be temporarily stayed and that those of witnesses Ceconi, Curry, Fallon, Griebling and Peng not be scheduled. The United States also seeks an order asking the parties to provide the government with a schedule of upcoming depositions so that it may

identify any prospective depositions that raise similar concerns. The United States also requests if, after receiving the list of prospective depositions from the parties, it identifies other prospective trial or grand jury witnesses scheduled for future depositions, that those depositions be stayed until December 1, 2004. The United States further requests that it be permitted to submit a report to the Court and the parties to the above-captioned action by December 1, 2004, updating whether any further stay of depositions of these witnesses, or others subsequently identified, pending their trial or grand jury testimony will be necessary and, if so, how long such a stay will be needed.

Dated: May 28, 2004
Houston, Texas



Benton J. Campbell
Special Asst. United States Attorney
Enron Task Force