

JUN - 1 2004

Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In Re ENRON CORPORATION	)	
SECURITIES LITIGATION	)	
	)	
_____	)	
	)	
MARK NEWBY, ET AL.	}	
	}	
Plaintiffs,	}	
	}	
vs.	}	CIVIL ACTION NO. H-01-3624
	}	
ENRON CORPORATION, ET AL.	}	
	}	
Defendants.	}	

**ORDER ON UNITED STATES' MOTION AND MEMORANDUM OF LAW  
IN SUPPORT OF ITS REQUEST TO INTERVENE  
AND FOR A LIMITED STAY OF SELECTED DEPOSITIONS**

Pending before the Court is the motion filed by the Enron Task Force, which is in charge of the pending and potential criminal actions arising out of the collapse of Enron Corp. The motion seeks a stay "until December 1, 2004 or, if necessary, pending the conclusion of trials in a number of criminal cases" of the depositions of Ron Hulme, (scheduled for June 3, 4, and 7, 2004), Claudia Johnson (scheduled for June 22, 23, and 24, 2004) and Roger Willard (scheduled for July 19, 20, and 21, 2004). The motion also requests that the depositions of additional witnesses not be scheduled and seeks an order that the Task Force will be provided with a list of pending and potential depositions so that it can determine whether it should seek a stay of the depositions of these deponents. Finally, the Task Force commits to providing the Court and parties with "an update" on December 1, 2004, as to whether the stays are "still necessary." (Instrument No. 2169, at 1-2). Although at first blush the motion seeks a limited stay, in actuality, the stay sought by the Task Force would seem to be one of indefinite duration.

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These depositions are governed by a Deposition Protocol Order signed by this Court on March 11, 2004, after a long and arduous negotiation by the parties in the above styled and numbered putative class actions and related cases that make up MDL 1446. The depositions are scheduled to begin on June 2, 2004 and to continue through November 30, 2005. The schedule is extremely tight and designed to preclude the waste of that precious resource, time, of the many individuals who will be required to participate.

The Task Force argues that it requires the stay of the specific depositions cited and possible future depositions because these witnesses are either likely to be witnesses for the prosecution in the upcoming trials, *United States v. Bayly, et al.*, Cr. No. H-03-363 (currently scheduled to begin trial on June 7, 2004), *United States v. Kenneth Rice, et al.*, Cr. No. H-03-93 (currently scheduled to begin trial October 4, 2004), and *United States v. Jeffrey Skilling, et al.*, Cr. No. H-04-25 (not yet scheduled for trial), or are expected to testify before the Enron Grand Jury. Because their testimony is directly related to current and possible future criminal prosecutions and investigations of other potential criminal activity arising out of the collapse of Enron Corp., the Task Force maintains that the taking of these depositions will (1) unduly risk disruption of the criminal prosecutions; (2) raise the danger of disclosing sensitive information from the ongoing grand jury investigation; and (3) accord to the defendants in the criminal cases, who are also defendants in the putative class action cases, discovery to which they would not be entitled under the rules and procedures governing criminal cases. The Task Force points out that in the civil enforcement cases filed by the Securities and Exchange Commission against various defendants common to the criminal cases, orders staying the discovery and the litigation itself have been almost routinely signed.

The Task Force's reasoning is compelling, but, as is demonstrated by the responses to the motion, its timing is abysmal. If the Court granted the Task Force motion, the mechanism set up by the Deposition Protocol would be thrown into a cocked hat. Moreover, this Court's duty to oversee and ensure prompt resolution of this massive case would be ceded to the Enron Task Force. Undue disruption of the criminal prosecutions, in the sense of actual time conflicts, can surely be worked out between the parties with the assistance of the Court if necessary. Two of the responses assure the Court and the Task Force that inquiries into testimony before the grand jury and proposed testimony at trial will be avoided during the depositions. The final concern, that the criminal defendants may become privy to information that they could and would not receive except for the civil discovery, may not be avoidable, but it is well to remember that the Discovery Protocol Order was not negotiated in order to provide an end-run around criminal procedure rules.

The Court believes that it is possible to formulate an order that will answer the Task Force objections to certain depositions, while at the same time, allowing the parties to proceed with the depositions as conceived by the Discovery Protocol Order. Accordingly, it is hereby

ORDERED that the United States's Motion to Intervene for the limited purpose of requesting limited stays of discovery is GRANTED. It is further

ORDERED that the United States's Motion for the limited stay of the depositions of Ron Hulme, scheduled for June 3, 4, and 7, 2004, Claudia Johnson, scheduled for June 22, 23 and 24, 2004, and Roger Willard, scheduled for July 19, 20 and 21, 2004 is DENIED. It is further

ORDERED that the United States's Motion to stay the prospective depositions of Margaret Ceconi, Wanda Curry, Jim Fallon, John Griebeling, and Gary Peng until December 1, 2004 is DENIED without prejudice. It is further

ORDERED, pursuant to Fed. R. Civ. P. 26, that discovery not be had of any witness at any deposition taken pursuant to the Deposition Protocol Order of his or her testimony before the grand jury, the areas of his or her anticipated testimony at a criminal trial, or the content of meetings with the Enron Task Force, agents of the Federal Bureau of Investigation, or any other agencies investigating the criminal conduct surrounding the collapse of Enron Corp or Arthur Andersen. It is further

ORDERED that the Deposition Protocol Order be amended to add the following language:

Objections and Motions to Stay or Quash by the United States

The Deposition Scheduling Committee, upon receiving nominations of witnesses from the parties to the litigation, shall (within three business days) assemble a list of potential witnesses by name and affiliation and forward it to the designated representative of the United States Government. The United States shall designate a representative to receive that list of witnesses. Within five business days of receiving that list the United States shall notify the Deposition Scheduling Committee of the identities of particular witnesses whose depositions it plans to move to quash or postpone. Upon such notice, the depositions of the witnesses at issue shall be postponed, automatically, to the next deposition cycle. During that one time postponement, the government shall have ten days to file its motion to stay or quash; the members of the Deposition Scheduling Committee shall have five days to file a response, and the Court will then rule on whether the deposition shall be postponed and, if so, for how long.

Signed at Houston, Texas, this 1st day of June, 2004.



Melinda Harmon  
United States District Judge