United States Courts
Southern District of Texas
FILED
JUN 0 2 2004
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)**
	§	
	§	CLASS ACTION
This Document Relates To:	§	
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 MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES BY CANADIAN IMPERIAL BANK OF COMMERCE AND CIBC WORLD MARKETS CORP.

2183

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF CONFERENCE 2

III. LEGAL STANDARDS 3

IV. ARGUMENT 4

- A. CIBC Should Be Ordered to Answer Interrogatory 5 4
- B. CIBC Should Be Ordered to Answer Interrogatories 11 and 12 6
- C. CIBC Should Be Ordered to Answer Interrogatories 13 and 14 7
- D. CIBC Should Be Ordered To Answer Interrogatory 18 10
- E. CIBC HAS FAILED TO ABIDE BY ITS AGREEMENTS 12

V. CONCLUSION 13

TABLE OF AUTHORITIES

Page

Alliance Gen. Ins. Co. v. Louisiana Sheriff's Auto Risk Program,
No. 99-961 Section "T" (2), 1996 U.S. Dist. LEXIS 16280
(E.D. La. Oct. 23, 1996) 9

Anderson v. Hale,
No. 00 C 2021, 2001 U.S. Dist. LEXIS 6127
(N.D. Ill. May 10, 2001) 3

Atlanta Coca-Cola Bottling Co. v. Transamerica Ins. Co.,
61 F.R.D. 115 (N.D. Ga. 1972) 9, 10

B. & S. Drilling Co. v. Halliburton Oil Well Cementing Co.,
24 F.R.D. 1 (S.D. Tex. 1959) 9

Blount v. Wake Elec. Membership Corp.,
162 F.R.D. 102 (E.D.N.C. 1993) 5

Cable & Computer Tech. v. Lockheed Sanders, Inc.,
175 F.R.D. 646 (C.D. Cal. 1997) 10

Coughlin v. Lee,
946 F.2d 1152 (5th Cir. 1991) 3

Dollar v. Long Mfg., N.C., Inc.,
561 F.2d 613 (5th Cir. 1977) 3

Hebert v. Lando,
441 U.S. 153 (1979) 4

Hickman v. Taylor,
329 U.S. 495 (1947) 3

In re Arlington Heights Funds Consol. Pretrial,
No. 89 C 701, 1989 U.S. Dist. LEXIS 8177
(N.D. Ill. July 7, 1989) 10

In re Bristol-Myers Squibb Sec. Litig.,
205 F.R.D. 437 (D.N.J. 2002) 12

In re Del-Val Fin. Corp. Sec. Litig.,
158 F.R.D. 275 (S.D.N.Y. 1994) 5

Page

In re Enron Corp. Sec.,
No. H-01-3624, 2004 U.S. Dist. LEXIS 8157
(S.D. Tex. Mar. 29, 2004) 1

In re Hawaii Corp.,
88 F.R.D. 518 (D. Haw. 1980) 5

Jepsen v. Florida Bd. of Regents,
610 F.2d 1379 (5th Cir. 1980) 6

Medtronic Sofamor Danek, Inc. v. Sofamor Danek Holding, Inc.,
No. 01-2373-M1V, 2003 U.S. Dist. LEXIS 8587
(W.D. Tenn. May 13, 2003) 3

Oppenheimer Fund, Inc. v. Sanders,
437 U.S. 340 (1978) 3

Poseidon Oil Pipeline Co., LLC v. Transocean Sedco Forex, Inc.,
No. 00-760, 2002 U.S. Dist. LEXIS 17635
(E.D. La. Sept. 18, 2002) 5

Somerset Marine, Inc. v. Far-Eastern Shipping Co.,
No. 01-1843 Section: "T" (1), 2002 U.S. Dist. LEXIS 10424
(E.D. La. June 3, 2002) 9

Wilson v. Enoch,
No. 98-1213 Section "E" (2), 1998 U.S. Dist. LEXIS 14198
(E.D. La. Sept. 2, 1998) 9

STATUTES, RULES AND REGULATIONS

Federal Rules of Civil Procedure
Rule 12(b)(6) 9
Rule 26 3
Rule 26(b)(1) 3
Rule 33(c) 9
Rule 33(d) 6, 7
Rule 37(a) 1, 2

SECONDARY AUTHORITIES

7 James Wm. Moore, *Moore's Federal Practice* (3d ed. 1997)
§33.78 9

Page

8A Wright, Miller & Marcus, *Federal Practice and Procedure: Civil 2d* (1994)
§2167 9
§2181 10

Lead Plaintiff, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, hereby respectfully moves this Court for an order requiring that defendants Canadian Imperial Bank of Commerce and CIBC World Markets Corp. (collectively referred to herein as "CIBC") respond completely to plaintiffs' Interrogatories 5, 9, 11, 12, 13, 14, and 18, within seven days of the Court's order.

I. INTRODUCTION

Since the filing of the Consolidated Complaint, several supplemental investigations have corroborated plaintiffs' allegations against CIBC. On December 22, 2003, defendant CIBC entered agreements with the U.S. Department of Justice, the Federal Reserve Bank of New York, the Superintendent of Financial Institutions, Canada, and the SEC. The agreement between CIBC and the Department of Justice sets forth the background upon which the various agreements were based:

> 1. During the Department's ongoing criminal investigation into matters relating to the collapse of Enron Corp. ("Enron"), the Department has notified CIBC that, in the Department's view, CIBC and its personnel have violated federal criminal law. In particular, the Department has notified CIBC that CIBC and certain CIBC employees: (a) violated federal criminal law in connection with certain FAS 125/140 transactions, explained in Appendix A hereto; and (b) aided and abetted Enron's violation of federal criminal law in connection with the same transactions.[1]

Ex. 1, ¶1. Based upon the above, CIBC agreed to cease engaging in certain structured finance transactions with U.S. public companies, adopt internal governance and compliance measures, and pay a fine of $80 million, among other things.

CIBC's agreement with the Department of Justice stands in sharp contrast to its claims that plaintiffs have "no factual basis for accusing CIBC ... of engaging in securities fraud." Motion of Defendant Canadian Imperial Bank of Commerce to Dismiss the Consolidated Complaint and

---

[1] "The fact that the SEC is authorized to and has charged [CIBC] merely with aiding and abetting does not automatically mean that Lead Plaintiff cannot assert a claim that [CIBC] is a primary violator of 10(b)." *In re Enron Corp. Sec.*, No. H-01-3624, 2004 U.S. Dist. LEXIS 8157, at *8 n.7 (S.D. Tex. Mar. 29, 2004).

Memorandum of Law in Support at 2 (Docket No. 615). CIBC has even accused plaintiffs of suing it merely because plaintiffs were "[d]esperate to find deep-pocketed defendants." *Id.* at 1.

In reality, it is CIBC that is desperate, and in its desperation, CIBC has avoided compliance with its discovery obligations under the Federal Rules of Civil Procedure. Specifically, CIBC refuses to respond to a number of plaintiffs' Interrogatories. As detailed below in the Statement of Conference, plaintiffs have been attempting to get responses to these Interrogatories for nearly a year. Plaintiffs did not want to move to compel and have accorded CIBC substantial forbearance. CIBC's refusal to answer plaintiffs' Interrogatories has left plaintiffs with no other option.

II. STATEMENT OF CONFERENCE

In accordance with Rule 37(a) and the Court's Procedures Manual, §IV.D., counsel for Lead Plaintiff conferred with counsel for defendant CIBC in an attempt to resolve this dispute. On May 16, 2003, CIBC was served with Plaintiffs' First Set of Interrogatories (Ex. 2); on June 20, 2003, CIBC was served with Plaintiffs' Second Set of Interrogatories (Ex. 3); and on August 1, 2003, plaintiffs received the Answers of Defendants Canadian Imperial Bank of Commerce and CIBC World Markets Corp. to Plaintiffs' First Set of Interrogatories and the Response of Defendants Canadian Imperial Bank of Commerce and CIBC World Markets Corp. to Plaintiffs' Second Set of Interrogatories (collectively "CIBC's Responses") (Exs. 4 and 5). On September 30, 2003, counsel for Lead Plaintiff met and conferred with Phillip Reed, counsel for defendant CIBC, concerning CIBC's Responses. During the September 30, 2003, meet and confer, the parties discussed the Interrogatories and CIBC's responses (and in several cases, plaintiffs narrowed and/or reformulated particular Interrogatories). At the conclusion of the September 30, 2003 meet and confer, defendant CIBC agreed it would supplement its responses in 60 days. In subsequent correspondence and meet and confers, plaintiffs' counsel clarified the supplemental responses they were seeking and reaffirmed their request that CIBC supplement its responses. Plaintiffs never received any written

response from CIBC. Correspondence regarding these discussions is attached hereto as Exs. 6-8. Counsel were unable to reach agreement concerning the subject matter of this Motion.

III. LEGAL STANDARDS

The scope of discovery under the Federal Rules is extremely broad. Under Rule 26(b)(1), parties may "obtain discovery regarding ***any*** matter, not privileged, that is relevant to the claim or defense of any party."[2] This includes the "existence, description, nature, custody, condition, and location of ***any*** books, documents, or other tangible things. *Id.* Relevant information "need ***not*** be admissible" at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. *Id.*

Discovery is permitted on "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).[3] It has long been the case in the Fifth Circuit that plaintiffs are permitted to "'obtain the ***fullest*** possible knowledge of the issues and facts before trial.'" *Dollar v. Long Mfg., N.C., Inc.*, 561 F.2d 613, 616 (5th Cir. 1977). *Accord Hickman v. Taylor*, 329 U.S. 495, 507 (1947) ("No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case."); *Coughlin v. Lee*, 946 F.2d 1152, 1159 (5th Cir. 1991) (discovery must "'adhere to the liberal spirit of the Rules'"). The discovery

---

[2] Emphasis is added and citations and footnotes are omitted unless otherwise noted.

[3] The 2000 amendments to Rule 26 do not affect judicial interpretations of relevance formulated prior to the amendments. "The minimal showings of relevance and admissibility hardly pose much of an obstacle for an inquiring party to overcome, even considering the recent amendment to Rule 26(b)(1)." *Anderson v. Hale*, No. 00 C 2021, 2001 U.S. Dist. LEXIS 6127, at *8 (N.D. Ill. May 10, 2001). *See also Medtronic Sofamor Danek, Inc. v. Sofamor Danek Holding, Inc.*, No. 01-2373-M1V, 2003 U.S. Dist. LEXIS 8587, at *6 (W.D. Tenn. May 13, 2003) (citing Rule 26(b)(1) as amended and finding materials discoverable if it "'appears reasonably calculated to lead to the discovery of admissible evidence'").

rules are accorded a broad and liberal treatment so they may fulfill their purpose of adequately informing litigants in civil trials. *Hebert v. Lando*, 441 U.S. 153, 176 (1979).

IV. ARGUMENT

A. CIBC Should Be Ordered to Answer Interrogatory 5

Defendant CIBC must provide a complete answer to plaintiffs' Interrogatory 5 which provides in full:

> Identify each current or former employee, officer, director, partner, manager or executive whose compensation, bonus, security or option grant, or any other payment or remuneration from You, Your parent or Your subsidiary was affected, determined, dependent or otherwise impacted by any transaction, service or business relationship with Enron or any of its SPEs, Trusts, LJM partnerships, subsidiaries, affiliates, partners, any Enron-sponsored entity or the Individual Defendants.

See Ex. 2 at 9.

In its answer to Interrogatory 5, CIBC stated, "there was no direct or calculable relationship between such compensation and any transaction, services or business relationships with Enron." *See* Ex. 4 at 17. At the same time, defendant objected "to Interrogatory 5 to the extent it seeks information about evaluations or assessments of employee performance. Such information is confidential, highly sensitive, irrelevant and not calculated to lead to discovery of admissible evidence." *Id.* Thus, based on its objection, CIBC refuses to consider the information at its disposal that would lead to a forthright answer of plaintiffs' interrogatory.

During the meet and confers, plaintiffs explained that they were entitled to a response to Interrogatory 5 and expected a response. Plaintiffs suggested CIBC examine performance appraisals and personnel files for responsive information. *See* Ex. 6. Additionally, plaintiffs offered defendant the option of attaching the performance reviews and self appraisals for the CIBC employees, officers, and/or directors who were involved in any Enron-related transactions. During the meet and confer, counsel for CIBC said CIBC would provide a supplemental response based on plaintiffs'

suggestions. However, CIBC has not supplemented its responses and has not responded in writing to any of plaintiffs' letters.

CIBC's objections to this Interrogatory are without merit. The requested information is clearly relevant to determining whether individual CIBC employees, officers, and/or directors were motivated to commit fraud. "Numerous cases, in fact, have allowed discovery of personnel files." *In re Hawaii Corp.*, 88 F.R.D. 518, 524 n.5 (D. Haw. 1980). *See also In re Del-Val Fin. Corp. Sec. Litig.*, 158 F.R.D. 275, 276 (S.D.N.Y. 1994) ("This court applies a balancing test in order to resolve discovery disputes concerning requests for confidential internal employee evaluations.").

Even if employee assessments ***might*** raise certain confidentiality concerns, this does not mean the information may be properly withheld from production. In this Circuit, courts require defendants to produce relevant documents from employees' personnel files:

> Discovery of the personnel files of non-party individual employees presents special concerns about the privacy rights of the individuals involved. ***This does not mean that a party is never entitled to discover the personnel files of an opponent's employees.*** The court must balance the interests of the parties in obtaining relevant discovery against the privacy interests of individual non-parties. Thus, "a district court has discretion to determine whether discovery of such files is warranted."

Poseidon Oil Pipeline Co., LLC v. Transocean Sedco Forex, Inc., No. 00-760, 2002 U.S. Dist. LEXIS 17635, at *5 (E.D. La. Sept. 18, 2002). The district court in *Poseidon Oil Pipeline* ultimately determined that the defendant corporation "must produce ... employee performance evaluations." *Id.* at *6.

Here, the CIBC personnel evaluations will provide contemporaneous records that are compelling evidence of whether CIBC personnel were motivated during the Class Period to act in furtherance of defendants' fraudulent scheme. "[P]ersonnel files possess an inherent reliability which cannot now be duplicated through any other source." *Blount v. Wake Elec. Membership Corp.*, 162 F.R.D. 102, 106 (E.D.N.C. 1993) (compelling discovery of personnel files). Any concerns that CIBC may have regarding confidentiality may be addressed by the proposal of an

appropriate confidentiality order. *See, e.g., Jepsen v. Florida Bd. of Regents*, 610 F.2d 1379, 1384-85 (5th Cir. 1980) (holding that district court erred by not allowing plaintiff to introduce "faculty evaluation forms" into evidence where "[a]ny danger that the confidentiality of these records will be violated may be prevented by the entry of further protective orders").

Thus, CIBC should be ordered to fully answer Interrogatory 5.

B. CIBC Should Be Ordered to Answer Interrogatories 11 and 12

Defendant CIBC should be compelled to answer plaintiffs' Interrogatories 11 and 12. Interrogatory 11 provides in full:

> Identify each current or former director, officer or executive of CIBC World Markets Corp., CIBC World Markets plc or CIBC Oppenheimer Corp. (or any other Canadian Imperial Bank of Commerce direct or indirect subsidiaries, affiliates, divisions, operating units, businesses, agents or related entities) who also has or had a title, position, or responsibilities concerning Canadian Imperial Bank of Commerce and for each, describe in detail all of their respective titles, positions, and responsibilities.

Ex. 3 at 8. Interrogatory 12 provides in full:

> For each transaction concerning Enron, identify each of Your employee(s), committee(s) and member(s) of such committee(s) that approved the transaction, and state each person's title(s) (specifying which company) and responsibilities.

Id. at 8-9.

CIBC answered Interrogatory 11 as follows:

> Pursuant to FRCP 33(d) and in accordance with the Scheduling Order, Answering Defendants will produce documents containing the requested information. As noted in the General Objections, Answering Defendants' investigation of the facts and documents in this matter is not yet completed. Answering Defendants reserve the right to supplement information contained in the documents to be produced with a narrative response if necessary.

Ex. 5 at 6. CIBC answered Interrogatory 12 as follows:

> Pursuant to FRCP 33(d) and in accordance with the Scheduling Order, Answering Defendants will produce documents containing the requested information. As noted in the General Objections, Answering Defendants' investigation of the facts and documents in this matter is not yet completed. Answering Defendants reserve the right to supplement information contained in the documents to be produced with a narrative response if necessary.

Id.

During the meet and confer, defendant represented it would both provide some type of narrative response to these Interrogatories ***and*** identify Bates ranges of documents responsive to these Interrogatories. Defendant has done neither. Defendant's failure has forced plaintiffs to move to compel on the issue.

Interrogatories 11 and 12 are highly relevant to this litigation, particularly to the defense CIBC has repeatedly raised, that it is not a proper party to this litigation. *See* Answer and Affirmative Defenses of the CIBC Defendants (to First Amended Complaint) ("CIBC's Answer") at 610 (Docket No. 2122) ("The CIBC Defendants are not, as a matter of law, liable for the acts of legally separate entities."). Indeed, on April 29, 2003, CIBC moved for summary judgment arguing that various separate and independent subsidiaries were the real party in interest, not CIBC. *See* Docket No. 1357. The Court denied CIBC's motion, noting Lead Plaintiff's theories of agent and principal, common law agency, control person liability under the statutes, and enterprise liability and the need for fact-intensive inquiries under them. *See* May 22, 2003 Order (Docket No. 1392). However, in its Order, the Court also noted "[a]fter discovery, should the evidence demonstrate that such a course is appropriate, Defendants may file amended motions for summary judgment." *Id.* at 3.

Undoubtedly, CIBC will again move for summary judgment on this issue. Yet it continues to evade plaintiffs' legitimate and highly relevant discovery requests. Clearly, CIBC is in the best position to provide the information plaintiffs seek. Accordingly, CIBC should be ordered to answer Interrogatories 11 and 12.

C. CIBC Should Be Ordered to Answer Interrogatories 13 and 14

Defendant CIBC should be compelled to answer plaintiffs' Interrogatories 13 and 14. Interrogatory 13 provides in full, "State all facts concerning each representation or act that You

claim misled You or was a causal factor in any of Your actions related to the Complaint's allegations." *See* Ex. 3 at 9. Interrogatory 14 provides in full:

> For each representation or act identified in Your responses to Interrogatory No. 13, identify who made the representation or act, and state all facts concerning how that representation or act purportedly misled You or was a causal factor in any of Your actions related to the Complaint's allegations (including Your description of the actions You took).

Id.

CIBC's answer to Interrogatory 13 provides in full:

> CIBC and CIBC World Markets Corp. object to Interrogatory 13, which is a premature contention interrogatory. Answering Defendants are still investigating the facts as they relate to the allegation of Plaintiffs' First Amended Complaint, and are still in the process of reviewing the documents to be produced pursuant to plaintiffs' document requests and the Scheduling Order. Answering Defendants reserve the right to supplement this response at such time and in such a manner they may deem appropriate once their investigation of the facts has been completed. Such response may include the assertion that Answering Defendants were mislead by acts or representations of Enron Corp., Enron-related entities, or officers, employees, or professionals working on behalf of or in conjunction with Enron or Enron-related entities.

See Ex. 5 at 6-7. CIBC's answer to Interrogatory 14 provides in full, "Please refer to the response and objection to Interrogatory 13." *Id.* at 7.

Defendant's objection that Interrogatories 13 and 14 are "premature contention" interrogatories is not well-taken. Throughout this litigation, CIBC has repeatedly asserted it was misled by others. In affirmative defense 13 of CIBC's Answer, defendant asserts:

> The allegations of the Complaint asserted against the CIBC Defendants are barred because any alleged statements by the CIBC Defendants or by any CIBC-related entity were based on good faith and reasonable reliance upon the work, opinions, information, representations, and advice of others upon which the CIBC Defendants and CIBC-related entity were entitled to rely.

CIBC's Answer at 612. This is the same affirmative defense CIBC asserted in its Answer to the Consolidated Complaint. *See* CIBC Answer to Consolidated Complaint at 589 (Docket No. 1203). As such, CIBC can hardly be heard to complain that Interrogatories 13 and 14 are premature.

Moreover, at this point in the litigation, Interrogatories 13 and 14 are ***not*** premature. CIBC has been a defendant in this action for ***over 26 months*** and has likely been investigating its role in the fraudulent scheme for even longer. CIBC has twice moved for dismissal under Rule 12(b)(6) and, as detailed above, has even moved for summary judgment. CIBC's document production was to be substantially completed by October 1, 2003 and depositions in this action are under way.

Under Federal Rule of Civil Procedure 33(c), "[a]n interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact." *See also* 7 James Wm. Moore, *Moore's Federal Practice* §33.78 (3d ed. 1997)("An interrogatory is not objectionable merely because the answer to an interrogatory involves an opinion or contention."); 8A Wright, Miller & Marcus, *Federal Practice and Procedure: Civil 2d* §2167, at 247 (1994) (same); *Somerset Marine, Inc. v. Far-Eastern Shipping Co.*, No. 01-1843 Section: "T" (1), 2002 U.S. Dist. LEXIS 10424, at *13 (E.D. La. June 3, 2002) (overruling defendants objection that interrogatories that sought facts in support of defendant's defenses were premature contention interrogatories); *Wilson v. Enoch*, No. 98-1213 Section "E" (2), 1998 U.S. Dist. LEXIS 14198, at *7-*8 (E.D. La. Sept. 2, 1998) (granting plaintiffs' motion to compel response to "contention interrogatory"); *Alliance Gen. Ins. Co. v. Louisiana Sheriff's Auto Risk Program*, No. 99-961 Section "T" (2), 1996 U.S. Dist. LEXIS 16280 (E.D. La. Oct. 23, 1996) (same).[4]

It has long been the rule that the burden of proof is on the objecting party, "to show that his objections to interrogatories should be sustained." *B. & S. Drilling Co. v. Halliburton Oil Well*

---

[4] *See also Atlanta Coca-Cola Bottling Co. v. Transamerica Ins. Co.*, 61 F.R.D. 115, 119 (N.D. Ga. 1972)(granting plaintiff's motion to compel and noting "'[r]equests for opinions or contentions that call for the application of law to fact ... can be most useful in narrowing and sharpening the issues, which is the major purpose of discovery'").

Cementing Co., 24 F.R.D. 1, 4 (S.D. Tex. 1959). This rule applies with equal force to so-called contention interrogatories. *See Cable & Computer Tech. v. Lockheed Sanders, Inc.*, 175 F.R.D. 646, 652 (C.D. Cal. 1997)(a court should consider "contention interrogatories in the same manner it would consider any interrogatory, placing the burden on the party opposing discovery rather than shifting the burden to the proponent of the contention interrogatories to justify their propoundment"). "Further, if the concern in answering a contention interrogatory before discovery has been completed, or even substantially done, is that the answer to the interrogatory may limit the party's proof at trial, that concern is misplaced in that, among other things, the trial court may permit the withdrawal or amendment of an answer to an interrogatory." *Id.* at 651 (citing Wright, Miller & Marcus, *supra*, §2181, at 344). CIBC has not (and cannot) meet its burden that its objections to Interrogatories 13 and 14 should be sustained.

Given the procedural history of this case and the fact that Interrogatories 13 and 14 are well calculated to narrow the issues in this litigation, these Interrogatories are not premature. *See Atlanta Coca-Cola Bottling Co.*, 61 F.R.D. at 119; *In re Arlington Heights Funds Consol. Pretrial*, No. 89 C 701, 1989 U.S. Dist. LEXIS 8177, at *1-*2 (N.D. Ill. July 7, 1989). If, as CIBC claims, it was "misled by acts or representations of Enron," it should fully answer plaintiffs' Interrogatories so that plaintiffs may properly focus this litigation. Good-faith answers to these Interrogatories would substantially contribute to: (a) clarifying issues in the case; (b) narrowing the scope of the dispute; (c) improving prospects for settlement; and (d) providing a real basis for motions that would remove a party from the case or dispose of significant parts of the litigation.

Accordingly, CIBC should be ordered to answer Interrogatories 13 and 14.

D. CIBC Should Be Ordered To Answer Interrogatory 18

Defendant must provide a response to plaintiffs' Interrogatory 18 which provides in full:

> Identify all persons from whom documents were produced in connection with responding to Lead Plaintiff's document requests to You, and for each person state

the Bates range of the documents produced from their documents or files (paper or electronic).

See Ex. 3 at 10.

CIBC's response to Interrogatory 18 provides in full

> CIBC and CIBC World Markets Corp. object to Interrogatory 18 to the extent that it requests information protected by the work product doctrine. Further answering Interrogatory 18, Answering Defendants state that their investigation and review of the documents requested by plaintiffs is still under way, and the Scheduling Order does not require that the production of such documents be substantially completed until October 1, 2003. Accordingly, Answering Defendants are not yet in a position to provide the requested information. In some cases, with respect to documents already collected for production, the information may not be available. To the extent possible, and to the extent that compliance is not unduly burdensome, Answering Defendants will provide the requested information once their substantial production of documents has been completed in accordance with the Scheduling Order.

See Ex. 5 at 8-9.

During the meet and confer CIBC confirmed it would supplement this response once substantial production of documents had been completed. *See* Exs. 6 and 7. Indeed, given the volume of documents CIBC produced it is exceedingly important for plaintiffs to have this information as depositions proceed. But CIBC refuses to answer Interrogatory 18.

Responding to Interrogatory 18 would not be "unduly burdensome," as defendant implies in its response to Interrogatory 18. Indeed, other bank defendants have responded to this Interrogatory. For example, Bank of America Corporation and Bank of America Securities have both provided a response. *See* Second Amended Objections and Responses of Bank of America Corporation to Plaintiffs' First Set of Interrogatories and Objections and Amended Responses to Plaintiffs' Second Set of Interrogatories at 29-34 and Second Amended Objections and Responses of Bank of America Securities LLC to Plaintiffs' First Set of Interrogatories and Objections and Amended Responses to Plaintiffs' Second Set of Interrogatories at 29-34 (attached as Exs. 9 and 10). CIBC's claim of burden for identifying the documents that it alone gathered, reviewed and produced lacks merit.

Accordingly, CIBC should be ordered to answer Interrogatory 18.

E. CIBC HAS FAILED TO ABIDE BY ITS AGREEMENTS

As detailed above, during the meet and confers, CIBC agreed to respond to plaintiffs' Interrogatories 5, 11, 12 and 18. *See* Exs. 6, 7 and 8. Despite these agreements, CIBC refused to supplement its answers to plaintiffs' Interrogatories and provide plaintiffs with complete responses. CIBC's violation of discovery agreements provides further support for plaintiffs' motion to compel.

"It is essential to our system of justice that lawyers and litigants, above all, abide by their agreements and live up to their own expectations." *In re Bristol-Myers Squibb Sec. Litig.*, 205 F.R.D. 437, 444 (D.N.J. 2002) (enforcing discovery agreement). Here, CIBC agreed to provide complete responses to Interrogatories 5, 11, 12, and 18. CIBC's failure to abide by its agreement flies in the face of our system of justice and should not be sanctioned.

Accordingly, CIBC's refusal to comply with its agreements provides further support for why CIBC should be ordered to fully respond to plaintiffs' Interrogatories 5, 11, 12 and 18.

V. CONCLUSION

For all of the foregoing reasons, plaintiffs request that the Court compel CIBC to respond to plaintiffs' Interrogatories 5, 9, 11, 12, 13, 14, and 18 within seven days of the Court's order.

DATED: June 1, 2004.

Respectfully submitted,

LERACH COUGHLIN STOIA
& ROBBINS LLP
WILLIAM S. LERACH
DARREN J. ROBBINS
HELEN J. HODGES
BYRON S. GEORGIOU
JAMES I. JACONETTE
MICHELLE M. CICCARELLI
JAMES R. HAIL
ANNE L. BOX
JOHN A. LOWTHER
ALEXANDRA S. BERNAY
MATTHEW P. SIBEN
ROBERT R. HENSSLER, JR.

James I. Jaconette #1
JAMES I. JACONETTE #by permission

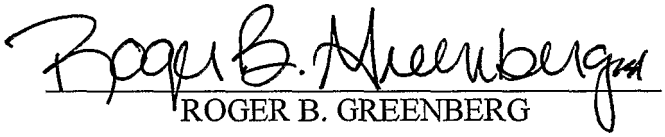
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058

LERACH COUGHLIN STOIA
& ROBBINS LLP
REGINA M. AMES
355 South Grand Avenue, Suite 4170
Los Angeles, CA 90071
Telephone: 213/617-9007
213/617-9185 (fax)

LERACH COUGHLIN STOIA
& ROBBINS LLP
G. PAUL HOWES
JERRILYN HARDAWAY
Texas Bar No. 00788770
Federal I.D. No. 30964
1111 Bagby, Suite 4850
Houston, TX 77002
Telephone: 713/571-0911

Lead Counsel for Plaintiffs

SCHWARTZ, JUNELL, GREENBERG
& OATHOUT, LLP
ROGER B. GREENBERG
State Bar No. 08390000
Federal I.D. No. 3932



ROGER B. GREENBERG

Two Houston Center
909 Fannin, Suite 2000
Houston, TX 77010
Telephone: 713/752-0017

HOEFFNER & BILEK, LLP
THOMAS E. BILEK
Federal Bar No. 9338
State Bar No. 02313525
440 Louisiana, Suite 720
Houston, TX 77002
Telephone: 713/227-7720

Attorneys in Charge

BERGER & MONTAGUE, P.C.
SHERRIE R. SAVETT
1622 Locust Street
Philadelphia, PA 19103
Telephone: 215/875-3000

Attorneys for Staro Asset Management

WOLF POPPER LLP
ROBERT C. FINKEL
845 Third Avenue
New York, NY 10022
Telephone: 212/759-4600

Attorneys for Nathaniel Pulsifer

SCOTT + SCOTT, LLC
DAVID R. SCOTT
NEIL ROTHSTEIN
S. EDWARD SARSKAS
108 Norwich Avenue
Colchester, CT 06415
Telephone: 860/537-3818

Attorneys for the Archdiocese of Milwaukee Supporting Fund, Inc.

LAW OFFICES OF JONATHAN D. McCUE
JONATHAN D. McCUE
4299 Avati Drive
San Diego, CA 92117
Telephone: 858/272-0454

Attorneys for Imperial County Board of Retirement

CUNEO WALDMAN & GILBERT, LLP
JONATHAN W. CUNEO
MICHAEL G. LENETT
317 Massachusetts Avenue, N.E.
Suite 300
Washington, D.C. 20002
Telephone: 202/789-3960

Washington Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES BY CANADIAN IMPERIAL BANK OF COMMERCE AND CIBC WORLD MARKETS CORP. document has been served by sending a copy via electronic mail to serve@ESL3624.com on this June 2, 2004

I further certify that a copy of the foregoing LEAD PLAINTIFF'S MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES BY CANADIAN IMPERIAL BANK OF COMMERCE AND CIBC WORLD MARKETS CORP.document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this June 2, 2004.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004

Mo Maloney

Mo Maloney

The Exhibit(s) May

Be Viewed in the

Office of the Clerk

United States Courts
Southern District of Texas
FILED
JUN 0 2 2004
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)**
	§	
	§	CLASS ACTION
This Document Relates To:	§	
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.	§	

ORDER GRANTING LEAD PLAINTIFF'S MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES BY CANADIAN IMPERIAL BANK OF COMMERCE AND CIBC WORLD MARKETS CORP.

Having considered Lead Plaintiff's Motion to Compel Complete Responses to Interrogatories by Canadian Imperial Bank of Commerce and CIBC World Markets Corp., the Court finds it should be GRANTED.

IT IS HEREBY ORDERED that CIBC defendants are ordered to fully respond to plaintiffs' Interrogatories 5, 11, 12, 13, 14, and 18 within seven days of the entry of this Order.

DATED: _____

_____
HONORABLE MELINDA HARMON
U.S. DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ORDER GRANTING LEAD PLAINTIFF'S MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES BY CANADIAN IMPERIAL BANK OF COMMERCE AND CIBC WORLD MARKETS CORP. document has been served by sending a copy via electronic mail to serve@ESL3624.com on this June 2, 2004.

I further certify that a copy of the foregoing ORDER GRANTING LEAD PLAINTIFF'S MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES BY CANADIAN IMPERIAL BANK OF COMMERCE AND CIBC WORLD MARKETS CORP.document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this June 2, 2004.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004

Mo Maloney

Mo Maloney