

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

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IN RE ENRON CORPORATION  
SECURITIES, DERIVATIVE, &  
"ERISA" LITIGATION

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§  
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§

MDL-1446

United States Courts  
Southern District of Texas  
FILED

JUL 1 2004

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Michael N. Milby, Clerk of Court

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MARK NEWBY, et al.,

Plaintiffs,

V.

ENRON CORPORATION, et al.,

Defendants.

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§

CIVIL ACTION NO. H-01-3624  
AND CONSOLIDATED CASES

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**MORDAUNTS' RESPONSE TO MOTION TO COMPEL**

Kristina Mordaunt, a defendant in various cases coordinated and consolidated with the Newby case, responds to Joe H. Foy's Motion to Compel as follows:

Mr. Foy has asked the Court to order Mordaunt to produce copies of her deposition testimony taken in a nonpublic investigation by the Securities and Exchange Commission. Citing *LaMorte v. Mansfield*, 438 F.2d 448 (2d Cir.1971), to support his demand for the transcripts, Foy asserts that the transcripts became public when they were released to Ms. Mordaunt. That assertion is wrong and is not supported by *LaMorte*. The court expressly recognized that the Commission could release a transcript to a witness with restrictions on disclosure by the witness. *LaMorte*, 438 F.2d at 451.

The Commission has in fact ordered Mordaunt not to disclose the transcript. The order form for the transcript of Ms. Mordaunt's December 12, 2001, testimony is attached as Exhibit A. That

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form required the party ordering the transcript to agree “that he/she will not make or permit any other party to make a photographic electronic, electrostatic or other facsimile copy of any transcript or diskette received pursuant to this order.” The order also requires the approval of two SEC officials—a step not required for public hearing or administrative proceedings.<sup>1</sup> That Ms. Mordaunt’s testimony was taken in a nonpublic proceeding is established by the order directing the private investigation which is attached as Exhibit B. The Commission’s regulations also insulate the Mordaunt transcripts from disclosure. *See* 17 CFR §203.2 and §203.5.

The Commission has responded to an inquiry by counsel for Arthur Andersen by objecting to the disclosure of the deposition transcripts taken in the private investigation of Enron. A copy of the Commission’s letter is attached as Exhibit C.

Ms. Mordaunt cannot comply with the request for copies of her testimony without violating the orders of the Commission. The Motion to Compel should be denied.

Respectfully submitted,

  
Robert Hayden Burnis  
State Bar No.:03456000  
1415 Louisiana, Suite 3300  
Houston, TX 77002  
(713) 651-1559  
(713) 651-0817 (Fax)

ATTORNEY FOR KRISTINA MORDAUNT

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<sup>1</sup>Although counsel does not have a copy of the order for Ms. Mordaunt’s August 22, 2002, testimony, he believes that it contains the same prohibitions against disclosure as are found in Exhibit A.

OF COUNSEL:  
BURNS, WOOLEY, MARSEGLIA & ZABEL, L.L.P.  
1415 Louisiana, Suite 3300  
Houston, Texas 77002  
(713) 651-0422  
(713) 651-0817 (Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by electronic posting to [www.ES3624.com](http://www.ES3624.com) on this 29<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
Robert Hayden Burns

DRS 4/19/02 OFFICIAL SEC ORDER FOR ALL ORDERS ARE IRREVOCABLE

TO BE COMPLETED BY ORDERING PARTY:  
Date of Filing: December 12, 2001

Case Name: In re Enron Corp. HQ-9350

Witness (One form for each witness): Kristina Mordant

DELIVERY ADDRESS: Burns, Woodley, Mansfield  
Case: Robert Handman Burns  
Tel: (713, 651-1559) Fax: 713, 651-0817  
Address: 1415 Louisiana Street, Ste 8300  
City: Houston State: TX Zip: 77002

Location: Houston, Texas

Delivery Type: (CHECK ONE): COST: 1st MEDIA COPY ADDITIONAL MEDIA COPIES  
(Indicate this option unless approved (Indication of media type ordered)  
Form is received by DRS from SEC.)

REGULAR (1st business days)	\$1.50/page	\$1.25/page	PAPER COPY	ADDITIONAL SERVICES: MAY NOT BE ORDERED IN LIEU OF FIRST COPY
XX ACCELERATED (1st business days)	\$1.35/page	\$1.25/page	ASCI DISKETTE	CONDENSED TRANSCRIPT WITH KEYWORD INDEX (1.25/page)
EXPEDITED (5 business days)	\$4.95/page	\$1.25/page	WORDPERFECT 5.1 DISKETTE	
DAILY (Next business day)	\$9.00/page	\$9.25/page		
RUSH (Same day)	\$12.00/page	\$1.25/page		

DELIVERY METHOD (CHECK ONE): XX Overnight 2-day Messenger (DC only)

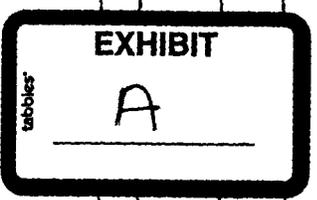
DEBITMENTS REQUIRED FOR ALL TRANSCRIPTS. ORS RESERVES THE RIGHT TO REQUIRE C.O.D. DELIVERIES. A 2.5% SURCHARGE WILL BE IMPOSED ON CREDIT CARD ORDERS.

Cardholder's Name (as it appears on card):

EXP Date: / /

Card No.:

Cardholder's Signature:



The undersigned hereby irrevocably and unconditionally orders 1 copies of the official transcript of the abovementioned proceedings at the per page rate indicated above plus delivery and is responsible for payment of same. The undersigned, his or her law firm (if any) and neither share shall be responsible, jointly and severally, for the payment of the obligation incurred hereunder, including reasonable attorney's fees for any collection action that may be required to enforce this obligation. The undersigned further agrees that he/she will not make or permit any other party to make a photographic, electronic, discographic or other facsimile copy of any transcript or exhibits received pursuant to this order.  
REASON FOR REQUEST: for

COMPLETE THIS SECTION AND RETURN ALL COPIES TO THE SEC ATTORNEY HANDLING THIS CASE. DIVERSIFIED REPORTING PROCESSING CANNOT PROCESS TRANSCRIPT ORDERS WITHOUT AUTHORIZED SEC SIGNATURE.  
TO BE COMPLETED BY SEC (NOT APPLICABLE FOR PUBLIC HEARING/ADMINISTRATIVE PROCEEDINGS):  
Commission Staff Attorney: Kurt Gravel  
Telephone: 202-442-7259  
Commission Supervisor: Douglas Paul  
Telephone: 202-942-4685

Commission Supervisor: Douglas Paul

Telephone: 202-942-4685

AFTER APPROVAL: Send complete original to: SECURITIES AND EXCHANGE COMMISSION, ATTN: Charles Steiger, 6-1 450 5th Street, NW, Washington, DC 20549

FOR DRS USE ONLY: Date form received: Date approval received: Date ship: # of pages: DRS approval: page rate: Invoice #: by: Ink #:

4/19/02  
4/16/02

**UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION**

October 30, 2001

In the Matter of

**ENRON CORP.**

File No. HO-9350

**ORDER DIRECTING  
PRIVATE INVESTIGATION  
AND DESIGNATING OFFICERS  
TO TAKE TESTIMONY**

**I.**

The Commission's public files disclose that Enron Corporation ("Enron") is an Oregon corporation with its principal place of business in Houston, Texas. Enron's common stock is registered with the Securities and Exchange Commission ("Commission") pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and is traded on the New York Stock Exchange.

**II.**

Members of the Commission's staff have reported information to the Commission which tends to show that:

A. From approximately 1998 through the present, Enron, certain persons associated with Enron, and other persons or entities, directly or indirectly, in connection with the purchase or sale of the securities of Enron may have employed devices, schemes, or artifices to defraud, may have made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or may have engaged in acts, practices or courses of business which operated as a fraud or deceit upon any person. Among other things, such persons or entities may have misstated or caused the misstatement of the financial condition and results of operations of Enron and disclosures related thereto.

B. Enron may have filed or may be filing, or certain persons associated with Enron or other entities may have caused or may be causing Enron to file, certain reports required to be filed with or submitted to the Commission pursuant to Section 13(a) of the Exchange Act which contain or incorporate financial statements and related disclosures that contain untrue statements

**EXHIBIT**  
tabbler **B**

of material fact, omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or omit to disclose information required to be disclosed.

C. Enron may have failed or may be failing, and certain persons associated with Enron may have caused or may be causing Enron to fail to:

(1) make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Enron;

(2) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions were executed in accordance with management's general or specific authorization; (b) transactions were recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or other criteria applicable to such statements, and (ii) to maintain accountability for assets; (c) access to assets was permitted only in accordance with management's general or specific authorization; and (d) the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

D. Certain persons may have knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified books, records or accounts of Enron.

E. While engaged in the acts and practices described above, such persons or entities, directly or indirectly, may have made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange.

### III.

The Commission, having considered the information reported by the staff, and deeming such acts and practices, if true, to be in possible violation of Sections 10(b), 13(a), 13(b)(2)(A) and (B) and 13(b)(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder, finds it necessary and appropriate and hereby:

ORDERS, pursuant to Section 21(a) of the Exchange Act, that a private investigation be conducted to determine whether Enron or any other persons have engaged in, are engaging in, or are about to engage in any of the aforesaid acts or practices or in acts or practices of similar purport or object; and

FURTHER ORDERS, pursuant to Section 21(b) of the Exchange Act, that, for the purpose of such investigation, Steven M. Cutler, Linda Chatman Thomsen, Eugene H. Bull, Christopher M. Cutler, David S. Frye, Kurt S. Gresenz, Phil Gross, Stephen R. Herm, Donna K. Knapton, John H. Loesch, Kevin M. Loftus, Laverne Patterson, Douglas B. Paul, Robin W. Sardegna, Camille A. Thornton, Charles J. Clark, Alex Lipman, Charles D. Niemeier, C. Gregory Scates, George Spanos, Dwayne Brown, and Beth Lehman, and each of them, is hereby designated an officer of the Commission and is empowered to administer oaths and affirmations,

subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or any other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Jonathan G. Katz  
Secretary

*Jill M. Peterson*  
By: Jill M. Peterson  
Assistant Secretary



DIVISION OF  
ENFORCEMENT

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D. C. 20549

Luis R. Mejia  
Assistant Chief Litigation Counsel  
Telephone: (202) 942-4744  
Facsimile: (202) 942-9569  
E-Mail: MejiaL@sec.gov

June 23, 2004

Catherine E. Palmer, Esq.  
Latham & Watkins LLP  
885 Third Avenue, Suite 1000  
New York, NY 10022-4834

Re: Newby, et al., v. Enron Corp, et al., Case No. H-01-3624 (S.D. Texas)

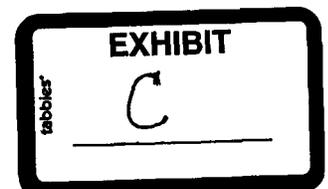
Dear Ms. Palmer:

We understand that certain parties in the above-captioned private action have served discovery requests for transcripts of SEC investigative testimony taken in the course of the SEC's Enron investigation. The SEC objects to the discovery requests and to any production of SEC transcripts.

On October 30, 2001, pursuant to Section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(a), the Commission issued an Order directing Private Investigation and Designating Officers to Take Testimony in an investigation entitled *In the Matter of Enron Corp.* (the "Formal Order"). In the Formal Order, the Commission directed that an investigation be conducted to determine, among other things, whether Enron's reports filed with the Commission contained materially false and misleading statements, or omissions of material facts, in violation of the antifraud provisions of the federal securities laws.

Pursuant to Rule 203.2 of the SEC Rules of Practice, information obtained by the SEC during the course of the Enron investigation is non-public. In this confidential setting, the SEC has taken the sworn testimony of numerous witnesses with knowledge relevant to the investigation. Upon request of certain witnesses the SEC has provided transcripts of their testimony to them for their own personal use. The Commission has otherwise not made public to third parties in private litigation the transcripts for any purpose.

The SEC's investigation has resulted in the filing of several cases in the Southern District of Texas. Some of these cases have been settled. Others are stayed pending resolution of parallel criminal cases brought by the Department of Justice Enron Task Force. However, the SEC's investigation is ongoing and remains nonpublic. The SEC continues to interview witnesses, take testimony, obtain documents, and review evidence. The Enforcement Division may recommend that additional charges be brought against parties involved in the Enron matter.



Ms. Palmer  
June 23, 2004  
Page Two

It is critical that all aspects of the investigation remain confidential.

Disclosure of SEC transcripts would hamper the SEC's investigation of the Enron matter and would reveal sensitive information, such as the direction and specific subject areas of the investigation. Potential defendants in future SEC proceedings would also have the opportunity to prematurely review testimony well before the time permitted under the rules governing federal civil discovery. Further, defendants in SEC cases currently stayed due to pending parallel criminal cases would gain access to materials they are forbidden from obtaining from the SEC and DOJ at this time.

For the foregoing reasons, the SEC objects to the discovery and production of SEC transcripts by any party in the above-captioned action. If any party pursues such discovery, particularly over the SEC's objections, please advise us promptly so that we may consider further appropriate action. Please post this letter on the Enron securities website for service on all parties so that they are on notice of the SEC's position.

Sincerely,



Luis R. Mejia