

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

United States Courts
Southern District of Texas
ENTERED

AUG 30 2004

Michael N. Milby, Clerk of Court

In re ENRON CORPORATION SECURITIES LITIGATION	}	MDL 1446
_____	}	
This Document Relates to:	}	Civil Action No. H-01-3624
	}	(Consolidated)
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	}	
	}	<u>CLASS ACTION</u>
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 ON LEAD PLAINTIFF'S MOTION TO COMPEL DEEMED ADMISSIONS BY
DEFENDANT CIBC

Pending before the Court is the Lead Plaintiff's motion to have the court deem "admitted" its nine Fed. R. Civ. Pro. Rule 36 requests for admissions made to defendant Canadian International Bank of Commerce (CIBC) (Instrument No. 2080). The requests for admissions concern certain FAS 125/140 transactions that are the subject matter of the plaintiffs' claims in this

2367

lawsuit and are based upon CIBC's agreement with the United States Department of Justice (DOJ). In that agreement CIBC agreed with the DOJ to a statement of facts that sets forth the conduct of CIBC. Lead Plaintiff utilized in its requests for admissions language sometimes identical and sometimes similar to the language of factual statements used in the CIBC/DOJ agreement. Lead Plaintiff sought from CIBC admissions to these identical or similar factual statements.

CIBC's response to the requests for admissions begins with eight numbered "General Responses and Objections." Instrument No. 2080, Exhibit C, "Defendant Canadian Imperial Bank of Commerce's Responses to Lead Plaintiff's First Set of Requests for Admissions," at 2. These are followed by two numbered "Objections and Clarifications to Definitions." *Id.* at 3. Responses begin on page 4 of the response. Generally speaking CIBC admits Request for Admission Nos. 1, 3, 6, 7, 8, and 9, but, with the exception of Nos. 3 and 6, CIBC goes on to hedge its responses by incorporating or cross referencing responses to other requests. *Id.* at 4-7

The response to No. 2 states that it is "presently" unable, "based on diligent inquiry, to admit or deny the accuracy of the specific numbers set forth in the tables on pages 7 and 8 of Appendix A."

The response to No. 3 admits the request for admission, but drops a footnote explaining the relationship between CIBC and its subsidiaries for purposes of the CIBC/DOJ agreement. Although the footnote may render the response confusing, it does constitute a permissible qualification pursuant to Rule 36(a).

The response to No. 4 objects that the request does not set forth facts requiring admission or denial, but goes on to admit that the CIBC/DOJ Agreement contains language, quoted

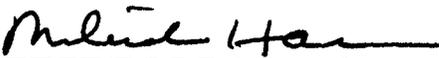
from the agreement, to the effect of the request for admission and finishes with an admonition that plaintiffs bear the burden of proof of any CIBC employee violation.

The response to No. 5 admits the facts of the first and third sentence of the request for admission, but states that the second sentence states a legal conclusion that requires no admission or denial by CIBC.

The objections made by CIBC are not justified and its cross-referencing and incorporating are confusing. CIBC has not denied any of these requests for admissions. Rule 36(a) provides that “when good faith requires that a party qualify an answer. . . , the party shall specify so much of it as is true and qualify . . . the remainder,” but, except for its response to request No. 3, CIBC has not followed this rule in appending additional language to its responses to 1, 4, 5, 7, 8, and 9. The additional language constitutes neither valid objection to nor qualification of these responses. Accordingly, it is hereby

ORDERED that Lead Plaintiff’s Request for Admission to CIBC, Nos. 1, 3, 4, 5, 6, 7, 8, and 9 are deemed admitted. CIBC is ordered to fully respond to Request for Admission No. 2 within ten days of the entry of this Order.

Signed at Houston, Texas, this 27th day of August, 2004.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE