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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	Civil Action No. H-01-3624
	§	**(Consolidated)**
	§	
Plaintiffs,	§	CLASS ACTION
	§	
vs.	§	
	§	
ENRON CORP., et al.,	§	
	§	
Defendants.	§	

LEAD PLAINTIFF'S SUPPLEMENT REGARDING PROPOSED PRETRIAL SCHEDULING ORDER AND LITIGATION STATEMENT REGARDING BANKRUPTCY STAY

#319

I. INTRODUCTION

Lead Plaintiff, the Regents of the University of California, hereby responds to Defense Counsel's Statement of Litigation Plan in Light of the Automatic Stay and Proposed Scheduling Orders ("Defendants' Statement").

Over the course of several days, counsel for Lead Plaintiff ("Lead Counsel") negotiated with a spokesperson for defendants' counsel regarding the scheduling order. Those discussions commenced with Lead Counsel providing a draft proposed scheduling order to defense counsel on Monday, February 18. From that starting point, we negotiated and discussed some counter-proposals. As we and defendants' counsel have noted, we reached an agreement regarding the filing of a consolidated complaint and a briefing schedule on motions to dismiss. We exchanged proposals on the rest of the schedule and we were unable to reach an agreement. Unfortunately, in Defendants' Statement, they refer to Lead Plaintiff's proposals from the negotiation rather than the initial scheduling proposal. Since we were unable to reach an agreement on matters other than briefing the motion to dismiss, Lead Plaintiff is proposing the schedule as initially drafted, rather than the offers of compromise discussed in our negotiations.

We agree with defendants that the discovery of the securities cases and the 401K cases should be coordinated. We are already coordinating the discovery taken pursuant to the Court's January 23, 2002 Order Prohibiting the Destruction of Evidence, Granting Limited Discovery, and Providing Other Relief Regarding Arthur Andersen. This week, Lead Counsel and counsel for the *Tittle* plaintiffs deposed Andersen individuals pursuant to that Order. We had agreed upon a division of hours for that questioning and we did not ask duplicative questions.

II. DISCUSSION REGARDING AREAS OF DISAGREEMENT

A. Class Certification

Lead Plaintiff proposed that the plaintiff's opening motion for class certification be filed September 1, 2002, defendants' oppositions be filed October 1, 2002, and plaintiff's reply be filed November 1, 2002. Defendants' proposal was for the oppositions to class certification to be filed 90 days after the start of fact discovery. We made a counter-proposal. However, no agreement was reached. Thus, Lead Plaintiff's proposed scheduling order calls for the opposition to class

certification to be filed October 1 and the plaintiff's reply to be filed November 1, 2002. We do not believe that 90 days of discovery on class certification issues is warranted in the consolidated securities cases. Such class cases as this are routinely certified. While we recognize that defendants have the right to contest class certification, after the extensive briefing regarding appointing the Lead Plaintiff, we believe that a 90-day period of discovery for class certification is simply unnecessary.

B. Length of Fact Discovery

While Lead Plaintiff recognizes that this case in many ways is unprecedented, Lead Plaintiff is continuing its factual investigation and believes that formal fact discovery should commence promptly. Lead Plaintiff and Lead Counsel will make every effort to complete the discovery in as short a time frame as possible; we submit that the discovery can be completed by November 15, 2003. Lead Plaintiff believes that it is in the best interests of the securities class to prepare the case for trial as soon as possible.

The bankruptcy stay as to Enron has been lifted for the 401K cases. Lead Counsel will move to similarly lift the stay as to the securities cases if negotiations which are underway with Debtors' counsel are unsuccessful.

C. Expert Discovery

Lead Plaintiff initially proposed that plaintiff's expert reports be completed on December 1, 2003, defendants' reports be completed December 31, 2003, and depositions of experts be completed in January 2004. Defendants proposed six months of expert discovery with a different sequence than Lead Plaintiff. Defendants insist that the plaintiff's experts be deposed ***before*** the defendants submit expert reports. We believe that, as in most securities class actions, it makes sense to exchange reports and then do depositions of all experts.

III. CONCLUSION

Lead Plaintiff respectfully requests that the Court enter its proposed scheduling order.

DATED: February 22, 2002

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on February 22, 2002, declarant served the LEAD PLAINTIFF'S SUPPLEMENT REGARDING PROPOSED PRETRIAL SCHEDULING ORDER AND LITIGATION STATEMENT REGARDING BANKRUPTCY STAY by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of February, 2002, at San Diego, California.

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