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

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| MARK NEWBY, et al. | § | |
| | § | |
| Plaintiffs, | § | No. H-01-CV-3624 |
| | § | |
| vs. | § | (Consolidated Action) |
| | § | |
| ENRON CORP., et al. | § | |
| | § | |
| Defendants. | § | |
| | § | |
| PIRELLI ARMSTRONG TIRE CORPORATION RETIREE MEDICAL BENEFITS TRUST, Derivatively On Behalf of ENRON CORPORATION, et al., | § | |
| | § | No. H-01-CV-3645 |
| | § | |
| Plaintiffs, | § | (Consolidated Action) |
| | § | |
| vs. | § | |
| | § | |
| ENRON CORP., et al., | § | |
| | § | |
| Defendants. | § | |
| | § | |
| TITTLE, et al., | § | |
| | § | |
| Plaintiffs, | § | No. H-01-CV-3913 |
| | § | |
| vs. | § | (Consolidated Action) |
| | § | |
| ENRON CORP., et al. | § | |
| | § | |
| Defendants. | § | |

**OPPOSITION OF DEFENDANT ANDREW S. FASTOW TO THE *TITTLE, RINARD,* AND *KEMPER* PLAINTIFFS' MOTION FOR A PRELIMINARY ORDER FREEZING AND IMPOSING A CONSTRUCTIVE TRUST OVER INDIVIDUAL DEFENDANTS' ASSETS AND LIMITED EXPEDITED DISCOVERY INTO THOSE ASSETS**

Defendant Andrew S. Fastow respectfully submits:

- The *Tittle, Rinard,* and *Kemper* (TRK) Plaintiffs seek relief that the district court has already denied. On January 8, 2002, Judge Rosenthal entered an Order

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denying Amalgamated Bank's request for an asset freeze, holding that the record lacked any evidence to warrant granting such relief. The TRK Plaintiffs have not introduced any new evidence into the record, much less evidence sufficient to warrant reconsideration of that ruling.

- None of TRK Plaintiffs has made any allegation that Fastow acted as a fiduciary of the 401(k) Plan. Despite their effort to characterize their claims against Fastow as arising under ERISA, the TRK plaintiffs' only claims against Fastow, to the extent they have any, would arise as shareholders of Enron. Shareholder claims are subject to stay of the Private Securities Litigation Reform Act of 1995, as the Court reaffirmed in its Scheduling Order. The Court's scheduling order does not contemplate any discovery other than that unique to the ERISA plan prior to July 1, 2002, when class discovery would begin. The TRK Plaintiffs have offered no reason to deviate from that Scheduling Order.
- As with the expedited discovery motion filed by Amalgamated Bank, which is still pending, the TRK Plaintiffs have made no evidentiary showing to justify lifting the PSLRA's discovery stay.

Fastow adopts the Opposition to the TRK Plaintiffs' Motion filed by Defendants Richard B. Buy, Richard A. Causey, and Cindy K. Olson and incorporates by reference his prior Response to Plaintiff Amalgamated Bank's Brief in Support of Expedited Discovery. In the interests of brevity, the arguments advanced in those pleadings are not set out here. For the reasons stated herein and the pleadings incorporated by reference, Fastow respectfully requests that the Court deny the TRK Plaintiffs' Motion.

Respectfully submitted,

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