United States Courts
Southern District of Texas
FILED

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Michael N. Milby, Clerk

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

In re ENRON CORPORATION SECURITIES LITIGATION	§	Civil Action No. H-01-3624
This Document Relates To:	§	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	
PAMELA M. TITTLE, on behalf of herself and a class of persons similarly situated,	§	Civil Action No. H-01-3913
Plaintiffs,	§	
vs.	§	
ENRON CORPORATION, et al.,	§	
Defendants.	§	

JOINT RESPONSE OF *NEWBY* PLAINTIFFS AND *TITTLE* PLAINTIFFS TO DEFENDANTS' MOTION TO SET ASIDE THE COURT'S JUNE 5, 2002 ORDER REGARDING SERVICE OF PAPERS AND NOTICE OF HEARINGS VIA WEB SITE

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On June 5, 2002, this Court issued an Order Regarding Service of Papers and Notice of Hearings Via Independent Web site. On June 6, 2002, defendants Credit Suisse Boston Corporation, Barclays PLC, Merrill Lynch & Co., Inc., Bank of America Corp., Citigroup, Inc., J.P. Morgan Chase & Co., and Arthur Andersen, LLP filed a motion to set the June 5th Order aside. In response to the defendants' motion, the Court issued an Order on June 10, 2002 setting aside the June 5th Order and requiring the parties to confer on the issue of the Web site and to attempt to come to an agreement. As is demonstrated on the attached exhibits, a clear majority of the firms are in favor of the continued use of the existing Web site. The *Newby* and *Tittle* plaintiffs submit the following Joint Response of *Newby* Plaintiffs and *Tittle* Plaintiffs to Defendants' Motion to Set Aside the Court's June 5, 2002 Order Regarding Service of Papers and Notice of Hearings Via Web site. As this Court is aware, the *Newby* and *Tittle* actions involve numerous parties, many of whom are represented by more than one counsel. To ease the burden on the parties to these actions, the counsel listed on the attached Exhibit A have agreed to the use of the Web site described in the proposed Order submitted herewith for serving papers in these actions which outlines the procedures for service of papers. The counsel listed on the attached Exhibit B have not agreed to the use of this Web site. The counsel listed on the attached Exhibit C were consulted with regard to this matter and have stated that they wish to take no position. The counsel listed on the attached Exhibit D were contacted, but were either unavailable or did not respond. The parties were unable to come to an unanimous agreement.

The Web site known as www.esl3624.com was created at the request of Milberg Weiss in response to the problems with email service demonstrated when the defendants' motions to dismiss were filed. Many of the parties in this case simply do not possess the equipment nor access to a server with sufficient capacity to receive documents in excess of 4MB. Due to the fact that most of the motions to dismiss were in excess of 4MB, several firms experienced complete system failure. As a result, service of the motions to dismiss was, in many cases, seriously delayed. Anticipating that the plaintiffs' oppositions to the motions to dismiss would result in similar difficulties, Milberg Weiss suggested the construction of a Web site, open to all the parties which would allow for the posting of larger documents and eliminate the need for significant and costly equipment upgrades

for participating law firms. There being no other person or law firm willing to accept the responsibility of this project on short notice, Milberg Weiss took it on. To be clear, the Web site was never intended to become a permanent fixture within the offices of Milberg Weiss. It has always been the plan to turn over the Web site operation and maintenance to the Depository Administrator as soon as that entity is agreed upon by the parties. For reasons not exactly clear to the plaintiff parties, the fact that Milberg Weiss established the Web site has made it suspect. This Web site merely receives filings and sends email notices to each registered party that the documents have been posted to the communal Web site. It has no other function, nor does it need any. It can be operated from any computer with internet access. To reiterate, both plaintiffs and defendants have equal access to the site.

Several of the parties, most notably Andersen and the Bank Defendants have proposed the use of a "neutral and experienced web-based service system." Specifically, the Bank Defendants have proposed the use of Verilaw Technologies, Inc. ("Verilaw"). To be clear, plaintiffs have no concern with either the neutrality nor the experience of Verilaw at creating web-based service systems. However, when queried as to just why they insist on such a system, few of the defendants have been able to clearly articulate any other reason to replace the existing system except for the rather obvious one. They object to the fact that Milberg Weiss was instrumental in its creation.

Verilaw Technologies, Inc. is a electronic service system based in Pennsylvania. They provide a multitude of services ranging from those similar to what we have now to the creation and maintenance of enormous online document repositories, providing world-wide email access to scanned images of evidentiary materials. They have impeccable credentials and given different circumstances, Milberg Weiss would have no objection to their engagement on the Enron Securities Litigation. It is, in this instance, a matter of cost. Verilaw charges $350.00 per firm as a "set up fee." At present, and including the newly added MDL 1446 firms, there are well over 250 separate firms now participating in the consolidated cases. Even assuming that most of the filings will be handled through lead counsel, that set up fee is due from each firm that wishes to view the documents. The set up fee comes to approximately $87,500.00. In addition, there is a $10 per document charge for each and every document filed on the Verilaw site. In the nine months since *Newby* was filed, there

have been 877 documents filed. In seven months, there have been 325 documents filed in *Tittle*. If Verilaw had been involved in *Newby* and *Tittle* from the beginning, the cost for the filings alone would have been in excess of $12,000.00, amounting to a total cost of $108,290.00. There are additional charges for documents that are faxed or sent by Federal Express. The defendants consistently refer to the Verilaw charges amounts as "minimal" and "inconsequential." Assuming that this case goes on for some time, that "minimal" fee could easily climb into several hundred thousand dollars. If the eyes of the world are truly upon us, one can only imagine the surprised expressions on the faces that are told that there was another option to this "minimal" expense. Imagine their further surprise when they realize that the available option was absolutely free. To date, Milberg Weiss has spent $32.00 on the creation and maintenance of www.esl3624.com, a cost that they are willing to absorb in its entirety. There is no limit to the number of users that can access the documents. Indeed, several firms have added every person working on the Enron case, including secretaries, paralegals and clerks. There is no charge to file the documents. There is no charge to download the documents. To be fair, Verilaw does offer some features that www.esl3624.com does not have. For instance, Verilaw offers a process called "threading" which amounts to a kind of bulletin board set up for each document. Users can make comments on the document and later users can make additional comments to those previous comments. It is a convenience, not a necessity.

In addition to Verilaw, there are literally thousands of litigation support firms that could be engaged in making the preparation of these consolidated cases much more convenient and less taxing on the attorneys involved. However, plaintiffs strongly object to the notion that any part of the costs of these unnecessary conveniences should be shifted to the class. Preparing for litigation is after all what the law firms are supposed to do.

The Web site is working very well. Since the date the site went live, June 5, 2002, there have been a total of three complaints, each remedied quickly and each of which was later traced either to the complainant's system or to the complainant's lack of proficiency at certain software applications required for download. On the average, the site sends out approximately 1,250 emails per day. It maintains an internal log of each email sent and received, a copy of which is available to any party for the asking.

Plaintiffs respectfully request that the Court enter an Order reinstating www.esl3624.com and allowing for its continued use until such time as it is turned over to the Depository Administrator on the date that the Depository Administrator is engaged.

In addition, as the Court is also aware, there have been a number of ex parte applications and emergency hearings in these actions already. To ease the burden on the Court and on the parties, and to ensure that all parties receive timely notice of all hearings in these actions, the parties request that the Court enter an Order requiring any party requesting or scheduling a hearing with less than 48 hours advance notice to immediately post that information on the Web site described in the attached Order. Counsel listed on the attached Exhibit A have agreed to the use of the Web site described in the proposed Order submitted herewith for this purpose. The counsel listed on the attached Exhibit B have not agreed to the use this Web site for this purpose. The counsel listed on the attached Exhibit C were consulted with regard to this matter and have stated that they wish to take no position. The counsel listed on the attached Exhibit D were contacted, but were either unavailable, or elected not to respond.

The parties listed on Exhibit A believe that entry of the Order Regarding Service of Papers and Notice of Hearings Via Web site will facilitate the just and efficient progress of these actions. Accordingly, those parties request that the Court enter the proposed Order attached to this Motion.

DATED: June 20, 2002

Respectfully submitted,

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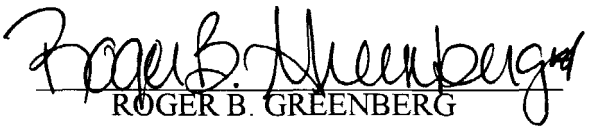

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The Exhibits May

Be Viewed In The

Office of the Clerk

The Service List

Attached

to this document

may be viewed at

the

Clerk's Office