

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

AUG 1 2005

Michael N. Milby, Clerk of Court

In re ENRON CORPORATION SECURITIES
LITIGATION

§ MDL Docket No. 1446

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§ Civil Action No. H-01-3624

§ **(Consolidated Coordinated**

§ **and Related Cases)**

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§ CLASS ACTION

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This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

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.

[Caption continued on next page]

~~PROPOSED~~ AMENDED ORDER WITH RESPECT TO DEPOSITIONS
SUBJECT TO STAYS AND FIFTH AMENDMENT ASSERTIONS

**[PROPOSED] AMENDED ORDER WITH RESPECT TO DEPOSITIONS
SUBJECT TO STAYS AND FIFTH AMENDMENT ASSERTIONS**

Upon consideration of the Motion of the Bank Defendants For Entry of an Amended Order with Respect to Depositions Subject to Stays and Fifth Amendment Assertions (“Motion”), it is hereby:

ORDERED that the Motion is **GRANTED**; and it is further **ORDERED** that:

1. Mark E. Koenig’s motion to postpone discovery and stay responsive pleadings is granted *nunc pro tunc* to August 25, 2004, to the same extent of the stay granted to Andrew Fastow.
2. The stays due to pending criminal proceedings of the following witnesses are lifted for the limited purpose of document discovery: Richard Causey, David Duncan, Andrew Fastow, Kevin Hannon, Joseph Hirko, Mark Koenig, Michael Kopper, Kenneth Lay, Kenneth Rice, and Jeffrey Skilling (the “Stayed Defendant Witnesses”).
3. Any stay applicable as to any individual Stayed Defendant Witness (other than Kenneth Lay) shall be deemed lifted for all purposes upon the close of evidence in the case *United States v. Causey, et al.*, No. 4:04-cr-00025 (S.D. Tex.) (“*United States v. Causey*”), now scheduled to commence trial on or about January 17, 2006. With respect to Mr. Lay, any applicable discovery stay shall be deemed lifted for all purposes upon the close of evidence in *United States v. Kenneth L. Lay*, No. H-04-25(S-2) (“*United States v. Lay*”), now scheduled to commence upon the submission of *United States v. Causey* to the jury. Should the timing of one or both of these criminal trials change, any party may seek appropriate modification of this Order.

4. To the extent not previously completed, the parties shall have 50 days starting on the date two weeks after the close of evidence in *United States v. Causey* to conduct the following discovery:

- (a) depositions of (i) the Stayed Defendant Witnesses, and (ii) any other witness whose deposition by Order of this Court is stayed due to that witness's expected testimony in *United States v. Causey* (the "Additional Stayed Witnesses");
- (b) depositions of any witnesses who have invoked Fifth Amendment rights during the course of fact discovery (the "Fifth Amendment Witnesses").

5. If the name of a Fifth Amendment Witness or Additional Stayed Witness does not appear on the witness lists to be filed in *United States v. Causey*, then the parties may schedule that witness's deposition to be taken any time after the witness lists are exchanged, up to and including the end of the period set forth in paragraph 4 of this Order.

6. Upon the written request of any party, the Stayed Defendant Witnesses, the Additional Stayed Witnesses, and the Fifth Amendment Witnesses must inform the requesting party as soon as practicable whether they intend to assert their Fifth Amendment rights (or in the case of the Fifth Amendment Witnesses whether they intend to revoke in whole or in part prior Fifth Amendment assertions) if deposed during the period set forth in paragraphs 4 or 5 of this Order. All parties shall have the right to

challenge, by motion to compel and in a manner consistent with federal law, any assertion of the Fifth Amendment they believe to be improper.

7. The Deposition Scheduling Committee is free to notice the depositions and begin the process of scheduling (including through service of subpoenas) the depositions of the Stayed Defendant Witnesses, the Additional Stayed Witnesses and those Fifth Amendment Witnesses who indicate they will revoke their Fifth Amendment invocation at any time so long as each of the Stayed Defendant Witnesses and Additional Stayed Witnesses is not deposed until after the close of evidence in *United States v. Causey*, or, as to Mr. Lay only, five days after the close of evidence in *United States v. Lay* (unless otherwise covered by paragraph 5 of this Order). The rules governing depositions outlined in the Deposition Protocol Order (as amended) shall apply to this limited extension of the fact discovery period, except as follows:

- (a) there shall be no “off week”;
- (b) up to three Extended-Time Witnesses may be deposed on any one day without regard to the party with which that Extended-Time Witness may be affiliated (subject to subparagraph 7(c) below);
- (c) absent consent by the law firm, only one deponent -- including any Extended-Time Witness -- represented by a particular law firm shall be deposed on any one day;
- (d) the depositions of Messrs. Fastow, Causey, Lay and Skilling shall not overlap with each other.

In addition, the normal nominating process and certain other procedures (as determined by the Deposition Scheduling Committee) shall be modified so as to permit discovery of

the limited group of witnesses covered by this Order within the limited time allowed.

The scheduling of the depositions will take place as expeditiously as possible with the understanding that depositions may need to be scheduled on relatively short notice, which shall be deemed to be no less than 10 days.

8. Any witness served a subpoena in connection with this Order and the Deposition Protocol Order (as amended) shall also be served a copy of this Order and the Deposition Protocol Order (as amended) so that the witness can be informed of the provisions of the Deposition Protocol Order (as amended) and this Order, including those provisions regarding notice of Fifth Amendment invocations. Such witnesses shall be subject to the terms of this Order with respect to Fifth Amendment invocation procedures.


9. Expert reports may be supplemented within 30 days of the close of this limited fact discovery period if testimony given subsequent to the report's original filing substantively alters the expert's conclusions. Parties shall have the option of reopening for a limited time period the deposition of any expert who so supplements his or her report. Reports need not be updated merely to discuss or reference additional testimony and no expert shall be precluded from relying on testimony generated during this additional fact period at trial merely because it was not referenced in his or her report, so long as the expert's reliance on testimony not so referenced does not substantively alter the expert's conclusions.

10. Motions for summary judgment in *Newby* and *Tittle* may be filed up to and including May 15, 2006. Opposition to a summary judgment motion filed on or before April 14, 2006 is due 45 days after the motion is filed. Opposition to a summary

judgment motion filed after Friday, April 14, 2006 is due on or before June 30. All replies are due 30 days after the opposition is filed. Summary judgment motions, oppositions and replies may be supplemented within 20 days of the close of this limited fact discovery period if necessary to incorporate the depositions completed subsequent to the filing of a given summary judgment motion, opposition or reply. This paragraph shall not affect the schedule of summary judgment briefing for any cases pending before the United States Bankruptcy Court for the Southern District of New York.

11. Nothing in this Order precludes any party from seeking further relief on any scheduling matter.

SIGNED at Houston, Texas, this th 28 day of July 2005.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

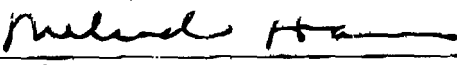
SIGNED at New York, New York, this ___ day of ___ 2005.

ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

judgment motion filed after Friday, April 14, 2006 is due on or before June 30. All replies are due 30 days after the opposition is filed. Summary judgment motions, oppositions and replies may be supplemented within 20 days of the close of this limited fact discovery period if necessary to incorporate the depositions completed subsequent to the filing of a given summary judgment motion, opposition or reply. This paragraph shall not affect the schedule of summary judgment briefing for any cases pending before the United States Bankruptcy Court for the Southern District of New York.

11. Nothing in this Order precludes any party from seeking further relief on any scheduling matter.

SIGNED at Houston, Texas, this th 28 day of th July, 2005.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

SIGNED at New York, New York, this th 28 day of th July, 2005.



ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE