



Temporary Restraining Order, and the exhibits offered and admitted at that hearing, the Regents' application for a temporary restraining order is GRANTED for the reasons stated below.

The Court finds to be mere verbal manipulation the argument that if Richardson, Stoops waits until attorneys' fees for the representation of the *Newby* class are in Lerach's hands and then pursues him, Richardson, Stoops is not seeking class action fees or affecting the class. Instead Richardson, Stoops' artful characterization appears to be a blatant attempt not only to avoid this Court's jurisdiction, but to circumvent the PSLRA's provisions that Lead Plaintiff, once appointed, oversees and controls which counsel participate on the class's behalf and what remuneration they receive.

The Court finds that the Regents will suffer immediate and irreparable injury if a temporary restraining order is not entered because Richardson, Stoops' California state court lawsuit presents a present and ongoing interference with The Regents' prosecution of this litigation as Lead Plaintiff. First, the California lawsuit seeks a judgment that Richardson, Stoops has "earned" a fee for its alleged work on the Enron case. Under the PSLRA, it is The Regents as Lead Plaintiff, subject to the exclusive jurisdiction and oversight of this Court, who has the exclusive right to determine whether alleged class counsel have earned or are entitled to a fee. Second, the California lawsuit asserts a claimed right to increased involvement in the prosecution of the Enron class action in order to enhance a claimed entitlement to a fee from the class recovery. The Regents, as Lead Plaintiff, have the exclusive authority, again, subject to this Court's exclusive jurisdiction and oversight, to select counsel to represent the class and approve their fee. The California lawsuit also harms the Regents because Richardson, Stoops, in an action in which The Regents are not a party, has demanded the production of The Regents' privileged documents and has otherwise served discovery that seeks to invade The Regents'

evidentiary and work product privileges. As a result, there is a present and immediate danger that the California court may authorize discovery or make findings that interfere with the Regents' and this Court's supervisory responsibilities in the *Newby* class action. Additional immediate and irreparable harm to The Regents is present in the prospect that the proceedings in the California lawsuit will frustrate the ongoing proceedings in this case as important settlement, pre-trial, and appellate matters are conducted in anticipation of the April 2007 trial date.

In addition, Richardson, Stoops' California state court lawsuit presents the likely danger of conflicting orders or judgments being issued by this Court and the California state court regarding Richardson Stoops' entitlement (a) to work as counsel to the class in this litigation or (b) to receive any portion of the attorneys' fees that may be awarded to counsel for the class in this litigation. This presents a serious and immediate risk of inconsistent determinations regarding who is representing the class in this litigation, who is entitled to work on the case, who is the Lead Plaintiff's counsel, and what fees that counsel may earn. As Lead Plaintiff, the Regents, with this Court's approval and supervision, are entitled to determine who serves as counsel to the class and what fees those attorneys earn for their work pursuant to the PSLRA. Richardson, Stoops' California state court lawsuit presently and seriously interferes with all of Lead Plaintiff's rights and responsibilities pursuant to the PSRLA and this Court's Lead Plaintiff Order, all of which are exercised under the exclusive jurisdiction and supervision of this Court.

The above-described injuries are irreparable because Richardson, Stoops' efforts to circumvent the statutorily prescribed role of the Lead Plaintiff to select class counsel, and to determine how they will be paid, cannot be fixed by a monetary or any other form of judgment if a conflicting order or judgment is entered by the court in Richardson, Stoops' California state court lawsuit. The resulting impact on the Lead Plaintiff if the California lawsuit is permitted to

proceed cannot be measured or compensated with money damages. Nor can the imminent and serious harm from the invasion of The Regents' attorney-client privilege, or the involuntary disclosures of their counsel's work product, be remedied by an award of money damages from Richardson Stoops after these sensitive, privileged documents have been disclosed.

The Regents have no adequate remedy at law because (a) the harm caused by Richardson, Stoops cannot be undone by monetary damages and (b) this Court's exclusive jurisdiction over the matters at issue, including, without limitation, its oversight of class counsel, its supervision of fee awards, and its management of this complex securities class action, cannot be repaired after the California state court issues orders or judgments affecting and/or impairing the Regents' and this Court's statutory and rule-based responsibilities under the PSLRA and Federal Rule of Civil Procedure 23 to, respectively, represent the class and manage this litigation.

The above-described harm faced by The Regents, and the overt interference with this Court's jurisdiction presented by the California lawsuit, outweighs any harm that will be sustained by Richardson Stoops by the issuance of this temporary restraining order. Richardson, Stoops will suffer no or minimal harm by being compelled to litigate its claims to an award of fees in the only court that has exclusive jurisdiction to hear it; namely, the United States District Court for the Southern District of Texas. In contrast, the Regents and the *Newby* class will suffer significant and irreparable harm if the state court lawsuit is allowed to proceed. The Enron Litigation is a complicated, multi-party, consolidated, and lengthy lawsuit that has taken thousands of hours of the Court's, counsel's, and the parties' time to organize procedurally and to litigate substantively. Richardson, Stoops' efforts to circumvent this process by seeking in California state court relief and a fee award that is within the exclusive jurisdiction of this Court significantly outweighs any merits Richardson, Stoops proffers for its state court lawsuit.

Issuance of this temporary restraining order does not adversely affect the public interest or public policy. Rather, it advances the public interest and public policy embodied in the PSLRA by ensuring that Lead Plaintiff, as supervised by the Court, both controls the selection of counsel that purport to represent the class and ensures that the resources of the class are not wasted by excessive or unearned fees. Lead Plaintiff's control of these matters is essential to the ability of this Court and the parties to handle this massive litigation expeditiously rather than scattershot throughout multiple jurisdictions whose courts may enter rulings that conflict with the Lead Plaintiff's determination concerning who should serve as class counsel and who should be awarded a fee for serving as such. That, under the PSLRA, is a matter that rests solely within the exclusive jurisdiction of this Court.

In addition, the Court enters this temporary restraining order pursuant to the All Writs Act as necessary in aid of its jurisdiction and as expressly authorized by Acts of Congress. This Court has statutory and rule-based jurisdiction to: (a) appoint the lead plaintiff in a securities class action pursuant to 15 U.S.C. § 78u-4(a)(3); (b) approve the lead plaintiff's selection and retention of counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v); and (c) approve class counsel's fees and expenses pursuant to 15 U.S.C. § 78u-4(a)(6). Richardson, Stoops' California state court lawsuit threatens to interfere with this Court's exclusive jurisdiction to determine who may or will serve as counsel to the Lead Plaintiff and what fees that counsel may earn. In light of the fact that this Court has already appointed the Lead Plaintiff, there is an additional serious risk that the relief requested in Richardson, Stoops' California state court lawsuit will duplicate or contradict relief already granted by this Court and thus collaterally attack this Court's prior rulings as well as its ability, based upon those rulings, to approve the fees awarded to class counsel. Such actions fall within the "necessary in aid of its jurisdiction" exception to the Anti-

Injunction Act. *See, e.g., Newby v. Enron Corp.*, 338 F.3d 467 (5th Cir. 2003); *Newby v. Enron Corp.*, 302 F.3d 295 (5th Cir. 2002); *In re Diet Drugs*, 282 F.3d 220 (3rd Cir. 2002).

In addition, Richardson, Stoops' California lawsuit seeks to circumvent and frustrate the statutory duties of the lead plaintiff and lead counsel under the PSLRA, as set forth above. An injunction to prohibit that interference falls within the "expressly authorized by Acts of Congress" exception to the Anti-Injunction Act. *See In re BankAmerica Corp. Secs. Litig.*, 263 F.3d 795, 801-04 (8th Cir. 2001).

There is a substantial likelihood that the Regents will prevail on the merits that Richardson, Stoops' lawsuit is an improper attempt to circumvent their proper role as Lead Plaintiff in this litigation as well as this Court's jurisdiction, and therefore, it is proper for this Court to enjoin the prosecution of Richardson, Stoops' California state court lawsuit.

Therefore, it is ORDERED that:

1. The law firm of Richardson, Stoops, Richardson & Ward (a/k/a Richardson Law Firm, P.C.) and its officers, partners, employees, agents, counsel, and all persons acting in concert with it are restrained, enjoined, and prohibited from (a) prosecuting the California state court lawsuit currently on file in the Superior Court of the State of California (County of Los Angeles) as Case No. BC359832 and (b) pursuing the claims brought in that lawsuit in any court other than before the Honorable Melinda Harmon of the United States District Court for the Southern District of Texas (Houston Division).

2. The Regents will post a bond in the amount of \$1,000.00

3. The Clerk of this Court will issue notice that a hearing on the Regents' application for a preliminary injunction is set for February 8, 2007 at 9:30 a.m.

Signed at Houston, Texas, this 26<sup>th</sup> day of January, 2007.

*Melinda Harmon*

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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE