UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§	Civil Action No. H-01-3624
	§	**(Consolidated)**
	§	
	§	CLASS ACTION
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.	§	

LEAD COUNSEL'S RESPONSE TO LETTER FROM P.E. ILAVIA (DOCKET NO. 5948) PURSUANT TO ORDER DATED APRIL 3, 2008 (DOCKET NO. 5949)

Mr. P. E. Ilavia wrote to the Court on March 29, 2008, asking that the Enron common shares received through the stock split in 1999 be included as an "acquisition" in and compensated under the Plan of Allocation ("Plan"). We understand that to mean Mr. Ilavia wants the stock acquired through the stock split to be treated as if holders "bought" the additional stock at the time of the split. Lead Counsel responds as follows.

Mr. Ilavia attended both sessions of the workshops for investors held in Houston on March 27 and 29. Representatives from Gilardi & Co. ("Gilardi"), the claims administrator, and Lead Counsel were there to answer questions regarding filling out the proof of claim forms. Each of the meetings was attended by over 200 people. After a short presentation addressing frequently-asked questions and the basics of filling out the proof of claim forms, Gilardi personnel and Lead Counsel answered questions from dozens of individuals. One of the questions was whether stock acquired through the stock split would be covered by the Plan. The answer is that such stock is not included for distribution under the Plan.

In August, 1999, Enron effected a 2-for-1 stock split. That simply means that every share of Enron common stock became two shares. If you held 10 shares on August 13, 1999, the effective date of the split, you had 20 shares thereafter. Importantly, there was no payment made or other consideration given for the additional shares. A respected corporate finance text refers to split transactions like this as a "free gift" of shares. *See* Richard A. Brealey and Stewart C. Myers, *Principles of Corporate Finance*, 291 (McGraw Hill, 3d ed. 1988). After the stock split, holders simply had twice as many shares and each of those shares traded at 1/2 the price on the day of the stock split (*i.e.*, on August 13, 1999, the pre-split Enron shares traded for $87.688 per share and on the next trading day, August 16, 1999, they traded for $43.875 per share).

The Plan provides that: "For each unit of . . . Enron common stock, . . . purchased in the Eligible Period, the Recognized Loss . . . is the dollar amount of the inflation in the Purchase Price

Paid at date of acquisition times the number of units acquired, minus the dollar amount of inflation in the Sale Price Received at date of sale if sold prior to December 3, 2001, times the number of units sold." *See* Corrected Order Approving Form and Manner of Notice (Docket No. 5789) at 14. "Purchase Price Paid" is defined as "the amount paid or value of the consideration given for each unit of the security." *Id*. Because the amount paid or consideration given for the stock received through the stock split is zero at the time of the split, the "Purchase Price Paid" for stock acquired through the stock split is zero. *Id*. Essentially, because holders paid nothing to "acquire" the stock through the stock split, they have no Recognized Loss under the Plan for the acquisition of those additional shares received as a result of the split. Significantly, the calculation of the claim of an Eligible Claimant who purchased Enron common stock ***during*** the Eligible Period and later received split shares is unaffected by the stock split transaction. That is to say, such an Eligible Claimant is neither advantaged or disadvantaged by the stock split since the claim will be calculated based on the pre-split price paid at the time of the purchase and on the number of pre-split shares purchased.

While Lead Counsel wants to facilitate distribution of settlement funds to the former Enron employees,[1] the fundamental goal of the Plan is to distribute settlement funds based on the economic realities of the claimants' transactions and to compensate Eligible Claimants for fraud-based damages. Accordingly, real economic losses are determined based on the amount paid or consideration given at the time of the stock acquisition. When nothing was paid and no consideration was given to acquire the stock, as in the stock split, there is no compensable economic

[1] Mr. Ilavia's assertion that former employees will be particularly disadvantaged by this treatment is incorrect as the split shares were received by ***all*** Enron shareholders, not just Enron employees, at the time of the split transaction. Consequently, the number of shares of Enron stock outstanding doubled from 356,916,343 to 715,613,151.

loss for those additional shares received. No reasonable basis upon which to revise the Plan has been offered.

DATED: April 10, 2008

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD COUNSEL'S RESPONSE TO LETTER FROM P.E. ILAVIA (DOCKET NO. 5948) PURSUANT TO ORDER DATED APRIL 3, 2008 (DOCKET NO. 5949) document has been served by sending a copy via electronic mail to serve@ESL3624.com on April 10, 2008

I also certify that a copy of the above-mentioned document has been served via U.S. MAIL on the parties listed on the attached "Additional Service List" on this 10th day of April, 2008.

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