UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORP. SECURITIES LITIGATION	)	Civil Action No. H-01-3624 **(Consolidated)**
This document relates to: MARK NEWBY, et al., individually and On behalf of all others similarly situated,	)	CLASS ACTION
Plaintiffs,	)	
v.	)	
ENRON CORP., et al.,	)	
Defendants.	)	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., individually and on behalf Of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	
KENNETH LAY, et al.,	)	
Defendants.	)	

SUPPLEMENTAL OBJECTIONS TO FEE PETITION

Class Members George S. Bishop, Jill R. Bishop, Lon Wilkins and Betty Wilkens ("Objectors") hereby file this supplemental objection to Class Counsel's request for attorney's fees, responding to the filing of their time records, pursuant to this Court's April 16, 2008 Order.

While two weeks is not sufficient time to adequately review the volume of records that were filed with the Court on April 30, 2008, a cursory review of those records, and in particular the yearly summaries of lodestar by the Coughlin Stoia firm, permit the following observations.

This Court's announcement in its Order that it will employ the lodestar method as a cross-check on the fee negotiated by the Regents signals a sensible attempt to determine whether the chosen methodology makes a difference. In other words, does the fee that results from application of traditional and established Fifth Circuit fee jurisprudence differ from the one that Regents negotiated with Class Counsel at the beginning of this case? If it does not, then this Court need not resolve the issue (one of first impression in this Circuit) of whether the PSLRA displaces prior fee jurisprudence and mandates the use of the percentage method *and* deference to the *ex ante* fee agreement.[1] If, on the other hand, the fee that would result from the application of Fifth Circuit lodestar methodology differs substantially from the percentage fee agreed to by the Regents, then this Court will have to resolve that issue, since it will make an enormous difference in the amount of attorney's fees that may be awarded.

The mandatory Fifth Circuit methodology was most recently confirmed in *In re: High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220 (5th Cir. 2008). The timing of this decision was fortuitous for this case, since Class Counsel and their experts had argued in their fee memorandum and affidavits that the passage of time had somehow eroded this Circuit's adherence to *Strong v. Bellsouth Telecomms., Inc.*, 137 F.3d 844 (5th Cir. 1998) and other earlier cases that had clearly adopted the lodestar methodology as the only permissible way of calculating attorney's fees in this Circuit.

[1] At least one federal district court has held that the PSLRA does not mandate use of the percentage-of-recovery method for calculating fees in securities actions, and that the provision of the PSLRA that limits attorney's fees to "a reasonable percentage of the amount of any damages… actually paid to the class" is simply that, a limitation, and not a prescription for the methodology to be used in computing fees. *In re Microstrategy, Inc. Sec. Litig.*, 172 F. Supp.2d 778, 785 (E.D. Va. 2001). *Accord In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 760-61 (S.D. Ohio 2007) (neither Sixth Circuit nor PSLRA has established controlling rule for calculating attorney's fees in PSLRA cases). As far as the Objectors have been able to determine, no federal court of appeals has yet resolved this issue.

In *High Sulfur*, the Fifth Circuit once again affirmed that the *only* proper method for determining attorney's fees in this Circuit begins with a lodestar calculation:

> This circuit requires district courts to use the "lodestar method" to "assess attorney's fees in class action suits." *Strong*, 137 F.3d at 850. The district court must first determine the reasonable number of hours expended on the litigation and the reasonable hourly rate for the participating attorney. *Id.* The lodestar is then computed by multiplying the number of hours reasonably expended by the reasonable hourly rate. *Id.* The district court may adjust the lodestar upward or downward after a review of the twelve factors set forth in *Johnson*. *Forbush*, 98 F.3d at 821. After the court calculates the lodestar, it must scrutinize the fee award under the *Johnson* factors and not merely "ratify a pre-arranged compact." *Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir. 1980)…

High Sulfur, 517 F.3d at 228.[2]

The Objectors cannot imagine a clearer rejection of the fee methodology urged by Class Counsel in this case. By asking this Court to adopt and defer to the fee agreement negotiated by Regents and Lead Counsel at the inception of this case, they are in effect asking it to "ratify a pre-arranged compact" that would grossly overcompensate Class Counsel under the twelve *Johnson* factors.

Class Counsel's time records illustrate the enormous difference that application of lodestar principles would have on the amount of a reasonable fee. The bulk of the settlements in this case were achieved by mid-2005. The Citibank, JP Morgan and CIBC settlements, totaling $6.6 billion, were announced in June and August of 2005. As of the summer of 2005, the risk associated with this case, *i.e.* the risk of non-recovery, disappeared. Along with it went the risk that Class Counsel would not be paid for every

[2] At the fairness hearing, Class Counsel argued that *High Sulfur* is limited to its facts and only applies to the issue of fee allocation among different law firms, rather than setting the overall amount of a fee. That is utter nonsense. Nowhere in the above quotation does the Fifth Circuit refer to allocation. Indeed, the quoted excerpt appears at the beginning of the "Discussion" section of the opinion, and serves as a preamble in which the Fifth Circuit set forth the general rules about awarding fees in class actions, before proceeding to address the specific procedural defects that attended the allocation process in that case.

hour that it spent working to achieve the settlements, and likely a very generous multiple of that time.

According to the end of year totals provided by Coughlin Stoia in its time records, Coughlin Stoia had the following total lodestar as of mid-2005 when it secured the bulk of the settlement monies:

2001	$2.4 million
2002	$15.4 million
2003	$12 million
2004	$19.2 million
2005	$10.4 million[3]
Total 2001-mid 2005	**$59.4 million**

Under Fifth Circuit precedent, this is the only portion of the lodestar that may be subjected to a multiplier. All time incurred post-settlement, while certainly compensable, may not be enhanced by a risk multiplier, since there was no longer any risk to Class Counsel. Under their agreement with the Regents, they were entitled to a fee of up to $630 million (as an upper limit) just for the three 2005 bank settlements. This guaranteed that they could receive full compensation for all of the time they had devoted to the case, along with a reasonable multiplier, and still come in well under the cap established by the fee contract.

Lead Counsel has requested that a 5.4 risk multiplier be applied to their lodestar. If the requested multiplier, which even Professor Coffee admits is beyond the high end of the range typically awarded by courts in securities settlements, is applied to that portion

[3] This amount was calculated by dividing the 2005 total lodestar in half, assuming that it was evenly distributed over the year and that half of it had been incurred by June 2005.

of their lodestar that was incurred when risk still attached to the case (*i.e.*, pre-settlement), the resulting figure is $320 million.

If $59.4 million of Coughlin Stoia's lodestar was incurred prior to summer of 2005, that means that the rest of the claimed lodestar, or almost $50 million, was incurred after the settlements. This time is not entitled to any risk multiplier. Furthermore, most of the post-2005 time was not spent seeking approval of the settlements, but instead was spent pursuing non-settling defendants, and attempting to influence the outcome of a separate case that was thought to have *res judicata* potential for what was left of this case.

This is where the Fifth Circuit lodestar methodology and the method endorsed by Lead Counsel diverge most significantly. For purposes of cross-checking the parties' negotiated fee, it is perhaps reasonable to count every hour that Lead Counsel spent pursuing any and every defendant in this case, and even hours spent trying to influence the outcome of other cases. The Regents hired Lead Counsel to pursue each of those defendants, and presumably it would be willing to give Lead Counsel credit for all of the hours worked, even those spent on unsuccessful cases and strategies.

For purposes of awarding a fee under Fifth Circuit caselaw, however, the lodestar must be limited to the hours spent obtaining the settlements that serve as the predicate for the fee request. "The lodestar is then computed by multiplying the number of hours *reasonably expended* ..." *High Sulfur*, 517 F.3d at 228 (emphasis added). "Reasonably expended" means hours that produced or led to the settlements that underlie the fee request, and excludes hours that were not necessary to produce the recovery. Post-settlement hours spent pursuing non-settling defendants are by definition not reasonably expended.

While it may be reasonable to count all of the hours spent pre-settlement, regardless of which defendant they specifically relate to, once the bulk of the settlement was achieved in 2005, the majority of Lead Counsel's time was spent, by definition, on unsuccessful cases against non-settling defendants. The class members may not be charged for this time against their recoveries from the settling defendants, since none of that time was necessary to the achievement of the settlement.

While the Objectors did not have sufficient time in the two weeks provided to comb through all of the time records in order to determine how much of the post-settlement time was directed to unrelated proceedings, the portion is certainly substantial. As an example, this excerpt from Lead Counsel Fee Brief at p. 40 gives a sense of the scale of the effort directed at a completely separate case with virtually no relationship to the settlements at hand:

> [T]he Firm directed a massive effort in developing a major *amicus curiae* effort in support of the plaintiffs' fraudulent scheme-conduct position in the *Stoneridge* case… And the Firm orchestrated a national effort to persuade the SEC to recommend to the Solicitor General that the SEC appear in the Supreme Court as *amicus curiae* in support of fraudulent scheme/conduct liability. This involved sophisticated efforts directed at legislators and regulators in Washington, DC, combined with a major public relations strategy, including press conferences with victims of defendants' misconduct in Washington, DC and Houston. As a result of Lead Counsel's educational efforts, several national labor leaders and major newspapers, including the New York Times and Los Angeles Times, and writers, like Ben Stein, spoke out and wrote in favor of the SEC siding with investors.

None of this is compensable time against *this* settlement. Perhaps one day it will all be justified by some future settlement against a holdout defendant. The preceding description certainly sounds as if a great deal of Lead Counsel's post-summer 2005 lodestar was spent on these extraneous matters, and perhaps as much as $30 million of the time they are now claiming as lodestar in the present fee application.

Certainly, Lead Counsel should be compensated for every hour worked post-settlement on settlement-related tasks, such as settlement approval proceedings, the plan of allocation and claims administration.[4] But Lead Counsel should receive no multiplier on that time, because Lead Counsel was guaranteed full compensation for every hour worked once $6.6 billion was on the table (or in escrow). Lead Counsel knew that it would receive a fair portion of those funds. The only thing in question was what its effective multiplier would be.

In order to comply with Fifth Circuit precedent, this Court must carefully review all of Class Counsel's post-summer 2005 time records, in order to segregate out time spent pursuing litigation against non-settling defendants, or the political strategy to influence the outcome of *Stoneridge*. That time will appropriately serve as the basis for a fee request and award in the event of a settlement against one of the remaining defendants. It cannot be appropriately charged to the class against the settlements that have already been achieved, because it had nothing to do with those settlements. It did not preserve the settlements already on the table. Rather, it sought additional settlement monies from different parties.

Applying the very generous multiplier of 5.4 to all pre-settlement time (regardless of defendant) yields a fee of $320 million.[5] Assuming that one-half of all post-settlement

[4] Of course, time spent pursuing a fee is neither compensable nor includable in a lodestar calculation.
[5] Some of the time claimed to be incurred pre-litigation will undoubtedly be excluded once this Court performs the mandatory detailed review of the time records. For example, Jonathan Cuneo of Cuneo Gilbert & LaDuca has 12 straight entries of exactly 6.0 hours each beginning on 12/21/01 and ending on 1/1/02 for "monitoring Congressional reports and proceedings and media reports." Congress was not in session during this entire time period, which included Christmas Eve, Christmas Day, New Year's Eve and New Year's Day. It is also unlikely that Mr. Cuneo worked exactly 6 hours on each of 12 consecutive days. While the aforementioned suspect billing only amounts to 72 hours and $42,000, it may only be the tip of the iceberg, as undersigned counsel identified it during a very cursory review. During this Court's more extensive review, there will undoubtedly be more such questionable items.

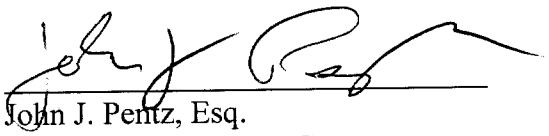
time was related to the settlement-approval and claims administration process, and awarding that time without any multiplier, would result in an additional award of $30 million, for a total fee of $350 million. That is the largest reasonable fee that may be awarded under existing Fifth Circuit fee jurisprudence, which has not been displaced by the PSLRA, according to the most recent case on fees from the Fifth Circuit, as well as several federal district courts. The largest fee that may be awarded under Lead Plaintiff's fee contract is $695 million. This is an enormous difference, and therefore this Court must resolve the material and fundamental issue of whether the PSLRA trumps established Fifth Circuit fee jurisprudence.

CONCLUSION

WHEREFORE, Class members and objectors Bishop and Wilkens pray that this Court award a fee to Class Counsel pursuant to established Fifth Circuit fee jurisprudence, most recently affirmed in *In re: High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220 (5th Cir. 2008), and treat the 9.522% contractual fee as an upper limit only. Objectors Bishop and Wilkens pray that this Court apply a risk multiplier only to reasonable pre-settlement lodestar incurred prior to June 2005, award Class Counsel unenhanced compensation for post-settlement lodestar related only to the present settlements, and award no compensation related to lodestar incurred with respect to claims against non-settling defendants or related to public relations campaigns. Objectors pray that, consistent with the foregoing, this Court award Class Counsel attorney's fees of no more than $350 million.

Respectfully submitted,
George S. Bishop, Jill R. Bishop,
Lon Wilkens and Betty Wilkens,

By their attorneys,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 12, 2008 the foregoing document was served by first-class United States mail upon the following counsel:

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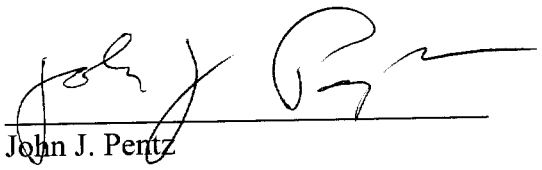

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