



order a stay until the close of evidence in the CSL case or until June 1, 2006, whichever is sooner.

Ms. Watkins worked in Enron's Capital and Trade Group where she was the manager of certain off-balance sheet entities. She also worked in Enron International and Enron Caribbean Basin LLC, Merger and Acquisitions, where she was involved in the Whitewing/Condor transaction. Her other assignments included Enron Broadband Services and the Enron Corporate Development Group, where she was responsible for developing a database that would identify merchant assets that Enron would consider selling to third parties to generate additional cash flow. On August 15, 2001, Ms. Watkins sent an anonymous letter to Kenneth Lay to convey her concerns that Jeffrey Skilling's departure from Enron would raise suspicions of accounting improprieties and valuation issues. Ms. Watkins then had a series of meetings regarding her concerns with persons including Kenneth Lay. The government intends to call Ms. Watkins as a witness at trial to discuss her memorandum, related documents, and meetings with Kenneth Lay and others regarding her concerns.

Although we are cognizant that such a delay places some burden on certain parties in the class action, the extremely limited relief sought will avoid prejudice to the government in the CSL criminal case while still allowing all the parties in the civil case to depose almost all witnesses within their relevant cycle.<sup>2</sup> Since some witnesses necessarily must be deposed after the completion of the CSL trial, a postponement of Ms. Watkins' deposition until the established

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<sup>2</sup> The United States hereby incorporates by reference its previous motions seeking limited stays of depositions.

post-trial deposition window will not prejudice the parties or delay the overall pace and scheduling of discovery in this matter.

A temporary stay of the Watkins deposition harms no one and avoids prejudice to the government. For that reason, courts have routinely granted not just the limited relief sought here, but full stays of discovery. See In re Worldcom, Inc. Securities Litigation, 2004 WL 802414 (S.D.N.Y. April 15, 2004) (granting stay of discovery of criminal trial witnesses). Accordingly, we respectfully request that the Court enter the limited order proposed by the government.

## **ARGUMENT**

### **I. The Relief the Government Seeks Is Limited In Scope and Duration**

The relief sought by the government in this motion is narrow in scope and duration. The government appreciates the difficulty of coordinating expedited discovery in complex multi-district litigation. Accordingly, the government has refrained from seeking any relief until little more than six months before the scheduled trial of CSL (the government requested a stay of the deposition of Mr. J.R. Sult in June of this year). The government's request for a stay of limited duration for two witnesses (Mr. J.R. Sult and now Ms. Watkins) reflects the same narrow and discretionary approach employed by the government in making only several requests for stays of limited duration for witnesses in the EBS case prior to trial. Given the limited nature and scope of the relief sought, granting the government's request will not pose a significant impediment to the completion of fact discovery in the Class Action.

### **II. There is no prejudice to the parties while the prejudice to the government is real and not imagined**

Because the relief sought by the government is both narrow and temporary the parties ultimately will be able to depose each and every witness that has been the subject of motions by

the government. For this reason, there will be no prejudice to the parties should the Court grant the government's instant motion. Any prejudice to the parties in the form of scheduling disruptions can be dealt with in future deposition cycles or, if need be, by a modification of the Deposition Protocol Order at the appropriate time. Because the Court has already ordered that depositions of certain witnesses shall commence after the conclusion of United States v. Causey et al. or United States v. Lay, a postponement of the Watkins deposition to this same time period will cause no prejudice. See Order of the Court, May 25, 2005.

In contrast, should the Watkins deposition proceed the prejudice to the government is real and substantial. Attorneys for defendants Skilling and Lay in CSL have attended and asked questions at numerous depositions to date. See, e.g., Deposition of John Greibling, 9/7/2004 at 12 to 219 (questioning by counsel for defendant Skilling); Deposition of John Diaz, 2/14/2005 at 11 to 349, 2/15/2005 at 364 to 449 (questioning by counsel for defendant Lay); Deposition of William Collins, 9/27/04, at 205 to 328 (questioning by counsel for defendant Skilling). Each time a witness in the criminal case is deposed the criminal defendants reap a discovery windfall under the auspices of civil discovery to which they are not entitled under the Federal criminal rules. The potential for prejudice to the government's investigation and criminal cases has already been raised and litigated by the parties. (See Order on United States' Motion to Intervene and For Access to Depositions and Exhibits at 2) ("On December 6, 2004, the Court held an emergency hearing on the perils the depositions of these key witnesses can pose when the civil litigants seek to delve deeply into certain areas that were the subject of the United States investigation and case preparation.").

The Court has made clear that a stay of depositions in the Class Action will only be granted when the circumstances present a compelling reason for doing so. Here, the criminal defense attorneys are actively involved in the civil depositions, exploiting discovery opportunities from which they are barred in the parallel CSL case. Under these circumstances, the government is seeking very narrow and limited relief which causes no prejudice to the parties in their ability to complete discovery within the parameters set by the Court. Accordingly, the Government respectfully requests that the Court exercise its authority to grant its Motion to stay the deposition of a witness in the criminal case and again notes that this is only the second time in recent months that the government has made such a request. United States v. Little Al, 712 F.2d 133, 136 (5<sup>th</sup> Cir. 1983)(As the Fifth Circuit has stated, “Certainly, a district court may stay a civil proceeding during the pendency of a parallel criminal proceeding.”); see United States v. Kordel, 397 U.S. 12, n.27 (1970); Heller Healthcare Finance, Inc. v. Boyes, No. Civ. A. 300CV1335D, 2002 WL 1558337 at \*2 (N.D. Tex. July 15, 2002).

### CONCLUSION

For the foregoing reasons, The United States’ motion for a limited stay of the deposition of Sherron Watkins should be granted.

Respectfully submitted,

SEAN BERKOWITZ  
Director, Enron Task Force

By: Leo Wise (by M&E w/permission)  
Leo Joseph Wise  
Special Assistant U.S. Attorney  
Enron Task Force

Dated: August 19, 2005

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

MARK NEWBY,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CIVIL ACTION NO.H-01-3624
	)	(Consolidated)
ENRON CORP., et al.,	)	
	)	
Defendants,	)	
	)	

**ORDER**

Upon consideration of the motion of the United States for a Limited Stay of the Deposition of Sherron Watkins,

IT IS HEREBY ORDERED that Sherron Watkins shall not be deposed until the earlier of the date on which evidence closes in *U.S. v. Richard A. Causey, et al.*, (Cr. No. 04-25 (S-2)) if the trial of *U.S. v. Richard A. Causey, et al.* begins as it is currently scheduled on January 17, 2006. If the trial of *U.S. v. Richard A. Causey, et al.* is continued, the civil litigants may take the deposition without further order of this Court.

In no event will this stay extend beyond June 1, 2006. The witness may be deposed any time after June 1, 2006, regardless of whether she has testified in *U.S. v. Richard A. Causey, et al.*

The parties are free to notice the deposition and begin the process of scheduling the deposition at any time as long as the witness is not deposed until after the time described above.

Dated: \_\_\_\_\_, 2005  
Houston, Texas

\_\_\_\_\_  
MELINDA HARMON  
UNITED STATES DISTRICT JUDGE

**Certificate of Service**

I hereby certify that on August 19, 2005, I served a copy of the United States' Motion For a Limited Stay of the Deposition of Sherron Watkins, electronically pursuant to the Court's order governing service in this matter.

*Leo Wise (w/permission)*  
Leo Joseph Wise  
Enron Task Force