

Hearing Date: July 15, 2004 at 10:00 a.m.
Objection Deadline: July 12, 2004 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
In re)	
)	Chapter 11
ENRON CORP., et al.)	
)	Case No. 01-16034 (AJG)
Debtors.)	
)	Jointly Administered
_____)	

**APPLICATION FOR ORDER AUTHORIZING CURRENT DEBTOR
EMPLOYEE ALAN QUAINANCE TO RETAIN, *NUNC PRO TUNC*,
COLLIER SHANNON SCOTT, PLLC AS SPECIAL COUNSEL
PURSUANT TO §§ 327(e) AND 330 OF THE BANKRUPTCY CODE**

TO THE HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE:

Alan Quaintance, a current employee of Debtors Enron Corp. and/or certain of its affiliated entities (“Debtors”), as and for his application for an order, pursuant to sections 327(e) and 330 of Title 11 of the United States Code, (the “Bankruptcy Code”), and 330 of Title 11 of the United States Code, (the “Bankruptcy Code”), and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Court’s Order Pursuant to Section 105(a), 327(c), 327(e) and 363(b)(1) of the Bankruptcy Code Authorizing Retention and Employment, nunc pro tunc, of Swidler Berlin Shereff Friedman, LLP as Special Employees’ Counsel and Granting Related Relief, entered March 29, 2002, (the “SBSF Order”), authorizing him to retain, effective as of May 17, 2004, the law firm of Collier Shannon Scott, PLLC

(“CSS”) to represent Mr. Quaintance in connection with, and through the completion of, certain government and other investigations relating to the Debtors, respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. Commencing on December 2, 2001 (the “Petition Date”), Enron Corp. and certain of its affiliates (the “Debtors”) filed, and subsequently filed, voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

THE GOVERNMENTAL INVESTIGATIONS AND THE RETENTION OF NIXON PEABODY, LLP

3. Before and since the Petition Date, various government and administrative entities and agencies have commenced investigations (the “Investigations”) concerning Debtor Enron Corp. and its affiliates (“the Enron Companies”). In the course of the Investigations, there are current and former employees of the Enron Companies who are witnesses who have information relevant to one or more of the Investigations and whose assistance, cooperation and participation as witnesses is, or likely will be, sought in connection with one or more of the Investigations. The cooperation, assistance and participation of the Employees is critical to the timely completion of the Investigations, which will foster the Debtors’ reorganization effort. In order to facilitate the employees’ cooperation while assuring their legal rights are fully protected, and especially in light of the complexity of the Investigations, Debtors’ employees require

representation by counsel. In order to assist him in responding to the Investigations, Mr. Quaintance retained the SBSF law firm.

4. On or about October 8, 2002, SBSF recommended to Mr. Quaintance that he retain other counsel. On or about October 9, 2002, Mr. Quaintance retained Nixon Peabody, LLC (“NP”) to represent him with respect to the Investigations. Specifically, Mr. Quaintance has been cooperating, and intends to continue to cooperate, with the Enron Task Force as a witness in its investigation.

5. The SBSF Order, entered by this Court, approved the employment of Swidler Berlin Shereff Friedman, LLP as Special Counsel for certain Enron Companies’ employees in matters relating to the Enron Companies’ employee benefit plans and other governmental investigations. The SBSF Order also made provision for the application for the employment of professionals for other employees. The SBSF Order provides that:

“any person who served for any period post-petition as an officer or employee of the Debtors, may seek, by Notice of Presentment or Motion, authority from this Court to retain and/or have the Debtors pay the fees and costs of separate counsel for one or more present and former officers and employees of the Debtors in connection with the Investigations based on a showing that: (i) the employee(s) and/or officer(s) in question are simply witnesses in the Investigations; and (ii)(a) SBSF has determined that it cannot represent the employee(s) and/or officer(s) in question (at least with respect to the particular matter at issue), or (b) SBSF has recommended that the employee(s) and/or Officer(s) in question engage separate counsel, or (c) the matter involves an area where SBSF does not have the requisite expertise, or (d) there is reasonable basis for a belief by the employee(s) and/or

officer(s) in question that either SBSF would have a conflict of interest in representing such individual(s) or the SBSF could not fully or adequately represent such individual(s)' interests.”

SBSF Order, paragraph 4.

6. On August 21, 2003, Mr. Quaintance filed an Application for Order Authorizing Current Debtor Employee Alan Quaintance to Retain, *Nunc Pro Tunc*, Nixon Peabody, LLP as Special Counsel Pursuant to Sections 327(e) and 330 of the Bankruptcy Code. A copy of that Application is attached as Exhibit A.

7. That Application was supported by an Affidavit of Barry J. Pollack in Support of Application for Order Authorizing Current Debtor Employee Alan Quaintance to Retain, *Nunc Pro Tunc*, Nixon Peabody, LLP as Special Counsel Pursuant to Sections 327(e) and 330 of the Bankruptcy Code. A copy of that Affidavit is attached as Exhibit B.

8. On October 30, 2003, this Court entered an Order Pursuant to Sections 105(a), 327(e), 330, 331, and 363(b) and this Court's Order of March 29, 2002, Authorizing Current Debtor Employee Alan Quaintance to Retain, *Nunc Pro Tunc*, Nixon Peabody, LLP as Special Counsel. A copy of that Order is attached as Exhibit C.

9. Since the entry of the Court's Order dated October 30, 2003, Mr. Quaintance has been cooperating with the Investigations and has been represented by NP, with Mr. Pollack serving as Mr. Quaintance's lead counsel.

10. As of May 17, 2004, Mr. Pollack joined CSS. Mr. Quaintance continues to cooperate with the Investigations and continues to need counsel. Mr. Quaintance wishes to continue to have Mr. Pollack represent him and therefore has retained CSS. Given Mr. Pollack's lengthy representation of Mr. Quaintance, it will be most cost effective for the Debtor for Mr.

Quaintance to continue to be represented by Mr. Pollack. As set forth in an affidavit by Mr. Pollack (attached as Exhibit D), CCS has no connection with the Debtors, their creditors, professionals or any other party in interest herein, or their respective attorneys or professionals. CSS does not hold or represent any interest adverse to the Debtors or their estates in the matters with respect to which CSS is to be engaged. CSS has neither an actual or potential conflict of interest.

RELIEF REQUESTED

11. By this Application Mr. Quaintance seeks, pursuant to the SBSF Order, authorization to retain CSS *nunc pro tunc*, as Special Employee's Counsel, to represent him as a witness in connection with the Investigations, at CSS' regular hourly rates in effect from time to time and pursuant to CSS normal policies for reimbursement of disbursements.¹ Accordingly, Mr. Quaintance respectfully requests entry of an order pursuant to sections 327(e), 329, and 330 of the Bankruptcy Code authorizing the employment and retention of CSS as Special Employees' Counsel to perform the specific legal services described below. A copy of a proposed Order is attached as Exhibit E.

GROUND FOR RELIEF

12. Section 327(e) of the Bankruptcy Code empowers the debtor in possession, with the Court's approval, to employ attorneys for a specified special purpose "that do not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e).

¹ In addition to cooperating in the Investigations, Mr. Quaintance has provided testimony to the Examiner in this matter. Mr. Quaintance understands that the Court has not authorized payment for retention of counsel for purposes of providing testimony to the Examiner, and by this Application, Mr. Quaintance is not seeking reimbursement for attorneys' fees incurred in this regard.

13. Mr. Quaintance believes that CSS is well qualified to represent him in connection with the Investigations, and, in light of SBSF's recommendation to him that he retain separate counsel, the retention of CSS is necessary and in the best interests of the Debtors and their estates. CSS has provided, and it is anticipated that CSS will continue to provide, the following services:

(a) representing Mr. Quaintance as witness in connection with specific civil, criminal, and administrative Investigations or other regulatory matters relating to the Debtors involving any branches and/or agencies of the United States Government (including, by way of illustration only, any hearings and/or investigations initiated by the United States Congress, the SEC, and the Department of Justice), as well as similar matters initiated by foreign or domestic state or local governmental entity;

(b) representing Mr. Quaintance as witnesses in any litigation or arbitration matters relating to the foregoing;

(c) attending meetings with third parties with respect to the above matters on behalf of Mr. Quaintance;

(d) appearing before the Bankruptcy Court, any district or appellate courts, and the United States Trustee on behalf of Mr. Quaintance with respect to the matters referred to above;

(e) facilitating and coordinating communications between Mr. Quaintance and other parties in connection with the Investigations; and

(f) performing on behalf of Mr. Quaintance the full range of legal services normally associated with matters such as those identified above.

14. CSS has indicated its willingness to act as counsel and to render the foregoing services to Mr. Quaintance. CSS has, and will, work closely with other professionals as may be retained by the Debtors and others in connection with the Investigations (including Skadden, Arps, Slate, Meagher & Flom, the Debtors' counsel ("Skadden Arps")), in order to facilitate Mr. Quaintance's participation in the Investigations, to protect his legal rights, and to take the necessary and appropriate steps to avoid any unnecessary duplication of effort with such other professionals.

15. Although, as noted, the Debtors have retained Skadden, Arps as their counsel, and Mr. Quaintance is an employee of the Debtors, he believes that he requires separate and independent counsel.

TERMS OF RETENTION

16. CSS' hourly rates for partners range from \$300 to \$500. Barry J. Pollack, Esq. has been and it is anticipated will continue to be, the CSS attorney primarily responsible for Mr. Quaintance's representation. His hourly rate is \$355. CSS adjusts its rates from time to time. CSS charges for reimbursement of out-of-pocket expenses including photocopying, telephone and telecopier, toll and other charges, travel expenses, expenses for "working meals," computerized research, transcription costs, and non-ordinary overhead expenses such as secretarial and other overtime.

17. If approved, CSS will apply to the Court from time to time for allowances of compensation and reimbursement of expenses in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, the Administrative Order Re: Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (the "Local

Rules”), and all orders of this Court, by submitting fee applications on appropriate notice on a quarterly basis. In light of privilege and confidentiality considerations, however, CSS reserves the right to redact its time and expense records and to seek authority from the Court to file such time and expense records under seal.

**CSS HAS NO CONFLICTS ON THE MATTERS
FOR WHICH IT IS TO BE RETAINED**

18. To the best of Mr. Quaintance’s knowledge, the partners and associates of CSS do not have any connection with the Debtors, their creditors or any other party in interest, or their respective attorneys, except to the extent set forth in the affidavit of Barry J. Pollack, a member of CSS, which is annexed hereto as Exhibit D (the “Pollack Affidavit”). Based upon the disclosure contained in the Pollack Affidavit, CSS meets the standard for retention as special counsel in that CSS does not hold or represent any interest adverse to the Debtors or to their estates in the matters with respect to which CSS is to be engaged.

19. Mr. Quaintance believes that CSS is well qualified to represent the Employees in connection with the Investigations and that its retention is in the best interest of the Debtors and their estates.

20. Mr. Quaintance requests that CSS’ retention be approved *nunc pro tunc* to May 17, 2004. The decision to approve the employment of professionals on a *nunc pro tunc* basis is well within the discretion of this Court, In re F/S. Airlease, 11, Inc., 844 F.2d 99, 103 (3rd Cir.), cert. denied, 488 U.S. 852 (1988), and retroactive approval of CSS’ retention is appropriate under the circumstances. Specifically, the preparation and presentation of this Application on a *nunc pro tunc* basis has not been occasioned by any action or omission of CSS. This Application was prepared promptly after Mr. Pollack joined CSS. Accordingly, it is respectfully submitted

that good cause exists justifying the *nunc pro tunc* retention herein. See In re Arkansas Co., Inc., 798 F.2d 645, 548 (3d Cir. 1986).

NOTICE

21. In accordance with this Court's Second Amended Case Management Order dated December 17, 2002, notice of this Application has been given (a) by service of hard copy upon (1) the Debtors, (2) counsel to the Debtors, (3) counsel to the Creditors' Committee, (4) counsel to the Additional Committees, (5) the U.S. Trustee, and (6) any requesting department or agency of the United States of America or of a State government, via United States first class mail, postage pre-paid, and (b) electronically via e-mail (or by hard copy via United States first class mail, postage pre-paid on parties unable to receive electronic notice) on all other parties requesting notice in this case.

22. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, Mr. Quaintance respectfully requests that the Court enter an order granting the relief requested herein, and such other and further relief as may be just.

Dated: June 17, 2004

Collier Shannon Scott, PLLC

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