

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

KEVIN HOWARD,
MICHAEL KRAUTZ

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Cr. No. H-03-93-04 (Gilmore, J.)

UNITED STATES' MOTION FOR AUTHORIZATION TO ESTABLISH PROCEDURES TO
PROVIDE NOTICE TO VICTIMS PURSUANT TO 18 U.S.C. § 3771
IN RELATION TO THE SIXTH SUPERSEDING INDICTMENT

Comes now the United States, by and through the undersigned, and respectfully requests the court authorize the government to provide notice pursuant to the Justice For All Act of 2004, 18 U.S.C. § 3771, by means of posting scheduled court dates on a web site operated by the Department of Justice and by noticing Paul Howes, of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, counsel for the class in *Newby et al. v. Enron Corp. et al.*, No. H-01-3642. Under the Justice for All Act, enacted in 2004, the United States has an obligation to provide notice of all court proceedings to victims of a crime. By this motion, the United States asks the Court to approve specific notice procedures designed to take into account the extremely large number of potential victims in this case. In particular, the United States seeks the Court's approval to dispense with the requirement that victims receive individual notice and to adopt substitute procedures to give notice. As set forth below, the suggested procedures would satisfy the United States' obligations under the Act.¹

¹ Counsel for the defendants have been contacted and they oppose this motion.

On October 30, 2004, the Justice for All Act (the “Act”) became law. The Act provides certain rights for victims in federal criminal proceedings, including (i) the right to notice of any public court proceeding involving the crime; (ii) the right to be reasonably heard at any public proceeding involving the release, plea or sentencing of a defendant; and (iii) the reasonable right to confer with the attorney for the Government in the case. *See* 18 U.S.C. § 3771(a). A “crime victim” is defined as “a person directly and proximately harmed as a result of the commission of a Federal offense.” *Id.* § 3771(e). The district court has a duty to “ensure that the crime victim is afforded the rights “guaranteed by the Act. *Id.* § 3771(b).

In cases involving “multiple victims” the court has discretion to adopt procedures to streamline the Act’s application. Section 3771(d)(2) of the Act provides as follows:

Multiple crime victims. - In a case where the court finds that the number of crime victims makes it impractical to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong proceedings.

The government submits that the Enron investigation, and the Enron Broadband Services investigation and the defendants set forth above in particular, fall within the provision for “multiple crime victims.” The original Indictment and the Superseding Indictments against the defendants allege a wide ranging scheme to deceive the investing public, including Enron’s shareholders, the SEC, and others (the victims). Even if the “Victims” identified in the original and Superseding Indictments would not fall within the Act’s definition of “crime victim,” the number of “direct and proximate” victims from the Enron collapse and the schemes alleged in the original and Superseding Indictments includes both Enron shareholders and employees. That group numbers in the tens of thousands.

Because the number of victims makes it impracticable for the government and the Court to give individualized notice of each court proceeding, the government proposes a two-pronged approach to give notice. Judge Lake has approved this approach in *United States v. Skilling and Lay*, No. H-04-25. First, the government will post notice on the Department of Justice website at the following URL: <http://www.usdoj.gov/criminal/vns>. The government has set up a link on the Department of Justice website for this URL and is already posting events relevant to *United States v. Bayly, et al.*, and *United States v. Skilling and Lay*. A similar approach has also been used in *United States v. Ebbers* and *United States v. Rigas*, and other large securities fraud cases. See <http://www.usdoj.gov/usao/nys/caseup.html>.

Second, the United States will give notice to counsel for the class in *Newby et al. v. Enron Corp. et al.*, No. H-01-3642, the class action brought by Enron shareholders against Skilling, Lay, and other former Enron officials. The government used this approach in the Barge case, *United States v. Bayly, et al.*, No. H-03-363, where it was approved by Judge Werlein. There, lead counsel for the class, Paul Howes, of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, agreed that the multiple victims provision of Section 3771(d)(2) applied. Mr. Howes also agreed to accept notice for the class. The government has contacted Mr. Howes and asked him to perform the same service in this case.

In sum, the government submits that (1) it is impracticable to give every potential victim individual notice of every court proceeding; and (2) using class action counsel and the Department of Justice website to give notice under Section 3771(a)(2) is a “reasonable procedure” under Section 3771(d) for providing notice to victims of the alleged offenses. The government therefore asks the

Court find that individualized notice is impracticable and find that the proposed notice procedure satisfies Section 3771.

CONCLUSION

The United States' Motion for Authorization to Establish Procedures to Provide Notice to Victims Pursuant to 18 U.S.C. § 3771 should be granted. The United States submits that notice on the Department of Justice web site and notice to counsel for the class action in *Newby* adequately complies with the Justice for All Act and is the most effective and expedient means of ensuring victims' rights afforded to them under the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true correct copy of the foregoing was sent March 1, 2006, if registered, via the Court's electronic filing system, or if not registered, deposited in the United States Mail, postage prepaid to

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