



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

July 7, 2009

VIA FAX at (619-231-7423) and EMAIL at PaulH@csgrr.com

G. Paul Howes, Esquire
Coughlin Stoia Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, California 92101

Re: United States v. Daniel Bayly, et al., (Dkt No. 05-20319) (Fifth Circuit)
Yeager v. United States. (Dkt No. 08-67)(S. Ct.)

Dear Mr. Howes:

At this time we wish to inform you of several recent developments in the above-captioned cases and to inform you of an upcoming status hearing date before Judge Ewing Werlein Jr.

Two significant court decisions have occurred since our letter to you of June 10, 2009. First, on June 16, 2009, the U.S. Court of Appeals for the Fifth Circuit in *James A. Brown et al. (Daniel Bayly et al.)* ruled that double jeopardy or collateral estoppel principles do not prevent a retrial of three former Merrill Lynch executives on charges that they helped defraud Enron Corporation and its shareholders by agreeing to "park" Nigerian power-generating barges with Merrill Lynch in order to artificially inflate Enron's 1999 earnings. That transaction allowed Enron to enhance fraudulently its year-end 1999 financial position that it presented to the public and to meet its projected year-end numbers.

Second, on June 18, 2009, the Supreme Court, in a 6-3 vote, issued its decision in *Yeager*, ruling in favor of petitioner F. Scott Yeager, a former Enron Corp. executive who had been acquitted of several securities and wire fraud counts by a jury that deadlocked on the remaining counts in the indictment. The Court held that an apparent inconsistency between a jury's verdict of acquittal on some counts and its failure to reach a verdict on other counts does not affect the preclusive force of the acquittals under the Double Jeopardy Clause. The Supreme Court stated that "if the possession of insider information was a critical issue of ultimate fact in all of the charges [against him], a jury that decided that issue in his favor protects him from prosecution for any charges for which that [fact] is an essential element." The Court left open the door, however, for the Fifth Circuit to re-examine its ruling that the jury must have found, when it acquitted Yeager, that Yeager did not possess any material, inside information.

A pretrial conference in *Bayly* has been scheduled in the case for August 7, 2009 at 11:15 a.m. before the Honorable Judge Ewing Werlein Jr. in Courtroom 11D, United States Courthouse, 515 Rusk Avenue, Houston, Texas.

As always, we appreciate your continued assistance in providing notice of case events to members of the shareholders' class action lawsuit captioned *Newby et al. v. Enron Corp., et al.*, No. H-01-3624.

Sincerely,

A handwritten signature in black ink that reads "Pamela Washington/BWJ". The signature is written in a cursive, flowing style.

Pamela Washington
Legal Administrative Specialist
Fraud Section