Kenneth Lay's Death Stalls Legal Proceedings

In-House News:

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By Amy E. Wong

Enron's former CEO, Kenneth Lay, died from a heart attack in Aspen, CO, on Wednesday, June 28.

With Lay's passing, people have been scrambling to figure out what to expect next. There are many pending legal and financial matters that still need to be resolved. Many Securities and Exchange Commission (SEC) and civil cases are still pending.

The SEC intends to pursue $90 million in damages against the deceased Lay on behalf of hurt investors.

With regard to the civil cases, Jacob Zamansky, principal at Zamansky & Associates, a law firm representing shareholders, claimed in a CNN.com article, "Lay's passing isn't going to have any material effect on the civil suits." Zamansky continued, "His testimony is still out there; and because of this, Lay is still liable for damages."

Prosecutors in Lay's trial planned a $43.5 million forfeiture case against Lay; this sum, they claimed, comprised "proceeds of fraud." This includes Lay's large bonuses and his Enron line of credit, which he used to pay off more than $100 million in personal debt.

Whether or not Lay remains liable for these damages rest in the hands of the Regents of the University of California, lead plaintiffs in the shareholder class-action lawsuit filed on behalf of Enron investors. Later on this month, the Regents will vote on whether or not they should remove Lay from the lawsuit.

For the meantime, however, it is safe to assume that Lay's assets will be safe from seizure. Trey Davis, spokesperson for the University of California, told *The Times*, "I do not expect that we will pursue the litigation against Mr. Lay or rather what's left of his estate." He added, "The final decision is up to the Regents, but I do not imagine it would be worth our while to go after what he has left behind."

Jacob Frenkel, former SEC employee and former federal prosecutor, noted the difficulty of trying to seize what little may be left of a dead man's assets, saying in *The Deal*, "It's not a case against an entity; it's a case against him, and he's no longer here. Those seeking to pursue his assets may or may not be able to find recovery."

This must come as a relief to the Lays, who claimed in recent court appearances that their money has dwindled away dramatically, leaving them next to nothing. Under U.S. law, as Lay's benefactors, they are liable for all civil litigation surrounding Lay's estate.

When the Enron trial began, Lay reported $50 million in personal assets. A huge chunk of this sum was held in company stock, which decreased in value after Enron declared bankruptcy. Adding to the family's financial duress, $20 million was spent on legal bills.

Lay started from humble beginnings as a poor preacher's son but soon rose to become the epitome of a rags-to-riches story. He founded an energy company, Enron, which eventually became the nation's seventh largest company, reaping millions of dollars along the way. At the height of the company's success, it employed more than 20,000 workers and had annual revenues of more than $100 billion.

However, in late 2001, a series of mishaps would demolish Lay's dream and reputation as Enron suffered the biggest accounting scandal in recent history.

In Oct. 2001, Enron announced a $1 billion reduction in shareholder equity, alleging accounting errors made by CFO Andrew Fastow. In Dec. 2001, Enron filed the largest bankruptcy in U.S. history after a $9 billion deal with Dynegy, Inc. failed.

Enron made headlines as a major marker of "corporate corruption." Its downfall was so debilitating and far-reaching that the U.S. government tightened its control on the free market, developing and implementing the Sarbanes-Oxley Act of 2002, which aims to protect investors by improving the accuracy and reliability of corporate disclosures.

After years of complicated litigation, on May 25, Lay was found guilty of 10 counts of corporate fraud and conspiracy for lying to investors and the SEC about Enron's economic health in late 2001.

After four grueling years of investigation and a 16-week trial, Lay died at the age of 64 of heart failure due to coronary artery disease.

He faced a maximum of 45 years in jail and was free on a $5-million bond.

Throughout the whole ordeal, Lay maintained his own innocence, testifying that all his public comments regarding Enron's economic vigor were based on reports that accountants and attorneys had provided. Lay blamed Fastow, a deviant party of short sellers, and the *Wall Street Journal* for Enron's demise.

The Houston jury convicted Lay, attributing their verdict to documentary evidence, the testimony of numerous former employees, and Lay's sharp renunciation of all responsibility.

For a Houston businessman whom President Bush fondly called "Kenny Boy," Lay's death is a "tragic ending to a tragic story," as former federal prosecutor Kirby Behre aptly commented in *The Deal*.