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Prosecutor keeps the heat on Lay

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Ken Lay is accustomed to being in control, and today he tried to rule his cross-examination from the witness stand.

The former Enron chief showed his disdain for the prosecutor by suggesting he couldn't understand what investors would, by asking him questions and even by calling for a new line of inquiry.

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"We've spent more than an hour on this," Lay complained testily to prosecutor John Hueston when, after an afternoon break, the lawyer returned to the complicated matter of a writing down the value of a British water utility Enron owned.

"Obviously you can go where you want to, but I think it's a real waste of the jury's time," Lay said, though his indictment includes an allegation that he lied to analysts in October 2001 about whether Enron would have to write down the value of the water company on its books.

Though most of today was calmer than Wednesday, which featured fireworks between Hueston and Lay, the former CEO and chairman of Enron was impatient in his second day on cross-examination.

There was still plenty there to see, with the courtroom full by afternoon in stark contrast to the empty seats during the drier fare of Lay's direct examination earlier this week.

When discussing that Lay didn't plan to change direction in the company when he came back as CEO in mid-2001, Lay said to Hueston: "I think the investment community would understand it, maybe you don't, but they would."

At another point, Lay told Hueston that he should just call another witness to explain a presentation Enron made to bankers in late 2001. "You need to call Jeff McMahan and put him on the stand," Lay snapped.

Lay also indignantly declared he did nothing illegal or improper when he told employees he was buying stock and they should too in late 2001, even though Lay was also quietly selling millions more in stock back to the company.

Lay told the 12 jurors and four alternates that his \$4 million in stock purchases in 2001 were voluntary. But, he said, his more than \$70 million in stock sales — which he didn't have to disclose monthly because he traded stock for cash in a revolving credit line at Enron — were "forced" by his personal finances and margin calls on his \$100 million in private loans.

"If the market had found out you had sold \$70 million of stock in that time, that actually would have caused the stock to tumble?" asked Hueston of Lay's 2001 stock sales to the company.

"It depends, Mr. Hueston," Lay said. The 64-year-old said if the market understood that he was using the cash from internal stock sales to keep his private bankers from selling Enron stock used as private loan collateral, the market might see it as a good sign that he had faith in Enron.

"There was no requirement that I disclose any of that," Lay said of his internal stock sales. "You're trying to mislead the jury as to somehow I was doing something illegal, and I'm not."

Stock sales targeted

He said he preferred selling stock to the company, a deal arranged for him in 1999 though not disclosed on the proxy forms. Though Lay had to make monthly filings about his stock purchases, he only had to account for his internal sales annually. Thus his public monthly holding total never reflected his frequent 2001 stock sales and made it appear that his Enron stock holdings were growing when they were actually shrinking.

"I found it more convenient to use the line of credit," he said.

Lay's sales to the company are not considered insider trading because it is assumed the company has all the material knowledge that he has.

But the government has included his failure to tell employees about those sales in a conspiracy charge and a wire fraud charge against Lay. They are two of the six charges he faces. His codefendant Jeff Skilling has 28 charges.

Today Hueston went back to Lay's allegations that colluding short sellers, people who bet a stock will go down, contributed to Enron's downfall. Lay lawyer Mike Ramsey previously called short sellers "vultures."

Hueston showed Lay that his son Mark Lay was short selling Enron stock in March 2001 and made more than \$166,000 betting Enron stock would fall.

"I didn't know that," Lay said.

"He wasn't a vulture was he?" Hueston asked Lay of his son.

"I don't think he's a vulture," Lay responded.

"He wasn't trying to kill Enron in 2001, was he?" Hueston asked.

"I would think not," Lay said.

The jury has also heard that Skilling himself made \$15 million shortly after leaving Enron by short selling an Enron competitor's stock.

Hueston also questioned Lay about his characterization in late 2001 that Enron's retail business was growing and that it had a projected \$30 billion in contract value for 2001. But, Hueston showed, shortly after it was clear Enron would not make that target, it stopped using the same measurements for success.

Lay said the change was because the business was maturing and other measures would work better. He said it was not done to hide problems and that the retail business was growing and had a bright future as he told outsiders and employees at the time.

The Wall Street Journal story

The prosecution questioned Lay about his contention that an Oct. 17, 2001, Wall Street Journal story hurt Enron's stock price by twisting an earnings report in a negative way. Hueston noted that news stories about Moody's credit rating agency investigating Enron's rating might also have done that.

Lay argued that Enron's savvy shareholders would have known about Moody's decision the day before and would not have waited until newspapers covered the announcement. Hueston asked whether the "average Joe" shareholder might not have learned about the Moody's decision Oct. 17, 2001.

"I'd like to think Enron didn't have any shareholders who were average Joes. I'd like to think they were somewhat superior to that," Lay said.

U.S. District Judge Sim Lake told lawyers at the end of the day that he plans to rule that information about the Valhalla scandal, evidence about an 18-year-old incident in which Lay did not immediately fire company wrongdoers, will not be part of this trial.

Prosecutors had hoped to question Lay about it but the judge said he'll be agreeing with the Lay team that the door was not opened to that questioning by anything Lay said on direct examination. The judge

had previously noted that the incident was very remote and it did not involve a conviction.

Lay is scheduled to continue on the stand on cross examination through most of Monday. He will be followed by five character witnesses, then some business experts.

Lake has said he would like to have evidence completed in the next two weeks so final arguments could begin May 15.

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