

SEP 06 2002

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re Enron Corporation §
Securities, Derivative & § MDL-1446
"ERISA Litigation §
§

THIS DOCUMENT RELATES TO: §
Member Cases H-02-0199; H-02- §
0347; H-02-0670; H-02-0673 §
§

MARK NEWBY, ET AL., §
§
Plaintiffs §

VS. §

ENRON CORPORATION, ET AL., §
§
Defendants §

CIVIL ACTION NO. H-01-3624
CONSOLIDATED CASES

FRED A. ROSEN AND MARION ROSEN; §
HOUSTON FEDERATION OF TEACHERS, §
on behalf of its members; §
ANNIE M. BANKS; LARRY D. §
BARNETT; ROBERT CHAZEN; §
CLIFFORD D. GOOKIN, Trustee for §
the Clifford D. Gookin §
Revocable Living Trust; CARL §
HERRIN, TODD L. JOHNSON, §
Administrator for RJS & §
Affiliated Companies Pension §
Plan; DAVID H. LOWE; ROBIN §
SAEX; JOHN SIEMER AND ELIZABETH §
SIEMER, Trustees FBO The §
Siemer Family Trust; ANTHONY §
G. TOBIN; AND JOHN E. WILLIAMS, §

Plaintiffs §
§

VS. §

ANDREW S. FASTOW; KENNETH L. §
LAY; JEFFREY J. SKILLING; §
ROBERT A. BELFER; NORMAN P. §
BLAKE, JR.; RICHARD B. BUY; §
RICHARD CAUSEY; RONNIE C. CHAN; §
JOHN H. DUNCAN; JOE H. FOY; §
WENDY L. GRAMM; KEN L. §
HARRISON; ROBERT K. JAEDICKE; §
MICHAEL J. KOPPER; CHARLES A. §
LEMAISTRE; REBECCA MARK- §
JUSBASCHE; JOHN MENDELSON; §
JEROME J. MEYER; LOU PAI; PAUL §

CIVIL ACTION NO. H-02-0199
CONSOLIDATED LEAD H-01-3624

1026

V. FERRAZ PEREIRA; FRANK §
 SAVAGE; JOHN A. URQUHART; JOHN §
 WAKEHAM; CHARLES E. WALKER; §
 BRUCE WILLISON; HERBERT S. §
 WINOKUR, JR.; BEN GLISAN; §
 KRISTINA MORDAUNT; D. STEPHEN §
 GODDARD, JR., DAVID B. DUNCAN; §
 DEBRA A. CASH; ROGER WILLARD; §
 THOMAS H. BAUER; AND ARTHUR §
 ANDERSEN, L.L.P., §
 §
 Defendants. §

HAROLD AND FRANCE AHLICH; §
 IRVING BABSON; JOHN AND IDA §
 BANKS; HOWARD AND NANCY BELL; §
 BILL AND RHONDA BRAGDON; SIDNEY §
 BROWN; BRUCE AND JANET §
 CAMPBELL; PATRICK CARNEY; GREGG §
 CAR; VINCENT AND MARIANNE §
 CARRELLA; LOUIS CARUCCI; §
 PATRICK CUNNINGHAM; JAMES AND §
 KAREN DAVIDSON; JOHN DAVIS; §
 PETER DORFLINGER; JANE GAUCHER, §
 DONALD GAUCHER; RONALD GISH; §
 JOHANNE GRAHAM; JOHN GUTMAN; §
 RICHARD HAYHOE; DAVID HUCKIN; §
 EDWARD JAPHE; MICHAEL KREHEL; §
 PAUL LUTZ; JOHN AND JEAN §
 NEIGHBORS; WILLIAM POWELL; §
 SAMUEL AND LILLIAN REINER; §
 CHRISTOPHER AND HENRIETTA ROWE; §
 RALPH AND JEAN SHAPIRO; §
 CONSTANCE THEODORE; GEORGE AND §
 NICKYE VENTERS; PETER VERUKI; §
 JANE BULLOCK; JOHN BARNHILL; §
 DON REILAND; SCOTT BORCHART; §
 MICHAEL MIES; VIRGINIA ACOSTA; §
 JIM HEVELY; MIKE BAUBY; ROBERT §
 MORAN; JACK & MARILYN TURNER; §
 AND HAL MOORMAN & MILTON TATE, §
 CO-TRUSTEES FOR MOORMAN, TATE §
 MOORMAN & URQUHART MONEY §
 PURCHASE PLAN AND TRUST, §
 §

Plaintiffs §

VS. §

ARTHUR ANDERSEN, L.L.P.; D. §
 STEPHEN GODDARD, JR.; DAVID §
 DUNCAN; DEBRA CASH; ROGER §
 WILLARD, THOMAS BAUER; ANDREW §
 FALSTOW; KENNETH L. LAY; §
 JEFFREY K. SKILLING; ROBERT §

CIVIL ACTION NO. H-02-0347
 CONSOLIDATED LEAD H-01-3624

BELFER; NORMAN P. BLAKE, JR.; §
 RICHARD B. BUY; RICHARD CAUSEY; §
 RONNIE CHAN; JOHN DUNCAN; JOE §
 FOY; WENDY GRAMM; KEN HARRISON; §
 ROBERT K. JAEDICKE; MICHAEL J. §
 KOPPER; CHARLES A. LEMAISTRE; §
 REBECCA MARK-JUSBASCHE; JOHN §
 MENDELSON; JEROME J. MEYER; §
 LOU PAI; PAUL V. FERRAR §
 PEREIRA; FRANK SAVAGE; JOHN §
 A. URQUHART; JOHN WAKEHAM; §
 CHARLES E. WALKER; BRUCE §
 WILLISON; HERBERT S. WINOKUR, §
 JR.; BEN GLISAN; KRISTINA §
 MORDAUNT; MICHAEL C. ODOM; GARY §
 B. GOOLSBY; AND MICHAEL M. §
 LOWTHER, §
 §
 Defendants §

MARY BAIN PEARSON AND JOHN §
 MASON, §
 §
 Plaintiffs §

VS. §
 §
 ANDREW S. FASTOW; KENNETH L. §
 LAY; JEFFREY J. SKILLING; §
 ROBERT A. BELFER; NORMAN P. §
 BLAKE, JR.; RICHARD B. BUY; §
 RICHARD CAUSEY; RONNIE C. CHAN; §
 JOHN H. DUNCAN; JOE H. FOY; §
 WENDY L. GRAMM; KEN L. §
 HARRISON; ROBERT K. JAEDICKE; §
 MICHAEL J. KOPPER; CHARLES A. §
 LEMAISTRE; REBECCA MARK- §
 JUSBASCHE; JOHN MENDELSON; §
 JEROME J. MEYER; LOU PAI; PAUL §
 V. FERRAZ PEREIRA; FRANK §
 SAVAGE; JOHN A. URQUHART; JOHN §
 WAKEHAM; CHARLES E. WALKER; §
 BRUCE WILLISON; HERBERT S. §
 WINOKUR, JR.; BEN GLISAN; §
 KRISTINA MORDAUNT; D. STEPHEN §
 GODDARD, JR., DAVID B. DUNCAN; §
 AND ARTHUR ANDERSEN, L.L.P., §
 §
 Defendants. §

CIVIL ACTION NO. H-02-0670
 CONSOLIDATED LEAD H-01-3624

RUBEN AND IRENE DELGADO AND §
 PRESTON CLAYTON, §

	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-02-0673
	§	CONSOLIDATED LEAD H-01-3624
ANDREW S. FASTOW; KENNETH L.	§	
LAY; JEFFREY J. SKILLING;	§	
ROBERT A. BELFER; NORMAN P.	§	
BLAKE, JR.; RICHARD B. BUY;	§	
RICHARD CAUSEY; RONNIE C. CHAN;	§	
JOHN H. DUNCAN; JOE H. FOY;	§	
WENDY L. GRAMM; KEN L.	§	
HARRISON; ROBERT K. JAEDICKE;	§	
MICHAEL J. KOPPER; CHARLES A.	§	
LEMAISTRE; REBECCA MARK-	§	
JUSBASCHE; JOHN MENDELSON;	§	
JEROME J. MEYER; LOU PAI; PAUL	§	
V. FERRAZ PEREIRA; FRANK	§	
SAVAGE; JOHN A. URQUHART; JOHN	§	
WAKEHAM; CHARLES E. WALKER;	§	
BRUCE WILLISON; HERBERT S.	§	
WINOKUR, JR.; BEN GLISAN;	§	
KRISTINA MORDAUNT; D. STEPHEN	§	
GODDARD, JR., DAVID B. DUNCAN;	§	
AND ARTHUR ANDERSEN, L.L.P.,	§	
	§	
Defendants.	§	

ORDER OF REMAND

Pending before the Court are motions to remand filed by Plaintiffs in the following member suits: (1) Rosen et al. v. Fastow et al., H-02-0199, instrument #224, supplement #897 in Newby; (2) Ahlich et al. v. Arthur Andersen, L.L.P. et al., H-02-0347, instrument #268, supplements #358 and 899 in Newby; (3) Pearson et al. v. Fastow et al., H-02-0670, instrument #361, supplement #900 in Newby; and (4) Delgado et al. v. Fastow et al., H-02-0673, instrument #359, supplement #898 in Newby.

These cases were filed in state court by Sean Jez and the law firm of Fleming & Associates and were removed pursuant to the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"),

Pub. L. No. 105-353, 112 Stat. 3227, codified as amended in part at 15 U.S.C. §§ 77p and 78bb(f) (1998) ("no covered class action based upon the statutory or common law of an State or subdivision thereof may be maintained in any State or Federal court by any private party alleging . . . an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security"). They do not technically satisfy SLUSA's definition of a "covered class action."¹

Furthermore, in its recent ruling affirming this Court's injunction enjoining Sean Jez and the law firm from filing new state court actions relating to Enron without leave of court, the

¹ Title 15 U.S.C. § 78bb(f) (5) (B) defines a "covered class action" as

- (i) any single lawsuit in which--
 - (I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominated over any question affecting only individual persons or members or
 - (II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or
- (ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which--
 - (I) damages are sought on behalf of more than 50 persons; and
 - (II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

15 U.S.C. § 78bb(f) (5) (B).

Fifth Circuit made clear that counsel's deliberate efforts to circumvent SLUSA and avoid federal jurisdiction by filing such suits in counties across Texas that did not meet SLUSA's definition "are not themselves an abuse of the courts." Newby v. Enron Corp., 2002 WL 1822352, *4 (5th Cir. Aug. 9, 2002). It further noted that

the district court cannot predicate future denials of leave [to file state court actions related to Enron] solely upon Fleming's desire to avoid the reach of the Securities Litigation Uniform Standards Act. We do not question the filing of suits tailored to avoid federal jurisdiction. Nor do we countenance any preemptive federal dominion. The parallel exercise of state and federal judicial power is inherent in our government of dual sovereignty.

Id. at *5.

Accordingly, the Court

ORDERS that the motions to remand are GRANTED for lack of subject matter jurisdiction. Rosen et al. v. Fastow et al., H-02-0199, is hereby SEVERED from Newby and REMANDED to the 333rd Judicial District Court in Harris County, Texas; Ahlich et al. v. Arthur Andersen, L.L.P. et al., H-02-0347, is SEVERED from Newby and REMANDED to the 272nd District Court in Brazos County, Texas; and (3) Pearson et al. v. Fastow et al., H-02-0670, and Delgado et al. v. Fastow et al., H-02-0673, are hereby SEVERED from Newby and REMANDED to the 164th Judicial Court in Harris County, Texas.

Finally, as this Court indicated in its Memorandum and Order entered on May 1, 2002 (#577 at 4-6), SLUSA provides for a stay of discovery in any private action in state court where the

state court proceedings are being employed to circumvent the discovery stay of the PSLRA. 15 U.S.C. § 78u-4(b)(3)(D). As it did in that Memorandum and Order regarding Bullock v. Arthur Andersen, L.L.P., No. 32,716, pending in the 21st Judicial District Court, Washington County, Texas, in aid of its jurisdiction and to protect and effectuate its judgments in Newby the Court

ORDERS that all discovery in these four remanded cases is ENJOINED until this Court has ruled on the motions to dismiss in Newby.

SIGNED at Houston, Texas, this 6th day of September, 2002.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE