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

United States Courts
Southern District of Texas
FILED
JAN 0 7 2002
Michael N. Milby, Clerk

MARK NEWBY, Plaintiff, vs. ENRON CORP., *et al.*, Defendants.	Civil Action No. H-01-3624 (Securities Suits)
JOHN and PEGGY ODAM, *et al.*, Plaintiffs, vs. ENRON CORP., *et al.*, Defendants.	Civil Action No. H-01-3914
PIRELLI ARMSTRONG TIRE CORPORATION RETIREE MEDICAL BENEFITS TRUST, Derivatively On Behalf of ENRON CORPORATION, Plaintiff, vs. KENNETH L. LAY, *et al.*, Defendants, - and - ENRON CORPORATION, an Oregon Corporation, Nominal Defendant.	Civil Action No. H-01-3645 (Derivative Suits)

106

WILLIAM COY, Individually and Derivatively and on Behalf of All Others Similarly Situated, Plaintiff,	:	Civil Action No. H-01-4248
vs.	:	
ARTHUR ANDERSEN, *et al.*, Defendants.	:	
PAMELA M. TITTLE, *et al.*, on behalf of herself and a class of persons similarly situated, Plaintiffs,	:	Civil Action No. H-01-3913 (ERISA suits)
vs.	:	
ENRON CORP., an Oregon Corporation, *et al.*, Defendants.	:	

DEFENDANT ARTHUR ANDERSEN LLP'S
OPPOSITION TO OBJECTIONS TO CONSOLIDATION
SUBMITTED BY PLAINTIFFS ODAM ET AL. AND COY ET AL.

Defendant Arthur Andersen LLP ("Andersen") respectfully submits this memorandum in opposition to the objections of plaintiffs in two actions – Odam v. Enron Corp., C.A. No. H-01-3914 (S.D. Tex.), and Coy v. Arthur Andersen, L.L.P., C.A. No. H-01-4248 (S.D. Tex.) – to the consolidation of those actions with numerous other actions relating to Enron Corporation ("Enron") that are pending and have been consolidated before this Court. For the reasons set forth below, the Odam and Coy cases have been properly consolidated and plaintiffs' objections should be overruled.

PRELIMINARY STATEMENT

In an order dated December 12, 2001 (the "Consolidation Order"), this Court consolidated the 45 Enron-related actions then pending before it, including the Odam action, pursuant to Federal Rule of Civil Procedure 42(a). On December 18, 2001, this Court consolidated the Coy action with the other actions pursuant to the Consolidation Order.

In the Consolidation Order, this Court found that the Enron-related cases pending in this district

> all arise from a common core of operative facts. They are filed against common defendants. Many of the cases contain identical claims. The legal issues will overlap. Much of the discovery will be common to all the cases.

Consolidation Order at 17. On this basis, the Court concluded that consolidation would "ensure the orderly progress of these lawsuits" and "avoid unwarranted

duplication of discovery and motion practice," and ordered that the actions be consolidated. Id.

The Court's findings of commonality are fully applicable to the Odam and Coy cases. Although the Odam and Coy plaintiffs object to the Consolidation Order, their objections neither establish that the Court applied the wrong legal standards, nor rebut the Court's findings of commonality as applied to their cases. As shown below, the Odam and Coy actions feature allegations of fact, legal issues, and defendants common to the other consolidated actions, and will require common discovery. Under these circumstances, permitting Odam and Coy to proceed separately from other Enron-related actions would impede "the orderly progress of these lawsuits" and generate "unwarranted duplication of discovery and motion practice." Consolidation Order at 17. Because the approach advocated by Odam and Coy would waste the resources of the Court and the parties, the Court should not reconsider its orders consolidating the Odam and Coy actions.

ARGUMENT

I

THE ODAM AND COY ACTIONS INVOLVE QUESTIONS OF LAW AND FACT COMMON TO THE OTHER CONSOLIDATED ACTIONS

Federal Rule of Civil Procedure 42(a) "authorizes the district court to 'order all actions consolidated,' when they involve 'a common question of law or fact.'" Harcon Barge Co. v. D&G Boat Rentals, Inc., 746 F.2d 278, 286 (5th Cir. 1984) (quoting Fed. R. Civ. P. 42(a)), adhered to on reh'g granted on other grounds, 784 F.2d 665 (5th Cir. 1986) (en banc). As the Fifth Circuit has explained, this rule provides for a "broad grant of authority" and "has been applied liberally." In re Air Crash Disaster, 549 F.2d 1006, 1013 (5th Cir. 1977); see also Johnson v. Celotex Corp., 899 F.2d 1281, 1284-85 (2d Cir. 1990) ("courts have taken the view that considerations of judicial economy favor consolidation").

In particular, securities fraud actions "based on the same 'public statements and reports'" are routinely consolidated under Rule 42(a). See, e.g., In re MicroStrategy, Inc. Sec. Litig., 148 F. Supp. 2d 654, 657 (E.D. Va. 2001); Wenderhold v. Cylink Corp., 188 F.R.D. 577, 583 (N.D. Cal. 1999); Werner v. Satterlee, Stephens, Burke & Burke, 797 F. Supp. 1196, 1211 (S.D.N.Y. 1992); see also Waldman v. Electropace Corp., 68 F.R.D. 281, 283 (S.D.N.Y. 1975) ("It is well recognized that consolidation of stockholders' suits often benefits both the courts and the parties by expediting pretrial proceedings, avoiding duplication of discovery, and minimizing costs.").

Likewise, actions asserting federal securities claims against a securities issuer, its directors and officers and its auditor based on common allegations of fact often are consolidated. See, e.g., In re SCB Computer Tech., Inc. Sec. Litig., 149 F. Supp. 2d 334, 339 n.1 (W.D. Tenn. 2001) (noting that separate actions previously were consolidated in unpublished order); Seidman v. American Mobile Sys., 157 F.R.D. 354, 359 (E.D. Pa. 1994) (same).

In their objections to consolidation, plaintiffs do not – and could not – show that their actions do not involve questions of fact common to the other Enron-related actions. To the contrary, both Odam and Coy center on questions of fact, and entail legal issues, that are common to these other actions. Moreover, Andersen is a defendant common to more than 20 of the Enron-related actions.

The factual allegations in the Odam complaint heavily overlap the allegations in the other consolidated securities actions. With particular respect to Andersen – which is the only defendant remaining in Odam – the complaint focuses on transactions and entities relating to Enron's restatement of its financial statements in the fall of 2001. The complaint asserts that Andersen violated generally accepted accounting principles ("GAAP") in connection with its audit of financial statements that allegedly overstated Enron's net income and inadequately disclosed Enron's debt. See Odam Compl. ¶ 107.[1]

The Odam complaint further alleges that certain entities – namely, Chewco Investments, L.P. ("Chewco"), Joint Energy Development Investments Limited

---

[1]"Plaintiffs' Original Complaint" in Odam will be cited as the "Odam Compl."

Partnership ("JEDI"), and L-JM Cayman, L.P. (LJM1) – should have been consolidated with Enron, and alleges that Enron's transactions with LJM1 and LJM2 Co.-Investment, L.P. (LJM2) were not properly reported. See id. ¶¶ 108-111. The complaint also asserts that certain notes receivable from four special purpose entities, named Raptor I through Raptor IV, allegedly were not accounted for in accordance with GAAP. See id. ¶ 112.

For example, the Odam complaint alleges:

- The financial activities of LJM1 which engaged in derivative transactions with Enron to permit Enron to hedge market risks also should have been consolidated into Enron's financial statements beginning in 1999. The failure to do so amounted to negligence on the part of [Andersen] and resulted in losses to Plaintiffs. Such failure by [Andersen] was also a violation of [GAAP]. The cover-up by [Andersen] of these transactions constituted gross negligence entitling these Plaintiffs to recovery of punitive damages. This cover-up was continued by the directors until October 2001. (Odam Compl. ¶ 111).

- These failures on the part of [Andersen] each constituted negligence and were a proximate cause of the precipitous drop in the value of Plaintiffs' shares in Enron. All of the above transactions [involving LJM1, LJM2, Chewco, JEDI and Raptors I-IV] and the failure of [Andersen] to properly record and document them constituted a violation of both federal and state security laws and GAAP. Each of the Plaintiffs herein suffered monetary losses because of their reliance on the accounting reports and audits of [Andersen] for which they seek actual and punitive damages. (Id. ¶ 113).

The allegations of the Coy complaint, while not as detailed, similarly overlap with the allegations of other consolidated actions. Like the Odam complaint and the complaints in the other consolidated actions, the Coy complaint focuses on Andersen's role in Enron's accounting for transactions involving LJM1, LJM2, and Chewco. See Coy Second Amd. Pet. ¶¶ 4, 12, 31-38;[2] see also Coy Obj. at 3 (claims against Andersen

[2]The Coy Plaintiffs' Second Amended Petition in Coy et al. v. Arthur

(continued...)

are grounded in "inaccurate and untrue" representations "of Enron's financial condition").[3]

For example, the Coy complaint alleges:

- Andersen made material misrepresentations to the Stockholders, including, without limitation, falsely representing to Shareholders that the Enron accounting transactions and activities with, among others, LJM2, LJM[1], and Chewco were proper and in conformity with GAAP. These misrepresentations were either made with knowledge of their falsity, or they were made recklessly without any knowledge of the truth as positive assertions and as aiders and abettors. Andersen made these representations with the intention that they be relied on by the Plaintiff Stockholders. The Plaintiff Stockholders relied on the Andersen Defendants' misrepresentations and thereby suffered injury. (Coy Second Amd. Pet. ¶ 31).

- The Andersen accountants and auditors owed the Plaintiff Stockholders the duty to act in the best interests of the Plaintiff Stockholders and, in addition, the duty to exercise reasonable and ordinary care and diligence as accountants and auditors in the use and application of their skill and knowledge. Defendants breached this duty to the Plaintiff Shareholders when Andersen committed certain acts, omissions, and failures and created conditions that include, but are not limited to the following:

  a. Failing to advise and disclose to the Plaintiff Stockholders the GAAP falsity, impropriety and illegality of, among others, Andersen's accounting conclusions regarding Enron and LJM2, LJM[1], and Chewco transactions.

---

[2](...continued)
Andersen, L.L.P. et al. – which was filed in the 55th Judicial District of the District Court of Harris County, Texas on or about December 10, 2001, the same day the case was removed to this Court – will be cited as the "Coy Second Amd. Pet."

[3]The Objection of William Coy and Candy Mounter, Individually and on Behalf of All Similarly Situated Stockholders of Enron Corp. to Consolidation of this Action with Other Federal Actions Involving Enron Corporation will be cited as the "Coy Obj."

> Andersen's breaches of duty proximately caused injury to the Plaintiff Stockholders, and the Plaintiff Stockholders' resulting damages including, but not limited to, the damages the Plaintiff Stockholders suffered from the diminution of the value of their Enron stock. (Id. ¶ 36).

Many of the other consolidated actions include claims against Andersen based on substantively similar, if not identical, factual allegations involving Enron's financial reporting. These complaints likewise emphasize entities (including Chewco, JEDI, LJM1, LJM2 and Raptors I-IV) and transactions related to the restatement of Enron's financial statements. See, e.g., Amalgamated Bank Amd. Compl. ¶¶ 95-118, 125-144; Archdiocese of Milwaukee Amd. Compl. ¶¶ 53-74, 79-96.

The amended Amalgamated Bank complaint, for example, alleges:

- Arthur Andersen falsely represented that Enron's financial statements for 1997, 1998, 1999 and 2000 were presented in accordance with GAAP and that Arthur Andersen's audits of Enron's financial statements had been performed in accordance with Generally Accepted Auditing Standards ("GAAS"). Arthur Andersen also consented to the incorporation of its false reports on Enron's financial statements in Enron's Form 10-Ks for those years and in [various prospectuses] . . . . (Amalgamated Bank Amd. Compl. ¶ 126).

- Arthur Andersen's reports were false and misleading due to its failure to comply with GAAS and because Enron's financial statements were not prepared in conformity with GAAP . . . so that issuing the reports was in violation of GAAS and SEC rules. Arthur Andersen knew that its reports would be relied upon by the Company as well as by present and potential investors in Enron's stock. (Id. ¶ 131).

- Arthur Andersen abandoned its role as independent auditor by turning a blind eye to each of the above indications of improper accounting, including the failure to consolidate, failure of Enron to make $51 million in proposed adjustments in 1997, and failure to adequately disclose the nature of transactions with subsidiaries. . . . (Id. ¶ 138).

Among the allegations of the amended Kemper complaint, which asserts ERISA claims, are:

- Andersen abandoned its role as an independent auditor and account[ant] by not requiring correction of Enron's improper accounting practices, by falsely representing that Enron's financial statements throughout the Misrepresentation Period were presented in accordance with GAAP and by falsely representing that its audits of Enron's financial statements had been performed in accordance with GAAS. (Kemper Amd. Comp. ¶ 68).

- For example, Andersen knew that Enron overstated its net income and earnings per share during the Misrepresentation Period and violated GAAP and SEC rules by failing to consolidate three entities which, pursuant to GAAP, were required to be consolidated into Enron's financial statements and which entries were incurring hundreds of millions of dollars in losses and should have reduced Enron's earnings. These entities also had hundreds of millions of dollars in debt which should have been included on Enron's balance sheets reported during the period. Andersen also knew that Enron also improperly accounted for common stock issued to a related party entity which should have been treated as a reduction in shareholders' equity but was accounted for as a note receivable. (Id. ¶ 69).

- Andersen knew that the Plan and Plan participants were investors and potential investors in Enron common stock and knew that the Plan fiduciaries offered and/or distributed Enron stock to participants. Andersen knowingly participated in the Enron Defendants' breaches of fiduciary duty by helping Enron deceive investors in the manner set forth above and by actively concealing from the Plan fiduciaries and Plan participants the true financial condition of the Company and the imprudence of investing in Enron stock. (Id. ¶ 70).

Odam and Coy also raise legal issues in common with the other actions. The Odam plaintiffs' claims pursuant to SEC Rule 10-b, as well as claims under other unspecified securities law provisions and the common law, raise, among others issues, those of fraud, misrepresentation, negligence, compliance with GAAP, scienter, reliance, injury, and proximate cause in connection with Andersen's auditing of Enron's financial statements. Odam Compl. ¶¶ 83-93, ¶¶ 106-113. The Coy plaintiffs' purported state law

claims likewise raise these same issues. See Coy Second Amd. Pet. ¶¶ 31-38; see also Coy Obj. at 11. These are among the issues that this Court found "will overlap" with legal issues in the other consolidated cases.

In addition, Andersen is a defendant common to Odam, Coy, and approximately 20 of the other consolidated actions. Although the Odam plaintiffs have dismissed their claims against Enron and its directors and officers, their roles in structuring the transactions and preparing the financial statements underlying the claims against Andersen are inextricably intertwined with the allegations against Andersen. In the event that any of the claims against Andersen in Odam, Coy, or any other consolidated action were to proceed to discovery, developing a complete factual record with respect to these claims would require discovery not only from Andersen, but also from Enron and its current and former directors, officers, and employees who are named as defendants in other consolidated actions, as well as from third parties. In addition, the same discovery also will be necessary to develop a complete factual record with respect to the related claims asserted in the other consolidated actions, whether these claims are asserted against Andersen, Enron, or individuals associated with Enron.

Under these circumstances, the Court's finding of commonality among the consolidated actions is fully applicable to Odam and Coy, and it would be a waste of judicial resources and the parties' resources to permit these two cases to each proceed on their own track separate from the dozens of other consolidated cases.

II

THE PLAINTIFFS' OBJECTIONS
TO CONSOLIDATION LACK MERIT

Absent any well-founded objections to the Consolidation Order, the Odam and Coy plaintiffs – all allegedly current or former Enron shareholders – proffer a variety of meritless arguments against the Court's consolidation of their claims with those of other Enron shareholders.

A. The Odam Plaintiffs' Objections Lack Merit

The Odam plaintiffs raise four main points, none of which warrants de-consolidation. First, they assert – without elaboration – that the issues they raise are somehow "different" from those in other Enron-related actions. See Odam Obj. ¶ 6(d) and 6(f).[4] But, as demonstrated above, the key factual issues underlying their claims are common to most, if not all, of the other consolidated cases. Moreover, the Odam plaintiffs' federal securities law claims against Andersen are similar, if not identical, to the federal securities law claims asserted against Andersen and other defendants in the consolidated federal securities actions, and thus entail common legal issues. Where, as here, there is "significant community of law and fact" consolidation is proper. State Mutual Life Assurance Co. v. Peat, Marwick, Mitchell & Co., 49 F.R.D. 202, 208 (S.D.N.Y. 1969).

[4]Plaintiffs John and Peggy Odam et al.'s Objection to the Court's Order of Consolidation will be cited as the "Odam Obj."

Second, the Odam plaintiffs object to consolidation because they have non-suited all other defendants leaving Andersen as the sole defendant,[5] whereas other consolidated actions name additional defendants, including Enron and its officers and directors. See Odam Obj. ¶¶ 6(a), 6(c) and 6(d)). This fact provides no grounds for permitting Odam to proceed separately. It is well established that "[t]he fact that a defendant may be involved in one case and not the other is not sufficient to avoid consolidation." Jolley v. Welch, 904 F.2d 988, 994 (5th Cir. 1990); see also Bottazzi v. Petroleum Helicopters, Inc., 664 F.2d 49, 50-51 (5th Cir. 1981). The Odam plaintiffs' tactical decision to drop their claim against Enron and associated individuals who are inextricably intertwined with the alleged occurrences underlying plaintiffs' claims cannot shield plaintiffs' action from consolidation.

Third, the Odam plaintiffs complain that consolidation will "unnecessar[ily]" increase their expenses because they will be "forced" to participate in discovery "not relevant" to their claims. See Odam Obj. ¶ 6(e) and 9. Not surprisingly the Odam plaintiffs provide no examples to suggest that discovery "irrelevant" to their claims will be substantial given the considerable overlap between their factual allegations and those in other complaints. In any event, if the Odam plaintiffs determine that any particular

---

[5]Nonetheless, the Odam Plaintiffs' objections to the Consolidation Order, which were apparently hand delivered to the Court on December 21, 2001, were not served on Andersen. Andersen obtained a copy of the objection on January 2, 2002 and requested an opportunity to respond by the close of business January 7, 2002. In the interim, Andersen was served with a copy of the Coy objection, to which it is now also responding.

discovery is not relevant to their claims, they can avoid incurring unnecessary expenses simply by declining to participate in that discovery.

Finally, the Odam plaintiffs argue that because their action raises individual claims, as opposed to class claims, consolidation of their action with purported class actions "probably" will slow down adjudication of their claims. Odam Obj. ¶¶ 6(b) and 8. Plaintiffs provide no reason to believe – assuming their claims against Andersen survive a motion to dismiss – that adjudication of class issues will substantially delay the consolidated litigation. Regardless, the potential delay to plaintiffs is clearly outweighed by the added burden on the Court and the other litigants that would be created if plaintiffs were permitted to prosecute their action independently of the other plaintiffs.[6]

Under these circumstances, the Odam plaintiffs have presented no meritorious grounds for this Court to reconsider its Consolidation Order.

B. The Coy Plaintiffs' Objections Lack Merit

The Coy plaintiffs' objections to consolidation are grounded principally in the supposed state-law nature of their claims. But even assuming, arguendo that plaintiffs' claims can be maintained under state law,[7] their arguments do not withstand scrutiny.

---

[6]Plaintiffs cite Mills v. Beech Aircraft, 886 F.2d 758 (5th Cir. 1989), for the proposition that consolidation with class actions "will prevent Plaintiffs from obtaining a trial setting." Odam Obj. at 14. In Mills, the Fifth Circuit upheld a district court's decision not to consolidate a trial-ready case with a case filed more than two years later that was still in the discovery phase. See id. at 762. Because Odam is at the same preliminary stage as the other consolidated actions, Mills creates no obstacle to the consolidation of Odam.

[7] The federal Securities Litigation Uniform Standards Act of 1998 ("SLUSA") bars the Coy plaintiffs from maintaining their claims under state law,

(continued...)

Two of Plaintiffs' arguments -- that it would be inappropriate under Fifth Circuit precedent to consolidate the claims with federal law claims, Coy Obj. at 6-8, and that the claims arise from 'different facts,' id. at 9-11 -- suffer from the same flaw. Both arguments fail to recognize that the appropriateness of consolidation, as the Consolidation Order holds, turns on whether actions involve common questions of fact, overlapping legal issues, common defendants and shared discovery – not whether the legal forms of claims are identical. See Consolidation Order at 17; see also Waldman, 68 F.R.D. at 284 ("Although . . . much of the proof presented in these actions will relate to technical accounting principles, the charges and therefore the proof of deviation from [GAAP] in each case are the same . . . The fact that the Waldman plaintiffs have raised a claim against these two defendants which plaintiffs in the other two actions have not does not militate against a consolidated trial."); In re Olsten Corp. Sec. Litig., 3 F. Supp. 2d 286, 293 (E.D.N.Y.) ("the facts and legal issues need not be identical to warrant consolidation"), adhered to on reh'g granted on other grounds, 181 F.R.D. 218 (E.D.N.Y. 1998); Vial v. First Commerce Corp., C.A. No. 83-1908, 1983 WL 1896, at *8 n.5 (E.D. La. May 4, 1983) ("[T]he fact 'that there are some questions not common to all the actions [does not bar consolidation] so long as there is at least one common question.'") (quoting 9 Wright & Miller, Federal Practice and Procedure § 2384, at 267-69 (1971)).[8]

---

[7](...continued)
which is the reason Andersen removed Coy from state court to this Court. See Coy Notice of Removal ¶¶ 10-13.

[8]The Coy plaintiffs cite dicta in Frazier v. Garrison I.S.D., 980 F.2d 1514 (5th Cir. 1993), which discusses three methods of consolidating actions, and
(continued...)

Although Plaintiffs assert that their claims involve "different facts" from the other consolidated actions, they present none – only different legal theories. See Coy Obj. at 9, 11.[9]

Plaintiffs cite Dupont v. Southern Pacific Co., 366 F.2d 193, 195-96 (5th Cir. 1996), and State Life Mutual, supra, to support their other argument, that consolidation of Coy will prejudice them through "lengthy delays" under the Private Securities Litigation Reform Act of 1995 (the "Reform Act"). See Coy Obj. at 7-9. There is no basis for their argument and neither case is apposite. In Dupont, the Fifth Circuit "urged" trial judges "to make good use of Rule 42(a) . . . where there is involved a common question of fact and law as to the liability of the defendant in order to expedite the trial and eliminate unnecessary repetition and confusion." 366 F.2d at 195. Consolidation was not

---

[8](...continued)
incorrectly suggest that consolidation of Coy could not be achieved by any of these methods. See Coy Obj. at 7. But Frazier's holding – that the district court did not abuse its "very broad" discretion in declining to consolidate actions involving neither common questions of fact nor common questions of law, see 980 F.2d at 1532 – is unremarkable, and has no application to the Court's consolidation of Coy.

[9]The Coy plaintiffs also assert in passing that their action involves some parties different from those in the other consolidated actions. See Coy Obj. at 6. In particular, plaintiffs assert without elaboration that their purported class is different than the purported classes proposed in the other consolidated actions. Even if true, plaintiffs cite no authority indicating this difference is significant. To the contrary, cases have held that the plaintiffs need not be identical so long as there are common issues of fact. See, e.g., Jordan v. Jones, 563 F.2d 148, 148 (5th Cir. 1977); Central Motor Co. v. United States, 583 F.2d 470 (10th Cir. 1978); Utah v. United States Dep't of Interior, 45 F. Supp. 2d 1279, 1281 (D. Utah 1999). Similarly, as shown above, a lack of complete identity among defendants is not an obstacle to consolidation, particularly where plaintiffs' have chosen not to name as defendants persons whose actions – under plaintiffs' allegations – are inseparable from the claims at issue.

appropriate in Dupont because it caused the lead counsel to have a "definite conflict of interest" that prevented him from "properly and adequately represent[ing]" all plaintiffs. See 366 F.2d at 196-97.[10] Similarly, consolidation was not required in State Life Mutual "where a disparity of interest" among plaintiffs id. at 209-10 "would likely cause prejudice". Id. 10 .[11] No disparity or conflict is presented here.

Moreover, even assuming, arguendo that plaintiffs' claims properly arise under state law, plaintiffs' invocation of prejudice is undermined by their offer to coordinate discovery – including cross-noticing depositions – with the plaintiffs in the other consolidated actions subject to the Reform Act. In light of the Coy plaintiffs' expressed

---

[10]Plaintiffs also cite three other cases for similar propositions, but all are unavailing. St. Bernard General Hosp., Inc. v. Hospital Serv. Ass'n, 712 F.2d 978, 989 (5th Cir. 1983), echoes Dupont in dictum, then holds that the district court did not abuse its discretion in refusing to consolidate a trial-ready case with cases still in the discovery phase. Like Mills, St. Bernard has no application here because Coy and the other consolidated cases are all in the same preliminary stages. Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492 (11th Cir. 1985), upholds the trial court's decision to consolidate cases presenting common issues of law and fact. Id. at 1296. Southwest Marine, Inc. v. Triple A Machine Shop, Inc., 720 F. Supp. 805 (N.D. Cal. 1989), involves cases that "do not state the same cause of action," do not "involve the same alleged fraudulent scheme" and do not have common facts. See id. at 807.

[11]Plaintiffs cite a string of cases, but these cases are distinguishable because they lacked the commonality necessary for consolidation. See Shumate & Co. v. NASD, 509 F.2d 147, 155 (5th Cir. 1975) (proponent of consolidation admitted that issues in suits were "separate"); EPA v. City of Green Forest, 921 F.2d 1394, 1402 (8th Cir. 1990) (claims in one action were "not relevant" to other action); Molever v. Levenson, 539 F.2d 996, 1003 (4th Cir. 1976) ("the 10b-5 claim tendered no question of law or fact like those in the derivative and defamation suits"); Meeder v. Superior Tube Co., 72 F.R.D. 633, 635 (W.D. Pa. 1976) (denying consolidation because of lack of sufficient record; "at this point we just don't know how 'common' these questions may be"); Fleishman v. Prudential-Bache Secs. Inc., 103 F.R.D. 623, 625 (E.D. Wisc. 1984) (denying consolidation because of "factual dissimilarities").

willingness to coordinate discovery with the supposedly slower Reform Act cases even in the absence of consolidation, consolidation will not prejudice the Coy plaintiffs at all.

In any event, the Coy plaintiffs have not shown that any "prejudice "to them outweighs the enormous burden on the Court and the other litigants that would result from permitting plaintiffs to litigate their claims separately. Instead, they baldly assert that the efficiencies of consolidation will be "marginal at best." Coy Obj. at 10. This fallacious assertion stems from plaintiffs' refusal to acknowledge the substantial overlap in questions of fact between their action and the other consolidated actions and blinds them to the manifest efficiencies of maintaining Coy as a consolidated action.

Thus, the Coy plaintiffs have not shown any cause for this Court to reconsider its decision consolidating the Coy action.

CONCLUSION

For these reasons, the Court should overrule the objections to the Consolidation Order interposed by the plaintiffs in the Odam and Coy actions, and adhere to its decisions consolidating these actions with the other Enron-related actions.

Dated: Houston, Texas
January 7, 2001

Respectfully submitted,

Rusty Hardin, by A. Ramzel with permission.

Rusty Hardin
State Bar No. 08972800
S.D. Tex. I.D. No. 19424
1201 Louisiana, Suite 3300
Houston, Texas 77002
(713) 652-9000
(713) 652-9800 (fax)

Attorney-in-Charge for
Defendant Arthur Andersen LLP

OF COUNSEL

Andrew Ramzel
State Bar No. 00784814
S.D. Tex. I.D. No. 18269
RUSTY HARDIN & ASSOCIATES, P.C.

Daniel Kolb
Michael P. Carroll
Sharon Katz
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
(212) 450-4000