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

United States Courts
Southern District of Texas
FILED

NOV 2 9 2001

Michael N. Milby, Clerk of Court

MARK NEWBY, Plaintiff, v. ENRON CORPORATION, ANDREW S. FASTOW, KENNETH L. LAY, and JEFFREY K. SKILLING, Defendants.	§ § § § § § § § § § §	C.A. No. H-01-3624 JURY TRIAL DEMANDED

SETH ABRAMS and STEVEN FRANK, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORPORATION, KENNETH L. LAY, JEFFREY K. SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § §	C.A. NO. H-01-3630 JURY TRIAL DEMANDED

ROBERT J. CASEY II and RUTH I. HORTON, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORPORATION, KENNETH L. LAY, JEFFREY K. SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § § §	C.A. NO. H-01-3647 JURY TRIAL DEMANDED
FRANK WILSON, On Behalf of Himself and All Others Similarly Situated, Plaintiffs, v. ENRON CORPORATION, KENNETH L. LAY, JEFFREY K. SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § § §	C.A. NO. H-01-3652 JURY TRIAL DEMANDED
J. MICHAEL GOTTESMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORPORATION, KENNETH L. LAY, JEFFREY K. SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § § §	CIVIL ACTION NO. H-01-3660 JURY TRIAL DEMANDED

AVIGAYIL GREENBERG, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORPORATION, KENNETH L. LAY, JEFFREY K. SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § §	C.A. NO. H-01-3670 JURY TRIAL DEMANDED
ROBERT CHRISTIANSON, Individually and On Behalf of All Others Similarly Situated Plaintiff, v. ENRON CORP., KENNETH L. LAY, JEFFREY J. SKILLING, and ANDREW S. FASTOW, Defendants.	§ § § § § § § § § § §	C.A. NO. H-01-3671 JURY TRIAL DEMANDED
ERNEST GOTTDIENER, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., KENNETH L. LAY JEFFREY K. SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § §	C.A. NO. H-01-3681 JURY TRIAL DEMANDED

MURIEL P. KAUFMAN, IRA, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORP., KENNETH LAY, ANDREW FASTOW, RICHARD CAUSEY, JEFFREY SKILLING, MARK FREVERT, CLIFF BAXTER, and LOU PAI Defendants.	§ § § § § § § § § § § § §	C.A. NO. H-01-3682 JURY TRIAL DEMANDED
MICHAEL KOROLUK, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORP., KENNETH LAY, JEFFREY SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § §	C.A. NO. H-01-3733 JURY TRIAL DEMANDED
JAMES BRILL, On Behalf of Himself and All Others Similarly Situated Plaintiff, v. ENRON CORP., KENNETH LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § §	C.A. No. H-01-3734 C.A.A NO. H-01-3734 JURY TRIAL DEMANDED

WARREN PINCHUCK, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORP., KENNETH LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW, Defendants.	§ § § § § § § § § §	C.A. NO. H-01-3736 JURY TRIAL DEMANDED

MAHIN S. MASHAYEKH, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORP., KENNETH LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW, Defendants.	§ § § § § § § § § §	C.A. NO. H-01-3737 JURY TRIAL DEMANDED

PIRELLI ARMSTRONG TIRE CORPORATION RETIREE MEDICAL BENEFITS TRUST, Derivatively On Behalf of ENRON CORPORATION,	§	
Plaintiffs,	§	
v.	§	C.A. NO. H-01-3645
KENNETH L. LAY, ROBERT A. BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, WENDY L. GRAMM, ROBERT K. JAEDICKE, CHARLES A. LEMAISTRE, JOHN MENDELSOHN, PAULO V. FERRAZ PEREIRA, FRANK SAVAGE, JOHN WAKEHAM, HERBERT S. WINOKUR, JR., ANDREW S. FASTOW,	§	DEMAND FOR JURY TRIAL
Defendants,	§	
-and-	§	
ENRON CORPORATION, an Oregon Corporation,	§	
Nominal Defendant.	§	

JOSEPH E. KASSOWAY, as Trustee of the JOSEPH E. KASSOWAY and ROBERT T. KASSOWAY TRUST Plaintiffs, v. ANDREW S. FASTOW, KENNETH LAY, JEFFREY K. SKILLING, ROBERT A. BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, WENDY L. GRAMM, KEN L. HARRISON, ROBERT K. JAEDICKE, CHARLES A. LeMAISTRE, JOHN MENDELSOHN, JEROME J. MEYER, FRANK SAVAGE, JOHN A. URQUART, JOHN WAKEHAM, and HERBERT S. WINOKUR, JR., Defendants, -and- ENRON CORPORATION Nominal Defendant.	§ §	C.A. H-01-3690 JURY TRIAL DEMANDED
BARBARA D. LEE, Individually and On Behalf of All Others Similarly Situated Plaintiff, v. ENRON CORP., KENNETH LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § §	C.A. NO. H-01-3789 JURY TRIAL DEMANDED

ELMAR A. BUSCH, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORPORATION, KENNETH L. LAY, JEFFREY K. SKILLING, and ANDREW S. FASTOW Defendants.	§ § § § § § § § § § § § § § §	C.A. NO. H-01-3735 JURY TRIAL DEMANDED
DANIELLE M. KARCICH, UGMA WITH ANDREW J. KARCICH PARENT AND NATURAL GUARDIAN, on Behalf of Itself and All Others Similarly Situated, Plaintiffs, v. ENRON CORP., KENNETH LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW, Defendants.	§ § § § § § § § § § § § § § §	C.A. NO. H-01-3838 JURY TRIAL DEMANDED

CANDY MOUNTER, SHIRLEY J. PRATZ, and WILLIAM COY, Individually And Derivatively, And On Behalf of All Similarly Situated Stockholders of Enron Corp.	§	
Plaintiffs,	§	
v.	§	C.A. NO. H-01-3996
JOINT ENERGY DEVELOPMENT INVESTMENTS, L.P., JOINT ENERGY DEVELOPMENT INVESTMENTS II, L.P., ANDREW S. FASTOW, JEFFREY K. SKILLING, and KEN LAY,	§	
Defendants.	§	

SHIRLEY J. PRATZ, WILLIAM COY, and CANDY MOUNTER, INDIVIDUALLY AND DERIVATIVELY, AND ON BEHALF OF ALL SIMILARLY SITUATED STOCKHOLDERS OF ENRON CORP.,	§	
Plaintiffs,	§	
v.	§	C.A. NO. H-01-3997
CHEWCO INVESTMENTS, L.P. a/k/a CHEWCO INVESTMENTS OF HOUSTON, L.P., MICHAEL KOPPER, ANDREW S. FASTOW, JEFFREY K. SKILLING, and KEN LAY,	§	JURY DEMANDED
Defendants.	§	

FRED GREENBERG, derivatively, on behalf of Enron Corp., Plaintiff, v. ROBERT A. BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, ANDREW S. FASTOW, WENDY L. GRAMM, ROBERT K. JAEDICKE, KENNETH L. LAY, CHARLES A. LEMAISTRE, JOHN MENDELSOHN, PAULO V. FERRAZ PEREIRA, FRANK SAVAGE, JEFFREY K. SKILLING, JOHN WAKEHAM, HERBERT S. WINOKUR, JR., and LJM2 CO-INVESTMENT, L.P., Defendants, and ENRON CORP., an Oregon Corporation, Nominal Defendant.	§ §	C.A. NO. H-01-3998 JURY DEMANDED
WILLIAM COY, INDIVIDUALLY AND DERIVATIVELY, AND ON BEHALF OF OF ALL SIMILARLY SITUATED STOCKHOLDERS OF ENRON CORP., Plaintiff, v. ANDREW S. FASTOW, JEFFREY K. SKILLING, KEN LAY, LJM2 CO-INVESTMENT, L.P., AND ALL OTHER SIMILARLY SITUATED OFFICERS AND DIRECTORS OF ENRON CORP., Defendants.	§ § § § § § § § § § § § § § § § § § §	C.A. NO. H-01-3995

HENRY STEINER, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORP., KENNETH LAY, JEFFREY SKILLING, and ANDREW S. FASTOW, Defendants.	§ § § § § § § § § § §	C.A. NO. H-01-3717 JURY TRIAL DEMANDED
PATRICIA D. PARSONS, On Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORP., ANDREW S. FASTOW KENNETH L. LAY, JEFFREY J. SKILLING and ARTHUR ANDERSEN LLP, Defendants.	§ § § § § § § § § § §	C.A. NO. H-01-3903 JURY TRIAL DEMANDED
NAOMI RAPHAEL, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. ENRON CORP., KENNETH LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW, Defendants.	§ § § § § § § § § § §	C.A. NO. H-01-3839 JURY TRIAL DEMANDED

PAMELA M. TITTLE, On Behalf of Herself And A Class of Persons Similarly Situated,	§	
	§	
Plaintiff	§	
	§	
v.	§	C.A. No. H-01-3913
	§	
ENRON CORP., an Oregon corporation; MARY K. JOYCE; ROBERT A. BELFER, NORMAN P. BLAKE, RONNIE C. CHAN, JOHN H. DUNCAN, WENDY L. GRAMM, KEN L. HARRISON, ROBERT K. JAEDICKE, KENNETH L. LAY, CHARLES A. LeMAISTRE, JEFFREY K. SKILLING, JOHN A. URQUHART, JOHN WALKEMAN, HERBERT S. WINOKUR, JOHN MENDELSOHN; JEROME J. MEYER, REBECCA MARK-JUSBASCHE, PAUL V. FERRAZ PEREIRA, and FRANK SAVAGE, Individually and as constituting the Board of of Directors of Enron Corp.; and JOHN and JANE DOES 1-20,	§	
	§	
Defendants.	§	

DECTECTIVES ENDOWMENT ASSOCIATION ANNUITY FUND, Derivatively on Behalf of ENRON ENRON CORPORATION,	§	
Plaintiffs,	§	
v.	§	C.A. NO. H-01-3892
KENNETH L. LAY, JEFFREY K. SKILLING, ROBERT A. BELFER, NORMAN P. BLAKE, RONNIE C. CHAN, JOHN H. DUNCAN, WENDY L. GRAMM, KEN L. HARRISON, ROBERT K. JAEDICKE, CHARLES A. LeMAISTRE, JOHN MENDELSOHN, JEROME J. MEYER, PAULO V. FERRAZ PEREIRA, FRANK SAVAGE, JOHN A. URQUHART, JOHN WAKEHAM, HERBERT WINOKUR, JR., ANDREW S. FASTOW, MICHAEL KOPPER, MARK FREVERT, CLIFF BAXTER, KEN RICE, STEVEN KEAN, STANLEY HORTON, RICHARD BUY, and ARTHUR ANDERSEN LLP,	§	
Defendants.	§	

JOHN & PEGGY ODAM, FRED A. ROSEN AND MARIAN ROSEN, HAL MOORMAN AND MILTON TATE, MOORMAN & URQUART MONEY MONEY PURCHASE PLAN & TRUST,	§	
Plaintiffs,	§	
v.	§	C.A. No. H-01-3014
ENRON CORPORATION, ANDREW S. FASTOW, KENNETH L. LAY, JEFFREY J. SKILLING, RONNIE C. CHAN, JOHN H. DUNCAN, WENDY L. GRAMM, ROBERT K. JAEDICKE, CHARLES A. LeMAISTRE, JOHN MENDLESOHN, PAULO V. FERRAZ PEREIRA, FRANK SAVAGE, JOHN WAKEHAM, HERBERT S. WINOKUR, JR., BEN GLISAN, KRISTINA MORDAUNT, and ARTHUR ANDERSEN, L.L.P,.	§	
Defendants.	§	

FRANK ANTHONY CAMMARATA, III. Individually and on Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
	§	C.A. NO. H-01-3993
v.	§	
ENRON CORP., KENNETH L. LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW,	§	
Defendants.	§	

MICHAEL P. HARNEY, On Behalf of Himself and All Others Similarly Situated, Plaintiffs, v. ENRON CORP., an Oregon corporation, JAMES S. PRENTICE, PHILIP J. BAZELIDES MARY K. JOYCE, KENNETH L. LAY, JEFFREY K. SKILLING, ROBERT A. BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, ROBERT K. JAEDICKE, CHARLES A. LeMAISTRE, JOHN A. URQUHART, JOHN WAKEHAM, HERBERT S. WINOKUR, KEN L. HARRISON, JOHN MENDELSOHN, JEROME J. MEYER, JOHN H. DUNCAN, JOE H. FOY, WENDY L. GRAMM, REBECCA MARK-JUSBASCHE, PAULO V. FERRAZ PEREIRA and FRANK SAVAGE Defendants.	§ §	C.A. NO. H-01-4063 DEMAND FOR JURY TRIAL

ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC. Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., KENNETH L. LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW, RICHARD A. CAUSEY and ARTHUR ANDERSEN, LLP, Defendants.	§ § § § § § § § § § § § § §	C.A. NO. H-01-4071 DEMAND FOR JURY TRIAL

ROY E. RINARD and STEVE LACY, Plaintiffs, v. ENRON CORP. and NORTHERN TRUST COMPANY, Defendants.	§ § § § § § § § § § §	C.A. NO. H-01-4060
GEORGE NICOUD, O Behalf of Himself and All Other Similarly Situated Plaintiffs, v. ENRON CORP., KENNETH L. LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW, and ARTHUR ANDERSEN LLP., Defendants.	§ § § § § § § § § § § § §	C.A. NO. H-01-4009 JURY TRIAL DEMANDED
VICTOR RONALD FRANGIONE, On Behalf of Himself and All Other Similarly Situated, Plaintiffs, v. ENRON CORP., KENNETH L. LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW, Defendants.	§ § § § § § § § § § § § §	C.A. NO. H-01-3889 JURY TRIAL DEMANDED

JOHN P. McCARTHY MONEY PURCHASE PLAN, Individually And On Behalf of All Others Similarly Situated	§	Civil Action No. H-01-3686
Plaintiff,	§	CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS
-v-	§	
ENRON CORP., KENNETH LAY, JEFFREY SKILLING, and ANDREW S. FASTOW	§	JURY TRIAL DEMANDED

KENNETH LAY'S AND THE OUTSIDE DIRECTORS'[1] MOTION TO CONSOLIDATE ACTIONS INVOLVING ENRON CORPORATION, TO DESIGNATE CAPTION FOR CONSOLIDATED ACTIONS, AND TO ENTER SCHEDULING ORDER

This Motion to Consolidate all pending litigation concerning Enron Corporation in a single court has been filed by the Outside Directors of Enron and Kenneth Lay. It is joined by the following additional defendants: Enron Corporation, Rebecca Mark-Jusbache, Jeffrey K. Skilling, Steven Kean, Lou Pai, Stan Horton, Rick Buy, Richard Causey, Mark Frevert and Andrew S. Fastow.[2]

There are more than thirty actions in this District that arise from or relate to the current financial difficulties of Enron Corporation. Some of the actions arise under the federal securities laws, other cases are diversity actions filed derivatively on behalf of Enron against its present or former directors, and yet a third group of cases have been filed on behalf of participants in various employee benefit plans maintained by Enron. These actions are listed on the attached Exhibit "A."

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[1]The "Outside Directors" of Enron Corporation are current and former directors that have been named in many of the Enron-related lawsuits. They are Robert Belfer, Norman Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. Lemaistre, John Mendlesohn, M.D., Paulo V. Ferraz Pereira, Frank Savage, John Wakeham, Joe H. Foy, Jerome J. Meyer and Herbert Winokur.

[2]There are additional defendants who have not yet been served and, as a result, we were unable to confer with them prior to the filing of this motion.

In addition, there are at least two lawsuits filed in the Eastern District of Texas that arise from or relate to the current financial difficulties of Enron.

All of these cases arise from a common core of operative facts. Most of them are filed against common defendants, and many contain identical claims -- so much so that the allegations in one suit are mirror images of those made in others. In the derivative cases, for example, it is axiomatic that there is only one claim being pursued -- that of Enron -- yet it is being pursued by multiple plaintiffs in this district and elsewhere.

In order to ensure the orderly progress of these lawsuits, to conserve judicial resources and to avoid massive duplication of discovery and motion practice concerning identical allegations, Kenneth Lay and the Outside Directors of Enron file this motion to consolidate all of the pending actions in one court. This will enable that court to closely supervise discovery, to implement appropriate pretrial schedules and to take such other actions as may be necessary to manage these actions in an orderly and efficient way.

All cases, including those pending in the Eastern District of Texas and in any other federal court, should be consolidated in a single court in this district. The Fifth Circuit follows the "first-to-file" rule, and under this general rule "the court in which an action is first filed is the appropriate court to determine whether subsequently filed cases involving substantially similar issues should proceed." *Save Power Ltd. v. Syntek Finance Corp.*, 121 F.3d 947, 950 (5th Cir.1997). As the United States Supreme Court has noted, "[t]o permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent." *Continental Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960). This concern "applies where related cases are pending

before two judges in the same district...as well as where related cases have been filed in different districts." *Save Power, Ltd.*, 121 F.3d at 950 , *citing Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 961 F.2d 1148, 1161 n. 28 (5th Cir.1992), *cert. denied*, 506 U.S. 1079 (1993).[3]

Pursuant to Rule 42 of the Federal Rules of Civil Procedure and to serve the interests of justice, therefore, Kenneth Lay and the Outside Directors of Enron Corporation respectfully request that all actions involving Enron Corporation pending in the Southern District of Texas, the Eastern District of Texas, and in any other federal court be consolidated in either: (a) the low-filed securities case, which is Cause No. H-01-3624, *Newby, et al. v. Enron Corporation, et al.*, which is pending before the Honorable Lee Rosenthal; of (b) the low -filed federal derivative case, which is C.A. No. H-01-3645, *Pirelli Armstrong Tire Corporation Defined Benefit Plan, et. al v. Kenneth Lay, et al,* which is pending before the Honorable Lynn Hughes. In addition, Kenneth Lay and the Outside Directors respectfully request that any other actions relating to the financial difficulties of Enron that are subsequently filed in the Southern District of Texas or elsewhere also be consolidated into the same court.

Under S.D. Tex. L.R. 7.6, this motion is filed in the *Newby* action (the oldest securities case) with a courtesy copy furnished to the Court in all of the pending actions listed on the attached Exhibit "A."

Dated: November 29, 2001.

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[3]Kenneth Lay and the Outside Directors have also filed motions to transfer the Eastern District cases to this District, pursuant to 1404(a), in the Eastern District courts where the related Enron cases are currently pending. Copies of those motions to transfer are attached as Exhibits "B" and "C."

Respectfully submitted,

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.

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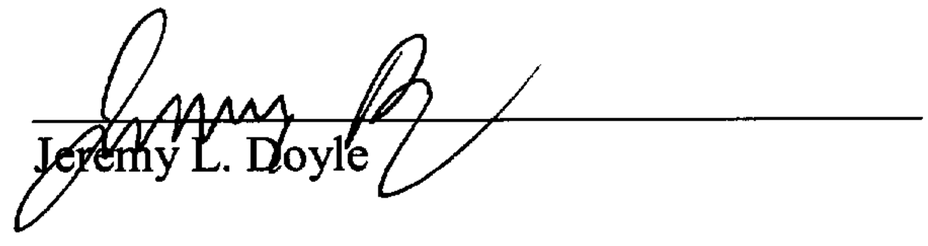
COUNSEL FOR OUTSIDE DIRECTORS

CERTIFICATE OF CONFERENCE

We have conferred with counsel for a number of Plaintiffs, who indicated that they were not in a position to agree with this Motion, so it is filed as an opposed Motion.



Jeremy L. Doyle

CERTIFICATE OF SERVICE

On this the 29th day of November, 2001, a true and correct copy of the foregoing Motion to Consolidate was served via facsimile and certified mail on all parties listed on the attached service list.

Jeremy L. Doyle

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Exhibit "A"

1. Case No. H-01-3681; *Ernest Gottdiener et al v. Enron Corp. et al* (Lake)

2. Case No. H-01-3734; *James Brill et al v. Enron Corp. et al* (Hughes)

3. Case No. H-01-3733; *Michael Koroluk et al v. Enron Corp. et al* (Rosenthal)

4. Case No. H-01-3717; *Henry Steiner et al v. Enron Corp. et al* (Hoyt)

5. Case No. H-01-3686; *John P. McCarthy Money Purchase Plan et al v. Enron Corp. et al* (Rosenthal)

6. Case No. H-01-3682; *Muriel P. Kaufman et al v. Enron Corp. et al* (Hoyt)

7. Case No. H-01-3736; *Warren Pinchuck et al v. Enron Corp. et al* (Rainey)

8. Case No. H-01-3737; *Mahin S. Mashayekh et al v. Enron Corp. et al* (Rosenthal)

9. Case No. H-01-3789; *Barbara D. Lee et al v. Enron Corp. et al* (Gilmore)

10. Case No. H-01-3838; *Danielle M. Karcich et al v. Enron Corp. et al* (Hughes)

11. Case No. H-01-3839; *Naomi Raphael et al v. Enron Corp. et al* (Atlas)

12. Case No. H-013690; *Joseph E. Kassoway, trustee of the Joseph E. Kassoway Trust v. Andrew S. Fastow, et al v. Enron Corp et al* (Rainey)

13. Case No. H-01-3903; *Patricia D. Parsons et al v. Enron Corp. et al* (Rosenthal)

14. Case No. H-01-3670; *Avigayil Greenberg et al v. Enron Corp. et al* (Lake)

15. Case No. H-01-3660; *J. Michael Gottesman et al v. Enron Corp. et al* (Hoyt)

16. Case No. H-01-3652; *Frank Wilson et al v. Enron Corp. et al* (Hughes)

17. Case No. H-01-3645; *Pirelli Armstrong Tire Corporation Retiree Medical Benefits Trust v. Kenneth Lay et al.* (Hughes)

18. Case No. H-01-3647; *Robert J. Casey II and Ruth I. Horton et al v. Enron Corp. et al* (Lake)

19. Case No. H-01-3671; *Robert Christianson et al v. Enron Corp. et. al* (Lake)

20. Case NO. H-01-3735; *Elmar A. Busch et al v. Enron Corp. et al* (Rosenthal)

21. Case No. H-01-3630; *Seth Abrams and Steven Frank et al v. Enron Corp. et al* (Harmon)

22. Case No. H-01-3624; *Mark Newby et al v. Enron Corp et al* (Rosenthal)

23. Case No. H-01-3997; *Shirley Pratz et al v. Chewco Investments* (Werlein)

24. Case No. H-01-3995; *William Coy et al v. Fastow et al* (Atlas)

25. Case No. H-01-3996; *Candy Mounter et al v. Joint Energy Development Investments* (Rosenthal)

26. Case No. H-01-4063; *Michael P. Harney et al v. Enron Corp et al* (Lake)

27. Case No. H-01-4071; *Archdiocese of Milwaukee Supporting Fund, Inc. et al v. Enron Corp et al* (Hoyt)

28. Case No. H-01-4060; *Roy E. Rinard and Steve Lacey v. Enron Corp and the Northern Trust Company* (Rainey)

29. Case No. H-01-4009; *George Nicoud et al v. Enron Corp et al* (Atlas)

30. Case No. H-01-3014; *John & Peggy Odam et al v. Enron Corp et al* (Hittner)

31. Case No. H-01-3993; *Frank Anthony Cammarata, III et al v. Enron Corp et al* (Hoyt)

32. Case No. H-01-3892; *Detectives Endowment et al v. Enron Corp et al* (Hittner)

33. Case No. H-01-3998; *Fred Greenberg et al v. Enron Corp et al* (Harmon)

34. Case No. H-01-3913; *Pamela M. Tittle et al v. Enron Corp et al* (Rainey)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

LYNN GOFFMAN and HARVEY L. YOUNG, derivatively on behalf of ENRON CORP.	§	
Plaintiffs,	§	
v.	§	**CIVIL ACTION NO. 9:01 CV289**
ROBERT A BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, ANDREW FASTOW, WENDY L. GRAMM, ROBERT K. JAEDICKE, KENNETH L. LAY, CHARLES A. LEMAISTRE, JOHN MENDELSOHN, PAULO V. FERRAZ PEREIRA, FRANK SAVAGE, JEFFERY K. SKILLING, JOHN A. URQUHART, JOHN WAKEHAM, and HERBERT WINOKUR, JR.	§	
Defendants	§	
and	§	
ENRON CORP., an Oregon Corporation	§	
Nominal Defendant	§	

KENNETH LAY'S AND THE OUTSIDE DIRECTORS' MOTION TO TRANSFER VENUE

Pursuant to 28 U.S.C. § 1404(a), Kenneth Lay and the Outside Directors[1] file this Motion to Transfer Venue from the Eastern District of Texas to the Southern District of Texas, Houston Division. Enron Corporation, Jeffrey K. Skilling and Andrew S. Fastow also join this Motion, and

---

[1]The "Outside Directors" of Enron Corporation are current and former directors that have been named in many of the Enron-related lawsuits. They are Robert Belfer, Norman Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. Lemaistre, John Mendlesohn, M.D., Paulo V. Ferraz Pereira, Frank Savage, John Wakeham, Joe H. Foy, Jerome J. Meyer and Herbert Winokur.

in support shows as follows:

INTRODUCTION

There are two lawsuits filed in this District that arise from or relate to the current financial difficulties of Enron Corporation. At the same time, there are more than thirty actions filed in the Southern District of Texas that arise from or relate to the same current financial difficulties of Enron. The actions filed in the Southern District of Texas are listed on the attached Exhibit "A." The bulk of these actions were filed in the Southern District before this action was filed in the Eastern District.

All of these cases arise from a common core of operative facts. Most of them are filed against common defendants, and many contain identical claims -- so much so that the allegations in one suit are mirror images of those made in others. In the derivative cases that are pending here or in the Southern District, it is axiomatic that there is only one claim being pursued -- that of Enron -- yet it is being pursued by multiple plaintiffs in this district and elsewhere.

In order to ensure the orderly progress of these lawsuits, to conserve judicial resources and avoid massive duplication of discovery and motion practice concerning identical allegations, Kenneth Lay and the Outside Directors of Enron file this motion to transfer this case to the Southern District of Texas. Kenneth Lay and the Outside Directors have also filed a motion to consolidate the numerous Enron-related cases pending in the Southern District of Texas into one court, which motion is attached as Exhibit "B." This will enable a single court to closely supervise discovery, implement appropriate pretrial schedules and take such other actions as may be necessary to manage these actions in an orderly and efficient way.

ARGUMENT

This lawsuit may be transferred in furtherance of the convenience of the parties and in the interests of justice pursuant to 28 U.S.C. § 1404(a). Section 1404(a) provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). All of the elements supporting a transfer under this statute are present in this action.

First, it is indisputable that the Southern District of Texas is a district where this action "might have been brought." Numerous mirror-image actions have already been brought in the Southern District.

The second factor in a transfer analysis under 28 U.S.C. 1404(a), the "convenience of parties and witnesses," also warrants transfer of this lawsuit to the Southern District. The convenience factors considered under Section 1404 (a) "may include: (1) plaintiff's choice of forum; (2) the convenience of parties and witnesses; (3) the place of the alleged wrong; (4) the location of counsel; (5) the cost of obtaining the attendance of witnesses; (6) the accessibility and location of sources of proof; and (7) the possibility of delay and prejudice if transfer is granted." *Ruth v. KLI, Inc.*, 143 F.Supp.2d 696 (E.D.Tex. 2001). Consideration of these factors supports transferring this case to the Southern District of Texas.

With more than thirty lawsuits arising out of the same core of operative facts having already been filed in the Southern District, maintaining two additional lawsuits in a different forum would be manifestly inconvenient to the parties involved in the multiple lawsuits. Further, most of the witnesses, including the individual defendants, reside in the Southern District, Enron's principal place of business is in the Southern District, almost all of the relevant documents are located in the Southern District, and most of the events giving rise to the claims in

this lawsuit took place in the Southern District. For all of these reasons, the convenience of the witnesses and the parties – and the interests of justice – would be served by transferring this lawsuit to the Southern District.

The fact that this lawsuit could be transferred to the Southern District and consolidated with many identical lawsuits filed in that district also weighs strongly in favor of transferring this case.

> "The possibility of consolidation may also be a significant factor in transferring an action to the district where the other case is pending. . . . Permitting 'a situation in which two cases involving . . . the same issues are simultaneously pending in different district courts leads to a wastefulness of time, energy and money that 1404(a) was designed to prevent.'"

Smith v. City of New York, 950 F.Supp. 55, 59 (E.D.N.Y. 1996), *citing, Continental Grain Co. v. Barge*, 364 U.S. 19, 26 (1960). The concern over the wastefulness of time, energy and money identified by the United States Supreme Court in *Continental Grain* "applies where related cases are pending before two judges in the same district...as well as where related cases have been filed in different districts." *Save Power, Ltd.*, 121 F.3d at 950 , *citing Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 961 F.2d 1148, 1161 n. 28 (5th Cir.1992), *cert. denied*, 506 U.S. 1079 (1993). On the basis of this factor alone, this action should be transferred. Indeed, the entire purpose of section 1404(a) would be defeated if this action were permitted to proceed separately from the multitude of lawsuits currently pending in the Southern District of Texas.

Finally, transfer should be granted because this Circuit follows the "first-filed" rule. *See Save Power Ltd. v. Syntek Finance Corp.*, 121 F.3d 947, 950 (5th Cir. 1997). The first-filed Enron-related securities fraud and derivative cases were filed in the Southern District of Texas.

Kenneth Lay and the Outside Directors have therefore also filed a Motion to Consolidate all cases in one court in the Southern District of Texas.

Plaintiff's choice of forum is ordinarily accorded some weight in weighing a motion to transfer. In this instance, however, Plaintiff is suing in a representative capacity as a derivative plaintiff. Under such circumstances, plaintiff's choice of forum should be accorded little, if any, weight. *See, e.g., IBJ Schroeder Bank & Trust Co. v. Mellon Bank, N.A.*, 730 F.Supp. 1278, 1282 (S.D.N.Y. 1990)("In shareholder derivative suits and other similar types of class actions, the accidental residence of the named plaintiff is discounted in weighing the transfer factors."); *Baird v. California Faculty Ass'n*, 2000 WL 516378, *2, (N.D.Cal. 2000)("mechanistic adherence to this rule [giving deference to plaintiff's choice of forum] is inappropriate in a class action in which plaintiffs are dispersed throughout the state.").

For the foregoing reasons, Kenneth Lay and the Outside Directors respectfully request that this case be transferred to the Southern District of Texas.

Respectfully submitted,

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.

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COUNSEL FOR OUTSIDE DIRECTORS

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Plaintiffs' counsel and they are not agreed to this motion.

_____

Jeremy L. Doyle

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Kenneth Lay's and the Outside Directors' Motion to Transfer Venue has been served on all counsel of record via hand delivery, certified mail, return receipt requested, federal express and/or facsimile on this the 29th day of November, 2001.

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Jeremy L. Doyle

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DAVID R. WORTHAM, Individually and on Behalf of All Others Similarly Situated,	§	**CIVIL ACTION 501CV299**
Plaintiffs,	§	
v.	§	**CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS**
ENRON CORP., KENNETH L. LAY, JEFFREY K. SKILLING and ANDREW S. FASTOW,	§	
Defendants,	§	**JURY TRIAL DEMANDED**

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1282 (S.D.N.Y. 1990)("In shareholder derivative suits and other similar types of class actions, the accidental residence of the named plaintiff is discounted in weighing the transfer factors."); *Baird v. California Faculty Ass'n*, 2000 WL 516378, *2, (N.D.Cal. 2000)("mechanistic adherence to this rule [giving deference to plaintiff's choice of forum] is inappropriate in a class action in which plaintiffs are dispersed throughout the state.").

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Respectfully submitted,

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.

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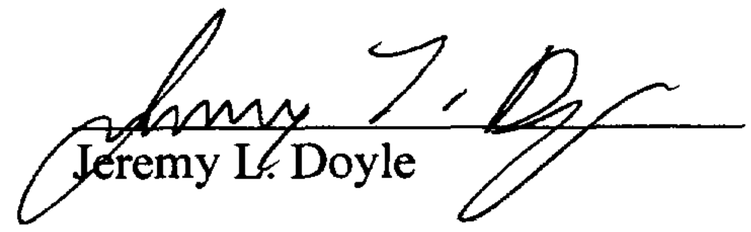
COUNSEL FOR OUTSIDE DIRECTORS

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Plaintiffs' counsel and they have indicated that they are opposed to this motion.



Jeremy L. Doyle

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Kenneth Lay's and the Outside Directors' Motion to Transfer Venue has been served on all counsel of record via hand delivery, certified mail, return receipt requested, federal express and/or facsimile on this the 29th day of November, 2001.

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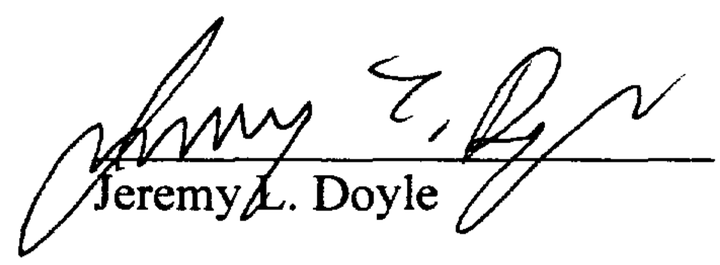

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