

OCT 28 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	§	
<hr/>		
THIS DOCUMENT RELATES TO:	§	
	§	
All Cases	§	
<hr/>		
MARK NEWBY, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
	§	CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants	§	

ORDER

Pending before the Court is the Bank Defendants' opposed motion to modify scheduling order and request for expedited consideration (instrument #1080).

On August 5, 2002, this Court issued an order affirming a stay of all discovery in *Newby*. Subsequently Lead Plaintiff has filed a motion for class certification, the submission date for which under the docket control schedule, issued in March of this year, is November 1, 2002. The Bank Defendants in the instant motion and other parties in their objections to the motion for class certification seek a stay on briefing on the class certification issue(s) until they have been able to conduct what they deem to be necessary discovery.

In opposition the Lead Plaintiff quotes the Court's optimistic statement in its February 28, 2002 order: "It is the

1113

nation's impression that the justice system grinds slowly in a Dickensian fashion, and it is the hope of this Court that that impression can be changed by an efficient resolution of these cases." It argues that if the class certification phase is postponed for even a few months, Lead Plaintiff's ability to prepare for a trial on December 1, 2003 would be jeopardized. Lead Plaintiff insists that an adequate factual record exists for Defendants to file responses. Moreover, citing *General Telephone Co. v. Falcon*, 457 U.S. 147, 160 (1982), Lead Plaintiff notes that the Supreme Court has observed that at times a "rigorous analysis" of class certification prerequisites is possible without resorting to expensive discovery and that "[s]ometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claims." Such, argues Lead Plaintiff, is the case here. It also concedes, however, that "[w]hether discovery will be permitted in connection with a motion for a class certification determination 'lies within the sound discretion of the trial court.'" *Steward v. Winter*, 669 F.2d 328, 331 (5<sup>th</sup> Cir. 1982).

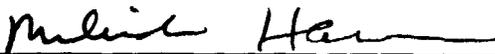
This litigation has raised numerous issues of first impression and the influx of additional cases since the filing of Lead Plaintiff's Consolidated Complaint, including suits with new causes of action and new parties, has complicated the situation. The Court is intensively reviewing the motions to dismiss, which are its first priority, and hopes to begin issuing orders resolving them shortly. Until those motions are resolved, the

discovery stay will remain in effect. While appreciative of Lead Plaintiff's efforts to keep the schedule in place, the Court, with its limited personnel, cannot compete with the number of lawyers working for parties filing motions and responses in this case. Moreover, from its current view, the Court finds that the class certification will not be a simple matter, that modification of the current schedule is necessary, and that there should be some, expedited discovery permitted to Defendants once the stay has been lifted. Similarly, the Court will not deprive Lead Plaintiff of time needed to prepare for trial. A new schedule will be established as soon as the motions to dismiss have been resolved.

Accordingly, the Court

ORDERS that Bank Defendants' motion to modify schedule is GRANTED. The general discovery stay shall remain in effect until the Court orders otherwise.

**SIGNED** at Houston, Texas, this 28<sup>th</sup> day of October, 2002.

  
\_\_\_\_\_  
MELINDA HARMON  
UNITED STATES DISTRICT JUDGE