United States Courts
Southern District of Texas
ENTERED

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Michael N. Milby, Clerk

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

In Re ENRON CORPORATION SECURITIES, DERIVATIVE & "ERISA" LITIGATION,	§ § §	MDL 1446
MARK NEWBY, ET AL., Plaintiffs VS. ENRON CORPORATION, ET AL., Defendants	§ § § § § § § § §	CIVIL ACTION NO. H-01-3624 ✓ AND CONSOLIDATED CASES
HAROLD VAN der LINDE, ET AL., Plaintiffs, VS. ARTHUR ANDERSEN LLP, DOES 1 through 10, Defendants	§ § § § § § § § §	CIVIL ACTION NO. H-02-4197

ORDER OF CONSOLIDATION

Pursuant to the order of consolidation entered in lead case H-01-3624, Newby v. Enron Corp. et al., on December 12, 2001, and the transfer order from the Multidistrict Litigation Panel, the above referenced case, H-02-4197, is hereby CONSOLIDATED into H-01-3624.

Moreover, pending before the Court in H-02-4197 is Plaintiffs' motion to remand (instrument #11) on that grounds that the removal of this putative class action under the

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Deputy Clerk

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Securities Litigation Uniform Standards Act ("SLUSA"), 15 U.S.C. §§ 77p and 78bb(f),[1] was improper.

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[1] 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), states in part that "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 . . . .").

With respect to removal, the plain language of SLUSA, 15 U.S.C. § 77p(c), evidences Congress' intent to preempt a specific category of state-law class actions, which it defines as follows: "Any covered class action brought in any State Court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending . . . ." 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).

SLUSA provides for mandatory removal and dismissal of a specific kind of class action claim:

Plaintiffs' first amended class action complaint, initially filed in the Superior Court of the State of California in and for the City and County of San Francisco, charges Arthur Andersen LLP with auditing fraud under Section 1710 of the California Civil Code (common law fraud and deceit)and Section 17200 of the California Business and Professions Code (unfair competition). The suit was brought on behalf of a proposed class defined, in relevant part, as "[a]ll common shareholders of Enron Corp. and/or Global Crossing Ltd. who have been at various times during the period January 1, 1999 through December 31, 2001 common

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> (f) LIMITATIONS ON REMEDIES.--
> (1) CLASS ACTION LIMITATIONS.--No covered class action based upon the statutory or common law of any state or subdivision thereof may be maintained in any State or Federal court by any private party alleging--
> (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or
> (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.
> (2) REMOVAL OF COVERED CLASS ACTIONS.--Any covered class action brought in an State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

15 U.S.C. § 78bb(f)(1)(A),(B) & (2). Thus SLUSA authorizes the removal of all private actions that are actually traditional securities claims that fall within its ambit to be removable to federal court and makes the state law claims subject to dismissal. 15 U.S.C. § 78bb(f)(1)-(2).

shareholders of Enron Corp. and/or Global Crossing Ltd. . . . ."[2] *Inter alia* Plaintiffs allege that Arthur Andersen knew that the price of Enron's common stock was artificially high, that Enron was in precarious financial condition, and that Enron's revenues and profits were overstated and its debt understated, yet Arthur Andersen knowingly and recklessly certified that Enron's financial statements and reports were in compliance with GAAP and a fair representation of Enron's financial condition, with the knowledge and foresight that common shareholders would rely on the representations. Once Andersen's deception was exposed, the complaint asserts, the accounting firm turned to document destruction to conceal its unlawful and fraudulent acts. Moreover, the complaint states, "Had plaintiffs and members of the class known of the true facts, they would not have owned the common stock of Enron Corp. and/or Global crossing Ltd. or would have sold said stock."

Plaintiffs contend that removal under SLUSA was improper because they have not alleged that their claims of fraud against Defendant Arthur Andersen LLP are "in connection with the purchase or sale" of a covered security.

After reviewing the pleadings and the parties' briefs, and the applicable law, this Court agrees with Defendant Arthur Andersen LLP that the facts and the issue here are nearly identical to and controlled by this Court's decision in another

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[2] The claims against Global Crossing were not transferred to this Court by the MDL Panel.

case removed and consolidated into *Newby: Coy et al. v. Arthur Andersen LLP et al.*, Civil Action No. 01-4248 (instrument #40). In *Coy*, as here, Plaintiff's proposed class covers purchasers and sellers of Enron common stock who relied on Andersen's representations in buying and selling their shares, as well as holders of Enron securities whose claims would not fall within the federal securities laws and may be asserted under California law. Because the Court does have jurisdiction under SLUSA over the former group, it may exercise supplemental jurisdiction over the latter. Moreover, as in *Coy*, all the claims against Arthur Andersen directly relate to those in *Newby*, making coordination of discovery for surviving state law claims appropriate. Thus for the same reasons it stated in its *Coy* memorandum and order, the Court

ORDERS that Plaintiffs' motion to remand is DENIED, their California statutory claims relating to shareholders who purchased or sold their stock in reliance on Arthur Andersen's reports during the class period are DISMISSED with prejudice, and the remaining state-law claims shall remain pending pursuant to 28 U.S.C. § 1367.

SIGNED at Houston, Texas, this 20th day of November, 2002.

Melinda Harmon

MELINDA HARMON
UNITED STATES DISTRICT JUDGE