

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

United States Courts
Southern District of Texas
FILED

NOV 26 2002

C.H.

Michael N. Milby, Clerk

In re ENRON CORPORATION
SECURITIES LITIGATION

This Document Relates To:

MARK NEWBY, *et al. individually*
and on behalf of all others similarly
situated.

Plaintiffs,

v.

ENRON CORP., et al.,

Defendants.

Civil Action No. H-01-3624
And Consolidated Cases

INTERNATIONALE
KAPITALANLAGEGESELLSCHAFT
mbH, individually and on behalf of BVT,
CBP, DSW, DUKAT, EKBAKK, EKBV,
ERHARD, HLF, LZO, PRENT A, SIT,
SKG, EGI and EUSB, HSBC TRINKAUS
LUXEMBOURG INVESTMENT
MANAGERS SA, individually and on
behalf of WALSER EURO CASH, and
HSBC TRINKAUS & BURKHARDT
KGaA,

Plaintiffs,

v.

CREDIT SUISSE FIRST BOSTON
CORPORATION, et al.,

Defendants.

Civil Action No. H-02-4080

**INTERNATIONALE KAPITALANLAGEGESELLSCHAFT
mbH's, individually and on behalf of BVT, CBP, DSW, DUKAT,
EKBAKK, EKBV, ERHARD, HLF, LZO, PRENT A, SIT, SKG, EGI
and EUSB, HSBC TRINKAUS LUXEMBOURG INVESTMENT
MANAGERS SA's, individually and on behalf of WALSER EURO
CASH, and HSBC TRINKAUS & BURKHARDT KGaA's OBJECTION
TO AND REQUEST FOR CLARIFICATION OF CONSOLIDATION ORDER**

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Consistent with the timetable otherwise followed by the Court for addressing procedural matters herein, Plaintiffs Internationale Kapitalanlagegesellschaft mbH, individually and on behalf of BVT, CBP, DSW, DUKAT, EKBAKK, EKBV, ERHARD, HLF, LZO, PRENT A, SIT, SKG, EGI and EUSB; HSBC Trinkaus Luxembourg Investment Managers SA, individually and on behalf of Walser Euro Cash; and HSBC Trinkaus & Burkhardt KGaA (hereinafter "plaintiffs") respectfully request clarification of the Order entered by this Court, dated November 20, 2002 (Dkt. #1154), consolidating Civil Action No. H-02-4080 brought by plaintiffs against Credit Suisse First Boston Corporation, et al. (the "HSBC Trinkaus action") with *Newby v. Enron Corp.*, Civil Action No. H-01-3624. In addition, in order to preserve their right to contest the terms of the consolidation of the HSBC Trinkaus action with other pending and/or future actions, plaintiffs file this objection to the Court's November 20, 2002 Order.

Plaintiffs also object to defendants Credit Suisse First Boston Corporation's and J.P. Morgan Securities Inc.'s Notice of Consolidation, and in the Alternative, Motion to Consolidate (Dkt. #1141) on the same grounds that plaintiffs object to the Court's November 20, 2002 Order.

Introduction

As set forth below, while the November 20, 2002 Order appears to consolidate the HSBC Trinkaus action with certain pending and future cases, it is unclear to what extent plaintiffs will be permitted by that Order to litigate their case apart from these other cases, and to what extent and upon what common issues plaintiffs will be bound by rulings and decisions in other related cases. Only after these issues have been clarified will plaintiffs be able to make a final determination of what specific objections, if any, they may have to the Court's November 20, 2002 Order.

Background

Plaintiffs commenced the HSBC Trinkaus action by filing their Complaint on October 29, 2002.

By means of their Complaint, plaintiffs assert claims against defendants Credit Suisse First Boston Corporation, Credit Suisse Group, Credit Suisse First Boston, Credit Suisse First Boston (USA), Inc., Credit Suisse First Boston, Inc., Credit Suisse First Boston (Europe) Limited, Deutsche Banc Alex. Brown Inc., Deutsche Bank AG, Deutsche Bank AG London, J.P. Morgan Chase & Co., J.P. Morgan Securities, Inc., J.P. Morgan Securities Holding Inc., Chase Securities Inc., J.P. Morgan Investment Corporation, J.P. Morgan Securities Ltd., Bank of America Corporation, Banc of America Securities LLC, Bank of America Securities Limited, Canadian Imperial Bank of Commerce, CIBC Inc., CIBC World Markets Corp., CIBC World Markets plc, Dresdner Kleinwort Wasserstein, Inc., Dresdner Kleinwort Wasserstein Securities LLC, Dresdner Kleinwort Wasserstein Services LLC, Dresdner Bank AG, Dresdner Bank AG London Branch, ABN AMRO Incorporated, ABN AMRO Securities (USA) Inc., ABN AMRO Bank N.V., Arthur Andersen LLP, Andersen Worldwide, SC, Marlin Water Trust, Marlin Water Capital Corp., Coronets Limited Series II, and John and Jane Does #1 through #50.¹

Plaintiffs state claims for relief under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder, Texas state law and common law, as well as under sections 12(a)(2) and 15 of the Securities Act of 1933, arising out of the sale of (1) Marlin Water Trust II 6.19% Senior Secured Notes, due July 15, 2003 (the "Marlin II Notes"), issued by two Enron Corporation Special Purpose Entities - Marlin Water Trust II and Marlin Water Capital Corp. II; and (2) Coronets Repackaged Marlin Water Trust II

¹ Plaintiffs simultaneously filed the same Complaint in the United States District Court for the Southern District of New York with the intent to serve the Complaint filed in New York only on those defendants who may assert a personal jurisdiction defense in the Southern District of Texas.

Notes (the "Coronets Notes"), issued by Coronets Limited Series 11, a Special Purpose vehicle incorporated in the Cayman Islands BWI, with a variable interest rate and collateralized by the Marlin II Notes.

Plaintiffs purchased €20,000,000 of the Marlin Water II Notes and €19,000,000 of the Coronets Notes, both of which ultimately were secured by Enron stock. As a result of Enron's collapse, plaintiffs lost over €35,000,000, plus interest on the Marlin II Notes and the Coronets Notes.

On November 15, 2002, defendants Credit Suisse First Boston Corporation and J.P. Morgan Securities, Inc. filed a Notice of Consolidation and, in the Alternative, Motion to Consolidate, which sought consolidation of the HSBC Trinkaus action with *Newby v. Enron Corp., et al.* pursuant to Local Rule 7.6 and the Court's December 12, 2001 Order of Consolidation.

Relief Requested

Plaintiffs object to the Court's Order, dated November 20, 2002, consolidating the HSBC Trinkaus action with the *Newby* case, and respectfully seek clarification of the Court's November 20, 2002 Order to insure that plaintiffs have an accurate understanding of the purpose and effect of the Court's November 20, 2002 Order. Defendants Credit Suisse First Boston Corporation's and J.P. Morgan Securities Inc.'s request for consolidation does not make clear either the purposes for which defendants seek consolidation of the HSBC Trinkaus action with the *Newby* case, nor the limitations, if any, upon plaintiffs in pursuing their claims as a result of such consolidation.

With respect to the Court's November 20, 2002 Order, plaintiffs respectfully request clarification as to the following:

(1) that although the HSBC Trinkaus action is consolidated with the *Newby* case for some purposes, the HSBC Trinkaus action is not merged with the *Newby* case or any other action that has been consolidated or will be consolidated with the *Newby* case; rather, the HSBC Trinkaus action maintains its separate identity, and its parties and pleadings remain distinct from those in the *Newby* case and any other action consolidated with the *Newby* case; *see McKenzie v. United States*, 678 F.2d 571, 574 (5th Cir. 1982) (“consolidation does not cause one civil action to emerge from two; the actions do not lose their separate identity; the parties to one action do not become parties to the other); *Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 135 F.2d 750, 752 (11th Cir. 1998) (“consolidation of cases under Fed. R. Civ. P. 42 does not strip the cases of their individual identities”);

(2) that the HSBC Trinkaus action is consolidated with the *Newby* case solely for the purpose of resolving common issues of fact and law;

(3) the nature and identity of the common issues of fact and law;

(4) whether the consolidation is for purposes of pre-trial motions, pre-trial discovery, and/or trial;

(5) that the consolidation of the HSBC Trinkaus action with the *Newby* case pertains to all defendants in the HSBC Trinkaus action even though some of the defendants in the HSBC Trinkaus action are not defendants in the *Newby* case;

(6) that the HSBC Trinkaus action is stayed in its entirety pending the Court’s rulings on the pending motions to dismiss in the *Newby* case;

(7) that once the pending motions to dismiss in the *Newby* case are decided, plaintiffs will have the opportunity to move to reinstate their complaint on the Court’s active docket and/or move to amend plaintiffs’ complaint if the Court’s decisions with respect to the

pending motions to dismiss in the *Newby* case or discovery indicate that modification is appropriate;

(8) that after reinstatement and/or amendment of plaintiffs' complaint, the defendants in the HSBC Trinkaus action shall be obligated to file timely responsive pleadings to plaintiffs' complaint, and the HSBC Trinkaus action shall proceed pursuant to a scheduling order issued by the Court;

(9) that plaintiffs will be given the opportunity to pursue their claims on an individual basis, rather than have their claims subsumed into any class or subclass created or approved by counsel or the Court; and

(10) that plaintiffs will have the opportunity to participate in all discovery in the consolidated action and to conduct any additional discovery that they require based on the distinct nature of the claims that they assert in their complaint.

Conclusion

Plaintiffs respectfully request that, consistent with the timetable otherwise followed by the Court for addressing procedural issues herein, the Court clarify its Order of

Consolidation, dated November 20, 2002, and provide plaintiffs with an opportunity to detail their specific objections, if any, to the Court's Order of Consolidation once it has been clarified.

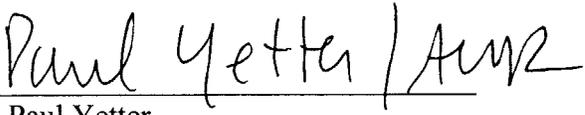
Dated: November 26, 2002

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2002, a true and correct copy of the foregoing pleading was served on the following counsel pursuant to the Federal Rules of Civil Procedure:

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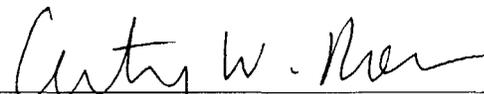
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I further certify that on this 26th day of November, 2002, service of the foregoing pleading was also performed electronically via the www.es13624.com web site.



Autry W. Ross