

MH

MAR 28 2003

Michael N. Milby, Clerk

MDL DOCKET NO. 1446

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Transferred from the United States District Court for the Southern District of New York, Southern District Case No. 02cv8881 (GEL), pursuant to order of the Judicial Panel on Multidistrict Litigation)

In re ENRON CORPORATION SECURITIES
LITIGATION

H-01-3624 ✓

This document relates to: X
SILVERCREEK MANAGEMENT INC.; :
SILVERCREEK LIMITED PARTNERSHIP; :
SILVERCREEK II LIMITED; :
OIP LIMITED :
and PEBBLE LIMITED PARTNERSHIP; :

Plaintiffs, :

vs. :

SALOMON SMITH BARNEY, et al. :

Defendants :

 X

Civil Case No. H-02-3185 (MH)

**MOTION FOR LEAVE
TO FILE FIRST AMENDED
COMPLAINT; DECLARATION
OF STEVEN N. WILLIAMS**

#1208

Plaintiffs, Silvercreek Management Inc., Silvercreek Limited Partnership, Silvercreek II Limited, OIP Limited, and Pebble Limited Partnership, file this Motion for Leave to File First Amended Complaint, and would show unto the Court the following:

FACTUAL BACKGROUND

1. On January 16, 2002, Plaintiffs filed their Complaint against Salomon Smith Barney, Goldman Sachs & Company, Banc of America Securities, and Arthur Andersen LLP in the United States District Court for the Southern District of New York. The action was assigned to the Hon. Gerard Lynch. Salomon Smith Barney, Goldman Sachs & Company, and Banc of America Securities responded to the complaint by filing a motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6). Defendant Arthur Andersen has not responded to the complaint by stipulation of the parties.

2. On or about June 24, 2002, the Judicial Panel on Multidistrict Litigation issued a transfer order pursuant to which this action was transferred to the United States District Court for the Southern District of Texas.

3. On or about September 6, 2002, this Court entered an order of consolidation pursuant to which this action was consolidated into *Newby et al. v. Enron Corporation, et al.*, H-01-3624.

4. As of the date that this action was transferred to this Court, Judge Lynch had not ruled on the motions to dismiss. As of the date of this declaration, this Court has not ruled on the motions to dismiss.

5. Since the time that the first complaint was filed in this matter, Plaintiffs have learned a great deal of information concerning the involvement of each defendant in the

misconduct described in the complaint. Plaintiffs seek leave to file a First Amended Complaint which reflects this new knowledge.

6. Ordinarily, Plaintiffs would be entitled to file the First Amended Complaint as a matter of right pursuant to Fed. R. Civ. Proc. 15(a). In accordance with this Court's orders governing the conduct of these actions, and in deference to the Court's management of these actions, Plaintiffs are filing this motion for leave to file the First Amended Complaint. Should the Court grant leave to file this Complaint, the Court will not need to rule on the pending motions to dismiss which will be mooted. Plaintiff believes that the proposed amended complaint sets forth additional facts that adequately respond to the concerns raised in the motions to dismiss (without conceding the merits of defendants' motions) and more accurately presents to the Court the controversy between the parties.

7. This is Plaintiffs' first request for leave to amend.

8. Justice would be served by granting of leave to amend in that the proposed amended complaint includes allegations based upon facts and information within the knowledge of the Defendants but which has only become known to the Plaintiffs after the filing of the initial complaint in this action.

9. Attached hereto as Exhibit 1 is Plaintiffs' Proposed First Amended Complaint.

LEGAL ARGUMENT

Rule 15(a) of the Federal Rules of Civil Procedure sets forth a liberal standard for the amendment of pleadings, and provides that even after the issues have been joined, "leave [to amend] shall be freely given when justice so requires." Before the issues have been joined, leave to amend is *of right*. The United States Supreme Court has emphasized that Rule 15(a) requires courts to look

favorably on motions to amend the pleadings, holding that a court must grant leave to amend absent a substantial reason to deny leave. *Fornan v. Davis*, 371 U.S. 178, 182 (1962). The policy in favor of allowing amendments is extremely liberal. *Ascon Properties, Inc. v. Mobile Oil Co.*, 866 F.2d 1149, 11160 (9th Cir. 1989).

Under these principles, leave to amend should be granted.

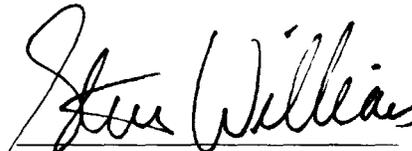
WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant them leave to file a first amended complaint in the form as attached hereto.

DATED: March 27, 2003

Respectfully submitted,

COTCHETT, PITRE, SIMON & McCARTHY

By:



STEVEN N. WILLIAMS

Admitted *pro hac vice*

JOSEPH W. COTCHETT (*pro hac vice*)
STEVEN N. WILLIAMS (*pro hac vice*)
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
(650) 697-6000

STANLEY GROSSMAN (*pro hac vice*)
H. ADAM PRUSSIN (*pro hac vice*)
SHAHEEN RUSHD (*pro hac vice*)
POMERANTZ HAUDEK BLOCK
GROSSMAN & GROSS LLP
100 Park Avenue
New York City, NY 10017
(212) 661-1100

DECLARATION OF STEVEN N. WILLIAMS IN SUPPORT OF MOTION

I, Steven N. Williams, declare as follows:

1. I am an attorney admitted to appear before this Court *pro hac vice*, and admitted to appear before the United States District Court for the Southern District of New York and the United States Supreme Court. I am a partner at Cotchett, Pitre, Simon & McCarthy, attorneys for Plaintiffs in this action. The statements set forth herein are of my own knowledge, and if called upon to testify thereto I could and would do so competently. I make this declaration in support of Plaintiffs' Motion for Leave to File a First Amended Complaint.

2. On January 16, 2002, Plaintiffs filed their Complaint against Salomon Smith Barney, Goldman Sachs & Company, Banc of America Securities, and Arthur Andersen LLP in the United States District Court for the Southern District of New York. The action was assigned to the Hon. Gerard Lynch. Salomon Smith Barney, Goldman Sachs & Company, and Banc of America Securities responded to the complaint by filing a motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6). Defendant Arthur Andersen has not responded to the complaint by stipulation of the parties.

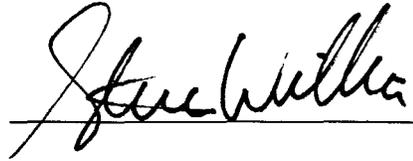
3. On or about June 24, 2002, the Judicial Panel on Multidistrict Litigation issued a transfer order pursuant to which this action was transferred to the United States District Court for the Southern District of Texas.

4. On or about September 6, 2002, this Court entered an order of consolidation pursuant to which this action was consolidated into *Newby et al. v. Enron Corporation, et al.*, H-01-3624.

5. As of the date that this action was transferred to this Court, Judge Lynch had not ruled on the motions to dismiss. As of the date of this declaration, this Court has not ruled on the motions

to dismiss.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct. Executed this 27th day of March, 2003 in Burlingame, California.

A handwritten signature in black ink, appearing to read "Steven Williams", is written over a horizontal line.

STEVEN N. WILLIAMS

2823 1