

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

United States District Court
Southern District of Texas
FILED

APR 17 2003

Michael N. Milby, Clerk

In Re: ENRON CORPORATION SECURITIES, DERIVATIVE & "ERISA" LITIGATION,	MDL 1446
MARK NEWBY, et. al., Plaintiffs, v. ENRON CORPORATION, et. al., Defendants.	Civil Action No. H-01-3624 ✓ And Consolidated Cases
HUDSON SOFT COMPANY, LTD., On Behalf of Itself and All Others Similarly Situated, Plaintiffs, v. CREDIT SUISSE FIRST BOSTON CORPORATION, et. al., Defendants.	Civil Action No. H-03-0860

**MOTION OF CONSECO ANNUITY ASSURANCE COMPANY FOR
RECONSIDERATION OF PART OF THIS
COURT'S MARCH 17, 2003 ORDER OF CONSOLIDATION**

Conseco Annuity Assurance Company ("CAA"), in the above-referenced action, Case No. H-03-0860, respectfully submits this Motion For Reconsideration of the portion of this Court's March 17, 2003 Order of Consolidation (Docket No. 1289, attached hereto as Exhibit A for the Court's convenience), which held with respect to the Notice Of Motion Of Hudson Soft Co., Ltd. And Conseco Annuity Assurance Company to be Appointed As Lead Plaintiffs And For The Approval Of Their Selection Of Co-Lead

#1339

Counsel (the "Lead Plaintiff Motion"), as follows:

. . . because a lead plaintiff and lead counsel have already been appointed in *Newby*...Conseco Annuity Assurance Company's Motion to be Appointed as Lead Plaintiff and for Approval of their selection of co-lead counsel (#51) is. . .MOOT."

CAA is seeking to be appointed lead plaintiff of a class that consists of purchasers of credit linked notes ("CLNs") issued by Citigroup, Inc., its affiliates, and its subsidiaries (collectively "Citigroup") that list Enron Corporation ("Enron") as the credit reference entity (the "Citigroup CLN Class"). The Citigroup CLNs were not issued by Enron and were not Enron publicly traded securities. As discussed below, the claims alleged in the above-referenced action against Citigroup on behalf of the Citigroup CLN Class are outside the scope of the Consolidated Complaint in *Newby*. The Citigroup CLN Class does not fit into the class definition of the *Newby* Consolidated Complaint and the *Newby* Lead Plaintiff does not have standing to assert the claims of the Citigroup CLN Class.

As such, CAA respectfully submits that the portion of the Lead Plaintiff Motion in which CAA seeks to be appointed lead plaintiff to prosecute the claims against Citigroup on behalf of the Citigroup CLN Class is not moot. Accordingly, consistent with this Court's Order dated August 5, 2002 (Docket No. 983), the claims in the above-referenced action against Citigroup on behalf of the Citigroup CLN Class should be held in abeyance until the Court addresses the class certification motion in the *Newby* action, at which time proposed Lead Plaintiff CAA respectfully requests that this Court consider CAA's Lead Plaintiff Motion.

PROCEDURAL BACKGROUND

Hudson Soft Co., Ltd. ("Hudson Soft") filed a Complaint on July 22, 2002, and a First Amended Complaint on September 29, 2002, alleging claims on behalf of itself and a class of all other persons and entities, other than defendants and their affiliates, who were members of the Citigroup CLN Class or who purchased CLNs issued by Credit Suisse First Boston Corporation, its affiliates, and subsidiaries (collectively "CSFB") that listed Enron as the credit reference entity and were damaged during the period November 4, 1999 to December 3, 2001 (the "Class Period") by the defendants' wrongful conduct. None of the CLNs issued by CSFB or Citigroup were issued by Enron or were Enron publicly-traded securities.

On November 27, 2002, Hudson Soft and CAA timely filed the Lead Plaintiff Motion seeking appointment of: (i) CAA as the lead plaintiff on behalf of the Citigroup CLN Class; and (ii) Hudson Soft as the lead plaintiff on behalf of all purchasers of any CSFB-issued CLNs (the "CSFB CLN Class").

Thereafter, on March 5, 2003, Hudson Soft and CAA jointly served and filed in the Southern District of New York a Joint Motion by Plaintiff Hudson Soft Co., Ltd. and Co-Lead Plaintiff Movant Consecro Annuity Assurance Company: (i) To Sever Claims; and (ii) For Leave To File Two Amended Complaints (the "Motion To Sever/Amend"). The Motion To Sever/Amend, which remains *sub judice*, seeks: (i) to sever CAA's claims against Citigroup and its employees from Hudson Soft's claims against CSFB and its employees; (ii) leave for CAA to file a "Proposed Second Amended Class Action Complaint" against Citigroup and its employees; and (iii) leave for Hudson Soft to file a

"Proposed Second Amended Complaint" as an individual action against CSFB and its employees. If the Motion To Sever/Amend is granted: (i) CAA will be asserting both individual and class claims against Citigroup and its employees under federal securities laws and (ii) Hudson Soft will be asserting only individual claims against CSFB and its employees under the federal racketeering or securities laws.¹

ARGUMENT

The Consolidated Complaint in the *Newby* action is brought ". . . on behalf of all persons who acquired **Enron's publicly traded securities**. . . during the Class Period". . . (*Newby* Consolidated Complaint, ¶986, emphasis added).

Since the Citigroup CLNs were issued by Citigroup - not Enron - and were not Enron publicly traded securities, the claims asserted against Citigroup on behalf of the Citigroup CLN Class in Case No. H-03-0860 are not encompassed within the Consolidated Complaint in the *Newby* action.

In its Order dated August 5, 2002 (Docket No. 983), a copy of which is attached hereto as Exhibit B for the Court's convenience, this Court set forth the procedure it would follow with respect to those actions -such as the above-referenced action - which assert claims that are outside the scope of the Consolidated Complaint in *Newby* and which the Court-appointed Lead Plaintiff in *Newby* does not have standing to raise. Specifically, this Court observed:

As was to be expected in such a massive consolidated litigation composed of numerous cases in different procedural postures asserting different claims by different plaintiffs (some individuals and some on behalf of a proposed class) against different defendants based on

¹ Accordingly, the portion of the Lead Plaintiff Motion in which Hudson Soft seeks to be appointed Lead Plaintiff of a CSFB CLN Class is moot.

different law, despite the central common core of facts and nature of the claims that justified consolidation, there is some confusion about requirements for those claims and parties that do not fit within the class defined, the causes of action asserted, and the defendants named in the Consolidated Complaint. The Court will attempt to clarify the situation.

(August 5, 2002 Order at 3.)

Accordingly, this Court ordered:

. . . that all claims and/or complaints not encompassed within the Consolidated Complaint are STAYED at this time.

(August 5, 2002 Order at 4.)

This Court also ordered that all discovery be stayed until the Court had decided all of the motions to dismiss addressed to the Consolidated Complaint in *Newby*. This Court then ruled as follows:

. . . Once these rulings are made, discovery will proceed on all federal securities claims surviving the PSLRA's heightened pleading standards and on all related state-law or federal claims not pursued by Lead Plaintiff.

* * *

Either shortly before or after the time of class certification, and subject to the Court's rulings on the motions to dismiss, those Plaintiffs asserting viable state-law, or different federal claims, or claims against Defendants not named in the Consolidated Complaint, or opting out of a certified class to pursue their claims on an individualized basis may move to reinstate their pleadings on the Court's active docket (or move for leave to file new pleadings or amend them if the Court's decisions or discovery indicate modification is appropriate).

* * *

Furthermore, it is evident that some groups of Plaintiffs do not fit into the class definition of the Consolidated Complaint and that Lead Plaintiff may not have standing to be a class representative of their discrete group. . . As this Court has indicated, around the time of class certification the Court will deal with these issues through creation of classes or subclasses and with appropriate class representatives having standing to pursue those claims.

(August 5, 2002 Order, at 5-6, emphasis added.)

The Citigroup CLN Class does not fit into the class definition of the *Newby* Consolidated Complaint and the *Newby* Lead Plaintiff does not have standing to be a class representative of the Citigroup CLN Class. Accordingly, the claims in the above-referenced action on behalf of the Citigroup CLN Class are not encompassed within the *Newby* Consolidated Complaint and should be held in abeyance until the Court addresses the class certification motion in the *Newby* action, at which time proposed Lead Plaintiff CAA respectfully requests that this Court consider CAA's Lead Plaintiff Motion.

CONCLUSION

CAA respectfully submits that the portion of its pending Lead Plaintiff Motion in Case No. H-03-0860, in which it seeks to be appointed Lead Plaintiff of the Citigroup CLN Class and for the approval of its selection of co-lead counsel, is not moot. Rather,

² Indeed, the Judicial Panel on Multidistrict Litigation, in its February 14, 2003 Transfer Order (attached hereto as Exhibit C for the Court's convenience), which transferred the above-referenced action to this Court for inclusion in the coordinated or consolidated pretrial proceedings, acknowledged the differences between the above-referenced action and the *Newby* Action when it stated as follows: "The transferee court remains free, of course, to formulate a pretrial program that allows discovery with respect to any non-common issues in *Hudson Soft* to proceed concurrently with remaining discovery on common issues...we point out that whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay." (Transfer Order dated February 14, 2003).

pursuant to and consistent with this Court's August 5, 2002 Order, proposed lead plaintiff CAA respectfully requests that CAA's Lead Plaintiff Motion should be considered by the Court "[e]ither shortly before or after the time of class certification..." in the *Newby* action. (August 5, 2002 Order at 5.) Accordingly, this Court should reconsider its March 17, 2003 Order of Consolidation, and upon reconsideration, withdraw that portion of the Order which rules that CAA's Lead Plaintiff Motion is moot.

Respectfully submitted by the Attorneys
For Conseco Annuity Assurance Company,
the Proposed Lead Plaintiff in Case No.
H-03-8860,


Amanda Bell Patty (24001715)

Kelly Puls
Brant Martin
PULS TAYLOR & WOODSON
2600 Airport Freeway
Fort Worth, TX 76111
(817) 338-1717

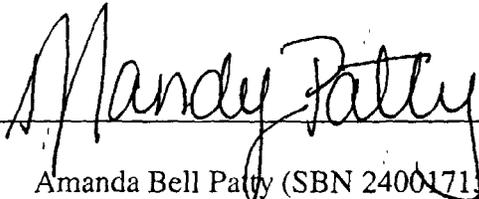
Edward F. Haber
Michelle H. Blauner
Theodore M. Hess-Mahan
Matthew L. Tuccillo
SHAPIRO HABER & URMY, LLP
75 State Street
Boston, MA 02109
(617) 439-3939

Paul O. Paradis
Evan J. Kaufman
Michelle Z. Hall
ABBAY GARDY, LLP
212 East 39th Street
New York, NY 10016
(212) 889-3700

Attorneys for Plaintiff

Certificate of Service

I hereby certify that on this 17th day of April 2003, I caused a true and correct copy of the foregoing Motion Of Conseco Annuity Assurance Company For Reconsideration Of This Court's March 17, 2003 Order of Consolidation to be served electronically to counsel of record, by serving it on Liason Counsel pursuant to this Court's June 6, 2003 Order, paragraphs 5 and 6.


Amanda Bell Patty (SBN 24001715)

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

MAR 18 2003

Michael N. Milby, Clerk

In Re ENRON CORPORATION §
SECURITIES, DERIVATIVE & § MDL 1446
"ERISA" LITIGATION, §

MARK NEWBY, ET AL., §
§
Plaintiffs §

VS. §

CIVIL ACTION NO. H-01-3624 ✓
AND CONSOLIDATED CASES

ENRON CORPORATION, ET AL., §
§
Defendants §

HUDSON SOFT COMPANY, LTD., On §
Behalf of Itself And All Others §
Similarly Situated, §

Plaintiffs, §

VS. §

CIVIL ACTION NO. H-03-0860

CREDIT SUISSE FIRST BOSTON §
CORPORATION, ET AL., §

Defendants. §

ORDER OF CONSOLIDATION

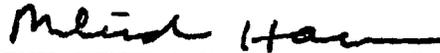
Pursuant to the order of consolidation entered in lead case H-01-3624, Newby v. Enron Corp. et al. on December 12, 2001, and the order of transfer from the Judicial Panel on Multidistrict Litigation, the above referenced case, H-03-0860, is hereby CONSOLIDATED into H-01-3624.

Furthermore, of the pending motions in H-03-0860, Arthur Andersen's motion to stay proceedings (instrument #5) is MOOT in light of the transfer of this action to this Court.¹ In addition,

¹ The Court observes that although Judge Griesa of the Southern District of New York previously ruled that the motion to stay was moot (#39) he subsequently vacated that order (#46). 1289

because a Lead Plaintiff and lead counsel have already been appointed in Newby, Hudson Soft Company, Ltd. and Conseco Annuity Assurance Company's motion to be appointed as lead plaintiffs, and for the approval of their selection of co-lead counsel (#51) is also MOOT.

SIGNED at Houston, Texas, this 17th day of March, 2003.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

other districts and other states that were transferred for consolidation into Newby by the Multidistrict Litigation Panel, of the following: since Lead Plaintiff's consolidated complaint governs at least until the time of class certification, whether any party named as a defendant in any putative class action other than the Consolidated Complaint need file any form of response or otherwise appear in any action until further order of the Court;

(3) American National Insurance Company et al.'s¹ motion to create subclass of plaintiffs asserting only Texas state-law claims and for appointment as subclass representative (#773);

(4) Preferred Purchasers' ongoing objection that Lead Plaintiff has failed to assert cognizable state-law claims on behalf of those who purchased Enron preferred stock;

(5) Hancock Plaintiffs' request for clarification of or, alternatively, objection to, the order of consolidation (#563) and motion for appointment of Lead Plaintiff and approval of Lead Counsel for a class action asserting claims on behalf of purchasers of non-publicly traded debt securities of Enron

¹ Plaintiffs in G-02-84, since remanded. Because others support the motion, it remains pending.

or Enron affiliates guaranteed directly or indirectly by Enron (#867);

(6) Arthur Andersen LLP's motion for clarification (#895) concerning responsive pleadings in Rogers v. Duncan, Member Case No. H-02-2702.

As was to be expected in such a massive consolidated litigation composed of numerous cases in different procedural postures asserting different claims by different plaintiffs (some individuals and some on behalf of a proposed class) against different defendants based on different law, despite the central common core of facts and nature of the claims that justified consolidation, there is some confusion about requirements for those claims and parties that do not fit within the class defined, the causes of action asserted, and the defendants named in the Consolidated Complaint. The Court will attempt to clarify the situation

Some of the member cases, whether brought in federal court on diversity grounds or asserting federal-law claims and state-law claims under supplemental jurisdiction, allege viable state-law claims against Defendants. Other Defendants have been sued under the federal securities laws in member suits, but not by Lead Plaintiff in the Consolidated Complaint. Because this Court established Lead Plaintiff's Consolidated Complaint as the governing pleading and imposed the PSLRA's discovery stay on everyone, some Defendants in these suits are uncertain whether they

need to file responsive pleadings to the claims in the member cases because the claims and/or the Defendants were not included in Lead Plaintiff's Consolidated Complaint. Clearly, one economical reason for utilization of a Lead Plaintiff and a Consolidated Complaint is to avoid having Defendants required to answer multiple complaints. For this reason, the Court first

ORDERS that all claims and/or complaints not encompassed within the Consolidated Complaint are STAYED at this time; this consolidated action will go forward based on the Consolidated Complaint. The Court further

ORDERS that all discovery is STAYED, pursuant to the PSLRA,² until the Court has ruled on the pending motions to

² Once any motion to dismiss claims arising under the federal securities statutes is filed by any defendant, the provision of the Private Securities Litigation Reform Act ("PSLRA"), automatically staying "all discovery," 15 U.S.C. § 78u-4(b)(3)(B), is triggered until the motions to dismiss are resolved. Section 78u-4(b)(3)(B), provides,

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice.

The parties have not demonstrated that either of the two exceptions has been met here, i.e., that there is a threat that the evidence will be lost or destroyed or that particularized discovery is need to avoid irreparable harm and undue prejudice. "Undue prejudice" is harm that is "improper or unfair under the circumstances." CFS-Related Sec. Fraud Litig., 179 F. Supp. 2d at 1265, citing Medical Imaging Centers of America, Inc. v. Lichtenstein, 917 F.Supp. 717, 720 (S.D. Ca. 1996). The delay inherent in the PSLRA's automatic discovery stay cannot constitute "undue" prejudice because it is neither improper nor unfair, but "prejudice that has been mandated by Congress after a balancing of various policy interests at stake in securities litigation, including a plaintiff's need to collect

dismiss. Once these rulings are made, discovery will proceed on all federal securities claims surviving the PSLRA's heightened pleading standards and on all related state-law or federal claims not pursued by Lead Plaintiff. If additional leeway is needed during discovery to pursue issues distinct from those in the Consolidated Complaint and if counsel are unable to agree how to proceed, the parties may file an appropriate motion.

Either shortly before or after the time of class certification, and subject to the Court's rulings on the motions to dismiss, those Plaintiffs asserting viable state-law, or different federal claims, or claims against Defendants not named in the Consolidated Complaint, or opting out of a certified class to pursue their claims on an individualized basis may move to reinstate their pleadings on the Court's active docket (or move for leave to file new pleadings or amend them if the Court's decisions or discovery indicate modification is appropriate). Once such pleadings are filed or reinstated, Defendants shall file timely responsive pleadings from the date of reinstatement and/or amendment, as ordered by the Court.

At that time, where needed, the parties may also move for distinct schedules, although continuing efforts should be made to coordinate the progress of all.

and preserve evidence." Id. See generally Angell Investments, L.L.C. v. Purizer Corp., 177 F. Supp.2d 152 (N.D. Ill. 2001); In re CFS-Related Securities Fraud Litigation, 179 F. Supp.2d 1260, 1263-65 (N.D. Okla. 2001) (staying discovery even against a defendant that did not file a motion to dismiss).

Furthermore, it is evident that some groups of Plaintiffs do not fit into the class definition of the Consolidated Complaint that Lead Plaintiff may not have standing to be a class representative of their discrete group, even though the discovery should be sufficiently broad to allow them the opportunity to obtain information about their distinct allegations. For example

Preferred Purchasers sue on behalf of preferred stock purchasers, while the Hancock Plaintiffs sue on behalf non-publicly traded debt securities guaranteed directly or indirectly by Enron. As this Court has indicated, around the time of class certification the Court will deal with these issues through creation of classes or subclasses and with appropriate class representatives having standing to pursue those claims.

Still remaining is the issue of those tort claims asserted under the Texas Securities Act by the Preferred Purchasers that fall outside of the Class Period as defined in the Consolidated Complaint and that Lead Plaintiff has objected to adding to the Consolidated Complaint. After fully reviewing the extended briefing, this Court is persuaded by Lead Plaintiff's Response to Wolf Haldenstein's Additional Memorandum (#963), for the reasons expressed therein, that Preferred Purchasers' 1996-97 Class Period claims should not be pursued in Newby by Lead Plaintiff. Thus, as suggested by Lead Plaintiff, the Court grants leave to counsel for Preferred Purchasers to pursue these claims. The discovery stay is lifted following resolution of the motions to dismiss.

In compliance with the above decisions, the Court
ORDERS the following regarding the pending motions:

Movants LJM Cayman L.P. Chewco
Investments, L.P., and Michael J Kopper's
motion for entry of preliminary scheduling
order (instrument #610) is currently DENIED;

in response to the request from LJM2 Co-
Investment, L.P (#815), no party named as a
defendant in any putative class action other

the Consolidated Complaint need file any
form of response or otherwise appear in any
actions until the Court lifts the discovery
stay and reinstates such complaint on the
Court's active docket;

American National Insurance Company et
al.'s motion to create subclass of plaintiffs
asserting only Texas state-law claims and for
appointment as subclass representative (#773)
is currently DENIED;

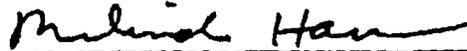
Counsel for Preferred Purchasers shall
independently prosecute Preferred Purchasers'
tort claims under the Texas Securities Act
after resolution of the pending motions to
dismiss;

Hancock Plaintiffs' request for
clarification (#563) is GRANTED and motion

for appointment of Lead Plaintiff and approval
of Lead Counsel (#867) is DENIED at this time;

Arthur Andersen LLP's motion for
clarification (#895) is GRANTED.

SIGNED at Houston, Texas, this 5th of August, 2002



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:

Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:

Judge John F. Keenan
United States District Court
Southern District of New York

Judge Bruce M. Selys
United States Court of Appeals
First Circuit

Judge Julia Smith Gibbons
United States Court of Appeals
Sixth Circuit

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

DIRECT REPLY TO:

Michael J. Beck
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: (202) 502-2800
Fax: (202) 502-2888

<http://www.jpml.uscourts.gov>

February 14, 2003

TO INVOLVED COUNSEL

Re: MDL-1446 -- In re Enron Corp. Securities, Derivative & "ERISA" Litigation

Hudson Soft Co., Ltd. v. Credit Suisse First Boston Corp., et al., S.D. New York, C.A. 1:02-5768
Wai Chinn v. Robert A. Belfer, et al., D. Oregon, C.A. No. 3:02-1392

Dear Counsel:

For your information, I am enclosing a copy of an order filed today by the Judicial Panel on Multidistrict Litigation involving this matter.

Very truly,

Michael J. Beck
Clerk of the Panel

By 
Deputy Clerk

Enclosure

JPML Form 34B

FEB 14 2003

FILED
CLERK'S OFFICE**DOCKET NO. 1446****BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION****IN RE ENRON CORP. SECURITIES, DERIVATIVE & "ERISA"
LITIGATION***Hudson Soft Co., Ltd. v. Credit Suisse First Boston Corp., et al.*, S.D. New York, C.A. No.

1:02-5768

Wai Chinn v. Robert A. Belfer, et al., D. Oregon, C.A. No. 3:02-1392**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN,
BRUCE M. SELYA, JULIA SMITH GIBBONS, D. LOWELL JENSEN, J.
FREDERICK MOTZ AND ROBERT L. MILLER, JR., JUDGES OF THE
PANEL****TRANSFER ORDER**

Before the Panel are motions brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by the plaintiff in a Southern District of New York action (*Hudson Soft*) and the plaintiff in a District of Oregon action (*Chinn*). Each plaintiff seeks to vacate a Panel order conditionally transferring the plaintiff's respective action to the Southern District of Texas for inclusion in the centralized pretrial proceedings occurring there in this docket before Judge Melinda Harmon. Twenty-five of the *Hudson Soft* defendants and one of the *Chinn* defendants have responded in support of transfer of their respective actions.

On the basis of the papers filed and hearing session held, the Panel finds that *Hudson Soft* and *Chinn* involve common questions of fact with actions in this litigation previously transferred to the Southern District of Texas, and that transfer of the two actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel is persuaded that transfer of the actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. The Panel held that the Southern District of Texas was a proper Section 1407 forum for actions sharing factual questions concerning allegedly negligent and/or fraudulent conduct relating to the financial collapse of Enron Corp. (Enron). See *In re Enron Corp. Securities, Derivative & "ERISA" Litigation*, 196 F.Supp.2d 1375 (J.P.M.L. 2002).

The *Hudson Soft* plaintiff initially contended that its action should be excluded from transfer because *Hudson Soft* is concerned solely with the issuance of credit linked notes by two investment bank defendants that has nothing to do with any security issued by Enron. Then, just days before the Panel's hearing session, the plaintiff further requested the Panel to postpone its consideration of

*Judge Motz took no part in the decision of this matter.

Section 1407 transfer because of plaintiff's intention to file an amended complaint narrowing the parties and claims involved in the action. Neither argument persuades us to deny or defer transfer. The fact that the involved securities have not been issued by Enron does not end the inquiry into whether *Hudson Soft* shares sufficient questions with previously centralized MDL-1446 actions to warrant its inclusion in MDL-1446. Indeed, we note that both the current *Hudson Soft* complaint and the hypothetical proposed amended complaint will focus on i) the investment bank defendants' knowledge of Enron's financial state of affairs, and ii) a resulting alleged scheme to shift the bank defendants' Enron financial exposure to unsuspecting third parties. Questions relating to Enron's financial collapse and who knew what and when are thus likely to remain common to both *Hudson Soft* and previously centralized MDL-1446 actions. Transfer under Section 1407 will permit *Hudson Soft* to proceed before a single transferee judge who can structure pretrial proceedings to consider all parties' legitimate discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands which duplicate activity that will occur or has already occurred in other MDL-1446 actions. The transferee court remains free, of course, to formulate a pretrial program that allows discovery with respect to any non-common issues in *Hudson Soft* to proceed concurrently with remaining discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (J.P.M.L. 1976). Finally, we point out that whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. 424, 436-438 (2001).

The *Chinn* plaintiff urges the Panel not to order transfer in view of the pendency of a remand motion in *Chinn*. There is no need to delay transfer because a remand motion, if not resolved in the transferor court by the time of Section 1407 transfer, can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these two actions are transferred to the Southern District of Texas and, with the consent of that court, assigned to the Honorable Melinda Harmon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman