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JUN 11 2003

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION
SECURITIES LITIGATION

§ MDL Docket No. 1446

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

§ Civil Action No. H-01-3624
§ (Consolidated)

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

**RESPONSE OF PLAINTIFFS HUDSON SOFT CO. LTD AND CONSECO
ANNUITY ASSURANCE COMPANY TO PROPOSED PRETRIAL
SCHEDULING ORDERS OF LEAD PLAINTIFF AND BANK DEFENDANTS**

Now come the plaintiffs Hudson Soft Co. Ltd ("Hudson Soft") and Conseco Annuity Assurance Company ("Conseco") in the actions *Hudson Soft Co. Ltd v. Credit Suisse First Boston Corp., et. al.*, No. 01-CV-5768 (S.D.N.Y.), consolidated as H-02-1831 (the "*Hudson*

1481

Soft Action)¹ and *Conseco Annuity Assurance Company v. Citigroup, Inc., et. al.*, No. 03-CV-1559 (S.D.N.Y.) (the "*Conseco Action*"),² and they respond to the Proposed Pretrial Scheduling Orders of Lead Plaintiff and the Bank Defendants which would, *inter alia*, lift the stay imposed by this Court's August 7, 2002 Order for specified actions. In summary, Plaintiffs Hudson Soft and Conseco respectfully submit that the *Hudson Soft Action* and the *Conseco Action* should both be included among the actions covered by the proposed modification of this Court's August 7, 2002 Order.

On May 16, 2003, Lead Plaintiff filed its Proposed Pretrial Scheduling Order and a Memorandum In Support. In its Memorandum Lead Plaintiff, with the concurrence of the Bank Defendants and other defendants, proposed that this Court's August 7, 2002 Order (Docket No. 983) be modified, to provide that the stay of the *Hudson Soft Action*, and other specified actions in MDL 1446, be lifted.

On May 23, 2003, the Bank Defendants filed their Response to Lead Plaintiff's Proposed Pretrial Scheduling Order, in which they expressed their agreement with the procedure proposed by Lead Plaintiff for the *Hudson Soft Action* and the other actions listed in Lead Plaintiff's Memorandum, but they advocated that the same procedure apply to many additional actions, including the *Conseco Action*, identified in Exhibit A thereto.

1 In the *Hudson Soft Action*, Plaintiff Hudson Soft raises claims against Credit Suisse First Boston and certain of its affiliates ("CSFB"), as well as certain of its employees, and Plaintiff Conseco raises claims against Citigroup, Inc. and certain of its affiliates ("Citigroup"), as well as certain of its employees.

2 The *Conseco Action* was filed in the Southern District of New York. That action is the subject of an unopposed Conditional Transfer Order of the Judicial Panel on Multidistrict Litigation ("JPML"), transferring the action to this Court. That Order became effective on June 4, 2003. In the *Conseco Action*, Conseco raises claims against Citigroup and certain of its employees.

Thereafter, on May 30, 2003, Lead Plaintiff, in its Response To Certain Defendants' Comments on the Proposed Pretrial Scheduling Order, reversed its initial position. Lead Plaintiff now seeks to exclude from the above-described modification of this Court's August 7, 2002 Order, both the *Hudson Soft Action* and the *Conseco Action*. Lead Plaintiff's new rationale for such exclusion is that the First Amended Consolidated Complaint in *Newby* ("*Newby Amended Complaint*"), which was filed on May 14, 2003, now sets forth - in footnote 20, on page 625 - such an enormously expanded definition of the putative class that it now purports to encompass even purchasers of the Citigroup-issued Credit Linked Notes at issue in the both the *Hudson Soft Action* and the *Conseco Action*.

Plaintiffs Hudson Soft and Conseco respectfully submit that the *Hudson Soft Action* and the *Conseco Action* should both be included among the actions covered by the proposed modification of this Court's August 7, 2002 Order. That Order contemplated the reinstatement of pleadings on the Court's active docket by ". . . those Plaintiffs asserting...**different federal claims, or claims against Defendants not named in the Consolidated Complaint...**" *Id.* at 5 (emphasis added). In its August 7, 2002 Order this Court also observed that ". . . it is evident that some groups of Plaintiffs do not fit into the class definition of the Consolidated Complaint, or that **Lead Plaintiff may not have standing** to be a class representative of their discrete group..." *Id.* at 6 (emphasis added).

Both the *Hudson Soft Action* and the *Conseco Action* fall into those categories of cases that should be included in any modification of this Court's August 7, 2002 Order permitting a process by which pleadings can be reinstated, for the following reasons:

1. Neither Lead Plaintiff nor any of the named representative plaintiffs in the *Newby Amended Complaint* have standing to sue for securities law violations in connection with the issuance and sale of the Citigroup-issued Credit Linked Notes that were purchased by Consecoco and the class it seeks to represent in the *Consecoco Action* and the *Hudson Soft Action*, because the Citigroup-issued Credit Linked Notes:
 - a. were not issued by Enron;
 - b. are not Enron publicly traded securities; and
 - c. were not purchased by Lead Plaintiff or any of the named representative plaintiffs in the *Newby Amended Complaint*.
2. In this Court's February 15, 2002 Memorandum and Order, Lead Plaintiff was appointed, pursuant to the provisions of the PSLRA, to represent the purchasers of "Enron publicly traded securities." Neither that Order, nor the requisite notices published pursuant to the PSLRA (all of which referred to "Enron stock" or "Enron securities"), contemplated a Lead Plaintiff that would be prosecuting claims on behalf of purchasers of securities that had not been issued by Enron and that had not been purchased by Lead Plaintiff or any other named representative Plaintiff in *Newby*.³

³ In contrast, pursuant to the requirements of the PSLRA, Hudson Soft published a notice on September 29, 2002, which identified the Citigroup-issued Credit Linked Notes as the subject of the *Hudson Soft Action* and notified purchasers of the Citigroup-issued Credit Linked Notes of their right to move to be appointed Lead Plaintiff in that action. In response to that Notice, Consecoco timely filed, in the *Hudson Soft Action*, a motion to be appointed Lead Plaintiff on behalf of the class of purchasers of the Citigroup-issued Credit Linked Notes.

3. Conseco, in both the *Conseco Action* and the *Hudson Soft Action*, asserts claims against the following Defendants not named in the *Newby Amended Complaint*: Schroeder Salomon Smith Barney, Rick Caplan, James Riley, William Fox and Maureen Hendricks.
4. Likewise, in the *Hudson Soft Action*, Hudson Soft asserts claims against Defendants not named in the *Newby Amended Complaint*, including: Credit Suisse First Boston International, CFSB Europe Limited, Lawrence Nath and Dominic Capolongo.
5. In the *Hudson Soft Action*, Hudson Soft asserts different federal claims from those asserted in the *Newby Amended Complaint*. Specifically, Hudson Soft seeks recovery individually, and not on behalf of a class, against CSFB and certain of its employees under, *inter alia*, federal RICO causes of action, as a result of its purchase of CSFB-issued Credit Linked Notes. No RICO claims are asserted in the *Newby Amended Complaint*, and purchasers of the CSFB-issued notes are not included even in the *Newby Amended Complaint*'s vastly expanded class definition. *See Id.* at 625 n.20.⁴
6. The putative class in the *Newby Consolidated Complaint* had previously encompassed only purchasers of "Enron's publicly traded securities." By inserting

⁴ On March 5, 2003, Hudson Soft and Conseco filed in the *Hudson Soft Action*, a Joint Motion by Plaintiff Hudson Soft Co., Ltd. and Co-Lead Plaintiff Movant Conseco 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 plaintiffs understand is not opposed by any defendant, remains *sub judice*. If it is granted: (i) Conseco will be asserting both individual and class claims against Citigroup and certain of its employees; and (ii) Hudson Soft will be asserting only individual claims against CSFB and certain of its employees.

The "Proposed Second Amended Class Action Complaint" which Conseco seeks to file pursuant to the Motion To Sever/Amend in the *Hudson Soft Action* is identical to the Complaint Conseco filed in the *Conseco Action* in the Southern District of New York. As previously noted, that action is the subject of an unopposed Conditional Transfer Order of the JPML, which order became effective on June 4, 2003.

a mere footnote - footnote 20 on page 625 - in the *Newby* Amended Complaint, Lead Plaintiff now seeks to vastly expand the unambiguous phrase “Enron’s publicly traded securities” to include securities which were not issued by Enron and/or were not publicly traded. This dramatic expansion of the proposed class was undertaken without leave of court and in contravention of this Court’s May 2, 2003 Order.⁵

Finally, Hudson Soft and Conseco note that the entry by this Court of the Bank Defendants’ [Proposed] Modification to the Court’s August 7, 2002 Order and Pretrial Scheduling Order (which by its terms applies to both the *Hudson Soft Action* and the *Conseco Action*) would impose absolutely no burden whatsoever on Lead Plaintiff or Lead Counsel in *Newby*. If entered, the plaintiffs in the enumerated cases would have to file an

5 In its May 2, 2003 Order, this Court stated:

. . . that Lead Plaintiff shall file an amended/supplemental complaint as a single instrument, repleading concurrently all claims identified by the court as deficient,

* * * *

. . . Lead Plaintiff shall file a **brief but adequately informative** summary of the parties Lead Plaintiff wishes to add and claims it wishes to assert against them. . .

Id. at 2 (emphasis in original).

In Lead Plaintiff’s Response to Order Entered May 2, 2003, Lead Plaintiff represented that it would be making the following limited changes to the then-operative complaint in *Newby*:

Lead Plaintiff will correct the deficiencies identified in the Court’s Orders on the motions to dismiss, make other clarifying amendments and will add various subsidiaries of bank defendants, including investment bank subsidiaries, as named defendants ...

Id. at 2.

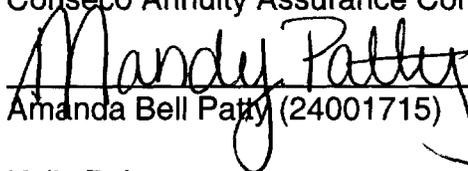
This Court’s May 2, 2003 Order did not authorize, and Lead Plaintiff’s Response to it did not suggest, that Lead Plaintiff would attempt to vastly expand the scope of the proposed class in *Newby*, which Lead Plaintiff has sought to do by redefining “Enron publicly traded securities” to include securities that were not issued by Enron and/or were not publicly traded.

amended complaint or a notice that they stand on their current complaint; the applicable defendants (which in the case of the *Hudson Soft Action* and the *Conseco Action* are only Citigroup, CSFB, and certain of their employees) would have either to answer the complaints or move to dismiss them; and the plaintiffs would have to oppose the motions to dismiss, if any are made. Nothing would be required of Lead Plaintiff or Lead Counsel.

Under these circumstances, it is respectfully submitted that the Bank Defendants' [Proposed] Modification to the Court's August 7, 2002 Order and Pretrial Scheduling Order should be entered and it should apply to both the *Hudson Soft Action* and the *Conseco Action*.

Dated: June 11, 2003

Respectfully submitted by the Attorneys
For Hudson Soft Co. Ltd and
Conseco Annuity Assurance Company,


Amanda Bell Patty (24001715)

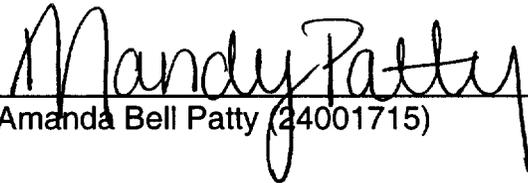
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Certificate of Service

I hereby certify that on this 11th day of June 2003, I caused a true and correct copy of the foregoing Response of Plaintiffs Hudson Soft Co. Ltd. and Conseco Annuity Assurance Company to Proposed Pretrial Scheduling Orders of Lead Plaintiff and Bank Defendants to be served electronically to counsel of record by serving it on Liason Counsel pursuant to this Court's June 6, 2002 Order, paragraphs 5 and 6.


Amanda Bell Patty (24001715)