

JUN 24 2003

Michael N. Milby, Clerk

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

In Re Enron Corporation	§	
Securities, Derivative &	§	MDL-1446
"ERISA Litigation	§	
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THIS DOCUMENT RELATES TO:	§	
	§	
All Cases	§	
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MARK NEWBY, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
	§	CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants	§	
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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.	§	

ORDER

Pending before the Court *inter alia* is a motion for summary judgment (instrument #1379) filed by Defendant Citigroup Inc., which is sued under Section 10(b) of the Securities Act of 1934 and Rule 10b-5, on the grounds that the alleged wrongful conduct was performed not by Citigroup Inc., but by its separate and legally distinct subsidiaries. Furthermore, in a footnote Citigroup Inc. (#1379 at 7 n.2) states that in its earlier motion to dismiss (#629), it contended that Lead Plaintiff had not stated

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a claim against it for control person liability under § 20(a) of the 1934 Act. In the Court's December 19, 2002 memorandum and order (#1194 at 267), the Court noted that Lead Plaintiff had not responded to that issue and deferred ruling on that one question until it had reviewed all the individual Defendants' motions to dismiss. Thus that issue is still pending.

After reviewing Lead Plaintiff's response and summary judgment (#1479),¹ the Court finds that Lead Plaintiff has raised genuine issues of material fact regarding Citigroup Inc.'s own involvement,² as well as Citigroup Inc.'s control and coordination

¹ Bank of America and Canadian Imperial Bank of Commerce previously moved for summary judgment based on the same argument, i.e., that their subsidiaries or affiliates, not the named Defendant institutions themselves, were responsible for the acts challenged in the complaint. In its order of May 22, 2003 (#1392), the Court stated,

Lead Plaintiff raises several legal theories for imposing liability against Bank of America, CIBC, and these subsidiaries. These theories are applicable to the federal statutes regulating the sale and purchase of securities, require fact-intensive inquiries generally inappropriate for summary judgment, and do not require piercing the corporate veil: control person liability under § 15 of the 1933 Act and § 20(a) of the 1934 Act; enterprise liability; and common-law agency principles).

The same is true of Lead Plaintiff's claims against Citigroup Inc.

² For example, controverting Citigroup Inc.'s insistence that it did not invest in LJM2, Lead Plaintiff presents testimony from David Bushnell, Managing Director of Global Risk Management at Citigroup, before a Congressional subcommittee investigating Enron's collapse, reflecting that it did. Other evidence demonstrates that Citigroup analysts did issue reports attributed to them and to Citigroup in the complaint. Lead Plaintiff also attaches documents demonstrating Citigroup's involvement in

of the subsidiaries and affiliates (including Citicorp, Citibank, N.A., Citibank North America, Inc., Citicorp North America, CXC Inc., Salomon Smith Barney, Inc., Salomon Brothers International Ltd., and even Delta Energy Corp.) and their extensive involvement in allegedly creating and effectuating fraudulent Enron transactions.

Furthermore, Lead Plaintiff emphasizes its minimal opportunity to conduct discovery thus far in order to challenge the motion for summary judgment and its entitlement to reasonable discovery before being forced to respond to the motion. It cites as relevant authority *Brown v. Miss. Valley State Univ.*, 311 F.3d 328, 333 (5th Cir. 2002) ("Summary judgment assumes some discovery"); *FDIC v. Shrader & York*, 991 F.2d 216, 220 (5th Cir. 1993) ("Summary judgment is appropriate if, after discovery, there is no genuine dispute over any material fact."), *cert. denied*, 512 U.S. 1219 (1994); *Little v. Liquid Air. Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (*en banc*) ("Rule 56 'mandates the entry of summary judgment, after adequate time for discovery'"); *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986) (summary judgment may be appropriate "as long as the plaintiff has had a full opportunity to conduct discovery"). Should the Court decide that Lead Plaintiff has failed to demonstrate genuine issues of material fact about Citigroup Inc.'s liability to preclude summary

allegedly fraudulent Enron transactions not included in the complaint.

judgment, Lead Plaintiff requests the Court deny the motions as premature under Fed. R. Civ. P. 56(f).

The Court finds that Lead Plaintiff has made persuasive arguments with supporting documentation for denial of the motion for summary judgment at this stage of the litigation. Accordingly, the Court

ORDERS that Citigroup Inc.'s motion for summary judgment (# 1379) is DENIED without prejudice. After discovery, should the evidence demonstrate that such a course is appropriate, Defendant may file an amended motion for summary judgment. The Court further

ORDERS that Citigroup Inc.'s motion to dismiss based on control person liability is DENIED.

SIGNED at Houston, Texas, this 19th day of June, 2003.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE