

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

United States Courts  
Southern District of Texas  
ENTERED

SEP 16 2003

In Re ENRON CORPORATION  
SECURITIES, DERIVATIVE &  
"ERISA" LITIGATION,

§  
§  
§

MDL 1446

Michael N. Milby, Clerk

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MARK NEWBY, ET AL.,

§  
§  
§

Plaintiffs

VS.

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

ENRON CORPORATION, ET AL.,

§  
§  
§  
§  
§  
§

Defendants

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PAMELA M. TITTLE, on behalf of  
herself and a class of persons  
similarly situated, ET AL.,

§  
§  
§

Plaintiffs

VS.

CIVIL ACTION NO. H-01-3913  
CONSOLIDATED CASES

ENRON CORP., an Oregon  
Corporation, ET AL.,

§  
§  
§  
§  
§  
§

Defendants.

ORDER

Pending before the Court in the above referenced action are Michael J. Kopper's motion to postpone discovery and to stay answers during pendency of criminal proceedings (#142 in MDL 1446) and David Duncan's motion to postpone and/or stay discovery during the pendency of criminal proceedings (#1646 in Newby).

Both men have pleaded guilty to certain charges against them related to Enron matters and urge that they remain in substantial jeopardy and need to protect their constitutional rights under the Fifth Amendment until they have been sentenced. See, e.g., *Mitchell v. U.S.*, 526 U.S. 314, 326 (1999) ("Where the

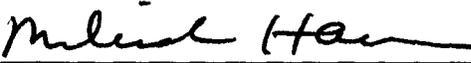
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sentence has not yet been imposed, a defendant may have a legitimate fear of adverse consequences from further testimony."); *U.S. v. Kuku*, 129 F.3d 1435 (11<sup>th</sup> Cir. 1997) ("[A] defendant retains the Fifth Amendment privilege against self-incrimination prior to sentencing despite having entered a guilty plea, because of the possible impact that compelled testimony may have on the defendant's as yet undetermined sentence."), *cert. denied*, 524 U.S. 909 (1998); *U.S. v. Hernandez*, 962 F.3d 1152, 1161 (5<sup>th</sup> Cir. 1992) ("[I]mpending sentencing may furnish grounds for a legitimate fear of incurring additional criminal liability from testifying, in which case the privilege should remain in effect.") (and cases cited therein). Both Defendants have also entered into agreements to cooperate with the government's ongoing investigation, and participating in discovery here might interfere with that investigation. They both reference this Court's order (#1298 in *Newby*) granting a similar request from Andrew Fastow.

After considering the matter, the Court finds that Kopper and Duncan show good cause for reasons cited in the Fastow order and based on their authority. Accordingly, the Court

ORDERS that both motions for postponement of discovery are GRANTED.

**SIGNED** at Houston, Texas, this 13<sup>th</sup> day of September, 2003.

  
MELINDA HARMON  
UNITED STATES DISTRICT JUDGE