

BL OCT 28 2003

Michael N. Milby, Clerk of Court

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

-----X	:	
IN RE ENRON CORPORATION	:	
SECURITIES, DERIVATIVE &	:	MDL-1446
"ERISA" LITIGATION	:	
-----X	:	
This Document Relates To:	:	
MARK NEWBY, ET AL.,	:	
PLAINTIFFS,	:	
VS.	:	CIVIL ACTION NO. H-01-3624
	:	CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	:	
DEFENDANTS.	:	
-----X	:	
SAMSON INVESTMENT COMPANY,	:	
PLAINTIFF,	:	
VS.	:	CIVIL ACTION NO. H-03-2264
ARTHUR ANDERSEN L.L.P.,	:	
DEFENDANT.	:	
AND	:	
ARTHUR ANDERSEN L.L.P.,	:	
DEFENDANT/THIRD-PARTY	:	
PLAINTIFF,	:	
VS.	:	
ANDREW FASTOW, ET AL.,	:	
THIRD-PARTY	:	
DEFENDANTS	:	
-----X	:	

[Caption continued on following page.]

**SECOND NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF BANK DEFENDANTS' SUPPLEMENTAL
RESPONSE TO PLAINTIFFS' MOTIONS TO REMAND AND DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION FOR REMAND**

1797

-----X :
RICHARD CHOUCROUN, ET AL., :
PLAINTIFFS, :

CIVIL ACTION NO. H-03-3320

VS. :
ARTHUR ANDERSEN L.L.P., ET AL., :
DEFENDANTS. :

AND :
ARTHUR ANDERSEN L.L.P., :
DEFENDANT/THIRD-PARTY :
PLAINTIFF, :

VS. :
JP MORGAN CHASE & CO. ET AL., :
THIRD-PARTY :
DEFENDANTS. :

-----X :
AL RAJHI INVESTMENT CORPORATION BV, :
PLAINTIFF, :

CIVIL ACTION NO. H-03-1219

VS. :
ARTHUR ANDERSEN L.L.P., :
DEFENDANT. :

AND :
ARTHUR ANDERSEN L.L.P., :
DEFENDANT/THIRD-PARTY :
PLAINTIFF :

VS. :
JP MORGAN CHASE & CO., ET AL., :
THIRD-PARTY :
DEFENDANTS. :

-----X :
CALIFORNIA PUBLIC :
EMPLOYEES' RETIREMENT :
SYSTEM, :
PLAINTIFF, :

CIVIL ACTION NO. H-03-3481

VS. :
BANC OF AMERICA :
SECURITIES LLC, ET AL., :
DEFENDANTS. :

-----X :

-----X	:	
PAUL OKOMO,	:	
PLAINTIFF,	:	
VS.	:	CIVIL ACTION NO. H-03-3508
	:	
BANC OF AMERICA	:	
SECURITIES LLC, ET AL.,	:	
DEFENDANTS.	:	
-----X	:	
RETIREMENT SYSTEMS	:	
OF ALABAMA, ET AL.,	:	
PLAINTIFFS,	:	
VS.	:	CIVIL ACTION NO. H-03-2308
	:	
MERRILL LYNCH & CO., ET AL.,	:	
DEFENDANTS.	:	
-----X	:	
DK ACQUISITION PARTNERS, L.P., ET AL.,	:	
PLAINTIFFS,	:	
VS.	:	CIVIL ACTION NO. H-03-3393
	:	
J.P. MORGAN CHASE & CO., ET AL.,	:	
DEFENDANTS.	:	
-----X	:	

Defendants J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., JPMorgan Chase Bank, Citigroup Inc., Citibank N.A., Salomon Smith Barney Inc., Salomon Brothers International, Credit Suisse First Boston LLC (formerly known as Credit Suisse First Boston Corporation), Credit Suisse First Boston (USA), Inc., Credit Suisse First Boston Inc., Pershing LLC, Canadian Imperial Bank of Commerce, CIBC World Markets Corp., fka CIBC Oppenheimer Corp., Bank of America Corporation, Banc of America Securities LLC, Bank of America, N.A., Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Deutsche Bank AG, Goldman, Sachs & Co., Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Lehman Brothers Inc., and Lehman Brothers Holdings Inc. (collectively, “Bank Defendants”) respectfully submit this second notice of supplemental authority in connection with

(1) the Bank Defendants' Supplemental Response to Plaintiffs' Motion to Remand Concerning the Effect of the Court's September 15, 2003 Decision in *American National, et al. v. Arthur Andersen, et al.*, (filed October 8, 2003) (the "Supplemental Response"), and (2) Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Remand (filed October 14, 2003) in H-03-3393.

The Bank Defendants submit this notice to bring to the Court's attention the October 20, 2003 decision by the U.S. District Court for the Southern District of New York in *Franck v. Sullivan (In re WorldCom, Inc. Securities Litigation)*, Case No. 03 Civ. 6220, slip op. (S.D.N.Y. Oct. 20, 2003) (opinion attached hereto as Exh. A). Reasoning that "[b]y its very terms, any party, whether a plaintiff or defendant, may remove an action under Section 1452 as related to a bankruptcy proceeding," the *Franck* court concluded that "[removal pursuant to Section 1452] does not require the consent of others." *Id.* at 7. Finding that unanimity was not required for "related to" bankruptcy removals, the court distinguished 28 U.S.C. § 1452 from 28 U.S.C. § 1441 (the general removal statute), stating, "every removal statute must be interpreted according to its own terms." *Id.* at 5, 7. Additionally, the *Franck* court recognized, "the two circuit courts that have considered this issue in the context of Section 1452 . . . have concluded that Section 1452 does not require all defendants to consent to removal." *Id.* at 6 (citing *In re Lazar*, 237 F.3d 967, 973 n.2 (9th Cir. 2001) and *Creasy v. Coleman Furniture Corp.*, 763 F.2d 656, 660-61 (4th Cir. 1985)).

The Southern District of New York's holding in *Franck* is particularly relevant authority because, according to this Court's September 30, 2003 decision in *American National Insurance Co. v. J.P. Morgan Chase & Co.*, Second Circuit law applies to jurisdictional issues in the Enron civil cases – including the above-captioned matters – that have been removed to this Court pursuant to "related to bankruptcy" jurisdiction. *See* No. G-02-0299, slip op. at 22 (S.D. Tex. Sept. 30, 2003). Accordingly, *Franck* provides additional authority to deny Plaintiffs'

remand motions in *Choucroun, et al., v. Arthur Andersen LLP, et al.*, H-03-3320 (S.D. Tex.) and *Retirement Systems of Alabama v. Merrill Lynch & Co., et al.*, No. H-03-2308 (S.D. Tex.).¹ In both of these actions, Plaintiffs have alleged that removal under Section 1452 requires the unanimous consent of all defendants.

The Bank Defendants respectfully submit this additional authority, which is attached hereto as Exhibit A.

Dated: October 28, 2003

Respectfully submitted,

/s/ Richard Warren Mithoff

Richard Warren Mithoff
Attorney-in-Charge
Texas Bar No. 14228500
S.D. Texas I.D. No. 2102
MITHOFF & JACKS, L.L.P.
One Allen Center, Penthouse
500 Dallas Street, Suite 3450
Houston, Texas 77002
Telephone: (713) 654-1122
Telecopier: (713) 739-8085

¹ On the basis of additional arguments fully discussed in the Supplemental Response and Defendants' Opposition to Plaintiffs' Motion for Remand in H-03-3393, the Bank Defendants respectfully submit that plaintiffs' motions to remand in all of the above-captioned cases should also be denied.

OF COUNSEL:

Charles A. Gall
Texas Bar No. 07281500
S.D. Texas Bar No. 11017
James W. Bowen
Texas Bar No. 02723305
S.D. Texas I.D. No. 16337
JENKENS & GILCHRIST, P.C.
A PROFESSIONAL CORPORATION
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
Telephone: (214) 855-4500
Telecopier: (214) 855-4300

Bruce D. Angiolillo
Thomas C. Rice
David J. Woll
Jonathan K. Youngwood
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Telecopier: (212) 455-2502

*Attorneys for J.P. Morgan Chase & Co., J.P.
Morgan Securities Inc. and JPMorgan Chase
Bank*

/s/ Hugh R. Whiting

Hugh R. Whiting

Attorney-in-Charge

Texas Bar No. 21373500

S.D. Texas I.D. No. 30188

JONES DAY

600 Travis Street, Suite 6500

Houston, Texas 77002-3008

Telephone: (832) 239-3939

Telecopier: (832) 239-3600

OF COUNSEL:

David L. Carden

Robert C. Micheletto (not admitted in NY)

JONES DAY

222 East 41st Street

New York, New York 10017-6702

Telephone: (212) 326-3939

Telecopier: (212) 755-7306

***Attorneys for Lehman Brothers Holdings Inc.
and Lehman Brothers Inc.***

/s/ Gregory A. Markel

Gregory A. Markel, (admitted pro hac vice)

Attorney-in-Charge

Nancy I. Ruskin, (admitted pro hac vice)

Ronit Setton, (admitted pro hac vice)

CADWALADER, WICKERSHAM & TAFT LLP

100 Maiden Lane

New York, New York 10038

Telephone: (212) 504-6000

Telecopier: (212) 504-6666

OF COUNSEL:

Charles G. King

Texas Bar No. 11470000

S.D. Texas I.D. No. 01344

KING & PENNINGTON LLP

1100 Louisiana Street, Suite 5055

Houston, Texas 77002-5220

Telephone: (713) 225-8404

Telecopier: (713) 225-8488

*Attorneys for Bank of America Corporation,
Banc of America Securities LLC and Bank of
America, N.A.*

/s/ Barry Abrams

Barry Abrams

Attorney-in-Charge

Texas Bar No. 00822700

S.D. Texas I.D. No. 2138

ABRAMS SCOTT & BICKLEY, LLP

700 Louisiana, Suite 1800

Houston, Texas 77002

Telephone: (713) 228-6601

Telecopier: (713) 228-6605

OF COUNSEL:

David H. Braff

Michael T. Tomaino, Jr.

Jeffrey T. Scott

Adam R. Brebner

SULLIVAN & CROMWELL LLP

125 Broad Street

New York, New York 10004-2498

Telephone: (212) 558-4000

Telecopier: (212) 558-3588

*Attorneys for Barclays PLC, Barclays Bank PLC
and Barclays Capital, Inc.*

/s/ B.J. Rothbaum

B.J. Rothbaum

Drew Neville

Charles E. Gerber

HARTZOG CONGER CASON & NEVILLE

201 Robert S. Kerr Avenue, Suite 1600

Oklahoma City, OK 73102

Telephone: (405) 235-7000

Telecopier: (405) 996-3403

William H. Knull, III

Texas Bar No. 11636900

S.D. Texas Bar No. 7701

MAYER, BROWN, ROWE & MAW

700 Louisiana Street, Suite 3600

Houston, Texas 77002-2730

Telephone: (713) 221-1651

Telecopier: (713) 224-6410

Alan N. Salpeter

Michele Odorizzi

T. Mark McLaughlin

MAYER, BROWN, ROWE & MAW

190 South LaSalle Street

Chicago, Illinois 60603

Telephone: (312) 782-0600

Telecopier: (312) 701-7711

*Attorneys for CIBC World Markets Corp.
(formerly known as CIBC Oppenheimer Corp.)
and Canadian Imperial Bank of Commerce*

/s/ Lawrence D. Finder

Lawrence D. Finder
Attorney-in-Charge
Texas Bar No. 07007200
S.D. Texas I.D. No. 602
Odean L. Volker
Texas Bar No. 20607715
S.D. Texas I.D. No. 12685
HAYNES and BOONE, LLP
1000 Louisiana Street, Suite 4300
Houston, Texas 77002-5012
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

OF COUNSEL:

Richard W. Clary
Julie A. North
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475
Telephone: (212) 474-1000
Telecopier: (212) 474-3700

*Attorneys for Credit Suisse First Boston LLC
(formerly known as Credit Suisse First Boston
Corporation), Credit Suisse First Boston (USA)
Inc., Credit Suisse First Boston Inc., and
Pershing LLC*

/s/ Taylor M. Hicks

Taylor M. Hicks
Texas Bar No. 09585000
Southern District I.D. No. 3079
Stephen M. Loftin
Texas Bar No. 12489510
Southern District I.D. No. 12676
HICKS THOMAS & LILIENSTERN, LLP
700 Louisiana, Suite 1700
Houston, Texas 77002
Telephone: (713) 547-9100
Telecopier: (713) 547-9150

OF COUNSEL:

Herbert S. Washer
James D. Miller
Ignatius A. Grande
CLIFFORD CHANCE US LLP
200 Park Avenue, Suite 5200
New York, New York 10166-0153
Telephone: (212) 878-8000
Telecopier: (212) 878-8375

Robert Serio
Mitchell A. Karlan
Marshall R. King
GIBSON, DUNN & CRUTCHER, L.L.P.
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Telecopier: (212) 351-4035

*Attorneys for Merrill Lynch & Co., Inc. and
Merrill Lynch, Pierce, Fenner & Smith,
Incorporated*

/s/ Charles G. King

Charles G. King

Texas Bar No. 11470000

S.D. Texas I.D. No. 01344

KING & PENNINGTON LLP

1100 Louisiana Street, Suite 5055

Houston, Texas 77002-5220

Telephone: (713) 225-8404

Telecopier: (713) 225-8488

OF COUNSEL:

Max Gitter

CLEARY GOTTlieb STEEN & HAMILTON

One Liberty Plaza

New York, NY 10006

Telephone: (212) 225-2000

Telecopier: (212) 225-3999

Attorneys for Goldman, Sachs & Co.

/s/ Joel M. Androphy

Joel M. Androphy

BERG & ANDROPHY

State Bar No. 01254700

3704 Travis

Houston, Texas 77002-9550

Telephone: (713) 529-5622

Telecopier: (713) 529-3785

OF COUNSEL:

Lawrence Byrne

Owen C. Pell

Lance Croffoot-Suede

WHITE & CASE LLP

1155 Avenue of the Americas

New York, New York 10036-2787

Telephone: (212) 819-8200

Telecopier: (212) 354-8113

Attorneys for Deutsche Bank AG

/s/ Jacalyn D. Scott

Jacalyn D. Scott
Attorney-in-Charge
Texas Bar No. 17899900
Eugene B. Wilshire
WILSHIRE, SCOTT & DYER
3000 Houston Center, 1221 McKinney
Houston, Texas 77010
Telephone: (713) 651-1221
Telecopier: (713) 651-0020

Brad S. Karp
Mark F. Pomerantz
Richard A. Rosen
Michael E. Gertzman
Claudia L. Hammerman
Jonathan H. Hurwitz
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Telecopier: (212) 757-3990

*Attorneys for Citigroup, Inc., Citibank
N.A., Salomon Smith Barney Inc., and Salomon
Brothers International Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served upon all known counsel of record by electronic mail to the esl3624.com website on this 28th day of October, 2003.

/s/ Richard Warren Mithoff

Richard Warren Mithoff

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: IN RE WORLDCOM, INC. SECURITIES :
: LITIGATION :
:

This Document Relates to:

MASTER FILE
02 Civ. 3288 (DLC)

MEMORANDUM OPINION
AND ORDER

-----X
: CATHY G. FRANCK, et al., :
: :
: Plaintiffs, :
:

vs.

: SCOTT D. SULLIVAN, et al., :
: :
: Defendants. :
:-----X

03 Civ. 6220 (DLC)

: DARYL W. ABRAMS, et al., :
: :
: Plaintiffs, :
:

vs.

: BERNARD J. EBBERS, et al., :
: :
: Defendants. :
:-----X

03 Civ. 6221 (DLC)

: RALPH ARNOLD SMITH, et al., :
: :
: Plaintiffs, :
:

vs.

: BERNARD J. EBBERS, et al., :
: :
: Defendants. :
:-----X

03 Civ. 6223 (DLC)

: DALLAS LITTLE, et al., :
: :
: Plaintiffs, :
:

vs.

: BERNARD J. EBBERS, et al., :
: :
: Defendants. :
:-----X

03 Civ. 6224 (DLC)

DENISE COTE, District Judge:

The four above-captioned securities actions were filed in Mississippi state court ("Mississippi Actions") against defendants connected with the telecommunications company formerly known as WorldCom, Inc. ("WorldCom"). Certain defendants removed these four lawsuits on the ground that they were related to WorldCom's pending bankruptcy proceedings. Through papers filed on August 25, 2003,¹ the plaintiffs in the Mississippi Actions have attempted to show cause why the prior Opinions in this consolidated action denying motions to remand brought by plaintiffs in other actions do not also require the denial of their pending motions to remand.²

¹ The Mississippi plaintiffs were following a procedure established in this consolidated, multi-district litigation through the Order of June 11, 2003. That Order provided an opportunity for actions that appeared on this Court's docket between March 3 and June 11, 2003 to show cause by July 3, 2003 why prior opinions in this consolidated securities action denying remand motions do not also require denial of their pending motions to remand; actions appearing on this Court's docket after June 11, 2003 are required to show cause within three weeks of their arrival on the docket.

² Earlier in this litigation, the New York City Employee's Retirement System ("NYCERS") moved to remand its action to state court. NYCERS and its co-plaintiffs had filed suit alleging violations of the Securities Act of 1933 and common law fraud arising out of their purchase of WorldCom stocks and bonds. Milberg Weiss Bershad Hynes & Lerach LLP also contested removal and federal jurisdiction on behalf of forty-one plaintiffs in the numerous Individual Actions it had filed across the country. The Milberg Weiss Actions were permitted to intervene in NYCERS' motion so that their removal arguments could be heard on an expedited basis. An opinion dated March 3 ("March 3 Opinion"), addressed and rejected the arguments made by both NYCERS and

(continued...)

This Opinion addresses one of the arguments for remand raised by the plaintiffs in the Mississippi Actions.³ They argue that the bankruptcy removal provision, 28 U.S.C. § 1452 ("Section 1452"), requires the unanimous consent of all the defendants who have been served at the time of removal. Their motion to remand is denied for the following reasons.

The notices of removal indicate that the four Mississippi Actions were filed in December of 2002.⁴ They pleaded claims

(...continued)

Milberg Weiss, and denied NYCERS' motion to remand. In re WorldCom, Inc., Sec. Litig., 293 B.R. 308 (S.D.N.Y. 2003) (DLC). The March 3 Opinion held that there was federal subject matter jurisdiction over the action, id. at 324, and that it was properly removed pursuant to the bankruptcy removal provision, 28 U.S.C. § 1452(a), as "related to" WorldCom's bankruptcy. Id. at 330. The March 3 opinion also addressed and rejected plaintiffs' arguments that the motion for remand should be granted on various equitable grounds. Id. at 331-34. By opinion dated May 5, 2003 ("May 5 Opinion"), see In re WorldCom, Inc., Sec. Litig. Nos. 02 Civ. 3288, 03 Civ. 167, 03 Civ. 338, 03 Civ. 998 (DLC), WL 21031974 (S.D.N.Y. May 5, 2003), the Court addressed and rejected the argument by an Ohio Individual Action that the Eleventh Amendment to the United States Constitution barred the removal to federal court of their actions since it alleged only State law claims. The May 5 opinion denied the motions and explained that the basis for federal jurisdiction was the existence of bankruptcy jurisdiction, not the existence of claims arising under the federal securities laws. Id. at *2.

³ Because removal was proper under 28 U.S.C. § 1452, it is unnecessary to address whether removal was also appropriate, as defendants argue, under the federal securities laws as amended by the Securities Litigation Uniform Standards Act of 1998, Pub. L. 105-353, 112 Stat. 3227 (codified in scattered sections of Title 15 of the United States Code).

⁴ The parties' submissions in connection with this motion indicate that the Original Complaint in 03 Civ. 6220 and in 03 Civ. 6221 was filed on December 19, 2002, in 03 Civ. 6223 was filed on December 31, 2002, and in 03 Civ. 6224 was filed on December 30, 2002. The parties submissions also indicate that the complaint in each action was amended on January 17, 2003.

under the Mississippi Securities Act, Miss. Code Ann. § 75-71-717(a)(2), and Mississippi common law. The actions were removed in February and March of 2003,⁵ by the defendants.⁶ The plaintiffs contend that defendants Betty L. Vinson and Troy M.

⁵ 03 Civ. 6221 and 03 Civ. 6224 were removed on February 21, 2003. 03 Civ. 6220 was removed on February 20, 2003, and 03 Civ. 6223 was removed on March 13, 2003.

⁶ 03 Civ. 6220 was removed by defendants James C. Allen, Judith Areen, Max E. Bobbitt, Francesco Galesi, and Stiles A. Kellett, Jr.; consent to removal was given by Scott D. Sullivan, David F. Myers, Buford Yates, Jr., John W. Sidgmore, Arthur Andersen, L.L.P., Andersen UK, Andersen Worldwide SC, Mark Schoppet, Melvin Dick, Salomon Smith Barney, Inc., Citigroup, Inc., Jack Grubman, Sanford Weil, J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., Bank of America Corp., Bank of America Securities, LLC, ABN AMRO Inc., Deutsche Bank AG, and Deutsche Bank Alex. Brown Inc. The other three actions were removed by Bernard J. Ebbers; consent was given to the removal of 03 Civ. 6221 by Scott D. Sullivan, David F. Myers, Buford Yates, Jr., John W. Sidgmore, James C. Allen, Arthur Andersen, L.L.P., Andersen UK, Andersen Worldwide SC, Mark Schoppet, Melvin Dick, Salomon Smith Barney, Inc., Citigroup, Inc., Jack Grubman, Sanford Weil, J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., Bank of America Corp., Bank of America Securities, LLC, ABN AMRO Inc., Deutsche Bank AG, and Deutsche Bank Alex. Brown Inc.; consent was given to the removal of 03 Civ. 6223 by Scott D. Sullivan, David F. Myers, Buford Yates, Jr., John W. Sidgmore, James C. Allen, Judith Areen, Max E. Bobbitt, Francesco Galesi, Stiles A. Kellett, Jr., Arthur Andersen, L.L.P., Andersen UK, Andersen Worldwide SC, Mark Schoppet, Melvin Dick, Salomon Smith Barney, Inc., Citigroup, Inc., Jack Grubman, Sanford Weil, J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., Bank of America Corp., Bank of America Securities, LLC, ABN AMRO Inc., Deutsche Bank AG, Deutsche Bank Alex. Brown Inc., Chase Securities, Inc., Lehman Brothers, Inc., Blaylock & Partners, LP, Credit Suisse First Boston Corporation, Goldman, Sachs & Co., UBS Warburg LLC, and Utendahl Capital; consent was given to the removal of 03 Civ. 6224 by Scott D. Sullivan, David F. Myers, Buford Yates, Jr., John W. Sidgmore, James C. Allen, Judith Areen, Max E. Bobbitt, Francesco Galesi, Stiles A. Kellett, Jr., Arthur Andersen, L.L.P., Andersen UK, Andersen Worldwide SC, Mark Schoppet, Melvin Dick, Salomon Smith Barney, Inc., Citigroup, Inc., Jack Grubman, Sanford Weil, J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., Bank of America Corp., Bank of America Securities, LLC, ABN AMRO Inc., Deutsche Bank AG, and Deutsche Bank Alex. Brown Inc.

Normand had been served in each action.⁷ Defendants Vinson and Normand did not join in the removal of the Mississippi Actions.

It is well established that the unanimous consent by defendants to a removal is necessary to remove an action under the general removal statute. See Bradford v. Harding, 284 F.2d 307, 309 (2d Cir. 1960). Section 1441(a) of Title 28, United States Code, provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter the citizenship of defendants sued under fictitious names shall be disregarded.

28 U.S.C. § 1441(a) ("Section 1441") (emphasis supplied).

Every removal statute must be interpreted according to its own terms, however, and the Bradford court itself found that the removal provision that applies to actions brought against officers of the United States does not require unanimity. That statute, 28 U.S.C. § 1442 ("Section 1442"), provides:

(a) A civil action or criminal prosecution commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of

⁷ The Proof of Service documents indicate that Troy M. Normand and Betty L. Vinson were served on December 20, 2002 in both 03 Civ. 6220 and 03 Civ. 6221. They were served on January 6, 2003 in 03 Civ. 6223, and on December 31, 2002 in 03 Civ. 6224.

the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for any Act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for any act in the discharge of his official duty under an order of such House.

28 U.S.C. § 1442 (emphasis supplied).

The Bradford court emphasized the use of the term "by them" in Section 1442, in contrast to the use of the phrase "the defendant or the defendants" in Section 1441, in reaching its conclusion that unanimity was unnecessary to a removal under Section 1442. Bradford, 284 F.2d at 309. See also In re Franklin National Bank Sec. Litig., 532 F.2d 842, 846 (2d Cir. 1976) (refusing to apply unanimity requirement to removal pursuant to 12 U.S.C. § 1819(4)).

Similarly, the two circuit courts that have considered this issue in the context of Section 1452, which is the bankruptcy removal provision, have concluded that Section 1452 does not require all defendants to consent to removal. In re Lazar, 237 F.3d 967, 973 n.2 (9th Cir. 2001); Creasy v. Coleman Furniture Corp., 763 F.2d 656, 660-61 (4th Cir. 1985); see also Mt. McKinley Ins. Co. v. Corning Inc., No. 02 Civ. 5835 (DLC), 2003 WL 1482786, at *6 (S.D.N.Y. Mar. 20, 2003); In re WorldCom, Inc., Sec. Litig., 293 B.R. 308, 330 (S.D.N.Y. 2003) (DLC).

Section 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a) (emphasis supplied).

As noted above, Section 1441 provides that an action "may be removed by the defendant or defendants," while Section 1452 provides that "a party" may remove any claim or cause of action. By its very terms, any party, whether a plaintiff or defendant, may remove an action under Section 1452 as related to a bankruptcy proceeding. Its use is not restricted to a defendant. Similarly, a single party may remove an action; it does not require the consent of others.

Plaintiffs rely almost exclusively on Retirement Sys. of Alabama v. Merrill Lynch & Co., 209 F. Supp. 2d 1257, 1264 (M.D. Ala. 2002) ("RSA"). The RSA court recognized that its conclusion that Section 1452 required unanimity was in conflict with the "many courts" that have considered the issue and declined to base its decision to remand on its own interpretation of Section 1452. In light of the above analysis and authority, RSA's analysis is not persuasive.

Conclusion

The motions by the plaintiffs in 03 Civ. 6220, 03 Civ. 6221, 03 Civ. 6223, and 03 Civ. 6224 to remand their actions are denied.

SO ORDERED:

Dated: New York, New York
October 20, 2003

DENISE COTE
United States District Judge