

DEC 17 2003



Michael N. Milby, Clerk

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

In re ENRON CORPORATION  
SECURITIES LITIGATION

MDL-1446

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MARK NEWBY, et al., individually and on  
behalf of all others similarly situated,

CIVIL ACTION NO. H-01-3624  
CONSOLIDATED CASES

Plaintiffs,

JUDGE MELINDA HARMON

v.

ENRON CORPORATION, et al.,

Defendants.

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AMERICAN NATIONAL INSURANCE  
COMPANY; AMERICAN NATIONAL  
INVESTMENT ACCOUNTS, INC.;  
SM&R INVESTMENTS, INC.;  
AMERICAN NATIONAL PROPERTY  
AND CASUALTY COMPANY;  
STANDARD LIFE AND ACCIDENT  
INSURANCE COMPANY; FARM  
FAMILY LIFE INSURANCE COMPANY;  
FARM FAMILY CASUALTY  
INSURANCE COMPANY; and  
NATIONAL WESTERN LIFE  
INSURANCE COMPANY,

CIVIL ACTION NO. G-03-967  
(JURY)

JUDGE SAMUEL B. KENT

Plaintiffs,

v.

ARTHUR ANDERSEN, L.L.P.;  
D. STEPHEN GODDARD, JR.; DAVID  
DUNCAN; KENNETH L. LAY; JEFFREY  
K. SKILLING; ANDREW S. FASTOW;  
RICHARD A. CAUSEY; RICHARD B.  
BUY; MICHAEL J. KOPPER; ROBERT K.  
JAEDICKE; RONNIE C. CHAN; JOE C.  
FOY; JOHN WAKEMAN; WENDY L.  
GRAMM; BRUCE G. WILSON; JOHN  
MENDELSON; PAULO V. FERRAZ  
PEREIRA; ROBERT A. BELFER;  
NORMAN P. BLAKE, JR.; JOHN H.  
DUNCAN; CHARLES A. LEMAISTRE;  
FRANK SAVAGE; HERBERT S.  
WINOKUR, JR.; KEN L. HARRISON;  
REBECCA MARK-JUSBASCHE;  
JEROME J. MEYER; JOHN A.  
URQUHART; and CHARLES E.  
WALKER,

Defendants.

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ROBERT K. JAEDICKE; RONNIE C.  
CHAN; JOE H. FOY; JOHN WAKEHAM;  
WENDY L. GRAMM; JOHN  
MENDELSON; ROBERT A. BELFER;  
NORMAN P. BLAKE; JOHN H. DUNCAN;  
CHARLES A. LEMAISTRE; FRANK  
SAVAGE; HERBERT S.  
WINOKUR, JR.; and CHARLS E.  
WALKER,

Defendants/Third-Party Plaintiffs,

v.

J.P. MORGAN CHASE & CO.; J.P.  
MORGAN CHASE BANK; CITIGROUP  
INC.; CITIBANK, N.A.; LEHMAN  
BROTHERS HOLDING, INC.; and  
LEHMAN BROTHERS, INC.,

Third-Party Defendants.

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RICHARD B. BUY,

Defendant/Third-Party Plaintiff,

v.

J.P. MORGAN CHASE & CO.; J.P.  
MORGAN CHASE BANK; MERRILL  
LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED A/K/A MERRILL  
LYNCH & CO.; CITIGROUP INC.;  
CITIBANK, N.A.; LEHMAN BROTHERS  
HOLDING, INC.; and LEHMAN  
BROTHERS, INC.,

Third-Party Defendants.

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**THIRD-PARTY DEFENDANTS' UNOPPOSED MOTION TO CONSOLIDATE**

Pursuant to Local Rule 7.6, the Order of Consolidation entered by The Honorable Lee H. Rosenthal on December 12, 2001 (the "Order of Consolidation") in *Newby, et al. v. Enron Corp., et al.*, Civil Action No. H-01-3624 (the "*Newby Action*"), and pursuant to the Order Striking Pleading, entered by the Honorable Samuel B. Kent on November 25, 2003 in *American National Insurance Company, et al. v. Arthur Andersen, L.L.P., et al.*, Civil Action No. G-03-967 (the "*American National Action*"), Third-Party Defendants J.P. Morgan Chase & Co.,

JPMorgan Chase Bank, Merrill Lynch, Pierce, Fenner & Smith Incorporated a/k/a Merrill Lynch & Co., Citigroup Inc., Citibank, N.A., Lehman Brothers Holdings Inc., and Lehman Brothers Inc. (collectively, the “Third-Party Defendants”) file this Unopposed Motion to Consolidate to have the *American National* Action consolidated with the *Newby* Action. In support of this Unopposed Motion to Consolidate, the Third-Party Defendants state as follows:

1. Enron-related litigation pending in the Southern District of Texas, such as the *American National* Action, is subject to the Order of Consolidation. (A copy of the Order of Consolidation is attached hereto as Exhibit “A”.) The Order of Consolidation provides:

Pursuant to Rule 42 of the Federal Rules of Civil Procedure and Local Rule 7.6, and to serve the interests of justice, the actions involving or related to the financial difficulties of Enron Corporation, pending in the Southern District of Texas, are consolidated in the court in which the oldest related case was filed in this district, which is Civil Action No. H-01-3624, *Newby v. Enron Corporation, et al.* Other actions later filed in this district relating to the same core of operative facts and issues will also be consolidated in this court.

The Order of Consolidation further provides that:

All actions filed in this district against any or all of the following will be automatically consolidated before this court: . . . Andrew S. Fastow, Kenneth L. Lay, Jeffrey K. Skilling, Richard Causey, . . . Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. Lemaistre [*sic*], John Mendelsohn, Paulo V. Ferraz Pereira, Frank Savage, John Wakeham, Herbert S. Winokur, [Jr.,] Ken L. Harrison, Jerome J. Meyer, John A. Urquhart, . . . Michael Kopper, . . . Arthur Andersen LLP, . . . Rebecca Mark-Jusbache [*sic*], . . . [or] Richard Buy . . . . If any such actions are subsequently filed in this district, counsel for defendants is directed to file a copy of this order along with a Notice of Consolidation in the action to be consolidated and to serve the same on counsel for plaintiffs.

More than 100 Enron-related matters have been consolidated with the *Newby* Action pursuant to the Order of Consolidation.

2. On December 27, 2001, Plaintiffs commenced the *American National* Action by filing an Original Petition in the 56th Judicial District Court of Galveston County, Texas.

Among others, Plaintiffs named as defendants Robert K. Jaedicke, Ronnie C. Chan, Joe H. Foy,

John Wakeham, Wendy L. Gramm, John Mendelsohn, Robert A. Belfer, Norman P. Blake, Jr., John H. Duncan, Charles A. LeMaistre, Frank Savage, Herbert S. Winokur, Jr., and Charls E. Walker (collectively, the "Outside Directors"). Plaintiffs also named Richard B. Buy as a defendant. Plaintiffs, who were purchasers of Enron stock, bonds, preferred stock, commercial paper, and other securities, allege that various directors and officers of Enron, along with Arthur Andersen, L.L.P., prepared and disseminated false, misleading, and incomplete information on Enron's financial condition upon which the Plaintiffs relied when they purchased Enron securities.

3. The Outside Directors have denied liability to Plaintiffs. Nevertheless, on October 10, 2003, the Outside Directors filed a Third-Party Petition seeking contribution from J.P. Morgan Chase & Co., JPMorgan Chase Bank, Citigroup Inc., Citibank, N.A., Lehman Brothers Holdings Inc., and Lehman Brothers Inc. for their alleged role in Enron-related transactions.

4. Buy has denied liability to Plaintiffs. Nevertheless, on October 2, 2003, Buy filed a Third-Party Petition seeking contribution from the Third-Party Defendants for their alleged role in Enron-related transactions.

5. On November 18, 2003, the Third-Party Defendants removed the *American National* Action to the United States District Court for the Southern District of Texas, Galveston Division, because it is related to Enron's bankruptcy, *In re Enron Corp., et al.*, No. 01-16034 (AJG), which is pending before The Honorable Arthur Gonzalez in the United States Bankruptcy Court for the Southern District of New York.

6. Based on the allegations of the Original Petition and the Third-Party Petitions, it is clear the *American National* Action is an action covered by the Order of Consolidation, because it is an action "involving or related to the financial difficulties of Enron Corporation, pending in the Southern District of Texas," and it is an action "later filed in this district relating

to the same core of operative facts and issues” as the *Newby* Action. In addition, Andrew S. Fastow, Kenneth L. Lay, Jeffrey K. Skilling, Richard A. Causey, Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn, Paulo V. Ferraz Pereira, Frank Savage, John Wakeham, Herbert S. Winokur, Jr., Ken L. Harrison, Jerome J. Meyer, John A. Urquhart, Michael J. Kopper, Arthur Andersen, L.L.P., Rebecca Mark-Jusbasche, and Richard B. Buy are named defendants in the *American National* Action. According to the Order of Consolidation, the *American National* Action therefore should be consolidated with the *Newby* Action automatically.

7. On November 18, 2003, the Third-Party Defendants filed a Notice of Consolidation in the *American National* Action pursuant to the Order of Consolidation.

8. On November 25, 2003, Judge Kent entered an Order Striking Pleading directing the Third-Party Defendants to file a motion, not a notice, for consolidation.

9. All Plaintiffs (American National Insurance Company, American National Investment Accounts, Inc., SM&R Investments, Inc., American National Property and Casualty Company, Standard Life and Accident Insurance Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, and National Western Life Insurance Company), the Defendants/Third-Party Plaintiffs Richard B. Buy and the Outside Directors, and all other Defendants who were either served with the Original Petition or who filed an answer (Arthur Andersen, L.L.P., D. Stephen Goddard, Jr., David Duncan, Kenneth L. Lay, Jeffrey K. Skilling, Andrew S. Fastow, Richard A. Causey, Bruce G. Willison, Paulo V. Ferraz Pereira, Rebecca Mark-Jusbasche, and John A. Urquhart) do not oppose consolidation of the *American National* Action with the *Newby* Action.

10. Pursuant to Local Rule 7.6, a courtesy copy of this Motion to Consolidate is being furnished to Judge Kent in the *American National* Action.

WHEREFORE, the Third-Party Defendants respectfully request that the *American National Action* be consolidated with the *Newby Action*.

Date: December 11, 2003

Respectfully submitted,

 *Richard Warren Mithoff by [signature] w/ permission*

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

## CERTIFICATE OF CONFERENCE

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Andrew J. Mytelka, one of the counsel for Plaintiffs, regarding the foregoing Motion. Mr. Mytelka advised that all Plaintiffs do not oppose the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Brian T. Ross, one of the counsel for the Outside Directors, regarding the foregoing Motion. Mr. Ross advised that the Outside Directors consent to the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Bradley W. Hoover, one of the counsel for Richard B. Buy and Richard A. Causey, regarding the foregoing Motion. Mr. Hoover advised that Richard B. Buy and Richard A. Causey consent to the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Andrew Ramzel, one of the counsel for Arthur Andersen, L.L.P. and D. Stephen Goddard, Jr., regarding the foregoing Motion. Mr. Ramzel advised that Arthur Andersen, L.L.P. and D. Stephen Goddard, Jr. consent to the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Barry G. Flynn, one of the counsel for David Duncan, regarding the foregoing Motion. Mr. Flynn advised that David Duncan consents to the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Diane Sumoski, one of the counsel for Kenneth L. Lay, regarding the foregoing Motion. Ms. Sumoski advised that Kenneth L. Lay consents to the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Robert M. Stern, one of the counsel for Jeffrey K. Skilling, regarding the foregoing Motion. Mr. Stern advised that Jeffrey K. Skilling consents to the relief requested herein.

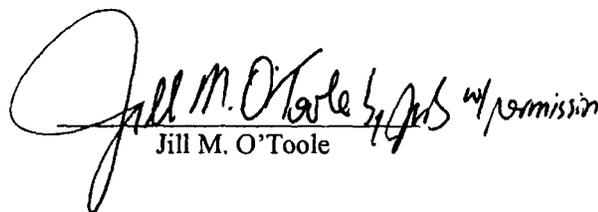
On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Asim Bhansali, one of the counsel for Andrew S. Fastow, regarding the foregoing Motion. Mr. Bhansali advised that Andrew S. Fastow does not oppose the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Wilson Aurbach, one of the counsel for Bruce G. Willison, regarding the foregoing Motion. Mr. Aurbach advised that Bruce G. Willison does not oppose consolidation of the *American National Action* with the *Newby Action* for pretrial and discovery purposes only.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Mark Rochon, one of the counsel for Paulo V. Ferraz Pereira, regarding the foregoing Motion. In addition, on December 10, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Dimitri Nionakis, one of the counsel for Paulo V. Ferraz Pereira, regarding the foregoing Motion. Messrs. Rochon and Nionakis advised that Paulo V. Ferraz Pereira consents to the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Helen Currie Foster, one of the counsel for Rebecca Mark-Jusbasche, regarding the foregoing Motion. Ms. Foster advised that Rebecca Mark-Jusbasche consents to the relief requested herein.

On December 4, 2003, the undersigned counsel for J.P. Morgan Chase & Co. and JPMorgan Chase Bank conferred with Randall C. Owens, one of the counsel for John A. Urquhart, regarding the foregoing Motion. Mr. Owens advised that John A. Urquhart consents to the relief requested herein.

 *Jill M. O'Toole by JMS w/ permission*  
Jill M. O'Toole

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served by sending a copy to the [www.esl3624.com](http://www.esl3624.com) website. I further certify that the above and foregoing document has been served by regular mail upon the following counsel of record on this 7 day of December 2003:

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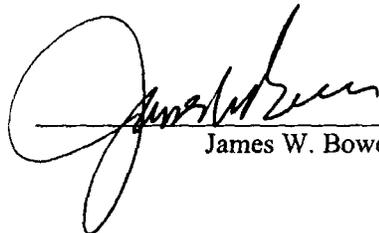
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The Exhibit(s) May

Be Viewed in the

Office of the Clerk