United States Courts
Southern District of Texas
ENTERED
FEB 25 2004
Michael N. Milby, Clerk of Court

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

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| In Re Enron Corporation Securities, Derivative & "ERISA Litigation | § | MDL-1446 |
| MARK NEWBY, ET AL., Plaintiffs | § | |
| VS. | § | CIVIL ACTION NO. H-01-3624 CONSOLIDATED CASES |
| ENRON CORPORATION, ET AL., Defendants | § | |
| HENRY H. STEINER, Individually and on behalf of all others Similarly Situated, Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. H-01-3717 |
| ENRON CORPORATION, et al., Defendants. | § | |

**ORDER**

Pending before the Court in H-01-3624 is Preferred Purchaser Plaintiffs'[1] motion for clarification (#1015) of this Court's order entered on August 7, 2002 (#983).

In the August 7, 2002 order, this Court ruled that Preferred Purchasers' 1996-97 claims, seeking rescission on behalf

[1] Named Preferred Purchaser Plaintiffs are Henry H. Steiner, Daniel Kaminer, Christine Benoit, Michael and Jennifer Cerrone, Harold Karnes, Henry H. Steiner, Trustee u/w/o Jakob Hirschberger, Etta K. Steiner, The Eshe Fund, Dr. Thomas Barnett, Ester Phillips Jackson, Michael G. Palmiero, James A. Van Burgh. They previously provided a Supplement (#Ex. 3 to #968) embodying those of their claims that were excluded from Lead Plaintiff's First Amended Consolidated Complaint and request the Court to amend that complaint by adding it and to allow counsel for Preferred Purchaser Plaintiffs to prosecute it.

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of purchasers of Enron Corporation's publicly traded preferred securities (in the Enron Capital Trust I offering on November 18, 1996 and the Enron Capital Trust II offering on January 13, 1997) between November 18, 1996 and October 18, 1998, i.e. prior to the *Newby* Class Period, grounded in the Texas Securities Act, need not be prosecuted by Lead Plaintiff in its consolidated complaint for reasons[2] persuasively argued by Lead Plaintiff in its Response to Wolf Haldenstein's[3] Additional Memorandum (#963). Instead the Court granted leave to Wolf Haldenstein to pursue those claims separately after the lifting of the PSLRA discovery stay.

In the motion for clarification and supporting memorandum, Preferred Purchaser Plaintiffs insist that the relation back doctrine will save their 1996-97 claims from a

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[2] Among the strong arguments made by Lead Plaintiff are (1) substantial hurdle of statute of limitations; (2) inapplicability of the relation back doctrine under Rule 15(c) of the Federal Rules of Civil Procedure because Defendants were not put on timely notice of the 1996 claims since no class actions were commenced by any preferred stock purchaser in the 1996 offering before expiration of the five-year statute of repose under the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-33(H)(2)(b); (3) the *Steiner* complaint (H-01-3717), filed on October 29, 2001, identifies its class period as June 1, 1999-October 26, 2001, while the amended *Steiner* complaint, filed on November 30, 2001 and identifying the class period as beginning on January 21, 1997, **after** the January 13, 1997 offering, more than five years after the November 18, 1996 offering, not only violates the statute of five-year-statute of repose but fails to assert a claim on behalf of purchasers in the November 18, 1996 offering, does not assert claims under the Texas Securities Act, and names only Enron, Kenneth Lay, Jeffrey Skilling, Andrew Fastow, and Arthur Andersen as defendants; (4) substantially different from the *Newby* claims, the two preferred stock offerings did not incorporate Enron's allegedly fraudulent 1997 financial reports, but incorporated Enron's 1995 financial statements.

[3] The law firm of Wolf Haldenstein Adler Freeman & Herz LLP is counsel for the Preferred Purchaser Plaintiffs.

limitations bar if added to the *Newby* complaint, but that if the claims are not included as a supplement or amendment to the *Newby* complaint, they will be barred on statute of limitations grounds.

The Court has already indicated that it finds solid and persuasive Lead Plaintiff's legal and practical reasons for not including the Preferred Purchaser Plaintiff's claims based on the 1996-97 offerings in the consolidated complaint. Should these claims not be time-barred, however, the Court agrees that if Preferred Purchaser Plaintiffs asserted them in a new action, they would be. As previously indicated, the Court does not find amendment of the *Newby* complaint appropriate for both legal and practical reasons. Accordingly, to insure that Preferred Purchaser Plaintiffs have an opportunity to assert their claims and Defendants to raise limitations challenges to them, the Court

ORDERS that the motion for clarification is GRANTED. The Court further

ORDERS that leave is granted to Preferred Purchaser Plaintiffs to add their Supplement, originally proposed for the *Newby* amended pleading, to their first amended complaint in H-01-3717 or to file a second amended complaint in H-01-3717 to assert the 1996-97 claims and name new Defendants. Defendants may then file responsive pleadings including motions to dismiss based on limitations.

**SIGNED** at Houston, Texas, this 24th day of February, 2004.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE