United States Courts
Southern District of Texas
ENTERED
APR 1 4 2004
Michael N. Milby, Clerk of Court

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

MARK NEWBY, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
	§	AND CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants	§	
ESI SKY RIVER, LP, a Delaware Limited Partnership, and ESI VG LP, a Delaware Limited Partnership,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. H-04-1060
	§	
ANDREW FASTOW, MICHAEL KOPPER, LAWRENCE LAWYER, PATTY MELCHER, WILLIAM DODSON, AND KATHLEEN WETMORE,	§	
	§	
Defendants.	§	

ORDER OF COORDINATION

ESI Sky Rover LP, et al. v. Andrew Fastow, et al., H-04-1060, seeks to recover damages and alleging under California law conspiracy to commit fraud, intentional misrepresentation, and concealment arising out Defendant Andrew Fastow and Michael Kopper's fraudulent scheme[1] to use as "fronts" Defendants Patty

[1] According to the complaint, Enron, in merging in 1997 with Portland General Corporation, became the owner of its electric utility subsidiary, Portland General Electric. It claimed to be an exempt public utility holding company under Section 3(a)(1) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79.792-6. Also in 1997 an Enron subsidiary, Enron Renewable Energy Corporation ("EREC"), acquired ownership of Zond Victory Garden Phase IV Development Corporation and Zond Sky River Development Corporation, each a 50% owner of one of the Plaintiff Partnerships, and thereby Enron acquired a 50% partnership interest in both Plaintiff partnerships. Plaintiff Partnerships

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Melcher, William Dodson, and Kathleen Wetmore[2] posing as independent investors, to acquire interests in the two Plaintiff California general partnerships that operated electric generating wind farms (Victory Garden and Sky River) in California for

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were designed to produce energy from a renewable source, i.e., wind, and thereby lessen the public's reliance on fossil fuels. The partnerships were thus given the status, under federal regulations, of "Qualifying Facilities" because they offered alternative power. Although Enron wanted to acquire the two Plaintiff partnerships, federal regulations relating to the QF status mandated that wind farms could not be more than 50% owned by public utilities or their related entities. Under terms of the partnership agreements between EREC and and the Zond entities in the purchase of Plaintiff Partnerships, EREC could not be owned by a public utility holding company because ESI was already one. Enron's merger with Portland General Corporation would nullify the QF status of the wind farms, which in turn would allow Southern California Edison to cancel its long term-contracts to purchase energy from them at preferred rates and would likely result in bankruptcy of the wind farms. Thus Enron had to divest itself of the interests in Plaintiff Partnerships before it completed the merger with Portland General Corporation or the partnerships would lose their QF status.

Plaintiffs' pleadings assert that Defendants Fastow and Kopper schemed to arrange for Enron to sell its interests in the Plaintiff Partnerships by pretending that Defendants Patty Melcher, William Dodson, and Kathleen Wetmore were independent investors with no ties to Enron who were elgible to buy the partnership interests. In fact, Plaintiffs allege, Dodson was Kopper's domestic partner, and Melcher was a long-time friend of Fastow's wife, while all three were friends of Fastow and Kopper. Moreover, Enron loaned and guaranteed for the three Defendants 97% of the purchase price through an apparent true market-rate loan. Moreover Fastow gave Kopper, who in turn gave Melcher, Dodson and Wetmore, most of the remaining funds necessary for them to purchase EREC's interests in Plaintiff Partnerships. Defendants Fastow, Kopper, Melcher, Dodson and Wetmore then turned to Lawrence Lawyer to help them set up several shell entities/alter egos known as the RADR LLCs, through which they allegedly purchased the Partnerships' interests. ESI never knew the investors were not independent, but instead funded by Fastow, or that Fastow and Kopper were secretly controlling and profiting by millions of dollars from the RADR LLC's 50% ownership of the two partnership interests.

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personal gain. The action was originally removed from the Superior Court of the State of California for the County of Los Angeles, California on diversity jurisdiction. The case was subsequently transferred to this Court by the California federal district court based upon a stipulation among the parties that Melcher would withdraw her motion to dismiss for lack of personal jurisdiction and improper venue if it were transferred here. Meanwhile on January 9, 2004 Michael Kopper filed a "Notice of Potential Tag-Along" to MDL 1446 with the Judicial Panel on Multidistrict Litigation seeking a transfer of the case to this Court. The Panel has not yet made a decision whether this case should be part of MDL 1446. The parties consented to the transfer of the case to the Southern District of Texas, but not to the transfer of it to MDL 1446.

Nevertheless, now that the case has been transferred to this district, the Court finds that the claims asserted in it arise out of conduct consistent with the alleged Ponzi scheme in H-01-3624, *Newby v. Enron Corp., et al.* and are related to the collapse of Enron. Discovery in H-04-1060 will necessarily overlap with that in *Newby,* since it arises from some of the same facts and fact patterns that comprise the alleged Ponzi scheme and alleges claims against some of the same critical Defendants. Nevertheless, because it does not allege securities violations, consolidation with *Newby* would be improper. Pursuant to Judge Lee Rosenthal's order of consolidation entered in lead case H-01-3624, *Newby v.*

Enron Corp., et al. on December 12, 2001, this Court has the authority to order and does

ORDER that pretrial proceedings in H-04-1060 shall be coordinated with those in Newby. To insure that H-04-1060 receives all relevant pleadings and orders, the Court

ORDERS that the docketing clerk shall henceforth designate H-04-1060 as a "coordinated case" in conjunction with *Newby* and shall enter it as such on the docket sheet of *Newby*. Because the Judicial Panel for Multidistrict Litigation has not yet ruled on the question of whether it should be part of MDL 1446, it will not as of now be added to that litigation.

SIGNED at Houston, Texas, this 8th day of April, 2004.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE