

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

United States Courts
 Southern District of Texas
 Fifth
 APR 19 2004

Michael N. Milby, Clerk

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 IN RE ENRON CORPORATION :
 SECURITIES LITIGATION :
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 This Document Relates To: :
 MARK NEWBY, et al., Individually and :
 On Behalf of All Others Similarly Situated, :
 Plaintiffs, :
 v. :
 ENRON CORP., et al., : Consolidated Civil Action
 Defendants. : Case No.: H-01-CV-3624
 ----- :
 THE REGENTS OF THE UNIVERSITY OF :
 CALIFORNIA, et al., Individually and On :
 Behalf of All Others Similarly Situated, :
 Plaintiffs, :
 v. :
 KENNETH L. LAY, et al., :
 Defendants. :
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**MOTION TO RECONSIDER THE COURT'S
 APRIL 5, 2004 ORDER RE: J.P. MORGAN DEFENDANTS**

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TABLE OF AUTHORITIES

Cases

<i>A.V. Meghani v. Shell Oil Co.</i> , No. Civ. A. H-00-0547, 2000 WL 33993306 (S.D. Tex. Aug. 24, 2000)	1
<i>Divane v. Krull Elec. Co.</i> , 194 F.3d 845 (7th Cir. 1999).....	1
<i>Girard v. Lambert</i> , 807 F.2d 490 (5th Cir. 1987)	1
<i>In re Enron Corp. Sec., Derivative & ERISA Litig.</i> , Civ. A. H-01-3624, No. MDL-1446, 2004 WL 405886 (S.D. Tex. Feb. 25, 2004)	3
<i>In re Enron Corp. Sec., Derivative & ERISA Litig.</i> , 235 F. Supp. 2d 549 (S.D. Tex. 2002)	4, 5
<i>In re Liljeberg Enters., Inc.</i> , Civ. A. Nos. 97-0456, <i>et al.</i> , 1997 WL 222497 (E.D. La. May 1, 1997).....	2
<i>Jensen v. Snellings</i> , 636 F. Supp. 1305 (E.D. La. 1986), <i>aff'd in part and rev'd in part on other grounds</i> , 841 F.2d 600 (5th Cir. 1988)	3
<i>Jensen v. Snellings</i> , 841 F.2d 600 (5th Cir. 1988)	3

Statutes and Rules

15 U.S.C. § 78u-4(a)(3)(A)(i)	5
Fed. R. Civ. P. 59(e).....	1

Other Authorities

Andrew Hill, <i>Insurer Claims Enron Contracts Were A Front</i> , FIN. TIMES, p. 10, Dec. 22, 2001	2, 3
Chad Bray, <i>St. Paul Files Counterclaim To J.P. Morgan's Enron Suit</i> , DOW JONES NEWS SERV., Dec. 27, 2001	4
<i>Class Action Lawsuit Amended on September 29, 2002 on Behalf of Purchasers of Credit Linked Notes Issued by Credit Suisse First Boston and Citigroup, Inc.</i> , PR NEWSWIRE, Sept. 29, 2002	5
James Norman, <i>Latest Enron Battle Pits Big Banks Versus Insurers</i> , PLATT'S OILGRAM NEWS, p.1, Jan. 3, 2002	4
Lynn Cowan, <i>Insurers Demand Proof of Enron Contract from J.P. Morgan</i> , DOW JONES NEWS SERV., Dec. 20, 2001	4
Sheryl Jean, <i>The St. Paul Fights Back In Enron Case</i> , ST. PAUL PIONEER PRESS, Dec. 28, 2001	4

Defendant JPMorgan Chase Bank respectfully submits this motion to reconsider the Court's April 5, 2004 Order ("April 5 Order" or "Order")¹ denying its motion to dismiss Plaintiffs' First Amended Consolidated Complaint (the "Amended Complaint" or "Am. Compl."). Pursuant to Local Rule 7.1(D), counsel for JPMorgan Chase Bank has conferred with counsel for Plaintiffs regarding the relief requested herein.

PRELIMINARY STATEMENT

JPMorgan Chase Bank respectfully seeks reconsideration of the April 5 Order to the extent it denies JPMorgan Chase Bank's motion to dismiss on statute of limitations grounds. JPMorgan Chase Bank presented definitive evidence that Plaintiffs were on inquiry notice of the allegations concerning JPMorgan Chase Bank's Mahonia prepay transactions over one year before the Amended Complaint was deemed filed. JPMorgan Chase Bank must, therefore, be dismissed from this case. JPMorgan Chase Bank's defense in this respect, which was not addressed by the Court in its April 5 Order, is unique because JPMorgan Chase Bank was involved in publicly-disclosed, Enron-related litigation in December 2001.

STANDARD OF REVIEW

A motion to reconsider should be granted where there exists "'a manifest error of law or fact,' so as to enable 'the court to correct its own errors and thus avoid unnecessary appellate procedures.'" *A.V. Meghani v. Shell Oil Co.*, No. Civ. A. H-00-0547, 2000 WL 33993306, at *1 (S.D. Tex. Aug. 24, 2000) (quoting *Divine v. Krull Elec. Co.*, 194 F.3d 845, 848 (7th Cir. 1999)). Such motion is appropriate when, as here, the court has overlooked an

¹ Pursuant to Federal Rule of Civil Procedure 59(e), JPMorgan Chase Bank files this motion within "10 days after entry" of the Court's order. See *Girard v. Lambert*, 807 F.2d 490, 492 (5th Cir. 1987) ("A Fed. R. Civ. P. 59(e) motion 'shall be served not later than 10 days after entry of the judgment.' For these purposes 'entry of the judgment' is when the judgment is entered on the docket, or docketed.") (citing Fed. R. Civ. P. 79(a)). The Court signed the Order on March 31, 2004, but it was not entered until April 5, 2004. JPMorgan Chase Bank did not receive notice of the Order until that latter date.

argument raised in the underlying motion's briefing papers. *See, e.g., In re Liljeberg Enters., Inc.*, Civ. A. Nos. 97-0456, *et al.*, 1997 WL 222497, at *2 (E.D. La. May 1, 1997).

ARGUMENT

I. EVEN ASSUMING THE AMENDED COMPLAINT IS DEEMED FILED ON JANUARY 14, 2003, PLAINTIFFS' CLAIM AGAINST JPMORGAN CHASE BANK IS TIME-BARRED

Plaintiffs' Section 10(b) claim against JPMorgan Chase Bank is time-barred because Plaintiffs had inquiry notice of the allegedly fraudulent Mahonia prepay transactions and JPMorgan Chase Bank's role in them no later than December 22, 2001 – over one year before the date on which this Court deems the Amended Complaint filed.² It was on that date that the U.S. edition of the widely circulated *Financial Times* reported that the contracts underlying the Mahonia prepay transactions allegedly were “*materially false*.” *See* Andrew Hill, *Insurer Claims Enron Contracts Were A Front*, FIN. TIMES, p. 10, Dec. 22, 2001 (Appendix, Ex. 3) (emphasis added). *See also* Reply Br. at 6-7 (Appendix, Ex. 2). Describing the substance of allegations made in a counterclaim filed by certain defendants in *JPMorgan Chase Bank v. Liberty Mutual Insurance Co.*, No. 01 Civ. 11523 (S.D.N.Y.) (the “*JPMorgan Chase Bank Action*”), the December 22, 2001 article stated that the Mahonia prepay transactions allegedly were “a front to obtain security for loans” to Enron. *Id.* Moreover, the *Financial Times* reported that Mahonia was a special-purpose entity registered on the island of Jersey that purportedly

² *See* Defs.' J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., and JPMorgan Chase Bank's Mot. to Dismiss the First Am. Consol. Compl. and Br. in Supp. (“Opening Br.”) at 5 (“The newly asserted Section 10(b) and Section 20(a) claims in Count I against JPMSI, JPMCB, and JPMC are time-barred.”) (Appendix, Ex. 1); Defs.' J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., and JPMorgan Chase Bank's Reply Br. in Further Supp. of Their Mot. to Dismiss the First Am. Consol. Compl. (“Reply Br.”) at 4 (“The federal claims asserted against JPMSI (Counts I and IV) and JPMCB (Count I), as well as associated control person claims against JPMC, are time-barred.”) (Appendix, Ex. 2); *id.* at 6 (“With respect to the Mahonia prepay transactions, Plaintiffs were on notice of JPMCB's alleged conduct no later than December 22, 2001.”) (Appendix, Ex. 2).

served as “the energy arm of [JPMorgan Chase Bank’s predecessor] The Chase Manhattan Bank.” *Id.*

This widely circulated news report triggered the statute of limitations because it provided the pertinent details underlying Plaintiffs’ claim against JPMorgan Chase Bank. *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, Civ. A. H-01-3624, No. MDL-1446, 2004 WL 405886, at *9 (S.D. Tex. Feb. 25, 2004) (“Among the circumstances found by some courts to constitute sufficient notice to be a storm warning are disclosures in the media”); *Jensen v. Snellings*, 636 F. Supp. 1305, 1309 (E.D. La. 1986) (“[T]he clock begins to tick when a plaintiff senses ‘storm warnings,’ not when he hears thunder and sees lightning.”) (citations omitted), *aff’d in part and rev’d in part on other grounds*, 841 F.2d 600 (5th Cir. 1988). Indeed, the Court need look no further than Plaintiffs’ own pleadings to establish that Plaintiffs had general knowledge of reports in the *Financial Times*. *See* Am. Compl. ¶ 800; Consol. Compl. ¶ 800 (citing the *Financial Times*). Because the clock began to run on December 22, 2001, Plaintiffs’ claim against JPMorgan Chase Bank expired on December 22, 2002 – nearly a month before the Amended Complaint was deemed filed on January 14, 2003 (and nearly five months before it actually was filed on May 14, 2003).³

Even were this Court to find that the *Financial Times* article alone was not considered a sufficient “storm warning,” the article plainly gave notice of facts that in the exercise of reasonable diligence would lead to knowledge of the alleged facts underlying Plaintiffs’ claim against JPMorgan Chase Bank. *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 2004 WL 405886, at *8; *Jensen v. Snellings*, 841 F.2d 600, 607 (5th Cir. 1988) (following “storm warnings,” a plaintiff “must proceed with a reasonable and diligent investigation, and is

³ While JPMorgan Chase Bank accepts for purposes of this motion that the Amended Complaint is deemed filed on January 14, 2003, it respectfully does not agree with the Court’s ruling in this respect and reserves its rights to appeal at the appropriate time.

charged with the knowledge of all facts such an investigation would have disclosed”).

Specifically, the article reported that the allegations of fraudulent Mahonia prepaids were made in a publicly filed pleading in the *JPMorgan Chase Bank* Action.⁴ With notice of the *JPMorgan Chase Bank* Action via this news article, reasonable diligence would lead to the publicly available counterclaim filed against JPMorgan Chase Bank, which alleged, *inter alia*, that

the contracts were not intended by the parties [including JPMorgan Chase Bank] to be fulfilled as actual supply contracts but, instead, were intended to provide a mechanism to obtain surety bonds to secure loans . . . in the guise of forward supply contracts.

Reply Br. at 7 (Appendix, Ex. 2). *See also* Answer, Affirmative Defenses and Counterclaim of St. Paul Fire & Marine Ins. Co. (Appendix, Ex. 8) (also attached as Ex. 1 to Reply Br.).⁵ In fact, this Court explicitly recognized in the April 5 Order that public notice of a lawsuit is sufficient to

⁴ *See* Reply Br. 6-7 (Appendix, Ex. 2). From December 20, 2001 through January 14, 2002 (one year before Plaintiffs’ effective filing of the Amended Complaint), numerous newspapers and news wires reported additional details about the *JPMorgan Chase Bank* Action and allegations that the Mahonia prepaids were fraudulent transactions devised by JPMorgan Chase Bank. *See, e.g.*, James Norman, *Latest Enron Battle Pits Big Banks Versus Insurers*, PLATT’S OILGRAM NEWS, p.1, Jan. 3, 2002 (Appendix, Ex. 4) (“[T]he surety companies say they were lied to by Enron and Chase, claiming the would-be commodity deals were really a sham to obscure \$ 2-bil of unsecured loans.”); Sheryl Jean, *The St. Paul Fights Back In Enron Case*, ST. PAUL PIONEER PRESS, Dec. 28, 2001 (Appendix, Ex. 5) (“The St. Paul Cos. doesn’t think it should to pay any part of the \$1.1 billion in payments related to oil and gas sales contracts it bonded for collapsed energy trader Enron Corp. because the insurer alleges the agreements were a sham.”); Chad Bray, *St. Paul Files Counterclaim To J.P. Morgan’s Enron Suit*, DOW JONES NEWS SERV., Dec. 27, 2001 (Appendix, Ex. 6) (reporting insurers’ allegation that surety bonds for the Mahonia prepaid transactions were “obtained under false pretenses”); Lynn Cowan, *Insurers Demand Proof of Enron Contract from J.P. Morgan*, DOW JONES NEWS SERV., Dec. 20, 2001 (Appendix, Ex. 7) (reporting that “a group of insurance companies is questioning whether forward sales contracts that they bonded for Enron Corp. (ENE) ever really existed”). Plaintiffs’ Consolidated and Amended Complaints cite extensively to many of these sources. *See, e.g.*, Am. Compl. ¶¶ 559, 666, 800, 937.

⁵ This Court has already taken judicial notice of the *JPMorgan Chase Bank* Action, the claims filed by JPMorgan Chase Bank, and the allegations of fraud asserted by defendants in their counterclaims. *See* April 5 Order at 7 n.1. *See also In re Enron Corp. Sec., Derivative & ERISA Litig.*, 235 F. Supp. 2d 549, 641 n.80 (S.D. Tex. 2002) (reciting from the Consolidated Complaint allegations concerning the *JPMorgan Chase Bank* Action).

establish inquiry notice of the claims raised by that suit. *See* April 5 Order at 5 (concluding, by reference to its February 25, 2004 Order, that inquiry notice of Plaintiffs' Foreign Debt Securities claims occurred in the fall of 2002 because Consecos Annuity Assurance Company published notice of its lawsuit concerning certain of those securities on September 29, 2002).⁶ Because Plaintiffs were on notice of the alleged facts underlying their claim against JPMorgan Chase Bank by December 22, 2001, the claim is untimely, having been deemed filed more than one year later on January 14, 2003. Consequently, JPMorgan Chase Bank should be dismissed from the action.⁷

CONCLUSION

For the foregoing reasons, JPMorgan Chase Bank respectfully requests that the Court reconsider the April 5 Order and dismiss JPMorgan Chase Bank from this action.

Houston, Texas
Dated: April 19, 2004

⁶ Pursuant to the PSLRA, Consecos published, "in a widely circulated national business-oriented publication or wire service," a notice advising of the commencement of its litigation. 15 U.S.C. § 78u-4(a)(3)(A)(i). Consecos's September 29, 2002 notice was published on PR Newswire. *See Class Action Lawsuit Amended on September 29, 2002 on Behalf of Purchasers of Credit Linked Notes Issued by Credit Suisse First Boston and Citigroup, Inc.*, PR NEWswire, Sept. 29, 2002 (Appendix, Ex. 9). Notice of the *JPMorgan Chase Bank* Action and the Mahonia prepay transactions via the *Financial Times* is of the same character as Consecos's notice announcing its lawsuit.

⁷ To the extent Plaintiffs' claims arise out of alleged misrepresentations in analyst reports and investment in LJM2, those allegations are not lodged against JPMorgan Chase Bank (*see* Am. Compl. ¶¶ 100(b)-(c), 669), and thus do not preclude dismissal of JPMorgan Chase Bank from this action. Likewise, the allegations underlying Plaintiffs' Texas Securities Act claim (which is due to be dismissed in any event, *see* April 5 Order at 15) are against J.P. Morgan Securities Inc., not JPMorgan Chase Bank. *See* Am. Compl. ¶ 100(c). In addition, this Court has already held that Plaintiffs' generalized allegations against JPMorgan Chase Bank concerning transactions such as Chewco, Sequoia and related SPEs, and a loan to LJM2 are "clearly inadequate by themselves to raise a strong inference of scienter." *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 235 F. Supp. 2d at 695-96.

Respectfully submitted,

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Attorneys for JPMorgan Chase Bank

CERTIFICATE OF CONFERENCE

I certify that I conferred with James Jaconette, counsel for Plaintiffs, on April 16, 2004 regarding the relief requested herein by JPMorgan Chase Bank. Mr. Jaconette informed me that Plaintiffs oppose dismissal of JPMorgan Chase Bank from the action.

/s/ Jonathan K. Youngwood
Jonathan K. Youngwood

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 19th day of April, 2004.

/s/ James W. Bowen
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