

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

United States Courts
Southern District of Texas
ENTERED

MAY - 2 2004

Michael N. Milby, Clerk of Court

MARK NEWBY, ET AL., §
§
Plaintiffs §
§
VS. § CIVIL ACTION NO. H-01-3624
§ AND CONSOLIDATED CASES
ENRON CORPORATION, ET AL., §
§
Defendants §

CITY OF MONTGOMERY, ALABAMA §
EMPLOYEES' RETIREMENT SYSTEM, §
§
Plaintiff, §
§
VS. § CIVIL ACTION NO. H-04-1648
§
KENNETH L. LAY, ET AL., §
§
Defendants. §

ORDER OF COORDINATION

City of Montgomery, Alabama Employees' Retirement System v. Kenneth L. Lay, et al., H-04-1648, which seeks to recover damages under the Securities Act of Alabama and under Section 12(a)(2) and 15 of the federal Securities Act of 1933, was removed by Defendants Kenneth L. Lay, Jeffrey K. Skilling, Andrew S. Fastow, Citigroup, Inc., Citigroup Global Markets, Ind. (f/k/a Salomon Smith Barney Inc.), and Credit Suisse First Boston, Inc. from the Circuit Court of Montgomery County, Alabama to the United States District Court for the Middle District of Alabama, Northern Division, on diversity and "related to" bankruptcy jurisdiction grounds. It was subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation for coordination or consolidation of pretrial proceedings with those in MDL 1446.

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-04-1648 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. Accordingly this Court

ORDERS that pretrial proceedings in H-04-1648 shall be COORDINATED with pretrial proceedings in *Newby* and MDL 1446. To insure that H-04-1648 receives all relevant pleadings and orders, the Court

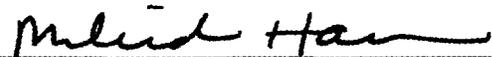
ORDERS that the docketing clerk shall henceforth designate H-04-1648 as a "coordinated case" in conjunction with *Newby* and shall enter it as such on the docket sheet of *Newby*.

Furthermore, among the pending motions, including various Defendants' motions to dismiss in part for lack of personal jurisdiction, is Plaintiff the City of Montgomery Alabama Employees' Retirement System's motion to stay consideration of Defendants' pending motions (instrument #31) until the Court rules on the jurisdictional issues in Plaintiff's motion to remand. In light of *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999) (holding that a court may consider personal jurisdiction challenges before subject matter jurisdiction challenges), the Court concludes that the authority cited by Plaintiff has been modified. See also *Alpine View Co. Ltd. v. Atlas COPCO AB*, 205

F.3d 208, 213-14 (5th Cir. 2000) ("A federal court may consider personal jurisdiction issues prior to addressing a motion to remand where 'federal intrusion into state courts' authority is minimized.") (citing *Ruhrgas*). Accordingly, the Court

ORDERS that Plaintiff's motion to stay (#31) is DENIED and that Plaintiff shall file responses to the motions to dismiss within twenty days of receipt of this order.

SIGNED at Houston, Texas, this 30th day of April, 2004.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE