

BT MAY 26 2004

Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(HOUSTON DIVISION)

In re ENRON CORPORATION SECURITIES
LITIGATION

MDL-1446

This Document Relates To:

MARK NEWBY, *et al.*, Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

-v.-

ENRON CORP., *et al.*,

Defendants.

Civil Action No. H-01-3624
(Consolidated, Coordinated and
Related Cases)

**REPLY MEMORANDUM IN SUPPORT OF BANK DEFENDANTS' MOTION
FOR MODIFICATION OF THE SCHEDULING ORDER**

The Bank Defendants submit this Reply Memorandum in support of their Motion for Modification of the Scheduling Order dated March 11, 2004 to adjourn by 90 days the commencement of fact depositions, currently scheduled for June 2, 2004.¹

¹ This Reply is submitted in response to the papers filed in opposition to the Bank Defendants' motion by Lead Plaintiff; American National and Westboro Properties; and certain other plaintiffs (the "Certain Plaintiffs"; collectively, "plaintiffs"). Defendants Milbank Tweed and Vinson & Elkins have joined in seeking the relief sought by the Bank Defendants' motion, while Enron has offered only the conclusory assertion that it "do[es] not believe the Bank Defendants have set forth sufficient reason to postpone the start of depositions." (Letter from H. Lee Godfrey to Judges Harmon and Gonzalez, dated May 25, 2004, at 2.) Andersen has stated that it takes no position on the motion. Capitalized terms not otherwise defined have the meaning given in the Bank Defendants' moving papers.

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Argument

I. FAIRNESS AND EFFICIENCY COMPEL A NINETY-DAY ADJOURNMENT OF THE START OF DEPOSITIONS

Plaintiffs do not dispute—nor can they dispute—the central facts on which this motion is based. Thus, it is undisputed that, with a week to go before depositions are scheduled to commence, the parties do not have available for review tens of millions of pages of documents from the central players in this case, Enron and Andersen. It is undisputed that these unavailable documents include approximately one-quarter of Enron's responsive documents (including the entirety of Enron's production to the bankruptcy examiner); the vast majority of Andersen's Enron-related documents; and some 70-90 million pages of documents collected by the government in connection with its criminal investigation and produced to certain of the Enron insiders. It is likewise undisputed that these documents will not be available to the Bank Defendants and other parties for at least a number of weeks, while counsel for Enron and Andersen have had their own documents available to review for many months or years.

Nor do plaintiffs offer a shred of evidence to rebut the Bank Defendants' evidentiary showing that they were not aware of these deficiencies, despite their best efforts, until just days before making this motion. Lead Plaintiff asserts, in conclusory fashion and by vague reference to unspecified "calls among the parties' liaisons to the Depository Administrator" that "we were all aware of the timing for production of millions of pages of documents into the depository." (Lead Plaintiff Response at 1.) Likewise, the Certain Plaintiffs assert that the Bank Defendants "were aware that every production would not be completed before the commencement of depositions in June" when they agreed to the current discovery schedule. Yet plaintiffs offer no evidence to

support these assertions. On the contrary, as shown in the affidavits submitted in support of our motion, the Bank Defendants had no reason to believe until just days before making this motion that tens of millions of pages of Enron and Andersen documents would not be available when depositions are scheduled to begin. (Scott Aff. ¶ 8; Hurwitz Aff. ¶¶ 7, 11-12.)

The remainder of plaintiffs' oppositions to the motion consist of a series of misleading factual assertions and utter irrelevancies.

First, plaintiffs point the Court to the large number of documents that have been produced to date, and argue that "[t]here is sufficient documentary evidence to begin depositions." (Lead Plaintiff's Response at 3; *see also* Certain Plaintiffs' Response at 3.) Plaintiffs' suggestion that the documents in this case are somehow fungible, so that if enough documents are available to begin questioning witnesses it is immaterial how many other documents are not available, is absurd. Plaintiffs do not even attempt to demonstrate that the documents currently available contain all the pertinent evidence, or that the documents not yet seen by the Bank Defendants are irrelevant or unimportant. Nor could they. Since the gravamen of plaintiffs' claims is that the Bank Defendants participated with Enron in a scheme to deceive the public about Enron's financial statements, there can be no serious dispute that Enron's and Andersen's documents are fundamental to this case. In these circumstances, it would be imprudent and prejudicial to hasten fact depositions before the documentary record is substantially complete—particularly in light of the fact that the enormous quantity of documents that remains

unavailable to the Bank Defendants has long been available to other parties, including Enron itself.²

Second, Lead Plaintiff's assertion that the Bank Defendants "should not be heard to complain that the volume [of Enron documents] is too great or that the Examiner's [sic] documents were not prioritized" is a red herring. (Lead Plaintiff's Response at 2). The problem is not the volume of documents Enron *has* produced, but the fact that 19 million pages of Enron documents are admittedly *not* available. The mere fact that Enron has "produced" these documents—in the sense that it merely delivered them to the depository administrator in some form—is scarcely sufficient when it is undisputed that the depository administrator has yet to process them and make them available to defendants to review, and will not do so for several more weeks.

² The Certain Plaintiffs assert that the Bank Defendants "have already scheduled depositions for June and designated deponents for July without the benefit of the outstanding documents," including "the only Enron and Andersen employees for June, and all seven Enron employees for July, as well as an Andersen employee." (Certain Plaintiffs' Response at 4.) To begin with, these assertions are incorrect. The Bank Defendants designated no Enron or Andersen witnesses for June, and only three Enron witnesses for July; the remaining Andersen and Enron witnesses were designated by other defendants. In any event, at the time they designated these witnesses, the Bank Defendants were not aware (as set forth in our motion) that large numbers of Enron's and Andersen's documents would not be available in time to prepare for these depositions.

The Certain Plaintiffs also argue (Certain Plaintiffs' Response at 4-5) that the problem would be solved if the Bank Defendants would simply agree not to take depositions of Enron and Andersen witnesses for the next three months, and instead simply to fill that time with depositions of the Bank Defendants' witnesses. But the Bank Defendants cannot adequately prepare their witnesses for deposition without access to millions of documents to which other parties have access. Moreover, it is hardly equitable, given the limited time available for discovery, to permit plaintiffs to proceed with the depositions they wish to take while depriving the Bank Defendants of the ability to pursue their own discovery in any comprehensive way.

Third, Lead Plaintiff contends that the unavailability of Andersen's documents is somehow the fault of the Bank Defendants because they "did not bother to garner [those documents] for months" before contacting Andersen ten days ago. (Lead Plaintiff's Response, at 2.) Lead Plaintiff's contention is contrary to the undisputed record evidence. As shown in the affidavits accompanying the moving papers, the Bank Defendants requested in November 2003—more than six months ago—that Andersen produce to the depository all documents it had previously produced to any government entities or the Enron bankruptcy examiner. Andersen's statements to the Court at a hearing held on July 10, 2003 indicated that these documents totaled approximately 13 million pages. See Transcript of Status Conference held July 10, 2003 (attached as Exhibit A hereto) at 35 (Kathy Patrick, counsel to certain of the outside directors, referring to 13 million pages of Andersen documents); *id.* at 65 (Rusty Hardin, counsel for Andersen, telling the Court that "the documents I believe that Ms. Patrick was referring to were those produced to the government during the pendency of the criminal case"). Andersen's recent disclosure to the Bank Defendants that the documents responsive to the Bank Defendants' November request totaled only 1.3-1.7 million pages can in no way be attributed to any lack of diligence by the Bank Defendants.³

³ Andersen takes no position on the Bank Defendants' motion, and responds only to state that it has complied with the Court's discovery orders and is continuing diligently to produce documents. It is irrelevant for purposes of this motion whether Andersen has complied with its discovery obligations. In any event, we note that Andersen does not dispute the facts on which this motion is predicated with respect to it: namely, that it has not yet produced the vast majority of its Enron-related documents—totaling millions of pages—although those documents have been ready for production for some time, and that the Bank Defendants were not aware until very recently that their November 2003 document request to Andersen covered such a small percentage of Andersen's 12-13 million page collection.

Fourth, Lead Plaintiff further faults the Bank Defendants for not having requested the approximately 70-90 million pages of documents received from the government by criminal defense counsel for certain former Enron officers. (Lead Plaintiff's Response at 2.) Lead Plaintiff again ignores the undisputed evidence that the Bank Defendants *were not aware these documents existed* until a recent conversation with counsel for certain of the insider defendants. (Hurwitz Aff., ¶¶ 11-12.)

Finally, contrary to Lead Plaintiff's assertion, the problem posed by the unavailability of relevant documents is not cured by the parties' right, on a case-by-case basis, to seek to reopen specific depositions. (Lead Plaintiff's Response at 3.) To begin with, that approach is inconsistent with the fundamental principle of the Deposition Protocol Order that witnesses should be deposed only once. (Deposition Protocol Order, Para. X.D.) Moreover, as a practical matter, the right to seek to re-open a deposition is no substitute for the ability to prepare adequately for the deposition in the first place. Finally, while the approach suggested by plaintiffs may be suitable for a case where a small number of marginal documents is not available when depositions begin, it makes no sense here, where nearly one-quarter of Enron's documents and the vast majority of Andersen's documents remain unavailable. If the Court permitted depositions to proceed with dozens of millions of pages of documents not having been received by the majority of the parties, the pretrial schedule would almost certainly be upset by numerous demands to reopen depositions grounded in material culled from the new documents. Recalling witnesses and scheduling follow up depositions would not only wreak havoc on the already enormously complex task of scheduling depositions, but would add to the schedule potentially many months of additional deposition days.

II. PLAINTIFFS' ALTERNATIVE REQUESTS ARE INADEQUATE AND PREJUDICIAL

Plaintiffs' alternative requests, in the event the Court grants an adjournment of the deposition schedule, are both irrational and unfair.

Lead Plaintiff's request that the discovery schedule be shortened by the amount of time by which the commencement of depositions is postponed flies in the face of the purpose of the discovery schedule previously agreed to by the parties and adopted by the Court: to accommodate and provide for the discovery necessary in this vast and complex litigation. The schedule reflects the conclusion by all parties—after extensive negotiation over more than two months—that 18 months for depositions was the appropriate time needed to examine all significant witnesses adequately. The coming to light of these new millions of pages of documents serves only to underscore the scope and complexity of this case. In a case involving thousands of witnesses and hundreds of millions of pages of documents, 18 months for fact depositions already sets an ambitious discovery period; the additional millions of pages of relevant documents certainly does not justify reducing the deposition time that the parties agreed to and the Court adopted.⁴

Lead Plaintiff and the Certain Plaintiffs also contend that, should this court order an adjournment, the Bank Defendants be required to pay certain costs that would, in the normal course, be borne by all parties, and “non-refundable” travel costs that certain parties may already have incurred. (*See* Lead Plaintiff's Response at 4.) Any such cost-shifting would be entirely punitive and unfair. The Bank Defendants did not create the

⁴ Lead Plaintiff also asserts that if the Court grants any part of the banks' motion it should not move the trial date. This assertion is entirely unrealistic, and again ignores the carefully laid-out schedule for proceedings after fact discovery (including time for expert discovery and pre-trial motions) reflected in the Scheduling Order.

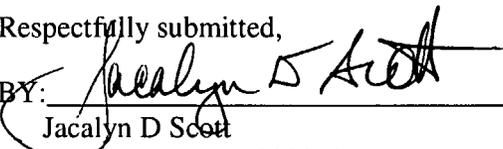
delays in the availability of documents that make an adjournment necessary, and they should not be saddled with additional costs resulting from those delays.

Conclusion

For the reasons set forth above and in our moving papers, the Bank Defendants respectfully request that Court modify the Scheduling Order to postpone by 90 days the commencement of depositions and all subsequent deadlines in this case.

Dated: May 26, 2004

Respectfully submitted,

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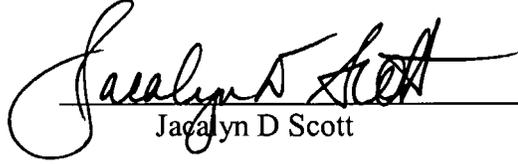
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CERTIFICATE OF SERVICE

I 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 www.esl.3624.com website or by facsimile or first class mail on this 26nd day of May 2004.



Jacalyn D Scott



1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

3 MARK NEWBY, ET AL . C.A. NO. H-01-3624
 4 VS. . HOUSTON, TEXAS
 5 ENRON CORPORATION, . JULY 10, 2003
 ET AL . 9:00 A.M. to 11:00 A.M.
 6

7 ***

8 PAMELA M. TITTLE, ET AL . C.A. NO. H-01-3913
 9 VS. .
 10 ENRON CORP., ET AL .
 11

12 ***

13 IN RE ENRON CORP. SECURITIES, . MDL-1446
 14 DERIVATIVE & ERISA LITIGATION .
 15

16 TRANSCRIPT OF HEARING
 17 BEFORE THE HONORABLE MELINDA HARMON
 UNITED STATES DISTRICT JUDGE
 18

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25 Proceedings recorded by mechanical stenography, transcript
 produced by computer-aided transcription.

EXHIBIT

A

tabbles

1 been coordinating scheduling for the ERISA cases. He has done
2 an admirable job of that. And we did it, I will note, without
3 any significant difficulty that we needed to bring to you with
4 the exception of our need to get documents from one-third party
5 witness. We're all professionals here. We can make this work
6 efficiently. The lead plaintiff asked to be the lead
7 plaintiff. The lead plaintiff needs to sit for a deposition to
8 support that. That's our view.

9 Richard, do you want to address that, or I can go
10 on with what I have?

11 MR. CLARY: No, you've already covered my point.

12 MS. PATRICK: Your Honor, the primary area of
13 controversy, in our view, is the question of how to deal with
14 the consolidated cases. And from our perspective -- the
15 computer is thinking and, therefore, I cannot. From our
16 perspective, the solution that has been proffered again suffers
17 from the appeal of simplicity that falls apart upon further
18 reflection.

19 As the Court will be aware, there are more than
20 100 cases consolidated here. Of those, the Court recognized
21 that that created very significant management issues. You
22 noted that some of those cases did not fit within the class
23 defined, and you also noted that one economical reason for the
24 utilization of a lead plaintiff was to avoid the defendants
25 having to answer multiple complaints. And that's the proposal

1 that the banks and the lead plaintiff would have you adopt.
2 That is, before you know who's in or out of the class, go ahead
3 and put all of the defendants to the burden of filing motions
4 to dismiss that may never be needed, may never have to be
5 addressed.

6 And for that reason in your August order, which
7 we think that set the table on this and it is an issue that
8 you've already decided, you said, "Shortly before or after the
9 time of class certification, those plaintiffs asserting viable
10 state law or different federal claims or claims against
11 defendants not named, et cetera, may move to reinstate their
12 pleadings on the Court's active docket or move for leave to
13 file new pleadings. Once those pleadings are reinstated, the
14 defendants shall file timely responsive pleadings."

15 Now, what is the appeal of that approach? Well,
16 as the Court knows, there is a lead complaint that now sweeps
17 in most of the tagalong and coordinated cases. Many of the
18 those cases involve plaintiffs that may, in light of the
19 mediation that has been ordered among the banks and in light of
20 the rapid depletion of the Enron insured's policies of
21 insurance, make the economic decision that they are better
22 suited simply remaining in the class and not opting out,
23 because they are ably represented by Milberg, Weiss, because
24 the complaint is quite broad, because the case is moving along
25 nicely, and because they don't want to waste resources that are

1 otherwise available to satisfy their claims by pursuing an
2 outlier case.

3 Those plaintiffs may make those decisions, and we
4 think that's a sound decision for the plaintiffs to make. But
5 importantly, it's a decision that they're entitled to make
6 under the rules when the Court considers class certification
7 and notifies them of the relief sought, the parameters of the
8 class, if any, and how they can make their decision.

9 To ask those plaintiffs now to expend resources
10 to litigate cases that they may not want to litigate -- I mean,
11 allow for the possibility that in those hundreds of cases that
12 have been consolidated here, there are plaintiffs who filed
13 cases not aware of what Milberg, Weiss was doing, unsure of
14 whether the lead plaintiffs' complaint would be dismissed or
15 not, but who now having seen that the claim has survived and
16 having seen the Court's attention to this case are comfortable
17 and content to remain in the class.

18 The proposal the defendants, the bank defendants
19 advocate -- and I think the plaintiffs, it's fair to say, are
20 actually agnostic on this. I don't think they're advocating
21 the waste of insurance proceeds that the banks would cause --
22 is the following: Other than the class action cases, in the 80
23 other cases, those people ought to move now to reinstate their
24 cases and we ought to haul off and file 80 motions. That's a
25 meaningful issue for my clients, the outside directors, who

1 have been dismissed from fraud claims, because they were
2 insufficiently pled. And I defy any plaintiff to have exceeded
3 Milberg, Weiss in the breadth of the allegations and so forth.
4 They just weren't sufficient.

5 We need to file those motions to dismiss. My
6 clients have a right to do that, but they certainly don't want
7 to do that in a wasteful and unnecessary way. And certainly
8 the Court, given all of the other issues to which you have to
9 attend in this case, cannot possibly justify a use of its
10 resources ruling on motions to dismiss that may never be
11 needed.

12 So, what do we think ought to happen? Well, the
13 Court's order in August shouldn't be reconsidered. You've done
14 this. You've told us what you think is the right thing. You
15 set out a very sensible triage approach. It ensures that we
16 only need to address motions that actually are separate
17 lawsuits by opt-out plaintiffs after class certification. And
18 importantly, this isn't a big delay. The class certification
19 briefing under the agreed scheduling order is over in October.
20 It's three months from now. I mean, this is not a long time to
21 allow these plaintiffs the right to decide how they want to be
22 considered, how they want to proceed, and it certainly is not a
23 delay given that, as you've determined, discovery is ongoing,
24 everybody is going to have access to the depository, and
25 they're going to have the full benefit, as Mr. Clary pointed

1 out and Mr. Lerach, of the discovery that's taken by the lead
2 plaintiff.

3 Now, I do want to add mine to the chorus, asking
4 you to impose some degree of order and rigor on what the
5 tagalong plaintiffs can do. I don't think it serves anybody's
6 interest to force us to file a hundred different initial
7 disclosures or answers to a hundred sets of interrogatories by
8 individual plaintiffs, nor requests for admissions that
9 somebody might haul off and file because they think that in the
10 deluge of paper, we might miss one and have some deemed
11 admitted. That's not good either.

12 These cases are here to be coordinated. Lead
13 plaintiffs' requests are presumptively adequate. And we would
14 go a step further and say that for those coordinated cases,
15 unless the plaintiffs are able to show you that the
16 interrogatories or admissions they seek to serve are not
17 adequately addressed by lead plaintiff, they should not be
18 served and we should not be compelled to respond.

19 Importantly, lead plaintiff has done an excellent
20 job of coordinating with the cacophony of voices on his side of
21 the table. I mean, the Silver Creek issues were resolved.
22 They've added in allegations that people wanted to add in.
23 They've done exactly what they should do as fiduciaries for the
24 class, and there's no reason to believe that they are not fully
25 able to speak on issues of general concern.

1 And so we would ask that the Court make clear
2 that any discovery in the consolidated cases must be
3 nonduplicative in nature and must be shown to be so before we
4 have to respond to it.

5 And after that, of course, if people opt out,
6 they can serve whatever discovery they need to serve, but
7 there's no need to deal with that issue right now. I think
8 this is a -- I tried, Your Honor, when we thought about how we
9 thought this case ought to be managed, we really tried to sit
10 down and think how you could manage it, how your staff could
11 dedicate their resources to it, what, without being
12 presumptuous, was a good use of time as opposed to a less
13 effective use of time, and that's why we looked back at the
14 August order and realized that you had thought about all of
15 that and had set it out and that really that makes sense. And
16 so that's all we're here advocating, is that you stick with
17 what you've already decided and let us go on down the road.

18 The timetable for discovery, I do just want to
19 give the Court some sense of why it is that the discovery
20 period here is lengthy. Everybody is in agreement on it, but I
21 think you might -- I thought you might like to understand. And
22 I think if you would like a presentation on the document
23 depository, there are people who actually do that, bless
24 their hearts, for a living. Thankfully, I'm not one of those.
25 That would be their temporal penance so they don't have to

1 spend time in purgatory, as far as I'm concerned.

2 Let me just give you a sense of how many
3 documents there are, because I thought you might like to know.
4 Enron's so-called government production, that is, the documents
5 that were seized and that have continued to be produced, exceed
6 18 million pages. We're advised there may be as many as 18 to
7 20 million pages more. Importantly, none of those is produced
8 in response to a request for production of documents. And once
9 one is sent, there will certainly be more documents.

10 Our clients, the directors and the individual
11 officers, have about a quarter of a million pages. That's the
12 smallest volume you're going to hear today.

13 Andersen, we understand, had imagined and
14 produced 13 million pages when they stopped. And by stopped, I
15 mean they just ran out of money and resources and they just
16 said, Look, this is it. They did a lot of that. I think
17 Mr. Hardin, you will be familiar, tried to defend the
18 obstruction of justice case and that that was all there, but
19 they advised us that they have several terabytes of data. God
20 help me, I don't even know what that is, but it sounds like a
21 lot. And, again, none of that was in response to a request for
22 production, and so one can expect that when they get one, that
23 volume of 13 million pages may be exceeded.

24 Vinson and Elkins has advised they have at least
25 3 million pages. That was an old number. I don't know what

1 the number is now.

2 Citigroup and J.P. Morgan, when we were doing the
3 document depository order, indicated that they had a thousand
4 boxes each of government production. That's about two and a
5 half million pages per entity, again, not in response to a
6 request for production, and there are nine financial
7 institutions in this case. So, 22 million pages is a low
8 estimate, in our judgment, for what the financial institutions
9 are likely to produce.

10 And so when you roll it all up, we're at
11 75 million pages and counting before requests for production
12 and before third-party discovery from rating agencies and
13 governmental entities and otherwise. And it does take time to
14 assimilate those documents.

15 The Enron documents that have been produced thus
16 far, we've had more than a dozen people working on them. It
17 has taken five months to knock that down. And we're working
18 hard, and it's expensive, but there's a certain amount of
19 discovery, as you remember from being a practicing lawyer, that
20 is contingent upon having the documents. And we want to get
21 through those documents. And so when we all sat down in our
22 professional judgment and tried to estimate realistically,
23 looking at a hundred million pages, how long does it take to
24 knock that down, cull out the irrelevant stuff, assimilate it,
25 and take reasonable depositions, that's how we arrived at this

1 We're not in favor of waiting for summary judgment necessarily
2 until May. If things can be done sooner, that's great. But we
3 would oppose any effort to try to accelerate any particular
4 case out of this vast mix of cases. Thank you, Your Honor.

5 *THE COURT:* Let me ask you a question. I'm going back
6 to Ms. Patrick's PowerPoint presentation and the Arthur
7 Andersen screen that said we produced X million copies of
8 documents and then we stopped. What's the status of that at
9 this point? Are y'all still stopped or what's the deal?

10 *MR. RUTHBERG:* No, Your Honor. We actually were one
11 of the first to produce documents here into the depository. We
12 did not produce 13 million documents. The documents that were
13 demanded by the lead plaintiffs when we culled through and
14 talked with the lead plaintiffs, it turned out what they were
15 really looking for was half a million documents and that's what
16 we produced and they're available in the depository.

17 *THE COURT:* All right. Okay. Thank you.

18 *MR. RUTHBERG:* Thank you, Your Honor.

19 *MR. HARDIN:* Your Honor, if I may on that. Good
20 morning.

21 *THE COURT:* Good morning.

22 *MR. HARDIN:* Rusty Hardin on behalf of Arthur
23 Andersen, also. Mr. Ruthberg and Cathy Palmer here from Latham
24 & Watkins are coordinating all the lawsuits against Arthur
25 Andersen around the country and will be very involved and

1 before the Court. But the documents I believe that Ms. Patrick
2 was referring to were those produced to the government during
3 the pendency of the criminal case. That is what had stopped, I
4 think, although there are some others still being produced.
5 Totally separate from that that were not in Ms. Patrick's
6 figures were the ones that we are producing for the document
7 depository in this case. So, that's what those two
8 distinctions are.

9 *THE COURT:* Okay.

10 *MR. HARDIN:* And if I could, very briefly, Your Honor,
11 I wanted to and I was trying to think of an additional
12 solution, the Court said you had done all you could about
13 Washington County, and I certainly agree, but as a probationer
14 of yours in this court, we might -- I was thinking we might
15 suggest that the Court -- we would certainly welcome if the
16 Court wanted to enter an amicus brief to the 14th Court of
17 Appeals. We have --

18 *THE COURT:* No, I'll let you-all do that.

19 *MR. HARDIN:* At any rate, that is scheduled to be --
20 just so the Court knows, because it might affect some of your
21 litigants here, is that we have a mandamus action pending
22 before the 14th Court asking to stay for the time being the
23 case in Washington County, but consistent with the issues here,
24 asking that the Court instruct the trial court down there to
25 coordinate and make the discovery along with Newby. And that

1 is our goal down there. We're now set for trial. The court
2 extended it the other day for five weeks. And there's a
3 scheduling order. And you may at some time be hearing from
4 some of your litigants here. But I wanted you to know that our
5 seeking discovery there is only because we're facing a November
6 trial setting and not because we want to interfere with the
7 Court's schedule.

8 *THE COURT:* Okay.

9 *MR. HARDIN:* I would love the irony, of course, if the
10 Court would enter a letter or anything to the Court of Appeals
11 on behalf of Arthur Andersen. We would welcome all the help
12 you could give. Thank you, Your Honor.

13 *THE COURT:* Thank you.

14 *MR. ACKER:* Rodney Acker on behalf of UBS Paine Webber
15 and UBS Warburg. We are the defendants and we are the only
16 defendants in the Lamkin case, which is matter 851.

17 The lead plaintiffs have not sued either Paine
18 Webber or Warburg. We are the only defendants in our case. We
19 think, as some of the other lawyers have suggested, that our
20 case is very different. The case brought against us -- the
21 plaintiffs in our case are Paine Webber customers who have
22 brought claims based upon alleged representations by Paine
23 Webber brokers and by a Paine Webber analyst in a research
24 report. So, we think our case is very different.

25 We think the discovery in our case -- there's