

JUL 27 2004

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

MDL Docket No. 1446

This Document Relates To:

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

Civil Action No. H-01-3624
(Consolidated)

Plaintiffs,

CLASS ACTION

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

[Caption continued on next page]

**THE DB ENTITIES' SEPARATE STATEMENT IN FURTHER SUPPORT OF THE
BANKS' MOTION TO CLARIFY THE MARCH 11, 2004 SCHEDULING ORDER,
WITH RESPECT TO THIRD-PARTY COMPLAINTS AND CROSS CLAIMS IN
ACTIONS NOT PROCEEDING UNDER THE CONSOLIDATED *NEWBY* AND *TITTLE*
COMPLAINTS**

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**THE DB ENTITIES' SEPARATE STATEMENT IN FURTHER SUPPORT OF THE
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ACTIONS NOT PROCEEDING UNDER THE CONSOLIDATED *NEWBY* AND *TITTLE*
COMPLAINTS**

The DB Entities¹ respectfully submit this separate statement in further support of the Banks' Motion To Clarify The March 11, 2004 Scheduling Order, With Respect To Third-Party Complaints And Cross Claims In Actions Not Proceeding Under The Consolidated *Newby* And *Tittle* Complaints (the "Banks' Motion").

The DB Entities support and have joined the Banks' Motion with regard to actions not proceeding under the consolidated *Newby* and *Tittle* Complaints. This separate statement is limited to a clarification of the DB Entities' separate Order of May 7, 2004 in the *Newby* action (Docket # 2132) (the "May 7, 2004 Order") regarding when they must answer the *Newby* complaint. The DB Entities are serving this separate statement to clarify that the May 7, 2004 Order does not otherwise create the unwarranted procedural anomaly of forcing the DB Entities to file third-party complaints and cross claims prior to answering any *Newby* complaint.

The DB Entities have never answered any *Newby* complaint, having twice prevailed on motions to dismiss any claims under the 1934 Act, and are now awaiting rulings by this Court on Lead Plaintiff's motion for reconsideration. The DB Entities and Lead Plaintiff agreed that, under these circumstances, the DB Entities would answer the *Newby* Complaint, to the extent required, 30 days after the pending motions are decided. That order was entered by this Court on May 7, 2004. The May 7, 2004 Order is silent on third-party and cross-claims.

¹ For purposes of this motion, the DB Entities include Deutsche Bank AG, Deutsche Bank Securities Inc., DB Alex. Brown LLC and Deutsche Bank Trust Company Americas.

The Banks' Motion does not address the DB Entities' position in the *Newby* case. The DB Entities propose that any third-party and cross-claims they may have to file in the Newby action be filed **at the same time** as the DB Entities file any answer in the *Newby* action.

This clarification to the May 7, 2004 Order should be granted because of the DB Entities' unique posture in the *Newby* case, the reasoning already presented in the Banks' Motion, and because this clarification will not prejudice any party. First, the DB Entities have never answered a *Newby* complaint. Second, Lead Plaintiff previously agreed that any response to the *Newby* Complaint by the DB Entities would be due 30 days after the motion for reconsideration was decided. Third, given this Court's rulings as to the DB Entities and Lead Plaintiff's motion for reconsideration, it remains unclear exactly what claims will be pending, if any, against the DB Entities. Accordingly, the DB Entities do not know the scope of the issues that must be addressed in any third-party or cross-claims. Fourth, the proposed clarification preserves the compromise reflected in the May 7, 2004 Order, as Lead Plaintiff provided extra time for an answer, the DB Entities would forego the extra time provided by the Rules for third-party or cross-claims. Under the proposed order, the DB Entities would serve any third-party complaints or cross claims in *Newby* **concurrently** with any answer in the *Newby* action.

In sum, the DB Entities seek a minor clarification of the May 7, 2004 Order in order to address their unique position in the *Newby* action. The relief requested is consistent with the May 7, 2004 Order, the Banks' Motion, and will not prejudice any party. Accordingly, the DB Entities respectfully request that the attached proposed order be entered.²

² The proposed order only addresses the limited relief sought in this separate statement. In all other respects, the DB Entities join in the proposed order filed with the reply to the Banks' Motion.

Dated: July 27, 2004

Respectfully submitted,

By: 

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DB ALEX. BROWN LLC, DEUTSCHE BANK
TRUST COMPANY AMERICAS

PAMELA M. TITTLE, *et al.*,

Plaintiffs,

vs.

ENRON CORP., *et al.*,

Defendants.

Civil Action No. H-01-3913

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ENRON CORP.,

Plaintiffs,

vs.

ANDREW S. FASTOW, MICHAEL J. KOPPER,
BEN GLISAN, JR., RICHARD B. BUY,
RICHARD A. CAUSEY, JEFFREY K.
SKILLING, KENNETH L. LAY, JEFFREY
McMAHON, JAMES V. DERRICK, JR.,
KRISTINA M. MORDAUNT, KATHY LYNN,
ANNE YAEGER-PATEL, ARTHUR
ANDERSEN, LLP, AND CARL FASTOW, AS
ADMINISTRATOR OF THE FASTOW FAMILY
FOUNDATION,

Defendants.

Civil Action No. H-04-0091

[Caption continued on next page]

[PROPOSED] ORDER CLARIFYING THE MAY 7, 2004 ORDER

Upon the Bank Defendants' Motion To Clarify The March 11, 2004 Scheduling Order, With Respect To Third-Party Complaints And Cross Claims In Actions Not Proceeding Under The Consolidated *Newby* And *Tittle* Complaints ("Motion"), it is hereby:

ORDERED that the Motion is **GRANTED**; and it is

FURTHER ORDERED that this Court's May 7, 2004 Order is clarified as

follows:

Deadline for the DB Entities to file a third-party complaint or cross-complaint/claims in Newby

30 days after the Court resolves Lead Plaintiff's motion to reconsider the Court's March 29, 2004 Order (Docket # 2036)

SIGNED at Houston, Texas, this ___ day of _____, 2004.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE

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 27th day of July, 2004.

A handwritten signature in black ink, appearing to read 'Thomas C. Graham', written over a horizontal line.

Thomas C. Graham