United States Courts
Southern District of Texas
FILED

MAR 06 2002

Michael N. Milby, Clerk

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

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

PIRELLI ARMSTRONG TIRE CORPORATION RETIREE MEDICAL BENEFITS TRUST, Derivatively on Behalf of ENRON CORPORATION, ET AL.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. H-01-3645
	§	AND CONSOLIDATED CASES
KENNETH L. LAY, ET AL.,	§	
	§	
Defendants.	§	

PAMELA M. TITTLE, On Behalf of Herself and A Class of Persons Similarly Situated, ET AL.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. H-01-3913
	§	AND CONSOLIDATED CASES
ENRON CORP., an Oregon Corporation, ET AL.,	§	
	§	
Defendants.	§	

RESPONSE OF MICHAEL J. KOPPER TO MOTION OF THE *TITTLE, RINARD* AND *KEMPER* PLAINTIFFS FOR A PRELIMINARY ORDER FREEZING AND IMPOSING CONSTRUCTIVE TRUST OVER INDIVIDUAL DEFENDANTS' ASSETS AND LIMITED EXPEDITED DISCOVERY INTO THOSE ASSETS

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TO THE HONORABLE JUDGE OF THIS COURT:

Michael J. Kopper ("Kopper") files this response to the motion of the *Tittle*, *Rinard,* and *Kemper* Plaintiffs for a Preliminary Order Freezing and Imposing Constructive Trust Over Individual Defendants' Assets and Limited Expedited Discovery Into Those Assets (Civil Action No. H-01-3913, Dkt. No. 77-78), and in support thereof would respectfully show the Court as follows:

I.
SUMMARY OF POSITION

1. On February 14, 2002, the *Tittle*, *Rinard* and *Kemper* Plaintiffs (collectively "TRK Plaintiffs") filed a motion and memorandum, allegedly on behalf of the Enron Corp. Savings Plan ("Savings Plan") and its participants and beneficiaries,[1] seeking a preliminary injunction to freeze unidentified assets of various persons, including Kopper, "pending the final resolution of Plaintiffs' claims" and, further, for an order permitting them "to conduct discovery into the assets" of these persons. *Tittle* Dkt. No. 78 ("TRK Plaintiffs' Memorandum") at 2. For the following reasons, the TRK Plaintiffs' requests should be denied in their entirety:

- **The request has no basis in the Court's prior orders.** The TRK Plaintiffs premise their request for relief on adopted positions addressed by the Court's January 9, 2002 Memorandum Opinion and Order (*see Newby*, Dkt. No. 111 ("January Order")).[2] Any allegations the TRK Plaintiffs have made in the past against Kopper do not fall within the

[1]The TRK Plaintiffs also filed the motion on behalf of and the Employee Stock Ownership Plan ("ESOP"), its participants and beneficiaries against "all of the ERISA fiduciaries[,]" namely, Cindy K. Olson, Mikie Rath, Sheila Knudsen, Rod Hayslett, Tod Lindholm, Paula Rieker, Mary K. Joyce and ESOP Trustee William D. Gathman. Plaintiff's Memorandum at 6-7. The TRK Plaintiffs do not contend Kopper is an "ERISA fiduciary." *See id.*; *see also* Amended Derivative Complaint at ¶¶ 29-39.

[2]The Court's Memorandum Opinion and Order has been electronically published at: *Newby v. Enron Corporation*, CIV.A. H-01-3624, 2002 WL 200956 (S.D. Tex. Jan. 9, 2002).

scope of the Court's Order, because Kopper is not alleged to have ever been in a fiduciary relationship to Enron shareholders.

- **The request has no basis in securities laws.** To the extent that the TRK Plaintiffs are seeking relief under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, they have not made allegations against Kopper sufficient to justify any relief on these claims, including but not limited to the type of discovery sought.

- **The request is premature in light of the Reform Act and the Court's scheduling orders.** Pursuant to the Court's scheduling order, Kopper has not yet appeared with respect to any claims made to date by the TRK Plaintiffs. To the extent that any consolidated amended complaint in *Tittle* or elsewhere[3] names him as a defendant for purposes of making securities fraud claims, Kopper will move to dismiss these claims. The TRK Plaintiffs' securities claims are thus subject to the stay of all other proceedings, including discovery, under the Private Litigation Securities Reform Act of 1995, Pub. L. No. 104-67 ("Reform Act"). This is true whether or not the TRK Plaintiffs attempt to disguise the nature of their claims by posturing themselves as "ERISA Plaintiffs."

- **The request is completely unsupported by competent allegations.** The TRK Plaintiffs have not made any of the requisite showings justifying the discovery they seek, much less the extraordinary remedy of freezing assets.

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[3]Pursuant to the Court's scheduling order, these consolidated complaints are to be filed April 1, 2002, with motions to dismiss to be filed by May 1, 2002.

II.
PROCEDURAL BACKGROUND

2. On December 5, 2001, in *Amalgamated Bank, et al. v. Kenneth L. Lay, et al.*,[4] Plaintiff Amalgamated Bank filed a motion seeking, among other things, a temporary restraining order to freeze assets it alleges were derived by certain named defendants from alleged insider trading and limited expedited discovery to ascertain evidence in support of its motion. *See Amalgamated Bank* Dkt. No. 7 (the "Amalgamated Bank Motion"). Neither Amalgamated Bank's Motion nor its Complaint seeks any relief against Kopper.

3. On December 12, 2001, Amalgamated Bank's claims were consolidated in H-01-3624, *Newby, et al. v. Enron Corp., et al.*

4. On January 9, 2002, this Court (through Judge Rosenthal) entered an order ruling on the Amalgamated Bank Motion. In that Order, Judge Rosenthal determined the Court had the authority, under certain circumstances, to enter a preliminary injunction to freeze assets of defendants in securities actions brought under Section 10(b), but that Amalgamated Bank had not presented sufficient evidence to warrant the relief in that case. The Order then requested additional briefing on the matter from the parties affected by that ruling. *See* January Order at 44.

5. Thereafter, on February 14, 2002, the TRK Plaintiffs filed a motion similar to the Amalgamated Bank Motion, seeking to freeze assets of certain individuals and for expedited discovery. *See Tittle* Docket Entry Nos. 77 and 78. In their briefing, the TRK Plaintiffs expressly state they are "join[ing]" in the Amalgamated Bank Motion. TRK Plaintiffs'

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[4]Cause Number H-01-4198. This motion was filed prior to consolidation of the various Enron-related cases in this district.

Memorandum at 2. However, unlike Amalgamated Bank, the TRK Plaintiffs include Kopper among the parties against whom they seek to freeze assets and to conduct expedited discovery.

III.
ARGUMENT AND AUTHORITIES

6. The TRK Plaintiffs have expressly adopted the positions set out in the Amalgamated Bank Motion.[5] As a result, many of the issues raised in the TRK Plaintiffs' motion have already been addressed by the Court's January Order on the Amalgamated Bank Motion.[6] As indicated by the Court in its Order, the TRK Plaintiffs' motion could not conceivably be granted unless the TRK Plaintiffs demonstrate, among other things: (1) that an individual against whom the relief is sought had a fiduciary relationship to Enron shareholders; (2) that a nexus exists between the relief sought in a complaint and particular assets the TRK Plaintiffs seek to encumber; and (3) that there is some independent evidentiary basis to support the application of a freeze order against each named defendant. January Order at 14, 26-36, 39-40.

7. As to Kopper, the TRK Plaintiffs have made nothing more than a half-hearted and legally insufficient effort to satisfy these multiple requirements.

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[5]In their Memorandum, the TRK Plaintiffs contend they are entitled to a preliminary injunction freezing assets because their securities claims are "based on the very same claims as the securities plaintiffs." TRK Plaintiffs' Memorandum at 5; *see also, e.g.*, *id.* at 3 ("[T]he ERISA Plaintiffs have the same right to freeze the prejudgment assets of the named defendants in their actions as the securities plaintiffs do upon a proper showing in their action—and for the same reasons.").

[6]Various defendants affected by that Order have moved for reconsideration of certain aspects of the Order.

A. The TRK Plaintiffs Have Not Asserted a Cognizable Equitable Claim Against Kopper.

1. Kopper Is Not Alleged to Have a Fiduciary Relationship with Shareholders.

8. The Court's Order on the Amalgamated Bank Motion is premised on a concept that because of the fiduciary duty owed by officers and a board of directors of a corporation to shareholders, under the right circumstances, allegations of insider trading in contravention of Section 10(b) could support the entry of a preliminary injunction freezing the assets of such persons that are related to purported profits from alleged insider trading. *See* January Order at 37. The Court analyzed the historical bases establishing equitable rights of recovery against fiduciaries who breach their duties and noted:

> The relationship between a corporation's officers and directors and the stockholders of that corporation has long been held to be fiduciary in nature. Justification for the fiduciary obligation of corporate officers and directors relies on trust law. Shareholders entrust assets to directors and officers for them to manage for their benefit. Directors and officers owe a fiduciary obligation to shareholders because property has been entrusted to the corporate fiduciaries to be managed for the shareholders' benefit.

January Order at 30-31 (citations omitted). Based on an analogy to trust law and the fiduciary obligations owed by officers and a board of directors of a corporation to the corporation's shareholders, the Court found that the *Amalgamated Bank* plaintiffs had alleged that "[a] nexus existed between the cognizable claims in the [securities] suit and the assets of the defendants." *Id.* at 37.

9. As indicated above, Amalgamated Bank did not seek relief against Kopper. In seeking to broaden the relief sought by Amalgamated Bank, the TRK Plaintiffs have made no showing that Kopper ever occupied a fiduciary relationship to shareholders of the type addressed

by the Court in its January Order. The TRK Plaintiffs' effort to expand the issues presented by Amalgamated Bank to include Kopper thus fails on its face.

2. *Kopper Is Not Alleged to Have a Fiduciary Relationship with an Enron ERISA Plan.*

10. The TRK Plaintiffs have not endeavored to bootstrap their request against Kopper on any alleged fiduciary obligations owed to an Enron-related ERISA plan (such as the Savings Plan), for good reason. They do not contend in their prior pleadings[7] or in their motion, and do not purport to provide the Court with any evidence, that Kopper at any time served in a fiduciary capacity to an Enron-related ERISA plan or its members. Such allegations can only be made with regard to persons who exercised discretionary authority or control over an ERISA plan's management or its assets. *See* 29 U.S.C. § 1002(21)(A); *DeLaurentis v. Job Shop Technical Servs., Inc.*, 912 F. Supp. 57, 62 (E.D.N.Y. 1996); *see also* Amended Derivative Complaint at ¶¶ 29-39; TRK Plaintiffs' Memorandum at 6-7.

11. Pursuant to the Court's January Order on the Amalgamated Bank Motion, there is a complete absence of any allegation or proof that Kopper served in a fiduciary capacity to plaintiffs of the type the Court found might conceivably support a claim for equitable relief. Thus, as a threshold matter the TRK Plaintiffs have not articulated a cognizable claim against Kopper for the imposition of any preliminary injunction interfering with his property rights. *See* January Order at 37.

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[7]*See, e.g.*, First Amended Derivative Complaint for the Enron Corp. Savings Plan and Complaint for the Enron Corp. Stock Ownership Plan for Violations of Federal Securities Law, the Employment Retirement Income Security Act of 1974 ("ERISA"), the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and Texas Common Law, Civil Action No. 01-4108, Dkt. No. 42, ¶¶ 29-39 ("Amended Derivative Complaint"). Any consolidated amended complaint of the type to be filed on April 1, 2002 must be done in a manner consistent with FED. R. CIV. P. 11.

B. The TRK Plaintiffs Have Not Articulated a Cognizable Claim for Relief Under Securities Laws.

12. In addition to the fact that they have not articulated any basis for equitable relief for breach of fiduciary relationship of the type addressed by the Court in its January Order, the TRK Plaintiffs have further failed to articulate any actionable claim for securities fraud on which their requested relief against Kopper is premised. In fact, the TRK Plaintiffs have not made *any* allegation of "insider trading" with respect to Kopper. *See* Amended Derivative Complaint, *supra*, ¶¶ 260-76. The only specific allegation they have ever made with respect to Kopper (as opposed to multiple instances of impermissible group pleading, *see Williams v. WMX Tech., Inc.*, 112 F.3d 175, 177-80 (5th Cir. 1994)), is as follows: they assert Kopper "was, at all relevant times, a managing director of Enron's Global Equity Markets Group[,] . . . an underling of Fastow" and "ran the Chewco and JEDI partnerships." Amended Derivative Complaint, *supra*, ¶ 48. They have not alleged that Kopper made any alleged actionable misstatement under securities laws, much less make any effort to comply with the Reform Act requirements of particularized pleading of such allegations.

1. The Relief Sought by the TRK Plaintiffs Would Violate the Reform Act Stay.

13. As this Court is well aware, a securities fraud claimant must satisfy the pleading requirements for securities fraud actions set out in the Reform Act. A failure to do so mandates dismissal. 15 U.S.C. § 78u-4(b)(3). Even with respect to cases filed prior to enactment of the Reform Act, the Fifth Circuit held that plaintiffs in securities fraud cases must "specify the statements contended to be fraudulent, ***identify the speaker***, state when and where the statements were made, and explain why the statements were fraudulent." *Williams*, 112 F.3d at 177-78 (emphasis added).

14. Section 78u-4(b)(3)(B) of the PLSRA provides:

> In any private action under this chapter, ***all discovery*** and other proceedings ***shall be stayed*** during the pendency of any motion to dismiss, unless the court finds upon motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

15 U.S.C. § 78u-4(b)(3)(B) (West 1997) (emphasis added). This section was "intended to prevent unnecessary imposition of discovery costs on defendants." H.R. Conf. Rep. No. 104-369, 104th Cong. 1st Sess. at 32 (1995), *reprinted in* 1995 U.S.C.C.A.N. Sess. 731. The Act was passed in response to perceived abuses in securities litigation and was designed to restrict those abuses (including, among other things, the practice of making securities fraud claims against non-issuers of alleged misstatements to the investing public) and to protect defendants from the abusive practice of plaintiffs' counsel "discovering" their way into facts in an effort to amend inadequate pleadings so as to state a claim. *Log On America, Inc. v. Promethean Asset Management, L.L.C.*, No. 00 CIV 6218 (RMB), 2001 WL 1658223, at * 1 (S.D.N.Y. Dec. 26, 2001); *SG Cowen Sec. Corp. v. United States District Court for the Northern District of California*, 189 F.3d 909, 911 (9th Cir. 1999) (*quoting In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 531-31 (3d Cir. 1999)). The Reform Act stay gives effect to Congress's intent to permit discovery "in securities class actions only after the court has sustained the legal sufficiency of the complaint." *Novak v. Kasaks,* No. 96 CIV 3073 (AGS), 1996 WL 467534 at *1 (S.D.N.Y. Aug. 16, 1996) (*quoting* Senate Comm. on Banking, Housing and Urban Affairs, Private Securities Litigation Reform Act of 1995, S. Rep. No. 98., 104th Cong., 1st Sess. 14 (1995)).

15. The true intent of the TRK Plaintiffs is to do precisely what the Reform Act prohibits. The heading of Section IV of the TRK Plaintiffs' Memorandum plainly states: "The ERISA Plaintiffs should be permitted discovery *to* ***establish*** *the insider trading of the*

Defendants." TRK Plaintiffs' Memorandum at 7 (emphasis added). The TRK Plaintiffs' motion does not represent an effort to conduct discovery to preserve evidence for trial or to avoid undue prejudice if the Reform Act stay is not lifted. Rather, the TRK Plaintiffs want to conduct a fishing expedition in the unsupported hopes of uncovering facts to use in making securities fraud claims. Accordingly, the TRK Plaintiffs' request should be denied. *See, e.g., SG Cowen Sec. Corp.*, 189 F.3d at 912-13 (holding that a "failure to muster facts sufficient to meet the [Reform] Act's pleading requirements cannot constitute the requisite 'undue prejudice' to the plaintiff justifying a lift of the discovery stay under 78u-4(b)(3)(B)"); *see also DM Research v. College of American Pathologists*, 170 F.3d 53, 55 (1st Cir. 1999) (finding *factual* allegations in pleading must demonstrate relevance for discovery into a matter; "Conclusory allegations in a complaint, if they stand alone, are a danger sign that the plaintiff is engaged in a fishing expedition").[8]

16. In this case, the TRK Plaintiffs' allegations against Kopper do not satisfy the Reform Act's pleading requirements because, among other things, the TRK Plaintiffs have not identified (much less identified with particularity) a single statement alleged to have been made by Kopper upon which shareholders allegedly relied in making any decision to buy or sell Enron stock.[9] In their Amended Derivative Complaint, the TRK Plaintiffs reference several press

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[8]The premise for the TRK Plaintiffs' Motion for expedited discovery is their alleged desire to discover information regarding their allegations "that the individual defendants engaged in insider trading during the relevant period, and [] that the proceeds of those transactions are [allegedly] at risk of being removed from the Court's reach." TRK Plaintiffs' Memorandum at 7. However, the scope of the document and deposition requests they propose to serve go far beyond these narrow areas of inquiry to include matters concerning, for example, Enron partnerships, accounting practices by Enron auditors, Board of Directors reports and minutes, documents produced to the Securities and Exchange Commission, and computer data retention policies at Enron. *See id.* at 9. The scope of the discovery proposed to be served only underscores the real (and inappropriate) purposes behind the TRK Plaintiffs' efforts, which violate the Reform Act stay.

[9]The inadequacies of "group pleadings" to satisfy pre- and post-Reform Act requirements has been the subject of many decisions in this Circuit and others. *See, e.g., Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 177-79 (5th Cir. 1997) (pre-Reform Act standard); *Melder v. Morris*, 27 F.3d 1097,

releases and SEC documents issued or filed by "Enron" from 1998 to 2001 and "in-house" promotional statements allegedly made to the Savings Plan participants concerning Enron. *See* Amended Derivative Complaint at 20-26. Notably, however, the TRK Plaintiffs do not specifically attribute any of these statements to Kopper. Moreover, the TRK Plaintiffs have not pleaded a single specific fact indicating that Kopper, in any way, directed or otherwise participated in making or disseminating any of the press releases, SEC documents, and/or in-house publications referenced in their Amended Derivative Complaint. They plead only that "Enron" or "Enron and certain of its senior management" may have been responsible for drafting or disseminating this information.

17. Pursuant to the Court's scheduling order, Kopper has yet to make an appearance with respect to any allegations of securities fraud made against him. Any such allegations included in an amended consolidated complaint, as yet to be filed pursuant to the Court's scheduling order and the Reform Act, will be the subject of a motion to dismiss pursuant to the Federal Rules of Civil Procedure and the Reform Act. Thus, the request for discovery made by the TRK Plaintiffs is premature. If and as needed, the Court will have an opportunity to address motions to dismiss the amended consolidated complaints filed by Kopper. However, in the meantime, the TRK Plaintiffs cannot "jump the gun" by premising their request to "freeze" assets and seek discovery on non-actionable securities fraud claims.

18. Any effort by the TRK Plaintiffs to avoid the Reform Act stay, by referring to themselves as "ERISA Plaintiffs," falls flat. The TRK Plaintiffs cite no authority for the bald

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1100 (5th Cir. 1994) (pre-Reform Act standard); *McNamara v. Bre-X Minerals, Ltd.*, 57 F. Supp.2d 396, 428 (E.D. Tex. 1999); *Coates v. Heartland Wireless Communications, Inc.*, 26 F. Supp.2d 910, 916 (N.D. Tex. 1998) (post-Reform Act standard); *Thornton v. Micrografx, Inc.*, 878 F. Supp. 931, 938 (N.D. Tex. 1995) (pre-Reform Act standard). This well-established case law is incorporated into the TKR Plaintiffs' obligations with respect to any amended consolidated complaint to be filed under FED. R. CIV. P. 11.

assertion that the Reform Act stay does not apply to them because they are "ERISA Plaintiffs," TRK Plaintiffs' Memorandum at 8, for obvious reasons. The Reform Act stay applies to all securities fraud claims, whether made by persons who call themselves "securities fraud plaintiffs" or persons who call themselves "ERISA Plaintiffs." *See* TRK Plaintiffs' Memorandum at 5 (admitting that the TRK Plaintiffs' Section 10(b) and Rule 10b-5 claims are "based on the *very same claims as the securities plaintiffs*"). The Reform Act makes no distinction between federal securities claims brought by non-employee shareholders and those asserted by shareholders who happen also to be employees and members of one or more of the corporation's ERISA plans. It is the *substance* of the allegations made by plaintiffs that matters — not the TRK Plaintiffs' description of themselves.

2. The Discovery Sought by the TRK Plaintiffs is Not "Unique" to Their Claims.

19. In its February 27, 2002 Scheduling Order, the Court has indicated that it will allow the TRK Plaintiffs to proceed with discovery only to the following extent: "[T]he Plaintiffs in the *Tittle* case, inasmuch as they are not subject to the PLSRA stay of discovery, may immediately begin any discovery unique to their case that has not been stayed in the *Newby* case by the PLSRA." *Newby*, Dkt. No. 326 at 4. As indicated above, the TRK Plaintiffs admit that the claims upon which their "asset freeze" and "expedited discovery" requests are premised are securities fraud claims, not ERISA claims. Thus, in addition to violating the Reform Act stay, the discovery requested is not in compliance with the Court's scheduling order.

C. TRK Plaintiffs Have Failed to Show Entitlement to Equitable Relief.

20. Even if the TRK Plaintiffs had as a threshold matter made a showing that relief against Kopper was even conceivable under the Court's January Order (which they have not),

and even if they had made cognizable securities fraud claims against Kopper (which they have not), they would still not be entitled to any of the equitable relief or discovery they seek.

21. In its Order on the Amalgamated Bank Motion, the Court held that a "nexus between the assets sought to be frozen through an interim order and the ultimate relief requested in the lawsuit is *essential* to the authority of a district court in equity to enter a preliminary injunction freezing assets." January Order at 14 (emphasis added); *see Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc.*, 119 S. Ct. 1961, 1969, 1970 (1999) (finding that the general rule is well-established "that a judgment establishing the debt [is] necessary before a court of equity [can] interfere with the debtor's use of his property. . . . [Such judgment] giving the creditor an interest in the property which equity could then act on."). The TRK Plaintiffs have made no such showing.

22. Likewise, the TRK Plaintiffs have made no effort to "demonstrate there exists a substantial threat of irreparable injury if the preliminary injunction is not granted." January Order at 39.

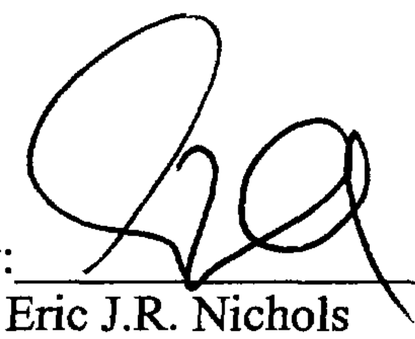
23. As the Court concluded in its January Order, a preliminary injunction freezing the assets of any defendant cannot be entered unless plaintiffs adduce sufficient evidence demonstrating that each, or any, identified defendant "has, or is likely to, conceal the stock sales proceeds or profits or place them beyond reach, absent immediate judicial intervention." January Order at 7. In addition to the fact that they do not allege a single insider trading violation against Kopper, the TRK Plaintiffs have not alleged that Kopper has or will take any action to place any asset beyond the reach of this Court while this case is pending resolution. Likewise, the TRK Plaintiffs have made no effort to show that discovery is necessary in the case of Kopper because they will be unduly prejudiced or that evidence will not be preserved in the absence of such

discovery. 15 U.S.C. § 78u-4(b)(3)(C). Absent such a showing, there is no legal or equitable basis for imposing upon him the injunction the TRK Plaintiffs are now seeking. *See In re Grand Casinos, Inc. Sec. Litig.*, 988 F. Supp. 1270, 1271-72 (D. Minn. 1997); *In re Tyco Int'l, Ltd. Sec. Litig.*, No. 00MD1335, 2000 WL 33654141 (D.N.H. July 27, 2000). In short, the TRK Plaintiffs have not cited any particularized allegations or information that the relief requested is justified in this case. *Compare In re Websecure, Inc.*, 1997 WL 770414 at *4 (D. Mass. Nov. 26, 1997).

IV.
CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Michael J. Kopper respectfully requests that the Court deny the TRK Plaintiffs' Motion for a Preliminary Order Freezing and Imposing Constructive Trust Over the Individual Defendants' Assets and Limited Expedited Discovery into Those Assets. A proposed form of order denying the motion is attached for the Court's convenience.

Respectfully submitted,



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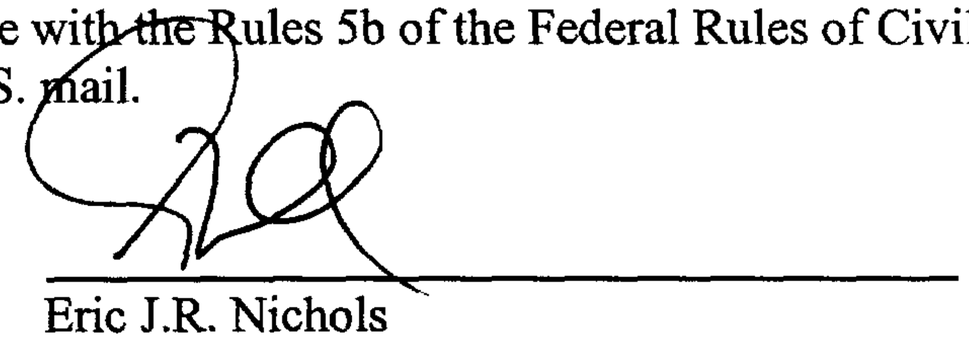
This pleading was served in compliance with the Rules 5b of the Federal Rules of Civil Procedure on the day of March 6, 2002, by U.S. mail.



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

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

PIRELLI ARMSTRONG TIRE CORPORATION RETIREE MEDICAL BENEFITS TRUST, Derivatively on Behalf of ENRON CORPORATION, ET AL.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. H-01-3645
	§	AND CONSOLIDATED CASES
KENNETH L. LAY, ET AL.,	§	
	§	
Defendants.	§	

PAMELA M. TITTLE, On Behalf of Herself and A Class of Persons Similarly Situated, ET AL.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. H-01-3913
	§	AND CONSOLIDATED CASES
ENRON CORP., an Oregon Corporation, ET AL.,	§	
	§	
Defendants.	§	

ORDER

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ON THIS DAY the Court considered the Motion of the *Tittle, Rinard* and *Kemper* Plaintiffs for a Preliminary Order Freezing and Imposing Constructive Trust Over Individual Defendants' Assets and Limited Expedited Discovery Into Those Assets. Having considered the motion, the responses filed in opposition to the motion, the arguments of counsel, and the applicable authorities, it is the opinion of this Court that, as to the allegations against Defendant Michael J. Kopper, the Motion should in all things be denied. The Court therefore

ORDERS that the Motion of the *Tittle, Rinard* and *Kemper* Plaintiffs for a Preliminary Order Freezing and Imposing a Constructive Trust Over Individual Defendants' Assets and Limited Expedited Discovery Into Those Assets is in all things DENIED.

Signed at Houston, Texas, this the _____ day of March, 2002.

_____
MELINDA HARMON
UNITED STATES DISTRICT JUDGE