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

United States Courts
Southern District of Texas
FILED
MAR - 8 2002
Michael N. Milby, Clerk

C.H.

AMERICAN NATIONAL INSURANCE COMPANY; AMERICAN NATIONAL INVESTMENT ACCOUNTS, INC.; SM&R INVESTMENTS, INC.; AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY; STANDARD LIFE AND ACCIDENT INSURANCE COMPANY; FARM FAMILY LIFE INSURANCE COMPANY; FARM FAMILY CASUALTY INSURANCE COMPANY; and NATIONAL WESTERN LIFE INSURANCE COMPANY
Plaintiffs

v.

ARTHUR ANDERSEN, L.L.P., D. STEPHEN GODDARD, JR. ;DAVID DUNCAN; KENNETH L. LAY; JEFFREY K. SKILLING, ANDREW S. FASTOW, RICHARD A. CAUSEY; RICHARD B. BUY; MICHAEL J. KOPPER; ROBERT K. JAEDICKE; RONNIE C. CHAN; JOE C. FOY; JOHN WAKEMAN; WENDY L. GRAMM; BRUCE G. WILSON; JOHN MENDELSON; PAULO V. FERRAZ PEREIRA; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; JOHN H. DUNCAN; CHARLES A. LEMAISTRE; FRANK SAVAGE; HERBERT S. WINOKUR, JR.; KEN L. HARRISON; REBECCA MARK-JUSBASCHE; JEROME J. MEYER; JOHN A. URQUHART; and CHARLES E. WALKER
Defendants

§

~~CIVIL ACTION NO. G-02-0084~~
CONDOLIDATED WITH ~~H-01-3624~~

OBJECTION TO CONSOLIDATION AND MOTION FOR ORAL ARGUMENT

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Plaintiffs, American National Insurance Co., et. al., subject to and without waiving its pending Motion to Remand, file this Objection to the consolidation of Plaintiffs' action with *Newby v. Enron*. The Court entered a Consolidation Order on February 28, 2002, consolidating Plaintiffs' action with the already-consolidated *Newby v. Enron* proceeding. Plaintiffs object to any consolidation, but in particular object that actions brought solely under state law have been consolidated with action brought pursuant to federal law.

Unlike many plaintiffs in the Newby action, Plaintiffs' causes of action all arise under state law. The applicable law and the evidentiary burdens under the state law claims vary considerably from the law and evidence required in federal securities actions. For example, to establish statutory fraud under Texas law, the plaintiff need not prove knowledge or recklessness as a prerequisite to the recovery of actual damages. *Brush v. Reata Oil & Gas Corp.*, 984 S.W.2d 720, 726 (Tex. App. – Waco 1998, writ denied); *Swanson v. Schlumberger Technology Corp.*, 895 S.W.2d 719, 732 (Tex. App. – Texarkana 1994), *rev'd on other grounds*, 959 S.W.2d 171 (Tex. 1997); *Diversified, Inc. v. Walker*, 702 S.W.2d 717, 723 (Tex. App. – Houston [14th Dist.] 1985, writ ref'd n.r.e.).

Consolidating the lawsuits of plaintiffs asserting only state law claims with those also asserting federal securities violations will not promote judicial economy and, if the case were tried as a consolidated cause, would tend to create jury confusion. To avoid the manageability problems associated with a single consolidated action such as the presently-constituted *Newby* proceeding, Plaintiffs request that a separate proceeding, comprising those plaintiffs asserting only state law claims, be created. Plaintiffs request oral argument concerning this issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this motion was served on counsel for each party as listed on the attached service list on 7 March, 2002.

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AMERICAN NATIONAL INSURANCE COMPANY; AMERICAN NATIONAL INVESTMENT ACCOUNTS, INC.; SM&R INVESTMENTS, INC.; AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY; STANDARD LIFE AND ACCIDENT INSURANCE COMPANY; FARM FAMILY LIFE INSURANCE COMPANY; FARM FAMILY CASUALTY INSURANCE COMPANY; and NATIONAL WESTERN LIFE INSURANCE COMPANY Plaintiffs	'	
v.	'	CIVIL ACTION NO. G-02-0084 CONDOLIDATED WITH H-01-3624
ARTHUR ANDERSEN, L.L.P., D. STEPHEN GODDARD, JR. ;DAVID DUNCAN; KENNETH L. LAY; JEFFREY K. SKILLING, ANDREW S. FASTOW, RICHARD A. CAUSEY; RICHARD B. BUY; MICHAEL J. KOPPER; ROBERT K. JAEDICKE; RONNIE C. CHAN; JOE C. FOY; JOHN WAKEMAN; WENDY L. GRAMM; BRUCE G. WILSON; JOHN MENDELSON; PAULO V. FERRAZ PEREIRA; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; JOHN H. DUNCAN; CHARLES A. LEMAISTRE; FRANK SAVAGE; HERBERT S. WINOKUR, JR.; KEN L. HARRISON; REBECCA MARK-JUSBASCHE; JEROME J. MEYER; JOHN A. URQUHART; and CHARLES E. WALKER Defendants	'	

ORDER

Before the Court is Plaintiffs' request for oral argument concerning the question of whether the actions brought by plaintiffs asserting only state law claims should be severed from this action. The court finds that the request has merit.

It is the ORDER of the Court that a hearing for oral argument on this issue is set for _____ on _____, 2002.

DONE this ____ day of _____, 2002

_____
MELINDA HARMOND
UNITED STATES DISTRICT JUDGE