

NC

MAR 26 2002

Michael N. Milby, Clerk

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

AMERICAN NATIONAL INSURANCE CO., §  
et al., §  
Plaintiffs, §  
vs. §  
ARTHUR ANDERSEN L.L.P., et al., §  
Defendants §

Civil Action No. G-02-0084  
Consolidated Lead H-01-3624

DEFENDANT ARTHUR ANDERSEN LLP'S OPPOSITION TO  
AMERICAN NATIONAL INSURANCE COMPANY'S OBJECTION TO CONSOLIDATION

Defendant Arthur Andersen LLP ("Andersen") submits memorandum in opposition to the objection to consolidation filed by 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 (together "American National"). In their Objection to Consolidation, these plaintiffs rely on only one argument – that their case should not be consolidated with the dozens of other cases consolidated in the Newby actions because they purport to assert only state-law claims<sup>1</sup>. This argument fails because these claims, like all others in these Enron-related

---

<sup>1</sup>Although consolidation in this Court does not depend on whether the plaintiffs assert federal or state law claims, their state law claims are preempted by the Securities Litigation Uniform Standards Act of 1998, pursuant to which their complaint has been removed. Plaintiffs have filed a motion to remand, which has been briefed separately by the parties. Resolution of that motion is not essential to the resolution of American National's objection to consolidation because consolidation is premised upon the

(continued...)

415

cases, regardless of whether predicated on state or federal law, arise from a common nucleus of operative fact, contain overlapping legal issues, and will require common discovery.

## ARGUMENT

### AMERICAN NATIONAL'S CLAIMS INVOLVE QUESTIONS OF LAW AND FACT COMMON TO THE OTHER CONSOLIDATED ACTIONS

This Court has the authority to “‘order all actions consolidated’ when they involve ‘a common question of law or fact.’” Harcon Barge Co. v. D&G Boat Rentals, Inc., 746 F.2d 278, 286 (5th Cir. 1984) (quoting Fed. R. Civ. P. 42(a)). Rule 42(a) is a “broad grant of authority” to the District Court, which “has been applied liberally” in this Circuit. In Re Air Crash Disaster, 549 F.2d 1006, 1013 (5th Cir. 1977). This Court has already determined that consolidation is proper where, as here, the Enron-related cases “all arise from a common core of operative facts. they are filed against common defendants. Many contain identical claims. The legal issues will overlap. Much of the discovery will be common to all the cases.” Newby v. Enron Corp., No. H-01-3624 (and consolidated cases) (S.D. Tex. Dec. 13, 2001).

In their objection, plaintiffs do not argue that this Court applied an improper standard in ordering consolidation. Moreover, they do not and could not show that their complaint does not involve questions

---

<sup>1</sup>(...continued)

factual allegations of the complaints and is proper whether the legal claims are premised upon state or federal law. See Newby v. Enron Corporation, H-01-3624, Memorandum and Order dated February 6, 2002 at p. 23 (state law claims in Coy arise from the same nucleus of operative fact, resulting in a strong nexus between federal and state claims.)

of fact common to the other Enron-related actions. On the contrary, the complaint is predicated upon issues of fact common to all the complaints, as well as overlapping issues of law.

The American National complaint is brought against Arthur Andersen, certain of its current and former employees, as well as current and former employees and members of the Board of Directors of Enron Corporation, virtually all of whom are defendants in other cases already consolidated in Newby. Like virtually all of the other cases pending in these consolidated actions, the complaint purports to allege acts and omissions by defendants in connection with the “issuance of false and misleading financial statements by Enron for the years 1997, 1998, 1999, and 2001, which were relied upon by Plaintiffs in the purchase of Enron stocks, bonds, preferred stock, commercial paper and other securities.” American National Compl., ¶ 44. American National makes numerous conclusory allegations about inadequate disclosures regarding the Broadband Services Division, id., ¶ 46, various partnerships “controlled by Defendant Fastow”, id., ¶ 47, and “two other limited partnerships designed to obscure the true financial picture of the company [Chewco and Jedi].” Id., ¶ 47. As to Arthur Andersen specifically, American National alleges, again in conclusory fashion, among other things, that Arthur Andersen:

“obtained, or recklessly disregarded, certain evidentiary matter which provided it with information revealing adverse facts about Enron’s business and finances and improperly failed to require or to make disclosure of such facts. . . .”

“knew or recklessly disregarded facts which indicated that it should have qualified its opinion[s]...”

“failed to cause Enron to disclose material facts ...”

“knew or recklessly disregarded that Enron’s publicly reported revenues and earnings . . . were overstated ...”

“knew or recklessly disregarded that employees and officers of Enron had interests in and control over . . . [SPEs] which would have caused such SPEs to be [consolidated]...”

“knew or recklessly disregarded that employees and officers of Enron had close ties to the SPEs, which themselves had huge liabilities ...”

Id., ¶ 58. American National further alleges that Andersen violated GAAS. Id., ¶ 59.

Many of the other consolidated actions include claims against Andersen based on substantively similar, if not identical, factual allegations involving Enron’s financial reporting. These complaints likewise emphasize entities (including Cheweo, JEDI, and the alleged “Fastow controlled” partnerships) and transactions related to the restatement of Enron’s financial statements. See, e.g., Amalgamated Bank Amd. Compl. ¶¶95-118, 125-144; Archdiocese of Milwaukee Amd. Compl. ¶¶ 53-74, 79-96.

The amended Amalgamated Bank complaint, for example, alleges:

- Arthur Andersen falsely represented that Enron’s financial statements for 1997, 1998, 1999 and 2000 were presented in accordance with GAAP and that Arthur Andersen’s audits of Enron’s financial statements had been performed in accordance with Generally Accepted Auditing Standards (“GAAS”). Arthur Andersen also consented to the incorporation of its false reports on Enron’s financial statements in Enron’s Form 10-Ks for those years and in [various prospectuses] . . . (Amalgamated Bank Amd. Comp. ¶ 126).
- Arthur Andersen’s reports were false and misleading due to its failure to comply with GAAS and because Enron’s financial statements were not prepared in conformity with GAAP . . . so that issuing the reports was in violation of GAAS and SEC rules. Arthur Andersen knew that its reports would be relied upon by the Company as well as by present and potential investors in Enron’s stock. (Id. ¶ 131).

Contrary to its sole argument in opposition to consolidation, American National’s complaint also gives rise to numerous legal issues in common with the other actions. Although American National argues that its purported “statutory fraud in stock transactions” claim does not require it to establish “knowledge or recklessness,” and even assuming, arguendo, this is correct, it is clear that its other claims do. Like the other cases pending before this Court, American National’s complaint, which alleges, among other things,

common law fraud and negligence, raises issues of knowledge, intent, misrepresentation, compliance with GAAS and GAAP, scienter, reliance, injury and proximate cause.

There is nothing separate or distinct about the American National claims. They include all of the same defendants as are named in many of the other actions. The very same discovery will be necessary to develop a factual record with respect to the claims they assert.<sup>2</sup> Allowing this complaint to proceed on a separate track would merely cause a duplication of expense and effort and would be a waste of judicial resources. The American National complaint will be most efficiently resolved as part of the consolidated Newby cases.

---

<sup>2</sup>For all of these reasons, this Court has overruled other plaintiffs' objections to consolidation on grounds substantially identical to those urged by American National. Newby v. Enron Corp., No. H-01-3624 (and consolidated cases) (S.D. Tex. Feb. 6, 2002). See id. at 24 (overruling Coy plaintiffs' objection to consolidation); Newby v. Enron Corp., No. H-01-3624 (and consolidated cases) (S.D. Tex. Feb. 15, 2002) at 25 (overruling Odam plaintiffs' objections); id. at 29 (overruling Steiner plaintiffs' objection).

CONCLUSION

For the foregoing reasons, defendant Arthur Andersen LLP respectfully requests that the American National Plaintiffs' Objection to Consolidation be overruled, and that this Court proceed with this action as currently consolidated.

Dated: Houston, Texas  
March 26, 2002

Respectfully Submitted,

By: Rusty Hardin by *A. Ramzel*  
Rusty Hardin  
State Bar No. 08972800  
S.D. Tex. I.D. No. 19424  
*with permission.*

RUSTY HARDIN & ASSOCIATES, P.C.  
1201 Louisiana, Suite 3300  
Houston, Texas 77002  
(713) 652-9000  
(713) 652-9800 (fax)

Attorney-in-Charge for  
Defendant Arthur Andersen LLP

OF COUNSEL

Andrew Ramzel  
State Bar No. 00784184  
S.D. Tex. I.D. No. 18269  
RUSTY HARDIN & ASSOCIATES, P.C.

Daniel Kolb  
Michael P. Carroll  
Sharon Katz  
DAVIS POLK & WARDWELL  
450 Lexington Avenue  
New York, New York 10017  
(212) 450-4000  
(212) 450-3633 (fax)

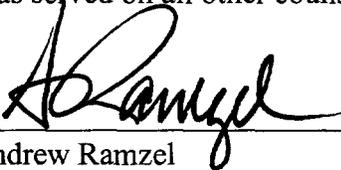
**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of March, 2002, the foregoing Opposition to Plaintiffs' Objection to Consolidation was served on

Mr. Andrew J. Mytelka  
Greer, Herz & Adams, L.L.P.  
One Moody Plaza, 18th Floor  
Galveston, Texas 77550

Mr. William Lerach  
Milberg Weiss Bershad Hynes & Lerach, L.L.P.  
401 B Street, Suite 1700  
San Diego, CA 921010-4297

by certified mail return receipt requested and was served on all other counsel by first class mail.

  
\_\_\_\_\_  
Andrew Ramzel