

IN THE UNITED STATES DISTRICT COURT MAR 29 2002 LF  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

*Michael N. Milby, Clerk*

Ralph A. Wilt, Jr.,

§

Plaintiff

§

vs.

Civil Action No. H-02-0576

Consolidated Lead H-01-3624

Andrew S. Fastow, et al.

§

Defendants.

§

**MOTION OF THE VINSON & ELKINS DEFENDANTS  
TO OPPOSE CONSOLIDATION AND  
TO SEVER THE CLAIMS AGAINST THEM**

The Vinson & Elkins Defendants object to consolidation of the claims against them into the *Newby* litigation on the grounds that they do not fit into any of the categories set forth in the Court's December 12, 2001, Consolidation Order.<sup>1</sup> Further, Vinson & Elkins hereby moves pursuant to Rule 21 of the Federal Rules of Civil Procedure to sever the claims pending against them in this suit from the claims brought by the plaintiff against the other three groups of defendants. As explained in more detail in the attached memorandum of points and authorities in opposition to consolidation and in support of the motion for severance, this relief is sought for the following reasons:

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<sup>1</sup> The Order granting consolidation in this matter was entered on February 20, 2002. This objection is made pursuant to the provisions of the December 12, 2001 Order of Consolidation, which provides that "[i]f any party objects to the consolidation, that party must file an objection with this court within 10 days of the filing of this Notice of Consolidation." Dec. 12 Order at 19.

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1. This case is brought by one plaintiff, Mr. Wilt, who, asserting solely state law claims, seeks to recover his alleged \$11,000 loss on his investment in Enron from four groups of defendants – Enron directors and officers, Arthur Andersen and its affiliates and some of its partners, the V&E defendants and 500 unnamed “Doe” “corrupt public officials” who are allegedly engaged in a “gargantuan fraud” with the other defendants.

2. The case is brought on Mr. Wilt’s behalf by Judicial Watch, Inc., a self-proclaimed “public interest organization” whose strategy is to “utilize the court system in a creative manner ... to expose corruption at all levels of government.”

3. There is no other case pending against V&E in the *Newby* litigation, or elsewhere, involving the failure of Enron. If the consolidation were to be granted, the effect would be to drag V&E into this massive securities fraud litigation when no federal securities claims are made against V&E, based upon an alleged \$11,000 loss brought by a plaintiff whose goals may not even be recovery of any financial losses.

4. The December 12 Consolidation Order expressly permits consolidation of claims involving (1) federal securities law against (2) an identifiable group of then-existing defendants in class action securities cases. Mr. Wilt, suing as an individual and not a member of a class, does not seek to recover loss from V&E based upon violations of federal securities law (nor could he in light of the Supreme Court’s decision in

*Central Bank of Denver, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164 (1994)), and V&E is not one of the defendants expressly identified in the Consolidation Order.

5. Mr. Wilt's suit does not involve a "common core of operative facts" as the *Newby* securities litigation, if the Judicial Watch press release accompanying the filing of this suit is to be believed. That press release states that Wilt's suit is "[u]nlike many other lawsuits arising from the Enron scandal" and is designed to address "pervasive political, business and legal corruption."

6. Bringing V&E into this securities fraud litigation will inject difficult privilege issues into this case which will unduly complicate the *Newby* litigation. While lawyers may use privileged information to defend themselves, the courts have adopted mechanisms to prevent disclosure of the privileged information to those who would not be entitled to see it. Consolidating V&E into the *Newby* case would present difficult issues of judicial administration. Severing the litigation against the lawyers (here V&E) is a commonly used technique to avoid this problem and should be employed here.

The Consolidation Order was designed to streamline the litigation against a number of then-existing defendants and avoid multiplicity of suits. It would be contrary to the purposes of the Order, and the expeditious resolution of the larger *Newby* case, for V&E to be consolidated in this case. It would also be improper to join V&E to in this massive securities litigation, when no federal

securities claim is alleged against it, based upon a claim by one individual who allegedly incurred an \$11,000 loss and may be pursuing this case for reasons unrelated to any financial recovery.

Wherefore, V&E prays that the portion of the Court's Order of February 20, 2002, consolidating it into *Newby* be vacated and the claims against it be severed.

Respectfully submitted,

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Dated: March 4, 2002

## CERTIFICATE OF CONFERENCE

Pursuant to Rule 6A.4. of the Local Rules of the United States District Court for the Southern District of Texas, on March 1, 2002, Mr. John K. Villa, counsel for the Vinson & Elkins Defendants conferred with counsel for the Plaintiff, James F. Marshall, regarding the Vinson & Elkins Defendants' Motion to Oppose Consolidation and to Sever the Claims Against Them. Counsel cannot agree about the disposition of the Motion.

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John K. Villa  
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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the following documents were previously served by regular mail on counsel of record on the list attached as Exhibit "A" when these documents were originally filed on the 4th day of March, 2002:

Motion of the Vinson & Elkins Defendants to Oppose Consolidation and to Sever the Claims Against Them;

Memorandum of Points and Authorities of the Vinson & Elkins Defendants in Support of Their Objection to the Consolidation Order of February 20, 2002 and of Their Motion to Sever; and

Proposed Order.

This will further certify that an additional copy of the foregoing documents was served by regular mail on March 29, 2002 on counsel for Ralph Wilt and on lead counsel in the consolidated case. All counsel on the list attached as Exhibit "A" were also served by regular mail on March 29, 2002 with a copy of the letter accompanying this filing.

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