

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

United States Courts
Southern District of Texas
FILED

APR 18 2002 I F

Michael N. Milby, Clerk

MARK NEWBY, *et al.*,

Plaintiffs,

v.

ENRON CORP., *et al.*,

Defendants.

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Civil Action No. H-01-3624

Consolidated Lead Case

CLASS ACTION

**JEFFERY K. SKILLING'S MOTION FOR EMERGENCY INJUNCTIVE RELIEF
STAYING DISCOVERY IN BULLOCK V. ARTHUR ANDERSEN, L.L.P., ET AL.**

Jeffrey W. Kilduff
O'MELVENY & MYERS LLP
1650 Tysons Boulevard
McLean, Virginia 22102

Bruce A. Hiler
Robert M. Stern
O'MELVENY & MYERS LLP
555 Thirteenth Street, NW
Suite 500 West
Washington, DC 20004-1109

*Attorneys in Charge for
Jeffrey K. Skilling*

Of Counsel:

Ronald G. Woods
RONALD G. WOODS, ATTORNEY AT LAW
5300 Memorial, Suite 1000
Houston, Texas 77007

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TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Jeffrey K. Skilling, one of the defendants in the above-captioned action, respectfully submits this Motion for Emergency Injunctive Relief Staying Discovery *in Bullock v. Arthur Andersen L.L.P.*

On April 18, 2002, counsel for plaintiffs in *Bullock* served a subpoena on Mr. Skilling along with a request for production documents. The subpoena seeks testimony and documents from Mr. Skilling on May 3, 2002. This, at a time when Mr. Skilling and his counsel are laboring at a feverish pace to respond to the 500 page *Newby* class action, as well as the 300 page *Title ERISA* action. Allowing this discovery to go forward will undermine this Court's prior scheduling orders and efforts to pursue this litigation in a cost efficient and orderly manner, no doubt resulting in duplicative discovery and unnecessary disruption. In addition to this motion and the arguments set forth below, Mr. Skilling joins in the motion filed on April 17, 2002 by Arthur Andersen L.L.P. seeking similar relief based on discovery served on it by counsel for plaintiffs.

I.

INTRODUCTION

As this Court may recall, the law firm of Fleming & Associates ("Fleming") previously filed four successive state court actions in various counties throughout the state of Texas. All of the state court actions allege common law fraud-based claims in connection with the purchase and sale of Enron securities and are based upon virtually the same facts as the *Newby* litigation currently pending before this Court. Each time Fleming filed one of its state court actions, it obtained *ex parte* injunctive relief. As a result of Fleming's conduct, on February 12, 2002, Defendants Jeffrey K. Skilling, Kenneth L. Lay, Andrew S. Fastow and David Duncan moved this Court for various forms of injunctive relief designed to prevent Fleming from continuing its

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parade through the state courts of Texas, filing duplicative actions and obtaining TROs *ex parte*.

On February 15, 2002, this Court issued a Memorandum and Order enjoining Fleming from filing any new Enron-related actions without leave of court and ordering it to dissolve one of the TROs that it had obtained¹ in order to protect its jurisdiction over the *Newby* action. (2/15/02 Order at 8.) As the Court pointed out in its Memorandum, Fleming's prosecution of duplicative state court proceedings "threaten[ed] to disrupt the orderly resolution of the consolidated *Newby* actions. Such a circumstance would constitute irreparable harm to the defendants for which there is no adequate remedy at law." (*Id.* (citation omitted))

Following this Court's entry of its injunction, on March 5, 2002, Judge Harry Lee Hudspeth entered an order remanding, *Bullock et al. v. Arthur Andersen L.L.P.*, A-02-CA-070-H (W.D. Tex), one of Fleming's previously filed state court actions which Defendant Arthur Andersen had removed. (3/5/2002 Order, attached hereto as Exhibit 1.) Shortly after Judge Hudspeth remanded the *Bullock* case, a status conference was set for March 28, 2002 in Washington County before the Honorable Terry Flenniken. (A copy of the Washington County court's letter order is attached hereto as Exhibit 2.) The Washington County court's letter order provides that the parties should be prepared to address:

1. scheduling,
2. Alternative Dispute Resolution,
3. pre-trial date, trial date and length of trial,
4. any anticipated discovery problems, and any other matters of concern.

(Exh. 2.)

On April 18, 2002, Fleming served Mr. Skilling with a subpoena and document requests.

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A copy of these papers are attached hereto as Exhibit 3. The subpoena seeks to take Mr. Skilling's testimony on May 3, 2002. At a time when Mr. Skilling and his attorneys are stretched beyond capacity to respond to the 500 page Consolidated Complaint filed by the *Newby* plaintiffs in this action, as well as the 300 page *Tittle* complaint, having to address premature discovery requests in an outlying state court case is an unnecessary disruption.

Permitting discovery to go forward in *Bullock* would severely undermine the strong interest in conserving judicial resources and conducting discovery once, in a coordinated and efficient manner that this Court has already indicated that it possesses (*Cf.* 1/22/02 *Tittle* Order, H-01-3913 ("Assuming that the litigation proceeds, given its size and complexity and the fact that many of the parties and counsel are involved in more than one group of cases, the Court believes that the savings in time, expense, and harassment of parties and witnesses by consolidation of discovery to the extent possible more than balances the amount of inconvenience and delay that may be experienced.")) Furthermore, the Case Management Order currently in place in the *Newby* litigation sets an extremely aggressive schedule—and frankly a schedule that the Defendants continue to believe is overly optimistic in light of the magnitude of this litigation—such that the possibility of duplicative discovery taking place in various individual state court proceedings would significantly impair the Defendants' ability to comply with the current schedule.² (*See* 2/27/02 Order.)

Finally, if *Bullock* or any other state court actions are permitted to proceed independent of the *Newby* litigation, it is difficult to see how any coordinated efforts to resolve this litigation

¹ That TRO being the one issued in the *Jose et al. v. Arthur Andersen L.L.P. et al.*, No. 2002-CI-01906 (57th Judicial Dist., Bexar County) action.

² For example, one could easily envision a scenario whereby one or more individual state actions proceed to trial in advance of the December 1, 2003 trial date set by the *Newby* Case Management Order. (*See* 2/27/2002 Order) Obviously, defense counsel could not try those cases and still meet the deadlines that this Court has currently imposed.

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prior to a trial on the merits of these claims could prove fruitful.

The only way that the *Newby* litigation could realistically proceed on the schedule that this Court has set would be for the Court to stay any and all discovery in the *Bullock* proceeding until after any motions to dismiss are decided and discovery commences in the *Newby* litigation.

II.

ARGUMENT

As set forth in detail below, this Court has the authority to issue an injunction staying discovery in the *Bullock* action under both the Private Securities Litigation Reform Act (“Reform Act”) and the All Writs Act. Mr. Skilling respectfully requests that this Court exercise that authority in order to prevent discovery from proceeding in *Bullock* on a different time table than discovery in the *Newby* litigation. The inefficiencies of such a result are obvious. In order to prevent potentially conflicting discovery orders, to allow Defendants enough time and resources to adequately respond to the aggressive scheduling order set forth by this Court in *Newby*, and to protect this Court’s exercise of its jurisdiction over the *Newby* litigation, it should order discovery stayed in *Bullock* until this Court rules on the forthcoming motions to dismiss.

A. Discovery In *Bullock* Should Be Stayed Under the Private Securities Litigation Reform Act

The Reform Act, as amended by the Securities Litigation Uniform Standards Act of 1998, provides, in relevant part:

[A] court *may stay discovery* proceedings *in any private action in a State court*, as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.

15 U.S.C. § 78u-4(b)(3)(D).

This provision was designed to prevent plaintiffs’ attorneys from circumventing the discovery stay that the Reform Act imposes on federal securities class actions by seeking to

obtain similar discovery in a parallel state court action. *See* H.R. Rep. 105-640, July 21, 1998; *see also* 15 U.S.C. § 78a (indicating that Congress found that following the enactment of the Reform Act, there was “considerable evidence . . . that a number of securities class action lawsuits have shifted from Federal to State courts.”)

In fact, the legislative history behind section 78u-4(b)(3)(D) makes very clear that Congress intended the provision to be used to stay discovery in precisely the sort of situation that the *Bullock* case presents here. As the House Commerce Committee noted:

[Section 78u-4(b)(3)(D)] amends Section 27(b) of the Securities Act of 1933 to include a provision to prevent plaintiffs from circumventing the stay of discovery under the Reform Act by using State court discovery, which may not be subject to those limitations, in an action filed in State Court. This provision expressly permits a Federal court to stay discovery proceedings *in any private action in a State court* as necessary in aid of its jurisdiction, or to protect or effectuate its judgments. . . . *Because circumvention of the stay of discovery of the Reform Act is a key abuse that this legislation is designed to prevent, the Committee intends that courts use this provision liberally, so that the preservation of State court jurisdiction of limited individual securities fraud claims does not become a loophole through which the trial bar can engage in discovery not subject to the stay of the Reform Act.*

H.R. Rep. 105-640 (emphasis added).

This is precisely the situation with which this Court is confronted here. If discovery is not stayed in the *Bullock* state court action until motions to dismiss are ruled on in the *Newby* litigation, then the *Bullock* action will become “a loophole through which the trial bar can engage in discovery not subject to the stay of the Reform Act.” *Cf. id.* Consequently, the Court should exercise its authority under section 78u-4(b)(3)(D) and stay discovery in the state court *Bullock* action.

B. Discovery In *Bullock* Should Be Stayed Under the All Writs Act

Alternatively, this Court also has the power to stay discovery in the *Bullock* state court

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action under the All Writs Act. As this Court is already aware from prior briefing, the All Writs Act provides federal courts have broad authority to issue an injunction when “necessary to prevent a state court from so interfering with a federal court’s consideration or disposition of a case as to seriously impair the federal court’s flexibility and authority to decide that case.”

Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295 (1970) (“Atlantic Coast”); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1334 (5th Cir. 1981), *cert. denied*, 456 U.S. 936 (1982) (same); *see also* All Writs Act, 28 U.S.C. § 1651 (“The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”), Anti-Injunction Act, 28 U.S.C. § 2283 (permitting a federal court to issue an injunction to stay a state court proceeding “as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.”)

From the plain language of the All Writs and Anti-Injunction Acts courts have construed three exceptions under which federal courts may enjoin a state proceeding pursuant to the All Writs Act:

1. Where the injunction is authorized by an Act of Congress other than the Anti-Injunction Act;
2. Where the issuance of an injunction is necessary in aid of the federal court’s jurisdiction; or
3. Where issuance of the injunction is necessary to protect or effectuate the federal court’s judgments or orders.

See Atlantic Coast, 398 U.S. at 287-88; *Standard Microsystems Corp. v. Texas Instruments Inc.*, 916 F.2d 58, 60 (2d Cir. 1990). Two of the three above exceptions apply in this case.

1. Section 78u-4(b)(3)(D) Of The Reform Act Provides This Court With Express Authority To Stay Discovery In *Bullock*

First, section 78u-4(b)(3)(D) of the Reform Act provides this Court with an Act of

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Congress that expressly authorizes the issuance of an injunction under the All Writs Act. As discuss in detail above, the entire purpose behind section 78u-4(b)(3)(D) was to provide federal courts with the authority issue injunctions staying discovery in parallel state court proceedings where permitting discovery to go forward would frustrate the broad stay of discovery applicable in federal securities cases. Consequently, there can be no serious dispute that section 78u-4(b)(3)(D) constitutes an “express Act of Congress” authorizing this Court to stay discovery in the *Bullock* action. *Cf. BankAmerica Corporation Securities Litigation*, 263 F.3d 795 (8th Cir 2001) (holding that the Reform Act constituted an act of Congress sufficient to support the issuance of an All Writs Act injunction enjoining a parallel state court action).

2. A Stay Of Discovery In *Bullock* Is Necessary In Aid Of This Court’s Jurisdiction

Second, issuance of an injunction staying discovery in *Bullock* is necessary in aid of the this Court’s jurisdiction over the *Newby* litigation. *Cf. In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1334-35 (5th Cir. 1981), *cert. denied*, 456 U.S. 936 (1982) (issuing an All Writs Act injunction in a complex multi-district litigation where a parallel state action would derogate the federal court’s jurisdiction), *see also, Carlough v. American Products, Inc.*, 10 F.3d 189, 197 (3d Cir. 1993) (same). Under the PSLRA, the federal securities class action will be subject to various procedural safeguards that Congress enacted to protect against frivolous filings, including: (1) selection of lead plaintiff and lead counsel; and (2) the automatic discovery stay. *Cf. 15 U.S.C. §§ 77z-1, 78u*. The safeguards will necessarily result in the federal action proceeding more slowly than any parallel state proceeding would.

By comparison, Fleming have requested a preferential trial date in *Bullock* under Texas Government Code § 23.101(a)(1). If the *Bullock* case, or any future case filed by Fleming is permitted to go forward, such action would undoubtedly reach resolution before the putative class action currently pending before this Court. In fact, it is likely that *Bullock*, if not stayed,

could proceed *to trial before substantive discovery even commences* in the *Newby* litigation. Thus, the state court opinion would undermine this Court's exercise of its jurisdiction.

Moreover, as set forth in detail above, if discovery in parallel state proceedings is not stayed, management of discovery in the *Newby* litigation would be virtually impossible. The same parties that are named as defendants in *Newby* are named in *Bullock*.³ Given the limited human and financial resources of the *Newby* defendants there is simply no way that discovery in multiple Enron-related actions could be handled simultaneously. Consequently, a stay of discovery in the *Bullock* case is necessary for this Court to protect its jurisdiction over the *Newby* litigation.

III. EMERGENCY RELIEF SOUGHT

Pursuant to S.D. Tex. Local R. 7.8, Andersen respectfully asks the Court to decide this motion on an emergency basis. Under S.D. Tex. Local R.7.3, this motion would ordinarily be submitted on twenty days from today-May 7, 2002. However, the Subpoena that Fleming has served on Mr. Skilling would compel him to give testimony before the submission date unless the Court alters the submission date.

In light of the fact that the ordinary submission schedule fails to address these events, Mr. Skilling respectfully requests that the Court set this motion for submission on or before April 26,2002.

³ In addition to Jeffrey K. Skilling, the *Bullock* complaint names Arthur Andersen, L.L.P., D. Stephen Goddard, Jr., David Duncan, Debra A. Cash, Roger Willard, Thomas Bauer, Kenneth Lay, Andrew S. Fastow as defendants. All of these parties are also defendants in the *Newby* litigation.

IV.

CONCLUSION

For the foregoing reasons, Jeffrey K. Skilling moves for an Emergency Motion to Stay Discovery and to Enjoin Fleming From Seeking a Temporary Injunction in Bullock v. Arthur Andersen L.L.P.

Date: April 18, 2002

Respectfully Submitted,

By:  *by permission*
Jeffrey W. Kilduff
O'MELVENY & MYERS LLP
1650 Tysons Boulevard
McLean, Virginia 22102
(703) 287-2400

Bruce A. Hiler
Robert M. Stern
O'MELVENY & MYERS LLP
555 Thirteenth Street, NW
Suite 500 West
Washington, DC 20004-1109
Tel: 202/383-5300

*Attorneys in Charge for
Jeffrey K. Skilling*

Of Counsel.

Ronald G. Woods
RONALD G. WOODS, ATTORNEY AT LAW
5300 Memorial, Suite 1000
Houston, Texas 77007
Tel: 713/862-9600

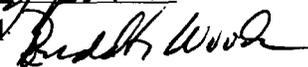
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 18th day of April, 2002 a true and correct copy of the foregoing:

1. Memorandum Of Law In Support Of Motion For Emergency Injunctive Relief Under The All Writs Act And Imposition Of Sanctions On Fleming & Associates; and
2. Order On Jeffrey K. Skilling's Emergency Motion To Stay Discovery *In Bullock v. Arthur Andersen LLP*

has been served pursuant to the Court's April 5, 2002 Order.


Robert M. Stern, Esq. 

FILED

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY M
DEPUTY CLERK

JANE BULLOCK, JOHN BARNHILL, §
DON REILAND, SCOTT BORCHART, §
MICHAEL MIES, VIRGINIA ACOSTA, §
JIM HEVELY, MIKE BAUBY, ROBERT §
MORAN, JACK & MARILYN TURNER, §
and HAL MOORMAN & MILTON TATE, §
CO-TRUSTEES FOR MOORMAN, TATE, §
MOORMAN & URQUHART MONEY §
PURCHASE PLAN AND TRUST, §

Plaintiffs, §

v. §

NO. A-02-CA-070-H

ARTHUR ANDERSEN, L.L.P., §
D. STEPHEN GODDARD, JR., §
DAVID B. DUNCAN, DEBRA A. CASH §
ROGER WILLARD, THOMAS H. BAUER §
ANDREW S. FASTOW, KENNETH L. §
LAY, AND JEFFREY J. SKILLING, §

Defendants. §

Reference Washington Co: 32,716

ORDER OF REMAND

Factual and Procedural History

On this day came on to be considered the above-styled and numbered cause which derives from the recent collapse of the Houston-based Enron Corporation. The Plaintiffs are citizens of the state of Texas and owners of Enron stock. They bring claims for fraud, negligence, and civil conspiracy against three of Enron's directors and/or officers, Enron's independent auditor, Arthur Andersen, L.L.P. ("Andersen"), and several partners at Andersen's Houston office.

This case was originally filed in the 21st Judicial District Court of Washington County, Texas, on January 24, 2002. Six days later, Defendant Andersen filed a notice of removal explaining that jurisdiction lies with this Court based on (1) the

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Securities Litigation Uniform Standards Act ("SLUSA") of 1998, and (2) allegations of federal securities law violations within the complaint. In their motion to remand, the Plaintiffs counter that SLUSA does not apply because they do not fit its definition of a "covered class" and that mere allegations will not give rise to federal question jurisdiction. After carefully considering Defendant Andersen's notice of removal, the Plaintiffs' motion to remand and Defendant Andersen's response thereto, the Court is of the opinion that this case should be remanded to state court for lack of subject matter jurisdiction.

Discussion

In its first argument, Defendant Andersen argues that Congress has expressly preempted state law class actions alleging fraud in connection with the purchase or sale of covered securities. SLUSA, it says, requires that this case be removed from state court. As such, the Court will begin its analysis with a brief examination of the influences and motivations behind SLUSA and its statutory precursors.

Responding to the reluctance of investors to reenter the securities markets following the 1929 crash of the stock market, Congress passed the Securities Act of 1933 and the Securities Exchange Act of 1934. See 15 U.S.C. § 77a et seq. (1933 Act); 15 U.S.C. § 78a et seq. (1934 Act); see also *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194-95 (1976) (detailing the purposes and influences of the Acts). The aim of the 1933 Act, as the Supreme Court has explained, was "to provide investors with full

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disclosure of material information concerning public offerings of securities in commerce, to protect investors against fraud and, through the imposition of specified civil liabilities, to promote ethical standards of honesty and fair dealing." *Id.* at 195; see 15 U.S.C. § 78b (Necessity for regulation); H.R. Rep. No. 73-85 (1st Sess. 1933). The 1934 Act, on the other hand, imposed reporting requirements on companies whose stock was listed on national securities exchanges and was further designed to ward against manipulation of stock prices through regulation of the securities exchanges and over-the-counter markets. See 15 U.S.C. § 78b; *Ernst & Ernst*, 425 U.S. at 195. In the wake of the 1933 and 1934 Acts, various states also enacted laws which similarly aimed to protect investors from fraud in connection with the sale of securities. See *Gutierrez v. Deloitte & Touche, L.L.P.*, 147 F.Supp.2d 584, 588 (W.D. Tex. 2001).

Although the 1933 and 1934 Acts were intended to protect investors from corporate insiders, Congress has more recently become concerned with protecting corporations from the claims and causes of overly litigious investors. *Id.* at 588-89. The Private Securities Litigation Reform Act ("PSLRA") of 1995 was enacted as a result. *Id.* at 589. At the time, it was thought that PSLRA's heightened pleading requirements would make it more difficult for investors to bring securities fraud class actions against corporate issuers. Yet the subsequent decline in filings of securities fraud class actions in federal courts was roughly equivalent to the increased number of filings in state courts.

See H.R. Conf. Rep. No. 105-803 (1998); see also *Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 108 (2d Cir. 2001). Accordingly, SLUSA was signed into law in 1998. Congress hoped that SLUSA would finally set uniform standards for the filing of class actions based on fraud against companies issuing certain covered securities by dictating that such actions be governed exclusively by federal law. See *Lander*, 251 F.3d at 108; see also 15 U.S.C. §§ 77p(b)-(c) and 78bb(f)(1)-(2). SLUSA does not preempt all state actions against the issuers of securities, however. See *Gutierrez*, 147 F.Supp.2d at 590; 2 Thomas Lee Hazen, *Securities Regulation* § 12.15 (4th ed. 2002) ("[T]he Uniform Standards Act applies only to class actions and thus not to individual or derivative suits."). It provides unique definitions of "covered class" and "covered securities," for example, and will not apply to actions whose terms land them outside those definitions. See 15 U.S.C. §§ 77p(f) and 78bb(f); see also Pub. L. No. 105-353, § 2, 112 Stat. 3227 ("[I]t is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators and not changing the current treatment of individual lawsuits.")

In order to establish the claim in this case as falling within SLUSA's preemptive scope, the Defendants must demonstrate that (1) the action is a "covered class action," (2) the action is based on state law, (3) they are alleged to have

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misrepresented or omitted a material fact (or to have used or employed any manipulative or deceptive device or contrivance), and (4) their misrepresentation or omission of that material fact (or their use or employment of a manipulative or deceptive device or contrivance) came "in connection with" the purchase or sale of a "covered security." See 15 U.S.C. §§ 77p(b)-(c) and 78bb(f)(1)-(2); see also *Green v. Ameritrade, Inc.*, 2002 WL 126170, at *4 (8th Cir. Feb. 1, 2002). The Plaintiffs have based the present case on state law, and they contend that the Defendants made "untrue and deceptive statements of material fact" and "omitted to state material facts" which induced them "to purchase and/or retain Enron common stock at artificially inflated prices." The only question to be resolved then is whether the case is a class action by SLUSA's definition. The Court finds that it is not.

SLUSA defines a "covered class action" as:

- (i) any single lawsuit in which--
 - (I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or
 - (II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or
- (ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which--
 - (I) damages are sought on behalf of more than 50 persons; and

(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

15 U.S.C. §§ 77p(f)(2)(A) and 78bb(f)(5)(B). The Plaintiffs do not seek damages on a representative basis or on behalf of fifty or more persons. And while a number of lawsuits involving common questions of law or fact have been filed, these suits have not been joined or consolidated, and they do not proceed as a single action. The Court disagrees with Defendant Andersen's assertion that the act of consolidating similar cases would be an "empty formality" and that because various cases could be consolidated, they should be viewed as having been consolidated. The issue before the Court is whether this case is removable, not whether it might be consolidated with other cases.

Nor is the Court persuaded by Defendant Andersen's objection that plaintiffs' counsel "[ha]s sought] to avoid the creation of a 'covered class action'" by bringing a number of separate lawsuits arising from identical alleged facts and making identical claims. The Court reminds the Defendants that the Plaintiffs are the masters of their complaint. See *Louisville & Nashville R.R., v. Mottley*, 211 U.S. 149, 153 (1908). It notes too that the courts must "presume that a legislature says in a statute what it means and means in a statute what it says[.]" *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Where a "statute's language is plain, the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). Moreover,

"removal statutes are to be strictly construed against removal." *Getty Oil Corp. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1263 n.13 (5th Cir. 1988). Thus, the Court will decline the Defendants' invitation to count persons in separate lawsuits in different courts as members of a "covered class" in order that SLUSA's 50-person requirement be satisfied.

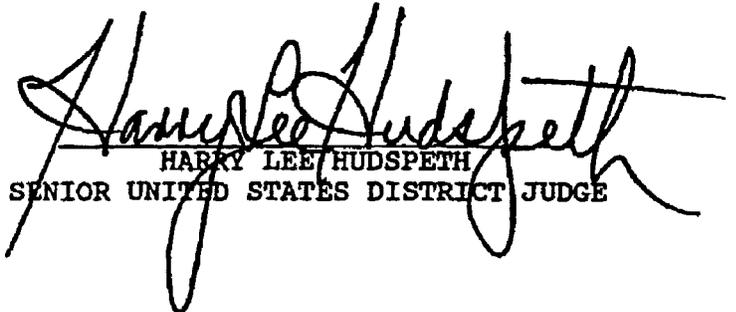
The Defendants request alternatively that the case be removed because the Plaintiffs allege in the complaint that several of the Defendants engaged in insider trading. In other words, they suggest that the case is removable because the Plaintiffs refer to federal crimes in their factual allegations. This claim fails as well, however, because plaintiffs alleging facts sufficient to invoke either federal or state jurisdiction may limit their claim so that it is based solely on state law. See *Oklahoma Tax Comm'n v. Graham*, 489 U.S. 838, 839-41 (1989). As the Fifth Circuit Court of Appeals recognized long ago, "[a] question of federal law is often lurking in the background of every case. In order to invoke the jurisdiction of a federal court there must be a substantial claim founded directly upon federal law." *Johnston v. Byrd*, 354 F.2d 982, 984 (5th Cir. 1965) (internal quotation marks omitted).

Finally, even if the case were to meet SLUSA's requirements or were to appear to be otherwise removable, the Court would still be obliged to remand it to state court. All defendants who are properly joined and served must join in the notice of removal within thirty days of the date on which they receive notice that

the case is removable. See 28 U.S.C. 1446(b); Jernigan v. Ashland Oil Inc., 989 F.2d 812, 815 (5th Cir. 1993). None of Defendant Andersen's Co-Defendants have filed written consent that the case be removed. As the case was originally filed in state court on January 24, 2002 and as Defendant Andersen's Co-Defendants received notice of the fact on January 30 at the very latest, the time period to join in the removal has now expired.

It is therefore ORDERED that the above cause be, and it is hereby, REMANDED to the 21st District Court of Washington County, Texas. The District Clerk is directed to transmit the file to the District Clerk of Washington County, Texas.

SIGNED AND ENTERED this 5th day of March, 2002.


HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE



21st and 335th JUDICIAL DISTRICT COURTS
BASTROP, BURLESON, LEE, AND WASHINGTON COUNTIES

TERRY FLENNIKEN, JUDGE
21st Judicial District Court
100 East Main Street, Suite 305
Brenham, Texas 77833
(979) 277-6200

JAN LYNN
Official Reporter
(979) 542-2947

CINDY SEE
Court Administrator
100 W. Buck Street, Suite 307
Caldwell, Texas 77836
(979) 567-2361
(979) 567-2382 fax
Email: csee@burlesoncounty.org

CHERYL IKARD
Court Administrator
100 East Main Street, Suite 305
Brenham, Texas 77833
(979) 277-6200, ext. 156
(979) 277-6235 fax
Email: cikard@wacounty.com

HAROLD R. (BOB) TOWSLEE, JUDGE
335th Judicial District Court
P. O. Box 648
Caldwell, Texas 77836
(979) 567-2335

CAROLEE MURRAY
Official Reporter
(512) 321-2699

March 15, 2002

G. Sean Jez
Fleming & Associates, L. L. P.
1330 Post Oak Blvd., Suite 3030
Houston, Texas 77056-3019
via facsimile #713.621.9638

G. Vince DiBlasi
Michael B. Miller
Sam Seymour
Sullivan & Cromwell
125 Broad Street
New York, NY 10004
via facsimile #212.558.3588

Barry G. Flynn, P. C.
Law Offices of Barry G. Flynn, P. C.
1300 Post Oak Blvd., Suite 750
Houston, Texas 77056
via facsimile #713.840.0311

Don R. Riddle
Riddle & Baumgartner
5625 FM 1960 W., Suite 210
Houston, Texas 77069
via facsimile #281.893.1827

Rusty Hardin & Andrew Ramzel
Rusty Hardin & Associates
1201 Louisiana, Suite 3300
Houston, Texas 77002
via facsimile #713.652.9800

Scott B. Schreiber
John Massaro
Arnold & Porter
555 Twelfth Street, N. W.
Washington, D. C. 20004-1206
via facsimile #202.942.5999

Kenneth S. Marks & Stephen D. Susman
Susman Godfrey, L. L. P.
1000 Louisiana, Suite 5100
Houston, Texas 77002-5096
via facsimile #713.654.3381

James Coleman & Diane M. Sumoski
Carrington, Coleman, Sloman & Blumenthal
200 Crescent Court, Suite 1500
Dallas, Texas 75201-1848
via facsimile #214.855.1333

Cause #32,716
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Page 2

Billy Shepherd
Cruse, Scott, Henderson & Allen, L. L. P.
600 Travis, Suite 3900
Houston, Texas 77002-2910
via facsimile #713.650.1720

Craig Smyser
Smyser, Kaplan & Veselka, L. L. P.
Bank of America Center
700 Louisiana, Suite 2300
Houston, Texas 77002
via facsimile #713.221.2320

Michael Warden
Luisa Caro
Sidley, Austin, Brown & Wood, L. L. P.
1501 K. Street, N. W.
Washington, D. C. 20005
via facsimile #202.736.8711

Ronald G. Woods
5300 Memorial, Suite 1000
Houston, Texas 77057
via U. S. mail

Dennis H. Tracey, III
Hogan & Hartson, L. L. P.
100 Park Avenue
New York, NY 10017
via facsimile #212.918.3100

Amelia Rudolph
Sutherland, Asbill & Brennan, L. L. P.
999 Peachtree Street, NE
Atlanta, Georgia 30309-3996
via facsimile # 404.853.8806

Bruce Hiler
Robert M. Stern
O'Melveny & Myers, L. L. P.
555 13th Street, N. W., Suite 500 W
Washington, D. C. 20004
via facsimile #202.383.5414

Richard Bruce Drubel, Jr.
Boies Schiller, et al
26 S. Main Street
Hanover, New Hampshire 03755
via facsimile #603.643.9010

Re: Cause No. 32,716; *Jane Bullock, et al v. Arthur Anderson, L. L. P., et al*; In the
21st Judicial District Court of Washington County, Texas

Dear Counsel:

Please be advised that the above styled case is set for a status conference on **Thursday, March 28, 2002, at 1:30 o'clock p. m.** before the Honorable Terry Flenniken.

Please be prepared to address the following matters with the Court:

1. scheduling,
2. Alternate Dispute Resolution,
3. pre-trial date, trial date and length of trial,
4. any anticipated discovery problems, and any other matters of concern.

All attorneys and pro se parties are required to be present at this status conference. The Court will not consider the concerns of any party who fails to appear.

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Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Ikard".

Cheryl Ikard
Court Administrator

cc: Vicki Lehmann, District Clerk
via hand delivery

CLERK OF THE COURT
VICKI LEHMANN
100 EAST MAIN, SUITE 304
BRENHAM, TEXAS 77833

ATTORNEY FOR PLAINTIFF OR PLAINTIFF
G. SEAN JEZ
1330 POST OAK BOULEVARD, SUITE 3030
HOUSTON, TEXAS 77056-3019

THE STATE OF TEXAS
SUBPOENA

NO. 32716

JANE BULLOCK; JOHN BARNHILL; DON REILAND; SCOTT BORCHART; MICHAEL MIES; VIRGINIA ACOSTA; JIM HEVELY; MIKE BAUBY; ROBERT MORAN; JACK & MARILYN TURNER; AND HAL MOORMAN & MILTON TATE, CO-TRUSTEES FOR MOORMAN, TATE, MOORMAN & URQUHART MONEY PURCHASE PLAN AND TRUST; DR. ROBERT STARK, SUDIE STARK, DELBERT H. STARK, JR., HENRY BOEHM, M.D.; VIRGINIA LAKE, ROBERT ARDERBURN, LEON TOUBIN; ZHONG LIN, ROBIN T. STERN AND JANE BARNHILL-NEWMAN, PLAINTIFFS
VS.

ARTHUR ANDERSEN, L.L.P.; D. STEPHEN GODDARD, JR.; DAVID B. DUNCAN; DEBRA A. CASH; ROGER WILLARD; THOMAS H. BAUER; ANDREW S. FASTOW; KENNETH L.LAY; AND JEFFREY J. SKILLING, DEFENDANTS

TO ANY SHERIFF, CONSTABLE, OR BY ANY OTHER PERSON WHO IS NOT A PARTY AND IS NOT LESS THAN EIGHTEEN YEARS OF AGE, OF THE STATE OF TEXAS, GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON **JEFFREY J. SKILLING, THROUGH HIS ATTORNEY OF RECORD, RONALD GENE WOODS, 5300 MEMORIAL DR., SUITE 1000, HOUSTON, TEXAS 77007** to be and personally appear at 9:30 o'clock a.m., on the 3rd day of May, 2002; before the Honorable 21st Judicial District Court of Washington County, Texas, to be held within and for said County at the Court House thereof, in Brenham, Texas, then and there to testify and the truth to speak on behalf of the Plaintiff in the above styled and numbered cause, now pending in said Court, and there remain from day to day, and from term to term, until discharged by said Court. Said above witness(s) is further commanded to produce at said time and place above set forth the following books, papers, documents or other tangible things, to-wit:

SEE ATTACHED

HEREIN FAIL NOT, and make due return hereof, showing how you have executed the same. Issued and given under my hand and seal of said Court at office, this the 15th day of April, 2002.

Vicki Lehmann
District Clerk, Washington County, Texas
by: Peggy Diggs
Peggy Diggs, Deputy

4. Jeffrey J. Skilling
Through his attorney of record
Ronald Gene Woods
5300 Memorial Dr., Suite 1000
Houston, Texas 77007

Mr. Skilling should bring with him on ~~May 16, 2002~~ ^{May 3, 2002}, at 9:30 a.m., the following records:

- a. all records of any sales of assets or stock by Jeffrey J. Skilling since August 1, 2001;
- b. all records of any transfers of money or property by Jeffrey J. Skilling to third parties since August 1, 2001;
- c. all records of any transactions between Jeffrey J. Skilling and any entities, banks and/or brokerage houses, savings and loans or investment trusts outside of the United States;
- d. all records of any sales of Enron stock by Jeffrey J. Skilling since August 1, 2001 and the ultimate distribution of those proceeds;
- e. all records of any trusts, annuities, pension plan, 401ks or retirement plan showing any deposits, additions or transfers since August 1, 2001;
- f. all records of any deposits, interest received or statements received by the witness showing monies owned or claimed by Jeffrey J. Skilling in any foreign financial institutions since August 1, 2001;
- g. all records of any transfers of money or property to any third parties by Jeffrey J. Skilling since August 1, 2001, other than to attorneys of record for Jeffrey J. Skilling, including a description of the property transferred and records of its value.



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4545 BISSONNET, SUITE 100
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(713) 667-0763 FAX (713) 661-3838 (800) 666-0763



35-10541130

33765

04/17/2002

PAY TO THE ORDER OF JEFFREY J. SKILLING

\$ *10.00

* Ten and No/100 *****

DOLLARS

JEFFREY J. SKILLING
BY SERVING HIS ATTORNEY, RONALD G. WOODS
5300 Memorial Dr., Suite 1000
Houston, TX 77007

Records Pertaining To :
(TRIAL SUBPOENA)
Order No. : 1873-4

Ansdel

MEMO: Trial Subpoena Witness Fee

⑆033765⑆ ⑆113010547⑆ 32098134⑆

SECURITY FEATURES: MICR OMR FOR BOTTOM ROLES ONLY. CHECK FOR MICR LINE AT BOTTOM OF ALL CHECKS.

SUNBELT REPORTING & LITIGATION SERVICES

33765

04/17/2002

JEFFREY J. SKILLING

*10.00

* Ten and No/100 *****

JEFFREY J. SKILLING
BY SERVING HIS ATTORNEY, RONALD G. WOODS
5300 Memorial Dr., Suite 1000
Houston, TX 77007

Records Pertaining To :
(TRIAL SUBPOENA)
Order No. : 1873-4

Trial Subpoena Witness Fee

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

MARK NEWBY, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. H-01-3624
	§	Consolidated Lead Case
ENRON CORP., <i>et al.</i> ,	§	
	§	
Defendants.	§	CLASS ACTION

**ORDER ON JEFFREY K. SKILLING'S EMERGENCY MOTION
TO STAY DISCOVERY *IN BULLOCK V. ARTHUR ANDERSEN LLP***

The Court, after considering the Emergency Motion to Stay Discovery in *Bullock V. Arthur Andersen LLP* filed by Jeffrey K. Skilling and any response to the motion, finds that the motion should be GRANTED. The Court ORDERS that all discovery in the case captioned *Bullock v. Arthur Andersen LLP*, No. 32,716 (21st Judicial District Court, Washington County, Tex.) ("*Bullock*") is stayed until such time as discovery is allowed in this action.

Signed this _____ day of April, 2002, at Houston, Texas.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE