

United States Court
for the Southern District of Texas
Houston Division

Secular Courts
FILED
Dec 21 2001

DEC 21 2001

MARK NEWBY,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3624
(Securities Suits)

SETH ABRAMS and STEVEN,
FRANK, Individually and on behalf
of All Others Similarly Situated
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3630

U.S. COURTS
SOUTHERN DISTRICT
OF TEXAS

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ROBERT J. CASEY, II and RUTH I.,
HORTON, Individually and on behalf
of All Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3647

FRANK WILSON, on behalf of,
Himself and All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3652

53

J. MICHAEL GOTTESMAN,
Individually and on behalf of
All Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3660

AVIGAYIL GREENBERG,
Individually and on behalf of
All Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3670

ROBERT CHRISTIANSON,
Individually and on behalf of All
Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3671

ERNEST GOTTDIENER, Individually
and on behalf of All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3681

MURIEL P. KAUFMAN, IRA,
Individually and on behalf of All Others
Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants..

CIVIL ACTION NO. H-01-3682

JOHN F. McCARTHY MONEY
PURCHASE PLAN, Individually and
on behalf of All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3686

HENRY H. STEINER, Individually,
and on behalf of All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3717

MICHAEL KOROLUK, Individually,
and on behalf of Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3733

JAMES BRILL, on behalf of Himself
and of All Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3734

ELMAR A. BUSCH, Individually
and on behalf of All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3735

WARREN PINCHUCK, Individually
and on behalf of All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3736

MAHIN S. MASHAYEKH, Individually
and on behalf of All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3737

BARBARA D. LEE, Individually
and on behalf of All Others Similarly
Situated,

Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3789

DANIELLE M. KARCICH, *et al.*, on
Behalf of Itself and All Others Similarly
Situated,

Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3838

NAOMI RAPHAEL, Individually
and on behalf of All Others Similarly
Situated,

Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3839

VICTOR RONALD FRAGIONE, on
behalf of Himself and All Others Similarly
Situated,

Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3889

PATRICIA D. PARSONS, on behalf of
All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3903

JOHN and PEGGY ODAM, *et al.*,
Plaintiffs,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3914

FRANK ANTHONY CAMMARATA, III,
Individually and on behalf of All Others
Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3993

GEORGE NICOUD, on behalf of Himself
and All Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-4009

ARCHDIOCESE OF MILWAUKEE
SUPPORTING FUND, INC., Individually
and on behalf of All Others Similarly
Situated,
Plaintiff,
v.
ENRON CORP., *et al.*,
Defendants. § CIVIL ACTION NO. H-01-4071

KENNETH FRANKLIN, Individually
and on behalf of All Others Similarly
Situated,
Plaintiff,
v.
ENRON CORP., *et al.*,
Defendants. § CIVIL ACTION NO. H-01-4106

SUSAN COPLEY, on behalf of Herself
and on All Others Similarly Situated,
Plaintiff,
v.
ENRON CORP., *et al.*,
Defendants. § CIVIL ACTION NO. H-01-4168

JAMES J. DALY, as Trustee of the James
J. Daly IRA Rollover and on behalf of
All Others Similarly Situated,
Plaintiff,
v.
ENRON CORP., *et al.*,
Defendants. § CIVIL ACTION NO. H-01-4189

AMALGAMATED BANK, as Trustee
for the Longview Collective Investment
Fund, Longview Core Bond Index Fund,
and Certain Other Trust Accounts,
Individually and on behalf of All Others
Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-4198

PIRELLI ARMSTRONG TIRE
CORPORATION RETIREE MEDICAL
BENEFITS TRUST, Derivatively on
Behalf of ENRON CORPORATION,
Plaintiff,

v.

KENNETH L. LAY, *et al.*,
Defendants.,

- and -

ENRON CORPORATION, an Oregon
Corporation,
Nominal Defendant.

CIVIL ACTION NO. H-01-3645
(Derivative Suits)

JOSEPH E. KASSOWAY, Trustee of
the Joseph E. Kassoway and Robert T.
Kassoway Trust,
Plaintiff,

v.

ANDREW S. FASTOW, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3690

DETECTIVES ENDOWMENT
ASSOCIATION ANNUITY FUND,
Derivatively on behalf of Enron
Corporation,
Plaintiff,

v.

KENNETH L. LAY, *et al.*,
Defendants.

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CIVIL ACTION NO. H-01-3892

WILLIAM COY, Individually and
Derivatively and on behalf of All Others
Similarly Situated,
Plaintiff,

v.

ANDREW S. FASTOW, *et al.*,
Defendants.

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CIVIL ACTION NO. H-01-3995

CANDY MOUNTER, *et al.*, Individually
and Derivatively, and on behalf of All
Similarly Situated Stockholders of Enron
Corp.,
Plaintiff,

v.

JOINT ENERGY DEVELOPMENT
INVESTMENTS, L.P., *et al.*,
Defendants..

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CIVIL ACTION NO. H-01-3996

SHIRLEY J. PRATZ, *et al.*, Individually
and Derivatively and on behalf of All
Similarly Situated Stockholders of Enron
Corp.,

Plaintiff,

v.

CHEWCO INVESTMENTS, L.P. a/k/a
Chewco Investments of Houston, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3997

FRED GREENBERG, Derivatively on
behalf of Enron Corp.,

Plaintiff,

v.

ROBERT A. BELFER, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3998

ENRON CORP. SAVINGS PLAN, an
Employee pension benefit plan appearing
Derivatively through Pamela M. Tittle,
a participant of the plan,

Plaintiff,

v.

ENRON CORP., an Oregon
Corporation, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-4108

PAMELA M. TITTLE, *et al.*, on behalf
Of herself and a class of persons similarly
Situated,

Plaintiff,

v.

ENRON CORP., an Oregon
Corporation, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-3913

MICHAEL P. HARNEY, on behalf of
Himself and All Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., an Oregon
Corporation, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-4063

GARY W. KEMPER, on behalf of Himself
and All Others Similarly Situated,
Plaintiff,

v.

ENRON CORP., *et al.*,
Defendants.

CIVIL ACTION NO. H-01-4089

BETTY J. CLARK, Individually
and on behalf of All Others Similarly
Situated,
Plaintiff,

v.

ENRON CORP., an Oregon
Corporation, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-4125

DOROTHY RICKETTS, on behalf
Of the Enron Corp. Savings Plan and
Its Participants,
Plaintiff,

v.

ENRON CORP., an Oregon
Corporation, *et al.*,
Defendants.

CIVIL ACTION NO. H-01-4128

RICHARD POTTRATZ and BRADLEY
DIEBNER, on behalf of Themselves and
All Others Similarly Situated,

Plaintiff,
§
v. § CIVIL ACTION NO. H-01-4150
§
ENRON CORP., an Oregon
Corporation, *et al.*,
Defendants. §

CATHERINE STEVENS, *et al.*,
Plaintiffs,
§
v. § CIVIL ACTION NO. H-01-4208
§
ENRON CORP., Savings Plan
Administrative Committee, *et al.*,
Defendants. §

CITY OF BIRMINGHAM RETIREMENT §
AND RELIEF PLAN on behalf of Itself §
and All Others Similarly Situated, §
Plaintiffs,
§
v. § CIVIL ACTION NO. H-01-3940
§
ENRON CORP., *et al.*,
Defendants. §
(Other Suit)

**PLAINTIFFS JOHN AND PEGGY ODAM, *ET AL.*'S OBJECTION TO THE COURT'S
ORDER OF CONSOLIDATION**

COMES NOW Plaintiffs John and Peggy Odam, *et al.*, and file this their objection to Kenneth Lay's and the Outside Directors' Motion to Consolidate Actions Involving Enron Corporation. In support thereof, Plaintiffs would show the following:

I. Facts.

1. Plaintiffs filed their Original Complaint against Enron Corporation, Andrew S. Fastow, Kenneth L. Lay, Jeffrey J. Skilling, Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. Lemaistre, John Mendelsohn, Paul V. Ferraz Pereira,

Frank Savage, John Akeham, Herbert S. Winokur, Jr., Ben Glisan, Kristina Mordaunt, and Arthur Andersen, L.L.P. on November 13, 2001.

2. On December 4, 2001, Plaintiffs filed a voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(i) as to Enron Corporation.

3. On December 13, 2001, Plaintiffs filed a voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(i) as to Andrew S. Fastow, Kenneth L. Lay, Jeffrey J. Skilling, Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. Lemaistre, John Mendelsohn, Paul V. Ferraz Pereira, Frank Savage, John Akeham, Herbert S. Winokur, Jr., Ben Glisan and Kristina Mordaunt.

4. To date, the only party remaining in Plaintiffs' cause is Defendant Arthur Anderson.

5. On December 12, 2001, this Honorable Court entered its Order of Consolidation wherein any action filed against the previously named parties would be consolidated in this Court.

II. Argument and Authority

6. Plaintiffs object to this Court's Order of Consolidation for the following reasons:

- a. Plaintiffs' only cause of action is solely against one of the Defendants that this Court has consolidated in this matter, Arthur Andersen;
- b. Plaintiffs' claims have been brought individually and have not been asserted nor will they ever be asserted as a class action;
- c. Plaintiffs will be burdened by this Order of Consolidation because it has only claims against Arthur Andersen and not the remaining Defendants mentioned in this Court's order.

- d. The issues urged by the Directors for consolidating this case with the others do not apply as Plaintiffs in this case are not making any claims against any of the officers or directors. This case involves different issues and parties.
- e. Plaintiffs' costs will be increased because they will be forced to participate in discovery and other proceedings not relevant to their own case.
- f. Plaintiffs' claims against Arthur Andersen are simple in relation to the claims against Enron, its officers and directors and involve different issues.

7. Plaintiffs' efforts to protect their interests will be impaired by having to wait for lead counsel to be appointed in the class action claims. Moreover, Plaintiffs will be forced to follow deadlines and timetables which benefit members of the purported classes. Plaintiffs desire to proceed outside the class action as indicated by their filing of individual actions rather than class actions. Moreover, the potential for prejudice, delay, and confusion outweighs the judicial resources conserved by consolidation. *See St. Bernard General Hospital, Inc. v. Hospital Service Asso.*, 712 F.2d 978, 989 (5th Cir. 1983); *Malcolm v. National Gypsum Co.*, 995 F.2d 346, 350 (2nd Cir. 1993); *Werner v. Satterlee, Stephens, Burke & Burke*, 797 F.Supp. 1196, 1211 (S.D. N.Y. 1992).

8. Since Plaintiffs are presiding on an individual basis rather than as a class action, Plaintiffs will probably be able to proceed to trial before any class action can. As such, requiring Plaintiffs to be consolidated with the other cases will prevent Plaintiffs from obtaining a trial setting. *See Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 762 (5th Cir. 1989).

9. The fact that Plaintiffs will be forced to incur unnecessary expense associated with participating in discovery and proceedings not relevant to their claim justifies reconsidering the Order of Consolidation as to Plaintiffs. *See In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373-374 (2nd Cir. 1993).

WHEREFORE, Plaintiffs pray that this Court reconsider its Order of Consolidation as to Plaintiffs in light of the special circumstances of Plaintiffs and for any and all further relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

FLEMING & ASSOCIATES, L.L.P.

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By

G. Sean Jez


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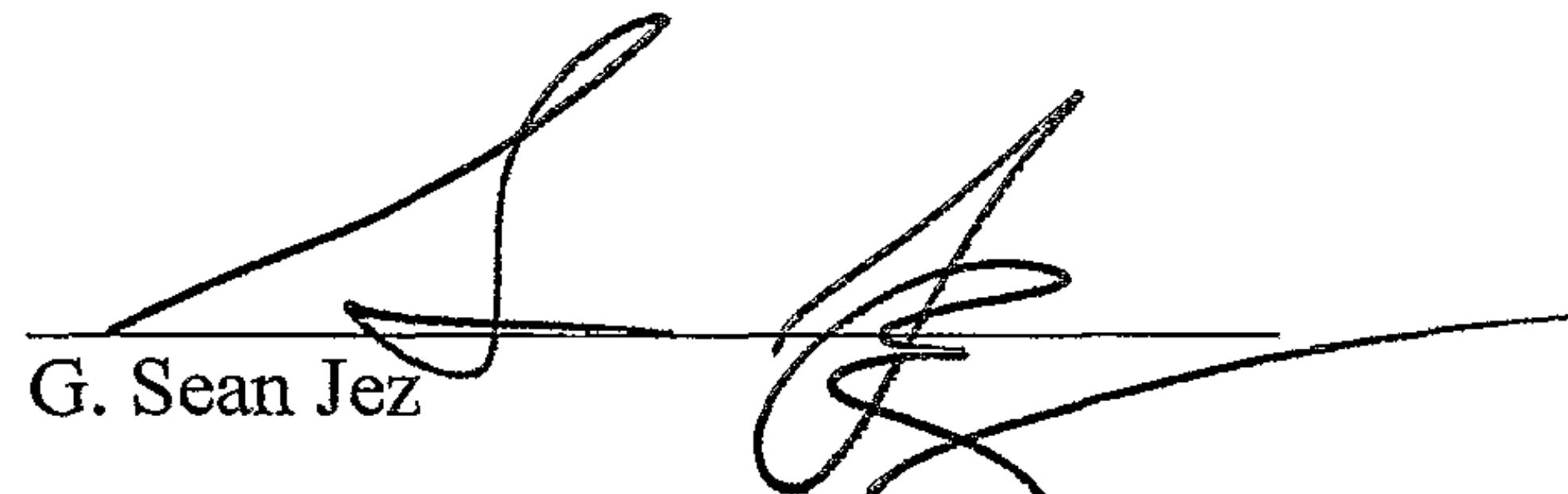
Certificate of Service

I certify that on this 21st day of December, 2001, a true and correct copy of Plaintiffs **John and Peggy Odam, et al's Objection to the Court's Order of Consolidation** was sent to the following counsel of record:

Via First Class Mail

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