

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

United States Courts
Southern District of Texas
FILED

MAY 28 2002 **LF**

Michael N. Milby, Clerk

MARK NEWBY,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

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§ CIVIL ACTION No. H-01-3624
§ AND CONSOLIDATED CASES

DEFENDANT J.P. MORGAN CHASE & CO.'S RESPONSE TO (1) LJM CAYMAN, L.P., ET AL.'S MOTION FOR A SCHEDULING ORDER, AND (2) AMERICAN NATIONAL INSURANCE CO.'S MOTION TO CREATE SUBCLASS AND FOR APPOINTMENT AS SUBCLASS REPRESENTATIVE

Defendant J.P. Morgan Chase & Co. ("JPMorgan Chase") respectfully submits this Response to (1) LJM Cayman, L.P., et al.'s (the "Cayman Parties") Motion For Entry Of Preliminary Scheduling Order For Complaints Consolidated Into *Newby* And Pursued By Persons Other Than Court-Appointed Lead Plaintiff (the "Cayman Parties' Motion"), and (2) American National Insurance Co.'s ("American National") Response To Cayman, L.P., et al.'s Motion For Scheduling Order And American National's Motion To Create Subclass And For Appointment As Subclass Representative.

RESPONSE

1. JPMorgan Chase is one of a number of institutions that were joined in this litigation for the first time in one or both of the Consolidated Complaints filed in the *Newby* and *Titte* suits on or about April 8, 2002 in accordance with this Court's February 28, 2002 Scheduling Order, as amended (the "February 28 Scheduling Order"). JPMorgan Chase

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believes that the claims against it are without merit and, accordingly, on May 8, 2002 filed its motions to dismiss.

2. The Cayman Parties seek a “preliminary scheduling order” in the event that the Consolidated Complaints are dismissed and certain plaintiffs “still desire to pursue” their claims.¹ Cayman Parties’ Motion ¶ 2. Respectfully, it is plainly premature to address the hypothetical situation that one or more unnamed plaintiffs will seek to pursue claims after dismissal of the *Newby* case. Rather, the motions to dismiss should be resolved and then, if certain parties seek to pursue claims notwithstanding dismissal of the *Newby* action, the parties and the Court can address any scheduling issues that arise in the context of the actual facts at that time. Similarly, it is premature to address at this point what should be done in terms of scheduling in the hypothetical situations promulgated by the Cayman Parties surrounding the outcome of an as yet unmade motion for class certification.

3. However, to the extent that the Court considers a further scheduling order at this time, any such order should provide for the coordination of discovery and other pretrial proceedings in these cases, so as to preserve and advance the purposes of the prior consolidation orders and the order of the MDL Panel – conducting discovery and other pretrial proceedings in an efficient, coordinated manner. *See In re Orthopedic Bone Screw Prods. Liability Litig.*, MDL No. 1014, 1997 WL 109595 at *2 (E.D. Pa. March 7, 1997) (“[T]he primary purpose behind the

¹ If and to the extent that the Cayman Parties intend to suggest otherwise, there is a scheduling order already in place for cases that have been or will be consolidated into the *Newby* and *Tittle* cases pursuant to the Court’s December 12, 2001 consolidation order (the “December 12 Consolidation Order”) – the February 28 Scheduling Order. Indeed, this Court recently confirmed that the February 28 Scheduling Order applies both to cases that existed as of the time of the December 12 Consolidation Order as well as to cases filed more recently. *See* May 16, 2002 Order (granting JPMorgan Chase an extension of time to respond to the complaint filed by American National) (a copy of which is annexed hereto as Exhibit A).

establishment of a multidistrict litigation transferee court was and is to promote efficiency through the coordination of discovery.”); 15 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure Juris. 2d § 3861 (“The objective of the [MDL] legislation is to provide centralized management under court supervision of pretrial proceedings of multidistrict legislation ... The [Coordinating Committee] believes that the possibility for conflict and duplication in discovery ... can be avoided or minimized by such centralized management.”).

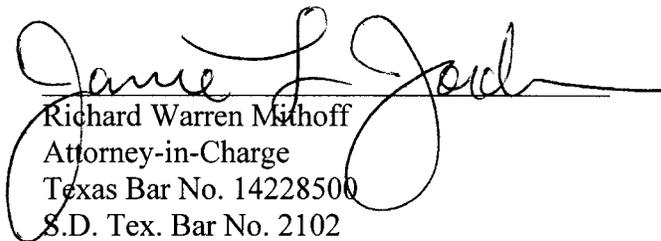
4. Finally, the request by American National, in its response to the Cayman action, for the appointment of a Texas State law subclass is both premature and without merit. Class and sub-class issues should be addressed in connection with the class certification process, which the Court has scheduled to occur after the present motion to dismiss phase. Moreover, the suggested state law-based sub-class is an improper effort to get around the Securities Litigation and Uniform Standards Act of 1995 (“SLUSA”). Congress enacted the SLUSA in order to preempt securities class actions that are brought in state court under state law. Under SLUSA, “[n]o covered class action based upon the statutory or common law of any State . . . may be maintained in any State or Federal court by any private party alleging – (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security.” 15 U.S.C. §78bb(f)(1). SLUSA therefore preempts the very type of sub-class proposed by American National.

Conclusion

For the foregoing reasons, JPMorgan Chase respectfully requests that this Court:

- (1) deny the Cayman Parties' request for a "preliminary scheduling order;"
- (2) require that all discovery and other pretrial proceedings in cases brought by or on behalf of the shareholders of Enron Corporation or Enron pension plan members against some or all of the defendants in the consolidated class actions be coordinated with discovery in the *Newby* and *Tittle* cases;
- (3) deny American National's request for the creation of a sub-class; and
- (4) grant such further relief as may be appropriate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served by electronic mail, pursuant to this Court's Order, upon the following counsel of record on this 28th day of May, 2002.



JANIE L. JORDAN