United States Courts
Southern District of Texas
ENTERED

JUN 1 4 2002

Michael N. Milby, Clerk

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

In Re ENRON CORPORATION SECURITIES, DERIVATIVE & "ERISA" LITIGATION,	§ § §	MDL 1446
MARK NEWBY, ET AL., Plaintiffs	§ § § §	
VS.	§ §	CIVIL ACTION NO. H-01-3624 AND CONSOLIDATED CASES
ENRON CORPORATION, ET AL., Defendants	§ § §	
PIRRELLI ARMSTRONG TIRE CORPORATION RETIREE MEDICAL BENEFITS TRUST, Derivatively On Behalf of ENRON CORPORATION, ET. AL., Plaintiffs	§ § § § § §	
VS.	§ §	CIVIL ACTION NO. H-01-3645 AND CONSOLIDATED CASES
KENNETH LAY, ET AL., Defendants	§ § §	
PAMELA M. TITTLE, on behalf of herself and a class of persons similarly situated, ET AL., Plaintiffs	§ § § § §	
VS.	§ §	CIVIL ACTION NO. H-01-3913 AND CONSOLIDATED CASES
ENRON CORP., an Oregon Corporation, ET AL., Defendants.	§ § § §	

ORDER

Pending before the Court in the Newby case are Defendants Henry H. Steiner, Daniel Kaminer, Christine Benoit, Michael and Jennifer Cerone, and Harold Karnes' (the "Preferred

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Purchaser Plaintiffs'") motion for clarification of this Court's memorandum and order dated February 15, 2002 (instrument #389), motion for expedited hearing (#391), and additional memorandum (#682), filed after Lead Plaintiff's Consolidated Complaint.

Preferred Purchaser Plaintiffs, noting that Lead Plaintiff does not allege that it purchased any Enron preferred stock, highlight this Court's statements in the memorandum and order that recognized that material differences in this consolidated action exist between preferred stock purchasers and common stock purchasers, that these issues can be addressed at the time of class certification, and that consolidation for pretrial matters does not necessarily mean that all claims will be tried together. They object to Lead Plaintiff's filing the Consolidated Complaint without input from and consultation with their attorneys. They also voice concern about omission of their claim under Texas state law for negligent misrepresentation relating to prospectus liability during a different time period than the shared Class Period for the Newby common stock investors. Initially they sought the opportunity to review the Consolidated Complaint before it was filed, a request, like that for expedited hearing, that is now moot. In an additional memorandum of law (#682), they object that Lead Plaintiff did not assert Texas state law claims on their behalf, although it did so on behalf of those who purchased Enron debt securities. They seek to have the Court order Lead Counsel to consult with their attorneys and file an amended complaint alleging the omitted claims on behalf of the preferred stock purchasers. They further request the Court to appoint their counsel as attorneys for the Preferred Purchaser

Plaintiffs to represent them in the same manner as specific firms for the purchasers of certain Enron debt securities listed in the Consolidated Complaint at p. 500.

Lead Plaintiff's response, filed before it filed its consolidated complaint, emphasizes the powers and responsibilities and simply states that the Consolidated Complaint will address the Preferred Purchaser Plaintiffs' issues. Apparently it did not.

While consolidation is appropriate in this complex litigation, a plaintiff cannot be denied its claims because of that procedural device. Accordingly, the Court

ORDERS that the motion for clarification is GRANTED to the following extent. Lead Counsel shall confer with counsel for the Preferred Purchaser Plaintiffs and determine where a short supplement to the Consolidated Complaint addressing the omitted claims should be filed. If Lead Plaintiff concludes that a supplement asserting the allegedly ignored claims should not be submitted, Lead Counsel shall file a response to Preferred Purchaser Plaintiffs' Additional Memorandum within twenty days of entry of this order. If Lead Plaintiff decides a supplement should be filed, it should file one within the same time period.

SIGNED at Houston, Texas, this 12th day of June, 2002.

Melinda Harmon

MELINDA HARMON
UNITED STATES DISTRICT JUDGE