

AUG 07 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

THIS DOCUMENT RELATES TO: §

All Cases §

MARK NEWBY, ET AL., §

Plaintiffs §

VS. §

CIVIL ACTION NO. H-01-3624  
CONSOLIDATED CASES

ENRON CORPORATION, ET AL., §

Defendants §

ORDER

Pending before the Court in the above referenced consolidated action are the following motions:

(1) Movants LJM Cayman, L.P. Chewco Investments, L.P., and Michael J. Kopper's motion for entry of preliminary scheduling order for complaints consolidated into Newby and pursued by persons other than court-appointed Lead Plaintiff (instrument #610), joined by LJM2 Co-Investment, L.P. (#815);

(2) a request for clarification (within #815) from LJM2 Co-Investment, L.P., which has not been named as a Defendant in the Newby Consolidated Complaint filed by Lead Plaintiff, but is named as a Defendant in several putative securities class actions from

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other districts and other states that were transferred for consolidation into Newby by the Multidistrict Litigation Panel, of the following: since Lead Plaintiff's consolidated complaint governs at least until the time of class certification, whether any party named as a defendant in any putative class action other than the Consolidated Complaint need file any form of response or otherwise appear in any action until further order of the Court;

(3) American National Insurance Company et al.'s<sup>1</sup> motion to create subclass of plaintiffs asserting only Texas state-law claims and for appointment as subclass representative (#773);

(4) Preferred Purchasers' ongoing objection that Lead Plaintiff has failed to assert cognizable state-law claims on behalf of those who purchased Enron preferred stock;

(5) Hancock Plaintiffs' request for clarification of or, alternatively, objection to, the order of consolidation (#563) and motion for appointment of Lead Plaintiff and approval of Lead Counsel for a class action asserting claims on behalf of purchasers of non-publicly traded debt securities of Enron

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<sup>1</sup> Plaintiffs in G-02-84, since remanded. Because others support the motion, it remains pending.

or Enron affiliates guaranteed directly or indirectly by Enron (#867); and

(6) Arthur Andersen LLP's motion for clarification (#895) concerning responsive pleadings in Rogers v. Duncan, Member Case No. H-02-2702.

As was to be expected in such a massive consolidated litigation composed of numerous cases in different procedural postures asserting different claims by different plaintiffs (some individuals and some on behalf of a proposed class) against different defendants based on different law, despite the central common core of facts and nature of the claims that justified consolidation, there is some confusion about requirements for those claims and parties that do not fit within the class defined, the causes of action asserted, and the defendants named in the Consolidated Complaint. The Court will attempt to clarify the situation.

Some of the member cases, whether brought in federal court on diversity grounds or asserting federal-law claims and state-law claims under supplemental jurisdiction, allege viable state-law claims against Defendants. Other Defendants have been sued under the federal securities laws in member suits, but not by Lead Plaintiff in the Consolidated Complaint. Because this Court established Lead Plaintiff's Consolidated Complaint as the governing pleading and imposed the PSLRA's discovery stay on everyone, some Defendants in these suits are uncertain whether they

need to file responsive pleadings to the claims in the member cases because the claims and/or the Defendants were not included in Lead Plaintiff's Consolidated Complaint. Clearly, one economical reason for utilization of a Lead Plaintiff and a Consolidated Complaint is to avoid having Defendants required to answer multiple complaints. For this reason, the Court first

ORDERS that all claims and/or complaints not encompassed within the Consolidated Complaint are STAYED at this time; this consolidated action will go forward based on the Consolidated Complaint. The Court further

ORDERS that all discovery is STAYED, pursuant to the PSLRA,<sup>2</sup> until the Court has ruled on the pending motions to

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<sup>2</sup> Once any motion to dismiss claims arising under the federal securities statutes is filed by any defendant, the provision of the Private Securities Litigation Reform Act ("PSLRA"), automatically staying "all discovery," 15 U.S.C. § 78u-4(b)(3)(B), is triggered until the motions to dismiss are resolved. Section 78u-4(b)(3)(B), provides,

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice.

The parties have not demonstrated that either of the two exceptions has been met here, i.e., that there is a threat that the evidence will be lost or destroyed or that particularized discovery is need to avoid irreparable harm and undue prejudice. "Undue prejudice" is harm that is "improper or unfair under the circumstances." CFS-Related Sec. Fraud Litig., 179 F. Supp. 2d at 1265, citing Medical Imaging Centers of America, Inc. v. Lichtenstein, 917 F.Supp. 717, 720 (S.D. Ca. 1996). The delay inherent in the PSLRA's automatic discovery stay cannot constitute "undue" prejudice because it is neither improper nor unfair, but "prejudice that has been mandated by Congress after a balancing of various policy interests at stake in securities litigation, including a plaintiff's need to collect

dismiss. Once these rulings are made, discovery will proceed on all federal securities claims surviving the PSLRA's heightened pleading standards and on all related state-law or federal claims not pursued by Lead Plaintiff. If additional leeway is needed during discovery to pursue issues distinct from those in the Consolidated Complaint and if counsel are unable to agree how to proceed, the parties may file an appropriate motion.

Either shortly before or after the time of class certification, and subject to the Court's rulings on the motions to dismiss, those Plaintiffs asserting viable state-law, or different federal claims, or claims against Defendants not named in the Consolidated Complaint, or opting out of a certified class to pursue their claims on an individualized basis may move to reinstate their pleadings on the Court's active docket (or move for leave to file new pleadings or amend them if the Court's decisions or discovery indicate modification is appropriate). Once such pleadings are filed or reinstated, Defendants shall file timely responsive pleadings from the date of reinstatement and/or amendment, as ordered by the Court.

At that time, where needed, the parties may also move for distinct schedules, although continuing efforts should be made to coordinate the progress of all.

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and preserve evidence." Id. See generally Angell Investments, L.L.C. v. Purizer Corp., 177 F. Supp.2d 162 (N.D. Ill. 2001); In re CFS-Related Securities Fraud Litigation, 179 F. Supp.2d 1260, 1263-65 (N.D. Okla. 2001) (staying discovery even against a defendant that did not file a motion to dismiss).

Furthermore, it is evident that some groups of Plaintiffs do not fit into the class definition of the Consolidated Complaint or that Lead Plaintiff may not have standing to be a class representative of their discrete group, even though the discovery should be sufficiently broad to allow them the opportunity to obtain information about their distinct allegations. For example, the Preferred Purchasers sue on behalf of preferred stock purchasers, while the Hancock Plaintiffs sue on behalf non-publicly traded debt securities guaranteed directly or indirectly by Enron. As this Court has indicated, around the time of class certification the Court will deal with these issues through creation of classes or subclasses and with appropriate class representatives having standing to pursue those claims.

Still remaining is the issue of those tort claims asserted under the Texas Securities Act by the Preferred Purchasers that fall outside of the Class Period as defined in the Consolidated Complaint and that Lead Plaintiff has objected to adding to the Consolidated Complaint. After fully reviewing the extended briefing, this Court is persuaded by Lead Plaintiff's Response to Wolf Haldenstein's Additional Memorandum (#963), for the reasons expressed therein, that Preferred Purchasers' 1996-97 Class Period claims should not be pursued in Newby by Lead Plaintiff. Thus, as suggested by Lead Plaintiff, the Court grants leave to counsel for Preferred Purchasers to pursue these claims once the discovery stay is lifted following resolution of the motions to dismiss.

In compliance with the above decisions, the Court  
ORDERS the following regarding the pending motions:

(1) Movants LJM Cayman, L.P. Chewco  
Investments, L.P., and Michael J. Kopper's  
motion for entry of preliminary scheduling  
order (instrument #610) is currently DENIED;

(2) in response to the request from LJM2 Co-  
Investment, L.P. (#815), no party named as a  
defendant in any putative class action other  
than the Consolidated Complaint need file any  
form of response or otherwise appear in any  
actions until the Court lifts the discovery  
stay and reinstates such complaint on the  
Court's active docket;

(3) American National Insurance Company et  
al.'s motion to create subclass of plaintiffs  
asserting only Texas state-law claims and for  
appointment as subclass representative (#773)  
is currently DENIED;

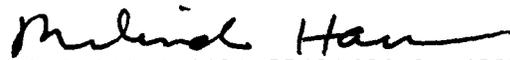
(4) Counsel for Preferred Purchasers shall  
independently prosecute Preferred Purchasers'  
tort claims under the Texas Securities Act  
after resolution of the pending motions to  
dismiss;

(5) Hancock Plaintiffs' request for  
clarification (#563) is GRANTED and motion

for appointment of Lead Plaintiff and approval of Lead Counsel (#867) is DENIED at this time; and

(6) Arthur Andersen LLP's motion for clarification (#895) is GRANTED.

SIGNED at Houston, Texas, this 5<sup>th</sup> of August, 2002.



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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE