

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

In Re Enron Corporation	§	
Securities, Derivative &	§	MDL-1446
"ERISA" Litigation	§	
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MARK NEWBY, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
	§	CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants	§	
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THE REGENTS OF THE UNIVERSITY	§	
OF CALIFORNIA, et al.,	§	
Individually and On Behalf of	§	
All Others Similarly Situated,	§	
	§	
	§	
Plaintiffs,	§	
VS.	§	
	§	
KENNETH L. LAY, et al.,	§	
	§	
Defendants.	§	

United States Courts
Southern District of Texas
ENTERED

MAR - 1 2005

Michael N. Milby, Clerk of Court

ORDER

Pending before the Court in the above referenced cause is Bank Defendants' motion to clarify the March 11, 2004 scheduling order,¹ with respect to third-party complaints and cross claims in actions not proceeding under the consolidated Newby and Tittle complaints (instrument #2277), joined by Arthur Andersen LLP (#2288), "Certain Defendants" (#2291), Royal Bank of Scotland and Royal Bank of Canada (#2296),² and the DB entities

¹ The March 11, 2004 scheduling order is instrument #2019.

² The DB entities filed a separate statement to clarify that the May 7, 2004 order in Newby (#2132), pertaining to them and stating that they are to answer the complaint thirty days after

(#2297). Specifically Bank Defendants seek to clarify whether August 2, 2004 is the deadline by which Defendants must file third-party complaints and cross-claims in the independent suits.

Unfortunately, despite the Court's granting a motion to expedite briefing, with the heavy motion practice in MDL 1446 this motion "fell through the cracks" and none of the parties subsequently brought it to the Court's attention.

With respect to the separate actions, the final sentence of the March 11, 2004 scheduling order, agreed upon by the parties, referred the parties back to the Court's July 11, 2003 order (#1561), under which the related and coordinated cases not proceeding under the *Newby* and *Tittle* consolidated complaints were stayed as to the filing of amended pleadings and/or responsive pleadings until motions for class certification in *Newby* and *Tittle* are resolved, but ordered that discovery was to proceed.

Bank Defendants note that the March 11, 2004 also established a general deadline of Monday, August 2, 2004 to join new parties or file a third-party complaint or cross complaint/claims. Bank Defendants are concerned that "there is potential to read the March 11, 2004 Order to suggest that defendants in such private actions are nonetheless required to file any third-party complaints and cross-claims by August 2, 2004." They urge that "it would be a procedurally illogical

resolution of a pending motion by Lead Plaintiff to reconsider the Court's dismissal of claims against the DB entities if Lead Plaintiff prevails, is still in effect. The Court reassures DB entities that the May 7, 2003 still governs their unique situation.

situation if defendants in the private actions were required to file cross-claims and implead third-party defendants before even having responded to the complaints in such actions. . . ." They want to be certain that the filing of such pleadings is also stayed. They suggest also that the Court follow the practice agreed upon in an adversary proceeding in the bankruptcy court that defendants in the private actions file third-party complaints and cross-claims within thirty days of answering the complaints in such actions.

The "Private Action Plaintiffs" oppose the motion to clarify and argue that it is really a motion to modify. #2290. They insist that the March 11th offer "unambiguously set the deadline to join new parties and or to file third-party complaints or cross claims complaints in 'those consolidated and coordinated cases' . . . as August 2, 2004." They further contend that allowing the Defendants to add new parties until the later of November 1, 2004³ or 30 days after the filing of the Bank Defendants' Answer in actions by Private Action Plaintiffs would severely prejudice them because they would not have a "meaningful opportunity to take part in on-going discovery," including attending depositions in person, and because they would have to order multiple productions of documents at one time to catch up with those parties participating in the discovery.⁴

³ In their reply (#2298), Bank Defendants question where Certain Private Action Plaintiffs found this date.

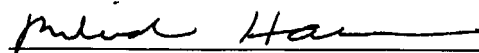
⁴ Bank Defendants reply, and this Court agrees, that it is unlikely that there will be any truly new parties that are not

Although the passage of time has mooted the August 2, 2004 deadline issue, to make sure the record is clear the Court

ORDERS that the motion to clarify is GRANTED. The August 2, 2004 deadline did not apply to the separate actions currently not proceeding under the *Newby* and *Tittle* complaints; rather the deadline applies only to the *Newby* and *Tittle* consolidated complaints. Moreover, the Court

ORDERS that for those private actions that do proceed independently after class certification in *Newby* and *Tittle*, Defendants shall file third-party complaints and cross-claims within thirty days of filing answers to the complaints. If any "truly new" parties are added, they may file appropriate motions for special relief if needed.

SIGNED at Houston, Texas, this 28^K day of February, 2005.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE

already participating in the MDL 1446 or in the bankruptcy court. Nevertheless, if it turns out that there are, Bank Defendants proposed that those parties be added by August 2, 2004. That proposal is now moot, but the Court will deal with the issue on an individual basis should it arise.