

JUN 15 2004

Michael N. Milby, Clerk of Court

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

In Re Enron Corporation	§	
Securities, Derivative &	§	MDL-1446
"ERISA Litigation	§	
<hr/>		
MARK NEWBY, ET AL.,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
	§	CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants	§	
<hr/>		
ARIC (AL RAJHI INVESTMENT	§	
CORPORATION) BV,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. H-03-3947
	§	(COORDINATED CASE)
THE MAN GROUP PLC, VINSON &	§	
ELKINS, LLP, CLIFFORD CHANCE,	§	
LLP, JAMES V. DERRICK, McGRAW-	§	
HILL COMPANIES, INC., MOODY'S,	§	
FITCH, INC., CITIGROUP INC.,	§	
CITICORP, CITIBANK, N.A., BANK	§	
OF AMERICA CORP., BANK OF	§	
AMERICA SECURITIES, INC.,	§	
BARCLAYS, PLC, BARCLAYS BANK	§	
PLC, DEUTSCHE BANK, AG,	§	
DEUTSCHE BANK ALEX BROWN INC.,	§	
DEUTSCHE BANK, AG LONDON,	§	
LEHMAN BROTHERS HOLDING, INC.,	§	
LEHMAN BROTHERS, INC., MERRILL	§	
LYNCH PIERCE FENNER & SMITH,	§	
INCORPORATED, J.P. MORGAN CHASE	§	
& CO., J.P. MORGAN CHASE	§	
SECURITIES, INC., J.P. MORGAN	§	
CHASE BANK, CHASE SECURITIES,	§	
INC., CREDIT SUISSE FIRST	§	
BOSTON, CREDIT SUISSE FIRST	§	
BOSTON (USA), INC., CREDIT	§	
SUISSE FIRST BOSTON CORP.,	§	
DONALDSON, LUFKIN & JENRETTE	§	
SECURITIES CORP., CANADIAN	§	
IMPERIAL BANK OF COMMERCE,	§	
CIBC, INC., CIBC WORLD MARKETS	§	
CORP., CIBC WORLD MARKETS PLC,	§	
ARTHUR ANDERSEN LLP, AND	§	
ANDERSEN WORLDWIDE,	§	

Defendants.           §  
                          §

**MEMORANDUM AND ORDER**

Pending before the Court in H-03-3947, removed from the 164<sup>th</sup> Judicial District Court of Harris County, Texas, based on "related to" bankruptcy jurisdiction, are the following motions: (1) Plaintiff ARIC's (also "Al Rajhi's") motion to remand or abstain (instrument #19); (2) Plaintiff's motion for leave to file its amended complaint (#26); and (3) Plaintiff's motion to join court ordered mediation (#39).

This case ("*Al Rajhi II*") is related to another pending on this Court's docket, H-03-1219, *Al Rajhi Investment Corporation, BV v. Arthur Andersen LLP* ("*Al Rajhi I*"), filed by the same Plaintiff, arising from Plaintiff's extension of credit in the same metals transaction involving Enron at issue here in reliance on alleged material misrepresentations and false statements and certifications by the same Defendant, Arthur Andersen, regarding Enron's financial status from 1997-2000, and removed from state court on the same grounds as the instant action.<sup>12</sup> Upon persistent request of parties in both suits once

---

<sup>1</sup> Asserting claims for fraud and negligent misrepresentation, in H-03-1219 *Al Rajhi* alleged that it relied on material misrepresentations and false financial statements knowingly made by Arthur Andersen LLP and on that auditing firm's certification of and report on the audited consolidated financial statements of Enron Corporation and its subsidiaries for the years 1997 through 2000, when *Al Rajhi* decided to extend \$101,924,431.17 as a line of credit in a metals transaction to Enron Metals Corporation on December 21, 2001, with the debt guaranteed by Enron Corporation. Enron failed to pay back any of it before declaring bankruptcy on

the suits had been removed to federal court, the actions were transferred to the undersigned judge and coordinated with MDL 1446 and *Newby* pretrial discovery.

In *Al Rajhi II*, asserting causes of action for fraud, negligent misrepresentation, conspiracy, indemnity, and liability for a joint or common enterprise and seeking actual, statutory, and exemplary damages, Plaintiff sues not only Arthur Andersen, but a number of other Defendants which Plaintiff contends knowingly or recklessly accommodated or participated in Arthur Andersen's fraud by engaging in "numerous sham transactions" with Enron by providing false or misleading financial and legal certifications and opinions and bogus loans to Enron and issuing erroneous credit ratings.

Since the removal, Plaintiff here in *Al Rajhi II* has voluntarily dismissed the following Defendants without prejudice

---

December 2, 2001. Al Rajhi first filed a proof of claim in Enron's bankruptcy suit on October 22, 2002, and then filed suit against Arthur Andersen on May 2, 2002. On February 25, 2003, Arthur Andersen filed a third-party petition against a number of Third-Party Defendants (entities with which Enron conducted business and two former Enron officers), alleging that they assisted Enron in its creation and manipulation of special purpose entities, misrepresented or failed to disclose to Arthur Andersen information about Enron's actual financial condition, breached or aided and abetted breaches of duties to Al Rajhi, and held positions and interests in those special purpose entities, partnerships and transactions. The third-party petition sought contribution and indemnity from the Third-Party Defendants, should Arthur Andersen be found liable to Al Rajhi. Some of the Third-Party Defendants removed that suit from the 11<sup>th</sup> Judicial District Court of Harris County, Texas on April 10, 2003; it was subsequently transferred to this Court. This Court has recently denied Al Rajhi's motion to remand that suit.

pursuant to Fed. R. Civ. P. 41(a)(1)(i): (1) Barclays PLC; (2) Deutsche Bank AG; (3) Deutsche Bank Alex Brown, Inc.; (4) Deutsche Bank AG London; (5) J.P. Morgan Chase Corporation; (6) J.P. Morgan Chase Securities; (7) Chase Securities, Inc.; (8) J.P. Morgan Chase Bank; (9) Credit Suisse First Boston; (10) Credit Suisse First Boston (USA); (11) Credit Suisse First Boston Corporation; (12) Donaldson, Lufkin & Jenerette Securities Corporation; and (13) Vinson & Elkins LLP.

#### **Plaintiff's Motion To Remand or Abstain**

Removing Defendants assert there is "related to" bankruptcy jurisdiction here under 28 U.S.C. § 1334(b) and § 1452 and Fed. R. of Bankr. 9027(a)(1), based on the following: (1) state-law provides potential statutory, contractual and common law rights of indemnity and/or contribution against the Enron bankruptcy estate; (2) Al Rajhi has filed a proof of claim in the Enron bankruptcy proceedings to recover the same loss alleged in both its federal suits; and (3) Enron has filed an Adversary Proceeding in its bankruptcy action against many Defendants named in this action and makes allegations similar to those asserted by Al Rajhi here.

Plaintiff argues that remand is proper because the Court lacks "related to" bankruptcy jurisdiction. The alleged contribution or indemnity claims based on unspecified state law and unspecified contracts are merely possible, not certain, are not against the debtor, and are insufficient to trigger such

jurisdiction, insists Plaintiff. Moreover, Defendants failed to obtain unanimous consent to the removal.

Alternatively, if the Court rejects remanding the case, Al Rajhi contends that mandatory abstention under 28 U.S.C. § 1334(c)(2) is required or, should the Court again disagree, discretionary abstention under 28 U.S.C. § 1334(c)(1) is appropriate here.

In Defendants' response (#22 at 7-10), the Court finds that Defendants have identified legal bases for their contribution and indemnity claims: statutes (Tex. Civ. Prac. & Rem. Code Ann. § 32.002 and N.Y.C.P.L.R. § 1401); Enron's articles of incorporation; Enron's D&O policies; underwriting agreements between Enron and certain financial institution Defendants; and case law.

This Court, hereby incorporating its previous memoranda and orders in *Newby*, has recently addressed the same arguments and rejected them. First, it has concluded that the unanimity rule does not apply to removals based on "related to" bankruptcy jurisdiction under 18 U.S.C. §§ 1334(b) and 1452. See, e.g., #2143 at 38-49. Thus there was no procedural default based on failure to obtain consent from all served defendants.

This Court has also concluded that the broad reach of "related to" bankruptcy jurisdiction reaches potential claims for contribution and indemnity like those asserted here, while the fact that Enron has not been named as a defendant because it is in

bankruptcy is not determinative. See, e.g., #1714 at 8-37 in *Newby*; #56 at 4-5 n.1 in H-03-2264; #55 at 5-7 in H-03-1219.

With respect to mandatory abstention under 28 U.S.C. § 1334(c), Plaintiffs have failed to show adequately that this suit, which involves very complicated legal and factual issues and requires extensive discovery, can be timely adjudicated in state court. See #995 at 16-19; # 56 at 5 in H-03-2264.

Discretionary abstention is also inappropriate in this MDL 1446 Enron-related litigation. #995 at 19-21

For these reasons, the Court denies Plaintiff's motion to remand or abstain.

Because no opposition has been filed, the Court grants Plaintiff's motion for leave to file an amended complaint.

Finally, because the Court agrees with Defendants Clifford Chance, LLP and Standard and Poor's Credit Market Services that participation in the mediation is inappropriate for them. The ongoing mediation is for financial institutions involved in the various suits, not for particular actions, especially where, as here, the claims are distinct from those in *Newby*. Most of the financial institutions involved in this action, including those voluntarily dismissed by Plaintiff, are already involved in the mediation. Therefore the Court denies the motion for leave to participate in the mediation.

In sum, the Court

ORDERS that Plaintiff's motion to remand or abstain is DENIED; Plaintiff's motion for leave to file its amended

complaint is GRANTED; and Plaintiff's motion to join the court-ordered mediation is DENIED.

**SIGNED** at Houston, Texas, this 10<sup>th</sup> day of June, 2004.



---

MELINDA HARMON  
UNITED STATES DISTRICT JUDGE